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Domestic Politics and Referendums on the  
Constitutional Treaty

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## **Abstract**

How can the decision of ten member states to subject the Constitutional Treaty of the European Union (EU) to a referendum be explained? Recently, some scholars have considered the need to give legitimacy to the decisions of the EU as one of the principal motivations for holding referendums. An empirical analysis of the motivations behind the decisions in favour of referendums uncovers a completely different reality, however. Political actors used the possibility to hold referendums about European matters in a strategic way to strengthen their positions in the domestic context rather than to correct the democratic deficit of the EU. The analysis of a database with the positions of all the political parties represented in the national parliaments of the twenty-five member states confirms this point.

## **Keywords**

European Union, Constitutional Treaty, Ratification, Referendum and Democratic Deficit



## Introduction<sup>1</sup>

Referendums on the constitutional politics of the European Union (EU) have never played such an important role as they do nowadays with regard to the ratification of the Constitutional Treaty (2004). That is, except in exceptional cases, the previous Communitarian Treaties have been approved in the national parliaments without the governments of the member states of the EU feeling any need to hold referendums.<sup>2</sup> To date, only Denmark and Ireland have called a referendum to ratify all the EU treaties, with the exception of Denmark in the case of the Treaty of Nice (2001) when the government alleged that this treaty would not lead to any transference of power. Nevertheless, in both countries referendums respond more to legal imperatives than to the desires of their governments. A last example is that of France, which held a referendum on the Treaty of Maastricht (1993). Surprisingly, the conservative tendency highlighting a reluctance to hold referendums on the Communitarian Treaties, has changed with the Constitutional Treaty. For the first time in the history of European integration, 10 of the 25 member states of the EU declared their intention to hold a national referendum even before the end of the negotiations on the Treaty in June 2004. How can this ‘boom’ in referendums on the Constitutional Treaty be explained?

One of the possible reasons for holding referendums could be the need to legitimate EU decisions (Weiler, 1997; Elster, 1998; Grande, 2000; Schmitter, 2000). According to this position, the deepening process of European integration is one of the principal reasons explaining why so many member states have held referendums on the Constitutional Treaty. In this view, the EU needs new forms of legitimation, and although referendums are by no means a magic solution to the problem of the democratic deficit of the EU, they can at least help to alleviate it. However, an empirical analysis of the motivations behind the decision to call for referendums on the Constitutional Treaty uncovers a completely different reality. Not only will referendums not be held in all the member states, since only 10 countries have accepted to do so; in addition, political actors have used the possibility to hold referendums on European matters in a strategic way to strengthen their position in the domestic context rather than to legitimize the decisions of the EU. Furthermore, empirically I observe that the main objective of the political parties when supporting referendums is to protect their position or to empower them in the national political system.

This instrumentalist explanation of referendums on the Constitutional Treaty contrasts with the one offered by Carlos Closa (2005), which is based on ‘institutional factors’, namely the influence of path dependency, the logic of justification, and the effect of ‘mimesis’, that is the influence of the decisions of one country on others. In contrast with my hypothesis, Closa discards the idea that domestic constraints can determine the decision of countries to call referendums. What I will show in this paper is that, on the contrary, the position of political parties and the decision to hold referendums are very clearly determined by domestic conflicts. How can path dependence explain this boom in referendums when only a few countries held referendums on the Communitarian Treaties previously? This was the first time, for example, that countries such as the Netherlands, Spain, Luxembourg and Portugal called for a referendum on European matters. Moreover, although ‘mimesis’ may have been important to some extent in this process, I hold that this factor alone does not provide for a sufficient explanation of the spread of referendums. The substantive contribution of this paper, therefore, is a systematic

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<sup>1</sup> Earlier versions of this paper were presented at the CONNEX workshop “Europeanization of Nation-State Executives and Implementation” in Oslo, at the Spanish Congress of Political Science and Administration in Madrid, and at the European Studies University Institute of the Autonomous University of Barcelona. I would like to thank all the participants who provided helpful comments, the two anonymous reviewers, and Andreas Dür for valuable suggestions on the whole paper. Finally, part of this research was made possible thanks to the Jean Monnet Fellowship held at the Robert Schuman Centre during the year 2005/06.

<sup>2</sup> For the general overview of all referendums in the EU, see Hug (2002).

analysis from a comparative perspective of the reasons why some member states have decided to call a referendum on the Constitutional Treaty while others have not.

The paper unfolds as follows. After the introduction, in the first part, I analyze the two conflicting theoretical views that explain the unusual decision to hold 10 referendums on the Constitutional Treaty. On the one hand, one of the principal motivations for holding referendums is understood as being the need to legitimize the decisions of the EU. On the other hand, a more traditional interpretation draws attention to domestic political considerations. In the main part of the paper, I empirically test the prediction that referendums are called for domestic reasons, using a database with the positions of all the parties represented in national governments in the member states of the EU with respect to the Constitutional Treaty and the holding of a referendum. Finally, I sum up with the conclusions and the most significant implications of the paper.

