

# **FROM CONSTITUTIONAL TREATY TO AMENDING TREATY: THE 2007 EUROPEAN INTERGOVERNMENTAL CONFERENCE**

## **A MISSION AND PUBLIC AFFAIRS BRIEFING PAPER**

The Foreign and Commonwealth Office published its White Paper on the European reform process on 23 July 2007. The White Paper sets out the Government's approach to the Intergovernmental Conference (IGC), which will negotiate the detailed text of the Reform Treaty for the European Union. The IGC seeks to take forward the debate surrounding the EU's future institutional and political architecture, but in a way that avoids the political pitfalls of the European Constitutional Treaty: a document that was rejected by referenda by the citizens of France and Holland in 2005. The IGC is expected to conclude its work by the time of the European Council meeting, 13-14 December 2007. The resulting Reform Treaty will not come into effect until all Member States ratify it.

Europe remains an emotive and divisive issue in British politics. This briefing paper therefore provides a critical analysis of the White Paper: *The Reform Treaty: The British Approach to the Intergovernmental Conference*, July 2007. It draws conclusions as to whether the red lines that the Government set itself ahead of the June European Council have been sufficiently reflected in the Mandate for the new amending Treaty. It also questions whether what is envisaged by the Reform Treaty amounts to a Constitutional Treaty in all but name. These issues will shape the nature of the debate on how the Reform Treaty should be ratified and whether the proposed Treaty represents a good deal for Britain. It is important, however, not to lose sight of

how the IGC impacts upon the Church and how the Church might contribute to subsequent discussions regarding the ratification of the Reform Treaty.

## **Evaluating the European Reform Process From a Christian Perspective**

Christians should approach politics, as they should every other subject, from the perspective of their faith and their understanding of God's will for the common good. The question of Britain's relationship with Europe and the current debate about the future of the European Union raises important questions about the character of our own society and our responsibility in the modern world.

Christians should approach these questions from the perspective of their double citizenship, members of earthly societies whose homeland is in heaven. The Bible and the Christian tradition do not, for the most part, suggest a clear preference for one form of government, political or social or economic order. It follows that Christians should not give absolute value to any particular way of ordering society, but should subject every political regime to a critique based on the dignity of the human person, created in the image and likeness of God and called to unity in Christ.

While many are critical of some tendencies towards centralisation and bureaucratisation in Europe, Christians cannot accede to principles of absolute national sovereignty. Neither can Christians give wholehearted assent to any system, which regards people either as autonomous individuals or as members of a collective humanity within which persons are of secondary value. In this, despite the need for reform, which all agree, the development of European law and European institutions since 1945 have provided benefits for the whole of Europe which should be properly valued.

Although other factors such as the Cold War, the existence of NATO and increasing prosperity have also played a significant part, it is important not to underestimate the contribution made by the EU to the preservation of peace in this continent, so long ravaged by war. It is also important to acknowledge the success, quiet and untrumpeted, of the EU in helping bring new democracies to birth in Eastern Europe. These same European institutions have also provided an important mechanism of support for some of the smaller countries in Europe. Christians should regard the European example as a preferable model to that of war.

The development of European norms and values and the growth of European institutions that structure relations between states provides a system of checks and balances at the European level that have curbed some of the worst excesses of human behaviour. The fallibility of human nature means abuses will always occur, but such fallibility ought to encourage the further strengthening of social and political cooperation within human society.

At the end of a debate in 1973, the General Synod of the Church of England affirmed: *“That British membership of a community which (based as it is on a common understanding of human rights and liberties) counts among its aims the reconciliation of European enmities, the responsible stewardship of European resources and the enrichment of Europe’s contribution to the rest of mankind, is to be welcomed as an opportunity for Christians to work for the achievement of these ends.”* It is worth comparing the provisions of the Reform Treaty against the aspirations of this motion.

