CENTRE FOR EUROPEAN REFORM
briefing note

THE CER GUIDE TO THE BRUSSELS SUMMIT

It is six months since the European Convention, a gathering of parliamentarians, government representatives and experts, presented its draft for an EU constitutional treaty. Since November, the EU governments – the current 15, plus the ten due to join on May 1st 2004 – have been negotiating a revision of this draft, in an 'inter-governmental conference' (IGC). Negotiations are set to go the wire at the European Council in Brussels on December 12th and 13th. Italy, which currently holds the EU presidency, has pledged to forge an agreement by the end of the summit, so that there will be a new 'Treaty of Rome'. But member-states remain divided on several contentious issues. There is a real risk that talks will drag on into 2004.

The most difficult issues are: the allocation of votes within the Council of Ministers; the role of the yet-to-be established Council president and the rotating presidency; proposals to expand majority voting; and the number of commissioners. Even if the EU leaders could solve all these problems, a number of other issues – such as demands for a reference to Christianity in the text – could still delay a final agreement. This paper provides an overview of the key issues in the IGC negotiations.

VOTING WEIGHTS

The dispute over how many votes each country should have in the Council of Ministers has dominated the IGC. Spain and Poland are determined to maintain the system of voting weights agreed in the Nice treaty three years ago, which gives them many more votes than their population size would justify.

The Nice treaty set up a complicated 'triple majority' system under which a measure passes when three separate thresholds are satisfied: a) a simple majority of the member-states; b) that majority must include countries representing 62 per cent of the EU's population; and c) that majority must be able to assemble weighted votes of at least 232, out of a total allocated votes amounting to 321. The largest countries – Britain, France, Germany and Italy – each has 29 votes; Spain and Poland have 27 each; and the other less populous countries all have fewer votes, with the scale ending at Cyprus, Estonia, Latvia, Luxembourg and Slovenia, each with four, and Malta with three. The votes of the largest EU countries are not proportional to the size of their populations. Germany, for example, with 80 million people has only two votes more than Poland and Spain, which have around 40 million each. The Nice system thus gives an in-built advantage to smaller countries, and particularly to Spain and Poland. In addition, the complex Nice voting formula threatens to make the Council, the EU's main decision-making body, less efficient and less representative of the population of the Union after enlargement.

The draft constitutional treaty proposes a much simpler system that dispenses with the complex weighted voting system. For a measure to pass, the Council of Ministers would have to muster a majority of 50 per cent of the member-states, that is 13 of the 25 countries – provided that these countries represent at least 60 per cent of the EU's total population. This is to make sure that the governments of small countries cannot outvote those governments representing most of the EU's people. Germany in particular likes the new 'double majority' system since it would better reflect its large population. Other countries support it because it is fairer, more transparent and therefore better suited to address the EU's 'democratic deficit'.

The Spanish and Polish governments, however, insist on the Nice formula. The Spanish government worries that a deal less advantageous than Nice could cost it votes in next year's national election. Similarly, the Polish government says that domestic public pressure leaves it no alternative to standing firm. Opinion polls show that nearly two-thirds of – largely pro-EU – Poles think their country will not enjoy full membership rights when it joins the EU. Poland's IGC negotiators fear that any compromise would leave them open to accusations of having agreed to 'second-class membership'. Both countries feel in a strong position because Nice will remain the default option if the IGC cannot agree on the double majority system, or some variant of it.

Germany, meanwhile, has made the defence of the double majority system its top priority in the IGC. It has threatened to link the IGC talks to upcoming negotiations about the EU's €100 billion annual budget. This threat is real: Germany is the EU's biggest paymaster while Spain has long been the biggest beneficiary, and Poland also expects to do well out of the EU's pot of regional subsidies. France is Germany's strongest supporter in this. France originally blocked a move to double majority voting during the wrangle over the Nice treaty in 2000 because it could not stand the thought of having less weight in the Council than Germany. But since 2000 relations between France and Germany have improved significantly, and France now appears willing to swallow its pride and back Germany on the voting issue.

