



FEBRUARY 2005

Referendums on the EU Constitutional Treaty: The State of Play

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- The EU Constitutional Treaty was signed on 29 October 2004 and this launched the ratification process.
- A number of governments have committed to referendums as part of the ratification process.
- The circumstances for each of these referendums is different but they are intertwined as one country's failure to ratify would raise questions about the survival of the Treaty.
- The first referendum is to be held in Spain on 20 February 2005.

Introduction

The EU Heads of State and Government agreed a new Constitutional Treaty for the EU at the European Council meeting in Brussels in June 2004. The Treaty was signed in Rome on 29 October 2004 and the ratification process is now under way. Some states have opted to ratify the Constitution through their respective parliaments while others have already pledged to hold a referendum. This briefing paper looks at those countries which will be holding referendums. We examine the legal procedure on the holding and overseeing of referendums in each of these countries with a specific focus on the UK, as well as predicting when the referendums are most likely to be held. We have also charted a likely chain of events leading to each referendum and the order in which they will probably be held. As an introduction we have provided a background discussion of the European Convention on the Constitution.

This paper is a revised version of EP BP 04/01 published in October 2004.

Background: the Convention

At Nice in December 2000, the European Council reached an agreement on the revision of the Treaty on European Union and revisions to the Treaties establishing the European Communities with the aim of adapting the Union's institutions in response to enlargement. The Treaty revisions that were reached did not, however, adequately prepare the EU for the substantial enlargement to which it was committed. As a component of the Nice Treaty, the European Council adopted a 'declaration on the future of the Union'. Three stages were envisaged in revising the Treaties: a first phase of open debate; a second, more structured phase, the details of which were to be determined by the Laeken Council in December 2001; and, lastly, a new Intergovernmental Conference to be convened in 2004 to decide on the necessary amendments to the Treaties.¹

The Nice Declaration identified four main topics for consideration:

- The establishment of a more precise division of responsibilities between the Union and the member states in accordance with the principle of subsidiarity;
- The status of the Charter of Fundamental Rights proclaimed at Nice;
- The simplification of the Treaties in order to make them clearer and more comprehensible without altering their core meaning;
- The role of national parliaments in the European architecture.

A year later (December 2001), the Laeken European Council adopted the Declaration on the Future of European Union. This committed the Union to becoming more democratic, more transparent and more efficient and to preparing the way for a Constitution for the citizens of Europe.² For this purpose, the Council decided to organize a Convention to identify and produce recommendations on the Union's future development. The Laeken Declaration provided for the acceding states to take a full part in the proceedings without, however, having any direct influence over any consensus which might emerge among the member states. The following points were to be tackled:

- The division of responsibility between the Union and the member states;
- The more rigorous definition of the tasks of the Union's institutions;
- Ensuring the coherence and effectiveness of the Union's external action;
- Strengthening the Union's legitimacy.

Under the chairmanship of the former French President Valéry Giscard d'Estaing, the Convention met from February 2002 to July 2003 and submitted its recommendations in the form of a new draft Constitutional Treaty to replace and modify the content of the existing Treaties. Giscard d'Estaing

presented this draft to the Thessaloniki European Council meeting of Heads of State and Government on 19 June 2003.

The Intergovernmental Conference and the draft Treaty

The process of discussing and reaching agreement on Treaty change is known as an Intergovernmental Conference (IGC). An IGC is convened by the President of the Council on the recommendation of the Council and following consultation with the European Parliament, the Commission and, if appropriate, the European Central Bank.

The draft formed the basis for the negotiations of an Intergovernmental Conference composed of the representatives of the Heads of Government of the member states and the acceding countries, and assisted by their Foreign Ministers.

On 29–30 September 2003, the Council gave its support to the convening of an IGC which was launched on 4 October 2003, during the Italian Presidency.³ However, initial disagreements delayed approval of the Treaty on the first attempt. The Italian Presidency, which chaired the meetings of the IGC during the second half of 2003, wished to depart as little as possible from the draft Constitutional Treaty on the basis that the text constituted a balanced outcome to months of negotiation within the Convention.

The Presidency hoped to complete the IGC by the end of 2003 with a view to achieving its signature in time for the European Parliament elections in June 2004. However, at its meetings in Brussels on 12–13 December, the European Council noted that it was not possible for the IGC to reach an overall agreement on a draft constitutional treaty at that stage.⁴ The delay to the agreement resulted in part from Polish and Spanish anxieties over proposed changes to the vote weighting system agreed by the Treaty of Nice. Various compromises were mooted. The Italian prime minister, Silvio Berlusconi, publicly suggested two options: delaying the double-majority voting system (a requirement for both a majority of states and a majority of the member state population to enable legislation to be passed) in the Convention's draft for a final qualified majority vote to decide, once and for all, on the vote-weighting agreed at Nice; or putting the changeover back from 2009 until 2014. Neither suggestion found favour, with France magisterially inflexible on the principle of the double majority.⁵

The Irish Presidency of the first half of 2004 was therefore requested to consult partners and make an assessment of the prospects for progress. This culminated in a report to the European Council on 25–26 March 2004. The European Council received the report and agreed that the IGC should be formally reconvened by the Irish Presidency.⁶ It was also agreed that the negotiations on the draft Constitutional Treaty should be concluded no later than the European Council meeting in Brussels on 17 and 18 June 2004.

In Brussels, progress was finally made. Spain and

Poland no longer opposed agreement after a compromise on vote-weighting was agreed. If three-quarters of member states or three-quarters of the population necessary to block a vote find themselves in a minority, they can appeal to have a debate in the Council.⁷ A further impetus was given by the change in the Spanish government in the March elections, for the new government had no wish to delay matters further. The IGC unanimously adopted the text of the Constitution at the Brussels European Council of 17–18 June 2004.

The text is now being ratified by each individual country in accordance with its own national procedures. This ratification may take place through parliament, by referendum or both. The Constitution cannot enter into force until one year after the last national ratification. Until then, the Treaty of Nice remains in force.

Decisions on provisions of national referendums

Ratifying the Constitution via a Europe-wide referendum had been proposed when 97 members of the Convention supported a resolution stating that such a referendum would be appropriate.⁸ Critics argued that this approach was too federal and the decision on whether or not to hold a referendum was devolved to the member states. The past practice of offering referendums on treaty amendments, coupled with the requirements of the Irish Constitution, were such that a referendum in Ireland was always inevitable.⁹ Outside Ireland however, political judgments have influenced EU member states' decisions on their own commitment to this course of action.

