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Managing Expectations and Hidden Demands: Options for the German EU Presidency

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Abstract: The “pause for thought” decreed by the heads of state and the government (after the voters in France and the Netherlands rejected the Treaty Establishing a Constitution for Europe) has been extended for at least another year. The European Council meeting held on the 15th and 16th of June 2006 did little more than sketch out the way forward for the period 2006–2008. By the end of 2008, decisions should be made about how to continue the reform process. Before anyone can agree on how to move forward, all 27 European Union member states would have to state clearly what goals they are pursuing in the process of institutional reform (a process which all sides agree is necessary) and what steps they believe are required for achieving these goals. In this context, clear statements on the importance of the Treaty and its fate are needed. It is unlikely that Consensus on these issues be achieved among all 27 member states. Regardless, in order to allow a constructive discussion to take place, the 27 member states would have to agree on a shared criteria for assessing the reform proposals, that are on the table and on the options for resolving the “constitutional crisis.”

Key words: EU presidency, EU institutional reform, EU constitutional treaty, German EU policy

The pause for thought on the future of the EU was officially prolonged at the European Council meeting on the 15th and 16th of June 2006.¹ According to the Conclusions of the European Council, in the first semester 2007, the German EU-Presidency will present a report on the discussions with regard to the Constitutional Treaty and will explore possible future developments. The task of putting the Constitutional Treaty – or an alternative to it – on track for ratification will be an extremely difficult task in political terms. Although we witness a multitude of proposals dealing with the constitutional crisis, there is still a danger that the EU will get stuck in the same frazzled and vague discussion that characterised the first year following the “double no votes” in France and the Netherlands. As a remedy this paper suggests a clarification of criteria (common yardsticks) by which the alternative proposals could be measured. Such a step would require the governments and other protagonists – parliaments, parties, and academia – to unveil and clarify their most basic motivations and political aims.

THE GERMAN PRESIDENCY'S KEY FUNCTION: THE MANAGEMENT OF EXPECTATIONS

The EU, its peoples, the parliaments, the individual state governments, its organs and institutions, and its international partners have all been looking to Berlin with particular expectations. Germany is a large state, which – at least nominally – disposes over the necessary materials and personnel resources to meet the multi-faceted management, leadership, coordination, and representational tasks associated with the Presidency of the EU Council. For Germany, domestic conditions are more congenial for playing a leading role than they are in other large EU-states, like France and the UK, whose scope for manoeuvre is restricted by leadership change and domestic crisis. The other member states therefore expect Germany to make “robust proposals” for shaping an approach to the Constitutional Treaty (CT).

The Presidency of the Council enjoys a plethora of instruments that allow it to steer negotiations, as well as possibilities to gain information about individual governments' scope for manoeuvre. For strategic reasons, governments only partially reveal their negotiating position; only bilateral discussions with other governments can give the Presidency an insight into the – in most cases – rather larger room for negotiation that they secretly enjoy. On this basis, the Presidency can elaborate compromise proposals and negotiating packages, as well as fostering a greater amenity to cooperate amongst its partners by restricting the number of dossiers to be negotiated. Moreover, it can strategically guide the negotiating process by determining the number, incidence and timing, the format and the agenda of meetings, and the timing of votes. Presidencies can single out certain dossiers for particular attention, whilst ignoring others, passing them over to the next Presidency.

In this way, it is only natural that the job of President as broker may sometimes be at odds with that of “representative of national interests” and of “impulse-giver”. A canny Presidency must therefore seek to strike a balance between narrow national interests and European compromises. Depending on the domestic situation, the Presidency will enjoy more or less some scope for manoeuvre. For the German government, this point of departure, which applies to all EU-states, is doubly difficult: Firstly, the principle of ministerial autonomy means that individual ministries develop their own programmes and then represent them, not without contradiction to the Brussels organs. Secondly, even during the Presidency, the German *Länder* have developed their own ideas of European policy, promoting them self-confidently to the outside world – particularly in those policy areas where the federal level enjoys only competition and no legislative competencies. European governments, the Parliament and the Commission judge Presidencies according to their organisational abilities and their aptitude for negotiating and giving impulses. At home, however, their success is scrutinised in terms of their ability to exploit the unique opportunities spawned by holding the Presidency in order to push through national priorities.

These contradictory expectations place the German federal government in something of a dilemma. If it seeks to overcome the domestic conflicts of competence and interest by forging “national” positions on a lowest-common-denominator basis, and then presents these as President in a broader European context, its position can only be altered at the cost of questioning the hard won national “consensus”. Yet the federal government is often forced to adapt national priorities when faced with an array of interests as is reflected in the 26 other member state positions and those emanating from the European institutions. If the German government desires to maintain its mobility and recognition as the EU Council Chair, it must desist from developing this kind of “hard” and inward-looking profile. One way out of this dilemma is to establish new modes of negotiating; the “invention” of the Convention method during the last German Presidency in 1999 is a prime example. In short, Germany’s role as the EU Council Chair differs from that of other states by dint of the fact that it will be less concerned with achieving particular goals such as with accommodating robust negotiating corridors (and contexts) as well as complex somewhat long-term processes in order to solve conflicts.

