



CENTRE FOR EUROPEAN REFORM

WHAT HAPPENS IF BRITAIN VOTES NO?

Ten ways out of a European constitutional crisis

Charles Grant

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the British?

Plans for a Franco-German union

Blair tries again with
second referendum

Britain demands a renegotiation

UK offered special status
with Switzerland and Norway

new plans for a **core Europe**



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What happens if Britain votes No?

Ten ways out of a European constitutional crisis

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1 Introduction

The British referendum on the European Union constitutional treaty will have profound consequences not only for Britain but also for the whole continent. At the time of writing (February 2005) it seems likely that a re-elected Labour government will hold a referendum in mid-2006, after most of the other EU countries have approved the treaty. If the British vote No, they will throw the Union into a political crisis, sparking off a chain reaction that could lead to the end of the EU as we know it. Britain would be likely to end up on the margins of the EU, or of whatever new institutions had partially or wholly replaced it.

Many eurosceptics claim that if the British vote Yes in the referendum, allowing the new treaty to take effect, the result will transform Britain's relationship with the EU; conversely, they say, voting No will keep the EU the way it is. That argument is correct, but only technically and in the short run. The strict legal position is that if one or more of the 25 member-states fail to ratify the treaty by parliamentary vote or referendum, it cannot enter into force. The EU would then have to operate with the existing treaties, last amended at the Nice summit in December 2000.

This pamphlet, however, argues that a British Yes would keep the EU more or less how it is today, and that a No would cast the EU into the unknown. Politically, and in the long run, the argument that a negative vote would lead to no change is unsustainable. That is because most of the member-states regard the constitutional treaty as a marked improvement on the preceding treaties that it consolidates and in some respects amends. If Britain – which through 30 years of membership has been a difficult and sometimes obstructive partner, often applying the brake to further integration – voted No, most of Europe's leaders would refuse to abandon the

constitutional treaty. A few of them would seize the opportunity of a British No to try and exclude it from a club which, in their view, it should never have joined. Even the most Anglophile EU governments would not accept that a British No should force everyone to keep working under the rules of the complicated and little-loved Nice treaty. Still less would they tolerate any British attempt to unravel parts of earlier treaties such as those of Maastricht and Rome.

There is another reason why a British rejection of the constitutional treaty would not maintain the status quo. Most British eurosceptics would not be satisfied with merely scrapping the new treaty. What angers a lot of No campaigners are the provisions of the existing treaties – on fisheries policy, social policy, the European Court of Justice and so on. So even if the other EU governments agreed – however implausibly – to forget about the new treaty, the eurosceptics would focus on amending the current treaties. Although British eurosceptics hold a wide range of views, most of them want the UK to disengage from many of its current EU commitments. They would use their referendum victory as a springboard to campaign for a renegotiation of Britain's membership.

What the other European governments would do in the event of a British No is uncertain. The outcome of the crisis would depend on many variables. Would the British reject the treaty by a narrow or a large margin? What would be the perceived reasons for the British No? In the wake of a No, would British politicians and media commentators adopt a constructive or confrontational attitude in their dealings with the rest of Europe? And what would be the results of the other referendums elsewhere in the EU?

At the time of writing one member-state has held a referendum on the treaty, and nine plan to hold them. The Spanish voted three-to-one in favour of the treaty in February 2005. In Portugal and Luxembourg, a Yes vote is probable. The outcome is less certain in

the Czech Republic, Denmark, France, Ireland, the Netherlands and Poland, though opinion polls currently point to positive votes in all of them.¹

¹ See Daniel Keohane, *Referendum season in Europe: a guide to the referenda on the EU constitutional treaty*, CER Briefing Note, February 2005.

Legally, ratification by a small member-state carries as much weight as ratification by any of the six large countries in the EU. But the political reality is that some countries are more equal than others. If a small country, such as the Czech Republic, voted No, it would be given a second chance to adopt the constitutional treaty. That is what happened to the Danes when they voted against the Maastricht treaty in 1992, and to the Irish when they voted against the Nice treaty in 2001. But if the Czechs voted No a second time, and everyone else had ratified the treaty, the other governments would be unlikely to allow them to block it. They would probably try to use legal mechanisms that in effect excluded the Czechs. For example, they might redraft the constitutional treaty amongst 24 member-states. This would not be easy: Britain, for one, might not be enthusiastic to expel the Czechs.

However, applying that kind of treatment to a big country would be markedly more difficult. If one of them voted No, the others could find the prospect of using complex legal mechanisms to exclude it too terrible to contemplate. Germany and Italy will not hold referendums. The three large countries that will hold referendums are Britain, France and Poland. Given that Poland is a newcomer – and one that has made a few enemies since it joined – a No from the Poles would not necessarily be fatal to the treaty. A negative referendum in the Netherlands would be as likely to kill the treaty as one in Poland: the Netherlands is the largest of the small member-states, with 16 million people, as well as one of the founding six.

As far as the future of the EU is concerned, the two referendums that matter most are those in Britain and France. If France, the

inventor of the EU and the source of much of its dynamism and creativity, voted No, there would be little point in attempting to resurrect the treaty. A scheme to expel France so that the others could proceed without it would be unimaginable.

French public opinion is unenthusiastic about the way the EU is developing – partly because of enlargement, and partly because many of the French believe that British policies and ideology now dominate the EU. A French *Oui* to the constitutional treaty cannot be taken for granted. After all, in June 1992, when President François Mitterrand called a referendum on the Maastricht treaty, opinion polls suggested a two-to-one vote in favour. In the event only 51 per cent voted for that treaty. Nevertheless, France seems likely to ratify the constitutional treaty in the referendum that is due by June 2005. When the Socialist Party, the main opposition party, balloted its own members on the treaty in December 2004, six out of ten were in favour. The fact that the Socialists will campaign for the treaty reduces the risk that French voters will reject it as a means of hitting Chirac. In any case the latest opinion polls are favourable.

The argument of this pamphlet is based on the assumption that the opinion polls in France and the other countries holding referendums are a reasonable guide to voting intentions, that 23 or 24 member-states will ratify the treaty, and that Britain will not. Ten scenarios are considered:

- ★ No change: the other countries decide to live with the existing treaties.
- ★ Another inter-governmental conference (IGC), to attempt a renegotiation of the constitutional treaty.
- ★ A second British referendum, on essentially the same treaty, but possibly with the addition of explanatory declarations or protocols.

- ★ An effort to implement parts of the constitutional treaty, under the legal base of the existing treaties.
- ★ An attempt to use the ‘enhanced co-operation’ provisions of the existing treaties, which allow a group of member-states to move ahead in a particular policy area; or to set up an *avant-garde* group or groups outside the framework of the treaties.
- ★ A mini-IGC to put one or two key provisions of the constitutional treaty into a new treaty to be signed by all EU member-states. Because the changes concerned would be relatively minor, these could be ratified without further referendums, at least in most countries.
- ★ The other member-states go ahead with the constitutional treaty, despite the British No, obliging Britain to negotiate special arrangements that would leave it less than a full member of the EU.
- ★ France, Germany and other countries that favour a more integrated Europe set up a ‘hard core’. This would be a new organisation with its own institutions and perhaps its own treaty, co-existing with the EU.
- ★ The French and German governments announce plans for a ‘Franco-German union’, involving a partial merger of the two countries’ political institutions.
- ★ The integrationist countries implement parts of the constitutional treaty, they use the enhanced co-operation provisions of the existing treaties, they set up *avant-garde* groups in specific areas outside the treaties, and they strengthen the institutions of the Euro Group (which brings together the countries in the euro). The end result is a ‘messy core’, with the countries involved in every group emerging as the Union’s de facto leadership. Britain is outside this leading group.

This pamphlet argues that the last of those scenarios is the most likely. But whichever of them turns out to be correct, a British No would push the Union into inward-looking institutional arguments that would absorb its energies for years. The EU's ability to tackle many of the urgent challenges that it faces would be severely impaired. These include the negotiation of membership with Turkey and perhaps other countries such as Ukraine; the completion of the Doha round of trade liberalisation; the establishment of new mechanisms for tackling global warming; the need for the EU to play a leading role in reforming the United Nations, and more broadly to contribute to the achievement of the Millennium Goals; the effort to revive the lacklustre 'Lisbon process' of European economic reform; the task of rebuilding a stronger EU-US partnership, at a time when the transatlantic and intra-European wounds over Iraq remain sore; and the attempt to construct a more effective EU foreign and defence policy, so that the EU can better deal with instability in the Balkans, the problem countries that lie between the Union and Russia, and the broader Middle East. Thus the consequences of a British No would be damaging to Britain and to the rest of Europe, and also to others who have an interest in Europe rising to these challenges, such as the US. In the words of one British official in Brussels: "If the British vote No it would be like starting a war: you never know how it is going to end."

2 Three implausible scenarios

Nothing happens

If the British killed the constitutional treaty by voting No, the EU would then continue to operate under the rules of the existing treaties. That is the claim of Michael Howard, the Conservative Party leader. It is true that if the EU had to work under current rules there would be no immediate disaster. The Union does manage to function, even though the arrival of ten new members in May 2004 has reinforced the case for reforming many of its institutions and decision-making procedures.

But the 'nothing happens' scenario is implausible, for the simple reason that most EU governments want something to happen. They have put a huge amount of effort into the planning and negotiation of the new constitutional treaty – first in the Convention on the Future of Europe, which ran from February 2002 to July 2003, and then in the inter-governmental conference that ended in June 2004 – and they do not want their work to be wasted. Some of the more perceptive British eurosceptics, such as Daniel Hannan MEP, accept that a British No would not prevent the other countries from moving forward.²

² Daniel Hannan, 'Voting on the European constitution: what this country should know about the consequences', *Politeia*, 2004.

All 25 EU governments believe that the final compromises enshrined in the constitutional treaty are good ones, and that they significantly improve the Nice treaty. In many member-states, the single biggest complaint about the constitutional treaty is that the British were too successful in defending their

'red lines' during the negotiations, and that the document is therefore tainted with an excessive deference to British principles and priorities. But in other respects most EU governments are generally happy with the document.

The constitutional treaty offers a consolidation of all the existing treaties into a single document; a clarification of which kinds of decision should be tackled by the EU, which ones by the member-states, and which ones should be shared; more transparent and fairer rules for voting in the Council of Ministers (for example, large countries such as Britain gain a higher proportion of the votes); a greater role for national parliaments in decision-making; more legislative power for the European Parliament; the extension of majority voting, and thus more power for the EU, in the area of Justice and Home Affairs; a charter of fundamental

³ For an eight-page summary of the constitutional treaty, see 'The CER guide to the constitutional treaty', CER, July 2004.

rights, that defines the values Europeans hold in common, and binds EU institutions to respect them; and the prospect of more effective institutions for co-ordinating EU foreign policy.³

If the other governments were to accept that a British No had killed the treaty, the Union's commitment to enlargement would stop. Most governments believe that the current set of institutions is ill-suited to a Union that has grown to include 25 members. They think that the reforms promised by the constitutional treaty would help to ensure that the Union can flourish with 25 or, in the future, more members. In the event of a constitutional blockage, not only France but also many other members would veto further enlargement of the Union. It only takes a single government to block the accession of a would-be member. Bulgaria and Romania would probably join before the ban on enlargement took effect: they have already finished accession negotiations and are due to enter in 2007. But all this is hypothetical, because the other governments would not accept that the EU should continue to operate under Nice rules.

Renegotiation of the treaty

What about the second scenario, a renegotiation of the constitutional treaty? Might the governments go back to the drawing board and come up with a more modest set of changes to the existing treaties, drafting a document that could be more palatable to British tastes? For example, a renegotiated treaty might include the provisions that would introduce new voting rules (so-called 'double majority' voting) in the Council of Ministers, cut the number of commissioners, increase the role of national parliaments in EU legislation, create the job of EU 'foreign minister', and establish a mechanism that allows a member-state to leave the Union. But it might cut out provisions that would extend qualified majority voting into areas such as asylum and parts of immigration policy, and into criminal justice procedures; that would give more powers to the European Parliament over the EU budget and legislation; that would allow the creation of an *avant-garde* group in defence policy; that would create the post of an EU president; and that would incorporate the Charter of Fundamental Rights into the EU treaties. Some might argue that a 'constitutional treaty lite' could scrape through in a second British referendum.

However, a renegotiation of the constitutional treaty would be unacceptable to most governments for the same reasons that 'nothing happens' is unacceptable. They like the treaty the way it is. Furthermore, the final agreement on the treaty consisted of a whole range of complex and inter-related compromises: government A may have given in on issue X, because it knew that government B had agreed to accept what government A wanted on issue Y. All the governments are reluctant to re-open this Pandora's box, for fear that a renegotiated treaty would be less satisfactory than the current one. In the words of Sir Stephen Wall, the official responsible for Britain's EU policy during the last two inter-governmental conferences: "In circumstances where 24 other countries, nine of them through hard-fought referendums, had ratified the constitutional treaty, both political reality and past

precedent suggest that their willingness to enter into substantial

⁴ *Sir Stephen Wall, renegotiation, requiring a fresh ratification in all their countries, would be zero.”⁴*
article forthcoming in The World Today.

