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## An Analysis of the European Integration Process after the Rejection of the Constitutional Treaty in France and the Netherlands

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### **Where we stand: Crisis for the EU, not of the EU**

After the refusal of the Treaty for a Constitution for Europe in the plebiscites in France and the Netherlands, the European Union fell into a deep political depression (Diedrichs and Wessels, 2005). Some observers regarded the outcome of the referenda as the expression of a crisis, signalling a fundamental reversal of the dynamics which had characterised the integration process since the signature of the Single European Act in 1986. Others tried to play down the message sent by the voters and to proceed with the ratification in other EU countries, hoping that political support for the Constitution in the rest of the Union would put pressure on the obstinate countries to correct their course and to find their way back to the 'family'.

Both views are probably overstated. We plead instead for a sober and rational analysis of the present situation. Two main conclusions can be drawn:

The 'no' in France and the Netherlands is to be seen as a refusal to the Constitutional Treaty. We do not know exactly whether there is a broader and more fundamental opposition to the European integration process as such, simply because empirical data available and the analysis undertaken so far have not generated convincing evidence in support of this assumption. There might be a negative impact of the refusal to the Constitution on public perceptions and positions towards the European Union, but so far no anti-European wave of sentiments has gained force which could put at risk the European Union itself.

Eurobarometer (EB) polls seem to hint at contradictory results. The latest EB poll conducted in autumn 2005 indicates that the support for EU membership, the perceived benefits of EU membership and the positive image of the Union are all in decline; the same holds true for the trust in the European institutions, which suffered considerably (Eurobarometer 64, 2005). On the other hand, there seems to be a growing acceptance for the idea of a European constitution. But here, the national results are disparate. In six countries (Estonia, Austria, Finland, the UK, Denmark and Sweden), this idea, according to the Eurobarometer data, would not find a majority among the citizens. Thus, the picture is contradictory and difficult to interpret. Premature explanations for the referenda, or the 'real' will of the citizens, should be avoided. Systematic investigations need time and a sound methodological basis.

Second, the outcome of the referenda should not be regarded as an accident, or a minor deviation from the course of integration, nor should it be ignored or underestimated, but taken seriously and without ideological blindness. There is no simple "business as usual"-strategy available, nor should it be tried to bypass the French and Dutch referenda by speeding up the ratification process. Some of the heads of state and government like the German Chancellor Schröder in 2005 tried to follow this path immediately after the referenda, but soon became aware that this strategy could neither count on public support nor on the approval of all the other governments.<sup>1</sup>

Taken from these assessments, our main conclusion is: The refusal of the Constitutional Treaty is a critical situation for the EU, but does not necessarily constitute a crisis of the Union. At the same time, it should be accepted that the Constitutional Treaty in its present form will have little chance of surviving. A recent study by the Centre for European Reform even comes to the conclusion that " [...] the No votes in the French and Dutch referendums have killed the Treaties" and that "[...] for the rest of this decade the EU should not spend a lot of time and energy on trying to adopt a major new Treaty" (Barysch et al., 2006). Still, the outlook is not as gloomy as it might appear. Although the perspective for the Constitutional Treaty is definitely problematic, there is considerable potential for a political and institutional dynamics.

## **The need for sober assessments and constructive solutions**

So far, 14 EU countries have ratified the Constitutional Treaty, among them two – Spain and Luxembourg – held a referendum with a positive outcome. Two countries have rejected the Constitutional Treaty, while nine countries have so far not taken a decision.<sup>2</sup> Among the countries still to take a decision, there are some critical cases. The United Kingdom has postponed the ratification process, any thus also the planned referendum; similar cases are Portugal, Ireland and Denmark, where the referenda have also been put off. In Sweden the parliamentary ratification procedure has been postponed. Particularly unclear is the situation in Poland and the Czech Republic where the final decision on holding a referendum has not been taken so far, due to political disputes. At the moment, the polls suggest that a victory of the Constitutional Treaty is far from safe in these countries. Czech President Klaus has publicly declared that he is “100 percent against the Constitutional Treaty”<sup>3</sup>, while the new Polish President Kaczynski made a statement in the sense that the Constitution should be replaced.<sup>4</sup> Other leaders like Luxembourg’s prime minister Juncker, or the German chancellor Merkel, are unwilling to give up the Constitution, regarding it as indispensable for the future of Europe.

