



CENTRE FOR EUROPEAN REFORM

# *briefing note*

## THE CER GUIDE TO GISCARD'S DRAFT EU CONSTITUTION

The draft constitution for the EU published on 26 and 27 May has provoked a ferocious debate in the British press. However, on closer inspection, the text would not fundamentally change the UK's position in the EU, and it secures nearly all of the British government's key objectives.

The proposed constitution brings together previous treaties and other legal documents, with the aim of clarifying and rationalising the EU's messy framework. It is supposed to make the Union simpler and easier to understand, but the current draft is still a long and complex legal text. The current proposals need improvement to make the EU more comprehensible to the average citizen. But this draft contains many useful reforms that would make the EU more efficient and democratic.

The grandly named 'Convention on the Future of Europe' was set up to ensure the EU works well after enlargement. The Convention is a much more diverse group than the traditional 'inter-governmental conferences' that usually decide on institutional reforms. The Convention's 105 members include not just government representatives but also national parliamentarians and MEPs. The aim is to make the EU more efficient – so that it can cope with 25 and more member-states – as well as more democratic.

The current draft of the constitution is far from perfect. But it is only a draft, prepared by the Convention's president, Valéry Giscard d'Estaing, and his steering-group (the 'praesidium'). There are two more stages on the road to reform. The whole Convention will debate Giscard's draft and propose further amendments until June 20<sup>th</sup>. The member-states will then haggle over a final text in an inter-governmental conference that will start this autumn. The final constitution could take up to another year to complete, and every member-state has to agree to it.

### WHAT THE DRAFT PROPOSALS REALLY MEAN

The **division of powers** is much clearer in the draft constitution than in previous treaties. It states explicitly that the EU draws its powers from the member-states, not the other way around. It defines clearly where the EU can and cannot act. The constitution names just five areas where the Union has exclusive powers: competition rules within the single market; monetary policy for the euro members; common commercial policy; customs union; and the conservation of marine biological resources under the common fisheries policy. The **Commission's** power would not be significantly extended.

The draft constitution proposes improvements to increase the **efficiency** of the EU's institutions, the most important of which is the European Council. Consisting of the heads of government and the president of the European Commission, it meets quarterly to set the Union's broad strategy and priorities. Currently the **chairmanship of the European Council** – like that of the many sectoral councils of ministers – shifts from one member-state to another every six months. This 'rotating presidency' is widely recognised as an

inefficient system: each country uses its stint in the chair to promote its own pet projects, while countries outside the EU find it confusing that a new group of people take over every six months.

Giscard's draft calls for the European Council to elect a former prime minister as its chair for a period of two-and-a-half years. His or her task would be to ensure that the Union "is effectively represented in the wider world"; to "drive forward" the work of the European Council, "ensuring proper preparation and continuity"; and to work for "cohesion and consensus" within it.

Giscard's proposal is a very good one. It would abolish the ludicrous system of the rotating presidency at the level of the European Council. With ten more countries due to join the EU in May 2004, that body is going to grow to unwieldy proportions. A competent individual needs to guide and steer the European Council, lest it become ineffective. He or she will also need to ensure follow-through of European Council decisions: too often the prime ministers sign up to promises that they soon forget. Finally, the new chairman would give the EU's foreign policy more credibility. The EU's new 'foreign minister' will meet foreign ministers of countries on other continents, but only the chairman will have the standing to visit George Bush or Vladimir Putin.

The Commission, the federalists and the small countries hate the plan for a European Council chairman – partly because the Commission president would no longer be able to claim to speak for Europe on the international stage. The Commission would be obliged to focus on its core internal and economic tasks. The appointment of the new chairman would confirm that the EU's foreign policy and grand strategy rest with the governments, represented in the European Council, rather than the Commission. The small countries believe – correctly – that this scheme would enhance the influence of the European Council, which the big countries tend to dominate, against that of the Commission, which often protects the interests of small countries. The Commission, the federalists and the small countries are furious with Giscard for coming up with a plan that reflects so many British priorities.

The draft proposes a **simpler system for voting** to replace the complicated 'qualified majority vote'. To pass, a measure would have to be supported by a majority of states which also represents at least three-fifths of the EU's population. That is a more democratic system because it ensures that people living in big countries are represented equally with those living in small ones.

