

# **The Reform Treaty for the European Union**

## **Summary**

On 22 June 2007, the European Council agreed the terms of a new treaty which will now go to an inter-governmental conference of all Member States to draw up the legal text. Negotiations will begin in July and the incoming Portuguese presidency aims to complete this by October or at the latest by December. The aim is to have the new treaty ratified by all Member States so that it can take effect in time for the June 2009 European Parliament elections.

Unlike the ill-fated draft Constitutional Treaty of 2005, which tried to sweep all the earlier treaties into a rather grandiose document, this one will be just another amending treaty. It will, however, introduce some valuable institutional changes which will improve the efficient running of an EU of 27 Member States. It will give the EU a more balanced voting system and includes some new provisions on majority voting (see below).

## **Background**

The prospect of large-scale enlargement of the EU on 1 May 2004 and the failure of the Nice Treaty of 2000 to address fully the institutional consequences of enlargement, encouraged a developing view within the EU that the organisation was not working effectively and that these difficulties would increase. An EU of 27 states from the Atlantic to the Black Sea would require different methods of operation. The resulting Convention and IGC produced the European Constitutional Treaty, a treaty which not only consolidated the existing treaties but also made some institutional changes and incorporated the Charter of Fundamental Rights. The Treaty, signed by 27 member States in 2004, was subsequently ratified by 18 Member States but the rejection of the Treaty in referendums in France and the Netherlands, thus preventing it from entering into force. Following a period of reflection, the German Presidency made it clear that they wished to resolve the issue this year and Chancellor Merkel embarked on widespread consultations to find a way forward.

## **The June 2007 European Council**

The election of Mr Sarkozy, who had earlier made clear his preference for a shorter treaty, made it possible for Chancellor Merkel to seek a compromise on a

less ambitious approach by which some of the controversial aspects of the Constitutional Treaty were dropped (notably the term “constitution” itself and the various implied trappings of statehood, eg. flag, anthem, motto) but a number of the key institutional changes were retained.

The British Prime Minister secured all the objectives the UK Government had set. The biggest threat to agreement was the Polish insistence on maintaining the disproportionate voting weight they had secured in the Treaty of Nice in 2000. The Poles gave way, but secured some concessions in return, including postponement of the introduction of the new voting arrangements until 2014-17.

The Council agreed an unusually tight mandate for the Intergovernmental Conference, in many areas laying down the specific words which will appear in the treaty. These provisions included a number of protocols and some declarations designed to clarify interpretation of the treaty.

### **The Reform Treaty – Overview**

The treaty will be an amending treaty in the manner of previous treaties such as the Single European Act and the Nice Treaty. The EU will have “legal personality” but only to make international agreements in areas which are within the EU’s competence (and with the unanimous consent of Member States). The much amended Treaty of Rome will be renamed the *Treaty on the Functioning of the Union*. A provision to enable a country to withdraw from the EU will be included in the treaty. The treaty now gives the European Parliament equal rights with the Council of Ministers in deciding on all part of the EU budget, including the CAP.

Separate arrangements are made for the Common Foreign & Security Policy from those that apply to economic and environmental measures. Justice and home affairs, now known as freedom, security and justice, will continue to be subject to hybrid arrangements for policy initiation (i.e. the Commission does not have the sole right of initiative) and the opt-in/opt-out arrangement for the UK and Ireland (see below).

### **The European Council**

The European Council – the quarterly meetings of heads of state or government - will now be an institution in its own right and have a president (chosen by the European Council) in office for two and a half years (renewable for a further similar period), meaning an end to its rotating six month presidency (but the chairmanship of the other councils, except foreign affairs, will continue to rotate every six months).

### **The Commission**

The present Commission, which has 27 members, will be reduced in size to 15 members with membership rotating through Member States so that each Member will nominate a commissioner two times out of three.

