

The constitutional Treaty: What Now?



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The French and Dutch "no" one year down the line

The depth of a crisis can be measured at the pervasiveness with which it takes hold: one full year has elapsed since the failures of the French and Dutch referendums. Allowing for recovery time and the Heads of State and Government's agreement by default to allow for a "period of reflection", proposals for action are taking tentative shape and expectant

eyes are turned to the German Presidency during the 1st semester of 2007. Whereas the June Summit should come up with a first assessment of the stage the debate has reached, Declaration 30, annexed to the project of Treaty still stands and, with it, the obligation for the European Council to "address the question" in the event of ratification by 20 States.*

* Declaration 30 states that "if, two years after the signature of the Treaty establishing a Constitution for Europe, 4/5 of the Member States have ratified it and one or more Member States have encountered difficulties in proceeding with ratification, the matter will be referred to the European Council". To date, 15 States have ratified the Treaty (Spain, Germany, Austria, Belgium, Greece, Hungary, Luxemburg, Italy, Latvia, Lithuania, Cyprus, Malta, Slovenia, Slovakia, Estonia), 2 of them through referendums (Spain, Luxemburg), and 2 have met with a negative referendum (France, Netherlands).

Political statements regarding the continuation of the ratification process

In its June 2005 statement, the European Council clearly indicated that the French and Dutch "no" did not call into question the pursuit of the ratification process, whilst allowing that the timetable would have to be adjusted. With this in mind, Chancellor Merkel asserted the incoming German Presidency's will to propose solutions, without forfeiting the option to have the text accepted as is. In its January 2006 Resolution, the European Parliament expressed its satisfac-

tion with the German government's declaration, holding that – provided significant measures were taken to reassure and convince the voting public – upholding the current text would be a positive outcome of the period of reflection which, more than likely, will be extended to halfway down 2007. Yet, although Finland has announced its intention to ratify following Estonia, the prospects in other countries are not remotely as clear.

Progress of the debate in Member States

Where there was a “no”

Raucous, buzzing during the referendum campaign, France has, since 29 May 2005, been silent – a silence broken by the President’s or other government members’ occasional utterances on “the Europe of Projects” or a “G6” lead Europe. Eyes focused on the 2007 presidential elections, politicians and journalists seem to forget that France holds a key to the solution of the crisis. As for the “pause for thought”, it has not, as yet, fostered any real public debate. A March Flash Eurobarometer survey showed that those wishing to abandon the text (12%) or to re-submit it as is (9%) were in the minority against those who advocated renegotiation, either on the basis of the existing text (35%) or starting back from scratch (39%).

The Dutch government seems to have taken its “period of reflection” seriously and has, among other things, launched on the internet a vast enquiry on the future of the EU, the results of which it will communicate at the June Summit.

Where there was a “yes”

Pioneer of the “yes” to the Constitution, Spain makes no secret today of its determination to have this positive result

taken into proper account and given a value equal to the French and Dutch failures.

The Heads of Government of countries who have ratified, such as Guy Verhofstadt or Romano Prodi, have recently called for a “hard core” type integration should it prove impossible to resolve the crisis between 25 parties.

Where there has been no formal decision yet

Finland and Sweden had originally chosen parliamentary ratification. Finland has stated its intention to ratify before the onset of its EU Presidency in July 2006. The September 2006 elections monopolise the political agenda in Sweden and no final decision has been taken as to the time and mode of ratification.

The other countries seemed to be headed for a referendum. The positions of the Czech Republic (focused on its June elections), of the United Kingdom and of Poland remain ambiguous and rather negative on the prospect of ratification. Ireland, Portugal and, to a lesser extent, Denmark have a more open attitude, as they wait for the fate of the text as well as the intentions of France and the Netherlands to become clear at a European level.

Possible “crisis exit” scenarios

If the favourable trend towards the pursuit of the ratifications holds good, it is not impossible for the threshold of 4/5 of States having ratified the Treaty to be reached, in which case the matter will have to be referred to the European Council and a solution “between 25” found. Theoretically, this gives rise to several possibilities, mainly including:

- *Ad hoc* negotiations with the countries who did not ratify are instigated with a view to adopt protocols or declarations aimed at addressing the concerns of the voting public and allow ratification after a second vote (invoking the Danish and Irish precedents though the situations do

not readily lend themselves to comparison). *

- The Member States concede the absence of unanimity and decide on the launch of a new exercise of treaty revision and a new ratification procedure.
 - Either on a small scale, through the adoption of part of the Treaty, specifically the measures designed to enable an enlarged Europe to function.
 - Or embracing a broader scope, starting back from scratch or submitting all or the best part of the draft Treaty to revision.

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This second option is also valid if the ratification process is blocked or the 4/5's threshold is not reached. The European Council will have to choose the decision making process for this new revision (Convention or IGC) whilst each State will again be responsible for

choosing the ratification mode (referendum or parliamentary vote).

