

June 3, 2005

Treaty Establishing a Constitution for Europe: Impact of negative votes in the French and Dutch referenda

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1. The negative votes in France and the Netherlands. The rejection of the Treaty establishing a Constitution for Europe ("the Constitution") by the French and Dutch electorates is a grave setback for the process of European integration, possibly the most fundamental since the "European Project" was launched 55 years ago. The crisis in the European Union is, for the reasons set out below, far more serious than previous difficulties in securing the ratification by all member States of the Maastricht, Amsterdam and Nice Treaties. It nonetheless needs to be placed in perspective. Even if further integration is likely to be on hold, the prospects of disintegration, at least in the short-term, are equally remote. In other words, the most likely outcome is "standstill" rather than "rollback".
2. A fundamental and complex crisis. This crisis, as the debate in Brussels today and around Europe shows, is of complex origin and make-up. There is no simple analysis, diagnosis and remedy. In the short term, at the European Council in Brussels on June 16-17, it will be for the 25 Heads of Government to decide on the next (formal) steps. In the longer term however, it is clear that unless European citizens are convinced that the next steps of the "European project" are in their interest, there is not only a risk of "standstill" but also of "rollback".
3. No simple solution – allow time to pass. complete the ratification process before moving on? There is therefore no simple solution to this crisis. Today in Brussels, the following points can be distilled from a largely incoherent debate:
 - (i) the likelihood that this Constitution will enter into force is remote;
 - (ii) there is a strong view in allowing the ratification process to proceed in all Member States, not in order to "force" the final acceptance of the Constitution nor even to reach the four-fifths majority in Declaration 30, but to respect the sovereign equality of all Member States and not to allow two States to "take hostage" all the others;¹
 - (iii) time should be allowed to pass, with EU business continuing as normally as possible, at least until France (2007), Germany (2005), Italy (2006) and UK have new leaders, and a new political "conjuncture" emerges;
 - (iv) no attempt to be made to "cherry-pick" and implement particular parts of the Constitution under existing rules and procedures.

¹ The latest indication emanating from the Commission however is that this line will not hold beyond the European Council on 16 June, since by that time it will be clear that further ratification would be merely academic.

4. Practical impact of the crisis. In my view, there will be consequences flowing from these developments, at the “micro” as well as the “macro” level, for the Member States, for the private sector and of course for third countries. It is impossible at this stage (especially with the Commission’s services themselves in a state of shock) to predict precisely how or in what areas the impact will be most felt. It seems safe to say however that in areas where the Commission’s autonomy is greatest (competition, external trade and - possibly - state aids), the effect will be least. On the other hand, in areas where national sensitivities are greatest (tax, social security, cross-border services other than financial services), I would not expect radical new proposals, including - as far as tax is concerned – the third country dimension. Neither however would I expect paralysis in the institutions, although in more politically sensitive areas, some slow-down is inevitable.
5. This is however not a time to under-estimate longer-term impact of this crisis. The seismic shocks of the last few days are - as I write - putting in question policies and procedures across a very wide field. The focus in the short term must be what more can be done (at EU as well as at national level) to promote economic growth without social or political instability, thereby reducing unemployment. One of the difficulties here (even if the Constitution had been adopted) is that the EU does not have the legal instruments available to shape macro-economic policy at EU level, even if it had the political will to do so. The monetary policy dimension (with the Treaty rules and secondary legislation, together with the autonomous powers of the ECB) is not alone enough; indeed the use of monetary policy instruments alone, unless carefully coordinated with economic and fiscal policy, may be counter-productive. Meanwhile, “negative” policies such as state aids and the “positive” use of EU-level funds, will not – in and of themselves – provide the European economy with the investment, innovation, entrepreneurship, education, R&D, employment and growth, which are needed to give credibility back to the “European project”.
6. All this said, the probable loss of the Constitution (at least for the foreseeable future) is not dramatic (at least in my view) from a legal and institutional standpoint. Nonetheless, politically and psychologically (particularly given the “founder-Member” status of France and the Netherlands), this is, without a shadow of a doubt, a turning point in European integration.
7. Legally and institutionally, we have lost further refinement and streamlining of qualified majority voting (QMV) and the co-decision procedure; the Charter of Fundamental Rights will not become legally-binding;² there will be no change in the Council Presidency; there will be no EU “Foreign Minister”, although the idea of an EU foreign service may still go forward; the simplified “double majority” voting system in the Council will not be introduced; the ECJ’s competence will not be extended to the “third pillar”; the role of national Parliaments will not be increased; the complex “three-pillar” structure of the Union will not be simplified and the Union still will not have legal personality.
8. However, a great deal of the progress made towards European integration over the last 55 years has been achieved by political will rather than legal or institutional

