

THE NEW TREATY:  
WHAT WILL IT MEAN, AND DO WE NEED A REFERENDUM?

"If there are further steps to European integration, the people should have their say at a general election or in a referendum"

Tony Blair, February 1997  
*New Britain: My vision of a young country*, p.70

"What you cannot do is have a situation where you get a rejection of the treaty and bring it back with a few amendments and say, 'Have another go'. You cannot do that"

Tony Blair, 23 April 2004  
*The Independent*

"The treaty does not and will not alter the fundamental nature of the relationship between member states and the European Union... Parliament should debate it in detail and decide upon it. Then, let the people have the final say"

Tony Blair, 20 April 2004  
*Speech announcing a referendum on the constitutional treaty*

"If it is not a constitutional treaty so that it alters the basic relationship between Europe and the member states, then there isn't the same case for a referendum"

Tony Blair, 20 April 2007  
*Interview announcing that there will be no referendum on the new treaty*

## EXECUTIVE SUMMARY

At the European Council on 22 June the German government aims to get an agreement to launch an Inter-Governmental Conference. This conference is expected to agree a new treaty to replace the constitutional treaty which was rejected by French and Dutch voters in the summer of 2005. The outline of the new treaty is expected to be agreed at the June summit, and the remaining details are expected to be finalised by the end of 2007.

At present it appears likely that the new treaty will contain many of the same controversial proposals as the rejected constitutional treaty.

### What is likely to be in the new treaty?

Fairly certain	Possible	Unlikely
Permanent EU President	End of pillar structure and new powers for the European Court of Justice	Reference to primacy of EU law
EU Foreign Minister and new foreign policy powers	End of the veto on criminal justice	References to symbols of the EU: flag etc
Changes to voting weights to make it easier to pass legislation (e.g. 30% cut in Britain's blocking power). This will allow several controversial laws the UK is now blocking to pass.	Some attempt at a division of competences	Reference to Charter of Fundamental Rights which will make it legally binding
End of "one Commissioner per country rule". A third of member states will have to give up their national Commissioner	<i>Reference to social values of the EU &amp; language suggesting caution about further enlargement (aimed at France)</i>	Single legal personality for the EU

(Ideas not in the previous constitutional treaty are shown in italics)

The core "institutional" features of the constitutional treaty are fairly certain to be carried over into the new treaty. Like the Constitution, the new treaty would create powerful new positions and institutions, making the central EU institutions more powerful in relation to the member states.

### EU president

For example, the new treaty is likely to follow the constitutional treaty in proposing an EU President - to be appointed by the European Council for two-and-a-half year terms. The constitutional treaty proposed that the president would have to be a former head of Government, and would not be allowed to hold a current national office. This means that unlike in the present system, whereby member states' Prime Ministers or Presidents head the EU for six months at a time, the President of the Council would have no direct link to any citizens of the EU. Indeed, by definition he or she would be likely to be either retired or have been recently rejected by national voters.

The opportunity to steer the direction of the EU for 6 months that the current system affords each member state would be taken away. This would deprive each member state of a chance to propose its own measures and agenda. It would mean

setting up another powerful, independent Brussels institution. Control of the 3,500 civil servants in the Council Secretariat would give the President a substantial power base - and the president would have an incentive to expand its own powers. The new President would fundamentally change the nature of the legislative process in Brussels. Instead of negotiations between the supranational Commission and a national head of Government with a vested interest in protecting the rights of member states, negotiations would in future take place between one unelected, independent Brussels institution and another.

Many also see the President as a stepping stone to a US-style President of Europe. The author of the constitutional treaty, Valéry Giscard d'Estaing, has already suggested that the new President of the Council will later be merged with the President of the Commission, and be directly elected. Nicolas Sarkozy has also recently backed making the President directly elected. During the negotiations on the constitution Jack Straw said the UK "would have preferred to have explicit separation of those two posts". The UK Government tried to block an amendment which allows the two posts to be merged, but it later gave way.

### **EU Foreign Minister**

The new treaty is likely to include the "EU Foreign Minister" proposed in the original constitution. In itself this would create a powerful supranational official, and give the Commission a role in foreign policy which the UK has long opposed. Denis MacShane has predicted that "The voice of the future Union Minister for Foreign Affairs will be louder than that of the ministers of each nation." It is not clear what would happen if member states took a different line to the Foreign Minister, which creates the dangerous possibility of sending mixed messages to the rest of the world.

However, on top of this, the constitutional treaty also proposed that the EU Foreign Minister should have various new powers - for example: to "automatically" speak on behalf of member states in key international meetings like the UN security council; to make proposals which would then be decided on by majority vote; and to run a powerful independent EU Diplomatic Service. During the negotiations on the constitution the UK opposed all three of these ideas, but later gave way. The UK will insist on changing the name of the "Foreign Minister" (and possibly the 'President') to something less emotive in the new treaty, but it is not clear whether the UK will also insist on taking away the substantive powers which would come with the roles. As Italian Prime Minister Romano Prodi has pointed out: "as long as we have more or less a European Prime Minister and a European Foreign Minister then we can give them any title."

### **Cutting our power to block EU legislation by 30%**

Another proposal from the constitutional treaty that is likely to resurface in the new treaty is the way that the EU takes votes. The system will be altered so that it is harder for member states to block legislation they are opposed to. Britain's power to block legislation would be cut by nearly 30 percent. Several controversial measures we are currently blocking might then pass - for example the proposal to restrict the UK's individual opt out from the working time directive. In general it will mean more EU regulations will be passed.

Some argue that unless the rules are changed to make it easier to pass legislation then the EU will "grind to a halt." But a study of legislation by academics at Paris-based university Sciences-Po found that the EU has in fact been adopting new rules and regulations some 25% *faster* since enlargement and that "old" member states are twice as likely to block measures as "new" countries.

Indeed, most people in business believe that the EU is already producing too much regulation. An ICM poll of 1,000 UK Chief Executives at the end of 2006 found that 59% thought that the burden of EU regulation was rising, and 54% now think the benefits of the Single Market are outweighed by the costs of EU regulation.

### The end of the national commissioner

Member states will no longer have a Commissioner each. This would mean there would be periods in which certain member states do not know what's going on within the Commission. The Constitution proposed that a third of member states would not have a Commissioner at any one time, and the next text may follow this.

### What else is up for grabs?

A number of other proposals are being discussed, but may not make it into the final text. There has been some discussion about abolishing national vetoes, particularly in criminal justice. There is also discussion about ending the so-called "pillar structure" of the EU, which was established in 1992 in order to avoid the European Court of Justice and the Commission having jurisdiction over the EU's newly created home affairs or foreign policy programmes.

Other possibilities under discussion are a return to the "division of powers" set out in the constitutional treaty, or the addition of wholly new articles which would attempt to placate voters in countries such as France by referring to the EU's social values and making further enlargement more difficult. There has been a proposal to refer to the EU Charter of Fundamental Rights in the new treaty, which would make it legally binding for the first time. However, the UK and other member states will almost certainly block this.

### The case for a referendum

The UK Government (and other EU governments) promised a referendum on the constitutional treaty, but are now signalling that they will seek to avoid a vote on the revised treaty. If the new treaty turns out, as expected, to contain many of the same proposals as the rejected Constitution, then a vote should be held for four main reasons:

- 1) The proposals that are likely to be in the new treaty are a significant step in the wrong direction. The EU does not need even more powers. The creation of a permanent EU President will lead to further centralisation over time; the EU Foreign Minister will reduce the UK's influence in the world; and proposals to make it easier to pass even more regulations will damage our economy. The treaty would give far more power to unelected judges.
- 2) If the new treaty is adopted without a referendum, there is nothing to stop EU leaders from then implementing all the other elements in the EU Constitution over time. When Nicolas Sarkozy first suggested the 'mini treaty' idea he argued that it should be followed by another treaty going further. The mini treaty will cover "the most urgent priorities", he argued, "But in the longer term, root-and-branch reforms remain essential." Jose Barroso has said that once the new treaty is in place, "*nothing rules out the possibility of certain more ambitious aspects later on*". Romano Prodi and Jose Zapatero have also said the new text should be just the first step.
- 3) We need an opportunity to say "no" to finally force reform in Brussels: EU leaders should have changed course after the French and Dutch referendums, but they didn't listen. We need an opportunity to finally end "integration by stealth" once and for all and make a fresh start.

