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The Future of the European Constitution

The Constitution “represents a sensible new set of rules for the enlarged European Union”
Jack Straw, Foreign Secretary, 6 June 2005.

“I may no longer practise medicine, but I can tell a corpse when I see one, and this constitution is a case for the morgue if ever I saw one”.
Dr Liam Fox, Shadow Foreign Secretary, 6 June 2005

The rejection of the *Treaty Establishing a Constitution for Europe* (European Constitution) in referendums in France and the Netherlands has brought about a crisis in the EU. There is no consensus on how to proceed with the constitutional process launched by the Laeken Declaration in December 2001, or on whether Member States should continue with ratification of the Constitution. One certainty is that the Constitution cannot come into force until all 25 Member States have ratified it.

This paper looks at the outcome of the two referendums, reaction to and commentary on them, and possible scenarios for future EU reform.

Vaughne Miller

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Summary of main points

- On 29 May 2005 the French electorate voted against ratification of the *Treaty Establishing a Constitution for Europe* (the European Constitution). On 1 June 2005 Dutch voters also voted against ratifying the Constitution.
- Reasons for the rejection are believed to include fears about national sovereignty and national identity, the increasing amount of EU legislation, the pace of enlargement and the single currency.
- The rejection of an EU Treaty by two founding members of the EU is unprecedented and has caused a crisis among EU leaders on how to proceed.
- There has been disagreement over whether the ratification process should continue or be suspended.
- The British Government announced on 6 June 2005 that it was suspending the *European Union Bill*, which aimed to give legal authority to the Constitution in the UK and provided for a referendum to approve implementation.
- The Constitution cannot come into force unless all 25 Member States ratify it, but various scenarios for the future of the EU have been proposed.
- It is possible that some parts of the Constitution and other, more general reforms, may be implemented without the Constitution.
- The European Council, which meets on 16-17 June 2005, will consider how to proceed.

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I Referendum results

A. France

The French Government opted for a referendum on ratifying the European Constitution, rather than a parliamentary method requiring the approval of both Chambers. On 29 May 2005 the French electorate voted in a binding referendum. The results were as follows:¹

Yes	45.1%
No	54.9%
Turnout	69.7%

B. Netherlands

The Dutch referendum was held following an initiative of the lower house. The bill for a consultative referendum on the European Constitution was introduced by three members of the House of Representatives and was passed by the Senate in January 2005. The referendum was held on 1 June 2005, and although it was consultative, the Dutch Government had said it would respect the result if turnout exceeded 30%.

The results were as follows:²

Yes	38.4%
No	61.6%
Turnout	62.8%

II Reaction

Although opinion polls had indicated that the French might, and the Dutch almost certainly would, reject the European Constitution, the reaction to the outcome of the two referendums was one of shock.³ By the time the Dutch went to the polls, the EU was already poised for another rejection. Following the negative votes, bilateral meetings took place between EU leaders. President Chirac met the German Chancellor, Gerhard Schröder, and on 4 June they issued a statement calling on other Member States to continue with their ratification processes. The Danish Prime Minister, Anders Fogh Rasmussen, announced that he would meet the British Prime Minister the following

¹ See Appendix 1 for full results

² See Appendix 2 for further information

³ For information on opinion polls in the run-up to the referendums, see Standard Note SN/IA/3652 *The European Constitution: political debate and public opinion* 26 May 2005 at http://pims.parliament.uk:81/PIMS/Static%20Files/Extended%20File%20Scan%20Files/LIBRARY_OTHER_PAPERS/STANDARD_NOTE/sn-03652.pdf

week. Denmark is due to hold a referendum on 27 September 2005, but recent opinion polls indicate that Danish support for the Constitution is weakening.⁴

The French vote had an immediate effect on the euro, which fell and continued to slide in the following days. The *Financial Times* reported on 30 May that the euro had fallen 1.3% to \$1.2381 since markets reopened after the French vote. The euro rebounded against the dollar after the Dutch vote, but commentators noted:

Worries over the political future of the EU, however, as well as the euro zone's faltering economy, are likely to make the rebound shortlived.

'Although we think that Europe's structural and economic uncertainties will remain a negative factor for the single currency in the medium term, the pace of the euro's declines against the dollar may slow from here,' said CALYON analyst Kristjan Kasikov.⁵

However, the Latvian Parliament went ahead and completed the ratification process on 2 June by 71 votes (out of 100) to 5 with 6 abstentions, and the two main Portuguese political parties (Socialists and Social Democrats) agreed on a common text to reform the Portuguese Constitution to allow a referendum to be held. In spite of the French and Dutch results, the Portuguese Parliament intends to vote on the joint text by mid-June 2005 and the referendum will take place in conjunction with local elections in early September 2005.

The French Prime Minister, Jean-Pierre Raffarin, resigned following the referendum and was replaced on 31 May by Dominique de Villepin, the former interior minister. Mr Chirac announced a government reshuffle on 2 June 2005. The new key ministerial posts are as follows:

Interior minister and deputy PM	Nicolas Sarkozy
Foreign Minister	Philippe Douste-Blazy (previously Michel Barnier)
Defence Minister	Michele Alliot-Marie
Finance Minister	Thierry Breton
European affairs minister	Catherine Colonna

The Dutch vote was not binding and the Government could in theory have proceeded towards ratification by a parliamentary method. However, it had pledged to be guided by the referendum if turnout was over 30%. The turnout well exceeded this figure. The Dutch Prime Minister, Jan Peter Balkenende, made a statement on 2 June 2005:

⁴ E.g. Greens *Analyseinstitut* poll published in the Børsen 3 June 2005. See *EUObserver* 3 June 2005 at <http://euobserver.com/?aid=19241&rk=1>

⁵ *AFX International Focus* 2 June 2005

'The Dutch government believes this ratification process should now continue as planned in other countries. At the end of the process, it will be important for us to see how each country has responded to the treaty.'

He added that the Dutch people voted against the proposed constitution, not against European cooperation. 'The Netherlands, as one of the founding fathers of the Union, will remain a constructive partner within Europe for taking on the problems that matter to all of us', Mr Balkenende said. 'I will tell my fellow European leaders that they must do justice to the Dutch "no". Because we understand the Dutch voters' concerns. About losing sovereignty. About the rapid pace of change, in which the public doesn't feel involved. And about our financial contribution. The European Union must take account of these issues.'

The prime minister closed his press conference with the remark that, in recent years and for the Netherlands, Europe has too often been more a matter for politicians than for the public. 'That has to change', he said. 'In the period ahead, we must put all our effort into getting the public more involved in the future of Europe. This government will devote its energies to that goal.'⁶

Mr Balkenende has not responded to suggestions that the Netherlands might hold another referendum in 2006,⁷ nor has he made any changes to government portfolios. He urged other Member States to continue with ratification, as it was important to know what each country thought about the Constitution.

The British Foreign Secretary, Jack Straw, is reported to have said:

We must all respect the results of the referendums, and we do ... but the verdict of these referendums now raises profound questions for all of us about the future direction of Europe. What we want now is a period of reflection⁸

Dr Liam Fox, the Shadow Foreign Secretary, thought the French electorate had done the rest of Europe a favour and shown that there was a large gap between Europe's ruling classes and its citizens. He called for the UK referendum to go ahead in spite of the two rejections:

The British people must be guaranteed a referendum if the Blair Government seeks to salvage any parts of the proposed EU Constitution, which has now been roundly rejected by the voters of Holland and France.

⁶ Dutch Ministry of Foreign Affairs press release at http://www.minbuza.nl/default.asp?CMS_ITEM=3C923A33D4F7444FAB4A793824C9C85EX1X53013X48

⁷ *News.Telegraph* 1 June 2005 at <http://www.telegraph.co.uk/news/main.jhtml?xml=/news/2005/06/01/udutch.xml&sSheet=/portal/2005/06/01/ixportaltop.html>

⁸ *EUObserver* 2 June 2005 at <http://euobserver.com/?aid=19224&rk=1>

[...] But Dr Fox insisted that in the wake of the Dutch vote the constitution is now dead and should be buried. He declared: "The French voters gave the Constitution its death sentence. The Dutch voters have now dealt a fatal blow. The Constitution is dead."

He stressed: "The British Government must now give the lead and unpick the mess which Europe has become to create, instead, the Europe which the peoples of the continent want."

And Dr Fox told conservatives.com: "This was the Constitution which Tony Blair negotiated and put his name to. If his Government now tries to implement any part of the Constitution by the back door, they will be treating the British people with contempt. If that happens, the Conservative Party will insist on a referendum to give the British people their legitimate voice."⁹

Sir Menzies Campbell, the Liberal Democrat foreign affairs spokesman told *The Times* "What is required is a period of reflection so that the members of the European Union can determine the future. The EU will go on based on existing treaties, but it will not be long before the need for reform becomes acute".¹⁰

The Presidents of the three main institutions, Josep Borrell Fontelles (EP), Jean-Claude Juncker (Council), and José Manuel Barroso (Commission), issued joint statements following the French and Dutch referendums. They took note of the French result but regretted the choice "coming as it does from a Member State that has been for the last 50 years one of the essential motors of the building of our common future". The outcome deserved "a profound analysis" by the French authorities and the EU institutions. The statement continued:

The tenor of the debate in France, and the result of the referendum also reinforce our conviction that the relevant national and European politicians must do more to explain the true scale of what is at stake, and the nature of the answers that only Europe can offer. We continue to believe that a response at the European level remains the best and the most effective in the face of accelerating global change.

We must ask ourselves how each among us – national governments, European institutions, political parties, social partners, civil society – can contribute to a better understanding of this project, which cannot have its own legitimacy without listening to its citizens.¹¹

⁹ Conservative Party website at

http://www.conservatives.com/tile.do?def=news.story.page&obj_id=123194

¹⁰ *Timesonline* 1 June 2005 at <http://www.timesonline.co.uk/article/0,,13509-1637664,00.html>

¹¹ EP press release IP/05/627 29 May 2005 at

<http://europa.eu.int/rapid/pressReleasesAction.do?reference=IP/05/627&format=HTML&aged=0&language=EN&guiLanguage=en?reference=IP/05/627&format=HTML&aged=0&language=EN&guiLanguage=en?reference=IP/05/627&format=HTML&aged=0&language=EN&guiLanguage=en>

The joint statement on the Dutch referendum contained similar expressions of respect for the no-vote and the need for a profound analysis. It maintained the view that ratification should continue as “all Member States must be able to express themselves on the project of the Constitutional Treaty”.¹²

The initial reaction from Member State leaders and the EU institutions was summarised in a BBC news report on 30 May 2005, and from various press reports following the Dutch referendum, as follows:

French President Jacques Chirac:

"You have rejected the European constitution by a majority. It is your sovereign decision and I take note of it.

"Nevertheless, our ambitions and interests are profoundly linked to Europe.

"But let's not be mistaken. The decision of France inevitably creates a difficult context for the defence of our interests in Europe."

