

EU Constitution Project Newsletter

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In line with the Federal Trust's aim to enlighten the debate on good governance, this Newsletter reviews the current reform process of the EU from the standpoint of the work of the Federal Trust's project on Constitutionalism, Federalism and the Reform of the European Union (the 'EU Constitution Project'). The Newsletter looks at current developments in and outside the Convention and also covers the UK debate. Finally, it provides information about relevant events and publications.

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1. Editorial: Time to bring the Constitutional Treaty to life

Following the drafting by the Convention of a new Constitutional Treaty for the European Union, the central task of the Intergovernmental Conference (IGC) due to start on 4 October is to make it a living document. That entails both discussing the political priorities necessary to make full use of the new provisions, and enabling the Union to adopt appropriate constitutional amendments in the future.

The draft Constitutional Treaty, albeit imperfect, is the best achievable compromise at the present stage of European integration. The key features of the new institutional framework should not be re-discussed, since that would inevitably lead to unravelling the major political accomplishment of the Convention, and would affect the credibility of the whole process in the eyes of the public. The proposal of the Italian Presidency to hold key IGC meetings at the highest political level – that of national leaders – is therefore to be supported. At most, foreign ministers should quickly finalise deals on a very limited number of outstanding issues and legal experts should improve the clarity and legal viability of the text. Heads of State and Government have, on the other hand, a useful opportunity to meet and build upon the constitutional basis that the Convention has agreed.



The EU Constitution Project

The Federal Trust for education and research

Brendan Donnelly, Director

Lars Hoffmann, EU Constitution

Dr. Anna Verges, EU Constitution

7 Graphite Square, Vauxhall Walk

London, SE11 5EE

Tel: +44 (0)20 7735 4000

Professor Jo Shaw, Professor of European Law
and Jean Monnet Chair

School of Law, University of Manchester

Oxford Road,

Manchester M13 9PL

Tel: +44 (0)161 275 3658

Fax: +44 (0)161 275 3579

Political guidance is what citizens expect from their leaders, with a view to electoral campaigns for the European Parliament next year and to the referenda in a number of Member States to ratify the Constitutional Treaty. There is nothing preventing the 'masters of the treaty' from striking a final compromise on the constitutional text and, at the same time, showing that they know how to use it, and they are willing to. Concrete discussion on how to make Common Foreign and Security Policy (CFSP) more effective, taking full advantage of the new position of the EU Foreign Minister, would show that there is meat on the bones of the constitutional skeleton. The same goes for the policy measures that a now more independent Eurogroup should adopt, as well as for the enhancement of Eurojust and Europol, included in the body of the Constitutional Treaty, but still deprived of a sense of purpose.

The Constitutional treaty must be flexible enough to adjust to unfolding events in a timely and transparent manner. The residual application of the rule of unanimity to some key provisions amounts to imposing a suffocating straitjacket on an enlarging political actor. In a Union of 25 or more, unanimity will simply mean inability to act, even when the vast majority of Member States are in agreement. Moreover, the application of unanimous voting will inevitably lead to a public setback because it will show that, leaving aside the cosmetic design, the new text is still essentially a treaty when it comes to decision-making on sensitive matters.

In the long-term, no constitutional system would tolerate unanimity on the financial resources of the Union (Article 53), on the multi-annual financial framework (Article 54), on the establishment of a European Public Prosecutor (Article III-175), on measures for police cooperation (Article III-176) and for decision in the domain of CFSP (Articles 39 and 40), to name but a few central issues. Unanimity will also stifle potential development towards the ordinary legislative procedure and majority voting, as envisaged by Article

24, and will most likely impair attempts at taking appropriate but unforeseen measures to attain one of the objectives set by the Constitution, according to Article 17. Ideally, the IGC should acknowledge these major constraints, and overcome them so as to bring the Union closer to its citizens by taking effective action and matching their expectations. At present, however, there is no political will among Member States to take such bold steps.

It is therefore of vital importance that the Union is at least enabled to amend relevant provisions, when the political will of the vast majority of Member States and of European citizens exists. The IGC has a political responsibility to go beyond the current wording of Article IV-7, and scrap the unanimity requirement for the ratification and entry into force of future amendments of the Constitutional Treaty. The distinction between provisions whose amendment requires unanimous ratification, and provisions that can be amended through a lighter procedure, creates more problems than it solves. Looking at the entire text, two options seem viable: either the identification of a very high threshold of super-qualified majority for amendments to enter into force, or a sort of 'reinterpretation' of unanimity. The latter formula would entail that if, after two years, the vast majority of Member States has ratified the amendments, then an additional deadline would be fixed for the one or two countries which have yet to ratify. If they fail to do so, then the amendments would enter into force among all the other Member States and it would be for those unable to ratify to deal with the consequences of their impediment. Solutions might range from the negotiation of opt outs, where possible, to the withdrawal from the Union. In practice, however, such a mechanism seems more likely to lead to reasonable compromise than to all out confrontation.

With a week to go before it begins, the hope is that this IGC will really differ from the last frustrating experiences of intergovernmental bargaining. The IGC should not re-discuss institutions, but focus on two issues: political

perspectives and flexibility. First of all, this IGC should be more political: national leaders should take full advantage of the innovations of the draft constitution to offer citizens perspectives and options with a view to European elections and referenda next year. Secondly, the IGC should enhance the flexibility and adaptability, over time, of the basic law of the Union, thereby increasing the efficiency of the whole decision-making process. If unanimity remains the rule to enact amendments, then differentiated integration will become the name of the game. In short, the IGC should bring the Constitutional Treaty alive, for the benefit of the entire Union.