² It is already applied in practice by the European Courts.

mechanisms. The customs union (achieved ahead of schedule in 1968), the Single Market and abolition of internal frontiers on time in 1992, EMU implemented in accordance with the Maastricht Treaty timetable in 1999, the fifth enlargement and the draft Constitution achieved on time in 2004 and the implementation of the financial services action plan (FSAP) on time in 2005 are merely some examples of what can be achieved by political will and efficient inter-institutional cooperation.

9. For the future, the concerted political will of all 25 Member States will be necessary, but no longer sufficient. The “democratic deficit” in the EU has now been made clear in a way in which the European political and bureaucratic elites cannot ignore. The most interesting issue arising from the present situation is to what extent the transparency and accountability of the EU will change vis-à-vis “stakeholders” other than Member States and the institutions themselves and the way in which the citizens of 25 diverse Member States can contribute to (“take ownership of”) the future of European integration.
10. The roots of the problem: the remoteness of “Europe” from the man/woman in the street. Since my arrival in Brussels 32 years ago (but especially since my departure from the Commission 16 years ago to join the private sector), I have been acutely aware of an “insider/outsider” mentality in Brussels and in EU affairs generally. In my view, this phenomenon can be attributed in part to the unique supranational nature of the EU and its institutions. Historically, civil servants coming to Brussels from the Member States felt (quite rightly) that they were engaged in an unprecedented historical venture. I myself felt this in 1973 working with German and British officials who had been fighting on opposite sides (sometimes fighting each other!), or prisoners of war, only a few years before. A certain European camaraderie and “elitism” developed as a result of this. The Commission fought to establish and expand its role as the exclusive initiator of law and policy, the “guardian of the Treaties”, the Community’s external negotiator in international economic affairs and as the European civil service. Although it took much longer, the European Parliament – at least since 1986 – has become a major player both formally and informally, as co-legislator with the Council and as “watchdog” in terms of financial and political propriety over the other institutions, in particular the Commission. It, too, has been fighting to strengthen its institutional position.
11. The term “outsiders” included, in my experience, third countries, the growing body of lawyers and consultants representing public and private sector interests in Brussels and other “stakeholders” including European citizens from around the Community (i.e. the general public).
12. Until 1992 and with the benefit of hindsight, I think that national interests (in the wider sense of this term) and certainly the ordinary citizens of the Member States were perceived as being of secondary importance by “insiders” in the European project. The situation has changed dramatically since 1992 (with the crisis over the ratification of the Maastricht Treaty), with far greater attention being given to transparency, subsidiarity, devolution, “repatriation” of policies such as competition policy etc. This seems to have gone unnoticed by public opinion however. As the “European project” has widened and deepened, so (somewhat ironically) it has moved further away from national public consciousness.

