

HURRAH FOR AN END TO EU NAVEL GAZING

By Hugo Brady

On July 23rd European leaders will open fast-track negotiations in Brussels on a 'reform treaty' to make the EU work better. The proposed treaty should end years of pointless agonising over what to do with the EU constitution, agreed in 2004 but killed off by referendums in 2005. Much of proposed treaty will be taken from the wreck of the constitution. But controversial aspects are being amended or dropped and the new text will be stripped of any pretensions to be a US constitution-style founding charter. The treaty's remit will now be simple. It should enable smoother EU decision-making and a more effective foreign policy, without seriously altering the balance of power between the 27 member-states and the Union's main institutions: the Commission, the European Parliament and the Court of Justice.

If negotiations conclude as expected, by October 19th this year, the new treaty will be ratified by the end of 2008. Its changes will come into force from 2009 onwards. Parliaments in Britain, the Netherlands and elsewhere will debate whether the text should be put to a popular vote. But it seems likely that only one country, Ireland, will hold a referendum (more for political reasons than clear legal necessity). Even the referendum-happy Danes are satisfied that the treaty will not involve transfers of sovereignty and hint that they will forgo a plebiscite. Hence the vast majority of member-states will choose to ratify through their national parliaments. With luck, the EU may be about to move on from its disastrous experiment with the constitution.

Changes worth sticking with

EU member-states have agreed a blueprint of the new treaty, eked out at an all-night summit in Brussels on June 23rd. The summit, chaired by Germany, agreed to rescue a number of key institutional reforms from the failed constitution. But while the constitution would have replaced all previous treaties with an entirely new legal order; the reform treaty will amend only the existing EU framework. Britain, the Czech Republic, France, Poland and the Netherlands won changes at the summit that alter or water down the 2004 text, some significantly. Britain was especially successful in ensuring that some clauses – which were domestically highly controversial – will apply differently or not at all to the UK.

The reform treaty will mean:

★ A change in the six-month EU presidency

The member-states will improve EU co-ordination by replacing the six-month presidency of the European Council with a permanent president. This will be a non-executive job – the person will have no formal powers save his or her powers of persuasion and the force of personality – but will be full-time. The president's term will last two and a half years, renewable once. The six-month rotating presidency was acceptable with an EU of 12 or even 15, but is simply impractical in an EU of 27 members. With the exception of foreign affairs, the various sectoral meetings of the Council (agriculture, employment and so on) will be chaired by teams of EU countries, each serving for 18 months and working with the permanent president.

★ A single foreign policy representative

The EU will merge the jobs of its two main figure heads of foreign policy. One post, that of the commissioner for external relations, Benita Ferrero-Waldner has money and technical expertise, but little diplomatic clout. The other, the EU's High Representative for foreign policy, Javier Solana, has impressive diplomatic credentials – he is the representative of the EU's foreign ministers when they agree – but virtually no money. The new treaty will merge the Solana and Ferrero-Waldner jobs into one 'high representative for foreign policy and security'. Solana would then take over from the rotating presidency as the chair of foreign ministers' meetings and have access to Ferrero-Waldner's €10.5 billion budget for foreign affairs. He or she will also speak for the EU externally, instead of the current trio of Solana, Ferrero-Waldner and the presidency's foreign minister. But the June summit also agreed to attach a declaration making clear that the revamped high representative will not supplant national foreign ministers. A new 'external action service', consisting of the merged Council and Commission foreign affairs departments, supplemented by national officials, will provide the high representative with advice, analysis and expertise. Their separate missions in countries outside the EU will also merge, saving valuable resources.

★ Eventual reform to the EU voting system

The EU will move to 'double majority' voting by 2017. The EU's current system agreed under the Nice treaty, is extremely complicated and discriminates unfairly against large countries, giving them fewer votes than their populations merit. Under double majority voting, a measure would pass only if 55 per cent of member-states voted for it, when they represent at least 65 per cent of the EU's population. That is both simpler and fairer than the status quo. To defuse a ferocious row with Poland over some loss of its influence under the new system, EU governments agreed delay this reform until after 2014. This concession means Poland will maintain its current voting weight for the next few years when important decisions on the EU's future financing are due.

★ More vetoes abolished including in justice and home affairs

From 2009, member-states will move from national vetoes to qualified majority voting (QMV) in 39 more areas, including cross-border crime and policing. The Commission, the European Parliament and the Court of Justice will also get a role in these sensitive matters for the first time. But member-states will be able to use an 'emergency brake' procedure to stop EU justice decisions from adversely affecting their national legal systems. Another sensitive policy area moving to majority vote is decisions affecting social security for migrants (a cross-border issue). The emergency brake procedure will apply here too, to stop national welfare systems being adversely affected by future EU decision-making. Strict unanimity will continue to apply for the most sensitive issues such as taxation or national security. The treaty will also contain a '*passerelle*' or bridging clause where member-states will have the option of moving to QMV on a particular brief, without the need for a new treaty. Any one member-state or national parliament can block the use of the *passerelle*. And the clause can never be used for a decision with defence or military implications.

