THE TREATY ESTABLISHING A CONSTITUTION FOR EUROPE: IMPLICATIONS FOR ASYLUM AND IMMIGRATION IN THE UK

Summary

1. The UK's circumstances are very different from those of our EU partners. We do not "fit" the continental model.

2. The British Government's attempts to influence EU policies on asylum and immigration have met with little success. Our European partners have declined to endorse British ideas for exerting EU economic pressure to achieve repatriation agreements, whilst proposals to overhaul the 1951 Geneva Convention on Refugees ("the 1951 Convention") have been largely ignored. A "fundamentally important" British draft amendment to the draft Treaty Establishing a Constitution for Europe (hereafter called "the Constitution") was dismissed during the negotiations.

3. The British Government has secured the continuation of the UK's opt-out from EU asylum and immigration policies under the Constitution, but has opted into all the Regulations and Directives on asylum so far agreed. What is more, it has given up the UK's national veto in advance of ratification of the Constitution. Its influence on the development of EU asylum and immigration policy is therefore likely to be minimal.

4. Other aspects of the Constitution, especially the Charter of Fundamental Rights and the mandate for the EU to accede to the European Convention on Human Rights, will set in concrete the failed 1951 Convention. This will also reduce our autonomy over asylum and immigration policy, even if the opt-out were to be exercised in full. Ratification of this Constitution will be the end of any serious attempt to control our own borders.

Background

5. The Government claim that asylum and immigration is "a European problem" that requires European solutions. In reality, however, Britain's situation is different from that of most of our EU partners, demographically,

geographically, administratively and historically. The Schengen Agreement on the abolition of internal border controls does not apply to the UK and Ireland.

6. Some EU countries have a very low birthrate of about 1.2. In Britain, our birth rate[1] is 1.73 - short of the replacement rate of 2.1 but far less drastic in demographic terms than the situation of Italy, Germany or the Baltic states. The fact is that our population is not declining. It is set to grow by 6.1 million by 2031 - even on the Government's very cautious assumption about immigration. Nor is our population of working age declining. It would continue to increase for the next 20 years, even if there were no immigration at all, mainly because women will work longer. Furthermore, the South East of England where, on present patterns, more than three quarters of migrants settle is already one of the most crowded areas of Europe.

7. In the past, the fact that Britain is an island has enabled us to impose tight control at points of entry, allowing almost total freedom once inside. Hence, unlike most countries in continental Europe, our administrative system has, at least for the present, no requirement for personal identity cards. Consequently, there is no effective control of access by foreigners to the National Health Service and other benefits.

8. Historically, our links with a worldwide Commonwealth and the prevalence of English as a second language throughout the world place us in a different situation from other European Union countries (except, to some extent, Ireland).

Co-operation so far

9. At the EU Summit in Seville in June 2002, the press were briefed that the Prime Minister would urge the European Union to use its economic muscle to ensure that third country nationals who failed asylum were accepted back by their own Governments. This proposal was watered down to extinction.

10. At the European Summit in Greece in June 2003, the Prime Minister pressed for a scheme involving offshore processing centres outside the jurisdiction of the European Union. This proposal was turned down and Britain was left to conduct a pilot scheme with a small group of sympathetic countries, although the Commission also now wants a feasibility study conducted.

11. Following the Amsterdam Treaty of 1997, the Council was required to adopt, by May 2004, "measures on asylum, in accordance with the Geneva Convention of…1951 and the Protocol of…1967 relating to the status of refugees and other relevant treaties" in the following areas:

    a) criteria and mechanisms for determining Member State responsibility for considering an asylum application;

[1] Or, strictly speaking, our total fertility rate ("TFR")

b) minimum standards on the reception of asylum seekers;
c) minimum standards with respect to the refugee definition;
d) minimum procedural standards for granting or withdrawing refugee status.[2]

12. Article 63 of the TEC also required the Council to adopt measures relating to minimum standards for temporary protection for displaced persons "who cannot return to their country of origin and for persons who otherwise need international protection"; and "promoting a balance of effort" between Member States accepting refugees and displaced persons. This resulted in the adoption of a Directive in 2001[3].

13. Further to the provisions of the Amsterdam Treaty, at Tampere, in October 1999, the European Council agreed "to work towards establishing a Common European Asylum System, based on the full and inclusive application of the Geneva Convention…".

