

November 2007

## The Treaty Establishing a Constitution for Europe: Stalled Ratification and the Difficulty of the European Union in Connecting to its Citizens

Eileen Kirley-Tallon

Follow this and additional works at: <https://digitalcommons.coastal.edu/jops>



Part of the [Political Science Commons](#)

---

### Recommended Citation

Kirley-Tallon, Eileen (2007) "The Treaty Establishing a Constitution for Europe: Stalled Ratification and the Difficulty of the European Union in Connecting to its Citizens," *Journal of Political Science*: Vol. 35 : No. 1 , Article 4.

Available at: <https://digitalcommons.coastal.edu/jops/vol35/iss1/4>

This Article is brought to you for free and open access by the Politics at CCU Digital Commons. It has been accepted for inclusion in Journal of Political Science by an authorized editor of CCU Digital Commons. For more information, please contact [commons@coastal.edu](mailto:commons@coastal.edu).

# The Treaty Establishing a Constitution for Europe: Stalled Ratification and the Difficulty of the European Union in Connecting to its Citizens

Eileen Kirley-Tallon

Francis Marion University

*The process of ratification of the Treaty establishing a Constitution for Europe is now stalled following the defeat of the Treaty in referenda in France and the Netherlands in 2005. The probable demise of the Treaty has provoked discussion of a "crisis" in the European Union. The crisis the Union faces stems not so much from the failure of the Treaty but what failure indicates: a disconnect between the European Union and its citizens. Citizens have had little impact on decision-making in the Union in the past even though they elect representatives to the European Parliament. The gap between the Union and its citizens is widening as the legitimacy of the Union comes into question and citizens indicate less support for the Union and its policies and operations.*

The foundational law of the European Union is found in the multitude of treaties signed by the governments of the member countries. These treaties, though not constitutions, incorporate much of what is found in national constitutions. The treaties establish the powers (called competencies) of the Union, create institutions to make, enforce, and adjudicate Union laws, and establish decision-making procedures. There are four treaties of the European Union which are considered founding treaties: the Treaty of Paris (1951), the (two) Treaties of Rome (1958), and the Treaty on European Union (1993) usually referred to as the Maastricht Treaty. In addition to the founding

treaties, there are multiple other treaties which play a role in governance of the Union, including the Treaties of Amsterdam (1999) and Nice (2003).

The process of writing and revising these treaties historically has not involved participation by the citizens of most member states. Rather, treaties are negotiated by high level executive officials from all member states and then, in almost all cases, submitted to the parliaments of member states for ratification. In a limited number of cases, member states have submitted treaties to citizens in consultative referenda which also require approval by the national parliament. In most cases these referenda have resulted in a vote of approval from the member state's citizens. Examples of such successful referenda include Denmark's approval of the Single European Act (1986), the Maastricht Treaty (1993) and the Treaty of Amsterdam (1998). Also successful was the referendum held in France on the Maastricht Treaty in 1992, and the referenda in Ireland on the Single European Act (1987), Maastricht (1992), Amsterdam (1998), and Nice (2002) (European Union 2006).

This list of successes may appear impressive and suggests that European citizens (at least in the referenda member states) support the Union, its decisions, policies, and objectives. But in the case of two of the successful referenda listed above, the voters had originally rejected a treaty in a referendum. In 1992, Danish voters rejected the Maastricht Treaty and in 2001 Irish voters rejected the Treaty of Nice.

The voters in Denmark rejected the Maastricht Treaty in June 1992 with 50.7% voting "no." This vote put the Treaty in jeopardy, but the assumption was that the Danes would reconsider and would, eventually, approve the Treaty. At the December 1992 European Council meeting (under the British Presidency), assurances were made to help the Danish government sell the Treaty to its citizens at a second referendum. Three

promises were made. First, the leaders pledged to increase the transparency (openness) of decision-making in the Union, and especially in the Council of Ministers. Second, the Danes were assured that the Union would not make decisions in areas of policy that were better left to national governments. And, finally, Denmark was promised that, once the Maastricht Treaty was ratified, the Union would begin the negotiations to admit Denmark's neighbors Sweden, Finland, and Norway to the Union. Denmark held its second referendum in May 1993, and the vote in favor of the Treaty was 56.8% (Wood and Yesilada 2004, 73).

Denmark's initial rejection of the Maastricht Treaty pointed to a larger looming problem within the Union. Citizens (at least those in Denmark) had objections to the decisions leaders had made regarding both deeper economic integration and additional areas of policy making by the institutions of the European Union. These decisions about integration and policies by Union institutions had typically been made by the governmental leaders, the elites, of the member states. In the past citizens had gone along with, or perhaps simply paid no attention to, actions by leaders to write and revise treaties. This was the case even though these treaties would affect European citizens by increasing integration within the Union and increasing the powers and decision-making responsibilities of the Union institutions. Danish voters were not quite certain this was acceptable and said so in their votes in the first referendum on Maastricht. The idea that citizens would accept decisions made by European leaders without the involvement of citizens in the process has been referred to as a "permissive consensus," which some have argued allowed European leaders to make decisions in the name of their citizens because citizens of the member states permitted this. But the era of "permissive consensus" arguably ended with the Danish rejection of the Maastricht Treaty in 1992 (Kurpas *et al.* 2005).

Danish citizens had tended to be more Eurosceptic than citizens in many other member states in the European Union by questioning the ever-closer integration within the Union and its greater decision-making powers. Therefore, it was not surprising that citizen disapproval for the Union should first emerge in Denmark. But the rejection of the Treaty of Nice by Irish voters in 2001 indicated the lack of citizen support for the Union was more widespread. Irish citizens historically had been some of the most supportive of the Union and have been referred to by one author as Europhiles (Smith 2005). So, the rejection of the Treaty of Nice in a referendum in 2001 was surprising. The referendum in June 2001 in Ireland produced a low voter turnout. Only 35% of Irish voters participated, a marked contrast to the 62% turnout in the Irish referendum on the Treaty of Amsterdam in 1998. Fifty-four percent of those participating voted "no" on the Treaty of Nice despite the fact that Ireland benefited substantially from membership. As one of the poorer nations in the Union, Ireland has received a great deal of monetary aid from it. This has led to economic development and prosperity in Ireland and Irish citizens are aware of how much Union membership advantages Ireland, making the "no" vote in 2001 all the more surprising. Fortunately for the Union and the Treaty of Nice, a second referendum in October 2002 produced a "yes" vote of 63% (Wood and Yesilada 2004, 85-86). Nonetheless, the initial "no" vote raised questions among the leaders. Perhaps Europe's citizens were not as convinced of the wisdom or advisability of the changes their leaders were proposing. Perhaps citizens would no longer agree to permit the future of the Union to be decided by leaders without input from citizens.

