

**‘Constitution Plus’
renegotiating the treaty**

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CONTENTS

| | |
|--|----|
| ‘Mini-treaty’ or ‘Constitution Plus’ ? | 1 |
| The German mandate | 3 |
| Easing future revision | 4 |
| Strengthening economic governance | 13 |
| Refreshing the European Social Model | 22 |
| Greening the constitution | 25 |
| Enlargement & neighbourhood policy | 34 |
| A reformed financial system | 40 |
| Other matters | 42 |
| The process | 43 |

Constitution Plus: renegotiating the treaty

On 21-22 June 2007, the European Council is going to risk a big salvage operation on the EU constitution. As Europe's leaders approach renegotiation of the 2004 constitutional treaty, they face some difficult choices. Their famous, self-imposed 'period of reflection' has shown how complicated the problem is but it has not exactly crystallised the available options. Two years on from the French and Dutch referendums, it is high time for the European Council to take a decisive initiative.

It is not the purpose of this short pamphlet to rehearse all the arguments about why and how the constitution should be saved. Suffice it to say that without the constitution Europe will be the weaker. Much has been said in the European Parliament on the matter, not least by Prime Minister Vanhanen when he reported back on the results of Finland's term in the chair of the Council, and by Chancellor Merkel when she introduced Germany's term.¹ Of written contributions, my own include *The Struggle for Europe's Constitution*, published by the Federal Trust and I.B. Tauris in 2005, and *Plan B: how to rescue the European Constitution*, published by Notre Europe in 2006.²

'Mini-treaty' or 'Constitution Plus'?

I hope it is sufficient here to recall that there are two fundamentally different approaches to solving the problem of Europe's stalled

1. On 18 December 2006 and 17 January 2007, respectively. See also Romano Prodi's important speech in Berlin on 6 November and Paavo Lipponen's speech to the Joint Parliamentary Meeting on the Future of Europe, Brussels, 5 December.

2. Respectively, www.ibtauris.com and www.notre-europe.eu (in English and French).

constitution. One option is to chop up the original 2004 text in order to devise a 'mini-treaty' – with or without a promise of later, more radical reform. I do not favour that approach for four reasons.

First, such vivisection would be far from painless. It would further undermine the original consensus that lay behind the complex package deal. Second, a minimalistic approach would be unlikely to convince public and parliamentary opinion that Europe's leaders had seriously addressed the causes of the widespread dissent expressed in France and Holland and elsewhere. Indeed, a mini-treaty concerned only with the hardcore 'sovereignty' issues of powers and institutions – a Treaty of Nice *bis* – might provoke serious and enduring hostility. Third, it is simplistic to think that the 2004 text could be cut up into small parcels. The fact is that Part I, containing the key constitutional provisions, is amplified and interpreted by Part III: the two are inseparable. Certainly one could re-print a shortened edition of Part III which left out those articles of the existing Treaty establishing the European Community where changes are not proposed. But such a deliberately obscurantist approach would be at odds with the spirit of this transparent age, and one may question whether the constitution ought to be rescued by camouflage. Likewise, one has little sympathy with those who believe that simply to change the name of the new treaty will cause mass popular conversions to its cause. Fourth, and last, a mini-treaty would not settle the constitutional problem of the Union. A Sarkozy type mini-treaty would spawn in other quarters proposals for something even less ambitious: the race to the bottom – from mini to tiny – would be difficult to stop. The European Parliament, at least, could never be satisfied by a faint-hearted, technocratic fix. Any pledge to pursue more radical reform at a later stage would scarcely be believed. In short, the idea of retreat to a mini-treaty represents dubious law, poor tactics and bad politics.

The alternative way of saving the project involves building on the foundation of the 2004 consensus by continuing the good but uncompleted work of the original Convention. I propose both presentational and substantive adjustments to the 2004 text. Instead of

minimising the force and scope of the constitution, we can maximise the opportunity afforded by the present crisis to make a small number of highly significant improvements to the constitutional treaty. With a better product, and improved marketing, there will be more chance of eventual success. The purpose of this pamphlet is to show how this approach can work in practice.

Given that both options carry the risk of a second failure, the key question is which of them is most likely to succeed: a new version of the constitutional treaty which is less good than 2004, or a new version which is better? In other words, should we make do with second best, or should we try to resolve the problems which have turned public opinion against the EU?

The German mandate

The German presidency of the Council has a heavy responsibility to steer the Union towards the correct risk assessment. If they are to crown their presidency with success, the Germans must broker an agreement, by the end of their term of office, on the timing, process and mandate for a new Intergovernmental Conference (IGC).

The Germans are right to try to conserve as much of the original constitutional treaty as possible. To open up the whole of the 2004 package to renegotiation would almost certainly result in something worse. Indeed, the presidency would be wise to insist, where possible, on ring-fencing the 2004 text where the consensus behind it still holds good – notably, Parts I and II. Having itself ratified the constitution, Germany is in a good position to act as spokesman for that majority of member states - now 18 out of 27 - which has likewise done so.

The Germans are also right to be impatient. A constitutional settlement is needed urgently if Europe is to acquire desirable internal cohesion and external strength. Globalisation does not wait for Europe to sort out its domestic difficulties. So the agenda for the IGC cannot be too long. The choice of items to tackle must be at once judicious

and limited. Five topics stand out by way of unfinished business and which, with skill and luck, can be resolved practicably by the IGC: economic governance, the social model, climate security, enlargement and the financial system. Taken together, these five would represent a very significant and popular modification of the original constitutional treaty. But first the IGC will also have to tackle the problem of the excessive rigidity of the 2004 constitution.

It is important to emphasise that the amendments proposed below are, in my view, necessary, desirable and practical now as a way of ensuring that the constitutional treaty enters into force by 2010.¹ They surely do not represent the final word on the evolution of the Union's decision-making procedures. Nor do they preclude work on the drafting of an historic First Amendment which we can confidently expect around 2015, once we have tried and tested in practice the provisions of the new constitutional treaty.

Easing future revision

One telling criticism of the 2004 package, advanced most cogently from the French left, is that the very act of constitutionalising the European Union will make it more difficult to effect desirable changes in the future, especially, but not only, to the common policies. And the fact is that the constitutional treaty makes no modification whatsoever to the EU's strict rule that all member states have not only to agree but also to ratify every treaty change, however modest, before amendments enter into force.

The principle of constitutional equality between states is encapsulated most clearly in Article 48 of the current Treaty on European Union concerning treaty amendment, but also in Article 49 which permits any one member state to veto the accession of an applicant country. But such a system, devised for six homogeneous member states

1. The German presidency's ambition to have the IGC finished in 2007 and the constitution in force by the time of the new European Parliamentary elections in June 2009 is commendable, but haste is not the only factor which determines the scope or content of the renegotiation.

half a century ago, is very ill-designed for today's heterogeneous Union of 27. It is a system designed only for member states in deep collusion about integration. It does not cater for countries or peoples who choose, even for spurious reasons, to say No to Europe. The threat of the *liberum veto* will continue to paralyse the constitutional evolution of the Union unless the up-coming IGC is bold enough to introduce a greater element of flexibility than was thought possible by its predecessor only four years ago. It is to be hoped that the crisis into which the whole Union has been tipped by the French and Dutch Noes will lead to enlightenment on this point.

