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**Recovering from the
Constitutional Failure**
An Analysis of the EU
Reflection Period

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Recovering from the Constitutional Failure

An Analysis of the EU Reflection Period

Introduction

After the rejection of the European Union's (EU) Constitutional Treaty in Spring 2005 by both France and the Netherlands, the heads of state and government called for a "reflection period" to provide opportunities to resolve constitutional difficulties, and to further engage Member State citizen populations, national parliaments and political parties. The ultimate aim was to provide sufficient time for Member States to further the Constitutional debate and garner enough support to continue the ratification process. Initially, the reflection period had not been intended to last longer than a year, but in June 2006 the European Council outlined a timeline to reach a solution, extending the deadline until the end of 2008.

Through a six-part analysis, this paper will examine how the European Union used its self-imposed "reflection period" to overcome the constitutional deadlock. To begin, the paper will provide a historical overview, including origins of the Constitutional Treaty and the initial signs of tribulations during the referenda process. Given the significance of the treaty rejections in France and the Netherlands, the second part of this paper devotes special attention to public opinion polls and attempts to identify the motivations of French and Dutch voters in their decisions to vote "no." In the third part, this paper takes a closer look at the three main EU institutions, European Commission, European Parliament and European Council, and attempts to illustrate the actions that were taken in response to their call to "reflect." This section also briefly describes Member States' activities during this time. These include various strategies to ensure EU institutions remain both accountable and reliable and establish a long-lasting link between the Un-

ion and its citizens. An overview of several academic contributions to the reflection period debate is presented in the fourth section. Research activities related to this discussion are presented in summary form from a selection of key European research institutes. In the fifth section of analysis, the EU Council Presidency debates are addressed. This section attempts to highlight the discrepancies that existed between the public debate and the negotiations occurring behind the “closed doors” of Member State governments. As the Lisbon Treaty (i.e. Reform Treaty) was the result of this government bargaining process, the sixth and final section of this paper summarizes the content of the Lisbon Treaty and provides a short comparison of its changes to the modifications envisaged in the Constitutional Treaty.

Historical context

In its more than 50-year history, the EU has faced several decisive moments which have affected the nature and scope of its institutions and structure. Following the ratification of the Treaty of Nice in 2001, there had been a desire among European political elites to tackle several problems which were left unresolved. Thus the *Treaty Establishing a Constitution for Europe* (“Constitutional Treaty”) was created with the aim of increasing democracy, transparency and efficiency, simplifying the Union’s instruments and clarifying competences. The outcome of this effort was perhaps one of the most striking moments in EU integration history to date—the treaty was rejected in two founding Member States by a popular vote, which launched a major political crisis in Europe and raised skepticism over citizens’ support for further European integration.

Indeed, the event proved to be a severe setback and even evoked uncertainty among some of the strongest proponents of European integration. Luxembourg's Prime Minister Jean-Claude Juncker conceded: “Europe no longer makes people dream.”¹ Despite the Constitutional Treaty being suc-

1 Jean-Claude Juncker commented on the rejection with: 'Europe ne fait plus rêver parce que le projet européen est devenu diffus et parce que la partie noble du message –'Europe artisan de paix – ne parle plus au cœur des jeunes et représente, pour

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cessfully ratified by eighteen other Member States representing 54 % of the European population, the French and Dutch ‘No’ votes, coupled with concerns expressed by the United Kingdom, Poland and the Czech Republic, had brought the ratification process to a screeching halt.

In the wake of these developments, European political leaders scrambled to find a way to save the treaty. Subsequently, a self-imposed “period of reflection, clarification and discussion”² was introduced with an aim to provide opportunities for the EU to resolve constitutional difficulties, engage Member State citizen populations, and provide a more democratic and inclusive review of new provisions and concepts laid out in the treaty.

The Origins of the Constitutional Treaty

In order to understand these developments, first it is necessary to analyze the origins of the Constitutional Treaty and the reasons for its failure. As Robert Schuman had already observed accurately in his declaration that, “Europe will not be made all at once, or according to a single, general plan. It will be built through concrete achievements, which first create a de facto solidarity.”³ Accordingly, the institutions and powers of the EU have been developed step by step over time, with each stage of integration widening or deepening the scope of the EU in a particular area, focused on a particular set of goals or aims.⁴ Thus, proposals can be made in one round of

les plus âgés, un rêve consommé.” *BBC News* 02.06.05, <http://news.bbc.co.uk/1/hi/world/europe/4601609.stm> (retrieved on 30.11.07). And Interview, “L’Europe ou l’absence de désir. Jean-Claude Juncker fait le bilan de l’année 2005”, *La Libre Belgique*, 29.12.05.

- 2 Press Release of the Luxembourg Presidency, “Jean-Claude Juncker states that there will be a period for reflection and discussion but the process to ratify the Constitutional Treaty will continue without further renegotiations”, 17.06.05, www.eu2005.lu/en/actualites/communiqués/2005/06/16jclj-ratif/index.html (retrieved on 30.11.07).
- 3 Robert Schuman, “Declaration of 9 May 1950, leading to the creation of the European Union.” Full text of the declaration can be found at: http://europa.eu/abc/symbols/9-may/decl_en.htm
- 4 The founding treaties include the Treaty of Paris (signed in 1951 establishing the European Coal and Steel Community), and the two Treaties of Rome, 1957 (one establishing the European Atomic Energy Community, and the other the European Economic Community). The Treaty of Rome establishing the EEC has been sub-

treaty revisions, excluded from the final agreement, and carried over to the next round of discussions. This “left over and carry over” trend is manifested well in the Constitutional Treaty as many of its key elements were leftovers from previous treaty negotiation periods.

One of the leftovers concerned the capacity of the EU to handle a future enlargement and stressed the need for an overhaul of EU institutions in order to maintain sustainability and workability. This reform element had been previously rooted in a 1990’s agreement among governments and was later carried over to the Nice Summit in 2001.⁵

A second key element of the Constitutional Treaty intended to amend the institutional voting structure of the Union and had originated during a 1996 Intergovernmental Conference (IGC). The provision concerned the number of Commissioners and outlined a Council voting system which created new weights and voting thresholds (i.e. Qualified Majority Voting (QMV)). The Treaty of Amsterdam had excluded these voting schemes in favor of other areas of reform, namely the establishment of a greater sense of citizenship and the role of individuals, an increase in institutional powers for the European Parliament (EP), and the beginnings of a Common Foreign and Security Policy (CFSP) for Europe.

While positive amendments were made in both the Amsterdam and Nice Treaties, several institutional issues remained unresolved. In particular, the treaties failed to address the basic question of institutional reform needed to prepare for the expected eastward enlargement in 2004.⁶ These issues were addressed by the Laeken Declaration of 10 December 2001, which adopted a commitment to making the EU more democratic, transparent and efficient. The Declaration also established the Convention on the Future of Europe, which drafted the Constitutional Treaty and a Charter of Human

stantially revised in the Single European Act (signed 1986), Maastricht Treaty (or Treaty on European Union, signed in 1992), Amsterdam Treaty (signed in 1997) and the Nice Treaty (signed in 2001).

5 R. Baldwin, “2006 Trail to Failure: History of the Constitutional Treaty's Rejection and Implications for the Future”, CEPS Policy Brief (104), p. 4.

6 May 1, 2004 (Fifth Enlargement)—The enlargement comprised the largest number of countries admitted to the European Union at one time: Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia, and Slovenia.

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Rights. Chaired by former French President Valéry Giscard d'Estaing, the Convention included 105 members, comprised of European and national parliamentarians, representatives of national governments and the Commission, as well as observers from candidate states.⁷ It met regularly over a sixteen-month period “to consider key issues arising for the Union’s future development and attempt to identify various possible responses”⁸ to the challenges the Union faced. On 18 June 2004, the Intergovernmental Conference agreed on the final text and called it the *Treaty Establishing a Constitution for Europe*. The EP voted overwhelmingly in favor of the treaty in a non-binding, but highly politically symbolic move. The Treaty was expected to be ratified by each Member State, thus providing a legally binding element. But no one had anticipated that significant portions of the population held strong reservations over the future of European integration.

The Beginning of Constitutional Treaty Tribulations

Spain was the first country to adopt the Treaty by referendum in February 2005 and by the end of May 2005 several other Member States had followed suit (Austria, Belgium, Germany, Greece, Hungary, Italy, Lithuania, Malta, and Slovenia). But in late spring that year, French and Dutch voters rejected the treaty with 54.7 % voting “Non” and 61.5% voting “Nee”.⁹ The main reasons for the rejections concerned dissatisfaction with their national political leadership and the feeling that their voices were not being heard at the EU level (see section 2 for additional details). Despite the unexpected referenda glitch, Luxemburg, Malta and Latvia strongly supported a continuation of the ratification process.¹⁰ However, shortly after the

7 Cf. European Convention. <http://european-convention.eu.int/organisation.asp?lang=DE>.

8 European Communities, “Laeken Declaration on the future of the European Union” 15.12.01. The Declaration can be found at www.european-convention.eu.int/pdf/LKNEN.pdf (retrieved on 30.03.08).