Denmark was the first country to announce that it would hold a referendum. Prime Minister Anders Fogh Rasmussen made a declaration to that effect as early as September 2003. This came as no great surprise, however, since Denmark is traditionally seen as more Eurosceptic than other member states and has held several referendums on EU matters in the past. Thus it is highly unlikely that external considerations influenced the Danish government's decision.

In the Czech Republic, Prime Minister Vladimir Spidla publicly supported the holding of a referendum in October 2003. Opposition within the parliament would have made ratification by parliament alone difficult, and Spidla sought to overcome this by recourse to a national vote. There were also calls for a referendum from the popular Eurosceptic president Vaclav Klaus, who argued that broader public debate was essential. Again, given the early announcement, with Denmark the only other country to have declared its commitment to a referendum, the Czech government's decision was not swayed by the internal politics of other member states. Rather, it would wish to appear to be giving the people of a recent accession state their say in European matters.

There was less controversy in the case of Luxembourg. In an address to the nation in 2003,

Prime Minister Jean-Claude Juncker declared that a referendum 'is an instrument which, at important moments, gives a sovereign dimension to decision-making'.¹⁰ It was no surprise that he then chose to call a referendum on the Constitution. Given Luxembourg's pro-integrationist tradition, a 'yes' vote is widely predicted.

In the Netherlands, in late November 2003, the Lower Chamber of the *Staten Generaal*, or parliament, voted in favour of holding a referendum. This decision was taken against the wishes of the Prime Minister, Jan Peter Balkenende, of the Democratic Christian Appeal (CAD) party, and despite the fact that all the major political parties declared their support for the EU Constitution. It was argued that an automatic parliamentary 'yes' would be seen as lacking legitimacy. Opposition parties reasoned that a referendum would increase the role that citizens play in the EU process and improve their knowledge of these processes and of European issues generally.

It was only the declaration in favour of a referendum made by the British prime minister, Tony Blair, in April 2004, however, that made the issue a Europe-wide concern. Blair's announcement, in the face of opposition from close cabinet colleagues, was a spectacular U-turn. The government's change of stance brought its position into line with that of the opposition Conservative party and neutralized the question of a referendum on a domestic political issue. The surge in support at local elections for the United Kingdom Independence Party (UKIP) also demonstrated that Europe is a topic that resonates with the electorate. Another key factor was the increasing criticism of the prime ministerial tendency toward a presidential style of decision-making. Blair has been widely accused of making political decisions in small groups at Downing Street without seeking parliamentary, let alone national, support. The decision to go to war with Iraq, against considerable popular opposition, and the subsequent failure to find the weapons of mass destruction on which the case for war was made have resulted in a loss of voter confidence in the prime minister. His persistent refusal to reconsider his stance on the Iraq war has increased his unpopularity, and the decision to hold a referendum on the EU constitution may have been taken to sway voter perception. It might be argued, therefore, that Tony Blair had more political capital to gain than other European leaders by calling the referendum.

The UK's decision caused disquiet among other European leaders, most particularly the French president, Jacques Chirac. Chirac came under pressure to take similar action in France to give the French people an opportunity to play a role in ratifying the Treaty. Only a couple of weeks before the UK decision, the former French president and Convention chairman, Valéry Giscard d'Estaing, announced that 'to consult the French people on this subject is a reasonable and positive risk and it is right to take it'. He added that 'all Constitutions that have been adopted in France have been adopted by referendum'.¹¹ And indeed on 14 July 2004 President Chirac declared that France would hold a referendum in the second half of 2005.

In July 2004 the new Spanish government in turn decided to hold a referendum. This was the delivery of a socialist manifesto promise. Prime Minister José Luis Rodríguez Zapatero thereby distanced himself from former leader José María Aznar, whose right-wing government had prolonged negotiations at the IGC in defence of qualified majority voting. There is no doubt that opponents would have attacked Zapatero if he had not called a popular poll, on the grounds that he had compromised Spanish power in the Council by agreeing to the 'double-majority' voting opposed by the Aznar government and was as a result unwilling to let voters have their say. Both the Spanish government and the opposition will campaign for a 'yes' vote.

From the above, it is clear that the UK decision had the most profound impact on the rest of Europe. Not only did it influence the calling of a referendum in France, but it has also led to intensified debate within those countries – including Sweden and Germany – that have yet to declare themselves officially on the issue. (Germany's constitution does not allow for the holding of referendums.)

Those in favour of the Constitutional Treaty will hope that momentum will be gained through the referendums in the first half of 2005, which are being held in countries where they are most likely to be won. Supporters will be hoping for a domino effect, with the more Eurosceptic countries being swayed by pro-Constitution results in other states. However, the crucial period seems to be the second half of 2005 when France is likely to hold its referendum. A French 'no' will effectively call the future of the Constitutional Treaty into question.¹² Subsequent referendums may then be postponed pending a 'stocktaking' exercise. However, with the dates of the referendums not yet fixed, developing a scenario is problematic. A succession of 'yes' votes might generate a momentum that works to the advantage of governments campaigning in referendums in countries with more sceptical, or opposed, public opinion.

Country contexts

Czech Republic

Former Prime Minister Vladimir Spidla declared on 7 October 2003 that his government would hold a referendum on the EU constitution.¹³ The new government headed by Stanislav Gross, will continue with plans to do so: under the heading of foreign policy, the referendum on the EU constitution was one of the goals it announced.¹⁴ The first step in the process involves submitting a bill on the holding of referendums which will enable debate within the Czech parliament.

As there is no history of referendums in the country (there is currently no organization to oversee one), the government will draft not only a special law applying to a referendum on the EU Constitution but a general law on referendums, which would pave the way to holding nationwide polls on various issues. The Bill will take about eight or nine months to pass; then, allowing for six months of campaigning, the

referendum looks likely to be held in June 2006 at the same time as the country's next general election. Indeed, Prime Minister Gross confirmed these plans when he addressed Czech diplomats at an annual meeting organized by the Foreign Ministry in Prague on 30 August 2004.

