

spotlight europe

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Who wants what and why? FAQs about the EU Constitutional Summit

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Shortly before the EU summit on the future of the European constitutional treaty, the member states have begun to put their suggestions on the table. Old cleavages and conflicts are beginning to resurface, and new interest coalitions are becoming apparent. But in point of fact who actually wants what, and why?

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How small is the “mini-treaty” advocated by Nicolas Sarkozy?

French President Nicolas Sarkozy no longer uses the term “[mini-treaty](#)”, but tends to talk about a “simplified treaty”. He has mooted the idea that a much leaner treaty should replace the voluminous constitution, and that this should be adopted as soon as possible. Furthermore, he is in favour of dropping anything that is reminiscent of the symbolism of a state (the term “constitution”, references to an anthem and a flag, the Charter of Fundamental Rights in its entirety). The new EU primary law ought to incorporate only the institutional arrangements from the first

part of the Constitutional Treaty. Sarkozy is of the opinion that this will help to dispel fears of a European “super state” without at the same time jettisoning badly-needed institutional reforms. The points of particular importance include the introduction of the “double majority”, the extension of majority voting in the Council of Ministers (perhaps extended by a super-qualified decision-making procedure), the strengthening of the co-decision procedure, the election of the President of the European Council, the reform of the composition of the Commission, structured cooperation in security and defence policy, and the enhancement of the EU’s Common Foreign and Security Policy by the appointment of a EU Minister for Foreign Affairs.

Thus the forthcoming treaty will probably not be quite that small after all. For exam-

ple, in order to take into account popular [scepticism about enlargement](#), Sarkozy wishes to incorporate the Copenhagen criteria into the new EU treaty. Provisions relating to the areas of immigration, social, [energy and climate](#) change policies could also be included. Thus the text of the new treaty would be more momentous and far larger than the term “mini-treaty” would lead one to suppose.

II

Why is the United Kingdom so bitterly opposed to the Constitutional Treaty?

Britain, it seems, is always making trouble and putting on the brakes. In the light of the innumerable objections which have emanated from the United Kingdom, this once more seems to be a fair assessment. In Britain the constitution was considered to be dead at an early stage, and the government is merely calling for modest alterations to the existing Treaty of Nice. It rejects constitutional symbolism of any kind, and is against an anthem, a flag, and a EU Minister for Foreign Affairs. It does not even wish to include a reference to the Charter of Fundamental Rights. Furthermore, it believes that as many policy areas as possible, especially justice and home affairs and foreign and security policy, should continue to be dealt with on the national level. However, the Blair government does not wish to be accused of being

“Blair rejects being anti-European”

anti-European, for after all in certain areas such as energy and climate change policy it believes that it is doing a great deal to promote joint European action. Yet reaching a consensus with the British is difficult for two reasons.

On the one hand the United Kingdom is certainly in favour of coordinated action on the European level, though only on the basis of unanimous decision-making by the member states and on the premise that as few competences as possible will be transferred to Brussels. Various opt-outs are now being discussed in order to enable the British to give their assent to a new primary law nonetheless. As in the case of the Eurozone, the United Kingdom would thus be permitted not to implement certain steps towards greater integration.

On the other hand British governments have traditionally been confronted with the dilemma of having to explain European decisions to a largely eurosceptical electorate moulded by the conservative gutter press. A referendum on the Constitutional Treaty would probably lead to its rejection, so that a pragmatic version of a simplified treaty without constitutional adornments which merely had to be ratified by Parliament would be advantageous as far as Britain is concerned.

III

Why is the existing method of voting so important for Poland?