14. On this basis, the Council has already adopted a Regulation determining responsibility for considering an asylum application[4] (and a further Regulation laying down detailed rules for its application[5]); called "Dublin II", because it revised and replaced the earlier Dublin Convention. Home Office officials have reported that other EU Member States' authorities have often been reluctant to acknowledge their responsibility for particular asylum seekers under the Regulation – just as they were under the old Dublin Convention.

15. The European Council has also already adopted a Directive on reception conditions for asylum seekers[6].

16. A Directive on the definition of a refugee was formally adopted by the Council on 30 April 2004 (but this is not yet a legally binding act). On the same day, it reached political agreement on a directive on asylum procedures.

17. The Government has been in the vanguard of countries facilitating a greater degree of economic migration, but this expansion has been on a national, not an EU basis – so far. A House of Lords Report[7] pointed out that the Government; "have consistently chosen not to opt into positive immigration measures, such as those relating to admission for employment and self-employment; family reunion; and protection for the victims of trafficking". In response to the Report[8], however, the Minister said that it was inappropriate to characterise the Government as having no commitment to "positive" measures: "the Government is keen to work with our EU partners *in all areas of present and future co-operation which do not conflict with our frontiers*

[2] Article 63 of the Treaty Establishing the European Community ("TEC")
[3] 2001/55/EC
[4] Council Regulation (EC) No 343/2003/EC
[5] Commission Regulation (EC) No 1560/2003
[6] Council Directive 2003/9/EC
[7] European Union Committee 37th Report, 5th November 2002
[8] Letter from Lord Filkin, 28th January 2003

protocol"[9] (i.e. in all areas which do not compromise the UK's opt-out from the Schengen Agreement).

18. The UK Government has opted into all four of the Regulations and Directives so far adopted as part of the Common European Asylum System, whilst Ireland has only opted into Dublin II and Denmark has opted out of the System entirely. The Government claims to be wary of opting into further measures in this area, but it remains to be seen whether this caution would remain the case if the present Government were re-elected.

19. The recent surrender of the national veto over measures in asylum and immigration will significantly reduce the Government's influence over the development of EU policies in these areas, as it will be possible (even likely) that the UK will be outvoted. Even if the opt-out is exercised in respect of every future measure, the UK will still be bound by the four Regulations and Directives that the Government has opted into, which will be subject to interpretation by the European Court of Justice and prospectively to amendment in the Council – where the veto will no longer be available.

The Constitution – Provisions on Asylum and Immigration

20. Title III, Chapter IV, Section 2 of the Constitution (Articles III-166 to III-169 – see Annex A for full text) deals with "Policies on border checks, asylum and immigration". It is designed to provide a legal basis for a comprehensive asylum and immigration system in the EU. Whilst the Section largely consolidates existing Treaties and other agreements, some of the provisions are novel, including:

- Article III-167, which introduces a uniform status of subsidiary protection, still undefined;
- Article III-168(2), which brings under qualified majority voting ("QMV") all aspects of third country nationals' right to live in another Member State, including the right to social security – "a considerable extension of the Union's competence", according to the British delegation;
- Article III-169, on solidarity and burden-sharing, "including its financial implications", which is entirely new.

21. The UK has an opt-out from the whole section (text at Annex B), but may nevertheless choose to opt into a policy at its inception, or opt in at a later date under the mechanism for "enhanced cooperation" if opting in immediately is not expedient.

22. During negotiations on the Constitutional text in 2003, the Government's representative, Peter Hain MP, put forward what he described as a "fundamentally important" amendment to the draft articles on asylum and immigration, but this proposal was ignored. The amendment would have set

[9] Emphasis added

out general objectives for asylum policy rather than the specific, detailed EU powers that have now been agreed.

Asylum and Immigration and the EU Legislative Process

23. From 1 November 2004, the UK will need at least 90 votes (out of a total of 321) to block any new measure on asylum or immigration to which qualified majority voting ("QMV") is subject. The UK itself has 29 votes. Following the meeting of the Council of Ministers in Luxembourg on 25 October 2004, national vetoes will disappear from these areas of decision-making altogether, and QMV will become the rule. Once a measure has been adopted, it will require 232 votes to get it changed. Under the new system of QMV contained in the Constitution, a change will require the votes of at least fifteen Member States, representing at least 65% of the population of the Union (see Annex C). This is scheduled for 2009.

