



CENTRE FOR EUROPEAN REFORM

briefing note

REFERENDUM SEASON IN EUROPE: A GUIDE TO THE REFERENDA ON THE EU CONSTITUTIONAL TREATY

By Daniel Keohane

Europe's referendum season is about to kick off. On February 20th Spain will hold the first of ten national referenda on the new EU constitutional treaty. EU leaders signed the constitutional treaty at a ceremony in Rome last October, and the 25 governments have until November 2006 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. Ten EU governments will hold referenda on the constitutional treaty. The other 15 governments will ratify the document in their parliaments.

At the time of writing, Hungary, Lithuania and Slovenia had already ratified the constitutional treaty by parliamentary vote.¹ Legally, if one of the 25 EU governments fails to ratify the treaty, 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 constitutional treaty and leave the naysayers behind.

¹ 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.

Who's having a referendum?

Referenda give citizens a direct say over their future, 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 drawbacks of referenda, some ten governments – representing over half the EU's population – 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 EU treaties after they joined the Union.

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, 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 length of membership 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

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 if the referenda were held close together it could help to foster a pan-European debate on the constitutional treaty. 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 the spring and summer of 2005, looks set to consist of Spain, France, the Netherlands and Luxembourg. Madrid has already said that the Spanish referendum will be held on February 20th 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.

Some countries will wait until 2006. This group includes Britain and the Czech Republic, and possibly Denmark, Ireland and Portugal. Britain, Denmark and Portugal all 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 have 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 – except Portugal – have significant eurosceptic lobbies and share a fair 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 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 governments in places such as London and Prague an extra argument in favour of the treaty: their country should not isolate itself from the European mainstream.

Referenda are unpredictable

Since there will be ten 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 treaty.

Furthermore, politicians are already playing domestic politics with the treaty. For instance, French politicians have already tried to use the constitutional treaty 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. There are similar presidential rivalries on the French centre-right. Nicolas Sarkozy, the head of the ruling UMP party and presidential hopeful, wanted his party members to have an internal vote on the treaty, but he was overruled by the founder of the UMP, President Chirac.

Another reason why these referenda are hard to predict is that 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 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 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 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. More specifically, a January 2005 Eurobarometer poll showed that one-third of EU citizens had not even heard of the constitutional treaty. And in some countries opinion polls are currently showing low numbers in support of that document.

Britain, in particular, has the highest numbers against. In most 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. Surprisingly, an opinion poll in the eurosceptic *Sunday Telegraph* newspaper on January 29th 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 sign that the tide is turning in their favour. But 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.

Another reason why a country might not ratify the constitutional treaty is that voters might 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. Poland could 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. To encourage a higher turnout, Warsaw is strongly considering holding the referendum on the same day as the Polish presidential election, which is due in autumn 2005, or even in conjunction with a general election.

The Czech referendum might also 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. And some Czechs worry about 'new members hangover'. Anti-treaty Czechs 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.

The countries where it is currently more likely, but by no means definite, that there will be a Yes vote include Denmark, France, Ireland, and the Netherlands. Opinion polls in France currently suggest a healthy 59 per cent in favour of the constitutional treaty. But support has dropped 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, 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.²

² See Aurore Wanlin, 'Will the French vote 'Non?', CER Bulletin, February/March 2005.

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 since many Dutch feel they pay too much into the EU budget for little reward in return. The Danish referendum could be another close-run affair; Denmark has rejected an EU treaty before. But since the main opposition socialist people's party, like the current centre-right government, now supports the constitutional treaty, most Danish observers think a Yes is more likely.

Likewise, Ireland has previously rejected an EU treaty; but since the constitutional treaty 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 Luxembourg, 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 constitutional treaty. In that event, the 25 governments would have three basic options.³ First, the government in question could decide to hold a second referendum at a later date, and try to convince their voters to

³ For a detailed analysis of the consequences of a No vote, see Charles Grant, 'What happens if Britain votes No? Ten ways out of a constitutional crisis', CER, February 2005.

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.

The option the governments chose would depend on which countries voted No and by what margins. If only one country, 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.

This scenario becomes even more complicated if a large country, for instance Britain, votes 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 passport-free travel area. 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 Nordic, Central and Eastern European allies 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 it meant their exclusion from the top table. If the other 24 countries wanted to adopt the constitutional treaty, Britain would have to renegotiate its membership terms – unless it obstinately used its veto to stop the others going ahead.

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 try 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. The governments would have 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 constitutional treaty 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, 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 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 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 probably 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 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.

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THE REFERENDUM TABLE

Country	Referendum?	When?	Odds of a Yes vote
Czech Republic	Yes	Expected in 2006	50:50
Denmark	Yes	Expected in late 2005/2006	55:45
France	Yes	Summer 2005	55:45
Ireland	Yes	Expected in late 2005/2006	55:45
Luxembourg	Yes	Summer 2005	70:30
The Netherlands	Yes	Summer 2005	60:40
Portugal	Yes	Expected in late 2005/2006	70:30
Poland	Yes	Expected in Autumn 2005	50:50
Spain	Yes	February 2005	70:30
UK	Yes	Expected in 2006	40:60
Austria	No		
Belgium	No		
Cyprus	No		
Estonia	No		
Finland	No		
Germany	No		
Greece	No		
Hungary	No		Ratified
Italy	No		
Latvia	No		
Lithuania	No		Ratified
Malta	No		
Slovakia	No		
Slovenia	No		Ratified
Sweden	No		