CENTRE FOR EUROPEAN REFORM
briefing note

A FRENCH LESSON FOR EUROPE? A GUIDE TO THE REFERENDA ON THE EU CONSTITUTIONAL TREATY

By Daniel Keohane

On May 29th France will hold the second of ten national referenda on the EU constitutional treaty. The 25 EU governments have until November 2006 to ratify the treaty.[1] Legally, if one of the governments fails to ratify the treaty, it cannot come into force. According to current opinion polls, there is a strong chance that France will vote No, which would probably kill off the treaty for good. Even if France votes Yes on May 29th, the treaty still faces a difficult passage in referenda in other countries. These include the Netherlands, which votes on June 1st, and Britain, which is set to vote next year.

[1] *For an eight-page summary of the constitutional treaty see 'The CER guide to the EU's constitutional treaty', CER, July 2004.*

At the time of writing (April 2005), Hungary, Italy, Lithuania and Slovenia had already ratified the constitutional treaty by parliamentary vote.[2] The German parliament is expected to ratify the treaty in May. On February 20th, Spain became the first country to hold a referendum on the constitutional treaty. Spanish voters adopted the treaty by an impressive 77 per cent, although the turnout was a less spectacular 42 per cent. (The Spanish parliament has promised to respect the result of the February referendum when it votes on its ratification later in the year.)

[2] *See the table at the end of this briefing note for a list of which countries say they will or will not hold referenda, when referenda will take place, and the odds of a country voting for or against the constitutional treaty. Please note that this is the third version of this guide – the previous versions, published in October 2004 and February 2005, can be found on the CER website: www.cer.org.uk.*

Governments can ratify the constitutional treaty by a parliamentary vote, or they can hold a referendum – in a few member-states a referendum is mandatory. Ten EU governments say they will hold referenda on the constitutional treaty. The other 15 governments will ratify the document in their parliaments. Depending on which countries – if any – vote No and by what margins, it is even possible that the vast majority of EU members may push ahead with the constitutional treaty and leave the naysayers behind.

Who's having a referendum?

Referenda give citizens a direct say over their futures, but they are also blunt political instruments. Hopefully those on the treaty will raise the level of public debate and understanding of the EU across Europe – provided they are preceded by well-organised national debates. But referenda have their drawbacks too. In particular, governments can lose. The unpredictability of referenda is one reason why most governments have traditionally ratified EU agreements in their parliaments, assuming a majority would vote in favour.

However, some analysts in the Czech Republic and Poland think it would be easier to ratify the constitutional treaty through a referendum than in their parliaments, because the governments in Prague and Warsaw are weak and the main political parties are split on the issue. And despite the apparent

Centre for European Reform
29 Tufton Street
London SW1P 3QL UK
T: 00 44 20 7233 1199
F: 00 44 20 7233 1117
info@cer.org.uk / www.cer.org.uk

drawbacks of referenda, some ten governments – representing over half the EU's population – say they will have a referendum. This is a seismic shift in EU politics. In the past only a few countries – Denmark, France, and Ireland – have held referenda on revisions of the EU treaties.

All sorts of member-states have decided to hold referenda on the new treaty. On the one hand they include member-states that have held referenda on EU treaties before, like France and Denmark. On the other, some states that have never held a direct vote will have their first referendum, such as the Netherlands. Size doesn't matter either – referendum countries include large member-states, like Britain and Spain; and much smaller ones like Ireland and Portugal. And membership age is irrelevant too; some EU founding countries, such as Luxembourg, are having referenda, as are two of the newest members, the Czech Republic and Poland.