- 4) Fundamentally, this is about democracy. The Government promised a referendum which is long overdue; now they want to take it away again. When MPs permanently give away powers which we have only *lent* to them in the first place, the voters should have a say. In the UK, no-one under the age of 50 has had a chance to have a vote on the direction of the EU. The fact that they might vote "no" is not an acceptable argument.

#### Do the Government's arguments against a referendum stack up?

The UK Government argues that the new treaty will be a "different animal" to the constitutional treaty which it previously promised a referendum on. However, the new treaty contains many of the same proposals as the rejected Constitution. In April 2007 a leaked letter from Angela Merkel to other leaders negotiating the new treaty highlighted the fact that it would have much of the same "legal substance" as the constitutional treaty, while making "presentational changes" and using "different terminology" - like giving the new "foreign minister" a less emotive title.

It suggested that: "The consolidated approach of part one of the Constitutional Treaty is preserved with the necessary presentational changes" and suggested a proposal "To use different terminology without changing the legal substance - for example with regard to the title of the treaty, the denomination of legal acts, and the union's minister of foreign affairs." It even suggested a plan to "Replace the full text of the Charter of Fundamental Rights by a short cross reference having the same legal value" - although this is almost certain to be rejected by the UK and other member states.

The Government argues that "What was different about the constitutional treaty was that it altered the basic relationship between the European Union and the member states, and therefore it was appropriate to have a referendum." (Geoff Hoon, BBC World at One, 20 April)

But this is the exact opposite of what ministers argued when the original Constitution was being negotiated. When announcing the referendum promise Tony Blair argued that "The treaty does not, and will not, alter the fundamental nature of the relationship between member states and the European Union". The promise of a referendum boosted the Government just before the 2004 elections. But this promise is now being withdrawn.

The Government's decision to try and push through more powers for the EU without public consent and without a referendum is ironic, given that the point of drawing up the Constitution in the first place was to "reconnect with voters", and end the perception that EU integration was taking place in an undemocratic way.

In the December 2001 "Laeken Declaration" which launched the constitutional process, EU leaders admitted that citizens "feel that deals are all too often cut out of their sight and they want better democratic scrutiny" and agreed that a way needed to be found to stop the "creeping expansion of the competence of the Union". The declaration called for "better responses to practical issues and not a European superstate or European institutions inveigling their way into every nook and cranny of life." The political leaders also talked about "restoring tasks to the Member States," and said that powers could be returned back to the national and local level.

If anything, public trust and confidence in the direction of the EU appears to have fallen even further since then. A TNS poll of voters in all 27 member states in March 2007 found that across the EU as a whole, 56% of people feel that the EU doesn't represent them or their community. Looking forward, just 28% of voters think the EU should have more powers than it has now. 23% think the EU should keep the powers it has now, but should not be given any more. But 41% think the EU should have less powers than it has now - and want more decisions to be taken at a national or local level.

So it's no surprise that 75% of voters across Europe want a referendum on any new treaty which transfers further powers to the EU.

*"People have an ever increasing feeling that something is going wrong; that an untransparent, complex, mammoth institution has evolved: divorced from practical problems and national traditions; grabbing ever greater competences and areas of power; that the democratic control mechanisms are failing - in brief, that it cannot go on like this."*

*- Former German President Roman Herzog, Die Welt, March 2007*

## PART ONE: WHAT'S LIKELY TO BE IN THE NEW TREATY?

### (1) An EU President

*"The Council president, elected by universal suffrage, will bring together the president of the European Commission elected by the European Parliament and the whole set of ministers and commissioners with federal competences."*

- Valery Giscard d'Estaing, Former French President and author of the constitutional treaty, 21 January 2003, *European Convention debate*

*"In the American system the Presidency was designed since the beginning, for Europe I guess it will be different. What will certainly have to change with time is the way of choosing the President. In 10 to 20 years there will be a demand for a more democratic election process."*

- Valery Giscard d'Estaing, 7 July 2003, *Wall Street Journal Europe*

*"The new president will only be held accountable behind closed doors to the European Council so no democratic breakthroughs with this potentially powerful new post... Nor looking forward is it clear that the new president will anyway act in the way the UK hopes. As a new permanent and full-time position in Brussels, with the Council secretariat at its service, it is quite possible that such a new president may prove more pan-European and less biddable than the current rotating part-time presidency. Fortunately for the UK government, this will be not be tested in advance of a referendum."*

- Kirsty Hughes, Visiting Fellow, European Institute, 1 January 2005

The constitutional treaty proposed a permanent President of the European Council, with a two and a half year mandate, to be chosen by EU Heads of State and Government by qualified majority vote. This was one of the key innovations of the EU Constitution, and now remains one of the main priorities of the German government for inclusion in the new EU treaty. It is seen as part of the core "institutional package" of the constitutional treaty which will be reintroduced in the new treaty.

The argument for an EU President is that the person would drive forward the EU's activity and partially replace the current system under which each member state takes it in turn to be EU 'president' and chairs all EU Council meetings for six months.

However, the President would not be allowed to hold national office. This means that unlike in the present system, whereby member states' Prime Ministers or Presidents head the EU for six months at a time, the President of the Council would have no direct link to any citizens of the EU. Indeed it is likely the role would be held by ex-heads of state and government, whose national citizens have voted out of office. As a full time Brussels official the President would be further removed from national politics and accountability.

### A stepping stone to a US-style president?

As well as being further removed from democratic accountability, there are concerns that over time the post will lead to a further centralisation of power in Brussels. The President is likely to be supported by a big bureaucracy and is likely

to lobby for more powers over time. Some, including the author of the constitutional treaty, Valéry Giscard d'Estaing, argue that the EU President will come to have powers akin to those of a US President, and be directly elected.

One federalist vision is that the Council President will later be merged with the President of the Commission. Giscard d'Estaing has argued that, "We will probably have to have at least two executives in the beginning. But the process of reform will not be complete in twelve months." (Speech at NYU, 13 May 2002)

Former Italian PM and member of the European Convention Lamberto Dini said, "We should ask ourselves whether it makes sense to maintain two presidents of the executive, one for the Council and the other for the Commission, or whether it would be better to have a single office, presiding over both institutions." (FT, 10 January 2003)

During the drafting of the constitutional treaty the UK Government failed to block a last minute change which would allow the two roles to eventually be merged. Early Convention drafts of part one of the Constitution excluded this possibility: "The President of the European Council *may not be a member of another European institution* or hold a national mandate" (CONV 724/03). But in the final stages of the negotiations this separation was abandoned and the final text stated only that: "The President of the European Council shall not hold a national office."

The EU's "Europa" website explicitly states: "The Convention also proposes that the President of the European Council may not hold a national mandate at the same time. However, this arrangement does not prevent the President of the European Council from holding another mandate within another European institution. This allows for the possibility, in future, of combining the roles of President of the European Council and President of the Commission, if the Member States so wish."

