

EU Constitution Newsletter

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Since the Intergovernmental Conference came to an agreement on the EU Constitution the focus of the debate has shifted to the challenge of ratifying this constitution. This monthly newsletter will monitor the debate, events and developments surrounding the ratification process in all 25 member states. It will offer a particular UK perspective of this process and provide a forum for differing views on the debate.

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Editorial note:

This is the first issue of the *EU Constitution Newsletter*, which will monitor developments concerning the ratification of the EU constitution in all 25 member states. It follows on from the Federal Trust's *EU Constitution Project Newsletter*, which over the past eighteen months has reported on the Convention on the future of Europe and the Intergovernmental Conference which succeeded it. The *EU Constitution Project* produced its last issue in July of this year, after the final agreement on the EU constitution. With a new editorial team the newsletter has now been relaunched with a focus on the process of ratification of the constitution.

1. Editorial

By Sir Stephen Wall

It took only the Easter break for Tony Blair to decide that he would rather take the risk of losing a referendum on the EU Constitution than give the Tories any further opportunity to make capital as the party that trusted the people. Better to jump than to be pushed.

Some of us were obliged, as the Prime Minister put it to me, to 'swallow our principles and just get on with it'. The Prime Minister himself has to accept that he has taken the decision which, more than any other by any British Prime Minister in

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...is a think tank that studies the interactions between regional, national, European and global levels of government.

Founded in 1945 on the initiative of Sir William Beveridge, it has long made a powerful contribution to the study of federalism and federal systems.

thirty years, puts Britain's place in Europe at risk.

Tony Blair will be tempted to make it a question of in or out' of Europe. That would be a mistake. If Britain's partners were blocked by a British 'no' in a referendum, and wanted to go ahead regardless, they could not remove our existing EU treaty rights. And the idea that twenty-four countries would leave the existing European Union to start again without Britain is fanciful.

A political crisis there would be. But fear of provoking such a crisis is not the way to win the referendum. All British governments have made the mistake of selling the EU, not as a positive success story for Britain, but as a necessary evil. And successive British governments have failed to come to terms with the main reason for the EU's success: its unique blend of supranational institutions, but institutions which remain ultimately subject to the will of national governments.

But, if the vote on the Constitutional treaty will not be about 'in or out' of the EU nor will it, for sure, be just about the Constitution either. It is a pretty modest document.

So the sceptics will have to campaign about something else. That something else will be the progressive loss of sovereignty they perceive over the thirty years of British EU membership. And that is what the argument always was about – always should be about. What kind of country are we? What place do we want to occupy in the world? On our own, as in 1940? But, if so, who now is the enemy? In ever closer union with the United States which does not want us, whose commercial interests often conflict with ours and whose government is as unpopular here as any US government in living memory?

And here is where I think the Prime Minister has got it spot on; not so much that Britain is the bridge between the United States and Europe but that

Europe is itself a bridge. On one side is the superpower, America, the undisputed leader of the free world, but a leader whose superiority is also careless and clumsy. On the other side is the dangerous, complex world we are all trying to grapple with, a world of extreme poverty, grave threats to our global environment, conflict and terrorism.

Can we persuade our fellow countrymen that the way to deliver for our country is alongside the twenty-four other democracies of our continent which share our interests and values, almost all of them also allies by treaty of the United States? And that, insofar as we still have issues with those other European countries, the EU is the best way yet devised of managing them? We have to try.

Sir Stephen Wall
Former Head of the European Secretariat, Cabinet Office

2. Overview of 25

No member state has yet announced a date for ratification of the EU constitution, however several have announced their intentions to hold a referendum on the issue.