President of the ruling UMP party, Nicolas Sarkozy (who campaigned for a "Yes" vote):

"By saying 'No', the French are calling on us to act quickly and vigorously to change the status quo.

"They are putting pressure on us to bring to an end the inertia and the nervousness... to move the country forward as fast as possible.

"We need to decide on a programme of action that is innovating, brave and ambitious. There has to be a major turnaround in our economic and social policy. There is no reason why this cannot happen."

French Foreign Minister Michel Barnier:

Rejection of treaty is "a real disappointment".

Leading French Eurosceptic Philippe de Villiers:

"We are this evening confronted with a major political crisis. Only the president can resolve it - in two ways, I leave him the choice. Either he resigns, given that he heavily involved himself in the campaign, or he dissolves the national assembly."

Chairman of the right-wing EPP-ED group in the European Parliament, Hans-Gert Poettering:

"The European Union has managed already many crises and was almost always able to reach agreement in the end.

"We must hope now that a pragmatic management of the crisis will also lead to a solution in this case."

Leader of the Socialist group in the European Parliament Martin Schulz:

¹² EP press release IP/05/653, 1 June 2005 at <http://europa.eu.int/rapid/pressReleasesAction.do?reference=IP/05/653&format=HTML&aged=0&language=EN&guiLanguage=en>

"The battle goes on. The ratification process must continue because all countries must have the opportunity to express their view."

GERMANY

German Chancellor Gerhard Schroeder:

"The referendum result is a blow for the constitutional process, but not the end of it. It is also not the end of the German-French partnership in and for Europe."

THE NETHERLANDS

Dutch Prime Minister Jan Peter Balkenende:

"There is all the more reason to say 'Yes' (in the Dutch referendum) so that some progress can be recorded with the constitutional treaty.

"The Netherlands has a lot to gain from this constitutional treaty. It is in the interest of Europe and of our own country."

SPAIN

Spanish Prime Minister Jose Luis Rodriguez Zapatero:

"The result of the referendum in France is not good news but it is not a catastrophe.

"The (constitutional) treaty has already been approved by nine countries, including Germany, Spain and Italy and should be submitted to a vote in the other members of the Union."

AUSTRIA

Austrian far-right politician Joerg Haider:

"The bureaucrats in Brussels have miscalculated... They have to find a consensus with the citizenry of Europe. This is an opportunity. I do not see it so tragically. There will be negotiations back and forth for a few months. I am convinced it will be possible to do something else, with a few adaptations."

ITALY

Former European Commission President and former Italian Prime Minister Romano Prodi:

"If this is the result, I am extremely disappointed. One must reflect and pay attention to these signs of discomfort.

"But even taking this into account, one must forge ahead tenaciously with the European project."

IRELAND

Government statement:

"For our part, the government is continuing to prepare for ratification of the European constitution by the target date of November 2006."

DENMARK

Prime Minister Anders Fogh Rasmussen:

"I regret the French 'No'. But all 25 countries must be given the opportunity to give their opinion. This means we must let the Danish people give their opinion in a referendum on 27 September."

CZECH REPUBLIC

Czech Prime Minister Jiri Paroubek:

"I've already said before that I thought it was a mistake to expect all 25 states of the EU to ratify the constitution in a first round.

"For me, the French result is not a surprise, but it is regrettable how it happened."

SLOVENIA**Slovenian Foreign Minister Dimitrij Rupel:**

"The EU project will advance at a slower pace, it will be difficult to talk about expansion. But inside the EU we will live as we did so far. This is not the end of the world."

ESTONIA**Prime Minister Andrus Ansip:**

"I am not happy about it. The constitution is good for Estonia and good for Europe. If France has voted no it should not stop other European countries from ratifying the constitution."

LATVIA**Foreign Minister Artis Pabriks:**

"I am convinced that we should stick to the idea of the constitution. We cannot turn back. It would be a disaster."¹³

Jean-Marie Le Pen, leader of the French far-right *Front National*, stated on 29 May that the French 'no' was a rejection of a European 'superstate'. The people had "reaffirmed France's political independence and its sacred right to make its own decisions". He also called for the French Government to resign and for elections to be called.¹⁴

The UK Independence Party leader, Roger Knapman MEP, welcomed the French result:

"It is only the political elite in the European Union which wants closer integration; tonight's result demonstrates once again that the voters who pay the bills do not. Mr Blair will be keen to prevent the British people from adding their voices to the only pan-EU political sentiment which is growing; Euroscepticism."

Looking ahead, Mr Knapman said that Britain's presidency of the EU, which begins in July, was now certain to be 'interesting', but he also cautioned that the 'No' vote didn't necessarily mean that the Constitution was dead.

"There is still a huge task ahead, and while this vote does not return an iota of power to the British parliament at Westminster, it does at least temporarily stem the flow of power to Brussels. Our task is to reverse that flow, and we will continue to work towards that end."

¹³ BBC News 30 May 2005 at <http://news.bbc.co.uk/1/hi/world/europe/4592415.stm>

¹⁴ http://www.frontnational.com/doc_interventions_detail.php?id_inter=74

“Many of the measures contained within the constitution will be implemented anyway, regardless of ratification, while the history of referendums on EU issues is hardly inspiring. Every nation which has rejected further integration has simply been subjected to further referendums and generally pressured into voting ‘Yes’.”¹⁵

III Why the rejections?

In the immediate aftermath of the two referendums there were many attempts to analyse the outcomes. Many expressed the familiar rhetoric that followed earlier rejections and near-rejections of EC Treaties by Denmark, Ireland and France: the EU must be brought closer to its citizens; the “democratic deficit” must be tackled; the EU must be made more transparent. Some thought the rejections had not resulted from objections to specific policies or articles in the Constitution, as in the past, but to the process of European integration itself. Reasons cited by commentators included the following:

- Erosion of national sovereignty and national identity
- General uneasiness with the EU
- Amount of legislation from Brussels and the increasing number of policy areas
- Turkish accession to the EU
- Anglo-Saxon economic liberalism reducing the focus on ‘Social Europe’
- Globalisation
- Loss of national influence in Europe
- EU integration going too fast
- EU influence over issues close to citizens
- The EU is undemocratic
- The euro

Some commentators looked at the background to the rejections in more detail. Gisela Stuart, who was one of the UK parliamentary representatives on the Convention on the Future of Europe, was not ‘aggrieved’ by the outcomes:

The Constitution was an overambitious attempt to consolidate an outdated political and economic vision of Europe. Our mandate was to bring Europe closer to its people - and we ended up alienating them even more.

She thought the EU had been “saved from its folly” by the two rejections, and that there was now a “chance for a fundamental rethink and the opportunity to create a Europe fit for the 21st century, able to deal with the post-Cold War world and global economies”.

So why did they say no? In France, they said no to three things; the enlarged Europe which brings with it competition from countries like Poland, the French

¹⁵ 30 May 2005 at http://www.independenceuk.org.uk/abc_news/gen12.php?t=1&id=1412

Government's ability to deal with unemployment and the political elites in Paris and Brussels.

Holland said no to different things. They resent the way small countries are bullied by large ones, are dissatisfied with the performance of the single currency and fear more immigration and the possible accession of Turkey. But there is one common thread; the public at large has lost confidence in the political institutions and those who represent them.¹⁶

She thought the UK Presidency should not rush to “rewrite the rule book”, but focus on the EU budget negotiations, and that pressing ahead with initiatives such as giving national parliaments more powers to scrutinise EU proposals or creating a foreign minister were no more than “tinkering on the edges”.

The real question - one no one dares to ask - is whether there are things the EU should not do at all. Some powers should be returned to member states - not because this would shore up narrow-minded nationalism, but because problems for which there are no pan-European solutions are best dealt with in the nation state.

There is no point in entrenching an economic and social model which was appropriate for the fifties and sixties, just as it's no good telling people that the EU is an economic enterprise, when it clearly tries to achieve deeper political integration.

[...]

The much talked about Lisbon Agenda which is supposed to make Europe the most competitive economy by 2010 has not delivered much. And I doubt that the European Commission is the right body to decide what kind of social and labour market reforms are best for France or for Germany.

Blair should charge the Commission to justifying its current set of policies and programmes. If the problem is one that can only be resolved at European level, then the Commission should act. If it is not, it should be left to or returned to member states. This reverses the current presumption. Such an exercise would bring interesting results. More action at European level on asylum and immigration, transport and liberalisation of trade are early candidates for 'more Europe'. Agriculture, social policy and regional development are likely to fall into the category where the EU should now withdraw.¹⁷

Anatole Kaletsky¹⁸ wrote in *The Times*:

Across Europe, even in such traditionally free-trading countries as the Netherlands, Germany and Denmark, there are widespread fears about global

¹⁶ *Birmingham Post* 2 June 2005

¹⁷ *Ibid*

¹⁸ Anatole Kaletsky is principal economic commentator and associate editor of *The Times*

competition and immigration, their impact on national cultures, as well as on wages, pensions and jobs. It is tempting for Europhiles to conclude that votes against the constitution do not really represent antipathy to European integration, but rather to global integration on terms dictated by Anglo-Saxon economic liberalism and the interests of the US.

On this view, which in France has now permeated from the unreconstructed Left to much of the political and media establishment, the constitution should have offered more protection from foreign trade, financial competition, immigration and American culture. The voters would then have welcomed it with open arms.

The obvious problem with this argument is that the French Left's dream of a protectionist, anti-American Europe has never been feasible because it would be unacceptable to Britain, the Netherlands, Scandinavia or even Germany — not to mention the new members in the east, who rightly see the US as their ultimate military protector against Russia. An anti-American Europe would require nothing less than the dissolution of today's continent-wide EU and its reconstitution as a tiny club of geopolitically like-minded nations, which might, in the end, be reduced to France, Belgium and Luxembourg.

But there is a deeper error in the Europhiles' excuse that the referendum results were really a popular protest against globalisation: the vision of Europe as a bastion against globalisation and Anglo-Saxon economic liberalism is not only a political fantasy, but also an economic pipedream.

Europe is more dependent on foreign trade, investment and capital flows than America. Europe's businesses and banks are more vulnerable than America's to currency movements and global capital flows. There is no alternative to the capitalist system of economic management which could secure the survival of Europe's labour-intensive industries against Chinese competition or make its state pensions, welfare benefits and short working hours affordable in an era when pensioner numbers are soaring, while working populations are in decline.

The idea that closer political integration could somehow turn these self-indulgent dreams into a new European "economic model" has been the dirty little secret of the EU project. Of course the citizens of Europe would like ever-rising incomes and ever more job security, in exchange for doing less and less work and retiring earlier and earlier — and they might be tempted to vote for a constitution which guaranteed these fantasies as fundamental human rights. On closer inspection, however, the citizens have begun to realise that their politicians have been selling Europe on a false prospectus.

The single market and the merging of foreign trade policies did genuinely create prosperity, but every subsequent project of European integration not only failed to deliver the results politicians promised but also made conditions worse. The single currency has been the most egregious. In exchange for giving up the basic tenet of sovereignty — the right to mint a currency and thereby manage the national economy — the EU promised economic prosperity and full employment. Instead the single currency has condemned the eurozone to stagnation and mass unemployment.

