

A year since the no votes: Can Europe learn to listen?

"I really believe the French and Dutch did not vote no to the Constitutional Treaty. Unfortunately the electorate did not realise that the Constitutional Treaty was specifically aimed at meeting their concerns and that's why we need to have a period of explanation for explaining this to citizens."

- Luxembourg PM **Jean Claude Juncker** (Press Conference, 17 June 2005)

"It is not France that has said no. It is 55 per cent of the French people."

- Former French President **Valery Giscard d'Estaing** (FT, 23 May 2006)

"[the no votes were] a request for more Europe not less".

- Italian Foreign Minister **Giuliano Amato** (Agence Europe, 23 May 2006)

"The negative results of the referendums in France and the Netherlands were a setback, but this has no bearing whatever on whether or not we need a Constitution. I say yes, we need the Constitutional Treaty."

- German Chancellor **Angela Merkel** (Speech, 11 May 2006)

"The Draft Constitutional Treaty contains important advances which improve the functioning of Europe, and would move towards a political Union, which is the UMP's aim... 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."

- French Interior Minister **Nicolas Sarkozy** (European View, January 2006)

"The European Constitution isn't dead; ratification must continue".

- Italian Prime Minister **Romano Prodi** (Telegraph, 17 April 2006)

"If Kohl had held a consultation exercise, we would never have had the euro. Who is the better democrat? The one who puts himself in his people's hands, or the one who has the courage to take risks?"

- **Jean Claude Juncker** (Deutschlandfunk Radio, 22 May 2006)

"The rejection of the Constitution was a mistake which will have to be corrected. The Constitution will have to be given its second chance... if the Irish and the Danes can vote yes in the end, so the French can do it too. It was a mistake to use the referendum process, but when you make a mistake you can correct it."

- **Valery Giscard d'Estaing** (Lecture at the LSE, 28 February 2006)

The 12 months since the French and Dutch voted against the European Constitution have been a major disappointment for all those who hoped that the referendum results might finally trigger reform of the European Union. The overwhelming majority of national leaders - together with the leaders of the EU institutions - have utterly refused to accept the verdict of the voters.

It is stunning to think that just twelve months after the amazing referendum results, the main topic of conversation in EU circles is *how* (not whether) to bring back the Constitution. Indeed, since the no votes a further six countries have chosen to ratify the text as it stands, and Finland plans to ratify on 1 July 2006.

The last year has seen supporters of "ever closer union" choose to interpret the no votes as protests against economic liberalisation, votes against enlargement, and even as votes for *greater* powers for the EU - in short, everything except a vote against deeper integration.

Some European leaders appear to believe that ordinary citizens are incapable of understanding any of the issues, and seem to think that it is impossible that voters might actually have answered the question on the ballot paper.

What the polls say

However, the opinion poll evidence does not bear out this interpretation. According to a new poll, around two thirds of voters in both France and the Netherlands want to either take back powers from the EU or leave it altogether.¹

	France	Netherlands
Give more power to the EU	18%	15%
Keep the current balance	16%	17%
Take back powers from the EU	53%	54%
Leave the EU altogether	10%	14%

Detailed opinion polling immediately after the Dutch referendum revealed that the top seven reasons given for voting no all reflected opposition to deeper integration and opposition to losing control. The top three reasons people voted no were over fears that "the Netherlands will have less influence under the Constitution" (54%), that "large countries will determine the future of Europe" (52%), and that "politicians will take decisions over our heads" (42%).

An honest analysis should acknowledge that there were significant differences between the French and Dutch referendums. The two have been lumped together far too much. The no vote in the Netherlands was not only bigger but also driven more straightforwardly by anti-integrationist sentiment of a kind similar to the UK.

There were indeed a greater number of issues in play in the French referendum. But the idea that French voters were merely venting their frustration at the government or globalisation has become so entrenched (through endless repetition by almost all EU leaders) that it deserves to be challenged.