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13. Despite these tendencies, the EU – riding high on the success of the Single Market and EMU and heedless of the warnings given by the difficulties in securing the ratification of the Maastricht, Amsterdam and Nice Treaties – behaved in an increasingly “imperial” way towards the applicant States from Eastern Europe and other third countries more generally. In several applicant States I heard it said that the EU in general and the Commission in particular behaved, in the accession process, with greater arrogance than the former Soviet Union. A greater openness and transparency towards EU citizens did not, it now seems, have any significant effect. The attitude towards “outsiders” has an historical precedent. In the 1960s and 1970s, a “beauty contest” took place between the EC and EFTA. Originally, when the EC had six Member States, EFTA had seven. The “defection” of almost all EFTA States to become EU Members has only underlined the success, power and apparent invincibility of the EU. Member States’ decision in the Constitution to abolish the “three-pillar” structure of the EU (including its two inter-governmental “pillars”) was further proof for European integrationists that the “Community model” was the “only show in town”.
14. Continuing short-term uncertainty. In conclusion to this introduction therefore, it is clear (at least to me) that the Constitution is a symptom (and only the latest one) of a wider malaise about the content, direction and democratic underpinning of European integration (the “European project”). It is ironical that, given the role of European integration in restoring political stability and economic prosperity in Western Europe to unprecedented levels after the Second World War and in contributing to the collapse of the Soviet empire with subsequent reunification of the European Continent as a whole, the EU should be facing its present crisis. This is perhaps why the shock in Brussels, in the EU institutions and in the Member States, is so deep and will reverberate for years to come. Strong and charismatic political leadership is more necessary (but less in evidence) than ever. Certainly, this is true of the Barroso Commission. This must be the subject of another analysis. However, the task now facing the UK (this situation could not be more ironical) as it takes up the EU Presidency from 1 July 2005 is Herculean. Given the role which economics must play in any future scenario (see below), the fact that the UK is not a member of the euro-zone is already a negative factor, even if the Blair Administration had the European credentials, political and economic “grip” and – above all – the imagination to lead the European Union forward with cohesion and credibility at this unique difficult time.
15. The reasons why France and the Netherlands voted “no”. One of the difficulties facing the EU in planning the way forward is the fact that opinions and perceptions about the Union differ from Member State to Member State. Even in France and the Netherlands for example, the reasons for the rejection of the Constitution were very different. In France, the primary source of discontent was that the Constitution would lead to more unemployment, not least because its provisions were “too liberal” (or as Chirac said, too “Anglo-Saxon”). Many French voters felt that the Constitution represented an unacceptable threat to French identity, not least because of the prospect of Turkey’s membership (80% of voters polled were against Turkish membership). Apparently, for many French people, enlargement more generally was an important background issue. Overnight, as it were, the EU had expanded to take in 10 new Member States, without any genuine explanation to or consultation of people. Finally in France, there was a strong view that, whereas for the older generation “peace and prosperity” after two world wars were sufficient reasons to support or at least acquiesce in European integration, this was no longer the case. A new *raison d’être* needed to be found for the European Union in a globalised and increasingly competitive world, in which Europe and some of its Member States had appeared to lose their way.

16. In the Netherlands, it was clear that the negative vote was not on the text of the Constitution itself. Primarily it resulted from an enormous gap between politicians and the electorate and a feared loss of national identity. There had been no significant effort to "sell" the Constitution to the Dutch people; the two campaigns in the Netherlands had been that against the Treaty and, on the other hand, the Government against the "no" campaigners. More specifically, 62% of Dutch voters felt that the Netherlands paid far too much to the EU. Interestingly, although the loss of identity and sovereignty was an important issue, only 25% of the population identified Turkish accession as a real issue. Unlike the situation in France, unemployment was not cited by voters as a reason for their scepticism, although the impact of the euro and its economic consequences were apparently perceived negatively.
17. The legal background to the current situation. Article IV-447 of the Constitution provides, as regards ratification and entry into force, that
- "The Treaty is to enter into force on 1 November 2006, provided that all the instruments of ratification have been deposited, or, failing that, on the first day of the second month following the deposit of the instrument of ratification by the last signatory State to take this step."*
18. As things stand therefore, even with one rejection, the Constitution cannot enter into force. Declaration 30, appended to the final act of the Constitution provides as follows:
- "The conference notes that if, two years after the signature of the Treaty establishing a Constitution for Europe, four fifths of the Member States have ratified it and one or more Member States have encountered difficulties in proceeding with ratification, the matter will be referred to the European Council."*
19. This Declaration is not legally binding. Nevertheless, it represented the political will of all 25 Member States when the Constitution was concluded. Normally therefore, if a minimum of 20 of the present 25 Member States have ratified the Constitution, but the others have not, there would be a meeting of the European Council on or shortly after 29 October 2006, that is 2 years after the signing of the Constitution on 29 October 2004. So far, 10 Member States have ratified the Constitution (representing almost half the population of the EU), 2 have failed to do so and the rest still have to decide. 7 more referenda are scheduled.³ As I write this, the tendency seems to be (quite rightly in my view) to allow the ratification process to proceed and then to take stock at the end. It is of course by no means certain that this will happen and there are already suggestions that the European Council on 16 June will consign the Constitution to the icebox if not the dustbin.
20. Reflecting the seriousness of the crisis and the sombre reaction of the governments of the 25 Member States (as well as the heads of all the institutions), it now seems more than likely that the European Council will meet on 16-17 June 2005, to consider the situation. First on the agenda will apparently be whether the process of ratification should continue in those Member States which have yet to decide. There are clearly strong democratic reasons why the process should continue, although the view seems to be that a decision by the United Kingdom not to proceed with its own referendum may,