24. Under the ordinary legislative process, the Council of Ministers' decisions on the basis of QMV are also subject to a vote of the European Parliament. This is known as "codecision". The increasing use of shortcuts in the way codecision is practiced will further undermine the UK's influence in the drafting of these measures (see Annex C on the legislative process).

25. The object of the extension of QMV, the planned changes in the way it functions and the increasing use of codecision shortcuts is to speed up or "streamline" the EU decision-making process. Since few other EU Member States share the UK's interests or policy aims in the field of asylum and immigration, however, these new mechanisms are likely to work against us.

The Constitution – Other Provisions

26. Even if the UK's opt-out were to be fully exercised, the Constitution would still fetter the UK's ability to make its own asylum and immigration policies and laws.

27. Article I-7 of the Constitution provides for recognition of the rights, freedoms and principles set out in the Charter of Fundamental Rights ("CFR")[10] and makes it mandatory for the EU to sign up to the European Convention on Human Rights ("ECHR"). The rights guaranteed by the CFR will constitute general principles of the Union's law, as will "fundamental rights…as they result from the constitutional traditions common to the Member States", under paragraph 3 of the Article. This Article thus has the potential to extend considerably the scope of EU law (the supremacy of which over national laws, in every circumstance, will be guaranteed by Article I-5a of the Constitution).

[10] The Dublin II Regulation already locks in the CFR, which constitutes Part II of the Constitution, in para (15) of its preamble, as follows: "The Regulation observes the fundamental rights and principles which are acknowledged in particular in the Charter of Fundamental Rights of the European Union. In particular, it seeks to ensure full observance of the right to asylum guaranteed by Article 18."

28. The main prospective point of relevance the CFR has to asylum and immigration is that its Article 18 expressly guarantees the right to asylum "with due respect of the rules of the Geneva Convention". Furthermore, Article III - 167 of the Constitution states that the common policy on asylum "must be in accordance with the Geneva Convention of …1951…". The draft Constitution thus contains a double lock ensuring the continued applicability of the 1951 Convention as well as locking Britain into the ECHR. It is precisely this framework of legislation that, despite seven Acts of Parliament in fifteen years, has proved thoroughly unsatisfactory as a framework for tackling the modern phenomenon of very large scale economic migration often disguised as asylum seeking. It results in an extremely lengthy and expensive process for deciding asylum claims and, by restricting the use of detention, it renders removal very difficult. The British Government, having acknowledged the shortcomings of the 1951 Convention, has sought to incorporate into the EU Common Asylum Policy radical revisions to the way it operates, but has had little success.

29. The extent to which the application of the Charter of Fundamental Rights would impinge on the legislative process in the UK depends on the effect of the "horizontal articles" which the British Government asserts will limit its application to matters of EU law under the Constitution. If the Government is right, then it will apply within the context of those existing regulations and directives on asylum which have been adopted or which are to be adopted, which the Government has already opted into. If, as some lawyers suggest, the Government is wrong, then the Charter will impinge on any national laws made in the exercise of our asylum and immigration opt-out as well.

30. The CFR includes a right to dignity, a right to freedom from discrimination and a right to social security and social assistance, any or all of which could be used by the European Court of Justice ("ECJ") to rule a national law unconstitutional under the European Constitution.

31. The introduction of ECJ jurisdiction into the asylum appeals process will directly undermine the Government's present policy of seeking to prevent delaying tactics and long, drawn-out appeals, many of which have very little merit. As well as the extra grounds for appeals which the CFR potentially provides, there will be the option of making "preliminary references" to the ECJ, which could disastrously worsen the existing problem of delays in the system.

Conclusion

32. The retention of the UK's opt-out on asylum and immigration policies under the European Constitution falls well short of a guarantee. The present Government's record suggests that it will be sparing in any use it makes of its opt-out. Meanwhile, the EU remit in this policy area has been considerably expanded whilst the national veto has been abandoned, and the UK is set to lose even more control due to planned changes to the legislative process under the Constitution.

33. Even if the opt-out were to be fully exercised, the EU would gain increasing influence over asylum and immigration policy in the UK through the "double-lock" in relation to the European Convention on Human Rights and 1951 Convention respectively, and the application of the Charter of Fundamental Rights.

34. The adoption of the Constitution can only result in the further progressive loss of national control over asylum and immigration in the UK. The extent of this loss will depend in part on how the EU immigration policy develops. For the reasons given in paragraphs 5-8, it is unlikely to suit British circumstances.