For years politicians have made Europe a pretext for imposing unpopular policies — cuts in pensions or higher taxes — which they were too cowardly to justify in their own right. But they always promised that giving up sovereignty to Europe would somehow stave off economic reality and make their citizens better off.

After falling for such false promises for decades, voters have finally turned against both Europe and their national leaders. Politicians can no longer abuse the “idea of Europe” as an excuse for failing in their own responsibilities — to manage the economy, to set foreign policy or to balance enterprise with social protection.¹⁹

Christopher Caldwell,²⁰ writing in *The Weekly Standard*, thought:

[...] the answer to the question of why the French and Dutch voted down the European constitution is simple: because they were asked. In the Netherlands, the metaphor on everyone's lips was that of a runaway train. The young PvdA (Labor) party chairman Wouter Bos--who was placed in an awkward position when his party voted resoundingly against the treaty that he had crisscrossed the country urging them to vote for--said: "People had the feeling that they were sitting on a runaway train. For the first time they had the chance to jump off. They had no idea how fast the train was going, or where it was headed."

Jacques Chirac viewed the "No" vote as a sign of resurgent nationalism, and hoped to exploit it. "In this period," he said last week, "we have to rally to the national interest." Similarly, if more subtly, Jean-Marie Colombani, editor of *Le Monde*, painted the French vote as a reactionary one: an assault on an E.U. that "disrupts habits and forces changes" on largely hidebound societies. But it's not clear that he's correct. In both countries it was the center-right parties (in popular mythology, the forces of complacency) that formed the bulk of the "Yes" vote. In France, roughly three-quarters of the two "conservative" parties--both Jacques Chirac's UMP and former president Valéry Giscard d'Estaing's UDF--voted for the treaty. In Holland the market-liberal VVD and the Christian CDA were the constitutional treaty's biggest defenders, backing it by 60 and 77 percent of the vote respectively.

This leads to a puzzle: If the bastion of support for the E.U. is the center-right, then how has it happened that for so many years the E.U. has been governed from the center-left? The elections showed both countries' center-left parties--the Socialists in France and Labor in the Netherlands--to be divided right down the middle on the issue. These are alarming data: They imply that there is no "base" constituency for the policies of the E.U. as they're currently constituted.

¹⁹ 2 June 2005 at <http://www.timesonline.co.uk/article/0,,1061-1637131,00.html>

²⁰ Christopher Caldwell is a senior editor at the US journal, *The Weekly Standard*

Holland's Christian Union, led by the political prodigy André Rouvoet, led a campaign against the E.U. that was commonsensical, couched in the language of American (even Reaganite) tax revolutionaries, and optimistic. His was the only bourgeois party of the right to oppose the treaty, voting "No" by 86-14 percent. For Rouvoet the key fact was that the Netherlands pays more per capita into the E.U. than any other country. His party's appeal can be understood from a poll taken for the daily *De Volkskrant* last week. The "No" campaigners had real, concrete issues. Their top two were (1) "The Netherlands pays too much for the E.U.," and (2) "It makes us less in charge in our own country." As for the "Yes" campaign, its top issues were thin air. They were (1) "Transnational politics are best addressed by the E.U.," and (2) "Foster cooperation between member nations." To the barricades, he yawned.

The uncomfortable news is that, except for the Christian Union in Holland, it was hardline parties of the left and right that carried the torch for "democracy." Calls for Chirac to dissolve parliament came from the Trotskyite postman Olivier Besancenot and the revanchist National Front leader Jean-Marie Le Pen. They have to be viewed more seriously than they were last month. Rightist extremism is a worry. European leaders have lazily taken to using the epithet "anti-European" to split the difference between calling someone a fascist and patting him on the back. Calling Le Pen and the Austrian Jörg Haider "anti-European" lets you exclude them from the councils of state without insulting extremist voters you'll need in the next election. Now that anti-Europeanism has shown itself the majority ideology in Western European referenda, we must hope potential Le Pen voters understand that politicians were merely speaking tactically. Leftist extremism is a worry, too, because of the left's organizing ability. A train strike was called in France to greet Villepin's arrival in power, and Besancenot has promised further "social mobilizations" in coming weeks. The worry is that the French "No" campaign, come the presidential elections of 2007, will resemble the Resistance in, say, 1948: A great coalition defeats a formidable foe, and only the Communists among them are well-enough organized to reap the benefit.

The problem at present is that mainstream politicians, national and European, have no credible lines of communication to their publics. The E.U. has taken on so many responsibilities, especially regulatory and economic ones, that the capacity of individual nation-states for full self-government has atrophied. This has spread the E.U.'s so-called "democratic deficit" (the thing that this constitutional plebiscite was meant to fix) to national governments. Consider the Netherlands. There, nearly two-thirds of the voters repudiated the E.U.--but 85 percent of national legislators were firm (often sanctimonious) supporters of the treaty just a few short weeks ago. This gap is the hot political topic in Europe right now. It will be redressed through national elections across the continent over the next couple of years.²¹

²¹ *Weekly Standard* 13 June 2005 issue

A Dutch academic rejected the idea that the Dutch rejection was a vote against the Government:

Dutch history professor Ido de Haan said the Netherlands' no vote against the EU constitution was not due to discontent with the unpopular government.

Instead, the Amsterdam and Utrecht University academic pointed to persistent euroscepticism, a phenomenon manifesting itself in most north-west European nations.

"The populations in the Scandinavian nations, in the Netherlands, France and the United Kingdom have had a feeling for a long time that other countries are sponging off us," he said.

"That sentiment is underestimated and is strengthened by the accession of 10 countries from Central and Eastern Europe last year."

De Haan said the gulf between citizen and politician — which manifested in the maelstrom that developed around maverick Dutch politician Pim Fortuyn in 2002 — has also played a role in recent months.

He said Western Europe is going through a phase of nationalism and no politician dared to paint the attractive side of a unified Europe. "The yes campaign was too defensive."²²

Roger Cohen,²³ giving another US view of the situation in the *International Herald Tribune*, thought the EU's constitutional project was doomed. He considered a theory that the European project had been 'hijacked':

"The feeling in these two founder members of the EU was clearly that somewhere along the line the project got hijacked," said Jonathan Eyal, a foreign policy analyst at Britain's Royal United Services Institute. The French and Dutch may have different views of this hijacking but have no doubt the EU was stolen from them.

Stolen by its new members, formerly communist Central European states with an unreasonable love of the United States and an undue suspicion of a more federal Europe with real political clout.

Stolen by seemingly unaccountable leaders ready to open the EU door to Turkey and the kind of uncontrolled immigration from Muslim countries that, many in

²² *Expatica* 2 June 2005 at http://www.expatica.com/source/site_article.asp?subchannel_id=1&story_id=20656&name=Dutch+%27no%27+vote+sparks+EU+crisis. There is further information on Dutch views of the Constitution at http://www.expatica.com/source/site_article.asp?subchannel_id=1&story_id=20377.

²³ Roger Cohen is the European Affairs columnist for the *International Herald Tribune* and also writes for *The New York Times*.

Holland believed, led to the murder last year by an Islamic fundamentalist of the Dutch film director Theo van Gogh.

Stolen by the bureaucratic drafters of an often impenetrable constitution for an EU without an agreed geography or ambition or economic model. "At the root of the rejection lies this feeling: no security, no prosperity, no identity," said Simon Serfaty of the Center for Strategic and International Studies in Washington.

Stolen, finally, by a European Central Bank adept at controlling inflation and making the euro credible, but unable to coordinate policies to stir European economies from their protracted torpor and so break a sense among many EU citizens that they are worse off.

A project that does not create prosperity is a project doomed.

So what now? The 448-article constitution is dead and will not be revived. Britain, almost certainly, will not even bother to hold its planned referendum on the document. The notion that France and the Netherlands might vote again and again, until they get it right? is farcical. Certain ideas, like the creation of an EU foreign minister, for example, might be salvaged, but Europeans are not ready for a European constitution.

They are not ready, in part, because patriotism, and outright nationalism, are more persistent than was imagined in Brussels.

Jurgen Habermas's "constitutional patriotism" the identity of shared democratic values as a substitute for the treacherous emotions of national anthem and flag was a genial construct for a traumatized post-war Germany, but Europe as a whole has mixed feelings about such bloodless allegiance.

"National sentiments in Europe have been underestimated," said Ezra Suleiman, a political scientist at Princeton University.

It was one thing, perhaps, when Europe seemed to offer the possibility of becoming a cohesive, even a federal, economic and political force. But "deepening" was sacrificed to "broadening": so the cold war's end dictated. This far-flung Europe of differing priorities and postwar histories seems to make few hearts beat faster for now.²⁴

Mr Cohen thought the present situation did not bode well for further EU expansion to include Bulgaria, Romania and Turkey. However, the Turkish Government has insisted it will press ahead with its objective of EU membership:

²⁴ *International Herald Tribune* 5 June 2005

The Turkish foreign ministry expressed hope that the 25-member bloc would resolve the crisis since "reconciliation, common sense and resolve to accomplish common targets" had always prevailed over differences within the EU.

"We keep our hopes alive that the problems that have emerged (today) will also be overcome and European integration will be taken forward to new targets as the necessary lessons are learned from the democratic decisions of the French and Dutch people," the statement said.

"Turkey will keep up efforts to accomplish the choice that the overwhelming part of its people has made.

"Our fundamental objective in the coming days is to ensure the successful completion of membership negotiations with the European Union which will start on October 3," it said.²⁵

The decision to launch accession talks with Turkey has already been taken. However, some think - in particular the United States Government, which supports Turkish accession - that the two rejections of the Constitution might lead the EU to reassess its strategic direction, including moves towards further enlargement.²⁶

IV What now?

A. Is the Constitution dead?

Under Article 48 TEU the European Constitution must be ratified by all 25 Member States before it can come into force. The flexible arrangements for future amendments under Constitution Article IV-444 will only apply once the Constitution has entered into force, not to its initial ratification.

The failure to ratify by one or more Member States will prevent the Constitution from coming into force. Many observers believed that a straightforward ratification by all 25 Member States was unlikely and that a more likely scenario was that one to three States would not ratify the Constitution initially. The UK, Ireland and Poland were seen as possible non-ratifiers. Referendums were seen as being the most unreliable means of ratifying.

Declaration No. 30, which is appended to the Constitution, concerns the possibility of non-ratification by one or more Member States. It states:

The Conference notes that if, two years after the signature of the Treaty establishing a Constitution for Europe, four fifths of the Member States have

²⁵ *Agence France Presse* 2 June 2005

²⁶ See *EUObserver* 8 June 2005 at <http://euobserver.com/?aid=19269&rk=1>

ratified it and one or more Member States have encountered difficulties in proceeding with ratification, the matter will be referred to the European Council.²⁷

In the past, when small Member States (Ireland and Denmark) voted against an EU Treaty amendment, thereby preventing it from coming into force, ways were found for the new treaty to be ratified. In the case of Denmark, this involved opt-outs that were negotiated by the European Council. However, it had not been envisaged that the people of France and the Netherlands, two of the EU's founding Members, would vote against it. Somewhat ironically, it was President Chirac who told a press conference on 28 April 2004 that "friendly pressure" should be exerted on Member States that failed to ratify the Constitution and who wanted a "ratify or leave" clause to be written into the Constitution.