A second British referendum

The third scenario, of a second referendum on the constitutional treaty, is not completely implausible. But it would be if the first referendum was a resounding No. Suppose that the British vote 70-30, 60-40 or even 55-45 against the treaty: if any political leader then said “Let’s have another referendum in a year’s time, to see if the people have changed their mind”, he or she would be mocked for arrogantly ignoring the will of the people.

But whereas a decisive referendum result would settle the issue for many years, a close result, with the No campaign winning by, say, a few hundred thousand votes, might not. Suppose that in the months following a narrow No vote, it became clear that the other governments would try to exclude Britain from the EU, or set up new institutions without Britain; suppose that the US argued strongly that it did not want to see its best European ally on the sidelines of the EU; and suppose that a number of major multinationals said that they would stop investing in a country that was becoming semi-detached from Europe; it would then be possible to imagine that political leaders would argue for a second vote.

Denmark and Ireland held second referendums after initially rejecting EU treaties. However, the Danish and Irish cases may not be particularly relevant to Britain’s problems with the constitutional treaty. Denmark’s opposition to the Maastricht treaty, and to some extent Ireland’s opposition to the Nice treaty, were focused on specific policy provisions contained in those treaties. The Danes were worried about the euro and EU involvement in defence and immigration policy. So the EU offered the Danes a chance of voting again on the Maastricht treaty – with the addition of a legally binding protocol that gave Denmark opt

outs from the euro and EU defence and immigration policy. The second time round, 57 per cent voted in favour.

One of several reasons why the Irish initially voted No to the Nice treaty was concern that the articles on defence could compromise Irish neutrality. The EU heads of government therefore issued a declaration saying that nothing in the treaty compromised Irish neutrality. Together with a separate declaration from the Irish government saying the same thing, this helped to reassure some doubters, and the treaty was passed in a second referendum, with 63 per cent in favour.

The problem about the constitutional treaty, in contrast to earlier EU treaties, is that it does very little to extend the EU’s remit into new areas of policy. So it is hard to see what the British could opt out of. Most of the treaty is about institutions and decision-making procedures. One country could not opt out of say, double majority voting or the creation of the EU foreign minister – such rules and institutions either apply to everyone or they cannot work.

However, the new treaty does significantly extend the EU’s remit in one area: the Commission and Parliament would play a greater role in ‘Justice and Home Affairs’ (JHA) – what the EU calls co-operation on subjects like asylum, border controls, criminal justice, immigration, policing and visas. The treaty would introduce majority voting for rules on asylum and the parts of migration policy where the EU is involved. Yet Britain already has (since the Amsterdam treaty, agreed in June 1997) the right to opt out of EU policies on asylum and migration. The constitutional treaty gives Britain the additional right to opt out of police co-operation. The new treaty also introduces majority voting on some aspects of co-operation on criminal law, for example on the procedures which govern the admissibility of evidence presented in court. But it gives the UK an ‘emergency brake’ in this area, a de facto opt out (a country which has strong objections to a law can block it, though the others may choose to set up an ‘enhanced co-operation’ to adopt it).

Where the treaty does extend the EU's role in Justice and Home Affairs, Britain has the right to opt out. So there would be little point in adding a new British opt out to the treaty. Therefore if there was a second referendum in Britain, the people would have to vote on substantially the same treaty. In order to justify the holding of a second vote, the government might wish to attach declarations from the EU which explained or clarified some point or other. For example, an EU declaration could explain in layman's language the value and meaning of the JHA opt outs that already apply to Britain. The government could even attach declarations that had nothing to do with the treaty, for example on the preservation of the British budget rebate. The government might present the treaty alongside a 'package' of measures that protected Britain's interests and redefined its relationship with the EU.

A more fundamental reason why a second referendum would probably make little sense is that the new treaty is in many ways a false target. British opposition to the treaty is not necessarily based on the parts of it that are new. Indeed, what most annoys many of the leading eurosceptics are parts of the treaty that come from previous treaties or court judgements. For example, the primacy of EU law, established by European Court of Justice rulings in the 1960s; the political commitment (that is not legally binding) to support common foreign policies, which comes from the Maastricht treaty; majority voting on the rules of the single market, introduced in the Single European Act; or the 'flexibility clause' that allows the Council of Ministers to legislate by unanimity in any policy area where the treaty provides no legal base, which was in the original Treaty of Rome.

To be fair to British eurosceptics, they have not – unless they are MPs – had the chance to vote on the successive treaty revisions negotiated in 1985, 1991, 1997 and 2000, all of which preceded the constitutional treaty. One Conservative MEP and *Daily Telegraph* leader writer, Daniel Hannan, describes the referendum as “a surrogate plebiscite on 30 years of successive transfers of power to

Brussels”. He believes that the other member-states would not let a British No deflect them from their purpose in implementing the treaty, and that they would ask Britain to leave. Unlike his party leader, Hannan says that Britain should welcome this opportunity and negotiate the kind of special deal that defines Norway's or Switzerland's ties to the EU. “‘Vote No for the status quo’ is hardly an appealing slogan when the majority ⁵ Daniel Hannan, *Voting on the European constitution: what should this country know about the consequences?*, Politeia, 2004. dislikes the status quo. Euroscepticism in Britain is chiefly animated not by concerns about future transfers of power to Brussels, but by what has already happened.”⁵

Another eurosceptic pamphleteer, Norman Blackwell, argues that after voting No Britain should insist on moving into a kind of EU 'outer circle': it would remain in the single market, the common commercial policy and perhaps one or two other policy areas, but opt out of most of the other things the EU does, as well as the European Parliament and the European Court of Justice.⁶ Lord Blackwell argues that such a relationship would still leave Britain an EU member. Many others would reckon that Britain was more out than in – and they would point out that one cannot have a single market without a Court of Justice to enforce the rules. ⁶ Lord Blackwell, *What if we say No to the constitution?*, Centre for Policy Studies, April 2004.

3 Three undramatic scenarios

The informal implementation of parts of the constitutional treaty

Although most EU governments want to preserve the constitutional treaty, they might conclude, after a period of crisis, that in the short run they cannot have it. They may also conclude that other, radical methods of maintaining the momentum of European integration would require years of planning and preparation (see the next two chapters). The member-states would then look at a number of second-best, interim solutions. These could allow all of them to keep parts of the treaty, and some of them to push ahead in particular policy areas within small groups.

Even if the treaty never entered into force, the EU governments could – if they wished to – implement some of parts it. Evidently, the treaty's major institutional provisions, such as double majority voting or the extension of the Parliament's powers over legislation and the budget, cannot be applied unless the treaty is legally binding. But several provisions that do not contradict the existing treaties could be implemented simply through an informal understanding among the governments. Other parts of the new treaty could perhaps be enacted on a more formal basis, through 'inter-institutional agreements', binding commitments made by the Council of Ministers (and thus all 25 governments), the Commission and the European Parliament.

In the area of defence, EU governments have already put flesh onto some of the new treaty's bones. Thus in July 2004 they agreed to establish a European Defence Agency, with the job of putting pressure on the member-states to enhance their military capabilities,

and also promoting a more open and competitive market for defence goods. The treaty refers not only to the defence agency but also to 'structured co-operation', meaning that the more militarily capable member-states should be allowed to work closely together. This concept inspired the British idea of 'battle groups', rapid reaction forces that the EU could deploy to a crisis zone at short notice. The entire Union has subsequently approved this idea, and about half the member-states are providing units of their national forces to take part in battle groups.

The governments could conceivably be bold enough to try and change existing voting rules through an inter-institutional agreement. For example, they might decide to forego the use of their national vetoes in an area that the constitutional treaty would switch to qualified majority voting. Some British officials have suggested that an inter-institutional agreement could introduce new procedures that contradict the current treaties. They cite as a precedent the seven-year budget deals that govern the EU's finances, which take the form of inter-institutional agreements. These deals in some respects contradict the provisions of the treaties, but are not challenged because all the governments and institutions have signed up to them.

An attempt to introduce the 'yellow card' procedure – the part of the constitutional treaty that allows national parliaments to block a draft EU law if they think it breaches subsidiarity – would be less

⁷ *Subsidiarity may be defined as the principle that the EU should act only in areas where it can do so more effectively than the member-states on their own.*

controversial.⁷ A series of inter-institutional agreements and decisions by national governments would suffice to introduce the yellow card procedure.

If there is one part of the constitutional treaty that most EU governments would wish to salvage, it is the section on foreign policy. Many governments believe that the external challenges facing the EU – notably in North Africa, the Middle East, the Balkans, Russia and the countries that border it – are becoming increasingly

difficult to deal with, and that the Union therefore needs to step up its efforts to forge more coherent and effective foreign policies. The EU's leaders know perfectly well that the most important ingredient of a more successful external policy is political will. But they also believe that the current institutional arrangements make the achievement of that objective extremely hard, and that the reforms promised in the new treaty would do quite a lot to help. As Javier Solana, the EU's High Representative for foreign policy, has written, what the Maastricht treaty did for the euro, the constitutional treaty could do for Europe's role in the world.⁸

⁸ *Javier Solana, 'Towards a unified European voice', International Herald Tribune, October 30th-31st 2004.*

The current set of EU foreign policy institutions is a mess. The EU presidency rotates every six months from one member-state to another, which means that the Union suffers from a chronic lack of continuity in the management of its external policies. This is an endless source of frustration for the countries that have to deal with the EU. The Union currently has two foreign policy chiefs: the external relations commissioner, formerly Chris Patten and now Benita Ferrero-Waldner, who has a budget and a large staff and deals with the economic side of foreign policy; and Javier Solana, who is based in the Council of Ministers, has less than two hundred staff and virtually no budget, and deals with the security side of foreign policy. The Commission and the Council are two separate bureaucracies and it is very hard to get them to work together.

The constitutional treaty would fix these problems, by merging the jobs of the High Representative and the external relations commissioner into the post of 'foreign minister', and by merging the relevant Commission and Council bureaucracies, plus a number of national diplomats, into a new 'EU external action service'. Furthermore, the new 'foreign minister' would chair the meetings of the member-state foreign ministers, removing the problem of the rotating presidency. These reforms do not involve the transfer of power from the member-states to the EU: the key decisions on

foreign policy would remain subject to unanimity, and the foreign minister could only act in line with policies that are unanimously agreed by the foreign ministers. These reforms are about making the machinery of foreign policy co-ordination more efficient.

Could they be implemented without the treaty entering into force? If the governments agreed, they could ask the High Representative, rather than the presidency, to chair the meetings of foreign ministers. They could also agree – as the treaty would allow – that he should speak on their behalf at the UN Security Council, when there is a common EU policy to speak for. Nor is there anything in the existing treaties that would prevent the governments from trying to create an external action service. Indeed, a declaration appended to the constitutional treaty says that governments should begin planning the service when the treaty is signed (as it was in October 2004). The governments have already asked Javier Solana and Commission President José Mānuel Barroso to start preparatory work.

However, merging the commissioner for external relations with the High Representative could prove more difficult, given their legal responsibilities under the current treaties. In December 2004 Jack Straw, the British foreign secretary, told a CER conference that he thought the post of EU foreign minister could not be created without the new treaty entering into force. Many others disagree. One of them is Giuliano Amato, a former Italian prime minister and an expert on constitutional law. At the same conference he claimed that so long as the member-states agreed to delegate one formal part of the High Representative's job, the secretary-generalship of the Council of Ministers, to the deputy secretary-general, there would be no legal obstacle to the High Representative also being the commissioner for external relations. The Spanish would have to withdraw their commissioner and appoint Solana in his place.

No legal obstacles, perhaps. But the political obstacles could be difficult to overcome. If there was a delay in the ratification of the

new treaty, most governments would want to apply as many of the foreign policy provisions as was feasible. But British officials worry that if the UK went along with this, the tabloid press would react badly. In the wake of a negative referendum result, if the government agreed to create an EU external action service, it would be accused of contempt for the popular vote. "British government backs secret plan to replace Foreign Office with Brussels super-ministry" is the kind of headline officials fear.

However, if Britain, having vetoed the constitutional treaty, then tried to block the informal application of one small part of it, many of its partners would lose patience. They would probably do their best to apply parts of the treaty without British participation. For example, if the UK did not agree to let Solana chair the meetings of foreign ministers, the other 24 governments might hold informal meetings of foreign ministers, chaired by Solana, just before the formal meetings of the 25. As already happens with the Euro Group (consisting of the finance ministers of the euro countries), which meets prior to the formal meetings of EU finance ministers, the British government might find that important business was done before it entered the room.

If the foreign policy parts of the constitutional treaty are applied without the treaty being ratified, they will probably work, though less well than if the treaty is ratified; and if they are applied without British involvement, they will probably work, though less well than with British involvement.

Use of 'enhanced co-operation' inside the treaties, or *avant-garde* groups outside them

Britain would have no means of preventing the more integrationist member-states from resorting to 'enhanced co-operation', the procedure set down in the treaties that allows a group to move ahead in a specific policy area. A group of member-states might also try to create a similar sort of *avant-garde* outside the legal framework of the treaties.

