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## **The Status of the Debate on Institutional Reform in European Union Member States (update – July 2007)**

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## Introduction

This review of the positions of European Union Member States on the institutional reform supplements the report published by the Polish Institute of International Affairs in May 2007, prior to the meeting of the European Council that was to decide on the fate of the Constitutional Treaty (Treaty Establishing a Constitution for Europe, TCE) and, in broader terms, on the institutional reform.<sup>1</sup> This paper discusses the developments until the June meeting of the European Council although, in some interesting cases (e.g. the Czech Republic), the paper also tackles the issues that emerged following the end of the Council's session.

Surprisingly enough for many commentators, the European Council of June 2007 agreed on an unprecedented, extremely detailed mandate for the Intergovernmental Conference (IGC).<sup>2</sup> The primary point of contention during the negotiations was the Polish proposal for the voting weight system to be based on the square root of the population of individual states. A sweeping majority of Member States opposed this proposal.

The listing of changes to the positions of Member States on the issue over the last weeks, presented below, indicates that a significant majority of Member States still advocates the retention of the substance of the Constitutional Treaty. This was made possible owing to the evolving position of France, headed by its new president Nicolas Sarkozy. His election campaign, during which he expressed opinions clearly in favour of a new mini-treaty, gave him a democratic mandate to put forward the relevant proposal during the European Council meeting. Not only did France return to Europe, but it also immediately attempted to navigate it.

The listing of the positions clearly shows that there has been a rift among the states of Central and Eastern Europe in terms of their attitude towards Polish proposals presented at the European Council. Certain states, as argued by their top politicians, such as the Prime Minister or the Foreign Affairs Minister, were overtly critical about the Polish attitude as being not only "non-European," but also at variance with the interests of those states. Two states expressed their understanding regarding the Polish proposals, namely the Czech Republic, supporting them to a considerable degree, although not unconditionally, and Lithuania, supporting the solutions to some degree only.

An important conclusion that can be drawn from this review is the projection of the method that the Intergovernmental Conference, headed by Portugal, will follow. Lisbon seeks to finish the negotiations already in October 2007. This means that the mandate for the IGC is construed as binding in terms of political solutions, and the IGC work will consist in the legal polishing of the agreement and reaching a consensus on individual provisions of the future treaty. This report on the positions of individual states suggests that a significant level of consent to this scenario is present, namely speedy and peaceful negotiations on rather uncontroversial legal details. It does not follow from the report that the states whose positions are covered here sought to delay the IGC's work. Therefore, an attempt to put an important and controversial issue on the agenda of the Conference is likely to meet with incomprehension.

\* \* \*

Annex I to this report contains a summary of the problems and positions of certain Member States, prepared by German negotiators for the purpose of negotiations carried out by the German presidency before the European Council summit. They were provided to the PISM for publishing by an analyst and observer of the work of the German presidency, Andreas Maurer, Ph.D., of the Berlin Stiftung Wissenschaft und Politik (SWP).

\* \* \*

Annex II presents an analytical questionnaire, forming the basis for the work of this paper, and of the original report published by the PISM in May 2007. The questionnaire only partially lost its analytical significance, as a result of the departure from the concept of the continued ratification of the Constitutional Treaty since, in the period under discussion, that is in the second half of the German presidency, when the

<sup>1</sup> See L. Jesień (ed.), "Current Status of Debate on Constitutional Treaty in European States," *Materiały Studialne* (PISM) No. 5, April 2007.

<sup>2</sup> *Presidency conclusions*, European Council, Brussels, 21-22 June 2007, 11177/07, Annex I.

states were modifying their positions in connection with the meeting of the European Council in June 2007, the questionnaire remained largely relevant. Therefore, it represents a frame of reference for this update.

## Austria

In early 2007, the government of Chancellor Alfred Gusenbauer and President Heinz Fischer advocated a position that the Constitutional Treaty is the best attempt to remedy the deficiencies marring the European Union. The TCE streamlines the Community structures and allows for building a strong, effective and democratic Union that could play a major role in the international arena.<sup>3</sup> Austrian authorities argued that in the case of changes to the treaty being negotiated, the present text should be used as the base document. The most desirable option would be to continue with the ratification process and complete it by the end of 2009 at the latest. Austria indicated that the TCE was signed by all EU Member States which, pursuant to the Vienna Convention on the Law of Treaties, is equivalent to their obligation to initiate the ratification procedure. Austria admitted, however, that what needed to be considered was the citizens' concerns communicated in the referendums in France and the Netherlands, and expressed the need for a compromise solution. Consequently, the Austrian government allows for minor changes to the TCE, such as amendments or protocols, if all EU members agree, notably those that have ratified the treaty. The core contents of the treaty should be retained on the grounds that two-thirds of the Community members have already ratified it.<sup>4</sup> The president, on the other hand, allowed for partial solutions, yet he was not specific on the concept.<sup>5</sup> Negotiating the document from scratch was ruled out by Austria, as it would delay EU consolidation and could threaten the entire integration project.

The Austrian government did not materially change its position on the treaty before the June summit of the European Council in Brussels. However, Austria specified what it believed to be a compromise or, rather, which components of the TCE it could sacrifice. Simultaneously, it supported the German presidency in its pursuit to achieve the set objective of approving the "road map," providing for the adoption of the new document towards the end of the year (Austrian politicians were already referring to the "Lisbon Treaty"), to be ratified before the European Parliament elections in 2009.<sup>6</sup>

Austria acknowledged a potential limitation of the number of areas where decisions should be taken by a qualified majority voting. Austria also agreed to abandon EU symbolism typical of a state, including the names (it proposed the name "reforming treaty" instead of "constitution"). The state was open to proposals for the preamble wording, as it did not consider it crucial. However, it called for the retention of the Charter of Fundamental Rights, since its removal would result in a weaker bargaining position of the EU as an organisation that supports respecting human rights all over the world. It did not find it justified to change the TCE regulations on the enhanced role of national parliaments (owing to the simultaneous strengthening of the subsidiarity principle) and on the Union's Foreign Affairs Minister. In fact, Austria supported all institutional solutions provided for in the Constitutional Treaty and those provisions that reduce the democratic deficit in the EU (citizens' legislative initiative). The state also saw no reason to amend the voting system in the EU Council. According to Austria, the double majority system is a result of long and painstaking negotiations and should be adhered to. As compared to the Nice system, it ensures a balance between the equality of states and the equality of citizens. As advocated by Austria, the treaty should also provide for enhanced cooperation in social policy.<sup>7</sup> At the same time, Austria proposed supplementing the

<sup>3</sup> See Letter by the Republic of Austria Ambassador to Poland Alfred Längle, No. 8.490.04/2/2007, 14.02.2007, author's own records: "Will von Schweiz lernen," Bundeskanzler Gusenbauer im Interview mit der Schweizer Tageszeitung *Der Bund*, 12.02.2007, [www.bundeskanzleramt.at/site/cob\\_20194/currentpage\\_0/5374/default.aspx](http://www.bundeskanzleramt.at/site/cob_20194/currentpage_0/5374/default.aspx). It should be underscored that the New Council of Ministers continues the TCE policy of the previous government headed by Wolfgang Schüssel.

<sup>4</sup> See *EU-25/27 Watch*, No. 4, Institut für Europäische Politik, Bonn, January 2007, [www.iep-berlin.de/publik/EU25-Watch/EU-25\\_Watch.pdf](http://www.iep-berlin.de/publik/EU25-Watch/EU-25_Watch.pdf), p. 72; answers to PISM questionnaire, 05.03.2007, author's own records.

<sup>5</sup> See "Bei der EU-Verfassung sollte man nicht "alles oder nichts" sagen," *Oberösterreichische Nachrichten*, 10.01.2006, [www.hofburg.at/rte/upload/pdf\\_interview/060110-ooen.pdf](http://www.hofburg.at/rte/upload/pdf_interview/060110-ooen.pdf).

<sup>6</sup> See "Konsens zwischen Gusenbauer und Merkel," *Kurier*, 29.05.2007, [www.kurier.at/nachrichten/ausland/79085.php](http://www.kurier.at/nachrichten/ausland/79085.php); W. Böhm, T. Vieregge, "Verfassung: Gusenbauer muss Merkel helfen," *Die Presse*, 29.05.2007, [www.diepresse.com/home/politik/eu/307101/index.do](http://www.diepresse.com/home/politik/eu/307101/index.do).

<sup>7</sup> See *Gusenbauer zu EU-Verfassung: Inhalt wichtiger als die Form*, SPÖ-Parlamentsklub, 06.06.2007, [www.ots.at/presseaussendung.php?schluessel=OTS\\_20070606\\_OTSO127&ch=politik](http://www.ots.at/presseaussendung.php?schluessel=OTS_20070606_OTSO127&ch=politik); "Gusenbauer: EU-Verfassung "wieder flottmachen"," *Der Standard*, 12.05.2007, [http://derstandard.at/?url=/?id=2878934%26\\_seite=2%26sap=2](http://derstandard.at/?url=/?id=2878934%26_seite=2%26sap=2).

treaty with issues that would meet citizens' expectations, such as the energy policy and internal security.<sup>8</sup> Vienna also supported the specification in the treaty of the terms of accession for prospective European Union Members, similar to the Netherlands.

In Austria, the TCE was present in the public debate, also owing to the media coverage. The coalition parties were in favour of it, although the Social Democratic Party of Austria (Sozialdemokratische Partei Österreichs, SPÖ) was more willing to introduce amendments than the Austrian People's Party (Österreichische Volkspartei, ÖVP), an avid supporter of the "Europe of projects" as the solution for the present stage.<sup>9</sup> The Green (Die Grünen) advocated negotiations on the basis of the TCE, with a new Convention (joined by the civil society) to decompose the text into constitutional matters and Community policies. The grouping stated that the text should be ratified in 2009 in a Europe-wide referendum. The Freedom Party of Austria (Freiheitliche Partei Österreichs, FPÖ) demanded a new text to be ratified in Austria also by a referendum. Business organisations supported the government position, while trade unions demanded the renegotiation of the TCE or preserving the Treaty of Nice. As argued by the unions, the building of the social union should appear higher on the agenda.<sup>10</sup>

Eurobarometer survey of June 2007 showed that 49% of Austrians supported the TCE, while 34% of respondents were of the opposite opinion (in December 2006, these figures were at 51% and 39% respectively). Among reasons to support the treaty, arguments most often referred to were that the adoption of the document would make EU more competitive, stronger and more democratic. Arguments of effectiveness and transparency of the EU were quoted less frequently.<sup>11</sup>

## Belgium

Belgium views itself as the state that defends European interests, which are prioritised over national interests. The support for political integration and the Community method is a permanent fixture in the European policy of Belgium.<sup>12</sup>

In terms of the EU treaty and institutional reforms, Belgium perceives itself as a state that contributes to deeper integration. The overriding objective of the Belgian presidency in 2001 was to provide a fresh impetus for the debate on the future of the EU. It was the Laeken Declaration of that period, adopted on 14-15 December 2001, that was the basis for the work on the TCE. In comparison to the declaration appended to the Treaty of Nice that represented the initial stimulus for the discussion on the next treaty reform, the Belgian presidency managed to expand the scope of the debate on the future of the EU. In addition, it was in Laeken where an innovative formula for the treaty revision was agreed on, part of which became the broadly legitimised European Convention.<sup>13</sup>

In June 2005, following the failure of the referendums in France and the Netherlands, Belgium vehemently reiterated its support for the TCE, referring to its commitment to the European integration project, and supported a continued ratification process. Foreign Affairs Minister Karel De Gucht argued that

<sup>8</sup> See "Plassnik: "Werkzeuge der Union zeitgemäß ergänzen und präzisieren", *ÖJ-Österreich-Woche*, 05.06.2007–11.06.2007, [www.oe-journal.at/Aktuelles/!2007/0607/W1/40606PeuVerfassung.htm](http://www.oe-journal.at/Aktuelles/!2007/0607/W1/40606PeuVerfassung.htm); A. Szymański, "Austria," [in:] K.A. Wojtaszczyk, M. Poboży, A. Wierchowska (eds.), *Ratyfikacja traktatów wspólnotowych w państwach członkowskich Unii Europejskiej*, Art & Archaeology, Warszawa-Ciechanów 2006, pp. 28-29.

