

**Briefing Paper presented to the European Parliament Symposium on
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1. The ratification of the Constitution has stalled. Is it your view that it should be salvaged? If so, how – and when?

In terms of substance, the Constitutional Treaty is hardly revolutionary. While the use of the word “Constitution” is, of course, highly symbolic and meaningful, it is also to a large extent misleading. The leap forward in terms of sovereignty transfers and “regime change” is much smaller than the one entailed by the Single European Act – a treaty that is virtually unknown by the public.

In retrospect, the very use of the word “Constitution” has probably proved even counterproductive. Although Eurobarometer and other polls consistently show a majority of Europeans agree that the Union should have a “Constitution”, what became clear in the French and Dutch referenda was that the word “Constitution” raises expectations beyond what the text actually delivers, as well as fears unrelated to its actual contents.

This is not to deny that the Constitution contains a number of important innovations that are worth salvaging – in particular: the extension of qualified majority and co-decision (however limited); the creation of an EU Foreign Minister and an European External Action Service; the simplification of legal instruments; the control of subsidiarity by national parliaments; the clarification of competences; and the lowering of the threshold for qualified majority. These elements are uncontroversial among European citizens, have gathered a very broad consensus in the Convention on the Future of Europe (and the unanimous agreement of Member States at the ensuing IGC), and were not central to the rejection of the text in France and in the Netherlands.

These elements are needed for a well-functioning European Union but it should not be forgotten that they are part of a package deal. In that sense, the easiest and simplest way of salvaging those innovations is certainly to rescue the text *as it is and as a whole*. This means that any politically viable solution will have to come from the Member States that have said No. It is difficult to see the current leaders of these countries having another go at ratifying the text. But with important elections coming up – presidential and parliamentary elections in France and general elections in the Netherlands in the first half of 2007 – there might be a political opportunity to be seized.

In the case of France, competition in the first round will be harsh and a candidate of either the centre-left or centre-right could rally the pro-European electorate by supporting the Constitutional Treaty as part of an ambitious package: this could also include new proposals for advancing European defence and foreign policy, or research and innovation, possibly in the form of enhanced cooperation. This is, however, predicated on the emergence of political leaders ready to tap the huge credit and support the European Union still enjoys among its citizens; even after the

negative referenda, in fact, 82% of the Dutch and 88% of the French believe that membership of their country in the EU is a good thing.¹

2. If there were to be a renegotiation of the Constitution what should be its main features? Recalling the need for consensus, what provisions, in particular, would you change?

The underlying assumption of this question is that there is a real potential for a better Treaty that will accommodate the concerns expressed by the French and Dutch voters. This hypothesis must be challenged.

As already mentioned, the Convention and the IGC have crafted a fragile agreement on what is arguably the best achievable compromise at this point in time. Apart from the fairly insignificant (and mutually-compensating) shifts linked to political changes within Member States, it is hard to see why a renegotiation based on the model used for the Constitution (Convention + IGC) should produce a fundamentally different outcome. Indeed, with governments now more aware (and afraid) of a potential domestic backlash, they are likely to be even more cautious and to draw even stricter “red lines”.

Of course, cosmetic changes could be devised. A declaration on “Social Europe” could possibly soothe the concerns of some people on the French left. But under the constraint of consensus, it is likely to be vague and essentially toothless – and to be attacked as a mere gimmick.

Any more comprehensive renegotiation would need to be rooted in a strong commitment by the Member States towards a radically different goal and/or method. Yet Member States have clearly demonstrated that they are not prepared to relinquish their role as “masters of the Treaties”: the double constraint of consensual agreement by the Member States and unanimous ratification will remain for the foreseeable future. A directly elected Convention – a possibility mooted by some federalists – would merely postpone, not overcome or circumvent the problem.

Another option would be for the European Council to give the next Convention a more ambitious mandate, one that would imply a fundamental rethinking of all existing texts and the drafting of a much shorter text that would only encompass “truly constitutional” provisions. This is a complex task, which is not just equivalent to separating Part I, II and IV – the supposedly “truly constitutional” parts of the Constitutional Treaty – from Part III – allegedly devoted to “technical” and “policy” details. Indeed, Parts I, II and IV cannot function independently from Part III, and elements as obviously “constitutional” as the functioning of co-decision (“ordinary legislative procedure”) and the actual distribution of powers (including all legal bases) are located in Part III.

The previous Convention has carefully avoided a clear distinction between what is really “constitutional” and what is not. Even the most outdated policy provisions of the Treaties – such as the ones on agriculture – were left untouched. There were good reasons for that. A comparison of national constitutions shows a high degree of

¹ Flash Eurobarometers 171 and 172, Post-referendum surveys in France and the Netherlands respectively, June 2005.

convergence as to what is “functionally constitutional”. Yet, extending the analogy to the EU would be misleading. In the process of European integration, Member States have agreed to transfer powers to the Union only under clearly pre-defined conditions. In other words, it is the negotiating process that establishes subjectively (and mostly on an *ad hoc* basis) what is “constitutional”. With a fresh look at the existing text, Member States would certainly agree to delete a number of outdated provisions. But there is no reason to believe that such an exercise could lead to a completely different, or more “advanced”, constitutional text.