The Treaty of Amsterdam, which entered into force in 1999, introduced provisions to allow enhanced co-operation. However, the treaty laid down demanding criteria, for example that a majority of member-states must be involved, and that all the others should be

⁹ See Brendan Donnelly and Anthony Dawes, 'The beginning of the end or the end of the beginning? Enhanced co-operation in the constitutional treaty', *Federal Trust European Policy Brief*, November 2004. See also Franklin Dehousse, Wouter Cousens, Giovanni Grevi, 'Integrating Europe: multiple speeds – one direction?', *European Policy Centre*, April 2004.

able to join when they meet the relevant criteria. Any single state had the right to veto the enterprise, and the Commission had to give its approval. The Nice treaty made it slightly easier to set up an enhanced co-operation, by removing the right of one member-state to wield a veto, except in foreign policy, and by reducing the minimum number of states required to eight.⁹

So far no country or group of countries has made a serious effort to use this procedure. In 2004, however, there was talk of an enhanced co-operation on tax. Commissioner Frits Bolkestein suggested that a sub-group of members might wish to harmonise rules on corporate tax bases (that is, the definition of corporate income to which tax is applied; tax rates would still be set by national governments).

Opinions differ as to why the procedure has never been used. For some, the problem is that the rules for establishing an enhanced co-operation are too onerous and bothersome. For others, there has simply not been the need. The technique was designed to overcome the veto of a difficult member-state, in a policy area subject to unanimity, but neither the UK nor anyone else has yet created the kind of blockages that would provoke others to try using the procedure.

A group of member-states might decide to ignore the EU rules on enhanced co-operation, and seek to establish something similar outside the treaties through inter-governmental agreement. This would be a way of avoiding the quite complex and demanding EU procedures.

There is a precedent for a successful *avant-garde* outside the treaties: the Schengen agreement (named after the Luxembourg village where it was signed in 1985) to establish an area of passport free travel among a group of EU members. This club began with just France, Germany, Belgium, the Netherlands and Luxembourg, but subsequently the other EU members, bar Britain and Ireland, joined the club, as did non-EU members Norway and Iceland. The members of Schengen signed up to a series of accords on subjects such as border controls, information-sharing and hot pursuit across frontiers. But running the Schengen agreement through inter-governmental co-operation proved cumbersome: national parliaments were slow at ratifying the various documents that provided the legal base. So by the time the EU treaties were revised at Amsterdam in 1997, the Schengen countries wanted to fold this inter-governmental institution into the Union. The EU treaties now provide a legal basis for Schengen business, and the EU institutions have become involved. Meanwhile Britain and Ireland have been given the right to opt into some of the Schengen policies.

Conceivably, an *avant-garde* group outside the treaties could involve all the countries that had ratified the constitutional treaty, rather than just a group of them. Twenty-four members might try to set up new agreements, distinct from the EU's legal framework, that focused on specific policy areas and were based on sections of the constitutional treaty. Such 'sectoral agreements' could apply, for example, to the fight against crime or economic policy-coordination. These agreements might even go further than the relevant parts of the constitutional treaty on which they were based: many of those parts were heavily influenced by British preferences, which would no longer have to be respected.¹⁰

¹⁰ See Gian Luigi Tosato and Ettore Greco, 'The EU constitutional treaty: how to deal with the ratification bottleneck', *International Spectator*, 4/2004.

When politicians and officials discuss the possibility of launching *avant-gardes* outside the treaties, they often incur the criticism that such a group would be divisive and anti-EU. They answer

that the example of Schengen shows that an *avant-garde* need not be harmful. Schengen began with just five countries blazing a trail, but almost all the others followed eventually. And far from undermining EU institutions, Schengen's eventual incorporation into the treaties gave them new powers and responsibilities.

Nevertheless new *avant-gardes* of this nature would probably meet the hostility of the EU institutions. The Commission would worry about whether the *avant-garde's* actions were compatible with the EU's rulebook and treaties. The countries involved would have to be careful not to act in breach of EU rules, lest they face an action in the European Court of Justice. "Such agreements may not be concluded in areas of exclusive EU competence (e.g. in the field of trade or monetary policy), they may not affect the normal operation of the EU institutional mechanisms (in view of duty of sincere co-operation) and they may not include any provisions that conflict with EU law or undermine existing EU policies, e.g. by discriminating on grounds of nationality in favour of citizens of

¹¹ Bruno de Witte, 'The process of ratification and the crisis options: a legal perspective', paper presented to the Asser Institute Colloquium on European law, the Hague, October 13th-16th 2004. some member-states only"¹¹. And like all inter-governmental institutional arrangements, such an *avant-garde* would face the criticism that it was unaccountable and lacking transparency.

Furthermore, such groups could be very divisive. In April 2003 France, Germany, Belgium and Luxembourg produced a plan for a core group of member-states to integrate militarily. This included a scheme for a new military headquarters in the Brussels suburb of Tervuren. This so-called Tervuren initiative created much bad blood at a sensitive time, just after the Iraq war. The Americans and their Atlanticist allies in the EU saw this as an effort to create European institutions that would undermine NATO. Greece offered support for the initiative but the other 20 members and soon-to-be-members opposed it. This potentially explosive issue was finally defused in December 2003, when first Britain, France and Germany, and then the whole EU agreed to

establish a planning cell tasked with bringing together civilian and military capabilities.¹²

¹² For details of this argument, see Charles Grant, 'Reviving European defence co-operation', *NATO Review*, Winter 2003.

However great the difficulties of setting up enhanced co-operations or *avant-garde* groups, a blockage of the constitutional treaty would probably push some governments to make the attempt. But in which policy areas would they do so?

Taxation would provide an obvious candidate. Because decisions on tax require unanimity, Britain and its allies have succeeded in blocking EU involvement in corporate taxation. In many policy areas that are relevant to the single market, an enhanced co-operation could be distorting. But if a group of countries decided to harmonise tax bases or even set minimum rates for corporation tax, their partners would not be disadvantaged (a high rate could put those in the enhanced co-operation at a disadvantage). The French government has given considerable thought to enhanced co-operation in corporate taxation. Another area that might make sense would be research and development. Many smaller and poorer member-states do not want to spend a lot of money on R&D, while the larger ones could benefit from the economies of scale that a joint organisation might provide.

Then there is the Euro Group, the informal club that brings together the 12 countries that have adopted the euro. The treaty would make the club a bit more formal: it refers to the Euro Group appointing a president, and to his or her possible role in representing it in international institutions. The treaty would also allow the Euro Group countries to co-ordinate their economic policies more closely, and to make recommendations on which non-euro member-states were ready to join the single currency. If the treaty cannot be ratified, the countries in the euro might use the enhanced co-operation procedure to replicate these changes, or find other ways of strengthening the Euro Group. In September 2004 they appointed Jean-Claude Juncker, Luxembourg's finance minister (as well as prime minister), as their president for a two-year period.

Where else might *avant-gardes* or enhanced co-operations emerge? Foreign policy is unlikely: many governments would argue that an EU foreign policy is only credible if backed by all the member-states, and in any case the current treaties allow a single country to veto an enhanced co-operation in that area (informal co-operation among a group of countries, such as that between France, Germany, Belgium and Luxembourg over the Iraq war, is another matter). The treaties do not allow enhanced co-operations in defence, though the constitutional treaty, with its provisions for ‘structured co-operation’, would change that. The area where enhanced co-operation might make most sense is Justice and Home Affairs. For example, a group of countries might wish to move ahead with a European public prosecutor, or rules on visas, or a common border guard, or the convergence of criminal procedures.

Justice and Home Affairs produced some of the most heated arguments in the negotiation of the constitutional treaty. For example, Britain (with some allies) insisted on limiting the scope of the public prosecutor, an institution that would investigate and prosecute some cross-border crimes. The final text of the treaty says that the post of public prosecutor cannot be established unless there is unanimous agreement to do so, and that even then the prosecutor could deal only with fraud against the EU budget – unless there is unanimous agreement to extend the prosecutor’s remit. The French and German governments have already discussed applying enhanced co-operation to subjects such as the public prosecutor.

Small changes to the existing treaties

If the constitutional treaty is blocked, some governments will call for another interim solution, a small inter-governmental conference to revise the existing treaties (a ‘mini-IGC’). As already discussed, the chances of the EU governments wanting to renegotiate the constitutional treaty, in the hope that Britain or others which failed to ratify would find a second version easier to

swallow, are minimal. But a mini-IGC – a short sharp treaty revision, on a specific issue – would be much more appealing. The governments might pick one or two parts of the treaty that are particularly important, such as the double majority voting rules, and leave the rest of the treaty on one side. They would then hold an inter-governmental conference, perhaps lasting for just a day, to agree on the necessary amendments to the existing treaties. With the mini-IGC making only one or two amendments, most governments would argue that there was no need for ratification by referendum. Parliamentary votes would suffice in most countries, though constitutional precedent suggests that Ireland might require a referendum.

The governments might try to reduce the political sensitivity of a mini-IGC by focusing on treaty provisions that would simplify the EU and its procedures, rather than those that would make it more integrated. For example the mini-IGC might try to retain the constitutional treaty’s consolidation, into a single document, of all the preceding treaties; the measures which make decision-making in the Council of Ministers more transparent; and the treaty’s reduction in the number of EU legislative procedures.

But in the aftermath of a British No to the constitutional treaty, it is highly debatable whether the British government would feel able to go along with any sort of mini-IGC. The Conservative Party could interpret the referendum as a popular mandate to seek a wide-ranging renegotiation of the existing treaties. The victorious No campaign would say that if the government tried to sign up to a mini-IGC it would be ignoring the verdict of the people.

The British government might try to argue that the mini-IGC’s amendments to the existing treaties were about making the institutions more efficient and simpler, rather than giving new powers to the Union; that 98 per cent of the substantive changes in the constitutional treaty had been abandoned; and that adopting a small part of the treaty could not be construed as

ignoring the result of the referendum. However, the government could well take the view that – as with the possibility of informally applying parts of the treaty – signing up to even minor treaty amendments would appear high-handed and arrogant. And of course if the UK refused to go along with a mini-IGC, the others would not be able to amend the treaties as they wished.

4 Can they kick out the British?

If the British reject the constitutional treaty, some senior European politicians will try to exploit the ensuing crisis to push them out of the Union. Britain, they will say, should negotiate with its EU partners for a special status that falls short of membership but provides access to the single market. Britain's relationship with the EU would then be similar to that of Norway, Iceland or Liechtenstein today. Those three countries, which are part of the European Economic Area (EEA), have to accept EU rules on the single market and labour markets, without having a vote on them. They do not take part in most other EU policies, such as the Common Foreign and Security Policy or the Common Agricultural Policy, though they do pay money into the EU's regional funds. Another possible model is Switzerland. Through a series of treaties that link it to the EU, Switzerland enjoys access to the single market but has no say in setting its rules. Switzerland does not have to accept EU social legislation or contribute to the regional funds.

Those who want Britain to emulate Norway or Switzerland include not only some continental federalists but also many British eurosceptics. They argue that, given Britain's economic weight, it could expect a more generous deal than the existing EEA countries, with more rights to be consulted on new EU legislation. Britain could attain a kind of 'super-Norway' status, for example, with representatives in the Commission, Council of Ministers and European Parliament, who could speak, though not vote, on single market issues.

The idea of kicking out the British is particularly popular among some senior figures in France. They agree with Charles de Gaulle's words of 1951:

It is a fact that, because of being an island, and its Commonwealth, and its tradition, Great Britain has a strong aversion to joining our continent. How many times, during the recent war, Mr Churchill told me: "When I have to choose between you and Roosevelt, you should know that I will always choose Roosevelt. And when I have to choose between

¹³ *Press conference of General de Gaulle, Palais d'Orsay, December 21st 1951.* Europe and the wide open seas, you should know that I will always choose the wide open seas".¹³

Advocates of pushing Britain out believe that this option would offer several advantages, especially compared with the principal alternative, which would be the establishment of a core Europe (see next chapter):

- ★ If the EU excluded the UK it could retain the constitutional treaty. A core Europe would require the abandonment of the treaty over which so many people had expended so much labour.
- ★ Legally, giving Britain (and any other obstructive country) a special status would be much simpler than building a core Europe that had to operate alongside the wider EU.
- ★ If 24 (or most of the members other than Britain) were able to move ahead with the constitutional treaty, it would be much less divisive than constructing a core Europe.
- ★ Ever since the British joined they have been a pain. From Margaret Thatcher demanding her money back (1981-84), to John Major opting out of the euro and social policy, and then leaving an empty chair to punish the continentals for banning beef from Britain's mad cows (1996), to Tony Blair threatening

Franco-German leadership of the EU, backing George Bush's foreign policy and stubbornly defending his red lines in the negotiation of the constitutional treaty, a pattern has been clear: Britain is not truly European and will always be a brake on European integration. So, let the rest of Europe resolve the ratification crisis by cutting the slowest coach of the European train adrift.

