

Constitutional referendum in France: a mid-term assessment

Following the opinion of the vast majority of parties, President Chirac announced on July 14th 2004 the organisation of a referendum on the European constitution. On this occasion he declared that no political leader could seriously oppose this text. Despite this judgement, and very often because of it, the opposition to the constitutional Treaty has grown in the last semester to reach a peak on December 1st 2004, the date of the PS's internal referendum. Today, according to recent polls, 25% of registered voters have already decided to support the referendum and 20% will vote against. In the meantime, the uncertainty among voters remains high (46% of the interviewed people), which explains the intensity of the on-going political debate¹. This report aims first to describe the main actors in the debate and, secondly, to contextualize the most debated issues by outlining some explanatory factors.

I Key players

Almost all the parties supported the choice to submit the European constitution to a referendum. This relative consensus was even strengthened in May 2004 when Tony Blair decided to organise a referendum in the UK. As a result, the decision of J. Chirac was expected. When it occurred in July 2004, it paved the way for the intervention of both institutional and individual actors.

1) The impact of institutional actors

Three institutional actors have had, or will have, an influence on the debate: the constitutional court, the Ministry for Foreign Affairs (MFA) and the parliament (*Assemblée nationale* and *Sénat*).

a) The constitutional court

According to article 54 of the French constitution, the constitutional Court (*Conseil constitutionnel*) may be consulted to determine if an international treaty includes unconstitutional articles. This was done at J. Chirac's initiative the same day that the constitutional Treaty was signed in Rome (October 29th). The Court called for a revision of the constitution to address two issues: first the new transfers of sovereignty in core areas of governmental activity (such as the CFSP and the JHA) and second the new role granted to the national parliament as a watchdog for the subsidiarity principle. Nevertheless, it judged that the official recognition of EU Law's primacy as well as the Charter of Fundamental Rights (most notably article II-70 that allows for public manifestations of religious practices) did not contradict the French constitution. Many observers of the Court considered its diligence to deliver an opinion as a way to undermine the side of the "no".

¹ This survey was realised by the IFOP beginning of February 2005. Another poll of January 2005 led by the CSA showed that the support for the text would reach 65% (35% being against). Nevertheless, the same survey underlined the fact that the abstention would remain particularly high (61% of the registered voters). To get a long-time perspective on these results, please refer to the following web site: <http://www.csa-tmo.fr/dataset/data2005/opi20050106a.htm>

b) *The MFA*

The action of the government as a whole is still uncertain. The current lack of popular support of the Prime Minister makes him a very dubious leader for the “yes” side. In this context, the MFA is in the forefront. Under the leadership of former EU Commissioner Michel Barnier and of Claudie Haigneré, the MFA is organising an information campaign on the Constitution, named “*Mission Europe*”, with a budget of 10 million Euros. It developed a web site (<http://www.constitution-europeenne.fr>), it will run an ad campaign on TV and it will financially sponsor local initiatives. The opponents of the European constitution, such as Ph. de Villiers, have already complained that this mission was using public funds to unofficially support a «yes» vote. The MFA answered by underlining the need to provide neutral information to the citizens. Nevertheless, on November 22nd 2004, the President of the *Conseil constitutionnel*, Pierre Mazeaud, sent a letter to the MFA calling for more neutrality. He even threatened to take this question under consideration when the *Conseil* will be asked to control the operations organising the referendum (article 60 of the French Constitution). This highlights once again the difficulty that all the governments cope with to lead an information campaign before a referendum².