This led to a decision, made by the European Council at its meeting in Laeken in December 2001, to convene a Convention on the Future of Europe (European Council 2001). It was hoped that this Convention would stimulate a debate on the European

Union and its future that would involve many groups of people and not simply leaders of the Union and officials in the institutions of the Union (such as the Commission and the European Parliament). In its *Laeken Declaration* the European Council provided for the composition of the Convention, and it was to be broadly based including representatives of national governments and parliaments, as well as representatives of the European Parliament and the European Commission. It was hoped that as the Convention did its work and considered proposals for treaty revisions, the citizens of member countries would become engaged and debate the issues being discussed at the Convention. Though the Convention operated in a very open fashion and made all of its documents available to the public via the Internet, the average citizen in member countries was barely aware of the existence of the Convention, much less its workings and the document it was to produce—the draft Treaty Establishing a Constitution for Europe.

This opportunity for the Union to connect with its citizens fell flat, though some groups of citizens in member states did pay attention to the Convention and its draft Treaty. Several organizations were active in a grass roots movement demanding that the Constitutional Treaty be submitted to the voters in referenda in the member states of the European Union. One such organization was the European Referendum Campaign, which had some success in getting backing for its proposal regarding the use of referenda in the ratification process both from some members of the Convention on the Future of Europe and from the leaders of some member states (European Referendum Campaign 2003). Also involved in the grass roots campaign was the Initiative and Referendum Institute-Europe, which not only advocated referenda in member states to ratify the Constitutional Treaty, but also proposed a European citizens' lawmaking process which would

directly involve citizens in making Union law (The Initiative and Referendum Institute Europe 2003).

Whether because of pressure from such groups or the more general recognition that the "permissive consensus" had evaporated and citizens needed to be more involved in deciding matters in the European Union, decisions were made by leaders of many member states to submit the Constitutional Treaty to citizens in referenda. A consensus among leaders seemed to be that the Union could not continue to move forward and make progress unless citizens were somehow included in decisions about the Union. In addition, leaders began to believe that citizens had to be sold on these decisions so that they had a sense of ownership. Unless the Union began to connect with its citizens, they would increasingly become less and less supportive. In the past, only a few member states had ever held referenda on treaties. But, after the signing of the Constitutional Treaty in October 2004, at least ten member states announced intentions to hold referenda, hoping to engage their citizens in the debate on the Constitutional Treaty and the European Union itself.

Some of the member states who announced referenda did so because it was required by their respective national constitutions. This is true in both Denmark and Ireland, whose constitutions require that any treaty which results in a transfer of sovereignty by the nation to an international organization must be approved by the citizens (Kurpas, Incerti and Schoenlau 2005). In France the President of the Republic has the power to call a referendum and President Chirac decided that the Constitutional Treaty would be submitted to the voters for approval. In the past, presidents in France had used referenda to shore up falling support for their governments by treating citizen approval of referenda as approval of the president and his policies. National political considerations were dominant in the decision by the French president to submit the Constitutional Treaty to the people for approval. The French Parliament also had to be involved. The

Constitutional Council in France had ruled that ratification of the EU Constitutional Treaty would make change in the French Constitution necessary (Kurpas, Incerti and Schoenlau 2005). Parliament must approve amendments to the French Constitution, and did so prior to the popular vote in the referendum.

In some other member states the decision to hold a referendum may have been made for political reasons as well. In the United Kingdom the announcement that a referendum would be held in 2006 took the issue of the Constitutional Treaty and the European Union off the table in the parliamentary election debate in 2005, allowing all candidates and parties to simply ignore European issues. Some member states may have decided to hold a referendum for cynical reasons, that is, the hope that the Constitutional Treaty would be voted down, but that seems unlikely. All but one of the national leaders of the twenty-five member states favored the Treaty and all heads of government expressed support for the Constitutional Treaty. Vaclav Klaus, the President of the Czech Republic, was seen as likely to oppose the Constitutional Treaty, but, as head of state and not of government, his position was not that of the Czech government. In any case it seemed likely that President Klaus would maintain a "low profile" (Kurpas, Incerti and Schoenlau 2005) in the debate in the Czech Republic.

#### **THE ROLE OF THE PEOPLE IN THE EUROPEAN UNION**

With the exception of a few referenda on treaties and other European issues, the role of the people in the European Union has been limited to the election of members of the European Parliament. Most of the referenda held in member countries have been on the ratification of various treaties, but some member states have held referenda on other European issues. Notably, Sweden held a referendum on the question of whether to adopt the euro as its currency and, thus, become part of the eurozone



within the European Union. Member states were allowed not to adopt the euro when it was introduced as the Union's common currency. This was provided in the Treaty on European Union which established a three stage process to move toward the single currency. Leaders were concerned that the Treaty might not be ratified if member states had no choice about adopting the euro. Three member states, Denmark, Sweden, and the United Kingdom, decided not to adopt the euro and, thus, retained their national currencies when the euro went into effect January 1, 2002 (Wood and Yesilada 2004, 83).

The Swedish government originally rejected the euro, but later, in 2003, held a referendum on participation in the single currency. In the campaign preceding the September 14 vote, opponents argued that adoption of the single currency would cause an increase in prices and that giving up the national currency would result in a loss of Swedish sovereignty (Bruter 2004, 143).

The "no" campaign proved to be more effective than the "yes" campaign in shaping public opinion. Opinion polls leading up to the vote showed that the "no" vote was leading, despite the support of the main political parties in Sweden. A few days before the referendum vote, the Finance Minister, Anna Lindh, was assassinated. Ms. Lindh was the most prominent woman in the government and an effective campaigner for the "yes" vote. The media in Sweden and elsewhere speculated that her assassination might increase both turnout and the "yes" vote as a sympathy vote. It did not happen. The "no" vote won with 55.9%. The "yes" vote was only 42% (Bruter 2004, 144). The "no" voters were concentrated in rural areas and among older suburban working class voters. In the city of Stockholm, 56.1% voted "yes" and only 41.7% voted "no." A majority of urban working class voters and young people supported joining the single currency (Bruter 2004, 145). Due to fear of having its referendum influenced by the Swedish outcome, the government in Denmark

decided to postpone its referendum, even though public opinion polls showed a slight lead for the "yes" vote in Denmark.

