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Note from the editor

From 2006 onwards this Newsletter will be published bi-monthly. It will continue to monitor and analyse institutional and political developments in the European Union, with a particular interest in any developments relevant to the future of the European Constitutional Treaty. It will regularly feature contributions from expert commentators on current European issues. Back issues are available at http://www.fedtrust.co.uk/european_newsletter.

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1. The UK's six months at the EU's helm: A triumph of substance over style?

The UK's Presidency of the EU was not a disaster. The UK Presidency achieved a large part of its planned agenda and the agreement brokered by the Presidency on future financing, together with to the opening of membership negotiations with Turkey, were both substantial achievements. However, the style in which the Presidency was conducted has damaged the UK's standing among other member states in the EU. The UK handled the future financing negotiations in a somewhat brusque fashion and many (especially the most recent) member states are still bearing bruises - and grudges.

The UK Presidency commenced on 1 July against the backdrop of 'no' votes in France and the Netherlands on the Constitutional Treaty and an acrimonious summit under the Luxembourg Presidency in mid-June which failed to reach a deal on the EU budget. For many commentators the EU was in deep crisis. However, in an inspirational speech to the European Parliament on 23 June Prime Minister Tony Blair performed a remarkable exercise in (briefly) boosting morale and raising expectations that the UK was to initiate a far-reaching debate on the future of European integration. But the speech, which was universally praised across Europe, was not systematically followed up by the UK government and was an early source of disappointment for other EU member state governments.

The Federal Trust for Education and Research

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...is a think tank that studies the interactions between regional, national, European and global levels of government.

Founded in 1945 on the initiative of Sir William Beveridge, it has long made a powerful contribution to the study of federalism and federal systems.

The failure of the Prime Minister to follow up on his June speech on the future for Europe left the impression that the UK is content with the EU's current status quo – and with the Constitutional Treaty being consigned to history. It was unfortunate that the UK did not use its Presidency to challenge such an impression by using the 'period of reflection' agreed by EU Heads of State and Government in the aftermath of the no votes to canvass opinion on the prospects for the Constitutional Treaty and to hand to its successor Austrian Presidency thoughts on how to take the issue forward.

What makes a good EU Presidency?

A dysfunctional Presidency has a significant impact on the EU's effectiveness. The UK as EU Presidency had few formal powers with which to directly influence the agenda. As with all Presidencies it was the conductor of the EU's business and played a key role in advancing the EU policy agenda during its term of office. The formal responsibilities of the UK EU Presidency were to act as chair for Heads of State and Government, ministerial and other committee and working group meetings, to represent the Council of Ministers to the European Parliament and the European Commission and to act as EU representative vis-à-vis third countries and within international organisations. Consequently the UK Presidency was essentially a cheerleader for a well-established programme, rather than a powerful executive position. The UK Presidency was generally successful in handling its role in chairing the ministerial, committee and working group meetings of the EU. This role represents a significant logistical and organisational challenge for the Presidency and there have been no criticisms of the UK's handling of this burden or its role in acting as the EU's representative in dialogue and summits with third countries. An exception to this efficient operation related to the logistics for the informal foreign ministers' meeting held in the UK in September. These provoked complaints and resulted in an apology from the Presidency.

Complaints of a different nature were directed towards the UK Presidency with regard to the agenda for the informal summit of Heads of State and Government at Hampton Court on 27 October. For many new member states the Hampton Court meeting was an exercise in Presidential filibustering, with the UK playing for time on the budget issue that these member states felt was of the most pressing concern. There was, however, an important new initiative at the summit with Prime Minister Blair calling for an EU energy security policy. The successful development of such a policy will fall to future EU Presidencies.

The work programme for the UK's six-month Presidency is a part of the Multi-annual Strategic Programme for the period 2004–6, designed for the Irish, Dutch, Luxembourg, UK, Austrian and Finnish Presidencies. Multi-annual Presidency work programmes are agreed because, at best, a Presidency can only start, move forward or conclude the EU's agenda. Six months is too short a period in office to see policy or legislation fully devised or implemented. A more detailed Operational Programme of the Council for, fleshing out the timetable for implementing this strategy, is submitted jointly by both member states holding the Presidency in any given year. In 2005, the operational programme was submitted by Luxembourg and the UK and outlined intended progress on the Lisbon Agenda, Justice and Home Affairs, enlargement and foreign and security policy.

The UK wanted to place a particular emphasis on resurrecting the Lisbon Agenda during its Presidency. The capacity for the Presidency to advance progress in this area was limited but progress was made under the Presidency in the field of better regulation, and there was significant progress on the reforms of chemical regulation (REACH), as well as development of the Financial Services Action Plan. The Services Directive advanced a little further. This was good news for the Presidency's agenda, but the direct role of the UK Presidency in these developments was minimal. Other actors such as the European Commission and the European Parliament were much more significant. This is a good illustration of the fact that although

achievements can be ascribed to a Presidency they are not of its own making. The influence of the UK Presidency was clearer still in the stalling of discussions on the Working Time Directive. This represents a victory of British interests over those of the EU as a whole but succeeding Presidencies will return to the issue.

