1. Editorial: Where next for the Constitutional Treaty?, Brendan Donnelly .............................................. 1
2. The political implications flowing from consolidated supervision of financial institutions, Graham Bishop ................................................................................................................................... 2
3. The Long Goodbye: the Conservatives and the EPP-ED, Markus Wagner ........................................... 4
4. CFSP: A European Rapid Reaction Force in Lebanon?, Joana Cruz ..................................................... 5
5. The EU and the Constitutional Treaty: still reflecting? Markus Wagner................................................ 5
6. News from the Federal Trust ................................................................................................................ 6

Note from the editor
This bi-monthly newsletter monitors and analyses 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, providing a platform for differing opinions. Views expressed are those of the authors and are not necessarily shared by the Federal Trust. Back issues are available at http://www.fedtrust.co.uk/european_newsletter.

Contents

1. Editorial: Where next for the Constitutional Treaty?
The provisions of the European Constitutional Treaty would have represented a distinct improvement in the running of the European Union. They would have made the Union more efficient, more democratic and more comprehensible to its citizens. The Treaty itself was the product of many months of diplomatic negotiation and political compromise. It is not surprising that the member states who signed the Treaty in 2004 were reluctant to abandon it, even after the French and Dutch referendums in 2005 had erected two massive barriers to its ratification.

Nevertheless, there are increasing indications that the Union’s member states are today gradually reconciling themselves to the need for a ‘Plan B’, which will recognise the impossibility of ratifying the Constitutional Treaty in its present form. The German government has let it be known that it expects to put forward during its Presidency in the first half of next year new proposals which they hope will be the basis of a fresh consensus on the Treaty’s future. For this to be a realistic hope, the German Presidency will need to think creatively. Anything which can be presented by the original Treaty’s opponents as simply a repackaged version of the text rejected in France and the Netherlands will stand little chance of final ratification or even immediate endorsement by national governments.

CONTINUED OVERLEAF
In their new proposals, the German government should avoid the temptation, to which the drafters of the original Constitutional Treaty succumbed, of seeking to produce a ‘grand compromise’, bearing on all aspects of the Union’s activities and synthesising all the often contradictory approaches of European governments to the future course of European integration. Any such document will inevitably fail to command sympathetic public attention among the Union’s national electorates. It will be a document of great interest and attraction to political and diplomatic elites, but of little interest or comprehensibility to those average voters who now seek from the Union a clear sense of re-established purpose and dynamism. This sense is much more likely to be communicated to voters by a limited number of demonstrably useful reforms to the Union’s workings now adopted by the European Council, rather than by a forlorn attempt to renegotiate all or even most of the Constitutional Treaty’s endlessly sophisticated individual provisions.

Ironically, many of the new proposals buried in the original Treaty’s arcane formulations are perfectly capable of generating popular assent. More majority voting, a fairer voting system in the Council, new powers for the European Parliament, the more efficient running of the Commission, a clearer allocation of tasks between the Union and its member states - all these are goals which any moderately competent national government should find little difficulty in conveying and advocating to its citizens. Nor would a limited number of amendments to the existing European Treaties necessarily involve referendums in as many countries as the Treaty itself was only tangentially related to the political, economic and social questions which standardly underlie the national debate on constitutional revisions. A number of the Union’s governments will be eager to avoid that trap for the future. Lawyers in national capitals and in Brussels are already working hard to advise their principals on what amendments to the existing European Treaties would certainly trigger national referendums, which would certainly not and which would fall between the two categories.

In considering those aspects of the Constitutional Treaty it wishes to save, the German government would do well to focus considerable attention on its proposals concerning the Common Foreign and Security Policy (CFSP). With some small amendment, these proposals could easily be adopted as a coherent, comprehensible and politically attractive package, which might even be capable of withstanding the rigours of ratification by national referendums. Very few of the European Union’s citizens are in principle hostile to the concept of a European foreign policy and the Constitutional Treaty contains much that is new and helpful for the consolidation of the Union’s position on the world stage.