The UK does not have a principled position in favour of either system. Nevertheless, the UK government has supported the Polish-Spanish preference. It reckons that the Nice rules would make it easier than under the double majority to assemble a 'blocking minority' and so prevent the passage of unwanted EU laws. However, it is by no means clear that Nice would work in the UK's favour. Under a double majority system the UK would have a higher proportion of the Council votes, which would make it easier for the UK to push through laws that it supports. In addition, the UK government supports Poland and Spain because it sees them as natural allies in its fight against Franco-German dominance of the EU. The UK government agrees with the two countries on issues such as tax and defence policy, where it disagrees with France and Germany. It also remembers that both Spain and Poland stood by the UK and the US over Iraq. British support for Poland and Spain probably means that the double majority system, as currently formulated, cannot survive.

This is regrettable: a double majority system would make the EU more transparent and easier to understand – both objectives shared by the UK government. Also, the UK's unprincipled defence of the Nice system has probably meant that France and Germany are less willing to compromise on other issues that are more important for British national interests.

What the EU ends up with will probably be closer to the Nice 'triple majority' than the draft treaty's double majority. A compromise could revolve around the exact number of votes that each country gets. Germany in particular will have to receive more votes than allocated under Nice to make a compromise at all acceptable. Poland and Spain could accept fewer votes without an embarrassing climb-down. In addition, the IGC could try and make this complex system somewhat easier to understand by adding the votes of all 25 countries (or 27, to include Bulgaria and Romania, due to join in 2007) up to 100.

Any such compromise should, in the CER's view, stick as closely as possible to the principles of the double majority system, namely a) to give people from larger member-states an equal representation in the Council of Ministers to those from smaller member-states; and b) reconcile the interests of small and large countries by including thresholds for both the number of countries voting for a measure (benefiting the small countries) and the share of the EU population (benefiting the larger countries) needed to pass a measure. Whether these thresholds are set at 50, 60 or 66 per cent is less important than achieving a balance between small and large country interests.

A deal on the voting issue would have to form part of a wider compromise that spans other key areas of disagreement in the IGC. Poland and Spain may, for example, have to give up their current efforts to insert a reference to God in the treaty's preamble (see below). Some government representatives fear that this may still not suffice for a compromise. They suggest that the EU should put off a decision on the voting issue until some point in the future. Some even suggest that the EU should adopt the Nice system for some decisions and double majority for others. Given that one of the key objectives of the constitutional treaty is to make the EU simpler, this must rank among the worst possible outcomes.

QUALIFIED MAJORITY VOTING

As with all previous IGCs, the question of whether the EU should take decisions by unanimity – giving each country a potential veto – or by qualified majority vote (QMV) – allowing individual countries to be overruled – pits the enthusiasts of further integration against the cautious and sceptical. The draft constitution does not greatly extend the scope of QMV overall. One important exception is in the relatively new EU policy area of justice and home affairs (JHA), where member-states seek to reinforce co-operation on issues such as asylum or the fight against cross-border crime and terrorism.

Nonetheless, some countries would like to use the IGC to make certain issues subject to majority voting, with varying sets of members opposed. For example, France, Germany and others would like to have QMV on certain tax matters: not for the harmonisation of tax rates, as is often claimed, but for combating tax fraud and defining tax bases. Britain, Ireland, Luxembourg, the Netherlands and nearly all the new member-states are vehemently opposed. Germany, meanwhile, is against moving questions of social security for migrant workers, workers' rights and public services to majority voting, insisting that national and regional governments should decide on these issues. The UK, supported by some of the Nordic countries and most of the new member-states, insists on keeping the national veto in these areas – for good. The UK is also on the defensive – though it has allies – in its attempt to strike out QMV for criminal law procedures, which could apply, for example, to the rules on evidence presented in court. However, the UK supports extending QMV to asylum and migration issues, in the face of German opposition.