The timing conundrum

Spain held the first referendum on the constitutional treaty, in February 2005. The next batch of countries to vote, in the summer of 2005, consists of France, the Netherlands and Luxembourg. There is an outside chance that Portugal will hold its referendum this summer. The main Portuguese opposition party, the Social Democrats, would like the government to have the constitutional treaty referendum before it holds a separate referendum on legalising abortion, which is planned for June. But the Socialist government in Lisbon has suggested that it should hold the treaty referendum on the same day as the Portuguese regional elections, which are due in October. The advantages of going early are twofold. First, the initial group of referenda will set the tone for the other countries. The Spanish government argued to its citizens in February that they should vote Yes to show the rest of Europe the way forward. Second, if the Netherlands or another country voted No in 2005, they would, in theory, have enough time to hold a second referendum by the end of 2006.

A few countries will wait until 2006. This group currently includes Britain and the Czech Republic, and Ireland might also wait until next year. Britain holds a general election on May 5th 2005, and the Labour government has understandably decided to wait for the outcome of the election before setting a date for the referendum. In addition, Britain will hold the EU presidency in the second half of 2005 and if the Labour government is re-elected, it does not want to have a referendum during its stint in the EU hot seat. However, the main opposition party, the Conservatives, say that if they form the next British government, they will hold the referendum within six months of the election – and that they would campaign for a No vote.

The Czech government has said it would probably hold its referendum on the same day as a general election, which must be held by the summer of 2006. However, the government in Prague is currently in crisis and may soon fall. A new Czech government might decide to hold a referendum later this year, instead of waiting until 2006. The Irish government has not yet decided, although one reason for the Fianna Fáil-led government to have a referendum this year would be to capitalise on Sinn Féin's falling popularity in current opinion polls. Sinn Féin opposes the constitutional treaty, and was one of the two political parties that drove the No campaign in the two Irish referenda on the Nice treaty in 2001 and 2002 (the other was the Green Party). But some Irish officials say the longer the government waits the better, as it is less than three years since the Irish electorate last voted on an EU treaty. Irish voters may not have the stomach just yet for another EU referendum, and therefore Ireland might vote as late as possible.

There are two advantages of going later. One is that if a preceding country, for instance France, had already voted No, then these governments would know that they would not be isolated if their electorate rejected the treaty – indeed their referendum may prove irrelevant. The second advantage could be that if all the preceding countries voted Yes it would give London, Prague – and possibly Dublin – an extra argument in favour of the treaty, namely that their country should not isolate itself from the European mainstream.

Referenda are unpredictable

Since there will be up to nine further referenda, there is a strong chance that at least one country will vote No. There are a number of reasons for this. One is that referendum campaigns are extremely unpredictable. Voters might not decide how they will vote based on arguments for or against the constitutional treaty; they may be more influenced by their government's general performance. And if they think their government is performing poorly on domestic issues, one good way to 'kick them in the shins' would be to vote against the constitutional treaty. Some French voters may vent their anger over President Chirac's tough pension and labour market reforms by voting *Non* in the referendum on May 29th.

Naturally, politicians are playing politics with the treaty. For instance, French politicians have already tried to use the constitution to bolster their domestic prestige. Last December the opposition Socialist party held

an internal ballot on the constitutional treaty, which pitted the Socialist leader François Hollande against the former prime minister Laurent Fabius. Both men would like to be the Socialist presidential candidate in 2007, and Hollande supports the constitutional treaty but Fabius opposes it. The Socialists approved the treaty by a convincing 60 per cent. However, Fabius has since resurrected his No campaign. In one recent opinion poll a majority of French Socialists (52 per cent) said they opposed the treaty.[3] There are similar presidential rivalries on the French centre-right. Nicolas Sarkozy, the head of the ruling UMP party and presidential hopeful, is in favour of the treaty. But, given that a victory for the No's would greatly weaken his rival Chirac, there are questions over how forcefully he will campaign for a Yes.