¹ Polls for Open Europe by BVA and Maurice de Hond, May 2006. (Figures do not sum to 100% due to rounding error and don't knows).

Pierre Giacometti, research director for the French polling company Ipsos noted that, "The more someone says they have read the Constitution in detail, the more sceptical they are". A poll on the day of the French referendum found that 58% were against "European construction" with just 39% of voters in favour. Those who said they were "strongly against" it outnumbered those who were "strongly for" by 26% - 9%.

Several EU leaders are now arguing that the Constitution is legitimate because it has been ratified in a majority of member states. But only two of the sixteen member states which have ratified have held referendums. France and the Netherlands generally do not rank as the more sceptical of the member states in the Commission's regular *Eurobarometer* polls. In nine of the member states which have not held a referendum voters appear to be *more* sceptical than in France or Holland.

The irony is that those who want to ignore the referendum results and continue to plunge headlong towards "ever closer union" are steering the EU towards disaster. Opinion polls suggest that attempts to implement parts of the Constitution without a referendum and to bring back some variant of the Constitution under a new name will further antagonise voters and cause public support for the EU to fall further across the continent.

What next?

A consensus has formed around plans to revisit the Constitution in the spring of 2007. France and Holland will have elections next spring², while at the same time the German government (probably the leading supporters of the return of the Constitution) will also hold the Presidency of the EU during the first half of next year.

Member states (including the UK) have already agreed that on 9 May 2007 they will sign a political declaration on the future of the EU. The Commission has made it clear that this declaration will be the precursor to a new treaty. The declaration is to be modelled on the Messina declaration which led to the founding of the EEC.

President Barroso has said it will be a document, "which not only sets out Europe's values and ambitions, but also contains a shared undertaking to deliver them: an *"obligation d'engagement"*. The purpose and style of the document should be inspired by the Messina declaration [of 1955], which was both a response to an institutional setback, and a precursor to a Treaty, in that case the Treaty of Rome."

There is still disagreement about *how* to bring back the Constitution. A multitude of schemes are being proposed by different leaders.

At one end of the spectrum is the bloc of 16 countries which have already ratified the Constitution, who want to keep the existing text almost exactly as it is. Angela Merkel is the leading exponent of this view. The only concession Merkel has suggested so far is the addition of a new social protocol to address the concerns which are felt to have been expressed in the referendums.

² The two leading contenders for the French Presidency - Nicolas Sarkozy and Ségolène Royal - both support the return of the Constitution in some form, while the current right-of-centre Government in the Netherlands is likely to be replaced by a Labour (PVDA) Government.

In the middle of the spectrum are various options based on “cherry picking” from the Constitution to come up with a new slimmed down treaty which would include many of the features of the original Constitution under a new name. French leaders - particularly Nicolas Sarkozy - are the leading advocates of this strategy. In March 2006 the Financial Times reported that the name “institutional treaty” was gaining favour in talks between France and Germany.

At the other end of the spectrum is the Dutch government, which is the most hesitant about the attempt to re-launch the Constitution process. The Netherlands is the only country to have described the existing text as “dead”. However, the Dutch Government is isolated on this point, and has signalled that it will accept an “institutional reform” as long as it is not described as a “Constitution”.³

While the situation is still unclear, the idea of a new slimmed-down treaty seems to be the most likely basis of an eventual consensus between the political leaders (see annex on member states’ positions below).

Rolling the pitch

As well as plans for a full scale return to the Constitution, EU leaders are also pressing ahead with all kinds of projects in the interim. This is seen partly as a way to prepare the way for the return of the Constitution.