The Polish government is afraid that Germany will attain a predominant position in the EU. That is why the weighting of votes in the Council of Ministers is of crucial importance for [Poland](#). Its weight in Europe, as it is reasoned, results from how it compares with that of Germany. In the Treaty of Nice, the voting system of which Poland wishes to retain, Poland and Spain have 27 votes, and thus only two votes fewer than Germany and France, which both have much larger populations. The Constitutional Treaty intends to replace the complicated weighting of votes in the Council of Ministers that is currently in force with what is known as the “double majority”. Thus in a [vote](#) on a Commission initiative a majority would be reached if

55% of the member states and 65% of the EU population were in favour of it. In absolute terms the weight of Poland would change only imperceptibly as a result of the new regulations. However, it would be worse off vis-à-vis Germany, which in relative terms would now have the greatest influence in the EU.

In Poland various suggestions have been aired on how it might be possible to enhance its weight. For example, the options of raising the double majority threshold, or to increasing the number of seats in the European Parliament are discussed. Furthermore, some consideration has been given to rules which would make it easier to form blocking minorities. Alternatively Germany might for a transitional period accept a lower population figure in the voting procedure. Another option, a cap could be placed on the size of the population that is taken into account. Another demand aired in circles close to the Polish government envisages that the future demographic development of Europe should be disregarded and that, in the event of a compromise, the results should be enshrined permanently in the institutional arrangements of the EU. Thus France, for example, would have to agree to a limitation of its proportion of the votes even if one day it were to have more than 75 million inhabitants.

IV

What precisely does the German government want?

Chancellor Angela Merkel has made a point of emphasizing that the “C-question” is right at the top of the agenda of the [German Presidency](#). Germany, which has in fact not yet fully ratified the Constitutional Treaty (a ruling by the Federal Constitutional Court on the matter is still pending), would like to retain as much as possible of the substance and the institutional balance of the current Constitutional

Treaty. However, on account of the widely divergent interests in the various European capitals, Merkel has hinted that there is room for manoeuvre in the negotiations with regard to the question of the constitutional symbolism. She has withdrawn a personal wish, which was to include a reference to God in the Constitution, on account of the secular tradition in France. However, Merkel is totally unwilling to accept a complete omission of references to European values. Indeed, one of her central concerns is to shape the European Union as a [community of values](#).

There are great expectations that Berlin will provide a resounding impetus. As it is argued, if the Germans cannot manage it, then nobody will. Without the requisite preparatory work by the German government, the Constitutional Treaty, a rather hefty morsel, would probably be too much for the ensuing presidencies of Portugal and Slovenia. In addition to a timetable the German government will press the June summit to reach a consensus on the content of the future EU primary law.

Reforming the EU treaties is of great importance for the European integration process, but it is also in the most vital interests of the German government. In the final analysis the German EU-Presidency will be judged on whether or not it has managed to make a substantial contribution to the renewal of the treaties on which the EU is based.

V

Do the “Friends of the Constitution” hold identical views?

The meeting of the “Friends of the Constitution” on 26 January 2007, to which the Spanish government invited all the countries which have already ratified the constitution or those which are in favour of the Constitutional Treaty, impressively demonstrated the determination of the

countries which want to make as few changes as possible to the current draft constitution. Above all else, the “Friends” agreed that, in addition to institutional reforms, the instruments required for the creation of a “[political Europe](#)” should be implemented, especially the Charter of Fundamental Rights.

Spain and Luxembourg, where a large majority of the electorate gave its assent to the Constitutional Treaty in a referendum, in particular are adamant that there should be as few changes to the text as possible. At the most it might be possible to imagine additional protocols in areas such as energy and climate change policy, enlargement, immigration, defence or social policy. They clearly reject the idea of an abbreviated text. Italian Prime Minister Romano Prodi also wishes to retain the “beautiful” Constitutional Treaty, preferably in its original form. Belgian Prime Minister Guy Verhofstadt has made a similar plea in Belgium a new treaty would have to be ratified not only by the Parliament, but also by the three regional parliaments and the parliaments of the German and French communities.

VI

What is behind the threat of a “Core Europe”?