Giovanni Grevi

The European Policy Centre, Brussels

2. The 2003 IGC Towards the IGC: a cool down phase?

We are at the end of what the Laeken Summit envisaged as a 'cool down' period before the start of the IGC. Indeed, let us recall that the decision to establish a Convention (made in December 2001 at Laeken) provided that the Future of Europe process would be a multi-staged process, with a pre-IGC phase (more inclusive, transparent and participatory) to be followed by the traditional IGC. Not least however, the Laeken European Council provided for a reflection period after the Convention before the start of the IGC. This reflection period was understood by some Member States as a 'cool down' period and by others to be a reporting/feedback exercise.

But is the current stage a 'cool-down' phase at all? If the Convention created a political momentum, in this cool down period the Convention output appears to be fuelled by a critical mass including the Presidency and a good number of large Member States. The situation, in the month before the start of the IGC, appears as one characterised by the sanctioning of the Convention's draft text as *the default* option, and by the projection of factors relating to the

process of reform - apart from numerous points of contention in the substance of the draft. Indeed, in an interesting twist of events the arguments about the limitations of the IGC method and the legitimacy agenda are re-appearing on the eve of the IGC in the defence of the *package* produced by the Convention.

This logic is not free from problems and certainly is not unchallenged: besides those representing a eurosceptic position, the Commission, many small states, accession countries, and the so-called 'Reg-leg' regions (i.e. those with legislative powers) are calling for 'renegotiation' in various degrees. Their objections have the potential to prove troublesome to those satisfied with the balances of power in the Convention draft. The latter are not fringe matters but substantial power issues which, if not treated adequately, are likely to bite back at the ratification process - and this final stage of the Treaty reform is one not to be treated lightly, as the experience of Nice has recently shown. In addition, whether new adjustments affect the balances struck by the Convention or not, is not only a matter of opinion but also one which is likely to imply a new re-construction of consensus. This may put the IGC (as a method of working out a deal) to the test once more.

The Convention draft: the default

The IGC will negotiate on the basis of a package of reforms put forward by the Convention - rather than from a list of options, as it has been the case in the past. Although there are a good number of contentious points with the potential to bring the IGC to deadlock, the work of the Convention has become the default. France, Germany, Italy, Belgium, Luxembourg and the Netherlands have declared themselves satisfied with the draft Constitution - while Germany has gone the furthest in calling for no changes to the Convention draft. Judging from the declarations after the trilateral meeting Schröder/Chirac/Blair in Berlin on 21 September, this group of countries seems has been joined by the UK.

The Italian Presidency, with the

support of the above-mentioned countries, has pushed for a number of organisational factors (on which more below) which will favour the prominence of the Convention text in the overall deliberations. Firstly, aiming at a short IGC should reflect overall satisfaction with the package produced by the Convention. Secondly, according to the Italian presidency at the Riva del Garda meeting of the General Affairs Council, there was widespread support for the orientation that, given that the Convention text had achieved a consensus, any substantial modification to the Convention should be based in principle on the existence of an alternative consensus. The latter amounts to making the Convention draft the default option while the burden of amending the text will fall on the unsatisfied parties.

In any case, there will be negotiation at the IGC. Indeed, although all Member States have at different occasions welcomed the Convention draft (at Council meeting of 21 July, at the Salonika European Council, at the Riva del Garda Council), all countries, including the Commission, will go to the IGC with their 'requests' lists.

Since July a clear division between a large number of small countries and large countries in relation to the work of the IGC has appeared. Indeed small and accession countries have expressed their firm intentions of negotiating the draft objecting to making some of the power balances drafted in the Convention text the default option.

On the IGC agenda there are a number of intractable left overs. Unsurprisingly, these include the same sorts of power issues such as the institutional reform pack which dominated the Nice IGC: Commission size, QMV, plus the Council Presidency - to name the most obvious. Also the IGC will have to work on tying up loose ends ('incomplete' proposals from the Convention such as matters relating to the accountability of the Minister of Foreign Affairs, the job description of European Council Chair, Council formations, and the impact on the Euratom Treaty), and address a good

number of fundamental constitutional questions which although the Convention may have largely reached compromise on will not be settled until the whole package is settled. Among the latter there are substantial items such as the Charter of Fundamental Rights, or how power will be distributed across the multiple tiers of government which the German Länder are likely to reopen through the IGC. Clearly there will be different opinions as to how well the answers given to the over 60 questions formulated by the Laeken declaration have been properly answered.

In any case behind the nitty-gritty of the IGC negotiations on individual matters such as the incorporation of the Charter or the reform of the Commission, there will be substantial choices at stake. At the IGC there will be voices in favour of moving into a new stage of political interaction, with new and deeper political unity. Others will defend higher degree of self-determination and independence in relation to European partners. The IGC will aim at settling a framework for the medium term, the choice between the various visions of Europe - or possibly muddling through both will be the underlying theme in the months to come.

Finally, the IGC will have to deal with the organisation of a more democratic process. The return to the 'IGC mode', that is a regression from the level of transparency attained by the Convention would be in the view of many a blow to the legitimacy of the final product. The promises already made by the Italian Presidency and Irish senior ministers to make IGC documentation available ought to be copied elsewhere. The proposal to hold some IGC meetings in public deserves consideration.

[EU Observer](#)

[Euractiv](#)

[European Voice](#)

Organisation and structure

As in previous IGCs the 2003 grand bargain will be influenced by the organisational factors and choices made by the Presidencies. In addition,

external factors in the background such as the settlement of the Iraq conflict may influence the work of the IGC.

