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And Yet It Moves: The European Constitutional Debate One Year Later

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In its not-so-long history, the European Union (EU) has known many *anni horribiles* marked by major events that brought about more or less prolonged crises. But the year 2005 will no doubt be recalled as one of the worst. The rejection of the constitutional treaty, which was signed in fall 2004, in referendums in France and in the Netherlands not only derailed a reform process that the European leaders had presented as crucial for the future of the EU, but also gave rise to a wider identity crisis over the meaning and purpose of the European Union.

Within this tumult, some signs have emerged of a fresh interest in reviving the process of constitutional reform. Prominent European political figures, including several heads of state or government, have presented their views on the possible way-outs of the deadlock over the constitutional treaty and pro-reform groups are now hopeful that the constitution can move forward this year. This signals a growing awareness that the period of reflection agreed upon at the June 2005 European Council, which has been unfruitful so far, needs to give way to new diplomatic initiatives.

But the spectrum of opinions concerning the future of the EU treaties remains broad and the governments of some EU countries are reluctant to accept a new cycle of talks on the constitutional issues. Is there a realistic chance that the EU leaders can reach an agreement to revive the constitutional treaty or at least to engage in a diplomatic process to give the Union a constitutional prospect? Can a plausible time horizon for the re-launch of the reform process be identified?

The State of Play

The failure of the referendums in France and the Netherlands did not fully stop the ratification process of the constitutional treaty. Since those failures, five countries (Belgium, Cyprus, Latvia, Luxembourg, Malta) have ratified the treaty, which means that 14 out of 25 member states, representing over half of the Union's population, have already accepted the treaty.¹

¹ In addition to the five mentioned above the group of the ratifying countries include Austria, Germany, Greece, Hungary, Italy, Lithuania, Slovakia, Slovenia and Spain.

Chancellor Wolfgang Schüssel of Austria, which holds the six-month rotating presidency of the Union in the first half of this year, has announced that he will propose a 'roadmap' for the constitutional reform at the European Council of next June.² The European Commission will provide the European Council, on the same occasion, with a report on the national debates over the future of the Union.

In a resolution approved in January 2006 by an overwhelming majority, the European Parliament (EP) stated that "a positive outcome of the period of reflection would be that the current text [of the treaty] can be maintained."³ However, even the EP has advocated an extension of the "period of reflection", proposing that a decision on the way forward be taken by the second half of 2007.

There is indeed a general agreement that the conditions to re-start a meaningful constitutional process will not materialize for at least another year. All signs indicate that a key player, France, will be unable to take a formal position until after the completion of its next round of elections, which includes both presidential and parliamentary elections, in spring 2007. The same applies to the Netherlands whose general elections are also scheduled for spring 2007. In both France and the Netherlands, a change in the political scene, with the ascent to power of a new leadership enjoying fresh legitimacy, is a prerequisite, though hardly a guarantee, for rebuilding a national consensus around the goal of constitutional reform.

Overview of Current Positions

No major new diplomatic initiatives have been undertaken by national governments to re-launch the constitutional debate. However, the many speeches and statements that the European leaders have recently devoted to the prospect of European Union reform indicate that the subject is gradually re-emerging on the European agenda and in few basic forms:

Proceeding pragmatically with a focus on economic reform - According to a first school of thought, priority must be given to the restoration of the citizens' trust in the European institutions as a prerequisite for reviving the constitutional process. Since the "no" votes in the referendums were apparently motivated more by a general dissatisfaction about the Union's performance than by a rejection of the treaty as such, it seems advisable, so the argument goes, to concentrate efforts on improving the EU economic policies in order to produce tangible results for the ordinary citizen. Reopening a formal diplomatic process on the future of the constitutional treaty is seen, from this standpoint, as putting the cart before the horse. A related concern is that putting treaty reform back on the agenda could give rise to new tensions within the Union, which would further confuse the electorates.

² "Speech to the European Parliament," January 18, 2006.

³ European Parliament resolution on the period of reflection: the structure, subjects and context for an assessment of the debate on the European Union (2005/2146(INI))

This pragmatic approach is advocated by, among others, European Commission President Jose Manuel Barroso, who has not hidden his skepticism about the possibility of re-launching the process of constitutional reform, at least in the short term. British Prime Minister Tony Blair, as well as most of the governments of Northern and Central Europe, have taken similar stances.⁴

The fact that the European economy has recently shown clear signs of recovery has encouraged the advocates of this pragmatic approach. However, resistance to economic change has continued to frustrate reform plans and the recent outbreak of economic nationalism, which has been on display in the dispute over cross-border mergers and acquisitions, does not bode well for the future. From this point of view, treaty reform, particularly the streamlining of the decision-making rules, can be seen as necessary to overcome the resistance to change, especially if that resistance comes from one or a few countries.

Abandoning the goal of an ever closer Union to ‘return’ to intergovernmentalism - Others have drawn more radical conclusions from the outcome of the French and Dutch referendums. They argue that the Union has lost support because integration has already gone too far. Their thesis is that there has been an excessive transfer of sovereign prerogatives to the supranational level and a related trend towards overregulation and bureaucratization. Reopening the prospect of a reform that would give even more power to the EU institutions would only further alienate European citizens.