The UK government was also in the unusual position of holding the G-8 Presidency alongside its EU Presidency (its sixth EU Presidency, and its second under the Blair government). There was, however, little real linkage between these two Presidencies because of the very different nature of the decision-making processes in the two organisations. The G-8 Presidency provided an opportunity to focus on the big themes of Third World poverty and climate change, and to work for progress in these key areas with some of the most internationally significant states. The EU Presidency is much less glamorous since it requires working in a much more circumscribed manner in a more complicated set of institutional arrangements and with more limited objectives. The UK tended to treat the G-8 Presidency as something to be celebrated; and the EU Presidency as something to be endured.

As for all Presidencies the UK also faced the challenge of managing the EU's response to external events and unexpected developments within the EU. The UK has faced both the domestic challenge of the London bombings on 7 July and the German general election in September, with the subsequent prolonged process of a Germany preoccupied with building a coalition government. During the Presidency there was disappointing progress on the Doha Round of WTO negotiations and the Montreal Conference on climate change was of mixed success. But significant progress was made in reaching an 'open skies' aviation agreement with the Bush Administration.

Perhaps the most important achievement of the UK Presidency was take the EU from mid-year crisis at the start of its Presidency to a sense of normality at its end. On the positive side, there was an advance towards key strategic objectives such as enlargement with the agreement on accession

negotiations for Croatia, the recognition of Macedonia's candidate status and Stabilisation and Association Agreement negotiations opening with Serbia and Montenegro and Bosnia and Herzegovina.

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A detailed examination of the UK EU Presidency, *Two Cheers for the UK EU Presidency* can be found at www.chathamhouse.org.uk/europe

2. Transparency in the Council of Ministers

Introduction

One of the more unexpected outcomes of the UK Presidency were the Conclusions on improving openness and transparency in the Council of Ministers adopted at the end of December. Although steps towards extending transparency had been trailed in Tony Blair's speech to the European Parliament in June 2005 and in earlier Presidency Documents, informal responses from officials involved in the UK Presidency to questions put to them during the course of Autumn 2005 seemed to emphasise that the politics of this question were 'complex' and might not result in a positive outcome. From late November through to mid December discussions about the Financial Perspective for 2007-2013 totally dominated all public and press discussions of EU affairs. However, steady progress on at least a limited outcome in relation to transparency was being made behind the scenes in the Antici Group (which prepares the work of COREPER I). The Group agreed a set of draft conclusions which were eventually adopted unchanged by the Council itself, without discussion, as an 'A' point on 21 December 2005 at – bizarrely – the Agriculture and Fisheries Council.

What has the Council of Ministers changed?

In its preparatory document in November 2005, the UK Presidency had suggested a number of options that could be taken by the Council in relation to transparency. The current position, in law, is governed by Article 8 and Annex II, Article 11 of the Council's Rules of Procedure, and this position and the steps taken hitherto to ensure implementation of this policy are set out in an annex to the Presidency's preparatory document.

In the initial phase of law making, the oral presentation by the Commission of its most important proposals subject to co-decision, and the ensuing debate in the Council, are held in public, and a list of such proposals is adopted by the General Affairs Council at the beginning of each Presidency. In the final phase, the formal vote on co-decided acts and the final Council deliberations leading to that vote (political agreement) are televised. The Council also holds at least one public debate on important new legislative proposals not subject to co-decision, and Council or COREPER decide by a qualified majority vote what should be discussed. There is no publicity for the final deliberations or the vote, if there is one. Televising and the relay of television pictures to an overflow room open to the public is the current means of 'making public' Council deliberations, and from November 2005 the outcome of a vote is indicated on a board in the meeting room of the Council visible on a television screen in the overflow room. From the second half of 2006, Council deliberations which are televised will be available via video-streaming on the internet, as are Parliamentary meetings already.

In relation to non-legislative activity, the Council holds brief public debates on its annual operational programme, and provision is made for the Council to hold further public debates on important initiatives. The UK Presidency drew attention to the fact that a public debate on 'Better Regulation' was held at the Environment Council meeting in November 2005.

Public debates are backed up by the access to documents policy of the Council, in accordance with Regulation

No. 1049/2001, under which the Council declares that it has a policy of making available, in response to requests, the full content of documents. This includes the differing positions of delegations (whilst withholding the identity of delegations), during the course of the legislative procedure, and making available all preparatory documents after the final adoption of a legal act. However, this is subject to the exceptions laid down in Article 4 of the Regulation on access to documents relating to matters such as public security, defence and military matters, international relations, commercial interests, and courts proceedings. Those seeking access to documents have found that these exceptions are interpreted in practice rather broadly by the Council.