Article I-3 states:

*The Union’s aim is to promote peace, its values and well being of its peoples. The Union shall offer its citizens an area of freedom, security and justice without*

*internal frontiers and an internal market where competition is free and undistorted. The Union shall work for the sustainable development of Europe based on balanced economic growth and price stability, a highly competitive social market economy, aiming at full employment and social progress, and a high level of protection and improvement of the quality of the environment. It shall promote scientific and technological advance. It shall combat social exclusion and discrimination, and shall promote social justice and protection, equality between women and men, solidarity between generations and protection of the rights of the child. It shall promote economic, social and territorial cohesion, and solidarity among Member States. It shall respect its rich cultural and linguistic diversity, and shall ensure that Europe’s cultural heritage is safeguarded and enhanced. In its relations to the wider world, the Union shall uphold and promote its values and interests. It shall contribute to peace, security, the sustainable development of the Earth, solidarity and mutual respect among peoples, free and fair trade, eradication of poverty and the protection of human rights, in particular the rights of the child, as well as to the strict observance and the development of international law, including respect for the principles of the United Nations Charter. The Union shall pursue its objectives by appropriate means commensurate with the competences, which are conferred upon it in the Treaty.*

While this reads a little like a political wish list, or even perhaps a General Synod motion, it does echo much of the imperative that drives the Church’s witness to the Gospel in the world. Although questions may rightly be asked as to whether the measures as set out in the Reform Treaty are necessarily the best ones, Christians can and should welcome the objectives themselves.

Members of the Church of England should also consider the particular responsibility laid upon our Church as the “Church by law established” to participate in public debate and contribute positively to the role our country can play within Europe and the wider world. It is also an expectation of many of our ecumenical partners that this should be the case. None of this adds up to an argument that Christians should endorse the Reform Treaty or vote ‘yes’ in any possible referendum. But it does suggest the need for the Church to be actively involved in the debate, while continuing to insist that all human systems are subject to the judgment of God.

### **A Brief History of European Integration**

It is outside the remit of this briefing paper to provide a comprehensive review of European integration since 1945. However, the 2007 IGC cannot be understood in isolation from those factors that have given rise to the current need to reform the EU’s Treaty structure. Two pressures have heavily influenced the history of European integration over the last 15 years: enlargement and the challenge of globalisation.

The European Union was created by six founding states, following the earlier establishment by the same six states of the European Coal and Steel Community (ECSC) in 1951. The EU has now grown to 27 Member States. There have been five enlargements in total, with the largest occurring on 1 May 2004, when 10 new states joined. The most recent enlargement occurred on 1 January 2007, when Bulgaria and Romania joined. The process of enlargement is still ongoing. Currently, accession negotiations are underway with several states including Croatia, the Former Yugoslav Republic of Macedonia and Turkey. Other potential candidate countries include Albania, Montenegro, Bosnia and Herzegovina, Serbia.

The EU’s expansion from a Community of 6 to a Union of 27 has placed considerable strains on the EU’s decision-making process. The EU’s rules and institutions have at times found it difficult to keep abreast of this growth. This has fuelled the need to reform the EU’s institutional structure in a way that improves both its efficiency and effectiveness. The British Government’s 2007 White Paper notes: “The most significant change to the EU in the last 30 years is how much it has grown. The EU has continued to deliver real benefits, which is a tribute to the strength of the core concept of member states co-operating to achieve more than they could alone. But we now need to review how the enlarged EU operates, to make it more effective, efficient and better able to deliver on the issues which most concern citizens.”

The process of EU integration has also been fuelled by the recognition that the EU faces considerably different challenges than those that gave rise to the European Coal and Steel Community in 1951. The underlying founding vision of the ECSC was to make “war between France and Germany ... not merely unthinkable, but materially impossible.” Today, Europe faces a distinctly different set of challenges, not least Europe’s integration into the global political economy in a way that provides for the prosperity and security of its citizens, both at home and abroad. As the British Government’s 2007 White Paper made clear, modernising the EU to meet the challenges of the future is an ongoing process: “We must continually adapt to ensure that the EU responds to new economic challenges.”

If enlargement and responding to the challenges of globalisation have been key factors in propelling EU integration, they have also made that same process more complicated. Seeking political consensus between 27 Member States as to what “an ever closer Union” might mean in practice is considerably harder than in a Union of

15. Differences between Member States as to how the EU might best respond to the challenges of globalisation have become ever more intense as disagreements emerge between Member States on both the nature of the challenge and the appropriate response. The net result has all too often been a re-emergence of vested national interests during Treaty negotiations, which has impeded further integration.