## Referendums: A Typology

Some scholars have emphasized the virtues of referendums as an instrument of legitimation of European decisions based on the defence of direct democracy (Weiler, 1997; Elster, 1998; Grande, 2000; Schmitter, 2000). These scholars defend the use of referendums by their legitimating function and the opportunity that is thereby offered to citizens to express their support for the European project. Comparing the European referendums to the European elections, some authors have pointed out the beneficial effects of referendums to the detriment of the European elections, considered as being of ‘second order’ since they are of minor importance and have less political impact (Garry *et al.*, 2005). These declarations in favour of referendums became more prominent during the negotiations of the Treaty of Amsterdam (1996-97), when the European Parliament and the governments of Austria and Italy expressed their wish to extend their use to all EU member countries.<sup>3</sup>

Interestingly, these demands have received the support of some academics like Joseph Weiler (1997), Edgar Grande (2000) and Philippe Schmitter (2000), who all see referendums as antidotes to the problem of the democratic deficit. The main idea that these intellectuals defend is that the deficiencies of the EU could be palliated by resorting to direct democracy. Jon Elster (1998), in particular, believes that a project of constitution proposed by a constitutional convention should be approved in a referendum. In the same direction, Schmitter (2000: 120-25) proposes the holding of one identical simultaneous referendum in all the member states to ratify the ‘Euro-constitution.’ Moreover, Jürgen Habermas (2003: 23) has claimed that ‘European-wide referenda would give citizens broader opportunities and more effective means to participate in the shaping of policies.’ Other academics even suggest possible models of referendums to approve the Constitutional Treaty, taking into consideration the member states and the citizens (Frey, 1996; Nentwich, 1996; Epiney, 1997; Abromeit, 1998). In addition, during the works in the Convention a large number of its members formally asked to hold a referendum on the Treaty in all EU member states.<sup>4</sup> In particular, the European Parliament and politicians such as the Austrian Chancellor Wolfgang Schüssel supported the holding of a referendum in all member states in the first week of May 2005 to solve the democratic deficit in the EU.<sup>5</sup>

Nevertheless, not all the member states have called for referendums on the Constitutional Treaty. In addition, one could very well argue that national governments are inclined to use referendums on European issues to further expand their power position, rather than to genuinely attempt to legitimize the decisions of the EU. This argument is akin to the instrumentalist explanation that referendums are

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3 For the outline of these demands, see Table 7.1 in Hug (2002: 103).

4 CONV 658/03, 31/03/2003.

5 European Parliament Resolution on Ratification procedures of the Treaty establishing a Constitution for Europe and the communication strategy, 14 October 2004, B6-0067/2004.

a weapon in the hands of governments (Butler and Ranney, 1978, 1994; King, 1981; Lijphart, 1984; Bogdanor, 1994; Setälä, 1999a; Morel, 2001; Walter, 2003). Arend Lijphart (1984: 204) is explicit when he states that: ‘The [referendums] are political weapons in the hands of governments rather than weapons against governments’. Following this interpretation, governments only choose this option when they gain clear tactical advantages from this decision—that is to say, when they can empower themselves in the domestic sphere. As Vernon Bogdanor (1994: 30) points out, ‘referendums are necessarily a weapon for protection and not for change.’ In addition, although there is no doubt that some referendums may benefit governments, they can also open up new and unpredicted options, thus escaping the control of the organizers and weakening the governments (Gallagher, 1995: 243; Setälä, 1999a: 330). It is for this reason that governments are generally only in favour of referendums when they expect to win them (Lijphart, 1984: 203) or when they can use them as an *ad hoc* solution to a particular domestic problem (Butler and Ranney, 1978: 221).

Over the last thirty years, some authors have tried to establish the reasons why states might decide to hold a referendum. Already in the seventies Butler and Ranney (1978: 18) referred to the difficulties of making a typology that can systematically explain why and when referendums are held, taking into account the singularities that each case study presents. Subsequently, different categories have been proposed to explain at least some of the reasons behind the decision to hold referendums (Butler and Ranney, 1978: 18; King, 1981: 113-15; Setälä, 1999b: 89-93; Morel, 2001: 53-62; Closa, 2005: 8-11; Qvortrup, 2005: 104-06). Based on these classifications, I distinguish four types of facultative referendums by their function: *plebiscitary*, *conflict-resolution*, *legislative* and *legitimizing* (see Table 1). In this classification, I start from the fact that governments have a privileged position to call for a referendum since they generally tend to control the majority in parliament.

*Plebiscitary referendums* are used to strengthen the power of the party or the parties in government before national elections (Qvortrup, 2005: 105). They are held for various reasons: One of these is that a victory in a referendum might well strengthen the position of the government before elections. Alternatively, calling for a referendum before national elections could serve to postpone controversial themes on the political agenda to the advantage of the party or parties in government (Bjørklund, 1982: 249; Setälä, 1999b: 91-92). Referendums, moreover, can resolve internal disputes within the party in government or the parties in the coalition: I call these *conflict-resolution referendums* (Morel, 2001: 53-56). The divergences among government parties on the topic under scrutiny or the possibility of holding a referendum can be sufficiently strong to put the final decision into the hands of public opinion. In this case, referendums can act as arbiters to resolve internal disputes (Setälä, 1999b: 91). *Legislative referendums* are those that make it possible to approve a decision in the absence of a parliamentary majority (Morel, 2001: 56-59; Closa, 2005: 9; Qvortrup, 2005: 104). In other words, when divisions in parliaments are powerful enough to frustrate ratification, referendums can become necessary. Finally, *legitimizing referendums*, as the name indicates, can enable the organizers to legitimize a decision (Morel, 2001: 60-62).

**Table 1: Motivations for holding facultative referendums**

Type	Function
Plebiscitary referendums	Strengthen the power of the government
Conflict-resolution referendums	Dissipate differences within a coalition or a governing party
Legislative referendums	Approve the question in the absence of a parliamentary majority
Legitimizing referendums	Legitimate a decision

In sum, this classification shows that governments can use referendums to strengthen their power at the domestic level but also in certain political scenarios where they can provide solutions to political problems and/or give legitimacy to a decision taken by the government. In spite of the relevance of these factors to explain the behaviour of political actors to call for referendums, no systematic analysis has yet been made that includes a process in which a series of countries find themselves in the position

of having to choose whether to hold a referendum or not. The process of ratification of the Constitutional Treaty offers the opportunity to test the usefulness of the classification proposed. By showing the importance of domestic factors for member states' decisions in favour or against referendums, I also challenge alternative views that see referendums as an instrument to provide the EU with legitimacy.

