

# EU Constitution Project Newsletter

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In line with the Federal Trust's aim to enlighten the debate on good governance, this Newsletter reviews the current reform process of the EU from the standpoint of the work of the Federal Trust's project on Constitutionalism, Federalism and the Reform of the European Union (the 'EU Constitution Project'). The Newsletter looks at current developments in and outside the Convention and also covers the UK debate. Finally, it provides information about relevant events and publications.

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## 1. Guest Editorial: A British Perspective on the UK Referendum

The appeal of a referendum lies in the assumption that it will supply a clear-cut answer to a single question. Yes or No? But any decision-making process is influenced by the quality of the information fed into it. Mr Blair's sudden embrace of the UK's electorate as a giant jury, rather than a passive consumer of decisions supplied by politicians allowed a five-year government franchise, is built on the quest, proclaimed to Parliament on 20 April, to replace myth by reality. And yet does public life provide the necessary pre-conditions for this change? Take the case of *The Times*. On 24 November 2003 William Rees-Mogg informed readers that France and Germany "can dominate Europe under the new constitution", for they will "have the power to block any European laws they do not like." This is untrue. On 13 April 2004 Irwin Stelzer declared that "France and Germany together will have the power to block any reforms the other 23 members propose" To misrepresent the voting rules envisaged by the draft Constitutional Treaty on one occasion may be deemed careless. To do it twice, and through two different putative opinion-formers, suggests a newspaper pursuing a more calculated agenda. A referendum depends for its legitimacy on pre-requisites such as fairness, truth and open deliberation. These ingredients are lacking in British public life. Of course, periodic elections that adorn the theatre of representative democracy are also commonly marked by a febrile atmosphere of rumour and half-truth. But the electorate is presented with a range of choices - among policies, people, principles. It's a rough-edged process that generates a legitimate result. By contrast the single-issue referendum is uniquely damaged by widespread misperception.

It is a cruel irony that a draft Treaty designed to make the workings of the EU more transparent is now vulnerable to rejection at the hands of British voters exasperated by the absence of transparency in the current arrangements. And yet we are on the highway to a referendum to decide the fate of a text which, in my view, is in parts imperfect, both technically and

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in rhetorical flourish, but which offers a sound basis for crafting a new constitutional document that will be far superior to the current mess. So is it time to rally to the Prime Minister's call to inject some reality into the debate? I hear no stampede. Scarcely even a soft footfall. A few short weeks ago Mr Blair was contemptuously dismissive of calls for a referendum on this issue. Constitutionally inappropriate! A fetter on vigorous government! And yet now, with startling suddenness, the people will decide. Is this a strategy devised for the long-term benefit of the UK in Europe, or is it a short-term fix, reflecting Mr Blair's political fragility and directed at defusing Labour's vulnerability to the Conservatives in the June European elections and the General Election slated for 2005? Who will hurl their energy into a "Yes" campaign when perceived political advantage may prompt Mr Blair to abandon his enthusiasm for a referendum as precipitously as he assembled it in April 2004? For those eager to demolish Euro-myths, it is a bleak prospect.

"Why should we give up power to Brussels?". A simple question – like the Yes or No of a referendum. But questions that are simple are questions that are apt to deceive. The enduring false dichotomy – the UK as master of its own fate or the UK in thrall to some remote Euro-tyrant – was embedded deep in British political thinking by Churchill's immediate post-War depiction of the UK as a superpower distinct from "Europe", and it has never been adequately purged. Mr Blair's tragedy is that he gives every impression of grasping the reality of State power in an interdependent world and he has periodically made the positive case for active British membership of an EU that is greater than the sum of its parts, but he has been deflected too often by the lure of short-term benefits and imagined influence in Washington. If the poison of anti-"Brussels" mythmaking is to be drained from British political life, it is improbable that a single-issue referendum in the current climate is the place to start.

Professor Stephen Weatherill  
University of Oxford

## 2. "No Concerns not already signalled" - The Irish Presidency in April

After reporting to the March European Council on the state of the IGC and achieving an agreement to reopen discussion with the aim of completing negotiation on the Constitutional Treaty by 17-18 June, the Irish Presidency is not resting on its laurels. The negotiations on the draft Constitutional Treaty will move from the bilateral to the multilateral format of the IGC and Taoiseach Ahern has maintained pressure on the national governments, asking them in a formal letter to "work together in a spirit of compromise and of flexibility".