Recent events in the Middle East are unlikely to have changed this perception, except to reinforce it. Most of the European Union’s citizens believe that the Union has a specific and positive contribution to make to resolving the Middle East’s problems, a contribution likely to be at least as helpful as that of the United States. This is a factor on which the German government in 2007 and succeeding Presidencies of the European Union can build. A national referendum in France on a successor text to the Constitutional Treaty, in which an independent European foreign policy and the Constitutional Treaty contains much that is new and helpful for the consolidation of the Union’s position on the world stage.

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2. The political implications flowing from consolidated supervision of financial institutions

Though barely reported in the media, a fundamental change in the EU’s power structure was agreed in July 2006 between the Parliament, Council and Commission: a compromise was reached on ‘comitology’. The need for a new agreement was triggered by the creation of the Lamfalussy ‘level 3 committees’ (CESR, CEBS, CEIOPS) but the results will go far wider as this agreement applies across all legislative sectors.

It will take time to see how Parliament is able to use this new agreement to influence secondary legislation as the actual power can only be exercised by reaching the high hurdle of 367 - an absolute majority – of MEPs voting to block a Commission proposal. Nonetheless, Parliament now has genuinely effective parity with Council as the co-legislator and that is a basic shift in the power structure of the EU.

The role of ‘finance’ in forcing this constitutional change

A single financial market should be defined broadly for all users across the EU – savers, users of equity and fixed income funds, retail, wholesale, intermediaries - but the specific challenge of ‘securities’ was taken up at the 2001 Stockholm Summit: ‘The regulation of securities markets needs to be sufficiently flexible to be able to respond to market developments, while recognising the need for transparency and legal certainty.’

The process of developing these flexible new regulations for the securities market has become known as the Lamfalussy Process [LP] - with its now-famous 4-level regulatory system. The entire philosophy of the Lamfalussy Process is to avoid excessive detail in the primary legislation (Level 1) as any subsequent changes are difficult and time consuming. Instead, the Level 1 legislation should be about principles and Level 2 should be about the details. The Commission proposes these detailed
rules – acting on advice from specialist Committees of national regulators. The key political step was to give Parliament effective equality with Council in overseeing these detailed rules – comitology.

The LP was judged to be sufficiently successful that it has now been extended beyond securities to cover banking and insurance, with mutual funds and financial conglomerates also rolled in. Europe’s citizens are keen to gain the benefits of a single financial market but are likely to be blissfully unaware that it may bring unknown risks during the transition period. So there is a strong duty on policy-makers to address these issues at an early stage.

Implications for the future
A politically-charged debate seems to be getting underway rapidly about the future shape of regulation of the banking industry. Moreover, it is spreading to include the insurance industry and deepening to reflect the technical details that would need to be resolved as part of any move towards possible European-level regulation. But, paradoxically, "official" Europe keeps saying there is no need for any of this. The Secretary-General of CESR recently rejected the view that the EU needs its own version of the American SEC.

No-one foresees a financial crisis of a magnitude that could suddenly change the entire game and even recent scandals have only led to a tightening of accounting and auditing rules. Is there a deep-seated force working towards converting the discussion into reality? Certainly there is the minimum necessary requirement of a powerful industrial lobby group – the European Financial Roundtable (EFR) of 20 large financial institutions – pushing for a ‘lead supervisor’. But is that sufficient? What would the implications be?

The academic European Shadow Financial Regulatory Committee (ESFRC) has challenged the EFR’s view on the grounds that it is currently not feasible mainly because deposit insurance and bail outs are the responsibility of the EU national Member States. So the deposit guarantee aspect emerges immediately as a crucial component of the debate.

The eventual necessity for a single regulator could flow from the manifest political wish to see more cross-border financial integration, bringing closer the corresponding need to grapple with cross-border regulation. On current grounds that it is currently not feasible mainly because deposit insurance and bail outs are the responsibility of the EU national Member States. So the deposit guarantee aspect emerges immediately as a crucial component of the debate.