BUILDING BRIDGES: BEATING A PATH TO THE CONSTITUTIONAL TREATY

The function of “path-finder” and “expectation-manager” is particularly in demand when dealing with the conflict that surrounds the future of the Constitutional Treaty. The German Presidency comes at a critical phase in the history of European integration. A stocktaking of progress on the 50th anniversary of the founding of the European Community gives a positive picture; all the same, it is important to take-into account the challenges of globalisation and the change in Europe’s geo-strategic position. Certainly, the European Community survived war and totalitarianism on the European Continent, yet it must now justify its 50-year function as a motor and guarantor of peace, prosperity, and social security under altered circumstances. What is required is a comprehensible strategy that is projected beyond the borders of the EU; this would deal with both economic and financial integration and cooperation, free movement, and internal and external security.

Reservations about European integration have multiplied in the last few years, especially since the negotiation of the Maastricht Treaty. Criticism and scepticism is rooted not only in the perceived, assumed and real effects of the technological revolution and globalisation and international competition, but also in the self-interested, anti-European rhetoric of national elites, which itself has thus far escaped censure. As long as governments and parliaments refuse to admit that it was they who determined (and continue to determine) the limits of their own space to manoeuvre through the creation of the internal market, as long as they present every unpopular EU directive as if it were the work of an uncontrollable and undesired *Leviathan* (an “aéropage technocratique, apatriote et irresponsable”),² the EU-project will be plagued by crisis – a crisis that harms its citizens, states, and institutions more than it benefits them. When it comes to dealing credibly with

globalisation and managing the associated risks the EU needs more effectivity, efficiency, coherency and above all sincerity from its actors,.

WAS IT AN ATTEMPTED RESCUE?

These initial thoughts strongly suggest that the German Presidency should push for the future approach to the European constitutional process to be laid down. Against the background of an intensified debate about the ratification of the CT, no more time should be wasted on discussing the future of Europe without any common conception of the relevant criteria or indeed openness of the goals involved. Should the German Presidency view it as its highest priority to set the substance of the CT on its path to ratification, the 50th anniversary of the EC (at the end of March 2007) could be used to adopt a celebratory declaration and “globalisation strategy”.

The European Commission, the European Parliament, and almost all member states have formulated proposals for dealing with the crisis triggered by the “double no”. Not that this has produced any kind of clarity: yet in fact, there is not even a consensual interpretation of the crisis. The actors start from conflicting premises in some cases, they keep their real interests under wraps and their proposals vague. This is why the June 2006 summit, a year after the two negative referendums, was unable to make a joint strategic decision on the fate of the Constitutional Treaty or search for an alternative.

In order to analyse the existing positions in the “crisis discussion” it is useful to systematise the debate with reference to two indicators: The first indicator sorts actors according to whether they advocate the termination of the Treaty or not, the second is according to the actual reform goals that they are pursuing. The three groups can be clearly distinguished:³

- One group, led by those who have already ratified the Treaty,⁴ calls for the ratification process to be continued and for the text of the Constitutional Treaty to be retained; this is, because the reforms laid out there still continue to represent the aims of these states (Treaty). At most they would consider amending the Treaty with declarations and protocols that might make ratification in other states easier (Treaty plus). These states would want France and the Netherlands to embark on a fresh attempt at securing ratification.
- A second group, led by representatives from the UK, France, the Netherlands, Poland, and the Czech Republic, proposes “burying” the Constitutional Treaty and discussing a reform of the EU’s institutional system on the basis of the *status quo* of the Treaty of Nice (Treaty of Nice plus).
- Between these two extremes lie the advocates of the “mini-treaty” or the “consolidated treaty” option, which foresees progress on the basis of the first two parts of the Constitutional Treaty. These “bridge-builders” would like, in particular, to save parts I and II of the Constitutional Treaty in order to ensure implementation of the institutional and procedural reforms (Treaty minus). For that to occur, the Treaty would have to be renegotiated during a reconvened convention or a brief intergovernmental conference.

THE SEARCH FOR A COMMON YARDSTICK

In the ongoing discussions in the EU, the heart of the problem is more than a simple disagreement over how to deal with the *impasse* of the ratification of the Constitutional Treaty and the underlying crisis of the European integration project. The causes for this “lack of direction” lie deeper, as do the reasons for the severe difficulties observers encounter in their efforts to gain an overview of the different proposals (something which explains the lack of signs of convergence, still less of consensus). Almost none of the 27 governments have revealed their actual political aims in the current discussions regarding the EU’s future. There is no shared, explicable yardstick by which the problem-solving potential and chances of implementation of the various proposals could be measured. In setting up such an instrument, I propose four criteria, that should be referred to:

