

# Beefing up the red lines:

## Key negotiating points for British business

### 1 Summary

- The long running negotiations over the proposed EU constitution will come to a head at the Brussels summit of 12-13th December. The Government's position is based on series of 'red lines' - issues on which it is insisting that the veto must be maintained.
- The Government's 'red lines' are not as tough as they seem - for two reasons:
  - At least one of the 'red lines' - social security - is already satisfied by the existing draft. So on this issue, a 'no change' outcome at the Brussels summit will allow Ministers to claim that they have 'won' a key 'red line' battle. The 'red line' on social security is really a 'red herring'.
  - The 'red lines' leave open the possibility that the Government may concede vital ground on other issues that are of equal - or even greater - concern to British business. These issues should also be 'red lines' for UK Ministers. They include:
    - the Charter of Fundamental Rights;
    - economic policy;
    - energy;
    - the new system of 'shared competences' - effectively a back door route to exclusive competence at EU level; and
    - the EU's new power to sign international treaties.
- A referendum commitment would strengthen the Government's negotiating hand immeasurably. The IoD repeats its call for a referendum.

### 2 The Brussels summit

On 12th and 13th December, EU Heads of Government will meet in Brussels to hammer out the final points of the proposed EU constitution. The summit is intended to mark the end of the intergovernmental conference (IGC) that has been working since early October to reach agreement on how the EU should move forward.

As is so often the case in international negotiations, the thorniest issues have all been left until last. There is not even any guarantee that agreement will be reached; it is quite possible that the IGC process will continue well into 2004.

Much of the political and media debate about the proposed EU constitution has concentrated on reform of Europe's institutional arrangements. Attention has focused on questions such as the number of European Commissioners, the thresholds for Qualified Majority Voting (QMV) and the balance of powers between the European Parliament and the Council of Ministers.

Important as these issues are, the IoD regrets that less attention has been devoted to the question that is our central concern - who sets the rules by which our members do business? So far-reaching are the constitution's proposed changes to the EU's 'competences' that these alone would justify a referendum of the British people. When added to the institutional reforms, the case for such an exercise is overwhelming.

This paper highlights the IoD's key concerns. In particular, we draw attention to crucial issues for UK business that do not appear to form a central part of the UK Government's negotiating brief as set out in the White Paper of September 2003.<sup>1</sup>

Proposals such as the Charter of Fundamental Rights and plans to transfer control over energy, consumer protection and environmental policy to EU level would be deeply damaging to British business. We urge the Prime Minister to put the business case on each of these points as he joins his fellow EU Heads of Government in Brussels.

## 3 The increased powers of the new EU

Under the new constitution, the EU's powers will be divided into two different types of 'competence' - 'exclusive competences' and 'shared competences'.

### 3.1 Exclusive competences

The EU will have exclusive competence in the following areas:

- competition rules necessary for the functioning of the Internal Market;
- customs union;
- Common Commercial Policy;
- monetary policy for the Eurozone;
- the conservation of marine biological resources under the Common Fisheries Policy (CFP); and
- the ability to negotiate and sign all international agreements and treaties (e.g. in transport, communications, public health, energy, commercial policy and criminal justice).

### 3.2 Shared competences

There will be a new category of 'shared competence', where member states will exercise their competence only if and to the extent that the Union has not exercised its competence.

In other words, if the Union chooses to legislate in an area, member states will be unable to do so. This will probably lead to very substantially increased powers in these areas for the Union at the expense of the member states.

This development is likely to be of great concern to business, as several of these 'shared competences' relate to issues of key business interest, such as energy, social policy, transport, environment and consumer protection.

The 'shared competences' are:

- the Internal Market;
- the area of freedom, security and justice;
- agriculture and fisheries, excluding the conservation of marine biological resources (which is an exclusive competence of the EU);
- transport and trans-European networks (TENs);
- energy (a completely new competence for the EU);
- social policy;
- economic, social and territorial cohesion;
- environment;
- consumer protection; and
- common safety concerns in public health matters.

### 3.3 Other powers

Further reforms of major significance for the country and for business include the following.

- The EU will gain a new power to co-ordinate EU economic and employment policies.
- The EU Charter of Fundamental Rights will be incorporated into the Constitution and will be legally binding on member states.
- In the area of 'freedom, security and justice' (formerly known as 'justice and home affairs'), issues such as civil law and asylum and immigration had already been transferred from Maastricht's third pillar to the Community. Criminal matters, for example, remained inter-governmental. The entire area of 'freedom, security and justice' will now become an EU competence.
- Common Foreign and Security Policy (CFSP) will no longer be inter-governmental and will become an EU competence.