## **Referendums on the Constitutional Treaty**

As mentioned above, the most surprising 'boom' of referendums in the history of the ratification of the Communitarian Treaties has come with the Constitutional Treaty (2004), for which 10 member states have decided to call a referendum (Denmark, France, Ireland, Luxemburg, Poland, the Czech Republic, Portugal, Spain, the Netherlands and the United Kingdom). Even before the end of the negotiations in June 2004, some of these countries announced this intention. The question that I am attempting to answer here, then, is how this wave of referendums can be explained.

First, the relevant legal constraints need to be taken into consideration. In the phase of ratification of a treaty, all the countries' national parliaments are required to approve the text and, in some cases, depending on their respective national constitutions, to hold an obligatory or facultative referendum (Setälä, 1999a; Closa, 2004; Kurpas *et al.*, 2005).<sup>6</sup> These differences are clearly relevant for an analysis of the reasons why member states may or may not decide to call for a referendum. Whereas in some countries a ratification referendum is obligatory (Ireland) or can be demanded by a minority in parliament (Denmark), in other member states the constitution does not directly foresee referendums (Estonia, Germany and Italy). In most member states, however, a simple majority of parliamentarians can pass a law that provides for a referendum. Considering these formal limits, in the following analysis I exclude Ireland and Denmark, as the political dynamics are different in these countries. In the case of Estonia, Germany and Italy, which would have needed an amendment to their respective constitutions to submit the Constitutional Treaty to a referendum, I decided to include them in the analysis since the possibility of holding a referendum was actually debated in all of them. In the following pages, I empirically evaluate my argument that states either did or did not decide to hold referendums for strategic reasons, to strengthen their position in the domestic context rather than to correct the democratic deficit of the EU.

### ***The position of political parties on the ratification of the Constitutional Treaty***

The empirical research is based on a database showing the position of all the parties represented in the national parliaments of the EU member states with respect to the Constitutional Treaty and the need to subject the Treaty to a national referendum. This information was collected from 165 political parties in the 23 countries—57 are in government and 108 are in opposition.<sup>7</sup> The first question that I examine in this section is why a specific party favoured or opposed the holding of a referendum.

The analysis resulting from the database shows that opposition parties were far more likely to ask for a referendum than government parties (59.8%-36.8%). However, this result may well be driven by the fact that opposition parties tended to be less favourable to the Constitutional Treaty. In these cases, it was felt to be better to have public opinion decide rather than to leave the decision in the hands of the parliament in which governments tended to have the majority of seats. More specifically, the possibility of introducing another veto player was an advantage for opposition parties having only a minority in the parliament, since it allowed for opposition parties to gain some control over the

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6 Obligatory or mandatory referendums are those ones that are required by the national constitutions, whereas facultative or consultative referendums can be required by a simple majority of parliamentarians.

7 I was unable to gather information about their position on the Constitutional Treaty for only six political parties and for one party about the celebration of a referendum.

government. In fact, as table 2 demonstrates, practically all the opposition parties that opposed the Treaty supported a referendum (32-8). This was the case of 32 parties in Belgium, the Czech Republic, Finland, France, Germany, Greece, the Netherlands, Poland, Portugal, Slovakia, Spain, Sweden and the United Kingdom (see table 3). Not forming part of this prediction, eight parties still opposed the Treaty and did not support the push for a referendum, in France (2), Italy (1), Latvia (2), the Netherlands (2) and Slovenia (1). In these cases, some specific factors may go towards explaining this decision: Latvia and Slovenia had recently held a referendum on whether to adhere to the EU, which could explain why parties there declared that another referendum on EU matters was unnecessary at that time. In Italy, the legal impediments on holding a referendum may explain the position of the party that came out against a referendum despite its opposition against the Constitutional Treaty. Finally, two small opposition parties in France—Movement for France and Rally for France—and in the Netherlands—Christians Union and Political Reformed Party—did not push for a referendum for reasons that are not easy to determine.

**Table 2: The position of political parties with respect to the Constitutional Treaty and to a referendum**

		Referendum		
		In favour	Opposed	
Constitutional Treaty	Parties in government	In favour	19(33.3%)	34(59.7%)
		Opposed	2(3.5%)	2(3.5%)
	Parties in opposition	In favour	29(28.4%)	33(32.6%)
		Opposed	32(31.4%)	8(7.84%)

In contrast, only four of the parties forming part of governmental coalitions were against the Constitutional Treaty: in Cyprus, Italy, Latvia and Slovakia (see table 2). Among these, half were favourable to a referendum whereas the other half was not. On the one hand, it may be hypothesised that the supporters of a referendum are pursuing interests that are identical to those of the opposition parties; that is to say, they also want to control the decisions of the strong parties in the coalition. This is what happened with the League North, which held 30 of the 368 seats controlled by the governmental coalition in the Italian Parliament, and with the Christian Democratic Movement in Slovakia, which held 15 of the 78 seats controlled by the coalition. On the other hand, the fact that it was the government parties that negotiated and approved the Treaty could explain to a great extent why the other two parties did not push for a referendum, i.e. to avoid creating difficulties for their own governments: the Centre Party-Latvian Peasants Union in Latvia and the Progressive Party of Working People in Cyprus. In spite of these exceptions, the finding is that opposition parties were substantially more likely to favour the holding of referendums.