The Council Conclusions adopted in December 2005 make no formal changes to this policy, but reiterate the existing policy in order to stretch its limits a little. All rather than just 'the most important' co-decision legislative proposals will be subject to initial public deliberation, and public deliberation on the final phase. Plus, under point 3 of the Conclusions, COREPER is invited to consider when drawing up the agenda for each Council session, 'making deliberations on co-decision items at the Council, in addition to [those noted above] open to the public in accordance with Article 8(3) of its Rules of Procedure.' Presumably this envisages more public deliberation throughout the legislative process, including more preliminary exchanges of view which are presently not visible to the public, but there is nothing to guarantee it will happen. Under point 5 of the Conclusions, the Council commits itself in future to 'hold more debates in public on important new legislative proposals on items other than those covered by the co-decision procedure.' This could lead to additional transparency in policy areas such as agriculture, economic and monetary union and justice and home affairs being subject to public deliberation. In relation to non-legislative work, under point 6 'the Presidency may propose that the Council may decide that its deliberations on non-legislative items be held in public if they involve important issues affecting the interests of the Union and its citizens.' This holds the prospect for foreign policy

discussions to be held in public – but that seems a rather distant prospect given the historic practices of the EU of secrecy in this area. Items for public deliberation are to be grouped together on agendas, and the general public and the press are to be informed in advance of upcoming public discussions by announcements on the Council's website. Video-streaming will go online as planned during 2006.

The member states as a whole contented themselves with a weak review clause in the Conclusions inviting the Council to assess the functioning of the measures taken during the Austrian and Finnish Presidencies, indicating that the Council will reflect on all options in the future, including amending the rules of procedure. Sweden and the Netherlands went rather further in a Declaration annexed to the Council minutes, stating that:

'The Netherlands and Sweden welcome as a first step the practical measures to improve openness and transparency of the Council's formal sessions. Sweden and the Netherlands underline the need to go beyond these practical measures to fully meet the demands for increased transparency from both EU and national institutions and from citizens. These demands could be met by making all stages of the Council deliberations on legislative acts open to the public as a general rule.'

Commentary

The pressure has been building for some time for increased action on the part of the Council of Ministers in relation to transparency. The Council fought vigorously against the investigation of a complaint made by Elmar Brok MEP, the CDU in Germany, and a representative of the youth group of the CDU to the European Ombudsman. The Ombudsman, however, published a special report in October 2005 finding that the Council's failure to open all its meetings dealing with legislative matters to the public by means of a simple amendment to the Council's Rules of Procedure constituted an instance of maladministration

Of course, the Ombudsman's finding changed nothing formally, and the Council has clearly not accepted that it should act directly upon the finding. The

Ombudsman's intervention, however, drew further attention to one element of the Constitutional Treaty which is ripe, it could be argued, for pre-emptive implementation. Article I-24(6) CT provides that:

'The Council shall meet in public when it deliberates and votes on a draft legislative act. To this end, each Council meeting shall be divided into two parts, dealing respectively with deliberations on Union legislative acts and non-legislative acts.'

It is arguable that such pre-emptive implementation is not cherry-picking, as such, but just an incremental step along a route towards increased transparency agreed upon back in the early 1990s, when the member states attached a declaration to the Treaty on European Union stating that:

'The (IGC) considers that transparency of the decision-making process strengthens the democratic nature of the institutions and the public's confidence in the administration...'

Furthermore, the European Ombudsman, making it clear that his Report was based on the existing not the prospective law of the European Union, made great play of the commitment in Article 1 of the Treaty on European Union, which entered into force back in 1993, that in future the Union should be as open as possible, and bring itself closer to the citizen. He argued that developments in European integration since 1993, including the progressive opening of certain debates in the Council of Ministers to public view, mandate that further steps towards transparency should now be taken.

In fairness, it should be pointed out that while some commentators might assess movement towards greater transparency in the European Union as obvious steps towards the democratisation of the Union, others can with equal conviction characterise them as illegitimate 'cherry-picking'. The nature of the characterisation chosen tends to depend upon the underlying perception of those commenting regarding the desirability or not of European integration as a whole, and of the Constitutional Treaty and the constitution-building process in particular.

Of course, transparency in the Council of Ministers is not the only currently sensitive issue. The European Ombudsman has recently announced that one-fifth of the complaints that he receives are concerned with secrecy in the EU institutions. While the Commission frequently claims that it is actually a very transparent institution, it has none the less launched a wider European Transparency Initiative. Lively discussions have ensued between stakeholders about creating more transparency in relation to the lobbying of the institutions (so that it becomes clearer who is exercising effective influence in relation to policy-making), in relation to the grants from Community Funds (including the task of making it clearer within the member states who benefits from EU funding), and in relation to contracts with the institutions, e.g. for the provision of services. A Green Paper will be issued in early 2006 on this question, and its contents have been trailed by an internal Commission Communication from President Barroso and other senior Commissioners responsible for transparency and communication issues such as Siim Kallas and Margot Wallström. The fact that the latter two figures promoting transparency are Commissioners from Scandinavian countries is not coincidental. These member states have a strong tradition of open government to uphold, and Sweden attached its name to the strongly worded declaration attached to the Council minutes noted above.

