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The French Tug-of-War over the EU Constitution

Domestic Conflicts Jeopardize Ratification of the Treaty

Daniela Schwarzer

France is one of ten countries whose population will decide whether to accept the new constitution of the European Union. The referendum on the draft Treaty establishing a Constitution for Europe has been announced for the second half of 2005. Recent opinion polls suggest that more French are in favor of the Treaty than are against it, but ratification is not a foregone conclusion. Around a quarter of voters are still undecided, and the constitution's critics have stepped up their campaign to persuade them to vote "no." Some of the critics are EU opponents from the right and left, who feel the new Treaty goes too far. For other politicians the Constitution Treaty does not go far enough—they demand that social integration be put higher on the agenda. Their canvassing for a "no" vote is motivated by domestic tactical considerations, and they have increasingly gained ground in the recent months of debate. Politicians of the Socialist Party (PS) play a special role here because the party is split on the constitution issue right up to the top leadership and will not take a position one way or the other until after an internal referendum at the beginning of December. This decision will decisively influence the French government's strategy and the result of the referendum.

A French "no" would not only send a negative signal to those member states whose population is still to vote on the Constitution Treaty. A rejection of the constitution by a co-founder of the EU and its second largest member would plunge the whole Union into a political crisis. No official "Plan B" has yet been introduced for the eventuality of one or more member countries rejecting the constitution. In this case the Treaty of Nice would be the base treaty of the EU, but it is considered unsuitable

for an EU of twenty-five members, not least because of its voting rules. A "no" would also lead the drafting of the constitution by the Convent—an important innovation in European politics in the last decade—to be called into question.

An Optional Referendum

The French constitution allows the president to decide whether the parliament or the people should vote to ratify EU treaties.

The Maastricht Treaty in 1992 and the accession of Britain, Ireland and Denmark in 1972 were ratified by referenda. In his traditional television interview on the national holiday on July 14, 2004, President Jacques Chirac, a supporter of the constitution, announced that the EU Constitution Treaty would also be put to a referendum in 2005.

But many observers and politicians in France are sounding a note of caution after the experience of the Maastricht referendum—opinion polls in the early 1990s predicted a comfortable majority for the Maastricht Treaty and the creation of the single European currency, but only a slim majority of 51.1 percent actually voted in favor in the 1992 referendum.

Chirac had several reasons for calling another vote. After his neo-Gaullist party's two defeats in the regional and European parliamentary elections in March and June 2004, Chirac came under strong domestic pressure to let the population vote on the constitution. His decision may well also have been influenced by Tony Blair's announcement in April 2004 that Britain would hold a referendum to conclude its ratification of the Treaty. A number of other heads of state and government (e.g. of the Benelux states, Spain and Portugal) have announced referenda on the Constitution Treaty too, so after much hesitation Chirac decided to put the issue to the public.

For the center-right government the planned ballot is also a means of weakening the left, in particular the PS. This strategy has worked, at least so far: only three months after Chirac announced the referendum the pro-European PS is divided right up to the top leadership on whether or not to support the constitution that the conservative government helped negotiate.

Amending the French Constitution

The heads of state and government signed the Constitution Treaty on October 29, 2004, and soon afterwards Chirac asked

the French Constitutional Council to examine the Treaty's compatibility with the French constitution. Constitutional lawyers have identified a number of points where amendments are required. One is that the EU Council of Ministers will have broader scope to make decisions with a qualified majority—e.g. on issues of immigration law—and this will require an explicit transfer of sovereignty from France to the EU in the areas of justice and domestic affairs. Another point is that the Constitution Treaty must be explicitly mentioned in the French constitution, which currently refers only to the Maastricht and Amsterdam treaties. Finally, the Constitutional Council will examine whether the Charter of Fundamental Rights incorporated in the Constitution Treaty is compatible with the principles of the French Republic (e.g. with laicism) and specify the interrelationship of the two different sets of legislation as required. Any necessary constitutional amendments could be adopted early in 2005 at a joint sitting of the deputies of the National Assembly and the Senate. The approval of the *Congrès* is almost certain.

No insurmountable constitutional problems are hence expected, but the political debate on ratification is taking place in a state of tension—particularly among the socialists. Leading PS politicians are fueling the debate by holding public meetings, writing articles, and publishing books. In France the constitution issue has become a breeding ground for a national controversy about the future of the EU. The debate is increasingly being reduced to the question of whether the Constitution Treaty takes sufficient account of French interests, or whether these have been “sold out” to the European partners for “nothing in return.”