<sup>9</sup> See A. Maurer, D. Schwarzer, "Alle Karten auf den Tisch!," *SWP-Aktuell*, June 2006, No. 28, p. 9; *Kursbuch Zukunft. Modern, Sicher, Menschlich*, [www.oevp.at/download/Kursbuch\\_lang\\_web.pdf](http://www.oevp.at/download/Kursbuch_lang_web.pdf), p. 10.

<sup>10</sup> See *Zeit für Grün. Das Grüne Programm*, [www.gruene.at/uploads/media/GruenesWahlprogramm2006\\_04.pdf](http://www.gruene.at/uploads/media/GruenesWahlprogramm2006_04.pdf), p. 23; *Strache gegen Wiederbelebung der EU-Verfassung*, 07.03.2007, [www.bmaa.gv.at/view.php3?f\\_id=12342&LNG=de&version=](http://www.bmaa.gv.at/view.php3?f_id=12342&LNG=de&version=); *EU-25/27 Watch*, *op.cit.*, p. 72.

<sup>11</sup> Figures from: *Eurobarometer 67, Public Opinion in the European Union. First Results*, June 2007, [http://ec.europa.eu/public\\_opinion/archives/eb/eb67/eb\\_67\\_first\\_en.pdf](http://ec.europa.eu/public_opinion/archives/eb/eb67/eb_67_first_en.pdf), p. 77; *Eurobarometer 66, Die öffentliche Meinung in der Europäischen Union. Nationaler Bericht, Österreich*, Herbst 2006, [http://ec.europa.eu/public\\_opinion/archives/eb/eb66/eb66\\_at\\_nat.pdf](http://ec.europa.eu/public_opinion/archives/eb/eb66/eb66_at_nat.pdf), pp. 43-49; *IEP-Ratifizierungssurvey*, Institut für Europäische Politik, 10.08.2006, [www.iep-berlin.de/fileadmin/website/09\\_Publikationen/Sonstige/Laenderueberblick.pdf](http://www.iep-berlin.de/fileadmin/website/09_Publikationen/Sonstige/Laenderueberblick.pdf), p. 22.

<sup>12</sup> S. Boldrini, B. Galer, "La politique européenne en Belgique: particularités institutionnelles et constantes européennes," [in:] *Les cahiers du CEPESS: L'Europe à la croisée des chemins: quelles politiques européennes pour la Belgique?*, 01.04.2007, <http://www.lecdh.be/media/spotavubroch.pdf>, pp. 26-31.

<sup>13</sup> H. Vos, E. Baillieux, *The Belgian Presidency and the post-Nice process after Laeken*, Zentrum für Europäische Integrationsforschung, Discussion Paper C 102 2002.

the rejection of the TCE would deprive the enlarged Union of the potential to act effectively, and he noted that the treaty emerged as a result of a democratic and far-reaching debate on the future of the EU.<sup>14</sup>

Similarly, during the "reflection period" of 2005-2007, Belgium continued its traditional European policy. The failures of the referendum were not interpreted as an objection to the integration processes. Quite the contrary, only the "Europe plus," that is deepened integration, was considered to be the solution for the crisis. The main reason for eroding confidence in the Union was considered to be poor efficiency of the EU, resulting from the dominance of the intergovernmental model, e.g. in the framework of the Lisbon strategy, or the EU external policy. A broader application of the Community method was viewed as the basis for the EU reform.<sup>15</sup>

Belgium consistently supported the retention of the most important the TCE provisions, indicating that any new proposal for a treaty reform should go at least as far as the changes proposed in the TCE. Therefore, Belgium clearly rejected the cherry-picking option, based on which the new treaty would contain only some elements of the TCE and would preserve the status quo, that is the status compliant with the Nice Treaty.<sup>16</sup>

As a solution to remedy the crisis, Belgium suggested the continuation of the ratification process and implementing specific projects, owing to which the confidence of the citizens in the EU could be restored.<sup>17</sup> The need for a "new economic strategy" was underscored in the first place, that is the enhancement of social and economic policies at the European level. One of their proposals was to adopt a new mode of cooperation within the Lisbon Strategy, which would be more binding for Member States.<sup>18</sup> In addition, Belgium supported the extension of the Community method to cover the Common Foreign and Security Policy (CFSP).<sup>19</sup> The need for deeper integration in the area of research and development, transport, and environmental protection was also referred to, as well as cooperation in the area of freedom, justice and security.<sup>20</sup>

During the "reflection period," Belgium often brought up the issue of enhanced cooperation, or the Europe of different speeds, as the strategy for integration development. Prime Minister Guy Verhofstadt, declaring himself in favour of the continued ratification process, suggested that it might be necessary to refer to the formula stipulated in 30<sup>th</sup> Declaration, annexed to the TCE,<sup>21</sup> and to continue EU reforms without the states that "cause difficulties."<sup>22</sup>

An important opinion in the debate over the future of the TCE, and, more broadly, the future of the EU, was the presentation of the concept of the United States of Europe by Verhofstadt at the beginning of 2006. Verhofstadt put forward an idea of integration based on two centres: the political core built around the

<sup>14</sup> K. De Gucht, *Deliver in order to win the debate*, European University Institute, Florence, 06.07.2005, [www.diplomatie.be/EN/press/speechdetails.asp?TEXTID=37143](http://www.diplomatie.be/EN/press/speechdetails.asp?TEXTID=37143).

<sup>15</sup> Rapport fait au nom du comité d'avis fédéral chargé des questions européennes, Sénat et Chambre des représentants de Belgique, Document législatif nr 3-1262/1, [www.senate.be/www/?Mival=/dossier&LEG=3&NR=1262&LANG=fr](http://www.senate.be/www/?Mival=/dossier&LEG=3&NR=1262&LANG=fr); Guy Verhofstadt at the European Parliament, Brussels, 31.05.2006, <http://premier.fgov.be/fr/premier/speeches/2006/18111.html>.

<sup>16</sup> Guy Verhofstadt at the Center for Strategic and International Studies, Washington, 18.01.2006, [www.diplomatie.be/EN/press/speechdetails.asp?TEXTID=47831](http://www.diplomatie.be/EN/press/speechdetails.asp?TEXTID=47831); La déclaration de politique fédérale, 17.10.2006, [www.premier.fgov.be/fr/politics/20061016\\_declaration\\_pol\\_fed\\_relations\\_internat\\_fr.pdf](http://www.premier.fgov.be/fr/politics/20061016_declaration_pol_fed_relations_internat_fr.pdf), Guy Verhofstadt at the European Parliament, *op.cit.*; S. Boldrini, B. Galer, *La politique européenne en Belgique*, *op.cit.*

<sup>17</sup> La déclaration de politique fédérale, *op.cit.*; K. De Gucht, *Deliver in order to win the debate*, *op.cit.*; K. De Gucht, *Enlargement: Past and Future*, Warsaw University, Warsaw, 23.04.2006, [www.diplomatie.be/EN/press/speechdetails.asp?TEXTID=53929](http://www.diplomatie.be/EN/press/speechdetails.asp?TEXTID=53929).

<sup>18</sup> La déclaration de politique fédérale, *op.cit.*; Guy Verhofstadt at the European Parliament, *op.cit.*

<sup>19</sup> K. De Gucht, *Shifting EU foreign policy into higher gear*, College of Europe, Bruges, 15.11.2006, [www.diplomatie.be/EN/press/speechdetails.asp?TEXTID=59483](http://www.diplomatie.be/EN/press/speechdetails.asp?TEXTID=59483).

<sup>20</sup> La déclaration de politique fédérale, *op.cit.*; K. De Gucht, *Enlargement: Past and Future*, *op.cit.*; Guy Verhofstadt at the Center for Strategic and International Studies, *op.cit.*

<sup>21</sup> "If, two years after the signature of the Treaty establishing a Constitution for Europe, four-fifths of Member States have ratified it and one or more Member States have encountered difficulties in proceeding with ratification, the matter will be referred to the European Council."

<sup>22</sup> Guy Verhofstadt at the European Parliament, *op.cit.*; Rapport fait au nom du comité d'avis fédéral chargé des questions européennes, Sénat et Chambre des représentants de Belgique, Document législatif n° 3-1262/1, *op.cit.*; K. De Gucht, *Deliver in order to win the debate*, *op.cit.*; La déclaration de politique fédérale, *op.cit.*

Eurozone, which he called the “United States of Europe,” and a more loosely integrated confederation of states.<sup>23</sup>

On the eve of the German presidency, in December 2006, Belgium upheld its position. Verhofstadt argued that his country would attempt to retain crucial provisions of the TCE, at the same time introducing proposals for enhanced cooperation in individual areas to the debate.<sup>24</sup>

Regarding the mini-treaty concept, disseminated by the then candidate in the French presidential elections Nicolas Sarkozy, Belgium adopted a reluctant position. It offered its vehement support for the initiative of the “friends of the Constitution” who, in January 2007, met in Madrid to oppose minimalist solutions and underscore that the new treaty should not only be based on the compromise worked out in the TCE, but also deepen integration and offer more ambitious and innovative solutions.<sup>25</sup>

Thus, it came as no surprise that, during the period preceding the June meeting of the European Council, Belgium clearly indicated that the most important task would be to retain the essence of the TCE. In addition, it offered its support for retaining EU symbols in the new treaty, enhancing the social dimension of the EU, enhancing economic policy in the Eurozone and developing the provisions on enhanced cooperation.

On 22 June 2007, at the European Council Meeting, Belgium and six other states (Italy, Spain, Greece, Luxembourg, Slovenia and Hungary) opposed the compromise offered by the German presidency, believing that it failed to incorporate to a satisfactory degree the crucial provisions of the TCE. Belgium protested against the Dutch proposal to empower national parliaments with the right to block the proposals for the Community legal acts. Other reservations brought up by Belgium referred to the dilution of the provision on the priority of the Community law, the declaration on public interest services and concessions in the area of common foreign policy. Belgium managed to win a favourable change of the provision concerning the possibility to initiate enhanced cooperation (in order to launch enhanced cooperation, a group of nine Member States is required, rather than one-third of Member States, as provided by the TCE).

Belgian diplomats were overtly disappointed with the passivity of most of the Member States that ratified the TCE. At the European Council summit of June 2007, those states failed to form a common bloc that would defend the TCE provisions, and they also did not push for any new provisions, contrary to the declarations made in Madrid in January. The Belgians felt isolated in their pursuit of European interests.

The Intergovernmental Conference mandate, worked out by the European Council, met with moderate satisfaction. On the one hand, it was underscored that reaching an agreement that retains the essence of the TCE and opens up opportunities for adopting the new treaty before 2009 was a success. On the other hand, however, it was indicated that the revision treaty would be less straightforward and more complicated than the TCE, and concessions in favour of the Netherlands, France, the United Kingdom and Poland should be viewed as negative developments.

Belgium criticised the atmosphere at the Council’s summit. The conduct of negotiations by the Polish delegation also met with criticism, similar to the minimalist attitude of the United Kingdom. An opinion was expressed that the confrontational nature of the June summit went on to show the present condition of the Union and the tension caused by the diversity within the enlarged EU. From this standpoint, the compromise reached gives Europe some time to “digest” the enlargement. Deeper integration by enhanced cooperation, or the Europe of different speeds, appears to be the way forward for the developing integration.