### **The EU's Powers**

A key element of the Constitutional Treaty was that it emphasised that the powers of the EU derived from competences conferred on it by Member States. This point is to be made by the new treaty through an amendment to Article 1 of the Treaty on European Union which will now read:

“By this Treaty, the high contracting parties establish a European Union hereinafter called the “Union” on which Member States confer competences to attain objectives they have in common”.

The treaty will also state that “competences not conferred upon the Union in the Treaties remain with Member States” as part of a new Article on relations between the EU and Member States. This Article goes on to say that the EU “shall respect the equality of Member States before the Treaties as well as their national identities, inherent in their fundamental structures, political and constitutional, inclusive of regional and local self-government”. It goes on to add that the EU will respect the “essential State functions” of Member States, including their territorial integrity, the maintenance of law and order and safeguarding national security. In a change from the Constitutional Treaty the text of this Article adds that “national security remains the sole responsibility of each Member State”.

The new competences agreed in the 2004 intergovernmental conference will be implemented by the amending treaty. These are in areas where EU co-operation

is occurring already (such as energy and freedom, security and justice). There will also be some extension of shared competence in less significant policy areas such as space and technological research but these will not stop Member States from acting in these areas on their own initiative.

The objectives of the EU, currently contained in Article 2 of the Treaty on European Union, will be replaced by a new set of values. There was some confusion about the status of competition in these objectives because the entirely new wording used in the Constitutional Treaty, which talked of “an internal market where competition is free and undistorted”, is not repeated in the reform treaty. The new treaty simply says that the EU “will establish an internal market”. The provisions of the original founding treaties, which have formed the basis for competition policy since 1957, continue unamended but because of concerns that there might be some confusion at the omission of the phrase used in the Constitutional Treaty, the Council agreed a (legally binding) protocol to the new treaty re-affirming that the internal market “includes a system ensuring that competition is not distorted”.

### **Common Foreign & Security Policy**

The member of the European Commission responsible for external affairs and the post of High Representative for the CFSP will be combined in a new post of High Representative of the Union for Foreign and Security Policy. The post holder will chair the external relations council and will be supported by an External Action Service, largely made up of existing Commission personnel in overseas offices with some diplomats seconded from Member States.

The European Council will continue to set the strategic objectives of the CFSP by unanimity. The voting procedure for CFSP will continue to be unanimity except in the implementation of measures under previously agreed strategies. The existing system for a referral of a measure back to the European Council where a country objects to the use of QMV will continue. The new treaty will state specifically that the Court of Justice has no jurisdiction over the CFSP save that it will continue to be able to ensure that CFSP measures are confined to the CFSP area and it will be able to consider cases involving sanctions against individuals (essentially to ensure that they have a right of appeal).

The new treaty will have a declaration attached to it stating that the creation of the new office of High Representative and the establishment of the External Action Service do not “affect the responsibilities of the Member States, as they currently exist, for the formulation and conduct of their foreign policy nor of their national representation in third countries and international organisations”. This declaration restates the existing position in respect of the CFSP, which is there to enable Member States to work together to deal with issues and problems and to underline that CSFP is not a substitute for national foreign policies.

### **Qualified Majority Voting**

The most difficult issue to resolve was over the move to the double-majority system of voting previously agreed for the Constitutional Treaty. Poland strongly objected to this system because it felt disadvantaged compared to larger states such as Germany (or incidentally the UK). The new system is therefore not to come into force until 1 November 2014 with transitional provisions until 2017 and a mechanism that a blocking minority could - if it is large enough - stop the adoption of an act by qualified majority of the council and set in motion a process to try and reach agreement on a way forward.

More decisions in the Council of Ministers will be made by QMV in future but many of these are technical in nature. Of the 49 new topics to be decided by QMV in future, 13 do not apply to the UK because they relate to matters of justice and home affairs or to the eurozone. The nine Articles described by Mr Blair as being of “genuine substance” relate to areas where moving to QMV is in the UK’s interest. These nine Articles include humanitarian aid, the supervision and co-ordination of intellectual property rights protection and energy market liberalisation. Taxation and social security are not affected by these changes; they remain subject to unanimity.