Embracing this view, some European leaders have openly put into question the objective of an “ever closer Union” enshrined in the current treaty. Czech president Vaclav Klaus believes that the EU’s harmonization policies have gone “farther than was necessary and more than is rational and economic advantageous.”⁵ He has suggested returning to an intergovernmental model of European integration and to a focus on the liberalization of markets. Polish President Lech Kaczynski and key members of the new Polish government share a similar vision. Their thesis is that the Union can work effectively even on the basis of the Nice treaty (which, by the way, gives Poland a substantially greater voting power in the Council of Ministers than the constitutional treaty.)⁶ The new anti-integrationist course in Warsaw—arguably the biggest change in the stance of any national leadership on the constitution since the failed referendums—may represent a serious obstacle to reviving the constitutional treaty.

This anti-reform position has one main weakness. Opinion polls suggest that, while there has been a decline in public trust in the EU, a majority of the European population want the EU to continue to be involved in issues such as immigration, internal security and foreign affairs in which the Euro-skeptics oppose, to varying degrees, a greater role of the Union. Moreover, it

⁴ Tony Blair, “Speech at the European Studies Centre at St Anthony College,” Oxford, February 2, 2006.

⁵ “Speech at the Bridge-Forum Dialogue,” Jean Monnet Building, Luxembourg, March 8, 2006.

⁶ See the interviews of Lech Kaczynski with *Le Figaro*, February 24, 2006 and with *Frankfurter Allgemeine Zeitung*, March 8, 2006.

would be difficult to develop these policies without stronger institutional instruments and additional resources.

Saving the constitutional treaty in its entirety - On the other end of the spectrum are those who still think that the constitutional treaty should and can be saved in its entirety. They argue that, even after the French and Dutch “no”, the completion of the ratification process is the only way to have a complete picture of the national positions. It is also hoped that, with a change in the political landscape in France and the Netherlands, a second referendum on the same text, with the addition of new declarations or protocols, might be successful.

Several countries that have ratified the treaty—Austria, Belgium, Germany, Italy, Luxembourg and Spain—have formally expressed themselves in favor of the continuation of the ratification process. The ratifying states are understandably reluctant to accept either outright abandonment or a watering down of a text that was approved in most cases by a vast majority of members of parliament or the electorate (77% of Spanish voters approved of the treaty).

Recently, German Chancellor Angela Merkel’s position has been most under the limelight. She has raised hopes that the treaty might be successfully re-launched during the German presidency of the EU in the first half of 2007. Indeed, the government program of the German grand coalition includes a firm commitment to inject “new impetus” into the ratification process when Germany takes over the EU presidency.⁷ In an attempt to save the treaty as a whole, Ms. Merkel has proposed attaching a non-binding declaration on the “social dimension of Europe.”⁸ The goal of the declaration would be to assuage the French voters who rejected the treaty out of fear that some Union policies might result in the dismantlement of welfare state benefits.

Tellingly, however, no French leaders have embraced Chancellor Merkel’s proposal. In fact, there is a widespread conviction in France that a new referendum would be successful only if a substantially new text is submitted to the electorate. Dutch leaders have been even more unequivocal in ruling out a second referendum on the same text.

Pushing for informal application of parts of the treaty - Not surprisingly, more nuanced proposals have emerged from the French debate. Indeed, French politicians, at least those in the mainstream, are confronted with two competing challenges: proposing changes to the constitutional treaty substantial enough to make it sellable to the French electorate and, at the same time, salvaging the key parts of a reform in which French diplomacy has invested much and which the political establishment considers to be in the national interest. Moreover, the aspiring candidates in the 2007 presidential election have a clear interest in maintaining a position that they can adjust, if need be, in the coming months without risking too much self-contradiction. It is clear that no presidential candidate can realistically hope to win without securing substantial support among those who voted against the treaty.

⁷ “Gemeinsam für Deutschland. Mit Mut and Menschlichkeit. Koalitionsvertrag von CDU, CSU and SPD,” November 11, 2005.

⁸ See *Handelsblatt*, December 18, 2005 and Euroobserver, January 10, 2006.

French President Jacques Chirac has tried to circumvent the question by proposing that, starting with the European Council meeting in June 2006, EU leaders unveil new “European projects” based at least in part on the institutional reforms envisaged in the constitutional treaty that, he argues, could be implemented under the existing treaties.⁹ French Prime Minister Dominique de Villepin has taken the same position, speaking of a “project-based Union” whose construction could begin under the current legal framework.¹⁰ What distinguishes Chirac’s and de Villepin’s proposals from other plans to implement parts of the constitutional treaty is their emphasis on the institutional dimension: the EU governments should push through those reform measures contained in the constitutional treaty that would establish a President of the Union, give the current EU foreign policy chief Javier Solana an effective role as EU foreign minister and build a European diplomatic service.