³ In Luxembourg, Denmark, Ireland, Portugal, UK, Czech Republic and Poland.

in effect, put an end to the process. It has to be said however that, even if the process continues and the four-fifths threshold is reached, the prospects for applying the Constitution in some shape or form without the participation of 2 "core" founding members, is inconceivable. It may well be therefore that, for governments to confront already the challenge of resolving the present crisis, and of continuing the "European project" under existing rules, is the best way forward. As indicated above, the latest word from the EU institutions in Brussels, as I write, is that the European Council on 16-17 June will put an end to the ratification process, on the grounds that it is now merely academic. For the moment however, both options are open.

21. The Constitution was a scapegoat for a deeper malaise. It seems that the French vote against the Constitution (as well as that in the Netherlands) was caused by deep dissatisfaction with the present government (including Chirac himself) as well as by persistent economic and social problems (low growth, high unemployment etc.).⁴ To the extent that "Europe" was a factor in voters' minds, it seems likely that issues such as enlargement, migrant workers and increased competition for fewer jobs as well as the remoteness of the EU institutions from ordinary people, were the main causes. Few if any of the electorate could indicate with any degree of precision the precise way in which the Constitution itself caused, contributed to or aggravated any of these phenomena. Before assessing the impact of the current crisis (and because the French and Dutch referenda were after all about the Constitution) it may be useful to recall briefly the key features of the Constitution – not least to consider what changes would have been made - since these have been somewhat lost or over-ridden in the political fall-out following the French and Dutch votes.
22. The advantages and disadvantages of the Constitution. What have we lost? In retrospect, it may be that the term "Constitution" was unfortunate. Certainly, the Treaty which contains 209 pages with a further 273 pages of protocols, annexes and declarations, does not resemble any national constitution. It resembles, even in its structure, but also in its language, the present Treaties. This is not surprising since the Constitution contains virtually nothing of substance (as opposed to procedure) that is genuinely new. In this respect, it is said that the inclusion of Part III (the policies and functioning of the Union) was controversial and the subject of much criticism. It is true that to elevate these provisions to "constitutional" status is difficult to understand. This has given rise to much academic debate ("to what extent are the "4 freedoms" fundamental principles?), but also to some confusion. This of course raises the issue of whether it was wise to use the term "Constitution" at all. It appears that the Commission fiercely opposed the inclusion of Part III, but that this was resisted by Giscard and by the Convention. A number of Member States apparently preferred to see the existing Nice provisions in the Constitution unchanged, rather than to open these to re-negotiation as some "Delorians" in the Commission would have wished. The result, in any event, was the inclusion of "ordinary" existing Treaty provisions in a "Constitutional" Treaty: a source of confusion and misunderstanding.
23. Even if very few European citizens will have read the text, its label was misleading, tending to exaggerate its political importance. And, even if the reasons underlying the negative votes in France and the Netherlands are national rather than European, the

⁴ It is ironic that if Chirac had not called a referendum, the Constitution would probably have been ratified in France, whereas in Germany there would have been no ratification if there had been a referendum.