In any case, even in the very unlikely event of an ambitious renegotiation, there is no way to ensure that the final text will fare any better than the present Constitutional Treaty. Indeed, the malaise expressed by French and Dutch voters is not essentially related to a number of particular provisions. Granted, the complexity of the text played a negative role, but none of the top five reasons mentioned by Dutch no-voters (lack of information, loss of national sovereignty, opposition to the national government, “Europe is too expensive”, and a negative attitude towards European integration in general²) can be easily redressed. The same is true for the motives given by French no-voters, which are mainly linked to fears that the Constitutional Treaty would have negative consequences for the French economy³.

3. If there is not to be a renegotiation of the Constitution, what institutional or policy reforms should be prioritised – and how?

Much of the debate that took place in the referendum campaigns in France and the Netherlands went well beyond the *text* of the Constitutional Treaty. It was rather linked to the economic *context* or to general views about Europe and the way it functions (or not). These are good reasons for prioritising a number of institutional and policy reforms *irrespective of what may happen with the Constitutional Treaty*. As the President of the Commission put it recently: “Au lieu d’insister sur le texte, changeons le contexte”⁴.

The state of the economy and the perception of economic outlooks have a proven influence on popular support for integration in general⁵. The emphasis of the current Commission on re-invigorating the European economy can certainly be helpful under two conditions:

1/ Member States should be prepared to use the EU as a catalyst for *their own* efforts. For instance, a more ambitious EU budget, especially regarding research and development, would be a positive signal, although the current state of play does not point into that direction.

2/ These efforts to revive the European economy should not be (perceived as) disruptive for a balanced and inclusive model of growth and development where welfare and redistribution are central. For however unlikely it is at the current juncture,

² Eurobarometer 172, P. 15

³ Eurobarometer 171, P. 17

⁴ “Instead of insisting on the text, let’s change the context”. Interview with *Le Monde*, 6 October 2005.

⁵ See for instance: *Why European Citizens Will Reject the EU Constitution*, Claes H. de Vreese, Center for European Studies Working Paper No. 116, Harvard University. Available under: <http://www.claesdevreese.com>

a stronger emphasis on instruments of solidarity in the EU budget would send the right message in this respect.

External and security policy should be the other main policy focus. The support of EU citizens for a common and more proactive European foreign policy remains overwhelming: 77% are in favour of a common defense and security policy among EU Member States (81% in France and the Netherlands), and 67% back a common foreign policy (respectively 66% and 65% in France and the Netherlands): support is as high as 78% in Germany, and only Sweden shows a majority against⁶.

In concrete terms, the absence of a Constitutional Treaty should not stop European institutions from improving and finessing their co-operation. To give an example, the External Action Service could easily and quickly be set up without any change in the existing Treaties and would immediately strengthen the way in which the EU acts outside of its borders and in international bodies. By contrast, the Union Minister for Foreign Affairs is less easy to have without at least some Treaty change. Yet there are wide margins for improving the working relationship between the Council Secretariat, the European Commission and the EU Presidency in order to avoid and prevent the all too evident shortcomings of the current troika system. For instance, a sort of inter-institutional “code of conduct” for external representation and action could be agreed and put in place that would allow to bring forward the ‘logic’ enshrined in the Constitution and agreed by all – Member States and citizens alike. And showing that the EU is able to put its act together when it comes to defend its interests and values in the world would definitely improve its image among citizens.

4. What should the EU do to reconnect with the citizens?

This question is largely unrelated to the fate of the Constitutional Treaty. As the answer to the previous question has shown, output legitimacy is part of the answer to this question: citizens will feel “connected” with the Union if it delivers the “goods” they want in terms of economic, social and personal security.

Nevertheless, when a majority of European citizens (53%) believe that “their voice doesn’t count in Europe”⁷, it is difficult to deny that the EU has an “input legitimacy” problem too. The recent opening of accession negotiations with Turkey has exposed, once again, the ambiguous approach of EU leaders. They certainly have very good reasons for starting negotiations but they have been unable to communicate them to citizens, hoping that the issue will quickly disappear from the political spotlight. As Quentin Peel writes: “*That is precisely the sort of behaviour that has got EU governments into such trouble with their voters already, both at national and European level*”⁸.

Ensuring that European issues are properly explained and debated at national level is therefore a central objective. EU institutions are undoubtedly democratic. And the Constitutional Treaty would have strengthened their nature. But this “shell” needs to be filled, and strong and permanent connections need to be established between the

⁶ Eurobarometer 63, September 2005: P 64 ff.

⁷ Eurobarometer 63: P 18 ff.

⁸ *Avoiding the issues*, Financial Times, 28 September 2005.

national and the European level. This is why some ideas, whether enshrined in the Constitutional Treaty or not, should be implemented irrespective of what may happen to the text. A tentative list would certainly include: the full openness of legislative meetings of the Council; a more systematic and effective scrutiny of EU policy by national parliaments; and a commitment by the European Commission to discuss any initiative put forward by at least 1 million citizens.

None of these ideas represents a panacea. For a start, however, their adoption could contribute to making the EU a less distant and more identifiable object and changing the political context in which future institutional reforms will be presented to the public.