## 4 The Government's 'Red Lines' - not as tough as they seem

### 4.1 Two problems with the red lines

The Government's approach to the EU Constitution is set out in a White Paper published in September, *A Constitutional Treaty for the EU: the British approach to the European Union Intergovernmental Conference 2003*.<sup>2</sup>

At the heart of the Government's White Paper is a set of 'red line' issues on which the Government insists that decisions must continue to be taken by unanimity, rather than by QMV. Although not spelt out in so many words, the threat is clear - if other Member States do not give way on these points, the Government will veto the whole exercise.

The 'red lines' on which the Government insists unanimity must remain are set out in paragraph 66 of the White Paper. They are:

- treaty change;
- taxation;
- social security;
- defence;
- 'key areas of criminal procedural law'; and
- 'own resources' - effectively the EU Budget.

The 'red lines' represent an astute political device for the Government. They allow Ministers to 'talk tough' for the benefit of the domestic audience, but, in fact, they fall some way short of being a satisfactory negotiating strategy - for two key reasons.

- First, at least one of these 'red lines' - social security - is already satisfied by the existing draft. On this issue, the Government does not need a change to the draft at all; it is simply insisting that the draft must not be amended to make it any more integrationist. So on this issue, a 'no change' outcome at the Brussels summit will allow Ministers to claim that they have 'won' a key 'red line' battle. In the political world, this is known as an 'easy win'.
- Second, the list of 'red line' issues still leaves open the worrying possibility that the Government may concede vital ground on other issues that are of equal - or even greater - concern to British business. These points are discussed in some detail in the next section, but briefly they comprise the Charter of Fundamental Rights, economic policy, energy, the new system of 'shared competences' and the EU's new power to sign treaties.

### 4.2 Social security - red line or red herring?

As mentioned above, the Government's 'red line' on social security is already safeguarded by the text as it stands at the moment. In this case, the Government would only have a problem if the IGC

were to amend the existing draft in order to make it more integrationist.

The social security provisions are set out in Articles III-103 to III-112 of the draft text. A close scrutiny of sub-clause III-104.3 shows that, on four specific aspects of social policy, decisions must be reached 'by the Council of Ministers acting unanimously'. These four aspects are:

- social security and social protection of workers;
- protection of workers where their employment contract is terminated';
- representation and collective defence of the interests of workers and employers; and
- conditions of employment for third-country nationals legally residing in Community territory.

Further reading of the same sub-clause shows that the Council of Ministers may, by unanimous vote, decide to apply the 'ordinary legislative procedure' (i.e. QMV) to the last of these three items, but not, however, to the first item in the list - social security. This is effectively the same situation as that set out in the existing EU treaties.<sup>3</sup>

So the text is clear - unanimity on social security remains firmly in place. It seems that the 'red line' on social security is actually a 'red herring'.

## 5 The IoD's concern - it's not just about the red lines

One of the effects of the Government's 'red lines' approach is that most observers are likely to measure the Government's success by the Government's own yardstick.

Of course, it would be remarkable if the Government had marked these issues out as red lines without being completely confident that they would win the battle on each one.

It is not difficult to envisage a scenario at the end of the IGC negotiations when triumphant British Ministers, fresh from victory on each of their 'red line' issues, declare that the IGC has been an overwhelming success. Cue applause all round.

Falling into this trap would be a mistake. The Government's 'red lines' are certainly welcome, but they still leave open the worrying possibility that the Government may concede vital ground on many other issues of direct concern to British business.

In this chapter we consider a range of crucial business issues that should form part of the Government's negotiating brief. It is not too late for Ministers to fight for these points in Brussels.

### 5.1 Charter of Fundamental Rights

The Charter of Fundamental Rights is to be fully integrated into the EU's Constitution as Part II of the new constitution, making it legally binding on Member States.

There are serious concerns that the courts will use the Charter to extend EU control over employment and industrial relations issues.