Herein lies the difficulty in these proposals, since it is doubtful that such reforms can be introduced without a new treaty. To be sure, there have already been several informal applications of parts of the treaty, including the solidarity clause in the event of a terrorist attack or natural disaster, the stable presidency of the Eurogroup, and the establishment of the European Defense Agency. Other relatively minor reforms aimed at enhancing the transparency of the Union’s decision-making procedures and at giving European citizens more democratic rights could also be implemented as they raise no major objections. But, apart from that, the cherry-picking approach may be close to exhausting its potential.

Renegotiating the treaty - Several politicians have recently promoted the idea of reaching an agreement on a revised, possibly slimmed-down, text of the treaty. French Interior Minister Nicolas Sarkozy has proposed identifying the treaty dispositions that enjoy a large consensus and incorporating them into a much smaller text that would have a form more similar to past treaties than to a constitution.¹¹ Other French politicians, including Laurent Fabius, are also in favor of revising the treaty but propose instead that this be done by saving the more “constitutional” parts that are more comprehensible to the ordinary citizen and dropping the lengthy part that spells out specific Union policies.¹² The latter proposal has had a certain echo in other countries.

In any case, any modification of the constitutional treaty would have to be negotiated at an intergovernmental conference and then be submitted to a new cycle of ratification with all the political uncertainties that this implies. However, according to the latest Eurobarometer opinion poll survey (Fall 2005), the most widespread view among the European citizens is that the

⁹ See President Chirac’s address to the diplomatic corps, January 10, 2006.

¹⁰ “Speech at the Humboldt University, Berlin,” January 18, 2006.

¹¹ “Speech at the Konrad Adenauer Stiftung, Berlin,” 16 February 2006.

¹² See the interview of Laurent Fabius to *Ouest France*, October 22, 2005.

constitutional treaty must be renegotiated. This is, in particular, the opinion of two thirds of the people of both France and the Netherlands.¹³

Working on the consolidation of a core group of integrationist countries – Given the difficulties in re-launching the process of treaty reform, some EU leaders have proposed forming a core group among the member states that want more advanced forms of integration. Belgian Prime Minister Guy Verhofstadt has put forward the idea of a nucleus composed of the 12 countries that have adopted the euro. This group, according to Verhofstadt, could eventually give birth to its own institutional structure alongside that of the Union.¹⁴ This is far from being an original proposal, but Verhofstadt has presented it as the only acceptable alternative to the ratification of the constitutional treaty, which he has candidly declared unlikely. Even Chirac has recently advocated the creation of mechanisms allowing for greater political coordination within the euro zone.

However, any plan to establish a parallel institutional structure would run up against formidable legal and political obstacles. Moreover, some countries in the euro zone have shown little enthusiasm for the idea. The German chancellor, in particular, seems more interested in an inclusive approach, not least for the purpose of improving relations with Britain and the new member states. Finally, the difficulties that several euro countries have encountered in implementing economic reforms, including those that are part of common European programs, raises doubts about the effectiveness of a core group centered on the eurozone.

Concluding Remarks

Ten concluding points can be drawn from the preceding analysis:

- There is a widespread recognition in Europe that, especially after the last round of enlargement and in view of the future accessions, the EU needs a more solid legal basis and more efficient institutional instruments than provided for by the Treaty of Nice.
- A strategy that concentrates exclusively on the Union's economic and regulatory policies, postponing *sine die* the constitutional question risks increasing the public's sense of distance vis-à-vis the European institutions. The discontent and disorientation of Europe's citizen are caused not only by the inefficacy or inconsistency of individual policies of the Union, but also by the lack of a clear direction of the integration process.
- The re-establishment of a balance between the enlargement of the Union and the reform of its institutional set-up seems destined to acquire a growing prominence.
- An important, first step would be the definition of a new roadmap to reach a collective decision on the future of the constitutional treaty, possibly by 2007.

¹³ See *Standard Eurobarometer* 64, October-November 2005.

¹⁴ See Guy Verhofstadt, *Les États-Unis d'Europe*, Editions Luc Pire, Bruxelles, 2006.

- New, informal implementations of parts of the constitutional treaty are possible, but for the most important measures, especially institutional reforms, the straitjacket of the current legal framework represents an insurmountable obstacle.
- Expeditious solutions such as the addition of non-binding political declarations to the constitutional treaty are unlikely to be accepted as an adequate response to the malaise that manifested itself in the failed referendums.
- A new negotiation on the text of the constitutional treaty seems therefore inevitable.
- A shorter text that is more comprehensible to ordinary citizens and that incorporates the bulk of the institutional innovations envisaged in the constitutional treaty and the charter of fundamental rights appears to be a workable compromise solution.
- It would be important that the countries that have ratified the treaty launch a common initiative soon to reactivate the diplomatic process of constitutional reform as a way of encouraging other countries to take a more defined position.
- While vanguard groups can prove helpful to promoting further integration, the creation of a core group with its own institutional instruments poses many political and legal problems.