- Implementing the Constitutional Treaty on the agreed date of 2009. First of all, one could consider whether the proposals further the goal of putting the CT into effect by June 2009 at the latest, as was agreed by the heads of state and government when they signed it.
- Refuting or accommodating the arguments that led citizens to reject the Constitutional Treaty or integration as a whole. This criterion could be used to assess the extent to which the proposals satisfactorily dealt with the reasons motivating those who rejected the Treaty in France and the Netherlands, as well as those who have yet to reject it (in countries that have still to complete ratification).⁵ Proposals that meet these reservations would increase the chances of ratification for the existing Constitutional Treaty or an alternative treaty.
- Achieving the reform goals laid down in the existing Treaty. All proposals can be measured against the mandate of the Constitutional Convention and the Intergovernmental Conference that was sketched out in the Treaty of Nice (in Declaration No. 23 on the Future of the Union) and fleshed out with more detail at the European Council of Laeken in December 2001, to discover the extent to which they satisfy the terms of that brief. The mandate encompassed several separate tasks: adapting the Union’s institutions for expansion, defining the division of powers between Union and member states, clarifying the status of the Charter of Fundamental Rights, defining the role of national parliaments in the Union, and simplifying the Treaties. The Constitutional Treaty – as the product of a broad, thorough discussion in the Convention, signed and thus recognized by all the member states – can be regarded as the fulfilment of this mandate. For that reason, analysis of this third criterion is largely a matter of juxtaposing the alternative proposals against the existing answers of the Constitutional Treaty.
- Providing a face-saving way out of the deadlock situation for governmental actors: This requirement is especially important for the non-ratifiers of the Constitutional Treaty. In France, there will be a need to provide any new government with a credible explanation for why it should support the content of the Constitutional Treaty or a new reform compromise. Likewise, this criterion is of importance to the ratifiers of the Treaty, especially in referendum countries such as Spain or

Luxembourg, in which any deviation from the ratified Treaty has to be convincingly explained to the public.

These four criteria allow a transparent assessment of options to be conducted. Studies that keep their criteria of analysis under wraps quickly attract charges that they are arbitrary or merely politically motivated “advocacy research” (for example with the predetermined aim of saving – or sinking – the Constitutional Treaty). In the political debate, too, the actors should openly reveal their goals and principles, so that their co-actors understand clearly which problems they want to solve and which conceptual prerogatives and political interests guide their actions.

In the absence of such transparency, there is a real risk of the debate unravelling and the Union becoming even more politically fragmented. Growing public discontent and Euro-skepticism – exacerbated by the impression of helplessness at the level of the heads of state and government and the deliberate instrumentalization of negative European stories by populist forces – can only strengthen these centrifugal forces. And in strategic political terms, these forces will be stronger than the centripetal element of the European Union, partly because the Commission (which is treaty-bound to pursue the European “common interest”) is displaying increasingly clear signs of polarization. The Commission has suffered a noticeable loss in its capacity to provide integrative momentum as well as political influence over the member states’ governments and public debate.

SAVING THE CONSTITUTIONAL TREATY BY SLIMMING OR RENEGOTIATING

During his September 2006⁶ speech held in Brussels and his New Year’s address on January 12th 2006;⁷ Nicolas Sarkozy, French interior minister and leader of the governing UMP party, called for a shorter treaty text based on the first part of the Constitutional Treaty: This text would do nothing more than regulate the institutional and procedural organization of the 27-member Union. The subject matter of this abridged Constitutional Treaty would be: the arrangements for the Presidency of the European Council and Council of Ministers; the areas of application for qualified majority voting and for the co-decision procedure for the European Parliament; the election of the President of the European Commission, by the European Parliament; the CT’s mechanisms for checking EU proposals against the principle of subsidiarity, by national parliaments; the simplification of reinforced cooperation; and the creation of a post for the European foreign minister. Sarkozy proposed having this reduced CT version ratified only by national parliaments and left this question open – How will the Charter of Fundamental Rights, included in the second part of the Constitutional Treaty, and the reforms of the third and fourth parts of the Treaty be put into effect? Sarkozy’s proposal would only offer a way out if he were to win France’s May 2007 presidential election and then claim an electoral mandate, for pushing an abridged reform treaty through parliament. So far, Italy’s prime minister, Romano Prodi, is the only European head of state or government to publicly support Sarkozy’s initiative.⁸

Whether or not the German federal government has also been entertaining this option is unclear. Its idea of saving the “political substance” of the CT suggests an attempt on Berlin’s part to consider the idea of a reduced version of the CT carefully.⁹ The conditions for the German government’s acceptance of such a treaty would be twofold: Firstly, a sufficiently large number of states would have to be prepared to rally behind this Treaty. Secondly, not only the new French leadership but in the long run all European governments would have to express their willingness to define the “political substance” of the Constitutional Treaty, in broad terms, so as to come close to the reform compromise contained in this document.

Saving the core institutional reforms is just as important a starting point for the so-called Amato Group (a gathering of senior and acting statesmen from various EU countries and political affiliations with the goal of presenting a report on the matter in spring 2007)¹⁰ as it is the guiding principle for, “Plan B”, published by the Liberal member of the European Parliament, Andrew Duff (2006). Duff suggests ring-fencing the constitutional provisions in Part I, none of which have proven particularly controversial in the ratification process. Further, he proposes a restructuring of the Constitutional Treaty, turning Part III into a subsidiary of Part I with a softer revision procedure – the Charter of Fundamental Rights would be annexed to the Treaty. Unlike Sarkozy, Duff puts forward substantial modifications for five policy areas (economic governance, economic society, climate change, enlargement policy and a revised financial system). Accordingly – given that such an agenda would need a larger renovation of the CT, Duff recommends that a new IGC meet in 2008 to co-decide with the European Parliament on the specifics of this process (revising the existing Treaty). In order to achieve public consent, he suggests organising an EU wide poll on this revised constitutional package.