B. Will the ratification process continue?

The General Affairs and External Relations Council meets on 12-13 June 2005 and the future of the Constitution will undoubtedly be discussed. The European Council meets on 16-17 June and the Presidency has decided that this summit "could usefully carry out a serious collective analysis of the situation"²⁸. The UK takes over the EU Presidency on 1 July 2005 and the British Government will have to tackle the aftermath of the negative referendums, as it did when Denmark voted against the Maastricht Treaty in June 1992. The then Conservative Government suspended parliamentary proceedings relating to the Treaty, pending the outcome of further negotiations within the European Council. The UK parliamentary process was resumed in December 1992, after Danish opt-outs had been agreed under the UK Presidency.

1. The British Government's view

Initially, the Government pledged to hold a referendum, regardless of the outcome of earlier referendums in other EU Member States. David Heathcoat-Amory asked in April 2004:

If another member state—a small country—holds a vote and rejects a constitution before we hold a referendum, will he, assuming he is still the Prime Minister, go ahead with his promised referendum, or will he use that as an excuse to cancel the British national referendum, even though that other country may subsequently be bullied into changing its mind?

²⁷ CIG 87/04 ADD 2 REV 2 25 October 2004 at http://europa.eu.int/constitution/download/declarations_EN.pdf

²⁸ Statement on Dutch referendum result, EP press release IP/05/653, 1 June 2005 at <http://europa.eu.int/rapid/pressReleasesAction.do?reference=IP/05/653&format=HTML&aged=0&language=EN&guiLanguage=en>

The Prime Minister replied: “No, of course not. The referendum should go ahead in any event. [Hon. Members: "Ah."] Of course it should.”²⁹

The new Minister for Europe, Douglas Alexander, confirmed this, citing Tony Blair, who said on 18 April 2005: “I've always said we'll have a vote on the constitution. It doesn't matter what other countries do; we'll have a vote on the constitution”.³⁰ Following the French and Dutch outcome, Mr Blair called for a period of reflection. He thought it signified that:

underneath all this there is a more profound question, which is about the future of Europe, and, in particular, the future of the European economy and how we deal with the modern questions of globalisation and technological change.³¹

Mr Blair did not initially indicate whether the Government would press ahead with a referendum. The *EUObserver* commented:

Some analysts have suggested that London is keeping quiet about its referendum as it does not want to be the first one to declare the treaty dead - particularly as there had always been a large question mark over whether the largely eurosceptic British public would ever have approved it.³²

However, on 6 June 2005 the Foreign Secretary announced in the Commons that the Government had decided to postpone the Second Reading of the *European Union Bill*³³ because “until the consequences of France and the Netherlands being unable to ratify the treaty are clarified, it would not in our judgment now be sensible to set a date for the Second Reading”.³⁴ Mr Straw said the Government would “keep the situation under review, and ensure that the House is kept fully informed”.³⁵ He insisted that neither legislation nor a referendum had been ruled out: “We reserve completely the right to bring back for consideration the Bill providing for a UK referendum should circumstances change, but we see no point in doing so at this moment”.³⁶

²⁹ HC Deb 20 April 2004 c164at
http://pubs1.tso.parliament.uk/pa/cm200304/cmhansrd/vo040420/debtext/40420-08.htm#40420-08_spm2

³⁰ HC Deb 18 May 2005 Column 155 at
<http://pubs1.tso.parliament.uk/pa/cm200506/cmhansrd/cm050518/debtext/50518-02.htm>

³¹ *EUObserver* 30 May 2005 at <http://euobserver.com/?aid=19199&rk=1>

³² Ibid

³³ The *European Union Bill* [Bill 45 of 2004-05] was first introduced on 25 January 2005 and received a Second Reading on 9 February, but it fell on the calling of the general election. The Bill provided for the Constitution to have legal authority in the UK conditional upon approval in a referendum. The Bill was reintroduced on 24 May 2005 [Bill 5, 2005-06]. For information on the Bill, see Library Research Paper 05/12, *The European Union Bill* 3 February 2005, at <http://www.parliament.uk/commons/lib/research/rp2005/rp05-012.pdf>

³⁴ HC Deb 6 June 2005 c 992 at
http://pubs1.tso.parliament.uk/pa/cm200506/cmhansrd/cm050606/debtext/50606-05.htm#column_991

³⁵ Ibid

³⁶ HC Deb 6 June 2005 c 992

The Shadow Foreign Secretary, Dr Liam Fox, considered the Constitution ‘dead’ and thought its loss was not a crisis for the people of Europe, but “an opportunity”.³⁷ He called for clearer direction from the Government and for an assurance that it would not try to introduce parts of the Constitution “by the back door”. He also called for a referendum on “any further transfer of power away from the British people”.³⁸ Mr Straw replied that it would be absurd to put a referendum proposals to implement subsidiarity in order to strengthen the role of the UK Parliament, just because they happen to be in the Constitution.³⁹ However, he later assured the House that “there will be no proposals made by this Government that seek to bring in this constitutional treaty, or elements of it, by the back door. That is clear”.⁴⁰

For Sir Menzies Campbell, Liberal Democrat foreign affairs spokesman, it would be “at best quixotic to ask the British people to endorse a treaty that will not come into force”,⁴¹ but asked the Government to confirm that “issues such as climate change, terrorism, the Middle East, Iran and trade with the US should be dealt with through a concerted European Union approach and for a commitment to enhancing transparency, subsidiarity and access, which did not require Treaty changes.

The Chairman of the European Scrutiny Committee, Jimmy Hood, thought the Constitution should now be put to rest and that the EU should “move on”.⁴² Gisela Stuart suggested revisiting subsidiarity and the exercise of powers at EU and other levels, while David Heathcoat-Amory, the other UK parliamentary representative on the Convention on the Future of Europe, said the Constitution had been “consigned to the political dustbin, but the problem remains of a European Union that is wasteful, remote and bureaucratic and lacks popular support”.⁴³

2. Other views on ratification

It is not yet clear whether those Member States that have not yet ratified will continue with their ratification procedures. Latvia went ahead with parliamentary ratification on 2 June 2005, and the Luxembourg Prime Minister, Jean-Claude Juncker, who currently holds the EU Presidency, has insisted that the ratification process must proceed in other Member States. The Dutch Prime Minister thought the ratification process should continue as it was important to know what each country thought about the Constitution. The Czech President, Vaclav Klaus, who is against the Constitution, has called for the ratification process to stop, arguing that continuing would be useless. Others have argued

³⁷ HC Deb 6 June 2005 c 993

³⁸ Ibid

³⁹ Ibid c 995

⁴⁰ Ibid c 1000

⁴¹ Ibid c 996

⁴² Ibid

⁴³ Ibid c 997

that, although the no-votes are a setback for the ratification process, the Constitution is not legally or politically dead.

After the French referendum the EPP-ED leader in the European Parliament (EP), Hans-Gert Poettering, was optimistic that the crisis could be overcome with the political will of Member State governments:

The ratification process will have to be continued in the other Member States. In the end the European Heads of State and Government will have to evaluate the overall result of the ratification process and will have to examine all possibilities on whether and in which way the Constitution, or at least important parts of it, can still become legal reality.

“There is an opportunity in every crisis”, Poettering said. The European Union has managed already many crises and was almost always able to reach agreement in the end. We must hope now that a pragmatic management of the crisis will also lead to a solution in this case. The Heads of State and Government now bear the main responsibility. “It will be their responsibility to ensure that that the enlarged European Union can act efficiently during the coming years”.⁴⁴

However, in the EP debate on the Constitution on 8 June 2005 Mr Poettering called for the ratification process to be “suspended for a while”.⁴⁵

The European Socialist Party (PSE) leader, Martin Schulz, thought the ratification processes should continue because “all countries must have the opportunity to express their view”.⁴⁶ The Liberal Democrat (ALDE) leader, Graham Watson, thought Member States were obliged to press ahead with ratification: “We must now persevere to ensure that all 25 Member States speak their mind. This will allow a breathing space in which France can reflect on its decision”.⁴⁷

Kimmo Kiljunen, a Finnish MP and former member of the Convention on the Future of Europe, suggested shortening the Constitution in order for it to be put to a second referendum in France and the Netherlands:

The only way to save the EU constitution is to approve an abbreviated version. Drop the technical and explanatory articles in parts III and IV. The new

⁴⁴ 29 May 2005: “A disappointing result in France”, Hans-Gert Poettering, at <http://www.epp-ed.org/Press/showpr.asp?PRControlDocTypeID=1&PRControlID=3716&PRContentID=6902&PRContentLG=en>

⁴⁵ “die Referenden für einen bestimmten Zeitraum auszusetzen”, EP ‘rainbow’ edition at <http://www2.europarl.eu.int/omk/sipade2?L=EN&PUBREF=-//EP//TEXT+CRE+20050608+ITEMS+DOC+XML+V0//EN&LEVEL=3&NAV=X#creitem3>

⁴⁶ [European Socialist Group website](#)

⁴⁷ 29 May 2005, at <http://alde.europarl.eu.int/1/GLANHOOCJACGGCLBIFNBANDHPDB19AF4F39DGWT3BY9LI7TOA/docs/DLS/2005-STAFF-0487-01-EN.htm>

constitution only needs parts I and II: what the Union is for, how it makes its decisions, and the rights of citizens.

This would give the constitution a chance to be approved. It would also offer citizens a more comprehensible document. This abbreviated constitution would have a chance of passing referendums in France and Holland by late 2006.⁴⁸

Other Member States, headed by Germany, insisted that ratification should continue:

Divisions over the fate of the European constitution deepened yesterday [2 June 2005] as Germany and Britain embarked on opposing diplomatic initiatives amid revelations that senior European commissioners have been privately pushing for the treaty to be suspended.

Gerhard Schröder, German chancellor, yesterday launched a round of diplomacy aimed at keeping ratification of the constitution going in spite of referendum defeats in France and The Netherlands. But Tony Blair has begun a rival push to put the process on hold.

[...]

Mr Schröder's plans to continue ratification also suffered a setback when he failed to organise an emergency summit of the EU's six founding members - although he will meet French President Jacques Chirac tomorrow. Jan Peter Balkenende, the Dutch prime minister, said he could not attend due to the resounding No vote in his country's referendum.⁴⁹

C. Maintaining the *Status Quo*

The EU will continue to operate under the present EC Treaty as amended by the *Treaty of Nice* in 2000. On 2 June 2005 the German weekly newspaper, *Die Zeit*, found this not unpalatable:

First the good news: the EU will not be wrecked by the Non of the French and the expected Nee of the Dutch (their vote had not yet occurred at time of going to press) to the constitutional treaty. The European idea is too important for that. The Union is too strong economically, too stable politically, and too attractive worldwide despite its current problems. From Ukraine to Turkey to Morocco - all the neighbours of the EU that are striving for lasting peace, freedom, democracy and prosperity want in the Union. In addition, the opponents of the constitution do not form a united front. Only a minority strictly rejects the EU, whereas the large majority argues for the EU - only for one that is more social, slimmer and less hurried than the present Union.