## Bulgaria

Bulgaria belongs to the group of states that support the speedy integration of the European Union and are happy with institutional regulations offered by the Constitutional Treaty. In fact, the TCE is part of Bulgaria’s EU accession agreement, which eliminated the need for its separate ratification, and allowed to identify Bulgarians’ support for the EU membership with the support for the Constitution itself.

<sup>23</sup> Guy Verhofstadt at the European Parliament, *op.cit.*; Guy Verhofstadt at the Center for Strategic and International Studies, *op.cit.*

<sup>24</sup> Rapport fait au nom du comité d’avis fédéral chargé des questions européennes, Sénat et Chambre des représentants de Belgique, Document législatif n° 3-1984/1, [www.senate.be/www/?MIval=/dossier&LEG=3&NR=1984&LANG=fr](http://www.senate.be/www/?MIval=/dossier&LEG=3&NR=1984&LANG=fr).

<sup>25</sup> *Ibid.*

The Constitutional Treaty and the shape of the potential EU institutional reform were not discussed in the public debate in Bulgaria. The government's declaration on the future of the EU, adopted already in 2002, indicates that the text of the TCE is largely in line with Bulgaria's expectations (including the word "constitution"). It should be noted that Bulgaria supported the option in which the European Council has the right to dissolve the European Parliament, if so demanded by the Commission, which was argued to provide a counterbalance to the extension of its competencies.<sup>26</sup>

In recent months, the TCE has been hardly debated over in Bulgaria. The document was primarily mentioned by Bulgarian authorities during their public statements addressed to Western Europe receivers. In his address at the European Parliament, Bulgaria's President Georgi Parvanov declared that his state supported the initiative of the German presidency, and personally of Chancellor Angela Merkel, for consultations on devising a new and original road map to take the constitutional project forward.<sup>27</sup> In turn, Prime Minister Sergei Stanishev, during his visit to Rome in January 2007, declared that the viewpoints of Italy and Bulgaria on the constitution "showed many similarities."<sup>28</sup> Also in June, Bulgarian authorities (Stanishev<sup>29</sup> and European Affairs Minister Gergana Grincharova<sup>30</sup>) announced their support for the attempts of the German presidency to overcome the institutional crisis in the EU, and stated that the adoption of the TCE would prevent the division of Europe into the core and periphery. Bulgaria argued that it would help to release other EU projects, such as enlargements, as well as ensure more intense involvement of the EU in the South-Eastern Europe. As argued by Stanishev, Bulgaria is currently an island of stability in the Balkans, and therefore stability in the region is in its vital interest.<sup>31</sup>

Many statements of Bulgarian authorities appear to result from Bulgaria's weak position within the EU. This state with six million citizens, the poorest in the EU, wants to convince old members of its European-ness and constructive approach, in particular that some Western Europe countries unofficially regard Bulgaria's accession as premature. This may partially justify assurances of Bulgarian authorities that they support solutions offered by the German presidency as well as severe criticism towards the attitude of Polish authorities during the meeting of the European Council in Brussels in June 2007. Foreign Affairs Minister Ivailo Kalfin stated that the situation where one state threatens the other 26 members of the Community is unacceptable,<sup>32</sup> and Polish actions regressed the EU. It should be remembered that, according to the Accession Treaty, the European Commission might, within three years of Bulgaria's accession to the EU, suspend the right of this state to take part in certain Community policies, or limit its access to the Community funding, if the authorities in Sofia fail to implement reforms at a satisfactory pace. In order for this threat not to become a reality, the support of influential EU members is necessary, already granted for instance as regards the prolonged (since 1999) case of Bulgarian nurses, imprisoned and tortured in Libya, allegedly guilty of deliberately infecting children with the HIV virus.

The Eurobarometer survey of June 2007 indicates that 61% of Bulgarians support the TCE.<sup>33</sup> This is slightly less than the mean value for the EU (66%). This may result from negative public feelings in the country. For instance, only 10% of its citizens believe that the economy is developing well, which means that Bulgarians, along with the traditionally pessimistic Hungarians, are the least optimistic in this respect among EU societies, markedly below the EU average of 52%. The question whether the EU is a good thing and whether the country will benefit from the membership, was answered in the affirmative by 55% and 50% of Bulgarians respectively, which is several percentage points short of the EU average.

<sup>26</sup> See *Initial Position of the Republic of Bulgaria on the Debate on the Future of the European Union*, [www.mfa.government.bg/index.php?tid=14&item\\_id=11025](http://www.mfa.government.bg/index.php?tid=14&item_id=11025) (12.03.2007).

<sup>27</sup> *Address by President Georgi Parvanov to the Members of the European Parliament*, [www.president.bg/en/news.php?type=3](http://www.president.bg/en/news.php?type=3) (12.03.2007).

<sup>28</sup> Radio Bulgaria, records of 18 January 2007, [www.bnr.bg/RadioBulgaria/Emission\\_English/Theme\\_BulgariaES/Material/bulgaria\\_italy.htm](http://www.bnr.bg/RadioBulgaria/Emission_English/Theme_BulgariaES/Material/bulgaria_italy.htm) (12.03.2007).

<sup>29</sup> Statement by Stanishev, based on the release by [www.government.bg/cgi-bin/e-cms/vis/vis.pl?s=001&p=0137&n=000427&g=](http://www.government.bg/cgi-bin/e-cms/vis/vis.pl?s=001&p=0137&n=000427&g=).

<sup>30</sup> Interview with Gergana Grincharova for Focus Agency, [www.mfa.government.bg/index.php?tid=121&item\\_id=19779](http://www.mfa.government.bg/index.php?tid=121&item_id=19779).

<sup>31</sup> Summary of an interview for the Portuguese daily *Expresso*, text on the Bulgarian government website, [www.government.bg/cgi-bin/e-cms/vis/vis.pl?s=001&p=0011&n=000696&g=](http://www.government.bg/cgi-bin/e-cms/vis/vis.pl?s=001&p=0011&n=000696&g=).

<sup>32</sup> PAP dispatch of 24 June 2007.

<sup>33</sup> Figures, including those quoted below, come from *Eurobarometer 67. Public opinion in the European Union. First results*, June 2007, [http://ec.europa.eu/public\\_opinion/archives/eb/eb67/eb\\_67\\_first\\_en.pdf](http://ec.europa.eu/public_opinion/archives/eb/eb67/eb_67_first_en.pdf).



## Cyprus

Since the beginning of 2007, the issue of the treaty was discussed occasionally, only when the Union problems were concerned and initiatives related to the “reflection period.”<sup>34</sup> The position of authorities was not uniform. At the meeting of the “friends of the constitution,” held in Madrid on 26 January 2007, the representative of the Cypriot MFA, Ambassador Alexandros Zenon, argued that the ratification of the Constitutional Treaty would be the optimum solution. At that time, Cypriot diplomats clearly supported the actions by the German presidency, which intended to prepare a road map on the TCE that could be submitted to the European Council in June 2007. They also argued that the TCE ratified by a large number of states could be the basis for new initiatives, which, from the viewpoint of Cyprus, also covered the mini-treaty, or the Italian concept of a committee to evaluate opportunities for further actions on the Constitutional Treaty.<sup>35</sup>

Cyprus did not change its attitude before the June summit in Brussels. It continued to argue that all primary components of the treaty should be retained and supported the effort of German presidency. However, Cyprus was not specific about what provisions it was willing to abandon and what provisions should be retained or added to the new text.<sup>36</sup> Among constitutional solutions contained in the TCE and supported by Cyprus there were primarily the EU Charter of Fundamental Rights, which should be legally valid, as well as changes to strengthen CFSP, including the appointment of the EU Minister of Foreign Affairs with appropriate competencies. Cypriot government also supported the solidarity clause in the case of an attack on one Member State (related to the problem of a divided Cyprus).<sup>37</sup>

Although public debate on the treaty was hardly present in Cyprus, distinct positions of major parties existed. The second-largest coalition party, the conservative Democratic Party (Dimokratikon Komma, DIKO) supported the plan of the German presidency, treating the TCE as a document that represented progress in political integration, ensuring greater effectiveness and more democratic character for the EU. The Progressive Party of Working People (Aristera Nees Dynameis, AKEL), the largest party of the ruling coalition, indicated the need to renegotiate the Constitutional Treaty, that is to draft a different document as a result of the TCE rejection in the French and Dutch referendums. Politicians of the party found it necessary to take into account the objection from the societies of those states. AKEL’s spokesperson Andros Kyprianou stated that the support for the Constitutional Treaty by his party required changes to the treaty to strengthen the social dimension of the Union (meeting the needs of the society half-way) and to reduce disparities in the economic development among EU states. In turn, the main opposition party, Democratic Movement (Dimokratikos Synagermos, DISY), ruled out the “Nice plus” scenario as incompliant with the needs of the Union of 27 members. The Constitutional Treaty, incorporating the positions of the society, was considered by the party as the basis for negotiations.<sup>38</sup>

The Eurobarometer 67 survey of mid-2007 indicated that 69% of Cypriot citizens supported the adoption of the Constitutional Treaty as a facilitator of EU actions; while 17% was against it and 14% had no opinion on the issue (in December 2006, the figures were 43%, 21% and as much as 36% respectively).<sup>39</sup>

<sup>34</sup> See *EU-25/27 Watch*, No.4, *op.cit.*, p. 75.

<sup>35</sup> *Ibid.*, p. 76; see also: *Cyprus considers that ratification of the Constitutional Treaty is the best way forward*, 29.01.2007, Ministry of Foreign Affairs of the Republic of Cyprus, [www.mfa.gov.cy](http://www.mfa.gov.cy).

<sup>36</sup> See *President Papadopoulos attends European Council*, 20.06.2007, Ministry of Foreign Affairs of the Republic of Cyprus, [www.mfa.gov.cy/mfa/mfa2006.nsf/All/9F628AE0C1C68A88C22573010026F999?OpenDocument](http://www.mfa.gov.cy/mfa/mfa2006.nsf/All/9F628AE0C1C68A88C22573010026F999?OpenDocument).

<sup>37</sup> See S. Kurpas, M. Incerti, J. Schönlaue, J. De Clerck-Sachsse, “Update on the Ratification Debates: What Prospects for the European Constitutional Treaty? Results of an EPIN Survey of National Experts,” *Working Paper*, No. 13, May 2005, [http://shop.ceps.be/BookDetail.php?item\\_id=1223](http://shop.ceps.be/BookDetail.php?item_id=1223), pp. 16-17.

<sup>38</sup> See *EU-25/27 Watch*, *op.cit.*, p. 76; L. Naumann, “Cyprus,” [in:] N. Eschke, T. Malick (eds.), *The European Constitution and its Ratification Crisis. Constitutional Debates in the EU Member States*, Discussion Paper C 156, ZEI, Bonn 2006, pp. 123-124; S. Wagener, *Der Vertrag über eine EU-Verfassung und die Positionen Linke Parteien*, Universität Potsdam, Potsdam 2006, [www.rosalux.de/cms/fileadmin/rls\\_uploads/pdfs/wagener\\_mag.pdf](http://www.rosalux.de/cms/fileadmin/rls_uploads/pdfs/wagener_mag.pdf), pp. 66-69.