A coalition of countries also opposes a clause in the draft constitution that would allow QMV for the Union's 'own resources', which is EU-speak for the way in which the Union raises money to implement its common policies. The British government fears that QMV on budgetary matters could result in the loss of its hard-won budget rebate. Virtually no-one wants to increase the ceiling of 1.27 per cent of EU GDP for expenditures. But some countries want to use QMV to 'streamline' the very complex formula by which the EU raises revenue – and to attack the British rebate. The British have allies in resisting QMV: several countries, particularly those that are net contributors to the EU budget, are loath to give up their veto on 'own resources'.

On foreign policy, the majority of smaller countries plus Germany and Italy would favour taking more decisions by qualified majority vote. The Italian presidency has put forward a scheme whereby proposals from the future EU foreign minister would be subject to majority voting. The scheme also includes an 'emergency brake': a country that fears that its vital national interests are threatened by a vote in the Council could wield a veto – provided that it is prepared to explain the reasons to the European Council. Nevertheless, Britain continues to resist, with support from small countries such as Estonia, Malta and Sweden. France probably supports Britain but has not said so yet. There is no prospect of the UK accepting a compromise that would allow proposals from the future EU foreign minister to be subject to a majority vote. This is regrettable: Britain and France both have much to gain from a more activist EU foreign policy, which they would shape and lead. Unanimity is a recipe for inaction and avoiding tough choices.

The UK has also led opposition to the draft constitution's 'passerelle' clause, which would allow the EU to make any issue subject to majority voting, provided all the member-states agreed to this. Such a clause would enable the EU to shift a policy area to QMV without the need to go through the lengthy procedure of holding an IGC, and then having national parliaments ratify the outcome. The latest Italian compromise proposal deleted this clause, but there is a risk it could re-emerge.

The UK is concerned that such a mechanism could result in constant pressure for the extension of majority voting. The CER agrees that the passerelle leaves too much ambiguity about which policy areas are subject to QMV and which are to be decided by unanimity. After all, the idea behind the constitutional treaty is to settle contentious issues for at least a number of years, rather than having an ongoing debate about them.

When the Italians deleted the passerelle clause they added another in part four of the constitution, which is concerned with procedures for adopting and changing the treaties. This would make it easier to change part three of the constitution, which contains details of the various EU policy areas, provided the subject concerned is one of internal policy and the move does not transfer fresh powers to the EU. The European

Council could make such a change by QMV, but then all EU national parliaments would have to ratify it. This would in effect make IGCs redundant for certain treaty changes.

THE SIZE OF THE COMMISSION

Another area of contention is the Convention's proposal to reduce the number of commissioners in Brussels, with the aim of keeping the European Commission efficient after enlargement. In particular, the draft treaty foresees a system whereby each country sends one commissioner (at present, the larger countries send two) but only 15 of them (including the president and the new 'foreign minister') are entitled to vote on policy initiatives. The voting posts would be appointed on a strict rotation, to ensure that each member-state occupies a voting post at least every five years.

Proponents of this measure, including France and Germany, insist that it is vital to ensure that the Commission can function effectively after enlargement. They argue, with some justification, that a Commission with fewer members would be more likely to act as an effective and cohesive body. The EU's smaller member-states, however, are strongly opposed to this. The new member-states, in particular, are aggrieved that they may 'lose their voice' within the Commission so soon after joining the EU. Commission President Romano Prodi echoed this sentiment, telling the European Parliament in September 2003 that "no people of the Union deserves to be represented by a second-class commissioner."