But the EU should not overstate the point. If some of the political leaders in Europe who are in favour of the Constitutional Treaty frenetically try to constantly underline its value and importance for the integration process, they could paradoxically worsen the situation for the Union and create a highly dangerous mood where the refusal of the Constitution is perceived as a rejection of the EU as a whole. The intention to save the Constitution could even turn out as counterproductive for the objective of deepening the European Union. This apparently unintended development would become a realistic scenario in the moment when in the public a double effect takes place:

The public could regard the insistence not to give up the Constitutional Treaty as a reflection of stubbornness and of lacking respect for the voters. It could even be perceived as a kind of political blackmail if the functioning of the European Union is made dependent on the adoption of the Constitution.

If a too close link between the Constitutional Treaty and the EU is therefore taken for given, the citizens could arrive at the conclusion that the Union as a whole might not be worth the price and lose further interest in the integration process.

Instead, the governments should try everything to avoid the emergence of an equation which would insinuate an inseparable relation between the EU and the Constitution. A higher portion of political generosity and relaxedness is required to handle the situation. The Constitutional Treaty should be taken as that what it is and has always been: A political offer made to the citizens, prepared by the Convention, negotiated by the member states and adopted by the heads of state and government, containing a project for the European Union. This offer has apparently not found sufficient support for being finally accepted. This is not the end of Europe, but probably the idea of a constitution will not be on the agenda for the next years. When it is stated that the popular vote in Spain has the same value of the French one, this statement is perfectly right, but it does not hit the point. The rules are clear in a ratification process: It is not about majority decisions, where each vote counts equal. Ratification of a treaty reform means that all and each single EU country have to give green light, and that the rejection of a single state leads to failure. It is simply impossible to counterbalance the positive ratification procedures against the negative ones, as such an equation doesn't hold.

All those who advocate the continuation of the ratification process, should answer one simple question: Under what circumstances would there be a realistic chance for the Constitution to come true? Even if all the other EU countries would have ratified the Constitution, this wouldn't make it easier to re-launch the process in France and the Netherlands.

France, in May 2007 will see presidential elections. The hot phase of the campaign will start probably in the second half of 2006, absorbing the political debate in the country until spring of the following year. Whoever will win the ballot will face parliamentary elections, asking the French people for a sign of confidence and support. Thus, until mid-2007, the political machinery in France will be busy with the races for the palais d'Élysée and the palais Bourbon; then,

having gone through two important ballots, it remains more than doubtful whether any newly elected President will dare to call a referendum whose outcome is – seen from now – more than unsafe, putting his/her legitimacy at risk at an early stage of his/her term. To put it brief, the timing is highly uncomfortable for the adherents to the Constitution.

Until France has not made the choice for the Constitution, the United Kingdom will also refrain from ratification. So far, this has been part of Blair's survival strategy after the narrow outcome of the parliamentary elections in 2005, which had led to growing pressure within the Labour Party to make him resign. But also a possible successor should not be expected to change course as the campaign on the Constitution could split the country and the party, and thus weaken the prime minister substantially. France provides a welcome excuse for the UK not to make the hard choices on Europe at the moment.

Even if the new German government composed of Christian Democrats and Social Democrats in its coalition agreement of November 2005 has announced that under the German EU Presidency there will be an initiative in favour of the Constitutional Treaty, the outlook for success appears rather modest.<sup>5</sup> In 2007 this will be exactly the semester where France will vote, and so far the German government has not given convincing proof of its ability to save the project. The new Chancellor Angela Merkel has apparently found taste in the European scenery after her performance in the negotiations on the financial framework 2007-2013. She seems to enjoy considerable respect and appreciation among her colleagues in the European Council, and could mobilise political capital for the Constitution. But after the sobering experience with the Agenda 2007 where she was first hailed for her success in compromise-building, and then came under heavy criticism in her own country after revised figures on the German financial contribution became public, should have warned her not to take a risk.<sup>6</sup> At least she will not be able to pay a substantial price for mustering support in favour of the Constitution. And even if the French and Dutch governments were willing to compromise, they don't control the game. This might be perhaps the crux of the problem for the governments. It is not the Convention that has taken the political game in the EU out of the hands of the governments, but the referenda in France and the Netherlands. This insight might be highly disappointing for the

federalists, but it reflects a fundamental structural condition of the integration process to which the political class in Europe has to respond. And it also reveals a major contradiction in European federalist thinking. Federalists have traditionally tried to strengthen the democratic principle in the EU against the power of the governments. The latent and underlying assumption was that more democracy in the European Union would strengthen supranational institutions like the European Parliament and drive the integration process deeper. Figures on the turnout at the elections to the European parliament have been telling us for decades that the European citizens are ever less willing to move to the ballots. And the recent referenda have underlined that the expression of a democratic will in the EU does not necessarily strengthen the integration process.