[3] *Henri de Bresson, 'Le non progresse à droite et à gauche', Le Monde, April 13th 2005.*

Furthermore, well-run campaigns matter. In France, the No side has managed to seize the initiative so far. At the time of writing (mid-April 2005), the Yes campaign did not even have its own headquarters. Over the next six weeks, President Chirac faces a tough task, trying to both counter the No agenda and put forward a positive case for the constitutional treaty. In the first Irish referendum on the Nice treaty in 2001, the Irish government was complacent. Dublin assumed the Irish electorate would vote in favour, as they had done in four previous EU referenda. However, the No side capitalised on the Irish government's complacency and set the agenda for the campaign. This was one reason why the Irish duly voted No.

Another reason why these referenda are hard to predict is that different issues will dominate the debate in different countries. Many British Conservatives and French Socialists oppose the treaty, but for very different reasons. Immigration and asylum could dominate British deliberations, while social policy is high on French voters' agenda. Even irrelevant issues can become divisive in a referendum debate. Defence policy was paramount in the Irish debate on the Nice treaty in 2001, even though the defence provisions in that treaty did not affect Ireland's long-standing policy of neutrality. Similarly, the European Commission's services directive, the aim of which is to open up the EU market for services – and which technically has nothing to do with the constitutional treaty – has become a major issue in the French campaign. This is because the treaty embodies the kind of liberal Europe that many French dislike, and the services directive reinforces their fears that the EU is becoming too liberal.

Referenda on EU accession have had an extremely high success rate, as only one country – Norway – has voted (twice) against joining the EU, out of the 15 countries that have held accession referenda. This is hardly surprising, since voters were asked a simple question of whether their country should join the EU or not. But referenda on EU treaties have had more mixed results, partly because they tend to get mixed up with other issues. This is yet another reason to think that the constitutional treaty will be defeated in at least one country. France's sole treaty referendum to date, on the Maastricht treaty in 1992, barely passed, with only 51 per cent voting in favour. The only other countries to hold treaty referenda before this year, Denmark and Ireland, have fared worse. The Danes voted against the Maastricht treaty in 1992, and the Irish voted against the Nice treaty in 2001.

Who is most likely to vote No?

Most EU member-states are likely to ratify the constitutional treaty. However, recent Eurobarometer opinion polls show a consistent rise in negative EU sentiment across Europe. And not only in 'eurosceptic' countries like Britain and Sweden, but also in founding members such as the Netherlands and Italy. Anti-EU sentiment is hardly related to the treaty: a March 2005 Eurobarometer report showed that one-third of EU citizens have not even heard of the constitutional treaty.[4]

[4] *Eurobarometer, 'The future constitutional treaty', March 2005. Available from http://europa.eu.int/comm/public_opinion/archives/ebs/ebs_214_en.pdf.*

Britain has the highest share of people opposing the treaty. In some British opinion polls half the voters say they are opposed to the treaty, less than a third are in favour and the rest are undecided.[5] Surprisingly, a January 2005 opinion poll in the eurosceptic *Sunday Telegraph* newspaper revealed much more positive figures: 39 per cent of those polled supported the constitutional treaty, with 41 per cent against. British pro-Europeans hope this is a sign that the tide can turn in their favour. However, Britain is the only EU country where the polls have not yet shown a single majority approving the treaty, and for that reason the UK is the most likely candidate to vote No.[6]

[5] *For detailed polls see http://www.mori.com/europe/index.shtml.*

[6] *See also Charles Grant, 'The peculiarities of the British', CER Bulletin, August/September 2004.*

Two recent opinion polls in France, one for *Le Figaro* and one for *L'Express*, show the same figures: voters currently oppose the constitutional treaty by 53 per cent, with 47 per cent in favour.[7] Support has dropped dramatically, from 64 per cent last September, giving French officials an uneasy feeling of *déjà vu*. In 1992, when the then-President François Mitterrand called for a referendum on the Maastricht treaty,

[7] *Christophe Barbeir, 'Référendum: le non défie Chirac' L'Express, April 12th 2005; and Guillaume Perrault, 'Le non s'enracine', Le Figaro, April 12th 2005.*

opinion polls showed 65 per cent of the population in favour. In the event, only 51 per cent voted Yes. Understandably, President Chirac would prefer to avoid such a nail-bitingly close result, not to speak of an outright rejection.[8] Based on current opinion polls, France is the next most likely candidate to vote No after Britain.