A further complicating factor has been the growing scepticism of many of its citizens towards the EU project as a whole. To some, the EU looks increasingly like a free-for-all free market with all the horrors that has already inflicted on the world. To others, it looks more like a bureaucratic superstate, more akin to the former Soviet system than to the essentially Christian communitarian vision of Monnet, Schuman and Adenauer. Attempts to rectify these problems by introducing concepts such as European citizenship and subsidiarity have done little to stem the popular disillusionment with the European project. Successive EU Treaties have suffered defeat at the hands of European citizens. The Danish electorate rejected the Maastricht Treaty (1992) and the Irish voters rejected the Treaty of Amsterdam (1997). Even where European citizens have voted in favour of EU Treaties the victory has been far from convincing. The French electorate voted by less than 1% in favour of the Treaty of Maastricht (1992).

All of these factors have contributed to a growing trend towards European sclerosis at a time when the EU arguably needs greater clarity as to common principles, structures and processes. The Treaty of Nice (2001), for example, was in part necessary because of the inability of Member States, to reach agreement on a number of important issues when negotiating the Treaty of Amsterdam (1997). Yet, despite the intense negotiations culminating with the Treaty of Nice (2001), many of the issues that needed to be

resolved to prepare the EU for a membership of 27 were postponed again until a later date because of the lack of political accommodation. As a result, the Treaty of Amsterdam (1997) and the Treaty of Nice (2001) provided little more than a band-aid to an organisation already creaking under the weight of enlargement. Recognising this situation, Member States annexed to the Treaty of Nice (2001) a declaration committing themselves to a *Future of Europe* debate. This debate culminated in the now defunct Constitutional Treaty.

### **The IGC Mandate**

Following the demise of the Constitutional Treaty, the European Commission launched a period of political reflection across European capitals, a process aimed at reconnecting Europe to its citizens. Subsequently, the June 2006 European Council mandated the German Presidency to present a report at the June 2007 European Council about the future of Europe. In March 2007, Member States signed the 50<sup>th</sup> Anniversary Declaration of the EU. This declaration identified the EU's future challenges and set a target for placing the EU on a "renewed common basis" before the European Parliament elections in 2009. Subsequently, at the European Council meeting in Brussels, June 2007, EU leaders agreed a detailed Mandate for a new Reform Treaty. The IGC is scheduled to conclude its deliberations in time for the European Council 13-14 December 2007.

*Treaty Structure:* The IGC Mandate departs significantly from the Constitutional Treaty by maintaining the pillar structure of the EU as established by the Maastricht Treaty (1992). The Constitutional Treaty would have refounded the European Union by replacing all existing treaties with a new consolidated Treaty. However, as the IGC mandate states: "The Constitutional

concept, which consisted in repealing all existing Treaties and replacing them by a single text called 'Constitution', is abandoned. As a result, the IGC is mandated to produce an amending treaty based upon existing EU Treaties with their distinctive features." This means that all the Constitutional elements have been deleted from the Reform Treaty, including any reference to 'Constitution' and symbols such as the flag and the anthem.

*Common Foreign and Security Policy:* The decision to abandon a unified Treaty structure means that Common Foreign and Security Policy will remain one of the three pillars of the EU, with its own distinct form of intergovernmental decision-making. However, as with the Constitutional Treaty, the IGC Mandate provides for a EU Minister for Foreign Affairs, even if it reframes the job title to one of 'High Representative of the Union for Foreign Affairs and Security Policy'. This new post merges two existing offices: the European Council's High Representative for Foreign Policy and the European Commissioner for External Relations. The new EU Minister for Foreign Affairs will be responsible for coordinating the foreign policy and foreign aid of the EU. The High Representative will be responsible to the European Council and the Council of Ministers and nearly all decisions will be taken by unanimity. Qualified Majority Voting (QMV) in the field of foreign policy will only occur if the High Representative makes a proposal, but since the European Council has first to unanimously decide to invite him/her to do so, decision making will continue to adhere to a consensus culture.

