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EU Constitution Newsletter

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Since the Intergovernmental Conference came to an agreement on the EU Constitution the focus of the debate has shifted to the challenge of ratifying this constitution. This monthly newsletter will monitor the debate, events and developments surrounding the ratification process in all 25 member states. It will offer a particular UK perspective of this process and provide a forum for differing views on the debate. Back issues are available at www.fedtrust.co.uk/constitution_newsletter.

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1. Editorial: The morning after the night before

Rightly, the signing of the European Constitutional Treaty in Rome on 29th October was lavishly celebrated. It may well go down in history as the moment when the European Union definitively recognised and proclaimed its mission as a political entity made up of traditional European nation states, but transcending and transforming them. The heads of state and government who signed the document were entitled to their day of triumph. The ratification of the Treaty will be for many of them a more demanding, and perhaps less pleasant experience.

According to the Constitutional Treaty, Member States have up to two years to ratify the Treaty, before the European Council will be called upon to review progress and (presumably) consider ways of prodding the laggards. This may seem a generous time frame, but it is one complicated by elections, Presidencies of the Union, uncertain public opinion in some Member States and the likely interaction between the ratification processes in individual countries.

The European Parliament has called for a co-ordination of the timetables of national ratification procedures, with a focus on the symbolic first week of May 2005, the 60th anniversary of the end of the Second World. While a 'European

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The Federal Trust for Education and Research

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...is a think tank that studies the interactions between regional, national, European and global levels of government.

Founded in 1945 on the initiative of Sir William Beveridge, it has long made a powerful contribution to the study of federalism and federal systems.

2. Overview of 25

Austria	Will seek ratification through parliament. Chancellor Schüssel says he would only support a referendum on a EU-wide basis.
Belgium	Most likely to seek ratification through parliaments (national and regional), despite Prime Minister Verhofstadt's early intention to hold a non-binding referendum.
Cyprus	Will seek ratification through parliament. There was no referendum on EU accession.
Czech Republic	Will hold a referendum, which is most likely to coincide with the general election in June 2006. The country will possibly be the last member state to seek ratification. This delay is due to the time it will take to pass a general bill on referendums.
Denmark	Will hold a referendum. Prime Minister Rasmussen has begun talks with parliamentary parties and a date could be set in either late 2005 or early 2006.
Estonia	Will seek ratification through parliament.
Finland	Likely to seek ratification through parliament despite Justice Minister Koskinen's proposal to hold a referendum simultaneously to the presidential elections in June 2006.
France	Will hold a referendum. Initially planned during the second half of 2005, it could be held in on 9 May – Europe day – possibly in co-ordination with other member states. This would reduce the risk for the 'yes' campaign to lose momentum over the summer. It would also ensure voters differentiate this referendum from that on Turkey's membership announced by President Chirac. However, the Constitutional Court has only just started to work on the Treaty's implications on the French Constitution and its conclusions are not expected before spring, which renders a May referendum difficult.
Germany	There is uncertainty over the ratification method. The parliamentary process started on 3 November and could be completed by June 2005. At the same time, the government is trying to amend the country's Constitution to allow for national referendums, the first of which should be held on the EU Constitution. However, the move requires a three-fifths majority in parliament, which is beyond reach unless the Christian-Democrats support it. They have recently said their support would be linked to concessions on policy areas which have yet to be specified.
Greece	Will seek ratification through parliament.
Hungary	Will seek ratification through parliament.
Ireland	Will hold a referendum, whose timing is unclear. Prime Minister Bertie Ahern told parliament it would take place in 2005, while Foreign Minister Dermot Ahern suggested it would be held in 2006.
Italy	Will seek ratification through parliament before Christmas this year and aims to be the first EU member state to ratify the Constitution.
Latvia	Will seek ratification through parliament.
Lithuania	Will seek ratification through parliament.
Luxembourg	Will hold a referendum, most likely in early 2006 or in late 2005 in case the government decides to make it coincide with the end of the country's Presidency of the EU. No referendum has been held since 1937. The Chamber of Deputies has overwhelmingly supported a motion in favour of a referendum. It remains to be seen whether it will be binding or merely consultative.
Malta	Will seek ratification through parliament.
Netherlands	Will hold a referendum, most likely in spring 2005. It will be the first national referendum in the country's history. Both chambers of the parliament are currently discussing the Referendum Bill.
Poland	Will hold a referendum, probably during the second half of 2005, when the country elects its new President.
Portugal	Will hold a referendum in April 2005, possibly on 10 April.
Slovakia	Will seek ratification through parliament.
Slovenia	Will seek ratification through parliament.
Spain	Will hold a referendum on 20 February 2005, the first in the EU.
Sweden	Will seek ratification through parliament in the second part of 2005. The bill will be brought to parliament in September and is expected to be passed by December.
United Kingdom	Will hold a referendum during the first half of 2006 (possibly in March), after the country's presidency of the EU. The parliamentary bill will be debated in early 2005, just before the general election which is likely to take place in May. The government claims it would be difficult to hold the presidency (from July to December 2005) and the referendum simultaneously. Besides, it hopes it can take advantage of the presidency to persuade the public of the virtues of the Constitution and Europe alike, thereby gaining momentum in favour of the text.