Back in 2003, Jack Straw told the Standing Committee on the IGC: "We would have preferred to have explicit separation of those two posts. I do not believe that in practice they will merge. The institutional balance between the Council and the Commission is absolutely fundamental to the proper orientation of the EU, and for a variety of reasons member states would not accept that they should merge into one position. Although it is not a red line, it is something that we must consider, and I promise to do so." (10 November 2003)

However, the Government did not manage to get the separation reinstated, and there is widespread expectation that if a post of EU President is created, then the two roles will merge. Giuliano Amato, Italian Foreign Minister and the Vice President of the Convention, has called for the merger of the two roles in 2015, asking "Can an animal with two heads survive for long?" (New York Times, 15 June 2003) Former Italian Foreign Minister Gianfranco Fini said that although the time is not yet "politically ripe" to merge the two roles, the idea should be considered "in the near future". (European Convention Plenary, 21 January 2003)

Nicolas Sarkozy has also backed the idea that the President should be directly elected. He endorsed a proposal by the NGO *Europanova* to create a directly elected EU President. (Le Figaro, 29 April 2007)

### **Will yet another President really simplify things?**

Despite the claim that such a system is necessary on efficiency grounds, in fact a permanent President could make things even more complicated. The new EU President would chair the European Council, while the Foreign Minister would chair the Foreign Affairs Council (see below), and the President of the Eurogroup (a post

proposed in the European Constitution, but introduced already) would chair that meeting. The constitutional treaty proposed that all other Council meetings would continue to be chaired by member states on a six month basis, only under a more complicated system, whereby the member state in charge shared some responsibility with two other member states at the same time.

The creation of the European President would increase the powers of the EU institutions in relation to the member states. The opportunity to steer the direction of the EU for 6 months that the current system affords each member state would be taken away. This would deprive each member state of a chance to propose its own measures and agenda. The powers of such a President are clearly intended to grow over time. It would mean setting up another powerful Brussels institution, which would have an incentive to expand its own powers.

## (2) An EU Foreign Minister, and more powers for the EU over our foreign policy

*"The post of European Minister for Foreign Affairs is revolutionary; it will coordinate development policy, foreign relations and defence. While it is true that the decisions that will be taken will generally require the unanimous approval of the Council, the Minister will be able to make proposals that could be approved by majority voting."*

- Miguel Ángel Moratinos, Spanish Foreign Minister, 28 February 2005, *Café Babel*

*"Why do France and Britain still have their own seat on the UN Security Council? Of course we should amalgamate these into a powerful European seat."*

- Dirk Benschop, Dutch Europe Minister, 16 April 2002, *Die Welt*

*"Europe must believe that it can be in 20 years the most important world power... Naturally it [US military help] will still last some time, until we develop a single defence policy. That can happen only after the agreement on a common foreign policy. The constitutional treaty is an important step into this direction. In 15 to 20 years we will surely have a foreign service for the European Union."*

- Jose Luis Rodriguez Zapatero, Spanish Prime Minister, 8 November 2004, *Spiegel*

*"We want a political Europe that can speak with one voice, and with one minister of foreign affairs and a common foreign service."*

- Nicolas Schmit, Luxembourg Foreign Minister, 26 January 2007, *BBC*

*"We will undoubtedly see European embassies in the world, not ones from each country, with European diplomats and a European foreign service. We will see Europe with a single voice in security matters. We will have a single European voice within NATO. We want more European unity."*

- Jose Luis Rodriguez Zapatero, Spanish Prime Minister, 17 February 2005, *AP*

*"The voice of the future Union Minister for Foreign Affairs will be louder than that of the ministers of each nation."*

- Denis MacShane, Former UK Europe Minister 28 February 2005, *Le Figaro*

*"We must act as one. That is precisely why, for a European foreign policy, we need a European Union Minister for Foreign Affairs - so that we can practise what we preach."*

- Angela Merkel, German Chancellor, speech in the European Parliament, 17 January 2007

*"We must set up the necessary institutions to sustain a common foreign policy, in particular the creation of a fixed post of Foreign Minister, whose role will be to ensure coherence in all the EU's actions in the international domain (foreign policy, defence, cooperation, trade)."*

- Nicolas Sarkozy, 6 January 2006, *European View*

For many of its supporters, one of the key attractions of the EU Constitution was the extra powers it gave the Union over member states' foreign policies. It provided for a new powerful EU Foreign Minister who would be supported by an EU Diplomatic Service. Despite the UK Government's insistence that majority voting in foreign policy was a "no go area," it would also have brought in Qualified Majority Voting (QMV) in over 9 areas of foreign and defence policy.

There is widespread support among EU leaders to use the new treaty to create the position of an EU Foreign Minister. This would be a significant move and would represent a considerable transfer of power over foreign policy from the member states to the EU.

The UK will almost certainly insist on changing the name of the "Foreign Minister" (and possibly the 'President') to something less emotive in the new treaty, but it is not clear whether the UK will also insist on taking away the substantive powers which would come with the roles. As Italian Prime Minister Romano Prodi has pointed out: "as long as we have more or less a European Prime Minister and a European Foreign Minister then we can give them any title." (Speech, 2 May 2007)

In the original Constitution, the creation of an EU Foreign Minister was part of a detailed package of foreign policy proposals - including an EU Diplomatic Service and the introduction of majority voting over some aspects of foreign affairs. Some of these other ideas may be included in the new treaty.

Even if the Foreign Minister was not given new powers, creating a Foreign Minister would (a) give the Commission far greater powers in foreign policy, which the UK has been resisting for decades, and (b) give greater prestige and authority to an official who may - as the Lebanon crisis showed - disagree with the UK position.

This would reduce member states' own relative clout in the world. As the former Europe Minister Denis MacShane has predicted, "The voice of the future Union Minister for Foreign Affairs will be louder than that of the ministers of each nation." (Le Figaro, 1 March 2005)

However, on top of this, the constitutional treaty also proposed that the EU Foreign Minister should have various new powers - for example:

- To "automatically" speak instead of member states in key international meetings
- To make proposals which would then be decided on by majority vote
- To run a powerful independent EU Diplomatic Service.

#### a) What role for an EU Foreign Minister?

The EU "Minister for Foreign Affairs" would combine in one person the role of the existing European Commissioner for External Relations (currently Benita Ferrero-Waldner) and the Council's 'High Representative' for foreign policy (currently Javier Solana). As well as merging the two roles and bringing the European Commission into foreign policy making for the first time, the Foreign Minister would also be given the right to initiate EU foreign policy alongside the member states - a substantial increase in the EU institutions' control over foreign policy.

Against the UK Government's wishes, the Constitution proposed that the EU Foreign Minister would automatically represent member states in international meetings, particularly at the United Nations Security Council. Article III-305 (2) of the constitutional treaty proposed that, "When the Union has defined a position on a subject which is on the United Nations Security Council agenda, those Member

States which sit on the Security Council shall request that the Union Minister for Foreign Affairs be asked to present the Union's position."

If the EU Foreign Minister is introduced in this way in the new, amending treaty, he/she will automatically speak on the UK's behalf on all subjects on which the EU had defined a common position in the Security Council.

For example, if the Constitution were in force today, the EU Foreign Minister would be speaking on the UK's behalf in the negotiations with Iran over its nuclear programme, undermining the UK's influence over one of the biggest political, strategic and security problems the world faces.

There are concerns that the EU Commission would use this as a stepping stone in its bid to get its own seat on the UN Security Council. External Relations Commissioner Benita Ferrero-Waldner has said, "Europe must speak with one voice in the Security Council... I think that one should consider a special seat for the EU in the Security Council given its foreign policy significance." (EUobserver, 25 January 2005)

The EU Foreign Minister would also take on controversial new powers to represent EU members around the world. Article III-296 (2) of the original Constitution says that the Foreign Minister "shall conduct political dialogue with third parties on the Union's behalf." When the Constitution was being drawn up, the UK Government opposed this and tried to have it deleted three times. Peter Hain, then Europe Minister, argued that it should be removed "to make clear the 'European Foreign Minister' is accountable to the Council and does not replace the right of Member States to speak on their own behalf in international organisations". He said, "The UK cannot accept any language which implies that it would not retain the right to speak in a national capacity on the UN Security Council." However, the UK was overruled.

It is not clear what would happen if member states took a different line to the Foreign Minister, which creates the dangerous possibility of sending mixed messages to the rest of the world.