Though Swedish citizens got to decide not to adopt the euro, the main participation avenue for citizens in the European Union is the election of representatives from their country to the European Parliament. Originally, the members of the European Parliament (MEPs) were not elected but appointed by their respective member state's legislature. However, direct elections to the European Parliament have been held since 1979. These elections are held every five years as the term of MEPs is five years. The importance of electing MEPs was, however, not substantial in the early years of direct elections. The people could directly choose their representatives, but these elected representatives had little power and played little role in the decision-making of the European Union.

For the most part, the institutions of importance and power in making Union laws were the European Commission, which proposed new rules and then implemented those adopted, and the Council of Ministers, which was the policy-making body of the Union and adopted Union laws. The European Parliament had to be consulted by the Council of Ministers through the consultation procedure established in the Treaties of Rome, but the opinion of the Parliament could be ignored by the Council. The Single European Act of 1987 added two new procedures for decision-making in the Union, but neither these nor the consultation procedure made the parliament a major player in policy adoption. However, that changed with the ratification of the Maastricht Treaty, which came into force in 1993. Maastricht introduced a new procedure, co-decision, which makes the European Parliament the equal of the Council of Ministers on matters that are subject to the co-decision procedure (Kirley-Tallon 2004). Under co-decision, a proposal of the Commission must be

approved by both the Council and the Parliament. Therefore, the European Parliament can now prevent the adoption of policies to which it is opposed. The co-decision procedure was simplified somewhat by the Treaty of Amsterdam (1999) and additional areas of policy were stipulated as covered by co-decision in both the Treaties of Amsterdam and Nice (2003). The Constitutional Treaty, were it to be ratified, would extend co-decision even further and would name co-decision as the ordinary legislative procedure.

Though the European Parliament has evolved into a more important and powerful institution, citizens show little concern for, nor interest in, the Parliament. Turnout is low on average (compared to turnout for national elections in the member states, especially those for national legislatures) and has declined consistently since the first election in 1979. Average turnout rates in the Union have declined from 63% in 1979 to 45.6% in 2004. Average turnout rates for all European Parliamentary elections, as well as turnout rates for individual member states, are presented in Table 1. Empty cells in the table indicate that a member state had not yet acceded to the Union and, therefore, its citizens did not elect MEPs (European Union 2004).

Averages mask differences between the member states of the Union in turnout. Some member states have turnout rates substantially higher or lower than other member states. For example, in the most recent elections to the European Parliament in 2004 the turnout was 90.81% in Belgium but only 38.90% in the United Kingdom. The lowest turnout rates in the 2004 elections were found in some of the newest members of the Union: the ten Central and Eastern European nations which acceded to the Union May 1, 2004, and whose citizens voted in their first European Parliament election in June of 2004. Among those ten member states only Cyprus and Malta did not have low turnout rates in the 2004 elections.

This is in marked contrast to the turnout rates in accession referenda held in these newest member states of the Union. Nine of these ten member states allowed their citizens to play a role in deciding if the country would join the Union. Cyprus held no referendum but ratified the accession treaty by a unanimous vote in its parliament. In the nine referenda on whether or not to join

**Table 1**  
**Turnout in European Parliamentary Elections**

Member States	1979	1984	1989	1994	1999	2004
Austria					49.40	42.43
Belgium	91.40	92.20	90.70	90.70	91.00	90.81
Cyprus						71.19
Czech Rep.						28.30
Denmark	47.80	52.40	46.20	52.90	50.50	47.90
Estonia						26.89
Finland					31.40	41.10
France	60.70	56.70	48.70	52.70	46.80	42.75
Germany	65.70	56.80	62.30	60.00	45.20	43.00
Greece		77.20	79.90	71.20	75.30	63.40
Hungary						38.50
Ireland	63.60	47.60	68.30	44.00	50.20	59.70
Italy	84.90	83.40	81.50	74.80	70.80	73.10
Latvia						41.34
Lithuania						48.38
Luxembourg	88.90	88.80	87.40	88.50	87.30	90.00
Malta						82.37
Netherlands	57.80	50.60	47.20	35.60	30.00	39.30
Poland						20.87
Portugal			51.20	35.50	40.00	38.79
Slovakia						16.96
Slovenia						28.30
Spain			54.60	59.10	63.00	45.10
Sweden					38.80	37.80
U.K.	32.20	32.60	36.20	36.40	24.00	38.90
EU Average	63.00	61.00	58.50	56.80	49.80	45.60

the Union, turnout rates were high. In all but one country turnout was over 50%, and in many cases turnout was well over 50%.

The results of the accession referenda as well as the turnout rates are presented in Table 2 (European Commission 2003). All accession referenda in these nine countries were held in 2003.

**Table 2**  
**Results and Turnout in Accession Referenda**

Country	Percent "Yes"	Turnout
Czech Republic	77.33	55.21
Estonia	68.83	64.06
Hungary	83.76	45.62
Latvia	67.00	72.00
Lithuania	89.95	63.37
Malta	53.60	91.00
Poland	77.45	58.85
Slovakia	92.46	52.15
Slovenia	89.64	60.44

Citizens in the newest member states participated in large numbers in the referenda on accession to the Union and they voted overwhelmingly in favor of joining the Union. Clearly, joining the European Union was very important to these citizens. But the next year, one month after accession, they chose in most member states to stay home in overwhelming numbers rather than participate in choosing their countries' first MEPs. The notable exception is Cyprus. Slightly more than 71% of Cypriots did participate in choosing MEPs to represent them in the European Parliament. The citizens in nine of the newest member states appear to have ascribed little importance to these elections. Joining the Union was important; choosing MEPs was not.

In the other fifteen member states, turnout in 2004 was in most cases low and, in most cases, lower than it had been in previous European Parliamentary elections. The data in Table 1 indicate some exceptions to these statements, but in general European citizens appear to place less and less importance on participation in choosing MEPs even as the Parliament has gained more and more decision making power within the Union.

Why do European citizens not vote in larger numbers in elections to the European Parliament? This is an important question because the Parliament is the institution of the European Union which allows citizens to have the strongest influence on policy making. The democratic legitimacy of the Union is tied to this institution since only its members are directly chosen by citizens and accountable to them. Part of the answer lies in the fact that citizens do not see these elections as important; certainly they do not view them as important as national elections for representatives to their respective legislatures.