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use of the term "Constitution" has made the task of "selling" the document more difficult. In my view, it was a fundamental mistake to submit a document of this kind to a referendum. Arguably, a referendum would be appropriate for decisions to join or leave an international organisation such as the European Union or for genuinely radical changes such as the introduction of a single currency. The EU Constitution is however an incremental, rather than radical step forward. It is a legalistic more than a political text. In any event, if there were to be referenda, these should have been in all Member States or none; or, preferably EU-wide.

24. Above all however, the text (though long) represents a massive simplification and consolidation of the existing texts. The original treaties from the 1950s have become "overlain" with accession treaties for 19 new Member States as well as the treaties emanating from inter-governmental conferences such as that which produced the Single European Act in 1986 and the Maastricht, Amsterdam and Nice treaties in 1992, 1997 and 1999 respectively. The Constitution also would have introduced procedural reforms (notably on qualified majority voting (QMV) and the co-decision procedure), a simplification of the current complex committee structure, greater power for national parliaments, greater consistency and continuity in most internal and external affairs, and a reinforcement of the "subsidiarity" principle by better defining the limits of EU competence. In substantive terms, (i.e. the extension of the material scope of EU activities) the Constitution contains little if any innovation, except of course for the Charter of Fundamental Rights introduced as Part II of the Constitution with binding legal effect.
25. The underlying causes of the current crisis. The current situation is not a "mere accident". It is far more serious than that, not least because of the fast-moving, dangerous and competitive global situation in which the EU now finds itself. If the EU (and its Member States) wish to play a decisive role in world affairs (for example in the transatlantic relationship and in developing policies to deal with the emerging economic superpowers in China and India, not to mention the United States) then Europe does not have the luxury of prolonged internal "navel-gazing", leading to weakness through fragmentation. That said, the weakness of current political leaders (especially in France and Germany, the traditional "locomotives" of European integration) does not inspire confidence that the necessary political will can be found in the short term. The burden (somewhat ironically) on the incoming UK Presidency to bring a measure of coherence and credibility to the present chaotic situation could not be greater. As indicated above, it is now far more likely that time (2-3 years) will be allowed to pass and a new leadership to be installed in the key 4 Member States, with any new initiative emerging from the political/economic conjunction existing at that time.
26. The EU as a victim of its own success. Between 1951, when the European Coal and Steel Community (ECSC) Treaty was signed by Belgium, France, Germany, Italy, Luxembourg and the Netherlands, and 1973, the new experiment in international cooperation represented by the supranational institutions of the ECSC, EEC and Euratom were welcomed by the populations of the original six Member States, still recovering from the devastation of the Second World War. I recall my own visits to Brussels from 1967 until I joined the service of the Commission in 1973, when the initial political and economic success of the EEC was universally welcomed. Even then however, many European states decided, for their own particular reasons, to pursue economic cooperation under the "free trade" rather than "customs union" model. The main reason for this was the greater external autonomy which was available to members of the free trade area, compared with the customs union, with its common external tariff

and common commercial policy. With its global interests (particularly the Commonwealth and the transatlantic relationship with the United States), it was logical that the United Kingdom was originally in "free trade area" school.