Although proposals of this kind are oriented around the text of the Constitutional Treaty, by undoing its “package” character they call into question the outcome achieved by the Constitutional Convention and the Intergovernmental Conference. The scope of the renegotiation would probably not be confined to the revision of the points criticized by the French¹¹ and Dutch¹² opponents of the Constitution. Other aspects would in all probability be called into question. Certain actors could take the negotiations as an opportunity to put elements of the Constitutional Treaty, which they themselves were unhappy with, back on the agenda. Evaluated against the criteria set out above, the minimalist strategy neither seeks to accommodate the arguments that brought citizens to reject the Constitutional Treaty, nor serves as an instrument to implement the Constitutional Treaty in 2009. Regarding the substance of reform, re-opening the package may lead to a situation which does little to ensure the implementation of the reforms contained in the Constitutional Treaty and may not even satisfy the requirements set out in the Nice Treaty and the Laeken Declaration. Some governments, particularly of those countries that have already ratified the Treaty, would face the problem of explaining this rollback to their electorate.

ADD-ON AND OPT-IN AS LAST RESORTS

Proposals for amending the Treaty – for example with a protocol, a declaration, or a charter¹³ – are more clearly designed to rescue the Constitutional Treaty and to achieve its goal of implementing the reform projects set out in the Treaty of Nice. An addendum of this kind could constructively address the concerns of the Treaty’s critics without affecting the political substance of the Treaty. The starting point for such considerations would be the reasons for the French and Dutch “no” to the Treaty.

Three factors can be identified as common denominators in the reasons for the rejection of the CT: existential personal concerns (with regard to social security and societal – or national-identity), fears associated with EU expansion, and the wish to preserve the autonomy of one’s own nation-state as, supposedly, the last bastion against the threats of globalization (the latter, perceived as a process that the EU has tended to push forward through liberalisation of the internal market, rather than ameliorating its socially detrimental effects and mitigating its impact on sovereignty and autonomy). As a result, a possibility arises to mitigate French and Dutch concerns by supplementing the Constitutional Treaty with responses to these fears. During the debates of the European Parliament’s Duff/Voggenhuber report, the two social democratic MEPs Carlos Carnero González (Spain) and Richard Corbett (Britain) were of the opinion that the current text of the CT could probably only be maintained if it were “accompanied by significant measures [...] involving in all likelihood, declarations interpreting the Constitutional Treaty and possibly protocols appended to it”.¹⁴ The German Chancellor, Angela Merkel, also put forward at the December 2005 European People Party’s meeting, the proposition of saving the Constitutional Treaty with a declaration on the “social dimension” of Europe.¹⁵

The German Presidency could therefore begin a review of the CT, limited both temporally and in terms of its content range, and thus suggest ways to clarify the EU’s social and economic dimension, as well as its values and characteristics that might be instrumental in forging identity. At the end of the review, a declaration or charter on the social dimension of the EU would ideally – and as a first step – be elaborated. This might in turn be linked to the elaboration of a European globalisation strategy (Maurer 2006a and 2006b), setting out the basic social and economic standards of the EU. in a set of guidelines that could be applied to the EU’s relations with third countries.

Of the three factors set out above, the Dutch “Nee” to the CT was above all an expression of the fears of European “homogenisation” and a loss of national identity. The same sorts of fears influence governmental EU/CT-skepticism in the Czech Republic, Poland, Britain, and Ireland. A mere declaration on the social dimension would not meet their concerns. However, analogous to this approach in the area of social policy, Europe’s representatives could set out in search of the concrete meaning of the elements, presently named in Article 6 of the EU Treaty, as “national identities”, but not further delineated. These could then be politically proclaimed as a second stage in the supplementation of the CT. Article I-5

of the CT gives a lead in this regard. Yet, according to this Article, the EU respects only the “equality of Member States before the constitution as well as their national identities, inherent in their fundamental structures, political and constitutional, inclusive of regional and local self-government”.

Whilst supplementing and clarifying these elements of the Treaty, the temptation should be resisted to define national identity as an objective asset to be safeguarded, and thus marking the limits of a state’s EU-integration policy and its readiness to integrate. This kind of “introverted” interpretation of Article I-5 CT would merely reinforce the zero-sum notion of EU/nation-state relations. In the worst-case scenario, a reversal of the economic and political cooperation already achieved may result. For this reason, it would be important to identify the national identities of the member states as constitutive elements of the EU-project, without placing them in opposition to the process of integration (Maurer 2006c). The aim of this conceptualisation would be to “extrovert” the values underpinning national identities, and to turn the EU into a civilian “protecting power”, safeguarding these values and rights in the context of global competition. Accentuating national identities in such a way could prove to have a dynamic effect on the internal machinery of the EU, a protective one on its external relations, and identity-forging effects on EU’s citizens. It could also clarify what is meant by the motto “unity in diversity” – namely, mutual understanding for national sensibilities, which for their part must assert themselves *vis-à-vis* the fundamental and civil rights norms of the EU.