The French Debate on Europe

Weariness with Europe prevailed in France in the lead-up to the European parliamentary elections on June 21, 2004. Although a survey by the polling agency Ipsos in June 2004 said that sixty-six percent of voters

took an interest in the elections and European politics in general—ten percent more than in 1999—neither of the two big parties, the PS or the Union for a Popular Movement (UMP), conducted an active election campaign with clear programs and statements on the future shape of the EU.

Only the traditionally pro-Europe Union for French Democracy (UDF) actively fielded proposals. It won almost twelve percent of the vote—quite a success for a small party. Otherwise it was domestic issues that dominated the election campaign and most voters' choice of party, the opinion polls said.

Only when the referendum was announced did lively debate on the EU constitution flare up, involving three main sets of issues: France's influence in the enlarged Union, the direction of EU economic and social policy, and the EU's foreign policy and role in world affairs.

1. Since early 2004 France has been debating intensely whether its influence in the EU is dwindling. Parties of the left and right criticize the conservative government for not adequately representing French interests in the Union. Significantly, the ambassadors' conference at the French foreign ministry in August 2004 was titled "Strategies for Exerting Influence." The most recent cause for criticism was the government's nomination of former minister Jacques Barrot as EU Commissioner for Transport, a post seen as being of secondary significance.

In February 2004 the employers' association MEDEF criticized France's waning power in the EU and demanded a spirited defense of French interests in the European Parliament and the Commission. In May 2004 a report to the National Assembly dealt in detail with France's declining influence in view of the enlargement of the Union (Floch Report No. 1594 "sur la présence et l'influence de la France dans les institutions européennes"). In this context the possibility of Turkey with its large population joining the EU is seen as a further threat to France's influence. In

public debate this aspect is not usually separated from the issue of the constitution because many French fear that the Constitution Treaty will accelerate Turkey's accession. Another common question in the debate is the place that Franco-German cooperation can and should have in the enlarged Union.

2. The debate on France's influence in Europe—and vice versa: on Brussels' influence in France—is closely related to the scope of action which the nation states and the EU have in economic and social policy, and how they interact. The leftist parties, including the PS, complain that the Constitution Treaty lacks a distinct concept for a "social Europe" that could convince the population. They demand a strengthening of the EU's powers to regulate social policy and also call for additional funding from the EU budget to support social cohesion in the Union.

Other areas of conflict are the coordination of economic policy in the euro zone, and EU competition policy. Politicians of all parties have demanded a reform of the EU's Stability and Growth Pact after France and Germany have both broken the budget rules for the third year running. There is broad consensus in France that the EU Commission and the Council of Ministers should not only ensure the stability of the euro but also adopt policies that promote growth and employment. In this vein, greater weight should be given to the Euro Group as a "gouvernement économique" to counterbalance the European Central Bank.

However, most French feel that the EU's competition commission should have less influence. The conservative government, in particular Finance Minister Nicolas Sarkozy, who is soon to resign, has repeatedly and successfully defended the interests of French companies (e.g. Alstom and Bull) on difficult issues of competition policy. While this action is criticized abroad, there is little protest in France itself. This is also the case with ongoing French resistance to fully opening particular public sector areas, such

as the nationally run power companies, to European competition.

3. Similarly, the moderate parties of the left and right agree on Common Foreign and Security Policy and the development of the EU's security and defense policy. The EU is to be strengthened as a global player, especially toward the US, and should develop a more confident independent defense identity parallel to membership in NATO. But the parties differ on the significance of transatlantic cooperation.

The Constitution: Tool or Hurdle?

The main parties have very similar goals in European politics, but they sometimes disagree substantially on how to achieve these goals. A majority in the governing party UMP sees the EU constitution as an appropriate means for pursuing the political goals and reforming the EU's institutions and decision-making mechanisms, while ensuring that the enlarged Union remains able to act and does not harm France's interests. The centrists of the UDF consider the Constitution Treaty worth voting for but feel it does not go far enough. They favor a further transfer of sovereignty to EU institutions and propose that additional policy areas be given to the Union. The extreme right of the National Front and leftist nationalists around Jean-Pierre Chevènement, on the other hand, see the constitution as a threat to France's sovereignty.

The PS is at odds with itself on the question of whether the EU constitution fosters or harms French interests in Europe. The position the party takes after its internal referendum at the beginning of December will decisively influence the outcome of the national referendum and also effect the government's communication strategy in the lead-up to it.

