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What if they say ‘non’? – Alternative scenarios if the European Constitution is rejected

by Julia De Clerck-Sachsse

As the referendum on the Constitutional Treaty in France draws ever closer, the one question that looms on everybody’s mind is “What happens if the French say NON to the Constitution?” Official sources in the EU insist that there is no “Plan B” in an effort to boost the ratification process by taking a confident stance towards the new treaty. Commission president Barroso recently stated that non-ratification would

be detrimental for the EU both politically and economically. However, the sudden turn of popular opinion against the Constitution in France in recent months has thrown up much speculation about the possibility of a rejection of the treaty.

While recent polls in France seem to suggest that opinions are in fact rather balanced towards the treaty, with “yes” and “no” camps tak-

MAIN POINTS

If one or more Member States fail to ratify the EU Constitution, the most likely outcome is that some of its policy innovations can be saved without amending the treaties but that further progress in European integration stops. It is therefore not possible to be for Europe but against the Constitution.

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ing the tie, now the Netherlands, another traditionally pro-European country and founding member of the EC, also emerges as an unsure candidate. Recent opinion polls show a clear advance for the “no” vote. The fact that now even traditionally pro-EU candidates are wavering on the question of ratification is unexpected and disturbing to many supporters of the Constitutional treaty. This is especially true, given that ratification in other member states, most notably the U.K., but also Poland and the Czech Republic has been regarded as problematic from the beginning.

Contemplation on the consequences of non-ratification and a possible “Plan B” therefore now seem as adequate and urgent as ever. The text of the Constitutional treaty itself remains somewhat unclear about the possible consequences of non-ratification, Declaration 30 appended to the Constitutional Treaty, simply states that:

“The Conference notes that if, two years after the signature of the Treaty establishing a Constitution for Europe, four fifths of the Member States have ratified it and one or more Member States have encountered difficulties in proceeding with ratification, the matter will be referred to the European Council.”

What will happen of course depends to a large degree on which member states reject the treaty. Different political solutions will be sought for the case of non-ratification of a small member state (for example Malta) or a larger one, especially if it would be one of the founding members of the EC/EU (as in the case of France). A different scenario yet would follow non-ratification by the U.K., given its overall ambiguity towards EU membership, not just the Constitutional Treaty itself. Now that it has become more likely that more than one member state might reject the Constitution, a closer look of possible scenarios for non-ratification seems justified.

Generally six alternative scenarios have been identified for the case of non-ratification:

- The treaty is put to the non-ratifying members for a second vote
- The non-ratifying members leave the union and the rest proceed on the basis of the new Constitutional treaty
- The ratifying countries leave the current EU and join together in a new political union that will enact the Constitutional treaty

- A new IGC is convened to either renegotiate some aspects of the treaty or to renegotiate the entire package
- The treaty is considered “dead” and the EU continues to function on the basis of the Treaty of Nice
- Some aspects of the Constitutional Treaty are introduced by ways which do not require treaty amendment

One scenario that is entertained as a possible solution to a rejection of the Constitutional treaty by a “no” vote in one or more member states, is to simply re-submit it to a referendum, after a period of enhanced campaigning and public information (as has been the case previously in Ireland and Denmark). However, given how high emotions have been running on the question of yes or no, especially in France and the U.K., it seems at least doubtful that this would lead to subsequent ratification. Even more unlikely, at least in the immediate future, would be a new union to be founded by those member states that have ratified the Constitutional treaty, leaving the others aside, or for the non-ratifying members to leave the existing EU and letting the other states go ahead. Again this is particularly unlikely for the case of France, although for the U.K., given its long standing am-

biguity to the EU as a whole, alternative scenarios have been contemplated.

Legally it would be no problem for the EU to simply continue to function on the basis of the treaty of Nice. However, of course much political impetus would be lost, if, after three years of constitutional debate, the entire project would simply be confined to the EU’s policy dustbin. This would be particularly difficult to justify, given that one of the main aims of the Constitutional treaty was to make the institutional process less cumbersome and to reform above all the voting procedure of member states (making qualified majority voting, instead of unanimous voting the norm). To many this reform is indispensable in order to prevent the decision making procedure in the enlarged Union of 25 from total paralysis. Moreover, plans for a European foreign minister and an External Service for the EU are unlikely simply to be abolished by EU decision makes given the overall consensus on these policy innovations as well as their popular appeal.

Therefore, it is rather likely that in the event that the Constitutional treaty will not be ratified, an effort will be made to save at least some of its key policy innovations, and to enact them through means that do not require treaty amend-

ment (and therefore would not be subject to any referenda). However, this will only be possible for policies which do not imply a shift of power from member states to the EU. Therefore, many important innovations of the Constitution, such a qualified majority voting (QMV) as normal procedure, the new system of double majority voting in the Council (a big bone of contention for Poland and Spain during the Constitutional negotiation period), are unlikely to be passed without resubmitting them to national ratification (which would mean more referenda at least for Ireland and Denmark). Apart from significant legal obstacles there are of course important political obstacles to consider. A reduction of commissioners and a permanent president of the Council are policies that have been much contested within the Convention and the IGC. If these policies were isolated from other parts of the “Constitutional package”, representing essentially a compromise deal, it is unlikely whether member states could come to agree on them once more.