The main political force in the *Parlament*, or parliament, pushing for a referendum on the EU Constitution is the opposition Civic Democrat (ODS) party. Both the Civic Democrats and the Communists are against the draft Constitution, and both made a strong showing in last year's European Parliament elections. A combined effort by these two parties could have meant that Spidla's government would have lacked enough support in the *Parlament* to push through the ratification procedure. This may have influenced the decision to hold a referendum. More recently President Vaclav Haus, founder of the Civic Democrats, questioned the legalities of implementing the constitutional treaty without changing the Czech constitution.¹⁵

Denmark

In a press conference on 17 September 2003 in Copenhagen, Danish Prime Minister Anders Fogh Rasmussen announced his plans to hold a referendum on the EU Constitution.

After his historic re-election as prime minister in February 2005, Mr Rasmussen must now set a timeline for a referendum. In the new Parliament there are only two parties that will campaign against the Constitution, the Danish People's Party and the Danish Red-Green Alliances. Together they comprise just 30 seats out of a total of 179. In December 2004, the Danish Socialist People's Party, often an influential player in close referendums on EU affairs, approved the Constitution with a clear majority in an internal referendum. Although the timing of a referendum is still uncertain, some commentators are predicting that the poll will take place in late 2005 or early 2006.

The Danish Constitutional Act lays down circumstances in which all citizens of the country may or shall be directly involved in a decision, and where the voters have the last word. What is more, politicians can, at national level as well as in the counties and local authorities, decide to hold consultative referendums, but in such cases, the voters are merely consulted and the outcome is not binding (see below).¹⁶

According to Rourke et al.,

the Danish public financing of referendum efforts on both sides of the issue succeeds well in informing the public of its choices and is less susceptible to cynical manipulation of public attitudes evident in referendum campaigns in other countries such as France and the United States. Furthermore, the Danish approach treats referendums more like elections, where public funding is provided for candidates for office, thereby bestowing the same level of importance on both types of ballot.¹⁷

The body that oversees the holding of referendums is *Indenrigs- og Sundhedsministeriet* (the Ministry of

Interior and Health) and the following rules are applied.

The basis of referendums

The present Constitutional Act of Denmark took effect on 5 June 1953. In accordance with this Act, there are five factors which shall or may cause a binding referendum to be held:

- when a major part of the Members of the *Folketing* (Danish parliament) request that a Bill be submitted to a referendum (Section 42 in the Constitutional Act);
- when ceding sovereignty (Section 20 in the Constitutional Act);
- for certain international treaties (Subsection 6 of Section 42 in the Constitutional Act);
- for constitutional amendments (Section 88 in the Constitutional Act);
- when altering the voting age (Section 29 in the Constitutional Act).

Moreover, as mentioned above, the *Folketing* may decide to hold a consultative referendum.

Bills (Section 42 in the Constitutional Act)

When the *Folketing* has passed a Bill, a third of the Members of the *Folketing* (i.e. 60) may request that it shall not take effect until it has been submitted to a referendum. For a Bill to become void, the Constitutional Act lays down that a majority of the voters reject it, and this majority shall comprise at least 30 per cent of all persons entitled to vote. A referendum of this nature has been held only once – in connection with the ‘land laws’ in 1963. The Liberals and the Conservatives, who had more than a third of the seats in the *Folketing*, requested that four of the Bills be subjected to a referendum. The Bills subsequently became void

In Subsection 6 of Section 42 in the Constitutional Act, a number of exceptions have, however, been enumerated. There are several laws which cannot be subjected to a referendum. This applies to finance, taxation, naturalization and expropriation Bills.

Ceding of sovereignty (Section 20 in the Constitutional Act)

This affects competences which, in accordance with the Constitutional Act, belong under the Danish authorities and can by law be transferred to ‘international authorities’ as stated in the Constitutional Act. The provision has mainly been used in connection with the EU. However, the Constitutional Act makes heavy demands on a Bill that deals with the ceding of sovereignty. Either five-sixths of the Members of the *Folketing* shall vote for it, or – if a majority but fewer than five-sixths of the Members vote for it – the Act presupposes that the Bill shall not be rejected at a referendum. However, in the last instance, the Bill only becomes void if a majority of voters reject it, and if this majority comprises at least 30 per cent of all persons

entitled to vote. The referendum on the Maastricht Treaty of 2 June 1992 was held in accordance with Section 20 in the Constitutional Act. The Bill that formally ratified Denmark’s accession to the Union was passed by only 130 votes in the Chamber. As 150 votes were needed for the Bill to be carried, it was subjected to a referendum on 2 June 1992, which rejected it. The following year the Treaty supplemented by the Edinburgh Agreement was passed by referendum.¹⁸

Amendments to the Constitutional Act (Section 88 in the Constitutional Act)

It is not easy to amend Denmark’s Constitutional Act. First, the *Folketing* needs to pass the amendment suggested. Next, writs for an election need to be issued, and then the new *Folketing* needs to pass the Bill. Subsequently, the amendment is subjected to a referendum, and it is only passed if it obtains a majority comprising 40 per cent of the persons entitled to vote.

Consultative referendums

Since consultative referendums are not mentioned in the Constitutional Act, it is for the *Folketing* to decide whether to hold a consultative referendum. As is apparent from the name ‘consultative’, the *Folketing* is not under any obligation as to the outcome of such a referendum. If the decision is to be binding, the provisions of the Constitutional Act are to be observed.¹⁹

France

President Jacques Chirac declared on 14 July 2004 that he would organize a referendum in the *second half of 2005*, and it is most likely to occur on one of the first three Sundays in June.²⁰ There had been pressure from across the political spectrum for him to do so. There is, however, no real consensus of opinion on whether France will return a ‘yes’ or a ‘no’ vote. The campaigning over the issue may yet swing towards a ‘no’ vote, with the Left particularly divided over the Constitution. The leader of the Parti Socialiste (Socialist Party), François Hollande, supports ratification, but former prime minister and fellow socialist Laurent Fabius is campaigning for a ‘no’ vote. This has split the party firmly down the middle. Battle is so fiercely joined that an internal party referendum on the treaty was held on 1 December 2004. In the end Hollande triumphed as 60 per cent of party members voted in favour of the Constitution.²¹ Political divisions aside, there appears to be a widespread apathy among French voters over Europe, concern about Turkish membership of the EU and little enthusiasm for the Constitution. In an attempt to ensure that the question of Turkey’s membership does not become entwined with the Constitutional Treaty debate, President Chirac announced on 1 October 2004 that he favoured an amendment to the French Constitution to permit a referendum to be held on this matter. Indeed, the parliamentary bill paving the way for the EU Constitution includes an amendment that requires

further referendums for all future enlargements post-Croatia.