The decision made at the Brussels summit in March can be read as a sign of confidence from EU leaders that agreement is close. How optimistic the deadline is will soon be shown. Ahern has mentioned that there may be from 20 to 30 issues outstanding, although others have reported only 15. Regardless, he is very clear that he would like only two or three of the remaining issues left to the final Summit.

This sets out a large challenge for next month's timetable, which was discussed at the General Affairs and External Relations Committee (GAERC) meeting on 26 April. The timetable for May and June has all the features of the run-up to the final endgame. On 4 May, officials will meet to begin preparing for the ministerial meeting scheduled at the margins of the GAERC of 17 and 18 May. If additional time is needed to prepare a document for the final June Summit of Heads of State and Government, 24 May has been reserved for additional ministerial-level meetings.

Issues that remain as major sticking points include the definition and scope of decision-making by Qualified Majority in the Council. Although it is unlikely that the inter-state power issues implied in what constitutes a 'majority' in the Council will be agreed upon before the final summit, the extension in the scope of application of QMV to new policy areas - including countries' red lines - may be an area for negotiation.

In his report to the European Council on the IGC, Prime Minister Ahern wrote that "there is a need to balance the particular concerns of Member States in relation to a number of specific issues with the general desire for the extension of QMV." The reopening of a discussion on the passerelle clause - eviscerated by the Italian Presidency in November - could potentially provide a new way forward on balancing these concerns. There are signs that the countries that opposed the Convention's definition of qualified majorities are ready to endorse a broader understanding of political influence in the Union going beyond voting power.

The composition of the Commission, an issue that was purported to be 'tied up' last December, appears far from being settled. At the root of the debate is the need to maintain the independence and the effectiveness of the Commission as being the key to the Community method. Smaller countries, concerned about a 'directorate' in the Commission, have demanded that each Member State have one Commissioner with full voting power. The Commission itself endorsed this view back in September at the beginning of the IGC process. However, some states, particularly France and Germany, have argued, in line with the Convention, that the efficiency of the Commission will suffer as enlargement increases the number of Commissioners to thirty. The number of 15 Commissioners has been repeatedly mentioned as the number of real jobs at the Commission. Indications have been that the subject may be simply postponed through a rendez-vous clause - for re-evaluation in 2014 (see April Newsletter). In April, however, German Chancellor Gerhard Schröder indicated that although he still believed the number of Commissioners should be reduced, he would be willing to move towards a system of equal rotation. He clarified: "That would mean that not only small member states but also the large ones would in the future have regularly to forgo a commissioner." This attitude echoes the speech given by Ahern to the Irish Parliament, in which he said, "I have long held a view that each member state should still have one

Commissioner." However, he added, this would ultimately have to change. "Having 30 or more Commissioners would be unwieldy and I support a small Commission as long as there is strict equality of rotation."

Other topics that remain on the table include the number of seats in the European Parliament, what to do if some member states fail to ratify the Constitution, the future amendment of the Constitution, budgetary powers of the European Parliament and Christianity - the latter an issue that has attracted 750,000 signatures in a Europe-wide petition. Poland, Spain, Ireland and the Holy See are lobbying for its inclusion. According to a member of the government in Poland, 10 countries support a reference to Christian values in the preamble. France, in particular, is strongly against. The question of the Christian basis of the EU becomes even more sensitive with the possibility of negotiations on membership opening with Turkey in December. Finally on other issues, some delegations will attempt to change the 'consensus': for instance, the UK government will make a last attempt to turn the early warning system into a red card for national parliaments.

Taoiseach Ahern's strong warning to the Member States that "no concerns not already signalled" shall be raised in the future IGC discussions may stave off rear-guard actions by those countries who might have secret interests in postponing a final agreement on the constitution. The 'spirit of compromise' that seems to pervade the current stage of the 'resumed' IGC may only be skin-deep. As the final endgame approaches, member states are likely to harden their positions. In the 'natural' dynamics of endgames, the possibility of drawing issue linkages and agreeing side-payments may be the determinant factor of success. From the rhetoric from Spain, Poland, Germany, France and the Presidency, it looks likely that a constitution in some form will be agreed in June. However, as has so often been said, nothing is agreed until everything is agreed, and in countries facing referendums, compromising on subjects (even tangentially) related to the

national interest may not be easy.

[Irish Presidency Website](#)

[Euractiv](#)

[EU Observer](#)

### 3. Ratifying the Constitution

Last autumn, this Newsletter discussed the 'siren song' of the referendum in a piece entitled '[To ask or not to ask](#)'. Those countries with requirements to hold referendums had made it clear that they would do so, and others followed. French President Chirac had promised the electorate a referendum in his 2002 re-election campaign. And French Prime Minister Jean-Pierre Raffarin said that "a real European cannot not want a referendum".