Austria	No decision taken yet.
Belgium	Referendum (possibly jointly with Luxembourg, early 2005)
Cyprus	Parliamentary ratification most likely.
Czech Republic	Referendum (possibly in 2006)
Denmark	Referendum (possibly autumn 2005)
Estonia	No decision taken yet.
Finland	No decision taken yet.
France	Referendum (possibly autumn 2005)
Germany	No decision taken yet.
Greece	Parliamentary ratification most likely.
Hungary	No decision taken yet.
Ireland	Referendum (possibly in 2005)
Italy	No decision taken yet.
Latvia	No decision taken yet.
Lithuania	No decision taken yet.
Luxembourg	Referendum (possibly jointly with Belgium, early 2005)
Malta	Parliamentary ratification most likely.
Netherlands	Referendum (possibly early 2005)
Poland	Referendum (possibly in 2005)
Portugal	Referendum (possibly early 2005)
Slovakia	No decision taken yet.
Slovenia	No decision taken yet.
Spain	Referendum (possibly early 2005)
Sweden	No decision taken yet.
United Kingdom	Referendum (possibly early 2006)

3. News from the institutions

The dust may have settled after the final meeting of the IGC in June, which agreed on the EU Constitution, but the task lying ahead now will be ratifying the Constitutional Treaty in all 25 member states.

The first stage will be the official signature of the Constitutional Treaty. The Dutch Presidency has announced that the Treaty will be signed at a ceremony in Rome on 29 October 2004, as agreed by a meeting of Foreign Ministers on 12 July. Previously, the Italian Prime Minister Silvio Berlusconi had created some confusion, much to the irritation of the Dutch Presidency, by announcing single-handedly a date in November for the signing ceremony. This was immediately rejected by the Dutch Presidency, which insisted on its right to set the date.

Prior to signature the final text has to be prepared by the legal and linguistic experts of the Legal Services of the Council. Their task is to consolidate the wording of the Treaty, which has undergone numerous changes during the negotiations, and edit it in all the 21 languages stipulated in the Treaty's final article. This also includes a renumbering exercise, as the IGC decided to use continuous arabic numbers for all articles, which will be preceded by a Roman number indicating in which part of the treaty the respective article is placed. A provisional consolidated and renumbered Treaty was published in early August.

The Treaty will only come into force after successful ratification in all member states. The text envisages this date to be 1 November 2006, but failing ratification in all member states by then, it would come into force 'on the first day of the second month following the deposit of the instrument of ratification by the last signatory state'. However, the IGC agreed to annex a declaration to the Treaty that if, two years after the signature of the Treaty establishing a Constitution for Europe, four fifths of the Member States have ratified it and one or more Member States have encountered difficulties in proceeding with ratification, the matter will be referred to the European Council. What

the European Council might then do is wholly unclear, since it seems impossible both politically and legally for the Treaty to come into force without being ratified by each member state.

The ratification process can start 50 days after signature of the Treaty, that is in mid-December. But the debate on the Constitution and its ratification has already started. The Dutch Presidency, in the light of low voter turnout in the European elections and the impending ratification of the European Constitution, has made 'Communicating Europe' a priority of its Presidency. In particular, it has stressed the importance of sharing information on the national ratification procedures. The Dutch Presidency is planning to hold an informal meeting of European Affairs Ministers on 5th October on these issues. One idea that has been voiced is to bring the dates of national referendums closer together to avoid spreading the ratification process over two years.

Not only the Dutch Presidency, but also the incoming President of the European Commission, José Manuel Durao Barroso, has made 'Communicating Europe' his priority. He decided to create a new Commission portfolio for institutional relations, which will be headed by Margot Wallström, who was also made a Vice President of the Commission. Her remit will be improving Commission relations with the other EU institutions and beyond, including national parliaments, the media and the public. In particular she has been tasked with drawing up a communication strategy, in acknowledgement of the fact that one of the main tasks awaiting the new Commission will be that of selling the EU Constitution. The Commission is said to be planning to become more publicly active in individual member states, although Mrs Wallström has also stressed the need to share the work of advocacy for the Constitution between the Commission, the member states and Europe's political parties. Equally, she must be aware that too much Commission involvement in national debates on the EU Constitution might prove counterproductive.

At the first session of the European Parliament on 20-23 June, José Barroso emphasised the challenge of ratification of the EU Constitution. He said that the new Commission, the new European Parliament and the member states had to be ready with answers in the discussion on the kind of Europe that people want: 'To win that debate we should not have a technocratic approach. We need instead political leadership and courage.'