The rights are outlined in very loosely worded terms. For example, Article II-1 of the Charter establishes a right to human dignity:

*'Human dignity is inviolable. It must be protected and respected'.<sup>4</sup>*

As Martin Howe QC has rightly noted, 'Clearly, this right to "human dignity", which is not further defined, can mean whatever a Court chooses it to mean'.<sup>5</sup>

Other rights in the Charter include:

- right to freedom of assembly and of association;
- right to work;
- workers' right to information and consultation;
- right of collective bargaining and action (including the right to strike); and
- right to protection in the event of unjustified dismissal.

It is not difficult to see how these rights could be interpreted by the courts to impose costly new obligations on employers, potentially reversing the labour market reforms that have given British businesses a crucial competitive edge.

For example, the 'right of collective bargaining and action' could lead to the European Court of Justice, not the UK Parliament, deciding whether restrictions on strike action should be allowed in situations where national security might be at stake.

Alternatively, it is easy to see how the UK's opt-out from the Working Time Directive, already under review by the European Commission, could be challenged under Article II-31.2 of the Charter, which states that 'Every worker has the right to limitation of maximum working hours'. Although Article II-52 allows for some 'limitation on the rights and freedoms recognised by this Charter', the final decision would be down to the courts.

Incorporation of the Charter will also make it easier for the Commission to bring forward new initiatives that will translate the Charter's 'rights' into EU law.

The Government has progressively relaxed its position on the Charter. At one point, Ministers talked of it as a potential 'red line' issue. However, the White Paper takes a more relaxed approach, claiming that the Charter does not give any new powers to EU. It then goes on to say that the Government will make a final decision 'only in the light of the overall picture at the IGC'.<sup>6</sup>

This seems to mean that the Government may use the Charter as a bargaining chip, but will sign up in the end. This is simply the wrong approach. If the Government really wishes to defend the interests of British business (and, for that matter, of European business) it should revert to its robust approach of a few months ago and insist that the Charter of Fundamental Rights be removed from the text.

## 5.2 Co-ordination of economic policies

Article I-14 of the draft Constitution says:

*'The Union shall adopt measures to ensure co-ordination of the economic policies of the Member States, in particular by adopting broad guidelines for those policies. The Member States shall co-ordinate their economic policies within the Union'.*

Although the precise implications of this provision are unclear, it will certainly cover the overall level of taxation, interest rates and public expenditure, as well as pensions policy and employment taxes. Social policies would also be included.

The IoD has major concerns about this competence. For example, the EU has an ageing and shrinking population and this has major implications for pensions. Greater economic co-ordination would suggest that these problems will increasingly be subject to common action, under the requirements of solidarity and burden-sharing in the European Constitution. This could leave the UK supporting pensioners in other EU states that have a less favourable demographic situation and large unfunded pension liabilities.

The Government's White Paper refers only obliquely to this proposal, stating that 'The Government will oppose any such proposals which might lead to unnecessary rigidities or undermine the central role of Member States in determining their economic policies'.<sup>7</sup>

To give him credit, the Chancellor of the Exchequer has made some severely critical noises about this particular proposal. The Government must now carry this through to the Brussels summit. As with the Charter of Fundamental Rights, the plan to allow EU co-ordination of economic policies must be removed from the text.

## 5.3 Energy

Clause III-157 of the draft Constitution states that the Union shall 'share competence' for energy. This is a completely new competence. QMV will apply.

Union policy on energy will aim to:

- ensure the functioning of the energy market;
- ensure security of energy supply in the Union; and
- promote energy efficiency and saving and the development of new and renewable forms of energy.

On the face of it, this clause appears to hand complete control of energy policy to EU level. Given that the UK produces 90 per cent of the EU's oil output, this is of major concern to British industry. It is vital that we retain control of energy policy at Member State level.

The Government's approach to this crucial clause has been surprisingly relaxed. The White Paper makes no mention of the proposal, apart from a general 'catch-all' statement on the new shared competences that says the Government 'will need to consider, on a case by case basis, whether the conferral of specific powers on the EU is the best way to allow us to pursue Union objectives'.<sup>8</sup>

Under pressure from the oil industry and a handful of parliamentarians with an eye for detail, the Government has belatedly started to take action. At the Naples Ministerial 'conclave' on 28-29th November, the UK and Dutch Governments tabled an amendment that would address at least some of industry's concerns. The text of the amendment is not, however, publicly available.

Meanwhile, the Italian Presidency has tabled its own amendment as follows:

*'The Conference believes that Article III-157 does not affect the ability of the Member States to take the necessary measures to ensure their security of energy supply under the conditions provided for in Article III-16'.<sup>9</sup>*

Note that this only safeguards the UK's control of its oil in time of crisis. It does nothing address the central issue of who sets energy policy - the UK or the EU.