27 October 2004

ANNEX A

SECTION 2
POLICIES ON BORDER CHECKS, ASYLUM AND IMMIGRATION

Article III-166

1. The Union shall develop a policy with a view to:

(a) ensuring the absence of any controls on persons, whatever their nationality, when crossing internal borders;
(b) carrying out checks on persons and efficient monitoring of the crossing of external borders;
(c) the gradual introduction of an integrated management system for external borders.

2. For this purpose, European laws or framework laws shall establish measures concerning:

(a) the common policy on visas and other short-stay residence permits;
(b) the controls to which persons crossing external borders are subject;
(c) the conditions under which nationals of third countries shall have the freedom to travel within the Union for a short period;
(d) any measure necessary for the gradual establishment of an integrated management system for external borders;
(e) the absence of any controls on persons, whatever their nationality, when crossing internal borders.

3. This Article shall not affect the competence of the Member States concerning the geographical demarcation of their borders, in accordance with international law.

Article III-167

1. The Union shall develop a common policy on asylum, subsidiary protection and temporary protection with a view to offering appropriate status to any third-country national requiring international protection and ensuring compliance with the principle of *non-refoulement*. This policy must be in accordance with the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and other relevant treaties.

2. For this purpose, European laws or framework laws shall lay down measures for a common European asylum system comprising:

a) uniform status of asylum for nationals of third countries, valid throughout the Union;
b) a uniform status of subsidiary protection for nationals of third countries who, without obtaining European asylum, are in need of international protection;
(c) a common system of temporary protection for displaced persons in the event of a massive inflow;
d) common procedures for the granting and withdrawing of uniform asylum or subsidiary protection status;
(e) criteria and mechanisms for determining which Member State is responsible for considering an application for asylum or subsidiary protection;
(f) standards concerning the conditions for the reception of applicants for asylum or subsidiary protection;
(g) partnership and cooperation with third countries with a view to managing inflows of people applying for asylum or subsidiary or temporary protection.

3. In the event of one or more Member States being confronted by an emergency situation characterised by a sudden inflow of nationals of third countries, the Council, on a proposal from the Commission, may adopt European regulations or decisions comprising provisional measures for the benefit of the Member State(s) concerned. It shall act after consulting the European Parliament.

Article III-168

1. The Union shall develop a common immigration policy aimed at ensuring, at all stages, the efficient management of migration flows, fair treatment of third-country nationals residing legally in Member States, and the prevention of, and enhanced measures to combat, illegal immigration and trafficking in human beings.

2. To this end, European laws or framework laws shall establish measures in the following areas:

(a) the conditions of entry and residence, and standards on the issue by Member States of long-term visas and residence permits, including those for the purpose of family reunion;
(b) the definition of the rights of third-country nationals residing legally in a Member State, including the conditions governing the freedom of movement and of residence in other Member States;
(c) illegal immigration and unauthorised residence, including removal and repatriation of persons residing without authorisation;

(d) combating trafficking in persons, in particular women and children.

3. The Union may conclude readmission agreements with third countries for the readmission to their countries of origin or provenance of third-country nationals who do not or who no longer fulfil the conditions for entry, presence or residence in the territory of one of the Member States.

4. European laws or framework laws may establish measures providing incentives and support for the action of Member States with a view to promoting the integration of third-country nationals residing legally in their territories, excluding any harmonisation of the laws and regulations of the Member States.

5. This Article shall not affect the right of Member States to determine volumes of admission of third-country nationals coming from third countries to their territory in order to seek work, whether employed or self-employed.

Article III-169

The policies of the Union set out in this Section and their implementation shall be governed by the principle of solidarity and fair sharing of responsibility, including its financial implications, between the Member States. Whenever necessary, the acts of the Union adopted pursuant to the provisions of this Section shall contain appropriate measures to give effect to this principle.