### **Nice and Beyond: Why we need a positive message**

As a standard explanation, it is often stated that the Constitutional Treaty has not been sufficiently explained to the citizens and there was rejected out of ignorance. Paradoxically, this assumption is less true for France and the Netherlands, where an intensive and serious debate over the text of the Constitution took place. The degree of knowledge about the Constitution was much lower probably in those countries that have so far positively achieved ratification – be it by referendum or by parliamentary approval. It is therefore too simple to relate the rejection to a lack of knowledge. There is in general little knowledge about the functioning of the EU among the citizens, who regard the EU system as highly complex and complicated. In this regard, the Constitutional Treaty has not substantially simplified the legal foundations in comparison to the Treaty of Nice. Still, the latter's image is awful.

But the Union will have to live with the Nice Treaty. The answer to the questions about whether Nice will work is: it already does. Nice is not perfect, but probably better than its reputation. When the Treaty reform was concluded in 2000 under the –admittedly mediocre – French presidency, criticism was all around and paved the way for the Convention which then elaborated a draft version of the Constitutional Treaty. Here, one of the self-designed problems of the EU became apparent: By so strongly devaluing the Nice Treaty as a product of egoistic bargaining among national governments, as the result of a lowest common

denominator in terms of national interests, and as the product of a secret and intransparent deal among narrow-minded political leaders, the idea of the Convention as a counter-model was born. The Convention should become all what the Intergovernmental Conference had failed to be and to achieve. In the media, among the political class and in the academic world it was suggested that with the Convention a new experience of democratically legitimate and responsible Treaty reform was enabled, leading probably to better solutions in an interactive process characterized by deliberation, argumentation and persuasion. Without intention, two damaging and misleading effects were generated:

- Expectations were created among the citizens that could not be fulfilled by the Constitutional Treaty, which in the end was not the 'big bang' solving all institutional, procedural and policy-based problems in the European Union.
- The historical role of the Convention was dramatically overstated, making it appear as the assembly of the 'founding fathers' of a European constitution backed by the European people – which they have never been.

Options were reduced for the case of failure. It is extremely difficult to convey to the public that we now have to work with Nice after so strongly discrediting the Nice Treaty as impossible to implement.

This last process could be described as a substantial de-legitimation of the European Union by its own political class, the media and part of the academia. Now the effects of this attitude strike back. What the leaders of Europe have done during the Convention period and beyond was to undermine the foundations of their own political work. Nice is by far not perfect – nor is the Constitutional Treaty, nor will probably any future Treaty reform be. But it does not convey an appropriate message to the citizens to underline the bad quality of a Treaty that has been adopted by the democratically elected governments of the member states. More modesty is required in dealing with the EU's reform process, and with the results achieved so far. Moreover, it should be considered whether the reform process which is in place since the mid-1980s shouldn't enter a phase of consolidation. It might have been too demanding for the citizens to deal with a number of reforms whose lifetime was around five years on average.

## **The Period of Reflection: Old Messages, No Dynamics**

The period of reflection proclaimed by the European Council in June 2005 has so far not generated a major dynamics in favour of the Constitutional Treaty, on the contrary: the impression prevails that time is working against the Constitution. Public attention, anyway frail, has further lost momentum; public support is nearly invisible; the political class is discussing the future of the Constitution in reduced circles of experts and professionals, encouraged by the academic world, itself in constant search for new issues and political relevance. In the eyes of the public, the future of the Constitution does not seem to be a question of a broader societal dimension, where vital issues are would be at stake.

No path-breaking proposals have been made so far. Under the UK Presidency, no major initiative was launched (Whitman and Thomas, 2005). The Austrian Presidency officially keeps up the project of a Constitution, but so far did not present the slightest idea which could serve as an inspiration or encouragement. It invests all the hope into the debate and reflection, and will try to present a 'roadmap' for the steps to tale. The work programme of the Council for 2006 contains a modest passage of six lines devoted to the future of the Constitution (Council of the European Union, 2005). Except perhaps for the European movement and its national sub-federations which came along with the idea of a Plan D (for Democracy), there has been scarce societal attention and weak commitment in favour of the Constitution. There is in fact no overwhelming political movement for the Constitutional Treaty.

