

# EU Constitution Project Newsletter

Volume 1 • Issue 8 • December 2003 • [constitution@fedtrust.co.uk](mailto:constitution@fedtrust.co.uk)

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. Guest Editorial

After 16 months of transparent deliberation, the European Convention reached a new and large consensus on a comprehensive constitutional settlement for the enlarged European Union. It considered all the options, engaged in a rich analysis and prolonged debate, and agreed proposals for the political and institutional reform of the EU that protected the *acquis communautaire*, respected the equivalence of all Member States and preserved the essential institutional balance. The outcome of the Convention represents the optimum advance that can be achieved at the present phase of integration. It also contains a number of indispensable provisions that allow for future constitutional evolution as circumstances permit.

The Intergovernmental Conference is now in danger of undermining the achievements of the Convention. Several key elements of the Convention package deal are being called into question.

The proposal for a Legislative Council already appears to have been jettisoned. The purpose of the Convention's proposal in this regard was to achieve a greater separation of legislative from executive functions of the Council so as to ensure more transparency, better scrutiny and tighter co-ordination of the Council's law making.

Some participants at the IGC are questioning the Convention's formula for establishing a qualified majority in the Council. This is designed, however, to balance the interests of both larger and smaller Member States, to be clearer and simpler than the system enshrined in the Treaty of Nice, as well as to facilitate decision making in the enlarged Union.

## The EU Constitution Project

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Many governments and the Commission itself appear now to be opposing the Convention's proposals for the shape of the Commission after 2009. This is designed to ensure that the Commission is both strong and manageable, and that all nationalities have an equal chance to be represented at the level of the college. If any adjustment is made by the IGC, it should be restricted to enhancing the status of the junior Commissioners.

Certain individual ministries are bringing their own narrow proposals to the table, thereby undermining the cohesion of member state governments that is a prerequisite for stable negotiations. In particular, finance ministers are challenging the Convention's proposals concerning the financial system of the Union which are intended to streamline the present arrangements and facilitate decision making, to safeguard national prerogatives over the overall scale of expenditure, to strengthen financial discipline, and to guarantee and reinforce parliamentary accountability over the budget. I doubt that a Constitution that failed to give the European Parliament at least those budgetary rights as agreed by the Convention would command the approval of either the European or national parliaments.

The IGC must rise to the challenge posed by the Convention, and to focus quickly on reaching a lasting political agreement on all these issues which is at least as convincing as that proposed by the Convention. It should negotiate a genuine reform of the Council presidency which is credible, efficient and comprehensible. The Union will only be brought closer to its citizens if the Council always deliberates and decides in public.

The Italian Presidency must be supported in its efforts to open up a serious discussion at the IGC about reform of the constitutional revision procedures, especially with regard to those provisions of Part III which do not affect the division of competences between the Union and the Member States.

Andrew Duff  
Member of the Convention, MEP

## 2. November at the IGC Towards the endgame

The Presidency has, since the beginning of the IGC, narrowed down the institutional issues to only a handful for discussion. 'Non-institutional issues', so termed by the Presidency, have been considered of secondary importance. They were placed on the agenda of the IGC by explicit request from various delegations; and by the beginning of November they have become the task of 'legal and technical examination' by the Piris Group. Thus Part III (except the 'institutional' considerations on the extension of QMV, the governance of economic and monetary union, and budget procedures) has been examined by legal experts with a technical (rather than political) mandate. Thus, overall, non-institutional issues have been downgraded in the light of the overarching political importance to secure respect for the draft produced by the Convention and with an eye cast on the ratification phase. Finally, in the specific case of defence, discussions have proceeded largely outside the strict confines of the IGC and were led by a few EU leaders. In addition, contribution to the work of the IGC has been made through bilateral contacts at a high governmental level, and by the Commission and European Parliament, the ECOFIN Council, pressure from Party groups, and ex-Convention members.

A narrowing down of actors and the concentration of the agenda on the most controversial items is likely to take place as the scheduled final summit on 12-13 December approaches. Indeed, the conducting of the IGC has aimed at reducing the number of controversial items and at reaching preliminary consensus - with the provision that this consensus will not be confirmed until the whole package is agreed.

Throughout October and November the Presidency has been examining the possibility of constructing new balances to those proposed by the Convention. The meeting of 18 November fell into this 'analysis phase'. At this meeting foreign ministers examined amendments to the provisions relating to the EU

Foreign Minister and those relating to the future revision of decision-making procedures and the revision of the Constitution as such.

By the end of November, the IGC moved from the analysis to the endgame phase. As announced by the Presidency in October, the final phase started with the submission of a package of proposals and the scheduling of a conclave of Ministers on 28-29 November in Naples.

Under the Presidency timeframe, the task for the ministerial conclave in Naples was to reach accord on a wide range of unresolved issues - apart from 'two or three' areas of disagreement over institutional questions, which would be left to the political discretion of Heads of State meeting in mid-December. On issues such as the acceptance of a smaller College of Commissioners, or the relative weight of states in the Council, no substantial progress had been made. This is generally acknowledged by the Italian Presidency, which has largely left the state of affairs in these dossiers unchanged aiming for a resolution in December.

[Letter by Ambassador Cangelosi to the "Focal Points" \[IGC 42/03\]](#)

[Issues to be dealt with by the Legal Experts group \[IGC 43/03\]](#)

[Address and reply by Under-Secretary for Foreign Affairs Roberto Antonione to the European Parliament on progress in the work of the IGC, Brussels 19 November 2003](#)

### The Presidency package

On 25 November the Presidency submitted its long-awaited package of proposals which built on the IGC discussions of October and November and aimed to reach an overall agreement. Perhaps not surprisingly (judging from the approach taken by the Italian Presidency from the start of the IGC), the package kept close to the Convention draft, and has avoided moving down to a minimum common denominator to secure agreement. In some cases however, the package by the Presidency departed from the consensus achieved at the Convention, notably, on the Council presidency

system and its formations. In other cases the package goes further than the Convention draft, such as proposing QMV on some specific decision-making procedures on CFSP. On the whole however, the Presidency package is a balanced package.