A not inconsiderable pre-condition for the success of this project would; however, be that the EU Presidency, along with those other states that have already ratified the Constitutional Treaty, would direct their attentions at the French and Dutch governments, seeking to initiate a new ratification process. In France, the referendum process is a constitutional requirement. The result of the referendum cannot be annulled by an act of Parliament, except if a new text is presented, which qualitatively diverges from the CT. By contrast, the Dutch Parliament could decide to ratify the CT under altered conditions. A number of hurdles would first have to be cleared, given that important actors in the Netherlands had already declared the CT for dead in January 2006 and warned against “quick fixes” and “cherry picking” tactics aimed at saving the project.¹⁶ It was therefore “out of the question that this Treaty would again be presented for ratification”.¹⁷ The Dutch government would not “present the European Constitutional Treaty a second time for the approval of the people or Parliament; not even should the text be slightly altered”.¹⁸ This “No” also applies to the *new* Dutch government.

The “add-on” strategy clearly seeks to accommodate the arguments that led citizens to reject the CT or indeed European integration as a whole. This strategy is an instrument to implement the Constitutional Treaty in 2009, as agreed upon; it would safeguard the full reform package accepted by the Intergovernmental Conference (IGC) in 2004, thus achieving the reform goals sketched out in the Nice Treaty and in the Laeken declaration.

The problem with this strategy is that the conflicting interests of many national governments with regard to the future of the EU could make it impossible to develop a solution which allows all 27 governments to return to their home constituencies with a face-saving solution. The failure of the constitutional referenda in two countries shifted the parameters of the debate on the future of the EU. They have also resistance to the Treaty, for the countries which have rejected or not yet ratified, easier in political terms than when the IGC broadly endorsed the work of the Convention in 2004. “Buying these countries out” with add-ons that meet specific national demands has therefore become more difficult. If a new attempt to achieve ratification were to be launched with a protocol that was nothing more than a “placebo”, this would fail to silence the Treaty’s opponents and certainly do nothing to stimulate a “yes”. On the other hand, if the substance of such an amendment were to go further than the content of the Constitutional Treaty, this could endanger ratification in the United Kingdom, Poland, and the Czech Republic. One way out of this dilemma could be to formulate the elements of deepening that go further than the existing Constitutional Treaty as options for a group of member states, which others would be free to join as the integration process progressed. The Constitutional Treaty would remain intact in the form already presented for ratification, and no state would be compelled to participate in deepening.

NICE AND NICE PLUS: PIECEMEAL APPROACHES

Criticising the Austrian suggestion for reviving the ratification process, former Dutch foreign minister, Bernard Bot, stressed that his government felt it was advisable for the moment to “concentrate on practical measures on the basis of the Treaty of Nice”.¹⁹ French President, Jacques Chirac, has also been calling, since January 2006, for the EU to be reformed “on the basis of existing treaties” in order to improve the functioning of institutions.²⁰ A letter written in April 2006 by the French foreign and European affairs ministers to the Austrian foreign minister lent weight to this proposal. In it they suggested:

- Using the *passerelle* clause in Article 42 of the Treaty on the European Union to shift issues from the third intergovernmental pillar to the supranational Treaty Establishing the European Community (TCE). This move would include the reform and full integration of police and judicial cooperation into the TCE. Some or all of the policy areas named in the “third pillar” would thus come under the qualified majority voting procedure in the Council and be subject to the co-decision procedure of the European Parliament rather than the weaker right of consultation. They would also be open to much stronger judicial control by the European Court of Justice.
- The *passerelle* clause in Article 137.2 of the Treaty Establishing the European Community can be utilized to make a codecision procedure in those fields of social policy, which are currently subject to unanimity in the Council of Ministers and only the consultative procedure in the European Parliament.

- Stronger networking as well as institutional and procedural convergence in those committees, of the Council and the Commission, dealing with foreign policy questions, on the basis of the organs' right of self-organization.
- A further increase in the transparency of the Council of Ministers, on the basis of its right of self-organization.
- Strengthening the European Parliament's rights of control and information through the committees dealing with questions relating to the implementation of Community law (comitology).
- Strengthening the EU's instruments for coordinating economic and financial policy through, and on the basis of, the organizational autonomy of the Euro group.
- *De facto* advance implementation of the Constitutional Treaty's protocol on the principle of subsidiarity in an effort to involve national parliaments more closely; also on the basis of the current protocol on the role of national parliaments in the EU.²¹

For the French Socialist presidential candidate, Ségolène Royal,²² institutional reforms are at best a mid-term perspective. She suggests that Europe should first of all prove its value to its citizens, demanding efforts in the fields of renewable energies, research and innovation, transport, and social protection. Pushing aside the Constitutional Treaty, she asked the German Presidency to start a two-year discussion phase, which could lead to a new Convention under the French EU Presidency in 2008. The new Treaty should then be approved by a trans-European referendum. Without wholeheartedly joining the group who declare the Constitutional Treaty to be dead, the EU Commission informally shifted closer to this line and in its communication to the European Council, "A Citizens' Agenda – Delivering Results For Europe", proposed similar reform steps "à traité constant" (Commission 2006).

