



Federal Trust Policy Commentary

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The June European Council: A new Treaty is born

Introduction

To the surprise of some observers, the European Council of 21st and 22nd June made considerable and detailed progress towards breaking the stalemate in the debate on institutional reform in the European Union. Not merely has a plausible timetable been established for agreeing an “amending treaty” to replace the proposed European Constitutional Treaty rejected by the French and Dutch electorates in 2005, with signature of the new document envisaged for the European Council in December 2007. Many of the specific provisions of the new treaty have already been agreed, in such a way as to leave little or no room for manoeuvres to the officials and ministers charged with drawing up the text of the new document at the Intergovernmental Conference which will meet in September. The praise which has been lavished on Angela Merkel over the past forty-eight hours rightly reflects the interconnectedness of these twin achievements. Because of the wide measure of detailed agreement at the European Council, the rapid timetable for drawing up the new document becomes an entirely feasible one. Unlike most of its predecessors, the Intergovernmental Conference to be convened in September may well be no more than a “technical” gathering, designed simply to give drafting expression to clear political choices already made by the heads of state and government.

Analysis

Three main preconditions seem to have led to the success of the European Council in agreeing the “amending” treaty, the election of Nicolas Sarkozy as French President in May, the willingness of the German Presidency then to show flexibility on the form and the contents of the text to replace

the European Constitutional Treaty; and the patient and effective diplomacy of Angela Merkel during the first six months of the German Presidency. Participants at the European Council have paid tribute to the adept handling of the meeting on 21st and 22nd June by the German Chancellor. Even the most skilful German chairmanship in Brussels last week, however, could hardly have led to a consensual outcome of the European Council if electoral circumstances, drafting flexibility and patient diplomacy had not prepared the way beforehand.

It is particularly difficult to imagine that the agreement adopted by the European Council last week could have been achieved if Madame Royal had become the French President rather than Mr. Sarkozy. At least partly to avoid further divisions within the Socialist Party on the European question, Mrs. Royal had promised a further referendum in France on any successor text to the European Constitutional Treaty. She had also undertaken to attempt to renegotiate the Constitutional Treaty and thereby reinforce its “social” character, the supposed absence of which was often criticised by the Treaty’s opponents during the French referendum in 2005. It is true that during the French Presidential campaign some advisers and supporters of Madame Royal suggested that after her election she might be willing to consider other approaches to a replacement for the Constitutional Treaty. But it would have been an extraordinary volte-face if within six weeks of her election, she had been able to accept at the European Council so radical a departure from the clear policy she had enunciated during her electoral campaign. Even if eventually some such arrangement as that adopted in the early hours of 23rd June might have been acceptable to her, last

week’s European Council would surely have been too early a date for any such fundamental change of strategy.

Mr. Sarkozy, by contrast, came to the French Presidency with a well-publicized plan of European action, which in the event was largely realised by the European Council. He had made it clear during the campaign that he regarded as premature any aspirations for the European Union now to adopt a “constitution.” A “mini-treaty” or a “reforming treaty” which would preserve most of the Constitutional Treaty’s institutional innovations without seeking any sort of final institutional settlement for the Union was the most which could be realistically envisaged in the immediate future. Such a limited treaty would not need in Mr. Sarkozy’s view to be submitted to a new referendum in France. He would use his Presidential mandate (together with the later Parliamentary mandate of his party) to ensure a parliamentary ratification for the new text, rather than seek direct popular endorsement. The implementation of this political analysis was at the heart of the agreement later reached by the European Council.

In the early months of 2007, there was some criticism of the German Presidency for its rigid insistence that the Constitutional Treaty signed in 2004 should be the basis for all further discussion of the issue. This was taken by some as an unrealistic aspiration, which took insufficient account of the domestic difficulties generated for the French, Dutch, British, Polish and Czech governments in particular by the failed or probably unwinnable referendums which the Constitutional Treaty had engendered or would engender. In retrospect, it is clear that the strategy of the Presidency, consciously or otherwise, was essentially to