In the impending renegotiation, therefore, the IGC should seize the chance to soften future revision procedures at least for Part III. A clear hierarchy needs to be created within the treaty so that Part III - that is, mainly the common policies of the Union and the detailed budgetary, legislative and administrative procedures - becomes clearly and directly subsidiary to Part I. I propose that Article IV-445 should be modified so as to allow any amendment to Part III that does not confer new competences on the Union to come into effect once four fifths of the states, representing at least two thirds of the population, have successfully completed ratification. Article IV-445 could be revised therefore as follows:-

| Article IV-445 | Article IV-445 revised |
|---|--|
| <p>Simplified revision procedure concerning internal Union policies and action</p> <p>1. The Government of any Member State, the European Parliament or the Commission may submit to the European Council proposals for revising all or part of the provisions of Title III of Part III on the</p> | <p>Simplified revision procedure concerning <i>the policies and functioning of the Union</i></p> <p>1. The Government of any Member State, the European Parliament or the Commission may submit to the European Council proposals for revising all or part of the provisions [delete] of Part III on the</p> |

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| <p>internal policies and action of the Union.</p> <p>2. The European Council may adopt a European decision amending all or part of the provisions of Title III of Part III. The European Council shall act by unanimity after consulting the European Parliament and the Commission, and the European Central Bank in the case of institutional changes in the monetary area.</p> <p>Such a European decision shall not come into force until it has been approved by the Member States in accordance with their respective constitutional requirements.</p> <p>3. The European decision referred to in paragraph 2 shall not increase the competences conferred on the Union in this Treaty.</p> | <p><i>policies and functioning of the Union.</i></p> <p>2. The European Council may adopt a European decision amending all or part of the provisions [delete] of Part III. The European Council shall act by unanimity after consulting <i>the Court of Justice</i>, the European Parliament and the Commission, and the European Central Bank in the case of institutional changes in the monetary area.</p> <p>Such a European decision shall not come into force until it has been approved by <i>four fifths of the Member States representing two thirds of the total population of the Union</i> in accordance with their respective constitutional requirements.</p> <p>3. The European decision referred to in paragraph 2 shall not increase the competences conferred on the Union in this Treaty.</p> |
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The article is revised in order to reflect the widening scope of the simplified revision procedure from just Title III of Part III ('internal policies and action') to the whole of Part III (comprising Title I 'provisions of general application', Title II 'non-discrimination and citizenship',

Title IV 'association of the overseas countries and territories', Title V 'the Union's external action', Title VI 'the functioning of the Union', and Title VII 'common provisions').

The Court of Justice is included as one of the institutions, along with the Parliament and Commission, from which the European Council will need to acquire a favourable opinion about its draft decision. This is particularly important because of the caveat laid down in paragraph 3 – that is, that the proposed amendments must not increase the competences of the Union. The Court of Justice has the duty, under Article I-29 of the constitution, to interpret and apply the constitution.

It is noteworthy that a comparable procedure features in Article 95 of the Treaty of Paris (1952-2002) establishing the Coal and Steel Community, where minor treaty changes could be made if they secured, following a favourable opinion of the Court of Justice, a majority of three quarters of the votes cast by the European Parliament representing two thirds of Member States. This sensible provision was unfortunately dropped from the Treaty of Rome in 1957 and has not subsequently re-appeared.

The formula of four fifths of states representing two thirds of the population is also comparable to, though higher than, that required in the statutes of international organisations, such as the United Nations - where only two thirds of member states are required to ratify revisions to the UN Charter (including all members of the Security Council). As far as federal states are concerned, amendments to any part of the US Constitution come into force once ratified by three quarters of the states. In Canada, the general threshold is two thirds of the provinces, representing half of the total population.

The formula of four fifths is also presaged in the constitution's own Article IV-443.4 – the 'ordinary revision procedure' - which allows for the referral to the European Council in the case of difficulties

encountered in completing the ratification process once four fifths of states have ratified.

Another modification should be made in the quest for less rigidity and more simplicity. A significant change proposed by the Convention in 2002-03 and accepted by the IGC in 2003-04 was to introduce a general *passerelle* clause whereby the European Council, acting unanimously, could normalise an abnormal decision-making procedure. In practice, this would allow for a gradual shift away from the old practice of making law by unanimous decision in the Council with the Parliament excluded. (The ‘ordinary legislative procedure’ requires qualified majority voting in the Council and co-decision with the Parliament.) Article IV-444 is an essential clause, marred only by the last-minute insertion by the IGC of the requirement that such a unanimous decision of the European Council could be blocked by any single national parliament. This provision heaped a needlessly complicated second national veto upon a decision which would in any case only be initiated if there were already a large consensus among member states about the need for further streamlining and rationalisation of decision making.

In the application of the early warning mechanism for breaches of the principle of subsidiarity, national parliaments must muster one third of their number if they are to register a reasoned objection to a draft measure. It would be sensible as part of this renegotiation to treat that as the template also for national parliamentary objections to use of the *passerelle*. Article IV-444 could be revised therefore as follows:-

| Article IV-444 | Article IV-444 revised |
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| <p>Simplified revision procedure</p> <p>1. Where Part III provides for the Council to act by unanimity in a given area or case, the European Council may adopt a European decision authorising</p> | <p>Simplified revision procedure</p> <p>1. Where Part III provides for the Council to act by unanimity in a given area or case, the European Council may adopt a European decision authorising</p> |