The report was less optimistic about the implications of the no-votes:

⁴⁸ *EUObserver* 3 June 2005 at <http://euobserver.com/?aid=19236&rk=1>

⁴⁹ *Financial Times* 3 June 2005

Now the bad and now more urgent news: the Non and the Nee are an expression of a deep European crisis and reflect a fundamental mood that extends far beyond France and Holland. Anyone who asserts the opposite and still thinks that just two peoples are punishing their national governments is greatly deceiving himself and everyone else. The No of the two founder nations, which formerly had the reputation of being flawless and even downright ambitious super-Europeans, also applies to the EU but primarily to the course that the Union has taken in recent years.⁵⁰

The author also thought the EU was moving too fast, that the political leaders of the four large Member States, France, Germany, Italy and the UK, were finding themselves “in decline”, and that, therefore, “It would be fatal for the EU heads of government now simply to proceed as before”. The report concluded:

Whoever finds the EU important and dear will not simply say "carry on" at the summit in mid-June. Of course it will be complicated to guide 25 states into the future without a constitution. The Union needs a new mechanism to work. For this reason, the constitution may come someday but in a changed slimmer form.

Something quite different is urgent now, however: winning the citizens back for Europe. One could tell them, for example, where hopes wrongly rest on the EU, hopes that only the national state can fulfil, and where the boundaries of Europe lie conceptually and geographically. One could also admit that the next enlargement through Romania and Bulgaria has been decided but will not automatically happen by 2007 or 2008. Whether Turkey can belong to the EU should be a question, if at all, of the day after the day after the day after tomorrow.

More than ever people will have to get used to a European Union in which the states move forward at very different speeds, sometimes alone and sometimes in small groups. It is impossible for all 25 to maintain the same pace for long. The Europe of the 25 will necessarily be an association of open states and a community of the citizens, to whom the elites will have to show more consideration. This constellation requires reasonable and energetic heads of state. Schroeder, Chirac, Blair, and Berlusconi lack the necessary strength.⁵¹

After considering various post-referendum scenarios, Sebastian Kurpas, of the Centre for European Policy Studies (CEPS), thought that maintaining the status quo was not an acceptable long term option:

[...] there is no scenario that comes without considerable disadvantages. Under the current circumstances, the most likely one seems to be (unfortunately) some kind of ‘Nice-plus’. But whatever option is taken, ratification should only be stopped for good, if there is an alternative on the table that is on the one hand

⁵⁰ *BBC Monitoring* 5 June 2005

⁵¹ *BBC News* 5 June 2005

potentially acceptable to all member states and on the other hand ambitious enough to provide for a more efficient and democratic functioning of the enlarged EU- 25. Simply burying the Constitutional Treaty and continuing on the basis of the Nice Treaty with some cosmetic changes is not an option, if politicians intend to take the massive criticism on the current state of the Union into account. Among the strongest sentiments behind the recent no votes is the widespread public perception that the EU is an undemocratic and inefficient bureaucracy that is lacking in transparency and largely detached from the citizens. It is ironic that the Constitutional Treaty – although certainly not perfect – actually addresses this criticism to some extent and would have clearly improved the status quo. If political leaders decide to scrap the Constitutional Treaty, they must have a very clear idea of how they want to tackle the substantial problems of the current institutional set-up.⁵²

D. Other scenarios

The European Council has tackled non-ratification problems in the past, but not the problem of non-ratification by two founding Member States. Professor Jo Shaw⁵³ considered some historical examples of non-ratification and their consequences. In the case of the 1954 treaty on the European Defence Community, which the French *Assemblée Nationale* refused to approve, the treaty initiative was abandoned. European integration efforts “were re-focussed on functional and economic questions, and the result was the Treaty of Rome in 1957”.⁵⁴ More recent examples are Denmark and the Maastricht Treaty in 1992, and Ireland and the Nice Treaty in 2001. In both cases a second referendum was held. In the first of these the Danish electorate was asked to vote on a slightly different package agreed by all Member States to take account of Danish objections. In the case of Ireland, the electorate voted on the same text, but on the basis of a more informed debate. In both cases the second referendum was positive.

A *Bertelsmann Stiftung*⁵⁵ analysis of the possible consequences of a no-vote outlined some key points to be taken into account:

- In case of a No vote in the constitutional referendum
 - the EU governments, the Commission, and the EP should declare as soon as possible that the ratification process will continue. The negative outcome of the referendum should be taken as an opportunity to intensify the constitutional debate on both the national and the transnational level.

⁵² CEPS Policy Brief No. 75/June 2005 “Should ratification proceed? An Assessment of Different Options after the Failed Referenda” at http://shop.ceps.be/BookDetail.php?item_id=1233

⁵³ Jo Shaw is Professor of European Law at the University of Manchester and Research Fellow at the Federal Trust for Education and Research

⁵⁴ Jo Shaw *Failure to ratify the Constitutional Treaty: what next?*

⁵⁵ The *Bertelsmann Stiftung* at http://en.bertelsmann-stiftung.de/foundation_www_reforms.html

- the referendum should be repeated within a year, as this will be the only way to eventually attain the entry into force of the Constitutional Treaty.
 - certain provisions of the Constitutional Treaty should be introduced into EU practice even without prior ratification. However, only the entry into force of the new primary law can guarantee that the progress made in the Constitution will be implemented in full.
- If the ratification of the Constitutional Treaty should ultimately fail, it cannot be assumed that the non-ratifiers will voluntarily leave the EU. Since the extent of the ensuing “constitutional crisis” will not be particularly high, it also seems unlikely that the ratifiers will establish a new Union with institutions of its own.
 - In case the ratification fails, the member states will intensify their efforts to implement as many of the innovations of “Constitution I” into political practice by other means (Inter-Institutional Agreements, Rules of Procedure, “small” intergovernmental conferences, in the framework of future accession treaties). However, as a result of the legal and political constraints of the “Nice Plus” option, one can assume that the Treaty of Nice will be reformed in the shape of a “Constitution II” in a few years time.
 - Until a new primary law is adopted, full use should be made of the potentials of differentiated integration within or outside the EU framework. The public discourse about the borders of Europe and the extent of European politics should be intensified.⁵⁶

Sebastian Kurpas also looked at possible scenarios in “Should ratification proceed? An Assessment of Different Options after the Failed Referenda”.⁵⁷ The following scenarios are drawn from articles by Shaw, Kurpas and other commentators:⁵⁸

- A second (or even third) attempt at ratification is made within the State(s) in question. A second referendum might be linked to specific issues that could be remedied by protocols agreed by all Member States and attached to the Constitution. Significant factors might include the size of the State, whether it is a founding member or not, the margin percentage of the ‘no’ vote and the number of non-ratifiers.
- The Constitutional Treaty is dropped and the current Treaties are retained for the foreseeable future. The Treaty as amended by the Treaty of Nice continues in force.

⁵⁶ Bertelsmann Stiftung, *Non, NNon, Nee, Ne, Nie or No – Consequences, Options, and Recommendations if the Constitution is rejected*, 2005/03, Janis A. Emmanouilidis and Bettina Thalmaier, at http://www.cap.lmu.de/download/spotlight/Reformspotlight_03-05_en.pdf

⁵⁷ CEPS Policy Brief No. 75/June 2005 at http://shop.ceps.be/BookDetail.php?item_id=1233

⁵⁸ See also Eric Philippart, European Policy Centre, May 2003 at <http://www.euractiv.com/cgi-bin/cgint.exe?204&OIDN=250919>

- Various steps are taken to introduce aspects of the Constitution by measures short of Treaty amendment, the so-called “Nice Plus” scenario. Not everything in the Constitution requires an amendment to the current Treaties and some measures could be introduced through inter-governmental agreements outside the Treaty structure, by inter-institutional agreements, by legislation under existing Treaty Articles or using the catch-all Article 308 TEC. The current EC Treaty already provides for enhanced cooperation among some Member States. This arrangement has not yet been used formally (Schengen and EMU came about in a different way), but it might be an option for some elements of the Constitution.
- A partial renegotiation might allow for opt-out and opt-in arrangements, as currently exist for EMU, defence and JHA matters. This raises the possibility of a multi-speed Europe with a hard core of integrationist States, which is favoured by some and rejected by other States.
- In time, an IGC is convened to try to amend the Constitution, with a view to making it more likely to be ratified by Member States; or attempts are made to negotiate a completely new text. The latter option would pose a serious credibility problem for the EU, which spent nearly two years preparing the constitutional text.
- By a formal agreement among all Member States, the non-ratifying Member State(s) voluntarily leave(s) the EU and a constitutional treaty enters into force between the remaining Member States.⁵⁹ Such a move would have to be agreed by all the Member States, including the State(s) wishing to leave. A variation of this would be for a group of States wanting to pursue integration to withdraw from the EU collectively and reconfigure a new Union and a new relationship with the other States.
- Those Member States which have ratified the Constitution agree to enter into a new Treaty without the non-ratifying State(s). The new treaty would be in addition to, not instead of, the current EC Treaty, which would remain in force. This could be messy and unworkable. A variation of this, the so-called “Delors option” of a “treaty within a treaty” would involve refounding the EU with the majority of Member States accepting the Constitution, while all Member States remained legally bound by the present EC/EU Treaties. This too would present serious legal, administrative and institutional problems.

⁵⁹ Non-ratifying States cannot be expelled from the EU, although some reports maintain that this can be done.

Although officially there was no “Plan B” to address non-ratification, since the negative referendums, reports about “Plans B, C and D” have been sprouting “like mushrooms after the rain”.⁶⁰ Some of the above scenarios, and others, are now being considered. The *Financial Times* reported:

Behind the scenes, some officials believe that Berlin and Paris may be manoeuvring to revive moves to create a two-tier EU. Eighteen months ago, when negotiations over the constitution collapsed, plans were circulated for a group of EU countries to press ahead with a 'hard core'.

Those ideas eventually came to nothing, mainly because there is no consensus on the areas upon which core countries could usefully co-operate.⁶¹

The proposals from Member States, think tanks, politicians, academics, former Convention members and others centre on whether to suspend ratification, salvage what can be salvaged from the Constitution, convene an Intergovernmental Conference (IGC), form a “committee of wise men”, launch enhanced cooperation arrangements, or plan a wide-ranging consultation exercise in 2007 with a view to drafting revised Treaty amendments.

On 6 June 2005 the EP’s Constitutional Affairs Committee discussed the ratification process. The following report summarised the MEPs’ exchange of views on what to do next:

While some MEPs called for the continuation of the ratification process in the remaining 15 countries, others called for a new Convention to be summoned to revise the constitution or just insisted it is “dead”.