[8] *See Aurore Wanlin, 'Will the French vote 'Non?', CER Bulletin, February/March 2005.*

The countries where it is currently more likely, but by no means definite, that there will be a Yes vote include the Czech Republic, Denmark, Ireland, the Netherlands and Poland. Even though the Netherlands is a founding member of the EU, the Dutch referendum on June 1st could come down to the wire. Public dissatisfaction with the EU has grown in recent years, especially since many Dutch feel they pay too much into the EU budget and get too little reward in return. In addition, the current Dutch government is weak and divided, and is so far failing to spark the imagination of Dutch voters. In one April 2005 opinion poll, eleven per cent of the Dutch supported the treaty, eight per cent were against, 14 per cent were undecided, and a massive 67 per cent said they would abstain.[9] This lack of knowledge and interest amongst Dutch voters is astonishing even in light of the fact that the Dutch referendum campaign has barely started yet. It also stands in stark contrast with an opinion poll conducted by the Dutch government in March 2005, in which 76 per cent of voters said they would vote on June 1st. The same poll suggested that 44 per cent of Dutch voters favour the treaty, 23 per cent are against, and 32 per cent are undecided.[10] The Dutch parliament has vowed to respect the result of the referendum as long as the turnout is above 30 percent.

[9] *George Parker, 'Referendums that threaten to undermine European unity', Financial Times, April 14th 2005.*

[10] *The results of the research can be found on the Dutch foreign ministry's website: www.minbuza.nl.*

Low turnout could become a problem for treaty supporters in more than one country. Low turnout did not affect the result of the Spanish referendum, because there was no significant opposition to the treaty. But in countries with well-organised eurosceptic lobbies, such as Denmark and Britain, the lower the turnout the greater the chance that the No side will win. For example, low turnout was one of the main reasons the Nice treaty was surprisingly defeated in Ireland in 2001. According to Eurobarometer polls, the Irish have consistently been one of the most pro-EU peoples, and anti-EU sentiment has not grown in Ireland in recent years. But in 2001, less than 35 per cent of the Irish electorate bothered to vote on the Nice treaty. Most of the pro-European majority stayed at home, whereas the well-organised No side managed to get most of their constituency to the polls.

Poland could have difficulties ratifying the constitution for this reason. Polish law requires a 50 per cent turnout for a referendum result to be valid, and some Polish officials fear that a low turnout would scupper their ratification. Poland might have a general election as soon as June 2005, but all the political parties agree that Poland should have a referendum, regardless of which parties form the next Polish government. To encourage a higher turnout, Warsaw is likely to hold its referendum on the same day as the Polish presidential election, which is due in October 2005. The Polish government has said it will confirm this by the end of April 2005. According to a March 2005 Eurobarometer report, 43 per cent of Poles support the treaty, only 16 per cent are against, while 41 per cent are undecided.[11]

[11] *Eurobarometer, 'The future constitutional treaty', March 2005. Available from http://europa.eu.int/comm/public_opinion/archives/ebs/ebs_214_en.pdf.*

The Czech referendum might be held on the same day as a general election, sometime in 2006. This would help to ensure a high turnout, but it would also risk confusing the treaty debate with purely domestic issues. The Czech government is currently in crisis, and there might be an early general election later this year. The second largest party in the Czech government, the Christian Democrats, left the coalition in March 2005, and the Social Democrat prime minister, Stanislav Gross, has since offered his resignation. The main opposition party, the Civic Democrats (ODS), who might form part of the next Czech government, have said they would prefer to hold the referendum this year. A new Czech government might not even bother with a referendum at all, especially since opinion polls show that Czech voters currently favour the treaty by close to 60 per cent, and only 20 per cent oppose it.[12] However, assuming there is a referendum, some Czechs still worry about 'new members hangover'. Anti-treaty Czechs, such as President Vaclav Klaus, argue that it would fundamentally change the organisation they worked so hard to join, only in May 2004, and for that reason it should be rejected. President Klaus leads the opposition ODS party, and is the only EU head-of-state who opposes the treaty.