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| <p>the Council to act by a qualified majority in that area or in that case.</p> <p>This paragraph shall not apply to decisions with military implications or those in the area of defence.</p> <p>2. Where Part III provides for European laws and framework laws to be adopted by the Council in accordance with a special legislative procedure, the European Council may adopt a European decision allowing for the adoption of such European laws or framework laws in accordance with the ordinary legislative procedure.</p> <p>3. Any initiative taken by the European Council on the basis of paragraphs 1 or 2 shall be notified to the national Parliaments. If a national Parliament makes known its opposition within six months of the date of such notification, the European decision referred to in paragraphs 1 or 2 shall not be adopted. In the absence of opposition, the European Council may adopt the decision.</p> | <p>the Council to act by a qualified majority in that area or in that case.</p> <p>This paragraph shall not apply to decisions with military implications or those in the area of defence.</p> <p>2. Where Part III provides for European laws and framework laws to be adopted by the Council in accordance with a special legislative procedure, the European Council may adopt a European decision allowing for the adoption of such European laws or framework laws in accordance with the ordinary legislative procedure.</p> <p>3. Any initiative taken by the European Council on the basis of paragraphs 1 or 2 shall be notified to the national Parliaments. If <i>one third of national Parliaments make known their</i> opposition within six months of the date of such notification, the European decision referred to in paragraphs 1 or 2 shall not be adopted. In the absence of opposition, the European</p> |
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| For the adoption of the European decisions referred to in paragraphs 1 and 2, the European Council shall act by unanimity after obtaining the consent of the European Parliament, which shall be given by a majority of its component members. | Council may adopt the decision. For the adoption of the European decisions referred to in paragraphs 1 and 2, the European Council shall act by unanimity after obtaining the consent of the European Parliament, which shall be given by a majority of its component members. |
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One final adjustment could usefully be made to the hierarchy of the constitutional treaty. The Charter of Fundamental Rights, although drafted to stand alone and enjoying its own preamble, now finds itself sandwiched as Part II between Parts I and III. The Charter would profit from higher visibility and greater detachment from the functional clauses of the treaty by being published separately as an Annex.¹ The Charter's proposed legal standing would not be affected by this change of position. The remainder of the treaty would also benefit from having only one preamble.

To emphasise its distinctive qualities and to allow for its timely amendment to suit changing societal or scientific circumstances, it could be argued that the Charter, like Part III, also deserves a unique yet more flexible revision procedure than the dual lock of unanimity which will still apply to Part I. A new Article 443 *bis* could read, therefore, as follows:-

1. The amendment would be rendered by making a technical adjustment to Article I-9.1.

| | <p align="center">New Article IV-443 bis</p> |
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| | <p>Revision procedure for the Charter of Fundamental Rights</p> <p><i>1. The government of any Member State, the European Parliament or the Commission may submit to the Council proposals for the amendment of the Charter of Fundamental Rights. These proposals shall be submitted to the European Council by the Council and the national Parliaments shall be notified.</i></p> <p><i>2. If the European Council, after consulting the European Parliament and the Commission, adopts by a simple majority a decision in favour of examining the proposed amendments, the President of the European Council shall convene a Convention composed of representatives of the national Parliaments, of the Heads of State or Government of the Member States, of the European Parliament and of the Commission. The Convention shall examine the proposals for amendments and shall adopt by</i></p> |

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| | <p><i>consensus a recommendation to the European Council.</i></p> <p><i>3. The European Council, acting by common accord after having consulted the European Parliament, shall accept or reject the recommendations of the Convention.</i></p> <p><i>4. The amendments shall enter into force after being ratified by five sixths of the Member States in accordance with their respective constitutional requirements.</i></p> |
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The procedure proposed follows that of the ordinary revision procedure (Article IV-443) save that (i) the possibility of not holding a Convention is suppressed; (ii) the IGC is dispensed with; and (iii) amendments would enter into force once five sixths of the member states had completed their national ratification.

Fundamental rights must be based on a profoundly democratic consensus, and a Convention rather than a diplomatic conference is the best available forum to articulate that concord. For that same reason, the European Council (and not an IGC) is the most authoritative body to decide whether to accept or reject the result of the Convention's deliberations. In practice, this would lead to an informal co-decision procedure between the Convention and the heads of government, sanctioned by a positive opinion of the European Parliament.

The high threshold of five sixths of member states ranks the Charter higher than Part III in terms of ease of amendment (where only four fifths would be needed to give their assent), but below that of Part I (where unanimity is still required).

Strengthening economic governance

Nowadays there seems to be broad agreement that the economic governance of the Union should be strengthened. The domestic policies of individual member states should become more closely aligned with the commonly agreed economic policy goals of the Union. As the Kok Report revealed in 2004, the EU's economic policy at present suffers from a proliferation of incoherent objectives, and a mixture of macro and micro-economic instruments which is not readily understood. However, the 2004 constitutional treaty did not help to resolve these problems by ignoring them, as it did, and, in the end, by simply taking over the economic policy chapters of earlier treaties.

As a result, Part III looks and is outdated. It is also inconsistent with some of the EU's general objectives as articulated in Part I. As part of the renegotiation, it would seem sensible to give the Commission the greater powers it seeks to propose changes to the national budgetary policies of member states. This would address the problem – increasingly exposed as Economic and Monetary Union beds down – that the coordination of the broad economic policy guidelines of member states is simply too soft. A change in the treaty provisions would allow the Union to assert more forcefully the common interest of fiscal discipline and raising growth potential through structural reform.

In addition, the euro area would profit from having both greater autonomy and responsibility. The revised treaty should establish a more political approach within the Euro Group to the making of common policies, at home and abroad. The Commission and the European Central Bank should be able to advance optimum solutions to the structural problems of the euro area in a manner akin to the active surveillance practices of the IMF.

Here follow some examples of what might be done to up-date and rationalise the economic policy articles of the treaty with a view to making the Union both better run and more clearly understood.

Article III-117 is one of the new horizontal clauses installed at the start of Part III. There is, however, a regrettable inconsistency with Article I-3, which sets out the general objectives of the Union and which speaks of ‘full’ employment. This should be rectified as follows:-

| Article III-117 | Article III-117 revised |
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| <p>In defining and implementing the policies and actions referred to in this Part, the Union shall take into account requirements linked to the promotion of a high level of employment, the guarantee of adequate social protection, the fight against social exclusion, and a high level of education, training and protection of human health.</p> | <p>In defining and implementing the policies and actions referred to in this Part, the Union shall take into account requirements linked to the promotion of <i>full</i> employment, the guarantee of adequate social protection, the fight against social exclusion, and a high level of education, training and protection of human health.</p> |

Article III-177 introduces the chapter on Economic and Monetary Policy. As such, it begs to be clear and succinct. And as in Article III-117, the language needs to be revised in order to replicate that of Article I-3, establishing the overall objectives of the Union. The phrase ‘open market economy with free competition’ dates from the Treaty of Rome in 1957, and is hardly an apt description of the situation today where strong EU-level regulation is found to be necessary in order to foster competition and combat protectionism. So a new formulation of the general economic policies of the Union is proposed in order to reflect the actual state of the Union and to prevent a return to economic nationalism, as follows:-

| Article III-177 | Article III-177 revised |
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| <p>For the purposes set out in Article I-3, the activities of the Member States and the Union shall include, as provided in the Constitution, the adoption of an economic policy which is based on the close coordination of Member States' economic policies, on the internal market and on the definition of common objectives, and conducted in accordance with the principle of an open market economy with free competition.</p> <p>Concurrently with the foregoing, and as provided in the Constitution and in accordance with the procedures set out therein, these activities shall include a single currency, the euro, and the definition and conduct of a single monetary policy and exchange-rate policy, the primary objective of both of which shall be to maintain price stability and, without prejudice to this objective, to support general economic policies in the Union, in accordance with the principle of an open market economy with free competition.</p> | <p><i>The Union's economic and monetary policy shall be aimed at raising growth potential and securing sound budgetary conditions.</i></p> <p>For the purposes set out in Article I-3, the activities of the Member States and the Union shall include, as provided in the Constitution, the adoption of an economic policy which is based on the close coordination of Member States' economic policies, on the internal market and on the definition of common objectives, and conducted in accordance with the <i>principles of sustainable development and a competitive, social and ecological market economy.</i></p> <p>Concurrently with the foregoing, and as provided in the Constitution and in accordance with the procedures set out therein, these activities shall include a single currency, the euro, and the definition and conduct of a single monetary policy and exchange-rate policy, the primary objective of both of which shall be to maintain price</p> |