But even if citizens viewed these elections as important and did participate in larger numbers, their choices of MEPs would not result in greater citizen input into and influence over Union policy decisions controlled somewhat by the European Parliament. This is because European Parliamentary election campaigns do not focus on European issues. Instead, these campaigns focus on national issues. Since the major parties in most member states support the Union, the parties do not nominate candidates for the Parliament who might put on the table questions of the usefulness and rightness of the Union and its policies. Candidates for the European Parliament from major parties tend to agree that the Union is a good thing and that it is going in the right direction. European voters are not presented by the candidates with clear choices regarding the future of the Union and its policies. This may well be an important part of why

European voters do not see these elections as important. Voters are not being offered choices relevant to the policies and direction of the Union and they may well believe that participation will have no impact on what the Union does. They may justifiably believe that their votes make no difference. Those voters who do choose to participate vote on the basis of national issues and domestic politics, which do vary across political parties and candidates.

This means that instead of a *European* election campaign for the European Parliament there tend to be twenty-five national election campaigns, one in each member state (Smith 2005). Therefore, the outcome of elections of MEPs does not ensure that the will of the people is represented in European Parliamentary decision-making with respect to decisions about the direction and policy of the Union. Elections to the European Parliament do not "present citizens with a choice between competing groups of European parties that propose different options for the future policies of the Union." (Working Group 2006, 6). The preferences of the people expressed in elections to the European Parliament reflect the people's will on national matters, not European matters.

That election campaigns for the European Parliament are actually separate campaigns, one in each member state, would seem to be related to the relative lack of attachment citizens in the member countries feel to the European Union. The European Commission authorizes public opinion polls, called Standard Eurobarometers, twice a year. In the May-June 2005 poll (Number 63), respondents were asked how attached they felt to their town, their region, their country, and Europe (European Commission 2005a). Citizens felt most attached to their country (91%), followed by the region or city in which they live (87%). Attachment to Europe was mentioned by 66%, a large majority, but clearly many fewer people than indicated attachment to their

country and region/city. There is variation from member state to member state within the Union. Higher percentages of people expressing attachment to Europe can be found in, for example, Belgium (72%) , the Czech Republic (74%) , Italy (75%) , Luxembourg (82%) , and Hungary (92%). In all of these cases, however, the percentage of people who said they were attached to their country was higher than the percentage who said they were attached to Europe. In some member states, attachment to Europe was felt by few. Cyprus at 32% stands out, but there are quite a few other member states in which the percentage who expressed attachment to Europe was only in the 40s.

One author has characterized the right to participate in elections for institutions which make decisions that impact people's lives and are binding on them as providing "input legitimacy" and argues that there is now "ample scope" for this form of legitimacy in the European Union because of direct elections to the European Parliament (Smith 2005). In the past citizens' views were not represented directly in the policy-making institutions of the European Union, but the Union had, nonetheless, "output legitimacy." Output legitimacy means that integration and the activities of the Union gained support and acceptance from the people because of the activities of the Union and the benefits that those activities secured for citizens of the member states. Now the Union can be seen as possessing "input legitimacy," but seems to be losing "output legitimacy" as more citizens appear not to support the decisions on further integration and policy which leaders have taken. But that disaffection does not receive expression in the election of MEPs.

#### **STALLED RATIFICATION FOR THE CONSTITUTIONAL TREATY**

Once the heads of state or government of the member states of the Union had signed the Constitutional Treaty at the Euro-



pean Council on October 29, 2004, the Treaty was submitted to the twenty-five member states for ratification. As with all previous treaties, the Constitutional Treaty would be ratified only if all twenty-five member states approved it through their individually selected ratification procedures. Though most member states chose to use the parliamentary method for ratification, a record number of ten member states announced intentions to submit the Treaty to their citizens in a referendum. Though most of these referenda were to be consultative, governments announced ahead of time that they would respect the vote of their citizens.

All of the early ratifications were in member states which had selected parliamentary ratification as the method to be used. The first to approve the Constitutional Treaty was new member state Lithuania, followed quickly by Hungary and Slovenia. These three ratifications took place before the first member state (Spain) held a referendum. Eventually Lithuania, Hungary, Slovenia, Italy, Greece, Slovakia, Austria, Germany, Latvia, Cyprus, Malta, Belgium, Estonia, and Finland ratified the Constitutional Treaty by means of a vote in their respective legislatures. The first legislative ratification in Lithuania occurred in November 2004; that in Finland occurred in December 2006. These ratification successes involved no direct input from the citizens in these countries. But, of course, the argument can be made for the democratic legitimacy of these ratifications based on two factors: national executive leaders, either directly elected or indirectly elected by the people, were involved in negotiating the Constitutional Treaty; and national legislatures, directly elected by the people, voted to approve the Constitutional Treaty.

Ten member states either intended to hold a referendum or leaned in that direction. Whatever the reasons for choosing to hold a referendum, these member states were going to give citizens major input into the decision to ratify the Treaty, and therefore a major say about the foundational law of the European

the national legislatures in these two member states approved the Treaty in accord with their promises to respect the vote of the people. The referenda were held in Spain on February 20, 2005, in France on May 29, 2005, in the Netherlands on June 1, 2005, and in Luxembourg on July 10, 2005. Results of the referenda are presented in Table 3 (European Commission 2005b, 2005c, 2005d, 2005e). Other referenda which had been scheduled or planned were postponed or cancelled after the June 16-17, 2005, European Council meeting.

**Table 3**  
**Results and Turnout in Referenda on the**  
**Constitutional Treaty During 2005**

<b>Member States</b>	<b>Percent "Yes"</b>	<b>Percent "No"</b>	<b>Turnout</b>
Spain	76.70	17.20	42.30
France	45.33	54.70	69.34
Netherlands	38.40	61.60	62.80
Luxembourg	56.52	43.48	96.00

The two successful referenda yielded turnouts of 42.30% in Spain (Wagner 2005), and 96.00% in Luxembourg, which has compulsory voting (European Commission 2005e). The turnout in Spain was somewhat disappointing and, in fact, was lower than had been the turnout in the 2004 European Parliament election in Spain in which turnout reached 45.10%. Did voters stay home because of opposition to the Constitutional Treaty, making the impressive "yes" vote less significant?

