

### **German police proposal to circumvent Constitution rejection**

Police forces would be allowed to pursue criminals across EU borders and have access to each other's confidential databases under a proposal to be tabled this month. The plan was aired informally by the German government at a meeting in January of EU justice and home affairs ministers in Dresden. The German government said it had won agreement in principle to press forward with a formal proposal in February from all EU member states, despite reservations over the costs and legal basis expressed by Britain, Ireland, Poland and the Czech Republic

The proposal – which requires unanimous support to come into effect – would allow police forces to directly access other countries' databases of fingerprints, car registration numbers and DNA profiles. It would also allow police to operate in other member states, for example when chasing suspects, and provide the basis for joint patrols. Germany, France, Spain, the Netherlands, Belgium, Austria and Luxembourg have had a similar scheme – under the Prum Treaty of 2005. Since then, four more countries have agreed to join and the plan is to extend it by common agreement to all 27 member states of the EU.

The fate of the German initiative will be watched closely, not just because of its relevance for police co-operation but also because it offers a new approach towards finding agreement in secret and without a popular mandate. EU measures touching on justice and security normally demand unanimity. By pressing ahead initially with a small group of member states on the basis of a multilateral treaty, Germany and its partners managed to escape cumbersome negotiations at an EU level. This selective approach is simply another way of circumventing the democratic process and implementing important aspects of the rejected Constitution by stealth.

### **The situation as of 26 January 2007**

Eighteen member states of the EU have ratified its proposed constitutional treaty, but only two used a referendum to do so. Two countries – France and the Netherlands – decisively rejected the treaty by referendum in 2005, while seven others have postponed any moves to ratify it. Two accession states – Bulgaria and Romania – ratified the document before they became members as part of their treaty of accession. Lithuania's parliament ratified it without a reading and before it was translated into Lithuanian.

***Countries that have ratified the treaty:***

- Lithuania: 11 November 2004
- Hungary: 20 December 2004
- Slovenia: 1 February 2005
- Spain: 20 February 2005  
(referendum)
- Italy: 6 April 2005
- Greece: 19 April 2005
- Slovakia: 11 May 2005
- Austria: 25 May 2005
- Germany: 27 May 2005
- Latvia: 2 June 2005
- Cyprus: 30 June 2005
- Malta: 6 July 2005
- Luxembourg: 10 July 2005  
(referendum)
- Belgium: 8 February 2006
- Estonia: 9 May 2006
- Bulgaria: 11 May 2006
- Romania: 17 May 2006
- Finland: 5 December 2006

***Countries that have rejected the treaty:***

- France: 29 May 2005: rejected by 54.9 percent of voters
- Netherlands: 1 June 2005: rejected by 61.6 percent of voters

***Countries that have taken no action:***

- Ireland: Government favours holding referendum 'at the appropriate time'. There is a commitment to a referendum on the document regardless of its final form.
- Britain: Government against current attempts to revive treaty but may go for a simple format.
- Czech Republic: Government officially against current attempts to revive treaty but seems favourable towards a less federalist document.
- Denmark: Government may hold a new vote, but on a revised text.
- Poland: Government against current attempts to revive treaty and seems to be veering towards the position of the Czech Republic.
- Portugal: Favours holding referendum if some changes made to text.
- Sweden: Current government has remains neutral but Germany has urged 'secret negotiations'.

**British want 'simple' Constitution to avoid a referendum**

The British Government is hoping to avoid a referendum on the new EU Constitution by pushing EU members to agree to a slimmed-down text. A government spokesman is quoted in the *Daily Mail* as saying that 'We think the best European Constitution is a simple Constitution. The result of a simple Constitution would be that we would not have to hold a referendum'. This thinking is shared by other EU leaders. Janez Jansa, Slovenia's Prime Minister, who is working closely with Merkel on the Constitution ahead of his country taking over the EU presidency next January, has said that 'The best way is

to reach a deal without referendums. The whole referendum procedure would take too long.' The *Daily Mail* article also reports that Gordon Brown is 'determined' to avoid holding a referendum and is annoyed that Ségolène Royal has pledged to hold one in France if she is elected president, which one official described as 'not helpful'. Likewise *Le Monde* reports that Royal's proposals to convene a new convention on the Constitution have 'brought fears in Berlin'. A German diplomatic source is quoted saying 'Mme Royal's position is unrealistic. All in all we would prefer Nicolas Sarkozy's mini-treaty.' *Le Monde* notes that the Germans deem Sarkozy's proposals 'an easier basis for discussion, avoiding all-too-uncertain new referendums.' Meanwhile, in a letter to the *Financial Times*, Britain's former minister for Europe Denis MacShane has argued that any new EU Constitution should be constructed so as to avoid a referendum, otherwise 'the chances of a more sensible way of running Europe will be lost as such plebiscites never answer the question asked'.