The constitution would enhance **democracy** in EU decision-making – although the CER believes later versions should go further. The Council of Ministers and the European Parliament would have an equal say in making laws. All areas with majority voting would be subject to 'co-decision', meaning better scrutiny by directly elected MEPs. The constitution proposes the establishment of a separate 'legislative council', so that a single body deals with all EU law-making. The UK opposes this idea, but the CER supports it because it would increase transparency by making it more obvious that ministers and MEPs make most EU laws, not bureaucrats. Moreover, the constitution proposes that the Council should meet in public when it is passing laws, making it easier for citizens to follow how their national ministers vote.

**National MPs** would become more directly involved in European affairs, through a more systematic exchange of information between EU bodies and national parliaments. The draft proposes a special procedure whereby one-third of national parliaments could block Commission proposals at an early stage if they risked breaking the subsidiarity principle (which states that decisions should be taken at the lowest appropriate level).

Citizens would gain from the inclusion of the **Charter of Fundamental Rights** in the constitution. It will protect citizens from any EU laws that might infringe their rights, for example invasion of their privacy. The Charter could not be used to strike down national laws that affect the citizens of only one country. The economic and social rights in the Charter – including the right to strike – are mostly hedged with the proviso that they apply only "in accordance with Union law and national laws and practice". However, there is a horizontal clause that makes it clear the Charter gives no new competences to the EU.

## CHANGES TO EU POLICIES

On **economic policy**, the draft constitution does little more than consolidate the EU's existing powers. The EU's approach is primarily based on the 'co-ordination' of policies, which means that member-states remain in ultimate control of their budgetary, employment and social security systems. Member-states retain a veto on all tax matters.

The draft constitution would grant formal powers to the **Euro Group** – the committee of eurozone finance ministers which at present meets only informally. In future, the Euro Group alone would vote on issues relating solely to the single currency, such as enforcement of the EU's fiscal rules. These fiscal rules, currently enshrined in the **Stability and Growth Pact**, would become an integral part of the treaty. The draft foresees a more flexible approach to the Pact, for example by taking into account public investment spending and the long-term sustainability of public finances – along the lines of Gordon Brown's own budget rules.

Like previous treaties, the draft constitution encourages EU member-states to work together to create more and better **jobs**. Co-operation here means comparing what works and what does not across different countries, and drawing up recommendations – a process known as the 'open method of co-ordination' in EU terminology. The Commission and the Council gain no new powers to dictate member-states' employment policies.

Similarly, the EU would gain few new powers in the area of **social policy**. The EU already requires its member-states to protect certain minimum rights of workers, such as non-discrimination between men and women. The Council of Ministers has long been able to adopt such minimum standards, especially for health and safety, by a majority vote. But decisions on key issues of **social security** would still require unanimity in the new constitution.

The member-states, rather than the EU, will also continue to be responsible for their own national **pensions**. EU countries have started a useful process of comparing notes on their pension reform efforts. Countries such as Germany and France are now following the British example of moving from a system that pays pensions out of current tax receipts to one that is based on company or individual pension funds. Like previous treaties, the new constitution explicitly prohibits both the EU and its member-states from paying to get any member-state out of fiscal trouble. This 'no bail-out' clause also includes national pension systems.

The draft constitution has missed an important opportunity to propose reforms to the **European Central Bank**. The draft confirms the independence of the ECB and only provides broad guidelines on the ECB's decision-making structure and its monetary policy targets. This is a shame, since the ECB has not proven very good at reforming itself.

In **foreign policy**, the draft constitution proposes some modest reforms, but they do not amount to a step-change. The biggest innovation is the creation of a new post of 'minister for foreign affairs'. The Convention has yet to work out the details, including the precise name and institutional affiliation for this post. But the basic idea is to merge the roles of Javier Solana, the High Representative for Foreign Policy, and that of Chris Patten, the Commissioner for External Relations. The point of this merger is to ensure that these two sides of EU external relations – broadly, diplomacy and aid – work better together. But the draft is careful to emphasise that the new foreign minister will be an agent of the Council of Ministers, whose meetings on foreign affairs he or she will chair. The foreign minister will be answerable to the member-states, not the Commission.

The text does say that "member-states shall support the Union's common foreign and security policy actively and unreservedly". But the key question is: who decides the objectives and provisions of this EU foreign policy? The answer is national governments, taking decisions through the Council of Ministers and the European Council. The draft does not give greater foreign policy powers to the Commission and it explicitly preserves every country's right to wield a veto.