<sup>39</sup> Figures from *Eurobarometer 67, Public Opinion in the European Union. First Results*, June 2007, [http://ec.europa.eu/public\\_opinion/archives/eb/eb67/eb\\_67\\_first\\_en.pdf](http://ec.europa.eu/public_opinion/archives/eb/eb67/eb_67_first_en.pdf), p. 77; *Standard Eurobarometer 66, First Results*, December 2006, Tables, [http://ec.europa.eu/public\\_opinion/archives/eb/eb66/eb66\\_highlights\\_en.pdf](http://ec.europa.eu/public_opinion/archives/eb/eb66/eb66_highlights_en.pdf).

## Czech Republic

The Czech Republic has not ratified the Constitutional Treaty. In October 2004, the centre-left government headed by Prime Minister Stanislav Gross accepted the TCE, however President Václav Klaus refused to take part in the signing ceremony in Rome and 70% of Czech Euro-deputies voted against the treaty.<sup>40</sup> The right-wing Civic Democratic Party (Občanská demokratická strana, ODS), the winner of the parliamentary elections in June 2006 (President Klaus remains its honorary chairman), took the same position. The ODS' leader, Mirek Topolánek, became head of the minority government in September 2006, and since January he has led the coalition government (majority by a narrow margin of votes), formed by the ODS, the Christian Democrats (Křesťanská a demokratická unie – Československá strana lidová, KDU-ČSL) and the Green Party. The Policy of Prime Minister Topolánek's government in the EU is marked by a more assertive approach and the intent to formulate the state interest in a clearer and more determined manner. As argued by ODS politicians, the legacy of European integration has been positive, notably in the economic area, yet political integration since the adoption of the Maastricht Treaty has gone too far in the EU and may endanger the quality of transatlantic relations in the area of foreign and defence policymaking.

The Czech Republic questioned the legitimacy of continuation of the TCE ratification and was the last one to agree on the present text as a point of departure for the new treaty.<sup>41</sup> This position was shared by the President, Prime Minister, Deputy Prime Minister for the EU, but there was a lack of a common position of the government, resulting from conflicting views on the EU institutional reform within the ruling coalition. Only on 22 February 2007 at the meeting of leaders of the coalition parties did the ODS acknowledge the TCE text as the point of departure for the new document. The ODS supported the drafting of a shorter, clearer and simpler text to be the EU core treaty that should “unite rather than divide” Europe. It was also argued that the EU was not in a crisis, and all attempted reforms should follow the “quality rather than speed” principle.<sup>42</sup> The new treaty may not weaken the Czech Republic's position, employ “quasi-constitutional” symbols (that is terms such as “constitution”, “EU Minister of Foreign Affairs”) and should allow for further EU enlargement on clearly defined terms and conditions.<sup>43</sup>

President Klaus, his collaborators, as well as Jan Zahradil, the Prime Minister's representative for treaty affairs, represent the most critical views on the TCE and the course of European integration it stipulates. Prime Minister Topolánek, ODS ministers, in particular ODS-appointed Deputy Prime Minister for European Affairs Alexandr Vondra, put less emphasis on the ideological premises of their attitudes, which makes their position more conciliatory. The third line of thinking on the EU reform in the government is represented by the coalition partners, who do not share the party's criticism towards the TCE. They are proponents of the original assumptions of the Czech EU policy for 2004-2013, where it was stated that the Czech Republic would “remain as close as possible to the gravity centre of integration.” The KDU-ČSL (whose voters are the primary supporters of the TCE) advocated the retention of core the TCE provisions, notably those on institutional change, and does not consider the ratification process in the EU as closed. The Green welcomed the TCE text as a good basis for the new document, although it should still be simplified. The opposition Czech Social Democratic Party (Česká strana sociálně demokratická, ČSSD) declared itself in favour of the adoption of an unchanged the TCE by all EU states by the spring of 2009. At the same time, they criticised, for example, the cooperation between Poland and the Czech Republic as leading to their state's marginalisation in the EU. The second opposition formation in the parliament, the Communist Party of Bohemia and Moravia (Komunistická strana Čech a Moravy, KSČM), supported “slimming down” and simplifying the TCE.

Since 2004, sceptical attitudes towards the TCE and the idea of deeper European integration have been on the rise in Czech society. Even though the Eurobarometer survey of spring 2007 indicates positive feelings about the TCE declared by 55% of Czechs (22% opposed it),<sup>44</sup> the research conducted by a reputable Czech research centre revealed that three-fifths of the citizens believed that the European

<sup>40</sup> See M. Gniazdowski, “Perspektywy ratyfikacji Traktatu ustanawiającego Konstytucję dla Europy w Republice Czeskiej,” *Biuletyn (PISM)*, No. 10 (255) of 8 February 2005.

<sup>41</sup> See M. Gniazdowski, “Stanowisko Republiki Czeskiej w sprawie reformy instytucjonalnej UE po “okresie refleksji,”” *Biuletyn (PISM)*, No. 9 (423) of 19 February 2007.

<sup>42</sup> *Pětibodové prohlášení představitelů koalice k evropské ústavě*, ČTK, 22.02.2007.

<sup>43</sup> *Koaliční strany se shodly na postoji k euroústavě*, ČTK, 03.04.2007.

<sup>44</sup> *Eurobarometer 67, Public Opinion in the European Union. First Results*, June 2007, [http://ec.europa.eu/public\\_opinion/archives/eb/eb67/eb\\_67\\_first\\_en.pdf](http://ec.europa.eu/public_opinion/archives/eb/eb67/eb_67_first_en.pdf).

Constitution as a document was not necessary for the EU to operate efficiently. Half of the respondents opted for a new, more concise and “less ambitious” project than the TCE.<sup>45</sup> During the “reflection period,” the share of those dissatisfied with EU membership grew to 27% (satisfaction with the new situation was declared by 32% in April, while the rest remained indifferent). Every third respondent is proud of being an EU citizen, but only one out of four respondents believes that EU decisions are in the interest of the Czech Republic.<sup>46</sup> It should also be emphasised that over 70% of the society has trust in President Klaus, who is critical of the TCE.<sup>47</sup>

The Czech right-wing parties have made it clear on numerous occasions that the debate on the reform and institutional order of the EU should be combined with the discussion on specific EU policies, as well as a thorough reform of EU spending. The focus here is mostly on the reform of the spending on the so-called old EU policies, notably the Common Agricultural Policy (CAP). The Czechs emphasise the importance of the review of the New Financial Perspective, to begin in 2008. CAP reform, stipulating cuts in the EU budgetary spending on the policy, is an objective shared by both coalition parties and the opposition ČSSD. This issue is also linked with other EU activities (also in external relations), where the Czech Republic seeks to be a promoter of liberalisation, e.g. in the negotiations of the World Trade Organization (WTO) on trading in agricultural products.<sup>48</sup> The Czech government, opposing protectionism and unification tendencies in the economy, does not welcome the presence of statements referring to the “social dimension” of the EU in the treaty. It was no accident that ODS politicians criticised both the concept of inclusion of the Charter of Fundamental Rights in the treaty and the provisions that equip the Charter with a legally binding status, stipulated in the draft mandate for the Intergovernmental Conference.

The topic that should play a major role in the discussion on the future of the EU, as viewed by the Czech government, is energy security. In their opinion, it is important as it opens up opportunities for improved stability of the EU internal market, and markets of the neighbouring states, and due to the strategic role that energy may play in achieving political objectives. The Czechs supported the idea of incorporating provisions on energy solidarity and support for links among energy networks into the treaty articles. The Czech right-wing parties agree to “deeper integration” in the area of energy. Owing to the presence of the Green Party in the ruling coalition, it is more troublesome for the Czech government to become involved in initiatives that emphasise the role of nuclear energy in ensuring long-term European energy security, however the Czech Republic competed for hosting the EU Nuclear Energy Forum (alternating hosts will be the Czech Republic and Slovakia<sup>49</sup>).

Choosing the negotiation tactics of a “kickstart” and revealing their maximum expectations, the Czech Republic was ready to hold constructive talks with EU partners and reach a compromise. Prime Minister Topolánek announced in March that the Czech Republic would not obstruct negotiations on the new treaty,<sup>50</sup> but he was nevertheless against the specification in the Berlin Declaration of June 2009 as the final target date for the ratification of the new document.<sup>51</sup> The Czechs expressed a reservation that they would not construe the formula of “renewing the common foundation” by June 2009 as the final date for adopting the institutional reform, on the grounds that they would not like it to “cast a shadow” over the Czech presidency, due in the first half of 2009.<sup>52</sup> Taking the above into consideration, the coalition finally concluded that it was in the Czech Republic’s interest to finalise negotiations and reach an agreement before the end of 2008.<sup>53</sup> The President and ODS politicians were suggesting that if the agreement was to

<sup>45</sup> Jak dál s evropskou ústavou? Informace z výzkumu STEM Trendy 4/2007, [www.stem.cz](http://www.stem.cz); “Lidové noviny” of 21 April 2007.

<sup>46</sup> Členství České republiky v Evropské unii očima veřejnosti (Centrum pro výzkum veřejného mínění, Sociologický ústav AV ČR), [www.cvvm.cas.cz/upl/zpravy/100681s\\_pm70427.pdf](http://www.cvvm.cas.cz/upl/zpravy/100681s_pm70427.pdf).

<sup>47</sup> According to the June poll from CVVM – 71%. *Lidé nejvíce věří Václavu Klausovi*, 26.06.2007, [www.ihned.cz](http://www.ihned.cz).

<sup>48</sup> See, for example, *Projev předsedy vlády ČR Mirka Topolánka na Inaugurační konferenci Platformy pro evropskou reformu - MER- v Bruselu*, 06.03.2007, [www.vlada.cz/scripts/detail.php?id=21430](http://www.vlada.cz/scripts/detail.php?id=21430).

<sup>49</sup> *Prague and Bratislava to host EU nuclear energy debates*, 21.06.2007, <http://euractiv.com>.

<sup>50</sup> *ČR se proti evropské ústavě nepostaví, říká Topolánek*, 06.03.2007, [www.euractiv.cz](http://www.euractiv.cz).

<sup>51</sup> *Zahradil: ČR nechce, aby ústava zastíňovala její předsednictví EU*, ČTK, 16.03.2007.

<sup>52</sup> The Czech government (as the only one) officially expressed their dissatisfaction with keeping the text of the declaration secret almost until the very last moment, the “shortage of open discussion” and the signing mode (EC chairman, German Chancellor as the presidency representative and chairman of the parliament). K. Šafaříková, “Česko má problém s deklarací,” *Lidové noviny* of 22 March 2007; *Evropská unie má do roku 2009 provést reformu institucí*, 26.03.2007, [www.euractiv.cz](http://www.euractiv.cz).

<sup>53</sup> *Koaliční strany se shodly na postoji k euroústavě*, ČTK, 03.04.2007.

lead to the deterioration of the Czech Republic's position in the EU, there should be no hurry, since the EU could function properly even without a new treaty.

The details of the Czech position were worked out at the coalition meeting on 15 June, and the outcome was to be presented at the European Council working on the IGC mandate. The "national priority" of the Czech Republic was to introduce to the treaty a formula drawing a clear distinction between the competencies of the national state and EU competencies. Czech negotiators demanded that an option of their transfer in both directions should be included in the treaty. The principle of bilateral flexibility became the "flagship" of the Czech government during the EU Council on 21–22 June. As argued by the Czech Prime Minister, a regulation like this "would be important if it turned out that individual states were more efficient in a given area than Community institutions".<sup>54</sup> The Czech Republic declared itself in favour of abandoning shared competencies and stated that the transfer of competencies to the supranational level should be subject to strict parliamentary controls, since missing parliamentary controls widen the gap between political elites and the society. The Czech government did not specify what competencies should be transferred to national states.