Only Tony Blair was able firmly to resist the call. His resolute stance, that the draft Constitution was a 'tidying up' exercise and did not fundamentally change the UK's relationship to Europe, influenced his European colleagues. Chirac backtracked, and instigated a period of 'consultation' with the major political leaders in France. He decided that France needed to wait out the IGC process before determining whether or not to hold a referendum. The Maltese Prime Minister implied that there was a private agreement between those countries not constitutionally bound to have referendums, that there should not be a referendum on the new Constitution.

With the failure of the December Summit, attention to the ratification phase of the constitutional project waned. However, the UK Prime Minister's 'U-turn' has returned referendums and ratification to the spotlight. Although their disapproval has been couched in diplomatic terms, it is clear that Blair's decision has frustrated his counterparts in France and Germany.

Chirac is under increased pressure to hold a referendum, with 74% of the French in favour. However, there is always the possibility of either a 'no' vote, or another 'petit oui' - and the motivation behind either result could have little to do with the Constitution itself. Some in France have been

highlighting a relationship between Turkish accession to the EU - a divisive issue for the French - and the EU Constitution. Alain Juppé believes that the Constitution (in Article 56) provides for a new type of relationship for Turkey - other than full membership. As an argument for endorsing or scrapping the new Constitution, the role of Turkish membership is calculated to raise emotions - but has little to do with the content or purpose of the draft Constitution.

In Germany, Schröder is facing increased calls for an amendment to the German Constitution to allow for federal referendums. The articles on ratification in the Constitution state that if after 2 years on, 4/5 of Member States have ratified, the issue of moving forward should be referred to the European Council. This past month, Schröder suggested going beyond this system, saying that Europe "ought to find an arrangement by which the Constitution can still come into force in the process of ratification in a country has not yet been brought to a conclusion." This proposed deviation from earlier plans - and from the Constitution itself - should also be seen in the context of Schröder's renewed calls, in the middle of April, for a multi-speed Europe. His statements on the subject are particularly noteworthy, as calls for a multi-speed Europe in the aftermath of the failed December Summit have dissipated - especially since the Irish Presidency strongly rejected the idea. Could unsuccessful referendums in some of the Member States open the door to a possibility of a 'core' Europe based on an acceptance of the Constitution?

Pundits in the UK hypothesize that the UK may never need to vote on the constitution - as perhaps another country will 'kill' the constitution first. This attitude could itself influence the outcome of the negotiations. As the Hungarian Ambassador to London remarked earlier this week, "the more we talk about ratifying the constitution, the more likely it becomes that we won't have a Constitution to ratify."

Ireland, Denmark, the Netherlands, Spain, Portugal, Luxembourg, the United

Kingdom and the Czech Republic will hold referendums. Neither the timing of these referendums nor the questions they will propose have been set.

[EU Observer](#)

[The Times](#)

[Prime Minister's statement to the House of Commons](#)

## 4. Parallel Developments Enlargement

On 1 May the Union became a Union of 25 member states. The process which started in the aftermath of the fall of the Berlin Wall is completed eleven years later. For other countries (especially Bulgaria, Romania and Turkey) the race is not over, and the prospect of an even larger Europe of perhaps 30 is, many would argue, a real one. The impact and effects of enlargement on the institutions and its in working methods will become obvious soon. Before this impact becomes apparent, the procedural aspects have had to be completed. The European Parliament has scrutinised the new members of the temporary Commission of 25. This temporary Commission will include the accession countries and also some new faces from current member states. Commissioners Barnier and Pedro Solbes have decided to return to domestic politics. The new Commission will take office in November.

### Cyprus

The moment of truth in the lengthy negotiations over reunifying Cyprus was on 24 April. Before the referendums in the North and South, opinion polls indicated a clear disparity of views from the two communities. 70% of Turkish-Cypriots supported and 70% of Greek-Cypriots opposed the Plan. As feared by many who had heavily invested in the plan's success, the settlement was rejected by the Greek-Cypriot side.

What is next? Enlargement Commission Günter Verheugen stated that he hoped the two communities would "seize the opportunity to reconcile their differences" and that if this opportunity was missed it would be the last one "for a long time". If Mr

Verheugen is right, Cyprus might have to wait for some time before any negotiations begin for reunification of the island. By then, Cyprus would already be divided for many more years and any attempt to create a state with a single international legal personality and sovereignty would be even less likely to happen. But if Mr Verheugen is wrong, a "No" vote from Cyprus only prevents the unification with the current terms and allows time to review the question and plan ahead without the pressure of 1 May.