referendum' in all countries on the same day is neither a genuine political possibility, nor necessarily desirable, it would certainly help to create a positive momentum if a number of countries in which ratification is politically uncontroversial were to conclude their ratification procedures simultaneously, in this historically significant week. By the first week of May next year a number of other countries will probably already have ratified the Treaty, notably Spain through a referendum and Italy through a parliamentary vote.

If by the middle of next year well over half of the signatories have ratified the Treaty, it will undoubtedly facilitate ratification in those countries where ratification is procedurally or politically more difficult. Much will turn on France's vote in the middle of the year. If France votes 'no,' it is difficult to foresee how the procedure will be continued. If it votes in favour of the Treaty, the political choices for those yet to ratify will be much more clear-cut. There are certainly countries, such as the United Kingdom, Poland and Denmark, that would be more likely to attain a 'yes' in the referendums they will all probably hold the later they vote. It will be important that their governments try to co-ordinate as far as possible the dates of their referendums.

An irony of the current European debate is that in those countries where ratification of the Treaty is uncertain, governments are sometimes forced to refine and crystallise their arguments in favour of the Treaty more than their colleagues in other Member States where the general question of European integration is less controversial. It is important that the right tone be struck, not least in the United Kingdom. The nature of the European Union lies in finding common ground between 25 member states. Triumphant claims to have 'won' in the Intergovernmental Conference or to have 'beaten' traditional rivals by superior negotiating tactics are dangerous hostages to fortune. Like all governments, the British government had to make compromises to achieve an outcome which it generally regarded as desirable. It will

expose itself to criticism from its opponents if it attempts to deny the reality and inevitability of such compromises made to achieve the balance of interests which is the only basis on which the Union can function.

During a campaign leading up to a referendum national governments should not merely 'sell' the EU Constitution to their electorate as the product of their 'winning' at the Intergovernmental Conference, possibly along the lines of having defended 'red lines'. To persuade voters to endorse the Constitution in a referendum they will need to give a positive message about the benefits of the EU Constitution as a step towards a more democratic, more transparent and more efficient European Union. They need to be clear that the alternative, in the form of the Treaty of Nice, is in a number of respects worse than what is offered in the Constitution. Whatever the faults of the Constitution, it provides a basis for further progress. It would be the wrong kind of perfectionism to reject the Constitution because of these deficiencies – real or imagined.

3. News from the institutions

The negotiations to create a Constitution for the European Union, which lasted for almost one and a half years, formally came to an end on 29 October, when the Treaty was officially signed by all member states. Speakers at the event – including host Silvio Berlusconi, Jan Peter Balkenende for the Dutch Presidency, the President of the European Parliament Josep Borrell as well as the current and future Presidents of the European Commission – commented on the symbolism and historic significance of this moment for Europe.

The Constitution was signed in the room in which on 25 March 1957 the Treaties of Rome establishing the European Economic Community and the European Atomic Energy Community were signed by the founding members – Belgium, France, Germany, Italy, Luxembourg and the Netherlands. But despite the carefully choreographed ceremony, accompanied by the

Eurovision tune and Beethoven's Ode to Joy, the scene was somewhat subdued. The institutional deadlock sparked by the failure to establish a new Commission seemed to cast a shadow over the celebration.