The flexible mandate of the government allowed for support for the Netherlands and their proposal for the greater empowerment of national parliaments and support for the Polish suggestion to change the voting system in the EU Council (the ODS' coalition partners were sceptical about this proposal).<sup>55</sup> It was also stated that the Czech Republic would not put forward their proposals and block negotiations. These decisions were used by the German presidency and some media which announced that Poland was left alone.<sup>56</sup> However, during the meeting with Chancellor Merkel on 17 June and one day later at the meeting of the Visegrad Group, Czech Prime Minister Topolánek did confirm the Czech government's support for the Polish proposal for a change in the voting system. He argued that the new system would be better and fairer than the double majority system provided for in the TCE (which favours large states) and announced that he would make every effort in order for Poland not to be isolated.

Before the meeting of the European Council, the Czechs stated that the incorporation of the "bilateral flexibility" into the draft mandate for negotiations would satisfy their expectations (they would not obstruct consensus in other areas). They forecasted a potential Czech veto in two cases, namely if a shift back to the constitutional and quasi-state symbolism of the treaty was made, and if any state forced through a unilateral, permanent opt-out from the Community policies. The Czechs were of the opinion that "every state or no state" should be entitled to permanent opt-outs.<sup>57</sup>

Among proposals submitted or supported by the Czechs and incorporated in the presidency conclusions already at the beginning of the European Council was the abandonment of the quasi-state symbolism of the EU. The formula of "bidirectional flexibility" was included with no objections from the remaining states.<sup>58</sup> Already before the meeting of the European Council, Czech politicians sought to broker between Germany and Poland and make the consensus possible. For instance, on 20 June in Warsaw, Deputy Prime Minister Vondra presented proposals for compromise solutions to Prime Minister Jarosław Kaczyński.<sup>59</sup> In a critical moment during the summit talks, the Czech Republic, along with Lithuania (joined by Portugal), objected to the German proposal of adopting the mandate for the IGC without Poland's consent. As regards provisions allowing the United Kingdom to opt out, the Czechs surrendered the position of blocking permanent opt-outs, formally expressing their understanding for the "peculiarity" of the British law.

The Czech government considered the provisions of the European Council a success, the Czech delegation successfully accomplished most of their objectives, and the Czech Republic won the reputation

<sup>54</sup> *Prohlášení předsedy vlády ČR Mirka Topolánka k jednání Evropské rady*, 20.06.2007, [www.vlada.cz](http://www.vlada.cz). M. Topolánek, "Poprzymy pierwiastek, ale nie chcemy za niego umierać," *Dziennik* of 21 June 2007.

<sup>55</sup> *Praha bude na summitu usilovat o zpětné přenášení kompetencí z EU*, ČTK, 15.06.2007; K. Šafaříková, "Češi v hlavním proudu unie," *Lidové noviny* of 18 June 2007.

<sup>56</sup> Frank-Walter Steinmeier stated in *Frankfurter Rundschau* of 16 June 2007 that "no state, except Poland, wants to open the package of institutional reforms agreed in the TCE."

<sup>57</sup> PAP, 18.06.2007; *Zápis z 18. schůze výboru pro evropské záležitosti konané dne 19. června 2007*, [www.psp.cz](http://www.psp.cz); *Prohlášení předsedy vlády ČR Mirka Topolánka k jednání Evropské rady*, 20.06.2007, [www.vlada.cz](http://www.vlada.cz).

<sup>58</sup> *Mirek Topolánek je s výsledky summitu spokojen*, [www.vlada.cz](http://www.vlada.cz); *Češi v Bruselu uspěli s většinou požadavků*, 25.06.2007, <http://hn.ihned.cz>.

<sup>59</sup> The proposal consisted in the change of the double majority system: 55% of Member States representing 62% (not 65%, as in the TCE) of citizens, with the increase from four to five of the minimum number of states required to block a decision. R. Honzak, "Euroústava se změní v reformní smlouvu. Snad," *Hospodářské noviny* of 21 June 2007.

of being a contributor to the consensus. The government underscores the importance of the “bilateral flexibility” mechanism. As argued by Deputy Prime Minister Vondra, the transfer of competencies (in both directions) would only be possible by way of treaty modifications, which would materially limit the potential uncontrolled, “creeping” transfer of competencies to the Community.<sup>60</sup> A move in a good direction is also the announcement of a declaration to divide the competencies and confirm the principle of the presumed competencies of national states. Deputy Prime Minister Vondra believes that, in accordance with the draft treaty, the binding nature of the Charter of Fundamental Rights will be limited to the Community institutions and the legislative, hence European law should not trickle down to areas that remain the exclusive domain of national regulations.

Another success heralded by the Czech government is the achievement by the Netherlands (supported by the Czech Republic) of tighter controls of national parliaments over the European legislation (the “orange card” system). Even though the Polish proposal to change the voting system in the Council was not included in the mandate, the Czech contributed to a compromise on the issue, and the prolonged life of the Nice system is beneficial for the Czech Republic. OSD politicians regarded the agreement reached by the European Council as a step away from the concept of a European superstate and European federalism.<sup>61</sup> They welcomed the fact that, irrespective of the appointment of the High Representative for Foreign Affairs, the cooperation in this respect would retain its intergovernmental nature.<sup>62</sup> More sceptical in his assessment of the results of the European Council was President Klaus. Although he referred to the agreement as the “victory of reason” and a message that a disadvantageous, “creeping” integration could be stopped, at the same time he regretted that the battle for the voting method hindered serious discussion on the EU competencies and, as a result, the related the TCE provisions found their way to the draft negotiations mandate, together with the shared competencies, criticised by the Czechs.<sup>63</sup>

The opposition welcomed the compromise. They stated that the mandate fully retained (except symbols) the TCE provisions in the institutional dimension. Social Democrats criticised Topolánek’s government for their “anti-European” policy, for abandoning the “mainstream” of integration and leaving the Czech Republic as a troublemaker next to Poland “managed by the Kaczyński brothers,” whose “current interests” are, according to the ČSSD, not in line with the long-term interest of the Czech Republic.<sup>64</sup> The leader of the Social Democrats, Jiří Paroubek, rejected the ODS’ argumentation and claimed that the draft mandate should be treated as the “victory of attitudes supportive of the weakest possible EU.” The opposition plays down the role of the mandate item on the “national priority” (bilateral transfer of competencies was possible, even if in a more difficult manner, under the TCE provisions), easily achieved at the European Council. The prospects of abandoning the principle “one state – one commissioner,” which used to be emphasised by Czech left-centre governments, no longer stir up negative comments.

As viewed by Deputy Prime Minister Vondra, the voting system to be introduced after 2017 was not specified in a binding manner, as a result of which the “Jagiellonian compromise” submitted by Poland “remains in the game,” and the double majority system provided for in the TCE does not have to be implemented at all, since it may be changed over the next ten-year period.<sup>65</sup> The ODS’ coalition partners are of the opposite opinion, arguing that the compromise reached is final, underscoring that the government with their representatives will not receive a mandate to support potential Polish proposals on the issue.<sup>66</sup>

There are divergent positions on the Czech political scene regarding the Czech Republic’s method of adopting the future reforming treaty. ODS politicians indicated that in the case of the TCE or another document of “constitutional nature,” referendums should be organised.<sup>67</sup> Currently, they are more inclined

<sup>60</sup> A. Vondra, “Palatova víra a evropská fakta,” *Lidové noviny* of 2 July 2007.

<sup>61</sup> *ODS vítá odklon od evropského superstátu*, 23.6.2007, [www.ihned.cz](http://www.ihned.cz).

<sup>62</sup> A. Vondra, “Palatova víra...,” *op.cit.*

<sup>63</sup> *Úryvky z rozhovoru prezidenta republiky v TV Prima o právě skončeném jednání Evropské rady v Bruselu*, 24.06.2007, [www.klaus.cz](http://www.klaus.cz).

<sup>64</sup> *ČSSD považuje politiku Topolánkovy vlády za antievropskou*, 25.6.2007, [www.cssd.cz](http://www.cssd.cz); por. *Vyjádření předsedy ČSSD k výrokům oficiálních polských představitelů*, 28.6.2007, [www.cssd.cz](http://www.cssd.cz).

<sup>65</sup> A. Vondra, “Palatova víra...,” *op.cit.*

<sup>66</sup> “Polsko nemůže dál počítat s pomocí Česka,” *Lidové noviny* of 3 July 2007.

<sup>67</sup> E.g. *Vondra: O Euroústavě by Češi mohli rozhodovat v referendu*, ČTK, 08.03.2007.

not to deem it necessary. The proposal for a popular vote is being looked at by the opposition ČSSD, more likely than not searching for opportunities to mobilise the pro-EU voters in the pre-referendum campaign.<sup>68</sup>

## Denmark

Owing to the country's specific constitutional provisions, as many as seven referendums were held in Denmark on European affairs (the first one was held in 1972 to ask about accession to the Communities, and the last one in 2000, in which the euro was rejected). In accordance with the decision taken by the Danish government, the ratification of the Constitutional Treaty was to proceed in the same manner. Following the February 2005 elections that kept the liberal-conservative coalition in power, a new deadline was scheduled for September 2005. At the same time, the government entered into an agreement with the coalition on the support for the TCE, attached to the Law on Referendum.<sup>69</sup> Initially, the voting was to proceed independently of the failure of the French process. However, fearing a continuation of the "losing streak", its postponement until further notice was agreed on. Prime Minister Anders Fogh Rasmussen supported the concept of the "reflection period." The peculiarity of the situation in Denmark was in that the decision on the potential surrender of the Treaty of Maastricht opt-outs would have to be taken by the citizens separately, as the provisions were incorporated into the TCE text as a declaration.

Public opinion surveys have shown significant fluctuations. During the referendum period, the percentage of the TCE opponents in the society was growing, most intensely after the failure in the Netherlands and France. Currently, there are more proponents than opponents of the process.<sup>70</sup>

Despite the freezing of the ratification process, it appears that the Danish establishment acknowledged the "pro-constitution" option among Member States. In official statements, an understanding of the unwillingness to change the text by the states that have already ratified the TCE was offered, along with underscoring significant difficulties in resuming negotiations. A recurring theme in the statements on the subject was the declaration on the vitality of the solutions already agreed on in the TCE. The support for the German presidency proposals and effort was expressed. The treaty was supported as it was considered an appropriate answer to the challenges that the Union faces and the intent to leave intact as much of the TCE text as possible.<sup>71</sup>

Among the right solutions for Denmark there were: efficient and transparent decision-making in the EU Council, appointment of the permanent president of the European Council and the EU Minister of Foreign Affairs, or the incorporation of the Charter of Fundamental Rights.<sup>72</sup> The need to work out a new compromise was also recognised, owing to potential difficulties with voting on the unchanged text in France and the Netherlands. The responsibility shouldered by the governments of those Member States for the future fate of the TCE was emphasised.<sup>73</sup> Following Rasmussen's meeting with Prime Minister Jarosław Kaczyński on 16 March 2007, both politicians announced that the treaty should come into effect before June 2009.<sup>74</sup> It was expected that the Polish proposal for incorporating into the text of solidarity in energy policy matters would not meet with Denmark's resistance. It turned out in the end that the idea of establishing a qualified majority in the Council on the basis of the mathematical root system found no support. The Danish Prime Minister referred to the proposals of the German presidency as "acceptable," while he openly criticised the reference to the Polish war victims in the negotiation context, made by Prime Minister Kaczyński.<sup>75</sup>

<sup>68</sup> *Paroubek: Přijetí unijní smlouvy ano, ale v referendu*, 25.6.2007, [www.ihned.cz](http://www.ihned.cz).

<sup>69</sup> Political Agreement between the Government (the Liberal Party, the Conservative Party), the Social Democrats, the Socialist People's Party and the Social Liberal Party regarding Denmark in the Enlarged EU, <http://euo.dk/upload/application/pdf/408864ff/PoliticalAgreementregardingDenmarkintheEnlargedEU.pdf>.