9 EU – CONSENT, “Wider Europe, Deeper Integration?” Constructing Europe Network, 2006, p.61. Paper can be found at www.eu-consent.net/library/deliverables/D11.pdf (retrieved on 30.03.08).

10 Declaration 30 stated that if by November 1, 2006 no more than four fifths of the member states (20 members) had ratified the Constitutional Treaty, the matter would be referred to the European Council for further examination.

French and Dutch ‘No’ votes, several other Member States (i.e. Finland, Denmark, Portugal, Ireland, United Kingdom, Poland and the Czech Republic) postponed their referenda, indicating that the situation had become quite serious.

Reasons for the Negative Referenda

As previously indicated, the failure of the Constitutional Treaty came rather unexpectedly. Both voter turnout rates for the referenda were quite high (69.34% in France and 63.6. in the Netherlands) and the results were clear: in France 54.7 % of voters rejected the Constitutional Treaty and in the Netherlands, as much as 61.5%.

Direct criticism of the Constitutional Treaty played the least important role in its rejection.¹¹ However, disenchantment with domestic issues was not the only cause for the negative votes. The rejection also represented the expression of a fundamental loss of confidence in the EU and its institutions. The “Project Europe” had become incomprehensible to many European citizens and therefore reached its limits of acceptance and legitimacy.¹² People also increasingly questioned the necessity of further European integration, especially in the absence of positive results in the fields perceived as most important (i.e. employment).¹³ The Center for European Policy

11 G. Kuhle, and J. Mathias, „Wege aus der Verfassungskrise – Die EU nach den gescheiterten Referenden in Frankreich und den Niederlanden“, *integration* (3), 2005, p. 257-261. Paper can be found at www.iep-berlin.de/fileadmin/website/09_Publikationen/integration_2005/Jopp-Kuhle.pdf (retrieved on 10.12.07).

12 U. Diedrichs, and W. Wessels, „Die Europäische Union in der Verfassungskrise? Analysen, Entwicklungen und Optionen“, *integration* (4), 2005, p. 287 – 306. Paper can be found at www.iep-berlin.de/fileadmin/website/09_Publikationen/integration_2005/Diedrichs-Wessels.pdf (retrieved on 10.12.07).

13 J. A. Emmanouilidis, „Die Zeit der Entscheidung: Optionen, Erfolgsvoraussetzungen und Fahrplan für ein neues EU-Primärrecht“, *CAP Analyse* (1), 2007. Paper can be found at www.cap.lmu.de/download/2007/CAP-Analyse-2007-01.pdf (retrieved on 28.11.07).

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Studies (CEPS) described the situation with: “Legitimacy in the public eye is not only transported by institutions alone. Outcome is also crucial.”¹⁴

Hence, what induced the French and the Dutch to ultimately reject the Constitutional Treaty? In the European Commission’s post-referenda Eurobarometer surveys, three main types of dissatisfaction can be identified in both the French and Dutch results: (1) political and (2) economic level, and an overall (3) integration fatigue (see Appendices I and II). In addition, the lack of information and communication also seem to have contributed to the rejection of the Constitutional Treaty.

The Political Dissatisfaction

In both countries, the people took advantage of the referendum to voice their disappointment with their respective governments. The presidential election in 2002 was the most influential factor in the negative attitudes towards the French government. With the unexpected presence of the extreme right wing candidate, Le Pen¹⁵, in the second round of the elections, the majority of voters supported Chirac, as a way to block the victory of the extreme right wing even though they had not previously been proponents of Chirac’s UMP. As a result, the policies carried out by the government in 2005 did not exactly reflect citizen’s expectations and the European constitutional referendum turned out to be in large part a way for voters to express their frustration.

In addition, the political and public debates leading up to the French referendum, exposed different opinions even within the opposition socialist party, PS.¹⁶ While the party’s position was to promote a vote in favor of the Constitutional Treaty, an opposing voice arose in the former Prime Minister Laurent Fabius who encouraged citizens to vote “no”. For the Socialist

14 CEPS. “The paradox of European Democracy- reflections on a “Plan D” for the EU”, CEPS Commentary, 19.02.07. Commentary can be found at www.ceps.eu/Article.php?article_id=474 (retrieved on 10.12.07).

15 Jean-Marie Le Pen is the leader of the extreme right-wing party “Front National.”

16 The PS, or Socialist Party, is the main left wing party in the French political landscape. In 2005, at the date of the election, the PS was the main party of opposition to Jacques Chirac’s right wing party, the UMP, or “Union for a Popular Movement.”

Party, a potential liberalization process that would follow an Anglo-Saxon model, less focused on social welfare presented a real fear of the changes that could be brought about by the Constitution. On the other side, the extreme right wing party denounced the Constitution as a text that would facilitate the accession of Turkey to the EU. Given the negative opinions and the absence of a harmonized position among parties, a climate of apprehension and a feeling of distrust toward the EU quickly developed, which eventually led to the collective “no” in May 2005.

In the Netherlands, the center-right coalition led by Prime Minister Jan Peter Balkenende was not heavily supported by the Dutch due to cuts in public spending. In addition, many citizens were still bitter for not having been consulted over the adoption of the euro, which they blamed in 2005 for the increase in their cost of living. Thus, their decision to reject the Treaty had less to do with the text itself but rather more with the reaction against the political elite.

The Economic Dissatisfaction

In comparison to France, the economic dissatisfaction in the Netherlands played a rather minor role, according to the post-referenda Eurobarometer reports.¹⁷ In 2005, France had been experiencing a period of economic recession. Two categories of citizens particularly expressed their concerns about unemployment levels: 1) young people whose unemployment rate was already high, and 2) middle aged workers, who traditionally have a greater difficulty in finding new jobs as compared to their younger counterparts. In addition, the Eurobarometer reported that 31% of the ‘No’ voters thought that the ratification of the European Constitution would have a negative impact on employment and would lead to outsourcing of jobs to new Member States.¹⁸ Moreover, the argument that “the Constitutional

17 According to the Eurobarometer, only 7% of Dutch nationals had been influenced by the negative repercussions on employment levels and relocation of Dutch companies outside the borders of the Netherlands. Eurobarometer, “The European Constitution: post-referendum survey in the Netherlands”, June 2005, p. 15.

18 Cf. Eurobarometer survey “The European Constitution: post-referendum survey in France”, June 2005.

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Treaty did not go far enough in securing a “social Europe” embodied reservations of the French.¹⁹ As a result, the state of the economy and high unemployment rates were both influential factors in the decision to vote against the Constitutional text.

Integration Fatigue

According to the Eurobarometer,²⁰ integration fatigue in France was not the main cause of the negative vote. Only 6% of voters feared Turkish accession in the near future, and only 3% expressed concerns over a new enlargement wave.

In the Netherlands, however, several integration-related issues nurtured the debate. The question of the accession of Turkey and Eastern European countries, coupled with the suspicions of a possible increase in immigration or the relocation of jobs to new Member States, were important considerations for the Dutch. In addition, voters were concerned about a decreasing influence of the Netherlands in an ever growing European Union and apprehended the possible loss of national identity in a uniform and global EU.

Lack of Information and Communication

In France, it seemed the lack of informed voters did little to orientate voters' decisions towards casting the ‘No’ side. In the beginning, “the referendum started out as almost a non-issue, but within six months, it skyrocketed in the public awareness”.²¹ Debates flourished and a Eurobarometer survey for France shows that French voters believed they had at least a minimum

19 R.L. Nielsen, and L.L. Olsen, “Why did the French reject the European Constitutional Treaty?”, Working Paper (26), Centre for European Studies, University of Southern Denmark, 2006, p. 14.

20 Eurobarometer survey, “The European Constitution: post-referendum survey in France”, June 2005, p. 18.

21 A. Grosskopf, Why non and nee to the EU constitution? Reconsidering the shock of the Dutch and French Referenda, Department of Political Science, Long Island University, C.W. Post Campus, 2007, p.7.

knowledge regarding the Constitution's content.²² However, interestingly, the debate remained largely focused on national concerns, while European issues held a secondary position. Additionally, the term "constitution" further exacerbated the debate, as the French perceived this new label as a threat to national sovereignty and to their French identity.²³

In the Netherlands, a large number of voters seemed to know very little about the content of the Constitutional Treaty.²⁴ This may have been due to the fact that the Constitutional text was not available for the Dutch citizens until the final days of the debate. Also, the Eurobarometer survey following the referendum showed that the lack of information had contributed to the rejection of the document, with 32% of all 'No' voters indicating this reason.²⁵

In both France and the Netherlands, the EU institutions were rather absent from the pre-referenda debate. The Commission correctly argued that the problems in communication were in large part due to the fact that the EU bodies had "focused largely on telling people what the EU does, and less attention had been paid to listening to people's views."²⁶ Although there was a growing perception at the time that the outcome of the votes would ultimately lead to a rejection of the Constitution, the EU institutions did not involve themselves in a communication campaign to clarify the nature and content of the Constitutional text.