The EU Constitution was signed by the Heads of State and Government as well as the Foreign Ministers of all 25 member states of the European Union. Additionally, the candidate countries Turkey, Bulgaria and Romania signed the Final Act. Croatia, a further candidate country, took part in the ceremony yet did not sign the Final Act, not having been a member of the Convention.

The text under which the Heads of State and Governments put their signatures was a revised and renumbered final version of the EU Constitution agreed to by the IGC at its June meeting. It had been published on 13 October after an editing process through legal and linguistic experts.

The signing of the final text has now officially launched the process of ratification through which the EU Constitution has to go in all 25 member states before it can come into force. At its plenary session on 14 October the European Parliament, by a large majority, adopted a motion calling for member states to co-ordinate as closely as possible their timetables of ratification. The motion, tabled by the Chairman of the Constitutional Affairs Committee, Jo Leinen MEP, also suggests the period 5 – 8 May 2005 as a suitable time to hold a referendum and calls for the Council and the Commission to draw up an 'appropriate communication strategy'. The Constitutional Affairs Committee confirmed that it will adopt its position on the EU Constitution on 30 November. This position will be voted on in the plenary session on 15 December.

Ulrike Rüb
The Federal Trust

[Treaty establishing a Constitution for Europe: CIG 87/1/04 REV2](#)

[Protocols and Annexes I and II annexed to the Treaty establishing a Constitution for Europe: Addendum 1 CIG 87/1/04 ADD1 REV1](#)

Declarations to be annexed to the Final Act of the Intergovernmental Conference and the Final Act: Addendum 2 CIG 87/1/04 ADD2 REV2

Speeches at the signing ceremony

Motion by the European Parliament

Parliament's Hearings of the Commissioners-designate

When the Constitutional Treaty is ratified by the member states – with or without the benefit of referendums – the European Parliament will acquire more powers and they will apply to broader areas of policy than before. But events of the last week demonstrate that Parliament's powers are growing now, long before the Constitution is in force. They grow by imaginative application of detailed procedures.

Take the example of the recent Hearings. First President-elect Barroso came before the plenary session of Parliament in July. Parliament told him in no uncertain terms what sort of Commission it expected at the end of the selection process he was undertaking with the heads of government. More women, a reasonable political balance, competence – those were the main qualities Parliament was looking for, and it said clearly that it would judge Barroso's team in the light of the commitments he gave to Parliament in that debate.

Then Parliament's committees organised the Hearings of individual Commissioners-designate, with television relaying the proceedings across the Union. Some Commissioners-designate simply avoided making enemies, others went out of their way to woo the MEPs, and a few incurred Parliament's wrath for a variety of reasons, both personal and professional. But the important thing was how seriously all concerned set about these Hearings.

First there were written questions, both general about the institutional relationship between Commission and Parliament and specific about the dossiers for which Commissioners-designate were hoping to take on responsibility. Candidates for office were worried enough to caucus over a

weekend to discuss how best to answer Parliament's probing. Then came the oral sessions with Parliament's committees. Candidates for office took these seriously too, even if the limitation to just one supplementary question per MEP blunted their investigative powers to some extent.

The results showed up the uneven quality of the Barroso team, and Parliament's threat to vote down the whole slate last week was on the cards from the moment one committee singled out Rocco Buttiglione. There are clearly a couple of other lightweight Commissioners, and some with political backgrounds that do not sit well with the responsibilities the President intends to give them – Kovacs for energy (who was also voted down by the committee concerned) or Kroes for competition, for instance. De jure Parliament could only vote on the whole slate, not individual candidates. Nonetheless, the procedure of Hearings allowed Parliament de facto to eliminate one candidate by forcing his withdrawal. Whether the new Commission team will contain further changes still remains to be seen, but Parliament has in fact achieved more than the letter of the Treaties suggested it could.

