



CENTRE FOR EUROPEAN REFORM

briefing note

THE EU CONSTITUTIONAL TREATY: THE FINAL DEAL

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EU leaders finally reached agreement on the EU's new constitutional treaty at their Brussels summit on June 18th. Although the summit was marked by a series of acrimonious exchanges, particularly between Jacques Chirac and Tony Blair, EU leaders were determined to agree the new treaty, following the embarrassing collapse of their previous summit in December 2003. Poland and Spain, which had stubbornly opposed the treaty's new system of decision-making, were more willing to compromise. Britain faced surprisingly little opposition to its 'red lines', such as the preservation of unanimous voting on tax issues.

This briefing note provides a summary of the key decisions taken at the June European Council's summit:

1. VOTING WEIGHTS

The member-states have agreed to scrap the complicated system of qualified majority voting that they currently use for taking decisions in the Council of Ministers. Instead the EU will use a 'double majority' system, to come into force in 2009, under which a measure would pass if it is supported by 55 per cent of the member-states representing at least 65 per cent of the EU population. This new system comes from a difficult compromise with Poland and Spain. Both countries insisted on keeping the fiendishly complicated 'triple majority' system agreed in Nice, under which they got an unduly high share of votes. As compensation, Poland and Spain managed to insert a safeguard clause that says a blocking minority must consist of at least four countries, which gives them more weight vis a vis bigger member-states. In some policy areas, such as foreign and security policy, justice and home affairs, or monetary policy, it will be the Council, an individual member-state or the European Central Bank that takes the initiative rather than the Commission. In these cases, the voting threshold is raised to 72 per cent of the member-states representing 65 per cent of the population.

The constitutional treaty's new double majority voting is simpler and more transparent than the current qualified majority system, and a huge improvement over the opaque triple majority system foreseen in the Nice treaty. However, the raised thresholds and safeguard clauses added at the last minute will diminish some of the benefits by making it more difficult to reach decisions in an EU of 25 or more member-states.

2. EXTENSIONS OF MAJORITY VOTING

To keep the enlarged EU functioning, the new treaty not only introduces a simpler voting system, it also reduces the number of policy areas that require member-states' unanimous agreement. However, Britain and some other countries were sceptical about any further extension of majority voting, with Britain drawing 'red lines' around some policy areas that it considers particularly sensitive. As a compromise, the treaty retains the national veto for crucial areas, such as taxation, key aspects of defence and foreign policy, and

the EU's 'own resources' (revenue for the EU budget). It also introduces 'emergency brakes' for criminal procedural law and social security as a way to maintain a national veto. This means that in case a member-state feels that a proposed measure is incompatible with its national interests, it can transfer the matter to the European Council, which then decides by unanimity. In the case of judicial co-operation in criminal matters, if the European Council fails to agree within four months, a sub-set of member-states (at least one-third) can also move ahead with the proposed policy on their own.

3. SIZE OF THE COMMISSION

The larger member-states successfully pushed through a proposal that will cut the overall size of the European Commission. France and Germany, in particular, insisted that a Commission with 25 or more commissioners is unlikely to function effectively. Thus the constitutional treaty has capped the overall number of commissioners at two-thirds of the number of member-states.

However, the treaty contains a series of important concessions to smaller member-states, many of which feared the loss of 'their' voice in Brussels. The new system will not become operational before 2014. This means that the next two commissions will be based on the principle of one commissioner per member-state. EU leaders also left open the possibility of changing their minds about the composition of future commissions, although they can only do so by unanimity. The final text also contains a new declaration calling on the Commission to take into account fully the views of those member-states without a commissioner. To keep small member-states happy and to compensate for the loss of their own commissioner, EU leaders agreed to raise the minimum number of MEPs from each member-state from four to six.

4. CHARTER OF FUNDAMENTAL RIGHTS

The British government successfully pushed for some treaty amendments to ensure that the legal implications of the Charter will remain limited. The Charter's critics feared that it might lead to citizens claiming new rights by invoking the Charter in national courts. In particular, businesses were worried that so-called social rights, such as the right to strike, would damage Britain's liberal labour market. Member-states agreed during the negotiations to give binding force to so-called explanations that were added to each Charter article and explain their background and limitations. These explanations ensure that nothing in its text can be interpreted as creating new rights or reinforcing existing ones beyond national law and practice.

6. ECONOMIC POLICY

The ongoing battle over the stability and growth pact, the eurozone's fiscal rule book, found its way into the constitutional debate. Some eurozone countries were outraged when France and Germany suspended the stability pact's sanctions in 2003. They were even more incensed when France and Germany – both of which will exceed the pact's three per cent limit for budget deficits in 2004 – suggested that the constitutional treaty should limit the Commission's enforcement powers under the pact. The critics, led by the Netherlands, wanted the Commission to get a stronger say in making recommendations to countries in breach of the pact. France and Germany, however, managed to water down this clause. While the Commission will still draw up recommendations, these now will have to be endorsed by the Council of Finance Ministers and they will not be made public. The Commission did, however, gain the right to issue 'early warnings' directly to eurozone countries heading for fiscal trouble.

Another dispute concerned a vaguely worded clause about economic policy co-ordination through the EU. The UK in particular was concerned that the EU may seek to exploit this clause to gain new powers in economic and labour policies. Other EU countries agreed to a re-phrasing that now makes it clear it is the member-states who co-ordinate their policies, and only within the limits set by the treaty.

The final deal is far from perfect. However, the new treaty will improve the transparency and efficiency of the European Union. EU leaders have now returned to their countries to proclaim the success of the summit to voters. But the truth is the battle for public and parliamentary support is only just beginning. Every country has to ratify the text and some countries have also promised to hold a referendum. This is already the case for four countries – the UK, Ireland, Denmark and Belgium – while a further five, including France and Poland, are considering this option.