22 Eurobarometer survey, "The European Constitution: post-referendum survey in France", June 2005, p. 9.

23 L. Pech, *Understanding the French No*, National University of Ireland, Galway Faculty of Law, 2006, p. 4.

24 Eurobarometer survey, "The Future Constitutional Treaty", March 2005, p. 3.

25 Cf. Eurobarometer survey, "The European Constitution: post-referendum survey in the Netherlands," June 2005, p. 15.

26 European Commission, "White Paper on a European Communication Policy," COM(2006) 35, February 2006, p. 4.

The Period of Reflection – Actions Taken up by the Commission

The period of reflection, conceived by the heads of states and governments during the summer of 2005, was to address the issues surrounding the ratification failure, and the Plan D (Democracy, Dialogue and Debate) project was intended to be the starting point of this process.

The Commission presented Plan D in October 2005. Launched by Vice President for Institutional Relations and Communications Strategy Margot Wallström, the plan sought to make EU policies more easily understood, ensure EU institutions remain both accountable and reliable and establish a long-lasting link between the Union and its citizens. In addition, Plan D intended to serve as a listening exercise and establish a new starting point for a long-term democratic reform process with an ultimate goal of building the future of Europe based on the citizen's needs and expectations. The plan had not been intended to be a “rescue operation” for the Constitution, but rather a stimulus toward a broad debate between EU institutions and citizens.

The Commission structured Plan D in three phases. The initial phase involved stimulating as much debate and discussion among Member States as possible. While the primary responsibility of this stage rested with the national governments, the Commission was expected to “help structure the debate, if necessary provide Member States with financial and organizational support.”²⁷ During the debates, several issues were raised, including the necessity of defining the role of the EU, how it functions, where its borders are, and issues concerning the economic and social development of Europe in general.

The second stage of Plan D focused on the feedback process and intended to establish “a concrete road map for the future of Europe.”²⁸ A European

27 EU Civil Society Contact Group, “Period of reflection on the Constitutional Treaty: state of play eight month ahead of the June Council”, 2006, p. 3.

28 European Communities, “European Commission launches Plan D for Democracy, Dialogue and Debate”, *Press Release* 13.10.05. Article can be found at

Conference discussing the future of Europe outlined a report which summarized the main issues and conclusions from national debates.

In the final phase, the Commission proposed thirteen specific initiatives to stimulate a broader public debate, “to promote citizens’ participation and to generate a real dialogue on European policies.”²⁹ The primary focus during this phase included “an intensive series of visits by Commissioners to Member States, support for European citizens’ projects, a drive for more openness of Council proceedings, a stronger presence of Commissioners in national Parliaments, the creation of a network of “European Goodwill Ambassadors” to raise the profile of the European debate, and renewed support for projects to increase voter participation.”³⁰ During this phase, the Commission worked in close cooperation with several EU institutions, namely the European Parliament.

Beyond executing its Plan D initiative, in February 2006 the Commission drafted a White Paper on European Communication Policy designed to meet the shortcomings identified during the Constitutional Treaty ratification process. The White Paper established a new communication approach which shifted from an institution-centered to a citizen-centered strategy approach.³¹ The paper, entitled “A Citizens’ Agenda – Delivering Results for Europe,” identified and recommended specific actions to take so that communication could be improved and citizen dialogue could be increased.³² These actions included: 1) defining common principles (i.e. right to information and freedom of expression, diversity and participation); 2) empowering citizens through the improvement of civic education, connecting citizens with each other and public institutions; 3) working with the media and new technologies to develop the national, regional and local dimensions; 4) continuing to understand European public opinion through use of Eurobarometers; and 5) fostering cooperation among Member States, EU

<http://europa.eu/rapid/pressReleasesAction.do?reference=IP/05/1272> (retrieved on 03.03.08).

29 Ibid.

30 Ibid.

31 European Communities. “White Paper on a European Communication Policy” White Paper, 2006, p. 2.

32 Ibid.

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institutions, regional and local authorities, political parties and civil society organizations.

In addition, the Commission established an action plan in May 2006 to address citizens' concerns about sovereignty, efficiency, security and identity regarding EU enlargement and globalization. In the introduction of the communication, entitled "A Citizens' Agenda: Delivering Results for Europe," the Commission declared that the EU and its institutions must respond to the challenges of globalization. "EU citizens want a greater understanding of, and say in, what the EU does and how it does it. They see the EU as important, but remote. The Constitutional Treaty is intended to help bridge the gap...but citizens want the EU to function effectively, now."³³

In the wake of the Constitutional crisis, the Commission responded by helping to identify the motivations behind the rejection of the Constitutional Treaty and to outline possible initiatives to serve as solutions to those issues.

Contributions of the European Parliament

The European Parliament heavily defended the Constitutional Treaty and considered the 'No' votes to be a sign of general dissatisfaction within the Union, as opposed to a rejection of the constitutional reforms themselves. The EP concluded that the outcome of the referenda provided further evidence of the growing general detachment of citizens from the EU integration process. In response to this challenge, the EP affirmed that these "specific concerns and worries should be addressed."³⁴ It saw its chance to position itself as the spearhead of the European renewal process during the reflection period.³⁵

33 European Commission, "Communication from the Commission to the European Council—A Citizens Agenda: Delivering Results for Europe," 2006.

34 Euractiv, "Constitutional Treaty: the reflection period", www.euractiv.com 01.06.07.

35 Cf. M. Bauer, A. Metz and S. Seeger, *Der Plan D der Europäischen Kommission und die Reflexionsphase zur Verfassung und Zukunft der Europäischen Union*, 2005. Paper can be found at www.cap.lmu.de/download/2005/CAP-Aktuell-2005-03.pdf.

In January 2006, the EP adopted a resolution on the period of reflection which was based on the Duff-Voggenhuber report.³⁶ The resolution highlighted initiatives concerning broader public debates by organizing parliamentary forums through the EP, national parliaments, and the European media sources. The resolution also referred to several options which suggested scrapping the constitutional project and beginning a new document from scratch. In the end, the general feeling was that positive results could come from the reflection period. Thus, the Constitutional Treaty would be preserved and the public would be more involved in the debate and formation process. In its communication as of May 2007, the European Parliament concluded that the Parliamentary Meetings “have shown a general recognition that the Constitutional Treaty would provide the European Union with an appropriate framework to meet the challenges that it faces, as well as the realization that it would be difficult, if not impossible, for a new IGC to agree on proposals that were either radically different or superior to those agreed on in 2004.”³⁷

One of the major EP accomplishments was the organization of a series of joint parliamentary conferences “in order to stimulate the debate and to shape, step by step, the necessary political conclusions.”³⁸ These biannual conferences on the “Future of Europe” between the EP and the national parliaments covered a broad range of issues. In May 2006, the first inter-parliamentary forum was held and organized by both the EP and the Austrian Presidency. The initial goal was to provide the European Council with recommendations on how to effectively react to the constitutional crisis. In the end, the forum failed to provide any meaningful results, but the majority of participants considered the Constitutional Treaty to be a viable means for further discussion.

During the EP debates, several MEPs provided input and specific suggestions on how to solve the complex constitutional issue. For example, And-

36 European Parliament. “The period of reflection: the structure, subjects and context for an assessment of the debate on the European Union”, EP Report 2005/2146(INI), 2005.

37 European Parliament, “Draft Report on the Roadmap for the Union’s Constitutional Process,” Committee on Constitutional Affairs, Publication No. 2007/0000 (INI), 17.04.07.

38 European Parliament. “The period of reflection: the structure, subjects and context for an assessment of the debate on the European Union”, EP Report 2005/2146(INI), 2005.

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rew Duff, a Liberal MEP from the UK, had proposed various plans to save the most important parts of the Constitution. “Cherry-picking” was also another method proposed, but German Social Democrat MEP Jo Leinen warned against such behaviors, as the removal of elements would open up the entire Treaty package and lead to more contentious negotiations. Some critics of the treaty process, including MEP Nigel Farage from the UK, thought the dustbin was the place where the Constitution belonged. However, it was clear that the majority of MEPs supported the continuation of the ratification process and carried the hope that the Constitutional Treaty would enter into force in 2009.

Also during this period, national political parties had been trying to include the “European dimension” in their internal debates and electoral campaigning. In doing so, the parties suggested that the Union would give greater priority to cultural and educational policies. The EP published ‘European Papers,’ which covered many of the prominent issues facing the Union and were thought to be a basis for deliberations of the joint parliamentary forums. These actions underlined the need for a strict timetable with a clearly articulated objective regarding the Constitutional progress, as well as the need to measure public opinion. As the only European institution directly elected by the people, the EP, as argued by Bauer, Metz and Seeger, has a natural interest in increasing the acceptance of the citizens for the European integration project and to act as the arena for public political exchange.³⁹ Therefore, the goal of the EP was to be heard not only by European elites, but also by European citizens in general.