This is far more a reflection of passivity and lack of interest than of anti-Europeanism; the traditional permissive consensus which reflected a benign neglect, might have been replaced by a sceptical disinterest, but far from being aggressively opposed to the EU. The EU will probably never move the masses, so it would be too demanding to expect public uprising for the Constitution.

It is the European Commission and the European Parliament, in contrast to the obvious passivity by the EU Presidencies, which not surprisingly picked up the thread, but in very different ways.

While the Commission presented a Plan D for Democracy, Dialogue and Debate on the future course of Europe (European Commission, 2005), the EP adopted a report which was designed by Andrew Duff and Johannes Voggenhuber on the reflection phase and the future of Europe (European Parliament, 2005). These two documents reveal some crucial differences and reflect a certain degree of disagreement among the key EU institutions. The Commission understands its Plan D “not as a rescue operation for the Constitution”, but tries instead “to stimulate a wider debate between the European Union’s democratic institutions and citizens” (European Commission, 2005, p. 2). While it supported the Constitution in the past, the Commission now believes that ratification is “unlikely in the foreseeable future” (European Commission, 2005, p. 2). The whole communication is not more than a lukewarm commitment to the Constitution, and focuses much more on the broader debate on the EU, which “should go beyond institutional questions and the Constitution” (European Commission, 2005, p. 5). For this purpose, three key areas of debate are identified in the Commission Plan: the EU’s social and economic development, feelings towards Europe and the EU’s tasks, and finally the Union’s borders and its role in the world. This list is far from innovative, but links up to rather traditional menus of public debate on the Union.

As regards the instruments and methods used in Plan D, the Commission presents a broad list of elements, including reports by the member states on the national debates on Europe, activities by Commission members, civil society participation, roundtables, goodwill ambassadors, internet tools, and of course – financial assistance. In the end, nothing really new appears, and that not even for the sake of the Constitution.

The EP report is a telling document as it contains a clear political statement on the substance as well as the method of solving the present crisis. In contrast to the Commission, the Parliament focuses on the Constitution and its salvation. Until 2009, the Constitution should enter into force; as long as ratification is pending, no new member states shall be allowed to enter the Union, as the Treaty of Nice is regarded as an insufficient legal base for a Union with 27 member states. The present text of the Constitution must not be split, nor

amended, but is to be preserved. In a number of Parliamentary Forums and Citizens Forums the debate on the Constitution and the future of Europe should take place.

In a peculiar mixture, it also reveals old-fashioned and overcome patterns of explaining the integration process. There is an apparent contradiction in the EP's approach. While on the one hand, a true and open debate should be undertaken with the citizens, the result seems to be given; the impression could be conveyed to the citizens that the debate is simply designed to make them accept what is predefined as the optimal solution. This could lead to further frustrations and even rejection. The same applies to the nexus between the Treaty reform and enlargement. First of all, the formulation used by the EP smells of blackmail, which politically is a dubious strategy. Second, the EP punishes the wrong: why should the Bulgarians and the Romanians pay the price for the failed ratification of the Constitution? Third, Nice is discredited without giving it a chance of working – although – as has been said – it does work already.

Finally, it is hard to believe that legitimacy will be produced by setting up a Parliamentary Forum composed of members of the European and of national parliaments, or by a number of Citizens Forums with members of the civil society. It is far from safe that these bodies will be able to speak for the citizens in more than a formal way, or that it will attract the political attention necessary to overcome the current impasse. It appears rather as the usual mixture of combining certain elements that are regarded as a surrogate for lacking public attention and support – parliamentary bodies, organised civil society, in brief: the usual suspects.

In the end, what strikes the observer is that the period of reflection has developed into a period of disorientation: different approaches by the EP and the Commission, and almost no voice by the Presidency, the Council or the European Council.