Many of the initiatives already being undertaken closely mirror plans first set out in the European Constitution. For example:

- The European Defence Agency proposed in the Constitution has been set up
- The veto on asylum issues has been abolished
- The veto on justice and home affairs legislation is to be abolished
- A recent court decision has given the Commission the power to propose criminal laws which are then adopted by majority vote.
- The appointment of permanent president of the Eurogroup

And while it has not been formally renamed, the EU’s diplomatic network has been expanding. The day after the French referendum, EU Foreign Policy Representative Javier Solana gave a speech in which he said, “Even if the Constitution was rejected in France, I think that it is suitable to keep on working on the establishment of a European External Action Service. This service will definitely come into existence sooner or later. It is not important when this will exactly happen - it is crucial that we get mentally and practically used to the fact that the EEAS will become a reality.”⁴

This *de facto* implementation of the Constitution not only builds momentum for the return of the Constitution, but also means that a future slimmed down version of the text will be able to concentrate simply on the proposals which need treaty change to bring them about.

³ Dutch Government’s letter to Foreign Ministers Meeting 27 May 2006

⁴ Remarks to the press by Javier Solana on the results of the referendum in France, Brussels, 30 May 2005

EU Constitution 2.0

The Constitution process will re-launch in earnest in spring 2007. It may take some time for a consensus about strategy to emerge. However, it seems likely that some kind of slimmed down treaty is the most likely outcome.

Despite frequent claims that it would be possible to draw up a text which included only "uncontroversial" elements, it seems likely that - after the French and Dutch no votes - any new treaty would spark calls for a new referendum.

Even proposals which are often cited as examples of "minimalist" reforms in Brussels (such as an EU President and Foreign Minister, or changes to the voting system to make it harder for member states to block legislation) are likely to be controversial elsewhere.

This makes it all the more surprising that the UK is going along with plans for the May '07 declaration on the future of Europe. However, while it might not seem to be in the political interest of the UK Government to be drawn into such a situation, Tony Blair has continued to insist on numerous occasions that the Constitution will need to be revisited:

"I accept we will need to return to issues around the European Constitution. A European Union of 25 cannot function properly with today's rules of governance." ⁵

"I think most people are pretty realistic about this. We have had two 'no's' in Europe - from France and Holland - and unless those are reversed that's the position. We have already agreed we will revisit the position but let's not return to focusing on that exclusively. That's an issue about the rules that govern the EU but our main priority is to carry through the reform agenda." ⁶

"We do need institutional change in Europe for Europe to work more effectively". ⁷

"I continue to think that the Constitution is a set of rules perfectly apt for Europe to function better. We will have to reflect on it again. The problem is that the people have said to the politicians: we will not let you adopt this text until you begin to respond to our daily problems. They did not vote no because of this or that article. I asked a French friend if he had read the Constitution. He looked at me as though I had gone mad." ⁸

Will it wash?

The role of the UK in the debate (currently almost non-existent) could be crucial. The UK is likely to have a new Prime Minister within the next year or two. One of the most interesting unknown quantities in the debate about the future of the EU is the date of a handover to a new Prime Minister in the UK.

⁵ [Oxford speech](#), 2 February 2006

⁶ Commons liaison committee hearing, quoted on [BBC, 7 February 2006](#)

⁷ Press conference with Angela Merkel, quoted on [AFP, 16 February 2006](#)

⁸ [Le Monde](#), 24 June 2005

None of the likely contenders for the role will want to continue with Tony Blair's strategy in Europe. Indeed, if elected, Brown would find it politically difficult to sign up to something which would collapse the more eurosceptic image he has sought to cultivate in recent years.

However, the process leading to a new text may be well underway by the time Tony Blair leaves Downing Street (indeed, Tony Blair might well appreciate the irony of locking Gordon Brown into a process of negotiations leading to a new treaty).

Will a future UK Prime Minister and other leaders sign up to another treaty? One way to sugar the pill which is widely discussed in Brussels is the idea of incorporating the institutional changes into a future accession treaty - for example for Croatia. This would allow leaders to make the argument that the changes were necessary for enlargement much more forcefully, by linking the two in a single document. In fact accession treaties have been used in this way before (e.g. the Nice Treaty voting arrangements were changed again by the A10 accession treaties, even though Nice had already provided voting weights for an EU of 27).