According to Article 11 of the French Constitution, the president may call a referendum only if a proposal is sent to him/her by the government (prime minister) or both chambers of the legislature jointly. When the government proposes a referendum, a declaration is made to each assembly and this is followed by a debate. A referendum can be called if the proposal could:

- affect the organization of public institutions;
- have economic or social implications;
- have implications for public services;

or if there is a need to authorize the ratification of a treaty which, without being contrary to the Constitution, would have an impact on the functioning of the nation's institutions.

If the referendum results show conclusive approval for the proposal, the president then officially announces the law fifteen days after the poll results.

Article 89 [Title XVI] of the Constitution deals more specifically with amendments to the Constitution. Such initiatives belong to the president and are based jointly on proposals from the prime minister and the members of parliament. In the case of referendums on constitutional change, the proposal can go forward only after both chambers of the legislature have passed the amendment. No revision can be made concerning territorial integrity or the republican form of government.²²

Real power ultimately rests with the president, however, as George Pompidou showed in the 1972 vote on expansion of the European Economic Community (EEC). He announced the vote three weeks before the government proposal was received, even though this contravened the constitutional requirements. It is possible to bypass a referendum on constitutional reform if both chambers meet at the request of the president and approve the constitutional amendment with a majority of three-fifths of the vote.²³

Article 60 states that the *Conseil Constitutionnel*, or Constitutional Council, is responsible for checking that the operations involved in the holding of a referendum conform to standards. It also announces the results. The government consults it on texts concerning the organization of voting in referendums. Local town councils usually monitor and administer the referendum process.

Linked to the *Conseil Constitutionnel* is the *Conseil Supérieure d'Audiovisuel* which monitors TV campaigns and has a specific list of parties that are authorized to take part in such a campaign. The *Conseil Constitutionnel* has been criticized in the past for being biased.²⁴

Ireland

Article 46.2 of the Irish Constitution states that the

government is required to put any issue to a referendum if it will alter the Constitution:

Every proposal for an amendment of this Constitution shall be initiated in Dáil Éireann as a Bill, and shall upon having been passed or deemed to have been passed by both Houses of the Oireachtas, be submitted by Referendum to the decision of the people in accordance with the law for the time being in force relating to the Referendum.

Article 17 of the Constitution states that any bill not amending the Constitution can be submitted to a referendum so long as there is a majority of the members of parliament or not less than one-third of the members of the Senate.

There is some confusion over the timing of the vote over the EU constitution. Recently, Ireland's Minister for Foreign Affairs said that the referendum would most likely be held in 2006. But the Taoiseach told the Dáil in early July 2004 that the referendum would take place in late 2005.

The Referendum Commission, which is part of the Department of Environment, Heritage and Local Government,²⁵ oversees the holding of referendums. It is an independent body set up by the Referendum Act, 1998 as amended by the Referendum Act, 2001. The Referendum Commission is independent in its actions and is supported by a secretariat from the Office of the Ombudsman.²⁶

Whenever a referendum is to be held, the establishment of a Referendum Commission is at the discretion of the Minister for the Environment, Heritage and Local Government. A Commission is created by means of an Establishment Order issued by the minister in respect of the proposed referendum. Within six months of completing its functions, the Commission furnishes a report on them to the minister and is then dissolved one month after submission of this report.

Under the Referendum Act, 1998 the Commission initially had the role of setting out the arguments for and against referendum proposals, having regard to submissions received from the public. Since the passing of the Referendum Act, 2001 this is no longer a statutory function of the Commission. The 2001 Act also removed from the Commission the statutory function of fostering and promoting debate or discussion on referendum proposals. Its current primary role is to explain the subject matter of referendum proposals, to promote public awareness of the referendum and to encourage the electorate to vote at the poll.

Luxembourg

Prime Minister Jean-Claude Juncker had stated that the referendum would be binding and initially wanted it to be held together with the 2004 European elections. The Lëtzebuergesch Sozialistesche Arbechterpartei (LSAP) brought a motion to the *Chambre des Députés*, or Chamber of Deputies, demanding a referendum on the EU Constitution. However, it did not say that this

referendum would be binding or consultative. In the vote, 54 of the 59 parliamentarians supported a referendum; five members of the Green Party abstained.

The government announced (10 November 2004) that it will be holding the referendum on 10 July 2005, just as Luxembourg takes over the presidency of the EU.²⁷

As with the Czech Republic, referendums are not a common practice in Luxembourg. The last one was held in 1937 and there is currently no permanent legislation on the procedure to be observed in such a case. For a constitutional amendment to be approved, the current legal requirement is a majority of two-thirds of the votes from the parliament, with at least three-quarters of members present. It shall be the task of the incoming *Chambre des Députés*, elected on 13 June 2004, to adopt an adequate legislative and regulatory framework.

Netherlands

In both chambers of the *Staten Generaal*, the Dutch parliament, there is a stable political majority in favour of holding a referendum on the European Constitution. It will be the first nationwide referendum in Dutch history. In a speech early 2005 to the conference of Dutch ambassadors, the Minister for European Affairs, Atzo Nicolai, said that the most likely date for the referendum would be the last Wednesday in May or a Wednesday in June 2005.²⁸ The poll is not expected to be binding but the government has said it will respect the outcome.

In the Netherlands there is a general law for holding referendums: the *Tijdelijke referendumwet*. This law, however, is not applicable to the referendum on the European Constitution. For this, a special law has been under consideration in the Second Chamber of the *Staten Generaal*, the *Wet raadplegend referendum Europese Grondwet*.

The original proposal of this Referendum Bill fixed the referendum date for the first Wednesday 50 days after the signing of the European Constitution. Changes were proposed to the original Referendum Bill in the Second Chamber:

- an independent referendum committee decides on the date of the referendum;
- the legally fixed date is dropped and the referendum committee is given a time limit within which to act.

This implies the following:

- the referendum law will come into force;
- the referendum committee will be established;
- a legal term (of 50 or 85 days) will start;
- the referendum committee will have a time limit of just over two months in which to fix the referendum date (with or without the consent of the government – see below);
- the referendum will then be held before or

during the parliamentary debate on the law ratifying the European Constitution.