Conclusions

The paradox about the Council's Conclusions on openness in Council meetings (aside from the fact that it is by no means clear to what extent they are genuinely innovative) is the fact that they were adopted without debate at the political level as an A point. So even if television cameras had been there to see this incremental step (rather than momentous stride) in the gradual opening up of political deliberations in the Council of Ministers, viewers would have been left none the wiser about either the individual positions of the member states (with the exception of the Netherlands and Sweden as noted above) or the reasons given for adopting the precise formulations chosen. That

irony goes to the heart of the debate about transparency. Unless citizens can know and understand the public reasons exchanged by member states in their deliberations, they can never fully understand the acts adopted, whether legislative or non-legislative. Knowing and understanding will not necessarily make citizens more content about what the EU is doing, or more accepting of the supranational level of governance generally, but it will at least mean that there is less scope for the type of ill-informed debate which seems to dominate most media outputs on the EU, its institutions, its policies and its politics.

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Notes

¹ Minutes of the 272nd Session of the Council of the European Union, Council Conclusions on Improving Openness and Transparency in the Council, 15834/05 + ADD1, 21 December 2005.

² Note from the Presidency to Delegations on Transparency in the Council, Dec. 14495/05, 18 November 2005.

³ In the case of the UK Presidency, see Document 10101/05 REV1, 13 July 2005.

⁴ A member of the Presidency team commented to me informally that 'real' public access could be improved simply by signage in the Council of Ministers building aimed at the public as well as just the press.

⁵ See Articles 8 and 9 of the Council's Rules of Procedure of 22 July 2002, OJ 2002 L230/7. The original provisions were introduced in 2000, and then amended reflecting a compromise reached at the European Council in Seville.

⁶ Use your right to complain, says the European Ombudsman, Press Release 16/2005, 6 December 2005, <http://www.euro-ombudsman.eu.int/release/en/2005-12-06.htm>.

⁷ Proposing the Launch of a European Transparency Initiative, Memorandum to the European Commission, http://www.eu.int/comm/commission_barroso/kallas/doc/etik-communication_en.pdf; details of the Commission's transparency policy can be found at http://www.eu.int/comm/commission_barroso/kallas/transparency_en.htm.

3. Beyond the Constitution

The course of events leading to the establishment of the Convention about the Future for Europe is well-known and needs no further clarification. This article takes as its starting point the question contained in the Declaration of Laeken (2001) 'whether the Union, in view of the forthcoming enlargement with 10 new member states, would not have to receive a constitutional text and, if so, what the basic elements of such a constitution ought to be' (*italics added*).

The desire for a constitution has been expressed already in the first half of the 20th century. Even before World War II the Spanish philosopher Ortega y Gasset devised a blueprint for a federal Europe and after the war several draft Constitutions for Europe have been presented. The Treaty for a European Political Community which was concluded in 1953, came close to the realisation of that ideal, but it sunk into oblivion after its counterpart, the European Defence Treaty, had been abandoned by the French Assemblée Nationale in August 1954. Although the process of European integration continued in a completely different manner than the federalists had envisaged, the idea of a Constitution for Europe emerged time and again. The Convention, which was convened as a result of the Declaration of Laeken to draft such a text, came up with an entirely new juridical concept. It devised a constitutional treaty, or in formal language, a treaty establishing a constitution. This new juridical instrument was unfortunately presented to the citizens as a 'normal' constitution. With the benefit of hindsight it can be argued easily that it was a major mistake from the part of the European institutions to disguise their legal innovation of a constitutional treaty under the veil of a traditional constitution. This was aggravated by the fact that the subtlety of the term constitution was lost in translation. Consequently, the referendum campaign in a country like The Netherlands largely focussed on the question whether the European Union should get a 'Basic Law' (*Grondwet*) or not. It would be unfair to blame the government of the day in The

Netherlands for the defeat in the referendum. The original sin lies in the decision to present the new constitutional treaty to the public as a traditional national constitution.

The nature of the Union

The reason why the Convention had to devise a completely new legal instrument, lies in the very nature of the European Union. The Union is a unique phenomenon in political history inasmuch as it exists to serve both citizens and member states. Over a period of fifty years European politicians have gradually created a new political body that can not be classified in the traditional terms of either a federation or a confederation. In order to govern this Union a legal instrument had to be developed that satisfies both requirements. On the one hand it had to regulate the relations between the Union and its citizens and on the other those between the Union and the member states. Such an instrument can be and has been described most appropriately as a 'constitutional treaty'. It is a constitution as far as the codification of the relations between the Union and its citizens is concerned on the one hand and the regulation of the competences of the institutions of the Union on the other. It is however a treaty with respect to the regulation of the relations between the member states and those of theirs vis-à-vis the Union. The drafters of the constitutional treaty demonstrated their awareness of the far-reaching juridical innovation of their endeavour by offering the member states the possibility to denounce the treaty and to withdraw from the Union. The implication of this provision is that their document can definitely not be regarded as a traditional constitution, whereas for example the citizenship of the Union defies the notion of a traditional treaty. It can therefore be concluded that, while the concepts of constitution and treaty exclude each other in the traditional legal approach, they are complementary with respect to the juridical foundation of the European Union. The extent to which these concepts are intertwined in the new way of thinking, can be amply illustrated by comparing the name of the instrument to the contents of its first article. It is a Treaty

