



BRITISH MANAGEMENT DATA FOUNDATION

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**To: All Members
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'THE DRAFT CONSTITUTIONAL TREATY'

Faired Text with Additional Papers and Index

Further to **BMDF** note of 30 June 2003 (enclosing extracts from the then current Draft).

Attached is the faired Draft of the proposed Treaty establishing a **Constitution for Europe** together with the '*Rome Declaration*'¹ by the Chairman of the European Convention, **V Giscard d'Estaing** when he submitted the Draft to the President of the European Council in Rome on 18 July 2003 for consideration by the Intergovernmental Conference starting in October this year.

Some additional relevant papers are also included. These have been printed on green paper in order to differentiate them clearly from the text of the Draft Treaty and include pertinent extracts² from the Treaty, the text of the Laeken Declaration (which initiated the European Convention) and a ten page index prepared by the BMDF to help identification of specific articles.

There are serious business concerns about the Draft Treaty. Some of these are listed overleaf.

A Government White Paper is being issued on Tuesday 9 September. There will subsequently be a debate on the draft Constitutional Treaty in the House of Lords and on a later date in the House of Commons.

A more detailed analysis by the BMDF of the full implications of the Constitutional Treaty will be circulated in due course.

¹ When he made a plea for the **Intergovernmental Conference** to be completed under the Italian Presidency in December 2003.

² **These extracts** supersede those attached as Annex A to the BMDF note of 30 June 2003 (which should be destroyed because the article numbers in Part Three of the Draft have since been changed).

SOME BUSINESS CONCERNS

- **Increase in Regulatory burden.** Rather than reducing the current burden of detailed regulations and directives emanating from Brussels this burden is likely to be significantly increased with the wider powers being granted to the EU Commission.
- **Concreting in the ‘*acquis communautaire*’.** There are now over 100,000 regulations encompassed in the *acquis communautaire* which the Treaty will concrete in.

When John Major agreed to Maastricht he was confident that the new clauses on subsidiarity would enable perhaps 25% of the then current regulations to be repatriated to member states. In the event not one was able to be repatriated.

- **Difficulty of Amendment.** It is not only the number of regulations that causes concern but the difficulty of amending such regulations if the circumstances change or if it can be seen they do not fit particular situations in some countries.

Subsidiarity is a ‘top down’ concept making the principle difficult to apply in practice. The power firmly rests in the centre and to get a consensus for amendment with so many different countries with varying interests is normally not feasible.

- **Deletion of the ‘Sunset clause’.** The proposal by the Better Regulation Task Force to insert a ‘*sunset clause*’ (so that regulations would lapse after a certain period of time and only be extended after reconsideration) was included in an earlier draft of the Constitutional Treaty in Article I-35. It was removed subsequently by the Praesidium on the grounds that this clause ‘*could be a source of uncertainty and problems for legal security*’.
- **‘Shared competencies’.** The addition of areas of ‘*shared competence*’ (Articles I-11 and I-13) to those in which the Union has exclusive competence (Article I-12) greatly widens the powers of the Union.

The term ‘shared’ is misleading as the power has been shifted fully to the Union. Member states can only exercise their competence when and to the extent ‘*that the Union has not exercised or has decided to cease exercising the competence*’.

If this shift of power is coupled with the proposed considerable **extension of QMV**³ it will be seen that the areas in which individual countries can take action in their own right on matters of particular concern or worry are being progressively eroded.

- **Increasing impotence.** The widening spread of competences given to the Commission seems likely now to encompass up to as much as 60% to 70% of all UK Government fields.

With the increased areas which will come under **the jurisdiction of the European Court of Justice** there are grounds to be considerably worried about the tightening bureaucratic network on business.

- **Social partners.** The potential strengthening of the position of unions (see Article I-47 on the social partners) adds to the possibility of further problems to good management.
- **Lawyers paradise.** There are prospects of a lawyers’ paradise by the inclusion of the Charter of Fundamental Rights to add to that of Human Rights.

³ This extension of QMV will indeed impact upon Article I-53 (4) which will affect **the EU budget rebate** secured by Margaret Thatcher in the 80’s.