- ★ Some argue that a spell out in the cold would do the British good. Eventually they would realise their folly and come crawling back – in a much less recalcitrant mood.

Valéry Giscard d'Estaing, formerly president of France and of the Convention on the future of Europe, is one of those who argues that the EU should not let a British No deflect it from adopting the constitutional treaty. He has written that if a large majority of the EU's citizens and member-states have ratified the treaty, but one or several member-states cannot, that would be a problem for the countries concerned rather than for the constitution.¹⁴ Nicolas Sarkozy, the leader of the governing Gaullist party, has said that if 24 members ratify the treaty, and one does not, it is welcome to stay with the Nice treaty; but it cannot stop the others going ahead.

¹⁴ Valéry Giscard d'Estaing, 'Vite, la constitution de l'Europe!', *Le Monde*, July 10th 2004.

This author has heard two senior officials at the heart of French policy-making argue that the best response to a British No would be to proceed without the UK. The individuals concerned cannot be described as anti-British, and would be genuinely sad to see Britain outside the EU. But they can think of no better way of dealing with a British No.

Inside the European Commission, some top officials have thought through the institutional mechanisms that could be used to allow the rest of the EU to proceed without Britain. François Lamoureux is currently director-general of transport and energy, and was a

close aide of former Commission President Jacques Delors. He wrote the federalist draft EU constitution known as ‘Penelope’, which former Commission President Romano Prodi presented to the Convention as a personal contribution. In 2004 Lamoureux published a plan for a European ‘*arrière-garde*’ [rear-guard]. He wrote that schemes for an *avant-garde* were counter-productive, and had not yet made any progress. Yet the ‘rear-guard’ was a concept that had proven its worth, with Britain and Denmark opting out of the euro, Britain opting out of the social chapter of the Maastricht treaty (from 1993 to 1997) and Britain and Ireland

¹⁵ François Lamoureux, ‘Draft Constitution: why a ‘rear-guard’ should be established’, *Notre Europe*, April 2004. staying out of the Schengen accords. If one or a few countries could not ratify the treaty, the others should press ahead with it and give the non-ratifiers a special status, outside the Union, in a rear-guard.¹⁵

There is one big problem with all the variants of the plan for kicking out Britain: the British government would probably not give its consent. And if Britain refused to accept ‘super-Norway status’, it is hard to see, legally, how the others could adopt the treaty and leave the UK behind. The constitutional treaty cannot enter into force unless everyone ratifies it, and the existing treaties cannot be amended except unanimously. In the past, there have been many proposals to soften this rule. For example, the ‘Penelope’ document said that if five-sixths of the member-states ratified it, the treaty should enter into force, with non-ratifiers obliged to accept associate status. The CER proposed that if countries representing 90 per cent of the EU’s population ratified a new treaty, it should

¹⁶ Charles Grant, ‘Designing an exit door for Europe’, in ‘New Designs for Europe’, CER, 2002. enter into force.¹⁶ Former commissioner Mario Monti has suggested that all the heads of government should make a political commitment: if a member-state’s attempt to ratify the constitutional treaty fails, its government would try a second time with a different question: to accept the constitution and stay in the EU – or to leave it.¹⁷

¹⁷ Mario Monti, speech to Aspen Italia conference, Rome, November 13th 2004.

But the chances of any such scheme obtaining the unanimity required to bring it into effect are virtually nil: no politician wants to imagine a situation whereby he signs a treaty, sees his country reject it in a referendum, and then has to explain to his people that they must accept it because the rest of the EU has voted in favour. All that the constitutional treaty says on the subject of ratification problems, in an attached declaration, is this: “If, two years after the signature of the treaty...four fifths of the member-states have ratified it and one or more member-states have encountered difficulties in proceeding with ratification, the matter will be referred to the European Council.”

Some analysts of a federalist bent like to suppose that when an EU summit meets to crack this problem, it will conclude by simply declaring that the treaty has entered into force. In reality there is no chance of the European Council choosing such an illegal path. The European Council takes decisions by unanimity. Britain and probably others would block any attempt to implement the treaty through a decision of the European Council.

The countries which wanted to leave Britain behind could conceivably find a legal way of making it happen. The 1969 Vienna Convention on the Law of Treaties says that some of the parties to a treaty can make a new treaty that modifies the first one – but only “if that modification does not affect the rights that the non-participating states draw from the original treaty”, according to Professor Bruno de Witte, professor of EU law at the European University Institute in Florence. “This is obviously not the case for the constitutional treaty, whose enactment unavoidably affects and modifies the existing rights of all the EU members.”¹⁸

¹⁸ Bruno de Witte, ‘The process of ratification and the crisis options: a legal perspective’, paper for the Asser Institute colloquium on European Law, the Hague, October 13th-16th 2004.

Two Italian legal experts claim, controversially, that the constitutional treaty could enter into force even if not every signatory ratifies it. “It could be argued that the requirement of

ratification by all member-states set down in Article 48 of the Treaty of European Union (TEU) does not apply to the constitutional treaty, in that the TEU refers to modifications, by amendment, of the existing treaties. Consequently, the procedure

¹⁹ Gian Luigi Tosato and Ettore Greco, 'The EU constitutional treaty: how to deal with the ratification bottleneck', *International Spectator*, 4/2004.

provided for applies to the revision, not the replacement of those treaties and, much less, to the refounding of the Union on new constitutional bases."¹⁹

And the new treaty claims to be such a refoundation. Furthermore, claim these experts, the procedures spelt out in the new treaty on its ratification do not explicitly state that every signatory must ratify it. They say it should enter into force two months after "the last state to take this step", namely the deposit of the instruments of ratification. So some may argue that the treaty enters into force two months after the last state that intends to ratify it does so.

Most legal scholars will dismiss such arguments as bunkum. But there may be other, legally sounder methods that would allow the 24 to bypass a British blockage. So long as every member other than Britain was ready and willing to go along with the scheme, the 24 could withdraw from the existing treaties. They would then have to redraft the constitutional treaty so that the EU had just 24 members, and then sign and ratify the document. Probably none of them would need to resort to a fresh referendum, given that the text would be substantively identical to the one that they had already ratified. This kind of scheme was mooted when Denmark rejected the Maastricht treaty in 1992. If the Danes had voted No a second time, some such method of excluding them would have been tried (though the British would have been unwilling to expel the Danes).

Legally, such a scheme would probably just about work. The Vienna Convention on the Law of Treaties says that states can withdraw so long as they can claim that a fundamental change of circumstances makes it impossible for them to continue in the existing treaties. A

withdrawal would work, according to one scholar, so long as the withdrawing countries can "argue that the original objectives of the European treaties can no longer be achieved under the current treaties and require the kind of *saut qualitatif* [qualitative leap] provided by the constitutional treaty".²⁰

²⁰ Bruno de Witte, 'The process of ratification and the crisis options: a legal perspective', paper for the Asser Institute colloquium on *European Law, the Hague, October 13th-16th 2004*.

Could this kind of mechanism be used against the British? Plenty of senior officials in Brussels and Paris seem to think so. One of Britain's leading experts on European law, Professor Alan Dashwood of Cambridge University, agrees. He told a House of Commons committee:

If only one or two member-states failed to ratify (e.g. the UK and one of the small member-states), there would be very strong pressure from the governments of the other 23 to go forward with the new constitution. It is possible that a compromise formula might be found (as was done with Denmark...) but this could not entail altering the text of the treaty itself, since it is inconceivable that other member-states would be willing to re-run the process of ratification. In all likelihood, the only practical option for the member-states unable to ratify the treaty would be to withdraw from the Union and negotiate some kind of associate status.²¹

²¹ Alan Dashwood, written evidence to the House of Commons European scrutiny committee, September 2004.

The obvious objection to this argument is that not all the other member-states would want to go ahead with a scheme for excluding the UK. Dashwood counters this as follows:

If the founding six, plus Spain, Portugal and Greece, plus most of the new member-states, were determined to press ahead with the constitutional treaty, I think it highly unlikely that the Nordics, Poland and Estonia, say, would want to risk

being left out in the cold. The probable outcome would therefore be for the UK to be offered a fairly generous form of association – take it or leave it. In the real world it seems inconceivable to me that the British government would sit tight, on the basis that the existing treaties cannot be amended without our co-operation. If they did, the other member-states would simply denounce the treaties and start afresh with the constitutional treaty. That would be a lot easier than, say, if Denmark had been unable to ratify Maastricht, because the

²² *Email to the author, January 2005.* constitutional treaty is a self-contained instrument designed to replace the existing treaties entirely.²²

Others point out that even the more pro-British states would have an incentive to co-operate with excluding the UK. If they did not go along with this scheme, the French and the Germans would be much more likely to establish some sort of core – a core that would probably exclude the likes of Denmark, Poland and Estonia. One senior Estonian diplomat puts it this way:

If you [the British] walk out, we won't go with you. You can stay by yourselves in your fine islands, but we might wake up and find ourselves in the [Russian-dominated] Commonwealth of Independent States. Britain is not a popular country – its insistence on retaining its EU budget rebate does not help – and you will be even less popular if you vote No. You will be outcasts. Those accession countries which agree with you on economics will not want to remain your allies. We may then be driven – unhappily – towards a core.

The British should not be so complacent or smug as to believe that they are just too special for the others to leave behind. If they vote No it is likely that some countries will hatch a scheme to push them out of the Union. Such an effort could, conceivably, succeed. Nevertheless this author thinks it would be more likely to fail. Even if such a scheme could be made to work legally, the political obstacles would be huge. While several governments, if faced with

a choice between losing the treaty and losing the British, would rather lose the British, one or two would probably not. And the UK would only need one government to stand beside it to make it impossible for the others to force Britain to accept a special status. If just one British ally was blocking this scheme, the other 23 could conceivably try to exclude Britain and its friend, redrafting the constitution for 23. But that is highly implausible.

Who would stand by the British? Despite Britain's track record as a sometimes difficult, arrogant and uncompromising partner, it does have friends in the EU (after all, on a bad day several other member-states can also be difficult, arrogant and uncompromising). The fact that the British economy is the most successful large economy in the EU; that the British have a good record of implementing EU rules; and that the British have some of Europe's cleverest diplomats, its most capable armed forces and the closest relations with Washington – all this would make several countries reluctant to exclude them. Many governments believe that the EU has two big tasks in the coming decades: to encourage the member-states to push ahead with economic reform, and to build an effective Common Foreign and Security Policy. They know that the EU cannot easily tackle either of those challenges without British participation.

Anglophile countries such as Denmark, the Netherlands and Portugal would not readily wish to kick out Britain. Many of the Irish would feel uncomfortable in a Union without Britain. A lot of influential people in Germany, though wedded to the sanctity of the Franco-German relationship, would be loathe to lose the UK. Many Italians would fear that in an EU without Britain, France and Germany would become too dominant (though that could change if the Britophile Berlusconi loses power in the elections of 2006). Among the East Europeans there would be particular reluctance to expel Britain: the Poles and some of the Baltic peoples feel they have more in common with Britain's Atlanticism and free-market approach to economics than with what France and Germany have to offer.

Just how many of these countries would stand by Britain in its hour of need would depend, to some extent, on how the British behaved. If, having thrown the EU into chaos by rejecting the constitution, the British government made an effort to consult its partners on a way out of the crisis, and if its tone were polite and constructive, it would find many friends in Europe. But suppose that the tabloid press used the referendum result as a trigger for a campaign in favour of withdrawal; that a Tory party revived by the referendum hardened its position on Europe; that parts of the Labour Party sought to reconnect with working class voters by turning eurosceptic; that politicians of all parties sought popularity through cheap attacks on Brussels, the French and the Germans; and that the government lacked the mettle to speak up in favour of the Union. Britain would then find few countries prepared to make an effort to keep it in. That said, there would have to be quite a lot of xenophobic ranting from eminent Britons to drive all the other EU countries to seek the UK's exclusion.

Only in one set of circumstances would schemes for the 24 to leave the UK behind become viable: if Britain wanted to have super-Norway status. So long as Labour is in power in Britain, it is very unlikely that Britain would want to leave the EU. But if the Conservative Party won the next election, that scenario would become plausible. Michael Howard, the current Conservative leader, says that he is committed to EU membership. Nevertheless his party faces a challenge from the United Kingdom Independence Party (UKIP), which campaigns for withdrawal. Many life-long Conservative Party members and voters want Britain out of the EU. Some of them will vote for UKIP or its equivalents unless Howard moves towards a policy of withdrawal. In any case, Howard is committed to 'renegotiating' Britain's involvement in the EU's policies on fisheries, development aid and social protection. As Howard certainly knows, a member-state cannot pull out of an existing policy that it does not like: when a country joins the EU, it signs up to a package deal, involving the whole range of policies (if the Union

decides to negotiate a new policy, the rules are different; hence the UK's opt out from the euro).

If a Howard government tried to change the basic operating rules of the EU by demanding the right to withdraw from fisheries, social and aid policies – and also, if he listened to some of his senior colleagues, from farm, foreign and defence policies – the other 24 would say: “no way”. But then they would add: “If you really cannot stand many of the policies that you signed up to when you joined the club, you might prefer to withdraw from the EU and join the European Economic Area.”