await the outcome of the French Presidential election, hoping that it would produce an outcome which would allow, even facilitate an agreement on institutional questions at the European Council of June. The rapidity with which the German Presidency moved after the French Presidential Election to advocate an "amending" rather than "constitutional" treaty as the outcome of the German Presidency strongly suggests that it had long since reconciled itself to such a step, despite earlier suggestions to the contrary. Mrs. Merkel was, however, only willing publicly to acknowledge this change of strategy once there was in place a French President willing and able to work with her in ensuring the success of this new approach. On general political grounds, Mrs. Merkel will no doubt have hoped for the election of Mr. Sarkozy in May. This hope will certainly have been reinforced by the knowledge that the German Presidency was much more likely to come to a successful conclusion on institutional questions in the event that Mr. Sarkozy was the French representative to June's European Council. His support for the new position of the Presidency would make it much more likely that those numerous member states which had already ratified the Constitutional Treaty could be persuaded to abandon that document in favour of something more modest. Mr. Sarkozy's approach was not only one tailored to the exigencies of French domestic political circumstances. It was also one likely to help other European leaders, particularly those faced with difficulty in ratifying the original Constitutional Treaty, to join an emerging consensus.

In essence, the European Council last week was confronted with an obvious dilemma. The great majority of member states had ratified, or were happy to ratify the European Constitutional Treaty. A minority had either tried to do so by referendums and failed, or thought they were highly unlikely to be able to ratify the Treaty at the very least until the French and Dutch positions had been clarified. The Council was therefore seeking a solution which would do justice to both positions, recognising on the one hand the impossibility of ratifying by unanimity the Constitutional Treaty but on the other hand reflecting the overwhelming political and popular support throughout the Union for most of the Treaty's specific provisions. The new Franco-German approach, whereby the form of the Constitutional Treaty was abandoned, while much of its substance was preserved, represented an elegant compromise between these two divergent starting-points. In the six weeks of negotiations between the French Presidential Election and the European Council, this approach was further refined,

with specific additions or subtractions made to the final text reflecting national positions. But no agreement at the Council would have been possible without this major shift in the German Presidency's position made possible by the result of the French Presidential Election.

Nor would agreement have been possible without the intensive diplomacy conducted by Mrs. Merkel in the early months of the German Presidency. In a number of meetings with Mr. Sarkozy, she had clearly prepared the way for their collaboration if and when the latter became President. In the same way, at both an official and political level intensive contacts were maintained with other European capitals to prepare the ground for rapid progress after the French Presidential Elections. Particularly notable was Mrs. Merkel's success in cultivating the Central European leaders. Even during the most emotional German-Polish exchanges before and during the European Council, Polish spokesmen went out of their way to recognise the helpful and constructive attitude of the German Chancellor. German public opinion has not reacted favourably to Polish negotiating tactics over the past six months. Mrs. Merkel, however, has always resisted the temptation to make negotiations with Poland more difficult by fuelling the flames of German-Polish resentments. It may well be that this measured approach before the European Council enabled her to make what was probably her decisive contribution to the successful outcome of the Conference itself, by simultaneously threatening the Polish delegation with isolation and promising them an extended transitional period for the new weighting of votes in the Council if they were willing to join the "European consensus."

British internal politics

Despite some diversions on the way (in particular on the question of competition policy) the upshot of the European Council conforms closely to the British strategy at which Mr. Blair has been hinting over the past two months. He and his successor will seek to present the agreement as being one to sign an "amending," not a "constitutional" treaty, which can legitimately be ratified by a parliamentary process, not by referendum. Mr. Blair and Mr. Brown will look to buttress this argument by referring in the new text to a specific British opt-out from the Charter of Fundamental Rights, the abandonment of the designation "European foreign minister," a new Protocol on CFSP stressing its intergovernmental nature and the reinforcement in the new treaty of the

principle of "conferral" in the workings of the European Union. Although Mr. Brown's commitment since the meeting of the European Council to the principle of parliamentary ratification for the new treaty has been slightly less clear-cut than Mr. Blair's, he seems content to argue at present that, in contrast to the government's final decision on the European Constitutional Treaty, no referendum will be needed on the text in the United Kingdom.