Besides the proposed changes to the draft law mentioned above, the Minister of Interior and Kingdom Relations has, on behalf of the Secretary of State for European Affairs, sent a letter to the Second Chamber indicating his wish for a change in the proposed amendments – namely, that the date for the convening of the referendum committee be chosen in conformity with the government's wishes. The Senate passed the bill in January 2005.²⁹

De Kiesraad is the Election Council, which usually monitors the democratic process, but a proposal in the Bill (as noted above) sets up an independent Referendum Committee, to be appointed by the Second Chamber on the basis of nominations from five independent advice organs. The Committee will have three tasks:

- to make a summary report on the EU constitution;
- to decide the date of a referendum (but, as already mentioned, the Minister of the Interior recently submitted a letter requesting that the government's views be taken into account)
- to subsidize the pro and anti groups (maximum of 1 million euros each)

This last point sparked controversy after recent reports indicated that the government had reserved 1.5 million euros on top of the above subsidy.

Poland

Poland has announced that it will be holding a referendum to coincide with the presidential elections in late 2005. Tough debate is expected on the referendum, with the number of supporters and opponents of ratification evenly split. Opinion polling suggests, however, that 56 per cent of Poles would vote in favour.³⁰

Poland's Constitution allows for the holding of referendums on matters of particular importance to the state. A majority of at least 50 per cent of the serving members of the Polish parliament must vote in favour of the referendum, which must then be approved by a majority of at least 50 per cent of the serving members of the Senate. The result of the referendum is only binding if there is at least a 50 per cent turnout of registered voters and this is one of the reasons given for holding it at the same time as the election. The regulations for the holding of a referendum are specified by statute and its validity is determined by the Polish Supreme Court.³¹

Portugal

Speaking at a meeting of the National Council (7 October 2003) of his ruling Social Democratic Party (PSD), then Prime Minister José Manuel Durão Barroso decided to hold a referendum on the European Constitution, declaring that 'it is essential that [the

Constitution] is legitimised by the people before it takes effect'. He later indicated his preference that the poll take place in early 2005.³² It was anticipated that it would be held in April, but a political crisis in the country has led to the calling of a general election on 20 February 2005, and the referendum will thus be delayed. In December 2004, the *Tribunal Constitucional*, or Constitutional Court, rejected the question that was finally put forward by the parliament after some debate.³³ The *Tribunal Constitucional* deemed it unconstitutional on the basis that it was too difficult to answer a clear 'Yes' or 'No'.³⁴ The Portuguese Constitution stipulates that a date for holding a referendum cannot be set until after the general election.

According to the Portuguese Constitution a referendum is provided for on issues of national interest when proposed by the government or parliament; binding referendums are provided for in order to give approval to international conventions.

The referendum law is the *Lei Orgânica do Regime do Referendo* (Organic Law of the Referendum Regime) 15-A/98, of 3 April 1998. Each referendum can refer to only one subject and the maximum number of questions in a referendum is three. As well as Portuguese citizens registered in the national territories and those registered voters residing abroad (when the referendum refers to a subject that specifically concerns them), Portuguese language speaking citizens who reside in the national territory and benefit from the special equality of status with regard to political rights can also vote in a referendum.³⁵

A referendum proposal can be initiated by deputies or parliamentary groups (parliamentary initiative), by the government (government initiative), or by the 'citizens' groups' (popular initiative). Portuguese citizens registered to vote in the national territory and those registered voters residing abroad (when a referendum refers to a subject that specifically concerns them) can belong to a 'citizens' group'. The minimum number of subscribers for such a group is 75,000.

A 'citizens' group' can present a referendum proposal in the form of a popular initiative which must be presented in writing to the *Assembleia da Republica*, or parliament. This must contain:

- complete names, ID numbers and signatures of the citizens;
- the exact question or questions to be submitted in the referendum;
- the composition of the group's executive commission (at least two members).

It is the group's executive commission that represents it before the law. According to Article 28 of *Lei Orgânica* 15-A/98, the *Tribunal Constitucional* verifies the constitutionality of the referendum proposal. The president of the Republic is responsible for convening the referendum through a decree 20 days after the decision made by the *Tribunal Constitucional*. The

decree must contain the questions in the referendum proposal and the date of the referendum. This must be between the 60th and 90th day after publication of the decree.

The referendum results can be publicly announced 19 hours after the closing of the ballot boxes. If the outcome of a binding referendum is 'yes', then the *Assembleia da Republica* must approve the international convention or the legislative act not less than 60 and not more than 90 days later. If the outcome is 'no', then the *Assembleia da Republica* cannot approve the international convention or the legislative act regarding the questions that were submitted to the referendum. The result of the referendum is only compulsory when more than 50 per cent of the enrolled electors have cast a vote.

The body that oversees the holding of referendums is the *Comissão Nacional de Eleições*, or National Election Commission.

Spain

In Spain, Prime Minister José Maria Aznar pledged to hold a referendum, and his successor prime minister, José Luís Rodríguez Zapatero, told parliament that he wanted to hold a referendum as quickly as possible.

Indeed Spain will be the first country to hold a referendum, on 20 February 2005. The question to be asked is: '*Aprueba usted el Tratado por el que se instituye una Constitución para la Unión Europea?*' [Do you approve the Treaty establishing a Constitution for the European Union?]. Both the government and the leading opposition party, the PP, will campaign for a 'yes' vote.

Article 92 of the Spanish Constitution of 1978 reads: 'Political decisions of special importance may be submitted to all citizens in a consultative referendum. The referendum shall be called by the King on the proposal of the Prime Minister, following authorization by the *Congreso de los Diputados* [Congress of Deputies]. An organic law shall regulate the terms and procedures for the different kinds of referendum provided for in the Constitution.' The authorization request made by the prime minister to the *Congreso de los Diputados* must include the exact terms of the question. This request must be published in the country's leading newspapers as well as provincial newspapers within five days of its official publication in the *Boletín Oficial del Estado* ([*Official Gazette*]). It will also be broadcast on radio and television. The *Congreso de los Diputados* can then authorize it if there is an absolute majority (176 votes out of 350).

The law regarding the holding of referendums is *Ley Orgánica (LO) 2/1980, de 18 de enero, sobre Regulación de las Distintas Modalidades de Referéndum* or Organic Law 2/1980 which was passed on 18 January 1980. It was later modified by *Ley Orgánica (LO) 12/1980*. This law contains specifications on the campaign in the mass media, the act of voting and other issues such as which parties can take part in the referendum process. According to Article 15 of this law, the campaign cannot last less than 10 days or more than 20 days. The campaign will end on the day before

polling day. Moreover, during the five days preceding polling day, publication of or commentary on opinion polls which are directly or indirectly related to the referendum issue is prohibited. According to Article 4 of *Ley Orgánica (LO) 2/1980*, there must be at least a 90-day period free of parliamentary and local elections and any other referendums before a particular referendum can be held.³⁶

On 29 November 2003, a specific organic law, *Ley Orgánica (LO) 17/2003*, was passed. This established measures to hold European Parliament elections and a possible referendum on the EU constitution.