At the same first session of the European Parliament the President of the outgoing Commission, Romano Prodi, took the opportunity to remind parliamentarians that the European Parliament had a decisive role to play in the ratification process. He pointed out that the Constitution was not a step back from a 'Social Europe', as was often wrongly claimed, and called on MEPs to 'do their utmost to ensure that people understand what is really at stake. Voting 'yes' to the Constitution also meant voting for the benefits of 'Social Europe'.'

The newly elected President of the European Parliament, Josep Borrell (PES), pledged to make ratification of the Constitution his first priority, doing everything in his power for the EP to help the ratification process, in particular in those countries which will hold a referendum. He called on all MEPs to drive forward the ratification of the Constitution, which would help tackle issues of direct concern to citizens: security, terrorism and migration among others. In September he will make a full statement on his plans.

In early July Mr Borrell's predecessor Pat Cox launched an initiative to promote public debate on the Constitution jointly with the President of the European Commission (Romano Prodi), the Presidents of the Committee of the Regions (Peter Straub) as well as then EP Vice-President Alejo Vidal-Quadras and Commission Member António Vitorino. In the appeal '1000 Debates for Europe' the politicians urge elected representatives of all levels - European, national, regional and local - to 'make a personal effort' to bring Europe closer to the citizens by

organising a public debate on the EU Constitution.

[Provisional consolidated Treaty, renumbered, 6 August 2004: CIG87/04](#)

[‘1000 Debates for Europe’](#)

4. The UK Debate

After the Intergovernmental Conference last June which adopted the European Constitutional Treaty, Mr. Blair gave a spirited defence of the Treaty to the House of Commons. Some observers at least believed that this parliamentary success would be the prelude to a concerted campaign by the Prime Minister and his colleagues to ‘sell’ the European Constitution to a sceptical British electorate. Mr. Blair is often reported as regretting his failure over the past seven years to persuade the British public of the merits of the single European currency. In the case of the euro, the need to meet the Chancellor’s ‘five tests’ acted as a brake on governmental advocacy of the single currency. No such inhibitions need apply to public discussion of the European Constitution.

In the event, the New Labour government has not in the past three months been eager to speak at all about European topics. The political agenda Mr. Blair wishes to pursue this autumn is predominantly a domestic one. In so far as the government has a strategy for winning the British referendum on the European Constitution, it seems to depend upon postponing any serious debate upon that subject until after the General Election which is likely to take place in the first half of next year. A reelected Labour government will then use the British Presidency of the Union in the second half of 2005 as an opportunity to lead public opinion in a more pro-European direction. The proposed Constitution envisages ratification by all member states before the end of 2006. The British government believes it has time on its side.

There are of course risks associated with the government’s strategy, in particular that hostility to the European Constitutional Treaty will be so entrenched by the middle of next year

that it will be impossible to dislodge it within a year or eighteen months of campaigning. Nor is it obvious that the British Presidency, possibly overshadowed by fresh controversy over the British budget rebate, will genuinely be an occasion for the government to persuade the electorate to stop worrying and love the EU. Similar hopes were reposed by New Labour in the British EU Presidency of 1998, without any apparent success.

Without the willingness of the government to be fully involved as yet, there are obvious limitations on the campaigning or even planning that other pro-European groupings can do for the referendum of 2006. Already, however, there are the first stirrings of a debate as to the appropriate rhetoric and arguments the pro-Constitution coalition should use in the coming referendum. The government and its allies will not be able wholly to avoid any discussion of Europe between now and the General Election. They would like their present rhetoric at least to be compatible with the arguments in favour of the Constitution that they will be advancing during the British Presidency and beyond. In this context, there seems an emerging consensus that it will not be sufficient simply to present the Constitution in negative terms as slowing the supposedly otherwise reckless pace of European integration. It will be important for its advocates to stress the document’s positive merits, for instance for its contribution to the EU’s efficiency, to its democratic structures and to its transparency.

It will undoubtedly be the hope of the British government to hold its referendum after most other member states have ratified the Constitution. Previous ratification by others may make it easier for the British electorate to do likewise. As Sir Stephen Wall rightly says in his editorial, this is an aspect of the debate where the British government will need to tread delicately. Rejection of the European Constitution is not of itself equivalent to Britain’s leaving the European Union. The Prime Minister will need to find a European discourse which avoids exaggeration of that kind, while

leaving no doubt that if Britain alone of twenty five member states rejects the Constitution, it will create a grave crisis for our position within the EU.