*European Security and Defence Policy:* The Reform Treaty's provisions on ESDP are identical to those provided for under the Constitutional Treaty. The Reform Treaty allows certain countries to work together more closely on military matters by using a procedure known as 'structured co-operation'. Under the Reform Treaty any

EU Battlegroup, aimed at providing the EU with a rapid reaction capability, would resemble the Eurozone in that some countries would choose to join while others would decide to opt out.

*Justice and Home Affairs:* Under the Treaty of Amsterdam (1997), the provisions on immigration, asylum and judicial co-operation in civil matters were transferred from the JHA pillar to the Community pillar. The IGC mandate echoes the provisions of the Constitutional Treaty by moving the remainder of the issues covered by JHA (police and judicial co-operation in criminal matters) to the Community pillar. As a result, Qualified Majority Voting and 'co-decision' will apply as a general rule to JHA issues.

*The Charter of Fundamental Rights:* The Reform Treaty sets out in a single legal text the whole range of civil, political, economic and social rights that apply to European citizens and everyone else living in the EU. These rights are drawn from the European Convention on Human Rights, the constitutional traditions of the EU Member States and other international conventions to which the European Union or its Member States' subscribe. The Charter does not create new rights or entitlements where they do not already exist. Safeguards attached to the Reform Treaty aim to ensure that the Charter would not affect domestic laws and practices.

*Economic Policy -* The IGC Mandate, like the Constitutional Treaty, does not alter the EU's role in economic policy. Nor does it alter the existing Treaty provisions regarding the development of the internal market. Similarly, it makes no changes to existing Treaty provisions on EU competence for establishing the competition rules necessary for the functioning of the internal market. The IGC Mandate ensures that, like the Constitutional Treaty, the national veto is upheld on such sensitive issues as tax and social security.

*Extension of Qualified Majority Voting (QMV):* The IGC Mandate retains the commitment made under the Constitutional Treaty to reduce the number of areas that require Member States' unanimous agreement. QMV is extended to 50 new areas. Apart from the field of Justice and Home Affairs most of these new areas are of minor importance and certainly do not touch on areas such as defence or foreign policy. In several areas such as criminal procedural law, the IGC Mandate provides for an 'emergency brake', whereby if a Member State dislikes a decision taken by a majority vote on an issue that it considers to be of national interest then it could ask for that decision be referred to the European Council. The European Council will then have to either approve the measure by unanimity or ask the Commission for a new proposal.

*The Voting System:* The IGC Mandate follows the practice of the Constitutional Treaty by introducing a new system of voting called 'Double Majority Voting'. Under this system a measure/proposal will become law if it is supported by 55% of the member states, provided these countries represent 65% of the total EU population. Whereas the Constitutional Treaty anticipated that this system would come into effect in 2009, the IGC mandate schedules its introduction in 2014. In some sensitive policy areas such as economic policy or foreign policy a proposal would require the support of at least 72% of member states, representing 65% of the EU population. The simplification of the Union's voting system is aimed at ensuring that the EU's decision-making process does not grind to a halt in an enlarged Union.

*Simplified Treaty Revision:* The IGC Mandate retains the Constitutional Treaty's provision for a so-called *passerelle* clause. This will make it possible for QMV to be extended to new policy areas without the whole Treaty having to be renegotiated. If the European Council decides to exercise

this clause, it must inform all national parliaments who then have six months in which to object. An objection by one national parliament would veto the decision.

*A European Council President:* The IGC Mandate upholds the provisions of the Constitutional Treaty by moving away from the system of six monthly rotating European Council Presidencies to an elected President of the European Council who would serve for a two and a half term period. The Council's Presidency will be mandated to take forward the work programme of the Council. The aim is to ensure the better preparation and continuity of the Council Presidency than currently exists under the rotating system.

*The Size of the Commission:* The IGC Mandate reflects the provisions of the Constitutional Treaty by moving away from the current system of one country one commissioner to one whereby the overall number of commissioners is capped at two thirds of the number of Member States. This measure is aimed at creating a smaller, stronger and more effective Commission.