The Role of the European Council During the Reflection Period

At the European Summit in June 2006, Member States agreed that the necessary steps for the continuation of the reform process should be taken in 2008, early enough to reach an agreement before the EP elections in 2009. The mandate for a roadmap, as well as procedural steps and a content out-

39 M. Bauer, A. Metz and S. Seeger, Der Plan D der Europäischen Kommission und die Reflexionsphase zur Verfassung und Zukunft der Europäischen Union, 2005. Paper can be found at www.cap.lmu.de/download/2005/CAP-Aktuell-2005-03.pdf.

line of the revised treaty, was given to Germany, who was taking over the Presidency in January 2007.⁴⁰

Despite being the initiator of the “period of reflection, clarification and discussion”, the European Council could not agree on a common position due to the dissent which existed among its Member States. The Belgian Presidency’s concluding remarks on in June 2006 stated,

“After last year’s period of reflection, work should now focus on delivery of concrete results and implementation of projects. The European Council agrees to a two track approach. On the one hand, best use should be made of the possibilities offered by the existing treaties in order to deliver the concrete results that citizens expect. On the other hand, the Presidency will present a report to the European Council during the first semester of 2007, based on extensive consultations with the Member States. This report should contain an assessment of the state of discussion with regard to the Constitutional Treaty and explore possible future developments.”⁴¹

Therefore, both the Nice Plus and Constitutional Minus camps were able to be assuaged at the ministerial level. In this regard, the incoming German Presidency inherited a roadmap with high expectations and was ultimately tasked with finding a way out of the Constitutional dilemma. Despite these challenges, German Chancellor Angela Merkel was able to accomplish a great deal. First, the German Presidency was able to settle the main political conflicts (i.e. including the UK’s ‘red lines’ and Polish inflexibility) in order to reach a joint declaration.⁴² Second, the existing text remained the main point of reference for all talks and therefore 90% of the text of the Constitutional Treaty can now be found in the Lisbon Treaty.⁴³ Finally, disagreement over several controversial points of the Treaty had been resolved before the IGC. It is, however, notable that despite the inclusive wording of the Berlin Declaration (i.e. “We, the citizens of Europe”) and

40 See section 5 for a more detailed analysis on the EU Council Presidencies’ actions during the reflection period.

41 Cf. European Council 15./16. June 2006, “Presidency Conclusions”, 10633/1/06 REV 1, p. 16.

42 Cf. S. Kurpas, and H. Riecke, “Is Europe back on track? Impetus from the German EU Presidency,” CEPS Working Document (273) July 2007, p.10. Paper can be found at <http://aei.pitt.edu/7574/01/Wd273.pdf> (retrieved on 03.03.08).

43 Ibid, p. 13.

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the ambitious action plan of the Commission (Plan D and Citizens' Agenda), parliamentarians, civil society and the public were hardly involved at all.⁴⁴ Even so, the EU heads of state and government signed the Treaty of Lisbon on 13 December 2007.

The Member States' Efforts During the Reflection Period

It had been expected that Member State efforts would be quite extensive during the reflection period. However, it seemed the debates at the Member State level concerned Europe's future, rather than the Constitutional Treaty itself. Activities included regaining citizens' confidence in the EU, better informing citizens, providing input in the debate on the EU's communication strategy, ensuring better rates of participation of citizens in the EU debate, and debating the substance and challenges raised by EU policies and their relevance for citizens' concerns (such as globalization and enlargement).⁴⁵

Some Member States, such as the UK, organized a major conference on subsidiarity and proportionality in November 2005 to focus on specific issues on the agenda and tailored debates to different national concerns. NGOs were also particularly involved in informing and educating EU citizens with the support of Member State governments, and in doing so, encouraged citizens to participate in hearings, conferences and European forums. In 2005, no debates took place in Germany and Poland because of national elections and the lack of euro-political issues in the campaigns.⁴⁶ Premier Balkenende of the Netherlands announced a dialogue with the public, but it failed to materialize due to diverging views among the Dutch parliament, government, and political parties.⁴⁷

44 Ibid, p. 11.

45 Cf. www.euractiv.com/29/images/Message%20to%20June%20Summit%202006_tcm29-155743.pdf (retrieved on 03.03.08).

46 B. Einhäuser, „Wie nutzt Europa die Reflexionsphase? Eine erste Bilanz seit dem Gipfeltreffen im Juni 2005,“ KAS-Länderberichte, Konrad-Adenauer-Stiftung, p. 8.

47 B. Lippert, and T. Goosmann, “The State of the Union: Period of Reflection or the Sound of Silence,” Analysis 02.01.2006, Real Instituto Elcano, p. 5.

Debates on national issues were held in Member States such as Spain and Portugal, but transnational elements often failed to come to the surface in such cases. Latvia criticized the missing coordination between the EU and national programs, especially the lack of information on actions that were intended by the Commission⁴⁸. Additionally, few reports explicitly refer to the trans-national and multi-level dimensions of the debates.

The type of activities undertaken by Member States encompassed diverse initiatives such as improving government work on EU-related issues, organizing conferences and direct consultation of citizens, as seen in Austria, creating informative and educational websites, working on better engagement of civil society in the decision-making processes, as done in France, various information and educational projects, as completed in Italy and the Netherlands, and public opinion surveys, as experienced in Luxembourg.

In January 2006, the Institut für Europäische Politik in Berlin published its report *EU-25 Watch*, which included analyses from across Europe regarding the difficulties being faced at the Member State level. Difficulties highlighted in the report included, heterogeneity and diversity of preferences; the widening gap between citizens and their Member State governments; the success, or not, of the wait-and-see approach that was beginning to characterize the period; enlargement fatigue; and the fact that integration is being increasingly driven by external factors and not internal grand European projects that capture peoples' minds.⁴⁹ In addition, there was a distinction between how "old" and "new" Member States acted during the period of reflection. As outlined in the *EU-25 Watch* report, a widespread perception existed that the crisis had been a clash between "old" members, many of whom were in the grip of economic and political crises, and the newer, more dynamic Member States, whose economies were doing relatively well.

On one level, the attempt to include European citizens in the policy-making process can be traced back to the October 1993 inter-institutional declara-

48 EU Civil Society Group, "Period of Reflection on the Constitutional Treaty: State of play eight months ahead of the June Council", 2006, p. 3.

49 B. Lippert, and T. Goosmann, "The State of the Union: Period of Reflection or the Sound of Silence", Analysis 02.01.2006, Real Instituto Elcano, p. 5.

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tion on democracy, transparency and subsidiarity. With its Plan D the Commission contributed to the reflection by reinforcing a very general PR scheme whose inherent objectives have been to: listen, i.e. to include the European citizen into the input-output model of politics; create ownership of EU policies according to their expectations; and to “populize” the European project.

Currently, it is impossible to evaluate to what extent the enhanced communication with citizens will have an impact. However, the first step to further include and involve civil society in a more representative democracy model has been taken. Furthermore, the structures and mechanisms established during the implementation of Plan D may prove to be of use in further treaty initiatives.

Academic Contributions

The ratification crisis and reflection period had been continuously monitored by the various research institutes and think tanks that are committed to analyzing European integration. Academic discussions and publications covered the constitutional process from start to finish. The following abstract presents a brief overview of the main focus in publications of some key research institutes in Europe.⁵⁰

The Center for European Integration Studies (ZEI), in Bonn (Germany) monitored the process leading to the Constitutional Treaty and published an interdisciplinary commentary on the Constitution.⁵¹ Furthermore, ZEI has dealt intensively with the motives that led to the ratification crisis and the opinions that were held in the various Member States.

The French and Dutch ‘No’ votes were analyzed in detail and background information was given.⁵² A research priority was to identify possible out-

50 It should be emphasized that this overview does not constitute an exhaustive list of research institutes focused on European integration.

51 M. Höreth, C. Janowski, L. Kühnhardt, „Die Europäische Verfassung. Analyse und Bewertung ihrer Strukturentscheidungen,“ Baden-Baden, 2005.

52 C. Janowski, „Das Referendum über die Europäische Verfassung in Frankreich“, WDR 2 Morgenmagazin 30.05.05.

comes of the ratification crisis and possibilities for institutional changes that arose through the negative feedback in the Member States.⁵³ A key aspect of the argumentation was the comprehensive discussion regarding the future of the European Union. Possible outcomes of the reflection period and alternatives for the Constitution were discussed and published accordingly.⁵⁴ In addition, the goals and achievements of the German EU Presidency in 2007 were another focal point of ZEI's publications.⁵⁵

Similar academic contributions can also be found in the publications of the *Center for European Policy Studies (CEPS)* in Brussels (Belgium), including the analysis of the German EU Presidency in 2007⁵⁶ and the alternatives which could substitute the failed European Constitution.⁵⁷ Variations in the academic research as compared to ZEI can be found in the field of Community instruments supporting and fostering public debates and communication on European integration. Conditions for the functioning of the EU's Citizens' Agenda⁵⁸ as well as the Commission's White Paper for Communication were both topics dealt with in publications.⁵⁹ One of the research priorities of CEPS was to examine the establishment of public awareness and the mechanisms to better understand the structure and functioning of the EU. It is quite clear that CEPS was also concerned with the concrete Community activities to implement a reflection period.