Brendan Donnelly
The Federal Trust

[Prime Minister’s Statement to Parliament on the EU Constitutional Treaty, 21 June 2004](#)

5. Countries of the month

The debate in France

Article 11 of the French Constitution gives the President of the Republic the power to submit to a referendum, on proposal of the government or a joint motion of the two assemblies, any government bill authorising the ratification of a Treaty which would affect the functioning of the institutions. Following the unexpected British announcement to hold a referendum on the EU Constitution, and amid pressures from all political parties, including his own, Jacques Chirac finally declared on 14 July that ‘the French people are concerned directly, and will therefore be consulted directly’ on the Constitution’s ratification. The long delay in announcing his decision clearly reflects Chirac’s uncertainty about the outcome of any referendum. Experience has shown that votes on European Union affairs can be close run matters for French public opinion. In these politically uncertain times, the President is certainly taking a risk.

At the moment, the polls are favourable - 72 per cent of French voters approve the principle of a Constitution for Europe. But the polls were also favourable in early 1992 and the Maastricht Treaty was ratified, following heated discussions, only with a minimal majority (51 per cent) and a substantial number of abstentions (30.31 per cent). In spite of a generally pro-European tradition in France, the present referendum debate is starting in an unfavourable climate. The Constitution was originally conceived with a view to accommodating future enlargements of the Union, for which there has been little enthusiasm in France. The recent

speculations about the loss of French influence in Europe, following the disappointing nomination of the French Commissioner to the relatively obscure transport portfolio, has reinforced existing concerns over a possibly declining role of France in an enlarged Europe. Moreover, it is still unclear how domestic politics will shape the European debate in the coming months.

The current government is unpopular, as seen in the recent regional and European elections, which were a triumph for the opposition. In addition to the inevitable anti-government votes in any referendum, a tangible risk for the pro-Constitution campaign would be that the socialists combine with the hard left and eurosceptic lists to form a blocking majority. Although François Hollande - leader of the Socialist Party and possible candidate in the next Presidential elections - supports the Constitution, an official position has yet to be taken by his party. All its potential opponents criticise what they see as the economically liberal character of the Constitution. Some resent in particular the continuing unanimity requirement for taxation, which they see as another hurdle to the development of a 'Social Europe'. Others consider the existing Nice Treaty a worse evil and urge a yes vote for the present Constitution, provided that a new Convention can be convened in 2009. The matter will be resolved by an internal referendum of the Socialist Party this December. By delaying its decision, the Party runs the clear risk of deepening division in its ranks.

In sum, although the current odds are that French citizens will vote for the European Constitution, this will not be an easy campaign. The referendum has been scheduled for the second half of 2005 and some commentators already foresee a domino effect on the British debate on the referendum, to be held the year after. A failure of ratification in France would almost certainly entail an early disappearance of the Constitutional Treaty.

Séverine Picard
The Federal Trust

Extracts of the 14 July speech of the
President of the Republic

[The Independent](#)

[Le Monde](#)

[Le Monde](#)

Austria

In Austria, constitutional amendments concerning the transfer of specific powers to the EU need only be ratified by a two thirds majority in both Houses of Parliament, the Nationalrat (the lower house) and the Bundesrat (the upper house in which the regions are represented). The Austrian government intends to ratify the European Constitutional Treaty by this procedure. However, the Austrian constitution does make provision for 'consultative referendums', which can be triggered either by a parliamentary initiative or by popular petition. This has fuelled debate about the possibility of a popular vote on the EU constitution. According to an opinion poll undertaken in December 2003 68 per cent of Austrians wanted their government to hold a referendum on the EU Constitution. This view has been echoed by the junior coalition partner in the Austrian government, the far-right Freedom Party (FPÖ), which says it is in favour of holding a national referendum on the EU Constitution.