The long-run consequences of this analysis underlines the interdependence of centralised supervision and deposit guarantee schemes. So the mechanics of resolving a financial crisis that can spread with frightening speed do need to be thought through beforehand – and be robust against ramifications that seem almost unimaginable in advance.

The key problems stem from differences in deposit guarantee schemes – depending on whether they are home country schemes that cover the parent and its branches, OR the host country system that covers subsidiaries. In other words, the magnitude of the political problem of the potential cost depends on the legal nature of the group’s structure – just at the moment when the practical reality of its operational structure is diverging sharply from the legal facade.

The mechanics of operation of such funds are normally seen as an integral part of a Member State’s consumer protection system. However, competition policy will be a new element in any decision to intervene in a major bank failure. At the extreme, a state might choose to use a state-run fund to provide support to a bank where shareholders would let it fail. That could easily be said to be an illegal state aid where the Commission would have to give agreement. However, a ‘run’ on the uninsured interbank deposits would probably develop at such a speed that the bureaucratic procedures would be overwhelmed.

So some very fundamental issues about the nature of a state’s relationship with both its citizen depositors and taxpayers need to be resolved before regulatory powers can be delegated to some form of lead regulator. However, the challenge appears to be that 30% of the EU’s deposit base has already moved outside the comfortable legal silos of the past. And the pace is accelerating.

The long-run consequences of monetary union are indeed likely to draw the Member States into an ‘ever closer’ economic and political union.

Graham Bishop
Founder and Principal,
grahambishop.com
3. The Long Goodbye: the Conservatives and the EPP-ED

On 13 July, Conservative Party leader David Cameron announced that the Conservative MEPs will leave their party group, the EPP-ED – but only in 2009. In a joint announcement with Marek Topolanek, the leader of the Czech Civic Democrats (ODS) and likely future prime minister, Cameron said that the two parties would form a new organisation, the Movement for European Reform (MER), in the expectation that this would form the basis for a new EP group after the 2009 European Elections. The declaration means that David Cameron will not follow through on the promise the 2009 European Elections. The form the basis for a new EP group after (MER), in the expectation that this would contain the ODS. The Czechs, who had asked for a decision to be postponed until after their June election, then found themselves unable to form a centre-right coalition after the vote delivered a Czech parliament split down the middle. In this situation, leaving the EPP-ED immediately was not an option open to the ODS.

Even now the precise membership of the proposed new group is still unclear. The Ulster Unionists – who have one MEP – have said they would be willing to join the new group. The blog Conservativehome.com reports that the PiS felt ‘snubbed’ and ‘humiliated’ by the decision to announce the new group without them. Given that their views are at odds with David Cameron’s social liberalism, it is not obvious how good a fit the PiS would be in the new group in any case.

It is also unclear what shape the Movement for European Reform promised by Cameron and Topolanek will take over the next three years. According to an explanatory note provided by the Conservatives, its main functions will be to build up links with potential partners and to provide a forum for debate. Membership is open to the following groups:

‘Adherents and participants in the work of the body will comprise political parties and organisations from across Europe, including non-EU states, who subscribe to the general principles of a European Union comprising cooperating nation states, a belief in the free market as the engine of economic growth and social progress, and who believe in the value of the transatlantic alliance in all its forms.’

For the moment, the MER combines features of a campaigning think tank and a transnational political party. No announcement has been made whether the MER will register as a European political party, as is now possible under the 2004 Regulation.

The Labour government has been trying to portray a decision to leave the EPP-ED as a damaging and incoherent move. In an article in The Guardian (22 June), Environment Secretary David Miliband and Europe Minister Geoff Hoon argued that Cameron’s soft Euroscepticism clashed with his Green positions, as the EU would be needed to achieve real progress on issues such as climate change. In a Commons debate on the June European Council, Tony Blair said that leaving the EPP-ED would be ‘a foolish error of judgement. It is one of the few instances, incidentally, in which an error of judgement by the Opposition can have an impact on the country.’ He added that even Conservative MEPs were sceptical of their prospective partners and had called them ‘nutters’, ‘the barmy army’, ‘very embarrassing allies’ and ‘fascists, outcasts and ne’er do wells’.