On 1 May, the whole island will join the EU, but EU law will apply only to the Greek-Cypriot side. The future of a united Cyprus may now rely on the possibility of Turkish accession to the EU.

Theodora Klountzou

The Federal Trust

## 5. UK Debate Time to Get Moving

Amid all the swirl of argument and speculation, three aspects of the Prime Minister's decision to call an eventual referendum on the European constitutional treaty are undisputed. He is taking a vast risk; he is doing it at least partly for the electoral advantage of the Labour Party; and the announcement of his sudden political reversal was an administrative shambles. The long march towards winning a referendum on the European constitution has not begun well for Mr. Blair.

The Panglossians will insist that none of this matters. By the time the referendum arrives (if it ever does) the electorate will have forgotten any initial confusion and hesitations. The template of the 1975 referendum campaign will reassert itself, when opinion moved substantially in a pro-European direction during the course of the referendum campaign. This complacent assumption needs to be treated with great scepticism.

In truth, there is very little common ground between a European referendum in 2005 and that of thirty years earlier. In 1975, all the main political parties were campaigning for a "yes" vote. The mass media, business, finance and the British Establishment in

all its varied forms were unanimously or preponderantly with the main political parties. Public opinion at that time was infinitely more malleable on European issues. Twenty years of Eurosceptic propaganda had not yet done their work. Moreover, in 1975, a "yes" vote was clearly a vote for the status quo, always an advantage in winning a referendum. It will be one of the points at issue in the referendum debate of 2005 precisely how destabilising a positive or negative British vote on the European constitution might be.

It is said that the Prime Minister regards it as a great failure of his time as Prime Minister that he has been unable to take Britain into the European single currency. There are highly pertinent lessons to be drawn from that failure, which must be taken to heart for there to be any chance of a positive outcome to the European constitutional referendum. Over the past seven years, the Prime Minister let the argument about the European single currency drift. He seemed concerned primarily to mark tactical points against the Conservatives, for their excess of zeal against the euro, and even against the Liberal Democrats, for their excess of zeal in favour of the single currency. Britain in Europe, the supposed pro-euro campaigning organisation, for long took its cautious and uncertain tone from Downing Street. Those hostile to British membership of the single currency were under no such inhibitions. Their clear message of rejection has firmly lodged itself in the mind of the British electorate.

If a similar outcome is to be avoided on the European constitution, it is vital that the government and its allies enter into the political and public battle as soon as possible. To wait until after the General Election would be much too late. In its own interest, the government will rightly be looking to hold the referendum as late as possible. If there has been a negative vote from other countries before then, it would make little sense to hold a referendum in any case. If a large number of other countries have already ratified the constitution, then that will be a powerful argument in the government's hand. But if it is to win the European constitutional referendum, the

government must use the coming months to good advantage. It needs rapidly to establish a coalition of the pro-European willing, a coalition of which it is a leading member, but which it does not attempt to dominate. If it is able to convince the electorate that Britain's future role in Europe really does hang on a positive vote on the constitution, then this coalition has a genuine chance of winning. If the argument centres around such esoteric matters as the permanent Chair of the European Council and its supposed contribution to the fight against federalism, the referendum will be lost. The government's urgent task is now to find a European rhetoric which is accessible, positive and credible. Its record in this area has been thus far distinctly mixed.

Brendan Donnelly  
Director, The Federal Trust

Giscard d'Estaing has even announced that he has found a solution to the voting system which he has discussed with Zapatero and Miller. However, as the major players in the negotiations move towards a compromise, other, smaller countries are nervous.

The Dutch are worried that their demands - particularly on the subject of the EU budget and expanded powers for the ECJ on the Stability Pact - will be ignored as agreements snowball between the bigger countries. In fact, Finance Minister Gerrit Zalm has said if the Dutch are not able to maintain their right of veto on the EU budget, there will not be a constitution. These concerns - really about the scope of QMV, rather than its definition - will be echoed in different forms (tax, for example) by the British and the Irish.

EU Observer

constitutional dimension of the EU and it will provide a platform for debate on the Convention and the IGC as well as on the broader theme of the EU as a constitutional project.

