

EU leaders plan return of EU Constitution

With the EU's budget "crisis" and the UK's Presidency now safely out of the way, EU leaders have begun to return their focus and energies to reviving the rejected European Constitution. The Austrian government, which holds the Presidency of the EU for the first half of 2006, has signalled that devising a strategy for bringing back the EU Constitution will be one of its top priorities. It has promised to "take stock of the Constitution debate and to take decisions on how to proceed in the future."¹ The Presidency wants to reach agreement on the next steps towards bringing back the Constitution at a meeting of EU leaders in June, when the so-called "pause for reflection" following the no votes will officially come to an end.

The new German government, widely credited with having played the key role in securing a deal on the EU's budget, has thrown its full weight behind the plan. Their traditional allies in Paris are also in favour despite the emphatic rejection of the text in their own country. Bringing back the Constitution is unlikely to be a straightforward process however, as the French and Germans disagree on strategy. The German government wants to bring back the Constitution in its entirety, while French politicians have talked about 'cherry-picking' parts which could be implemented by the back door. Some in the EU, not least the Dutch government, have warned that bringing back the Constitution will simply create more arguments and division at a time when the EU should be concentrating on sorting out Europe's failing economies. The British Government has so far largely stayed out of the debate in public. In this briefing note we look at the positions of the key players in the debate and the possibilities for the eventual return of the European Constitution.

Back from the grave?

Although the whole idea seems strangely surreal to observers in the UK - where it had been widely assumed in all political circles that the EU Constitution would be left to gather dust in historical archives - there is a huge amount of support for the bringing back the text. 13 countries have already ratified the document and Estonia is planning to vote it through parliament in early 2006.

Nevertheless it still came as some surprise when in December, Wolfgang Schüssel, the Austrian Chancellor and current President of the EU, declared in an interview with the *Financial Times* that "the Constitution is not dead".² He then announced that he sees the Austrian Presidency's main task as giving "Europe new momentum this year".³

A sign of the Austrian government's commitment to resurrecting the Constitution is the considerable personal effort that is being invested by its Foreign Minister,

¹ Austrian Foreign Ministry briefing on EU Presidency programme

² *Financial Times*, 22 December 2005

³ *Deutsche Welle*, 10 January

Ursula Plassnik. This week she visited Paris and The Hague for meetings in which she said the Constitution was “a central theme of the talks”.⁴

In rather poetic language she has called for a new “climate” for the EU in 2006: “The constitutional process has slowed down over the last half year - it is now covered in a blanket of snow waiting for spring. So what we need is climate change. We have had massive blows to the European ego in 2005. I hope that now - having agreed on the [budget] - we will be moving into a more positive climate.”⁵

Angela Merkel, the new German Chancellor, is one of the key driving forces behind the Austrian Presidency’s push to revive the EU Constitution. Her new governing “grand coalition” in Germany committed itself to bringing back the Constitution when it negotiated its programme for government. In a demonstration of the close working relationship between the two governments, Merkel visited her counterpart in Vienna for its New Year’s Eve celebrations. Merkel also used her New Year’s address to stress that she was aiming for an early and “tangible” result in the Constitution negotiations. She has argued that “This Constitution has so many positive elements that we must not abandon it.”⁶ Merkel’s enthusiasm for the EU Constitution is shared in many other European capitals, not least in Paris, despite its rejection there in June.

The French predicament

The situation in France is particularly strange to British onlookers. The French government is in an extremely tricky position: 85 percent of the governing party’s membership (the UMP) voted in favour of the treaty, the text was written by a former French President, Valery Giscard d’Estaing, and largely represented the French vision of how Europe should look. Parisian politicians are therefore, quite understandably, some of the Constitution’s biggest enthusiasts.

So while the French government is a big supporter of the Constitution it does not want to risk alienating voters further. In the UK this would mean shelving the whole project but the narrative which is currently holding sway on the other side of the Channel is the idea that the French did not vote against the Constitution itself. They weren’t even opposed to further EU integration; it was simply a vote against unpopular leaders as well as an expression of their fears about ‘globalisation’.

Thus the French government feels justified in trying to bring back most of the Constitution in one form or another but it has to demonstrate to French voters that it has listened, understood, and changed the Constitution accordingly.

Presidential hopeful and current French Interior Minister Nicolas Sarkozy described this vein of thinking in a recent article in the Brussels-based magazine *European Review*: “Nobody interpreted the referendum results of 29 May as a rejection of Europe... The French people want us to react to their expectations and to the resentment they expressed through the referendum.”

“...The Draft Constitutional Treaty contains important advances which improve the functioning of Europe, and would move towards a political Union, which is the

⁴ *Deutsche Welle*, 10 January

⁵ *Guardian*, 9 January

⁶ *Economist*, 6 January

UMP's aim: a stable presidency of the Union, a European Minister of Foreign Affairs, double majority, reform of the Commission, co-decision, and the extension of the qualified majority. Our objective must be to implement these advances, whilst respecting the democratic vote of the French people.”

“One way or another, we must give Europe the procedures that will enable it to make decisions in a quick and effective manner. The rules that have already been proposed have not been criticised, but they have nevertheless been refused along with all the rest. In order for these rules to be re-adopted, it is essential that Europeans rekindle their faith in Europe and its progress.”⁷

Another leading member of the UMP, Pierre Lequiller, who is also the head of the French parliament's EU delegation, has proposed that a new “economic and social treaty” should be added onto the EU Constitution in order to restore the French people's “faith in Europe”. He argues that this would constitute the basis for a new “European model of society” and could enter into force in a “pioneer group” of countries, should it not be ratified by all member states. He also proposes a second option which would be to discard the Constitution and replace it with a treaty limited to institutional reform, which would take into account future enlargements of the EU.⁸

This plan is actually one of the most credible put forward so far: a “social” addition to the Constitution would make it much easier to sell to the French people in a second referendum. But by keeping it as an optional extra it avoids creating even more opposition in Britain. Angela Merkel has also given backing to the idea of adding a protocol stressing the EU's “social” values.

