



CENTRE FOR EUROPEAN REFORM

briefing note

WHAT HAPPENS IF FRANCE VOTES NO?

In just over two weeks France will hold a referendum on the EU constitutional treaty. The outcome of the May 29th referendum remains on a knife-edge with the latest polls suggesting the country is split down the middle. Whatever the final result, President Chirac is likely to reshuffle the French government, although he will probably not resign if the referendum is lost. For the EU, the consequences of a No are likely to prove long-lasting, almost certainly killing off the constitutional treaty and plunging the EU into a severe political crisis.

1. WHY THE FRENCH COULD VOTE NO

The French are traditionally pro-European. As a large founding member France has played a key role in shaping the EU. Unlike Britain, for example, France participates in all EU policies, from the euro to the 'Schengen' area of passport-free travel. Moreover, Valéry Giscard d'Estaing, the former French president, was the chairman of the Convention that prepared the draft text of the constitutional treaty. France successfully proposed a number of innovations in the treaty, such as the creation of a president of the European Council (which brings together EU heads of government). The treaty also safeguards some of France's key concerns, such as the *exception culturelle* which protects the French language and the film industry. The vast majority of the French media and the mainstream political parties all support the treaty.

So why could the French reject the treaty? French opposition to the treaty is fuelled by two trends: a rising disenchantment with the EU, and a sense of crisis at home.

First, enlargement has made it increasingly difficult for France to exercise its traditional leadership within the EU. Many French voters fear that the country's influence and vision of Europe is becoming diluted in a larger, looser and more liberal EU. In particular, many voters fear that immigrants from the new member-states and, in the future Turkey, could steal their jobs. They are also anxious that French companies could relocate to low-cost Central and Eastern European countries. The passionate debate about the draft services directive that enflamed France in February revived all these fears. French voters are concerned that the liberalisation of services across the EU will undermine their cherished social rights

Second, French fears about the direction of the EU are compounded by a deep-rooted pessimism about the country's economic and political future. Unemployment has remained stubbornly high for nearly two decades. One in ten French workers is out of a job, exactly the same rate as in 1983, while more than one in five of the under-25s are unemployed. Governments from both sides of the political spectrum have failed to get to grips with the labour market's problems, leading to growing disillusionment with mainstream politics. The current centre-right government has carried out some painful social security and pension reforms, but without securing widespread public support. As a result, many French voters see the constitutional treaty referendum as a welcome opportunity to give President Chirac a bloody nose.

The impact of a No on French politics

A French No vote is unlikely to force President Chirac to resign, although his credibility would be greatly damaged. But it would almost certainly end any lingering hopes the President might have of running for a third term in office in 2007, thereby clearing the way for Nicolas Sarkozy to become the centre-right

candidate. Win or lose, Chirac is likely to shake up the French government and sack the unpopular prime minister, Jean-Pierre Raffarin.

However, the difficulties of the ruling centre-right government have not helped the socialist opposition. The referendum has exposed a deep contradiction between their traditional support for European integration and their historical opposition to economic liberalism. The socialists face a period of infighting between the supporters of current leader François Hollande and those who back Laurent Fabius, the former prime minister and leader of the No camp. Hollande's authority has been significantly undermined by the strength of opposition to the treaty among socialist voters, although Fabius remains a divisive figure.

2. THE END OF THE CONSTITUTIONAL TREATY?

The short answer to the question, "What happens if France votes no?" is that the constitutional treaty is dead. Legally, the treaty cannot enter into force unless every EU member ratifies it.

Can the treaty be renegotiated?

In France, some of the anti-treaty campaigners have suggested that if the French vote No, their government will be in a strong position to renegotiate the treaty. They argue the government could achieve an outcome better suited to French interests, in particular through the inclusion of more social provisions. But such claims are illusory.

The treaty is a finely balanced compromise between the interests of 25 member-states. France won plenty of the arguments during the negotiations. Thus the treaty contains, for example, the Charter of Fundamental Rights and a chapter on public services. During the negotiations, every country had to give way on some of its interests to achieve objectives in other areas. Having worked long and hard on the constitutional treaty, the other governments would simply be unwilling to alter the text to suit the French. Moreover, there is no consensus on the need to harmonise more tax or social policies. For example a majority of member-states would oppose any attempt to introduce majority voting on company taxation. The current treaty is the best one that France is going to get.