Michael Howard has promised that if he wins the 2005 general election he will hold a referendum on the constitutional treaty – and of course campaign against it. If the result of the referendum were negative, if the Conservative party were riding a high tide of euroscepticism, and if large parts of the media were clamouring for withdrawal, the Conservative government could take an historic series of steps: agree to let the others proceed with the constitutional treaty, pull out of the EU, and negotiate a special status that guaranteed Britain access to the single market.

At the time of writing, the Conservatives look unlikely to win the next general election. But even out of power they can cast a shadow over Britain's relationship with the rest of Europe. Citing the referendum result as their mandate, they would seek to influence the terms of Britain's negotiations with its partners, making it increasingly difficult for Britain to remain a full member.

5 Three kinds of core Europe

A hard core

If a group of countries tries to expel the UK from the EU, they will meet immense difficulties. Therefore some European leaders would look to a 'hard core' as an alternative way out of the ratification crisis. A number of senior figures in Berlin, Paris and Brussels support this idea. They find other possible scenarios – such as the use of enhanced co-operation, the informal implementation of parts of the treaty, or a mini-IGC – too piecemeal and insufficiently ambitious.

If the integrationist countries tried to set up a hard core, they would have to write off the constitutional treaty. Instead they would establish – under Franco-German leadership – a new vanguard group. This would have its own institutions, co-exist with the EU, and, at least in theory, remain open to other EU members, if and when they were able to make the commitment to a closer union. This concept of a hard core should not be confused with the leadership groups discussed in Chapter 3 ('enhanced co-operation' within the treaties, or an *avant-garde* group outside them), which would focus on one particular policy area, such as corporation tax or border controls. A hard core would be a leadership group that pursued closer union across a wide range of policies. Its existence would divide the EU into two categories of members, the A team and the B team.

The idea of a hard core (*noyau dur* in French and *Kerneuropa* in German) has a history that stretches back a dozen years. In the early 1990s it became clear that the Union was going to enlarge into Central and Eastern Europe, and that this would make the

traditional objective of a ‘political union’ very hard to realise. In France and in Germany, the idea of a hard core won favour for several reasons:

- ★ Enlargement made it unlikely that the EU would ever develop federal institutions. The creation of a hard core would allow the most integrationist countries to build a true political union.
- ★ Enlargement made it difficult for the French and the Germans to lead the EU. But they would be able to lead the hard core, which in turn would lead the wider Union.
- ★ The UK is always a brake on European integration. One of the merits of a hard core is that it would exclude the British.

²³ Karl Lamers and Wolfgang Schäuble, ‘Reflections on European Policy’, CDU/CSU Fraktion des deutschen Bundestags, September 1st 1994.

In September 1994 Wolfgang Schäuble and Karl Lamers, two senior German Christian Democrats, published what became known as the Schäuble-Lamers paper.²³ They argued that after France, Germany and the

Benelux three had established the single currency, they should build a ‘political union’, by which Schäuble and Lamers meant mainly much tighter co-ordination of economic policy. Their paper assumed that this hard core would be a kind of caucus within the EU, and they did not propose new institutions. They were very specific in saying that where the hard core led, the other EU members should, in time, follow: they hoped that the hard core would have a centripetal effect. Schäuble and Lamers’ motivation was to ensure that both the federal approach to EU institutions, and Franco-German leadership, survived enlargement.

Although this paper had Chancellor Kohl’s backing, the French government, disliking the emphasis on federalism, gave it a frosty response. Early in 1995 Giscard d’Estaing produced his own plan for a core Europe, but on rather different lines. He envisaged a *Europe puissance* of the integrationist countries, committed to Europe

becoming a global power, surrounded by an outer circle of *Europe espace*, those EU countries that wanted to keep it primarily a free trade area. In contrast to the Schäuble-Lamers paper, Giscard did not envisage the peripheral countries ultimately catching up with the hard core. His division of Europe into sheep and goats was permanent.

Joschka Fischer, the German foreign minister, revived the idea of a hard core in May 2000, with his Humboldt university speech. Like Schäuble and Lamers, he wanted the core – which he called a “centre of gravity...comprising a few member-states which are staunchly committed to the European idea” – to be a federal structure, and like them he hoped that everyone would join it eventually. But unlike them he made specific proposals on institutions: he suggested that the core countries should sign their own treaty, within the already existing EU treaties.²⁴

²⁴ Joschka Fischer, ‘From confederacy to federation: thoughts on the finality of European integration’, speech to Humboldt university, Berlin, May 12th 2000.

On the basis of this treaty, the federation would develop its own institutions, establishing a government which within the EU should speak with one voice on behalf of the members of the group on as many issues as possible, a strong parliament and a directly elected president. Such a centre of gravity would have to be the driving force for the completion of political integration and should, from the start, comprise all the elements of the future federation.

Fischer also delivered an implicit warning to the British that they should not try to prevent a core Europe from emerging:

If one follows the tenet of Hans-Dietrich Genscher [German foreign minister from 1974 to 1992] that no member-state can be forced to go further than it is able or willing to go, but that those who do not want to go any further cannot prevent others from doing so, then the centre of gravity will emerge within the treaties. Otherwise it will emerge outside them.

Jacques Chirac responded a few months later with a speech to the German Parliament, calling for a “pioneer group” to lead the EU, but suggesting a more inter-governmental model than Fischer had done. Chirac wanted no treaty within the treaty, but rather a small-scale “secretariat to ensure consistency between the positions and policies of the members of this group”. Neither Fischer nor Chirac thought the core could be based on the euro, as Schäuble and Lamers had done: many more countries had embraced the euro than had at first seemed likely, while most of the states that were due to join the EU in 2004 clearly intended to join the euro, when they were ready. So in the long run the euro zone would be too wide to make an effective core.

In recent years Chirac has spoken of “pioneer groups” rather than a pioneer group. That implies a set of enhanced co-operations within the framework of the treaties, rather than a single entity built outside them. Fischer has also changed his mind, saying in February 2004 that the idea of a core Europe was “*passé*”. Following enlargement, “plans for a small-size Europe do not work any longer”. That kind of Europe “cannot deal with strategic challenges”.²⁵ He perhaps changed his mind because of what he had learned during the Iraq crisis, when the emergence of a kind of core led by France and

²⁵ *Berliner Zeitung*, Germany had contributed towards the EU becoming weak and divided. February 28th 2004.

Nevertheless, every time the EU faces a potential institutional blockage, people in France and Germany revive the idea of a core. In the autumn of 2003, when it seemed that the EU’s constitutional treaty might never be signed, politicians such as French foreign minister Dominique de Villepin spoke of the need for a Franco-German union, while Chirac, Schröder and Belgian prime minister Guy Verhofstadt held a dinner to discuss the idea of a hard core. Around the time of the December Brussels summit, a draft declaration on the establishment of a core Europe was circulating. This talk subsided when it became clear that the constitutional treaty would be agreed (a deal was finally struck in June 2004). It

will revive when the British referendum approaches, both as a tactical threat to encourage the British to vote Yes, and as a genuine expression of what senior French and German politicians think about the future of the EU.

In Berlin there are people close to Schröder who say they already have a plan under wraps – to be unveiled the day after the British vote No. Apparently France and Germany would announce their intention to build a closer union that would cover eight or nine policy areas. They would immediately involve Belgium and Luxembourg, and then invite other member-states to join them. “We would start with an objective, as we did with the Schengen agreement, and then work out how to get there,” says one official. “A decision to merge our armed forces could take a decade to bring about, just like the creation of the euro. The key to all this is political will.” A new secretariat would organise the co-operation.

The areas to be covered, say these people close to Schröder, would include the integration of military forces, harmonisation of criminal law, harmonisation of civil law, the establishment of a European criminal court (going further than the idea of a European public prosecutor), tax harmonisation, a single seat in international financial institutions and the merging of embassies. The question of representation on the United Nations Security Council has apparently been left open. These are policy areas where the EU is either uninvolved or only partly involved, to minimise the risk of friction between the core and the EU.

“The core would be separate from the EU and replace it step-by-step in the areas it covered,” says one German official. “For example, if we start to harmonise taxes the role of the EU in that area degrades. If we start to do common foreign and defence policy, the EU’s role there loses its importance.”

How would this core relate to the EU? Apparently there would be peaceful co-existence between the two organisations. The

Commission would be present in the core's secretariat, though not play a leading role there. MEPs from the core countries would sit together in special sessions to deal with the core subjects.

Who would join? Not necessarily every country in the euro, say proponents of this plan. But they add that several Central and East European countries might join. "At the time of the December 2003 Brussels summit [when the talks on the constitutional treaty broke down], the Lithuanians, Slovaks, Slovenes, Czechs and Hungarians all said 'If there is a core, we want to be in' – there was a big fear of being left out," says a German official, who thinks that in the very long run most countries could join a core.

This is the thinking in some parts of the German government. But the greatest support for a core Europe has traditionally come from France. Chirac is clearly interested in the idea, at least periodically. Although senior figures in the French government do not talk in such concrete terms as those close to Schröder, the political elite in France is in general more enthusiastic about the idea of a hard core than that in Germany.

For example Dominique Strauss-Kahn, a former Socialist finance minister, and one of his party's leading thinkers, is a believer in a Europe of concentric circles. The centre would consist of an *avant-garde* based on the euro zone, or the EU's founding members, or on some other grouping.

Some member-states will not for a long time be able to give up sovereignty as is required to build a political union.

²⁶ Dominique Strauss-Kahn, 'Building a political Europe: 50 proposals for tomorrow's Europe', report presented to the President of the European Commission, April 2004.

Others will not want to do so. It is therefore difficult to imagine that there will not be a more integrated core... It will be open at all times to those who wish to join.²⁶

The second circle would be the EU (which for Strauss-Kahn could include Turkey). Beyond

that would be a wider circle of affiliated countries which might one day join the EU, such as Ukraine or the North African countries. Those in the outer circle would not belong to the EU's political institutions but would have much tighter economic, financial and social ties to the EU than do today's associate members.

Strauss-Kahn argues that the core should avoid doing things which the EU does, to prevent conflicts between the two. He talks of common fiscal laws agreed by the parliaments of the core countries; of co-ordinated national budgets; of the convergence of tax bases; of common passports and diplomatic representation; of educational exchanges and co-operation on Justice and Home Affairs. He believes that if Britain blocks the constitutional treaty, most of the French Left, and much of the Right, would back a core Europe.²⁷

²⁷ Interview with Dominique Strauss-Kahn, September 2004.

Strauss-Kahn's great rival in the Socialist Party, former prime minister Laurent Fabius, has campaigned against the constitutional treaty, on the grounds that it is too liberal and British-influenced. Fabius has also said that it is time to "*renverser la table*" (overturn the table), by which he means that he wishes to scrap the EU and start again with the foundation of a core Europe. In France, the debate on core Europe tends to get mixed up with the debate on whether Turkey should become an EU member. A majority of the French oppose Turkish membership, as do senior politicians such as Fabius, Sarkozy and Giscard d'Estaing. To the many French who never felt comfortable with the 2004 enlargement into Central and Eastern Europe, and who fear the prospect of Turkish accession, a *noyau dur* offers an easy way out: a tight-knit group with France in the lead, unencumbered by Atlanticist countries that oppose a political union.

Among senior figures in the EU institutions, too, there is strong support for the core idea. One top official with close links to the French establishment takes a broad historical sweep to explain why, in his view, a core is likely. "There are countries which want a true union, those rooted in the Roman Empire, the Latin and

German languages, the Catholic church, the enlightenment and the Code Napoléon. And there are countries which lack some or all of those qualifications, which want a wider Europe.” He believes that the countries which want a true union will not move to create one unless they receive a shock – but that a negative British referendum could provide such a shock. “The countries which want a union would not want to admit that the last five years’ work had been useless.”

Like Strauss-Kahn and the officials in the Schröder entourage, this Brussels official speculates that the core would concern itself with subjects where the EU is not involved or not closely involved, such as merging air forces, language education, school teachers or police forces. But he thinks the core countries could also co-operate in areas covered by the treaties, such as tax, through inter-governmental agreements. Some other senior officials in the EU institutions agree that several countries could respond to a British No by trying to create a core, but argue that an informal core, rather than one with its own institutions, would be more plausible.

Support for the idea of a hard core extends beyond Berlin, Paris and Brussels. Belgium and Luxembourg would certainly want to join. The government of José Luis Zapatero in Madrid would probably think the same way. While Silvio Berlusconi is no fan of the idea, Italy’s foreign policy establishment would want to join a core: it believes that Italy should be in as many clubs as possible, and would see entry into the core as a means of weakening Franco-German domination of the EU. If Romano Prodi returned to power as the leader of a Left coalition in Italy’s next elections, due by 2006, he would support a core. Many political leaders in the Netherlands would be reluctant to join an enterprise led by France and Germany, but they might find it hard to stay out. Austria, Hungary and Slovenia might also be keen to join.