The “Core Europe” catchword has made a revival. If it proves impossible to reach a compromise with regard to the constitutional issue, Italian Prime Minister Romano Prodi warned in his speech to the European Parliament on 22 May 2007, then “a vanguard of countries could be the best way to proceed towards a more integrated union.” Belgian Prime Minister Guy Verhofstadt even wants to go a step further and establish the “[United States of Europe](#)”, which would unite all of the member states of the European Union, but if need be only a few pioneers. The countries of the Eurozone would constitute the

gravitational centre for the other members of the EU.

“Examples of a Europe of different speeds already exist.”

Those in favour of the constitution are mooting the idea of setting up a new Union within the EU in the knowledge that Poland and the Czech Republic do not have a future outside the EU, that the Netherlands as a founding member considers itself to be part of the European core, and that even the United Kingdom, if the worst comes to the worst, will always prefer to put on the brakes inside than to be left out in the cold. This option is very unlikely to materialize, for the current crisis is far too insignificant and the potential participants do not display a pronounced interest in deeper integration. Some of the “Friends of the Constitution” nevertheless hope that this threatening gesture might persuade opponents of the constitution to drop their objections.

However, examples of a Europe of different speeds already exist, for example, the Schengen cooperation or the Treaty of Prüm. When confronted with a Union of 27 or more member states, the [instrument of differentiation](#) provides the necessary room for manoeuvre, so that in certain areas it becomes possible to move ahead more quickly. The spectre of a “Core Europe” should not lead us to cast doubt on the potential embedded in the idea of differentiation.

VII

How united are the opponents of the Constitutional Treaty?

The opponents of the Constitutional Treaty agree on only one thing, and that is that they wish to avoid having referendums in their countries. This is the reason why

France, the United Kingdom and the Netherlands are so keen to retain the method of [successive treaty amendment](#) employed hitherto. However, what the various countries wish to amend is different, partly for domestic policy reasons.

The Polish government insists that changes will have to be made to the envisaged “double majority”, and thereby calls into question the very core of the Constitutional Treaty. The Czech government wishes to incorporate a passage into the new primary law which will make it possible to restore European competences to the national decision-making level. The specific demands being made by the Dutch government are now also of a rather far-reaching nature. It is seeking more rights for the national parliaments and clear-cut guarantees about the member states’ responsibility in individual areas such as social policy and education. On the British agenda are the complete removal of the Charter of Fundamental Rights and the retention of British veto rights in as many policy areas as possible.

“Reacting to widespread fears of a European super state.”

In the negotiations the room for manoeuvre of the various countries is significantly different. Whereas it is true that the French electorate rejected the Constitutional Treaty, President Nicolas Sarkozy, on account of his resounding election victory, has a bigger freedom to act. The situation in the Netherlands is rather different. Prime Minister Jan Peter Balkenende, reacting to widespread fears of a “European super state”, places great emphasis on elements in the new treaty which reinforce national sovereignty. By announcing that he intends to resign directly after the summit, Tony Blair has increased the British government’s room for manoeuvre in the negotiations. No matter what the compromise looks like, it will be Blair and not his successor Gordon Brown who will have to bear the responsibility for

it. In Poland the situation is far more complicated. Thus, even if the Polish government fails to secure support for its suggestions pertaining to the weighting of votes, it must receive something by way of compensation.

VIII

Where is there room for manoeuvre, and where is the “red line”?

The member states of the EU are fully aware of the fact that amendment of primary law reforms in the context of the increasingly heterogeneous interests in a EU-27 will not necessarily lead to an improvement on what was achieved by the European Convention. For this reason the EU is supposed to adopt the institutional innovations of the Constitutional Treaty. They include the extension of the majority voting in the Council of Ministers, the strengthening of the co-decision rights of the European Parliament, the reform of the composition of the Commission, and the election of the President of the European Council.