c) *Parliament*

The intervention of the Parliament is a three-step process. First, given the need to revise the French constitution, both Chambers have to vote on the articles of revision. This was realised in the *Assemblée nationale* on January 27th 2005 (450 in favour, 34 against and 27 MPs did not vote) and the text is now under consideration in the Senate. Although the government enjoys a majority in both Chambers, this first step was unexpectedly debated. Some members of the current majority party (UMP), including the former Prime minister E. Balladur (1993-1995), used this discussion to propose a constitutional amendment that would have forced the government to submit all the documents issued by the European institutions to the Parliament. Thanks to a last minute alliance between the UMP and the PS, a lighter version of this amendment was adopted. It foresees that only the European proposals falling in the legislative field will be submitted³. The second step of the process will occur probably end of March. Indeed, the Congress (meaning both the Senate and the Lower House voting together) needs to approve the constitutional amendments by 3/5 of the voters (article 89 of the French constitution). The quorum will be reached without any doubt since only the Communist and the Republicans shall vote against the revision. However, the attitude of the opposing minorities within the PS and the UMP are still unclear since voting «no» instead of simply abstaining may tempt some of them. Finally, the third step, the most formal, will be the organisation in both Chambers of a public debate before the referendum takes place, as required by the French constitution (article 11).

2) The divergent influence of individual actors

All actors outside of the Government structure fall into this category. Consequently, it encompasses the parties, the trade unions and civil society. The Media are not mentioned since the leading dailies (*Libération*, *Le Monde*, *Le Figaro*) have not clearly taken sides on the subject. However, they generally give the impression that they are supporting the constitution.

² Such difficulty was also present in the Spanish case; cf. the report written for NE on the Spanish referendum.

³ This simply restates the article 88-4 of the French constitution. However, the government agreed to facilitate the transmission of non-legislative documents.

a) *The parties*

As was frequently the case in the past, the parties' positions on this issue follow quite perfectly the centre/periphery representation. Nevertheless, whereas the extremist parties are almost unanimously against this treaty, new divisions occurred at the centre of the political spectrum.

Although they have been relatively discreet so far, the extreme-right parties such as the FN and the MNR have adopted a clear position against the Treaty. Likewise, the far-right parties (MPF and RPF), surfing on the idea of national sovereignty, have sharply criticised the European constitution.

The "no" front is almost as united on the extreme-left side. In the LCR rows, the opposition to the treaty was instantaneous whereas more debates took place within LO. Traditionally, this trotskyst party has been reluctant to take a position on national referenda. For instance, Arlette Laguiller issued a call to abstain from voting in 1992 for the Maastricht Treaty. This time LO's leaders decided to oppose the Treaty but they will not campaign with the other extreme-left groups. Finally, the PCF executive has officially advocated a "no", even though some past members such as former MEP Philippe Herzog are in favour of the text.

The situation remains much more complex at the centre of the political spectrum. In the green party, most of the leaders such as N. Mamère, A. Lipietz, D. Voynet, Y. Cochet and G. Hascoët, as well as Y. Wehring, a former temporary EP civil servant who was elected party leader on January 17th 2005, expressed their support for the text. However, many members and the former Head of the party, G. Lemaire, seem reluctant to vote for what they consider a neo-liberal text. An internal referendum is currently taking place by mail and the results shall be made public in the second half of February. Beside the result, the question of how to count the abstentions is debated, some proposing to include them in the "no" side.

Divergences are also important on the Left. Whereas it seemed intuitive that Chevènement's newly created party, the MRC, would oppose the constitutional treaty in the name of French Republicanism, the intense debate within the PS was somehow less expected. The "yes" side includes the most prominent historic leaders such as J. Delors, P. Mauroy, R. Badinter and L.Jospin (with the exception of P. Joxe), most of the elected politicians (at the European, national and local levels), most of the possible candidates for the 2007 presidential nomination (D.Strauss-Kahn, J.Lang, B. Delanoë, M. Aubry) as well as the party leader F. Hollande. On the contrary, before December 1st 2004, the "no" side had a majority within the executive body of the party (*le bureau national*), whose composition reflects the numerous internal divisions (named *courants*). L. Fabius and most of his supporters, such as former member of the EU Convention and current MEP Pervenche Berès, some strong regional organisations (M. Dolez in the North), as well as the dynamic *courant* "the New socialist party" (A. Montebourg, V.Peillon) and the leftist *courant* "New world" (H.Emmanuelli, J-L. Mélenchon) all oppose the European constitution. Given his personal background, the position of former Prime Minister L. Fabius was surprising and reflects the emergence of a new cleavage based on an "alter-Europe" platform. An internal referendum took place on December 1st and the "yes" side won with an unexpected margin (59% in favour with a participation of 82%). Commentators explained this margin by outlining the fact that the different types of "no" had not been able to aggregate, provoking a phenomenon of "internal cannibalisation". This led to a reshaping of the *bureau national* to exclude some of the opponents. However, the socialist opponents of the European constitution still publicly oppose the text, which reflects the power struggle that takes place at the top of the party.