Moreover, even if opposition parties supported the Constitutional Treaty, they seemed to push for a referendum whenever they saw a possibility to weaken the government and to strengthen their own position in the national political system (Mendelshon and Parkin, 2001; Closa, 2005: 9; Crum, 2005: 6), or to legitimize themselves with their supporters. Looking at table 2, we can see that 29 (28.4%) parties fall into this category out of a total of 62 parties. This happens with at least one party in Belgium, Cyprus, Estonia, Finland, France, Germany, Greece, Lithuania, Luxembourg, the Netherlands, Poland, Portugal, Spain, and the United Kingdom (table 4). In contrast, it seems reasonably clear that parties in the government in favour of the Treaty were less enthusiastic

supporters of referendums (19 of a total of 34, table 2). This finding could possibly go towards supporting the hypothesis that is often set out whereby opposition parties are invariably more in favour of holding referendums, using them to try to limit the power of governments. There are some interesting examples of this in the Estonian Centre Party—which held the same number of seats as the largest party in the governmental coalition (28 seats)—and the Union for the Republic—Res Publica in Estonia and the Pan Hellenic Socialist Movement, which had 117 seats of a total of 300 in the Greek Parliament. It might well be that these three opposition parties called for a referendum to weaken the governments by pushing them onto the defensive on the issue.

**Table 3: Opposition parties opposed to the Constitutional Treaty and in favour of a referendum**

<b>Countries</b>	<b>Political parties</b>
Belgium	Flemish Interest (VB)
Czech Republic	Civic Democratic Party (ODS); Communist Party of Bohemia and Moravia (KSČM)
Finland	True Finns (PS)
France	French Communist Party (PCF)
Germany	Party of Democratic Socialism (PDS)
Greece	Communist Party of Greece (KKE); Coalition of the Left of Movements and Ecology (SYN)
Netherlands	Socialist Party (SP); List Pim Fortuyn (LDF)
Poland	Self-Defense (SO); League of Polish Families (LPR); Law and Justice (PiS)
Portugal	Portuguese Communist Party (PCP); Ecological Party The Greens (PEV); Left Bloc (BE)
Slovakia	Communist Party of Slovakia (KSS)
Spain	United Left (IU); Initiative for Catalonia Greens (ICV); Republican Left of Catalonia (ERC); Canarian Coalition (CC); Galician Nationalist Bloc (BNG); Aragonese Council (CHA); Basque Solidarity (EA); Navarra Yes (NA-Bai)
Sweden	Left Party (VP); Green Party (MP)
United Kingdom	Conservative Party (CP); Scottish National Party (SNP); Ulster Unionist Party (UUP); Democratic Unionist Party (DUP); Sinn Féin (SF)

In addition, small parties that are excluded from the legislative policy can push for a referendum ‘to draw attention to themselves and get established’ (Budge, 2001: 75), as, for example, some parties did in Lithuania—the Lithuanian Poles’ Electoral Alliance (2 out of a total of 141 seats), in Italy—the Green Federation (8 of a total of 630 seats), in Cyprus—the New Horizons, the Fighting Democratic Movement and the Ecological and Environmental Movement (all of them with 1 of a total of 56 seats), and finally in Germany—the Christian-Social Union in Bavaria (58 of a total of 603 seats) and Free Democratic Party, liberal (47 of a total of 603 seats). In sum, all these cases show some evidence of the fact that opposition parties may push for referendums to weaken the government or at least to try to limit its power.

An alternative explanation for the determinants underlying the call for a referendum looks at the ideological orientation of the different political parties (Marks *et al.*, 2002; Crum, 2005). An empirical analysis, however, suggests that ideology as a predictor of a party’s position on whether to hold a referendum does not fare as well as the party’s status as opposition or government party (see also Kurpas *et al.*, 2005: 11). This is not astonishing for the case of international treaties, since these treaties have been negotiated by the governments of the member states, irrespective of their ideological orientation.

**Table 4: Opposition parties in favour of the Constitutional Treaty and in favour of a referendum**

Countries	Political parties
Belgium	Humanist Democratic Centre (CDH); Confederated Ecologists (ECOLO); New Flemish Alliance (NVA)
Cyprus	New Horizons (NEO); Fighting Democratic Movement (ADIK); Ecological and Environmental Movement (KOP)
Estonia	Estonian Centre Party (K)
Finland	Green Alliance (VIHR)
France	Socialist Party (PS); Union for French Democracy (UDF); The Greens (VERTS); Radical Party of the Left (PRG)
Germany	Christian-Social Union in Bavaria (CSU); Free Democratic Party (FDP)
Greece	Pan Hellenic Socialist Movement (PASOK)
Lithuania	Liberal and Centre Union (LiCS)
Luxemburg	Socialist Worker's Party (LSAP); The Greens (GRENG); Action Comity for Democracy and Pensions Justice (ADR)
Netherlands	Labour Party (PvdA); Green Left (GL)
Spain	People's Party (PP); Convergence and Union of Catalonia (CiU); Basque National Party (PNV)
Poland	Polish People's Party (PSL)
Portugal	People's Party (PP)
United Kingdom	Liberal Democrats liberal (LD); Plaid Cymru-Party of Wales (PC); Social Democratic and Labour Party (SDLP)

In sum, this analysis of the database has convincingly shown that it is the parties in opposition that particularly favour referendums. In the following sections, I empirically study the decisions preceding the recent wave of referendums on the Constitutional Treaty, showing why some member states make a decision to hold referendums while others do not. Drawing on the database discussed above and the Eurobarometer poll, I will make some inferences about the politics underlying member states' decisions to hold referendums. At the same time, I will show the usefulness of the typology of referendums presented in the theoretical part (see table 1).