However, growing opposition to enlargement in France means that while such a strategy would boost the chances of a future treaty in Britain, it might make matters "worse" in France. Then again, the accession of Croatia without Turkey (even though Croatia applied to join 16 years later than Turkey) might well be accompanied by a crisis leading to the breakdown of talks with Turkey which might "help" in France.

Conclusion

Beyond the fact that an attempt to re-launch the Constitution will begin next spring, the future for the text remains uncertain. There is huge political pressure behind the drive for some kind of new treaty. But there are also clear democratic obstacles.

One thing is certain: the continuing drive towards "ever closer union" which is exemplified in the attempt to bring back the Constitution is going to erode the EU's support further.

For a brief moment at Laeken in 2001, it seemed like EU leaders had finally "got it". They responded to the Irish and Danish no votes by acknowledging that citizens "feel that deals are all too often cut out of their sight and they want better democratic scrutiny". The Laeken declaration also said that means needed to be found to stop the "creeping expansion of the competence of the Union". It stated that what the public wanted was "not a European superstate or European institutions inveigling their way into every nook and cranny of life". Crucially, it also talked about "restoring tasks to the Member States".

This was the right vision. But it has been lost without trace. Now, five years on, EU leaders are spending their time trying to force the mashed-up remains of a rejected Constitution down voters' throats. The question now is: which leader will have the courage to call time on the idea of "ever closer union", and can Europe learn to listen?

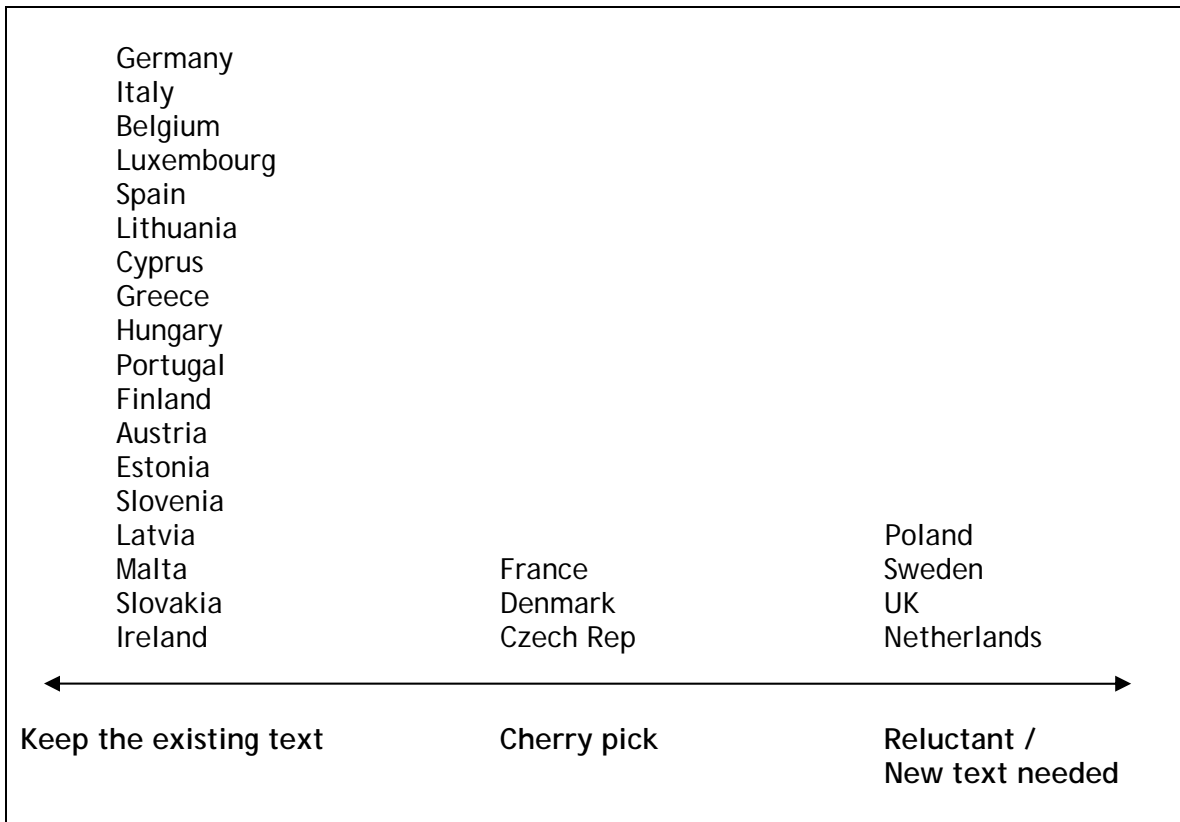
Annex 1:
The state of the ratification process