A post-referendum survey in Spain (European Commission 2005d) indicated opposition to the Constitutional Treaty did not keep voters away. The major reason given by non-voting respondents was the lack of information about the Constitutional

Union. Clearly the decision to hold a referendum was a gamble on the part of leaders. The elites may have supported the Treaty, but whether the people would was another matter entirely, especially after the rejection of the Maastricht Treaty by the Danish voters in 1992. It was no longer clear that European voters would support their leaders' decisions about Europe and its direction. The "permissive consensus" was breaking down.

Why take the gamble? One possible reason was to enhance the democratic legitimacy of the European Union. Ever since the adoption of the Single European Act in 1987, European leaders have concerned themselves with the democratic deficit in the Union. The member's concern with the lack of democracy moved them to include a greater role for the European Parliament in new treaties and to give Parliament greater powers as the only directly elected institution of the Union. Allowing citizens to decide the fate of the Constitutional Treaty would allow leaders in those member states to argue that democracy is served by putting the decision in the hands of voters and allowing the will of the people to prevail. The referenda could also encourage citizen engagement with the European Union, something the elections to the European Parliament had thus far failed to accomplish.

Referenda were likely in, or scheduled by, these ten member states: the Czech Republic, Denmark, Spain, France, Ireland, Luxembourg, the Netherlands, Poland, Portugal, and the United Kingdom (Kurpas, Incerti, Schoenlau, and DeClerck-Sachsse 2005). Only three referenda (in Spain, France and the Netherlands) had been held when the ratification process was stalled by the "no" votes in the referenda in France and the Netherlands. One member state (Luxembourg) chose to go ahead with a referendum despite the "no" votes in France and the Netherlands. In Spain and Luxembourg the "yes" vote prevailed. Subsequently

Treaty. Another reason was the lack of a public debate on the Treaty, apparently due to the short time from the signing of the Treaty on October 29, 2004 and the referendum on February 20, 2005. However some blame may lie on the shoulders of Spanish governmental leaders who may not have effectively communicated the importance of the Treaty to the voters. The approving voters, the overwhelming majority, did so because of their overall support of the European Union and not because of their opinion of the Constitutional Treaty. The "no" vote in Spain, albeit small, was influenced by negative views of the Treaty.

In Luxembourg turnout was high, as it always is, because of compulsory voting. The government in Luxembourg decided to go ahead with the referendum on July 10, even though voters in both France and the Netherlands had already rejected the Treaty. The Prime Minister of Luxembourg, Jean-Claude Juncker, had served as the President of the European Council for the first half of 2005 and was determined to get approval of the Treaty from his citizens. He even went so far as to say that he would resign if the voters did not approve the Treaty. So the referendum, the first in Luxembourg since 1936 (Poirier 2005), went ahead as scheduled even as other member states were postponing their scheduled or planned referenda. The "yes" vote prevailed and Prime Minister Juncker was vindicated.

The "no" votes in the referenda in France and the Netherlands dealt a significant blow to the Constitutional Treaty. Whether the blow is the death of the Treaty remains to be seen, but for certain the blow from these defeats has stalled the ratification process and may have ended it. In these two nations most voters did choose to participate, with turnout at 69.34% in France (European Commission 2005b) and 62.80% in the Netherlands (European Commission 2005c). In both countries sub-

stantial majorities rejected the Treaty. The results were clear, but why did voters say "no" to the Treaty?

Post-referenda surveys were completed by the European Commission in both nations. In France the "no" vote was motivated by a multiplicity of reasons. Thirty-one percent of "no" voters did so because they believed the Constitutional Treaty would have negative effects on employment in France. Another reason cited by 26% was the belief that the French economy was too weak with too much unemployment. Opposition to French political leaders was cited as a reason by 18% of the "no" voters. The survey authors concluded that the reasons for the "no" vote in France were based on national and/or social concerns which were more important in the eyes of "no" voters than European considerations. Opposition voters simply believed that the Treaty would not be in the best interests of France, especially with respect to economic matters. They also rejected the judgment of their national leaders that the Treaty would be good for France. France is both a founding member of the European Union and one of the largest member states, making its rejection of the Treaty significant. Future research on the role of interest groups in the campaigns for and against the Treaty, especially in those member states, such as France, in which the Treaty was rejected, would be useful and interesting.

The rejection of the Treaty by a second founding member of the European Union, the Netherlands, may have dealt a death blow to the Constitutional Treaty. When the voters in the Netherlands voted June 1, 2005, they were voting in the first referendum ever held on any matter in their country. Why did they reject the Treaty by an even larger "no" vote than had obtained in France? The European Commission's post-referendum survey in the Netherlands showed that quite a few Dutch "no" voters lacked information (31%). But many cited other reasons, some indicating disaffection with the European Union and with the

Constitutional Treaty. Nineteen percent of "no" voters opposed the Treaty itself, citing their fear the Netherlands would lose national sovereignty were the Treaty approved. Thirteen percent said that Europe (the Union) is too expensive, based on the fact that the Netherlands is a net contributor to the Union and receives less in benefits from the Union than it contributes. This reason captures a segment of opinion directly opposed to the European Union. Eight percent of Dutch "no" voters said they voted "no" because of opposition to Europe, the Union, and integration. These results clearly indicate great disaffection with the Union and the Treaty among Dutch citizens, who, like the French, did not accept the endorsement by their national leaders of the Constitutional Treaty.

Kees Aarts and Henk van der Kolk (2006, 243) argue, based on data from the 2005 Dutch Referendum study, that the referendum results in the Netherlands showed fully, for the first time, a gap between elites and voters in the Netherlands on views concerning the direction and pace of change in the European Union. They also argue that elite and popular views about the Union diverge considerably in two areas. The first area is the pace and scope of integration within the Union. Elites in the Netherlands support ever expanding integration within the Union. Dutch voters, on the other hand, are especially skeptical regarding the common currency and see the euro as having disadvantages and costs. The second area of divergence is the area of the continuing enlargement of the Union. Elites support continued enlargement, but Aarts and van der Kolk argue that Dutch voters see the accession of nations in the east and particularly Turkey as possible threats to the Dutch economy, Dutch culture, and even the power of their country within the European Union.