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| <p>These activities of the Member States and the Union shall entail compliance with the following guiding principles: stable prices, sound public finances and monetary conditions and a stable balance of payments.</p> | <p>stability and, without prejudice to this objective, to support <i>the general economic policy of the Union</i> [delete].</p> <p><i>The general economic policy of the Union will be aimed at job creation, structural reform, social and territorial cohesion, and a high level of environmental protection. The Union shall promote learning, training and scientific and technological advance. It shall combat social exclusion and discrimination. It shall ensure inter-generational solidarity, and equality between women and men.</i></p> <p>These activities of the Member States and the Union shall entail compliance with the following guiding principles: stable prices, sound public finances and monetary conditions and a stable balance of payments.</p> |
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Article III-178 lays down the detailed economic policies of the Union. This is the opportunity to include the key policy objectives and instruments of the Lisbon agenda, as revised by the European Council in 2005 following the critical review under Wim Kok.

| Article III-178 | Article III-178 revised |
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| <p>Member States shall conduct their economic policies in order to contribute to the achievement of the Union's objectives, as defined in Article I-3, and in the context of the broad guidelines referred to in Article III-179(2). The Member States and the Union shall act in accordance with the principle of an open market economy with free competition, favouring an efficient allocation of resources, and in compliance with the principles set out in Article III-177.</p> | <p><i>The Union and the Member States shall conduct their economic policies in order to contribute to the achievement of the Union's objectives, as defined in Article I-3, and in the context of the broad guidelines referred to in Article III-179(2). They shall act in accordance with the principles of sustainable development and a competitive social market economy, and in compliance with the principles set out in Article III-177.</i></p> <p><i>The Union aims to create a globally competitive knowledge-based economy with a strong social dimension and a high level of care for the natural environment. It will develop research and innovation as the key to long-term investment.</i></p> <p><i>The Union and the Member States will ensure the necessary degree of macro and micro-economic policy convergence in order to achieve these overall objectives.</i></p> |

In 2004 the IGC added Declaration No. 17 to Article III-184, which deals with the excessive deficit procedure. It would be useful to incorporate in the first paragraph of the article the key idea of this Declaration (which itself, especially after the recent reform of the Stability and Growth Pact, could then be suppressed).

In addition, Article III-184.6 should be amended to allow the Commission to make a formal proposal to the Council and not just, as now, a recommendation on what a member state had to do to correct its excessive deficit. The change would force the Council to take a decision by unanimity (minus the offending state) if it wished to overturn the Commission’s position. The Union’s authority to insist on respect for the common economic good by all member states would be enhanced at a stroke and at a suitably early stage in the deterioration of the particular member state’s finances.

| Article III-184 | Article III-184 revised |
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| <p>1. Member States shall avoid excessive government deficits.</p> <p>.....</p> <p>6. The Council shall, on a proposal from the Commission, having considered any observations which the Member State concerned may wish to make and after an overall assessment, decide whether an excessive deficit exists. In that case it shall adopt, without undue delay, on a recommendation from the Commission, recommendations addressed to the Member State concerned with a view</p> | <p>1. Member States shall avoid excessive government deficits. <i>They shall use periods of economic recovery to consolidate their public finances.</i></p> <p>.....</p> <p>6. The Council shall, on a proposal from the Commission, having considered any observations which the Member State concerned may wish to make and after an overall assessment, decide whether an excessive deficit exists. In that case it shall adopt, without undue</p> |

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| <p>to bringing that situation to an end within a given period. Subject to paragraph 8, those recommendations shall not be made public.</p> <p>Within the scope of this paragraph, the Council shall act without taking into account the vote of the member of the Council representing the Member State concerned.</p> <p>A qualified majority shall be defined as at least 55 % of the other members of the Council, representing Member States comprising at least 65 % of the population of the participating Member States.</p> <p>A blocking minority must include at least the minimum number of these other Council members representing more than 35 % of the population of the participating Member States, plus one member, failing which the qualified majority shall be deemed attained.</p> <p>.....</p> | <p>delay, on a <i>proposal</i> from the Commission, recommendations addressed to the Member State concerned with a view to bringing that situation to an end within a given period. Subject to paragraph 8, those recommendations shall not be made public.</p> <p>Within the scope of this paragraph, the Council shall act without taking into account the vote of the member of the Council representing the Member State concerned.</p> <p>A qualified majority shall be defined as at least 55 % of the other members of the Council, representing Member States comprising at least 65 % of the population of the participating Member States.</p> <p>A blocking minority must include at least the minimum number of these other Council members representing more than 35 % of the population of the participating Member States, plus one member, failing which the qualified majority shall be deemed attained.</p> <p>.....</p> |
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Steps are needed to strengthen the autonomy of the euro area, not least because it now transpires that the UK, Denmark and Sweden will not be joining the single currency at least for the foreseeable future. Article III-194 establishes only that the euro area states are to 'strengthen the coordination and surveillance of their budgetary discipline' and to 'set out economic policy guidelines' above and beyond those established by Ecofin for the Union as a whole. Article III-195 acknowledges the existence, via a Protocol, of the Euro Group, but the extent of its enhanced cooperation is very limited. The Protocol says that ministers of the Euro Group shall meet 'informally ... when necessary, to discuss questions related to the specific responsibilities they share with regard to the single currency'.

Ideally, the Euro Group would enjoy the privileges and capacity for autonomous action prescribed under the terms of the constitution's formal enhanced cooperation procedures. This would allow the Euro Group to change decision-making procedures at will in order, for example, to coordinate their national finance acts and to act singly within the IMF. Unfortunately, perhaps, the relevant Article I-44 specifically disallows use of the enhanced cooperation procedure in areas of the Union's exclusive competence, which, according to Article I-13, includes monetary policy for those states using the euro.