<p>Ratified before no votes</p> <p>Lithuania - 11 November 2004 Hungary - 20 December 2004 Slovenia - 1 February 2005 Spain- 20 February 2005 (referendum) Italy - 6 April 2005 Greece - 19 April 2005 Austria - 25 May 2005 Germany - 28 May 2005⁹</p> <p>Ratified since no votes</p> <p>Latvia - 2 June 2005 Cyprus - 30 June 2005 Luxembourg - 10 July 2005 (referendum) Malta - 6 July 2005 Belgium - 8 February 2006¹⁰ Estonia - 9 May 2006 Finland - plans to ratify on 1 July 2006</p>	<p>Delayed</p> <p>Czech Republic Denmark Ireland Poland Portugal Sweden United Kingdom</p> <p>Rejected</p> <p>France - 29 May 2005 Netherlands - 1 June 2005</p> <p>Under review</p> <p>Slovakia - The Parliament ratified on 11 May 2005 but courts upheld a legal challenge which said that a referendum should have been held</p>
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⁹ Still needs to be signed by the President

¹⁰ Still needs to be signed by the King

Annex 2: Where member states stand on the return of the Constitution



Germany

The German Chancellor Angela Merkel has made it clear that she wants to re-launch the Constitution during Germany's Presidency of the EU in 2007. She said in a speech to the Bundestag that "We absolutely need the Constitution to ensure the European Union is effective and capable of action. We need to think about how we make the Constitution a success. I want the Constitution, the German government wants the Constitution and I think a majority of this parliament wants it too."¹¹

Germany favours keeping the text of the Constitution and is against "cherry picking". Merkel has said "to put single parts of this Constitution into force, and leave others aside, with knowing where you want to go, that does not work".¹² One of the German proposals is to add a "social protocol" that upholds a commitment to the European social market economy. It is believed that the inclusion of a social chapter would appease voters on the French left.

¹¹ Rach, C, Merkel will strive for revival of EU Constitution, Bloomberg, 11 May 2006

¹² Der Spiegel, 11 January 2006

France

The French Government is broadly in favour "cherry-picking" the best bits of the Constitution. For example, it has proposed creating the post of an EU President and Foreign Minister without the Constitution.

Jacques Chirac has suggested that the EU should concentrate on 4 or 5 "*grand projets*" to create a "Europe of projects" that would illustrate to citizens that the EU is working. The projects he has proposed include a European civil defence force, a European border guard or a common energy policy.

Italy

Newly elected Italian Prime Minister Romano Prodi has called for parts one and two of the Constitution to be detached from the main detailed part of the text (part three).

He has argued that this new shortened Constitution would be more likely to be ratified in every member state. He has said that "we have to aim for a much more simplified Constitution which focuses on the big principles. That means the first part of the Constitution... but we have to remove all the technical, detailed aspects which scared people."¹³

The Italian government are keen to see the reflection period come to a close and for immediate action to be taken on the EU Constitution. They are broadly in favour of Germany's plans to bring it back. Prodi has indicated that he would like to form an alliance with "those countries most determined to push for a common European policy" including France, Germany, Belgium and Luxembourg, but "not the Netherlands".¹⁴