### **'Friends' cancel Luxembourg meeting**

Luxembourg has called off the planned February meeting on the EU constitution in order to avoid the 'impression' of working against the German EU presidency, while the 'friends of the constitution' meeting in Madrid continues to stir controversy. It has also emerged that the meeting had been cancelled because of resistance by France and the Netherlands, which would be forced at the Luxembourg conference to define their exact position on the constitution at an early stage.

### **Merkel urges Sweden to push through Constitution deal**

The main Swedish broadcaster, SVT, reports that it has seen part of a classified letter that the German chancellor Angela Merkel sent to the Swedish government earlier this month. In the letter Merkel reportedly writes that she wants to restart the EU Constitution process as soon as possible and urges the Swedish government to appoint an 'entrusted' official who can secretly negotiate Sweden's position on the document. The letter also sets out a timetable for reviving the Constitution.

The move by the Swedish government to classify the letter has been widely criticised and runs counter to the Swedish official line to push for more 'openness' in EU affairs. Concerns remain that the letter is the first step in the attempt to avoid a future referendum in Sweden over a revised Constitution, as politicians, primarily from the left, have urged the government to make the letter publicly available and so encourage a wider constitutional debate.

Meanwhile, Germany's foreign minister Frank-Walter Steinmeier has said that MEPs will not have any major role in the EU's Constitution-revival project, warning deputies against fighting national governments over who serves Europe better or overshadowing Berlin's efforts to revive the EU charter. The process is so undemocratic that even the Europhile parliament is not allowed to be involved. It just serves to emphasise the elite nature of the whole EU Constitution project.

## Talks highlight divisions over Constitution

Twenty EU governments have paid homage at a meeting in Madrid to the bloc's 'magnificent' proposed constitution, amid warnings that those blocking the revival of the stalled text could be relegated to the slow lane of a two-speed Europe. The so-called 'friends of the constitution' argued that, far from slashing the original treaty to make it more palatable to voters, it should be made more ambitious, giving the EU a bigger role in social policy, fighting climate change and immigration.

That stance puts the twenty member states at odds with countries such as Britain, the Netherlands, Poland and the Czech Republic, which want the constitution scaled back and stripped of its pretensions to be the foundation of an EU super-state. A public wrangle over the fate of the constitution – rejected by French and Dutch voters in referendums in 2005 – is precisely what the German presidency of the EU wanted to avoid as it begins the task of trying to breathe life into the corpse.

Seven of the Union's twenty-seven members did not take part in the controversial Madrid meeting of foreign ministers and senior officials: Britain, the Czech Republic, Denmark, France, the Netherlands, Poland and Sweden. But Bertie Ahern managed to sneak Dermot Ahern in the back door as an observer on behalf of the Irish elite. None of the countries who did not attend have ratified the constitution and most will argue that the only way forward is to adopt a modest mini-treaty focusing on the rule changes and institutional reforms deemed necessary to make the EU function effectively.

The message from Madrid was that the best way to salvage the treaty – which has to be ratified by all members to come into force – is to 'use the pen, not the scissors'. 'If needed, we could add something about climate change, immigration or energy ... We are ready for that. But the clear message from Madrid is that we prefer to improve the text rather than cut out from it', said Spain's minister. Nicolas Schmit, the Europe minister of Luxembourg which had co-organised the meeting with Spain, stated 'We can't move below from what we have already achieved in the treaty signed by all member states. We can go further but not below'.

Miguel Angel Moratinos, Spanish foreign minister and host of the meeting, called the constitutional treaty 'a magnificent document', claiming Europe's citizens were clamouring for the EU to do more. Admitting this might prove problematic for some countries he said the Union 'would very likely have to resort to mechanisms of differentiated integration or of enhanced co-operation' – EU-speak for a two-speed Europe – in order to reach agreement. This could be a very positive development were Senor Moratinos' ideas to come to fruition.

Mr Moratinos believes the French and Dutch rejection of the constitution was a sign that Europe's citizens are frustrated because they want the EU to do more. That is the opposite of the interpretation given to the No votes in more sceptical countries. Vaclav Klaus, the Czech president, said this week the constitution was 'not usable and acceptable' in its current form, a view shared by Lech Kaczynski, his Polish counterpart.