Even on the Right side, some divergences have re-emerged. In the government party (UMP), the so-called *souverainistes*, represented by the MP Dupont-Aignan, as well as the Catholic side of the party (led by C. Boutin), have announced their opposition to the text.

Even in the most pro-integration party UDF, whose leader is F. Bayrou, voices were raised to link the position on the constitution with the issue of Turkey's membership in the EU. For instance, one MP, J-C. Lagarde, already announced that he will oppose the text. Nevertheless, these two parties should remain the strongest supporters of the treaty.

b) The trade unions

On October 13th 2004, the European Trade Union Confederation (ETUC) officially endorsed the new version of the European constitution. On this occasion, the five French members, namely CFDT, CFTC, UNSA, CGT and FO expressed divergent opinions. While the CFDT and the UNSA voted in favour of the resolution, the CGT and the CFTC abstained, and FO was the only European trade union to vote against it (the overall result being 68 in favour, 7 abstentions and one against). Since then, the CGT has been split on this issue. Whereas its General Secretary B. Thibault was willing to abstain from giving voting orders, the assembly regrouping the representatives of the various branches voted against the text on February 3rd 2005 (81 against and only 18 in favour). This outcome is considered as a step backwards. Indeed, after it had endorsed a "no" vote for the Maastricht Treaty, this organisation had tried to "europeanise" its platform.

The division is also important among the non-members of the ETUC. The two main trade unions teachers' (FSU, SNES) have serious doubts about the constitution, the latter denouncing the "serious dangers" implied by the text. At the same time, the main agricultural trade union (FNSEA) refused to officially endorse the text but underlined the need for "rules' clarification" in the EU. Unlike the FNSEA, the growing *Confédération paysanne* led by José Bové opposed the text. Finally, the so-called "groups of 10" (which include some important trade unions like SUD and has about 90 000 members) called for a "no" to the text.

c) Civil society

Civil society has been equally divided so far. Although the debate is still limited, some trend-makers have already announced their position. On the left, the Copernic foundation, which is close to the Communist party, has been the most outspoken for a "no" vote. On October 20th, a list of 200 names coming mainly from the *altermondialistes* and the anti-liberal Left called for a "Left no". Included were political leaders (F. Wurtz, M. Dolez), as well as actors (J-P. Daroussin, A. Ascaride) and members of trade unions (J. Bové, FSU, CGT). Moreover, on December the 12th, the main *altermondialistes* movement, namely ATTAC, officially took an electoral stance for the first time in its short history, a majority of 85% calling for an opposition to the treaty.

The "yes" side has also started to unite. On November 16th 2004, several organisations such as New Republic, Europa Nova, Europartenaires, Femmes Débats et Société, the Robert Schuman Foundation, Génération Europe 21 (etc) organised a joint meeting in Paris to launched the "platform for the 'yes'". Further events are forecast.

II Ideological cleavages and political strategies as explanatory factors

The intensity of the debate in France was both surprising and predictable. It derives from the resurgence of political oppositions, which have appeared since the early 80's, as well as from the on-going transformation of the French political scene. To this extent, one needs to analyse it as a cleavage-based debate fuelled by partisan realignment.

