

Germany, the UK and the Future of Europe

KEY POINTS

- I Just over one month into the IGC, the position of the German government is still against a reopening of the compromise package reached at the Convention and in favour of acceptance of the draft Constitution as it stands. Nevertheless there are a series of points that it will throw into the ring if others remain intransigent and the compromise crumbles. The UK government continues to insist upon certain changes to the draft and to defend its 'red lines' – particularly tax harmonisation and defence.
- I Despite an underlying coherence that comes from a clearly structured federal constitutional system, primacy of the rule of law and a consistent European philosophy, German European policy is characterised rather by institutional pluralism and different sectorial and territorial interests. Consequently, there is no uniform German position on the draft Constitution and the IGC. Various actors continue to have problems with the draft, some of whom (e.g. Länder, Federal Constitutional Court) have in the past been successful in shifting the German position.
- I Despite concurring on the importance of the 'nation state' in the EU, there remains a fundamental underlying difference between the visions that the UK and German governments have for the Future of Europe, centring around where the dynamics of government should be located: with the European Commission or the European Council. The nature of the post-Convention debate in each country is also markedly different as they play for the approval of different galleries.
- I The Franco-German partnership continues to be nurtured, with the symbolism reaching new heights. Nevertheless the motivating factors behind their continued coordination may have changed.
- I Defence could be the next big 'European project' but this will require a carefully worked out compromise on structured cooperation to keep the UK, France and Germany on board, to ensure an inclusive framework for any avant garde, and to avoid setting a precedent of ad hoc coalitions outside of the treaties.

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Germany shaping the debate

To date, German actors have had a substantial degree of influence on the Future of Europe debates. It is undoubtedly Germany’s Foreign Minister Joschka Fischer who revived the Eurovisions debate with his address at Berlin’s Humboldt University in 2000. The introduction of the Euro and the fast-approaching eastern enlargement considerably changed the terms of the debate and it again became necessary to engage in a deeper reconsideration of what the EU was for, not only for the current 15, but also for the new members. The vision Fischer presented set down some markers, but was left sufficiently open on institutional matters to foster discussion across Europe.

Invoking their clout in European Policy, the German Länder (regional governments) succeeded in persuading Chancellor Schröder to insist on a follow-on IGC after Nice which would inter alia focus on a clearer delineation of competences of the EU vis-à-vis the member states. The Nice Declaration on the Future of Europe thus mirrored the priorities that had been held in particular by the German Länder, but also by other German actors, for some time.

Nice Declaration on the Future of Europe

- A more precise delimitation of powers between the European Union and the Member States, reflecting the principle of subsidiarity;
- The status of the Charter of Fundamental Rights of the EU, proclaimed in Nice, in accordance with the conclusions of the European Council in Cologne;
- A simplification of the Treaties with a view to making them clearer and better understood without changing their meaning;
- The role of national parliaments in the European architecture

The events of 9/11 further intensified the need to redefine what the EU is for, and the Convention backdrop of the war in Iraq served as a continual reminder to the delegates of what was at stake.

Broadly speaking German actors have been rather successful in achieving their objectives at the Convention. The Charter of Fundamental Rights will be incorporated, three categories of competences have been created and the proposed simplification measures will lead to a certain degree of increased transparency over who does what in the Union. The power of the European Parliament has been increased, although not perhaps as far as Joschka Fischer would have liked in the election of the Commission President. Nevertheless, at the same time the position of European Council President has been watered down somewhat since the ABC proposal, which helps maintain the balance in the institutional triangle that Fischer called for in his ‘maiden’ speech to the Convention on 28 October 2002.

The UK government’s White Paper, published in September 2003, describes the draft as a ‘good result for the UK’, which the government will seek to build on. Emphasis is placed on the fact that it does not alter the nature of the relationship between the EU and the member states and that it is the national governments of member states that remain in control. The Chair of the European Council and the new role for national parliaments in the subsidiarity early warning mechanism are presented as successes for the UK. There are however several ‘red lines’, in particular on defence and tax harmonisation, and the government insists that changes will have to be made to the draft for it to be acceptable to the UK.

Germany’s Convention consensus – signs of fault lines?

The German Chancellor and Foreign Minister have both insisted that the Convention’s draft can be accepted as it stands, that they do not wish to see the package unravelled and continue to defend the draft as a whole. Indeed despite a Bundesrat decision calling on the German Government to put forward a number of themes (both institutional and non-institutional) for discussion at the 27/8 October ministerial meeting, the document on non-institutional matters issued by the Presidency for this meeting on the basis of delegation submissions made by 20 October does not seem to include any entries by the German delegation. The German response to the Italian Presidency’s questionnaire on legislative functions and council formations simply restated the overall position. It made no proposals: the Convention draft sets out the basic elements of the rotating presidency and the Council formations and the rest should be left up to a European decision once the Constitution has come into force. This will make it easier for the European Council to change the arrangement in the future without having to amend the constitution.