Shortly after the no vote in the referendum in the Netherlands, the European Council met at its regular summit meeting in

Brussels. The meeting took place on June 16 and 17, 2005, and the heads of state and government of the member states had to take stock of the situation with respect to the ratification process for the Constitutional Treaty. After a review of the process of ratification, the members of the European Council asserted, in the *Declaration on the Treaty* (European Council 2005), that they did not believe that the "no" votes in two referenda meant that citizens did not believe in and support the "construction of Europe."

The European Council then called for a period of reflection to allow a debate to take place in all member states with participation from "citizens, civil society, social partners, national parliaments and political parties." The President of the Council, Jean-Claude Juncker (Luxembourg Presidency 2005), also issued a statement that the ratification process had not been suspended, but that more attention must be paid to what the citizens of the Union were saying. He also stated there would not be a renegotiation of the Treaty, a belief held by some French, that a referendum defeat in France would lead to renegotiation.

Though, as Juncker stated, the process of ratification was not suspended by the European Council; it was only stalled. Some member states (Cyprus, Malta, Luxembourg, Belgium, Estonia, and Finland) went ahead with ratification plans and approved the Constitutional Treaty. This eventually increased ratifying member states from ten before the June 2005 European Council meeting to sixteen. Other member states postponed their ratification processes. The Czech Republic probably would have scheduled a referendum but had not yet. Denmark cancelled its scheduled referendum. Ireland, Poland, Portugal, and the United Kingdom postponed or cancelled their referenda. Sweden, which had planned legislative ratification, also postponed its process.

Two member states, Belgium and Estonia, announced intentions to proceed. In Belgium, all but one of the legislative bodies

which must ratify the Treaty had done so and the final body held a favorable vote on February 8, 2006. Estonia's legislature ratified the Treaty on May 9, 2006. In addition, the Finnish parliament voted in favor of the Constitutional Treaty (and against holding a referendum on the Treaty) on May 12, 2006. This vote led to ratification of the Treaty by the Parliament on December 5, 2006, making Finland the sixteenth member state. Bulgaria and Romania approved the Treaty and entered the Union on January 1, 2007, bringing the total number of Treaty member states to eighteen.

The status of the Constitutional Treaty is now in limbo. The European Council in June 2005 agreed to return to this issue in the first half of 2006, at which time the Council said it would decide how to proceed. At the June 2006 meeting the Council decided to continue the period of reflection on the Treaty until at least early 2007. Based on statements of some leaders of member countries in the press, it appears the Treaty may be dead. But the deeper, more serious problem of the European Union may not be the possible failure of the Constitutional Treaty, but the alienation from the Union and its policies that some citizens feel as demonstrated by the negative referendum results in two member states.

### **CONCLUSION**

The European Union may very well now be in crisis, but the most important cause of crisis may not be the possible failure of the Constitutional Treaty. If the Treaty is not ratified, the existing treaties all remain in force and they contain the foundational law on which the Union is currently based. The Union can continue to operate under the treaties now in force. The Treaty of Nice, for example, provides the necessary institutional changes required



for the accession of the ten nations which joined in 2004 as well as the two nations (Bulgaria and Romania) which acceded to the Union in January 2007. More important as a source of crisis may be the failure of the Union to connect with its citizens sufficiently so that citizens feel a sense of attachment to the Union and a sense of ownership of it. Political systems, whether national governments or organizations of a very special type like the European Union, need the support of citizens to prosper and be strong and powerful. Though the Union is not about to collapse, it does face challenges from its citizens. How can the Union engage its citizens, gain citizens' approval of the Union and its future directions, and ensure that citizens believe in the legitimacy of the European Union?

The European Union possesses democratic legitimacy in a formal, legal sense. Treaties which are the foundational law of the Union have been negotiated and ratified in accord with the constitutional requirements of member states. The institutions of the Union which make Union law can also be seen as legitimate. National leaders, including Prime Minister Tony Blair of the United Kingdom, have argued for a "dual legitimacy" of the Union (Smith 2005). The two sources of the legitimacy of the European Union institutions are first, the direct elections to the European Parliament which provide that institution with legitimacy, and second, the national mandates held by the leaders of national governments of the member states who comprise the European Council and the Council of Ministers.

But the European Union also needs its citizens to *believe* in its legitimacy. In their first discussion paper the members of the Working Group (of the Federal Trust, a think tank in the United Kingdom) on 'Democracy, Legitimacy, and Accountability in the EU' (Working Group 2006, 2) refer to this aspect of legitimacy as 'political' or 'psychological' legitimacy. The Working Group argues legitimacy "felt or intuited by the individual citizen in

regard to the prevailing political structures under which he or she lives" is present "at best patchily" in the European Union. It is clear that some citizens do not believe in the Union, its institutions, and processes. Some citizens do not accept the roles and functions of the Union as they do accept the roles and functions of their national governmental institutions. They do not *believe* in the legitimacy of the Union, and no statements by leaders of the sources of the democratic legitimacy of the Union seem to create that belief. Of course, the lack of belief in legitimacy and the lack of acceptance of the roles and functions of the Union are not universal throughout the European Union. Clearly some citizens are very supportive of the Union and its activities, for example in Belgium and Luxembourg, two of the founding member states of the Union, and in Spain whose citizens approved the Constitutional Treaty in a referendum.

But in other member states there are more and more questions about the Union, and more and more unease among citizens about its direction. Citizens ask more questions about the wisdom of enlargement, not just in terms of the number of nations which should ultimately comprise the European Union, but also in terms of *which* nations are appropriate candidates for membership in the Union. The case of Turkey is one example of this questioning among citizens.

The official position of the governments of the member states supports Turkey's accession to the Union. The (then) twenty-five member states all agreed in late 2004 to open formal accession negotiations with Turkey in October 2005. Despite this agreement, negotiations almost did not open because of the Austrian government's insistence that Turkey be offered something other than full membership in the Union. Austria insisted that Turkey be offered a 'privileged partnership.' Turkey rejected this

and, after a short delay, Austria relented only after strong pressure from the other twenty-four member states.

More leaders have become critical of Turkey's possible membership in the Union, including Germany's Angela Merkel whose Christian Democratic Union wants to offer a 'privileged partnership' as well. Former French president Chirac was a supporter (though lukewarm) of Turkey's accession, but Chirac's successor, Nicolas Sarkozy, does not support full Turkish membership. These leaders are now more in tune with popular opinion in many member states also opposed to Turkey's entry. A special Eurobarometer conducted in mid-2006 on attitudes towards enlargement (European Commission 2006) showed that 45% of Union citizens favor further enlargement and 42% are opposed, making it clear that citizens are divided on the issue. On the accession of Turkey, European Union citizens are also divided, but more oppose Turkey's membership than support it. Forty-eight percent oppose Turkey's accession, while only 39% are in favor. The strongest opposition to Turkey joining the Union is found in Austria (81%), Germany (69%), and Luxembourg (69%).

