

El futuro de la Constitución Europea: opciones para España

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Nota preliminar

Este informe es fruto de la labor de análisis y reflexión llevada a cabo por el Grupo de Trabajo sobre el Futuro de la Unión Europea del Real Instituto Elcano de Estudios Internacionales y Estratégicos, que ha venido reuniéndose regularmente desde el mes de junio de 2005 hasta la fecha. El informe aspira a reflejar el contenido de los debates y aportaciones realizadas por los miembros del Grupo en cuanto al futuro del Tratado Constitucional y las opciones que se plantean para España en el escenario de negociaciones que se abre en el año 2007. Pese a ello, el análisis y las opiniones aquí planteadas no comprometen individualmente a los miembros del Grupo, sino que en última instancia son responsabilidad exclusiva del autor, José Ignacio Torreblanca, investigador principal del área de Europa del Real Instituto Elcano.

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Además de las aportaciones de los miembros del Grupo de Trabajo, el autor de este informe se ha beneficiado también de la generosidad de una serie

de personas que, en razón de su experiencia en cuestiones europeas, han accedido a comentar con el autor, en parte o en su totalidad, versiones anteriores de este documento o, más genéricamente, las ideas contenidas en él. Se trata (por orden alfabético) de Joaquín Almunia, Josep Borrell, Carlos Carnero, Alfonso Dastis, Rafael Estrella e Iñigo Méndez de Vigo. Aquí también, el autor desea sumar al agradecimiento la más completa exención de cualquier responsabilidad en relación a las posiciones aquí defendidas.

En nombre propio y, especialmente, del Real Instituto Elcano, quede constancia aquí de nuestro agradecimiento a todos los miembros del Grupo, cuya composición se detalla en el Anexo, así como a cuantas otras personas lo han hecho posible con su dedicación y generosidad.

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director.

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Real Instituto Elcano

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Resumen/Summary

This report analyses the current **crisis** in the EU caused by the double 'no' to the European Constitution in France and the Netherlands as well as the likely future unfolding of the so-called 'reflection period' during the year 2007.

The report examines both the current status of the Constitutional Treaty's ratification process and the impact of the current crisis on the integration process. Although the crisis does not question the continuity or the justification of the need for the integration process, the report identifies three main problems:

- ◆ **First**, the lack of agreement between **citizens and the European** elites on both the direction and content of the main European policies. This translates into a growing sense of distance towards the European Union among wide sectors of Europe's citizenry.
- ◆ **Second**, the member states' inability to reach a stable consensus on the **institutional reforms** needed to ensure the efficient and legitimate functioning of the enlarged European Union, which has led to a slowing down of the decision-making process in the EU and a lack of confidence in the possibility of honouring existing commitments concerning future enlargements.
- ◆ **Third**, the difficulties implied by the Treaty's **revision and ratification-making procedures** which, as a result of the proliferation of actors with a vetoing capacity, is highly likely to lead the European Union into a permanent stalemate.

Therefore, besides recommending a strategy based on policies aimed at **increasing the legitimacy** and efficacy of the EU and its institutions, the report considers the need to **simplify** the EU's Treaty revision and ratification procedures. The core of the crisis will be solved to the extent in which:

- ◆ **First**, a better balance between the 'demand' and 'supply' sides of integration is reached. This requires European policies that meet the new concerns and needs of Europe's citizens today in areas such as the Union's internal and external security, its foreign policy, immigration, energy security and climate change.
- ◆ **Second**, a more flexible and **efficient institutional framework** is designed, thus allowing the enlarged EU to continue deepening its integration and, at the same time, to honour its remaining enlargement commitments.
- ◆ **Third**, consensus is reached on **simpler**, more flexible and more agile Treaty revision and **ratification-making procedures**.
- ◆ **Finally**, the report points at the lack of **leadership** as a problem that further contributes to the current European crisis. Therefore, it advocates a position of active leadership for a country such as Spain at this key stage of the European integration process.

Against this backdrop, the report identifies four scenarios and ranks them according to Spain's interests and

preferences. After examining in detail each and every one of them, the report concludes that the first two offer enough conditions for satisfying Spain's interests, while the remaining two are considered more adverse and, thus, less advisable. Nevertheless, for all four scenarios, the Report examines the conditions and strategies under which the values and principles guiding Spain's European policy could be satisfied.

- (1) The **best scenario** is one in which the present Constitutional Treaty rapidly enters into force **without** substantive **modifications**.