### *Council Functions and Council Formations*

The Presidency proposals opt for the removal of the Legislative Council and for a team presidencies system. The Convention draft proposed to separate the legislative function currently dispersed across the sectoral formations of the Council, and at the same time consolidate it into a separate formation: the Legislative Council. Thus the Council of Ministers would have two distinct functions, legislative and executive, and in its executive function it would have various sectoral formations (agricultural Council, ECOFIN Council, etc.). Thus Article 23 of the Draft Constitutional Treaty provided for two Council formations in line with the two functions: a Legislative Council and a General Affairs Council, the latter with a number of sectoral sub-formations.

Although largely perceived as a confusing recommendation, the Convention proposal was the result of marrying various aims and positions: firstly, it promoted the agenda outlined in the Solana Report and the Seville Council (June 2002) of attaining a better co-ordination in the work of the Council, and of making the legislative work of the Council more transparent and public; and secondly, it aimed to separate more clearly the legislative and executive functions while at the same time avoiding the creation of what some perceived as a second chamber.

The proposal for a Legislative Council, widely perceived as an unsatisfactory compromise, was simply ruled out by various delegations at the very first session of the IGC. Besides the political implications, drafting points were made. At a very early stage in the IGC the Presidency thus moved away from the Convention draft. Calls have been made for the re-institution of the Legislative Council. On 13 November

2003, members of the Convention on the Future of Europe together with members of the European Parliament launched a cross-party appeal to the IGC to 'reconsider their decision to remove the Legislative Council from the European Constitution'. The appeal argued that the creation of a Legislative Council is essential for the clear separation of the legislative and executive powers in the Union and for achieving full transparency and openness in the EU's legislative procedures - thus keeping the legislative and the bargaining in executive matters apart, and allowing legislative action to be conducted in public.

The Presidency package however, takes another view. In a substantial re-drafting of the Convention text, the Presidency proposes in Article I-23(5) to divide each Council (in whatever sectoral formation it takes) into two parts dealing respectively with legislative and non-legislative functions. In its legislative function the Council would act under public scrutiny.

Regarding Council formations, the Presidency spells out three different formations: General Affairs, Foreign Affairs, European Council, and any other formations which the European Council may want to decide upon by qualified majority in line with the Seville Summit decisions.

The European Council at Seville reduced the number of formations from 16 to 10. Yet, a separation has traditionally been made between those aspects of the internal structuring of the institutions to be written into the Treaties (and thus requiring treaty amendment for changing) and those that are left to the internal discretion of each institution. Currently, provisions relating to the sectoral formations of the Council are not written into the Treaties but are laid down in the Council's Rules of Procedure. The current IGC has discussed these procedural issues and aims at reaching agreement on the number of Council formations as part of the outcome of the IGC. The number of Council formations may not be written into the Constitution but rather could be adopted through a decision of the

European Council on the day the Treaty enters into force. In fact the Seville Summit broke with the traditional practice of issues, such as the Council formations, being decided by the Council itself through the adoption, by qualified majority, of its Rules of Procedure.

As regards the presidency of the sectoral formations of the Council (other than the European Council and the Foreign Affairs Council), the Italian Presidency maintains the principle of equal rotation on the basis of a three-state team presidency for a period of one year. The presidency of the General Affairs Council would be different in that it would rotate among the three-country team for periods of four months each. The complexity of the solution proposed by the Presidency indicates the highly problematic search for checks and inter-state balances in the performance of the work of the Council.

[Presidency Report to the European Council: Measures to prepare the Council for Enlargement, June 2002](#)

[Seville Presidency Conclusions](#)

[Council Rules of Procedure, OJ L 230 of 28.8.2002](#)

[Euractiv](#)

### *European Council Chair*

The role of the Chair/President of the European Council has not really been debated by the IGC, and the remit of this position remains unclear. The problem of assuming its establishment (beyond a debate on its remit) was highlighted on 20 November when a majority of the Swedish Parliament voted against the creation of a European Council President.

The Commission in its proposal to the IGC called for a clearer definition of the statute and powers of the proposed permanent President/Chair of the European Council, and stated that the duties of this office should be limited to chairing meetings of the European Council and representing the Union in the context of the CFSP.

The Presidency package also proposes that legal acts which are intended to produce legal effects vis-à-vis third parties adopted by the

European Council be subject to judicial control by the Court of Justice (Articles III-270(1) and III-272(1)).

[EU Observer](#)

### *Composition of the Commission*

No significant advance was made on the composition of the College of Commissioners during October and November. It is, first of all, a red line for small Member States, but also it is a crucial element in the effective functioning of the EU. As an institution with power of initiative and leadership in a Union which balances interests and strives for the common good beyond state size, the Commission's role is of paramount importance. In addition the Commission is a central institution to the continuation of the 'Community method'. Thus changes to the composition of the Commission are to be assessed on their implications for country balance, on their effects on the domestic political scene, and critically on the effects of these reforms in the wide range of functions that the Commission provides in the development and governance of the EU.

The current Commission College (2000-2005)\* has 20 members (the 5 largest Member States have 2 nationals and the remaining 10 have 1 national). The Nice Treaty established the composition of the Commission for the period 2005-2009, thus, although the Treaty of Nice came into effect on 1 February 2003, provisions on institutions are still not in effect.

Since the Amsterdam IGC, the composition of the Commission has been the subject of debate between the supporters of a Commission made up of one national from each Member State and those who favour a leaner Commission. At Nice, the expansion of the College was deemed inconsistent with efficiency, and as part of an overall compromise settlement, the Protocol on enlargement in the Nice Treaty provided for the reduction in the number of Commissioners per member state to one national and established a limit to the enlargement of the College. The Protocol on enlargement, rather than laying down the number of Commissioners in the College, stated that when the number of Member States

reaches 27, the number of Commissioners would be less than the number of Member States. Commissioners are to be chosen 'according to a rotation system based on the principle of equality' between States, and each Commission shall 'reflect satisfactorily the demographic and geographical range of all the Member States'.