If Part I is not to be reopened substantively, however, it is still possible to reinforce the role and standing of the Euro Group at official, ministerial and heads of government level, and to expand its remit. A more earnest political dialogue, engaging both the Commission and the European Central Bank, about the management of Europe's political economy will reinforce the capacity of the euro area to take decisions and implement them - at home and abroad. It might also, by raising the profile of economic governance, solve the conundrum that the historic success of the euro has not yet been noticed by many of the citizens who profit from it.

| Article III-195 | Article III-195 revised |
|---|---|
| <p>Arrangements for meetings between ministers of those Member States whose currency is the euro are laid down by the Protocol on the Euro Group.</p> | <p><i>Member States whose currency is the euro shall develop closer coordination of economic, labour and fiscal policies within the euro area.</i></p> <p><i>Without prejudice to Article I-44 and Articles III-416 to III-423, the Member States whose currency is the euro will meet in the Euro Group.</i></p> <p><i>Without prejudice to their respective functions under the Constitution, the Commission and the European Central Bank shall participate in the activities of the Euro Group. The European Parliament will be regularly consulted.</i></p> <p><i>The Euro Group Council shall elect a president for two and a half years, by a simple majority.</i></p> |

Refreshing the European Social Model

The alleged weakness of the social dimension of the Union was undoubtedly a major contributory factor to the defeat of the constitution, especially in France. The renegotiation of Part III is a good opportunity to redress that unfortunate and exaggerated perception, and to give the citizen a clearer idea of where the Union is headed with respect to future labour and social welfare policies. The language of the current chapter on social policy seems almost deliberately obscurantist, more about what cannot be done at the Union level rather than what can. The constitution should, in particular, seek to defend the concept of the 'European social model' while not suppressing the several regional and national varieties of social models co-existing within the EU framework. Surely it is now possible for the EU to design a common framework for the organisation of economic society in Europe, and for it to be said loud and clear that the social dimension is an integral part of the European single market? The constitution's new motto of 'unity in diversity' should be applied to social matters, and shared solutions sought to the known, common problems of equity, efficiency and employability.

Article III-209, for example, which introduces the social chapter could be improved both literally and substantively, as follows:-

| Article III-209 | Article III-209 revised |
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| <p>The Union and the Member States, having in mind fundamental social rights such as those set out in the European Social Charter signed at Turin on 18 October 1961 and in the 1989 Community Charter of the Fundamental Social Rights of Workers, shall have as their objectives the</p> | <p><i>Social policy is a cornerstone of the single market. The Union and the Member States will so organise their economies to ensure equity between different sectors of society. In allocating resources efficiently, the Union will concentrate on improving the employability of all its</i></p> |

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| <p>promotion of employment, improved living and working conditions, so as to make possible their harmonisation while the improvement is being maintained, proper social protection, dialogue between management and labour, the development of human resources with a view to lasting high employment and the combating of exclusion.</p> <p>To this end the Union and the Member States shall act taking account of the diverse forms of national practices, in particular in the field of contractual relations, and the need to maintain the competitiveness of the Union economy.</p> <p>They believe that such a development will ensue not only from the functioning of the internal market, which will favour the harmonisation of social systems, but also from the procedures provided for in the Constitution and from the approximation of provisions laid down by law, regulation</p> | <p><i>peoples and in securing high standards of social welfare.</i></p> <p><i>Drawing on the Charter of Fundamental Rights, the Union and the Member States shall have as their objectives the promotion of full and high quality employment, improved living and working conditions, [delete] decent social protection, dialogue between management and labour, and the development of human resources [delete].</i>¹</p> <p><i>The Union and the Member States will aim to develop a skilled, trained and adaptable workforce and labour markets responsive to economic change.</i></p> <p>To this end they shall act taking account of the diverse forms of national practices, in particular in the field of contractual relations, and the need to maintain the competitiveness of the Union economy.</p> <p>They believe that such a development will ensue not only from the functioning of</p> |
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1. The Charter of Fundamental Rights already draws upon the 1961 European Social Charter and the 1989 Community Charter of the Fundamental Social Rights of Workers. It is sincerely to be hoped that earlier UK objections to recognising the existence of the European social dimension can now be dropped.

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| or administrative action of the Member States. | the internal market, which will favour the harmonisation of social systems, but also from the procedures provided for in the Constitution and from the approximation of provisions laid down by law, regulation or administrative action of the Member States. |
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As Chancellor Merkel and others have suggested, it would be desirable to add a new Declaration on Solidarity which gathers together all the social policy provisions of the new treaty in order to ease its interpretation (and to help those campaigning for its ratification).¹ Such a Declaration, to which all member states would have to subscribe, would put the advances on offer in Part I and in the Charter within the context of the Union's shared competence to legislate and undertake other activities in order to combat social exclusion and discrimination, promote equality, integrate those with special needs, boost training, enhance mobility, support the social dialogue, prevent social dumping and ensure universal access to services of general economic interest.

Those member states wishing to go further should undertake to draft a new Protocol on Social Union whose terms would commit the signatories to forming enhanced cooperation under the terms of Articles I-44 and III-416 to III-423. Nine member states (one third of the membership) would be required so to agree, and the recruitment of these could be an early job for Ségolène Royal should she gain the Elysée in May. An early purpose of such a Social Union would be the harmonisation of social security and employment conditions for third country immigrants.

1. A good example of what might be acceptable has been published by Dr Andreas Maurer, *In Detention, Repeating the Year, or Expelled?*, SWP-Studie 4/06, Stiftung Wissenschaft und Politik, Berlin, February 2006.

Greening the constitution

Environmental policy, today merely a flanking policy of the single market and aimed at pollution control, should be upgraded. Combating climate change should become the imperative to which all common policies, especially agriculture, energy and transport, need to conform. This reform will open up the perspective of recasting farm and fisheries policies. It will also allow a common energy policy to emerge as a major feature of the reformed Union, involving realisable objectives of conservation and renewable energy sources as well as improving the security and diversity of supply.

The negotiations of 2002-04 succeeded in making one significant improvement in Part III to EU environmental policy. Article III-119 is a new horizontal clause of general application, but its language leaves the reader with the overriding impression that the environment is yet another neuralgic problem that the EU has to face. There is little sense of urgency or of rising to the occasion. On Europe's future contribution to conserving the planet's eco-system the constitution is strangely silent. It could, therefore, usefully be modernised, thus:-

| Article III-119 | Article III-119 revised |
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| Environmental protection requirements must be integrated into the definition and implementation of the policies and activities referred to in this Part, in particular with a view to promoting sustainable development. | Environmental protection requirements must be integrated into the definition and implementation of the policies and activities referred to in this Part, in particular with a view to promoting sustainable development <i>and to combating climate change.</i> |

I propose re-writing Articles III-119 and III-233 as well as promoting the whole environmental chapter up the sequence of Part III in order to give the policy sector greater force and visibility. A priority should be to reinforce the capacity of the Union to reach its greenhouse gas

emission targets and to consolidate its pioneering carbon emissions trading scheme. Member states should be discouraged from concluding their own international environmental agreements which tend to undermine EU solidarity.