The *Junta Electoral Central*, or Central Electoral Commission, oversees the holding of referendums in Spain. This central commission consists of local bodies called Provincial Electoral Commissions and Zone Electoral Commissions which are established throughout the country. They also make sure that the rules and regulations are being followed. According to *Ley Orgánica (LO) 2/1980*, the cities of Ceuta and Melilla count as electoral zones. The *Junta Electoral Central* announces the results after it has collected them from the Provincial Electoral Commissions, and publishes them in the *Boletín Oficial del Estado*. The Ministry of the Interior plays a logistic role while the National Institute of Statistics helps to determine the eligibility of voters.

Article 14 of *Ley Orgánica (LO) 2/1980* states that expenses are paid to political groups with representation in Las Cortes Generales, or the General Courts, in proportion to the number of deputies each group has. Postage costs for referendum campaign material are tax free. For the coming referendum each party received 8,571 euros per deputy.

The Spanish Constitution permits both a binding and a consultative referendum. Article 9 of *Ley Orgánica (LO) 2/1980* states that if, once the referendum has been held, there is not an absolute majority of voters in each province in favour of ratification, then no further referendum can be held for five years. The referendum on the EU Constitution will be a consultative one and a vote will be held in the *Cortes Generales*.

United Kingdom

Prime Minister Tony Blair delivered a statement to parliament on 20 April 2004 announcing plans for the UK to hold a referendum on whether to ratify the Constitution.³⁷

The crucial issue now is the timing of the vote. The prime minister is adamant that parliament debate the issue before it is put to the people. This makes a referendum improbable before the next general election, predicted for May 2005. But the opposition Conservative party wants a vote as soon as possible and argued that one could have been held in autumn 2004. It is increasingly likely that the UK will be one of the last countries to hold a referendum; both the Foreign Secretary Jack Straw and the Europe Minister Denis MacShane have made clear that the referendum would not be held until 2006 at the earliest. This late date would avoid any clash with the UK's holding of

the EU Presidency in the second half of 2005.

The European Union (EU) Bill was introduced in the House of Commons on 25 January 2005.³⁸ The Bill establishes the details of the referendum to be held and makes provision for the Treaty to be given effect in UK law if the referendum approves it. The ratification process begins with Parliamentary scrutiny of this Bill. The question to be asked is: 'Should the United Kingdom approve the treaty establishing a constitution for the European Union?' The Foreign Secretary, Jack Straw, commented a little further on the timing of the vote, saying it could be held in the spring of 2006.³⁹

MPs passed the EU Bill at its second reading by a majority of 215 on 9 February 2005.⁴⁰ It will now go on to the Committee Stage. If a General Election is called before the Bill is given the Royal Assent, then the Bill must be re-introduced in the new political term.

The Electoral Commission oversees the holding of a referendum. It has important responsibilities in relation to referendums in the UK. In summary, in the UK, the Commission will:

- publish its views as to the intelligibility of the referendum question proposed by the government. It was satisfied with the question proposed in the EU Bill.⁴¹
- register organizations wishing to campaign in relation to a referendum as permitted participants;
- monitor spending on referendum campaigning in line with the referendum expenditure limits imposed by the Political Parties, Elections and Referendums Act (PPERA);
- consider appointing lead campaign groups known as designated organizations on either side of the campaign;
- ensure that designated organizations (if appointed) have access to certain assistance.⁴²

In addition, the Chairman of the Commission will be the Chief Counting Officer (or will appoint someone else to carry out this role), who will appoint a counting officer for each local authority area within the referendum area. The Chief Counting Officer will ensure the accuracy of the overall result and announce it.

Until the introduction of the Political Parties, Elections and Referendums Act 2000 (PPERA), Britain had no specific legislation regarding referendums and new legislation was introduced on an ad hoc basis. However, PERA now provides a consistent legal framework for all popular votes in the UK.

*The Political Parties, Elections and Referendums Act 2000 (PPERA)*⁴³

Permitted Participants

Permitted Participant is the term used under PERA to describe a campaigner who has registered with the Commission to campaign on a given election or referendum. Unless registered with the Commission,

campaigners are restricted to spending no more than £10,000 on their campaign. Once registered they may spend more than £10,000 in accordance with the financial regulations set down by PPERA.

To register as a Permitted Participant, an individual, company or political party must submit a notification of permitted participant status to the Commission. This must specify the referendum to which the notification relates and the outcome for which the participant will be campaigning. It will also name the individual responsible for the participant's financial compliance with PPERA. Registration can only occur once the formal referendum period has begun.

Designated Organization

A permitted participant may also apply to be a designated organization for any given referendum. Designated organizations are the lead campaigners in the referendum and have higher limits on campaign expenses than other permitted participants. They are also eligible for public funding. The Commission will only appoint designated organizations if a permitted participant can be designated for each of the specified outcomes.

Donations

PPERA controls the donations that permitted participants may receive for their campaigns. A donor must be registered on the electoral role or be a UK-registered:

- company;
- trade union;
- building society;
- Limited Liability Partnership;
- friendly/building society; or
- a UK-based unincorporated association.

Designated organizations can also take donations from UK registered political parties. All campaign donors (unless their donation is below £5,000 and they are permissible donors) must be identifiable and identified on the donation reports that permitted participants must submit to the Commission with their referendum expense returns. Information must be provided to identify all donors as permissible sources. If any donor cannot be identified then their donation must be returned either to a recognizable financial institution or to the Commission.

Referendum expenses

Referendum expenses are defined by PPERA as spending incurred in connection with any of the following:

- referendum campaign broadcasts;
- advertising;
- unsolicited material to electors;
- referendum material;
- market research and canvassing;
- media/publicity;
- transport;

- rallies and other events; and
- incremental overheads.

Certain benefits in kind are also included as referendum expenses, i.e. payments made towards some aspect of the campaign by sympathetic individuals but not donated as money.

