

# **‘Euro-visions’? Some Thoughts on Prospects and Mechanisms for Future Constitutional Change in the European Union<sup>†</sup>**

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## 1. INTRODUCTION

On the last two occasions that any of the European electorate rejected the result of an IGC that had agreed a Treaty to amend the founding Treaties of the European Community (“EC”) and European Union (“EU”), the voters were given a second opportunity to change their minds and reach the ‘correct’ result. In Denmark in May 1993, the Maastricht Treaty was eventually accepted by the electorate in a second referendum after the subsequent adoption by the European Council of a Decision ‘interpreting’ the Maastricht Treaty. In September 2001 in Ireland, meanwhile, the addition of a Declaration to the Treaty on European Union guaranteeing Irish military neutrality provided the basis for a ‘successful’ referendum at the second attempt.

After agreement was reached on the Treaty Establishing a Constitution for Europe (hereinafter, “TCE”) under the Irish Presidency in June 2004, one editorial summed up the position of the governments of the Member States as follows:

The difficult task of the political leaders now is to explain in a clear way what they wanted to create, so that their citizens do not decide on the basis of propagandist clichés, but rather on the Union as they wanted it.<sup>1</sup>

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<sup>1</sup> Editorial, (2004) 41 *CMLRev* 899, 907. In the period leading up to the Spanish referendum, reports were widespread that adverts and flyers summarising the content of the TCE were to be available at football stadiums around the country, in an attempt to publicise the document and the referendum: see reports on the internet at (e.g.) <http://www.tsr.ch/tsr/index.html?siteSect=200002&sid=5453308> and <http://www.robert-schuman.org/lettre/lettreat194.htm>, and the Spanish government’s ‘Information Note’ of 19 February 2005 on the referendum (available at <http://www.es-ue.org/Documents/NOTA%20ARTESANOS%20CAGRE.INGLES.doc>). In the event, voter turnout was a somewhat disappointingly low 42.3% of those registered to vote, but no-one could argue that strenuous efforts had not been made to make the populace aware of the event and its source (although other reports suggested that one poll found that as many as nine out of ten Spaniards confessed to being unsure of what the TCE actually concerned, let alone what its provisions contained: see <http://www.socialistworld.net/eng/2005/03/01europe.html>). For a contemporary (and not entirely favourable) audit of the conduct of the Spanish referendum, see Madroñal (for Mas Democracia and Democracy International), ‘Spanish Referendum on the EU Constitution – Monitoring Report’ (20 February 2005, available at: <http://europeanreferendum.org/fileadmin/pdf/monitoring/di-spain.pdf>).

Whether or not this wise advice was heeded is a point that will no doubt be debated by historians, political scientists and lawyers (to say nothing of journalists) for many years to come. However, after a number of ratifications via national Parliamentary approval and a ‘Yes’ vote in a referendum in Spain, the early summer of 2005 saw the electorates of first France (29 May) and then the Netherlands (1 June) reject the ratification of the TCE. In spite of these ‘No’ votes, a number of other Member States have continued with their national ratification processes: indeed, a referendum in Luxembourg on 10 July 2005 returned a result in favour of the ratification of the TCE. The current state of play with regard to the ratification of the TCE is set out in Table 1, below: at the time of writing (early July 2006), twelve Member States have formally ratified the TCE, three have approved it at national level but have yet to lodge the formal instrument of ratification, two have rejected it in a referendum, seven seem to have suspended the ratification process indefinitely and Finland expects to ratify by Parliamentary approval during the Finnish Presidency of the EU in the second half of 2006.

[Insert Table 1 here]

There is a serious danger that the history of previous ratifications may come back to haunt the EU and its Member States over the TCE. The statements by the European Council in June 2005 and June 2006, agreeing to continue a ‘period of reflection’ on the TCE could certainly be read as having left open the possibility of submitting the TCE to second referendums in both France and the Netherlands. However, the past practice with regard to Denmark and Ireland risks leading to angry reactions from press and populace alike, as the *Private Eye* cartoon illustrates presciently. A cynical saying has it that if “the people don’t like it, change the people”, while the late Lord Williams of Mostyn (erstwhile Leader of the House of Lords) once opined that he believed that the people wanted a liberal democracy, and if they did not then “they would be wrong”.<sup>2</sup> Even if only some account is taken of the results in the French and Dutch referendums, neither of these approaches is open to the EU in the first decade of the 21<sup>st</sup> Century. So long as national ratification of any Treaty amendment is required, the same ‘people’ will have to be engaged: the key question is whether or not the position that they take in the future may change, and information and accountability will be key in any such development. Meanwhile, a commitment to representative democracy, coupled with some limitations upon what laws the representatives of the people can actually adopt, will clearly form an important part of any future EU developments, but the idea that any (political) elite can force this upon an unquestioning electorate, against their express will but paternalistically ‘in their best interests’ flies in the face of the forces unleashed by those same referendums.

[Insert cartoon here]

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<sup>2</sup> The full quote reads: “My Lords, given the alternative, I prefer a liberal democracy. I believe that that is what the overwhelming majority of countries, were the will of the people to be supreme at all times, would want – and if they did not, they would be wrong” (*Hansard*, 21 June 2001, Column 113; available at: <http://www.publications.parliament.uk/pa/ld200102/ldhansrd/vo010621/text/10621-08.htm>).