| Article III-233 | Article III-233 revised |
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| <p>1. Union policy on the environment shall contribute to the pursuit of the following objectives:</p> <p>(a) preserving, protecting and improving the quality of the environment;</p> <p>(b) protecting human health;</p> <p>(c) prudent and rational utilisation of natural resources;</p> <p>(d) promoting measures at international level to deal with regional or worldwide environmental problems.</p> <p>2. Union policy on the environment shall aim at a high level of protection taking into account the diversity of situations in the various regions of the Union. It shall be based on the precautionary principle and on the principles that preventive action should be taken, that environmental damage should as a priority be</p> | <p>1. <i>The Union's goal is to be a globally competitive, energy and resource efficient economy. Its policy on the environment shall pursue the following objectives:</i></p> <p>(a) preserving, protecting and improving the quality of the environment;</p> <p>(b) protecting human health <i>and bio-diversity</i>;</p> <p>(c) prudent and rational utilisation of natural resources;</p> <p>(d) promoting <i>legislation and market</i> measures at <i>all levels</i> to deal with regional or worldwide environmental <i>challenges</i>.</p> <p>2. Union policy on the environment shall aim at a high level of protection taking into account the diversity of situations in the various regions of the Union <i>as well as the Union's duty to the international community</i>. It</p> |

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| <p>rectified at source and that the polluter should pay.</p> <p>In this context, harmonisation measures answering environmental protection requirements shall include, where appropriate, a safeguard clause allowing Member States to take provisional steps, for non-economic environmental reasons, subject to a procedure of inspection by the Union.</p> <p>3. In preparing its policy on the environment, the Union shall take account of:</p> <p>(a) available scientific and technical data;</p> <p>(b) environmental conditions in the various regions of the Union;</p> <p>(c) the potential benefits and costs of action or lack of action;</p> <p>(d) the economic and social development of the Union as a whole and the balanced development of its regions.</p> <p>4. Within their respective spheres of competence, the Union and the Member States shall cooperate with</p> | <p>shall be based on <i>the principles of precaution and substitution</i> and on the principles that preventive action should be taken, that environmental damage should as a priority be rectified at source and that the polluter should pay.</p> <p>In this context, harmonisation measures answering environmental protection requirements shall include, where appropriate, a safeguard clause allowing Member States to take provisional steps, for non-economic environmental reasons, subject to a procedure of inspection by the Union.</p> <p>3. In preparing its policy on the environment, the Union shall take account of:</p> <p>(a) available scientific and technical data;</p> <p>(b) environmental conditions in the various regions of the Union;</p> <p>(c) the potential benefits and costs of action or lack of action;</p> <p>(d) the <i>sustainable</i> development of the Union</p> |
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| <p>third countries and with the competent international organisations. The arrangements for the Union's cooperation may be the subject of agreements between the Union and the third parties concerned.</p> <p>The first subparagraph shall be without prejudice to Member States' competence to negotiate in international bodies and to conclude international agreements.</p> | <p>as a whole and the balanced development of its regions.</p> <p>4. Within their respective spheres of competence, the Union and the Member States shall cooperate with third countries and with the competent international organisations. The arrangements for the Union's cooperation may be the subject of agreements between the Union and the third parties concerned.</p> <p>[delete]</p> |
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Up-grading environmental policy in the hierarchy of the constitution would make it a criterion by which all other relevant common policies are judged. Not least among those affected will be the common agriculture and fisheries policies, whose constitutional provisions, now fifty years old, pre-date the concept of sustainable development, the need to intensify care for the ecology of the countryside, or the introduction to farming of genetically modified organisms. As far as the CAP is concerned, the constitution is obsolete even before it comes into force, lacking references to the primary objective of the present-day CAP – income stability – or to rural development, decoupling, cross-compliance, public health, animal welfare and the EU's obligations in agriculture to the WTO. The constitution's stated objectives of the CAP are still 'to increase agricultural productivity', 'to ensure a fair standard of living for the agricultural community', 'to stabilise markets', and 'to assure the availability of supplies ... at reasonable prices' (Article III-227).

It would also be useful to separate out fisheries from agriculture, as common sense and current practice dictates. The constitution should refer to the specific objectives of the common fisheries and aquaculture policy in a wholly new article.

| Article III-227 | Article III-227 revised |
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| <p>1. The objectives of the common agricultural policy shall be:</p> <p>(a) to increase agricultural productivity by promoting technical progress and by ensuring the rational development of agricultural production and the optimum utilisation of the factors of production, in particular labour;</p> <p>(b) thus to ensure a fair standard of living for the agricultural community, in particular by increasing the individual earnings of persons engaged in agriculture;</p> <p>(c) to stabilise markets;</p> <p>(d) to assure the availability of supplies;</p> <p>(e) to ensure that supplies reach consumers at reasonable prices.</p> <p>2. In working out the common agricultural policy and the special methods for its</p> | <p>1. The objectives of the common agricultural policy shall be:</p> <p><i>(a) to ensure the sustainable development and competitiveness of farming;</i></p> <p><i>(b) to promote sustainable rural communities, the sound management of natural resources and species, and the conservation of the countryside.</i></p> <p>2. <i>The common agricultural policy shall ensure a fair standard of living for rural communities, supply consumers with healthy products of good quality at reasonable prices, respect animal welfare, and guarantee the security of supplies.</i></p> <p>3. <i>The policy shall pay due regard to the disparities between Europe's agricultural regions.</i></p> |

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| <p>application, account shall be taken of:</p> <p>(a) the particular nature of agricultural activity, which results from the social structure of agriculture and from structural and natural disparities between the various agricultural regions;</p> <p>(b) the need to effect the appropriate adjustments by degrees;</p> <p>(c) the fact that in the Member States agriculture constitutes a sector closely linked with the economy as a whole.</p> | <p>4. It shall contribute towards the objective of global food security.</p> |
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| Article III-227 | Article III-227 bis new |
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| | <p>1. The objectives of the common fisheries policy shall be defined in relation to the specific nature of the dependency of the fisheries sector on the Union's ability to manage sustainably its marine biological resources.</p> <p>2. The common fisheries policy shall ensure a fair standard of living for coastal communities, supply consumers with healthy products of good quality at reasonable prices,</p> |

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| | <p><i>and guarantee the security of supplies.</i></p> <p><i>3. The policy shall pay due regard to the specifically regional nature of European fisheries.</i></p> <p><i>4. It shall contribute towards the objective of global food security.</i></p> |
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The Convention had struggled to get member states to install a decent legal base in the constitution for a common energy policy. Eventually, the new Article III-256 emerged, but its scope is limited. Needless to say, it was the British and Dutch governments which were at that stage the most vehemently opposed to strengthening the competence of the Union in energy market matters. Today, Tony Blair, at least, appears to have changed his mind.

The IGC should seize the opportunity to re-visit Article III-256 in order to ensure that the new common energy policy can implement effectively a single market in energy. Energy policy must focus on diversified supply from variable sources with greatly improved efficiency and conservation. Abroad, the EU needs to develop, in the context of its neighbourhood policy, serious, long-term relationships with its source and transit countries.