According to Angela Merkel, the President of the Council, the adoption of the “double majority” in the Council of Ministers, which Poland has described as unacceptable, is non-negotiable. Furthermore, national parliaments will not receive veto rights as demanded by Poland and the Czech Republic. The United Kingdom will also have to give up some of its more far-reaching demands. It seems probable that the Charter of Fundamental Rights will be mentioned, at least with a reference to the actual text.

However, apart these “diehards”, there is certainly room for manoeuvre in the negotiations, though this will necessitate the use of “scissors” and “pens”. Any kind of state symbolism such as the term “constitution”, the reference to the symbols and the anthem of the European Union, and the

term “European Minister for Foreign Affairs” will probably be discarded. Furthermore, parts of the planned extension of majority decisions in the Council could fall victim to the cuts. As has already been suggested with regard to the United Kingdom, there could also be various opt-outs in certain policy areas such as justice and home affairs.

The incorporation of a reference to the social dimension of European integration is above all designed to placate the French electorate. Many French citizens perceived the constitution to be the Trojan horse of globalization, liberalization and borderlessness, and rejected it for that reason. Furthermore, policy areas such as energy, climate change and immigration are to be included as joint tasks. In addition to this, the Copenhagen criteria are to be incorporated into the treaty as a result of the misgivings about further enlargement voiced especially in the Dutch and French referenda.

IX

How does the “summit strategy” of the member states look like?

The strategy of the individual EU member states is on the one hand determined by their attitudes towards the draft Constitutional Treaty. In other words, they are either for or against it. In this context it is not particularly important whether or not they have ratified the Constitutional Treaty. On the other hand, over and above their approach to the contents of the treaty, the countries differ with regard to their willingness to negotiate. If these two components are plotted on a graph, it is possible to identify five separate strategies pursued by discrete groups of member states.

The first group (“rather without you than nothing”) includes the most vocal supporters of the constitution. They have only re-

cently made it clear that they are not prepared to relinquish the central elements of the constitution. Italy, Luxembourg and Belgium form the spearhead of this group, which have openly threatened to create a “Core Europe” or a two-speed Europe. Spain also wishes to change as little as possible.

“The German Strategy: Europe needs to compromise.”

“*Europe needs to compromise*” would be a way of describing the German strategy. When it assumed the Presidency of the European Council, the German government’s vehement support for the retention of the Constitutional Treaty gave way to a more pragmatic approach. The EU 27, so the reasoning goes, is no longer governable on the basis of the Treaty of Nice. That is why the Presidency of the Council continues to cling to the institutional achievements of the Constitutional Treaty. The Scandinavian countries have also underlined the need for a compromise.

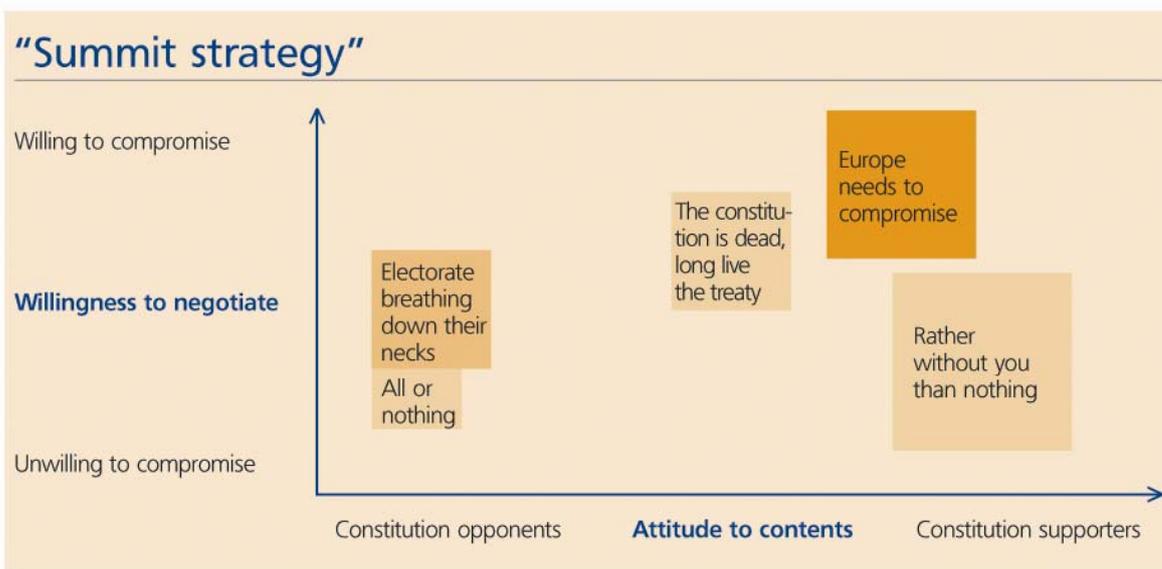
France, under the leadership of Nicolas Sarkozy, is in favour of a simplified treaty, which is illustrated by the motto “*the constitution is dead, long live the treaty*”. Although France, like the Netherlands, rejected the Constitutional Treaty, it wishes to incorporate into a new treaty as much of the current draft as possible. Sarkozy’s general willingness to compromise means that he is closer to the supporters of the constitution than to its opponents.