The Convention on the Future of Europe departed from the Nice provisions and recommended that, rather than limiting the number of Commissioners to 25 (or 27 if Bulgaria and Romania accede before 2009) as Nice provided, the Commission for the period 2009-2014 (i.e. the first Commission to be appointed in the enlarged EU) would have one national per member state yet not all Commissioners would be equal. The number of Commissioners holding a right to vote would be reduced to 15 members.

The Commission itself has objected to this proposal. The Commission defends the principle of equality of all Member States and favours the retention of a full Commissioner per Member State with the same rights and obligations. As an alternative to the Convention proposal, the Commission proposes a re-organisation of the Commission into sectoral groups, each composed of seven Commissioners. The areas of responsibility of these groups of Commissioners would coincide with the various Council configurations.

Arguments for and against reducing the size of the Commission were floated throughout the Convention's lifetime. The Presidency package supports the Convention proposals of a smaller College and envisages a final compromise by seeking review on the precise role and responsibilities of the non-voting Commissioners.

[Communication for the Commission, A Constitution for the Union, 17 September 2003 \[COM\(2003\) 548\]](#)

[Commission Rules of Procedure, OJ L 308/26 of 8.12.2000](#)

[Protocol on the enlargement of the EU](#)

*\* In fact the new Commission will take up office on 1 November 2004 -ahead of time.*

### *Formation of majorities*

The definition of majorities has also been one of the most visible sticking points, raised on the eve of the Convention. Spain and Poland in particular object to the re-definition of qualified majorities in the Council (Article I-24). Under the new system, Poland and Spain would not have the same blocking power as the Nice deal had provided (see [November Newsletter](#)).

During November two developments occurred in this area. In late October, the German Chancellor gave signs that agreement could be reached on this matter - even though tough language and a linkage to budgetary issues had been resorted to in early October. Then in November Poland gave signals that it would seek compromise. Yet, in a surprise decision, British Foreign Secretary Jack Straw backed the Polish position on QMV in a joint press conference with the Polish Foreign Minister. Mr Straw said that any deal should be acceptable to all and until there is such a deal, the British government would support the Nice system of voting. Whether the UK will take a tough stance of this issue, which had until this point been a minor concern on the UK wish list, remains to be seen - although the UK loses a number of votes, its blocking capacity is not affected. It seems unlikely that the UK would pursue this dossier further should Spain and Poland be accommodated.

Ahead of the ministerial conclave, the Presidency's approach on this matter was to maintain the majorities system established by the Convention and to find alternate ways of responding to the concerns of medium size countries. The Presidency has not specified the means by which a 'compensation' could be made. This issue will be on the agenda of the December Summit.

[Protocol on the enlargement of the EU](#)

[Financial Times](#)

[Euractiv](#)

[The Independent](#)

[EU Observer](#)

[EU Observer](#)

[The Economist](#)



## Foreign Minister

During November the Presidency proposed some clarifications on the articles relating to the Foreign Minister: the independence of the Foreign Minister as a Commissioner (Article I-25(4)), the resignation of the Foreign Minister (Articles I-25(5) and I-26(3)) and the coherence between the CFSP and external relations (Article I-27(3)).

The issue of the special independence of the Foreign Minister is directly related to the double-hatted nature of the Foreign Minister. The Foreign Minister is under Council mandate, and yet as a Commissioner his/her independence ought to be beyond doubt. The amendments proposed by the Italian Presidency clarified that the Commission would be formed of independent individuals except for the Foreign Minister.

The difficulties inherent in this position are highlighted by the accountability and resignation procedures. As a member of the Commission, the Foreign Minister can be removed by the Commission President with the agreement of the European Council. However, as a member of the Commission in its collectivity, the Foreign Minister could be removed by the European Parliament. Yet the European Parliament would not be able to sack the Foreign Minister from his/her position in the Council. At that point, the double-hatted nature of the Foreign Minister would be lost and the position would no longer achieve its *raison d'être*.

Finally the Presidency proposed adding a clarification of the purpose of a double-hatted figure 'to ensure that the Union's action in external relations is consistent with the CFSP'. Yet the drafting does not dispel confusion in case of conflict between the CFSP and external relations policy.

[Presidency, Union Minister of Foreign Affairs \[CIG 45/03 PRESID 8\]](#)

## Defence

See Parallel Developments section below.

## Revision clauses in the Constitution

The Presidency believes that the revision procedures envisaged by the Convention appear excessively rigid and thus run the risk of making the enlarged Union incapable of updating its own constitutional regulations - even as regards minor provisions.

The Convention on the Future of Europe did not substantially change the general amendment procedure in so far as the 'double lock' imposed by Article 48 of the Treaty on European Union (unanimity at the IGC plus national ratification in each of the Member States) is concerned. The Convention draft proposed the Constitution be ratified by all Member States in accordance with their own constitutional traditions (Article IV-3), but if in 2 years after the signing of the Constitution, four fifths of the Member States have ratified it and one or more Member States have encountered difficulties in proceeding with ratification, the matter would be referred to the European Council (Article IV-7(4)).

The Presidency has proposed some adaptations so as to facilitate constitutional revision in several specific sections of Part III of the Constitutional Treaty, such as internal policies (Part III Title III).

In addition, the draft Constitution introduced some flexibility in the future revision of Constitution provisions through *passerelle* provisions: either general 'bridging clauses' (which permit special legislative procedures to become ordinary legislative procedure) or specific 'bridging clauses' (which allow for the modification of voting rules in clearly defined sectors). The Presidency feels that the specific bridging clauses are not problematic insofar as their scope is well-defined and therefore a compromise could be found by ensuring that a clearer drafting is acceptable to all delegations. However, the Presidency proposal tightens the use of general bridging clauses by adding a provision whereby national parliaments would have the right to raise objections. Effectively the change from special to ordinary legislative procedure would be subject to the common

agreement of all Member States in the European Council, with consultation of the European Parliament and the previous informing of national parliaments.