This could be seen as characteristic behaviour for Germany. In past IGCs the German government has avoided settling on fixed positions early on, in order to have greater flexibility in negotiation.

Hans-Jürgen Papier, the President of the Federal Constitutional Court (FCC), an important domestic actor in the process of European policy shaping, has criticised the government for suggesting that the draft as it stands can be accepted, and believes that it should be subject to a rigorous internal discussion.

Despite overall satisfaction, one of the main disappointments of the draft for German Convention representatives was the minimal extension of qualified majority voting. Some consolation was found in the last-minute inclusion of Article 24.4 (the ‘passarelle’ clause), which allows for a transfer of an area from unanimity to QMV on the basis of a unanimous vote in the European Council.

This point does not enjoy the overall consensus that the German government might like it to have. A recent CDU-CSU joint position flagged Art. 24.4 up as a decision that should continue to require the agreement of both chambers of the

German parliament. The Conference of Länder Europe Ministers has also rejected such a circumvention of the parliament, claiming that this should be subject to the same procedures as a treaty revision. Were the article to survive the IGC process, it might prove difficult to ratify in the German context given the objections of the second chamber and opposition party.

In the final instance, it is the FCC that the German government must satisfy, and here Article 24.4 is a potential problem. Agreeing to what amounts to treaty alterations without the assent of the Bundestag and Bundesrat is a fundamental legal problem for the FCC. In the UK, with no written constitution or FCC equivalent, the problem is a political one; the position on Article 24.4 is clear with government and Parliament firmly against.

Considerable unease on the economic governance and budgetary clauses included in the draft text has also surfaced recently amongst those that hold the European purse strings. The recent Ecofin decision to reject the Convention proposals to increase the powers of the Commission and the European Parliament in monetary and budgetary matters also included the German minister Hans Eichel, head of the more cost-conscious Finance Ministry, which has taken over from the more integration-oriented Economics Ministry in coordinating German EU Policy. Whereas the British government supported this move, the German government rejected Ecofin’s proposals. The IGC may remain the domain of Heads of State and Foreign Ministers; nevertheless the incident does highlight differences in the positions of Hans Eichel on one hand, and Joschka Fischer, who is in favour of increasing the powers of the European Parliament in budgetary matters.

But Germany is pulling no punches. There is a growing list of issues that Germany will not hesitate to throw into the ring if others remain intransigent and the overall compromise collapses. If the ‘smalls’ continue to insist on one voting commissioner per member state, Germany has already made it clear that the ‘big’s’ will then have the right to return to two commissioners each. Similarly, an ever more tangible link is being established between the current IGC and the EU’s budgetary negotiations – Gerhard Schröder described them as ‘two sides of the same coin’. On 28 October the Commission initiated preliminary discussions on the budget. Vivid recollections remain of the disagreements last time around in Berlin 1999 (particularly amongst the ‘big’s’). Germany remains a net contributor and successful enlargement and negotiation of the structural funds are to a certain extent predicated on this remaining the case.

The likelihood of a quick resolution of the most controversial issues is however fading. Until now Spain and Poland have posed the most serious potential obstacle by rejecting the Convention proposals on Council of Minister vote weighting in favour of the original Nice compromise, which was more favourable to both and formed the basis on which the Polish government held and won a referendum on EU membership. Recent reports in the Polish press place Estonia, Malta, Sweden and Austria alongside Poland and Spain in their defence of Nice. This suggests a series of successful bilaterals for Polish PM Leszek Miller. However it may come at the cost

of further souring relations with Germany, already under strain in recent months following the difference in positions over Iraq and an extremely contentious debate over the potential opening of a Centre for Expellees in Berlin.

On another key issue for Poland – inclusion of a reference to God – German Interior Minister Otto Schily has further enlivened the debate by suggesting that a reference to Islam could also be included.

Germany and the UK: falling short of a common Eurovision

The ‘goodness of fit’ that exists between the structure of the German state and the institutional architecture of the EU facilitates a clear vision of the nature of the institutions and how they should be legitimised. The UK has a more ad hoc approach, which some prefer to call ‘pragmatism’. In the absence of a written constitution, the more flexible arrangements in the UK do not project the same need for intellectual consistency and rigour onto the institutions at an EU level. The focus is much more on what Europe can deliver for its citizens and member states. In an enlarged Europe, such ‘output legitimacy’ will depend heavily on the Union’s continued ability to deliver. Some believe that measures proposed by the draft in the interest of ‘input legitimacy’, such as the national parliaments’ Early Warning Mechanism, may in fact obstruct EU legislation and endanger its ‘output legitimacy’.

The main UK response to the Humboldt speech came in the shape of Tony Blair’s speech in Warsaw. Although Fischer’s speech had strong federal undertones, he and Blair both referred to the importance of sovereign nation states within the EU, which enabled them to find common ground, also with France, which has been closely tied to its partnership with Germany throughout the history of European integration, but was nevertheless an uneasy integrationist in many ways. Fischer reiterated the ‘federation of nation states’ in his ‘maiden’ speech on the floor of the Convention on 28 October 2003.