1) The cleavages on Europe

Whereas the independence/integration cleavage had structured the Maastricht debate, polarising the oppositions on the extremities of the political spectrum, the division lines of the current debate are more blurred. If the “independence/integration” cleavage is still palpable, another structuring cleavage is emerging based on the idea that an alter-Europe is possible.

a) *The salience of the “sovereignty/integration” cleavage*

This cleavage appeared as soon as the EU developed into a polity. Very salient during the Maastricht debate, this factor remains pertinent to explain most of the anti-constitutional positions. The Front national, the RPF, the MPF, a few members of the UMP (hence continuing to a lesser degree the split that had occurred in the former RPR), and the MRC, all refuse the idea of transferring additional competencies to the EU level. The inclusion of the Charter of Rights, the supremacy of the EU law, the use of qualified majority voting in the CFSP field, the creation of a permanent President of the European Council and the omnipotence of the ECB are some of the most criticised clauses.

As some scholars have already argued (Bartolini, 2001), this cleavage is not exempt from all ambiguity⁴. Indeed, whereas for some more independence means the end of the deepening of European integration (de Villiers), for others it means the promotion of intergovernmental enhanced co-operation (Chevènement). This ambiguity in fact reflects the emergence of a second cleavage that opposes the proponents of the incremental integration and the others.

b) *The emergence of an “alter-Europe” cleavage*

Albeit heterogeneous, this cleavage is based on an assertion: another Europe is possible and should be realised (this, for instance, was the title of an article written at the end of September by Paul Thibaud, the former head of the famous periodical “Esprit”). Such an assumption reflects both the growing distrust towards the neo-functional method with its incremental spill-over effects and the doubts regarding the European identity resulting from the waves of enlargements. There are two variants, which both share the view that the social dimension of the EU has been neglected for too long and that a political constitution should not incorporate such bias.

A first one, which also partially plays on the sovereignty idea, focuses its criticism on the liberal bias of the EU. Arguing that the neo-functional method of integration has had no impact on the development of a truly European social system and that it may even harm the current national welfare systems, these people support a more social Europe. Inspired by the French social system, they ask for a new Stability pact, a political control over the ECB’s policies and a stronger emphasis on the social aspects of the constitution. This view derives most of its support from the left of the socialist party (the “New World” *courant*), the left of the green party, the extreme-left parties (PCF, LO, LCR and the PT) and the *alter-mondialistes*. Amplifying the PCF slogan used during the last EP’s elections (“Europe, yes, but not this one”), they also denounce the idea that European policies should be included in the EU constitution (part III). The recent debate on the Bolkestein directive provided them an opportunity to illustrate their thesis.

⁴ Bartolini, Stefano, « La structure des clivages nationaux et l’intégration européenne », *Politique européenne*, n°4, printemps 2001, pp.15-45

The second variant, which calls itself the “realist no”, as promoted by L.Fabius, holds that the constitution dilutes the European project. Entitling his book “A Certain Idea of Europe” (in reference to the General de Gaulle’s “certain idea of France), L. Fabius estimates that another Europe should be shaped. Whereas Europe needs to be powerful, which implies a more substantial budget, the constitution does not provide any hint in this direction. Consequently, he advocates voting “no” to this constitution, hoping that the resulting crisis would facilitate the launch of a new round of negotiation. This would shape Europe according to three circles: a first front-runner circle with France, Germany, Spain (and smaller countries), a second circle with the other current members and a third one linking the EU to third States (such as Turkey and the Maghreb countries) through special partnerships. Such a view emerged following the 2004 enlargement and the likely opening of negotiations with Turkey. It is partially based on the idea that France is losing its pre-eminence within the EU and that the EU’s original identity needs to be reasserted. In this regard, the “realist no” is an idealist return into the past, used for strategic motivations.

2) The political strategies underpinning these positions

Even though European issues fuel the debate, domestic political concerns remain in the background. Consequently, the current debate also needs to be analysed through the lens of personal and partisan realignment.

a) The personal political realignment

The 2005 referendum on the EU constitution will be the last national election before the presidential election of 2007. Consequently, potential candidates have used this issue to improve their political profile. This was particularly the case for L. Fabius. Knowing that the European idea is not popular among the least favoured social classes, L. Fabius concluded that the only way to avoid another 21 April 2002 (when L. Jospin was beaten in the first round of the presidential election) was to oppose this treaty. Even though this strategy was not successful during the internal debate in the PS, L. Fabius is still convinced that France will reject the constitution. In the meantime, the internal referendum’s outcome strengthened the political profile of F. Hollande.