Numerous efforts are currently being undertaken to implement the two Treaty protocols on the role of national parliaments and the application of the Principle of Subsidiarity. The start was made by British foreign minister, Jack Straw, who emphasized directly after the two referendum defeats that the rules of the two protocols could be put into effect even without the Constitutional Treaty.²³ Also, the majority of participants at the annual subsidiarity conference from the Committee of the Regions, at the end of November 2005, demanded the implementation of the subsidiarity protocol in the Constitutional Treaty.²⁴

A further attempt was made at a meeting for justice ministers, in Tampere, in September 2006, when the Finnish Presidency together with the EU Commission and a group led by France, Spain, Portugal, and Luxembourg attempted to do away with the national veto on police and judicial cooperation in criminal matters. Several member states' ministers, including those from Germany, opposed the activation of the *passerelle* mechanism as "cherry-picking" from the Constitutional Treaty, which provides for justice-related decisions to be taken by qualified majority decision rather than by unanimity. While cherry-picking can in some cases ensure the rapid implementation of useful reforms, its downside could make the Constitutional

Treaty obsolete; especially if too many of the innovations are implemented without the Treaty. From the German point of view, the risk then is that some of the major, and more contentious innovations, such as the double majority rule or the new rules on the EU's budget procedures, will in the end not be implemented.

The concentration on partial reforms and individual projects does not address the concerns of those citizens who rejected the Treaty (or, for example in Britain, would reject it if asked). Demonstrative activity at the EU level is certainly helpful in allaying further criticism of the system and relativising the (empirically unproven) argument of high levels of public Euro-skepticism, but these "projects" cannot be expected to have any material effect before 2009.

Lastly, the concentration on piecemeal approaches and projects stands for an interpretation that understands the current crisis of the EU above all as an "output problem". In France this reading is associated with a striking overemphasis on the part of the political elite, of the social policy reasons for rejection. This rather threadbare maneuver distracts the debate from the crisis of political leadership in France, from criticism of the government's unsatisfactory representation of national interests at the EU level, and finally from the more fundamental problem of the input legitimization of the EU decision-making system itself. Interestingly, France is not the only country where, in terms of the "input" and "output legitimization" question, the political interpretation of the "non" and the proposed responses diverge strongly from the academic discussion, which itself has brought forth a veritable flood of publications on the theme of democratization and politicization of the EU.

A fundamental overhaul of the EU Treaties, by the piecemeal route of taking the Constitutional Treaty apart and passing partial reforms on the basis of the Treaty of Nice, is a cumbersome and risky venture. It would open up the possibility of making changes – to the relationships between the organs themselves and between the organs and the member states – that would not be compatible with the logic and method of the "quid pro quo" (deals practiced at the Intergovernmental Conferences). Each individual question would thus demand of the member state governments a greater willingness to compromise than required at the intergovernmental conferences. Additionally, this approach could have the disadvantage that by multiplying the volume of documents and rules it would further increase the bureaucracy that citizens already complain about. One of the main goals of the Constitutional Treaty – simplifying European primary legislation (treaties) – thus would not be achieved. Finally, if the proposed approach were to be implemented, important reforms laid down in the Constitutional Treaty would remain on the sidelines (Maurer 2006b).

THE PRESIDENCY'S OPTIONS

Since the German Council Presidency makes it its top priority to save the substance of the Constitutional Treaty, the 50th anniversary of the European Community at the end of March 2007 could be celebrated by adopting a

commensurate declaration and a “globalisation strategy” along the lines of the elements described above.

If in the meantime the cherry-picking continues, and elements of the constitutional reforms are put into effect in a piecemeal manner, their implementation would have to be accompanied by a joint initiative of the “friends of the Constitutional Treaty” to revive the EU’s reform process if there is any interest in saving the Treaty as a whole.

However, the possible scenarios should be rigorously judged. A strategy of confrontation with the “no”-voting countries and the not-yet-ratifiers could put the “friends of the Constitutional Treaty” in a situation where at best twenty countries agree, while two still reject the Treaty and three want to wait longer. In this constellation, the political leeway for the “friends” would be small. Germany has no interest in urging France to leave the European Union and European Monetary Union in order to implement the Constitutional Treaty with the diminished core group of the “friends”, nor can it be expected that political pressure will lead the “non-ratifiers” (probably five) to change their minds. Any initiative for saving the substance of the CT would only make sense if the situation of the non-ratifiers were to change in such a way that they would rediscover their own inherent interest in the EU’s institutional reform, or if the “friends” were to come to the conviction that in the worst case scenario it would be better to proceed with a reduced number of members than to abandon the Constitutional Treaty.

These options need to be assessed clear-headedly before choosing strategies for moving forward. If this does not happen, the fixation on the Constitutional Treaty will get in the way of developing alternatives. If the implementation of the existing Constitutional Treaty is treated as the only permissible option it may be possible to delay the piecemeal approach for a while, but if this strategy fails – and in view of the current constellation of attitudes toward the Treaty that is not unlikely – the discussion of alternatives, which then becomes necessary, will thus drag on over years. The EU would remain trapped in its stagnation and waste precious years while the rest of the world moves on.