*A More Flexible Union:* The Treaty of Amsterdam (1997) introduced the concept of 'structured co-operation'. This enables a group of Member States to work more closely together on policy areas that do not have the backing of all Member States. The Reform Treaty introduces the idea of 'enhanced co-operation' between Member States, where the Council of Ministers acting by majority vote allows a group of Member States, constituting at least one third of the total membership, to proceed to a system of enhanced co-operation governed by majority vote. Those countries that decided not to join such a group would be unaffected by decisions taken by those working under this mechanism.

*Improving the EU's Democratic Deficit:* The IGC Mandate leaves unchanged the

Constitutional Treaty's provisions aimed at enhancing the role of national parliaments and the European Parliament within the EU's decision-making process. The Commission will now be obliged to forward all its documents, from consultation papers to draft directives, to national parliaments for scrutiny and comment. If two thirds of national parliaments object to any EU measure on the grounds that such a measure is better handled at the national rather than the European level, it can ask the Commission to reconsider the measure. The IGC Mandate also extends the role of the European Parliament by allowing both the European Parliament and the European Council a right to decide on measures proposed by the Commission, unless an explicit provision to the contrary is made.

*Legal Personality:* As with the Constitutional Treaty, the IGC Mandate provides the EU with a single legal personality. The EU already concludes numerous agreements with third countries on a wide range of areas such as trade and development. The new arrangements will simplify the existing situation thereby making it easier for the EU to act in the international arena in a more coherent way.

### **Britain and the IGC**

The Government has defended the IGC Mandate in its 2007 White Paper on the grounds that it has successfully defended its red lines. It holds that if the IGC honours this Mandate, then the resulting Treaty would not see a transfer of power away from the UK on issues of fundamental importance to national sovereignty. In addition to ensuring that all reference to the Constitution was removed from the text, its red lines included: protection of the UK's existing labour and social legislation; protection of the UK's common law system and the UK's police and judicial processes; maintenance of the UK's intended foreign and defence policy and a recognition that

national security remained a matter for member states; protection of the UK's tax and social security system.

Whether the Government has been successful in defending its 'red lines' has already become the focus of considerable political debate. Writing in *The Times*, 7 August 2007, William Hague, the Shadow Foreign Secretary argued, for instance, that "the government's claim to have safeguarded our interests is about as credible as a student who set his own exam paper, marked it himself and then awarded himself an a-grade". This debate will intensify over the coming months as the IGC Mandate and the resulting Reform Treaty comes under closer political and parliamentary scrutiny.

*Constitutional elements:* Responding to Parliamentary questions in the House of Commons, 23 July 2007, the Minister for Europe stated, that since the constitutional concept has been abandoned "there is a radical difference between the Reform Treaty and the prior Constitutional Treaty". Although this is correct, there are striking similarities between the IGC Mandate and the Constitutional Treaty. Although the IGC Mandate abandons the Constitutional concept, the innovations of the Constitutional Treaty have been retained unchanged by the IGC Mandate. The symbolism of the Constitutional Treaty has therefore been avoided, but the substance of the Constitutional Treaty has been preserved. As the German Chancellor noted following the conclusion of the June European summit: "The fundamentals of the Constitutional Treaty have been maintained in large part". William Hague's article in *The Times*, 7 August 2007, noted: "We can now see more clearly than ever that this new Treaty is essentially the old EU Constitution, rejected by French and Dutch voters just two years ago, but brought back under another name".

*Common Foreign and Security Policy:* The Government argues that although the IGC Mandate provides for a EU Minister for Foreign Affairs, the Mandate contains a declaration, confirming that the provisions on CFSP will not affect the responsibilities of the Member States, as they currently exist for the formation and conduct of their foreign policy, or of national representations in third countries and international organisations. The Government's White Paper gives reassurance, that giving the EU a legal personality "does not create any new powers for the EU. The Reform Treaty will contain a Declaration by all Member States stating explicitly "the fact that the European Union has a legal personality will not in any way authorise the Union to legislate or act beyond the competences conferred upon it by the Member States in the Treaties." Despite these reassurances many MPs have expressed concern that the safeguard secured by the Government is meaningless since it is only a non-legally binding declaration. This has led some to fear that the IGC Mandate is the thin edge of a wedge, which will over time lead to the EU replacing its Member States in important international bodies such as the UN.