## **Options Available: Deepening integration without a Constitution**

So, what options are available? The first and most pragmatic one would be to take the present Treaty base and try to use it as a starting point. Second, thoughts should be devoted to the question which elements of the Constitutional Treaty could be implemented without Treaty revision. In this regard, a number of options could be considered. Primary law could be used (e.g. Art. 308 TEC) for entering new fields of action; secondary legislation, inter-institutional agreements and even the organisational competencies of the institutions offer perspectives for developing further the integration process. The member states could also try to design initiatives outside the Treaties but compatible with these in order to be transferred at a later stage, similar to the Schengen system, which started as a form of intergovernmental cooperation among a reduced number of member states, and in 1997 was taken over into the EC and EU Treaties for most EU countries. Fourth, some reflections should be undertaken under which circumstances Treaty changes could take place in the future, avoiding such situations as we have witnessed in France and the Netherlands.

The implementation of the Nice Treaty has already started, and so far no major paralysis has taken place as regards decision-making after enlargement. The EU institutions seem to work in an acceptable manner, without suffering a breakdown under the conditions of an enlarged Union. Implementation of the Nice Treaty is however not necessarily the final stage, it may be accompanied by further reform steps below the level of Treaty change.

The creation of groups of member states is much more controversial. The risk of division and a break-up if the EU could emerge should the member states reorganise themselves outside the Union framework, forming flexible constellations in different policy areas. But it could also be imagined that a group of willing and able countries try to take the political lead in favour of a reform process for the whole of the Union, designing an agenda according to which different reforms may be translated into reality.

Finally, further revisions according to the classical model, i.e. having the IGC as the method without a great preparation by a Convention, could be a more

pragmatic approach to adjust the Treaties. The next enlargement could be an appropriate occasion for changing the Treaties, and to limit the revision to institutional and procedural questions rendering the Union more efficient without going into policy-specific details. Thus, the best way would be to choose a mix of different options for improving the Union's performance in a pragmatic and modest manner.

### **Conclusions: A New Package Deal for Europe**

There is no major EU crisis so far, but the present situation could turn into such when and if the member states handle the situation without the necessary caution, prudence and skill. It is therefore indispensable to accept that the Constitutional Treaty will probably not be saved and that new ways must be found for deepening the European Union. The problem is that with too long sticking to the Constitution, the member states could create the crisis which they want to avoid, in the sense that the public mood would turn against the EU. Second, although the public mood does so far not give rise to concern, but political extremists could take up the issue and use the EU as a source of fear and concern. It is true that enlargement has caused fears in countries like Germany, according to the latest Eurobarometer polls (Eurobarometer 64, 2005). It is also true that in a number of countries the political class is little enthusiastic about Europe. So, although no imminent danger exists for the Union, the potential for crisis is in place.

The EU should therefore turn a vice into a virtue, try to design a reform programme even without the Constitutional Treaty. A new package deal including policy results, institutional change and concrete projects for the citizens, should be concluded, similar to the SEA (with the Single Market as the core project) or the Maastricht Treaty (with Economic and Monetary Union). Concrete policy projects should be designed where success is achievable, and where citizens see the added value of integration. The area of freedom, security and justice would be such a field where the EU could offer solutions in the case of fight against crime, terrorism, or border control. Environmental and health policy would be another field where visibility of the EU is high in combating major critical developments. The definition and defence of a European social and political

model in the global context could even convince eurosceptics who identify the EU only with neoliberalism. In any case, policy results combined with institutional reform in a step-by step process would constitute a better basis for progress than the aspirations for the big leap into a constitutional reality.

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<sup>1</sup> See Frankfurter Allgemeine Zeitung (FAZ), 3 June 2005.

<sup>2</sup> See for an overview the EU ratification website:

[http://europa.eu.int/constitution/ratification\\_en.htm](http://europa.eu.int/constitution/ratification_en.htm)

<sup>3</sup> This quote is taken from Král 2005.

<sup>4</sup> "Polish president wants euro entry delayed, EU treaty replaced", eubusiness, 23.02.2006, <http://www.eubusiness.com/Euro/060223164039.a0vgmwgs>

<sup>5</sup> See the coalition agreement between CDU/CSU and SPD titled "Gemeinsam für Deutschland, mit Mut und Menschlichkeit, 11 November 2005, at:

<http://www.bundesregierung.de/Anlage921232/Der+gesamte+Koalitionsvertrag+im+Worlaut+.pdf>

<sup>6</sup> See Berliner Zeitung, 23 November 2005 „Merkel erkaufte Gipfel-Erfolg“