53 L. Kühnhardt, „Die Chance der Krise“; Rheinischer Merkur 23.06.05.

54 B. Matthieu, D. Popovic, and D. Presova, “Reconstructing Europe. Two Alternative Proposals for a European Constitution”, Discussion Paper, Center for European Integration Studies, 2007.

55 A. Marchetti, and M. Zimmek, „Annäherung an Europa. Beiträge zur Deutschen EU-Ratspräsidentschaft 2007“, Discussion Paper, Center for European Integration Studies, 2007.

56 S. Kurpas, and H. Riecke, “Is Europe back on Track ? Impetus from the German EU Presidency”, CEPS Working Document (273), Centre for European Policy Studies, 2007.

57 R. Baldwin, “Plan B”, CEPS Policy Brief (74), Centre for European Policy Studies, 2005.

58 E. Guild, “Making the EU's Citizens' Agenda Work”, Policy Brief (122), Centre for European Policy Studies; 2007.

59 S. Kurpas, S. Brüggemann, and C. Meyer, “The Commission White Paper on Communication. Mapping a Way to a European Public Sphere”, CEPS Policy Brief (101), Centre for European Policy Studies; 2006.

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The *Robert Schuman Centre for Advanced Studies* at the *European University Institute (EUI)* in Florence (Italy) monitored the Constitution drafting, the ratification crisis and subsequently the reflection period. Through an in-depth analysis of the Constitution draft, one major publication series supported the finding of a solution for the EU's future integration challenges.⁶⁰ Future prospects for European integration and its legal framework were also evaluated and discussed. EUI launched a comprehensive project concerning the development of the Constitution,⁶¹ the content of the draft, the consequences of the negative referenda and future options for the document itself and European integration in general. The project was comprised of seminars, speeches, publications and presentations involving experts from different backgrounds. The academic activities were pursued under the overall umbrella "A European Constitution: Retrospective and Prospects."⁶² Finally, the EUI contributed to the work of the "Action Committee for European Democracy" which was involved in the public debates during the reflection period and provided logistical, technical and scientific support.⁶³

Researchers involved in the *Garnet Network of Excellence* tried to identify factors leading to the crisis which the European integration process had to overcome.⁶⁴ The respective researchers characterized the crisis that followed the French and Dutch referenda as 'distinct from the preceding one.'⁶⁵ They drew this characterization because the crisis combined a de-

60 G. Amato, H. Bribosia, and B. De Witte, "Genesis and Destiny of the European Constitution", Paper, European University Institute, 2007.

61 B. De Witte, *Ten Reflections on the Constitutional Treaty for Europe*; e-Book, European University Institute, 2003.

62 "A European Constitution: Retrospective and Prospects", www.eui.eu/RSCAS/Research/Institutions/Index.shtml (retrieved on 03.03.08).

63 Further details concerning the "Action Committee for European Democracy" (ACED) can be found at www.iue.it/RSCAS/research/ACED/.

64 Garnet is a research network on "Global Governance, Regionalisation and Regulation: The Role of the EU" funded under the European Commission's 6th Framework Programme and comprising 42 leading research centres and universities. It is coordinated by the Centre for the Study of Globalisation and Regionalisation at the University of Warwick (UK).

65 O. Costa, P. Magnette, "How the EU could overcome the Current Constitutional Crisis?", *Garnet Policy Brief* (4), 2007.

cline in both the public support for the EU as well as in the motivation of some European leaders. According to some authors, a possible solution was to revitalize the integration process by identifying common political objectives while modifying the institutional structures as much and as far as necessary.⁶⁶ Possible solutions and recommendations pertaining to the French and Dutch referenda and their impact on the political and social level were also envisaged.⁶⁷

The *Centre d'Etudes Européennes (CEE)* of *Sciences Po* Paris (France) analyzed the reactions after the French referendum with a focus on the social dimension of the French 'Non'. This approach tried to explain and identify motives for the outcome of the votes, such as internal social tensions, disparities among voters⁶⁸ and lack of information.⁶⁹ A political agenda which contains priorities such as employment, education, enlargement and political reform was considered to give scope to the social and political debate in saving the ratification process.⁷⁰

The German Institute for International and Security Affairs (SWP) in Berlin (Germany) has also dedicated a great deal of work to the Constitutional crisis and Europe's options to move forward. Possible solutions were (1) maintaining the status quo by improving the Treaty through dialogue, (2) individual reform steps in a "sub-constitutional manner" or (3) separating the Member States that are unwilling to ratify the Treaty.⁷¹ The SWP's works concluded that ultimately the success would depend on the willingness and capacity of political parties to find consensus and to implement reforms.

66 Ibid.

67 C. Lesquesne, "Referenda and European Integration: A Misguided Procedure", Garnet Policy Brief (1), 2005.

68 M. Lazar, "Le grand soir n'aura pas lieu", *Le Monde*, June 2005.

69 E. Friedberg, "Referendum: NON, le debat n'etait pas exemplaire!", *Tribune Libre*, June 2005.

70 Moscovici, P., "Si nous ne voulons que l'Europe se defasse... ", *Nouvel Observateur*, June 2005.

71 A. Maurer, "In Detention, Repeating the Year or Expelled? Perspectives on the Realisation of the Constitutional Treaty", *SWP Research Paper*, 2006/RP 02, 2006.

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The publications issued by the *Institute of European Politics (IEP)* in Berlin (Germany) first sought to analyze the reasons for and consequences of the failed referenda in France and the Netherlands. Generally, these failures were viewed as a serious crisis in the integration process. It had been recognized, however, that the negative referenda were not an expression of dissatisfaction with the Constitutional Treaty in general, but rather as an expression of underlying problems.⁷² These difficulties needed to be addressed before taking further steps. Taking the anxieties and fears of the citizens into account was considered crucial.⁷³ While early publications also tried to explain the value-added of the Constitutional Treaty,⁷⁴ later publications attempted to suggest possible ways out of the crisis, mostly focusing on what should be done with the Constitutional Treaty and to what extent certain elements could be used for further integration. An analysis of proposed package deals showed that all possibilities seemed to bear a high risk of failure.⁷⁵ But they seemed to have in common the conclusion that retaining the Constitutional Treaty was not a feasible solution. Although the crisis did not need to be viewed as a disaster for the integration process, there was considerable disagreement about solutions for the future.⁷⁶

The articles published by the *Centre for Applied Policy Research (CAP)* in Munich (Germany) regarding the reflection period analyzed the different initiatives taken by the European Parliament and the Commission in detail. They concluded that the citizens of Europe should be placed in the center of all debates. Furthermore, they examined how far these initiatives could contribute to solving the legitimacy problem of the EU by focusing in par-

72 D. Göler, and H. Marhold, “The Future of the Constitution – Reflections at the Outset of the Reflection Period”, *integration* (28) 4. 2005.

73 M. Jopp, S. Kuhle, “Ways out of the Constitutional Crisis – The EU after the failed Referendums in France and the Netherlands”, *integration* (28) 3. 2005.

74 D. Göler, H. Marhold, “The Future of the Constitution – Reflections at the Outset of the Reflection Period”, *integration* (28) 4. 2005.

75 D. Göler, and M. Jopp, “The European Constitutional Crisis and the Strategy of Patience”, *integration* (29) 2. 2006.

76 U. Diedrichs, W. Wessels, “The European Union in the Constitutional Trap? Analysis, Developments and Options“, *integration* (28) 4. 2005.

ticular on the potential contribution of Plan D.⁷⁷ Compared to several other institutes, CAP also considered the integration process to be in a severe crisis. The debate about the future of the European Constitution nonetheless received a new impulse from the debates initiated by the Austrian Presidency. The most prominent lines of argument and competing paradigms which surfaced during these debates had also been analyzed by CAP.⁷⁸

This brief overview of some key research institutes in Europe demonstrates the ongoing study of the process that the European Union went through following the failed referenda in France and the Netherlands. The think tanks previously mentioned have closely monitored this period and they all seem to be interested in the underlying reasons that led to this situation. All authors agreed on the severity of the crisis and provided several solutions that could solve the integration dilemma. The overall opinion was that the European integration process had come to a crossroads and that alternative scenarios needed to be carefully assessed in terms of advantages and disadvantages. A great deal of work suggested possible ways out of the crisis, not only in a theoretical manner but also in very practical terms, such as comprehensive projects entailing seminars, speeches, conferences and publications to facilitate the involvement of citizens in the European integration process.