Limits

Spending limits depend on the category of the permitted participant with the designated organization, and political parties which achieved over 30 per cent of the vote in the previous Westminster elections having the highest limits on expenditure. For a UK-wide referendum the expenses would be as follows:

Designated organization	£5m
Political party (over 30% of vote)	£5m
Political party (20–30% of vote)	£4m
Political party (10–20% of vote)	£3m
Political party (5–10% of vote)	£2m
Political party (less than 5% of vote)	£0.5m
All other permitted participants	£0.5m

Timetable

Before a referendum there is a designated 'referendum' period, usually from the day the Bill is introduced in parliament to the day of the poll itself, during which all PPERA regulations surrounding campaigning expenditure and publicity apply. If the Secretary of State reserves the right to name the date at a later stage, PPERA is usually triggered nevertheless. A referendum period of 10 weeks is assumed; applications for permitted participant and designated organization status must be submitted within the first four weeks. The Commission will appoint the designated organizations within a two-week period, leaving a campaign run of four weeks.

The question

The wording of a referendum question will be specified in the Bill which provides for the referendum but under PPERA the Commission must consider the wording of the question and publish a statement on its intelligibility. As a result the Commission has set out a series of guidelines concerning the question:⁴⁴

- It should prompt an immediate response.
- There should be no positive or negative connotations in the language of the question.
- The language should not be intentionally leading.
- The language should not be loaded.
- There should be no jargon.
- The language should be consistent.
- The language should be understood by the voter and reflect his/her usage.
- The question should contain no superfluous information.
- The question should not be unnecessarily long.

Endnotes

- ¹ Conclusions of the Nice Council can be found at: http://ue.eu.int/ueDocs/cms_Data/docs/pressData/en/ec/00400-r1.%20ann.en0.htm.
- ² The Laeken Declaration and the conclusions of the Presidency can be found at: http://ue.eu.int/ueDocs/cms_Data/docs/pressData/en/ec/68827.pdf.
- ³ http://www.ueitalia2003.it/EN/Notizie/convenzioni/Notizia_0929015601.htm.
- ⁴ http://www.ueitalia2003.it/EN/Notizie/convenzioni/Notizia_12132035230.htm.
- ⁵ See 'IGC – European Leaders put constitution on ice until March', Europe Information Service, European Report, 17/12/03.
- ⁶ <http://ue.eu.int/igcpdf/en/04/cg00/ch00070.en04.pdf>.
- ⁷ For a full account of the compromises on voting agreed at the Brussels Conference, see 'Historical deal sealed on Europe's first constitution' in Europe Information Service, *European Report*, 23/06/2004.
- ⁸ The text of the resolution is as follows:
'The Convention recommends to the Inter-Governmental Conference that the draft European Constitution be approved not only by National Parliaments and the European Parliament but also by the citizens of Europe in binding referendums. These referendums should take place in accordance with the constitutional provisions of the member states. They should be held simultaneously on the same day, an option being the same day as the European Parliamentary Elections in June 2004. Those member states whose constitutions do not currently permit referendums are called upon to hold at least consultative referendums. An information campaign must be publicly funded.'
- ⁹ Article 46 of the Irish Constitution states that any issue that will alter the constitution must be put to a referendum.
- ¹⁰ State of the Nation address by Luxembourg Prime Minister Jean-Claude Juncker, 2003.
- ¹¹ Interview with *La Montagne*, 24 March 2004.
- ¹² EUobserver.com, Referenda on EU section, 30/09/04.
- ¹³ www.euobserver.com.
- ¹⁴ 'Skin deep', *The Prague Post*, 05/08/04.
- ¹⁵ 'Czech President calls on experts to check on EU Constitution', www.euobserver.com, 03/02/05
- ¹⁶ www.im.dk.
- ¹⁷ J. T. Rourke, R.P. Hiskes and C.E. Zirakzadeh, *Direct Democracy and International Politics Deciding International Issues through Referendums* (Boulder, CO: Lynne Rienner Publishers, 1992).
- ¹⁸ See http://www.eu-oplysningen.dk/fakta_en/denmark/referenda/.
Subsection 6 of Section 42 in the Constitutional Act lays down that Bills ratifying international treaties can be subjected to a referendum if the *Folketing* decides to test the ratification at a referendum by introducing a separate Bill. This provision led to the referendum of 18 May 1993 on the Edinburgh Agreement. There was general agreement on holding this, even though there was every chance that the 150 Folketing majority would support the Agreement in Parliament. With a majority vote the possibility of holding a referendum would be excluded in accordance with Section 20 of the Constitutional Act. Since the Edinburgh Agreement was an international treaty it was therefore decided to ensure a referendum by reverting to the provision in Subsection 6 of Section 42 in the Constitutional Act. The Maastricht Treaty was appended and both it and the Edinburgh Agreement were passed.
- ¹⁹ www.eu-oplysningen.dk.
- ²⁰ 'France plans EU constitution poll', BBC News, 14/07/04.
- ²¹ 'Les socialistes français ont voté oui', www.rfi.fr, 02/12/04
- ²² Article 89, Title XVI, French Constitution.
- ²³ Rourke, Hiskes and Zirakzadeh, *Direct Democracy and International Politics*.
- ²⁴ This was argued with regard to the April 1972 vote on the EEC, for instance, where the Council's role in supervising radio and TV campaigns was questioned.
- ²⁵ www.viron.ie.
- ²⁶ www.refcom.ie.
- ²⁷ 'Luxembourg announces Constitution referendum date', www.euobserver.com, 10/11/04
- ²⁸ 'EU Constitution: Senate agrees to referendum', www.government.nl, 25/01/05
- ²⁹ 'Dutch Upper House backs EU referendum on constitution', www.eubusiness.com, 25/01/05
- ³⁰ 'Constitution de l'UE', Agence France Presse, 05/10/04.
- ³¹ See Article 125 of the Polish Constitution, <http://www.sejm.gov.pl/english/konstytucjalkon1.htm>.
- ³² 'Portugal gets its referendum on EU constitution', The Portugal News, 18 October 2003
- ³³ The question was: "Do you agree with the Charter of Fundamental Rights, the rule of voting by qualified majority and the new institutional framework of the European Union, in the terms included in the European constitution?".
- ³⁴ 'Top Portuguese court rejects EU Constitution referendum question', www.eubusiness.com, 17/12/2004
- ³⁵ *Lei Orgânica do Regime do Referendo 15-A/98*. http://www.cne.pt/Eleicoes/dlfiles/legis_lorr2002.pdf.
- ³⁶ *Ley Orgánica (LO) 2/1980, de 18 de enero, sobre Regulación de las Distintas de Referéndum*, http://noticias.juridicas.com/base_datos/Admin/lo2-1980.html.
- ³⁷ Prime Minister Tony Blair's statement to Parliament on the EU White Paper and the EU Constitution, 20 April 2004, <http://www.number-10.gov.uk/output/Page5669.asp>.
- ³⁸ <http://www.publications.parliament.uk/pa/cm200405/cmbills/045/2005045.pdf>
- ³⁹ 'EU referendum question unveiled', news.bbc.co.uk, 26/01/2005
- ⁴⁰ 'EU referendum vote backed by MPs', news.bbc.co.uk, 09/02/2005
- ⁴¹ <http://www.electoralcommission.gov.uk/media-centre/newsreleasereferendm.cfm/news/416>
- ⁴² www.electoralcommission.gov.uk.