To Johannes Voggenhuber, an Austrian Green MEP, the result of the French and Dutch rejections of the treaty “was a ‘No’ on a European Constitution, it was not a ‘No’ on the process”.

Jo Leinen, a German socialist and Chair of the Committee, set an optimistic tone noting that “there is a good chance that by the end of the year we will have 18 or 19 ratifications under our belt”.

Andrew Duff, a UK Liberal, argued that the European Council should suspend the ratification procedure after the Luxemburg referendum and summon a new Convention to revise the treaty, which would later be subject to simultaneous referenda “by all the member states obliged to hold them”.

Other MEPs argued that the EU's credibility would be undermined if the EU put the breaks on the ratification process.

⁶⁰ *Lefigaro.fr* 3 June 2005 at <http://www.lefigaro.fr/referendum/20050603.FIG0130.html>

⁶¹ Stephen Castle, *Financial Times* 4 June 2005

To James Hugh Allister, a UK Non-attached MEP, the constitution is simply dead, "like it or not".

Another vote is "yesterdays dinner"

A tough question on the table was why should the French and the Dutch be subject to another vote on the treaty - like the Irish and Danish were in the past - while the Spanish, who voted favourably but with less influence than their northern neighbours, would not.

Pushing through a re-vote "is humiliating to member states", said Danish eurosceptic Jens-Peter Bonde.

"No president of the French republic will accept the task of handing out yesterday's dinner for today's lunch", warned French MEP Jean-Louis Bourlanges.⁶²

E. Implementing reform without the Constitution

Elements of the Constitution and some reforms linked to it could be implemented without a Treaty amendment, either because their legal basis is provided by existing Treaty articles, or because they can be implemented by intergovernmental or inter-institutional agreements. These might include institutional reforms that address the "democratic deficit" and other, more innovative, elements, such as the proposed EU diplomatic service, the EU defence agency, the rapid reaction forces, the European gendarmerie and the Fundamental Rights Agency.

1. Democratic reform

The Constitution contains a Protocol on subsidiarity⁶³ and provides an "early warning mechanism" involving national parliaments in the legislative process.⁶⁴ Although the principle of subsidiarity is already enshrined in the EC Treaty, there is at present no mechanism for applying it. One observer thought this would be a legitimate and popular area for reform:

Crucially, the fact that the system is merely advisory presents an opportunity for European leaders in their present predicament. Because it does not upset the existing power balance in the EU, it could easily be put in place without amending the treaty. Inevitably, there will be opposition.

⁶² *EUObserver* 7 June 2005 at <http://www.euobserver.com/?sid=9&aid=19258>

⁶³ The principle of subsidiarity is contained in Article 5 TEC and means that in matters where competence is shared between the EU and the Member States, the EU should not act when action at the national level is more appropriate.

⁶⁴ See Research Paper 04/77 *The Treaty Establishing a Constitution for Europe: Part IV and Protocols* 21 October 2004 at <http://hcl1.hclibrary.parliament.uk/rp2004/rp04-077.pdf>

[...]

Eurosceptics will complain that this amounts to smuggling elements of the treaty in through the back door. Europhiles will worry that "cherrypicking" the least objectionable elements of the treaty is a prelude to its abandonment. They should press ahead despite such objections.⁶⁵

Richard Laming, director of *The Federal Union*, thought that democratic reforms to increase the transparency and efficiency of the EU decision-making process could be implemented by an agreement of the European Council:

Meeting in public

First, the Council of Ministers could meet in public when dealing with legislation. (This doesn't even need a summit – a single national government could simply leak all the papers and broadcast the proceedings from the Council chamber on a mobile phone.) Who could object to this? Every government has already signed up. Even the French and Dutch electorate, I suspect, would accept this one.

Next, the European Council could choose itself a chair. The heads of government meet in secret and publish no minutes, so they might even have chosen somebody already and not told anyone. If they had, we couldn't find out. Choosing a chair doesn't require a treaty change, only a decision by the people at the meeting itself.

Thirdly, national parliaments should be consulted on legislation. Open Council meetings will make this possible, in any case, for those national parliaments that choose to stir themselves, but the Commission could invite comments from them on the immediate publication of the first legislative proposal.

And lastly, the heads of government should make it clear that the next president of the Commission will be appointed on the strength of the results of the next European elections in 2009. That will concentrate minds. Want to get ahead in European politics? Then earn the right at the ballot box.

Something supporters and opponents can agree on

I can hear the counter-argument already that it shouldn't be for heads of government to take such far-reaching decisions on their own. The nature of European politics ought to be harder to shift than this. The closed doors at summits should not conceal changes to our democracy.

My response is that at last there is something that both supporters and opponents of further European integration can agree on. Of course, such powers should not lie in so few hands. That's the whole point of a European constitution.⁶⁶

⁶⁵ Ian Cooper, Munk Centre for International Studies, University of Toronto, *EUObserver* 13 June 2005 at <http://euobserver.com/?aid=19302&rk=1>

⁶⁶ *EUObserver* 9 June 2005 at <http://euobserver.com/?aid=19282&rk=1>. Richard Kurpas, of the Centre for European Policy Studies (CEPS) has written about possible reforms that could be introduced without ratifying the Constitution in "What Could be Saved from the European Constitution if Ratification

2. EU External Action (Diplomatic) Service

The EU Member States currently have around 600 bilateral embassies with one another and the Commission has 128 delegations around the world. Diplomatic services are already offered to EU citizens. Under Article 17 TEC any EU national can seek help or advice at any Member State embassy or consulate anywhere in the world. Under the Constitution, the arrangements would be streamlined to provide an EU service for EU citizens. The service would support the proposed EU Foreign Minister. According to Kurpas, the legal requirements for bringing this part of the Constitution into force are low, because “it concerns the form rather than a shift of powers”.⁶⁷

In October 2004 the Common Foreign and Security Policy (CFSP) High Representative, Javier Solana, set up a task force to look into the proposed new service. The group was composed of senior officials in Mr Solana’s Council secretariat and diplomats from the Member States. Reports suggested that the service might number 7,000 people. Mr Solana told the German weekly, *Der Spiegel*, that this figure was correct, “but only at the end of a rather lengthy development process”.⁶⁸ The *EUObserver* identified some of the issues:

Among the issues that have to be answered include how to maintain equality between the Council, Commission and member states in terms of posts. Also being considered is the extent to which participation by the 25 member states in the overall service is based on the size of their populations. Other issues that member states are looking at are having special units in the service for relations with the UN and the OSCE.⁶⁹

The *EUObserver* reported on 16 March 2005:

The central questions concern how much power the diplomatic service will have and how to make sure it is balanced and does not grow into an autonomous uncontrollable body.

The main issue that found general agreement was that there should be no duplication between desks in the new service and functions subsequently carried out by the Commission.

There was also broad agreement that the service should not just be limited to common foreign and security policy issues as this would result in the Commission being excluded.⁷⁰

Fails? The Problems with a ‘Plan B’”, CEPS Policy Brief No. 70/May 2005 at http://shop.ceps.be/BookDetail.php?item_id=1222

⁶⁷ Kurpas, SEPS Policy Brief 70/May 2005

⁶⁸ Reported in *EUObserver* 29 October 2004, at <http://euobserver.com/?aid=17655&rk=1>

⁶⁹ Ibid

⁷⁰ <http://euobserver.com/?aid=18669&rk=1>

There was disagreement as to whether the service should be integrated with the Commission or the Council of Ministers, or whether it should be an autonomous body. There were also questions about the number and type of personnel, their training and the financing of the body. The EP wants the service to work under the aegis of the Commission, so that it would be regularly informed of its activities and of any decisions affecting the EU budget. If it is essentially a Council body, answerable to Member State governments, the EP would have little, if any, involvement. The Council insists that the service should be a ‘double-hatted’ body, and should be answerable to the Commission and Member States.⁷¹

On 26 May 2005 the EP voted in favour of establishing the service, but reminded the Commission that it must first approve any decision to establish it.⁷² This was also a reminder of the EP’s budgetary powers and the need for it to approve the administrative spending to the Council and Commission.⁷³

The Resolution stated that the EP was “convinced ... [the service] should be incorporated, in organisational and budgetary terms, in the Commission’s staff structure”.⁷⁴

3. European President and EU Foreign Minister

Article 203 TEC sets out the terms for the six-monthly EU Presidency and this could only be changed by means of a formal Treaty amendment. However, it has been suggested that the post of EU Foreign Minister could be introduced intergovernmentally, by a unanimous CFSP decision.

The British Foreign Secretary has ruled out the creation of both these posts outside the Constitution:

Those points are central to the European constitutional treaty, and of course I see no prospect of their being brought into force, save through the vehicle of a constitutional treaty.⁷⁵

⁷¹ *European Voice* 17-23 February 2005

⁷² Motion for a resolution on the institutional aspects of the European External Action Service, Doc. B6-0320/2005, at <http://www2.europarl.eu.int/omk/sipade2?L=EN&OBJID=96060&LEVEL=4&MODE=SIP&NAV=X&LSTDOC=N>. Debate: 11 May 2005; vote: 26 May 2005. The Europarl summary of the debate is at <http://www2.europarl.eu.int/omk/sipade2?PUBREF=-//EP//TEXT+PRESS+DN-20050608-1+0+DOC+XML+V0//EN&L=EN&LEVEL=0&NAV=X&LSTDOC=N#SECTION1>

⁷³ *EUObserver* 26 May 2005 at <http://euobserver.com/?aid=19172&rk=1>

⁷⁴ EP Resolution, 26 May 2005

⁷⁵ HC Deb 6 June 2005 c1001

4. **European Defence Agency**

The Constitution establishes a European Defence Agency, which aims to boost research, joint procurement and development in defence, with a view to improving the EU's military capabilities. However, EU foreign ministers agreed in Luxembourg in June 2003 to set up the agency as an inter-governmental body. The final text of the Joint Action formally establishing the EDA was adopted on 12 July 2004.⁷⁶ Developing European military capabilities has been taken forward intergovernmentally since the Helsinki European Council in December 1999, so it is likely that this sort of cooperation will continue, regardless of the fate of the Constitution.

5. **European *Gendarmerie***

Five EU Member States, France, Spain, Italy, Portugal and the Netherlands, have decided to follow up a proposal by the French Defence Minister, Michele Alliot-Marie, in September 2003, to establish a peace-keeping *Gendarmerie*. This force would bridge the gap between military and civilian EU peace-keeping operations. Press reports suggest that the force would consist of 800 people and would be based in Italy.⁷⁷ Without a militarised police, the UK is also not expected to take part, although it has welcomed the scheme.