In future, when the Council is deciding on legislation it will meet in public. The European Parliament’s involvement in the legislative procedure will be further increased as the co-decision procedure – that is the Council of Ministers and the Parliament both having to agree on legislation – will apply to all areas where decisions can be taken by a majority.

Although the IGC mandate does not specifically state that the reform treaty will include a simplified procedure enabling a move from unanimity to QMV in new areas, it is likely that the final treaty will do so. Such a provision will require that any change to QMV is dependent on unanimous agreement by the Member States; it will exclude the removal of unanimity in defence; and it may include other steps limiting its effect.

### **Freedom, Security & Justice**

The Constitutional Treaty strengthened the EU's capability to deal with cross-border crime in Europe and the new treaty adopts that approach. This means that several of the changes heralded by the Constitutional Treaty will go ahead but with an extension of the UK's op-in/opt-out rights in this area.

A significant change from the Constitutional Treaty however will mean that although QMV will be introduced for judicial co-operation in criminal matters, a Member State which feels that a proposal would "affect fundamental aspects of its criminal justice system" can refer the matter to the European Council for a decision by consensus. But if Member States cannot agree and, if at least one third of Member States then wish to proceed, they can do so using the enhanced co-operation procedure to adopt the measure for their countries.

The UK obtained a significant extension of its previously agreed (in the 1997 Amsterdam Treaty) right to opt-in or opt-out of policies in the area of freedom and security. These rights already applied to border controls, asylum and immigration and judicial co-operation in civil matters; they will now be extended to judicial co-operation in criminal matters and to police co-operation. Ireland is to decide whether or not to make use of this extension at a later date.

### **The Charter of Fundamental Rights**

The Charter of Fundamental Rights, a political declaration agreed in 2000 and then in a slightly amended form included in the Constitutional Treaty, will not be incorporated in the new treaty but will be adopted as a separate legal document by the EU institutions and then referred to in the treaty as having "the same legal value as the Treaties". The Member States agreed an important declaration in respect of the Charter which stated that the Charter does not extend the application of Union law beyond the "the powers of the Union or establish any

new power or task for the Union, or modify powers and tasks defined by the Union". In a separate protocol (a protocol has the same legal force as the treaty itself), the United Kingdom obtained a guarantee that British courts could not find the laws of the UK incompatible with the Charter and that the Charter does not create justiciable rights in the UK that go beyond existing rights recognised in British law.

### **Subsidiarity & National Parliaments**

One of the most positive elements in the Constitutional Treaty was the way it sought to increase the involvement of national parliaments in the decision making and scrutiny processes of the EU. These elements of the Constitutional Treaty are to be included in the amending treaty.

In fact the amending treaty will go further in one important respect; the amount of notice that national parliaments receive of proposed EU legislation. This will be extended from the six weeks proposed by the Constitutional Treaty to eight weeks in the new treaty.

The new Article on the role of national parliaments in the EU also gives the national parliaments (working together) a specific role in the monitoring of subsidiarity, including the ability to refer back to the Commission if a majority agree, legislative proposals which they believe to be in breach of the subsidiarity principle, and in scrutinising the EU's work in the area of freedom, security and justice.

National parliaments will also have to give their unanimous consent before QMV can be introduced for civil judicial matters concerning family law.

### **Conclusion**

The amending treaty should bring to an end the long period of debate about the institutional structure and powers of the EU. It will improve the EU's efficiency and effectiveness. In political terms it is likely to strengthen the role of Member States in the EU's machinery. The creation of the post of the President of the European Council, making the European Council an institution in its own right and the appointment of a double-hatted CFSP representative who will work to implement strategies agreed by the European Council all amount to an increase in the power of the Member States within the EU's structures. The European

Council, which will also continue its recently acquired role of directing strategy in the area of freedom, security and justice, has enhanced its authority considerably in recent years at the expense of the Commission.

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