UK

Tony Blair has continued to insist that the Constitution was the right solution to the EU's problems. He has said that there is a need to "return to issues around the European Constitution. A European Union of 25 cannot function properly with today's rules of governance".¹⁵

Blair *has* acknowledged that the Constitution failed to connect with citizens. In a speech in February 2006 he noted that, "Apart from better rules of internal governance, no-one in Europe knew what it was meant to solve. As the problems of the citizen grew ever more pressing, instead of bold policy reform and decisive change, we locked ourselves in a room at the top of the tower and debated things no ordinary citizen could understand. And yet I remind you the Constitution was launched under the title of "Bringing Europe closer to its citizens."¹⁶

The UK Government would essentially like the issue to go away, and has stressed that it would like to see the EU focus on economic reform rather than a new treaty. However, the Government has also made it clear that it supports the declaration on

¹³ Prodi plan to leave Britain out in EU cold, Sunday Times, 16 April 2006

¹⁴ *ibid*

¹⁵ PA, 17 February 2006

¹⁶ Speech on the future of Europe, Oxford, 2 February 2006

the future of Europe proposed by the Commission, and has also signalled on several occasions that the promise to hold a referendum in the UK only applies to the existing text and not to a reworked version.

Netherlands

The Dutch have been the most vocal opponents of revisiting the Constitution. Bernard Bot, the Dutch Foreign Minister, has admitted that "we have discussed the Constitution, which for the Netherlands is dead."¹⁷ The Dutch government is not keen on submitting the EU Constitution to another referendum in the Netherlands. The Dutch Europe Minister Atzo Nicolai has commented, in an interview with the *Today* programme, "We are not in favour in the Netherlands of proposing this Constitutional Treaty... this government will not go back...In the Netherlands it's not really alive".¹⁸

But even the Dutch have left themselves some room for negotiation. Bot indicated as much in an interview with *Die Presse*, where he said that "something new"¹⁹ needed to happen. The government has also admitted that they would like to see institutional reform of the EU in 2008 or 2009.

Poland

The Polish government have also been critical about the return to the EU Constitution. Officials in the ruling Law and Justice party have said that "the Constitution must be ratified by all. The decision in France and Netherlands closes the matter".²⁰ They have also led the way with calls for the constitutional process to begin again with a new treaty. The Polish President Lech Kaczynski has said that the EU Constitution was too integrationist, and that he would like to see a new treaty formed "from scratch"²¹ that "reflects the EU's real needs."²²

Recently, the Polish government have taken a more supportive stance of the EU Constitution in an attempt to engage Poland in the shaping of a new document.

Belgium

Belgium Prime Minister Guy Verhofstadt said on the *Today* programme that the votes were not "no votes against Europe, but were votes against a certain type of Europe... what people want is a strong Europe, a United States of Europe that can give an answer to their concerns".²³ Having already adopted the text, Belgium is one of the supporters of the Constitution as it stands.

Luxembourg

The government is keen to see the constitutional process continue. The Luxembourg Prime Minister Jean-Claude Juncker has indicated his support for the Constitution to

¹⁷ EU Constitution is dead, says Dutch minister, *Telegraph*, 12 January 2006

¹⁸ BBC *Today* programme, 10th May 2006

¹⁹ *Die Presse*, 20 January 2006

²⁰ *EUobserver*, 17 January 2006

²¹ *Le Figaro* 6 March 2006

²² *ibid*

²³ BBC *Today* programme, 21 March 2006

be renamed as an “institutional treaty”²⁴ or a “Basic Treaty for Europe”²⁵ to appeal to sceptical voters.

Ireland

Bertie Ahern, the Irish Prime Minister, has said that the EU Constitution is “the right choice for Ireland”.²⁶ The Irish European Affairs Minister Noel Tracy also said that the Irish government remained “totally committed”²⁷ to the Constitution and that “we do not believe that a better agreement can be found at the current stage”.²⁸

Sweden

Sweden has no plans at the moment to ratify the Constitution. The Minister for Foreign Affairs Laila Freivalds has said that “the EU, in the coming few years, can continue to function with the present treaties. In the longer perspective, however, it is necessary to consolidate the Union and make it more efficient”.²⁹

Denmark

Danish Prime Minister Anders Fogh Rasmussen is supportive of a new treaty that contains some of the “obviously good”³⁰ elements of the Constitution. This would include changing the voting weights to make it easier to pass legislation.