27. With hindsight, it may be questioned whether the United Kingdom and certain other current Member States (Sweden and Denmark spring to mind) should have joined the "customs union" model, rather than the more flexible model represented by the European Free Trade Association (EFTA). In fact, since 1972, 19 new Member States have joined what has become the European Union (EU), with numerous others "waiting in the wings". Although it is politically incorrect to say so publicly, there are many who consider that – whatever the political benefits for the former Communist countries of Central Europe (and Cyprus/Malta) – the EU has now become unworkable, no matter what "constitutional" adjustments are made.
28. The Single Market (paradoxically) at the heart of the problem. In a sense paradoxically, the Single Market, completed on schedule on 31 December 1992 with the complete abolition of internal frontiers, has been, on the one hand, the EU's greatest success story and, on the other, at the origin of the current malaise. The success of the Single Market after many years of stagnation led to:
- (i) a higher public profile for European integration in the national politics of Member States;
 - (ii) applications for membership from the EFTA countries (recognising, at least in most cases, that EU membership was the only way to obtain "a seat at the table");
 - (iii) at least indirectly, the unification of Germany (with its massive and continuing financial, economic and social cost) and the collapse of COMECON, the Warsaw Pact and former Yugoslavia, leading to membership applications from Central and Southern European countries in unprecedented numbers;
 - (iv) the conclusion of the Maastricht Treaty with a compromise "three-pillar" structure, including justice and home affairs, to address the internal problem caused by the complete abolition of frontiers;
 - (v) a roadmap and timetable for economic and monetary union (EMU) in Articles 102-109 EC included in the Maastricht Treaty in 1992;
 - (vi) increased pressure for more transparent and more efficient decision-making, leading to a greater role for the European Parliament (extension of co-decision procedure) and qualified majority voting (QMV) in the Council, particularly on Single Market policies;
 - (vii) increased responsibilities and workload for all the institutions (particularly the Commission), including serious financial responsibility for virtually all

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Commission departments, leading to increased charges of corruption and incompetence;⁵

- (viii) the increased power of the European Parliament being one element in a changed inter-institutional relationship, culminating in the forced resignation of the Santer Commission in 1999.
29. The price of success. The remarkable progress achieved over the last 20 years has come at a price. This is generally expressed in terms of the “democratic deficit”, whereby the “broadening and deepening” of European integration (more Member States, an increasingly diverse and technical agenda, more jargon and acronyms, more un-transparent committees, increasingly voluminous legislation despite the “new approach” to Single Market legislation) have given the European public an impression of a system which is irrelevant to them and beyond their control or influence.⁶ The media (both print and audiovisual) have played a significant part in failing to inform European populations accurately and neutrally on European developments of interest to them. Perhaps most damaging of all, European integration has become a national political football.⁷ If the EU institutions (particularly the Commission) have been rightly criticised in the past for lack of transparency and public awareness (enormous improvements have been made in my experience over the last ten years in this respect), then it is also true that Member States have signally failed in their own responsibility to explain the European dimension of national politics to their populations. The work of the European Council and the Council of Ministers is often characterised as “defending national interests” or “winning victories” in areas such as agriculture, the budget, etc.
30. “Business as usual” despite the crisis? As indicated above, even if there is now a “standstill” in terms of new business, work in the pipeline will continue. All aspects of the EU’s work (policy-making, legislation, management and enforcement) depend on a mix of political and technical input. This is as true in the Commission (where Commissioners and their Cabinets drive the process forward) as in the Council (where Ministers in the Council and Ambassadors in COREPER should provide impetus and momentum). In terms of new initiatives, there has now been almost a year since the “lame duck” period of the Prodi Commission and the “running in” period of the Barroso Commission, when very little of substance has emanated from the Commission. The fact that the Barroso Commission was sharply rebuffed on the services Directive has also quelled what little initiative existed. We are therefore already in (and likely to stay in) a fallow period insofar as new legislative or policy initiatives are concerned. At the same time, the “management” of EU business in the numerous Committees (usually chaired by the Commission) which exist to manage the implementation of existing legislation, work should continue more or less normally. It remains to be seen whether the crisis

⁵ Note that even today, despite the financial management responsibility falling on many Commission services, most Commission officials have an economic, legal or linguistic background, rather than accountancy.

⁶ In the UK for example, I have long thought that the media interest in “Europe” is in complete disproportion to the practical importance of European law and policy for most citizens. By far the most serious problems confronting the UK today (health, education, drugs/drinks, crime, non-European immigration, etc.) have little or nothing to do with the EU.

