



## Ratification Process

**How will the EU get from the Constitutional Treaty agreed by the Member States to the Constitutional Treaty ratified by its Member States and in force?**

The Constitutional Treaty was agreed by the Member States on 18 June 2004. It will be signed in the autumn of 2004. After that, the Member States have 2 years to ratify it. It cannot come into force unless all Member States ratify it.

When asked what would happen if the Constitutional Treaty was not ratified by one or more Member States, an official of the European Commission indicated that this would not happen and that there is therefore no official position of what would occur in such an eventuality.

Member States can ratify the Constitutional Treaty by

- A decision in their national parliament
- A referendum

In some Member States one or the other method is laid down as the only one allowable. However, a number of Member States that do not have to have a referendum have now decided to hold one. Some Member States are still undecided about this.

There have been some calls for a European Union wide referendum. However, this is both politically and constitutionally more than unlikely.

### **What are the issues about holding a referendum?**

#### **Information Available to the Public**

The Convention on the Future of Europe was set up to bring the European Union closer to its citizens. In this, it failed.

The turnout in the European Parliament elections in 2004 is testament to this, as is the level of success achieved by parties that are anti-European Union or European Union sceptic. The European Parliament elections were fought in most countries on national issues and were seen as an opportunity for the electorate to issue their national governments with serious criticism. These criticisms were not, in the main, related to European issues.

The level of information available to European citizens about the Constitutional Treaty is significant. The websites listed in our **Briefing Paper 5** alone provide access to a large amount of this information. However, the information is not readily accessible. It is not, as it were, 'in your face'. The media do not devote serious attention to it, and so, nor does the public. It takes effort to access, digest, understand and use this information to reach conclusions about the pros and cons of the Constitutional Treaty.

In order to ensure that any referendum has any chance of being conducted on the basis of a real understanding of the Constitutional Treaty and the issues it raises, a massive public

education campaign is needed. This will have to be supported not only by politicians at national level, but also by the media. MEPs can play a role in this.

#### **What are these issues?**

The Constitutional Treaty is a long and complex document. It runs to some hundreds of pages. It covers fairly simple concepts, such as the flag and anthem of the EU and it covers some extremely complicated issues relating to development, trade, foreign policy, asylum and migration and justice and home affairs to name but a few.

A referendum, by its very nature, tends to ask a single, simple question.

There could be many reasons why individual voters might be in favour or against the Constitutional Treaty. Answering a single question on the whole of the Constitutional Treaty is unlikely to allow them to voice their real concerns. Nor is the referendum process likely to engage governments in real discussions with the electorate about the key issues the electorate is concerned about.

How would a government even go about measuring or assessing, which of the components of the Constitutional Treaty the electorate is in favour of or not? There will be differences between different groups of the electorate.

A referendum is, thus, a very blunt instrument to deal with this complex issue.

Will the vote, as it did in the European Parliament elections, be cast on the basis of disaffection with their current government? Will the vote be cast on the basis of current events in the world rather than on the question of the Constitutional Treaty? Will the media use the opportunity to make it into a vote on whether or not a particular country should or should not be in the European Union?

All these are good and valid questions, but they do not relate directly to the Constitutional Treaty or to the question of whether it should be ratified or not.

#### **What Question will be asked?**

At this stage it is not at all clear what question will be asked in any of the referenda. Nor is it clear whether the question will be the same in all the referenda. However, the way the question is formulated is going to be critical to the ability of individuals to make an informed choice. This is an issue which needs to be watched in the future as the referenda campaigns are fought.

#### **What happens if one or more countries say no?**

The official position is that this won't happen. However, it could happen and it would be useful to consider this question, both at national level and at European Union level. At national level, this is certainly a question to ask the various campaigns and the government during any referendum campaign.

It is possible that only one country says no. Legally, even that, and even if it were the smallest and least populated country of the EU, would mean that the Constitutional Treaty

could not come into force. However, there might then be a political solution found which would allow progress to be made.

It is possible that a country that said no might decide as a result to withdraw from the EU. This might be a long and difficult process, but it is possible. The implications for the EU would depend on which country it is.

It is possible that several countries say no. This could lead to a two speed European Union where those who are keen to make progress would do so in so far as is possible with the others staying on the sidelines. There are precedents for this in the Schengen Agreement and in the adoption of the Euro.