establishing a Constitution for Europe and article 1 says that the constitution establishes the European Union.

Towards a new perspective

As president of the Convention Giscard tended to compare the work of his team to that of the founding fathers of the United States of America. Both conventions have indeed achieved results of historical importance. The Convention about the Future of Europe has created the first species of a new juridical genus, namely the constitutional treaty. The example may be followed over years or decades by other unions, such as the African Union. Giscard's blunder was, however, also of historical proportions. By presenting the document as a traditional constitution he alienated the citizens from the project instead of engaging them in it. In doing so, he - and the European Council which followed in his footsteps - underestimated the importance of the change of paradigm which the constitutional treaty brings with it. Changes of paradigm do not occur too often in legal history. The most recent one may be found in the peace of Westphalia which was closed in 1648. As argued above, the European Union cannot do without such a change of paradigm, if it is to receive a proper legal foundation. The European Council would therefore be well-advised to prepare the citizens for such a change. In view of this huge task it will not be sufficient for the Council to merely listen to the citizens. It will also have to show leadership. The period of reflection offers ample opportunity to embark on this project and to look for ways to make the present treaty somewhat shorter and more constitutional. It may well be that Europe will need a couple of years more to convince the citizens of the necessity of a constitutional treaty and to enthrone them for it, but the price is certainly worth paying.

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This is an abbreviated version of an article originally published in the Dutch Lawyers Journal NJB.

4. Where next for the Constitution in 2006?

In Britain, the European Constitution can sometimes seem like a distant memory, with neither the government nor the opposition parties eager to promote its revival. Moreover, there seems to be little appetite among the British political elite for wide-ranging debate about Europe's future. Over the past weeks, however, discussion about realising institutional reform has shown some signs of life in other EU states.

Germany's new government has repeatedly stressed that it remains committed to the Constitutional Treaty. Chancellor Merkel stated in her New Year's address that she would pursue the ratification process with renewed emphasis. She also declared in an interview with the *Frankfurter Allgemeine Zeitung* that 'this Constitution has so many positive elements that we shouldn't abandon it just like that'. Her success as a negotiator at the European Council in December perhaps bodes well for her ability to act as a mediator between different priorities in Europe, especially during Germany's presidency in the first half of 2007.

In particular, the German government is suggesting the adoption of a non-binding declaration on the 'social dimension of Europe', requiring EU institutions to consider more closely the social implications of internal market legislation. This declaration would be adopted during the German presidency of the EU in the first half of 2007, with the aim of persuading French and Dutch voters to reconsider their rejection of the Constitution.

Mrs Merkel has stressed, however, that 'cherry-picking' parts of the Constitution is out of the question. This, she argues, would 'damage the overall balance' of the agreement: 'To put single parts of the Constitution into force, and leave others aside, without knowing where you want to go, that does not work.'

The Portuguese Prime Minister José Socrates has said that he will also place the Constitution high on Portugal's agenda as President of the Union in the second half of 2007. He told his national

parliament, 'The project of the Constitutional Treaty was signed by the 25 member states and it would not be right [to forget it].'

In the first half of 2007, presidential elections will take place in France and parliamentary elections in the Netherlands. As a second round of referendums seems unlikely before these votes, any new impetus to the Constitution will have to wait until the German Presidency at the very earliest.

It seems, then, that 2007 will be an important year for the future of the Constitution, while 2006 is likely to be characterised by inaction. Austria has already declared that it will not press hard for movement on the Constitution. Foreign Minister Ursula Plassnik has argued that there are 'no quick fixes and easy answers' to the problem of ratification.

However, Chancellor Wolfgang Schäussel has said that he would encourage wide-ranging debate on how to proceed on the Constitution. He argued that the EU needs to encourage discussion and debate with its citizens, particularly concerning the borders of Europe, its institutional structure and what the ultimate goal of integration should be. He will present ideas on how to proceed with the Constitution at the European Council in June.

Foreign Minister Plassnik gave further details of Austria's plans at a visit to France on 10 January: 'Today in Paris I am beginning the listening and exploratory process. I intend to involve all our partners in this process and to collect their ideas, expectations and sensitivities regarding Europe's future. Our aim is to draw up a joint choreography on the constitutional process at the end of these six months.'