### *Plebiscitary referendums in Spain, Portugal, the United Kingdom and France*

This type of referendum is aimed at strengthening the power of the party or the parties in the government in the perspective of national elections. Examining the 23 countries in the EU, five states held elections between the phase of the negotiations and the ratification of the Constitutional Treaty. During the negotiations, national elections were held in Spain; and between the signing of the Treaty in October 2004 and the end of 2005 national elections were held in Germany, Poland, Portugal and the United Kingdom. Curiously, four of these countries called for a referendum on the Treaty. In the following, I will outline the particularities of each case.

The reason for the referendum in Poland was definitely based more on the impossibility of reaching a parliamentary majority to ratify the Constitutional Treaty than on the forthcoming national elections. As I will show below, the referendum in Poland was a *legislative* one. For its part, Germany has not held a referendum, the reason being that the constitution does not directly foresee referendums. In contrast, the elections in France that will be held in 2007 have been part of the political debate since the start of the phase of ratification. Therefore, the referendums held in Spain, Portugal, the United Kingdom and France of the Constitutional Treaty are *plebiscitary*, as I will now go on to show.

In Spain, the former government of the Popular Party declared its intention to hold a referendum before the end of the negotiations, not least influenced by the fact that national elections were due in March 2004. President José María Aznar's government had been sharply criticised for going against public opinion in areas such as educational reform and the war in Iraq. At this particular point in time, then, the call for a referendum could be sold as a pro-active sign of transparency, something that could

be used to his advantage in the perspective of the upcoming national elections. Despite this, the Popular Party lost the elections in March 2004, and the Spanish Socialist Workers' Party headed by José Luis Rodríguez Zapatero came to power. In its manifesto, too, the new government had promised a referendum on the Treaty, a decision that was in all likelihood taken to strengthen the party before the elections. Moreover, if the socialists had refused to hold a referendum, they would have been criticised just as the other political parties had (Hussain, 2005: 4). In fact, Zapatero reiterated his wish for Spain to be the first country to ratify the Constitutional Treaty on several occasions, since this would undoubtedly strengthen his reputation. The referendum was held on 20 February 2005, with Zapatero emerging as the winner (76.73%-17.24%).

In Portugal, the situation was not dissimilar. The former Prime Minister José Manuel Durão Barroso showed to be in favour of a referendum in a meeting of the National Council of the Social Democratic Party on 7 October 2003: 'It is essential to legitimize [the Constitutional Treaty] by the people before it takes effect' (quoted in Hussain, 2004: 7). After his resignation and the government crisis that led to early elections, the current Prime Minister Pedro Samprana Lopes also declared himself in favour of holding a referendum. This despite the fact that in order to call a referendum it would be necessary to carry out an extraordinary reform of the Constitution. This decision was based on the electoral advantages that it was predicted would be yielded for the new prime minister, given that, as in Spain, the predictions of the results were favourable (93% in favour - 5% opposed) (Eurobarometer, July 2004).

All the Portuguese political forces unanimously supported the decision to hold a referendum on the Constitutional Treaty. Only three minority parties, which held 22 seats of a total of 230, were opposed to the Treaty—the Communist Party, the Ecological Party, and the Left Bloc. In addition, if we take public opinion into consideration, it should be emphasized that the electorate is in general a strong supporter of the EU. More specifically, when Durão Barroso announced the referendum in June 2004, 81% of the Portuguese were in favour of the Treaty, while only 7% were against (Eurobarometer, July 2004). In April 2005, when the new Prime Minister Samprana confirmed his aim of calling a referendum, a lower figure of 59% declared in favour whereas now 12% expressed their opposition (Eurobarometer, July 2005). All the same, these percentages show us that the government was risking very little in holding a referendum. Rather, on the contrary, the possibility that a majority of citizens would ratify the treaty strengthened the position of parties in the different governments.

The United Kingdom is also a paradigmatic example of a *plebiscitary referendum*, since the national elections in May 2005 pushed Prime Minister Tony Blair to call for a referendum on the Constitutional Treaty (*Financial Times*, 30 May 2005: 6). During the year 2003, Blair had repeatedly expressed his unwillingness to hold a referendum on the Treaty. In a declaration, the British representative in the Convention even declared that the Treaty would be 'less important than the Treaty of Maastricht' (*Financial Times*, 20 May 2003: 23). Nevertheless, on 20 April 2004 Blair announced a referendum for the spring of 2006. What explains Blair's change of mind to make him support a referendum? This 'abrupt change of decision' even had potentially negative consequences for Blair, who was accused of having taken a 'U-turn' on this issue (*Financial Times*, 20 April 2004: 20). I suggest that Blair's weakness can be explained fairly straightforwardly. There were many internal divisions in the Labour Party over the issue, with some of the members speaking out against the Treaty; a group of 24 parliamentarians presented a motion in which they actually asked for a referendum (*Financial Times*, 21 May 2003: 5). As a result, some influential members of Blair's cabinet, including Gordon Brown, Jack Straw and John Prescott, were able to argue that a referendum was 'necessary'. The war on Iraq, moreover, had created a group of internal challengers to Blair. It was in this sense, then, that we can say that European politics became a central factor in the internal politics of the Labour Party.