*Justice and Home Affairs:* The Government explains in its White Paper that the 'opt-in' arrangement, that it secured under the Treaty of Amsterdam (1997) on issues such as asylum, immigration and civil justice, has been retained and extended to the areas of judicial and police co-operation. The Government is at pains to stress in its White Paper that it would not 'opt in' to any proposal that was inconsistent either with UK national interest or with the UK retaining control of its borders. It also makes much of the fact that it was able to secure an important exemption for national security from the scope of the reform Treaty by having the Treaty state explicitly that national security remains the sole responsibility of each Member State. Despite these exceptions, the Government

argues that the proposed Treaty arrangement will help facilitate a unified approach to combating cross border crime, human trafficking, terrorism and illegal immigration. Writing in *The Times*, 7 August 2007, however, William Hague voiced the Conservative Party's concern that "the safeguard against the new powers over criminal justice that the Treaty gives to the EU is weaker than it looks. EU Judges will have the power to rule on existing and future EU agreements in an area that has been until now wholly intergovernmental. Indeed, the EU justice Commissioners said that he will use these powers to the full. Over time, we could see our criminal justice system changed against our values".

*Charter of Fundamental Rights:* Despite the inclusion of the Charter of Fundamental rights within the main body of the Treaty, the Government claims that it has secured a UK- specific Protocol annexed to the Treaty. It believes that this Protocol will "clarify beyond doubt" the application of the Charter in relation to UK laws and measures, and in particular its justiciability in relation to labour and social articles. The White Paper holds: "This Protocol is legally binding and sets out clearly that the Charter provides no greater rights than are already provided for in UK law, and that nothing in the Charter extends the ability of any court to strike down UK law." It is already apparent, however, that this safeguard has come under close scrutiny. The Advocate-General Tizzano of the European Court of Justice, for instance, has already stated that no legal safeguard on the Charter will work if it's made legally binding. This position was echoed by the Vice President of the European Commission who, appearing in front of the European Scrutiny Committee, stated: "Normally the opt-outs are respected, but I will not prejudge or speculate on what the Court of Justice will decide on fundamental rights and how this is applied throughout the European Union."

*Economic Policy:* As part of the negotiations for a IGC Mandate, France successfully lobbied to exclude the objective of “free and undistorted competition” from those articles of the Treaty setting out the Union’s values and objectives. On the request of the UK Government, however, this removal was compensated by a legally binding Protocol, which makes clear that the internal market includes a system ensuring that competition is not distorted and confirms the legal basis for the EU to take action to ensure this. This ‘belt and braces’ approach should ensure that the EU’s position on competition remains unchanged. On the question of taxation, the Government’s White Paper acknowledges: “It is a long standing Government policy that tax matters should continue to be decided by unanimity. The Reform Treaty proposal meets this commitment; there is no change to the status of unanimous decision-making on Tax.”

### **How does the IGC Affect the Church?**

During the negotiations resulting in the draft Constitutional Treaty a number of churches and Church related organisations, not least the Vatican and the Commission of the Catholic Bishops’ Conference of the European Community (COMECE) campaigned vociferously for the Constitutional Treaty to have an explicit reference in its preamble to God or Christianity. This reflected their position that Europe needed to value its Christian roots and strengthen its awareness of belonging to a common civilisation to better meet the challenges of the future. These efforts were not realised. Rather, the first paragraph of the Preamble spoke of drawing inspiration from “the cultural, religious and humanist inheritance of Europe, from which have developed the universal values of the inviolable and inalienable rights of the human person, freedom, democracy, equality and the rule

of law.” Many will therefore be disappointed to see that this same sentence will remain in the preamble to the Reform Treaty.

The decision not to include a mention of God in the preamble has less to do with any desire to confine religious beliefs to the private sphere and more out of the recognition that Europe and its values cannot be “firmly defined or delimited”. This was the conclusion of a EU Reflection Group, including prominent scholars and politicians, in spring 2002. The reflection Group held: “The question of European identity will be answered in part by immigration laws, and in part by the negotiated accession terms of new members”. The desire not to define or delimit the EU’s values and identify also reflected private concerns held in many European capitals that the Catholic position, supported by Poland and the European People’s Party, amounted to a form of “Euro-nationalism” that might lead to exclusionary policies within European societies (as regards non-European immigrants) and the polarisation of global politics, with the “clash of civilisations” prophesied by the scholar Samuel P. Huntington as its worst possible outcome.