Confirmed speakers include Ana Palacio, John Kerr, Advocate General Miguel Poiares Maduro, Prof. Neil Walker, Andrew Duff, Linda McAvan, Prof. Sir Neil MacCormick, Dr. Thomas Christiansen, Dr David Phinnemore, Prof. Deirdre Curtin, Prof. Charlie Jeffery, Prof. Larry Backer, as well as European Commission and Foreign Office officials.

The Conference will be accompanied by a formal dinner on the evening of 1 July. Peter Sutherland (Chairman of BP plc, Chairman of Goldman Sachs International, founding Director-General of the World Trade Organisation, and former Director General of GATT) will speak on the Future of Europe. Dinner can be booked separately from attendance to the Conference. However, those attending the Conference will enjoy a special rate.

A late registration fee applies to Conference registrations after 1 May. Federal Trust Friends, UACES and BIICL members will also enjoy a special rate. For Conference information, registration and special membership rates see: [www.fedtrust.co.uk/conference2004](http://www.fedtrust.co.uk/conference2004)

**New Constitutional Online Papers:**

Simone White, 'European Constitution: what is new in the area of judicial cooperation in criminal matters and police cooperation' [Paper no. 07/04](#)

**6. Forthcoming**

**The IGC resumes in earnest**

With only a month to conclude difficult negotiations on the outstanding issues threatening the draft constitution, the Irish Presidency can at least look forward to new faces around the negotiating table. The new Spanish Prime Minister, José Luis Rodríguez Zapatero, took over on 22 April and Polish Prime Minister Leszek Miller - who famously travelled to Brussels in December to protect Polish interests after a severe helicopter crash - steps down on 2 May. Momentum, has been regained, and both the Spanish and the Polish have indicated that they are ready to negotiate on the subject of the definition of the system of QMV. Valéry

**7. News from the Constitution Project**



**Federal Trust/UACES Conference and formal dinner**

Registration for this Conference on 1-2 July 2004 in London which will conclude our 3 year EU Constitution project, is open.

The Conference will explore the

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## Graduate Student Essay Competition

We welcome submissions from graduate students on the broad topic of 'the future of the Union'. Essays could focus on European constitutionalism, EU reform, theories of integration or policy issues such as developments in defence or economic governance.

The winning entry will receive £100 and have his or her essay printed as a European Essay by the Federal Trust. Terms and conditions of the competition are available on our website. The competition closes on 1 July.

See details: [www.fedtrust.co.uk/graduatecompetition](http://www.fedtrust.co.uk/graduatecompetition)

## 8. Web Corner and External Events

### European elections

The Robert Schuman Foundation has launched a site devoted to the European Parliament elections. It contains useful information relating to the role of the European Parliament, the campaign and parties participating, the manifestos, constituencies etc.

[www.elections-europeennes.org](http://www.elections-europeennes.org)

### Not trivial pursuits

European quizzes to test our knowledge of the EU are becoming popular. See, among others:

<http://news.bbc.co.uk/2/hi/europe/3238368.stm>

### External Events

**Jean Monnet Café:** 'Germany and the EU: the 'Sick Man on the Spree'? Joachim Fritz-Vannahme, Brussels Editor of Die Zeit 6 May, 6:30-8pm. Café Muse, Oxford Road, Manchester.

Contact: [jan.dormann@man.ac.uk](mailto:jan.dormann@man.ac.uk)

**Conference:** The EU Section of the Society of Legal Scholars is holding a conference in London in May 2004 with the UKAEL, to look at the impact and influence of thirty years membership of the EU on UK law. 13 & 14 May 2004, The Conference Centre, Westminster

For further details: [www.biicl.org/edetail.asp?eventid=411&menuid=16](http://www.biicl.org/edetail.asp?eventid=411&menuid=16)

**For students:** Last call for applying to the University of Rome Summer School "Europe and the US in a Changing World" (June 20th - July 10th). Deadline 12th May.

Contact: [ederiga.bindi@uniroma2.it](mailto:ederiga.bindi@uniroma2.it)

**Conference:** "Enlargement of the EU: benefits and costs for new members countries" 20-21 May, Wroclaw ( Poland ) on 20-21 May 2004.

Contact: [kun@prawo.uni.wroc.pl](mailto:kun@prawo.uni.wroc.pl)

**ACES conference:** "The Italian Presidency of the European Council in 2003" which is to be held on Friday 21 May 2004 at the LSE in London.

For further details: [www.uaces.org/D410403.htm](http://www.uaces.org/D410403.htm)

**UACES Workshop:** "National Parliamentary Scrutiny of EU Legislation." Limerick Ireland 21 May 2004

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