This dilemma clearly shows how urgent it is for the 27 governments to bring about a clarification of their own and their shared motivations. In the absence of such clarification, Year Two of the post-“no” era looks like a heralding of the same kind of frazzled and vague discussion that characterized the first year of the “pause for thought”. Under these conditions, the German Council Presidency stands little chance of presenting a simple plan for the way forward. What is required is to clarify, as far as possible, the interests and the existing willingness to act – even with a government who is at present largely self-absorbed.

THE CONSTITUTION IS DEAD – LONG LIVE THE TREATY

Rather than seeking to maintain the integrity of the Constitutional Treaty, the best feasible option today seems to put all efforts into saving the core institutional reforms agreed upon in Part I and in the institutional, procedural and financial chapters of Part III of the Treaty. Thus, the rest of Part III can

be ammended in such a way that it enables the functioning of the EU according to the needs of particular policy areas. This strategy could be complemented by the so-called Berlin Declaration of March 2007, which marks the fiftieth anniversary of the Rome Treaty: A forward-looking declaration which re-introduces a sense of political leadership into EU policy-making, based on the global challenges facing the EU today. Calling upon such a treaty could reinvigorate popular support for European integration and privilege efforts to safeguard core reforms.

Two years after the EU's enlargement, it is becoming increasingly more clear that the current EU system is not functioning as smoothly as decision-makers often publicly state. Within the Council system, the current arrangements for voting, as well as those for the internal management and external representation of the Council, continue to have various negative effects in the enlarged EU. The Council, which represents the central link between the member states and the European institutions, is facing fundamental problems: First of all, the multiplicity of decision-making arrangements, according to which the Council must decide unanimously, increases the risk of decision blockades in a Union of 27 (Gomez and Peterson 2001).²⁵ Secondly, Gomez and Peterson (2001) provide clear empirical evidence about a loss of coherence on the part of the Council and a significant decrease in the coordination function of the General Affairs Council (GAC). Thirdly, the evolving network of "parallel structures", set up alongside the supranational EC, and informal arrangements between some member states (Prüm Treaty, G-6 group) put the system of the Council as well as the inter-institutional arrangements between the Council, the Commission and the European Parliament into question. These deficiencies restrict the Council's capacity for external and internal action, as well as efficiency. They damage the atmosphere of negotiations in Council meetings and preparatory committees. As for the European Commission, (its size and its heterogeneity) and the Commissioners' contradictory positioning, all have an increasingly negative impact on the EU's external image, as well as upon its power to formulate convincing policies within the EU's arenas of decision-making.

The German EU Presidency must view the crisis in the integration project as an obstacle and an opportunity in order to recalibrate the European project (inwardly and outwardly). One basis guiding its actions could be provided by the fact that, Europeans can only successfully pursue their interests in the world if they do so through common institutions, which are in turn bound to the common European good and are capable of reaching decisions to that effect. The faith of critical elites and citizens in the European project can only be won back if, the European institutions prove their capacity to act especially in regards to the challenges of a heterogeneous EU-society, as well as of the globalisation of the production of goods, services and risks. For the Presidency, this means no less than consciously emphasising the totality of instruments, available on both a national and European level, to drive integration forward in a phase of insecurity. This requires it to come clean about the goals and tasks, the competencies and limits of the enlarged Union. In order to engage citizens in European politics and its further

development, it is not simply the principle of subsidiarity that must be respected but also that of solidarity.

