



CENTRE FOR EUROPEAN REFORM

# *briefing note*

## A GUIDE TO THE REFERENDA ON THE EU CONSTITUTIONAL TREATY

*By Daniel Keohane*

On October 29<sup>th</sup> EU leaders will formally sign the new EU constitutional treaty at a ceremony in Rome. The 25 EU governments will then have two years to ratify the document. 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. Nine EU governments have said they will hold referenda on the constitutional treaty (hereafter referred to as the constitution). Only six governments so far have ruled out a plebiscite and the remaining ten countries have not yet decided how they will ratify the document. Some of the undecided governments are almost certain to hold a direct vote, while others are unlikely to do so.<sup>1</sup>

<sup>1</sup> See the table at the end of this briefing note for a list of which countries will or will not hold referenda, when referenda will take place, and the odds of a country voting for or against the constitutional treaty.

It is perfectly conceivable that over half of the EU member-states will hold referenda, and that a majority of European citizens will vote directly on the constitution. This is a seismic shift in EU politics. In the past only a few countries – Denmark, France, and Ireland – have held referenda on EU treaties after they joined the Union. Legally, if one of the 25 EU governments fails to ratify the constitution, it cannot come into force. However, depending on which countries – if any – vote No and by what margins, the vast majority of EU members may push ahead with the constitution 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 constitution 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 constitution 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 drawbacks of referenda, only six governments have confirmed that they will not have a direct vote (Cyprus, Estonia, Greece, Hungary, Malta and Sweden).

The countries that will hold referenda do not follow a set pattern. On the one hand they include member-states that have held referenda on EU treaties before, namely Denmark, France and Ireland. On the other, some states that have never held a direct vote will have their first referendum, such as Belgium and the

Netherlands. Referendum countries include large member-states, like Britain and Spain; and much smaller ones like Luxemburg and Portugal.

Of the undecided governments, a number are likely to plump for a direct vote. The Czech Republic and Poland are almost certain to hold referenda. Lithuania and Slovenia are leaning towards plebiscites, while Finland and Slovakia seem to be moving away from that option. The Latvian government is uncertain how it will proceed. The Austrian chancellor, Wolfgang Schüssel, says he has no plans to hold a referendum, and would prefer not to unless all EU governments agreed to have a direct vote on the same day. But he is under pressure from within his own party and from Austria's opposition to reconsider and organise a referendum.

The Italian constitution does not permit direct votes on international treaties, although a bill to change this law has been submitted to the Italian parliament. Silvio Berlusconi, the Italian prime minister, had indicated that there could be a referendum; but his foreign minister, Franco Frattini, has since said that Italy wants to be the first country to ratify the constitution, and would do so in a parliamentary vote before the end of 2004. The German constitution also prohibits national plebiscites. The German chancellor, Gerhard Schröder, had said he would prefer to have a parliamentary vote than a popular one. But according to opinion polls, 90 per cent of Germans would like to vote on the EU constitution, and pressure is growing within the ruling social democrat-green coalition to alter the German constitution and hold a referendum. As a result, Schröder is now considering holding a referendum.

Currently, 13 governments are either committed to hold referenda or are highly likely to do so – a majority of member-states. Furthermore, those governments represent roughly 260 million citizens, well over half the EU's population. If Germany and Italy allowed direct votes then 15 governments, representing over 75 per cent of the EU's population, would leave the fate of the constitution in their voters' hands. The EU is on the cusp of a direct democracy revolution.

### **The timing conundrum**

The European Parliament has adopted a resolution recommending that all national referenda should be held during the same week in May 2005. Part of the rationale behind this idea is that it could help to foster a pan-European debate on the constitution if the referenda were held close together. However, despite the appealing symbolism of this suggestion, national governments will each hold their referendum according to their own timetable. This is regrettable because it means that referendum debates will be mainly national in their content.

The first batch of countries to vote, in spring 2005, looks set to consist of Belgium, Luxemburg, the Netherlands, Portugal and Spain. Madrid has already said that the Spanish referendum will be held on February 20<sup>th</sup> 2005. The advantages of going early are twofold. First, the initial group of referenda will set the tone for the other countries. The Spanish government is arguing to its citizens 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 are likely to wait until 2006. This group includes Britain and Denmark, and probably the Czech Republic. Britain and Denmark both face general elections in 2005, and would understandably prefer to wait for those votes before having a referendum. In addition, Britain will hold the EU presidency in the second half of 2005 and does not want to hold a referendum during its stint in the EU hot seat. The Czech Republic, however, might hold its referendum on the same day as a general election in 2006. Interestingly, all of these countries have significant eurosceptic lobbies and share a high possibility of a No vote. 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 voted No – indeed their referendum may prove irrelevant. The second advantage could be that if all the preceding countries voted Yes it would give Copenhagen, London and Prague an extra argument in favour of the constitution, namely that their country should not isolate itself from the European mainstream.

### **Referenda are unpredictable**

Since there could be up to 15 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 constitution; 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 constitution.

Furthermore, politicians are already playing domestic politics with the constitution. For instance, in France, the opposition socialist party has not yet decided to support or oppose the constitution – they will decide their position this December. Part of the reason for their indecision is because there is a power struggle between the socialist leader François Hollande and the former prime minister Laurent Fabius. Both men would like to be the socialist presidential candidate in 2007, and Hollande supports the constitution but Fabius opposes it.

Another reason why these referenda are hard to predict is because different issues will dominate the debate in different countries. Immigration and asylum could dominate British deliberations, while social policy could be 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 cherished policy of neutrality.