Ruiz-Jimenez and Torreblanca show that opposition by citizens to Turkey's accession to the Union has steadily grown since 2000 (2007, 7). Their analysis of attitudinal dimensions that inform public opinion about Turkey's accession indicates a large number of European citizens argue that Turkey is simply not a part of Europe in its geography, history, and culture. Citizens holding this position are most likely to oppose Turkey's accession to the European Union.

Additional questions are being asked by citizens about the wisdom of expanding areas of policy making by the Union and its increasing integration. More and more citizens, especially in Denmark and the United Kingdom, are expressing Eurosceptic views, but so are citizens in the Netherlands which historically

has been very supportive of the Union. But because European issues are not discussed or debated for the most part in either national election campaigns or the campaigns for seats in the European Parliament, citizens have little opportunity to register their views. It might be the case, for example, that at least some Dutch voters who voted "no" in the referendum on the Constitutional Treaty were not so much saying "no" to that Treaty as saying "no" to some previous Union decisions, such as the euro, on which they had not been given a voice or vote.

Leaders of the Union appear to be out of touch with the views and positions of at least some of their citizens on issues of the Union and its future directions. Leaders appear to be much more supportive of greater integration and enlargement of the Union than are citizens of many of the member states. This indicates a potential crisis in the Union and a loss of legitimacy of the Union if its citizens, because of disagreement with Union policies and decisions, come to no longer *believe* in the legitimacy of the Union. What can be done? At the least, there needs to be better communication between the European Union and its citizens which must focus on European-level issues, policies, and decisions. If there is not, the Union will at best stagnate, and at worse could begin to come apart. The challenge for leaders, if they want the Union to continue to develop and prosper, is to bridge the gap with their citizens which the failed referenda on the Constitutional Treaty indicate is growing wider.

How could this gap be bridged? A role could be played by the people's directly elected representatives in the Union's institutional structure—the members of the European Parliament. More specifically, the European party groups in the European Parliament could take the lead. Parliament has become a more powerful institution within the Union and its leaders could help to forge a better connection between the people and the Union.

Within the Parliament, members do not organize themselves as nationality groups but as political party groups. The current Parliament, elected in 2004, includes seven party groups. The two dominant groups are the Group of the European People's Party and European Democrats, composed of MEPs from Christian Democratic parties and parties with similar ideologies, and the Group of the Party of European Socialists, composed of MEPs from Socialist parties and the like. These European party groups could take the lead within the Union by engaging in functions similar to national political parties within member states.

Within individual democratic countries, national political parties do much to develop and articulate alternative policies, ideas, and visions of the future, thereby allowing citizens, in elections, to choose the directions for their respective countries. As a result national governments in democratic nations generally adopt policies citizens want. The roles which political parties play in democratic political systems do much to establish and maintain the legitimacy of governments for their citizens. Similarly, European party groups could enhance the legitimacy of the Union in the eyes of European citizens.

The European party groups could first articulate policy commitments and positions on important issues within the European Union. The party groups already do so somewhat, but they could expand their role by adopting alternative policies and visions of the future for the Union. The European party groups all have web sites, accessible through a link on the main page of the European Parliament's web site ([www.europarl.europa.eu](http://www.europarl.europa.eu)). On these party group web pages are statements regarding issue positions. More could be done to articulate alternative futures for voter choice. The European party groups in the Parliament would have to persuade the national political parties which are a part of each group to adopt these commitments and positions about European Union matters and also to nominate candidates for the

European Parliament who would run on the basis of these commitments and positions.

If this were to happen, it could transform European Parliament elections into true European elections (as opposed to twenty-seven separate national elections with national issues and policies debated) and allow voters a choice of candidates for MEP based on European issues rather than national ones. Making this happen would be difficult and depend on many factors falling into place. Individual European party groups in the Parliament would have to agree on broad commitments and policies. The party groups would have to persuade the national parties within the individual European party groups to adopt the commitments and policies and nominate candidates for seats in the European Parliament who would then run on the basis of these shared ideas. Voters in the member states would have to participate in these debates on European matters and make their voting decisions in selecting MEPs based on European commitments and policies, rather than voting for the candidate of the national party most endorsed by voters on national policy matters.

Making this happen would not be simple. But it does seem reasonable to suggest that a larger role may be played by the leaders of the Union most directly connected with citizens; namely, the citizen-elected representatives in the European Parliament.

#### REFERENCES

- Aarts, Kees and Henk van der Kolk. 2006. "Understanding the Dutch "No": The Euro, the East, and the Elite." *PS* 39 (April): 243-246.
- Bruter, Michael. 2004. "Developments in the Member States." *Journal of Common Market Studies* 42: 135-153.