This view, predictably, is not shared by the Conservative Party, which will no doubt stress the undoubted similarities in content between the new "amending treaty" and the major innovations of the Constitutional Treaty. In the sphere of European foreign policy in particular, the Conservatives will be on solid ground in arguing that nothing of substance, as opposed to nomenclature, has changed between the two documents. Both the party's main spokesmen on European affairs, William Hague and Mark Francois, have already called for a referendum. Significantly, at the time of writing David Cameron has not yet joined his voice to the call for a referendum and some press reports seem to suggest that he is far from eager to reawaken unhelpful public memories of a Conservative Party unhealthily preoccupied by the European Union and the threats it supposedly represents to the United Kingdom and its interests. It can only be a matter of speculation whether over the coming months Mr. Cameron will be able to preserve his relative reserve on this issue. He will certainly not wish to disagree publicly with his spokesmen on the question of a referendum and his recent weaker showing in the opinion polls may undermine his ability to resist (if he wishes to do so) insistent calls from within his party to make the call for a European referendum a central plank of Conservative campaigning over the next twelve months. It will be an interesting indication of Mr. Cameron's confidence in his own leadership of the Conservative Party to see how vehement are his calls for a referendum over the coming months. Other things being equal, an energetic and outspoken campaign by him on this issue will bespeak internal weakness rather than strength.

If Mr. Brown remains determined to avoid a referendum on the "amending" treaty, he will probably be able to do so, although at some cost to his not unwelcome Eurosceptic reputation in certain parts of the British press. If the next British General Election is to be held in 2008 or 2009, then Mr. Brown will probably ratify the new treaty in the first half of 2008 by purely parliamentary procedures and defy the Conservative Party

to stand at the General Election on a platform which might revoke a European treaty ratified by the House of Commons. Mr. Cameron would no doubt think long and hard before undertaking any such step. An intriguing alternative possibility would arise if, because his accession to the premiership led to a series of favourable ratings for his government in the opinion polls, Mr. Brown decided to hold a General Election in the first half of 2008. It would then be for his decision whether he thought it tactically more opportune to ratify the treaty agreed in December 2007 before or after the General Election. Ratification before the election would undoubtedly be the bolder option, but would also make it more difficult for the Conservatives to avoid a potentially damaging debate about European policy in their General Election campaign. Postponement of the issue until after the General Election would arguably be a safer option for Mr. Brown, but would help Mr. Cameron to avoid the European minefield by saying that ratification of the new treaty was a question only for resolution by a referendum after the General Election.

Concluding Remarks

As often in current discourse about the European Union, the real significance of both the European Constitutional Treaty and the document which succeeds it was and is less than either its most enthusiastic partisans or most vitriolic opponents have claimed. It was and is a relatively small step in the process of the European Union's institutional development, marking neither a major development in that process nor a substantial change of direction. The sense that confidence in the European Union, both externally and internally, was being undermined by less than vital institutional debates will certainly have been one reason why the heads of state and government were willing and able to come to an agreement putting these disputes behind them. A relatively compressed ratification procedure, with only a very limited number of referendums appearing necessary, will have been a considerable attraction for many heads of government of the agreement they signed in Brussels last week.

For many most involved in the European Constitutional Convention the agreement of the European Council will have come as an especial disappointment, since so much of the systematising and consolidating work of the Convention to produce the Constitutional Treaty has now fallen by the wayside. One lesson that might be drawn from that chastening experience is that for the foreseeable future it will be very difficult

for the European Union to proceed other than incrementally in its institutional deepening. In a Union of twenty-seven members, the lowest common denominator may well be the only basis on which ratifiable agreements can be achieved. Another, and contrary conclusion might be that those member states which would ideally have preferred to go further, faster in their institutional integration even than the original Constitutional Treaty will not be able to do so for many years to come, or perhaps ever, unless they resort to arrangements for "enhanced co-operation." The past five years of institutional debate have made it clearer than ever that within today's Union a wide spectrum of views exist about the institutional future of the Union and that very little common ground exists between those who occupy the outermost points on this spectrum. As long as the Union continues to take its most important decisions by unanimity, those at the outermost points of the spectrum, and particularly those who regard the status quo as the most acceptable of available evils, will exercise a disproportionate influence on the Union's evolution. For the short-term future of the European Union, the result of the European Council in Brussels is overwhelmingly positive. But it is the culmination of a process which has posed in particularly acute form many fundamental questions about the European Union's institutional future. The European Council did not provide the answers to those questions. If those answers exist, it is unlikely that any future European Council of twenty-seven members will ever provide them.

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