Nicolas Schmit, another EU democrat and Luxembourg minister for European affairs said such talk was 'cavalier', arguing that Poland and the Czech Republic were outnumbered by the twenty member states represented in Madrid.

Such public positioning could complicate Germany's efforts to stop the EU breaking into two camps. Angela Merkel, German chancellor, says she wants to hold the constitutional debate at a high level and in private, i.e. in secret! In a sign of the mutual disdain entering the debate, Britain, Denmark and Sweden pointedly sent only junior diplomats from their Madrid embassies to monitor Friday's meeting; France and the Netherlands sent nobody at all.

### **We are all friends of the Constitution now!**

The EUObserver reports that Ireland is keeping a watchful eye on any possible changes to the European Constitution, while calling on member states to maintain the 'balance of the entire package'. 'We are very concerned that the balance will be maintained within the whole package', Noel Treacy, minister for European affairs said, adding that his colleagues in charge of justice and foreign affairs are following the negotiations closely. 'We are keeping a critical eye on it and we will be very watchful of any changes that are proposed', he said.

'We are pleased with the constitution. We negotiated the constitution. We didn't agree with all of the things that are in it, nor did we get everything that we wanted, but at the end of the day it is a very conclusive democratic document. And on that basis we believe it should be accepted', he explained.

Although Ireland has not ratified the constitution, Mr Treacy will be present at a meeting organised by Luxembourg and Spain in Madrid for the 18 member states that have already ratified the EU Treaty. 'We are friends of the constitution', explained Mr Treacy, pointing out that it was under the Irish EU presidency during the first half of 2004 that the constitution conclusions were negotiated. 'We hope that our presence at those meetings will bring balance and assistance and experience to the deliberations and ultimately we can find a consensus to how we go forward together', Mr Treacy said, referring to a second meeting on the constitution set to take place in Luxembourg next month involving all 27 member states.

Of the remaining countries, France and the Netherlands rejected the treaty in 2005 leading the Czech Republic, Denmark, Ireland, Poland, Portugal, Sweden and the UK to put the ratification process on hold.

Meanwhile, Mr Treacy indicated that Ireland will have a referendum whatever the outcome of the negotiations on the document. 'We are obliged to hold a referendum in our country and we cannot agree to any changes in any treaty situation unless it goes to a referendum for our people', he said. His comments come as some politicians – such as France's right-wing presidential contender Nicolas Sarkozy – are suggesting that a small pared-down treaty would only have to be ratified by national parliaments rather than by

referendum.

Ireland voted 'no' to the Nice Treaty in June 2001 but Mr Treacy is not worried that there will be another 'no' to an EU treaty: 'Ireland like Europe is very optimistic, we believe that our country has benefited immeasurably from membership of the European Union', he said. 'On that basis, we are confident that given the right time and the right information the people of Ireland will ratify the constitution in due course.'

### **'Friends of the Constitution' meet as backroom dealings commence**

German chancellor Angela Merkel told the World Economic Forum in Davos recently that 'I am going to do everything I can as presidency holder to set the constitutional process in motion again. In June we will put forward a plan.' The German presidency hopes not just to produce a 'timetable' for reviving the Constitution by June, but also 'proposals that are as concrete as possible on the detail'.

Giuliano Amato, Italian foreign minister and former vice-president of the convention that drew up the EU Constitution, argues that a new, 'brief' intergovernmental conference should be convened on the Constitution. Amato believes that the best way forward 'would be to adopt the text as a protocol, making it less visible and cumbersome, without changing its legal nature'. He concludes that member states must use 'their political intelligence' to put forward a new name for the treaty, together with 'a method of ratification that will help to avoid the problems of the first round'.

The Spanish minister for Europe, Alberto Navarro, has said that Spain 'would prefer to add rather than take things away' from the treaty. Navarro suggested that terms on enlargement and a common immigration policy should be added to the new text. He said that Nicolas Sarkozy's proposals for a slimmed down mini-treaty are 'intelligent', but that 'Spain can in no way accept a mini-treaty that has solely institutional provisions'.

A piece by George Parker in the *Financial Times* analysed the politics surrounding the Constitution's revival: 'Five years after that Laeken summit, Europe's elite seems to have tired of its ungrateful citizens. After years of work, the constitution did not last long in the face of democratic scrutiny ... Now it is back to Plan A. The current German presidency of the EU this week begins the task of side-stepping those awkward No votes as it tries to salvage a new treaty from the constitutional wreckage. This time there will be little room for transparency: backroom deals, it seems, are back in vogue.'