

The future of the constitutional process of the European Union

Brussels, 13/14 October 2005

1. Should the Constitutional Treaty be salvaged?

From a *legal* point of view there are no compelling reasons to stop the ratification process of the European constitution. The fact that in two of the member states a substantial majority of those casting their votes in the referendum voted against the constitutional treaty is in itself no formal reason to deny other member states that have not yet concluded their ratification process the opportunity to continue this process and bring ratification to an end. Support for this view can also be found in the constitution itself. It contains after all a special procedure for the eventuality of problems arising out of the ratification in one or more member states. As long as the two-years period as stipulated in this provision has not been expired and the level of support among the member states for the constitution has not been determined, there seems, at first glance, to be no reason to interrupt the treaty's ratification process. An additional argument for this approach can be derived from the treaty text itself. Judged on the basis of the aims that were set in the Laeken declaration, the European constitution marks an important step forward in the integration process, both in terms of efficiency and effectiveness and of democratic legitimacy and transparency. It seems highly unlikely that a new round of negotiations (see also par.2) will result in a treaty text that will make the Union even more effective and democratic, i.e. as compared to the text of the constitution. So, for various reasons there seem to be compelling arguments to continue the ratification process in order to salvage the treaty.

However, the likelihood of a successful outcome of such a scenario seems to be very small indeed. Because in contrast to the legal reasons for continuing the ratification process there are strong *political* reasons for accepting that the treaty is dead after the French and Dutch no-vote, and that it would be counterproductive and even damaging to the integration process to continue ratification. First, the present Dutch and French administrations will not organize a new referendum on the constitution during their term of office. As regards the Netherlands, even after a new government has been formed following the elections of 2007, it seems highly unlikely that this new government would be willing to take the risk of a second referendum. And if, nonetheless, it was prepared to take this risk, it would certainly not be its first priority. Organizing a new referendum would moreover require a very careful and balanced preparation both from the side of the new government and of parliament, in particular if the voters were to be asked to give their views on the original treaty text. In other words, without any guarantee of a successful outcome, this scenario would anyhow lead to a serious further delay in the ratification process. But, secondly, even in the (too) optimistic scenario of a yes-vote in a second referendum in both the Netherlands and France, the final fate of the constitution would still be in doubt. Commitment to and support for the treaty have dwindled in a number of member states, implying the risk of a no-vote in these member states where the decision about the constitution is envisaged by way of a referendum. A no-vote in the UK

seems to be certain, assuming that a British government would be prepared at all to call for a referendum on the constitution.

The conclusion, therefore, should be that, although in view of its substance the constitution is worth salvaging, it would for political reasons be prudent to stop the ratification process. The treaty can only enter into force after ratification by all member states. But such an outcome is highly unlikely, if not impossible. As far as the Netherlands is concerned, it seems highly unlikely that a new government would be prepared to organize a second referendum about the present treaty text. The question therefore is not whether the constitutional treaty in its present form should be salvaged. The real challenge to the EU's institutions and to the member states following the failure of the constitution is to devise the conditions under which the Union can make a new and more successful effort at revising the present treaties in order to continue the process of adaptation and modification of its structures and procedures.

2. Is renegotiation of the constitution feasible and, if so, what should be the main features of a new treaty?

Renegotiation as a way out of the present crisis has different meanings, both in terms of substance and timing. One approach might be to negotiate with the no-voting countries about opt-outs or opt-ins and special clauses regarding issues that apparently were a matter of concern to the population in these countries (the Danish or Irish approach). This seems to be a difficult road to take. First, because it is highly unlikely that renegotiations with these countries would start before the ratification process is finalized. For tactical reasons both the Netherlands and France would prefer to wait for the final outcome of the ratification process. In view of the dwindling commitment of some member states that still have to ratify and the risk of more no-votes, this approach might end up in further delay and very complicated renegotiations with more than two countries. Secondly, neither in the Netherlands nor in France is there a clear pattern of objections towards the constitution that can be related to specific provisions in the treaty text, which makes it difficult - if not impossible - to find a way out. Thirdly, such an approach always carries the risk of being interpreted by the electorate as an effort to introduce the constitution through the backdoor, in particular if the proposed changes are primarily or purely of a symbolic and declaratory nature.

In a second approach, renegotiation would refer to all member states. The aim here would be to produce a new, alternative, shorter, more readable, etc. text, that would be acceptable both to the no-voters and the countries that have already adopted the constitution. If the aim of this approach would be to present, within a reasonable span of time, a new treaty text, then again the obstacles seem to be prohibitive. Apart from the question whether member states that have already concluded the ratification would be willing to join such an effort in renegotiation, it seems highly questionable whether such an effort will result in a new treaty text at all, not to mention a treaty text that would be an improvement on the original constitutional treaty. After all, the original text was a clear example of a compromise between very diverse views on the structure, ambitions and orientation of European integration. Renegotiating this document would inevitably result in an unraveling of this package deal; certainly if it is taken into account that as a result of the past events and due to domestic reasons the room for compromise for a number member states' governments has decreased further. In other words, this approach will almost certainly end up in frustration and failure.