It is possible that so many countries say no that the Constitutional Treaty has to be renegotiated. This has implications and raises questions:

- Renegotiation costs time and money; would such an approach lead to a revised Constitutional Treaty that was so different from the current one that it would achieve a different result?
- Renegotiation on which issues? There are many different - and mutually contradictory concerns citizens in different Member States have. How could they be accommodated in new negotiations? How would they even be identified through the referendum process?

Finally, where would it leave the European Union if the Constitutional Treaty either fell completely or was significantly delayed in its implementation? It would leave it legally in the position it is now. However, a number of the processes foreshadowed in the Constitutional Treaty are under way. The European Armaments Agency has been established. The European Joint External Service (part of the proposal for a Union Foreign Minister) is developing slowly.

The consequences of saying no are by no means certain nor are they clearly predictable.

The position regarding the holding of referenda is at present (July 2004):

Country	Referendum?	When / What is the state of play	Major EU-related referenda
Denmark	Yes	Tradition of holding referenda on major EU issues.	1972 - EC membership 1986 - Single European Act 1992 - Treaty of Maastricht 1993 - Treaty of Maastricht (w. opt-outs) 1998 - Treaty of Amsterdam 2000 - EMU membership
France	Yes	President Chirac announced on 14 July that the referendum on the Constitution would be held in the second half of 2005.	1972 - EC enlargement 1992 - Treaty of Maastricht
Ireland	Yes	Tradition of holding referenda on major EU issues. Usually takes 18 months to 2 years to organise but the process can be speeded up. Taoiseach Ahern announced on 6th July that the referendum would take place in 2005.	1972 - EC membership 1987 - Single European Act 1992 - Treaty of Maastricht 1998 - Treaty of Amsterdam 2001 - Treaty of Nice 2002 - Treaty of Nice
Portugal	Yes	Announced by the Portuguese PM Jose Manuel Durao Barroso on 23 June 2004. The referendum is likely to take place in early 2005.	
Spain	Yes	In February 2005	
United Kingdom	Yes	Although not needed under existing UK constitutional arrangements Tony Blair announced on 20 April 2004 at the House of Commons the government's intention to hold a referendum. The plebiscite is likely to take place following the UK's general elections in late 2005.	1975 - EC membership

Country	Referendum?	When / What is the state of play	Major EU-related referenda
Belgium	Likely	Prime Minister Guy Verhofstadt has said he would be in favour of a non-binding referendum.	
Luxembourg	Likely	Referendum likely even though the Constitution does not envisage one.	
Netherlands	Likely	Both senate and lower house in favour of a referendum which could take place in December 2004, during the term of the Dutch Presidency.	

Country	Referendum?	When / What is the state of play	Major EU-related referenda
Estonia	Undecided	Discussion in parliament, government and the media; decision is unlikely before the beginning of 2005.	September 2003 - EU membership
Latvia	Undecided		September 2003 - EU membership
Lithuania	Undecided	Discussion underway.	May 2003 - EU membership
Poland	Undecided	Both Polish President Aleksander Kwasniewski and caretaker Prime Minister Marek Belka have said that they were in favour of holding a referendum.	June 2003 - EU membership
Slovenia	Undecided		March 2003 - EU membership

Country	Referendum?	When / What is the state of play	Major EU-related referenda
Finland	Unlikely		1994 - EU membership
Hungary	Unlikely	No real debate.	April 2003 - EU membership
Slovak Republic	Unlikely	Both Prime Minister Mikulas Dzurinda and President Ivan Gasparovic are opposed to a referendum.	May 2003 - EU membership

Country	Referendum?	When / What is the state of play	Major EU-related referenda
Austria	No	Very unlikely (unless a lot of other Member States were to hold one)	1994 - EU membership
Germany	No	Proposal to hold a referendum rejected by the Bundestag. However, the discussion on this issue continues.	
Greece	No		Tradition of ratifying treaties by parliament
Italy	No	The Italian Constitution does not currently permit a referendum on this issue.	
Sweden	No	Tradition of holding referenda only when there are splits within the parties (eg on EMU).	1994 - EU membership 2003 - EMU membership
Cyprus	No	To be ratified by national parliament.	
Czech Republic	No	Referendums are not feasible under the Czech Constitution.	June 2003 - EU membership
Malta	No	On 17 October 2003, PM Eddie Fenech Adami ruled out the possibility of a referendum arguing that there is no legal basis for holding such a referendum and that the March referendum (on EU accession) had been decisive.	March 2003 - EU membership