The Netherlands and the United Kingdom have “*the electorate breathing down their necks*”. In traditionally eurosceptical Britain, even the Blair government, despite its greater room for manoeuvre in the negotiations, has to take into account the mood of the public and dispel suspicions that sovereignty is being transferred to Brussels. The Dutch government is faced with a similar dilemma, which is complicated by the fact that on the European level it cer-

tainly does not wish to be perceived as being obstructionist.

Until recently the Polish government pursued an *“all or nothing”* strategy. There was an openly expressed threat that it would wreck the constitutional summit if it proved impossible to find a compromise with regard to the question of the “double majority”.

to reform the EU’s primary law will actually be a success. Various options are thus being considered in case the new EU treaty once again cannot be ratified by all member states. It is currently unrealistic to envisage a withdrawal of the states which are unable to give their assent to a revision of the treaty, or the foundation of a new Union by states which wish to proceed jointly on the basis of the Constitu-



In any case, at the summit the member states will not reach agreement about the final version of the new primary law, but, providing they make it a success, will merely define its outlines. An Intergovernmental Conference with a precisely defined mandate could then finalize the small print under the Portuguese Presidency of the Council. It would be useful to set a target date. Europe’s governing politicians could sign the new document by the end of the year, or they could wait until the Slovenian Presidency. A “Treaty of Ljubljana” would be a telling symbol for the new member states of the EU.

tional Treaty. The political and economic costs for all of the countries which are not involved would be far too high. This time round there is once again no “Plan B”.

However, the EU would not be incapacitated if it once more proved impossible to introduce the proposed treaty amendments. The institutions would continue to function on the basis of the Treaty of Nice, and it would also be possible to implement certain reforms envisaged in the Constitutional Treaty without resorting to the protracted treaty amendment procedure. Prominent examples of this are the already established European Defence Agency, the opening of meetings of the Council of Ministers to the media and the public, or the enhanced involvement of national parliaments in the EU decision-making process. Over and above this, minor reforms can be implemented with the help of inter-institutional agreements. Furthermore, the [Open Method of Coordination](#) makes it possible to take joint action

X

In case of failure, is there a “Plan B”?

On account of the extremely divergent positions of the various governments, it can not be assumed that the renewed attempt

in areas which are not covered by the competences of the Union.

However, it will not be possible to implement the central innovations relating to the decision-making procedure such as the extension of majority decisions in the Council and the strengthening of the co-decision procedure without the usual

treaty amendment process based on unanimity. Therefore, there is certainly a need for a kind of "[Treaty amending the Treaty of Nice](#)". Otherwise there would continue to be striking shortcomings and imperfections with regard to transparency, efficiency, participation, and the democratic structures of the European Union.

Responsible

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