Finland, which holds the Presidency in the second half of 2006, supports the Constitution but has not made clear what it may do to bring forward the ratification process. Indeed, Finnish president Tarja Halonen has expressed her surprise at Wolfgang Schäussel's announcement that Austria would attempt to create some form of consensus on how to move forward. 'To us', she said, 'the recess declared after the referendums in France and Holland is still valid.'

French president Jacques Chirac, however, has promised 'ambitious proposals' in 2006, also to be made public towards the end of the 'period of reflection' in June 2006. After the European Council in December, he declared that the current institutions were not suitable for the enlarged Europe of today, making reform an absolute necessity. The Europe he wants is one that is more democratic, transparent and effective, so that Europe can remain a major international actor.

In a speech before diplomats on 10 January, he suggested that the European Council could take important decisions on institutional reform within the existing treaty framework. He named three areas in particular where more integration should be agreed, namely internal security and justice, external action and defence policies, and the association of national parliaments to the policy-making process.

Two days after Mr Chirac's comments, his Interior Minister - and possible successor - took a different stance altogether, arguing that only the first part of the Constitution be retained. This could then be ratified by the French Parliament without a referendum. Controversially, he also argued that enlargement should be paused after Bulgaria and Romania's accession so as to give Europe time to reform its institutions.

Members of the European Parliament, meanwhile, have suggested adding energy to the 'period of reflection'. A report by Andrew Duff and Johannes Voggenhuber suggests that the EP should join with national parliaments in parliamentary forums in order to debate Europe's future. Member states are encouraged to hold a series of national citizens' forums involving civil society and the broader public. In the second half of 2007, a clear way forward would be agreed upon, leading to possible constitutional renegotiation in 2008. The revised text would then be put to European voters at the same time as the EP elections in 2009.

The report earned a tough response from the presidents of the national parliaments of Austria, Finland and Germany. In a letter to Josep Borrell,

President of the EP, they state that they do want to commit to a series of inter-parliamentary meetings, but agree to meet for an exchange of views in May. They doubt that parliaments could agree on a common way forward as views on the Constitution differ widely across countries. The authors of the letter point out that, for example, half the parliaments have already ratified the Constitution while the others have not.

Supporters of the Constitution should thus not feel that ratification has become any more likely in the past months. Governments are still divided over how to proceed. Some leaders, such as Mr Verhofstadt and Mr Chirac, are in favour of 'cherry-picking', an idea Mrs Merkel rejects outright. The UK's silence on the topic should probably be seen as indicating that the government would prefer not to discuss the future of the Constitution, at least publicly.

Even if an agreement was reached to proceed with ratification, it is still highly implausible that the British people would ever endorse the Treaty in a referendum. Ratification through a popular vote also currently seems unlikely in other countries generally sceptical of the benefits of the Constitution, such as Poland and Denmark. Mrs Merkel's suggestion of adding a 'social declaration' is also more likely to damage rather than help the document's chances, especially in the UK.

Moreover, there is no sign that Europeans in general have become any more positive on the EU in the past months. While the most recent Eurobarometer poll does show that nearly 50 per cent of respondents want the Treaty to be re-negotiated, which signals basic support for the idea of a Constitution, the opinion on the institutions of the Union has sunk to new lows. With many European economies still in the doldrums, there is little indication that the mood of European citizens has changed fundamentally since the failed referendums.

As The Economist noted on 7 January, 'to go back to the Constitution as if nothing had happened - or to argue that what happened was so long ago that nobody should worry about it - seems a dangerous strategy. It risks

precipitating a huge split between the countries that want the constitution and those that do not, as well as alienating long-suffering voters everywhere.'

In the face of these realities, alternative institutional proposals are regaining popularity. Belgian Prime Minister Guy Verhofstadt has recently revived the idea of a 'Core Europe' in a new book, 'The United States of Europe - Manifesto for a new Europe'.

He argues that the EU should be divided into two sub-groups, a 'United States of Europe' and an 'Organisation of European States'. The former, made up of the eurozone countries, would form the political core of the EU, open to all members willing to 'work unconditionally on pushing ahead with the overall political project'. The latter would be a much looser confederation of countries.

The 'United States of Europe' would be based on coherent, well-defined areas of integration without opt-outs and differentiation. Verhofstadt explicitly criticises the current situation, which he calls a 'multi-speed' or 'a la carte' Europe: 'However well-intentioned it may be at the outset, the use of permanent, invariably applicable exceptions is a highly questionable practice that does no favours whatsoever to the European Union's image, because such opt-outs show that it does not really matter whether or not all the Member States are marching in the same direction. In actual fact, opt-outs constitute a de facto negation of European integration.'

So far, Verhofstadt's ideas have not been received with great enthusiasm. For example, Austria's Chancellor Wolfgang Schüssel told the *Süddeutsche Zeitung* that he was not in favour of creating a core Europe, as all EU states should be able to move together towards deeper integration without creating new frontiers in Europe. The EP report also dismissed 'core groups' as a way out of the constitutional quandary. In his speech on 10 January, however, Jacques Chirac signalled his support for the idea of 'pioneer groups', especially if based on the members of the eurozone.