While on some of the proposals the Italian Presidency has not succeeded (e.g. allowing Convention chairman Giscard to be present at the IGC), Italy intends to speed up the process. Germany also wants a quick conclusion: Foreign Minister Fischer is one of the strongest proponents of working rapidly, to avoid reopening each individual chapter. The Presidency aims to conclude the IGC at the December European Council in Brussels but understands that, with all the possible delays, details and adjustments, the process could lead up to the early weeks of 2004. Translation into the 21 official languages and for the transformation of the treaty into proper juridical form would then take a further 3 months. The actual signing, an official ceremony, could take place in Rome between the beginning and the end of May - just before the European parliamentary elections which are to be held on 13 June. This was the proposal, accepted at the Salonika Summit. Between May 2004 and the end of 2005 the Constitutional Treaty would have to be ratified by the 25 Member State parliaments, with referendums being held where necessary.

The Italian Presidency has opted for maintaining the work of the IGC at the high political level of Foreign Ministers and Heads of State. No formal preparatory subgroups have been planned. The Presidency has scheduled six ministerial meetings and three meetings of EU leaders to provide the political guidelines. (See [IGC timeline](#)). Some ministerial meetings will be fully devoted to IGC matters but others will take place in the margins of the regular monthly meetings of the General Affairs and External Relations Council. There will also be a sort of concluding conclave at the end of November to work out differences. If the work of the IGC requires more detailed and precise remit, preparatory *ad hoc* meetings ahead of the ministerial meetings will be set up. Where necessary these meetings will open without a fixed term i.e. to

end only when the points to be treated have been concluded.

Legal advice will be provided by the Council Legal Service, with assistance from the Commission's Legal Service, and also by a group of legal experts from the 25 participant States which will be chaired by the IGC Secretariat. The Secretariat services will be provided by the General Secretariat of the Council.

As agreed at Salonika, acceding States will participate fully and on an equal footing with current Member States, which is a novelty from IGCs in the past where acceding countries have not been fully included. Detailed arrangements for EP participation will be determined by the IGC itself at its inaugural meeting. Conference documents are expected to be in the public domain and to be accessible on the internet.

Italy intends to follow a particular discussion method: a 'constructive dissent' approach. This method rather than calling for amendments will favour the negotiation of individual issues only if a counterproposal is presented and its ameliorative effect is explained. In the words of Minister Frattini: 'It is not enough to say 'we like the Nice method better' (as in the case of Spain and Poland on Nice voting weights). It is necessary to explain why it is better, to make a better proposal. We will not put any country up against the wall. We certainly cannot eliminate the possibility that, between what was decided at Nice and what is decided at the Convention, a third and more acceptable way exists. This will be the work of the IGC'. To counterbalance the narrowing of the IGC agenda proposed by the Italian presidency, delegations will be able to raise matters not listed. However, whether this possibility is offset by the rules of constructive dissent remains a matter to be seen.

The IGC will have to balance different agendas: the will of some Member States to complete reform in short delay, the need to resolve a number of legal and political issues unresolved by the Convention, and the

will of some countries to 'renegotiate' power issues even at the risk of reopening Pandora's box.

[Le Monde](#)

[Italian Presidency Web-site](#)

[Speech by the Minister Frattini on the Italian Presidency's guidelines for conduct of the IGC](#)

The diplomatic process and developments at the fringes

The diplomatic process started well ahead of the formal opening of the IGC. Indeed, September saw the increase in 'shuttle diplomacy' among EU leaders. Foreign Ministers (Berlusconi-Aznar-Raffarin met in Porto Rotondo; Prime Minister Berlusconi met Danish President Rasmussen in Rome; UK Foreign Affairs Minister MacShane visited Finland; German Foreign Minister Fischer met his Italian counterpart Franco Frattini; French President Chirac met Chancellor Schroder and Prime Minister Blair).

In addition to the numerous bilateral meetings, EU Foreign Ministers met informally at Riva del Garda, on 5-6 September. The informal General Affairs and External Relations Council dealt with 3 major items: the European Constitution, the design of a European security and defence strategy and the on-going crises in Iraq and the Middle East. As regards the revision of the Treaties, the Italian Presidency presented the approach, the calendar and the agenda for the IGC. There emerged discrepancies in relation to the proposed calendar and the extent of the negotiation to which the draft Constitutional Treaty ought to be subjected to.

Foreign Affairs Ministers met again on 29-30 September. Completing the procedure decided on 10 July in order to launch the IGC (that is, having received the opinions from the Commission, the European Parliament and the European Central Bank), the Ministers convened officially the IGC. The Council dealt with the preparations for the opening of the IGC at the end of the week. The Council rehearsed the splits emerging since July between large and small countries, and on specific items such as Council weighting votes,

rotation, and the overall approach and timetable of the Presidency. The Council also examined an annotated draft agenda prepared by the Presidency for the following European Council to be held on 16-17 October in Brussels. The latter will examine the re-launching of the European economy on the basis of the Franco-German initiative for growth of 21 September, external relations and the strengthening of the area of freedom, security and justice.

[Euractiv](#)

[EU Observer](#)

[ECB Press Release](#)

[Agenda GAERC \(29-30 September\)](#)

[Annotated Agenda, 26 September](#)

[The Independent](#)

The European Parliament

On the fringes of the diplomatic process there have been input, most notably from the European Parliament, the European Commission, and the smaller Member States.