From Public Debate to Negotiations Behind Closed Doors

The period of reflection was not only a period of academic debate and discussions with the public, but also a period of efforts to find solutions for future treaty reforms in order to overcome institutional inefficiencies. Hagemann and Missiroli stated in May 2007: “The political debate has now resumed, slowly but surely, thus bringing an end to the ‘pause’ and trigger-

77 M. Bauer, A. Metz, S. Seeger, “Der Plan D der Europäischen Kommission und die Reflexionsphase zur Verfassung und Zukunft der Europäischen Union“, CAP aktuell (3). 2005.

78 S. Seeger, “Spiel auf Zeit – Die Debatte um die Zukunft der europäischen Verfassung“. CAP aktuell (3). 2006.

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ing [at last] some real ‘reflection’.”⁷⁹ On the one hand, citizens discussed the future of Europe from a social and political point of view, while on the other hand, the institutions and national governments were bargaining and negotiating with each other about the contents of the Constitutional Treaty.

Member States’ Conflicting Positions

Member States’ positions on how the reflection period should be used and how the EU should move forward differed greatly. British Prime Minister Blair presented his idea of how the reflection period should be used in a speech at Oxford University when he stated that it would be necessary to find “the policy answers” for the challenges Europeans are faced with and “then let institutional change help deliver them; rather than the other way round.” This was the kind of pragmatic approach that the Commission also proposed. But Blair expressed his critical view of the mainly elite-driven constitutional process when he said: “Instead of bold policy reform and decisive change, we locked ourselves in a room at the top of the tower and debated things no ordinary citizen could understand.”⁸⁰

After the French voted “No,” there was no chance for French politicians to openly foster the ratification process in Europe. They pursued, moreover, the strategy of a deeper integration process on the basis of the existing treaties. President Chirac also proposed enhanced cooperation among the countries of the Eurozone, which would mean nothing less than a two-speed Europe. This idea was also supported by the Belgian Prime Minister Verhofstadt, who also indicated that he had severe doubts as to whether or not the Constitution would ever be successful. Rather, he promoted the idea of a “United States of Europe” with enhanced cooperation in certain fields. The Netherlands’ head of government Balkenende took an even more negative position, and the Polish government went as far as to ask to stop the ratification process. The leader of the ruling Polish party, Jaroslaw Kaczyn-

79 S. Hagemann, and A. Missiroli, “Debating the Constitution: between realism and revival”, EPC Policy Brief, 2007, p.3. Policy Brief can be found at www.epc.eu/TEWN/pdf/499520943_Debating%20the%20Constitution.pdf (retrieved on 03.04.08).

80 Cf. Blair speech at the University of Oxford (2006).

ski, even argued that the reflection period would only extend the crisis. On the other hand, there were countries that still showed a strong commitment to the Constitution, such as Finland and the new EU member Estonia, whose parliament ratified the Constitution in May 2006. Spain, Hungary, Cyprus, Slovenia, Portugal, Austria and the Czech Republic also wanted the Constitution to survive. Germany supported the idea of the Commission to first tackle urgent problems like unemployment and showed openness to changes in the constitutional text.⁸¹

As a counterbalance to the diverging positions held by individual Member States, the Member States holding the Presidency in the Council that were tasked with the advancement of the reflection period and future Treaty reform played a significant role in the Constitutional process.

British Presidency

Taking over the EU Council Presidency from Luxembourg in July 2005, the British Presidency intended to set the scene for a broad debate on the future orientation of the Union with no particular timetable attached. The European Union and its Member States needed time to debate how to react to the constitutional impasse; whether to continue the ratification process or to put it to a halt. The lack of citizen support not only in France and the Netherlands, but also in other skeptical countries such as Great Britain, had to be analyzed in order to respond to the crisis. However, it may be stated that the first Presidency after the referenda took a particularly slow start to initiate discussion, putting the issue off to the upcoming Austrian Presidency.⁸² Member States were exhibiting a “wait-and-see” approach, with Germany and Poland focusing on their respective non-euro-political national election campaigns,⁸³ Dutch politics being deeply divided on the is-

81 S. Seeger, „Spiel auf Zeit – Die Debatte um die Zukunft der europäischen Verfassung“, CAP Aktuell (3), 2006, p. 3 f. Can be found at www.cap.lmu.de/download/2006/CAPAktuell-2006-03.pdf (retrieved on 15.03.08).

82 Cf. B. Lippert, and T. Goosmann, “The state of the Union: Period of r or the sound of silence”, Paper, Institut für Europäische Politik, 2006, p. 4.

83 See B. Einhäuser, „Wie nutz Europa die Reflexionsphase? Eine erste Bilanz seit dem Gipfeltreffen im Juni 2005“, KAS-Länderberichte, Konrad- Adenauer Stiftung, 2005, p. 8.

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sue⁸⁴ and many other countries, such as Spain and Portugal, generally being absorbed by their national agenda. In this context, it was Latvia who actually criticized the missing coordination between the EU and national programs.⁸⁵

Austrian Presidency

Nevertheless, EU Member States launched a number of information and communication activities following the call for a period of reflection by the European Council. The Austrian Presidency was asked to conduct a questionnaire and to come up with a summary reflecting the findings of those initiatives. In its interim report on national debates on the future of Europe, the following key findings were highlighted:

- Member States used a multi-level approach to address citizens. Even though the audiovisual initiatives played a key role, the internet was also identified as a highly potent instrument, which however, requires specific use.
- Providing especially teachers and journalists with an education on Europe was favoured by many Member States due to the multiplier effect of such activities.
- Concerning the topics discussed, citizens seemed to perceive the European agenda as an extension of their national agenda. As a result, priorities and subjects differed widely between Member States. This made it impossible to come up with some key messages common to all EU citizens. Even so, common concerns seemed to be: employment, globalization, security, environment, EU enlargement and other international challenges.⁸⁶

84 Cf. B. Lippert, and T. Goosmann, “The state of the Union: Period of reflection or the sound of silence”, Paper, Institut für Europäische Politik, 2006, p. 5.

85 Cf. EU Civil Society Contact Group, “Period of Reflection on the Constitutional Treaty: State of play eight months ahead of the June Council”, 2006, p. 3.

86 Cf. Council of the European Union. “Report on Member States’ information and communication activities during the reflection period” 9701/1/06 REV 1, 24 May 2006. Report can be found at <http://register.consilium.europa.eu/pdf/en/06/st09/st09701-re01.en06.pdf> (retrieved on 29.11.07).

People seemed to have very little knowledge about the way decisions are taken on the EU-level, which went along with a certain degree of mistrust in the decision-making process. In spite of this, citizens expected actions regarding their core interests - quality of life, unemployment, security and environmental concerns - to be taken at the European level.

Under the Austrian Presidency's influence, first steps were taken to address the Constitutional impasse leading up to the Council Conclusions of June 2006, the one year deadline of the reflection period. As alternative proposals and positions began to take shape among the Member States, it was decided to follow the Commission's proposal of extending the reflection period until 2008. New impetus for a settlement was expected under the German Presidency beginning in January 2007 and Germany was mandated to submit a report outlining possible avenues for the future. The entire issue was to be resolved by the end of 2008 under the French Presidency at the latest.⁸⁷

Finnish Presidency

During the Finnish Presidency in the second half of 2006, no further concrete steps were taken, however the groundwork was laid for real movement on the issue of what to do about the Constitutional Treaty and it looked as if the period of reflection might be finally coming to an end. The Finnish government held discussions with all Member States on the future of the Constitutional Treaty, and as noted by Council President Matti Vanhanen, there was a definite "change in atmosphere."⁸⁸ In a shift from people being in a "dream world" and not wanting to give the elephant in the room active consideration, European leaders and decision makers began to seriously think about how to move ahead with the Constitutional Treaty.

87 Council of the European Union, "Brussels European Council 15/16 June 2006. Presidency Conclusions", 10633/1/06 REV 1, CONCL 2, 17 July 2006. Conclusion can be found at www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/ec/90111.pdf (retrieved on 28.11.07).

88 Speech given by Finnish EC President Matti Vanhanen to the EP, 18th December 2006. Speech can be found at www.eu2006.fi/news_and_documents/speeches/vko51/en_GB/178743/ (retrieved on 28.11.07).

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The German Presidency: The Turning Point

When Germany took over the rotating EU presidency and officially ended the period of reflection on 17 January 2007, the Constitutional issue still represented a complicated challenge. Due to its image of “motor of European integration,” Germany was seen as the most likely player to find a solution. However, it was feared that if Germany were to fail, the EU would experience a severe backlash and lose even more credibility. The German government was thus under intense pressure. A fast-paced program of negotiations and initiatives had been set up with a view to outline the content of a renegotiated treaty that the European Council could agree on in June 2007.