In the meantime, David Cameron has yet to visit Brussels or meet many of his MEPs, perhaps a reflection of the political importance the EU has for him. Caroline Jackson, an outspoken opponent of the split with the EPP, has said she would like to meet her leader one day: ‘I’d love to meet Mr Cameron. I think my colleagues

would love to meet Mr Cameron. We'd particularly like to meet Mr Cameron in Brussels, so we can show him what it's all about.

Markus Wagner
The Federal Trust

Cameron’s declaration
Explanatory note on the MER
Daily Telegraph, 12 June
The Guardian, 22 June
The Guardian, 13 July
Commons debate, 19 June
Conservativehome.com

4. CFSP: A European Rapid Reaction Force in Lebanon?

Since the conflict between Israel and Hezbollah began on the 12 July, the Finnish Presidency of the EU has expended considerable effort attempting to construct a coherent and pro-active European foreign policy towards the region. However, recent events have highlighted the diverging policies of member states with respect to the Middle East and undermined the likelihood of any concerted EU action emerging.

The EU’s foreign policy chief, Javier Solana, has advanced the proposal of a mixed European-Arab contingent - with contributions from Egypt, Jordan and Syria - being deployed under a ‘strong mandate’ in Lebanon. Another solution would be for the EU to resort to the Rapid Reaction Mechanism (RRM) and proceed with the deployment of a European Rapid Reaction Force (RRF) to southern Lebanon. Under the Petersberg Tasks (2004), national and multinational EU units can operate in peacekeeping and peacemaking roles, including in ‘joint-military disarmament’ and in ‘supporting third countries in fighting terrorism’. The EU has recently triggered this mechanism in Macedonia (‘Operation Concordia’) and in Bosnia Herzegovina (‘Operation Aethea’), proving that, within Europe at least, the EU is able to act militarily in a manner befitting its political weight.

For a number of reasons, the EU is well positioned to play an important role in the Middle East crisis. The EU conducts a credible neighbourhood policy in the region, its diplomatic relations with Iran are now stabilised, and Israel has signalled its acceptance of an EU force in Lebanon with a strong mandate. Equally, in not considering Hezbollah to be terrorist organisation (common position (2004/500/CFS)), Europe can hope to hold negotiations with parties on the other side of the conflict. Thus, the EU is able to offer a viable diplomatic approach backed by the United Nations as an alternative to NATO action.

The main obstacle to the development of a European foreign policy in the current crisis is the disparity of views within the EU over the urgency of a cease fire. Mr Blair’s government has not called for an immediate ceasefire, publicly preferring a more ‘sustainable’ solution. On the other hand, France is advancing a resolution calling for Israel to put an immediate end to hostilities with Lebanon, with which France has historical links. Mr Chirac has also requested that the Finnish Presidency allow Mr Solana a stronger role in brokering peace on behalf of the EU.

Moreover, member states hold different views about sending troops to the region. In this regard, the only agreement reached at the international summit in Rome on July 24 was for a peacekeeping force in Lebanon constituted ‘under a UN mandate’. Britain would probably be reluctant to participate in such a peacekeeping force, given its commitments in Iraq and Afghanistan. Germany is likewise cautious about joining any such mission, with its troops currently deployed in the Balkans, Afghanistan and the Democratic Republic of Congo. The Netherlands also looks likely to step back from sending a contingent.

Finally, there is some scepticism about whether an international force could execute a mandate aggressively to confront Hezbollah. European countries would be reluctant to contribute troops to a mission which involved the difficult and complex task of transferring weapons from militia commanders to the Lebanese army. Yet it is to be expected that an international force deployed to implement UN Security Council Resolution 1559 - which calls for the disarmament of Hezbollah and the re-establishment of Lebanese government control over the south of the country - would need to have just such a robust mandate.