## 'Non-institutional' issues

A good number of issues fall under this heading. Those relating to budgetary and economic governance appear especially sensitive. Overall the Presidency's package did not incorporate the ECOFIN amendments, which introduced substantial inter-institutional re-balances, particularly regarding EP budgetary powers and the Commission's supervisory powers in economic policy co-ordination. On the budget and multilateral surveillance mechanism, the Presidency has opted for maintaining the Convention proposals.

Other unresolved matters remain on the agenda such as new protection for minority rights, changes to JHA, European Public Prosecutor and Criminal co-operation, the review of the Union's atomic treaty, references to Christianity, etc.

[Presidency Naples Ministerial Conclave: Presidency proposal, 25 November 2003 \[CIG 52/1/03 REV 1 PRESID 10\] and Addendum to the Presidency Note \[CIG 52/03 ADD1 PRESID 10\]](#)

[Commission](#)

[Euractiv](#)

[EU Observer](#)

## The Conclave: approximation of positions

Although a mood of scepticism and recrimination over the breaching of the Stability Pact threatened the conclave of ministers in Naples, at the end a sense of progress was broadly shared.

At Naples ministers discussed the Presidency package including the most controversial issues (relative weight of votes in the legislative function of the Council and the composition of the Commission). On the power within the law-making Council of Ministers, no definite move was made, as any agreement on this would have to be sanctioned by EU leaders. Discussion ranged between finding an alternative

compensation for the loss of power in the Council for small countries to delaying a decision on its revision for a number of years. Spanish officials claim that there is no consensus among the 25 on the double majority system preferred by Berlin and Paris. Spanish Minister Ana Palacio claims that Spain is open to proposals and that agreement could be reached if the percentages in relation to population and states were re-weighted.

According to Minister Frattini, a 'broad consensus' appears to have emerged on the composition of the Commission. States seem to have come closer to the idea of accepting the principle of giving one Commissioner per member state - for the time being.

Progress was seemingly made on defining the job of the new Foreign Minister but the major breakthrough was made in structured co-operation on defence (see Parallel Developments). On the extension of QMV, Britain threatened to veto the Constitution if sovereignty in CFSP and tax were challenged. Opposition remains to the insertion of Christian references. On other issues final agreements may possibly be made through side-payments.

[Financial Times](#)

[The Independent](#)

[Euractiv](#)

[Avui](#)

### 3. Reflections on the Commission

#### Options for the Commission

The draft Constitutional Treaty which emerged from the Convention on the Future of Europe proposes a 15-Member Commission with a rather complex set of provisions to ensure equality of treatment between Member States over a period. In a refinement of the formula agreed at Nice, it envisages a Commission with one Member from each Member State, of whom only 15 would be voting Members, selected according to a rotation system determined in advance. This proposal is currently on the table at the IGC: there is room for doubt as to whether it will survive intact.

The current Commission, some Member States, and some accession States have hesitations about this approach and see merit in continuing the practice of including one national of each Member State as a 'full' Member of the Commission. Joschka Fischer, with the support of the Italian Presidency, has suggested a 31-Member Commission comprising two nationals of each of the 6 large Member States and one of each of the 19 small Member States.

The current Commission's proposal is for a Commission comprising one 'full' Member from each Member State. The new Commission would be divided into sectoral groups, with decision-making delegated to these groups, but with a back-stop provision allowing any decision to be reviewed by the full Commission.

The Fischer proposal seems to have been prompted by the opposition of Spain and Poland - now backed by the UK - to the proposal to replace QMV by a new 'double majority' system. The IGC now seems to be deadlocked on this issue. At this point, it is difficult to predict where a solution might be found.

#### The Realities

The Convention's proposals are designed to come into effect in 2009. From the 2004 enlargement on, the Commission will have 25 Members. If Bulgaria and Romania accede in 2007, the Commission will then increase in membership to 27. Thus, by the implementation date for the Convention's proposals, there will be considerable experience of the operation of a much larger Commission.

The Commission President taking office in 2005 will have made whatever dispositions she or he believes to be necessary to allow the new Commission to discharge its functions satisfactorily.

The new Member States will, by 2009, have had a period of experience of operating as Member States, fully involved in the institutional life of the Union.

#### The Politics

The Governments of the Member States clearly attach a certain importance to

the fact that, so far, each has always known that there is a Member of the Commission for whom its country is the Member State 'which I know best'. There are reasons to suppose that this sentiment has a certain echo, however limited, in public opinion.

By the same token, there are no reasons to suppose that things might be any different in the new Member States in this respect. If anything, these considerations might count for more in the new Member States than in the 'old', at least for some period of years.

The Convention's proposals amount to saying to the accession States that they will designate a Commissioner for the remainder of the term of office of the Commission in existence on the date of accession and (in the case of the 'ten' but not in the case of Bulgaria and Romania) for the term of office of the next Commission and that they will thereafter take their places in the rotation for the designation of 15 'full' Commissioners. They are likely to find that rather an uncongenial proposition.

In circumstances in which 6 Member States (Belgium, Denmark, Ireland, Netherlands, Portugal and Luxembourg) are obliged to hold referendums on the proposed Constitutional Treaty and where 6 more (France, Finland, Hungary, Latvia, Poland and Slovenia) may hold referendums, it seems rather unwise to include an uncongenial proposal without any, or in advance of, clear evidence that it is really necessary or justified by the requirements of effective, well-informed and expeditious decision-making.

#### Conclusion

It is argued in some quarters that the accession States would like this issue to be settled now, so that they know what to expect in 2009. Against this, it can be argued that the certainty of a bad decision in the short term must be less attractive than the possibility of a better one in the medium term.

Common prudence and political reality would seem to suggest that it is neither necessary nor wise to advocate a fundamental change of the kind proposed in the composition of the Commission a full 5 years before the

question really arises, and in circumstances in which there is no objective experience on which to rely for guidance.

Alan Dukes, Director General  
Jill Donoghue, Research Director  
Irish Institute of European Affairs

## 4. Parallel developments

### The In-Stability Pact

The 'mauvais élèves' of October have turned into the political victors of November. France and Germany have broken the Stability Pact rules for three years in a row. Theoretically, therefore, they should be subject to huge fines. The Commission has been lenient with the delinquents, but recently began proceedings to discipline the wayward countries - leading to potential fines of billions of euros. The Eurozone finance ministers, after a late-night meeting lasting over nine hours, agreed to halt the Commission's proceedings, effectively waiving the fines.