Martyn Bond

The Federal Trust

4. The UK Debate

Over the past few days the British government has said that it plans to hold the referendum on the European Constitutional Treaty in 'early 2006.' Speaking at the signing ceremony for the Treaty in Rome, the Foreign Secretary, Jack Straw, ruled out holding the referendum before or during the British Presidency of the Union in the second half of 2005. His remarks were taken by commentators as pointing towards a poll in March or April 2006, somewhat earlier than the widely anticipated date of autumn 2006. Interestingly, Mr. Straw hinted that the referendum might not take place at all if other countries had already rejected the Constitution by 2006. Mr. Blair's advisers, on the other hand, insisted that it would go ahead in any event, thus

echoing what the Prime Minister said earlier this year when he announced his decision to reverse his original hostility to a referendum on the Constitution.

This division of view between Prime Minister and Foreign Secretary underlines how far the government yet is from a robust and coherent approach to winning the European Constitutional referendum. Iraq, domestic questions and above all next year's General Election dominate the political and personal agenda of the Prime Minister in particular. He clearly believes that it will be time enough to focus on European questions in the middle of next year, once the General Election has been safely won, probably in May 2005.

In adopting this strategy, Mr. Blair is running the risk that over the next six months the opponents of the European Constitution will have made such political and organisational headway that their advantage cannot be clawed back in the following twelve months, even by a re-elected New Labour government. It is generally assumed in this country that the government will be re-elected next year, but there are very different estimates of its likely majority. Most analysts believe that the government's re-election, if it occurs, will be more due to the weakness of the main opposition party, the Conservatives, than to the Labour Party's intrinsic popularity. There is little expectation that even a substantial Parliamentary majority in next year's election will give the Prime Minister any significant infusion of new political authority.

Both Mr. Blair and Mr. Straw have spoken of their intention to use the British Presidency of the EU next year to 'make the case for Europe.' Current opinion polls, which show a large majority of British voters hostile to the European Constitution, suggest that the government will need to take every opportunity given by the Presidency to put its pro-European message across. The British Presidency will not of itself change British public opinion on the European Union or its proposed Constitution. It is only the use which the government makes of its Presidency that

can do that. If by the second half of next year the government has not found a consistent and convincing rhetoric for its discussion of the Constitutional Treaty, then the British Presidency will highlight rather than hide this deficiency.

A number of articles have appeared recently in the British press stressing claimed British successes in ensuring that the Constitutional Treaty did not mark any important new step towards further integration. It seems likely Mr. Blair's government will be using this argument in its advocacy of the Treaty throughout 2005 and 2006. The outgoing Conservative European Commissioner, Chris Patten, seems, to judge from recent interviews, willing to endorse the government's analysis of its own success in restraining European integration. He is expected to play a leading role in the 'Yes' campaign and his support for the government's rhetoric is significant. But it is unclear what chance of success this likely message from the government on the European Constitution will have with the British electorate. The electorate may well continue to view with suspicion a document, the primary merit of which according to its supporters is that it may have prevented something (supposedly) yet worse.

Brendan Donnelly
The Federal Trust

5. Countries of the month Belgium

A founding member of the European Union, Belgium is one of the staunchest supporters of deeper integration. This feeling is echoed in the public at large: just under three-quarters of voters recently told pollsters that they would favour a Constitution for Europe. As early as 1 June Prime Minister Guy Verhofstadt argued that because 'Europe is more and more part of (...) national politics' Belgian citizens should have a say on the ratification of the Constitution, despite the fact that Belgium has never held a referendum on European integration. The Belgian Constitution only provides for consultative referendums, which means that a

parliamentary ratification of the Treaty will remain necessary.

Article 1 of the Belgian Constitution states that 'Belgium is a Federal State made up of Communities and Regions'. There are three Regions (the Flemish, the Walloon and that of Brussels-Capital) and three Communities (the Flemish, the French and the German-speaking). In an attempt to limit the number of institutions, the legislative bodies of the Flemish Region and Community have merged. Nevertheless, seven assemblies will be asked to ratify the European Constitution: the federal parliament's House of Representatives and Senate, the Flemish parliament, as well as those of the two remaining Regions and of the two remaining Communities.