But perhaps the main argument against efforts to solve this crisis by introducing opt-outs, making amendments or even starting renegotiations is that this approach is based upon the assumption that people voted against the European constitution because of the substance of this document, and that therefore their objections might be resolved by offering them a new, more acceptable, better, etc. treaty text. That assumption is false. People voted against the constitution for various, often contradictory reasons. But the main reason to oppose this treaty clearly was their inability to identify themselves with the EU as it has evolved over the past decade (in particular since the Maastricht Treaty). This crisis of confidence goes much further and deeper than the constitution and can therefore not be solved by merely changing this document.

3. What institutional and policy reforms should be prioritized in the absence of renegotiation?

The implication of the second paragraph is that member states should abstain from introducing provisions from the constitution in the absence of full ratification or renegotiation (the plan-B approach). Apart from legal constraints, such a scenario would in particular be damaging from a political point of view. For any effort to do so would rightly be considered as an effort to introduce the constitution through the backdoor and would erode the democratic legitimacy and public support for the EU further.

As far as there is room for institutional and policy reform, this refers to the application of those provisions that strengthen the involvement of the population in the decision-making process and to the more effective application of the principle of subsidiarity. The latter implies a very critical and sober attitude from the part of the European Commission as to its own initiating role and to initiatives put forward by the member states, and a much more active and coordinated role of national parliaments in the process of monitoring EU policies.

Ultimately, the EU has no other option than to proceed on the basis of the Treaty of Nice. Although this treaty does not offer the transparency and effectiveness needed in response to the enlargement of the EU and the concerns of its citizens, there is no reason to suppose that the EU is doomed to stagnation because of Nice. If decision-making stagnates, it is due to a lack of consensus among the member states and not to the absence of certain institutional innovations.

4. How to reconnect to the European citizens?

Any effort to put the process of adjusting the present treaties back on track should start from two considerations. First, it is a long-term process. To put it differently, a period of reflection of less than a year is much too short to even start a process of engaging the European citizens in European integration. As was indicated above (see par. 2), the current crisis is, after all, not the result of the rejection of the treaty, but is an expression of a fundamental lack of confidence of citizens as regards the integration process. So, although a new treaty is necessary, it would be sensible to start negotiations only after a long 'time out' which enables to reconnect the EU with the population in the member states. Secondly, starting this process requires in all member states - i.e. not only in the no-voting countries - a much greater involvement of national politicians - in government as well as in parliament - in EU affairs.

The reason for this is that, perhaps more than ever before, the future of the integration process depends on the ability of *national* political leaders to convince their skeptical electorate of the need and importance of the Union.

This will not be an easy task. From this perspective the term 'reconnecting' is misleading. The point is that there has never been a substantial or meaningful connection between Europe and its citizens. This situation was the logical implication of the elite character of the integration process. The famous phrase that European integration was based on permissive consensus, i.e. largely disinterest by the population, has applied to the integration process until the 1990s. Since then Europe has 'hit home' by the introduction of the Euro, the effects of European legislation on domestic issues, etc. A process of Europeanization of national policies which in a number of member states - in particular also the old ones - was accompanied by the rise of Euroscepticism. Hence the real challenge for politicians is to connect for the first time with their citizens on the issue of European integration under very complicated and difficult circumstances. Given the lack of a European political space, this battle can only be fought in the framework of the member states and will only be successful if national political leaders are involved and are willing to claim 'ownership' of the European project. This also means that European institutions such as the EP and Commission can only play a secondary role. They should focus their efforts primarily on national leaders and political parties, interest groups and the member states governments in order to stimulate them in involving their populations more directly in European affairs.

To conclude, connecting with the citizens requires a long-term strategy and a multi-tier approach, with as its main elements:

- Integration of European issues in the national scene and in political and parliamentary procedures.
- A strict application of the subsidiarity principle, not only to avoid a further straining of the EU decision-making machinery, but in particular to correct the impression of Brussels as being too bureaucratic and intruding on the member states.
- An objective and continuous process of exchange of information on EU issues, by both European and national institutions.
- Much more room for European issues in education.
- Finally, what is needed is a strategy to manage expectations in order to avoid disappointment as regards the results of the integration process. In a sense, the Union is the cause of its own delivery deficit by time and again taking new but not very realistic initiatives which are doomed to end in failure or disappointment.

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