Could France be forced to leave the EU?

If one of the EU's smaller or newer members could not ratify the treaty, but the other 24 did, they might be able to find a way of going ahead without that country. They would have to withdraw from the existing EU treaties; redraft the constitutional treaty for 24; and then sign and ratify the document. The 24 would thus in effect expel the problem country from the EU – and save the constitutional treaty in the process.

However, the probability of France being forced out of the EU is virtually zero. France has been central to the history of the EU, and participates in all EU policies, from the euro to the 'Schengen' area of passport-free travel. Although France no longer exercises unchallenged leadership within the EU, it remains a pivotal player in EU debates. For most EU governments a Union without France would be unimaginable.

Could there be a second referendum in France?

Luxembourg Prime Minister Jean-Claude Juncker, who currently chairs the European Council, has said that all EU member-states should continue with their ratification of the treaty, even if France votes No. Legally, the 25 EU governments have until November 2006 to ratify the treaty, so there would be time for France to organise a second referendum. And if the other 24 countries ratified the treaty, there have been suggestions that it could be saved through a second referendum in France. After all, the Danish and the Irish governments succeeded in winning second referendums after voters had initially rejected the Maastricht (1992) and Nice (2001) treaties respectively.

However, parallels between the Danish and Irish situations, and that in France today, are misleading. The Maastricht treaty extended EU powers into new areas, notably monetary policy, justice and home affairs, and defence policy. This made it easier to accommodate the Danes by granting them opt outs from those new policy areas. Similarly, in the Irish case, the European Council made a declaration offering reassurance that nothing in that treaty compromised Ireland's military neutrality, as many Irish had feared.

However, the constitutional treaty is a different sort of document. It does very little to extend EU powers into new areas, with the exception of justice and home affairs (which has not been a controversial issue in the French referendum campaign). The treaty is mainly about institutions and voting rules, for which no

opt-out is available. In any case, French opposition to the treaty is mainly fuelled by general fears about the EU's evolution. Unlike in the cases of Denmark and Ireland, those fears could not be overcome with opt-outs or declarations ahead of a second referendum. Another reason why a second referendum is unlikely is that if France votes No, several countries, including Britain, are unlikely to proceed with their referendums.

Nothing happens?

It is possible that nothing would happen if France votes No. This would be the easiest option for the heads of government, and require the least work and effort on their part. They would meet, declare the constitutional treaty dead, and announce that the Union needed a pause before returning to the question of institutional reform. They might say that they would spend several years watching how the rules of the Nice treaty worked, before considering what treaty amendments, if any, were needed.

However, this scenario is unlikely to unfold for two reasons. First, there would be a loss of momentum for the process of European integration. A pause would be seen as a defeat for the EU, weakening the authority of its institutions. Therefore, some governments would argue, "something must be done".

Second, most EU governments believe that the existing institutions do not work well. After the recent round of enlargement, decision-making has become increasingly difficult. Many governments believe that many of the EU's key challenges are external, such as the need to develop coherent strategies for Russia, China and the Middle East. They believe that, without the improved foreign policy machinery offered by the constitutional treaty, the EU will find it very hard to develop common positions. That is why there is a fair chance that EU governments will try and rescue parts of the treaty.

Could parts of the treaty be saved?

If France votes No it is possible that parts of the treaty could be salvaged, in two ways. First, some of the treaty's provisions do not require its ratification in order to be implemented. For example, EU governments have already moved ahead with setting up the European Defence Agency, which is one provision of the treaty. Nothing in the existing treaties prevents the governments from setting up this agency. Similarly, there is already work under way on the creation of a European External Action Service. If the treaty is lost, the EU governments could proceed with what would be in effect an embryonic EU diplomatic service, although this would be legally complicated.