The CER thinks that the draft constitution's proposal is both unnecessary and potentially dangerous to the long-term health of the Commission. Unnecessary, because the Commission de facto operates a two-tier system already: commissioners vary in terms of their political weight and the importance of their job; and dangerous, because no credible political figure would want to serve as a non-voting commissioner. The junior posts would be more likely to be staffed by political cronies who, deprived of any direct responsibility for Commission decisions, may spend all their time lobbying on behalf of their national governments, or seek to make the most of the Brussels *dolce vita*. At the same time, the majority of voting commissioners would face compulsory retirement after just one term of office, owing to the rules of rotation.

Those member-states that broadly support the current draft would probably be willing to compromise, such is the strength of opposition among the smaller countries. Small countries are right to insist on every government having a voting commissioner, to ensure the Commission remains both legitimate and credible in the eyes of the European population. The big countries do now seem prepared to yield on this point. At their November meeting in Naples, EU foreign ministers reached a tentative agreement to give every country a commissioner with full voting powers. However, this deal could unravel if there is no agreement on the other outstanding issues. The mantra for all IGCs is: 'nothing is agreed until everything is agreed'.

ECONOMIC GOVERNANCE

While the Convention had little to say about economic and budgetary issues, these have become a major source of contention in the later stages of the IGC. The UK, in particular, has stepped up its efforts to revise a series of provisions that it claims would increase the EU's power over economic and taxation policies.

The UK Treasury, along with the Spain, Ireland and a number of other member-states, objects strongly to two clauses in part one of the treaty that could be interpreted as permitting the EU a greater role in economic policy-making. The UK particularly dislikes a provision referring to the Union's 'competence to co-ordinate the economic and employment policies of the member-states'. It fears that the Commission could use that to claim a stronger role in economic policy-making. France and Germany are sympathetic to the British arguments, not least because of their recent row with the Commission over the enforcement of the stability and growth pact. The UK hopes to secure the wide support of finance ministers on this issue, before the summit. However, the Italian presidency so far rejected demands to revise these clauses.

The council of EU finance ministers, Ecofin, submitted its own wish list for amendments to the constitutional treaty in November. Ecofin called on the IGC to change a clause that would give the European Parliament more powers in budgetary measures. The Convention's draft gave the European Parliament the final say on all agriculture spending, some 50 per cent of the EU's budget, whereas previously it only had this power on the non-farm parts of the budget. Ecofin wants to give the Parliament the right to propose amendments on all aspects of spending but insists that the member-states should have the final

say. If the European Parliament and the Council cannot agree on the details of the budget, the budget would simply operate under the same rules as the previous year. The Italian presidency has so far reassured MEPs that it will not bow to the finance ministers' demands.

Ecofin also opposes a clause in the Convention's draft that would strengthen the hands of the Commission in penalising countries that violate EU fiscal rules as enshrined in the stability and growth pact. At the moment, the Commission can recommend the starting of a so-called excessive deficit procedure against a country that breaches the pact's 3 per cent of GDP limit on budget deficits. But the final decision on this lies with Ecofin. On occasion, this has led to delays in starting an excessive deficit procedure against countries already in breach of the pact. The Convention had therefore proposed giving the Commission the power to set the procedure in motion but Ecofin is against this. The gap between the two positions has widened after Ecofin's recent decision to 'suspend' the excessive deficit procedures against France and Germany. Since this has robbed the stability pact of what little credibility it had left, it makes little sense for the IGC to haggle about detailed procedures. Instead, it should find a way of leaving the door open for a thorough reform of the pact in the future. The current draft constitutional treaty contains the two elements of the pact that turned out to be troublesome or unworkable in practice, namely the 3 per cent limit on budget deficits and the sanctions mechanism attached to it. If these elements get passed as part of the treaty, any future reform of the pact would require a new IGC, unanimity among all 25 member-states and ratification of the new rules by all 25 national parliaments. It would be better to enshrine only the principle of fiscal responsibility in the constitutional treaty, leaving the details and procedures to be worked out by Ecofin and the European Council at a later stage.