But for all this potential support, the legal and political difficulties of establishing a core would be immense. It is not evident that either

the countries founding the core, or those left outside, would want it to be closely tied to EU institutions. If everyone agreed, EU institutions could be involved, either in their current form, or adapted. For example Jacques Delors, the former Commission president, who favours a federal sort of core, has suggested that the Commission should manage it, as it does the broader EU, since it is the guardian of the European interest. Delors ²⁸ Jacques Delors, ‘Europe needs an avant-garde, but not a constitution’, CER Bulletin No 14, October/November 2000. See also ‘Jacques Delors critique la strategie d’élargissement de l’Union’, *Le Monde*, January 19th 2000. has also suggested a special Council of Ministers for the core countries, a special bicameral parliament (consisting of MEPs and national parliamentarians from the core countries) and an individual to be elected as president of the *avant-garde*.²⁸

But whatever the core’s institutions – inter-governmental or partly based on those which run the current EU – ensuring that its decisions and policies are compatible with EU law would be difficult. Even in areas where the EU is not closely involved, core activities could prove problematic. For example, special arrangements for educational exchanges among core countries could discriminate against people from non-core member-states, and thus be illegal under EU law. For one legal scholar, “the formation of a true core group, adopting binding laws in a large range of crucial policy areas, is hardly imaginable, because it would unavoidably affect the rights which the other member-states and their citizens have under current EU ²⁹ Bruno de Witte, ‘The process of ratification and the crisis options: a legal perspective’, paper for the Asser Institute colloquium on European Law, the Hague, October 13th-16th 2004. law”. He adds: “It would also add to the complexity and opaqueness of the EU system and reduce the scope for democratic control of the decision-making process.”²⁹

The core would need its own budget to finance, for example, common research and development projects. But would the core countries find the money for the core budget only by cutting their contributions to the EU budget? And if the core were built on inter-

governmental lines to whom and how would its decisions be accountable? What role would the Commission and European Court of Justice play in policing the core's activities?

Legal boffins and institutional experts can find answers to all these questions. But the advocates of a core Europe do not yet appear to have done the necessarily detailed work. The model with the most support now seems to be an inter-governmental arrangement that would be distinct from the EU. The idea backed at various times by Fischer and Delors of a treaty in the treaty, a union in the Union, is widely thought to be too complex to implement. One of the top lawyers in the EU institutions, who is not a fan of the core idea, predicts that if the British vote No, the integrationist countries "will do something, like setting up a new secretariat, *juste pour emmerder les anglais* [just to piss off the English]. But this would be more symbolic than substantive, because of the institutional difficulties, and it could collapse in due course."

Leaving aside the institutional and legal difficulties, the political difficulties would be even greater. The EU institutions would probably be opposed, since a core – whatever its institutions – would be a rival centre of authority and would by definition undermine their own power and role in the Union. Furthermore, a belief in the equality of member-states is deeply engrained in the Commission and the European Parliament, and a core would by definition create two classes of state.

The countries outside the core would see it as divisive and resent their second-class status. And the core's Franco-German leadership would in itself generate tensions and widespread hostility to the idea. The history of the Franco-German alliance is beyond the scope of this pamphlet. Suffice to say that since close co-operation between Paris and Berlin re-emerged in the autumn of 2002 – after five years when there had been little of it – this duo has made itself unpopular with many member-states. In earlier times, France and Germany convinced most of their partners that one of the rationales for their

alliance was to promote the wider goal of European integration. But over the past two years many EU states have perceived their alliance to be more about promoting French and German national interests than the wider European good. Thus the initiative from France and Germany to maintain EU farm spending at its current level, their common contempt for the budgetary rules of the Stability and Growth Pact, and their 'Tervuren' scheme (supported by Belgium and Luxembourg) for a defence *avant-garde* went down badly in many parts of the Union.

Not only the most Atlanticist countries, such as Poland and Britain, are suspicious of any Franco-German initiative, but also many others. This is a serious problem for those who wish to launch a core Europe. Were the French and German governments to propose such an enterprise, a number of governments would greet it with cynicism and mistrust – even before they had read whatever proposal came out of Paris and Berlin.

Even if several capitals were opposed to a core Europe, they could not necessarily stop it, especially if it began as an initiative for Franco-German union (see page 51). However, all the political, legal and institutional difficulties do mean that an *avant-garde* is not a serious proposition unless the political will behind the idea in France and Germany is strong and sustained.

If Britain votes No to the treaty, throwing the EU into a constitutional crisis, it is quite likely that France could muster cross-party support for the establishment of a hard core. But would Germany follow? This is the key question for those who want a core Europe.

Some of the people around Schröder certainly want a *Kerneuropa*. But Fischer, who is not only foreign minister but also the leader of Schröder's Green coalition partners, no longer does, and his ministry is divided on the issue. The finance and defence ministries oppose a core Europe. The opposition Christian Democrats are divided: if Angela Merkel became chancellor, her Atlanticist leanings would

probably prevent her from supporting a core, but her rival Edmund Stoiber is more focused on Franco-German leadership. The business community tends to be hostile to anything that could tighten Franco-German integration, thereby increasing the distance between Germany and the US. Writing early in 2004, Heather Grabbe and Ulrike Guérot explained some of the reasons why Germans may be reluctant to pursue this path:

The idea of a core Europe still has enormous appeal in Germany, given its long intellectual tradition and its distinguished backers from a range of political parties. But the current conception of the core, pursued by the chancellery and the French president's office, makes many Germans uneasy. It is fundamentally based on inter-governmental co-operation, not the political union that German federalists wanted to see at EU level... Now the concept is about a few countries teaming up in a permanent grouping that excludes the others. The core is no longer a way to achieve political union, but rather an alternative to a federal EU because it is

³⁰ Heather Grabbe and Ulrike Guérot, 'Could a hard core run the enlarged EU?', *CER Briefing Note* (web only on www.cer.org.uk), February 2004. clear that political union will never be achieved. The proponents of a core talk little about federal structures, and much more about Franco-German leadership on particular issues.³⁰

Guérot and Grabbe also wrote that for most German politicians, "the core is only a second-best option if the Union simply cannot work after enlargement. They will try everything else first." Enlargement has subsequently happened, and the Union does, just about, work. The next potential threat to the smooth working of the Union is the ratification of the treaty. If Britain cannot ratify, and other options cannot resolve the crisis, German support for the idea of a hard core could grow. In the words of Christoph Bertram, director of the Foundation for Science and Politics in Berlin: "The hard core is less an institution than a state of mind. A No from the British will reinforce that state of mind." The British should not

assume that talk of a core is just airy-fairy continental verbosity. The chances of France and Germany succeeding in setting up a core may not be high, but they are far from negligible.

Franco-German union

Most scenarios for a core Europe would involve France and Germany taking the lead and asking others to join them in the enterprise. But France and Germany could simply announce plans for a union of their own, and then wait until they had made progress before inviting in other countries – perhaps after a delay of several years.

France and Germany might take the view that a bilateral union would offer some of the benefits of a broader core, without all the complications. A Franco-German union, like a core, would be a way of responding to a British blockage of the constitutional treaty. It would show that Britain could not thwart the momentum for European integration – even if for the time being that momentum would be maintained by just two members. It would also show that Franco-German leadership was still a real force in an enlarged EU: if those two member-states spoke with the same voice in the Council of Ministers they would make a weighty combination.

Some of the arguments against a core would also pose problems for a Franco-German union. Such a union would be divisive: other member-states, concerned to prevent Franco-German domination of the EU, would probably form countervailing alliances. However, institutionally and legally, a Franco-German union could in some ways work more easily than a core which had its own institutions. This is because the basic unit of EU decision-making is the member-state. If two of them decided to move towards becoming one member-state, it could be less disruptive than if several member-states created new institutions that stood between themselves and the EU.

In the early stages of a union, presumably both France and Germany would send ministers to meetings of the Council, though only one of them would need to speak and cast their combined votes. But if the Franco-German union progressed so that the two countries' legal, administrative and political systems really started to merge, the other member-states would demand a rebalancing of representation in the Council and the Parliament. Under the Nice treaty's rules, large countries have fewer MEPs and votes in the Council, proportionate to their populations, than small ones. By the same logic an extremely large country, such as France and Germany combined, should lose some votes and MEPs.

However, the chances of a genuine Franco-German union are minimal. Ever since the Treaty of the Elysée in January 1963, French presidents and German chancellors have periodically committed themselves to a closer union. Such initiatives have generally been long on windy rhetoric but short on practical steps forward. The Versailles celebrations of the 40th anniversary of the Elysée treaty – in January 2003, just before the Iraq war – followed this pattern. After joint meetings of the French and German parliaments and cabinets, two secretariats were established to encourage closer ties between the two governments. The focus of these efforts is mainly on boosting co-operation on domestic issues such as culture, media, sport and education.

In the same month as those 40th anniversary celebrations, two EU commissioners – one French and one German – wrote an article proposing some concrete steps for the two countries to take. Pascal Lamy and Günter Verheugen suggested that France and Germany should start with the ambition of having identical positions on economic policy, within the EU Council of Ministers, the IMF and the World Bank. They should decide together on budget lines and fiscal policy; they should progressively converge their tax systems; and they should establish a minimum level of company tax, to prevent unfair tax competition. Lamy and Verheugen also proposed

applying the same principles to foreign policy, leading to common armed forces, diplomatic representations, and positions at the UN Security Council.³¹

³¹ Pascal Lamy and Günter Verheugen, 'Pour une union franco-allemande', *Le Monde*, January 21st 2003.

With a Europe which enlarges, we need at the same time a body with stronger muscles – that is the job of the constitution prepared by the Convention – and a stronger heart, which is why we need to renew the Franco-German alliance. These two conditions are indispensable if we are to avoid the dilution of the European project. That is an ambition that neither the *souverainistes* [eurosceptics], nor the enthusiasts for a Europe that is no more than a market, have abandoned.

A few months later, a group of young French and German thinkers and officials published a paper which picked up some of the Lamy-Verheugen ideas, and also emphasised that the Franco-German alliance would regain legitimacy if it were seen to work on behalf of the EU. "The perspective of working for European integration and, beyond that, for better global governance, could provide a 'new frontier' for Franco-German co-operation, and one that is less self-centred," they wrote. The authors suggested for example that France and Germany should announce plans for a European border guard and then show they are serious by starting to merge their own border guards. They also suggested that France and Germany should propose financing the EU budget with an EU corporation tax, taken as a slice of national taxes on companies. Tax bases would be harmonised across the EU and each government should set a rate that was above a minimum level.³²

³² Sylvie Goulard, Jacqueline Hénard, Thomas Klau, André Loesekrug-Pietri and Nikolaus Meyer-Landrut, 'France et Allemagne en Europe: le leadership se mérite', *Europartenaires*, July 2003.

Evidently, any serious attempt to promote a Franco-German union would provoke significant opposition within those two countries.

Lamy and Verheugen are not typical of the political classes of their respective countries. Very few senior politicians have called for such a union (one who has is Jean-Pierre Chevènement, the veteran French eurosceptic). But that might change in an EU constitutional crisis: political leaders in Paris and Berlin could feel compelled to make a dramatic gesture, in order to show that the crisis could not extinguish the spirit of European integration. The Germans would probably be less enthusiastic than the French. However, the French could conceivably try to entice the Germans into some sort of union by offering a tantalising bait: the right to ‘share’ France’s permanent seat on the UN Security Council.

The very different French and German constitutional and administrative traditions would make a union extremely hard to implement. France is a centralised country with a powerful elected presidency and a weak parliament. Germany has a parliamentary system of government and has devolved so much power to the *Länder* that the federal government cannot easily change the way the country works.

A true Franco-German union is almost certainly not on the cards. But there may be talk of creating one, combined with occasional symbolic gestures, such as at the October 2003 EU summit, when, in Schröder’s absence, Chirac “represented German interests”. Without doubt, close co-operation between France and Germany is an essential precondition of a core Europe. Franco-German co-operation will provide the core of any core.

A messy core

Of the nine scenarios so far considered, most are unlikely to come about. If the British vote No, the rest of the EU will not meekly agree to live with the Nice treaty for ever more. Neither an attempt to renegotiate the constitutional treaty nor a second British referendum is likely. Three further scenarios would not on their own and in themselves suffice to resolve the constitutional crisis:

efforts to implement parts of the treaty on an informal basis, or to establish enhanced co-operations or *avant-garde* groups, or to hold an inter-governmental conference that would make only one or two changes to the current treaties. Neither the expulsion of the British nor the establishment of a hard core is likely, while Franco-German union is probably a fantasy.

That leaves one scenario which is, in part, a combination of numbers four, five and six. Let us suppose that Britain votes decisively against the constitutional treaty, but that the other 24 members ratify the document. In the ensuing crisis, one group of countries tries to persuade all the others that have ratified the treaty to adopt it – and to force the British to accept a special status. But that effort fails when friends of Britain refuse to go along with the scheme. France and Germany then work on plans for a core Europe that would have its own institutions, but this gathers little support and the legal and political obstacles prove insurmountable. Meanwhile the Labour government, weakened by its referendum defeat, is trying to resist a concerted campaign by the Conservative Party and much of the press to demand a renegotiation of Britain’s relationship with the EU.