⁷ As John Palmer has said (see EPC paper attached), it is not possible for Member States to treat the EU as a battleground six days a week and then to expect their electorate to fall in love with it on Sunday!

will affect enforcement action by the Commission (the Barroso Commission is already extremely sensitive about upsetting Member States whilst the Constitution remains to be ratified) and whether technically difficult but politically important areas of business such as the budget, agricultural reform and the harmonisation of company tax will be affected.⁸

31. No "Apocalypse Now" perspective. There is I think a general view in Brussels⁹ that "an implosion of the Union will not happen". It would be even more difficult to negotiate some kind of disintegration of the Union today than it has been to agree on further integration. In addition, there is quite simply no alternative to international cooperation in many areas currently covered by EU law and policy in political, economic and social life today. Unravelling the massive acquis accumulated over 55 years would also be a political and technical impossibility. Nonetheless, in my view, even if an "Apocalypse" can be ruled out, there are a number of fundamental questions if not contradictions that need to be addressed, as the EU now tries to find a way forward. These include radically different approaches to macro-economic policy (the social welfare model in France and the free market/deregulated model in the UK), the relationship between the optimum number of Member States and the need for efficient and effective decision-making (it is of course not conceivable now to reduce the number of Members, but at least it needs not be increased), the need to define the geographical limit of "Europe" and then to implement credible and confidence building external relationships with third countries,¹⁰ the need to go beyond the conceptual or theoretical allocation of competences as between the Union and its Member States in order to make it clear that, for example in "core" areas of the Single Market, there is no substitute for greater centralisation (e.g. in the regulation and supervision of financial institutions), whereas in other areas (health, education, micro-economic management, "social" issues such as alcoholism, drugs, crime and the causes of crime etc.) primary responsibility remains with Member States. I wonder here whether the EU has been totally honest with European citizens about the need for "more Europe" in certain areas, and less elsewhere. I doubt also whether the fact that the "ripple effect" of the total abolition of internal frontiers in 1992 has been fully grasped or explained to the public as giving rise to the need for EU action in justice and home affairs, including greater harmonisation of criminal and civil law as well as greatly enhanced judicial and administrative cooperation.
32. Which way forward for European integration? The media have already started to reflect on the future, presumably after the Constitution is dead and buried. One UK newspaper on 31 May offered four alternatives – a "constitutional Europe" supported by Spain, Italy and Greece; a "free trade Europe" supported by the UK, Poland and Estonia; a "United States of Europe" supported by Luxembourg and Belgium and a "multi-speed Europe" supported by France and Germany. I do not find these theoretical models particularly helpful. The present "constitutional" system, as it has evolved under the

⁸ Note that the Commission's political determination to pursue a rigorous infringements policy under Article 226 is already doubtful. In the field of direct taxation for example, of the numerous "landmark" cases either decided or pending in the ECJ, none result from action under Article 226 EC and all result from references from national courts under Article 234.

⁹ See attached paper from The European Policy Center, prepared by John Palmer.

¹⁰ The "neighbourhood policy" must not be sold or perceived as a "second best" to full membership. Further consideration should be given to the EEA Agreement as a model for future cooperation between the Union and its partners.

Treaties as amended, is unique in the history of international organisation. The present three-pillar EU structure contains supranational and inter-governmental elements. It contains elements also of "multi-speed" Europe (Schengen, EMU etc.). It in no way resembles a European State, far less a "United States of Europe". Free trade is at the core of the Union, but (reflecting the importance of services and liberalised capital markets in the global economy) is now indissolubly linked to the EMU (for the 12 euro-zone countries) and to the other "freedoms", supported by competition, state aids and other "flanking policies".