Dug up whole or in pieces?

While France and Germany are united in their aim of resurrecting the Constitution and both agree that it should become more “social”, there are considerable differences between them on how this should be achieved.

Both President Jacques Chirac and the French EU Commissioner Jacques Barrot have called for parts of the Constitution to be ‘cherry-picked’ and implemented separately. Barrot has argued that the major institutional changes and the Charter of Fundamental Rights should be pushed through on their own while vast parts of the rest of the Constitution could be ditched. In a recent speech Chirac said he was in favour of implementing the proposals on “internal security and justice, external action and better involvement of national parliaments in the European decision-making process.”⁹

This view is also shared by Javier Solana, the EU head of foreign policy, who has said that initially only certain parts of the EU Constitution should be put into effect. He said, “The sooner the elements that are contained in the Constitution relating to the decision-making structure are put in place, the better for the EU.”¹⁰

Angela Merkel has positioned herself as being firmly against this strategy. She has said that, “To put single parts of this Constitution into force, and leave others

⁷ *European Review*, 5 January

⁸ *Le Figaro*, 5 January

⁹ *International Herald Tribune*, 11 January

¹⁰ *E!Sharp*, January/February 2006

aside, without knowing where you want to go, that does not work".¹¹ The EU Commission's plan for bringing back the Constitution (known rather ironically as its plan 'D' for democracy), which has been masterminded by EU Communications Commissioner Margot Wallstrom, envisages the Constitution being implemented in full after a period of debate between the EU and ordinary voters.

Dissenting voices

Not all EU leaders are so committed to bringing back the Constitution. Jose Barroso, EU Commission President, has said that he thinks the issue is potentially divisive, and has instead called on member states to focus for now on creating more "growth and jobs".¹² The Dutch government has also insisted that it will not attempt to ratify the Constitution. Dutch Foreign Minister Bernard Bot said that "the Constitution... for The Netherlands is dead. As far as we're concerned, there's no debate that this Constitution will again be submitted for ratification".¹³ One of the leaders of the Dutch yes campaign, Lousewies van der Laan MP, has said, "I want to be very clear on this subject. We will not ratify the text, and I sincerely ask Mrs Wallstrom - what part of no do you not understand?"¹⁴

The UK Government has been largely silent on the matter; they did their best to avoid discussing the Constitution during the UK's Presidency of the EU last year, and do not seem particularly pleased about its return. Jack Straw told the House of Commons recently that "the best that can be said about the European Union draft Constitution is that it is somewhere in limbo... As limbo is somewhere suspended between heaven and hell, it is difficult to argue that the Constitution is not dead."¹⁵

The newly elected Polish Prime Minister, Kazimierz Marcinkiewicz, from the eurosceptic Law and Justice Party, has said simply that the Constitution "is dead".¹⁶ The Finnish government, which will hold the Presidency of the EU in the second half of 2006, has also expressed surprise that the Austrians are so keen to attempt to breathe life into the Constitution.

What next?

It will obviously take some time for EU leaders to reconcile their differences over the EU Constitution. But what is also clear, is that there is significant momentum building behind the push to resurrect the Constitution. Once the French and German governments agree on their preferred strategy it will be extremely difficult for countries such as the Netherlands to stand in their way.

Barroso's predicted divisions are almost certain to come true, and the harder the French and German governments press the bigger they will become. There are several countries which are committed to holding referendums, and they are unlikely to want to have to take that step in the current climate of growing hostility to the European Union.

¹¹ *Der Spiegel*, 10 January

¹² *Daily Telegraph*, 10 January

¹³ *Daily Telegraph*, 12 January

¹⁴ *Agence Presse*, 11 January

¹⁵ *Hansard*, 10 January

¹⁶ *El Pais*, 10 January

It is unlikely that the Austrians (as they have acknowledged) will be able to broker a deal in the short time they hold the EU Presidency. The Constitution has been causing divisions for years and it would be miraculous if these could be papered over in the next six months. The most likely scenario, which is currently being predicted by many in the European Parliament, is that after the groundwork by the Austrians the EU will simply wait until 2007. Next year will bring elections in both France and the Netherlands and EU Constitution enthusiasts are hoping that the removal of these two unpopular governments will improve the chances of yes votes in their countries. Just as importantly, the two Presidencies of the EU in 2007, Germany and Portugal, have both committed to making the Constitution a top priority.

What about the UK?

One of the most interesting dynamics will be how the UK Government handles the whole issue. After all Tony Blair is on record saying that he still thinks that the document is a "sensible set of rules".¹⁷ Although the Government's body language since then has hardly given the impression that they are enamoured with the Constitution. If the French and Germans succeed in making the Constitution more 'social' it will almost certainly harden opinion in the UK business community. It could also prove to be a precarious time for the Prime-Minister-in-waiting, Gordon Brown. Although he has spoken in favour of the Constitution and is a self-proclaimed "pro-European", Brown is unlikely to want to start his premiership by backing the hugely unpopular EU Constitution. The irony is that the key decisions on the issue are likely to be taken at the end of Tony Blair's time in office, while the political fall-out will land on whoever follows him in to Downing Street.

One thing is certain: simply allowing the French and German governments to seize the initiative will undoubtedly produce a result which will create even more public opposition in Britain. A Government which was serious about reforming the EU would seize this moment to present concrete plans to transform the EU's failing policies and institutions.

¹⁷ Associated Press, 14 June 2005