Whether a consultative referendum will actually be held in Belgium is still unclear. Mr Verhofstadt's announcement in June forecast the consultation would take place in August. Reports also suggested it could be held together with either the Netherlands or Luxembourg. Thus far, no date has been set and plans of a possible co-ordination with neighbouring member states appear to have been all but scrapped. According to the federal government's policy declaration of 12 October, discussion moved to the parliament and agreements on a timetable are to be concluded with the subnational parliaments, in order to ratify the European Constitution as soon as possible.

The parliamentary ratification of the Treaty could prove more difficult than the opinion polling suggests. Different coalitions are in place in the seven parliaments and each is a potential hurdle for the ratification process. Besides, in the event of a referendum, party allegiance could impinge on electoral behaviour. At the federal level, the coalition government is split along ideological lines. Mr Verhofstadt's liberals would support a Constitution for Europe at any cost, while his socialist allies threaten to vote 'no', given what they regard as insufficient progress on social and fiscal harmonisation, as well as on the use of qualified majority voting in the Council. Another issue is that of

the Flemish/Walloon divide. The main coalition partners are the Flemish liberals (23 seats in the House of Representatives, out of 150), the Walloon socialists (19), the Walloon liberals (18) and the Flemish socialists (14). This gives considerable influence to the Walloon socialists who only make up the third largest representation in the chamber, after the 22 seats of Jean-Luc Dehaene's Flemish Christian-Democrats, who advocate a 'yes' vote. This influential position is often resented in Flanders, where Walloon socialist leader Elio di Rupo is regarded as *the* country's decision-maker; a Flemish weekly even recently described him as Belgium's 'regent'. Irrespective of the socialist stand, the ratification process is a foregone conclusion at the federal level. The danger, if there is one, comes rather from sub-national assemblies.

Olivier Michel
The Federal Trust

[Federal Government's Policy Declaration](#)
12 October 2004

[Federal Portal](#)

[Le Soir 21 April 2004](#)

[Le Soir 4 October 2004](#)

The Czech Republic *Ratification of the Constitution for Europe (1)*

The constitutional position of referendums in the Czech Republic

Within the Czech constitutional and political system, the referendum does not have a prominent position. The Constitution refers to referendums 'in a footnote' – as the alternative method of expression for the sovereign powers of the people. In Czech history, the only referendum to take place was held in the context of Czech accession to the EU, when a special Constitutional Act was adopted and the referendum took place in 2003. The Act provided for a directly binding plebiscite and required no quorum (in contrast to the fifty per cent quorum in Poland and the Slovak Republic). The EU referendum saw a turnout of 55 per cent of eligible voters, over 77 per cent of whom voted in favour of EU accession.

The debate on the Constitution for Europe and possible scenarios for ratification

Both the coalition government and the major opposition party agreed – albeit in rather broad terms – that a referendum on the ratification would be the most appropriate procedure. Differences between the political parties, however, remain in regard to the ‘technical’ details of the referendum (such as quorum and level of specificity) and its timing. The government (and its strongest party – the Social Democrats) prefers a referendum in 2006 (in June, at the time of the parliamentary elections) while the opposition is pushing for an earlier date in 2005. As of November 2004 the deadlock in the Parliament had not been resolved and the relevant constitutional act had not been passed.

Theoretically, the Treaty establishing the Constitution for Europe opens four scenarios for its ratification in the Czech Republic:

- Ratification as a ‘standard’ international treaty, according to Article 10 of the Czech Constitution;
- Ratification by Parliament under the ‘European’ Article 10a;
- Ratification by referendum under the ‘European’ Article 10a;
- Ratification by specific constitutional amendment ‘tailored’ to the Constitution for Europe.

At present, the third scenario seems to be the most likely option.

Judicial follow-up

Another potential actor in the ratification process may be the Constitutional Court. Before ratification, it can be asked (e.g. by the President or a group of opposition MPs) to review the compatibility of the Constitution for Europe with the Czech constitutional order. In case of declared unconstitutionality, the ratification process will have to be blocked.