As far as the scope of the policy is concerned, it may now be possible to remove an internal contradiction. Environmental policy Article III-234.2(c) allows the Council to legislate on ‘measures significantly affecting a Member State’s choice between different energy sources and the general structure of its energy supply’. Absurdly, energy policy Article III-256 forbids an EU law from affecting a member state’s ‘right to determine the conditions for exploiting its energy resources, its choice between different energy sources and the general structure of its energy supply’. One may well ask what there will be

left of substance in an EU common energy policy if it is restricted to measures pruning energy demand but all the key questions about energy supply are left to the national level. The choice to go nuclear or not remains a matter for each member state, respecting the principle of subsidiarity. But nuclear energy is bound to remain part of the mix under an integrated common energy policy. A better formulation of the energy chapter is, therefore, as follows:-

| Article III-256 | Article III-256 revised |
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| <p>1. In the context of the establishment and functioning of the internal market and with regard for the need to preserve and improve the environment, Union policy on energy shall aim to:</p> <p>(a) ensure the functioning of the energy market;</p> <p>(b) ensure security of energy supply in the Union, and</p> <p>(c) promote energy efficiency and energy saving and the development of new and renewable forms of energy.</p> <p>2. Without prejudice to the application of other provisions of the Constitution, the objectives in paragraph 1 shall be achieved by measures enacted in European laws or framework laws. Such laws or framework laws shall be</p> | <p>1. <i>The objective of the Union's energy policy shall be to ensure long-term, sustainable and affordable supply for the citizen.</i></p> <p>2. In the context of the establishment and functioning of the internal market and with regard for the need to preserve and improve the environment, Union policy on energy shall aim to:</p> <p>(a) ensure the <i>efficient, transparent and competitive</i> functioning of the energy market;</p> <p>(b) ensure <i>the security, diversity and connectivity</i> of energy supply in the Union, [delete]</p> <p>(c) <i>ensure the protection of the environment in the production, supply and consumption of energy, including energy</i></p> |

adopted after consultation of the Committee of the Regions and the Economic and Social Committee.

Such European laws or framework laws shall not affect a Member State's right to determine the conditions for exploiting its energy resources, its choice between different energy sources and the general structure of its energy supply, without prejudice to Article III-234(2)(c).

3. By way of derogation from paragraph 2, a European law or framework law of the Council shall establish the measures referred to therein when they are primarily of a fiscal nature. The Council shall act unanimously after consulting the European Parliament.

efficiency and energy saving and the development of new and renewable forms of energy, *and*

(d) enhance competition between companies and solidarity among Member States.

3. Without prejudice to the application of other provisions of the Constitution, the objectives in paragraph 2 shall be achieved by measures enacted in European laws or framework laws. Such laws or framework laws shall be adopted after consultation of the Committee of the Regions and the Economic and Social Committee.

[delete]

4. By way of derogation from paragraph 3, a European law or framework law of the Council shall establish the measures referred to therein when they are primarily of a fiscal nature. The Council shall act unanimously after consulting the European Parliament.

Enlargement & neighbourhood policy

The forthcoming IGC must try to address the widespread public concern that the expansion of the Union is at best badly managed, and at worst out of control. I propose that a wholly new chapter should be inserted into Part III governing the enlargement and neighbourhood policy of the Union. The Copenhagen criteria, which have governed enlargement policy since the fall of the Berlin Wall, should be written into the constitution. The rigorous membership process, involving pre-accession agreements, screening, safeguard provisions and transitional arrangements, should be described in the new chapter. The concept of neighbourhood policy, introduced summarily in Article I-57, could be helpfully fleshed out in this chapter.

In this context, a new category of associate member should be created. The introduction to the constitution of the secession clause in Part I (Article I-60) postulates the stark choice between 'in' or 'out'. Reaction to the recent, controversial enlargement has sparked a lively debate about the Union's own 'absorption capacity' and the potential of 'privileged partnerships' as a half-way house. EU associate membership, as here proposed, would serve both as a safety valve for any member state choosing to reject the constitution but retain close links with the Union, as well as a respectable parking place for any other European state which either chose not to seek full membership of the Union or, having made the attempt to join, failed to meet the accession criteria. Altogether, the insertion of this new chapter on the Union's frontiers policy would assist potential candidates to understand the full implications of making a membership application.

| | Article III-XXX new |
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| | <p><i>1. Any European state wishing to join the Union shall respect the values laid down in Article I-2, and be committed to promoting them together with the Member States and according to the provisions of this constitution.</i></p> <p><i>2. In accordance with Article I-58, the Council shall open accession negotiations on the basis of an opinion from the Commission, and after obtaining the consent of the Parliament, once it is satisfied that the following criteria are sufficiently fulfilled:</i></p> <p><i>(a) the applicant state has achieved stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities,</i></p> <p><i>(b) the applicant state is a functioning market economy and has the capacity to cope with competitive pressure and market forces within the Union;</i></p> <p><i>(b) the applicant state is able to take on the obligations of membership, including</i></p> |

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| | <p><i>adherence to the aims of political, economic and monetary union, as laid down in Article I-3.</i></p> <p><i>3. The Union's capacity to accept a new member while maintaining the momentum of integration is an important consideration in the general interest of both the Union and the applicant state.</i></p> |
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| | <p>Article III-XXY new</p> |
| | <p><i>1. Once an application for membership is received, the Council may confer candidate status on the basis of an opinion from the Commission and after consulting the Parliament. A screening process shall be undertaken jointly by the Commission and the applicant state in order to prepare for accession negotiations.</i></p> <p><i>2. A pre-accession partnership may be agreed between the Union and the applicant state, involving a structured dialogue and the delivery of financial and technical assistance. The pace of the accession process will be conditional on the</i></p> |

applicant state's participation in the pre-accession partnership. Each applicant state will be judged on its own merits.

3. Accession negotiations shall commence once the Council has conferred accession status in accordance with the provisions of Article III-XXX.2. The negotiations shall determine whether and, if so, when the applicant state has complied fully with all the obligations of membership of the Union.