<sup>70</sup> See [http://ec.europa.eu/public\\_opinion/archives/eb/eb66/eb66\\_dk\\_exec.pdf](http://ec.europa.eu/public_opinion/archives/eb/eb66/eb66_dk_exec.pdf).

<sup>71</sup> Address by Prime Minister of Denmark Anders Fogh Rasmussen at the Annual Ambassadors Conference, Bucharest, Romania, 30.08.2006, [www.stm.dk](http://www.stm.dk).

<sup>72</sup> *Achieving Europe*, Speech by Prime Minister Anders Fogh Rasmussen at Copenhagen University on Friday 21.04.2006, [www.stm.dk](http://www.stm.dk).

<sup>73</sup> Prime Minister Anders Fogh Rasmussen's Opening Address to the Folketing (The Danish Parliament) on Tuesday 3.10.2006; Address by Prime Minister Anders Fogh Rasmussen at the Meeting with the Diplomatic Corps in Copenhagen, 12.01.2007, [www.stm.dk](http://www.stm.dk).

<sup>74</sup> *Wizyta premiera Jarosława Kaczyńskiego w Danii*, 16.03.2007, <http://euro.pap.com.pl/>.

<sup>75</sup> *EU Summit Denmark's Rasmussen condemns Polish linkage of voting rights to WW2*, [www.forbes.com](http://www.forbes.com).

In the case of Denmark, the question of the mode of consenting to being bound by the new reforming treaty is important. An attempt was made to formulate the mandate in a way that would allow its adoption without the requirement to conduct a referendum.<sup>76</sup> Owing to the prevailing social sentiments, the adoption of the new text by the parliament will not be easy, as public opinion research shows nearly 70% support for the referendum track.<sup>77</sup> Rasmussen's government therefore faces a difficult task of convincing the society to ratify the treaty using the parliamentary track (reforming treaty as a "rearrangement" and consolidation of the Community legacy thus far), or a broad information and promotion campaign for the new treaty before the referendum.

## Estonia

The position of Estonia on the future of the TCE is reflected in the document "Aims of the Estonian government during the German presidency," adopted in January 2007. It states that: "We expect the [German] presidency to come out with a proposal that is not going to bring substantial changes to the agreements achieved earlier. We also hope that the Treaty will be implemented before the European Parliament elections in 2009 with minimal changes."<sup>78</sup> Authorities in Tallinn also assured that Estonia would "contribute to the discussions over the Constitutional Treaty in order to find a proper solution."<sup>79</sup>

The above document concludes with a statement that the treaty is important both for the effectiveness of EU actions and for further enlargement. This expression properly reflects the pragmatic attitude of Estonians towards the document. Following 1991, Estonia has recorded a rapid economic growth and rising living standards which, without being anchored in the EU and NATO structures that would not have been possible to that extent. Among political elites and the society there is a conviction that the strengthening of the EU matches Estonian national interests.

The treaty failed to be disputed by any major political power – only one dissenting voice was recorded during the ratification in the parliament on 9 May 2006. Previously, it was agreed that the parliamentary procedure would be sufficient, as the contents of the treaty had already been known to the society in September 2003, during the referendum on Estonia's accession to the EU (67% voted in favour and 33% against). Not without its symbolic meaning, the date of the parliamentary vote was nearly one year after the failed referendums in France. The treaty ratification under such circumstances was intended to send a clear message that would encourage undecided EU states to finish the ratification procedure. It also underscored that the contents of the treaty entirely matched the Estonian national interests.

In the first half of 2007, Estonia found itself in the group of states that supported the German presidency, thus resisting Polish proposals to open the discussion on the voting system in the EU Council. The media announced that, according to Prime Minister Andrus Ansip, "Estonia decidedly opposes reopening the chapter on EU institutional instruments," and referred to the criticism towards the Polish position, as expressed by Estonia.<sup>80</sup> Prime Minister Ansip argued, however, that his statement was distorted by the press. He stated that the voting system suggested by Poland made sense. Even though Estonia did not want to open the institutional package, it had no intention to criticise the Polish position, thus creating a rift between the states of the region. The Polish position did, however, receive negative comments from Marko Mihkelson, Chairman of the European Affairs Committee of the Estonian Parliament, who argued that "Poland puts itself, and the entire Europe, at risk by opposing the renewed EU Constitutional Treaty."<sup>81</sup> In his opinion, Polish persistence influences the perceptions on Eastern Europe as a whole and may lead to a serious internal crisis of the European Union.

<sup>76</sup> *Treaty changes make referendum optional*, [www.denmark.dk](http://www.denmark.dk).

<sup>77</sup> *Polls finds 70 pct of Danes want EU treaty referendum*, [www.eubusiness.com](http://www.eubusiness.com).

<sup>78</sup> See *Aims of the Estonian Government during the German Presidency*, [www.vm.ee/eng/euro/kat\\_486/8178.html](http://www.vm.ee/eng/euro/kat_486/8178.html) (10.03.2007).

<sup>79</sup> *Ibid.*

<sup>80</sup> See PAP dispatch of 18 June 2007.

<sup>81</sup> See AFP dispatch of 18 June 2007.

## Finland

Opinions in favour of the referendum on the Constitutional Treaty ratification were not too widespread. However, a social and political consensus on the parliamentary procedure as the applicable track was reached in Finland. The announcement of the “reflection period” resulted in the postponement of the vote on the TCE by the Finnish government, however the concept of its ratification was not discarded altogether. A driving force for the decision on this issue seemed to be the assumption by Finland of the EU presidency in the second half of 2006. As a result, it could have been expected that the successful ratification would have constituted a positive stimulus and counterbalanced the results of the French and Dutch referendums. The decision on the issue was preceded by a report submitted in November 2005 by the Finnish government to the parliament.<sup>82</sup> The report clearly stated that the government still regarded the TCE as a necessary tool to improve the prevalent EU treaty principles and that it supported the continued ratification process by EU Member States, declaring its openness to a reasonable compromise on the issue.

In effect, on 5 December 2006, with 125 votes in favour and 39 against, the Finnish parliament decided on submitting the ratification law to President Tarji Halonen for her signature, which she did on 8 December. This provided a stimulus for the European Parliament Chairman Josep Borrell to underscore that, upon ratification by Finland, and including Romania and Bulgaria, the TCE was ratified by two-thirds of EU states (18 out of 27), representing 56% of the Union’s population.<sup>83</sup>

The victory in the elections of the ruling Centre Party (Keskustapuolue, KESK) of Prime Minister Matti Vanhanen indicates a political continuation of the European policy pursued thus far, but also a consensus on the issue reached by the Finnish society, over a half of which supports the TCE.<sup>84</sup>

By joining the group of states that ratified the TCE, Finland clearly opted for the “pro-constitution” stance. During the Brussels summit, its defenders consistently sought to preserve as many provisions of the TCE as possible in an unchanged form, e.g. by opposing reservations against the Charter of Fundamental Rights, including the Polish reservations on public morality and family.<sup>85</sup>

## France

The French rejected the TCE in a referendum conducted on 29 May 2005. 54.7% voted against and 45.3% was in favour. From that moment, the subject of the EU institutional reform was virtually absent for months from official declarations and public debate. The French were very critical about the TCE. Opinion polls of late 2006 showed that 66% of the French opted for renegotiating the treaty. A mere 16% claimed that it should be abandoned and 9% opted for a continuation of the ratification process, while 9% had no opinion.<sup>86</sup>

The subject of institutional reform was tackled again on the occasion of the Presidential elections (22 April and 6 May 2007), won by Nicolas Sarkozy of the right-centre Union for a Popular Movement (Union pour un Mouvement Populaire, UMP). Already in September 2006, he presented the most comprehensive vision of the future of the Constitutional Treaty and EU reforms. He argued at that time that the adoption of the Constitutional Treaty in that shape was impossible, although the institutional reform was still indispensable for the EU to regain effectiveness and decision-making potential. Under the circumstances, Sarkozy proposed to implement the most urgent institutional reforms and adopt those provisions of the treaty that complemented or modified the Treaty of Nice. He referred to that solution as a mini-treaty.<sup>87</sup> The position expressed at that time did not change materially although, in early 2007, Sarkozy declared himself

<sup>82</sup> Government report to the Parliament on the treaty establishing a Constitution for the European Union, unofficial translation, [www.valtioneuvosto.fi/tiedostot/julkinen/vn/selonteot-mietinnot/Valtioneuvoston\\_selonteko\\_Euroopan\\_unionin\\_perustuslakisopimuksesta/145494.pdf](http://www.valtioneuvosto.fi/tiedostot/julkinen/vn/selonteot-mietinnot/Valtioneuvoston_selonteko_Euroopan_unionin_perustuslakisopimuksesta/145494.pdf).

<sup>83</sup> *European Parliament President Josep Borrell welcomes Finland’s ratification of the Constitutional Treaty*, 05.12.2006, [www.europarl.europa.eu](http://www.europarl.europa.eu).

<sup>84</sup> See [http://ec.europa.eu/public\\_opinion/archives/eb/eb66/eb66\\_fi\\_exec.pdf](http://ec.europa.eu/public_opinion/archives/eb/eb66/eb66_fi_exec.pdf).

<sup>85</sup> *Polls finds 70 pct of Danes want EU treaty referendum*, *op.cit.*

<sup>86</sup> *Eurobarometre 66, L’opinion publique dans L’Union Europeenne*, Autumn 2006, [http://ec.europa.eu/public\\_opinion/archives/eb/eb66/eb66\\_fr\\_nat.pdf](http://ec.europa.eu/public_opinion/archives/eb/eb66/eb66_fr_nat.pdf).

<sup>87</sup> Statement by Nicolas Sarkozy at Amis de l’Europe and Robert Schuman Foundation, on 8 September 2006, Brussels, Solvay Library, [www.u-m-p.org/site/index.php/ump/s\\_informer/discours/fondation\\_friends\\_of\\_europe\\_amis\\_de\\_l\\_europe\\_et\\_la\\_fondation\\_robert\\_schuman\\_8\\_septembre\\_2006\\_bruxelles\\_bibliotheque\\_solvay](http://www.u-m-p.org/site/index.php/ump/s_informer/discours/fondation_friends_of_europe_amis_de_l_europe_et_la_fondation_robert_schuman_8_septembre_2006_bruxelles_bibliotheque_solvay).



in favour of adopting the simplified treaty (slightly more than the mini-treaty), which was agreed on during a quick negotiation process.<sup>88</sup> The document would not require ratification by referendums, which would substantially increase the chances of its actual adoption by all Member States. The work on the document should start as soon as possible, he argued, so that the European Parliament elections of 2009 could proceed based on the new terms.

The new document should include the following provisions: 1) the establishment of a stable presidency of the European Council, 2) the establishment of the office of the European Minister of Foreign Affairs, responsible for coordination of diplomatic, financial and, if necessary, military measures, and should be subordinated politically to the governments of Member States, 3) the extended application of the qualified majority principle, notably in judiciary, criminal and immigration matters, 4) the extended application of the co-decision procedure, 5) the introduction of the double majority principle (55% of Member States representing 65% of the EU population), 6) the introduction of the “footbridge” clause, 7) the introduction of the early warning mechanism to ensure compliance with the subsidiarity principle, 8) the citizens’ initiative, and 9) enhanced cooperation, allowing states that are interested in deeper cooperation in certain areas not to be blocked by those EU members that are not interested, or ready to participate.