The reactions to this decision were divided. Economists, such as Paul de Grauwe and Charles Wyplosz, believe that the Stability and Growth pact needed to 'die' - and be revised. From this perspective, the crisis only demonstrated the faults in the underlying economics of the pact - it lacked flexibility and was badly thought out in the first place. Now Germany and France can reduce their budget deficits and aid their flagging economies without the threat of sanctions. The German finance minister, Hans Eichel, believed it to be a "very reasonable" decision, and Schröder called it "a sensible compromise between the imperatives of budget consolidation and support for the signs of economic growth."

Perhaps the Stability Pact needed to be revisited, perhaps its lack of flexibility is a weak point that threatens economic growth, however, the negative political ramifications of the decision are immense. Austria and the Netherlands are furious. Spain and Finland also voted against France and Germany. The European Commission 'deeply regrets' the action taken by the finance ministers

and is threatening legal action in front of the ECJ.

The immediate strain is between the large and small states - Gerrit Zalm, the Finance Minister of the Netherlands, remembered that when discussions were held over the breaching of the Pact by Portugal and Ireland, "the decisions were made more decisively than when we are now dealing with France and Germany." This tension is threatening the constitutional process itself.

Prime Minister of Spain, José-Maria Aznar explicitly connected the crisis with the IGC. He said that "it is evident that this decision will have consequences for the work of the IGC. How could it otherwise? If the suspension of the application of a treaty can be decided merely by the Council of Ministers, imagine the importance of the discussion on establishing a qualified majority in the European Council."

Belgian Finance Minister Didier Reynders noted that "It will be rather difficult after all to explain that we absolutely want to respect the rules of this new treaty [constitution] at the same time as we are seeking blocking minorities to avoid applying the current treaty." And Zalm said, "In countries like the Netherlands, we may have a referendum on the European Convention and of course all this will be mixed up and it will be more difficult to convince people of Europe because of what is happening now."

Schröder has again warned that Germany would pay no more money into the EU budget in the next financial round - widely perceived as a threat to Spain and Poland to keep them from pursuing their desire to maintain the voting system from Nice. Initially portrayed as 'troublemakers', threatening to unravel the delicately balanced package produced by the Convention, Spain and Portugal are now seen as the champions of the rights of the smaller Member States and the governments boast about their new role.

However, the fallout from the Stability Pact decision is not limited to issues of voting. Other areas are also under threat from an increased atmosphere of distrust and 'bullying'. For

example, one EU official said, "If London, Berlin and Paris want to sell something about defence to the other 12 it will be an uphill struggle. There is a real distrust now, especially with France and Germany." As Graham Watson, the leader of the Liberal Democrats in the European Parliament, pointed out, "Citizens may well ask what is the point of agreeing new rules to run the European Union if the big countries will ride roughshod over them when the going gets tough."

The conclave did not reach any agreement on voting weights, but the spectre of the Stability Pact crisis did hang over the meeting. At the opening of a discussion on the draft Constitution, the Dutch Secretary for Europe, Atzo Nicolai, asked that budgetary discipline be anchored in the Constitution itself. However, the Italian Foreign Minister, Franco Frattini was resolved that the Stability Pact issue would not "encroach" on the talks over the Constitution. Meanwhile, the chairman of the ECB maintained that the Stability Pact was, like the plague victim in Monty Python and the Holy Grail, not dead yet.

[EU Observer](#)

[Euractiv](#)

[Le Figaro](#)

[Le Monde](#)

[FT](#)

[The Times](#)

### Defence

The long-awaited conclave may not have produced a final version of the constitution, but a 'breakthrough' was achieved in the area of defence. In fact, for the entire month of November, European defence and all things military remained high on the political agendas of European leaders. Earlier in the month, at the 17 November meeting, defence ministers agreed to form a European defence agency. This new agency is intended to "help Member States improve the large gap between theory and reality in their defence capabilities." Firstly, however, it will most likely identify the areas that fall in that gap: lack of equipment and finances. Initially, it looked as though these very 'gaps' that the new agency is designed

to discover would support the British position that a separate military headquarters for the EU is unnecessary. However, regardless of its necessity or financial plausibility, some measure of agreement appears to have been reached at the conclave on the creation of a separate EU military planning facility.

The deal, of which the details are not yet available, appears to accept the creation of an independent EU military headquarters while rejecting the inclusion of a mutual defence clause in the EU Constitution. Although the Blair Government has been generally against the idea of a separate HQ, the UK government has also been particularly concerned with the wording in Article I-40(7) of the draft Constitution which provides for 'mutual defence'. This concept could change the primarily peacekeeping and humanitarian nature of European military action to a defence role that may threaten the EU's relationship with NATO. The UK government has insisted on the 'scaling back' of this clause. The Italian Presidency produced, in its original 'package', an amended I-40(7) which removes the words 'mutual defence' from the text of the Article and inserts the assertion that "Commitments and co-operation in this area shall be consistent with commitments under NATO, which, for those States which are members of it, remains the foundation of their collective defence." However, both the package and the document on defence coming out of the Conclave include the words 'mutual defence' in the heading of the sub-Article - "closer co-operation on mutual defence". So room may remain for further debate on this issue.

The rewriting of clause I-40(7), particularly regarding NATO, is consistent with the agreement set out by Tony Blair and Jacques Chirac during their summit in London, on 24 November. Blair and Chirac agreed to a 'hierarchy' of European forces. Downing Street asserted that "the first choice is always NATO", and that this would be followed by a joint NATO-EU force, with an EU force in third position. In his press conference with President Chirac, Blair stated: "There is nobody I

know in Europe who wants to see European Defence go forward at the expense of NATO. NATO will remain the cornerstone of our defence."