* The Danes had rejected the Maastricht Treaty by 52% of the votes in June 1992 only to approve it by 57% of the votes in May 1993. As for the Irish, they adopted (63%) the Nice Treaty at a second referendum in 2002 (after the 2001 rejection by 54% of the votes).

Proposals

Daring ambition

- 1. Set democracy as a prerequisite:** this "crisis exit" issue cannot dispense with a diagnosis. The history of European integration is at a turning point: moving away from the "permissive consensus" on to "appropriation" – the slow, inexorable and indispensable appropriation – of Europe's affairs by its peoples. Any solution proposed to remedy the current deadlock must be subjected to this question: is it likely to diminish or increase the distance separating the citizens from the European unification project?
2. Reclaim the primacy of the political vision: it has become the norm, in times of institutional crisis to hear pleas for a return to the "Monnet method". This would consist in restricting ambitions to a sectorial integration, which would bring about a *de facto* adhesion to the European project. It is today much quoted by the advocates of a "Europe of Concrete Projects" who demand the shelving of institutional reforms. This conveniently overlooks a fundamental element of the "one step at a time" approach evolved by Jean Monnet. The Schuman Declaration carried a clear political objective. The ECSC was to realise "the first concrete foundation of a European Federation indispensable to the preservation of peace". It is this very political vision that warranted its approach. Clearly, with time and Union enlargements, ambiguity descended on federal prospects. Until recently, however, this ambiguity remained constructive. It is no longer so. The current champions of the "Europe of Projects" no longer have a strong political vision which would give it the global direction European citizens look to. The key issue remains the question of political Union and, with it, that of "federalisation" of the decision making process within the EU (majority within the institutions, generalisation of co-decision, ambitious budget). To speak of "concrete projects" as though they had a life without the institutions (the need for reform of which is not in question) and without a global political vision, amounts to locking the European project in the fragile bubble of short-termism thereby removing it further from a European citizenry in need of direction.
- 3. Continue with the ratification process:** when they signed the Treaty, the 25 committed to its submission to (national) ratification. It is also the first condition for an authentically democratic and European fresh start. This is not only about asserting the value of the "yes" votes expressed by 15 States but also about giving all the peoples of the Union their chance to debate this text. It is furthermore necessary for all Union members to have declared themselves in order to trigger off the disposition provided by Declaration 30. Having foreseen difficulty and set a significant ratification threshold, it is the only crisis exit route already agreed by the European Council.
- 4. Stand by the Project of Constitutional Treaty:** this project has the particular-

If we ignore this "democratic turning point" and advocate a "diplomacy behind closed doors", we condemn the European project to stagnation.

ity of being the brainchild of a Convention made up with Council representatives *and* European and national Members of Parliament. Contrary to what has sometimes been said, the adoption process for this draft Treaty has lent itself to debate much more than in the past. The shelving of this project would detract from the work of this forum which, imperfect though it was, represents an undeniable democratic progress; which is why two solutions must take precedent: a second vote in the States which have not ratified or a new global text which would be an amended version of the project of constitutional Treaty.

5. Organise a new Convention on Part III of the Treaty: both our favoured solutions call for a new revision exercise. The first because, even if, by a miracle, a new vote took place – with positive re-

sults – in the countries that have not ratified (and it is unlikely that France and the Netherlands will stand alone), this text, which is a key stage, remains evolutive and can still be improved. There is even a case to be made for the prospect of a further revision as an asset in a “yes” campaign. The necessity for a further revision is obvious in the case of the second solution. Yet, its scope may be a matter for debate. There again, the argument for a “democratic prerequisite” sways us in favour of a revision by a Convention. The latter is intended to assuage public fears regarding the length of the text and the “constitutionalisation” of policies. Part III of the project of the constitutional Treaty, neglected by the Members of the Convention, partly through lack of time, must be brought up to date and made to correlate with Part I of the Treaty. More

importantly, the revision process of this more “programmatic” part must be in keeping with its legislative nature and shed unwieldy dispositions (a more flexible procedure than double unanimity must be provided).

6. Ratify via a European referendum: the obstacles to the organisation of a common ratification time for all member States must be overcome. There is no point in the efforts to bring a European public space to life to deal with the revision of the Treaties if we forget it at ratification time. The 2009 European elections could offer this common opportunity. ■

The French “no” vote on 29 May 2005: understanding and action

Why did the French say “no” to the Constitutional Treaty? What is to be learnt in order to re-launch the European engine? G. Ricard-Nihoul's study proposes the beginning of an answer to this vast and complex question. She registers the significant impact of a political and economic context unfavourable in the short term whilst noting the ongoing overall support of the

French people for European integration. This leads to a more searching analysis, which brings into light deeper phenomena. The 29 May “no” points in particular to an identity-positioning problem in the context of globalisation and of the failures of democratic practices reaching beyond the French framework. Starting from these clues, the study flags up lines reflection

and opportunities for action with a view to exit what looked like a dead end to the road to European unification. ■



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