Czech Republic

The Czech Republic has been sceptical about the renewal of the EU Constitution, and has called for a new text to be adopted. The Czech President Vaclav Klaus has said that “all the political forces in the Czech Republic consider the treaty to have practically stopped after it was rejected by France and the Netherlands.”³¹

Spain

The Spanish government is supportive of the German plan to resurrect the EU Constitution. The Prime Minister Jose Zapatero said that “Europe needs a new, more ambitious treaty”³² and that the Spanish government would work with Germany “to take advantage of the first opportunity we have to recover the constitutional will”.³³

Lithuania

Lithuania was the first member state to ratify the EU Constitution and is supportive of its continual ratification.

²⁴ FT, 17 March 2006

²⁵ ibid

²⁶ Agence Europe, 25 May 2006

²⁷ ibid

²⁸ ibid

²⁹ Speech by Laila Freivalds in Canberra, Austria, 8 November 2005

³⁰ Speech to Copenhagen University, 21 April 2006

³¹ EU Constitution ‘not on agenda’ for Czech Republic, president says, Forbes, 23 May 2006

³² Zapatero asks Merkel common energetic rules of play, EITB, 20 April 2006

³³ ibid

Cyprus

The Cypriot government is supportive of the current EU Constitution and continued ratification.

Portugal

The Portuguese Prime Minister Jose Socrates has said that "the project of the Constitutional Treaty was signed by the 25 member states and it would not be right"³⁴ to forget it, and plans to revive the EU Constitution during the Portuguese Presidency of the EU in 2007.

Hungary

The Hungarian government is supportive of continuing the ratification process and returning to the EU Constitution. They are against any plans for a two speed Europe and want to see the EU Constitution introduced soon.

Finland

Finland plans to ratify the Constitution on the first day of its Presidency of the EU on the 1 July 2006. The government is determined use its Presidency to attempt to breathe new life into the text.

Austria

During its Presidency of the EU this year, Austria has been 'preparing the ground'³⁵ for the resurrection of the Constitution. The Austrian President Heinz Fischer has proposed that the EU Constitution should be voted again through in an EU-wide referendum, an idea that was initially rejected when considered in 2004. He is also supportive of Germany's plans to add a commitment to uphold Europe's social model.

Slovenia

Slovenia is supportive of attempts to bring back the Constitution. The Slovenian Foreign Minister Dimitrij Rupel has said that "in Slovenia, we are convinced that the EU Constitution is very much alive".³⁶

Latvia

The Latvian government has indicated that it is open to changes on the Constitution, but the Prime Minister Aigars Kalvitis hopes that "this Constitution will be ratified sooner or later in all European Union countries".³⁷

³⁴ Portugal wants to revive EU Constitution: premier, AFP, 20 December 2005

³⁵ Austrian president backs EU Constitution, Eupolitix, 15 February 2006

³⁶ EUobserver, 12 January 2006

³⁷ EU to back constitution in the end: Latvia, AFP, 19 April 2006

Malta

Malta is supportive of the existing Constitution. The Maltese parliament voted unanimously to ratify the Constitution in 2005.

Greece

The Greek Foreign Minister Petros Molyviatis has said that he wants to “revive the debate on the ratification of the Constitution”³⁸. Greece is supportive of the continuation of the constitutional process.

Slovakia

Slovakia is supportive of the existing Constitution and continued ratification.

Estonia

Estonia is supportive of the existing Constitution and continued ratification. They recently ratified the Constitution in May 2006.

³⁸ Greece and Spain seek to revive EU Constitution debate, AFP 7 February 2006