Nevertheless, there is a fundamental difference in opinion over who should govern Europe. Germany on a whole prefers the vision of the Commission as the Union’s executive, whereas the UK (with France) sees the European Council in this role. This thread runs through the various institutional compromises currently on the table. Joschka Fischer fought hard for a combined President of the Commission and the European Council. In the end it was the German Chancellery that held sway and the Franco-German paper on the institutions proposed two Presidents, one in the Commission and one in the European Council. Nevertheless, a last-minute change to the draft constitution did leave the fusing of the two positions as a possibility in the future, which earlier drafts had precluded.

This difference in institutional finalité gives different centres of gravity to each institutional debate: whether the EU Foreign Affairs Minister will have a firmer foot in the Commission than in the Council; whether the predominant thread of legitimacy runs via the European Parliament to the Commission, or via member states and their governments to the European

Council. Another last-minute change to the draft, again favouring the German position, was the inclusion of a reference to a diplomatic service to support the work of the EU's Foreign Minister. Key issues again are whether the institutional base and staffing pool will be situated more or less within the Commission or Council of Ministers.

For the UK government it is a fundamental necessity that certain elements of the draft are renegotiated. Under increasing pressure to hold a referendum on the Constitution, it is crucial that the 'red lines' are seen to be defended before a predominantly eurosceptic public. Germany, on the other hand, is not facing a particularly difficult public debate; referenda in Germany are constitutionally impossible. However the Federal Constitutional Court has in the past proved a staunch defender of the rights of national courts and parliament over European competence creep, and is likely, if called upon, to continue to do so.

Franco-German relationship - from motor to self-defence mechanism

The symbolism of the Franco-German relationship reached new heights in October when Jacques Chirac represented Gerhard Schröder at a meeting of the European Council. There has also been talk of a simultaneous Franco-German ratification of the EU Constitution at some point next year. On the back of the official celebrations of the 40th Anniversary of the Elysée Treaty in early 2003 the raft of joint papers issued during the Convention indicate that the symbolism of the Franco-German partnership is alive and kicking; less obvious however is whether it can continue to act as the motor for integration.

The ballpark has changed and the dynamics of an enlarged EU are undoubtedly going to take their toll on the original six. This was already apparent in the last months of the Convention, when an initiative on the part of the original six failed to bear fruit. On a raft of issues the new member states will find themselves closer to the UK and Spain, certainly at first when they may be less keen to hasten down the path to further integration. The Franco-German core will no longer be representative of the centre of EU gravity and may find it more

difficult to be the 'motor for integration'. It is perhaps more likely that the issues on which the Franco-German partnership will find the most inner strength will be those areas they wish to defend from the centrifugal forces that enlargement may engender (CAP reform and the Stability and Growth Pact perhaps two examples of such a development).

Defence – the next big project?

Defence is without a doubt an area that lends itself clearly to Franco-German-British co-operation. As one commentator has succinctly put it, the UK could be the born leader here, but continually misses the boat; Germany could not be the leader, but is happy to be drawn forward; whilst France would love to take the lead. This is not without its problems, as many other members fear a *directoire* of the 'big's'. Nevertheless, in an area such as defence, investment, capabilities and efficient and available forces are the key criteria, and not all member states are in a position to offer this.

There are fundamental differences in the strategic cultures of the three and a lack of any common 'Eurovision' to provide a longer-term overarching understanding of the EU's role, aspirations and relationship to the US. Nevertheless, defence could still prove to be the area in which ad hoc solutions keep the ball rolling, simply because necessity will dictate Europe's need to act.

The key lies in finding a balance in the draft between 'not going too far' and 'leaving the door open' for possible developments. If this is not the case there will be no incentive to promote action within the Union and ad hoc initiatives, such as the Tervuren defence initiative, will become the rule rather than the exception. A proliferation of such ventures would undermine the Union as a whole.

This briefing was written by Vanda Knowles, Research Fellow at the Institute for German Studies, University of Birmingham, and draws on the workshop 'Germany and the UK: From the Convention to the IGC', held in London on 22 October 2003 with the support of the German Embassy. It forms part of an ongoing research project on 'Germany and the Future of Europe'. We would like to thank Mr John Pinder and the James Madison Trust for their valuable input.

Further Information

For more information on the project please contact Vanda Knowles,
Institute for German Studies, University of Birmingham, Birmingham B15 2TT, UK.

Tel: +44 (0)121-415 8723, or email V.J.Knowles@bham.ac.uk

For more information on the Search for Solutions series, visit

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or contact Ed Turner on +44 (0)121-414 8045, email E.O.Turner@bham.ac.uk, fax +44 (0)121-414 7329