



**CENTRE FOR EUROPEAN REFORM**

# *briefing note*

## **THE EU CONSTITUTIONAL TREATY: THE STATE OF PLAY AHEAD OF THE SUMMIT**

*By Aurore Wanlin*

European leaders gather in Brussels on 17-19 June for a ‘make or break’ summit on the EU’s new constitutional treaty. The last time they tried, at the EU summit in December 2003, they failed to agree on the details of the document. And despite the impressive work of the Irish presidency, a successful outcome in Brussels is far from certain. EU foreign ministers remained divided on several key issues during their last meeting on 24 May. The British government has hardened its overall stance since Prime Minister Tony Blair promised a referendum on the treaty. The UK is especially concerned about the legal implications of the Charter of Fundamental Rights that forms part of the new treaty, and about proposed extensions of majority voting. Poland is also taking a tough stance, not least because a domestic political crisis has reduced the government’s room for manoeuvre. France and Germany, among other countries, are trying to preserve the main proposals of the Convention. Three key issues could block a deal:

### **1. THE SIZE OF THE COMMISSION**

At present, every country has one commissioner while the bigger member-states have two. Successive rounds of enlargement have swelled the size of the Commission, threatening to make it unwieldy. The Nice treaty therefore foresees a move to a smaller Commission after the next round of enlargement, when the EU will have 27 member-states or more. France and Germany, supported by Belgium and the UK, want a similar clause in the constitutional treaty. But Denmark, Austria and Greece, backed by several of the new member-states, are defending the principle of one commissioner per member-state. The Irish presidency has suggested that only 18 of the EU member-states should send a commissioner from 2014 onwards. The idea is based on a rotation scheme that would leave EU countries without their ‘own’ commissioner in only one out of three Commission terms – a compromise that may well be acceptable to both camps.

### **2. COUNCIL VOTING WEIGHTS**

The Convention, which prepared the draft constitutional treaty in 2003, recommended that the EU should scrap the complicated system of qualified majority voting that it now uses for most decisions. Instead, the Convention has proposed a simpler ‘double majority’ system, under which a measure would pass if it was supported by at least half of the member-states provided these countries represent 60 per cent of the EU’s population. Poland and Spain are the main opponents of the new system. They initially insisted on keeping the fiendishly complicated ‘triple majority’ system agreed in Nice under which both countries got an unduly high share of votes. New governments in both Spain and Poland

have accepted ‘double majority’ in principle. But both are still fighting to raise the population threshold from the current 60 per cent to 66.6 per cent – although Spain has since indicated that it is ready to compromise. A number of the smaller member-states, meanwhile, want the thresholds for the number of member-states and the share of population to be the same. They argue that, since the EU is both a union of states and people, both should be equally represented. These countries will resist any widening of the gap between the two thresholds, as proposed by Poland and Spain. Any compromise will probably include a higher threshold for member-states (perhaps 55 per cent) and for the share of population they represent (between 62 and 65 per cent). It could also add ‘safety clauses’ to ensure that neither a few big member-states nor a handful of the smallest ones could block a decision. Such a clause could say, for example, that a majority of small countries could only block a measure if they together represent more than 15 per cent of the EU population.

### 3. QUALIFIED MAJORITY VOTING

A new system of double majority voting could make it easier for the EU-25 to reach decisions on most policies. But there are still a lot of policy areas that the member-states regard as so sensitive that decisions require unanimity, giving each of the 25 countries a veto. To keep the enlarged EU functioning, France and Germany want to minimise the number of decisions requiring unanimity. Britain and some other countries are sceptical about any further extension of majority voting, with Britain drawing ‘red lines’ around some policy areas that it considers particularly sensitive, notably corporate taxation, EU’s foreign and defence policy, some aspects of criminal law (especially the rights of individuals in criminal proceedings), the EU’s so-called own resources (the different sources of revenue for the EU) and social security.

Compromises are conceivable in some of these areas. In foreign policy, for example, the EU could fall back on the Convention’s original proposal under which member-states agree on the broad outlines of a policy with unanimity but then vote on how to implement it. In the areas of criminal law and social security, the new treaty could add an ‘emergency brake’ to make voting more palatable. If a member-state felt that a vote threatened a ‘vital national interest’ it could transfer the matter to the European Council, which would then decide by unanimity within a predetermined timeframe. Alternatively, the new treaty could allow sceptical countries to opt out of a proposed policy rather than preventing the others from moving ahead. The UK may well prefer the first option, fearing that the second one could banish it to the fringes of an emerging ‘core Europe’.

The member-states also continue to disagree on a number of other issues, for example whether the constitution should contain a reference to Europe’s Christian heritage. Poland and Italy are pushing for this, but they may agree to the EU moving any such reference into an annex. The UK remains worried about the Charter of Fundamental Rights, but it may well be reassured by the inclusion of explanations into the treaty which make it clear the Charter will not create new individual rights.

Since compromises are required across a number of areas, the nature of the eventual deal is impossible to predict. The Irish government, which will run the Brussels summit, will wait until the last moment before offering a final package deal. EU leaders will probably haggle and horse-trade until the small hours in an effort to agree on the details. The outcome remains uncertain. However negotiators should bear in mind that, this treaty, despite its imperfections, contains significant and necessary improvements for an enlarged EU to continue to function effectively.

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