Among the Austrian political class, the Freedom Party is in a clear minority with its calls for a national referendum. Ironically, many Austrian politicians and parties claim to be in favour of a referendum on the Constitutional Treaty. But the referendum they have in mind is a Europe-wide referendum, held in all EU member states on the same day. Chancellor Wolfgang Schüssel, for instance, said in a television interview after the European Council meeting of June that he was interested in the idea of holding an EU referendum with a double majority threshold of a majority of member states and a majority of people. This, with variations, is the official position of the governing People's Party (ÖVP), the Social-Democratic Party (SPÖ) and the Green Party. All but one of the Austrian Convention members and observers, including the government

representatives, signed the petition of the European Referendum Campaign which calls for binding referendums on the EU Constitution to be held in all countries on the same day.

In addition to individual politicians such as the MEP Hannes Swoboda (SPÖ), who call for a referendum to be held in Austria, there is some support for a national popular vote from civil society organisations, such as peace movements, anti-nuclear energy movements and environmental organisations. The government argues that it has robustly defended Austria's interests by ensuring institutional arrangements in favour of small countries and retaining unanimity for issues such as land and water use and the choice of energy sources. But civil society groups are concerned about the military implications the EU Constitution would have for a neutral country such as Austria, in particular the implications of the mutual defence clause, the European Armaments and Research Agency and the possibility for structured co-operation. Another bone of contention is the Euratom Treaty.

Austria has already once held a referendum on an EU issue - its original EU membership. In this accession referendum, held on 12 June 1994, 66.6 per cent of the Austrian population voted in favour of EU membership, with a turnout of 82 per cent. A recent survey shows that 78 per cent of Austrians agree with the principle that the EU needs a constitution.

Given the unlikelihood of a Europe-wide referendum on the European Constitution, it is improbable that the Austrian government will allow itself to be deflected from its present intention to pursue the course of exclusively parliamentary ratification for the Treaty. It would only be if further member states which previously had refused a referendum, now changed their mind that a change of tack in Austria would become a real possibility. Germany will be crucial in this regard. Rapid parliamentary ratification of the Constitutional Treaty in Germany would be a persuasive example for Austria to follow, while the current simmering

German debate on whether to initiate constitutional changes creating the possibility of holding a referendum will be watched closely in Austria.

Ulrike Rüb

The Federal Trust

[Extracts from an interview with Wolfgang Schüssel in Pressestunde](#)

[Die Presse](#)

[EUObserver](#)

6. And finally...

The designated President of the European Commission, José Manuel Durao Barroso, has announced that, in the light of the recent EU enlargement, he will follow his predecessor Romano Prodi's proposal on the EU's budget, which sees an increase in the budget to 1.14 per cent of EU GDP. This is strongly opposed by the EU's net contributors. The issue and the related question of the British rebate is likely to play a significant role in the UK debate in the run-up to the referendum on the EU Constitution.

The UK's House of Lord's EU Sub-Committee on Economic and Financial Affairs, and International Trade is currently conducting an inquiry into the future financing of the European Union. Read the Federal Trust submission to this inquiry on our website: www.fedtrust.co.uk.

7. News from the Federal Trust

Forthcoming Publications

European Essay No. 32

Silvana Gliga: **Constitution and Community. Social underpinnings of a legal order**

Available from 13 September from the Federal Trust:

publications@fedtrust.co.uk

European Policy Brief Nr. 5:

Brendan Donnelly and Séverine Picard: **The impact of the European Constitution on asylum – beyond the myth**

Available for download from 13 September: <http://www.fedtrust.co.uk/policybriefs>

Forthcoming Seminars

'The European Union in 2007: New Members, New Interests', 6 October, Romanian Cultural Institute, 1 Belgrave Square, London. For further information or to register please contact Alexis Krachai: alexis.k@fedtrust.co.uk

New Projects

Jointly with two partner organisations, the One World Trust and the Democratic Audit, the Federal Trust has embarked on a new project **British External Policy: Not in our name?**, funded by the Joseph Rowntree Charitable Trust. The Federal Trust will undertake a study on scrutiny of EU policies and legislation by the British and the European Parliament, taking into account possible implications of the new arrangements for national parliaments in the EU constitution.

Later this year the Federal Trust will be beginning a new programme of work on **Europe's Role in Global Environmental Governance**. This programme will begin with a conference and the publication of an essay in late November 2004. Further details are available at www.fedtrust.co.uk or from Alexis Krachai at alexis.k@fedtrust.co.uk

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