In the aftermath of an unproductive emergency meeting of the UN Security Council and in the context of the conflict’s continued escalation, the EU has issued a series of co-ordinated statements stressing the urgency of the cessation of hostilities. EU Foreign Ministers will soon (August 1) discuss their countries’ participation in a UN peacekeeping operation at the Israeli-Lebanese border. However, it seems very unlikely that Europeans will support any such force without the prospect of a ceasefire between Israel and Hezbollah.

Joana Cruz,
The Federal Trust

5. The EU and the Constitutional Treaty: still reflecting?

The European Council in June brought few concrete advances, even though it marked the official end of the one-year ‘period of reflection’ called in June 2005 after the referendums in France and the Netherlands. The main conclusion is that the period of reflection will be extended until 2008 in the hope that the EU may find agreement on how to proceed with the Constitutional Treaty. The official presidency conclusions note that five further countries have ratified the Treaty over the past year, bringing the total to fifteen, but also recognise that there are no plans for ratification in nine member states. Anything but an extension of the reflection period was therefore not possible.

For the period until 2008, the European Council has agreed a ‘two-track approach’. First, the EU will try to make good use of the current treaty framework to ‘deliver the concrete results that citizens expect’. This echoes the suggestion, made by Tony Blair and José Barroso, to concentrate on a ‘Europe of results’. Second, the German Presidency

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will present to the European Council in the first half of 2007 a report that will contain 'an assessment of the state of discussion with regard to the Constitutional Treaty and explore possible future developments'. Based on this report, the next steps will be decided and implemented from the second half of 2008 at the latest. On 25 March 2007, the European Council will adopt a political declaration 'setting out Europe's values and ambitions and confirming [EU leaders'] shared commitment to deliver them'. This declaration will mark the fiftieth anniversary of the Treaty of Rome.

The European Council endorsed the early implementation of the 'early warning mechanism', which will give national parliaments the opportunity to protest against infringements of the principles of subsidiarity and proportionality. National parliaments had already received support from the Commission in their effort to introduce the mechanism informally.

The Council also agreed to a limited policy of transparency, despite UK Foreign Secretary Margaret Beckett's initial scepticism. From now on, all Council deliberations on co-decision legislation as well as debates on Commission and Council work programmes will be open to the public. The Council will regularly hold public debates on 'important issues affecting the interests of the Union and its citizens'. Interested citizens can watch Council debates on-line through video-streaming, which will be available either live or for one month after the event.

While there has thus been some movement in implementing some thoroughly non-controversial aspects of the Constitutional Treaty, it is still unclear what precisely the 'next steps' taken in 2008 will consist of. In all EU member states, it is agreed - even if sometimes grudgingly - that some kind of institutional reform will be necessary. However, two central issues are unresolved. First, should the Constitutional Treaty be retained or should a new, more modest document be negotiated? Some member state would prefer to proceed with ratification with the existing text, while other countries, such as Great Britain, France and the Netherlands, regard that as an impossible plan, especially given their own sceptical publics.

Second, how will any Treaty, whether the Constitution or a new document, be adopted by member states? In any event, the procedure in France and the Netherlands will call for delicate handling. It seems unlikely that there could be a second vote on the existing Constitution, while Valéry Giscard d'Estaing's proposal of a new vote on only the first two parts of the document would require an agreement with the 24 other member states. Wolfgang Schüssel, the Austrian Chancellor, has recently suggested a pan-European referendum, possibly at the same time as the EU elections in June 2009. In Britain, the new Europe Minister Geoff Hoon said on 15 June that a more modest treaty could be passed by Westminster without recourse to a referendum. He argued that renewed debate on institutional reform was necessary and inevitable, but that a decision on a popular vote would be based on how 'comprehensive and extensive' the changes are.

Some procedural clarity has now been added to the constitutional debate. For example, it now seems unavoidable that there will be little movement before 2007, when France and the Netherlands hold elections. Proceeding with ratification on the basis of the existing text seems ever more unlikely, as no such consensus is foreseeable. The most likely path at present seems to be the adoption of a much-reduced, modest treaty that will alter the institutional structure of the EU only where this is most required. Although the EU has now come to the end of the first year of its 'period of reflection' with many basic questions unresolved, the dust has settled somewhat since last June, and the contours of the debate on the institutional future of the Union are now a little more visible.