At the moment, fundamental reconsideration of the Union's structure is clearly off the agenda in most member states. The negotiation of the Constitution

showed how limited the scope for radical change currently is, while the public relations disaster of the failed referendums should make any politician be careful about embarking on new discussions on reform. Nevertheless, the need for institutional changes has not disappeared: a new rulebook for the EU is an issue that, as Richard Corbett notes in *The Guardian*, 'cannot be swept under the carpet indefinitely'.

Markus Wagner
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Links

[Handelsblatt, 'Merkel will EU-Verfassung retten'](#)

[Jacques Chirac's press statement](#)

[EUObserver's news on the Constitution](#)

[Richard Corbett, 'The issue that won't go away'](#)

5. The European Debate in the UK: British views on the Presidency

After the bitter disagreements on the EU Budget at the European Council in June, very few British observers expected that the UK would be able to fashion a compromise in its turn in the chair of the Union. In the end, the agreement on the future financial framework of the EU was finally reached on 17 December after difficult negotiations lasting late into the night.

The final Budget sets total EU spending at 862bn euro (£586bn) for 2007 to 2013, or at 1.045 per cent of the EU's GDP. This is clearly lower than the 1.21 per cent originally proposed by the Commission, and the final agreement lies halfway between the 1.06 per cent on the table in June and the 1.03 per cent proposed by the UK in early December. On the size of the Budget, then, the proponents of lower expenditure clearly succeeded to a large extent.

The two other central issues of disagreement - the reform of the Common Agricultural Policy (CAP) and the British rebate - were inter-linked, with France

finally agreeing to a fundamental review of the Budget in 2008 in exchange for a 10.5bn euro (£7bn) reduction in the British 'cheque' over the seven-year period of the Budget.

At home, the UK government defended its compromise on the rebate by referring to the costs of enlarging the Union. Giving up on part of the rebate, it was argued, is justified as the UK should pay its fair share towards integrating the new member states into the EU. As Tony Blair stated after the summit, 'If we believe in enlargement, we had to do this deal now.' Overall, the Budget would be, in Mr Blair's eyes, 'good for Europe'.

In his last address to the European Parliament on 20 December, Mr Blair struck a similar note in reply to a question from the UK Independence Party's Nigel Farage: 'When you and your colleagues say, "what do we get for what we contribute to enlargement", we get a Europe that is unified after years of dictatorships in the east, and we get economic development, and we get a Budget which puts once and for all an end to the need for the rebate. That's what we get, if we have the vision to seize it.'

However, the agreed Budget was not as ambitious as Tony Blair would surely have liked, as it leaves CAP reform up to fresh negotiations in two years' time and does not re-orient EU spending towards research and innovation. Moreover, France and Ireland already claim that CAP funding would not be open for re-negotiation.

The fact that fundamental changes to the CAP were not achieved was immediately criticised by the opposition parties. For example, William Hague, the shadow foreign secretary, declared: 'Seldom in the course of European negotiations has so much been surrendered for so little ... It is amazing how the government has moved miles while the French have barely yielded a centimetre.'

Sir Menzies Campbell, the foreign affairs spokesman of the Liberal Democrats, saw the Budget as a 'thoroughly disappointing' agreement, adding: 'Government tactics have resulted in a reduced rebate but no real progress on Common Agricultural Policy reform.'

In general, however, the agreement on the Budget did not dominate the news agenda in the UK, perhaps as it took place just before the Christmas break and at almost the same time as the WTO meeting in Hong Kong. The complicated numbers game of EU financial negotiations, moreover, does not lend itself to easy journalistic reporting. Nevertheless, the limited amount of coverage of the Council came as some surprise after the hyperbolic talk of a fundamental EU 'crisis' after the June summit, when UK news programmes were dominated by reports on the Union and its failures.

Reactions to the Budget agreement in the press were muted. The Independent managed to give the result a positive spin, arguing that 'a fudge is better than nothing'. In *The Times*, Peter Riddell argued similarly that the Budget was a 'messy, inglorious compromise'. Most reports concentrated on the fact that the reduction in the rebate could cause financial problems for the UK Treasury, especially as the £10.5bn increase in the British contribution will set in during the last years of the financial framework instead of being spread out equally over the seven years.

The more Eurosceptic end of the British media criticised the new Budget heavily. For example, *The Sun* branded Blair a 'loser' for giving up the rebate in return for only a 'vague promise' of CAP reform, while the *Telegraph* described the deal as a 'rebate fiasco'.

The European Council meeting was also the last major event of the UK Presidency, with the official hand-over to Austria taking place on December 31. The evaluation by British politicians of the UK's turn in the chair of the EU was very mixed. Timothy Kirkhope, leader of the British Conservatives in the EP, argued that the Presidency was characterised above all by 'wasted opportunities' and 'absent leadership'.