Different Currents in the PS

Assessments of the mood of the PS rank and file differ widely. These are always based on

opinion, for want of inner-party surveys. General opinion surveys suggest that PS members are more skeptical of the constitution than those who describe themselves as PS sympathizers, but this alone does not allow us to draw any reliable conclusions as to the mood in the PS. Constitution supporters in the party warn that there is no certainty that the membership will give its approval, and their intensive campaigning for a "yes" demonstrates how deep their concern runs.

Constitution critics in the PS argue that the draft Treaty cements a neoliberal Europe in Anglo-Saxon mold. They feel that the EU is sacrificing its social element on the altar of market logic—quite in the British interest—and is also governed undemocratically. These critics overlook that a "no" to the Constitution Treaty is also quite likely in Britain.

Former Prime Minister and deputy party leader Laurent Fabius sees his "no" campaign as a way of canvassing for an alternative, left-wing Europe. Rejecting the constitution was not tantamount to rejecting European integration per se, he says, but instead allowed a further development of decision-making processes and concrete policies on the basis of the Treaty of Nice. Observers criticize Fabius for using rejection of the constitution to push his own presidential ambitions—elections will be held in 2007—and not giving due consideration to the political consequences that this inner-party power struggle could have for Europe. And indeed, the opponents of the constitution are silent when asked how their ideas for a more social and democratic Europe will be put into practice if the Constitution Treaty fails. The French socialists have no recipe for achieving consensus on their ideas in a twenty-five member EU.

The supporters of the constitution around party leader François Hollande warn that a socialist "no" and a failure of the French referendum would precipitate a profound crisis in the EU. They consider the "constructive crisis" scenario propagated by the Constitution Treaty opponents to be an

illusion—instead of progressing, integration would stagnate at the level of Nice. But they have difficulty convincing the public of the negative consequences of rejection.

If the PS membership really votes “no,” this would reinforce the position of current deputy party leader Fabius. He is supported by the New Socialist Party (NPS), a group around Arnaud Montebourg which is increasingly gaining influence within the party. Party pundits consider that leading “yes” supporters would lose influence and resign office if the membership votes against the constitution. The internal referendum will thus greatly influence the strategy and prospects of the PS in the presidential elections in 2007. A membership “no” would be interpreted as a vote of no confidence in Hollande and liberal left-wing colleagues such as former finance minister Dominique Strauss-Kahn. The party could shift to the left and abandon the policy of moderate reform adopted by François Mitterrand and continued—despite all leftist rhetoric—by Michel Rocard, Jacques Delors, and Lionel Jospin.

A rejection of the Constitution Treaty by the PS membership would weaken the party further within the European social-democratic political family PES. The constitution supporters therefore caution that even the current debate in the PS is isolating it within PES, especially since no comparable rifts of any scale are visible in the British Labour Party.

Chirac's Referendum Strategy

President Chirac supports the constitution and it would be a major political defeat for him if the population rejected it in 2005. Since he is flirting with the idea of standing again for the highest public office in 2007, he will try hard to gain French approval for the Constitution Treaty.

This task is made difficult by many French being inclined to see the referendum as a vote about Chirac's presidency. The next general elections are not until 2007, and many voters feel that the power

of the conservatives is overwhelming—despite landslide losses in the regional elections in March 2004. The President is from the umbrella party UMP, whose two-thirds majority in parliament allows it to form the government and designate the prime minister.

If the PS decision is “no,” Chirac could use this as an opportunity to reshuffle government. Prime Minister Jean-Pierre Raffarin is unsuitable as a dynamo for the “yes”-campaign because he has not developed a pro-European profile of his own in Chirac's shadow. His approval rating has also plummeted recently. The Prime Minister's poor image could have an effect on Chirac's own approval rating, so the President may appoint a head of government who is more popular and at the same time increase the involvement in government of the pro-European UDF, which until now has maintained its independence from the conservative umbrella party UMP.

The President and the government will have to come up with convincing arguments for the view that France's interests can be achieved in the scope of the Constitution Treaty. They will have to refute criticisms that the EU is unsocial and that the constitution would hinder progress in social policy.

The issue of Turkey's membership in the EU will also play an important role. Opinion polls suggest that, of all EU countries, the French are most skeptical about Turkey joining the Union. To dispel these reservations, Chirac is at pains to separate the debate on the EU constitution from that on Turkey's membership in the EU, particularly since his challenger within the party, the future UMP leader Nicolas Sarkozy, has openly rejected Turkey joining the EU. To emphasize that no constitutional or political connection exists between the Constitution Treaty and Turkish EU membership, the President has announced that there will be a separate referendum on the latter.