Given these other 'assurances' the creation of a European military headquarters might not be as big a threat to NATO as originally considered by the UK. In addition, the plans, leaked to the press before the UK had a chance to show them to the US, are a scaled down version of the earlier ideas presented by France, Germany, Luxembourg and Belgium in April. Nonetheless, it is not likely that the US will view them favourably. In his 18 November meeting with EU defence ministers, Colin Powell, while highlighting the continued importance of NATO in European security, indicated that the US was more comfortable than it had been with plans for a European defence capability. It may no longer be so. NATO is planning to examine the 'defence breakthrough' in the first few days of December. Some are referring to the plan as a 'Trojan Horse', and with Donald Rumsfeld representing the US at the meeting, a tough line is likely.

At the conclave at Naples, the Italian Presidency presented a revised version of Article III-213, which outlines the governing provisions of structured co-operation. The amended Article envisaged a minimum number of Member States necessary for the setting up of structured co-operation and provided for decisions on setting up as well as future membership of the avantgarde group to be taken in the whole Council by qualified majority, rather than by the avant-garde group alone. In a new Presidency text, produced on 1 December after the conclave, there are no minimum number requirements. The permission to set-up a structured co-operation group remains with the Council, by qualified majority, but future membership can be arranged by the new group, after consultation with the EU Foreign Minister. All other decisions concerning structured co-operation will be decided among those States participating.

Whether or not the new text indicates an agreement or consensus is not clear.

The UK is putting a different spin on the conclusions reached, as Foreign Minister Jack Straw has said, "structured co-operation is not about the running of military operations, it is about a group of countries getting together to develop their capabilities. ... Decisions on whether to mount any military operation, could only, and will only in the future be made in the European council by unanimity." This statement seems to be in opposition to the wording of the 1 December document on defence.

In a different, yet related area, the UK government is not pleased with the Italian Presidency's proposal to expand qualified majority voting for foreign policy decisions - crossing one of the UKs 'red lines'. One British spokesperson said, "this idea only appeals to federalists or to countries which don't have any foreign policy of their own." Although Britain expects France to support the removal of the proposal, Germany, Belgium, Luxembourg and Greece are in favour of the expansion.

[EU Observer](#)

[PMOS](#)

[PMOS](#)

[Epolitix](#)

[Telegraph](#)

[FT](#)

[Defense \[CIG 57/03 PRESID 13\]](#)

### Is it serious, or was it the moonlight?

The Franco-German romance seems to be blooming. Jean-Pierre Raffarin and Dominique de Villepin are rumoured to be contemplating a core Franco-German union which would merge foreign and defence policies, and increase co-operation on education and the economy. Although Jacques Chirac has downplayed the idea, De Villepin referred to such a union as the "only historical gamble we cannot possibly lose." Joschka Fischer has said, "The draft (constitution) is a tremendous step forward. If it is blocked, history will not wait. Things will move forward. We'll have different goals. Some Member States will be in at all costs." Not all German politicians are so sanguine -



Edmund Stöiber does not think such a union “could become reality” - but certainly, France and Germany are in a period of ever-closer integration. Whether France and Germany would carry on into an unknown, integrated future should the constitution talks break down is unclear, but the possibility of their doing so may influence some of the smaller states in the IGC.

[EU Observer](#)

[Le Monde](#)

[FT](#)

## 5. UK Debate

Public commentary on the draft EU Constitution in the UK has taken on a somewhat schizophrenic nature. Certain members of the Blair Government, specifically Gordon Brown and Jack Straw, have questioned the draft Constitution this month. Jack Straw's comments were perhaps the oddest, as he claimed, though highly desirable, it was “not absolutely necessary to have a treaty,” and that “life would go on” without the Constitution. The Prime Minister distanced himself from these comments - which were in marked opposition to Blair's own words to the Confederation of British Industry, on 17 November, in which he stated that without a new constitution, the EU would “grind to a halt”. The CBI has itself expressed strong concerns about the draft Constitution, adding that “week by week changes to the constitution are no good for business.” The CBI wants assurances that the Charter of Fundamental Rights, which includes a ‘right to strike’, will not override British laws requiring ballots before industrial action.

In the Queen's speech, the Government announced that it would bring forward legislation to ratify the EU Constitution during this Parliamentary term, an action which some see as ‘rushing the constitution through’. In contrast, the speech stated that regarding the euro, a draft bill would be published to enable a referendum. Shadow foreign secretary Michael Ancram has said that the speech provided for “the wrong referendum”

and that “the legislation on the European Union is a poor substitute for a bill calling for a referendum on the EU Constitution.” As part of their efforts to show that a referendum on the EU Constitution would be unnecessary, the Government has promised the Constitution will be given detailed scrutiny. However, compared to the scrutiny given by both Houses of Parliament to the Convention, the scrutiny thus far on the IGC phase of deliberations has been relatively lacklustre - oral evidence from the Foreign Office has been rare. The European Scrutiny Committee did hold an oral evidence session on 19 November on the Commission's Annual Legislative and Work Programme, and a session is scheduled for 5 December on fisheries and animal welfare in the draft Constitution. A 29 October report on the draft Constitution and the IGC has yet to be debated in the Lords. Of course, the process may be re-invigorated when (and if) an actual final version is produced.

The unique position of the UK in geopolitics was highlighted this month by the visits of Bush and Chirac. High on the agenda in both visits was the future of European defence, which has been discussed above in [Parallel Developments](#).

[Independent](#)

[The Times](#)

[European Scrutiny Committee](#)

[Vote 2004](#)

[E-Politix](#)

## 6. Forthcoming

Two further meetings of the IGC are scheduled for December: the first is a ministerial meeting on 9 December, during which ministers will continue to prepare a revised package for the final IGC meeting of EU leaders, on 12-13 December. Obviously, the big question is will agreement be reached in December? Austrian Benito Ferrero Waldner seems optimistic that the deadline set by the Italian Presidency will be met - but the intransigence of the Polish and Spanish on the vote weighting issue may preclude a final agreement.