[12] *See David Král, 'The Czech ratification of the constitutional treaty – victim of the government crisis?', Europeum Policy Brief, March 2005. Available on www.europeum.org.*

The Danish referendum on September 27th could be another close-run affair; Denmark has rejected an EU treaty before. But since the main opposition parties – the Social Democrats and the Socialist People's Party – like the centre-right government, now support the constitutional treaty, most Danish observers think a Yes is more likely. Likewise, Ireland has rejected an EU treaty; but since the constitutional treaty was agreed during the Irish presidency in June 2004, the Dublin government hopes that voters will be more likely to embrace the document. The most likely countries to vote Yes are Luxembourg and

Portugal. In both of these countries all the main political parties are decidedly pro-EU, and they have no significant eurosceptic lobbies.

If a country votes No…

If one EU country votes No it will not necessarily mean that the EU will scrap the constitutional treaty. In that event, the 25 governments would have three basic options. First, the government in question could decide to hold a second referendum at a later date, and try to convince its voters to change their minds. Second, the member-state could agree that the other 24 governments could go ahead and adopt the treaty. This would require that member-state to re-negotiate its terms of membership. Third, the 25 EU governments could decide to abandon or to re-draft the treaty.

Much would depend on which EU country (or countries) voted No and by what margins. If only one country, let's say the Czech Republic, rejected the treaty by a small margin, the other 24 governments would understandably want to push ahead with the treaty. They would probably ask that country to think again. This happened when the Danes voted against the Maastricht treaty in 1992, as the Irish did with Nice in 2001. Both peoples changed their minds a year later, in second referenda.

However, those countries only held second votes when they had received assurances on issues that had proved contentious. The Danes were allowed to opt out of the Maastricht treaty's provisions on immigration, defence and the euro, while the Irish won a declaration saying that the Nice treaty did not oblige them to participate in an EU military alliance. The trouble with the constitutional treaty is that it does not extend the EU's remit into major new policy areas – except for majority voting on asylum policy – from which a timid country could choose to opt out. The main things the treaty changes are decision-making rules and institutions. That said, if a referendum defeated the treaty by a small margin, a government might consider a second referendum – on the same treaty. The government could cite plans by other governments to exclude their country as a reason for voting again.

But if a country voted No by a large margin, say 60 per cent or more, then another scenario would be possible, because then a second vote would not be plausible. If the other 24 governments decided that they wanted to adopt the constitutional treaty, they would have to ask that country to agree. The present treaties do not allow some countries to change them without the consent of all. The 'renegade' country would probably be offered 'associate membership', allowing it to remain in the single market. Norway, for example, is not an EU member but it does have full access to the single market. This requires Oslo to accept EU internal market laws and pay into the EU's budget even though it has no vote in Brussels decision-making.

This scenario becomes even more complicated if a large country, for instance Britain, voted against the treaty by a large margin. Although it is large and influential, Britain is not a member of the eurozone, nor does it participate in the so-called Schengen area of passport-free travel. France and Germany, which do participate in all EU policy areas, might push for the other countries to adopt the constitutional treaty without Britain. London's best friends in the EU, the Nordics, and Central and Eastern European countries would be reluctant to adopt the treaty without the British. But many other governments, including Spain and Italy, might support a Franco-German proposal to go ahead. In that case, even London's allies might be persuaded to adopt the treaty. They might not want to wait for Britain if to do so would mean their exclusion from the top table. If the other 24 countries wanted to adopt the constitutional treaty, unless Britain obstinately used its veto to stop the others going ahead, it would have to renegotiate its membership terms.[13]

13 For more detailed options, see Charles Grant, 'What happens if Britain votes No? Ten ways out of a constitutional crisis', CER, February 2005.