The Foreign Secretary's answers when questioned by a House of Commons Committee on 1st December did little to suggest that the Government appreciates the importance of this vital distinction. Pressed by SNP MP Angus Robertson to clarify whether the Anglo-Dutch amendment merely ensures that the EU may not sequester our oil in time of crisis or explicitly states that regulation and management of resources should remain at member state level, Mr Straw could only answer:

*'The chapter should have that effect, but I will write to the hon. Gentleman. I have a large number of documents to hand, but not the letter [the joint Anglo-Dutch letter to the Italian EU Presidency]'.<sup>10</sup>*

Furthermore, the Foreign Secretary also said that the problem with the current clause 'is not that it shifts competence, but that it is poorly drafted'.<sup>11</sup> This suggests that the Anglo-Dutch amendment merely tightens the language rather than changing the policy. This is a significant concern.

Regrettably the Government gives every impression of 'playing catch-up' on the crucial debate over energy policy. Ministers must get fully up to speed before the Brussels summit and ensure that a watertight amendment is passed to secure UK control of energy policy.

#### 5.4 Shared competences - exclusive competence by the back door

Over time, the new 'shared competence' arrangement will see complete control of a number of important policy areas transferred to EU level. It is, effectively, exclusive competence by the back door.

Given the far-reaching nature of this constitutional innovation, it is surprising that the Government's White Paper gives it only a brief reference:

*'Also, for the first time, the text sets out a clear definition of the different types of competence: where the Member States have chosen to confer exclusive competence on the EU; where the Member States share competence with the EU; and where the EU can take only supporting action to help the Member States achieve their goals'.<sup>12</sup>*

Although the White Paper goes on to say 'we will need to consider, on a case by case basis, whether the conferral of specific powers on the EU is the best way to allow us to pursue Union objectives; and, if so, what the relevant title should say', there is no indication at all of what the Government's view might be.

The IoD would suggest that the Government should be particularly concerned about two of the proposed shared competences - consumer protection and environmental policy.

- Consumer protection policy is clearly of great importance to business. It is vital to have a system that safeguards the rights of consumers without imposing unreasonable or unnecessary burdens on companies. At present the EU has a supporting role only. It may legislate for consumer protection measures which 'support, supplement and monitor' the policy of member states. Under the new constitution, member states will be barred from legislating in this area if the EU decides to do so. So the EU will have complete control.
- Environment policy is another area of crucial importance to business. The Better Regulation Task Force estimates that around 80 per cent of new environmental law has its origin in the EU. Under the shared competence device, we could expect this figure to rise rapidly to 100 per cent. Given the battle that the UK Government and business is currently fighting against the most damaging provisions of the proposed Environmental Liability Directive, further EU control of environmental policy would be a matter of serious concern.

Clearly the shared competence arrangement is an innovation of major importance. The Government should make it clear that it is a backdoor route to exclusive EU control. In doing so, Ministers should make it clear that they will negotiate to retain Member State control over key areas such as consumer and environmental law.

## 5.5 EU power to sign treaties

Article I-12 of the draft constitution will, for the first time, allow the EU to sign international treaties without recourse to member states.

Given that an increasing number of international agreements have major consequences for business, this new EU competence is of direct interest to the IoD and its members.

For example, it is entirely likely that future international agreements on climate change (such as the Kyoto Protocol) will be negotiated by the EU, rather than by member states. The resulting agreements would, presumably, have primacy over existing domestic or EU law.

Although the IoD is in favour of international co-operation to tackle global challenges, it is vital that control of policy remains in the hands of member state governments, which are best placed to

represent the interests of domestic stakeholders, including businesses.

The EU's new treaty signing power will have far-reaching consequences. At the Brussels summit, the UK Government must ensure that member states retain the final say over international agreements signed on their behalf.

## 6 The case for a referendum

The central concern of this paper is that the British Government's negotiating position is not as tough as it should be. Ministers seem to be preparing to give ground on vital issues such as the Charter of Fundamental Rights and shared competence in order to secure victories on the 'red lines'.

There is, of course, nothing new in this approach to European negotiation. Successive governments have taken the view that, if they want to win on the issues that matter most, they have to be prepared to give ground elsewhere.