Conservative MEPs also ran an advertisement in the Independent on 20 December that showed a blank sheet of paper accompanied by the following text: 'Conservative MEPs are happy to list Mr Blair's successes during Britain's Presidency of the European Union', adding at the bottom of the page that 'he's given £7 billion back to Brussels'.

Charles Kennedy, then the leader of the Liberal Democrats, described the Presidency as 'disfigured by too much spin and poor tactics', while Graham Watson, leader of the Liberal and Democrat EP Group, chided Tony Blair for raising expectations in June only to fail to capitalise on them. He added that Mr Blair should have used the Presidency to promote Britain's membership of the Union by 'tackling, head-on, the sceptics and cynics who are quick to deride and misrepresent the EU'.

The BBC news website marked the UK's EU Presidency marks on a scale of 1 to 10 for its achievements in six areas. The highest score (9) was given to enlargement, as talks with Turkey finally began and Macedonia became an official candidate for accession. The Budget deal received 7 points, while counter-terrorism and environment were given 6 points each. Economic reform and poverty reduction fared worst in the evaluation of the BBC, receiving only 4 points each. Overall, the scores are average rather than catastrophic, an assessment shared by Peter Riddell of The Times, who argued that 'Britain's record is not bad' considering the failed referendums and the unsuccessful summit in June.

A recent listeners' poll on BBC Radio 4's Today programme, however, illustrates the challenges that any UK government would face if it tried to convince its citizens of the benefits of the EU. The listeners of the show were asked to decide 'Who runs Britain?' and replied: José Manuel Barroso, President of the Commission. Tony Blair was seventh and Gordon Brown ninth, while Rupert Murdoch, in second place, was the only serious competitor for Barroso. It later emerged that the UK Independence Party may have had a hand in creating this result by mobilising its supporters to vote for the Commission president.

Nick Robinson, the BBC's political editor, points out in his online blog that Barroso can hardly control his own Commissioners, let alone run the UK. He predicted the announcement would cause 'hearty laughter in the Barroso household'. In The Guardian, Nicholas Watt imagined Tony Blair answering an urgent phone call from the most powerful man in Britain: 'Good morning, Mr

President, what are my orders from Brussels today?'

Markus Wagner
The Federal Trust

Links

[The Guardian, 'This is 2005 not 1945 - Blair attacks UKIP over budget deal'](#)

[Conservative MEPs' advert in the Independent](#)

[The Times' commentary on the EU Presidency](#)

[BBC: UK EU Presidency scorecard](#)

[Today's poll on 'Who runs Britain?'](#)

[Euractiv.com, 'UK Presidency: Hip hip but no hooray'](#)

6. News from the Federal Trust

New projects

New Working Group: on 'The Governance of the Eurozone'

The Federal Trust is currently setting up a new Working Group of experts to consider the key strategic political and economic issues that will impact on the governance of the euro over the medium to long term.

The Working Group's aims are:

1. To review the present rules for the economic and political governance of the single European currency, such as the role of the European Central Bank and the workings of the revised Growth and Stability Pact;
2. To discuss ways of improving the governance of the Eurozone, including possible changes to the European budget or different forms of economic co-ordination;
3. To make proposals for improving the governance of the Eurozone with view to improving its long-term economic and political sustainability.

The Group will be chaired by Sir Stephen Wall, former European adviser to the Prime Minister, and will produce a report in summer 2006.

Further details will be available soon on the Federal Trust's website.

New Working Group on 'Democracy, Accountability and Legitimacy in the European Union'

The Federal Trust will soon set up a similar expert Working Group under the chairmanship of Professor Vernon Bogdanor, Oxford University. This Group will examine the current state of the debate in Europe and assess present problems faced by the EU in the field of democracy, legitimacy and accountability. The Group will publish a report in early 2007 which will consider how the EU can improve its standing with Europe's citizens and make specific suggestions as to how the Union can be made more democratic, more legitimate and more accountable in the eyes of its voters. Further details will be available soon on the Federal Trust's website.

Forthcoming events

Workshop on "The European Parliament and the European political space"

London, 30th March 2006

This workshop will be organised by the Federal Trust in conjunction with SWP Berlin, joint team leaders of a research team on 'The European Parliament and European Politics'. The activities of our team form part of Work Package IV (Institutions and Political Actors) of the 'Network of Excellence' CONSENT. We are grateful to receive support from UACES towards the organisation of this workshop.

The focus of our research within this framework is on the impact of recent, past and future enlargements on the European Parliament. This question will be considered as part of the broader issues of the internal organisation and functioning of the Parliament and the significance of the Parliament's political groups and of European political parties. We will also consider how European political parties can be strengthened in an enlarged Europe.

For more information on the activities of CONSENT, please see <http://www.eu-consent.net>.

For further details of the workshop please contact ulrike.rub@fedtrust.co.uk