Markus Wagner
The Federal Trust

Presidency Conclusions, 15/16 June 2006

6. News from the Federal Trust

New Policy Briefs
All Policy Briefs are available for download at www.fedtrust.co.uk/policybriefs.

Policy Brief 27: Voting for Europe: Citizens, Elections and Referendums
Brendan Donnelly and Markus Wagner
This Policy Brief examines how European elections and referendums could be reformed in order to encourage participation in campaigns and voting. The Brief argues that voters should be presented with clearer choices in elections. This could be achieved by linking EP elections with the nomination of the Commission President and by strengthening EU parties. Referendums should in future be held on the same day and in as many states as possible.

Policy Brief 28: Openness and secrecy in the EU institutions: lessons from the EU sugar regime
Richard Laming
This Policy Brief examines the transparency of EU decision-making in the Council of Ministers and in the European Parliament. It uses as a case study the recent revision of the EU's sugar regime, which was debated in both institutions at the same time. While the Parliament conducted its discussion wholly in public, the Council proceeded mostly in secrecy. As last year's reforms to the transparency of Council meetings will not be as significant as they may appear at first sight, the author argues that the Council should open up its legislative process further and adopt the Parliament's procedures.

Policy Brief 29: National Parliaments and democratic control in the EU
Markus Wagner
This policy brief considers the role of national parliaments in EU policy-making with some scepticism about its beneficial...
impact on improving the legitimacy of the EU. It highlights that national parliaments are already given the power of commenting on European Commission’s legislative proposals and that the proposed ‘early warning mechanism’ in the Constitution has already been informally agreed. The policy brief suggests that national parliaments’ central remit is and should remain primarily the control and scrutiny of their own executive directly represented in the Council of Ministers.

Policy Brief 30: Democracy and the European Commission
Joana Cruz

This policy brief looks into possible ways for the European Commission to improve democracy, accountability and legitimacy in the European Union. In order to make the exercise of its existing competences more legitimate and democratically accountable, the European Commission will have to rely on more than just policy results. This policy brief suggests bringing to the European surface some elements of member states’ parliamentary structures, which allow for political competition and the formation of political preferences at the EU level. Giving EU citizens a say on a preferred candidate for the Presidency of the Commission and on a clear European Agenda could genuinely alter the status quo.

Drawing on contributions from academics and those involved in Romania’s integration with the EU, this timely volume provides insights into the progress Romania has made with economic and political reforms on its challenging and often difficult journey to EU membership. It assesses from a range of perspectives the significance for both Romania and the EU of the country’s imminent accession to the EU and the challenges this raises.

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The EU and Romania
Edited by David Phinnemore

Romania will soon be a member of the European Union. Yet few people are aware of how the country has evolved since the revolutionary events of December 1989 and under what circumstances membership has been achieved. Equally, what membership will mean for Romania and for the EU has received little attention.

EU-25 Watch

EU-25 Watch is a six-monthly publication which brings together surveys of key issues and challenges in the current European debate in all 25 member states as well as the four acceding/candidate countries (Bulgaria, Romania, Croatia and Turkey). It aims to give a full comparative picture of debates on European integration and current developments in European politics in each of these countries. It is co-ordinated and published by Institute für Europäische Politik (IEP) in Berlin (www.iep-berlin.de).

The current July 2006 issue addresses the following issues:
- Period of reflection
- Costs and benefits of EU membership
- Leadership in the EU
- Discourses of interest in other EU or neighbouring countries
- The Lisbon process
- Developments in the Western Balkans and enlargement of the EU
- Middle East and energy policy of the EU
- Upcoming events and issues

It is available for download at www.fedtrust.co.uk/admin/uploads/EU-25_Watch_No.3.pdf

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