Not only EU finance ministers, but also the European Central Bank (ECB) and some national central bankers from the eurozone countries have followed the IGC with a keen eye. Central bankers fear that the draft constitutional treaty does not clearly defend the 'stability culture' on which the EU's macro-economic framework is based. They note that the draft constitution refers to 'balanced growth', rather than 'non-inflationary growth' as in the Maastricht treaty. The ECB has suggested adding price stability to the key objectives of the Union listed in part one of the constitutional treaty. Moreover, the ECB worries about a Commission proposal, since accepted by the Italian presidency, that could allow the European Council to change the way the ECB Governing Council works, without submitting this to ratification in national parliaments.

The UK government is not only under pressure from local businesses over issues of taxation and social policy (see section on Qualified Majority Voting). Some UK energy companies, supported by their Dutch counterparts, are also worried about a new clause in the treaty that deals with the EU energy policy. They claim that the relevant article puts too much emphasis on sustainability and security of supply and too little emphasis on the liberalisation of European energy markets. In addition, oil companies fear that the ambiguities of this clause could open the way for the EU to take decisions on licensing the exploitation of energy resources, including oil-fields, a matter which is currently a national competence.

THE COUNCIL PRESIDENT

Small countries are fighting hard to minimise the powers of the proposed new post of the president of the European Council. The new president, who is likely to be a former prime minister, would be charged with chairing meetings of the European Council, driving forward the EU's work programme and representing the EU externally at a high level.

Britain and France are the main proponents of the Council president. Most of the smaller member-states do not like the idea because they suspect it could weaken the authority of president of the Commission, and thus of the Commission in general. Ever since the days of Jacques Delors, Commission presidents have sought to speak for the EU on international affairs. If the new EU president became the Union's voice at the highest level, the Commission president would have to focus more on the mainly economic domains for which the Commission is directly responsible. The smaller countries tend to see the Commission as their friend and protector against the dominance of the larger member-states in the EU.

Small countries thus worry that the new Council president could become an instrument of the larger countries. Javier Solana, the current High Representative for the Common Foreign and Security Policy

(CFSP), does talk more often to the foreign ministers of Britain, France and Germany than to the others. The small countries imagine – probably with some reason – that the new president would work very closely with the larger member-states. Furthermore, some prime ministers are also reluctant to end the EU's rotating presidency, which provides them with the occasional opportunity to spend six months in the international spotlight.

Many of the smaller countries have therefore sought to diminish the role and importance of the Council president as defined by the constitutional treaty. But they should think again. If the EU is ever going to develop a credible foreign policy, the larger member-states will need to play a leading role. If the smaller states try to exert as much influence as the large ones, or if the Commission tries to guide EU foreign policy, the big states will simply act outside the framework of EU institutions, in cabals of their own. The real difficulty for EU foreign policy is getting large states with strong diplomatic traditions, such as Britain and France, to work through the EU. This does not mean the larger countries and the EU institutions should decide policies behind the backs of smaller countries. Indeed, a key role for the new EU president, like that of the EU foreign minister (who will bring together the jobs currently done by the commissioner for external relations and the High Representative for the CFSP), will be to make sure that the small countries' interests are represented when the larger states discuss foreign policy.

THE ROTATING PRESIDENCY

Even if member-states agree on the creation of a president of the European Council, which is likely, they will still need to resolve the problem of who chairs the various sectoral councils that preside over policy-making in areas as diverse as finance, JHA and farming. The draft constitutional treaty proposes that each sectoral council should elect its own chairman from among the 25 ministers. The draft adds little detail on how such a system would work, apart from fixing the duration of the chairmanship at one year.

Everyone accepts that there will be two important exceptions to this new principle: the new EU foreign minister will chair the foreign ministers' council; and the euro group – consisting of the finance ministers of eurozone members – will appoint a chair to serve for 2.5 years. But there is no consensus regarding the precise arrangements for the other sectoral councils.