Where the Debate on Europe Could Lead

A socialist “no” to the Constitution Treaty would polarize the French debate on Europe between left and right. Addressing the EU’s deficit of democracy and making the Union more citizen-friendly would probably become dominant issues, alongside questions of EU economic and social policy.

The conservatives must react to socialist criticism that the constitution cements an undemocratic structure in the EU. The UMP and other political parties could adopt positions introduced to the debate by civil-society groups who call for the introduction of Europe-wide referenda. They also demand that future changes to the constitution should no longer be made in consensus by the heads of state and government—in their opinion this should be done by majority vote in the Council of Europe or the European Parliament, or by EU-wide referendum. The campaigns for a “yes” to the constitution could therefore be connected with the demand for “more democracy” and point out other ways of achieving this than the traditional German approach of strengthening the European Parliament.

The prevailing opinion in France is that the national parliaments should have as much controlling authority as possible in dealings with Brussels and that the European Parliament should play a subordinate role. French proposals for democratization therefore concentrate on the strengthening of national parliaments in European decision-making. The background to these efforts to increase the influence of national legislatures in the EU is that in France parliament traditionally plays a lesser role vis-à-vis the executive than in other EU countries. For this reason deputies of the *Assemblée Nationale* in particular are up in arms against their influence being undermined further by a transfer of authority to EU institutions. The actual growth in power of the European Parliament and the potential for it becoming even more powerful are thus deliberately

played down in public. This in turn fuels French criticism of the lack of democratic participation in the EU.

However, the French are overwhelmingly in favor of introducing elements of direct democracy. Unlike in Germany, referenda can be held in France on a wide range of issues. They can be applied to the functioning and reform of public institutions, international treaties that impact on the French political system, and since 1995 can also be held on matters of economic and social policy.

Conclusions for German Policy

If a majority of French reject the EU constitution, this will in no way mean that France, an EU founder member, will leave the Union (or partially withdraw from it)—unlike Britain after a British “no.” The Treaty of Nice would remain in force as the basic treaty. In order to advance European integration in the absence of a formal revision of the Treaty, the states of the EU would have to define joint political initiatives. This could be achieved by stepping up cooperation, but in this scenario France’s role—and thus the impetus of the Franco-German pair—would be greatly weakened.

The creation of a pro-integration “core Europe” based around Germany and France would not be a realistic alternative. If France rejected the constitution it would lose its power of persuasion for fostering joint initiatives not only with other large EU countries such as Britain, Italy or Spain, but also with smaller member states. Germany would have to work even harder than in the past to find partners among the twenty-five EU states for each specific policy initiative.

Until now Franco-German initiatives have been undertaken in the framework of the EU with the intention of gaining all members’ approval. The cooperation of varying groups of countries on specific issues, on the other hand, might remain restricted to intergovernmental cooperation, which would weaken EU institutions.

This would be detrimental to the transparency, controllability and democratic legitimization of their decisions, which in turn would strengthen critics of the EU and popular rejection of the Union.

France must on no account become politically isolated. That could breathe fresh wind into the sails of integration critics on both the right and the left—among them political extremists—some of whom have long called for France's withdrawal from the EU.

If the PS membership votes "no" and the constitution is then rejected at the referendum, the left wing of the party would be boosted at the expense of the liberal reform supporters. This would reduce German politicians' chances of picking up where the French left off on certain European and domestic policy issues.

The governing UMP could react to a rejection of the constitution by underlining France's interests more emphatically—which would probably be detrimental to Germany's negotiating position on the issue of the EU Own Resources Mechanism for 2007–2013. France could also become more tenacious in defending its economic interests against the EU competition commission and in bilateral relations with Germany, especially in the lead-up to the 2007 elections.

With few exceptions, the referendum debate in France is currently being conducted by French protagonists. Prominent German politicians might be able to lend support to the pro-constitution camp by expressing their opinions in the French media or making public appearances. Further options might be an open letter of the parties in the Bundestag to their French parliamentary colleagues, or joint initiatives by German and French members of the political groupings in the European Parliament.

A message to the French public might emphasize the dangers that a rejection of the constitution would bring: a crisis in the EU, a weakening of the powerful Franco-

German pair, and a waning of France's influence.

Finally, Germany could and should emphasize that the Constitution Treaty not only reinforces the role of the European Parliament, but for the first time also sets binding rules at EU treaty level for the many functions where national parliaments are involved in European politics. This represents a hitherto unique and positive step toward more democratic participation of the parliaments. This point should be put aggressively so as to introduce a clear, contrasting view into French debate on the means and institutions for democratizing the EU.

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