This option, though it might not be considered the most likely, would be the fastest and least costly way of satisfying the majority of EU member states. The Constitutional Treaty, it is argued, might not be perfect, but it surely amounts to a good compromise both from the perspective of Europe's general interests and Spain's in particular. The European Constitution includes important innovations from the perspective of both citizen's concerns and the efficient working of an enlarged European Union. Though the unanimity criteria must be respected, the Constitution enjoys the legitimacy of having been already ratified by 18 member states. Therefore, the Treaty must inevitably be taken into account as the basis for considering and evaluating how likely and desirable different scenarios might be.

- (2) The **second scenario** is characterised by an attempt to salvage the Constitution if and when the double 'no' in France and the Netherlands are to be considered an insurmountable obstacle.

Should the present Constitutional Treaty be discarded, the best option would be to accept the modifications to the current text which would guarantee the rapid entry into force of a text which resembles the present one as much as possible both in its content and ambitions regarding institutional reforms or the introduction of new key policy areas, which the report considers crucial in order to satisfy citizens' needs and concerns. This scenario, the report warns, is risky both from the political and the technical points of view: first, because the condition of unanimity does not ensure that this new text will have an easier ride through the ratification process than the present Constitutional Treaty; second, because ensuring the coherence of the resulting text after chopping into different parts the present Constitutional Treaty is not an easy task. Notwithstanding the difficulties implied in this second scenario, a new Intergovernmental Conference (IGC) would open different possibilities, including, why not?, taking advantage of the opportunity to open the Constitutional Text in order both to improve and update it in light of the lessons learned from the reflection period concerning the challenges faced by the EU. Also, it may offer an opportunity to rescue some of the more innovative proposals which did not finally see the light in the treaty-making procedure leading to the Constitutional Treaty. A renegotiation scenario might thus not necessarily imply a watering down of the reforming and innovation impulse. Accordingly, the 18 member states which have already ratified the text should not need to act as a defensive bloc limited to safeguarding the constitutional essences, but rather take the leadership and responsibility of extending the consensus reigning

among them on to the other member states with the aid of innovative political and technical formulae which might be considered to be attractive by all member states.

- (3) A **third scenario** would open up once the exploratory conversations among member states lead to the conclusion that the integrity, ambitions and political substance of the current Constitutional Treaty cannot be saved. A 'selective rescue' of some elements, but not all, of the Constitution would then take place (ie, what the media refers to as 'cherry-picking').

This could result in a mini-Treaty –or a mere 'institutional Treaty'–, less ambitious and satisfactory than the current Constitutional Treaty. In practice, such a dynamic would easily lead to a revised Treaty of Nice or a Treaty amending the Treaty of Nice. Faced with such a scenario, it would be essential, although difficult, to preserve the global equilibrium which led to the Constitutional Treaty in its present form. The opening up of the Constitution to selective cherry-picking would very likely lead some member states to place the emphasis on some aspects (strengthening of the Council, reduction of the size of the Commission, double majority voting etc), whereas other member states would focus their efforts on keeping what they consider the substantial improvements and innovations included in the Constitutional Treaty (such as the European Security and Defence Policy, the Common Foreign and Security Policy, Justice and Home Affairs policies, etc) and the decision-making institutions (especially *codecisión*). Therefore, the goal in this scenario would be to **preserve the equilibrium between institutional and policy innovation**, so as to have a resulting package satisfactory for all

the member states involved. Once again, one should not forget that success in this task will hinge upon the satisfactory completion of the ratification procedures in 27 member states, in accordance with their national constitutional provisions.

- (4) In a **fourth scenario**, member states would completely **abandon the Constitutional Treaty** as a basis for further negotiations and would start negotiations all over again from scratch. This would probably entail the convening of a new Convention, followed by a new IGC, although this time member states might choose not to open the deliberation dynamic represented by the Convention. The decision to open a new negotiating process, and whether to wait until the 2009 European elections, is linked to the interpretation of what the political climate in the EU in general, and some member states in particular, might allow. In a similar vein, whether in absence of a Constitutional Treaty member states might adopt a package of reforms not requiring a new Treaty (via a series of inter-institutional agreements, bridging clauses, etc), would also have much to do with the assessment of the damage derived from discarding the Constitutional Treaty. Even then, such a scenario would not necessarily mean a retreat from the most ambitious and pro-European positions when examining future possibilities of moving the Union ahead in key matters such as the institutional framework, common policies and financial resources, treaty-making and ratification procedures and, last but not least, enhanced cooperation or flexible integration mechanisms.