Several countries back the idea of creating 'team presidencies', which means that groups of states would chair different Council formations for a set period. The Italian presidency proposed in November that three countries should share the chairmanship of the different Council formations for a year. For example, a Council 'troika' consisting of Germany, Slovakia and Finland could mean that the German minister chaired the agriculture council, a Slovak minister the industry council, and a Finnish minister the meetings of interior ministers.

The Italians also proposed that the chairmanship of the General Affairs Council (GAC), tasked with co-ordinating the work of the sectoral councils, should rotate among member-states every four months. The three countries that chaired the GAC each year would be the same three countries that formed the yearly 'team presidency' in the other council formations.

The small states are concerned that the proposed European Council president might enhance his powers by taking on this role of internal co-ordination. But it would make sense for him or her to take on this vital task. The present system of rotating presidencies leads to an unacceptable lack of continuity and coherence. The country in charge regularly uses the EU presidency to advance its pet projects at the expense of long-standing and agreed EU priorities. The new European Council president should work together with the Commission president to draw up the EU's annual work programme and present it to the European Parliament for approval.

DEFENCE

For a long time, the future of the EU's nascent European security and defence policy (ESDP) was one of the most controversial issues in the IGC. But, at the end of November, the 'big three' – Britain, France and Germany – struck a deal on the way forward for European defence, including on the necessary treaty changes. In particular, they agreed to set up an EU military planning cell – a unit that will make little difference in the real world, despite the highly charged negotiations surrounding it. With this institutional question out of the way, the EU can concentrate on what really matters, namely a much-needed increase in military capabilities, and preparations for taking over Nato's peacekeeping mission in Bosnia.

It is only six months since France and Germany, with Belgium and Luxembourg, hatched plans for a 'core Europe' defence organisation that excluded Britain. That scheme deepened the divisions caused by the Iraq war and convinced many Americans that France and Germany were determined to undermine Nato. But antagonism has since given way to compromise. Jacques Chirac, the French president, and Gerhard Schröder, Germany's chancellor, now insist that European foreign and defence policies cannot be built without the UK. To facilitate an agreement with Britain, they diluted their original plan for new military headquarters to run EU operations. Instead of building up a new institution at Tervuren (Belgium), the EU will now have a small unit of planners to join the existing EU military staff, as part of the secretariat of the Council of Ministers.

Tony Blair, too, has had to compromise, by accepting the principle that the EU may need to do its own operational planning, and that this unit may one day evolve into a real headquarters, if everybody agrees. In return, France and Germany have agreed to change two contentious parts of the EU's draft constitution that relate to defence policy.

The treaty articles on 'structured co-operation' will be amended, so that the rationale of the avant-garde group becomes the enhancement of military capabilities. A separate protocol will describe what the structured co-operation will do, which will be to become, in effect, a kind of capability-enhancement club. The criteria required for entering the club will not be too stringent – for example the countries involved must have forces ready for action in 5 to 30 days, which can be sustained on a mission for 30 days – which means that it will be not be exclusive. While neutrals or others which are uninterested in boosting their capabilities may wish to stay outside, the majority of member-states will probably join. The way the protocol is drafted, structured co-operation cannot be about military operations, nor about a small group of countries establishing new institutions or headquarters. The British are therefore happy with these arrangements, which is why they have agreed that the European Council should be able formally to trigger the structured co-operation by QMV.

The deal between the three large countries will also change the articles on mutual military assistance in the constitutional treaty. The mutual defence clause in the detailed part three of the draft treaty has been deleted altogether. The more general article in part one has been watered down, with references to members aiding each other "in accordance with Article 51 of the UN Charter", and to Nato remaining "the foundation of members' collective defence and the forum for its implementation". Thus the EU will not be making claims to be a collective defence organisation of the sort that could rival Nato. Despite their general suspicion of domination by the large countries, the EU's smaller members will probably follow the lead of London, Paris and Berlin in defence matters. The IGC will probably take over the treaty amendments agreed by the big three.