*4. Negotiations shall be conducted between the applicant state and the Member States, which shall act in good faith according to common positions agreed in the Council on the basis of proposals from the Commission. Where appropriate, transitional measures and safeguard provisions may be agreed in order to allow the negotiations to be concluded. Derogations from the *acquis communautaire* shall be granted only in exceptional circumstances and shall be limited in scope.*

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| | <p><i>5. The Commission shall evaluate continuously the progress of the accession negotiations and, in particular, the success of the applicant state in transposing, chapter by chapter, the whole acquis. The European Parliament shall be kept fully informed and consulted.</i></p> |
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| | Article III-XXZ new |
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| | <p><i>1. Any democratic European state sharing the values of the Union may apply for associate membership of the Union. The application shall be considered according to the procedures laid down in Article III-325.</i></p> <p><i>2. The purpose of associate membership is to bind the Union and the associate into a close and durable partnership in which reciprocal commitments can be made in any policy field falling within the competences conferred on the Union in this constitution.</i></p> <p><i>3. Participation of associate members in the financial or institutional aspects of the</i></p> |

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| | <p><i>Union will be decided on a case by case basis.</i></p> |
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| | <p>Article III-XYX new</p> |
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| | <p><i>1. The Union's neighbourhood policy shall be developed in the context of its security strategy. It shall seek to promote the rule of law, respect for human rights, good governance, the market economy and sustainable development.</i></p> <p><i>2. In accordance with Article I-57, the Union may negotiate specific agreements with neighbouring countries. The aim of these agreements will be to enhance good neighbourly relations founded on the values of the Union and characterised by close cooperation. The agreements may establish reciprocal rights and obligations, as well as joint activities.</i></p> |

A reformed financial system

A revised financial system, covering both revenue (including the UK rebate) and expenditure (including the CAP), is due in any case to be negotiated in 2008-09.¹ This review has to be concluded in time for the negotiation of the new multi-annual financial framework – ‘financial perspectives’ – starting in 2014. Informal discussions among the institutions, and with national parliaments, have already begun. Let us hope these discussions prove to be more fruitful than those in the Convention when the UK blocked any reform of revenue, France blocked any reform of spending, and the Netherlands refused any meaningful debate at all unless and until the alleged unfairness of its own budgetary settlement – ‘juste retour’ – was redressed.

The present financial system of the Union is excessively complex and mired in confusion. It has been misleading to call the Union’s revenue its ‘own resources’ because although member states are legally obliged, under the Treaty, to pay their dues, they retain fiscal sovereignty. Put simply, only about 15 per cent of the EU’s revenue comes directly from customs duties and agricultural levies – genuine ‘own resources’. The rest is made up of contributions from national treasuries – either from VAT (about 15 per cent of the whole) or a levy in proportion to a member state’s GNP. All member states retain (variable) collection premiums. The UK has a rebate in an attempt to lessen its budgetary burden, and four member states have abatements on their payments towards the UK rebate.² A ceiling is put on the EU’s total revenue of 1.24 per cent of the Union’s GNI.³

Reform of the present system will be controversial but not impossible. It is easier to agree the principles which should shape the financial system – equity, solidarity, fiscal neutrality, transparency, accountability – than to put them into practice.

1. Interinstitutional Agreement of 17 May 2006; OJ C 139, 14-06-2006.

2. Austria, Germany, Netherlands, Sweden.

3. The current own resources Council Decision dates from 2000; OJ L 253, 07-10-2000.

As far as the future of the own resources system is concerned, the existing GNI resource, which has many merits, could be consolidated and the VAT resource, both complicated and regressive, could usefully be abolished. There is no good case for direct EU taxation. In the longer run, however, it might be desirable to create a new resource which gave to the Union a certain share of an existing national tax, thereby creating more of a direct link between EU spending and the citizen. Candidates for such a scheme would include excise duties and eco-taxes. One immediate solution to the problem of equity would be to generalise the corrective mechanism, so that all member states received a refund once their national contribution reached a certain threshold of GNI.

No reform of the EU revenue system makes sense unless the imbalance of expenditure is also addressed. Here the CAP still takes about 40 per cent of total EU spending, which mostly favours France. A sensible reform, therefore, would be to extend co-financing of the CAP so that member states would meet a proportion of the cost of CAP payments within their own countries, as indeed they already do in order to draw down spending from the EU structural and cohesion funds. How much each member state would have to pay towards the CAP would be varied according to the relative wealth of the state concerned. Richer states would co-finance half the CAP, others less.

Whatever evolves, the new system must, broadly speaking, redistribute wealth between richer and poorer member states. It must also be designed to enable the Union to match more directly its spending decisions with its economic and political priorities – including future enlargement. Narrowing the gap between rhetoric and reality should help public opinion.

So what is the connection between the financial review and the constitutional renegotiation? The German presidency intends to dispatch the IGC as soon as possible before embarking on the formal financial negotiations. Certainly, two separate but simultaneous sets of negotiations on equally tricky issues would be impossible to manage.

My preference, however, is to embrace the two in the expectation that the addition of money matters will lubricate the IGC and that the engagement in the serious business of reforming common policies will create a realistic perspective for the financial review. Taken together, the one will incentivise the other. Mercifully, as far as the constitution is concerned, no further amendment to the financial system of the Union is required at this stage.¹

Other matters

If the renegotiation goes well, trust between the member states, rudely dashed in 2005, will quickly return. No doubt other proposals will be made for modification of certain provisions in Part III, and will deserve due attention.

My own final proposal, however, is that the IGC adds a new horizontal clause at the start of Part III that would provide an assured legal basis for the communications policy of the Union. The constitution provides in Article I-50 that the EU institutions shall be open and consultative. The frustrating experience of the failed referendum campaigns and of the Commission's subsequent 'Plan D' suggests the need for something more, as follows:-

| | Article III-122 bis new |
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| | <i>In the defining and delivery of the policies laid down in this Part, the Union and its Member States shall aim to communicate faithfully with citizens and to deepen public understanding of the activities, functioning and purposes of the Union.</i> |

1. Although the Netherlands should drop its unilateral Declaration No. 42 in which it demands a 'satisfactory solution for its excessive negative net payment position'.

The process

The June European Council is aiming to agree the timetable and mandate for the new IGC. It must also define the process by which the IGC is most likely to achieve a successful conclusion. Clearly, government ministers must take it upon themselves to engage their national parliaments in consultation and debate throughout the IGC negotiations. The European Commission, which will have a central role in an IGC which focuses upon the reform of the common policies of the Union, will also need to be actively involved in informing national parliaments. National parliaments themselves will be able to confer together through the medium of COSAC and, along with MEPs, in the Interparliamentary Forums on the Future of Europe recently established during the period of reflection.

The key question is how to involve the European Parliament in the deliberations of the IGC. It is unquestionable that the old formula of appointing two MEPs to observe the IGC will no longer be acceptable. Since the Convention, the Parliament has established its constitutional credentials. It is an acknowledged and invaluable player in brokering agreement not just between countries but across party political boundaries. The fact is that ministers and officials of the member states know that they need the expertise and backing of the European Parliament if they are to succeed in improving the constitutional treaty and in democratising the consensus behind it. Over two thirds of the Parliament endorsed the original text.¹ Unless a similar level of support can be induced this time, the ratification of the revised constitution in several member states cannot be contemplated with equanimity.

The answer is to install a system of informal co-decision, comparable to that used for legislation at second reading. A small delegation from the Parliament would meet regularly with a delegation from the IGC, along with representatives of the Commission, to discuss draft texts. Bolstered by this new form of constitutional co-decision, each national

1. 12 January 2005, by 500 votes to 137 with 40 abstentions.

government would retain its right to accept, or not, the emerging consensus.

Thereafter, it will again be up to national parliaments or the people by referendum to take the ultimate, historic decision about the future of Europe.