For example, during the Lebanon crisis in July 2006 the EU's current High Representative, Javier Solana, said that Israeli action was "disproportionate" - a controversial description which the UK Government deliberately avoided using. Regardless of the rights and wrongs of the case, the point is that the more independent and powerful the EU's role in foreign policy becomes, the greater potential there is for it to potentially undermine a UK position.

#### **b) Other foreign policy powers for the EU: majority voting in some areas?**

While it is unclear just how much of the old constitutional treaty will be salvaged, it seems likely that the proposals to create an EU Foreign Minister and EU Diplomatic Service will be retained. In connection with this, there may well be a move to include the other foreign policy proposals that were in the constitutional treaty - in particular those which spell out new powers for the Foreign Minister and define the role of the EU Diplomatic Service.

#### **Majority voting in foreign policy?**

The Government has long been opposed to majority voting in foreign policy, but nevertheless allowed it to appear in the European Constitution. During the negotiations on the Constitution, Peter Hain promised that "QMV is a no-go area in

CFSP [Common Foreign and Security Policy].” However, despite this, the original Constitution moved several aspects of foreign policy away from unanimous voting and towards qualified majority voting. Examples include:

*i) Majority voting on proposals from the EU Foreign Minister.* Article III-300 (2) (formerly Article III-201) of the EU Constitution stipulated that the Council should act by qualified majority “when adopting a European decision defining a Union action or position, on a proposal which the Union Minister for Foreign Affairs has presented following a specific request to him or her from the European Council, made on its own initiative or that of the Minister”. During the negotiations on the Constitution during the Intergovernmental Conference, Jack Straw said that the move to QMV in this area was “simply unacceptable”.

*“I made it clear that Article III-201, which proposes QMV on proposals made by the Union's Minister for Foreign Affairs, is simply unacceptable. I do not remember exactly how much support there was for that view in the room, but there was a great deal. Again, we made it clear that common foreign and security policy is an intergovernmental matter, and must be established unanimously.”*

- Jack Straw, Standing Committee on the IGC, 1 December 2003

*ii) Majority voting on the EU foreign policy fund.* In order to fund large military/civilian operations abroad, Article III-313 (3) of the EU Constitution contained a procedure which would allow rapid access to parts of the EU budget for the Foreign Minister. It also stipulated that any extra expenditure would have to come from the member states - which would pool resources into a “start-up fund”. The procedures for setting up and administering this foreign policy fund would be decided by QMV. Given that the budget provided would dictate what action member states took, a large part of the UK's involvement in any EU foreign policy would not be subject to a national veto. The Government tried to avoid this during the negotiations on the Constitution. Peter Hain said the UK wanted “to bring the procedures into line with the arrangements for launching operations reflected in existing Council Decisions.” However, he was ignored.

*iii) Majority voting on the running of the new EU Diplomatic Service.* Article III-296 of the EU Constitution stipulated that the organisation and functioning of the new EU Diplomatic Service would be decided by QMV.

*iv) Majority voting on consular issues.* According to Article III-127 of the Constitution, consular issues, and the rights of EU citizens to be represented by the embassies of other member states were also to be dealt with using QMV.

### An EU Diplomatic Service?

*“After half a century of European construction, we are sufficiently united to ensure that none of our states can conduct a great diplomatic action on its own, but not enough to act together and to count significantly on the international scene.”*

- Nicolas Sarkozy, 1 March 2007, *FT*

The EU Constitution provided for a new EU Diplomatic Service (“the European External Action Service”), to assist the Union Minister for Foreign Affairs. It was to be comprised of officials from the General Secretariat of the Council and of the Commission, alongside staff seconded from national diplomatic services of the member states.

The UK Government originally opposed the EU Diplomatic Service. In the negotiations on the draft constitutional treaty Denis MacShane said, “We believe that it remains for EU Member States to organise their respective bilateral diplomatic services at the national level.” (Hansard Written Answer, 17 June 2002)

On 30 November 2004 *Handelsblatt* reported that France and Germany were already planning to launch joint embassies in order to “complement” the EU Diplomatic Service. According to the paper the countries planned to move a number of embassies into joint buildings, and pool political units and research, piloting the idea of an EU Diplomatic Service.

Despite the rejection of the constitutional treaty, in November 2006 the European Commission published a Green Paper which revealed plans to establish EU “consulates” around the world - an intermediate step towards establishing the Diplomatic Service. The paper proposed “strengthening” existing arrangements written into EU law whereby citizens of EU member states which are not represented by an embassy or consulate in a third country are entitled to protection by the consular authorities of any other EU member state that does have a representation there.

The Green Paper also suggested setting up common embassies, arguing that “Setting up common offices would help to streamline functions and save on the fixed costs of the structures of Member States' diplomatic and consular networks... these offices could be housed in various representations or national embassies or in just one, or they could share the Commission delegation.” It went on to say that “the EU consulates could take over functions now controlled by member states, including issuing visas. “In the long term, common offices could perform consular functions, such as issuing visas or legalising documents.”

Spanish Prime Minister José Zapatero has predicted that once the EU Diplomatic Service is set up, national embassies will eventually be replaced by EU ones: “We will undoubtedly see European embassies in the world, not ones from each country, with European diplomats and a European foreign service. We will see Europe with a single voice in security matters.” (AP, 17 February 2005)

### (3) Reducing our ability to block legislation

The EU Constitution proposed two parallel changes which would have reduced member states' ability to block legislation they oppose. Firstly, it proposed moving from unanimous agreement to majority voting in several new areas (see the next section). But equally importantly, it also proposed that when majority voting does apply (as it already does in most areas), then a new voting system would be used, which would make it far harder for member states to block legislation.

The system proposed in the Constitution would have reduced Britain's ability to block legislation by 30%, and would have made it more difficult for groups of countries to get together to form a blocking minority.

Currently, France, Germany, Italy and the UK all have the same weight in decision-making. Under the new system, for the first time the UK would no longer have the same number of votes as the other "big" member states - Germany would have a third more votes, reflecting its larger population.

It is very likely that the new voting system will be included in the new EU treaty. This would be very significant, as it might mean that several controversial pieces of legislation which the UK is currently blocking with the help of other member states would become law - against our Government's wishes.

#### **Raising the blocking threshold**

The key change under the new system is that the threshold number of votes needed to stop a piece of legislation from being adopted is increased. Academic work by Felsenthal and Machover (2004) shows that this would reduce the UK's power to block legislation by almost 30 percent.<sup>1</sup>

Since 1 January 2007, under the Nice Treaty (amended by the Accession Treaty), 255 out of a total of 345 votes have been required to pass a proposal (73.9 %). The UK has 29 votes, which represents 8.4 percent of the overall votes.

The provisions likely to be in the amending treaty would make it much easier for the EU to pass legislation, by lowering the qualified majority threshold. The Constitution proposed scrapping the current voting weights and replacing them with a system under which legislation may be passed even if only 55% of the member states agreed to it, provided that they represent 65% of the population. The chart below, based on research by Baldwin and Widgrén, shows that the probability of a piece of EU legislation passing would have been tripled under the Constitution.

In fact, Baldwin and Widgrén's research shows the provisions in the Constitution would have made it easier to pass a proposal in the Council than it was when the EU had only 12 members. They found that the probability of a contested piece of legislation gaining a majority would be tripled, from 3.6% under the Nice rules, to 12.9%.