★ A legally binding EU rights charter

The reform treaty will make the EU's charter of fundamental rights legally binding on European legislation. The charter was originally negotiated in 2000 to help ensure EU law respects basic human rights, such as dignity, freedom, equality and citizenship. When legally binding, the charter will apply to European legislation only. It cannot intrude into purely domestic law or give the EU new powers. The UK has secured an opt out from this provision.

★ National parliaments will vet new EU laws

The reform treaty will allow national parliaments a role in EU law making for the first time. A majority of national parliaments will be able to challenge a piece of European legislation if they feel that the EU has exceeded its powers. Each parliament will be allocated two votes (some national parliaments have two houses; others have unicameral systems). If a simple majority of these votes (28 votes or more) is cast against a proposed EU law, the Commission will have to withdraw the proposal or explain why it is necessary. The Council of Ministers and European Parliament will decide if the Commission's explanation is convincing.

★ More certainty in international co-operation

The EU will get a single legal identity for signing international treaties. Many inter-governmental organisations (UNESCO, the International Money Fund and the World Health Organisation, for example) have a 'legal personality' that enables them to sign international treaties. Due to the way the EU has developed over the years, the member-states still sign international economic agreements as the 'European Communities' and foreign policy or justice agreements as the 'European Union'. Often the EU's international agreements contain both economic and foreign policy or justice aspects, which makes their negotiation extremely complex. The reform treaty will allow the member-states to sign future international treaties together as simply 'the EU'. This will make the EU less confusing to work with for outsiders and make it easier to work in those international organisations that allow non-state participants (the World Bank, for instance). Some argue this will eventually give the EU the power to become a state or declare war. This is hyperbole. The move would give the EU no new powers and the EU could not sign an international agreement without the unanimous approval of the member-states. Thus the single legal personality gives the EU more capability, without giving it more power. The reform treaty will also underline that a single EU legal identity poses no threat to the UN Security Council seats, of either Britain or France.

★ Member-states can leave if they want to

The reform treaty will allow for a member-state to leave the EU if it chooses. A country that wants to withdraw will negotiate new arrangements for working with the rest of the union but EU law would no longer apply to it.

Important caveats

Several member-states pushed for, and got, assurances that the reform treaty will respect national sensitivities in key areas. France and the Netherlands demanded changes to address public dissatisfaction with the EU that led to the rejection of the constitutional treaty by their electorates in 2005. To appease the Dutch, the EU's political criteria for the accession of new members will now be referred to in the new treaty. These state that no country will be able to join the EU unless it has, for example, robust national institutions, a fair legal system and a market economy. But applicants already have to meet those criteria, and putting them in the treaty is unlikely to make a difference in practice.

The French president, Nicolas Sarkozy, also controversially secured the removal of a commitment to 'undistorted competition' from the EU's list of basic objectives. This is a cosmetic change: many other references to competition will remain in the treaty. And a new protocol will reinforce the role of competition policy. But symbolism is important to French public opinion on Europe: the French voted down the constitutional treaty two years ago, in part because they feared it symbolised an 'ultraliberal' EU.

Britain worried about removing the national veto in EU criminal justice decisions, and needed to ease concern at home that the charter's social aspirations might endanger UK liberal labour laws. Britain, along with Ireland will have the right to opt-out of any new crime and policing initiatives from the beginning of future negotiations. And Britain secured a new protocol to prevent the charter having any legal force in the UK. Ireland and Poland too reserved their right to opt-out of the charter in the forthcoming treaty negotiations.

Poland is getting an 'energy solidarity' clause in the new treaty – it fears Russia may withhold vital gas supplies – to enshrine the principle that EU countries will help a member-state hit by future energy shortages. And the Czechs inserted a clause to say that future treaty negotiations could be convened to take powers away from the EU.

Time to tidy up and move on

The proposed reform treaty – in classic EU style – will mean different things to different countries. For the 22 countries that were happy with the constitution, it preserves the delicate compromise that led to that treaty. For the British, it is probably the most significant negotiating victory in the history of its EU membership. For others, it represents the protection of key national interests. For the EU as a whole, the treaty will be an admission that the enlarged union has become much more diverse: economically, politically and in terms of its different legal traditions. The EU needs a rulebook that respects this new diversity, but also gives member-states the tools to work as one on Europe's most pressing challenges.

Even though the blueprint is agreed, it will still be tough to get final agreement in the formal negotiations. Poland, for instance, accepted the preliminary deal on double majority voting but will prove truculent when the details for moving to the new system are worked out. And pressure for referendums across Europe could make the negotiations just as fractious as the June summit.



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