However, most of the key provisions in the treaty, notably those on the powers of institutions and voting rules, cannot be applied informally. Therefore, although a renegotiation of the treaty is out of the question, a so-called mini-inter-governmental conference (mini-IGC) is more plausible. The 25 governments might decide to pick out a few of the key provisions of the constitutional treaty, such as the new 'double majority' voting rules or the creation of the post of European Council president.¹ These provisions would make up a new, short treaty. The 25 governments would have to sign the new text and then ratify it. Given that the text would be only a few pages long, and its import would be much less than that of the full-scale constitutional treaty, most governments would argue that it could be ratified by parliamentary vote rather than referendum (only in Ireland might constitutional precedent require the holding of a referendum on the new text).

¹ The new voting rules would allow a measure to pass if supported by 55 per cent of the member-states, so long as they represent 65 per cent of the EU population.

Of course, such attempts to save parts of the constitutional treaty – either through informal application or a mini-IGC – would be highly controversial. Eurosceptics in Britain, France and elsewhere would complain that once again political elites were arrogantly strengthening the EU behind the backs of the people. If a single EU government felt weak-kneed at the prospect of incurring eurosceptic wrath, such attempts could not work. Both the informal application of parts of the treaty and a mini-IGC would require the unanimous support of every member-state.

That said, this option is perhaps the most practical. It would allow EU governments, and in particular the French government, to claim that, despite the loss of the new treaty, the momentum for integration was being sustained.

3. THE LONG TERM POLITICAL IMPLICATIONS OF A FRENCH NO VOTE

A French rejection of the constitutional treaty would throw into stark relief two competing visions of the European Union. At one end of the spectrum are a group of countries, including the UK, Poland, the Czech Republic and the Baltic and Nordic states, which favour a more diverse and economically liberal EU. At the

other is an integrationist group led by France and Germany, but also including Spain, Belgium and potentially Italy, that favours a high level of social protection.

In the short-term the battle between these two sides could put at risk much-needed economic reforms, such as the services directive. The further enlargement of the European Union to include the countries of the Western Balkans, possibly Ukraine and above all Turkey, would also be at risk (Bulgaria and Romania should still join on schedule in 2007). Some economists even argue that the eurozone could disintegrate, although such apocalyptic warnings remain far-fetched.

The longer-term outlook remains even more clouded. The EU's success has been based on an ability both to manage diversity and maintain some integrationist momentum. A French No – unravelling a hard-fought constitutional treaty – would put at risk the EU's ability to reach agreement on any major new initiatives.

Economic reform and the euro

In the short-term, a French No would represent a major setback for the cause of economic reform. The French government would interpret the vote as a firm rejection of EU liberalising measures, such as the services directive. President Chirac has already stated that he will put forward a new proposal on the services directive, dropping the controversial 'country of origin' provision that would allow companies to trade services anywhere in Europe under the rules of their home country.

The French government would also be likely to insist that the Commission comes forward with a raft of 'social Europe' measures. For example, France may push for a directive making it compulsory for companies to consult their workers before undertaking restructuring – such as the sale or closure of a subsidiary. France could also propose the creation of a 'core' group of eurozone countries that would push ahead with harmonising some forms of taxation and social protection. However, France would not be able to impose any new social or protectionist measures on the rest of the EU. Thus the danger is that France would block badly needed reform at EU level, rather than force a fundamental change of direction in EU economic policy.

The financial markets are also becoming jittery about the consequences of a French No. Some economists are busy constructing doomsday scenarios, which suggest the disintegration of the euro. For example, the bond markets could lose confidence in the euro, sending the cost of debt spiralling for overburdened governments, such as Greece and Italy (and potentially delaying the euro accession plans of the new member-states). At the same time, a widespread loss of confidence in the euro could send its value plummeting, forcing the European Central Bank to raise interest rates to stave off inflation. Under this scenario, high debt countries could be forced out of the single currency or Germany might decide it does not want to share the pain and leave. However, eurozone members are so politically and economically committed to the single currency that this scenario remains a highly distant proposition.

EU foreign policy and enlargement

Another consequence of a French No and the ensuing crisis would be a threat to further EU enlargement. The Union can only negotiate the entry of new members if it has a clearly defined set of rules and stable institutions. An aspirant for membership cannot seek to join a club whose structures are fluid and uncertain. For example, when the Danes rejected the Maastricht treaty in 1992, Sweden, Austria and Finland's accession talks were put on hold. Similarly, a referendum crisis might force the EU to suspend membership talks with Turkey, and also prevent it from starting negotiations with other countries that hope to join, such as those in the Western Balkans. The loss of the prospect of membership could destabilise countries in that region.