More important still was the fact that the opposition parties rejected the Treaty; the strongest objections were made by the Conservative Party, closely followed by the Scottish National Party, the Ulster Unionist Party, the Democratic Unionist Party and Sinn Féin, which together held 186 seats of

the total of 659 in the Parliament. This, taken together with the generally negative public opinion, made the whole question of holding a referendum very risky. However, at the same time, all the political parties agreed on the need to hold one. As a result, Blair's hand was forced: despite the fact that it was unlikely that the Treaty would be ratified, he realised that a referendum would have to be held, and he hoped to be able to strengthen his position by doing this. However, his decision to leave the referendum to 2006, after the national elections, would at least allow him to avoid giving this issue added importance in the electoral campaign (*Financial Times*, 11 December 2004: 1; Wagner, 2005). As Bogdanor points out: 'Blair is like any other politician, a problem postponed is a problem resolved' (*Financial Times*, 24 April 2004: 10), since once he had accepted that the referendum would have to be held, the issue could no longer be exploited by the conservatives, particularly during the electoral campaign (Wilson, 2005).

In addition, the United Kingdom is one of the most euroskeptical countries in the EU, known for its 'red lines' on social policy, foreign policy and the single currency. This meant that the vague possibility that Blair might 'win' a referendum on a European issue would have left him in a more positive position in relation to the national political arena (Hussain, 2005: 4; *Financial Times*, 2 October 2004: 11). Finally, Blair adroitly left the responsibility to first ratify the Treaty in the hands of his European partners. The high probability that some member state would not succeed in ratifying the Treaty, as in fact went on to become the case in France and the Netherlands, thus left open the possibility of cancelling the referendum.

Again, as in the cases discussed above, the need to ratify the Constitutional Treaty in France had important repercussions for domestic politics. The President, Jacques Chirac, announced the decision to hold a referendum in a discourse coinciding with the celebration of the traditional Bastille Day speech on 14 June 2004. In the French Constitution, the President of the Republic has the right to call for a referendum substituting for the approval of the two chambers of parliament. As well as Chirac, some other leading French politicians such as Giscard d'Estaing, Pierre Moscovici and Xavier de Villepin also supported this decision (Closa, 2004: 5).<sup>8</sup> Moreover, a large majority of the political parties represented in the French parliament were in favour of the Constitutional Treaty. Only three spoke out against the Treaty, namely the French Communist Party, the Movement for France Party, and the Rally for France Party. Although these political parties have only a few seats in the parliament (29 out of a total of 557 seats), the internal discrepancies in the Socialist Party substantially increased the number of members of parliament who were likely to vote against the Treaty.<sup>9</sup> Furthermore, a broad majority supported the holding of a referendum although the Movement for France Party and the Rally for France Party argued that it was not important enough for a referendum to be called.<sup>10</sup>

Another important factor in Chirac's decision to hold a referendum was the fact that his *Union pour une Majorité Populaire* had lost a series of elections in the preceding year (European and regional elections in June 2004), while the socialists, in contrast, had increased their share of the vote. This trend threw the party's chances of winning the forthcoming national elections in 2007 into doubt. A French referendum was thus the 'perfect platform' for winning the elections in 2007 (*Financial Times*, 26 May 2005: 9). This plan was particularly attractive as at that time around two-thirds of the population were in favour of ratifying the Constitutional Treaty. Indeed, Chirac's strategy was initially successful in that two potential future leaders of the Socialist Party, namely François Hollande and Laurent Fabius, disagreed strongly over the Treaty. In an interview published in August 2004, Hollande declared that he was in favour of the Treaty (*Le Monde*, 2 December 2004), legitimizing this

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8 Giscard D'Estaing declared that 'to consult the French people on this subject is a reasonable and positive risk and it is right to take it' (quoted in Hussain, 2004: 3).

9 Similar discrepancies among the same political parties occurred during the ratification process of the Treaty of Maastricht. For a study of these developments, see for example: Keraudren and Dubois (1994).

10 These political parties had 7 and 1 seats respectively of the total of the 577 in the parliament.

position by maintaining that he was preparing ‘for the exercise of his responsibilities’ in the future. Fabius and his defenders viewed this declaration as a challenge and started to attack Hollande.

In Fabius’ opinion, the Treaty was too liberal and needed some renegotiation in order to give more importance to the social dimension (*Le Monde*, 30 November 2004). Hollande’s argument, in contrast, was that saying ‘no’ to the Treaty would be detrimental to the socialists themselves and would not help his party to win the next Presidential elections. In the end, this conflict culminated in an internal referendum in the Socialist Party in which the group around Hollande carried the victory with 58.8% of the Socialists voting in favour of the Treaty (*Le Monde*, 1 December 2004).<sup>11</sup>

Although initially successful, it soon became clear that Chirac’s decision to hold a referendum was no longer advantageous for his own political future. With the no-camp starting a vigorous public relations campaign, the public mood shifted and on 29 May 2005 the French electorate said ‘no’ to the Constitutional Treaty. Finally, ‘Mr. Chirac’s hopes of using the referendum vote as a springboard for running for a third presidential term in 2007 have now been dashed’ (*Financial Times*, 17 June 2005: 9). In sum, the evidence demonstrates that Chirac took the decision to hold a referendum because he thought that this would strengthen his position in relation to the elections. Overall, the analysis of the cases of Spain, Portugal, the United Kingdom and France reveals that these countries held referendums for *plebiscitary* reasons.

### ***Conflict-resolution referendums in the Netherlands (and almost in Belgium)***

Referendums can resolve disputes within a party that is in power or the parties in a coalition by placing the final decision in the hands of public opinion. Considering the position of all the political parties that occupy the governments in the 23 countries under analysis, it can be seen that certain divergences of opinion over the Treaty were evident in the governments of Austria, Belgium, Cyprus, Slovakia, Hungary, Italy, Latvia and the Netherlands. Within this group, however, only the Netherlands called for a referendum, while in Belgium the decision against a referendum was very narrow.