6. **Rapid reaction forces**

In November 2004 EU defence ministers agreed to form up to ten rapid reaction forces, known as "battlegroups", to be deployed in international crisis regions, such as Sudan and Ivory Coast. The proposed battlegroups are not intended to replace either the European Rapid Reaction force of 60,000 personnel that was first outlined as part of the Helsinki Headline Goal in 1999 or provide competition to the NATO Response Force.⁷⁸

According to the Foreign and Commonwealth Office:

The enhancement of the of the EU's rapid reaction capabilities in the shape of the Battlegroups initiative has already started. The target date for initial operational capability is 2005, with full capability by 2007. Each of the 7 to 9 planned Battlegroups will consist of around 1500 troops, ready to deploy within 15 days of a crisis, primarily in support of the UN, and normally for a period of around 30 days. Battlegroups will not replace the 50-60,000-strong rapid reaction capability outlined in 1999 for the Helsinki Headline Goal. They are smaller, rapidly deployable, self-sustainable forces tailored for the types of crisis management tasks demanded by the world today. The initiative does not compete with the NATO Response Force but is designed to be complementary and mutually

⁷⁶ 2004/551/CFSP. For further information on the Defence Agency see Standard Note SN/IA/3246

⁷⁷ *EUObserver* 16 September 2004 at <http://euobserver.com/?aid=17298&rk=1>

⁷⁸ For detailed information on the ESDP, see Standard Notes SN/IA/2949 and SN/IA/3246

reinforcing, with each providing a positive impetus for military capability improvement.⁷⁹

Both the *Gendarmerie* and the battlegroups are linked to Article III-312 of the Constitution on structured cooperation.

7. Fundamental Rights Agency

The EU has already agreed to establish by 2007 a Fundamental Rights Agency, to be based in Vienna, which will monitor the EU institutions and Member State governments for compliance with rights enshrined in the European Constitution and issue opinions to the institutions or governments concerned. The agency will collect, record and analyse data, with a view to reporting on alleged cases of discrimination. It will incorporate the existing EU Monitoring Centre on Racism and Xenophobia but with a broader mandate that could include, for example, domestic violence against women and children. It will not be a law-making body or a court, but would seek to coordinate policies and best practice. The British Government has been largely supportive, provided the agency is concerned only with monitoring the implementation of EU law by the Member States, and that its opinions are non-binding. Others fear that it will only duplicate existing mechanisms under the *European Convention on Human Rights* and will therefore be wasteful.

⁷⁹ <http://www.fco.gov.uk>

Appendix 1 Full results of French referendum

The French Interior Ministry gave the following results for the referendum.⁸⁰

	Number	%
Registered voters	41,789,202	100%
Abstentions	12,800,902	30.63%
Turnout	28,988,300	69.37%

	Number	%
Blank or nil returns	730,522	2.52%
Votes cast	28,257,778	97.48%

Referendum question: “Do you approve of the draft law authorising the ratification of the Treaty Establishing a Constitution for Europe?”

	Votes	% of votes cast
YES	12,808,270	45.33%
NO	15,449,508	54.67%

The UDF website set out the full results by region and department, as follows:⁸¹

ALSACE	Oui : 53,44 % - Non : 46,54 %
Bas-Rhin (67)	Oui : 56,11 % - Non : 43,89 %
Haut-Rhin (68)-	Oui : 49,72 % - Non : 50,28 %
AQUITAINE	Oui : 42,85 % - Non : 57,15 %
Dordogne (24)	Oui : 37,66 % - Non : 62,34 %
Gironde (33)	Oui : 43,74 % - Non : 56,26 %
Landes (40)	Oui : 41,64 % - Non : 58,36 %
Lot-et-Garonne (47)	Oui : 38,04 % - Non : 61,96 %
Pyrénées-Atlantiques (64)	Oui : 47,85 % - Non : 52,15 %
AUVERGNE	Oui : 42,43 % - Non : 57,57 %
Allier (03)	Oui : 39,79 % - Non : 60,21 %
Cantal (15)	Oui : 47,44 % - Non : 52,56 %
Haute-Loire (43)	Oui : 42,10 % - Non : 57,90 %
Puy-de-Dôme (63)	Oui : 42,71 % - Non : 57,29 %
BOURGOGNE	Oui : 41,48 % - Non : 58,52 %
Côte d'Or (21)	Oui : 46,10 % - Non : 53,90 %

⁸⁰ <http://www.interieur.gouv.fr/avotreservice/elections/rf2005/000/000.html?txt=1>. A similar analysis of the 1992 vote on the Maastricht Treaty can be found on the Interior Ministry site at <http://www.interieur.gouv.fr/avotreservice/elections/rf1992/000/000.html>

⁸¹ UDF website at http://www.udf-europe.net/europe/opencms/page_referendum.jsp?path=/referendum/290505/resultats.xhtml. See also Interior Ministry website at <http://www.interieur.gouv.fr/avotreservice/elections/rf2005/index.html>

Nièvre (58)	Oui : 36,51 % - Non : 63,49 %
Saône-et-Loire (71)	Oui : 40,70 % - Non : 59,30 %
Yonne (89)	Oui : 39,62 % - Non : 60,38 %
BRETAGNE	Oui : 50,90 % - Non 49,10 %
Côtes d'Armor (22)	Oui : 46,72 % - Non : 53,28 %
Finistère (29)	Oui : 51,12 % - Non : 48,88 %
Ille-et-Vilaine (35)	Oui : 53,81 % - Non : 46,19 %
Morbihan (56)	Oui : 50,65 % - Non : 49,35 %
CENTRE	Oui : 43 % - Non : 57 %
Cher (18)	Oui : 29,6 % - Non : 60,4 %
Eure-et-Loir (28)	Oui : 42,54 % - Non : 57,46 %
Indre (36)	Oui : 36,72 % - Non : 63,28 %
Indre-et-Loire (37)	Oui : 45,68 % - Non : 54,32 %
Loir-et-Cher (41)	Oui : 41,01 % - Non : 58,99 %
Loiret (45)	Oui : 46,45 % - Non : 53,55 %
CHAMPAGNE-ARDENNES	Oui : 42,91 % - Non 57,09 %
Ardennes (08)	Oui : 37,21 % - Non : 62,79 %
Aube (10)	Oui : 42,98 % - Non : 57,02 %
Marne (51)	Oui : 46,34 % - Non : 53,66 %
Haute-Marne (52)	Oui : 41,58 % - Non : 58,42 %
CORSE	Oui : 42,30 % - Non 57,70 %
Corse du Sud (2A)	Oui : 41,29 % - Non : 58,71 %
Haute Corse (2B)	Oui : 43,17 % - Non : 56,83 %
FRANCHE-COMTE	Oui : 42,19 % - Non : 57,81 %
Doubs (25)	Oui : 46,14 % - Non : 53,86 %
Jura (39)	Oui : 42,47 % - Non : 57,53 %
Haute-Saône (70)	Oui : 36,78 % - Non : 63,22 %
Territoire de Belfort (90)	Oui : 37,47 % - Non : 62,53 %
ILE-DE-FRANCE	Oui : % - Non %
Paris (75)	Oui : % - Non : %
Seine-et-Marne (77)	Oui : 44,8 % - Non : 55,2 %
Yvelines (78)	Oui : 59,42 % - Non : 40,58 %
Essonne (91)	Oui : 49,24 % - Non : 50,76 %
Hauts-de-Seine (92)	Oui : 61,91 % - Non : 38,09 %
Seine-Saint-Denis (93)	Oui : 38,48 % - Non : 61,52 %
Seine-et-Marne (94)	Oui : 50 % - Non : 50 %
Val-d'Oise (95)	Oui : 46,53 % - Non : 53,47 %
LANGUEDOC-ROUSSILLON	Oui : 37,59 % - Non 62,41 %
Aude (11)	Oui : 35,38 % - Non : 64,62 %
Gard (30)	Oui : 35,95 % - Non : 64,05 %
Hérault (34)	Oui : 39,85 % - Non : 60,15 %
Lozère (48)	Oui : 46,23 % - Non : 53,77 %
Pyrénées-Orientales (66)	Oui : 35,17 % - Non : 64,83 %
LIMOUSIN	Oui : 40,78 % - Non : 59,22 %
Corrèze (19)	Oui : 43,15 % - Non : 56,85 %
Creuse (23)	Oui : 38,06 % - Non : 61,94 %
Haute-Vienne (87)	Oui : 40,06 % - Non : 59,94 %

LORRAINE	Oui : 43,56 % - Non : 56,44 %
Meurthe-et-Moselle (54)	Oui : 43,42 % - Non : 56,58 %
Meuse (55)	Oui : 41,40 % - Non : 58,60 %
Moselle (57)	Oui : 45,19 % - Non : 54,81 %
Vosges (88)	Oui : 40,98 % - Non : 59,02 %
MIDI-PYRENEES	Oui : 42,85 % - Non : 57,15 %
Ariège (09)	Oui : 36,44 % - Non : 63,56 %
Aveyron (12)	Oui : 46,52 % - Non : 53,48 %
Haute-Garonne (31)	Oui : 46,10 % - Non : 53,90 %
Gers (32)	Oui : 41,62 % - Non : 58,38 %
Lot (46)	Oui : 40,23 % - Non : 59,77 %
Hautes-Pyrénées (65)	Oui : 38,98 % - Non : 61,02 %
Tarn (81)	Oui : 40,81 % - Non : 59,19 %
Tarn-et-Garonne (82)	Oui : 38,19 % - Non : 61,81 %
NORD-PAS-DE-CALAIS	Oui : 35,11 % - Non : 64,89 %
Nord (59)	Oui : 38,06 % - Non : 61,94 %
Pas-de-Calais (62)	Oui : 30,50 % - Non : 69,50 %
BASSE-NORMANDIE	Oui : 44,76 % - Non : 55,24 %
Calvados (14)	Oui : 44,14 % - Non : 55,86 %
Manche (50)	Oui : 45,74 % - Non : 54,26 %
Orne (61)	Oui : 44,46 % - Non : 55,54 %
HAUTE-NORMANDIE	Oui : 35,58 % - Non : 64,42 %
Eure (27)	Oui : 37,03 % - Non : 62,97 %
Seine-Maritime (76)	Oui : 34,92 % - Non : 65,08 %
PAYS-DE-LA-LOIRE	Oui : 50,12 % - Non : 49,88 %
Loire-Atlantique (44)	Oui : 51,13 % - Non : 48,87 %
Maine-et-Loire (49)	Oui : 52,99 % - Non : 47,01 %
Mayenne (53)	Oui : 52,37 % - Non : 47,63 %
Sarthe (72)	Oui : 42,59 % - Non : 57,41 %
Vendée (85)	Oui : 50,20 % - Non : 49,80 %
PICARDIE	Oui : 34,98 % - Non : 65,02 %
Aisne (02)	Oui : 33,25 % - Non : 66,75 %
Oise (60)	Oui : 37,66 % - Non : 62,34 %
Somme (80)	Oui : 33,20 % - Non : 66,80 %
POITOU-CHARENTES	Oui : 44,66 % - Non 55,34 %
Charente (16)	Oui : 40,76 % - Non : 59,24 %
Charente-Maritime (17)	Oui : 44,38 % - Non : 55,62 %
Deux-Sèvres (79)	Oui : 48,67% - Non : 51,33 %
Vienne (86)	Oui : 44,85 % - Non : 55,15 %
PROVENCE-ALPES- COTE D'AZUR	Oui : % - Non %
Alpes-de-Haute Provence (04)	Oui : 39,73 % - Non : 60,27 %
Hautes-Alpes (05)	Oui : 44,18 % - Non : 55,82 %
Alpes Maritimes (06)	Oui : 47,45 % - Non : 52,55 %
Bouches-du-Rhône (13)	Oui : % - Non : %
Var (83)	Oui : 42,48 % - Non : 57,52 %