The European Parliament's Committee for Constitutional Affairs, in a report on the work of the Convention, called on the IGC not to challenge the consensus achieved by the Convention and to approve the draft treaty establishing a Constitution for Europe 'without altering its basic balance while aiming at reinforcing its coherence'. This is the central message of the report by José María Gil Robles Gil Delgado (EPP-ED) and Dimitrios Tsatsos (PES) adopted on 9 September 2003 by the Constitutional Affairs Committee by 18 votes to 6 with 4 abstentions. In plenary the European Parliament debated and adopted the report on 24 September 2003

The EP has approved of the timetable put forward by the Italian Presidency and would like the new treaty to be signed by the 25 Member States on 9 May 2004, which is also 'Europe Day'. Member States that hold referendums should if possible hold referendums on the same day.

The Committee welcomed the progress achieved with the drafting of the Constitution for Europe, 'even if not

all demands in respect of democracy, transparency and efficiency in the European Union were met'. The committee therefore spoke of the 'important steps towards a more democratic, efficient and transparent European Union' but also of the 'aspects requiring further monitoring' and the 'shortcomings' of the draft Constitution.

Among the points to be welcomed, MEPs highlighted the inclusion of the Charter of Fundamental Rights, the simplification of EU acts, the abolition of the pillar structure, the wider use of the co-decision procedure and of qualified majority voting, the election of the President of the Commission by Parliament, the introduction of the citizen's right of legislative initiative, the possibility of structural cooperation in security and defence policy 'while respecting Alliance commitments', and the separation of the Euratom Treaty from the legal structure of the future Constitution.

Among the 'aspects requiring further monitoring' are the election of the President of the European Council, whose role MEPs say should be strictly limited to chairing proceedings in order to avoid any conflicts with the President of the Commission or the EU Foreign Minister. The Foreign Minister should, moreover, be supported by a joint Council-Commission administration. MEPs also called for a more prominent role for Parliament in the Common Foreign and Security Policy (CFSP) and defence policy. They added that, under the budget procedure, their powers should not be reduced by comparison with the present situation. They welcomed the disappearance of the link between the weighting of votes in Council and the distribution of seats in Parliament, a link laid down in the protocol to the Nice Treaty, and they suggested that the new distribution of seats in Parliament be implemented without delay.

As regards the 'shortcomings', the Committee voiced concern about 'unsatisfactory answers to some fundamental questions', particularly regarding the consolidation of economic and social cohesion policy, the co-

ordination of economic policy, the appointment of members of the Court of Justice and the Court of First Instance, the continuation of unanimous voting in Council for the CFSP and certain areas of social policy. MEPs also hoped that the reform of the Commission will not affect the collegiate nature of this institution and they regret that the system envisaged makes it difficult to keep a good European Commissioner for a second term.

Despite certain limitations and contradictions, MEPs believe that the outcome of the Convention should be approved: if the compromises reached by the Convention are unpicked, this will jeopardise all the progress made and undermine the 'Convention method', which MEPs see as much more efficient than the intergovernmental method. Finally, while highlighting the fact that Parliament was for the first time expressing its views on the convening of an IGC in full knowledge of the text which would be the basis for the negotiations, it point out in clear reference to the first Convention on the Charter of Fundamental Rights, that for any future revisions, it would be better if the Convention elected its own Praesidium.

[EP Resolution on the draft Constitutional Treaty and opinion on the convening of the IGC](#)

[EP Report on the Draft Treaty on the European Constitution and EP opinion on the convocation of the Intergovernmental Conference, \(Rapporteurs: José María Gil-Robles Gil-Delgado and Dimitris Tsatsos\) \(Summary\)](#)

[EP Committee on Constitutional Affairs: Draft Report, 5 August 2003](#)

[Verbatim of European Parliament debate on 3 September 2003 on the Convention and the IGC](#)

The question of European Parliament representation at the IGC has also proved controversial. The Salonika Summit agreed on a close association and involvement of the European Parliament in the works of the Conference. Political Group leaders in the European Parliament met on 19 September to discuss the Parliament's participation in the upcoming

Intergovernmental Conference. Not only there have been competing candidates within the Groups, but also calls have been made in favour of a larger number of parliament representatives at the IGC -more than two. The Group of the Liberals, in particular, have raised the exclusion of the Liberal Group and of its leader and Convention member Andrew Duff in the Parliament delegation to the IGC. It is expected that discussion and decision on whether Groups with lesser majority in the European Parliament will be represented at the IGC is made on 4 October at the opening session of the IGC.

[EU Observer](#)

'The return of the dwarfs'

Probably the strongest opposition to the Convention settlement and the Presidency plans is currently coming from smaller countries including a large number of accession countries, and from the European Commission. Austria, the Czech Republic, Denmark, Estonia, Finland, Greece, Hungary, Ireland, Latvia, Lithuania, Poland, Portugal, Slovakia, Slovenia and Sweden have called for changes to the power balances established in the draft EU Constitution. Deputy Foreign Ministers from most of the smaller Member States of the enlarged EU met in Prague on 1 September and then in New York to discuss common interests and to prepare a common position for the IGC. They said in a statement that 'some issues ranging from aspects of institutional structures to decision-making procedures would require further consideration' at the IGC.

One of the key demands of the smaller countries is that each should be guaranteed a post of a Commissioner with full voting rights. Under the Convention's proposal, from November 2009, there would be only 15 (out of 25) Commissioners with full voting rights.

The smaller countries also want to reopen the proposal for a permanent president to replace the current six-month rotating presidency which gives each Member State an equal

opportunity to lead the EU. The smaller countries are convinced that the current proposal favours the bigger Member States, notably Germany, France and the UK.

The harmony of views among the small and medium size countries has however been questioned. Discrepancies of views among small countries were evident during the Convention and they have reappeared. Most clearly the Benelux countries have kept themselves outside from the small countries various initiatives. Belgian Prime Minister Verhofstadt has argued that the Convention's draft Constitution should be accepted in its current form. The Dutch foreign ministry said the Netherlands did not want to 'align definitively with a specific group'.

