An inter-governmental tug-of-war

How the governments of Europe are rewriting the European Union's draft constitution

Get article background

WHEN Valéry Giscard d'Estaing and his convention on the future of Europe delivered their draft constitution to EU governments last June, they stuck a large label on saying “Fragile: Do Not Touch.” The argument of the conventioneers was that they had considered all possible questions, and had achieved the best compromise available. Indeed, they insisted, to alter any one element in their text would be to risk making the entire product incoherent. But Europe's governments have not paid any attention. It is becoming clear that the inter-governmental conference (IGC) now poring over the convention's draft text will make many significant changes.

The single most controversial issue concerns the balance of power between EU countries in the Council of Ministers. The convention's proposal was to junk the system of weighted votes and switch to “double majority voting”: a law would be passed if it commanded the support of a majority of countries, representing three-fifths of the EU's population. This new system implies a considerable loss of influence for Spain and Poland, which have duly vowed to oppose it.

It had been generally assumed, however, that the two countries were isolated and that there was a good chance that the other 23 EU countries would force them to accept the double majority. Yet some months ago, the British gave a secret undertaking to Spain that they would oppose the adoption of the double majority in return for Spanish support in blocking any move towards tax harmonisation. This week British officials refused to confirm that the Spanish deal was still on, saying merely that they were “sympathetic” to Spanish concerns. But Jack Straw, Britain's foreign secretary, has now said publicly that Britain will not accept any deal that Poland is unhappy with; and he seems to have received pledges that, in return, Poland will support British positions on tax and defence policy.

Germany, which would gain a lot more influence from a move to a double majority, continues to insist that its adoption is crucial to the new constitution. But officials from other countries are beginning to realise that the new voting system will not be accepted. That means the EU is likely to revert to the Byzantine system of weighted votes agreed at Nice three years ago. Under Nice, Poland and Spain each get almost as many votes as Germany, despite their populations being only half as big.
Junking the double majority system would get rid of one main plank of the convention’s proposals for the EU’s institutions. The other main reform—cutting the number of voting European Commissioners to 15—is also under threat. The smaller countries have made it clear that they will not agree to losing “their” commissioner. It is now widely predicted that the larger EU countries will concede that all countries can have a voting commissioner, although they may try to argue that the biggest six should then revert to the two that they have had until now. Thus, in true Brussels style, might a dispute between 15 (in the convention text) and 25 (as the smalls say they want) threaten to turn into an absurd compromise of 31.

The great unravelling

These institutional arguments may fascinate Brussels insiders. But the draft constitution has ambitious and arguably more important plans for the extension of EU powers in such areas as justice, foreign policy, defence, taxation, the budget and energy, all of which are now under attack. The most dramatic proposal is that EU policy on serious cross-border crime, immigration and asylum should be decided by majority vote. Several countries are now having second thoughts about this. The Irish dislike the idea that their system of criminal law could move towards the continental European model. Britain, Portugal, Slovakia and Austria are against the notion of harmonising criminal-law procedures. And if these articles on home affairs are reopened, the Germans, for all their determination to stick by the convention text, may be tempted to abandon their support of majority voting on immigration.

Britain, Ireland, Poland and Sweden also dislike the idea of calling the EU’s foreign-policy supremo a “foreign minister”, since this smacks too much of a superstate. Provisions to allow a core group of countries to forge a closer defence union, from which they might exclude others, are also meeting opposition from Finland, the central Europeans and the British. Britain and Ireland, meanwhile, are leading the battle against any hint of tax harmonisation. And the British, after heavy lobbying by the big oil companies, are belatedly trying to insist on changes to proposals to create a common EU energy policy. A bevy of finance ministers are also keen to limit the European Parliament’s planned powers over the EU budget.

If many of these changes are made, defenders of the convention text will cry foul and start saying that the whole thing has been gutted. That would be melodramatic. Most of the details of the draft constitution are all but agreed: a big extension of majority voting, a binding Charter of Fundamental Rights, a president of the European Council, a “legal personality” for the Union and the first explicit statement of the supremacy of EU law over national statutes. These are not small matters.

All the same, if there are substantial and eye-catching changes to the convention text, or if (as seems quite likely) the inter-governmental conference simply fails to reach agreement on time next month, there will be much hand-wringing in Brussels, Paris and Berlin. The French and Germans might then be tempted to use a “failure” in the IGC as an excuse to press ahead with schemes for a closer Franco-German union, which are known to beguile senior politicians in Paris in particular. If that happens, efforts to write a new EU constitution, far from marking a new beginning for Europe, might instead mark the beginning of the end.