- European Commission. 2003. "Accession Referenda." *Enterprise Europe Number 13* (October-December) At: <<http://ec.europa.eu/enterprise/library/enterprise-europe/issue13/articles/en/enterprise10en.htm>> (December 6, 2006).
- \_\_\_\_\_. 2005a. *Eurobarometer 63: Public Opinion in the European Union*. September. At: <[http://europa.eu.int/comm/public\\_opinion/archives/eb/eb63/eb63\\_en.htm](http://europa.eu.int/comm/public_opinion/archives/eb/eb63/eb63_en.htm)> (October 11, 2005).
- \_\_\_\_\_. 2005b. *The European Constitution: Post-Referendum Survey in France*. June. At: [http://europa.eu.int/comm/public\\_opinion/flash/fl171\\_en.pdf](http://europa.eu.int/comm/public_opinion/flash/fl171_en.pdf)> (May 5, 2006).
- \_\_\_\_\_. 2005c. *The European Constitution: Post-Referendum Survey in The Netherlands*. June. At: <[http://europa.eu.int/comm/public\\_opinion/flash/fl172\\_en.pdf](http://europa.eu.int/comm/public_opinion/flash/fl172_en.pdf)> (May 5, 2006).
- \_\_\_\_\_. 2005d. *The European Constitution: Post-Referendum Survey in Spain*. March. At: <[http://europa.eu.int/comm/public\\_opinion/flash/fl\\_168\\_en.pdf](http://europa.eu.int/comm/public_opinion/flash/fl_168_en.pdf)> (May 5, 2006).
- \_\_\_\_\_. 2005e. *The European Constitution: Post-Referendum Survey in Luxembourg*. July. At: <[http://ec.europa.eu/public\\_opinion/flash/fl173\\_postref\\_lu\\_en.pdf](http://ec.europa.eu/public_opinion/flash/fl173_postref_lu_en.pdf)> (December 6, 2006).
- \_\_\_\_\_. 2006. *Special Eurobarometer: Attitudes Towards European Union Enlargement*. July. At: <[http://ec.europa.eu/public\\_opinion/archives/ebs/ebs255\\_en.pdf](http://ec.europa.eu/public_opinion/archives/ebs/ebs255_en.pdf)> (December 7, 2006).
- European Council. 2005. *Declaration by the Heads of State or Government of the Member States of the European Union on the Ratification of the Treaty Establishing a Constitution for Europe*. June. At: <[http://ue.eu.int/ueDocs/cms\\_Data/docs/pressData/en/ec/85325.pdf](http://ue.eu.int/ueDocs/cms_Data/docs/pressData/en/ec/85325.pdf)> (May 5, 2006).
- European Council. 2001. *Laeken Declaration*. December. At: <[http://europa.eu.int/constitution/futurum/documents/offtext/doc151201\\_en.htm](http://europa.eu.int/constitution/futurum/documents/offtext/doc151201_en.htm)> (July 25, 2005).
- European Referendum Campaign. 2003. *History of the European Referendum Campaign (ERC)*. September. At: <<http://european-referendum.org/background/back2.html>> (November 4, 2003).

- European Union. 2006. *Summary Table: Procedures Planned for the Ratification of the European Constitution*. May. At: <[http://europa.eu.int/constitution/ratification\\_en.htm](http://europa.eu.int/constitution/ratification_en.htm)> (May 11, 2006).
- European Union. 2004. Turnout Trends at European Elections. July. At: <[www.elections2004.eu.int/ep-election/sites/en/results1306/turnout\\_ep/turnout\\_table.html](http://www.elections2004.eu.int/ep-election/sites/en/results1306/turnout_ep/turnout_table.html)> (October 26, 2005).
- Initiative and Referendum Institute Europe (IRI Europe). 2003. *European-Wide Constitutional Referendum and European Citizens' Lawmaking Process*. March. At: <[http://www.iri-europe.org/convention/prop\\_en.asp](http://www.iri-europe.org/convention/prop_en.asp)> (October 28, 2003).
- Kirley-Tallon, Eileen. 2004. "The Expanding Role of the European Parliament in Decision-Making in the European Union." Presented at the Annual Meeting of the South Carolina Political Science Association, Charleston, S. C.
- Kurpas, Sebastian *et al.* 2005. "A Citizens Compact: Reaching out to the Citizens of Europe." September. Working Paper Nr. 14. At: <[http://www.epin.org/pdf/WP14\\_EPIN.pdf](http://www.epin.org/pdf/WP14_EPIN.pdf)> (May 11, 2006).
- Kurpas, Sebastian, Marco Incerti, Justus Schoenlau, and Julia DeClerck-Sachsse. 2005. "Update on the Ratification Debates: What Prospects for the European Constitutional Treaty." May. Working Paper Number 13. At: <[http://www.epin.org/pdf/WP13\\_KurpasIncertiSchoenlauDeClerck.pdf](http://www.epin.org/pdf/WP13_KurpasIncertiSchoenlauDeClerck.pdf)> (May 11, 2006).
- Kurpas, Sebastian, Marco Incerti, and Justus Schoenlau. 2005. "What Prospects for the European Constitutional Treaty?: Monitoring the Ratification Debates." January. Working Paper Nr. 12. At: <[http://www.epin.org/pdf/WP12\\_KurpasIncertiSchoenlau.pdf](http://www.epin.org/pdf/WP12_KurpasIncertiSchoenlau.pdf)> (May 11, 2006).
- Luxembourg Presidency of the Council of the European Union 2005. 2005. "Jean-Claude Juncker states that there will be a period for reflection and discussion but the process to ratify the Constitutional Treaty will continue with no renegotiation." Press



- Release. June 17. At: <[http://www.eu2005.lu/en/actualities/communiqués/2005/06/16clj\\_ratif/index.html](http://www.eu2005.lu/en/actualities/communiqués/2005/06/16clj_ratif/index.html)> (June 17, 2005).
- Poirier, Philippe. 2005. "Analysis of the Luxembourg Referendum." EU Constitution Newsletter. July. At: <[http://www.fedtrust.co.uk/admin/uploads/News\\_Jul\\_05.pdf](http://www.fedtrust.co.uk/admin/uploads/News_Jul_05.pdf)> (May 12, 2006).
- Ruiz-Jimenez, Antonia M. and Jose I. Torreblanca. 2007. "European Public Opinion and Turkey's Accession." Working Paper Number 16. At: <[http://www.epin.org/pdf/WP16\\_RuizJimenez\\_Torreblanca.pdf](http://www.epin.org/pdf/WP16_RuizJimenez_Torreblanca.pdf)> (May 23, 2007).
- Smith, Julie. 2005. "Democracy and Legitimacy in the European Union." European Policy Brief. October. At: <http://www.fedtrust.co.uk/admin/uploads/PolicyBrief16.pdf> (May 12, 2006).
- Wagner, Markus. 2005. "Update: Spain, France." EU Constitution Newsletter. March. At: <[http://www.fedtrust.co.uk/admin/uploads/News\\_Mar\\_05.pdf](http://www.fedtrust.co.uk/admin/uploads/News_Mar_05.pdf)> (May 12, 2006).
- Wood, David M. And Birol A. Yesilada. 2004. *The Emerging European Union 3rd Ed.* New York: Pearson Longman.
- Working Group on 'Democracy, Legitimacy, and Accountability in the EU'. 2006. "The EU and its voters: Connecting to citizens via democracy, legitimacy, and accountability." Discussion Paper for Federal Trust. At: <[http://www.fedtrust.co.uk/admin/uploads/FedT\\_Discussion\\_Paper\\_1.pdf](http://www.fedtrust.co.uk/admin/uploads/FedT_Discussion_Paper_1.pdf)> (May 12, 2006).