Already after the Presidential elections and with the parliamentary elections approaching (10 and 17 June), the new President was more and more eager to refer to the issues that were not directly linked with the institutional reform, but could affect further course of the debate on the future of the EU. According to Sarkozy, the European Union should protect its citizens against globalisation and ensure more effective actions by Member States in those areas where success cannot be achieved by acting single-handedly. Those areas are in particular the migration policy, development policy and scientific research. What stirred up Sarkozy’s reservations was also the operation of the Eurozone. Even though he did not question the provisions of the European Central Bank statute, or its independence, he demanded a change in the ECB monetary policy, arguing that the policy of high exchange rates was detrimental to French exporters.<sup>89</sup> He was also critical about the EU competition policy, which should not obstruct, in his opinion, the industrial policy.<sup>90</sup> Sarkozy also claimed that the Union should specify its final boundaries and he opposed Turkey’s accession.<sup>91</sup> The latter resulted in his proposal to establish the Mediterranean Union, covering eight southern EU members, as well as EU non-members from the Mediterranean region.<sup>92</sup>

## Germany

The Christian social-democrat government headed by Angela Merkel was one of the most avid supporters of the Constitutional Treaty. Justifying their support, German politicians emphasised primarily the need to make EU actions more efficient. The rising political power of Germany in the EU institutional order to begin with the effective date of entry into effect of the new treaty was rarely focused on. If referred to it all, it was stated that the voting system for the EU Council provided for in the TCE, which was advantageous for Germany, was fairer and derived from the democratic principle that every citizen of the EU should have the same impact on decision making. In addition, a sizeable group of German intellectuals and politicians (notably from the Green Party and social democrats) underscored the necessity to deepen integration of EU Member States and enhance Community bodies.

The support for the Constitutional Treaty was therefore an outcome of a consensus between Germany’s two major political powers. The adoption of the treaty in an unchanged form was supported both by the

<sup>88</sup> N. Sarkozy, *Mes objectifs en matière de politique internationale*, Conférence de presse sur la politique internationale, 28.02.2007, [www.u-m-p.org/site/index.php/ump/s\\_informer/discours/mes\\_objectifs\\_en\\_matiere\\_de\\_politique\\_internationale](http://www.u-m-p.org/site/index.php/ump/s_informer/discours/mes_objectifs_en_matiere_de_politique_internationale). Also an article by Sarkozy’s advisor on European affairs: A. Lamassoure, *Après l’échec de la Constitution, relancer l’Europe*, Challenge Europe, February 2007, [www.alainlamassoure.eu/liens/600.doc](http://www.alainlamassoure.eu/liens/600.doc).

<sup>89</sup> *Présidentielle: point par point, les programmes décryptés*, 6.04.2007, [www.lefigaro.fr](http://www.lefigaro.fr).

<sup>90</sup> Allocution de M. Nicolas Sarkozy, Président de la République, devant les parlementaires de la majorité, 20.06.2007, [www.elysee.fr/elysee/elysee.fr/francais/interventions/2007/juin/allocution\\_du\\_President\\_de\\_la\\_republique\\_devant\\_les\\_parlementaires\\_de\\_la\\_majorite.78912.html](http://www.elysee.fr/elysee/elysee.fr/francais/interventions/2007/juin/allocution_du_President_de_la_republique_devant_les_parlementaires_de_la_majorite.78912.html).

<sup>91</sup> N. Sarkozy, *Ensemble tout devient possible. Mon projet*, p. 10, [www.sarkozy.fr](http://www.sarkozy.fr); Voici l’intégralité du débat de l’entre-deux-tours opposant Nicolas Sarkozy à Ségolène Royal, 2 May, pp. 24-26, [www.nouvelobs.com](http://www.nouvelobs.com).

<sup>92</sup> Point de presse conjoint de M. Nicolas Sarkozy, Président de la République, et de M. José Luis Rodriguez Zapatero, Président du gouvernement du Royaume d’Espagne, à l’issue de leur entretien à Madrid, 31.05.2007, [www.elysee.fr/elysee/elysee.fr/francais/interventions/2007/mai/point\\_de\\_presse\\_conjoint\\_du\\_President\\_de\\_la\\_republique\\_et\\_du\\_President\\_du\\_gouvernement\\_President\\_du\\_gouvernement\\_d\\_espagne.77634.html](http://www.elysee.fr/elysee/elysee.fr/francais/interventions/2007/mai/point_de_presse_conjoint_du_President_de_la_republique_et_du_President_du_gouvernement_President_du_gouvernement_d_espagne.77634.html).

ruling parties: the Christian-democratic CDU (Christlich Demokratische Union Deutschlands) and the CSU (Christlich-Soziale Union in Bayern), and the social democratic SPD (Sozialdemokratische Partei Deutschlands), and by opposition liberals (Freie Demokratische Partei, FDP) and the Green Party. The coalition agreement of November 2005, signed by the CDU, the CSU and the SPD, states that “We support the European Constitutional Treaty. It represents an important step forward, towards Europe focused on values, fairer in social terms, with broader civil rights, EU and Member States’ competencies divided in a better way, Europe with less regulation and more democracy as well as with more robust participation of national parliaments. The European Union will become more democratic, effective and more transparent, and its ability to act will also grow.”<sup>93</sup> German politicians used similar rhetoric later, too.

The Constitutional Treaty also enjoyed significant support of the public opinion. According to the Eurobarometer of 2006, as many as 73% of Germans were in favour, while a mere 17% opposed it.<sup>94</sup> In spring 2007, there were even more supporters of the Constitution (78%).<sup>95</sup> It should be noted that public debate in Germany on the advantages and disadvantages of the document is scarce and statements by politicians on the issue are vague, sometimes revealing their ignorance regarding the fundamental principles of the EU’s operation.<sup>96</sup> As described by a commentator of the weekly “Die Zeit”: “The constitution is like modern art. Nobody understands it. But whoever dares to criticise it, is instantly exposed as an ignoramus.”<sup>97</sup>

Circles that criticised the TCE were few and far between. The post-communist, parliamentary Left Party (the former Party of Democratic Socialism, PDS, and the former SPD’s left-wing politicians) was not fundamentally against the constitution for the EU as such, but condemned the TCE based on their leftist sentiments, arguing it was eager to strengthen the economic “neoliberalism” prevalent in the EU<sup>98</sup> and on the grounds that its adoption was not consulted with citizens.<sup>99</sup> On the other hand, right-wing criticism from parties such as the neo-Nazi NPD (Nationaldemokratische Partei Deutschlands) and some factions within the CDU and the CSU emphasised too far-reaching interference with competencies of national states and no reference to Christian values. At the 2005 vote in Bundestag, 20 deputies from a CDU/CSU faction voted against approving the president’s ratification of the treaty.

Christian-democratic “dissidents” were supported by some constitutionalists, experts and commentators, who pointed out the removal of some competencies from the Bundestag and the unclear division of competencies between Member States and the EU.

One of the most recognised German critics of the treaty is the CSU’s deputy Peter Gauweiler. He demanded incorporating a reference to God into the treaty (this was actually the proposal of the entire German Christian-democratic camp). When the Bundestag agreed to the ratification of the Constitution in the form accepted by the European Council in October 2004, that is without *invocatio Dei* or even a mention of Christianity, Gauweiler filed a complaint with the Constitutional Court, claiming a conflict between the treaty and the German Constitution. His reasoning was that adopting the Constitutional Treaty would mean superseding the present German Constitution by a different constitutional system, which, under art. 146 of the Constitution, requires a referendum. Because of this complaint, President Horst Köhler announced that he would ratify the TCE only after the matter has been investigated by the Constitutional Court, which decided, in October 2006, that it would proceed to investigating the case only when the final shape of the treaty is decided on, i.e. after a political decision of the European Council announcing the end of the “reflection period” is taken.

<sup>93</sup> See *Gemeinsam für Deutschland – Mit Mut und Menschlichkeit. Koalitionsvertrag zwischen CDU, CSU und SPD*, p. 127, [www.bundesregierung.de/nsc\\_true/Content/DE/\\_\\_\\_Anlagen/koalitionsvertrag,templateId=raw,property=publicationFile.pdf/koalitionsvertrag](http://www.bundesregierung.de/nsc_true/Content/DE/___Anlagen/koalitionsvertrag,templateId=raw,property=publicationFile.pdf/koalitionsvertrag) (12.03.2007).

<sup>94</sup> See *Eurobarometer 66, Herbst 2006, Nationaler Bericht Deutschland*, [http://ec.europa.eu/public\\_opinion/archives/eb/eb66/eb66\\_de\\_nat.pdf](http://ec.europa.eu/public_opinion/archives/eb/eb66/eb66_de_nat.pdf), p. 19 (14.03.2007).

<sup>95</sup> See *Eurobarometer 67. Erste Ergebnisse*, [http://ec.europa.eu/public\\_opinion/archives/eb/eb67/eb\\_67\\_first\\_de.pdf](http://ec.europa.eu/public_opinion/archives/eb/eb67/eb_67_first_de.pdf).

<sup>96</sup> See ARD TV channel’s material of 12 May 2007 on the occasion of the ratification by Bundestag of the Constitutional Treaty, [http://daserste.ndr.de/container/file/t\\_cid-2853670\\_.pdf](http://daserste.ndr.de/container/file/t_cid-2853670_.pdf). Deputies specialising in foreign affairs showed crass ignorance on the EU when answering questions by TV reporters.

<sup>97</sup> U. Speck, *Kosmoblog*, entry of 16 January, [www.zeit.de](http://www.zeit.de).

<sup>98</sup> See *Beschluss der 1. Tagung des 9. Parteitages der PDS, Potsdam, Oktober 2004*, passage on the constitution is published on the official Internet site of the party, <http://sozialisten.de/politik/themen/europaverfassung/index.htm> (12.03.2007). See also interview with a leading politician of the Left Party, Oskar Lafontaine, *Neues Deutschland*, 8 III 2007, also available at: [http://sozialisten.de/sozialisten/medienspiegel/view\\_html?zid=35292](http://sozialisten.de/sozialisten/medienspiegel/view_html?zid=35292) (12.03.2007).

<sup>99</sup> See position of the faction “die Linken,” [www.linksfraktion.de/position\\_der\\_fraktion.php?artikel=1747241971](http://www.linksfraktion.de/position_der_fraktion.php?artikel=1747241971).

Another event that resonated significantly was an article from January 2007 by former President Roman Herzog and Lüder Gerken, director of the reputed Centre for European Policy, criticising the Constitutional Treaty for reinforcing the present domination in the EU of the executive over the legislative.<sup>100</sup> The authors criticised EU officials (and judges of the European Court of Justice) for a growing number of cases where the subsidiarity principle has been infringed upon. They also blamed the governments of EU Member States for bypassing the legislation process in Member States by insisting on particular directives in Brussels.

## The German position on negotiations on the future of the Constitutional Treaty

The coalition agreement between the CDU, the CSU and the Green provides that: “We declare ourselves in favour of continued ratification of the European treaty in the first half of 2006, and wish to give it new impetus in the first half of 2007 during the German presidency. In this connection, we will propose that national parliaments be strengthened already before the entry into force of the constitution, by applying the subsidiary early warning system, which will not require any changes to the Treaty.”<sup>101</sup> All public statements by German politicians are largely reformulations of the above position.

The testing attitudes of individual EU states towards the future of the treaty, establishing the framework for the discussion and drafting the “road map” of subsequent institutional reform-related actions, were announced as key objectives for the German presidency in the EU. Angela Merkel’s government released relatively little information on its proposals and plans for recovery from the crisis, which follows both from the fact of presiding over the EU Council and from the conviction that Germany’s *raison d’état* was to play the role of a “fair broker” in the EU. As a result, at the beginning of March the FDP accused Merkel of equivocation and demanded that she should show her trump cards.<sup>102</sup> In turn, the Left Party demanded a referendum on the treaty. The government preferred caution, especially since the presidential campaign was in progress in France.