⁴³ For access to the Political Parties, Elections and Referendums Act visit the Electoral Commission website. See also <http://www.hmso.gov.uk/lacts/acts2000/00041—a.htm#1>.

⁴⁴ See http://www.electoralcommission.org.uk/files/dms/QuestionAssesmentGuidelinesOct03_10833-8644_E_N_S_W_.pdf.

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The authors would also like to acknowledge the assistance of Dr David Phinnemore and Professor Clive Church in the production of this briefing paper.

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Appendix A:***Prospective Referendum Timetable***

2005:	First Half:	Spain (20 February) Portugal Netherlands France
	Second Half:	Luxembourg (10 July) Ireland Poland
2006:		Denmark United Kingdom Czech Republic (June)

Appendix B:

Summary of the ratification process in all member states

Country	Ratification method	Body overseeing referendum process (if applicable)	Possible timing of referendum (if applicable)
Austria	Ratification by national parliament. Chancellor Schüssel has so far ruled out a referendum, but has shown support for a Europe-wide poll. ¹	-	-
Belgium	Prime Minister Verhofstadt has expressed his desire for a non-binding referendum, but for now official ratification will be through the parliament. ²	-	-
Cyprus	Ratification by national parliament and a referendum very unlikely. No referendum was held over EU membership. ³	-	-
Czech Republic	Referendum to be held (new laws are being drafted as there is no tradition of holding referendums). ⁴	-	June 2006
Denmark	Referendum to be held. ⁵	Indenrigs- og Sundhedsministeriet (Ministry of Interior and Health)	Late 2005/Early 2006
Estonia	Ratification by national parliament. ⁶	-	-
Finland	Ratification by parliament. However, the Minister of Justice, Johannes Koskinen, suggested recently that a referendum could be held at the same time as the presidential elections in 2006. ⁷	-	-

France	Referendum to be held. ⁸	Le Conseil Constitutionnel (Constitutional Council)	June 2005
Germany	Ratification by national parliament, ⁹ A move towards changing the Constitution to allow for a referendum has been proposed by the ruling coalition who have agreed a draft text for a new law. There is no certainty, however, that any law to change the German Constitution in this way would be approved by a parliament, which is which is deeply divided over the issue.	-	-
Greece	Ratification by parliament. ¹⁰	-	-
Hungary	Ratified by parliament on 11 November 2004	-	-
Ireland	Referendum to be held. ¹¹	Referendum Commission	Late 2005
Italy	Ratification by parliament possibly by the end of 2004. There is currently a bill proposing changes to the constitution to allow for referendums to be held on international treaties). ¹²	-	-
Latvia	Ratification by parliament. ¹³	-	-
Lithuania	Ratified by parliament on 11 November 2004.	-	-
Luxembourg	Referendum to be held (new laws are being drafted, no referendum tradition). ¹⁴	-	10 July 2005
Malta	Ratification by parliament. ¹⁵	-	-

Netherlands	Referendum to be held. ¹⁶	Creation of a referendum committee currently under discussion	May/June 2005
Poland	Referendum to be held.	-	Late 2005
Portugal	Referendum to be held. ¹⁷	Comissão Nacional de Eleições	Early 2005
Slovakia	Ratification by parliament, although there is some support for a referendum, including from Slovakia's EU commissioner, Jan Figel. ¹⁸	-	-
Slovenia	Ratified by parliament on 1 February 2005.	-	-
Spain	Referendum to be held. ¹⁹	Junta Electoral Central	20 February 2005
Sweden	Ratification by parliament by the end 2005 according to a working plan from the Social Democrat government. Bill on ratification to be presented by September 2005, with view to adoption in December of the same year. A parliamentary majority is in favour of the Constitution with few calls for referendum, except from Greens and the Left Party. ²⁰	-	
United Kingdom	Referendum to be held. ²¹	Electoral Commission	2006

¹ Austrian Foreign Ministry (www.bmaa.gov.at). euobserver.com, Referenda on EU constitution section, 28/10/03.

² Belgian Embassy, London.

³ Cyprus High Commission, London.

⁴ Embassy of the Czech Republic, London.

euobserver.com, Referenda on EU constitution section, 28/10/03.

⁵ www.im.dk.

www.eu-oplysningen.dk.

⁶ www.european-referendum.org.

⁷ 'Finnish minister suggests EU poll in 2006', euobserver.com, 11/08/04.

⁸ www.conseil-constitutionnel.fr.

'France plans EU Constitution poll', BBC News, 14/0704.

⁹ Article 20 of the German Constitution, 1949, emphasizes representative democracy.

¹⁰ www.european-referendum.org.

¹¹ www.refcom.ie

Article 46, Irish Constitution.

¹² euobserver.com, Referenda on EU constitution section, 29/10/03.

¹³ Embassy of the Republic of Latvia, London

¹⁴ Embassy of Luxembourg, London.

www.luxembourg.lu

¹⁵ Malta High Commission, London.

¹⁶ 'Dutch distemper', The Economist, 17/07/04.

Royal Netherlands Embassy, London.

¹⁷ www.cne.pt.

'Portugal gets its referendum on EU constitution', The Portugal News, 18/10/03.

¹⁸ euobserver.com, Referenda on EU constitution section, 29/10/03.

¹⁹ 'Spain to hold Constitution referendum in February 2005', EurActiv, 26/07/04.

²⁰ euobserver.com, Referenda on EU constitution section, 30/09/04.

²¹ www.electoralcommission.gov.uk.

'No UK referendum before 2006' says MacShane, euobserver.com, 07/06/04.