The IoD's argument is that, in the case of the current debate about the constitution, this traditional approach is unnecessary. On this occasion, the Government should take a different tack: it should call a referendum.

A referendum commitment would strengthen the Government's negotiating hand immeasurably as Ministers go to the negotiating table in Brussels. Those EU colleagues who would force Britain to accept unwelcome transfers of sovereignty would know that there would be no point in scoring victories in the negotiating chamber if they could not be repeated at the ballot box. They would have to accept far more British positions - or take the risk of a referendum defeat torpedoing the whole exercise.

At least seven other countries are planning to hold referendums on the new constitution - Spain, Portugal, Czech Republic, Denmark, Republic of Ireland, Netherlands and Luxembourg. Others may follow suit.

A similar commitment from Britain would not only be good for democracy, it would help our Ministers to get the right deal for Britain.

The IoD repeats its call for the Government to announce a referendum.

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*December 2003*

## References

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1. A Constitutional Treaty for the EU: the British approach to the European Union Intergovernmental Conference 2003, FCO, September 2003, Cm 5934
2. Cm 5934
3. See Article 137-2.b of the current Treaty establishing the European Community.
4. Article II-1 of the draft Constitution
5. A Constitution for Europe: a legal assessment of the draft Treaty, Martin Howe QC, Congress for Democracy, November 2003
6. FCO White Paper, para. 103
7. FCO White Paper, para. 74
8. FCO White Paper, para. 56
9. Addendum to the Presidency Note, 25th November 2003, p.33, available at <http://ue.eu.int/igcpdf/en/03/cg00/cg00052ad01.en03.pdf>
10. Rt Hon Jack Straw MP, House of Commons Standing Committee on the Intergovernmental Conference, 1st December 2003, Col.106
11. Rt Hon Jack Straw MP, House of Commons Standing Committee on the Intergovernmental Conference, 1st December 2003, Col.98
12. FCO White Paper, para. 55

This IoD paper has concentrated on the business aspects of the new EU constitution. There are, of course, many other important issues. This appendix provides a brief survey of these points, starting with a description of the negotiation process to date.

Readers who have followed the IGC process closely from the outset will already be familiar with the details set out here. However, others may find that the following few pages provide at least some of the answers to the question 'how did we get here?'

### A1 The road to Brussels

#### A1.1 The Convention on the Future of Europe

At the December 2001 European Council in Laeken, Belgium, it was decided to establish a Convention on the Future of Europe, charged with charting a course for the enlarged EU.

- The Convention was effectively a 108-strong working group comprising government representatives, MPs and MEPs from the 15 EU member states plus the 10 states due to join the EU in May 2004.
- The Convention was chaired by the former French President, Valéry Giscard d'Estaing, with Giuliano Amato and Jean-Luc Dehaene as Vice-chairmen. The UK Government was represented by Rt Hon Peter Hain MP and the UK Parliament by two MPs - Rt Hon David Heathcoat-Amory (Con) and Gisela Stuart (Lab).
- The Convention started work in February 2002 and published its first stab at a 'Constitution for Europe' in late October 2002. This was followed by several further drafts, which were then brought together and split into four parts.
- Valéry Giscard d'Estaing presented Parts I and II to EU leaders at the Thessaloniki European Council in June 2003 and the final versions of Parts III and IV were presented to the Italian Presidency in July 2003. (The Italians hold the Presidency of the Council for the second half of 2003.)

#### A1.2 The IGC

With the Convention's work done, the draft constitution is now being scrutinised and negotiated in an intergovernmental conference or IGC.

- The IGC opened on 4th October in Rome, with a meeting of Heads of Government.

- Since the opening meeting, most of the IGC work has been done at a more junior level, by civil servants or by middle-ranking Ministers.
- Revised proposals and compromises have been tabled from time to time by the Italian Presidency. The most important of these is a 56-page set of amendments tabled on 25th November in advance of a 'conclave' of Foreign Ministers in Naples on 28-29th November.<sup>1</sup>
- The Naples 'conclave' prepared the ground for what Italy hopes will be the final stage of the IGC - a meeting of the European Council in Brussels on 12-13th December.
- If Heads of Government fail to reach agreement on 12-13th December, then the IGC will continue into 2004. The Republic of Ireland will hold the EU Presidency in the first half of 2004.

## **A2** The draft Treaty - an overview

### A2.1 Far-reaching changes to our relationship with the EU

The constitutional treaty will extend and profoundly change the nature of the EU - for three main reasons.