A prolonged paralysis after a French No would also marginalise the EU on the world stage. More infighting over EU institutions is the last thing Europe needs at a time when it is trying to develop stronger policies toward the Middle East, China and Russia. The security threats to Europe do not come from within. Rather they come from instability in neighbouring regions, particularly in Russia and in the Middle East. The EU cannot have an effective foreign policy if its member-states are arguing over the future shape of the Union.

A weak and divided EU?

A French No could lead to the creation of a 'core Europe' of countries committed to greater integration. It is conceivable that President Chirac would try to seize the initiative by making a joint declaration with Chancellor Gerhard Schröder. They could declare that the constitutional treaty was dead and that France and Germany should create a new club committed to maintaining high standards of social protection, and

preventing 'unfair' tax competition. They might also announce ambitious objectives in areas such as police and judicial co-operation, research and development, and military integration. They would expect Spain, Belgium and – if Romano Prodi becomes prime minister – Italy, and perhaps others, to join them.

Evidently, creating a hard core Europe within the EU would be neither simple nor easy. The judicial hurdles would be immense. For example if the core's activities overlapped with what the EU did, it might discriminate against member-states outside the core and thus come into conflict with EU law. Institutionally, trying to make the core mesh with the broader EU would be a nightmare. What would be the role of the EU's Parliament, Court of Justice and Commission in the core?

However, if Franco-German attempts to establish a core come to nothing in the short term, the integrationist countries could seek to promote a more united Europe in other ways. They could try to use current EU rules to establish vanguard groups in particular policy areas, for example, in corporate taxation or research and development. They might also try to create other vanguard groups outside the EU framework, in areas such as border guards, police co-operation, and criminal justice. There is a precedent: the Schengen area of passport-free travel was established by France, Germany, and the three Benelux countries in the 1980s as an entity separate from the EU, although in 1997 the Union assumed control. The integrationists would also be likely to build the euro group, currently an informal forum for the countries in the single currency, into a concrete institution. The opposition of other countries, such as Britain or Poland, could not prevent these kinds of initiative.

The consequence of all this would be further European integration, some of it involving the whole EU, but much of it within distinct but overlapping smaller groups. Eventually, the countries that belonged to all the groups would start to caucus, attempt to guide and direct the whole union, and probably establish their own secretariat. Europe would thus develop a 'messy core'. Messy or not, however, the long-term effects would be similar to those of a hard core: the EU would be divided into two groups of countries: those in the Franco-German core, and those on the periphery. There have always been influential figures in France who would favour some kind of core; whether Germany's leaders would wish to follow France down this route is more debatable.

4. CONCLUSION

Greece, Hungary, Italy, Lithuania, Slovakia and Slovenia have already ratified the constitutional treaty; while Austria, Belgium and Germany are set to do so before the French referendum. Spanish voters adopted the treaty in a referendum last February by an impressive 77 per cent, and the Spanish parliament has promised to respect that result when it votes on its ratification.²

² See Daniel Keohane, 'A French lesson for Europe? A guide to the referenda on the EU constitutional treaty', CER, April 2005. Available at www.cer.org.uk

A French No on May 29th would not only render those ratifications null and void, but also throw the EU into a deep and potentially destabilising crisis. The stakes in the French referendum for Europe are high. In the event of a *Non*, the EU would probably enter into a prolonged period of introspection and infighting. The EU would not fall apart, but its legitimacy would be greatly damaged.

Even if France votes Yes on May 29th, the treaty still faces a difficult passage in referenda in other countries. These include the Netherlands, which votes on June 1st, the Czech Republic and Britain, which are both set to vote next year. But after a French *Oui*, the momentum across Europe would be firmly in favour of the treaty, and a Yes vote in the eight other referendums would be more likely (perhaps with the exception of Britain). Europe's future is in French hands, but which future France will choose is too close to call.

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