Despite this disappointment, the IGC Mandate retains Article I-52 of the Constitutional Treaty. Securing this article was a key strategic priority of the Conference of European Churches and its Protestant member churches. Article 52 recognises the obligation of the Union to respect and hold open dialogue with religious, philosophical and “non-confessional associations.” It states:

- “1) The Union respects and does not prejudice the status under national law of churches and religious associations or communities in the member states.
- 2) The Union equally respects the status under national law of philosophical and non-confessional organisations.

3) Recognising their identity and their specific contribution, the Union shall maintain an open, transparent and regular dialogue with these churches and organisations”.

This obligation enables churches to contribute to the EU’s future development. If, however, European churches are to have an effective voice it will be essential for them to work and wherever possible speak with a common voice. Key to this will be continued and deeper collaboration between the Conference of European and its Catholic counterpart, COMECE.

As part of the Church’s own commitment to take forward this dialogue with the EU institutions, the Church of England, through its House of Bishops, established in 2004 a House of Bishops’ Europe Panel. The Panel aims to act as a point of reference for items affecting the Church of England’s relations with Europe and the European Union institutions which arise in the House of Bishops and General Synod. The Panel is committed both to promoting and shaping an open and transparent Europe close to its citizens and to monitoring the EU institutions in so far as they affect Church life and practice. Flowing out of this development, a new post has been created namely that of Church of England Representative to the EU Institutions, based in Brussels. This post is financed by a consortium of private donors interested in seeing the Church making a more visible contribution to European debates. The post holder would be grounded in the parish life of Holy Trinity Brussels, but with an office at the Conference of European Churches. It is anticipated that this post will be operational in early 2008.

Article I-52 also requires the Union to respect the existing legal position of religious bodies in the Member States and prevents interference in Church-State relations. There remains some concern, however, that the potential for expanded competences provided by the Reform

Treaty, by its inclusion of the Charter of Fundamental Rights within the main text of the Treaty, will lead to an increase in anti-discrimination legislation that might impact negatively or positively upon church life and practice. In so far as this might affect British Churches, much will depend on subsequent rulings by the European Court of Justice on the Government’s own ‘opt-out’ from the Charter. If the ECJ were to rule against the Government then it is difficult to see how Article 52 will provide the Church with any protection. While some Christians will welcome the positive contribution the Charter might make, others will be suspicious of anything that might tend to limit the Church’s freedom to regulate their internal lives according to their own understanding of the divine law.

The requirement that the Commission must keep national parliaments informed of its actions, with the option that national Parliaments might ask the Commission to either withdraw or amend a proposal, may or may not be regarded as a safeguard against unwarranted intrusions into Church life. It will, however, provide the Church through the Lords Spiritual with an opportunity to raise matters of concern regarding specific pieces of legislation.

The IGC Mandate contains four separate provisions on religion: freedom of religion; the right of parents to ensure their children’s education in conformity with their religious conventions; non-discrimination on the grounds of religion and respect for religious diversity. In terms of family policy, the Government’s White Paper notes: “The Reform Treaty retains the requirement for unanimity (i.e. a UK veto) for measures concerning family law with cross border implications.”

One area that should concern Christians and adherents of other faiths is the underlying assumption inherent in the IGC Mandate, that every actual religious community is one among many ‘faith communities.’ This

leads to a tendency to ask members of different faiths to suppress the diversity of values and approaches, which make them distinctive in favour of an abstract theory of 'faith' or 'spiritual values.' It is important for different religions to address this tendency by wherever possible developing patterns of collaboration based on their distinctiveness as well as what they have in common.