- It has far-reaching implications for the constitutional relationship between the EU and member states.
- It makes a large number of important changes to the institutional arrangements of the EU.
- It makes an unprecedented transfer of powers from the member states to the EU on a wide range of policy issues.

The bulk of the present briefing note is concerned with the third of these points - the vital issue of who has control over the rules on policy matters as diverse as energy, social policy and transport. These are covered on the forgoing pages. This appendix gives a brief summary of the constitutional and institutional changes set out in the draft, many of which have already been the subject of extensive debate in the media.

### A2.2 Changes to our constitutional relationship with the EU

The Constitution will radically change the current relationship between member states and the EU.

- The Constitution will give the EU full legal personality for the first time. In other words, the proposed Constitution will create a new Union, separate from member states and with its own legal personality and status, allowing it to sign international agreements that will be binding on the whole population of the EU and will empower it to play a full part on the world

stage, like a state. At present, the European Community has such a capacity only by treaty law.<sup>2</sup>

- The member states and their constitutions will be subordinate to the EU and the European Constitution. Some would say that this marks the end of the member states as fully independent and sovereign countries.
- EU law will have complete supremacy over national law.
- The new Treaty will provide for a full written constitution. The EU will derive its powers from this constitution - not from the member states. Member states will not be able to reduce the EU's powers by their individual acts. The EU will not, in other words, be treaty-based.
- The EU will become a unitary structure. The three-pillar structure set out in the Treaty of Maastricht will be consigned to history.
- Any member state wishing to withdraw from the Union would need to agree the terms on which it would continue any special relationship thereafter. Such terms would be agreed by QMV, with the departing member state excluded from the discussion and decision.

### A2.3 Changes to the institutional arrangements of the EU

- The current system of the rotating EU Presidency will be abolished. Instead, there will be a permanent (and very powerful) President of the European Council, elected by Heads of Government (on a QMV basis) for a term of two and a half years, renewable once.<sup>3</sup> It is no exaggeration to say that the new President will effectively be the Head of State of the new EU.
- The Presidency of Council of Ministers formations, except for Foreign Affairs, will be held by Member State on the basis of equal rotation, for periods of at least a year. The details of this arrangement remain to be negotiated - another key issue for the Brussels summit.
- The President of the European Commission will be elected by the European Parliament (EP).
- There will be a new position of European Foreign Minister to be appointed by the European Council. He/she will conduct the Union's Common Foreign and Security Policy, chair the Foreign Affairs Council and become Vice-President of the Commission. The present position of Commissioner for External Affairs will cease to exist.
- From 1st November 2009 it is proposed that the Commission College will consist of its President, its Vice-President (the Foreign Minister) and just 13 Commissioners. In addition, there will be non-voting Commissioners (junior status) from the member states not represented in the College. Hardly surprisingly, this proposal is proving highly controversial - especially with smaller member states. It is one of the major sticking points in the IGC negotiations.

- The European Commission will operate independently of member states. Commissioners will be appointed for five-year terms.
- The two Presidents (of the Council and of the Commission) will both be powerful figures. If the two positions were held by countries that share the same vision of Europe's future, it would be more difficult for other member states to advance alternative policies.
- Qualified Majority Voting (QMV) will become the general procedure of decision-making, with the notable exceptions of taxation, some areas of social policy, and the CFSP. In other words, the majority of policy areas will not be subject to a veto.
- The method used for calculating a qualified majority will be changed. The weighted voting system which has applied since the original Community treaties, and which was updated by the Treaty of Nice, will be abandoned and a so-called 'double-majority' system will be introduced. From 1st November 2009, a qualified majority will need the support of half the member states, representing at least 60 per cent of the EU's population. In simple terms, this will make it easier to get legislation through.
- The co-decision procedure will become the general mode of decision-making.

### References

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1. Addendum to the Presidency Note, 25th November 2003, available at <http://ue.eu.int/igcpdf/en/03/cg00/cg00052ad01.en03.pdf>
2. Note that the European Union comprises the institutions of the European Community plus the two intergovernmental 'pillars' created by the Treaty of Maastricht - Common Foreign and Security Policy (CFSP) and Justice and Home Affairs (JHA). The new constitution will abolish the two intergovernmental pillars, thereby bringing CFSP and JHA under the control of the EU institutions.
3. The European Council consists primarily of the Heads of State or Government of the member states. It meets quarterly.