Personal motivations are not exclusive of the PS. Among the Greens, former leader D. Voynet was one of the first to advocate a “yes” vote, in spite of the absence of an official position of her party. Immediately after, the other potential candidates (N. Mamère, A. Lipietz) came out in favour of a “yes” vote. Even within the Communist party, the activism of MP P.Braouezec is considered by the other members as an indication of his willingness to be the Communist nominee in 2007. His attempts to link his «no» vote to other «anti-liberal no» are also interpreted as a strategic attempt to reshape the party’s line towards more participation of civil society actors. Last but not least, the active engagement of F. Bayrou in the campaign can be understood as a way to bank on the sympathy created by an issue where the UDF has traditionally had a comparative advantage.

b) The partisan realignment

Not only does the 2005 referendum give an incentive to politicians to personalise the debate, it also encourages parties to reconsider their political strategy. On the extreme-left, the debate on the constitution could help overcome the difficulties encountered to creating a broad coalition including the PCF, LCR, LO but also civil society members such as ATTAC and the Copernic Foundation. Still on the left of the PS, J-P.Chevènement’s party will use this debate as an opportunity to regain influence after the catastrophic electoral results in the

spring of 2004. This could be facilitated by the outcome of the PS's internal referendum, which gives him a political opening. The realignment of the PS remains, however, a controversial issue. Whereas the results of the referendum were analysed as the last move towards a social-democratic stance, as initiated in 1983, the situation may yet change in function the national referendum's outcome. Indeed, a "no" at the national level would force the party to bridge the gap on its left, which could lead to a partial reconstitution of the former *gauche plurielle* (the governmental coalition with the PS, the PCF, the Green and Chevènement's party that ruled France from 1997 to 2002). On the contrary, a "yes" vote will only strengthen the current PS's line if this party manages to differentiate its support from that of the Right parties. This explains why a broad coalition going from the centre-left to the centre-right, a project that has inspired the UDF since its creation in 1978, would be very dubious.

Conclusion:

It is certainly too early to draw a conclusion or to evaluate the chances of success of the referendum. Today, the challenge for the proponents of the constitutional treaty lies in their ability to aggregate their strength and to avoid a second "internal cannibalisation". More importantly though, what this campaign underlined so far is the growing incomprehension, and in some cases the obvious dissatisfaction, of the French electorate towards the European integration, a phenomenon that various polls and Eurobarometers illustrated. The incremental method, the territorial limits, the goals and the place of France within this project have raised concerns not about the European ideal as such but about the way it is currently being implemented. These doubts, more than any partisan strategy, fuel the utopia of "another Europe".

List of Acronyms:

ATTAC: Association pour une Taxation des Transactions financières pour l'Aide au Citoyen
CFDT: Confédération Française Démocratique du Travail
CFTC: Confédération Française des Travailleurs Chrétiens
CGT: Confédération Générale du Travail
ECB: European Central Bank
EP: European Parliament
ETUC: European Trade Union Confederation
EU: European Union
FN: Front National
FNSEA: Fédération Nationale des Syndicats d'Exploitants Agricoles
FO: Force Ouvrière
FSU: Fédération Syndicale Unitaire
LCR: Ligue Communiste Révolutionnaire
LO: Lutte Ouvrière
MEP: Member of European Parliament
MFA: Ministry for Foreign Affairs
MNR: Mouvement National Républicain
MP: Member of Parliament
MPF: Mouvement Pour la France
PCF: Parti Communiste Français
PS: Parti Socialiste

PT: Parti des Travailleurs

RPF: Rassemblement Pour la France

SNES: Syndicat National des Enseignants du Second degré

SUD: Solidaires, Unitaires, Démocratiques

UDF: Union pour la Démocratie Française

UMP: Union pour un Mouvement Populaire

UNSA: Union Nationale des Syndicats Autonomes