Many voices were raised through November (from the Commission, Party Groups at the European Parliament, national parliament representatives at the Convention to the odd government representative) that governments at the IGC are undermining the compromises achieved at the Convention and putting at risk the substantial novelty of the whole revision process. Giuliano Amato and other members of the Convention, including Elmar Brok (who has replaced Iñigo Mendez de Vigo as the EP representative at the IGC) and Andrew Duff, launched a campaign to save the draft EU Constitution from emasculation at the hands of the Member States. This group demonstrates the continued relevance of the Convention itself as a political player in the IGC debate. On 5 December, old Convention members will get together again to assess the situation in the IGC. German Socialist MEP Jo Leinen has called on Convention members to come together to fight for the Convention's ‘consensuses’. The examples of overturning the Convention's *acquis* are quite numerous. Perhaps the most striking one emerged at the end of last month when the ECOFIN Council submitted to the Italian Presidency changes to the Convention text, challenging economic and existing budgetary provisions beyond the amendments proposed by the Convention, such as changes in the rules for the adoption of the multi-annual budget, etc. (See [October Newsletter](#)) The European Parliament has threatened to take action if its powers are curbed in a departure from the Convention's draft.

Given the likelihood that talks will continue into the new year, the Irish Presidency has already spelled out some of its aims for its tenure. Irish President Mary McAleese said that Ireland will “attempt to be an effective and impartial arbiter”, acting in the interest of the European Union as a whole. She said that Ireland will continue to promote the Lisbon agenda and will continue accession negotiations with Bulgaria and Romania. McAleese also said that external relations would be a key element of the Presidency, with Ireland's history making it an “effective bridge to the United States, home to so many Irish

emigrants." In fact, President Bush is expected to attend an US-EU summit towards the end of Ireland's Presidency. However, given Ireland's reluctance to host the leaders of the 25 Member States for the accession celebrations on 1 May due to the terrorism threat, it is not clear where such a US- EU summit would take place.

[EU Observer](#)

[Irish Independent](#)

[The Guardian](#)

[FT](#)

[Speech by Barnier before the EP](#)

[Address by Under-secretary for Foreign Affairs Roberto Antonione to the European Parliament on the state of progress of the IGC, Brussels, 5 November 2003](#)

## 7. Making it Our Own

*Making it Our Own is a trans-European proposal on amending the draft Constitutional Treaty for the European Union. It responds to calls by the Nice Treaty, the Laeken Declaration and the Convention itself for input from academia in the writing of a Constitution for Europe.*

As the tension rises in the Intergovernmental Conference, with the European Council meeting later in December looming ever closer, progress towards agreement on most of the outstanding issues in the draft Constitution seems to have slowed to a snail's pace. On many questions, Member States appear to be flatly refusing to cross their red lines. The prospect of discussions on QMV being postponed until closer to a deadline day in 2009, until which point the Nice arrangements would apply, seems a recipe for disaster. It would require another intergovernmental conference, just a few years after the current one, and perhaps only a very few years after the ratification process has been concluded (assuming it is successful). Such a solution would be contrary to the spirit of the Laeken Declaration. It would throw away the hard work done by the Convention to find balanced solutions to conflicts which have already proved to be intractable in the context of intergovernmental conferences. Why should either this IGC, or one in a few years in the future be expected to

succeed where Nice, for example, had failed? The only way forward seems to be through accepting the spirit of consensus which imbued the imperfect but at least workable Convention compromise.

This seems to have been the spirit also in which the Italian Presidency has drawn up the document which it presented to the conclave of Foreign Ministers in Naples on November 28/29. The Italian Presidency document generally suggests a light touch *vis-à-vis* what we might call the 'Convention *acquis*'. It is becoming increasingly clear that the processes which led to the Convention's outcomes in areas like institutional reform, not to mention some of the final elements put in place to placate France and Germany in the last days of discussion on Part III of the draft Constitution were very different to those, involving successive working groups and plenary discussions, which shaped the provisions, for example, on the simplification of instruments. As a result of how the Convention endgame played out, some Member States may have felt 'steamrollered' by a juggernaut driven by Giscard d'Estaing, ably assisted by Jean-Luc Dehaene and Giuliano Amato sitting alongside him in the cockpit. The small Member States certainly objected to the removal of 'their' Commissioner, despite all the rational arguments about a more effective and collegiate Commission being limited to those persons with meaningful portfolios in the light of the current state of EU competences and about the Council of Ministers being the place where national interests are asserted. Poland and Spain objected vehemently to the 'simplification' of the form of qualified majority voting, with the Convention opting to propose that a qualified majority should be constituted by a majority of Member States representing three-fifths of the population of the Union. This means the removal from the Treaty of weighted voting, for the first time since the inception of the Communities in the 1950s. The weighted voting, henceforth, will be the weight of population. Yet arguably it is the smallest states, not the medium-large states like Spain and Poland which have most to

lose from such a system. However, their objections have not been so strongly felt. Perhaps they thought that this was not the point to fight upon, given their desire to push for the restoration of one Commissioner per Member State. Even so, it is clear that there are few Member States willing actively to defend the new proposed system of qualified majority voting. Germany is probably too embarrassed because it stands to gain most. The UK is restricted by a strategic desire to keep Spain inside in relation to *its* red lines in relation to the retention of unanimity. Consequently, it would seem that both the suggested smaller Commission *and* the new system of qualified majority voting may be, at least *pro tem* the victims of what happens when the IGC method has to take over from the Convention method.

Is there a case for separating these two issues out? The drafters of a set of amendments to the Draft Constitutional Treaty, for which they have sought and gained more than one hundred signatories in many different countries, certainly think so. *Making It Our Own* is supportive of the general idea that amendment of the Convention's end product should be light touch. The document suggests three types of amendments - stylistic, legal and normative. Under the category of normative improvements, the drafters and signatories claim to have found a group of amendments which are normatively superior to the provisions suggested by the Convention. Both the size and composition of the Commission and the nature of QMV are suggested for amendment. We suggest that the European Commission, although not a representative institution, should none the less be composed of one national per Member State. One interesting facet of the Convention debate was how it brought to the fore the arguments for retaining the larger Commission, namely the symbolic importance - at this juncture of the EU's history - of a system whereby all states have one Commissioner. It does not suggest we should return to the current unequal system in which states have *at least* one Commissioner, which in practice has meant two for the large states and one

for the small ones. We recognise the value of having all Union nationalities within the College of Commissioners in terms of local knowledge and legitimacy in relation to the functioning of the Commission, as well as the political sensitivities involved in reducing the College at this point in time, with Enlargement impending within months. None of the suggested forms of reduction, including non-voting junior Commissioners, are successfully thought through in the Convention's proposal, and they would cause, in our view, more problems than they solve.