BUBBLING UNDER – other issues that still have to be resolved.

GOD

Some EU countries, including Italy, Spain, Poland, and Ireland, want to insert a reference to Christianity, or at least to God, into the preamble of the constitution. This is one of the few constitutional issues which has sparked a popular debate. The Pope has supported the initiative and a coalition of church groups is aiming to collect a million signatures backing demands for a mention of Christianity. However, France remains implacably opposed to any reference that might threaten the strict separation between church and state in its own national constitution. Another group of countries, including Britain and Germany, is wary of including any language that might offend their non-Christian minorities. A clear reference to Christianity would also cause problems for Turkey, the first non-Christian EU applicant country. Abdullah Gül, the Turkish foreign minister, has called for the constitution to also refer to Judaism and Islam if Christianity is explicitly mentioned. The Italians have said they will propose that the constitution should have a reference to Europe's 'Christian heritage', but that the text should also point out that member-state institutions are secular organisations.

PUBLIC PROSECUTOR

The draft treaty allows the EU to establish the office of a European public prosecutor at some point in the future, provided all member-states agree to do. The Italian presidency has suggested that the EU prosecutor would only investigate and prosecute fraud and other crimes that directly affect the EU and its institutions.

In the Convention's draft, the role of the prosecutor's office had been defined more broadly also to combat crimes that have a cross-border dimension, where appropriate in co-operation with Europol. The UK, Ireland, Denmark and Sweden oppose the creation of an EU public prosecutor for fear that it would lead to increased harmonisation of criminal law. Since the Scandinavian and common law systems differ from those elsewhere in the EU, any harmonisation would affect their legal systems most. They are worried that a supranational body might interfere with the decisions of their domestic prosecution services about whether or not to take certain cases to court. To help allay their fears, the Italian presidency has not only narrowed down the tasks of the proposed new office but also inserted a clause into the draft constitution which says that EU agreements on criminal law must "take into account" the differences between those countries with common law systems and the others.

CHARTER OF FUNDAMENTAL RIGHTS

Economic liberals worry about the constitution's incorporation of the Charter of Fundamental Rights, which forms part two of the constitution and contains a number of 'social' rights, such as the right of workers to be consulted, protection against unfair dismissal, the right to collective bargaining, and the right to strike. They fear that law courts could invoke the charter to create new, legally binding rights for workers. But they need not worry. The text states very clearly that the charter applies only to the application of EU rather than national law, that nothing in it extends the competences of the EU, and that it should be interpreted to take into account national laws and practices. Thus EU employees would have the right to strike, but not the hundreds of thousands of German civil servants who do not currently have that right. The IGC is unlikely to make substantive changes to the charter's text. But British negotiators are trying to amend the constitution to strengthen the authority of the explanatory memoranda that accompany the charter.

CONCLUSION

The Italian presidency has not won high marks for its handling of the IGC negotiations. The set of proposals it presented at the end of November ducked the most difficult issues, which therefore remain unresolved. Despite the desire of most member-states to wrap up discussions before Christmas, there is a significant chance that the IGC could well extend into 2004. In that case, a further special summit in February is likely. Even if there is no agreement on the constitutional treaty in early 2004, EU enlargement would take place regardless. The Nice treaty comes into force at the start of 2004, and although it is in many ways a muddled compromise, it is sufficient to allow the EU to take in ten new members next year.

Once the member-states have agreed on the final text of the constitutional treaty, it will have to be ratified by the parliaments in all 25 member-states. Ratification is rarely a straightforward process. Two of the past three treaty revisions were rejected in one member-state through referenda, namely the Maastricht treaty in Denmark in 1992 and the Nice treaty in Ireland in 2001 – although both countries eventually the treaties – with the addition of protocols and declarations – in repeat referenda. Clearly, with nearly one-third of the 25 member-states planning to hold referenda on the new treaty, the risk of another EU constitutional crisis is high.

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