The CER believes that an EU of 25 countries, each with its own preferences and idiosyncrasies, will need streamlined decision-making. Only a few months ago the vast majority of EU states – including the UK, France and Germany – indicated that they could accept more majority voting. But since then some have backtracked. This is a pity. The CER’s proposed compromise is that the foreign minister’s proposals should be subject to majority voting but that national governments should retain the right of veto in exceptional circumstances for matters of supreme national importance. This system would usually benefit Britain: for example, the rest of the EU would have outvoted France on allowing Zimbabwean President Robert Mugabe to visit Paris. But on any issue with military consequences – such as the war in Iraq – the CER thinks unanimous voting should still apply.

The main innovation for **defence policy** is that member-states can sign up to a ‘mutual assistance’ clause which allows each country to ask for help – military or otherwise – from other EU members if it is attacked. But member-states would not be obliged to sign this mutual assistance clause, and the neutral countries would not want to do so. In addition, to ensure that progress in EU defence policy cannot undermine NATO, the constitution says that this EU commitment should not “affect the rights and obligations resulting ... from the North Atlantic Treaty”. Governments are also supposed to provide the EU with military and civilian capabilities when the Union needs them to deal with international crises. But the constitution does not establish a standing EU force that could become a European army.

On **asylum and immigration**, the draft constitution introduces provisions that would make it harder for countries to ignore EU laws or fail to apply them properly. The UK government fought hard for immigration and asylum measures to be passed by a majority vote rather than a unanimous one. Far from fearing that it might be outvoted, the UK is keen to speed up the creation of an EU asylum system. Without majority voting, it will be virtually impossible to create common policies. Britain is one of the strongest advocates of EU-level action to prevent asylum-seekers from shopping around, and to ensure that those who are refused entry are returned to their home countries. The CER supports a Union-wide system because it would be better for legitimate refugees, by providing the same minimum rights – such as access to healthcare – no matter where people apply for asylum.

The draft treaty allows the member-states to establish a **European Public Prosecutor** if they want to in future. However, all the member-states would have to agree unanimously to do this, and there is no deadline for the creation of this job. The draft proposes that such a European Public Prosecutor would be able to investigate and prosecute serious cross-border crimes – such as terrorist acts – and fraud involving EU funds. The draft does not propose a federal police force of any kind.

## **BRITAIN HAS NO REASON TO FEAR THE EU CONSTITUTION**

Giscard’s draft will be revised over the next year, and the CER will shortly publish an analysis of the points where the constitution should be improved. The EU needs to find new ways of making its institutions more democratic and transparent. But serious discussion of these issues in the UK has been pre-empted by the fantastical claims of the europhobic press.

Most of this constitution is not new. For example, EU law has had supremacy over national law since the 1960s. If it did not, member-states could simply ignore EU laws they did not like, even after they had agreed to them in negotiations – and we would not have a single market. Similarly, EU countries have worked together to increase employment and co-ordinate economic policies for many years – and the constitution proposes no new powers for EU institutions in social policy.

Moreover, the constitution contains several provisions that eurosceptics have long demanded, such as a voluntary exit clause for countries which want to withdraw from the Union, and a clear division of powers between the member-states and the EU’s institutions. And the constitution contains reforms that are necessary to make a success of the one European project that British eurosceptics mostly support, which is enlargement to ten new members.

The overwhelming majority of the tabloids' claims about the effects of this draft constitution are factually inaccurate, not just exaggerated. Even if it were adopted unchanged (which it will not be), Giscard's draft would not fundamentally change the relationship between the UK and the EU. Most people in Brussels think that the UK government got most of what it wanted in the draft constitution, and it is the federalists who are most disappointed with the text. The UK managed to avoid many proposals that excited the tabloids earlier in the Convention's proceedings, such as renaming the EU 'United Europe'. Its name will remain the European Union. The UK doggedly guarded its red-lines around tax, social security, foreign policy and defence.

The whole document is favourable to the EU's larger members – by preserving their hold on foreign policy, for example. Overall, it reinforces the upper hand of the member-states over the EU's institutions. The main danger is not that the final constitution will increase the powers of 'Brussels', but that it will not reform the EU sufficiently to ensure it can still function with 25 members.

*30 May 2003*