ENDNOTES

- ¹ Conseil de l'Union Européenne/Conseil Européen (2006).
- ² Extraits de la conférence de presse du Général de Gaulle, Palais de l'Élysée, Paris, 9 September 1965; www.ellopos.net/politics/degaulle65.htm.
- ³ On the academic debate see Tosato and Greco (2004), Shaw (2005), De Witte (2004), Maurer (2005), Král (2004), Monar (2005).
- ⁴ For Germany, it has to be taken into account however that while the Bundestag and the Bundesrat have ratified the Treaty, a decision from the German Constitutional Court has been postponed, and that the German President consequently refuses to sign the Treaty. From a legal point of view, Germany cannot, therefore, be counted amongst the countries that have ratified the Constitutional Treaty.
- ⁵ For a deeper analysis on the factors of the French and Dutch No votes see Schild (2005), Uterwedde (2005), Lang and Majkowska (2005), Aarts and van der Kolk (2006).
- ⁶ Speech of Nicolas Sarkozy delivered to Friends of Europe and the Fondation Robert Schuman, 8 September 2006, Bruxelles.
- ⁷ Nicolas Sarkozy (Ministre d'Etat, Ministre de l'intérieur et de l'aménagement du territoire, Président de l'Union pour un Mouvement Populaire), vows to the press, Paris, 12 January 2006, www.u-m-p.org/site/GrandDiscoursAffiche.php?IdGrandDiscours=164.
- ⁸ See his interview in *Le Monde* of 13 September 2006: Romano Prodi: Une Constitution limitée aux grands principes.
- ⁹ "Steinmeier will 'politische Substanz' der EU-Verfassung", *Münchener Merkur*, 23 July 2006; Speech of Foreign Minister Steinmeier during the Bundestag's debate of the annual budget, 6 September 2006; www.auswaertiges-amt.de/diplo/de/Infoservice/Presse/Reden/2006/060906-Bundestag.navCtx=21928.html; "Polen und Deutschland – Gemeinsam Europas Zukunft gestalten", Speech of Foreign Minister Steinmeier at the University of Frankfurt/Oder, 26 October 2006, www.auswaertiges-amt.de/diplo/de/Infoservice/Presse/Reden/2006/061026-Viadrina.html; "Ausblick auf die deutsche EU-Präsidentschaft: Stand der Vorbereitung in der Bundesregierung", Speech of the Foreign Ministry's State Secretary Silberberg, 4 October 2006, www.auswaertiges-amt.de/diplo/de/Infoservice/Presse/Reden/2006/061004-SilberbergEuro pa.html.
- ¹⁰ "EU 'wise' group welcomes new debate on constitution", *EU Observer*, 5 October 2006.
- ¹¹ See Lauren, Annie and Sauger, Nicolas (eds.), "Le référendum de ratification du Traité constitutionnel européen du 29 mai 2005: comprendre le 'Non' français". Paris: Centre de Recherches Politiques de Sciences Po, 2005 (Les cahiers du CEVIPOF, No. 42); Milner, Henry (2006), Brouard and Tiberj (2006), Schwarzer (2005).
- ¹² See Lang and Majkowska (2005), Aarts and van der Kolk (2006), Gouvernement Néerlandais (2006).
- ¹³ See the amendment No. 177 of González, Carlos Carnero and Corbett, Richard on the Duff/Voggenhuber-report of the European Parliament, No. 2005/2146(INI) 21a, doc. no. PE 364.885v01-00 56/69 AM586904DE.doc and, for a similar proposal made by the German Chancellor Angela Merkel: "Merkel will mit Sozial-Erklärung EU-Verfassung retten". *Handelsblatt*, December 18, 2005; "Text der EU-Verfassung soll unverändert gelten." *Berliner Morgenpost*, December 20, 2005; "Merkel schlägt ein Sozialkapitel vor". *Der Standard*, December 20, 2005.
- ¹⁴ Proposed amendment 177 by González and Corbett to the Duff/Voggenhuber Report, op. cit.
- ¹⁵ See "Merkel will mit Sozial-Erklärung EU-Verfassung retten", op. cit.; "Text der EU-Verfassung soll unverändert gelten", op. cit.; "Merkel schlägt ein Sozialkapitel vor", op. cit.
- ¹⁶ See "EU-Verfassung ist für uns tot". *Kurier*, 12th January 2006.
- ¹⁷ See "EU-Verfassung für Außenminister Bot tot". Austria Presse Agentur, Release 12th January 2006.
- ¹⁸ See Nicolaï, Atzo: "Auf dem Prüfstand der Wirklichkeit: Wie Hollands Regierung die Zukunft der EU sieht". Interview. *Der Tagespiegel*, 16th January 2006.

- ¹⁹ See Florence Deloche-Gaudez, Contribution au symposium organisé par la Commission des affaires constitutionnelles du Parlement européen: L'avenir du processus constitutionnel de l'Union européenne, Bruxelles, 13 and 14 Octobre 2005; "EU-Verfassung für Außenminister Botot", op. cit.; Nicolai, Atzo: "Auf dem Prüfstand der Wirklichkeit: Wie Hollands Regierung die Zukunft der EU sieht", op. cit.
- ²⁰ See Jacques Chirac plaide contre un "statu quo institutionnel" pour l'UE. *Le Monde*, 10 January 2006; Jacques Chirac relance le débat sur la Constitution européenne. *Libération*, 10 January 2006; Brändle, Stefan: "'Ursula' und 'Philippe' Hand in Hand. Außenministerin Plassnik zu Gast in Paris". *Der Standard*, 11 January 2006; "Chirac will 'Pionier Europas' sein". *Frankfurter Allgemeine Zeitung*, 11 January 2006; Alich, Holger and Rinke, Andreas: "Chirac will ein Kerneuropa. EU-Verfassung entzweit Paris und Berlin". *Handelsblatt*, 11 January 2006; Leparmentier, Arnaud: "Jacques Chirac veut convaincre les Allemands d'appliquer certaines dispositions de la Constitution". *Le Monde*, 9 January 2006.
- ²¹ See Ministère des Affaires Étrangères, Améliorations institutionnelles à partir du cadre des traités existants, Contribution Française, Paris, 24 April 2006.
- ²² Ségolène Royal, Sept propositions pour l'Europe par la preuve. Speech to press conference, 11 October 2006.
- ²³ See Statement made by British Foreign Minister Straw before the House of Commons on 6 June, 2005, www.publications.parliament.uk/pa/cm200506/cmhansrd/cm050606/debtext/50606-05.htm, column995f.
- ²⁴ See Committee of the Regions, "Conference calls for creation of a 'real subsidiarity culture' to meet citizens' needs", Pressemitteilung, 30 November 2005, www.cor.eu.int/de/press/press_05_11138.html.
- ²⁵ See also the Report of the European Parliament on the Council's reform (rapporteur: Jacques F. Poos), Doc. No. A5-0308/2001, 17 September 2001.
- ²⁶ See also the Swedish Prime Minister Göran Persson's speech at Humboldt University on 18 October 2001 (HRE 2001), www.whi-berlin.de, p. 16.

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