[EU Observer](#)

[EU Observer](#)

The Commission

On 17 September the European Commission issued a Communication stating its negotiating positions ahead of the IGC. Commission President Prodi has declared that the proposals were approved by unanimity by the College.

The Commission is joining those who ask for a re-negotiation of some of the political balances put forward by the Convention: 'It is the Commission's view that the IGC's task should consist of improving, clarifying and finalising the draft Constitution'. It argues that it is possible to improve the draft Constitution on a limited number of points without upsetting the general balance. To avoid the risk of unpicking the broad consensus achieved by the Convention's draft, its submission is limiting amendments to four key proposals.

The first improvements requested by the Commission relates to the composition and decision-making arrangements for the Commission. Objecting to the reforms proposed by the Convention, the Commission asks for the principle of equality of all member states to be translated not only in the composition of the Commission (i.e. all member states are entitled to have one Commissioner) but also in its decision-

making processes. The Commission urges the IGC to find alternatives to the Convention proposal to create a two-tier Commission in which only a section of the Commission would have voting rights. Instead of a two tier Commission which would threaten the basis of collegiality and affect the legitimacy and effectiveness of the Commission, it proposes re-structuring the College into a number of Groups of Commissioners.

Secondly, the Commission calls for a larger reduction in the veto power of governments in the Council. Commission denounces the persistence of unanimity requirements in various policy fields in order to enable the Union to operate effectively. It proposes amendments to the legal base in some policy areas, setting deadlines to move to qualified majority, introducing reinforced qualified majorities voting or a new definition of unanimous voting, or otherwise replacing unanimous voting by alternative procedures providing sufficient guarantees to Member States.

Thirdly, to facilitate the future reform of the Constitution, the Commission is in favour of the reform of the general amendment procedure and in particular the lock provided by the double unanimity requirement of unanimous agreement of all Member States (at the IGC) and subsequent ratification by all national parliaments.

Fourthly, the Commission wants to see the reinforcement of economic co-ordination amongst the countries which have adopted the euro. According to the Commission 'the Governing Council of the European Central bank and the operational decision-making framework for monetary policy should be reviewed'. The role of the Euro-Group ought to be increased and sharpened in the context of decisions affecting those countries participating in the Euro.

Under the category of 'clarifications' to the Convention draft, the Commission also introduces a number of requests relating to categorisation of competences, job description of the Council Chair,

Council formations, Minister for Foreign Affairs, and legal tidying up of a number of provisions relating mostly to Part III and their consistency with Part I.

Communication from the Commission: A Constitution for the Union

3. The IGC Agenda

As mentioned above, the Italian Presidency envisages a short IGC concentrating on a small number of issues which are dealt with, not by experts, but by the political representatives and EU leaders themselves. The Italian Presidency plans to review a small number of items, most notably: the Council Presidency and its rotation, the creation of a Legislative Council, the setting up of a Minister of Foreign Affairs, European defence, the definition and the scope of qualified majority, and the ratification procedure.

Possibly one of the most notable items on the agenda of the IGC is the reform of the Council. A number of Member States hold doubts on the position of Chair of the European Council. Some States still prefer the concept of team presidencies. Even among those who accept the principle of a semi-permanent Chair, there have been proposals to reduce the authority of such a Chair for fear of either: that the overall balance of power may be shifted in favour of governments vis-à-vis supranational institutions, and/or in turn, in favour of larger member versus smaller size countries.

The reform of the Council, in so far as its formations are concerned, is also on the table. There is widespread criticism of the Convention proposal for the creation of a Legislative Council but no clear alternative seems to be available. Articles I-22, I-23 not only set out inconsistent structures, but in particular is doubtful how the desired co-ordination in the legislative function of the Council could be attained.

On EU external action, there are two types of discrepancies in particular. One relates to the Foreign Affairs Minister and the tensions which could arise from its double-hatted nature. In other words, although in principle there

seems to be agreement on its creation, the IGC will have to clarify who this minister would take instructions from and be accountable to (i.e. whether the Commission or the Council). On ESDP there are substantial objections to the mutual defence clause proposed by the Convention and to structured co-operation. Spain, Italy and eastern European countries are expected to back a British-led counter-offensive to change Article I-41, which obliges countries to give 'aid and assistance by all means, military or other' should any member subscribing to the common defence policy come under attack. UK Government believes this would rival Article 5 of the NATO Charter, and fears it could pull the EU away from the transatlantic alliance with the United States. UK Officials said their preference is to remove the mutual defence clause altogether, leaving only a more vague commitment to 'solidarity' among EU countries - as exists in the current Treaties.

On structured co-operation the division between Member States is large. Some remain hostile to any initiative which could potentially rival the Atlantic link, and others appear resolved to create alternative joint military capabilities.

Concerning the definition of majorities, the IGC will encounter the opposition from Poland and Spain to give up the relative gains introduced by the Nice Treaty. In this sense some exchanges of threats had already taken place between these countries and German officials linking enlargement, qualified majority and the financial perspectives. Besides the difficulties found in the acceptance of the simplification of qualified majority proposed by the Convention, the IGC will also have to address requests to extend qualified majority to areas excluded in the Convention draft, most notably indirect taxation, CFSP, and in the adoption of the multi-annual financial frameworks.