During the German presidency in the first half of 2007, the EU celebrated the 50th anniversary of the Rome Treaties. On the occasion on 25 March 2007, the EU produced the “Berlin Declaration” which, in addition to stating common European values, looked back on EU achievements as well as forward to new challenges. Although the declaration did not make direct reference to the Constitution, it stated that it wanted to place the EU on a “renewed common basis.”⁸⁹ In her government declaration in June 2007, German chancellor Angela Merkel herself claimed that the clear commitment of the 27 Member State governments to finding a new common basis by 2009 was a very important step in overcoming the institutional deadlock, as it caused needed time pressure.⁹⁰

The German Presidency engaged in bilateral consultations with the European governments in order to establish their respective positions. The secrecy of the talks, while being criticized for aggravating the transparency problem, was defended as a necessary tool to achieve agreement in the end. Any involvement of the press in the negotiations would arguably have

89 Cf. European Communities. “Declaration on the occasion of the 50th anniversary of the signature of the Treaties of Rome”, 25. March 2007. Speech can be found at www.europa.eu/50/docs/berlin_declaration_en.pdf (retrieved on 10.12.07).

90 Cf. A. Merkel, “Government Declaration of the German Chancellor: Outlook on the European Council of 21/22 June 2007”, 14 June 2007. Speech can be found at www.bundesregierung.de/Content/DE/Regierungserklaerung/2007/2007-06-14-regierungserklaerung-eu-gipfel.html (retrieved on 10.12.07).

stirred up an open controversy between Member States, making a compromise impossible.⁹¹

Each Member State had been asked to appoint two representatives, or “sherpas”, who would be in charge of the direct but confidential negotiations with the German presidency. The aims were (1) to promote a clear definition of stances by the Member States and (2) to increase trust among sherpas to facilitate negotiations and the adoption of common stances. The process was exacerbated by the British and Polish negotiators who drew off their red lines with respect to fundamental rights, foreign policy and the judicial system on the one hand and the call for a ‘square root of the population’ in Council voting on the other.⁹²

Opposing Models for Treaty Reform

The task of alleviating conflicts could not have been much more challenging. The positions on the Constitution were divided, with large Member States fundamentally opposing each other on how to proceed. There were basically two different concepts and models for Treaty reform.

One approach advocated not taking the Constitutional Treaty, but rather the Treaty of Nice as the basis for future reform steps. Politicians as well as scholars have declared the Constitution ‘dead’ and claimed that people should look for creative solutions elsewhere. Britain, France, the Netherlands, the Czech Republic and Poland all adopted this “Nice-Plus” position, despite differing reasons and backgrounds.⁹³

The EP and the Member States that had already ratified the Constitutional Treaty promoted the idea of basing a ‘Reform Treaty’ on the Constitution. This approach was also referred to as “Constitutional Minus.” As they were

91 Cf. S. Kurpas, and H. Riecke, “Is Europe back on track? Impetus from the German EU Presidency”, CEPS Working Paper (273), 2007.

92 For an in-depth discussion: S. Kurpas, and H. Riecke, “Is Europe back on track? Impetus from the German EU Presidency”, CEPS Working Paper (273), 2007.

93 D. Göler, M. Jopp, „Die europäische Verfassungskrise und die Strategie des "langen Atems"“, integration (2) 2006, p. 91-105. Article can be found at www.iep-berlin.de/fileadmin/website/09_Publikationen/integration_2006/GoelerJopp.pdf (retrieved on 29.02.07).

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convinced that the Constitutional Treaty was the optimal outcome, since it had been developed as the smallest common denominator of the 25 members and then Candidate States, they did not want to go back to cumbersome and time-consuming negotiation and voting processes in order to reinvent the European reform wheel.⁹⁴

Reaching a Compromise

Despite strong resistance on a number of issues, particularly from Poland and the UK, an agreement was hammered out during the German presidency at the European Council Meeting of June 21 to 23 2007. A mandate was presented for an Intergovernmental Conference (IGC) to take place in October to draft a final successor to the now defunct Constitutional Treaty.

As previously indicated, it was deemed necessary to negotiate the treaty with as little publicity as possible. Furthermore, with the exception of Ireland, it was set to be ratified by parliamentary vote. Negotiations under the German Presidency and the envisioned ratification procedures were highly controversial. Instead of sticking to the Convention method of democratic openness, the return to “the old days of inter-governmental talks behind closed doors”, as well as the strategy of “avoiding referenda at all costs” were considered necessary to move the Union forward. It may be argued that an EU-wide consultative ballot on the same day would have been more adequate to demonstrate accountability and political tact, but in the end, the lack of transparency in the process seemed to be the trade-off for institutional efficiency and legitimacy. At this point it should be stressed that “EU documents and treaties are usually not written with the primary purpose of impressing public opinion or being transparent for ordinary citizens.”⁹⁵ They are written to “satisfy the bureaucrats and political representatives of 27 nation states, and to reconcile the complex interests of the many pressure groups across Europe.”⁹⁶ In fact, “the European Union is fully accepted by national governments, and increasingly by civil society in the

94 Ibid.

95 Euractiv, “If EU Referendums Are Taboo, What Then?” www.euractiv.com 03.10.07.

96 Ibid.

form of NGOs and interest groups, as well as by most elite opinion.”⁹⁷ On the other hand, the EU is “not yet an integral part of national political systems, which is why national electorates are not fully engaged in or committed to its ways.”⁹⁸

Content of the Lisbon Treaty

Following the 2007 Intergovernmental Conference, the European Council that met on 18 and 19 October in Lisbon adopted a draft Reform Treaty (“Lisbon Treaty”) expected to be ratified in 2009 to replace the failed Constitutional Treaty. The most important modifications of the Lisbon Treaty compared to the Constitutional Treaty are the following⁹⁹: the Lisbon Treaty is not a single text as suggested by the Constitutional Treaty, but will amend the two existing treaties, the Treaty on European Union (TEU) and the Treaty establishing the European Community (TEC), the latter being replaced by the Treaty on the Functioning of the Union (TFEU).

In the Council, QMV will be extended to 40 additional policy areas by 2014, in an attempt to reduce the blockage-threat and to lead to a more efficient decision-making process. The most contested policy issues will, however, remain under unanimity voting (i.e. taxes, social security, Common Foreign and Security Policy). In addition, double-majority voting will be introduced. A “qualified majority” is reached when a majority of all Member States (55%) who represent a majority of all citizens (65%) vote in favor of a proposal. The new system is designed to yield higher transparency and greater legitimacy by incorporating slightly stronger population weights. Furthermore, a reduction of the number of Commissioners (from 27 to 18) and members of the European Parliament (from 785 to 750) will

97 Ibid.

98 Ibid.

99 The following section is based on: Giuliani, “Understanding the European Council in Lisbon and the Reform Treaty”, *European Issues* (76), Foundation Robert Schuman, 2007. A more in-depth analysis of the Lisbon Treaty regarding the questions of transparency, efficiency and democracy can be found in: M. Höreth, and J. Sonnicksen, “Making and Breaking Promises. The European Union under the Treaty of Lisbon”, ZEI Discussion Paper C181, 2008.

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start in 2014. The influence of the European Parliament in the legislative process will increase with the extension of the co-decision procedure, currently the most frequently used legislative method. A permanent Council Presidency of two and a half years will be introduced, designed to set more coherent priorities and to deliver more continuity. Whether there will be a conflict of competence between the Commission President and the European Council President has yet to be seen.

The “European Foreign Minister” changed into a “High Representative of the Union for Foreign Affairs and Security Policy”, replacing the current EU High Representative for Foreign Affairs and the EU External Relations Commissioner.

Further changes include the enhanced control of subsidiarity by national parliaments which will take part in the European legislative procedures, the obligatory nature of the Charter of Fundamental Rights in all Member States except the UK and Poland and the possibility of popular initiative by means of the right to petition. Finally, the three pillars will be merged transforming the EU into a legal entity within the Treaty on European Union (TEU).

To achieve consensus on these changes, several concessions had to be made: the UK's withdrawal from some common policies (opt-out clauses in police and legal areas, Charter of Fundamental Human Rights), the delay of the new weighting of votes in the Council until 2014, the application of the ‘Ioannina Compromise’ (allowing a blocking majority), the elimination of the “market, where competition is free and undistorted”-clause (without considerable legal effects) and the withdrawal of European symbols.

Thus, while the Lisbon Treaty maintains most of the reforms envisaged by the Constitutional Treaty, marking a vast improvement in the functionality and workability of the union, some reform steps were not taken due to diverging national interests, in particular those of the UK and Poland. Due to the character of national constitutions and the concern about maintaining national sovereignty, the European symbols (i.e. the flag and anthem) had to be removed and the Charter of Fundamental Rights only referenced instead of included in the Treaty’s text. Therefore, the Lisbon Treaty remains

somewhat lacking in terms of the expectations and hopes expressed in the Constitutional Treaty by many advocates of reform.