ANNEX B

Protocol on the position of the United Kingdom and Ireland on policies in respect of border controls, asylum and immigration, judicial cooperation in civil matters and on police cooperation

THE HIGH CONTRACTING PARTIES, DESIRING to settle certain questions relating to the United Kingdom and Ireland, HAVING REGARD to the Protocol on the application of certain aspects of Article III-14 of the Constitution to the United Kingdom and Ireland, HAVE AGREED UPON the following provisions which shall be annexed to the Treaty establishing a Constitution for Europe:

Article 1
Subject to Article 3, the United Kingdom and Ireland shall not take part in the adoption by the Council of proposed measures pursuant to Section 2 or Section 3 of Chapter IV of Title III of Part III of the Constitution or to Article III-161 of the Constitution, insofar as that Article relates to the areas covered by those Sections, or to Article III-164 or Article III-176(2)(a). The unanimity of the members of the Council, with the exception of the representatives of the governments of the United Kingdom and Ireland, shall be necessary for acts of the Council which must be adopted unanimously. For the purposes of this Article, a qualified majority shall be defined as at least 55% of the members of the Council representing the participating Member States, comprising at least 65% of the population of these States. A blocking minority must include at least the minimum number of Council members representing more than 35% of the population of the participating Member States, plus one

member, failing which the qualified majority shall be deemed attained. By derogation from the second and third subparagraphs, where the Council does not act on a Commission proposal, the required qualified majority shall be defined as at least 72% of the members of the Council representing the participating Member States, comprising at least 65% of the population of these States.

Article 2

In consequence of Article 1 and subject to Articles 3, 4 and 6, none of the provisions of Section 2 or Section 3 of Chapter IV of Title III of Part III of the Constitution or of Article III-161 of the Constitution, insofar as that Article relates to the areas covered by those Sections, or of Article III-164 or Article III-176(2)(a), no measure adopted pursuant to those Sections or Articles, no provision of any international agreement concluded by the Union pursuant to those Sections or Articles, and no decision of the Court of Justice of the Union interpreting any such provision or measure shall be binding upon or applicable in the United Kingdom or Ireland; and no such provision, measure or decision shall in any way affect the competences, rights and obligations of those States; and no such provision, measure or decision shall in any way affect the acquis communautaire or the acquis of the Union nor form part of Union law as they apply to the United Kingdom or Ireland.

Article 3

1. The United Kingdom or Ireland may notify the Council in writing, within three months after a proposal has been presented to the Council pursuant to Section 2 or Section 3 of Chapter IV of Title III of Part III of the Constitution or to Article III-164 or Article III-176(2)(a) of the Constitution, that it wishes to take part in the adoption and application of any such proposed measure, whereupon that State shall be entitled to do so. The unanimity of the members of the Council, with the exception of a member which has not made such a notification, shall be necessary for acts of the Council which must be adopted unanimously. A measure adopted under this paragraph shall be binding upon all Member States which took part in its adoption. The European regulations or decisions adopted pursuant to Article 111-161 of the Constitution shall lay down the conditions for the participation of the United Kingdom and Ireland in the evaluations concerning the areas covered by Section 2 or Section 3 of Chapter IV of Title III of Part III of the Constitution.
For the purposes of this Article, a qualified majority shall be defined as at least 55% of the members of the Council representing the participating Member States, comprising at least 65% of the population of these States. A blocking minority must include at least the minimum number of Council members representing more than 35% of the population of the participating Member States, plus one member, failing which the qualified majority shall be deemed attained. By derogation from the second and third subparagraphs, where the Council does not act on a Commission proposal, the required qualified majority shall be defined as at least 72% of the members of the Council representing the participating Member States, comprising at least 65% of the population of these States.
2. If after a reasonable period of time a measure referred to in paragraph 1 cannot be adopted with the United Kingdom or Ireland taking part, the Council may adopt such measure in accordance with Article 1 without the participation of the United Kingdom or Ireland. In that case Article 2 applies.

Article 4
The United Kingdom or Ireland may at any time after the adoption of a measure pursuant to Section 2 or Section 3 of Chapter IV of Title III of Part III of the Constitution or to Article III-164 or Article III-176(2)(a) of the Constitution, notify its intention to the Council and to the Commission that it wishes to accept that measure. In that case, the procedure provided for in Article III-326(1) of the Constitution shall apply mutatis mutandis.

Article 5
A Member State which is not bound by a measure adopted pursuant to Section 2 or Section 3 of Chapter IV of Title III of Part III of the Constitution or to Article III-164 or Article III-176(2)(a) of the Constitution, shall bear no financial consequences of that measure other than administrative costs entailed for the institutions, unless all members of the Council, acting unanimously after consulting the European Parliament, decide otherwise.