Finally, the Italian presidency aims to put on the IGC table the question of the future revision of the Treaties as the unanimity through Article 48 plus

national ratification by all 25 Member States may make any future changes to the Treaty in the future highly unlikely, thus making the Union unable to evolve

Besides the issues singled out by the Italian presidency, as agreed at Salonika delegations will also be able to raise other matters. Various delegations have insisted on this right. These other matters may include 'Structural' aspects (such as de-pillarisation and effects, legal personality, incorporation of the Charter, values and principles in the EU Constitution (references to Christianity), *passerelle* clauses, enhanced co-operation, the Euratom Treaty). Another second batch of issues relates to the interaction of the EU with the national political arena, notably parliamentary scrutiny of European institutions, and respect of regions with legislative powers. There are also policy specific issues such as economic governance including the reform of the Eurogroup, lifting of national veto on indirect taxation, or the extension of the European justice system. Finally, the redrafting of Part III is also pending: some policy areas need modernising and simplifying and in any case made consistent with Part I and II of the Constitutional Treaty.

4. Parallel developments Franco-German axis

Perhaps the two most prominent developments outside the strict framework of the treaty revision process during September were a second display of Franco-German unity, and a seeming *rapprochement* between France/Germany and UK/US positions in relation to the Iraq crisis.

The celebration of the second joint Franco-German ministerial Council on 18 September in Berlin proved the good condition of the Franco-German axis at present. In a new display of unity the Franco-German leaders put forward an initiative for growth in Europe which was later seconded by the UK. The initiative has been criticised in the light of their failure to obey by the rules of the Stability and Growth Pact. The initiative

may lead to the adaptation of the Pact as it concerns giving growth a priority in relation to public deficit rules - which the French and German governments have not observed.

[Le Monde](#)

[Le Monde](#)

[The Times](#)

[La Vanguardia](#)

Tony Blair was also invited to Berlin to discuss the three major topics previously discussed bilaterally: a new UN resolution on Iraq, the Future of Europe dossier and economic plans. 'The meeting serves to agree to common positions in foreign policy after there were divergent opinions in the run-up to the Iraq war,' the German government said in a statement. The meeting ended with the claim that positions had come closer although differences remained (on the calendar and modalities to return sovereignty to Iraq).

[Financial Times](#)

[10 Downing Street News Room](#)

EU defence

Following from the lack of progress on the defence field made by the Convention, and from the initiatives launched by the mini-summit held on April 2003 between Belgium, France, Germany and Luxembourg on European defence (see [Newsletter issue no.2 May 2003](#)), a meeting of the Strategic Affairs Directors of the Ministries of Foreign Affairs and of Defence of the 25 countries of the EU took place in Rome on 29 August. The meeting convened by the Italian Presidency examined various proposals for reinforcing the Union's military capability. Among other proposals, it examined the plan to set up an EU military home base in Brussels. Belgium has declared that it would go ahead with plans to build a European military command headquarters near Brussels next year despite opposition from the United States and Britain. Prime Minister Verhofstadt told a meeting of ambassadors to his country that the

new headquarters was necessary for Europe to be able to 'plan and execute European operations autonomously'.

It should also be recalled that the final text of a European Security Strategy prepared by Javier Solana is scheduled for adoption at the December 2003 European Council. EU leaders approved the general principles of the EU's first ever security strategy at the Salonika Summit from a report from Javier Solana (who was charged by the Informal Foreign Affairs meeting at Kastellorizo in May 2003 to design a common defence strategy to face the threats from weapons of mass destruction, terrorism, regional conflicts and refugee crises).

[International Herald Tribune](#)

Competence

The German government has decided to take the EU's tobacco directive to the EU Court for a second time to annul its provisions to ban tobacco advertising.

[Euractiv](#)

[Irish Independent](#)

Referendums

The enlargement ratification process was completed on 20 September with the final referendum taking place in Latvia. Voters in Malta, Slovenia, Hungary, Lithuania, Slovakia, Poland, the Czech Republic and Estonia gave their support for EU membership in popular referendums earlier during this year. Only Cyprus endorsed its membership of the Union without a referendum.

Estonians voted in favour of their country's EU membership in a referendum on 14 September. According to official results, released by the National Electoral Committee on 15 September, 66.92 per cent of Estonian voters said 'Yes' to the EU membership, while 33.08 per cent said 'No'. The turnout was 64 per cent of the 850,000 voters.

More than two thirds of Latvian voters endorsed their country's membership of the EU. According to final results, 67 per cent of Latvian voters

said 'Yes' and 32.3 per cent said 'No' in the referendum on 20 September. The turnout was 72.53 per cent.

[Euractiv](#)

[Euractiv](#)

Sweden

Of the 7 million eligible voters, 81 per cent turned out on 14 September to the Swedish referendum on joining the European single currency in a climate of shock after the murdering of Anna Lindh. The 'No' side had 56 per cent of the votes against 42 per cent for the pro-euro camp. Every region of the country, with the exception of the capital Stockholm, voted to retain the Swedish currency, the krona. Prime Minister Göran Persson blamed the defeat on bad timing and the reckless conduct of some of the euro zone countries. He said another euro referendum is now not likely to be held for another 10 years.

The result sent immediate shockwaves to the UK and Denmark, which become less likely to hold a euro referendum in the foreseeable future.

The interpretation of the referendum results was wide-ranging across the European press. Its implications clearly go beyond the strictly monetary field. The Swedish referendum reminds us that the various referendums that have taken place on matters relating to EU (apart from the recent accession referendums) have given results close to refusal, or of approval by narrow margins. Commentators have called for reflection on whether the Swedish results can be simply dismissed as 'provincialism', or whether they reflect a widespread perception of Europe as an elitist project, which favours the power of large countries. These elements are clearly crucial in the current constitutional moment, and in the light of a possible referendum on the European constitution

[Euractive](#)

[The Independent](#)

[EU Observer](#)

5. The UK scene

The Foreign Office published on 9 September a White Paper setting out the UK Government's views on the draft European constitution, both an assessment of the results of the Convention and the expected British positions at the IGC.