Referenda on EU accession have had an extremely high success rate, as only one country – Norway – has voted against joining the EU, out of the 15 countries that have held accession referenda. But referenda on EU treaties have had more mixed results, which is yet another reason to think that the constitution will be defeated in at least one country. France's sole treaty referendum to date, on the Maastricht treaty in 1992, barely passed by 51 per cent. The only other countries to hold treaty referenda, 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 constitution. 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. In some countries opinion polls are currently showing low numbers in support of the constitution. Britain, in particular, has the highest numbers against. In some British opinion polls half the voters say they are opposed to the constitution, less than a third are in favour and the rest are undecided. On that basis the UK is currently the most likely candidate to vote No.

Another explanation why a country might not ratify the constitution is because voters may not even turn up at their polling stations. Low turnout was one of the main reasons the Nice treaty was defeated in Ireland in 2001. If Warsaw holds a referendum, Poland might have difficulties ratifying the treaty 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.

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 constitution debate with purely domestic issues. And some Czechs worry about 'new members hangover'. Anti-constitution Czechs argue that it fundamentally changes the organisation they worked so hard to join, only in May 2004, and for that reason it should be rejected.

The 2006 Danish referendum could also be a close-run affair. The outcome of the Danish general election, which must be held by November 2005, will have a big bearing on the Danish referendum result. If the social democrats win back power from the current centre-right coalition, some Danish observers think that would make a Danish Yes more likely.

The countries where it is currently more likely, but by no means definite, that there will be a Yes vote include France, Ireland, and the Netherlands. Opinion polls in France currently favour the constitution by around 65 per cent. But if the socialists opposed the treaty, then analysts expect the French vote in summer 2005 to be very close. Even though the Netherlands is a founding member of the EU, the Dutch referendum could also come down to the wire. This is because public dissatisfaction with the EU has grown in recent years, especially because many Dutch feel they pay too much into the EU budget for little reward in return.

Ireland has rejected an EU treaty before; but since the constitution was agreed during the Irish presidency in June 2004, the Dublin government is hopeful that it can win its referendum. The most likely countries to vote Yes are Belgium, Luxemburg, Portugal and Spain. In each of these countries all the main political parties are decidedly pro-EU, and they have no significant eurosceptic lobbies.

### **If a country votes No...**

Despite what the lawyers and the eurosceptics say, if a country votes No it will not necessarily mean that the EU governments will scrap the constitution. In that event, the 25 governments would have three options. First, the government in question could decide to hold a second referendum at a later date, and try to convince their voters to change their minds. Second, the member-state could agree that the other 24 governments could go ahead and adopt the constitution. 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 constitution.

The option the governments chose would depend on which countries voted No and by what margins. If only one country, let's say the Czech Republic, rejected the constitution by a small margin, the other 24 governments would understandably want to push ahead with the constitution. 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 constitution 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 constitution changes are decision-making rules and institutions. That said, if a referendum defeated the constitution by a small margin, a government might consider a second referendum – on the same constitution. 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 constitution, 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.

This scenario becomes even more complicated if a large country, for instance Britain, voted against the constitution 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 passport-free travel area. France and Germany, which do participate in all EU policy areas, might push for the other countries to adopt the constitution without Britain. London's Nordic, Central and Eastern European allies would be reluctant to adopt the constitution 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 constitution. They might not want to wait for Britain if it meant their exclusion from the top table. If the other 24 countries wanted to adopt the constitution, unless it obstinately used its veto to stop the others going ahead, Britain would have to renegotiate its membership terms. This scenario would not be the same thing as a Franco-German led 'core Europe', which would seek greater integration across a number of policy areas than the constitution would allow. A British No would probably mean that the other 24 governments would still push ahead with the constitution.

However, if France voted No the other EU governments would probably have little choice but to reject the constitution 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 accept adopting the constitution without France. But an outright rejection – or the daunting prospect of redrafting the constitution – 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.

Finally, if a number of countries, including perhaps a large one, did not ratify the constitution that would also probably kill it off for good. In reality, what matters is which countries formed part of the non-ratification group. And if only 'fringe' countries such as the UK, Denmark, Poland or other Central European states 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 constitution would permit. These could include the economic management of the euro-zone, 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 next year's 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 cannot be put back into the bottle. After so many referenda on the constitution it will be difficult for governments not to put other kinds of EU issues 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 is likely to start negotiations to join the EU next 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 he would 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 research fellow at the Centre for European Reform,  
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## THE REFERENDUM TABLE

Country	Referendum?	When?	Odds of a Yes vote
Belgium	Yes	Spring 2005	70:30
Denmark	Yes	Expected in 2006	45:55
France	Yes	Summer 2005	50:50
Ireland	Yes	Expected in late 2005/2006	50:50
Luxemburg	Yes	Spring 2005	70:30
The Netherlands	Yes	Spring 2005	55:45
Portugal	Yes	Spring 2005	65:35
Spain	Yes	Spring 2005	65:35
UK	Yes	Expected in 2006	35:65
Czech Republic	Almost certain	Expected in 2006	45:55
Poland	Almost certain	Expected in late 2005	45:55
Austria	Undecided - unlikely		
Finland	Undecided - unlikely		
Germany	Undecided		
Italy	Undecided - unlikely		
Latvia	Undecided		
Lithuania	Undecided - likely		
Slovakia	Undecided - unlikely		
Slovenia	Undecided - likely		
Cyprus	No		
Estonia	No		
Greece	No		
Hungary	No		
Malta	No		
Sweden	No		