However, if France voted No the other EU governments would probably have little choice but to reject the treaty outright. This is because France is a large founding member and one of the main architects of today's EU. In contrast to a British No, if the French voted against, Germany and Italy – two other large founding members – would probably not agree to adopt the constitutional treaty without France. But an outright rejection – or the daunting prospect of redrafting the treaty – would indefinitely delay the prospects for reforming the EU's institutions, and require the governments to continue working within the cumbersome institutional and voting arrangements contained in the Nice treaty.[14]

14 The CER will publish an analysis of the consequences of a French No in May 2005.

Finally, if a number of countries, including perhaps a large one, did not ratify the constitutional treaty that would also probably kill it off for good. In reality, what would matter is which countries formed part of the non-ratification group. And if only 'fringe' countries such as the UK, the Czech Republic and Poland voted No, France, Germany and others might be sorely tempted to move ahead with a core Europe. A Franco-

German core would be a new institutional club that would complement the wider EU, and would allow some countries to integrate further across a range of policy areas than the constitutional treaty would permit. These areas could include the economic management of the eurozone, foreign policy, corporate taxation, migration policy and criminal law. Those in the core would lead the EU; those outside would have to choose between following or opposing the leading group.

Conclusion

After the forthcoming wave of referenda, it will no longer be possible for politicians and technocrats to redesign Europe according to their view of what is best for the people. The genie of direct democracy cannot be put back into the bottle. Following so many referenda on the constitutional treaty it will be difficult for governments not to put other kinds of EU issue to a public vote.

Take enlargement. Critics of EU enlargement, and especially the recent accession of ten mainly East European countries, claim that it has been concocted by political elites against the interests of the common people. Turkey will start negotiations to join the EU later this year, and one day those negotiations may conclude. Given the controversial nature of Turkish accession, there is a fair chance that several member-states will hold referenda on the matter. If there were a single No vote, Turkey could not join, regardless of what EU governments or the Turkish people thought. The French President, Jacques Chirac, has already said that France will hold a referendum on Turkish accession. This is not as outlandish as it may seem. France held a referendum in 1972 on whether or not Britain, Denmark, Ireland and Norway could join the then European Economic Community, which passed by 70 per cent.

The good news about the rise of referenda is that, in future, it will be harder for critics to claim that the EU is inherently undemocratic. But governments and pro-Europeans must seize the opportunities that referenda offer, running active campaigns to convince Europe's citizens of the EU's merits. Otherwise, this new era of direct democracy could even lead to an unravelling of the EU.

Daniel Keohane is a senior research fellow at the Centre for European Reform,
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THE REFERENDUM TABLE

Country	Referendum?	When?	Odds of a Yes vote
Czech Republic	Yes	Expected in 2006	55:45
Denmark	Yes	September 27th 2005	55:45
France	Yes	May 29th 2005	50:50
Ireland	Yes	Expected in late 2005/2006	55:45
Luxembourg	Yes	July 10th 2005	70:30
The Netherlands	Yes	June 1st 2005	55:45
Portugal	Yes	Expected in October 2005	70:30
Poland	Yes	Expected in October 2005	55:45
Spain	Yes	February 20th 2005	Passed
UK	Yes	Expected in mid-2006	40:60
Austria	No		
Belgium	No		
Cyprus	No		
Estonia	No		
Finland	No		
Germany	No		
Greece	No		
Hungary	No		Ratified
Italy	No		Ratified
Latvia	No		
Lithuania	No		Ratified
Malta	No		
Slovakia	No		
Slovenia	No		Ratified
Sweden	No		