It was the ‘volatile political climate’ in the Netherlands that explains the unusual decision to hold a referendum on the Constitutional Treaty (*Financial Times*, 17 February 2005: 15). In particular, it was the disputes within the political parties in the coalition with respect to their views on the need to subject the Treaty to a national referendum and the weakened government that forced Prime Minister Peter Balkenende to call a referendum on 10 September 2003, although he did not initially want to do so. The political situation at that time was the following: Balkenende’s party, the Christian Democratic Appeal Party, which opposed a referendum, had 44 seats. A referendum was supported by the other two parties forming the coalition, the People’s Party for Freedom and Democracy and the Democrats 66, which held 34 seats of the total of the 78 controlled by the coalition. These two parties’ pressure finally forced Balkenende to place the decision on the Treaty in the hands of the electorate.

As expected, these internal divisions in the governmental coalition were also used by opposition parties to push for a referendum. Although they argued for the need to give legitimacy to the Treaty (Hussain, 2004: 3), all the evidence shows that their decision was based more on the opportunity to make trouble for the government and to weaken it if the Treaty were to be vetoed. In short, the referendum in the Netherlands to ratify the Constitutional Treaty on 1 June 2005 attempted to resolve the conflicts between the parties in the government, and this underlines the importance that domestic politics plays in the decision to hold a referendum.

Moving on, although the Belgian Prime Minister Guy Verhofstadt stated that he wanted to hold a referendum on the Constitutional Treaty, the split in the governmental coalition led to the ratification of the Treaty only in Parliament. Two parties in the coalition supported the proposal for a referendum—the Flemish Liberals and Democrats and the Reform Movement—49 seats out of a total

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11 Of the party members, 41.000 voted against and 56.000 in favour of the Treaty (*Le Monde*, 4 December 2004).

of 97 controlled by the coalition in the Belgian Parliament; whereas the Socialist Party and Spirit, which opposed a referendum, held 48 seats.<sup>12</sup> Despite extensive discussions until January 2005, Verhofstadt was unable to gain the necessary support to hold a referendum. In this case, the conflict within the parties in the government was not resolved by means of holding a referendum, unlike the case of the Netherlands.

Likewise, in other countries different positions within the parties in government were perceptible with respect to the Constitutional Treaty and the holding of a referendum, making them part of this group of countries, although in the end they decided not to hold a referendum. In Italy, opposition to the Treaty and, at the same time, to the demand for a referendum came from some of the parties of the coalition, the League North, which held 30 seats out of the total of the 368 controlled by the governing coalition. However, the conflict that this small party generated was not strong enough to force the government to hold a referendum. In addition, it should be mentioned that the Italian Constitution does not provide for referendums to ratify international treaties.<sup>13</sup>

Moreover, there are some cases among the EU member states in which government parties opposed the Treaty but also the holding of a referendum. In Cyprus, the Progressive Party of Working People, which controlled the majority of seats in the coalition—20 out of a total of 33 seats, opposed the Treaty, as did the Centre Party-Latvian Peasants Union in Latvia (8 out of a total of 66 seats). As a result, these countries decided to ratify the Treaty in their parliaments. Exceptionally, two government parties called for referendums in Latvia and Hungary—the People's Party (20 out of a total of 66 seats) and the Union of Free Democrats (20 out of a total of 198 seats) respectively; these demands were not, however, taken into serious consideration. Finally, in Austria, the two parties of the governmental coalition declared in favour of the Treaty although the Freedom Party called for a referendum, claiming that this was fundamental for the country (Sommeregger, 2005). Nevertheless, it seems that this demand was based more on the need for legitimation of the own position among the party's main constituency.

### ***Legislative referendums in the Czech Republic and Poland***

When divisions in a parliament are powerful enough to frustrate ratification, referendums can become a necessary tool for ratifying a treaty. The two referendums on the Constitutional Treaty in the Czech Republic and in Poland fall into this category. The Czech Republic is a special case since the three parties in government declared in favour of the Constitutional Treaty—the Czech Social Democratic Party, the Christian and Democratic Union and the Freedom Union - Democratic Union, which together held 101 out of a total of 368 seats. The Civic Democratic Party and the Communist Party of Bohemia and Moravia, which opposed the Treaty, held 99 seats. All of these parties supported the holding of a referendum, expecting to resolve the split over the Treaty by doing so (Hussain 2004: 3). The need for a referendum was also expressed by the founder of the Civic Democratic Party, Vaclav Klaus, who declared that the particular circumstances made it necessary for a referendum to be called. In addition, these divisions among the political parties went hand in hand with a divided public opinion (39% in favour - 20% opposed) (Eurobarometer, March 2005). Given this situation, Vladimir Spidla's government decided to hold a referendum on the Treaty in order to avoid a parliamentary defeat.

In Poland, the political situation was quite similar because the political parties were also split over the issue of the Treaty, the difficulties over reaching a favourable parliamentary majority making a referendum necessary (*Financial Times*, 26 October 2004: 4). The President of Poland declared that it was better to hold a referendum 'rather than risk defeat in a badly divided parliament' (*Financial Times*, 28 April 2004: 9). As in the Czech Republic, in Poland all the political parties, with the exception of three parties—the 'Self-Defence', the League of Polish Families and the Law and Justice

12 For more information about the political situation in Belgium see Rigo (2004).

13 For a general overview of the constitutional rules on referendums in Italy see Uleri (2002).

Party, were in favour of holding a referendum. The initial idea was to make the referendum coincide with the national elections in autumn 2005; however, after the negative results in France and the Netherlands the Polish referendum was postponed. Although the proximity with the elections in Poland might have had some influence on the positioning of the different parties with respect to the Treaty, the lack of a parliamentary majority was unquestionably the main reason for holding a referendum. The situation described in the Parliaments of the Czech Republic and Poland shows that *legislative referendums* are in some cases the only way to ratify a Treaty.