Turning to the question of QMV, we propose - far from readopting the discredited compromises of Nice - the further pursuit of the logic of the dual majority system proposed by the Convention. We suggest that where decisions are taken by a qualified majority, this should be composed of a majority of Member States representing a *majority* of the population of the Union. It is the easiest system for Union citizens to understand. Second, we think it is important to draw attention to why the population verification system (62%) was introduced at Nice. This was precisely in order to counterbalance some of the inequities of the reweighting of votes undertaken at that time. If the inequitable weighted vote system has gone, there is no reason not to place the population verification measure at its most logical point - the majority. There is still the requirement of a *dual* majority. This, surely, is sufficient to guarantee the interests of minorities, without bringing deadlock to the legislative system in an enlarged Union.

We believe, in sum, that these two *canards* which divide the Member States at the present time can be separated in normative terms. We advocate dropping the Convention's reduction of the size of the Commission, but strengthening its approach to QMV. The Italian Presidency proposals go halfway with us, at least in relation to the size of the Commission. It is clear that the sympathies of the Italians at least are with the proposal to change the system of QMV, even if they do not follow our logic of majoritarianism.

There is much besides in our document, including a proposal simplifying the Preamble on stylistic grounds, revisions of the Convention's approach to the issue of competences on grounds of the legal uncertainty generated by the current approach, and a proposal on future revision to break deadlocks which might be caused in the future by one or more Member States experiencing difficulties with ratifying future amendments to the Constitution.

Dr. Kalypso Nicolaidis and Professor Jo Shaw  
[Making it our own \[Version 2.0, 20 November 2003\].](#)

**8. News from the EU Constitution Project UACES/Federal Trust Study Group: Workshop III: 'What Union after the IGC 2003?'**

16 December 2003, British Institute for International and Comparative Law.

The Workshop will look at progress at the IGC. Speakers include Kalypso Nicolaidis, Andreas Føllesdal, John Kerr,

William Wallace, David Phinnemore, Tony Brown, Kirsty Hughes and Quentin Peel.

Please note that the final panel of the day will consist of an open panel discussion session which will be conducted on the basis of submitted questions and questions and comments from the floor. If you would like to submit questions to our panel for debate please send them to us. We will distribute them before the Workshop, and we will try to address as many as possible.

If you would like to register for the Workshop, send us an email: [constitution@fedtrust.co.uk](mailto:constitution@fedtrust.co.uk)

[Programme](#)

**New Constitutional Online Papers**

Tony Brown, National Parliaments in European decision-making: A real prospect or wishful thinking? Paper no 31/03

Neil Walker, After the Constitutional Moment, Paper no. 32/03

Richard Bellamy and Justus Schonlau, The Good, the Bad and the Ugly: the need for constitutional compromise and the drafting of the EU constitution, Paper no. 33/03

Paul Magnette, Why and How Arguing in a Constitutional Convention? Paper no. 34/03

Branko Smerdel, The Convention on the Future of Europe and the Process of Constitutional Choice, Paper no. 35/03

Brigid Gavin, From the Convention to the IGC: Visioning the Future of Europe, Paper no. 36/03

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**9. Web corner  
IGC Watching**

What are the major sites following the IGC?

IGC documents are available on the Italian Presidency website [www.ueitalia2003.it](http://www.ueitalia2003.it) or in the Council website <http://ue.eu.int/igc/index.asp?lang=EN> and of course, The Federal Trust - EU Constitution site [www.fedtrust.co.uk/eu\\_constitution](http://www.fedtrust.co.uk/eu_constitution). Our IGC section puts together the IGC calendar with commentary and links to original documents.

For regular commentary on the development/progress of the IGC:

- [Tomorrow Europe - European Social Observatory](#)
- [IGC Watch - Irish Institute of European Affairs](#)

**Online Papers**

*Stiftung Wissenschaft und Politik (SWP)*

This site contains [Papers](#) and a section devoted to the reform of the EU and the IGC. ([EU Reform Papers](#)).

*Deutsche Gesellschaft für Auswärtige Politik (DGAP)*

[Papers](#) to download.

**New books relating to the Convention process:**

Peter Norman (2003) *The Accidental Constitution: The story of the European Convention*, Eurocomment. Review by John Kerr, [Financial Times](#)

Lynn Dobson and Andreas Føllesdal (forthcoming 2004) *Political Theory and the European Constitution*, Routledge.

**10. External events**

**The Irish Presidency of the European Union**

Conference organised by the Institute of European Affairs, and Trans European Policy Studies Association (TEPSA), 5 December 2003, Dublin Castle.

[Programme](#)

**Europe: Old and New**

Joint EPRU / MMU / JMCE Seminar, University of Manchester, 5 December 2003, 9.30am-4pm.

Contact: [Adrian.Jarvis@man.ac.uk](mailto:Adrian.Jarvis@man.ac.uk)

**Workshop 'Governance and Civil Society'**

11/12 December 2003, University of Trento, Italy.

Contact: [am.eu@soc.unitn.it](mailto:am.eu@soc.unitn.it)

**Round table of UK Ambassadors to the EC/EU since 1973**

9th January 2004

European Research Institute at the University of Birmingham (ERI) Seminar held at the Institute of Directors, London 2.30 - 5.30pm.

Contact: [c.s.bowman@bham.ac.uk](mailto:c.s.bowman@bham.ac.uk)

**UACES Study Group: The Europeanisation of British Politics and Policy**

University of Sheffield, 16 January 2004

Contact: [i.bache@sheffield.ac.uk](mailto:i.bache@sheffield.ac.uk)

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