The view from the Foreign Office of the results of the Convention is that the Constitutional Treaty is 'a good deal', and a more transparent, legitimate and effective Europe has been drawn up. The competence system is clearer, national parliaments have gained a role within the institutional architecture, a European Council Chair is being proposed and a reasonable reinforcement of the European Parliament and the Commission is going to ensue. The Convention draft is 'a good basis for negotiation', and a constitution per se 'good for Britain and good for Europe'. Aiming at the eurosceptic opinion, for Number 10, 'the Convention text spells out that the EU is a union of nation states and that it only has those powers which governments have chosen to confer upon it. It is not and will not be a federal superstate'. Although the draft treaty is 'not perfect', the Foreign Office believes that, after further negotiations, it will result in a more effective EU which will promote 'the national and the patriotic interest'.

Thus the White Paper refers to a number of issues which the UK government would be looking at with more detail at the IGC. The government has claimed that its negotiating attitude is not to block compromise or risk unpicking the delicate compromise, but to be ready to argue and seek compromise - while certain red lines were kept: 'we could only accept a final text that made it clear that issues like tax, defence and foreign policy remain the province of the nation state.' These are the major red lines for the British government. Nonetheless the White Paper lists a series of concerns arising from the draft and on which the UK government is likely to pursue amendment.

As to a first category of one may call structural problems, the White Paper refers to problems arising from the depillarisation of the EU Treaty, notably the scope of legal personality and the differentiation in policy making and legal nature of what they used to be different pillars. On the Charter of Fundamental Rights, Foreign Office seems confident that it can be incorporated but the government will make a final decision only in the light of the overall picture at the IGC.

In a second block of issues relating to power in the EU (such as Commission size, Council presidency, Council formations, weighting of votes, rotation), the British position is of overall satisfaction with the balance of power although it will seek to reinforce the role of the European Council Chair and to remove the provisions on the Legislative Council (Article I-23). On the re-definition of qualified majority in the Council, although the Convention draft represents a loss for UK in relation to Nice arrangements, the Foreign Office is not intending to make of it a red line.

Another third block is constituted by CFSP/ESDP. On CFSP, the Foreign Office is in favour of coherence of overall action and of the double-hatting where the EU has a common Foreign policy (Balkans, Middle East Peace Process). However, regarding the Foreign Minister, the Government denounces a lack of clarity as regards the its dual relationship with the Commission and the Council. The British government would like to ensure that the representative is properly accountable to Member States in the Council. Secondly, and opposed to Germany, UK government is not ready to move to QMV on CFSP matters

Regarding defence, the Government is not supporting all the proposals from the Convention. The Foreign Office is determined to remove a mutual defence pact which it perceives as undermining NATO by replacing the security guarantee offered through the Atlantic link. For the Foreign Office a flexible, inclusive approach and effective links to NATO are essential to the success of ESDP. In relation to structured co-

operation the underlying British concern is once more, ensuring the key role of NATO, while at the same time trying not to be excluded from initiatives that may arise from their European partners. The British opposition to structured co-operation may however be softening.

Regarding the scrutiny of national parliaments, the British government has expressed in various occasions that it would be willing to strengthen the early warning system to effectively turn the procedure into a 'red card system' thus giving parliaments power to turn down Commission proposals altogether if a sufficient majority of opposing parliaments is gathered.

As regards other fields: On budgetary matters no QMV is acceptable and Britain will oppose any attempt to terminate the budget rebate from the 1980s; where new competences are conferred (energy, intellectual property, sport, administrative co-operation) the UK will seek to specify the legal base in watertight language to prevent competence creep.

On specific policies, the Foreign Office is in favour of greater use of QMV and a wider use of co-decision. On QMV however, the UK opposes the *passerelle* clauses for they are seen to amount to treaty change without ratification procedures - thus undermining national parliaments. The Foreign Office fears that these clauses could be a backdoor attempt to harmonise taxation, and/or to pass proposals for an EU public prosecutor for instance. Unanimity is to be kept for decisions on Treaty change and for those which affect other vital national interests (tax, social security, defence, key areas of criminal procedural law, system of own resources, CFSP). The Government is particularly worried by Article III-63, designed to combat tax fraud and tax evasion. They see it as an indirect means of harmonising taxation, which Britain (along with Ireland) has long resisted.

On co-decision, although the UK Government is overall in favour of the extension of co-decision powers for the European Parliament in certain matters

under the internal market, trade, economic governance, tax, social policy, social security, and JHA, the extension of co-decision ought to be examined on a case by case basis and never used in cases where vital national interests are at stake. In relation to the internal market, the number of exceptions to internal market principles are to be kept to a minimum. On trade the UK Government is in favour of more liberalisation but without implying more powers to the EU to achieve these objectives. On economic governance, it will oppose proposals which lead to unnecessary rigidities or that undermine the central role of Member States in determining their economic policies. On indirect taxation the maintenance of the veto is a red-line. On the field of social policy and social security, unanimity is to be retained on the social security rights of workers who move within the EU, working conditions and employment relations, and on combating various forms of discrimination.