It must be noted here that after the ‘No’ votes to the Constitutional Treaty and the subsequent struggle over an adapted version of the latter during the reflection period, the Lisbon Treaty is first and foremost a political compromise. Despite an apparent shift in Euro-enthusiasm among the people and policy makers alike, the reform treaty ‘saves’ the core of the institutional reforms as outlined in the Constitution, most importantly the change of voting procedures in the Council, the permanent presidency and the establishment of the ‘High Representative’.

Conclusion

In summary, during the reflection period the EU attempted to resolve its constitutional difficulties by pursuing several strategies that would provide sufficient time for Member States to further the Constitutional debate and garner enough support to continue the ratification process. While the broad discussions provided an additional opportunity for the heads of state and government to establish a consensus regarding the future of Europe, the Member State populations and national parliaments were unable to contribute to the degree that they had wished. On the one hand, citizens discussed the future of Europe from a social and political point of view, while on the other hand, national governments were bargaining and negotiating with each other about the contents of the Constitutional Treaty—a process which lacked transparency throughout the duration of reflection period.

As demonstrated in this paper, the Constitutional Treaty originated through a desire among European political elites to consolidate the existing treaties and governing documents into a single text, as well as to enhance efficiency, transparency and democracy. Although receiving overwhelming support from MEPs during the non-binding, but highly politically symbolic vote, the Treaty met resistance from significant portions of the population, namely in France and the Netherlands. However, direct criticism of the Constitutional Treaty played the least important role the voters’ decisions

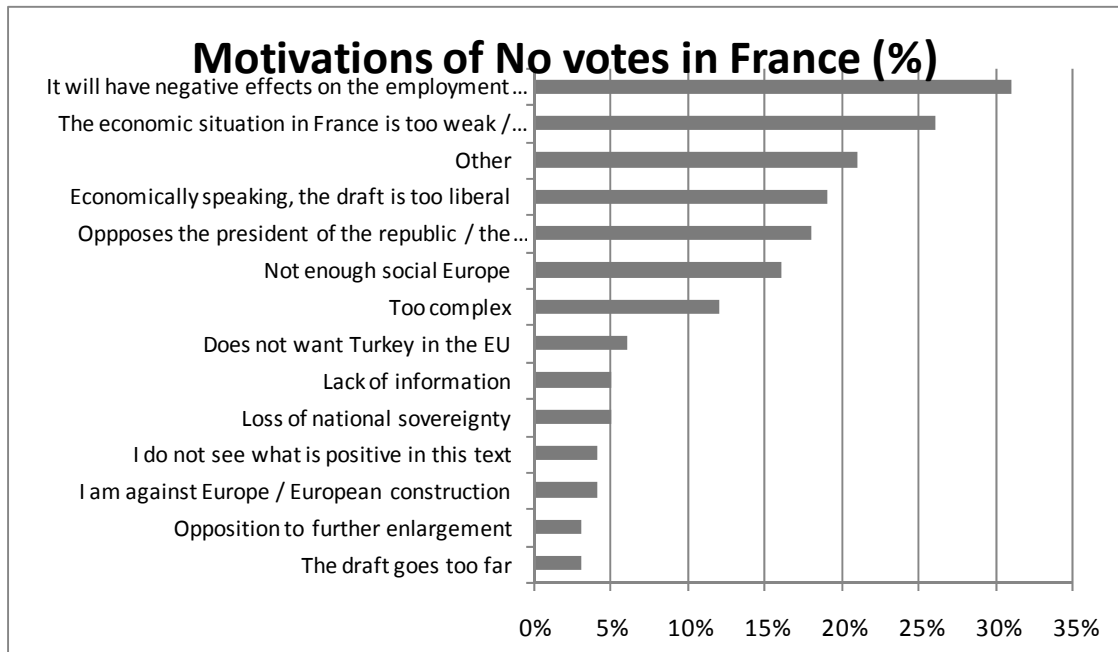
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to vote ‘No.’¹⁰⁰ As identified through public opinion polls in the second part of the analysis, disenchantment over domestic issues, expressions of a fundamental loss of confidence in the EU and its institutions, as well as a questioning of the necessity of further European integration, were identified as the root causes for the negative votes. It is difficult to evaluate the impact of EU institutions’ projects on contributing to the solution of the Constitutional crisis, yet it is clear that some initiatives (i.e. Plan D) have resulted in an enhanced discourse between EU institutions and citizens. In this context, one could conclude that these developments have led to improvements in advancing democratic elements. As outlined in the fourth section, the reflection period was monitored by various research institutes committed to analyzing European integration. Contributions of these academic institutes ranged from research publications and discussions to larger projects which incorporated seminars, speeches, and presentations involving European integration experts. Ultimately, negotiations to solve the Constitutional crisis occurred behind the “closed doors” of Member State governments, as illustrated in the fifth section of this paper. Instead of sticking to a method of democratic openness, the EU returned to “the old days of inter-governmental talks behind closed doors.” These negotiations produced the Lisbon Treaty, which can be categorized as a political compromise on the one hand, since it retains the core elements of the Constitutional Treaty, but on the other hand, omits several original provisions.

As a final point, the period of reflection did not have a fundamental impact on the negotiations which led to the drafting of the Lisbon Treaty, the actions taken by Member States and EU institutions were certainly positive, in the sense that for the first time, the integration process attempted to incorporate the needs and wants of the citizens of Europe.

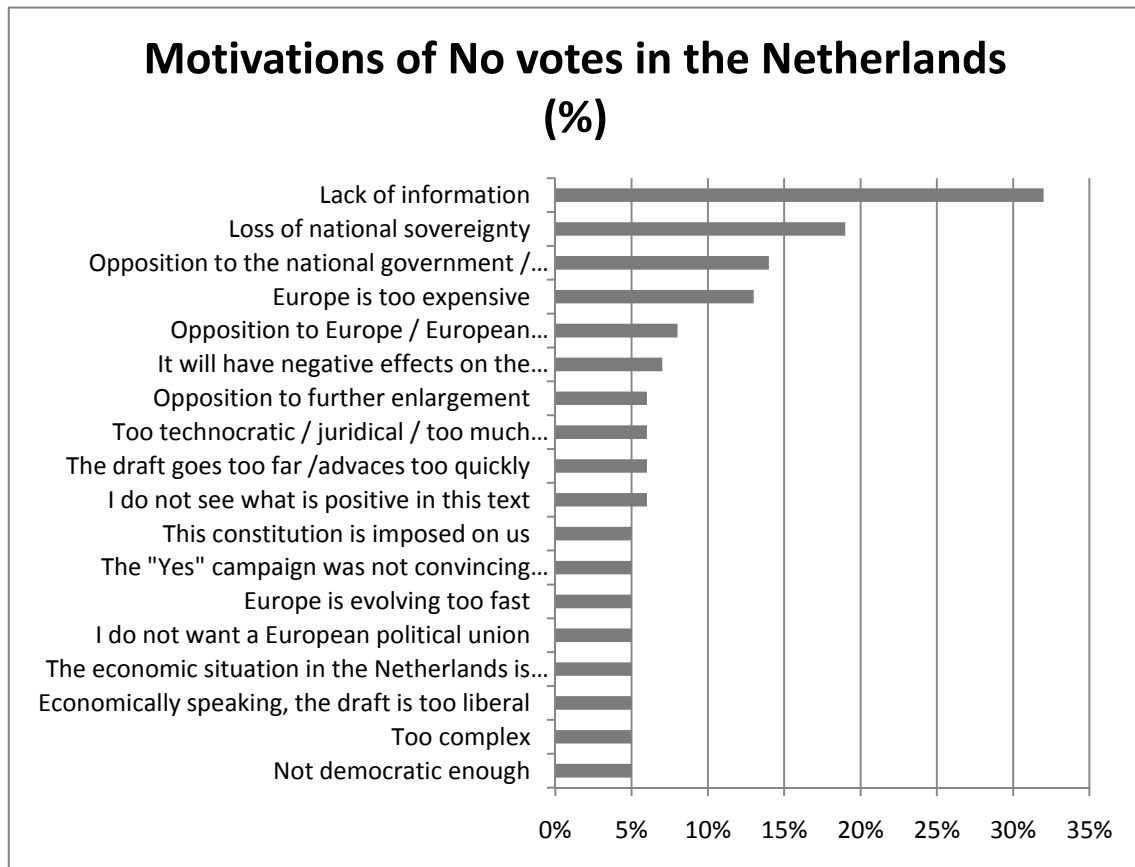
100 G. Kuhle, and J. Mathias, „Wege aus der Verfassungskrise – Die EU nach den gescheiterten Referenden in Frankreich und den Niederlanden“, *integration* (3), 2005, p. 257-261. Paper can be found at www.iep-berlin.de/fileadmin/website/09_Publikationen/integration_2005/Jopp-Kuhle.pdf (retrieved on 10.12.07).

Appendix I



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Appendix II



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