Article 6
Where, in cases referred to in this Protocol, the United Kingdom or Ireland is bound by a measure adopted pursuant to Section 2 or Section 3 of Chapter IV of Title III of Part III of the Constitution or to Article III-161 of the Constitution, insofar as that Article relates to the areas covered by those Sections, or to Article III-164 or Article III-176(2)(a) of the Constitution, the relevant provisions of the Constitution shall apply to that State in relation to that measure.

Article 7
Articles 3 and 4 shall be without prejudice to the Protocol on the Schengen acquis integrated into the framework of the European Union.

Article 8
Ireland may notify the Council in writing that it no longer wishes to be covered by the terms of this Protocol. In that case, the provisions of the Constitution will apply to Ireland.

ANNEX C

Qualified Majority Voting

For the period between 1 May 2004 and 31 October 2004, the previous QMV system for 15 Member States has been extrapolated to include the new Member States. After 1 November 2004, the voting system will be amended, based on the principles defined by the Nice Treaty. The following table, based on Articles 12 and 26 of the Act of Accession, shows the system of weighted votes from May until October 2004 and from November 2004 onwards:

Member State	**Votes 1.5 - 31.10.04**	**Votes from 1.11.04**
Germany	10	29
UK	10	29
France	10	29
Italy	10	29

Spain	8	27
Poland	8	27
Netherlands	5	13
Greece	5	12
Czech Republic	5	12
Belgium	5	12
Hungary	5	12
Portugal	5	12
Sweden	4	10
Austria	4	10
Slovakia	3	7
Denmark	3	7
Finland	3	7
Ireland	3	7
Lithuania	3	7
Latvia	3	4
Slovenia	3	4
Estonia	3	4
Cyprus	2	4
Luxembourg	2	4
Malta	2	3
EU-25	124	321

The qualified majority threshold is currently 62 out of 87, on a proposal from the Commission, or 62 in favour, cast by at least 10 members. The blocking minority is 26 votes. Initially, the qualified majority will be 88 votes out of 124 on a proposal from the Commission, and 88 votes cast by at least two-thirds of members in other cases. The blocking minority will be 37. The Treaty provides in Article 26(2) that the qualified majority should represent 71.26% of the total number of votes, regardless of the number of countries which accede to the Union during this period.

From 1 November 2004 Council acts will require for their adoption by QMV at least 232 out of 321 votes. The blocking minority will be 90. Furthermore, a Member State may request verification as to whether these 232 votes represent at least 62% of the total population of the Union (Article 12(1)(b)). Article 12(3) provides for the qualified majority threshold to be fixed between 71% and 72.27%, depending on the eventual size of the Union (on the current accession schedule, Bulgaria and Romania will accede to the Union in 2007).

The new, "double majority" voting system defined by the Constitution is not scheduled to displace the Nice provisions on QMV until 2009. It is set out below:

Article I-24

1. A qualified majority shall be defined as at least 55% of the members of the Council, comprising at least fifteen of them, representing Member States comprising at least 65% of the population of the Union. A blocking minority must include at least four Council members, failing which the qualified majority shall be deemed attained.

2. By derogation from paragraph 1, when the Council is not acting on a proposal of the Commission, or on the initiative of the Union Minister for Foreign Affairs, the required qualified majority shall be defined as a majority of 72% of the members of the Council, representing the Member States, comprising at least 65% of the population.

2a. Paragraphs 1 and 2 shall apply to the European Council when it is acting by a qualified majority.

[3. Abstentions shall not be taken into account when counting the total number of Council members and of population.]

Codecision

- The new asylum and immigration policies will be determined by the "ordinary legislative procedure", or "codecision", as it is otherwise known. Over the last European Parliament ("EP") session, of 1999-2004, increasing use has been made of the so-called "fast-track" procedure introduced by the Treaty of Amsterdam under which codecision may be concluded at first reading if the EP and the Council can agree. In the last year of the session, 39% of codecision dossiers were concluded at first reading.
- In a large number of cases in the last session, the EP and the Council have reached a "political agreement" on the basis of secret negotiations between the two institutions, with the Commission also present. The basis of such negotiations is that the Council undertakes in advance to accept certain amendments if they are made by the EP at first reading.
- These agreements have been defended as improving the speed and efficiency of the EU legislative process, but there are obvious consequences for transparency, accountability and national Parliamentary scrutiny (as the Danish Parliament has observed).
- The scope for using fast-track "political agreements" will increase very significantly under the Constitution, which doubles the EP's powers of codecision. It will apply to all new asylum and immigration policies.