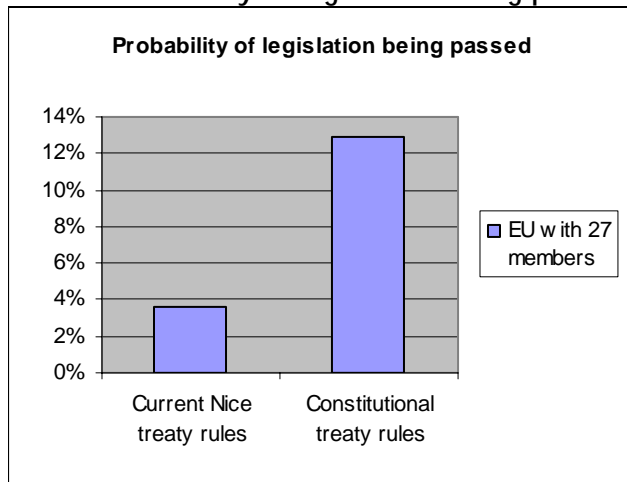
Baldwin and Widgrén argue, "The switch to the CT [constitutional treaty] rules in 2009 will involve a quantum jump up in decision-making efficiency; it will be less difficult to find a qualified majority in the EU27 than it was in the EU12."<sup>2</sup>

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<sup>1</sup> Analysis of QM Rule Adopted by the EU Inter-Governmental Conference Brussels, 18 June 2004, <http://eprints.lse.ac.uk/archive/00000431/>

<sup>2</sup>[http://heiwwww.unige.ch/~baldwin/PapersBooks/Devil\\_in\\_the\\_details\\_BaldwinWidgren.pdf](http://heiwwww.unige.ch/~baldwin/PapersBooks/Devil_in_the_details_BaldwinWidgren.pdf)

### Probability of legislation being passed



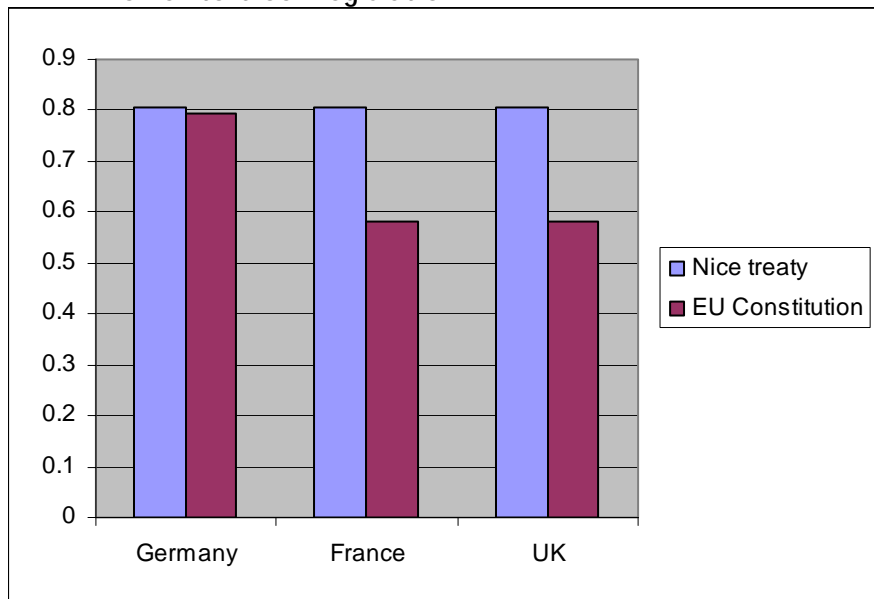
(Baldwin and Widgren, 2004)

Separate research by Felsenthal and Machover also concluded that it would be easier for the EU to pass legislation. They state that, "In betting terms, this means that the *a priori* odds against approval of an act are approximately 27 to 4. The values of these parameters are not very different from what they were in the periods 1973-80 and 1980-85, when the EU had nine or ten members."<sup>3</sup>

Felsenthal and Machover also calculated the converse measure - how hard it would be for individual member states to block legislation (known as Coleman's measure). They found that in terms of blocking power, almost all member states lose blocking power, but some lose more than others. Malta is the only country that stood to actually gain from the changes to the voting weights. Germany is the only large member state which stays roughly the same - its hugely increased share of the vote offsets the effect of the higher threshold needed to block legislation.

The UK stands to lose nearly 30 percent of its ability to block EU legislation in the Council.

### Power to block legislation



(Felsenthal and Machover, 2004)

<sup>3</sup> Table 3, page 6. <http://www.lse.ac.uk/collections/VPP/VPPpdf/QMRule040618.pdf>

## But don't we need these changes to make enlargement work?

Some argue that unless the rules are changed to make it easier to pass legislation then the EU will "grind to a halt." But a study of legislation by academics at Paris-based university Sciences-Po found that the EU has in fact been adopting new rules and regulations some 25% *faster* since enlargement and that "old" member states are twice as likely to block measures as "new" countries.

As the *Economist* recently noted: "When eurocrats call for more streamlined decision-making, what they mean is making life more frightening for laggards." Hans-Gert Pöttering, President of the European Parliament, is admirably frank: "If you have majority voting, you can overrule those who don't want to move ahead."

The opposite argument has also been made. The author of the Constitution, Valéry Giscard D'Estaing, said that the voting system in the Constitution will limit enlargement. He believes that because the system is based on population sizes, this will raise further political hurdles to Turkey joining the Union.

He argued, "In order to avoid the situation where the last State to join the Union - and as a result, unfamiliar with its functioning - would become the primary decision-maker, it would be necessary to rewrite the Constitution and to institute a maximum limit with respect to how the population of member states is taken into account... The fact remains that the European Constitution submitted today for ratification was not conceived to take in a power the size of Turkey". (Zaman, 25 November 2004)

## Do we need even more EU regulation?

Despite the EU Commission's claim that it needs to speed up decision making many people in business believe that the EU is already producing too much regulation. An ICM poll of 1,000 UK Chief Executives at the end of 2006 found that 59% thought that the burden of EU regulation was rising, and 54% now think the benefits of the Single Market are outweighed by the costs of EU regulation.

EU Industry Commissioner Gunter Verheugen told the *Financial Times* in October last year that EU legislation now costs European business €600 billion (£405 billion) a year, on the basis of a new evaluation of the administrative costs of red tape. This figure is almost twice the previous estimate of €320bn, and represents 5.5% of total EU GDP. This is the equivalent of the EU losing the entire output of a medium-sized country like Holland every year.

Despite repeated announcements that the EU Commission is about to begin a "war on red tape," the problem is actually getting worse. Of the 170,000 pages of red tape that the EU has churned out since 1957, 100,000 have been produced in the last ten years. EU regulations have cost the UK economy over £40 billion since 1998 alone. By making it easier for the UK to get outvoted in Brussels, the new treaty would only make matters worse.

## When could reduced voting power make a difference in practice?

Because meetings of the Council of Ministers take place largely in secret, and formal on-the-record votes are almost never taken, it is difficult to know on exactly which occasions in the past the new system might have tipped the balance. It is certainly hard to predict where the new system might have an effect in the future.

However, from press reports we do have some information about the sorts of pieces of legislation on which blocking groups of member states have so far stopped new laws from being passed.

Damaging legislation in the pipeline that could easily be passed under the new system:

- **Working Time Directive - the UK's individual opt-outs.** France and Spain - backed by the EU Commission - are trying to get rid of the derogation, which allows individuals to opt out of the EU's 48 hour working week. The DTI estimates that losing this exemption would cost the UK £9 billion a year. It would mean that workers would not be allowed to work extra hours to save cash - even if they wanted to. At the moment the UK is part of a coalition of other member states which form a blocking minority to protect the opt-out. Under the new system the UK would either need to find more allies somehow, or give up the opt-out.
- **Powers for foreign police in Britain.** The UK and Ireland are currently blocking a German plan to allow police to operate in other EU countries. If this went through it could lead to foreign armed police operating on British soil and armed foreign air marshals on UK planes.
- **Temporary Agency Workers Directive.** France is backing a new EU law which would give temporary workers the same benefits as permanent workers. The UK has more temporary workers than any other EU country - currently over 700,000. If this measure went through it would become much more expensive to hire temporary workers, reducing competitiveness and potentially increasing unemployment. At present the UK and a few other liberal member states are blocking the directive.
- **EU green card for migrants.** The Constitution had proposed abolishing the veto over legal migration (see below). Despite this, the UK and some other member states are very cautious about EU plans to create a European "green card" system, which would give the EU control over who the UK lets into the country. EU Justice Commissioner Franco Frattini has already suggested that the EU could allocate immigration quotas from each member state. Under the new system it would be more difficult to resist such plans.
- **Financial regulation and the City.** On several occasions during the passage of the EU's Financial Services Action Plan the UK teamed up with a minority of member states to block protectionist proposals which would have further damaged the competitiveness of the UK financial services industry. For example, by teaming up with other member states Brown managed to block some of the more damaging aspects of the MIFID directive. There are several further pieces of financial services legislation in the pipeline, including important measures on consumer credit and insurance, meaning this will remain a significant issue.
- **EU-wide congestion charging?** The UK Government's attempts to fight off EU plans to harmonise congestion charging and road pricing across Europe will be made much more difficult if Britain's voting weight is cut by the new voting system.