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Further reading:

[‘And what if they do not buy it? Reflections on how to win the constitutional referenda and consequences of \(non\)ratification’, by David Kral](#)

[‘Accession to the EU and the Czech constitutional judiciary’, by Ivo Slosarcik](#)

Ratification of the Constitution for Europe (2)

Among the wider public, concerns seem to prevail over positive expectations over the last months in regard to the EU generally. This attitude is reflected in the Czech perception of the Convention as well. According to a Europe-wide poll conducted at the end of the last year, the percentage of Czech population afraid of a ‘building of Europe’ was highest among all candidate countries, with 50 per cent of the population expressing their fears ([Eurobarometer 2003.4: Public Opinion in the Candidate Countries. February 2004](#)). A more recent poll shows a similarly high level of scepticism among Czechs as regards the Constitution. The Czech Republic has the lowest percentage of those supporting the adoption of the European Constitution (48 per cent) among all candidate countries. Altogether, only Denmark and the UK are more sceptical than Czechs ([Eurobarometer Spring 2004. Public Opinion in the European Union. July 2004](#)).

A variety of views on ratification of the EU Constitution have been expressed during academic and political debates in the last twelve months. To talk about a simple dichotomy of views (parliamentary ratification versus referendum) would therefore be misleading and at least three possible options should be taken into account: (1) standard approval by the Parliament, envisaged for international treaties, or (2) majority voting with a higher threshold that would normally apply to changes of Czech Constitution, or (3) a binding or non-binding referendum.

Originally, the Government tried to stay non-committal, until the parliamentary debate about the final mandate for Czech negotiators at the

IGC. The then Prime Minister Spidla then gave in, stating that the Government will ‘ask the people of the Czech Republic about its opinion.’ The PM also claimed that his Government would seek to legalise a general referendum procedure instead of one-off referendums according to special statutes. This move was quite surprising. The new Prime Minister Gross confirmed the change in the policy of the dominant government parties, saying that a referendum on the EU Constitution would be held in the country since parliamentary ratification would be ‘much more complicated’.

The opposition, unlike the parties in power, has always been quite explicit in its support for a referendum. This position is a natural consequence of the belief of the main opposition party, the Civic Democrats, that the Constitutional Treaty in its current form fundamentally changes the nature of the EU. Their view coincides with that of the President.

There are, nevertheless, two potential obstacles to the adoption of the Constitution in a referendum. First and foremost, it is doubtful whether currently a majority of the population would approve the document. It would be overly optimistic to believe that Czech attitudes towards the EU in general have changed to a more positive assessment since the 2003 accession referendum. Quite to the contrary, the Convention was perceived as some remote, unimportant debating circle without any impact on the life of ordinary citizens.

Second, legal questions remain obscure as well. It is still not clear whether any change of the Czech Constitution would be necessary for the adoption of the Constitutional Treaty or whether the current wording is sufficient. Given the strong opposition to the Treaty by Civic Democrats and Communists, it might drag on for months and the Constitutional Court might be required to step in.

Conclusion

Although the participation of representatives of the Czech Republic in the Convention has refined the government’s European policy and

facilitated the 'inclusion' of the Czech government into the EU institutional framework, this has not been followed by an increase of interest from the general public in EU integration. Czech citizens remain also somewhat sceptical as regards the Constitutional Treaty. The Constitutional Treaty has polarised Czech politics, leading to a deeper debate about the Czech position in the enlarged EU and about its overall direction. Although this may have the effects of an earthquake on the Czech political scene in the short term its long-term impact will undoubtedly be positive.

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6. News from the Federal Trust

Recent publications

European Essay No. 33:

Tony Brown: **Ireland's National Forum on Europe**. Available at <http://www.fedtrust.co.uk> or from publications@fedtrust.co.uk

European Policy Brief No. 7:

Anthony Dawes and Brendan Donnelly:

The beginning of the end or the end of the beginning? Enhanced co-operation in the Constitutional Treaty

Available at <http://www.fedtrust.co.uk/policybriefs>

Policy Commentary:

Séverine Picard: **Asylum, immigration and qualified majority voting**

Available at <http://www.fedtrust.co.uk/admin/uploads/commentary3.pdf>

Events

'Ratifying the EU Constitution', 18 November, Czech Embassy, London. For further information please visit www.fedtrust.co.uk/embassy or contact Dr Martyn Bond: martynbond@fedtrust.co.uk.

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