As far as Justice and Home Affairs is concerned, QMV is acceptable on asylum and immigration (to identify quickly and fairly persons in genuine need of international protection and for tackling abuses). Britain is keen to encourage common EU action on immigration in the hope of reducing the ability of asylum seekers to go 'asylum shopping' in countries with more liberal systems. Yet officials also suggest a hardening attitude to wide-ranging provisions for a common European judicial system, including clauses paving the way for an EU attorney general and giving the final say on judicial issues to the European Court of Justice for the first time. UK favours setting minimum standards in criminal procedures across EU (but only minimal). Harmonisation of criminal procedural law should be on unanimity basis, no QMV is to be used here. UK will also protect its full right to carry out frontier controls (Schengen). The UK government is also doubtful of a Public Prosecutor who would have powers to decide how to investigate and prosecute serious trans-national crimes. It does not see a need

for a Public Prosecutor, and even if the Convention decided that this decision could be taken only by unanimity, the UK government simply would like to see the provision removed.

[A Constitutional Treaty for the EU. The British Approach to the European Union Intergovernmental Conference 2003](#)

Don't say 'fundamental'

The White Paper re-ignited calls in the UK for a referendum on the reform of the Treaties. The Conservative opposition has been particularly vocal in renewing their calls for a referendum on the proposed EU constitution on the grounds that the Prime Minister had promised a national ballot if the changes involved were 'fundamental'. Indeed, in the specific British context the debate had revolved around whether the Convention's constitutional outcome is a mere tidying up exercise or a fundamental change in the relationship between the Union and its Member States.

[BBC News](#)

[BBC News](#)

[The Times](#)

[Financial Times](#)

[e-politix](#)

In Parliament

Continuing with the task of monitoring of the Convention and its proposals, the EU Select Committee of the House of Lords is expected to report in October on the Draft Constitutional Treaty and the IGC.

[EU Select Committee](#)

[The EU Select Committee monitoring the Convention](#)

Sub-Committee E (Law and Institutions) of the EU Select Committee is gathering evidence for an enquiry on 'The role of the European Court of Justice under the new Constitutional Treaty for the European Union'. Closing date for written evidence is Monday 6 October 2003.

[Call for evidence](#)

6. News from the EU Constitution Project UACES/Federal Trust Study Group: Workshop III

Following for two previous Workshops examining the work of the Convention on the Future of Europe and the more general theme of the constitutionalisation of the EU, the third Workshop of the series will take place on 16 December 2003 in London (venue to be announced). Workshop III is timed either to provide an assessment of progress at the IGC before its endgame, or otherwise its output. For further information, including call for papers, please visit the Workshop III site.

The Federal Trust welcomes contributions examining the work of the IGC either as a process or its various items on the agenda. Contributors please send an abstract (300 words maximum) before 1st December 2003 to the organisers constitution@fedtrust.co.uk

Publications

Two new papers have been added to our Constitutional Online Essays collection:

Peter Norman, 'From the Convention to the IGC', Constitutional Online Essay no 28/03.

Christina Bengtson, 'National Parliaments in European decision-making: A real prospect or wishful thinking?', Constitutional Online Essay no 29/03.

[Constitutional Online Essays](#)

Friends of The Federal Trust will receive a printed copy of our latest European Essay: '[Britain in Europe. Yet another moment of truth](#)' by Lord Haskins of Skidby.

This month has seen the departure of Lars Hoffmann to start doctoral research at the University of Oxford. From early October Dr. Erin Delaney will replace Lars Hoffmann to work in the EU Constitution project.

7. Web corner and external events

A Group of academics and researchers from across the EU are putting forward a series of amendments to the draft Constitutional Treaty in a document entitled "Making it Our Own". The Group invites to examine the amendments proposed and to submit comments and your signatures to protocol manager: Lars Hoffmann larsinlondon@yahoo.co.uk. You can also contact one of the three conveners (Kalypso Nicolaidis at kalypto.nicolaidis@st-antony.oxford.ac.uk, Miguel Maduro at maduro@fd.unl.pt, Paul Magnette at pmagnet@ulb.ac.be).

The document can currently be consulted at: <http://www.umich.edu/~iinet/euc/MiscHTML/EUnews.html>

Notre Europe has published two new essays:

'The Europeanisation of anti-terrorism policy: a critical assessment', by Monica Den Boer, Policy Papers n°6, septembre 2003

'L'élargissement de l'UE : une fuite en avant', by Daniel Vaughan-Whitehead, Policy Papers n°5, septembre 2003

The Bertelsmann Foundation is about to publish a paper on how regions could play a bigger role in the EU by Charlie Jeffery: [Regions and the Future of Europe](#)

Events

'European Question Time', Event organised by Federal Trust/ Manchester University, 10 October 2003 @ Manchester Metropolitan University 12-13.30.

Contact: jo.shaw@man.ac.uk

Prof. Paul Craig will be giving evidence to the EU Select Committee (Sub-Committee European: Law and Institutions) for an enquiry on 'The role of the European Court of Justice under

the new Constitutional Treaty for the European Union', 15 October 2003.

Contact: Committee Office 020 7219 5791

EU Governance and External Relations, 10-11 October 2003 @ Mannheim Centre for European Social Research, University of Mannheim, Germany.

Contact: michele.knodt@mzes.uni-mannheim.de

Citizens for Europe - One Day Conference, 16 October 2003, 9.30-5pm, @ University of Bristol.

Contact: Maria tol.ac.uk
Mj.Gracia@bristol.ac.uk

Europe and the Future of Economic Governance, Journal of Common Market Studies Annual Lecture by Pascal Lamy, European Commission; 28 October 2003, 17.00-18.30 (by ticket only) @ Conference Centre Department of Trade and Industry, 1 Victoria Street, London SW1.

Contact: jcms@sussex.ac.uk

8. Become a Friend of The Federal Trust

If you would like to become a Friend of the Federal Trust, or would like to make a donation to support the work of our project please contact:

Friends@fedtrust.co.uk