#### (4) More majority voting?

As well as making it harder to block legislation when majority votes are taken, the original constitutional treaty also proposed introducing majority voting in more areas. These are less likely to make it into the new treaty - not least because Gordon Brown is said to be opposed to giving up any more vetoes. However, there still appears to be some discussion about giving up the veto on criminal justice and migration.

##### (a) Crime

In September 2006, EU justice ministers met to discuss a proposal from the EU Commission and the Finnish Presidency to use a *passerelle* clause in the current treaties to abolish the national veto over crime, justice and policing. As well as introducing majority voting, this would have given the European Court of Justice and the European Parliament jurisdiction in these areas for the first time.

This proposal mirrored the proposals in the constitutional treaty, but was blocked in 2006 by a large group of member states. However, some of them appeared to have been against the proposal because they thought it should form part of a new treaty, rather than because they had developed a fundamental objection. In particular Germany did not want to pre-empt what was waiting to be ratified in the Constitution.

Other countries such as Ireland were worried that the current *passerelle* clause (Article 42 TEU) would not provide enough flexibility and would not be accompanied by some of the 'safeguards' that were in the EU Constitution. The Irish were particularly concerned about including the 'emergency brake' procedure which was established in the EU Constitution.<sup>4</sup> There was also some concern that the *passerelle* would allow EU action over the entire breadth of criminal justice policy, whereas under the Constitution it would have been limited to 11 areas.

The Commission was disappointed with the outcome; both Commission President Jose Barroso and Justice Commissioner Franco Frattini have issued apocalyptic warnings about the failure to move to majority voting. Frattini asked, "Shall we just sit around and wait for the next European terrorist bombs?" (EUobserver, 15 September 2006).

The Commission and some member states will undoubtedly press for a move to majority voting to be included in the new treaty. It is a move that will not be without support, particularly as it will give member states an opportunity to address some of the constitutional problems thrown up by a recent controversial European Court of Justice (ECJ) ruling. In Case C-176/03 the ECJ ruled that the European Community had the power to define 'environmental crimes' and their punishments by majority voting. The Commission has used an expansive interpretation of the judgment to justify a whole host of new harmonised EU crimes in areas such as illegal immigration, firearms sales and intellectual property. The Commission now believes that it has powers to propose criminal laws in any area where it would support the four freedoms in the treaty or help fulfil a "fundamental objective of the Union".

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<sup>4</sup> The emergency brake would have allowed any country to halt progress on a new criminal law if they thought it would "affect fundamental aspects of its criminal justice system". The matter would then be resolved by a vote of EU leaders - however, it is not clear from the Constitution whether this vote would require unanimity or not. Clearly the threat of using an emergency brake is not as strong a bargaining position as the threat of vetoing negotiations altogether.

18 of the 25 member states disagreed with the ECJ ruling and the Commission's subsequent interpretation of it, but the only way that they can limit the revolutionary impact of the ECJ's judgment would be through treaty change. Member states might push for a deal which would limit the impact of the court ruling, but would still introduce majority voting in the areas of "serious cross border crime" and judicial cooperation included in the Constitution.

This would still represent a significant shift of power from member states to the EU. The EU would gain power over the central planks of countries' criminal justice systems. It would move from a position of setting laws on fringe areas such as crimes against the environment, to being able to decide by majority the rights of criminals (including high security suspects such as terrorists), court procedures, and how organised criminals, people traffickers and drug dealers among others, should be punished.

There are a number of controversial proposals that are being held up in the Council which could become EU law if majority voting over criminal justice was introduced. They would create particular problems for common law countries such as the UK and Ireland. There are two recent examples of this:

*i) The procedural rights framework decision: increasing rights for those in police custody*

This controversial framework decision<sup>5</sup> aims to create a harmonised set of rights for suspects in custody across the EU. The proposal is currently being held up by a minority of member states, because of the wide-ranging implications it could have for their legal systems.

If the current proposals were to go ahead, police authorities would be required to hand a "Letter of Rights" to all suspects detained in police custody throughout the EU. The letter would state at the top that "European Union law requires all Member States of the Union to guarantee common minimum standards in respect of certain rights," which would be outlined on the first page.

The second page would detail other rights which national member states would grant. Although these rights already exist throughout the EU they would now be granted by "European Union law", leaving other less important issues to the member states.

In calling for the abolition of the veto, the EU Commission regularly argues that member states need to work more closely together to fight the threat of cross-border crimes. However, the Commission wants this proposal to apply not only to cross-border crimes but also purely internal ones.

The House of Lords EU Committee has warned that if this measure made it onto the statute book it could have serious consequences. They argue that "there is the risk that this approach might lead, over time, to the incremental unification of criminal procedure throughout the Union."<sup>6</sup>

During the negotiations on the EU Constitution, Europe Minister Peter Hain warned that abolishing the veto in areas of criminal procedure could cause particular problems for the UK's legal system. He said:

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<sup>5</sup> Formally known as the "Framework decision on certain procedural rights in criminal proceedings throughout the European Union"

<sup>6</sup> EU Committee, 1st Report, Procedural Right in Criminal Proceedings, 7 February 2005

*"In the area of Justice and Home Affairs we continue to have problems, in particular with the proposal for majority voting for criminal procedural law, Article 166. This could change fundamental principles of our legal system, such as habeas corpus, which we are not prepared to accept."*<sup>7</sup>

The Government failed however to persuade other EU countries of the problems this would cause for the UK and instead backed down.

#### *ii) Presumption of innocence*

The EU Commission has also released a Green Paper which calls for the harmonisation of the principle of the presumption of innocence across the EU. Irish Justice Minister Michael McDowell told a House of Lords inquiry that it could pose particular difficulties for common law countries:

*"A desire is slowly building up to codify in some way or to Europeanise the presumption of innocence and what it means. The common law States, which in criminal justice include ourselves, yourselves, Malta and Cyprus to some extent have a difficulty on occasions in criminal justice legislation under framework decisions in impressing on our fellow Member states the difficulties that some of their concepts pose for common law systems. If we were to surrender competence to the European Union in relation, say, to criminal procedure or in relation to fundamental issues such as the presumption of innocence and the like... on a basic political level that would cause a very major reaction."*<sup>8</sup>

UK Attorney General Lord Goldsmith warned that:

*"There are major differences between our common law systems and the civil law systems which characterise much of the rest of the European Union. A legislative approach designed to harmonise systems across EU Member States would be likely to require significant changes to our primary legislation for which we see no need. We trust that responses to the Green Paper will show the unwisdom of pursuing legislative measures at this time."*<sup>9</sup>

If the veto is surrendered, and as McDowell warns, the Common law countries fail to "impress" upon other member states the "difficulties" posed by such proposals, they could well see themselves being outvoted in the Council and forced to accept them.

#### **(b) Immigration**

Another key area where the Commission has been pushing to introduce majority voting is legal migration. The UK Government gave up the country's veto over asylum and *illegal* immigration in December 2004, but the Constitution - and subsequent initiatives by the Commission - would also have abolished the veto over *legal* migration if they had been accepted.

The EU recently completed what is described as the "first phase" in its work towards harmonising immigration policies. The "second phase" - as set out in the 2004 "Hague programme" - is even more controversial and moves beyond the minimum standards approach which the UK Government has endorsed, and moves towards what is intended to eventually become a "Common European immigration policy."