33. In my view, at least for the next few years, we will live in the Europe to which we have now been accustomed based on the founding Treaties as amended by the Single European Act, the Maastricht, Amsterdam and Nice Treaties. As indicated already, the so-called "Constitution" would, in any event, only have made an incremental difference to the present situation legally and institutionally. The extent to which the ECJ would have had an opportunity to play an even more active role in the "development" of the law (particularly perhaps by interpreting and applying Part II of the Constitution on fundamental rights) is of course another question and the subject of a separate paper. Certainly, observers in the Member States would not have noticed significant differences in the European Union and its impact on their daily life as a result of the adoption of the Constitution. It is true that a permanent Council President and an EU Foreign Minister would have added "profile", as well as continuity and consistency, in the Union's external policies. This would have strengthened the Union in its relations with major competitors such as the United States, China, Russia and Japan. But the substantive law of the Union would not have made a significantly greater impact on European citizens and companies after the Constitution. Perhaps crucially, national Parliaments will not now have the chance – at least by virtue of the Constitution – to play a greater role. That is a serious loss in my view.
34. The probable way forward. With the accession of ten new Member States on 1 May 2004 (many of them with GDPs well below the EU average), there was in any event going to be a long period of "digestion". All previous enlargements show that a period of between three to five years - if not longer - is necessary, depending on the level of development and sophistication of the new Member State concerned, for new Members to fully integrate into Union processes. The EFTA countries (Austria, Finland and Sweden) were absorbed easily and quickly, but that was because they had ten years preparation in the EEA and were already highly developed industrialised democracies. Greece (some would say) still has not fully integrated into the EU after nearly 25 years. Spain, Portugal and Ireland on the other hand have made enormous progress. Given their political will and economic dynamism, it is likely that the ten new Member States (particularly those which adapt most closely to market economy principles) will adjust quickly to life in the Union. Nonetheless, the evidence is that the massive volume of "acquis" which they have had to absorb (coming so late to the party as it were) will be a significant burden for many years to come. The serious legal problems underlying this situation have yet to surface. One reason for this is the worrying but unpublicised incapacity of the Commission (linguistically and in terms of human resources) to monitor and enforce the implementation of EU law in all Member States, for example by the use of Article 226 enforcement procedures.
35. Will further enlargements be put on hold? The fact that one of the elements in the French referendum (and to a certain extent in the Dutch referendum) concerned immigrant workers - notably from Eastern Europe - must raise questions about whether the timeline of 2007 for Bulgaria and Romania can be respected or even whether these

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accessions will happen at all. And even if no timescale at all has been fixed for Turkey and the Western Balkan applicants, these countries must surely realise that their eventual membership of the EU is now in doubt. Virtually every former colleague to whom I have spoken in the last few years takes the view that the recent enlargement was (from a strictly institutional viewpoint) "a bridge too far". Politically of course, the welcome for the new Member States and the demise of their Communist legacy is genuine. But the organisational problems which have been created, not so much within the institutions themselves (where colleagues quickly adapt to the esprit de corps), but in the management and enforcement of EU policies more generally, are formidable and still not resolved. My own view is that the procedural adaptation envisaged in the Constitution (Council voting, QMV, co-decision etc.) would not have addressed the fundamental problem that supra-national decision-making with 25 sovereign and radically diverse nation States is not possible.

36. The priority now (and the Commission must "take its responsibilities" in this respect) is to retrench, to consolidate the existing acquis, to make sure it is applied in as a uniform way as possible throughout the 25 Member States and to try to rebuild public confidence. Strong political leadership is more vital than ever, but is unlikely to be found. As indicated above, this is not only (or not even) a matter for the institutions in Brussels and Luxembourg. It is above all a matter for the Member States to convince their electorates that European integration within the institutions of the European Union is not only desirable but indispensable in the modern world.
37. In due course – presumably after the German, French and Italian elections (and post-Blair in the UK) – the debate will have to be resumed in order to define the EU's future. Old assumptions can no longer be taken for granted. The EU needs a new *raison d'être*, in a fiercely competitive, rapidly changing, globalised world. Disintegration is clearly not the answer; but the form and content of the "European project" needs urgent revision, with better communication between the European and national elites and European citizens. ⊕

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