What then? The integrationist countries would try to do the best they could in difficult circumstances. They would seek to maintain the momentum towards a political union in every way they could, without contravening the existing treaties. They would try to implement as much of the constitutional treaty as was legally possible, especially the provisions on foreign policy. They would expect the British to co-operate; if the British did not, the others would do as much as they could – such as creating the external action service – without them. They would try to establish enhanced co-operations, under Nice treaty rules, in certain policy areas, such as tax, R&D and educational exchanges. They would also set up vanguard groups outside the treaties in other areas, such as border guards, police co-operation, the European public prosecutor and the harmonisation of criminal law. They would

strengthen and formalise the institutions of the Euro Group, perhaps basing it on a new treaty among the euro countries. And they would cajole the British into agreeing to a mini-IGC that would adopt one or two of the central provisions of the constitutional treaty, such as double majority voting.

And then the integrationist countries would try to make these various initiatives work. Some of them would take several years to bear fruit. The consequence of all this would be further European integration, some of it involving the whole EU, but much of it based on perhaps half a dozen over-lapping but distinct smaller groups. The UK might join some of these initiatives, for example on defence or R&D.

After a number of years, the leaders of the countries that were in all these smaller groups would probably hold informal meetings among themselves. One day these leaders would hold a dinner, and then emerge to announce that they considered themselves the EU's de facto leadership group. Being involved in the complete range of its policies and actions, they would take it upon themselves to provide guidance and direction to the whole EU. They would establish a small secretariat to co-ordinate their positions. And they would normally vote as a block in the Council of Ministers. This, then, would be a 'messy core' at the heart of the EU.

This author finds this the most plausible scenario. So do some of the politicians and experts who have thought through the various possibilities. Giuliano Amato, formerly prime minister of Italy and vice president of the Convention, argues that in the event of a ratification crisis the constitutional treaty should not be abandoned. "We should use it as a store of innovation, and adopt parts of it piecemeal, one at a time – we could set up the foreign minister without ratifying the treaty; and we could build

³³ *Interview with Giuliano Amato, November 2004.* on the Nice legal base through mini-IGCs, while at the same time using the Nice provisions on enhanced co-operation."³³

Such a messy core, in contrast to the hard core, would not be planned as a big new organisation or institutional arrangement. It would emerge slowly from a complex and confusing institutional picture. After several years it would probably become more organised. One German official – who prefers the term "differentiated integration" to messy core – predicts that the core would end up with two legs. One would be the Euro Group. He thinks the euro countries could build various sorts of co-operation, including those not directly concerned with the euro, on to Euro Group structures. The other leg would be a 'Schengen II' institution, separate from the EU, to organise a wide range of core activities in the Justice and Home Affairs area.

However the messy core evolves, its long-term effects would be similar to the establishment of a formal hard core: the division of the EU into two sorts of country, leaders and followers, with France and Germany dominating the leading group and Britain outside it. And it would have the same strategic consequences.

6 How should the British government handle a referendum defeat?

The British should not forget that if they do vote No to the treaty, that would not be the end of their role in the constitutional drama. The British themselves would be leading actors, rather than passive recipients of whatever schemes were hatched in Paris, Berlin or Brussels. In the wake of a British No, what the British do and say would have a huge impact on how other governments behave, and what plans they devise.

The British may well be rude – for example blaming others for the constitutional crisis; or obstructive – for example insisting that because the UK has rejected the treaty, everybody else should abandon it too; or unreasonable – for example demanding that they should be allowed to stay in the EU while quitting several of its core policies. But if they are rude, obstructive or unreasonable, they will find that other governments, including some they regard as friends, will be unwilling to stand by them. Other member-states will be more willing to pursue the strategies that would be most damaging to Britain, such as expelling it or setting up a hard core.

From Britain's point of view, the messy core is probably the least bad option that could resolve the constitutional blockage. In contrast to exclusion and super-Norway status, the messy core would allow Britain to remain an EU member. And while the creation of a hard core would spell out in clear terms that Britain was a second-class EU country, a messy core would leave that status less precise; the messiness would make it easier for Britain to join one of the leadership groups, for example in defence or R&D.

Therefore in the wake of a referendum defeat, Britain's European policy should have two priorities: first, making sure that the UK remains in the EU, and second, preventing the emergence of a hard core. In order to minimise the risk of expulsion or the hard core, the government's tone in dealing with its partners should be polite; it should consult them frequently and keep them briefed on its plans; and it should show its willingness to be constructive by coming up with positive EU policy initiatives. Defence could be a suitable area, since defence co-operation is largely inter-governmental and depends very little on what the EU treaties say. For example the British might propose a new initiative to promote collaboration on military R&D, or common armaments projects, or a new European military headquarters to support the UN's peace support missions. Such proposals would do something to help restore Britain's credibility with its partners.

The British government should encourage the other EU governments to implement those parts of the constitutional treaty that can be applied without ratification, such as some of the provisions on foreign policy – and make clear that Britain wants to be part of such initiatives. In a similar spirit, it should support the idea of a mini-IGC to make minor changes to the existing treaties. And it should tell the more integrationist countries to use the enhanced co-operation procedure and/or set up *avant-garde* groups outside the treaties. All these steps would curb the willingness of other governments to kick out the British or build a hard core.

When the government has to cope with the crisis that would follow a No vote, it will need the maximum of freedom of manoeuvre. During the referendum campaign the eurosceptics will do their best to tie the government's hands, for example by demanding that it promise not to hold a second referendum. The government should refuse to make such a promise. The eurosceptics will also demand that the government should pledge not to implement parts of the treaty if it loses the referendum. The government should respond with the truth: that if the treaty is not ratified, most of it cannot be

implemented, but that the EU's existing legal base would allow a few parts to be put into effect.

However, the British political situation may make it very difficult for a Labour government to take the kind of constructive steps outlined in the preceding paragraphs. A No vote would be a major discontinuity in British political history, rather like sterling falling out of the Exchange Rate Mechanism in 1992. The Labour government would have suffered a defeat on one of the central parts of its political programme, and its confidence would be shattered. The government's overall popularity would probably collapse, as did that of the Conservatives after the ERM crisis. Many in the Labour Party would demand a change of leadership and Blair might resign. Labour's hard left, always inclined to be anti-European, would thrive on the chaos. A lot of mainstream Labour MPs, not caring very much one way or the other about the constitutional treaty or the EU, would demand that the party adopt more eurosceptical policies, as a means of reconnecting with its core voters.

Meanwhile the triumphant eurosceptics would be demanding more. Having defeated the treaty, many of them would see 'renegotiation' as the obvious next step. Most of them would not call overtly for withdrawal, for such an extreme policy would not be particularly popular. They would instead say that Britain should stay in the EU, but without the CAP, the fisheries policy, the foreign policy and the European Court of Justice. They would know, of course, that such a menu was incompatible with EU membership. But they would hope that an attempt to renegotiate the terms of Britain's membership would show that the EU cannot deliver what the public wants – and that the public would therefore turn against the EU itself.

The Tory party would be resurgent, having experienced its first serious victory since 1992. The leading Tories would be divided between those who wanted to stay in the EU, and those who sought

a renegotiation that would end in an associate status. Egged on by the withdrawalist popular press, the leadership would take an increasingly hard line on Europe. Because of the uncertainty, the pound and stockmarkets would fall – and the Labour government would take the blame, while the Tories soared in the opinion polls.

In these circumstances it would be very hard for a Labour government to behave in the responsible and measured way suggested earlier in this chapter. If the government tried to sign up to a mini-IGC that changed voting rules, or agreed to participate in an EU external action service, the press would accuse it of ignoring the popular will as expressed in the referendum. Yet if the government pandered to the eurosceptic press the rest of the EU would be more likely to hatch schemes that excluded Britain or set up a hard core. That prospect, hopefully, would motivate a Labour government to stand firm and resist the pressure to loosen Britain's ties with Europe. And if the government could stand firm, it might find help on its way.

The longer that Europe remained in a constitutional crisis, and the UK in a political crisis, the worse would be the impact on the British economy. At some point the big businesses operating in Britain – both foreign and domestic – would decide to act. They would understand that continued uncertainty, and the possibility of Britain drifting out of the EU, would inflict great damage on the economy, for example through a loss of foreign direct investment. The trade unions would have exactly the same self-interest in arresting the eurosceptic tide: they would fear that outside the EU their members would enjoy less social protection.

At the time of writing neither Britain's organised business lobbies, nor its leading trade unions, seem concerned or interested in the fate of the constitutional treaty. That would certainly change in the aftermath of a No vote. The combined forces of capital and labour would provide money and energy for the cause of maintaining Britain's ties with the EU. And they might – depending on the

magnitude of the No campaign's victory in the 2006 referendum – demand a second referendum. This could either be a repeat of the first referendum; or, more likely, a vote on a different question – a simple choice between the accepting the treaty and leaving the EU.

7 The strategic consequences of a British No

Let us assume that Britain's rejection of the constitutional treaty creates a crisis, and that what ultimately emerges is some sort of core, probably a messy one but possibly a more tightly organised hard core. Britain would be outside this core. The number of countries involved could be anything from four or five to around a dozen or more. Should any of this matter, to the British, to other Europeans, to Americans or to the rest of the world? The answer is that an EU crisis followed by the division of Europe into an inner and an outer circle would be bad news for everyone. (This pamphlet has argued that the exclusion of the British from the EU is unlikely; but if that did come about, the strategic consequences would be similar to those of a core Europe.)

Britain would give up its current position as one of the leaders of the EU. It would have much less influence on EU decision-making. This would apply not only, as is obvious, to the areas covered by the core or cores, but also to other fields that remained the exclusive business of the EU. The influence of a member-state on EU decision-making is hard to quantify. But it certainly depends on much more than the formal position of that state in the institutions – how many votes it has in the Council of Ministers, how many MEPs and so on. EU countries are endowed with greater or lesser amounts of 'soft power', which may be defined as a member's attractiveness or ability to persuade other countries to follow its wishes. Some countries have close allies who, when pressed, will deliver support (thus Belgium almost never opposes France on issues of foreign policy). Some have particularly forceful or clever ministers who are good at winning the argument in the Council. Other countries gain moral authority from a consistent track record of being seen to pursue not only their

national interest but also the wider European good (for example, Finland). Another may gain authority through running a successful presidency (such as Ireland in the first half of 2004) or a well-managed economy (such as Britain, Spain or Sweden). Some countries may lose kudos because of their poor record of implementing EU laws (France, Italy and Greece have in the past had among the worst records).

The EU already contains a limited amount of ‘variable geometry’: not all member-states take part in the euro, the Schengen area of passport free travel, or European defence co-operation. The record so far suggests that countries which opt out of particular projects lose influence not only on the project itself, but also on related policy areas: being outside the euro, Britain is not best-placed to lead the discussion on reform of the EU’s Stability and Growth Pact (although not in the euro, the UK has to respect the pact’s rules on budget deficits). Absence from a particular policy area may even curb a member’s influence on decisions that, in theory, have nothing to do with that area. Thus in June 2004 the European People’s Party proposed Chris Patten for the Commission presidency. Many regarded him as a strong candidate. But France and other countries argued that since Britain was outside the euro and the Schengen area, a Briton such as Patten should not become president. Nothing in the EU rulebook says that the Commission president has to come from a country that takes part in all the policies, but enough governments went along with this French line to ensure that Patten could not be president.

If Britain is outside a core Europe, it is likely to lose some influence across a broad range of policy areas, including those in which it does participate. Some countries will see Britain – even more than they do today – as a half-hearted EU member, less committed to the club than its partners, and therefore less deserving of a favour when it asks. But Britain’s loss of influence will stem mostly from the other governments making rational calculations of their interests. The core countries will by definition have certain interests

in common, and they will often work as a caucus even in fields where every EU member is involved. The core countries will scratch each others’ backs. This has been evident in the past between France and Germany. Thus at the Berlin summit in March 1999, when Chirac tried to unravel a radical reform of the CAP that Germany (and Britain) supported, Schröder caved in, because of the broader interest that Germany had in maintaining its alliance with France. One may suppose that all the core countries would feel a certain common bond. Thus if the EU tried to take decisions on the reform of the regional funds, or the personnel policy of the European Parliament, or the powers of the European Patent Office, British views might count for less than they otherwise would. To state the obvious, if Britain is not part of the EU’s leadership group, it cannot lead in Europe.