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<sup>7</sup> Peter Hain, 31 May 2003, European Convention

<sup>8</sup> "The Criminal Law Competence of the European Community", House of Lords EU Select Committee, Q198, July 2006

<sup>9</sup> 7 June 2006

*"We have made it clear that we shall retain our veto on immigration issues. We have always said that."*

- Tony Blair, 15 November 1995, *Hansard*

*"We have ensured that we, and only we, decide border policy, and that policies on immigration, asylum and visas are made in Britain, not in Brussels. Others may choose to have different arrangements, to suit their traditions and geographical position. I see no reason for preventing them from doing so, although such arrangements will continue to be governed by unanimity."*

- Tony Blair, 18 June 1997, *Hansard*

In its communication the Commission states that "The Union aims at developing a balanced approach: it implies establishing a common immigration policy, covering admission procedures and criteria to legally enter its territory, and ensuring a secure legal status and a better defined set of specific rights to third country nationals temporarily working or staying legally for other reasons in the EU, while carrying out a policy against illegal migration, which is both firm yet respectful of the rights and dignity of third country nationals, including those in an irregular situation in the Union."

The European Commissioner responsible for this area of EU policy, Franco Frattini, has also set out proposals to establish a European system to control legal migration. The paper states that "The Commission... believes that there is a clear case for agreeing transparent and more harmonised common rules and criteria at EU level for admitting economic migrants."<sup>10</sup>

The paper calls for "the progressive development of a coherent Community immigration policy" and puts forward different options which could be part of this common EU policy. These include: the introduction of common EU green cards; harmonised conditions for the immigration of third-country nationals at EU level; an EU-level "independent assessment" to decide who would be allowed entry; and a combined EU "work-residence permit". Franco Frattini has even suggested that the member states would give the Commission a quota for a number of legal migrants they would accept, and then the Commission would use this as a bargaining chip - particularly with north African countries. The EU would promise to take a certain number of migrants from certain countries if they agree to try and limit illegal emigration from their country to the EU.

The UK Government is very cautious about such plans, and it remains to be seen whether it would accept the inclusion of the same proposals in a new EU treaty.

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<sup>10</sup>[http://europa.eu.int/comm/justice\\_home/doc\\_centre/immigration/work/doc/com\\_2004\\_811\\_en.pdf](http://europa.eu.int/comm/justice_home/doc_centre/immigration/work/doc/com_2004_811_en.pdf)

## PART TWO: IS A REFERENDUM JUSTIFIED?

Apart from the significance of the proposals in the new treaty, there are several other powerful arguments for a referendum. EU leaders have already been quite explicit in arguing that the new treaty will just be the first step, and if accepted will be followed by further transfers of power to the EU. Holding the governments of the EU to their promise of a referendum now is the only way to stop the incremental transfer of more and more powers to the EU in the future.

More broadly, the behaviour of EU leaders since the no votes suggests they have forgotten the principles set out in the Laeken Declaration. In fact they appear to have learned exactly the wrong lesson: instead of reform and decentralisation, they now favour further 'integration by stealth' - pushed through without consulting the voters. Unless this undemocratic approach is challenged now, it will become the norm for decades to come.

### 1) The new treaty is just the first step

If the new treaty is accepted without a referendum, there is nothing to stop EU leaders from then implementing all the other elements in the EU Constitution over time. Indeed, Nicolas Sarkozy has already said that this is exactly what will happen. From the first time he suggested a "mini treaty", he has always suggested that it should be followed by a further treaty, which would go beyond even what was agreed in the Constitution. Sarkozy argues that:

"The need for EU constitutional reform remains strong. A new reference text will have to define Europe's geopolitical boundaries, establish the union's long-term political aims, and set out the means to move forward. An ambitious agenda of this sort calls for a large-scale democratic debate. But all this takes time, and time is something we do not have. I would suggest that the most urgent priorities for institutional reform could be covered in a mini-treaty that would modify the treaties of Nice and Amsterdam.... *But in the longer term, root-and-branch reforms remain essential.*" (Telegraph, 8 October 2006)

He has stressed that the mini-treaty will revive the same proposals that were in the Constitution, while a subsequent treaty will go further:

"This mini-treaty could be negotiated rapidly without re-igniting past political debates because basically it would cover provisions that were set out by the Convention and the IGC. Further discussion will undoubtedly prove necessary for a number of other fundamental issues, *including problems that the constitutional treaty in fact failed to address adequately.*" (Europe's World, September 2006)

Nor is the desire to go beyond the Constitution restricted to France. Jose Barroso has said that "the Commission and I have always supported the constitution. But let's be clear: we will ratify a treaty that is not the Constitutional Treaty. It will be drawing from the latter but it will be different. It's the only possible way ahead. Everyone has understood, even though it has taken some time for some of them, as if the truth were heresy! *But nothing rules out the possibility of certain more ambitious aspects later on.*" (Agence Europe 8 May 2007)

Others have also talked about a the need for a treaty which would go even further beyond the constitution. Spanish PM Jose Luis Rodriguez Zapatero has said that "Europe needs a new, *more ambitious* treaty." (EITB, 20 April 2006)

Angela Merkel has recently called for a "European army." She said that "In the EU itself, we have to come closer to creating a common European army." (Bild, 23 March 1007)

Italian PM Romano Prodi has warned that that "Italy is not prepared to subscribe to any old compromise. For us the rights of citizens from countries which have approved the treaty must have the same value as the citizens of countries that haven't." (ANSA, 3 May) He has also stated simply that, "If we have a united Europe we survive, if not we are dead. So I'm actually convinced that this is a project that is irreversible. Absolutely irreversible ... I don't know how long before we have the constitution but we need it."(BBC, 23 March 2007).

### Sarkozy's vision of Europe

The response of Nicolas Sarkozy and much of "Brussels" to the 'no' votes has been to argue that Europe must do more, not less. For example Sarkozy wants the EU to have new powers to "protect us from globalisation".

He has attacked "a Europe which does not protect us from globalisation - on the contrary: it fuels globalisation within its borders." (European View, 6 January 2006)

Many of Sarkozy's suggestions for the future of the EU go well beyond anything contained in the original Constitution. He suggests a cocktail of protectionism; limits on further enlargement; limits on "social dumping"; plus new powers for the EU over migration, energy and health (going beyond the Constitution); and a further removal of vetoes in general and a bigger EU budget. He has also suggested direct EU taxes.

- "Controlling globalisation means re-establishing the Community preference principle, which has been neglected. This does not mean a return to protectionism... Europe must buy European... A Europe without borders, that has trade agreements with China, Brazil and India which are sometimes more advantageous than those with countries in our immediate surroundings, is not what we want. We want a Europe with borders."
- "Competition policy must not prevent us from becoming European champions capable of acting on world markets. It must not stop us from implementing an industrial policy. In the same way, tax dumping and social dumping must not be accepted within the EU. A country cannot claim to be rich enough to abolish its taxes and poor enough to receive European structural funds."
- "In the domain of immigration, we must be able to regulate the quantity of the flux, in other words, set a limit on the number of new entrants according to our capacity to accommodate them, increase economic migration, forge agreements with countries of origin in order to apply a joint regulation of the migratory flux and contribute to development in these countries, which will moderate the desire to emigrate."
- "I would also like to propose that health, one of the major issues of this new century, become a Community field of action. With a common fiscal policy, harmonisation of research projects, a simplification of bureaucratic procedures and the creation of hubs of competition, Europe could aim to become as attractive an environment for health research as the United States or the UK."