Much more likely to pass by inter-institutional means are the post of a European foreign minister and the establishment of an external service for the EU. These policies face considerably less difficulties both legally and politically. Legally they

do not represent a shift from member state competences to the EU. The EU External Service in fact could be argued to continue along the lines of cooperation in Common Foreign and Security policy already outlined in the TEU (Art. 20). With regard to the post of foreign minister an inter-institutional agreement would also suffice, although, it would have to be very clear on the different competences implied in combining the post of High Representative and External Relation Commissioner in order to prevent a seeming shift of competences between institutions. However, apart from fewer legal restraints these two innovations also face much less political resistance, given that there is a wide consensus among Member states on the desirability of these policies and they even enjoy popularity in public opinion.

Even if some of the innovations could be saved by such means, the abolition of the Constitutional project would of course be a big disappointment to all those who have put their political weight behind EU reform. Moreover, it would be somewhat ironic that a process that was hailed to be more democratic and closer to the citizen would in the end resort to bypassing the popular voice, having failed to secure its approval in the first instance.

The biggest lesson to be learned then, is that communication on European integration is still insufficient. This is true for member states as well as the EU institutions, above all the Commission. The debate in France has shown that simply blackmailing voters into voting for the Constitution (Chirac's "France will be Europe's black sheep" speech) will not do. The Commission on the other hand has done much too little too late, for the most part confining itself to "preaching to the converted" rather than tackle anti-European sentiment face on and explaining the consequences of the Constitutional treaty as well as those of non-ratification in a clear manner (see also OCGG Government Briefing No 3).

Should the constitution be rejected this will also be a lesson for member states that the ambiguity with which Europe has been approached for decades by national politicians (their practice of "blaming Brussels" for national political malaise) eventually has come to haunt them in undermining their credibility when urging the public to give a "thumbs up" to the Constitution.

Less than a week to go before the French referendum, the vote on the future of Europe is still out. Nothing can be predicted. However, the negative polls in France

and the Netherlands should be a "wake-up call" to other member states and the EU institutions on how to approach the ensuing referenda. Above all, it will be important not to abolish the ratification process, even in case of a French 'non'. It would be undemocratic to deny those citizens that still have to decide upon the treaty their voice, and would reflect negatively on the governments that took the decision to have a referendum in the first place. This however, might be rather difficult to achieve. Although EU officials, including President Barroso, have stated that the ratification process will continue, some member states like the UK, where the Constitution has never won much public support, are keen to bypass the ratification process, which might hurt their political careers. While British diplomats have voiced the opinion that a French no might well lead to calling off the referendum in the UK, Tony Blair has recently stated that there will be a referendum, no matter what happens in France.

In many ways it is perhaps the very wish to give their governments a "wake-up call" that motivates many European citizens to say 'no' to the Constitution. The problem, with this is that, unfortunately, the alternatives are much less likely to put citizens' interest in the foreground. The "non pro-European" as it is often proclaimed

in France is simply not a political reality. Considering the situation in other member states a “non” to the Constitution in France will most certainly come to imply a “non” to the further progress of European integration. In particular, it is hard to see how a more social and more democratic treaty could be negotiated, given the current balance of power in the EU (see also OCGG Government Briefing No 2).

As I have outlined above, the most likely scenario is a “Plan B” in which popular consent is simply bypassed. Regrettably there is very little awareness that the Constitutional Treaty is of course a compromise that has been achieved after many months of deliberation and hard national bargaining. The fact that the Constitutional Convention that drafted the treaty was much more open, representative and democratic than the previous intergovernmental conferences (not to speak of the policy making process of many member states!) also is often conveniently forgotten. Thus far the ratification process has not brought with it the politicization of European politics on member state level that many hoped it would bring. Instead, the European debate has been nationalized in many instances, and came to be overshadowed by domestic issues as well as questions that have very little to bear on the actual text of the Constitu-

tion (like the Bolkestein directive and the question of Turkish membership).

One positive aspect of the negative turn towards the Constitution in France and the Netherlands may be that at last member states are beginning to realize that what is happening in one member state will have a direct impact on their own political future as well. Should the Constitution fail, it is to be expected, however, that rather than learning their lesson from adopting ambiguous positions towards the EU by playing the “blame Brussels” card while at the same time trying to advance common European measures, it is more likely that member states will be altogether more hesitant to tie their common political destinies to one another. This would of course have a severe impact on the future of European integration.

Let's hope then that the recent polls in France and the Netherlands was “wake up call” enough for governments to teach them that Europe needs to be communicated consistently, openly and in an unambiguous manner. The recent efforts in France in this respect seem to have shown some effect and should be an impetus to all those countries, where a referendum is still on the table. This way “Plan B” could remain a subject of political analysis rather than become a policy reality.

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