Vaucluse (84)	Oui : 37,31 % - Non : 62,69 %
RHONE-ALPES	
Ain (01)	Oui : 47,20 % - Non : 52,80 %
Ardèche (07)	Oui : 40 % - Non : 60 %
Drôme (26)	Oui : 41,78 % - Non : 58,22 %
Isère (38)	Oui : 46,42 % - Non : 53,58 %
Loire (42)	Oui : 44,15 % - Non : 55,85 %
Rhône (69)	Oui : % - Non : %
Savoie (73)	Oui : 48,60 % - Non : 51,40 %
Haute-Savoie (74)	Oui : 53,94 % - Non : 46,06 %

TERRITOIRES ET DEPARTEMENTS D'OUTRE-MER

Guadeloupe	Oui : 58,60% - Non : 41,40%
Mayotte	Oui : 86,46% - Non : 13,54%
Saint-Pierre-et-Miquelon	Oui : 62,69% - Non : 37,31%
Martinique	Oui : 69,03 % - Non : 30,97%
Guyane	Oui : 60,08 % - Non : 39,92 %
Polynésie française	Oui : 72,88 % - Non : 27,12 %
Wallis-et-Futuna	Oui : 59,67 % - Non : 10,33 %
La Réunion	Oui : 40,05 % - Non : 59,95 %

Appendix 2 Analysis of the Dutch referendum

A *Dutch News Digest* report looked at the breakdown of votes in the Netherlands.

Of the nearly 600 municipalities in the Netherlands, only 21 voted in favour of ratification. The composition of those political municipalities favouring the proposition are the upper middle or upper classes such as in Wassenaar, Heemstede and Oegstgeest, or the government-dependent public broadcasting population who live in Bunnik, Bussum and Laren. Utrecht is the only one of the big four cities to vote for ratification with 51.1% yes and 48.9% no.

The negative vote was concentrated in the so-called Dutch Bible Belt extending from the Nijkerk to Dordrecht and on to Middleburg in the Province of Zeeland. Urk, the orthodox Christian fishing village in the Province of Flevoland was overwhelmingly opposed to ratification. Here the vote was 8.4% in favour and 91.6% opposed.⁸²

Detailed information on voting in the referendum by province can be found in Dutch on the Kiesraad website at

<http://www.verkiezingsuitslagen.nl/verkiezingsuitslagen.aspx>

⁸² *Dutch News Digest* 6 June 2005 at <http://www.dnd.nl/>

Appendix 3 Ratification table

The following table sets out the ratification procedures adopted by EU Member States and dates where available:

Country	Referendum	State of play on ratification	Prospects for Ratification
Austria	No	Lower House voted on 11 May 2005. A two-thirds majority in both Houses is required for ratification. 182 MPs voted in favour, with one - Barbara Rozenkranz - of the far right Freedom Party – against. On 25 May 2005 the Upper House approved the Constitution by 59 to three (from the far-right).	No problems are expected as nearly all political parties support Constitution, in spite of some concerns about Austrian neutrality. However, the extreme-right party leader, Jörg Haider, has threatened a legal challenge over the Government's refusal to put the Constitution to a referendum. ⁸³
Belgium	No	Parliamentary committee voted 16 February 2005 by 9 to 8 2005 against referendum. Parliamentary ratification expected May 2005. On 29 April 2005 Senate voted for the Constitution by 54 votes to 9 with 1 abstention. On 19 May 2005 the Lower House approved the Constitution by 118 to 18 with one abstention. The Constitution will then be considered by the parliaments of the three regions (Brussels, Francophone Wallonia, Flemish-speaking Flanders) and of the three language communities (Flemish, French, German).	
Cyprus	No	Parliamentary ratification on 30 June 2005.	Ratification had been considered a formality. However, the largest party, Akel (Communist, 20 seats), is opposed to the Constitution. The other parties in the 56-seat parliament are likely to vote in favour, which means it could still be

⁸³ *EUBusiness*, 9 May 2005 at <http://www.eubusiness.com/afp/050509122454.jrfa2cxq>

Country	Referendum	State of play on ratification	Prospects for Ratification
			approved.
Czech Republic	Undecided	A new law was adopted on 9 March making referendums a common instrument of decision-making. Main opposition centre-right Civic democrats (ODS) proposed bill applying only to vote on EU Constitution. Possible date: June 2006, to coincide with regional elections. Parliamentary ratification becoming more popular option. ⁸⁴	Czech President, Vaclav Klaus, is against Constitution.
Denmark	Yes	Referendum on 27 September 2005. Draft law must be adopted in early September.	Public support reasonably high. In 179-seat parliament, only right-wing Danish People's Party and left-wing Red-Green Alliance (30 seats) are opposed. Denmark is considering whether to go ahead with a referendum in view of the French and Dutch results.
Estonia	No	Constitution sent to Parliament on 5 May 2005. Parliamentary ratification expected to be completed before summer recess 2005. ⁸⁵	Lowest public support for Constitution of all the new Member States. ⁸⁶
Finland	No	The Prime Minister, Matti Vanhanen, ruled out a referendum, in spite of support for one by some government ministers.	Parliamentary ratification expected December 2005.
France	Yes	Constitutional amendments were agreed on 28 February 2005, allowing for referendum to be held on 29 May 2005. In the referendum, 45.1% voted in favour, 54.9% against, with a turnout of 69.7%.	The Constitution cannot be ratified.
Germany	No	According to recent polls, 81% of Germans support a referendum, but the German Constitution currently rules one out. The CSU	<i>Bundestag</i> ratification on 12 May 2005 by 569 to 23 with two abstentions. The <i>Bundesrat</i> ratified on 27 May 2005 by 66 votes out of 69

⁸⁴ *EUObserver* 10 March 2005 at <http://euobserver.com/?aid=18632&rk=1>

⁸⁵ *EUBusiness*, 5 May 2005 at <http://www.eubusiness.com/afp/050505131705.vj9v5ots>

⁸⁶ See http://www.vm.ee/eng/euro/kat_315/2973.html

Country	Referendum	State of play on ratification	Prospects for Ratification
		parliamentarian, Peter Gauweiler, appealed to the Constitutional Court for a referendum, but this was rejected by the Court on 28 April 2005.	with three abstentions.
Greece	No	On 19 April 2005 the Greek Parliament approved the Constitution by 268 to 17. 15 deputies were absent.	The main government and opposition parties support the Constitution and there is majority public endorsement of it.
Hungary	No	Parliamentary ratification on 20 December 2004 by 304 votes to 9 with 8 abstentions and 64 deputies absent.	The Hungarian population is the most pro-European of the new Member States.
Ireland	Yes	Probably October 2005	Unpredictable. No vote on the Nice Treaty. Government likely to be active in promoting Constitution.
Italy	No	The Chamber of Deputies endorsed the Constitution on 25 January 2005 by 436 to 28 with 5 abstentions. On 6 April 2005 the Senate approved it by 217 to 16. 82 deputies were absent.	
Latvia	No	Parliamentary ratification process started on 13 December 2004. Parliament ratified Constitution on 2 June 2005 by 71 votes to 5 with 6 abstentions.	
Lithuania	No	Ratified by <i>Seimas</i> 11 November 2004 by 84 votes to 4 with 3 abstentions.	
Luxembourg	Yes	Consultative referendum on 10 July 2005	High public support for Constitution.
Malta	No	Parliamentary vote expected mid-July 2005	In the referendum on EU membership in 2003 Malta was the weakest EU supporter among the accession states.
Netherlands	Yes	In a consultative referendum on 1 June 2005, the Dutch were asked: "Are you for or against the Netherlands agreeing to the Treaty Establishing a Constitution for Europe?" The Constitution was rejected by 54.9% to 45.1% with a turnout of 69.7%.	Following the French rejection opinion polls indicated that public support for the Constitution was diminishing. The Parliament and the Government will respect the result, as the turnout was over 30%.

Country	Referendum	State of play on ratification	Prospects for Ratification
Poland	Yes	25 September 2005, to coincide with presidential elections.	Poland is one of the most euro-sceptic Member States. Recent opinion polls indicate low public opinion of the Constitution. Turnout must be at least 50% for vote to be valid.
Portugal	Yes	October-December 2005, with local elections. The new Socialist Prime Minister, Jose Socrates, supports constitutional amendments to allow for the two votes. The main Government and Opposition parties have agreed a common text for the amendment. In spite of the French and Dutch results, the Portuguese Parliament is to vote on the joint text by 15 June 2005 and the referendum will take place with local elections on 2, 6 or 9 September 2005.	There is strong public and political support for the EU Constitution.
Slovak Rep	Unlikely	Prime Minister, Mikulas Dzurinda and President Ivan Gasprovic are against referendum. They have the support of the two main opposition party leaders for parliamentary ratification. On 12 May 2005 116 deputies out of 150 voted for the Constitution, with 27 against and four abstentions.	
Slovenia	No	Parliamentary ratification 1 February 2005 by 79 to 4 with 7 abstentions.	
Spain	Yes	Consultative referendum on 20 February 2005. Yes: 77%, No:17%,blank: 6% blank; turnout: 42%. Question: "Do you approve the Treaty by which a Constitution for Europe is established?" ⁸⁷ Formal ratification by the	

⁸⁷ Information on the referendum and results can be found at Elcano Royal Institute of International Strategic Studies at <http://www.realinstitutoelcano.org/documentos/171.asp>

Country	Referendum	State of play on ratification	Prospects for Ratification
		Chamber of Deputies on 28 April 2005 by 311 votes to 19 with 20 abstentions. The Senate approved the Constitution on 18 May 2005 by 225 votes for to 6 against.	
Sweden	No	Tradition of holding referendum only when there are party splits (eg on EMU). Parliamentary ratification expected December 2005. Social Democrat MP, Sören Wibe, has found rarely used paragraph in party statute allowing for 5% of party members to call for a referendum. 7,000 party members would have to sign the current petition to secure a vote.	Parliament is expected to ratify the Constitution without problems. Only Swedish Green Party and the Left Party want a referendum. Public support for it is weakening.
United Kingdom	Yes	Early indications were for mid-March 2006, following UK Presidency of EU (July-December 2005). Question: "Should the United Kingdom approve the Treaty establishing a Constitution for the European Union?".	Low public support for the Constitution. On 6 June 2005 the Government suspended parliamentary proceedings on the <i>European Union Bill</i> and thereby the UK ratification process, pending further EU discussion on the French and Dutch referendums.