### ***A legitimating referendum in Luxembourg***

This category of referendums includes those that can enable the organizers to legitimate a decision that has already been approved by a government. Nevertheless, as has been shown here, most of the referendums to ratify the Constitutional Treaty were *plebiscitary*, *conflict-resolution* and *legislative*. The only case that does not form part of one of these categories and which seems to have had a legitimating purpose, having been pushed by a cohesive government that was strongly in favour of the Treaty, with the support of all other political forces (except for one very small party of the extreme left, 'the Lefties', which was not represented in the Parliament) is that of the referendum held in Luxembourg. Public opinion was also favourable, with only 12% opposing the Treaty in November 2004 (57% in favour) (Eurobarometer, March 2005). The referendum was the first to be held in Luxembourg since 1937. In spite of the legal difficulties encountered, Prime Minister Jean-Claude Juncker announced that the referendum would be held on 27 June 2003; at the same time, he linked his political future to the outcome of the referendum. In the end, 56.52% of Luxembourg citizens voted in favour of the Treaty.

Why did no other countries use this opportunity to legitimate EU decisions? Although it is difficult to determine the reasons, some specific factors may go towards explaining the decision that fifteen countries did not hold a referendum. First, the constitutions of Germany, Estonia and Italy do not foresee a referendum to ratify international treaties. Second, most of the new member states held referendums to adhere to the EU in 2003 and coinciding with the negotiation of the Constitutional Treaty, some of them explicitly declaring that these referendums implied acceptance by the public of the Treaty (Slovenia, Estonia, Malta and Latvia). In Austria, Chancellor Wolfgang Schüssel declared against a national referendum in his country but in favour of a Euro-referendum.

The fear that a referendum might fail is the most convincing reason in the other cases. In Sweden, the Social Democratic Workers' Party, which had the most votes in the parliament (although it did not have an absolute majority), obtained the necessary support to pass the Treaty without referendum. Only two minority parties came out against the Treaty and supported a referendum, the Left Party and the Green Party, which held 47 out of a total of 349 seats in the Parliament. The fact that a large majority supported the government can be explained by the high cost that a referendum on European issues could have had for the supporters' parties. In this regard, it should be remembered that the referendum to adhere to the EU in 1994 resulted in a vote of only 52.3% in favour, while the referendum on the entrance to the Euro area had failed (56%-44%). Still more important is the data of the Eurobarometer poll (July 2004), in which only 50% of the citizens were in favour of the Constitutional Treaty, whereas 26% showed themselves to be opposed to it. The risk of a failed referendum in Sweden explains to a great extent why opposition parties supported the government and avoided holding a referendum (Herolf, 2005: 5). Nevertheless, the rejection of the Treaty in the Dutch and French referendums has stimulated new demands.

The situation in Malta is quite similar since the only two parties that are represented in Parliament are in favour of the Treaty and against the holding of a referendum. This may be due partly to the fact that the referendum to adhere to the EU was approved with only 53.6% in favour (Closa, 2004: 3; Muscat, 2005: 6). In addition, according to the Eurobarometer (March 2005), only 31% of the citizens supported the Treaty whereas 13% were opposed, which means that a high percentage of voters was

undecided and, therefore, the risk of a negative result was considerable. The position of political actors in Sweden and Malta against a referendum on the Treaty thus supports the argument that governments prefer not to hold referendums when the results are uncertain.

In sum, it has been shown above that political actors often hold referendums on European matters for strategic reasons, to strengthen their position in the domestic context rather than to correct the democratic deficit of the EU. The analysis of the eight referendums confirms that most of them were held for *plebiscitary*, *conflict-resolution* or *legislative* reasons and only one for a *legitimizing* reason. Moreover, the analysis of a database with the positions of all the political parties represented in the national parliaments convincingly shows that opposition parties nearly always favour referendums. This finding corroborates the classic explanation that referendums are weapons in the hands of governments, but also of the opposition parties to protect their position or to empower them in the national political system.

## Conclusions

My objective in this paper has been to analyse the reasons why some member states decide to hold a referendum on the Constitutional Treaty. I have suggested that in most countries the decision to submit the treaty to a referendum resulted from domestic political factors rather than from a desire to enhance the legitimacy of the EU. The empirical analysis using a database with the positions of all the political parties represented in the national parliaments of the member states with respect to the Constitutional Treaty and the holding of a referendum supported this prediction. In a first part of the paper, I showed that particularly opposition parties tend to favour referendums. In part, this is explained by the fact that opposition parties tend to be less favourable to the Treaty. Nevertheless, even where opposition parties support the Treaty, they often push for a referendum whenever they see a possibility of weakening the government and of strengthening their position in the national political system. In contrast, parties in government tend to be less favourable to a referendum. In a second part, I have provided some more detailed evidence on the political processes in 23 EU member countries. This analysis revealed the prevalence of referendums with a plebiscitary, conflict-resolution, or legislative purpose. As a result, this finding casts doubt on the alternative hypothesis that the need to legitimize European decisions was the main motivation behind the decisions to hold referendums. Indeed, only Luxembourg seems to have held a truly legitimizing referendum on the Constitutional Treaty.

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