- “Energy is at the heart of the two major challenges of the 21st century: environmental protection and the depletion of oil reserves. The countries of Europe can’t solve this problem alone. The EU must focus on four points: a diplomatic approach to energy in order to secure supply, as the United States and the United Kingdom have already put in place; an energy saving policy with, for example, common fiscal incentives; a questioning of the supremacy of road transport and the implementation of piggyback transport solutions throughout the EU; and research into new, cleaner energy sources. Europe’s “new Airbus” must take the form of research programmes into energy.”
- “Our aim is to finally give Europe borders... We cannot permit new countries to join the European Union without first reforming its institutions... Today, Europe is divided between those who believe that the Union has no borders other than democracy and free trade, and those who believe that political Europe has no meaning unless it is founded on a European identity. The UMP made its opinion known on the Turkey question ... We believe that a special, strategic partnership must be concluded. This opinion remains unchanged.”
- “Many policies cannot be implemented because they depend on the rule of unanimity, which is the best way to never reach a compromise.”
- “We cannot expect Europe to implement new policies whilst remaining financially inactive... A slight increase in the budget will no doubt be required in order to achieve this.”
- “The Draft Constitutional Treaty contains important advances which improve the functioning of Europe, and would move towards a political Union, which is the UMP’s aim: a stable presidency of the Union, a European Minister of Foreign Affairs, double majority, reform of the Commission, co-decision, and the extension of the qualified majority. Our objective must be to implement these advances, whilst respecting the democratic vote of the French people. One way or another, we must give Europe the procedures that will enable it to make decisions in a quick and effective manner.”  
(European View, 6 January 2006)
- “EU expenditure must be financed by EU-raised taxes, just as local taxes finance local spending.” (Telegraph, 8 October 2006)

## 2) EU leaders’ attempts to avoid a referendum - an exercise in cynicism?

In April 2007 a leaked letter from Angela Merkel to other leaders negotiating the new treaty highlighted the fact that it would have much of the same “legal substance” as the constitutional treaty, but would make “presentational changes” and use “different terminology” - like calling the new “foreign minister” something else instead.

It suggested that: “The consolidated approach of part one of the Constitutional Treaty is preserved with the necessary presentational changes” and suggested a proposal “To use different terminology without changing the legal substance - for example with regard to the title of the treaty, the denomination of legal acts, and the union’s minister of foreign affairs.” It even suggested a plan to “Replace the full text of the Charter of Fundamental Rights by a short cross reference having the same legal value” - although this is almost certain to be rejected by the UK and other member states.

Some comments from people in Brussels suggest that EU leaders believe that simply changing the name of the new treaty so that it is no longer called a "Constitution" will be enough to "fool" the voters.

Giuliano Amato, the Italian Interior Minister and Vice-Chairman of the European Convention which drafted the Constitution, has argued that EU leaders should "change the name, but not the substance" of the EU Constitution in the new text. He joked that the "good thing about not calling it a Constitution is that no one can ask for a referendum on it!" (Speech at the London School of Economics, 21 February 2007)

The whole way in which EU leaders describe what they want to achieve suggests a deeply undemocratic approach, which is radically opposed to the supposed goals set out in the Laeken Declaration. They often talk in terms of 'getting the new treaty past a referendum'.

As Peter Mandelson puts it: "Anything that crosses the threshold of requiring a referendum will immediately run into difficulties. We have to come to terms with the fact that *getting any constitutional treaty past a referendum* in our member states will be an uphill struggle.... I am tempted to argue that we should identify those elements of the existing draft treaty that are the most necessary and most important and effective in meeting our institutional needs and strip away the rest." (Independent, 3 July 2006)

Sarkozy advisor Alain Lamassoure has also talked about "avoiding referendums". He argues that "We shall go through the text with a rubber instead of a pencil. Many of the clauses are unnecessary, because they reiterate what is already in the treaties. But these are generally the articles that people object to. So, if we take out what we don't need, we can avoid any new referendums." (Telegraph, 20 February 2007)

### Democracy in action?

**Valery Giscard d'Estaing**, author of the Constitution: "People say 'We cannot vote again.' What is this joke? We have to vote again until the French see what the stakes are." (Agence Presse, 12 June 2006)

**Giscard d'Estaing**: "It is not France that has said no. It is 55 percent of the French people." (FT, 23 May 2006)

Even before the referendums **Luxembourg Prime Minister Jean-Claude Juncker** said: "If it's a Yes, we will say 'on we go', and if it's a No we will say 'we continue.'" (Telegraph, 26 May 2005)

**Jean-Claude Juncker**: "we decide on something, we leave it lying around and wait and see what happens. If no one kicks up a fuss, because most people don't know what has been decided, we continue step by step until there is no turning back." Jean-Claude Juncker, Luxembourg PM, (Economist, 24 September 2004)

## Annex: Is there a technical need for a new treaty?

*"We know that under the current regulations the EU can neither be enlarged, nor is it capable of taking the necessary decisions."*

- Angela Merkel, speech to the European Parliament, 17 January 2007

*"We cannot say 'yes' to enlargement without changing the institutions. If you want an enlarged Europe, you must also accept a reform of the institutions."*

- Jose Barroso, 15 June 2006, Press conference after European Council

Proponents of the new treaty often argue, rather vaguely, that a new treaty is needed in order to "make enlargement work". However, as noted above, there is no evidence that the EU is grinding to a halt. The EU is actually passing legislation 25% *faster* since enlargement.

The EU Commission has sent out mixed messages on the issue. Commission President Jose Barroso claimed that "we need a constitutional reform in Europe. We cannot say 'yes' to enlargement without changing the institutions. If you want an enlarged Europe, you must also accept a reform of the institutions" (15 June 2006). But later he admitted that, "We do not think that with the Nice Treaty we cannot have new members." (4 July 2006, L'Express)

### Changing the Commission

Italian Foreign Minister and Vice President of the Convention Giuliani Amato claimed in a speech at the London School of Economics that according to the Nice Treaty, the EU had to have the Constitution because the composition of the Commission would have to be changed before any new members could join. In fact, Article 4(2) of the protocol on the enlargement of the European Union says:

*"When the Union consists of 27 Member States, Article 213(1) of the Treaty establishing the European Community and Article 126(1) of the Treaty establishing the European Atomic Energy Community shall be replaced by the following:*

*1. The Members of the Commission shall be chosen on the grounds of their general competence and their independence shall be beyond doubt.*

*The number of Members of the Commission shall be less than the number of Member States. The Members of the Commission shall be chosen according to a rotation system based on the principle of equality, the implementing arrangements for which shall be adopted by the Council, acting unanimously.*

*The number of Members of the Commission shall be set by the Council, acting unanimously."*

Paragraph 4 states:

*"4. Any State which accedes to the Union shall be entitled, at the time of its accession, to have one of its nationals as a Member of the Commission until paragraph 2 applies."*

It would therefore seem that the protocol on enlargement not only gives the Council a mandate to change the size of the Commission after Romanian and Bulgarian accession but it indicates how it should be done - by reducing the number of Commissioners. This issue could simply be agreed in the enlargement treaty which brought in a new member state.

### Changing the voting weights

Likewise, it has also been claimed that the voting weights and rules need updating and that this cannot be done under the current treaty structure. But again the protocol on enlargement in the Nice Treaty actually spells out how this is to be done:

*2. At the time of each accession, the threshold referred to in the second subparagraph of Article 205(2) of the Treaty establishing the European Community and in the second subparagraph of Article 118(2) of the Treaty establishing the European Atomic Energy Community shall be calculated in such a way that the qualified majority threshold expressed in votes does not exceed the threshold resulting from the table in the Declaration on the enlargement of the European Union, included in the Final Act of the Conference which adopted the Treaty of Nice.*

The Nice Treaty provides a basis for resolving these technical problems, and there is also enough flexibility to allow EU ministers to make extensive changes to the rules - if they so wish. Should more extensive changes be deemed necessary these could always be added on to the accession treaty of the next member state to join the EU.

The idea that a new Constitution or even a simplified treaty is necessary to allow enlargement is not true - the desire to bring back the Constitution is driven not by concerns over enlargement - which is opposed by many of the politicians most in favour of a new treaty - but by an ideology that sees further integration as the answer to all of Europe's problems.