Another consequence of a British No and the ensuing crisis would be a threat to further EU enlargement. The Union can only negotiate the entry of new members if it has a clearly-defined set of rules and stable institutions. An aspirant for membership cannot seek to join a club whose structure is fluid and uncertain. Carl Bildt, who was Swedish prime minister in the early 1990s, recalls that when the Danes rejected the Maastricht treaty, Sweden’s accession talks were put on hold. He predicts that a ratification crisis would force the EU to suspend membership talks with Turkey, and also prevent it from starting negotiations with other countries that hope to join, such as those in the Western Balkans. “We would pay a price in the stability of South East Europe,” he says.³⁴

³⁴ *Remarks at the DaimlerChrysler CER-Brookings Institution forum on transatlantic relations, November 2004.*

If the ratification crisis could not be resolved easily, enlargement might be permanently blocked. French politicians state explicitly that if the constitutional treaty is not implemented, the EU will not be able to take in new members. They have a point: the constitution has been specifically designed to make the institutional changes that would enable the EU to work smoothly with more members. In the long run, however, if the constitution is abandoned and a core is

established, France and others in the core would probably not block enlargement: they would say that the accession of Turkey (or Serbia, Ukraine or whoever) would be fine so long as they stayed out of the core. Of course the countries which want to join the EU wish to be full members of the club, not just members of the outer circle. In any case, all these constitutional problems could weaken the EU's magnetic appeal to its neighbours. Some might think twice before trying to join a club that was locked in crisis and unable to sort out its rules and institutions.

The emergence of a core would probably bring back some of the divisions which afflicted Europe over the Iraq war, when Donald Rumsfeld famously drew a distinction between 'Old Europe', the countries that opposed President Bush's intervention in Iraq, and 'New Europe', the countries which supported the US. Two years on, these wounds have not entirely healed. That was evident in June 2004, when Chirac and Schröder tried to install their friend and fellow critic of the Iraq war, Belgian prime minister Guy Verhofstadt, as Commission president. Blair, Berlusconi and other Atlanticist leaders thwarted that attempt, provoking fury from some of the 'old Europeans'.

It so happens that the countries whose governments are most hostile to the Iraq war – France, Germany, Belgium, Luxembourg and, following the defeat of José Maria Aznar, Spain – are more or less the same as the countries that would be in the forefront of any core. The two groups would probably not be exactly identical. For example, Italy might wish to join the core, possibly even if the Atlanticist Berlusconi was still in charge. So might relatively pro-American countries such as Portugal or Hungary. Nevertheless if a core emerged it would probably have its own distinct approach to foreign policy.

That approach would be heavily influenced by Chirac, who has a particular and consistent view of international relations, and who can often if not always persuade Schröder to follow him. Chirac

believes that the EU should develop its own, independent common foreign and security policy (CFSP), and that it should be prepared to oppose the US when American policies are mistaken. He sees the world as increasingly 'multipolar', with Europe as one of the emerging poles, and appears to think that this is desirable. And while Blair believes that the best way to influence US decisions is to be polite and supportive in public, Chirac has often taken the opposite line. Like most of the French establishment, Chirac believes that if France (or Europe) makes a point of standing up for its interests and principles, even when comparatively minor matters are at stake, the Americans will be forced to listen.

A core Europe would probably lean towards a relatively anti-American foreign policy, while the countries of the periphery, such as Britain and Poland, would be relatively Atlanticist. Chirac's term of office expires in 2007. But although some of his potential successors, such as Nicolas Sarkozy, have adopted a softer line on the US, it is unlikely that a new French president would pursue a foreign policy that was radically different from Chirac's. If Schröder wins re-election in the autumn of 2006, he is likely to remain on the same foreign policy wavelength as the French; but a German government led by the Christian Democrat Angela Merkel – especially if combined with a Sarkozy presidency in France – would probably be less willing to oppose America.

One may suppose that Donald Rumsfeld and those who think like him would be quite happy to see Europe's Iraq war divisions re-emerge into a semi-permanent institutional structure. Some right-wing Republicans hope for a fragmented Europe, so that the US can pick and choose its allies at will, and so that the EU never becomes a strategic actor. But many Americans, including some senior figures in the Bush administration, see the EU in a different light. They understand that Americans need friends and allies to help them tackle the huge range of global security threats that confront them, and that the Europeans – who share many of their values and interests – are the best partners they are going to get. These

Americans would be worried by the creation of a core Europe: a divided Europe cannot be a useful strategic partner.

Nor would it be good for the US if its closest ally, Britain, became marginalised in the EU. The member-states which take part in all the *avant-garde* groups, enhanced co-operations and cores, whatever they are called, will be better placed to steer the overall direction of the Union than member-states which shun such bodies. Ever since it joined the EU, Britain has been one of the more influential members, and well-placed – when it so chooses – to represent American interests. If Britain leaves the EU’s leadership group it will be less capable of nudging EU policies in an Atlanticist direction. The same applies to other close American allies, such as Poland and the Baltic countries, which are unlikely to be in the core.

Some Americans are waking up to the relevance of the constitutional treaty for US interests. Robert Kagan, for instance, observes:

It may actually matter...whether Britain votes to support the EU constitution, as Blair wants. A Britain with real influence

³⁵ Robert Kagan, ‘Embraceable EU’, *Washington Post*, December 6th 2004. Robert Cooper is a senior official in the EU Council of Ministers and the author of ‘*The Breaking of Nations*’, Atlantic Books, 2003.

inside the EU is more likely to steer it in the liberal imperial direction that the EU’s [Robert] Cooper, a former Blair adviser, proposes. That could prove a far more important strategic boon to the United States than a few thousand European troops in Iraq.³⁵

An EU hard core would also have a distinct approach to economic policy. Many of the continent’s most dynamic economies, such as Britain and Poland, as well as the Nordic and Baltic countries, would probably be outside. Even if the relatively vibrant Spanish economy joined the core, France and Germany would be the dominant economies. That pair has been plagued by low growth and high unemployment; they have been laggards in the EU’s

‘Lisbon process’ of economic reform; and their governments are inclined to be economically interventionist. If Italy joined the core it would bring a dowry of similar problems.

The core would probably lack the capacity to inflict great damage on the EU’s single market, which would remain the competence of the broader EU. The core countries could not stop the others from pushing ahead with an agenda of economic reform. But the overall credibility of the Lisbon process could suffer if the EU’s leadership group consisted mainly of foot-draggers. In its efforts to preserve social standards and prevent ‘unfair’ tax competition, the core could become less and less competitive compared with the Central and East European economies. In recent years France and Germany have joined forces to oppose the Commission in some of its efforts to enforce and deepen the single market, for example on state aid and the draft directive that would liberalise services. A core led by France and Germany would tend to have defensive economic policies and could even lean towards protectionism.

This argument assumes that the membership of the core would be limited, as do most advocates of the concept. If the membership grew beyond a dozen countries, then France and Germany – and their distinctive approach to foreign policy and economic reform – would be less dominant. Thus the larger the core, the less potentially damaging it would be to the Union.

When presented with the scenario of an emerging EU core, many British eurosceptics ask: “So what?” They argue that if France and Germany want to lead a group of economically weak, anti-American countries into a tighter union that starts harmonising taxes and building hugely bureaucratic institutions, that is their problem. Britain and its friends in Europe would be better off on the outside, reaping the fruit of their deregulatory economic policies, enjoying relative freedom from interfering Brussels bureaucrats, and benefiting from closer ties to the US.

These are serious points which deserve a serious answer. It is not self-evident that the creation of a core which excluded Britain would be bad for Britain. In this author's judgement, exclusion from a core would not be disastrous for Britain, but it would be very damaging to Britain's long-term interests for several reasons. The most important is that, as explained at the start of the chapter, Britain would lose influence across a range of policy areas. This would leave Britain less well positioned to shape the way the EU evolves. Furthermore, Britain's global influence would suffer. In a world increasingly dominated by large powers – China, India, Russia and others – Britain can achieve more leverage by working through the EU.

The second reason is that the British economy is intimately bound up with the economies of the continent. Sixty per cent of Britain's exports go to the EU. Many of those exports are linked to foreign direct investment in Britain, from the US, Japan and other EU countries. Companies invest in Britain because it is a good base from which to export to the whole continent, and they regard it as an integral part of the EU's single market. So long as Britain remained part of the EU, the emergence of an inner core should not prevent British-based firms from exporting throughout the Union. But some overseas investors, already concerned that Britain's absence from the euro increases their foreign exchange risk, would question whether Britain was going to remain an integral part of the single market.

Given the continent's importance as a market for British exports, Britain has a strong interest in the slower-growing continental economies improving their performance. A core Europe would not prevent Britain from running its economy the way it wanted. And so long as the British economy continued to perform well, other governments would pay attention to what the British government said on economic reform. Nevertheless, without British involvement a core Europe would be rather more likely to adopt potentially harmful economic policies. For example if Britain were

part of the core it could veto any move by its partners to harmonise company taxes. Britain would be better placed to preach on economic reform if it were one of the EU's leading members. If Britain moves to the margins of Europe, its sermons on how to make the European economy more competitive will carry less weight.

The third reason is that Britain has a strong interest in further EU enlargement. If the constitutional treaty is not ratified, the EU will enter a period of uncertainty, internal argument and navel-gazing that is likely to persist for several years. Enlargement would be put on hold (though Bulgaria and Romania are probably close enough to joining to do so whatever happens). Britain should favour enlargement because a wider Europe will have a more dynamic economy and more labour mobility. A bigger EU will be closer to and better placed to influence the unstable areas that lie around its periphery. Turkish membership of the EU would make it easier to promote harmonious relations between Christians and Muslims both within EU countries and in the wider world. And if the problem countries of the Western Balkans cannot move towards membership, the EU will have less influence over them. They would then be more likely to remain poor and troublesome neighbours that nurture conflict.

The fourth reason for Britain to be wary of a core Europe is that a stronger EU foreign and defence policy would serve British interests. A dangerous arc of instability surrounds the EU, running from Belarus, Ukraine and Moldova to the Western Balkans, to the Caucasus, to the Middle East and to North Africa. Europe needs to be able to deal with these problem areas more effectively. If the EU cannot help these countries to become stable, secure and prosperous, it risks paying a heavy price. They may become sources of organised crime, the trafficking of drugs and people, illegal immigration and perhaps terrorism. But if the Europeans can speak with one voice when they have similar interests – as they did during the December 2004 crisis in Ukraine – they will be better able to influence their

neighbourhood. A more coherent and active EU foreign policy would make a useful contribution to the Middle East peace process – and also help in other parts of the world, such as Iran, Zimbabwe, Sudan, Congo and Kashmir.

If the Europeans could develop a stronger CFSP, Britain would be among the leaders. The quality of its diplomats and soldiers is widely recognised by all its partners, including the French. But there cannot be a stronger CFSP if the Union is split into two groups, each with its own view of international relations. If the creation of a core turns Rumsfeld's dream of a Europe split between New and Old into reality, the EU will remain a spectator rather than become an actor on the international stage.

The fifth reason why a core Europe would be bad for Britain is that a harmonious and strong EU-US relationship is in the British national interest. Britain will always be among the most Atlanticist of the EU countries. In normal times it may be able to play a pivotal role in helping Europeans and Americans to understand each other better. But when transatlantic relations are strained, as at the time of the Iraq crisis, Britain's position becomes uncomfortable. If Europe is led by a core that does not include the UK, a fractious transatlantic relationship becomes more likely. A Europe that is divided can be ignored by the US. But a Europe that has a united foreign policy will be a more useful partner to the US. The Americans are more likely to listen to a Europe that is strong and whole, and to treat it with some respect. And that more balanced transatlantic partnership is what Britain needs.

In order to prevent a core from emerging, Britain needs to ratify the constitutional treaty. If Britain and the other member-states adopt the new treaty, the EU will remain similar to how it is today, though the institutions will be rather more efficient. Most of the member-states will take part in most policies, and they will all have the same legal standing in the EU institutions. But if Britain rejects

the treaty, it will throw the EU into a period of confusion and crisis. The outcome is likely to be some sort of core that would exclude Britain and damage the British national interest.

For Britain to relinquish voluntarily its leadership role in Europe would be a dramatic rejection of the past 40 years of history. In the 1960s Britain fought to join the European club, overcoming de Gaulle's opposition, and then it pushed for free trade, a single market, and the enlargement of the Union. It has won most of the key arguments and even curbed the worst excesses of the EU's farm policy. Britain's relatively liberal economic philosophy has become predominant throughout the Union – much to the chagrin of some senior French politicians. In 2005 Britain has unprecedented influence in the EU, as can be seen in the shape of the constitutional treaty. Laurent Fabius, a leading French Socialist, has described that treaty – with only a little exaggeration – as “Anglo-Saxon”. The constitutional treaty contains very little that is dramatically new, and certainly nothing to justify Britain giving up its position of strength at the heart of the EU. If the British vote Yes, they will soon wonder what all the fuss was about. But if they vote No, Britain will move towards disengagement and become a marginal European country.





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WHAT HAPPENS IF BRITAIN VOTES NO? Ten ways out of a European constitutional crisis

Charles Grant

If the rest of the EU adopts the constitutional treaty but the British vote against it, the Union faces crisis and instability. Charles Grant looks at what may happen next. Would there be a second referendum, or an attempt to renegotiate the treaties? Would the other countries try to push ahead with the constitutional treaty, excluding Britain from the EU? Or would France and Germany try to establish a 'core Europe?' Grant concludes that the most likely outcome would be a 'messy core', with Britain outside the leading group of EU countries. He argues that this would be bad for Britain, bad for Europe and bad for the US.

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