### **Ratifying the Reform Treaty – A British Perspective**

As with the Constitutional Treaty the process of ratification will require some Member States to hold referenda on the proposed reform Treaty, while in other Member States it will require the consent of national Parliaments. The Netherlands is not planning to hold a second referendum but the Dutch Government will ask its consultative body, the Raad van Staat, to give its opinion. Similarly, France will ratify the Treaty through Parliament rather than by referendum. Denmark and Ireland have an obligation to hold a referenda in the case of any transfer of sovereignty to a supranational organisation but a definitive decision will only be made later in the year once the final text of the treaty is agreed other countries, like Poland Slovakia and the Czech Republic have yet to clarify their position.

The British Government indicated in its July 2007 White Paper that due to important derogations obtained at the June Summit, a referendum will not be required. This reverses its earlier commitment to put the Constitutional Treaty to a referendum. The Government argues that since the IGC merely reforms existing Treaties, it will leave unchanged the fundamental relationship between the EU and the Member States. The Government places the new Treaty firmly within the reforming tradition of the Single European Act (1986) and the Treaties of Amsterdam (1997) and

Nice (2001). The Government therefore argues that its position is consistent with past tradition of ratifying EU treaties by an Act of Parliament.

The Government's position is not necessarily shared by all members of its own party or by other parties. The Government's decision has resulted in a slight, but not insignificant backbench revolt from within its own party. A group of around 40 Labour MPs, headed by Ian Davidson and Gisela Stuart, has called on the Prime Minister to hold a referendum on the EU Treaty, claiming that the move would restore trust in the EU. A number of Labour MPs remain concerned that the Government's decision to abandon the referendum is contrary to the manifesto commitment upon which they and the Government were elected.

The Conservative Party's official position is that the proposed Treaty is a Constitution in all but name, with only symbolic changes to the one agreed in 2004. It argues that the Government has negotiated away vital national interests, which changes significantly the relationship between the EU and its Member States. They argue, therefore, that the Government should honour its previous commitment, as set out in its election manifesto, to hold a referendum.

The Liberal Democrats on the other hand have broadly welcomed the contents of the White Paper and the IGC mandate. Although they do not argue in favour of a referendum, they argue that the decision not to do so is a missed opportunity to take a broadly based proactive stance about constructive, sensible engagement in Europe. Instead, the Liberal Democrats are pressing the Government to give sufficient Parliamentary time for extensive investigation and scrutiny of the IGC Mandate and then of the Reform Treaty when it finally comes forward as a Treaty. This reflects growing concern that most of

the work on the Treaty will be completed before Parliament returns in October.

The Government is unlikely to be swayed by arguments in favour of a referendum. It will not wish to risk a referendum defeat on this matter prior to a General Election. Furthermore, the Prime Minister is keen to develop good working relationships with the new political elite in France and Germany. A decision to hold a referendum would be seen as an unwelcome step in many European capitals. All European political leaders, including the new British Prime Minister, are keen to settle this issue as quickly as possible and to move forward from the acrimonious debates of recent years regarding the EU's future. As Gordon Brown wrote in his foreword to the White Paper: "This amending Treaty will allow the EU to move on from debates about the institutions to creating the outward-facing, flexible Europe that we need to meet the fundamental challenges of globalisation."

## **Conclusion**

The Reform Treaty like its failed predecessor, the Constitutional Treaty, attempts to resolve many of the issues that have hung over the European Union since the early 1990s. These issues have become more pressing with the pace of enlargement and the array of challenges facing the EU. Many EU governments had hoped that these matters might be resolved in a way that would renew the EU's democratic mandate. Following the rejection of the referenda by the people of France and Holland, these aspirations remain unfilled. Rather than risking further institutional and political paralysis, the EU Heads of Government have opted instead for a reform process, which like other EU reform treaties, represents a technocratic settlement between political elites. While there are legitimate political reasons why EU Heads of State and Government have adopted this strategy, many will feel that rather than

leading to an "ever closer union amongst the peoples' of Europe", European government's have contributed to making the Union ever more distant from its citizens. Despite the shrinking parameters within which this debate will now take place, it remains important for Christians to consider and discuss the issues at stake. In so doing they should base their judgement on whether the Reform Treaty is likely to contribute towards the further development of the positive achievements of the European Union over the past half-century and a correction of any errors that may be compromising those achievements.

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