Caution was absolutely necessary, also because Germany, as a result of intense consultations, diplomatic action and pressure exerted on some states, was planning not only to broker the consent to the framework of the treaty, but also to make arrangements as to its contents, in order that the only task for the Portuguese presidency should be to agree on technical details.

Initially, other ways out of the crisis were also assessed. Approximately by the end of 2006, German politicians looked at the option of repeated ratification in the Netherlands and France, following a different track than a referendum, after the exclusion of less important provisions (part III). This legal trick, sometimes referred to as a “Constitutional Treaty minus,” would render the ratification still valid in the states that have successfully ratified the treaty. This was justified by the fact that the rejection of the TCE by the French and Dutch resulted not so much from the resistance to the treaty’s contents, but rather dissatisfaction with the policy of the governments of the day. In the end, the plans were abandoned due to the objections by politicians from those states. The proposal to include Christian values in the preamble was also abandoned, even though Chancellor Merkel made such a promise to Pope Benedict XVI in August 2006.

In the end, the prevailing attitude was that the treaty should be based on the TCE, but it could not be identical with it, and it would not be reasonable for the treaty to incorporate elements that could irritate Member States, such as EU symbols or the name “constitution”. This was the assumption based on which negotiations were carried out with the remaining EU states, and their results were commented on by Merkel in the Bundestag. On 14 June, the Chancellor referred to the need to adopt a “reforming treaty”<sup>103</sup> based on the TCE and proposed a clear division between national state competencies and EU competencies. She also referred to the need to remove symbols that could suggest that the EU is a state, although she made it clear that it was not her personal conviction, but rather the position worked out in consultations held with

<sup>100</sup> R. Herzog, L. Gerken, “Europa entmachtet uns und unsere Vertreter,” *Welt* of 13 January 2007, also available at: [www.welt.de/politik/article715345/Europa\\_entmachtet\\_uns\\_und\\_unsere\\_Vertreter.html](http://www.welt.de/politik/article715345/Europa_entmachtet_uns_und_unsere_Vertreter.html).

<sup>101</sup> See footnote 93.

<sup>102</sup> See “Opposition hält Merkel Mutlosigkeit vor,” *Tagesspiegel* (Internet edition) of 1 March 2007, [www.tagesspiegel.de/politik/nachrichten/eu-verfassung-merkel/94073.asp](http://www.tagesspiegel.de/politik/nachrichten/eu-verfassung-merkel/94073.asp) (13.03.2007).

<sup>103</sup> See the Chancellor’s address of 14 June 2007: *Regierungserklärung der Bundeskanzlerin: Vorschau auf den Europäischen Rat am 21. und 22. Juni 2007*, [www.bundesregierung.de/nn\\_1502/Content/DE/Regierungserklaerung/2007/2007-06-14-regierungserklaerung-eu-gipfel.html](http://www.bundesregierung.de/nn_1502/Content/DE/Regierungserklaerung/2007/2007-06-14-regierungserklaerung-eu-gipfel.html).

other EU Member States, whose opinions “must be respected”. In the debate that followed,<sup>104</sup> SPD representatives supported Merkel’s statement regretting that EU symbols could not be saved and insisting that the option of blocking decisions taken by the EU by national parliaments should not be implemented. Representatives of the Green were of the same opinion, also underscoring that the European referendum as an institution should continue to exist. The Left Party barely tackled the issue of the TCE, only indicating that treaties should be adopted by referendums, while the FDP praised Merkel for her actions and expressed their full support for her subsequent efforts.<sup>105</sup>

Germany completed their presidency with relative success, achieved at the European Council held on 21-23 June 2007, as the “core” substance of the TCE was retained in line with their plans, which was welcomed by the German media and the majority of politicians. Chancellor Merkel was particularly praised for her role in the success.

## Polish themes in the debate on the future of the TCE

In spring 2007, a wave of criticism swept across Germany in connection with the Polish position on the future of the TCE (the proposal for a voting system in the EU Council based on the square root of the population of a given state in the EU) and threats of vetoing the outcome of the Intergovernmental Conference. The most serious supraregional press usually presented their opinions in a balanced manner, while the television and notably the regional press and tabloids, as well as the weekly “Spiegel,”<sup>106</sup> reacted in a harsh and direct manner, referring to the Polish position as “impudent,” denying its “European-ness,” or calling for the introduction to the new treaty of an option to exclude certain members from the EU.<sup>107</sup> Only some conservative and far-left commentators supported the Polish position or expressed their understanding for it.<sup>108</sup> Grudges against Poland, concerning its allegedly “non-European” attitude, were expressed by many politicians, although the Chancellor herself avoided such criticism. Already after the European Council meeting, this onslaught was condemned by the Left Party, while government politicians attempted to relieve the tension.<sup>109</sup>

## Greece

The Greek parliament ratified the Constitutional Treaty on 19 April 2005, with 286 votes in favour and 17 against. The voters in favour were the two main political parties, the ruling New Democracy (Nea Dimokratia, ND, 45.5% of seats in the parliament) and the opposition, the Panhellenic Socialist Movement (Panellinio Sosialistiko Kinima, PASOK, 40.5%). The document enjoyed robust support of the society (72%),<sup>110</sup> even though the question of the EU institutional reform was not tackled in the public debate. The most important component of the European policymaking in Greece is the Turkish and Cypriot issues, followed by the Western Balkans.

Among politicians who primarily tackled the Constitutional Treaty issue was the Greek Minister of Foreign Affairs, Dora Bakoyannis. In her view, the document provided appropriate tools to be able to effectively meet the challenges faced by the EU. As argued by her deputy, Yannis Valinakis, in a meeting of

<sup>104</sup> See Minutes of the Bundestag session of 14 June 2007, [www.bundestag.de/bic/plenarprotokolle/plenarprotokolle/16103.html](http://www.bundestag.de/bic/plenarprotokolle/plenarprotokolle/16103.html).

<sup>105</sup> *Ibid.*

<sup>106</sup> See *Spiegel* 2007, No. 25, with the cover page depicting Lech and Jarosław Kaczyński bestriding Chancellor Merkel and the title “Unloved neighbours. How Poles annoy Europe.”

<sup>107</sup> See *Financial Times Deutschland* of 19 April 2007, [www.ftd.de/meinung/leitartikel/:Kolumne%20Wolfgang%20M%20FCnchau%20Notizen%20Quadratwurzel/215139.html](http://www.ftd.de/meinung/leitartikel/:Kolumne%20Wolfgang%20M%20FCnchau%20Notizen%20Quadratwurzel/215139.html).

<sup>108</sup> E.g. Alan Posener, a well-known columnist at *Die Welt*, see his article defending Poland, <http://debatte.welt.de/kommentare/25275/es+sind+die+polen+die+europa+retten>, and his interview for *Rzeczpospolita*, edition of 5 July 2007. Wolfgang Münchau of *Financial Times Deutschland*, see his: “Notizen über die Quadratwurzel,” [www.ftd.de/meinung/kommentare/:Pressestimmen%20Polens%20Forderungen/214723.html](http://www.ftd.de/meinung/kommentare/:Pressestimmen%20Polens%20Forderungen/214723.html), and leftist journalists’ centres, linked with the Internet site [www.german-foreign-policy.com](http://www.german-foreign-policy.com).

<sup>109</sup> See the position of the party, H. Scholz, *DIE LINKE fordert eine friedliche, sozial gerechte und demokratische Europäische Union auf vertraglicher Grundlage*, <http://die-linke.de/presse/presseerklarungen/detail/browse/1/zurueck/presseerklarungen/artikel/die-linke-fordert-eine-friedliche-sozial-gerechte-und-demokratische-europaeische-union-auf-vertrag/>.

<sup>110</sup> *Eurobarometer 66, Public Opinion in the European Union*, Autumn 2006, [http://ec.europa.eu/public\\_opinion/archives/eb/eb66/eb66\\_el\\_exec.pdf](http://ec.europa.eu/public_opinion/archives/eb/eb66/eb66_el_exec.pdf).

the friends of the Constitutional Treaty in Madrid in January 2007, the TCE was important because it contributed to a growing role of small states and greater security, and also because of its provisions on the protection of the EU external borders, development of island regions and tourism development actions.<sup>111</sup>

Greece advocated the adoption of the Constitutional Treaty in an unchanged form.<sup>112</sup> The Foreign Affairs Minister argued that the EU needed the TCE, as it would allow the institutional modernisation required for the Union to function more efficiently and speak as one in the world. At the same time, the minister showed considerable flexibility by arguing that those members that failed to ratify it could not be solely responsible for searching for new solutions. The usefulness of the TCE should be examined, along with the need for its adoption, and the requirements of the new realities should be adhered to. Already before the Presidential elections in France, she pointed out that if no agreement were reached on the adoption of the TCE, Member States would be forced to look at the option of signing a new, shorter mini-treaty.

While allowing for the mini-treaty option, the Foreign Affairs Minister noted that any decision on the EU's institutional future should not depart significantly from the contents of the TCE. All its primary rules and arrangements should be retained. A subtle balance reached by the document may not be distorted. As argued by Prime Minister Costas Karamanlis shortly before the European Council, minor changes that were necessary should not touch upon the essence of the provisions agreed on in the TCE. If no compromise on the issue could be reached, Greece "was prepared to act with those countries that wish to have more Europe," concluded the head of the government.<sup>113</sup>

## Hungary

Hungary ratified the TCE as the second Member State (after Lithuania). During the vote in the parliament on 20 December 2004 the treaty was supported by 304 deputies out of 385 members of the National Assembly (9 voted against), and the ratification was complete with the signature made by President Ferenc Madl. All deputies from the ruling coalition composed of the Hungarian Socialist Party (Magyar Szocialista Párt, MSZP) and the liberal Alliance of Free Democrats (Szabad Demokraták Szövetsége, SZDSZ) voted in favour of the treaty. The document was also supported by 127 deputies of the opposition Fidesz - Hungarian Civic Union (Fidesz - Magyar Polgári Szövetség). Several Fidesz deputies and a few independent deputies voted against the treaty. The major political parties in Hungary did not raise any reservations to the TCE, and the government policy in this respect did not meet with major criticism. Although non-parliamentary extreme right groupings did voice their protest, the EU treaty reform was on the sidelines of public debate. Following the elections in April 2006, the socialist-liberal coalition remained in power, achieving a stable majority in the parliament (by 33 votes), although from autumn 2006 the state fell into a deep crisis, resulting from its financial collapse and severe political fighting (riots, etc.).

According to the survey carried out in spring 2007, a sweeping majority of Hungarians (79%) support the TCE. Only 11% of the respondents were of the opposite opinion.<sup>114</sup> When assessing the prospects of the evolution of the Hungarian position on European integration, a growing disappointment with EU membership, fuelled primarily by the internal situation, should be considered. In autumn 2006, public opinion polls showed a 10% drop of support for the EU (the most dramatic drop in Europe), down to 39%.<sup>115</sup> In spring 2007, only 40% of the respondents acknowledged the benefits of EU membership. Moreover, 52% of Hungarians claimed that they did not benefit from the membership (an increase by 7% in comparison to autumn 2006).

<sup>111</sup> *Participation of Deputy FM Mr. Y. Valinakis in the informal "Friends of the Constitutional Treaty" meeting of Ministers for European Affairs held in Madrid*, 29.01.2007, [www.greekembassy.org/Embassy/content/en/Article.aspx?office=1&folder=19&article=19608](http://www.greekembassy.org/Embassy/content/en/Article.aspx?office=1&folder=19&article=19608).

<sup>112</sup> The most comprehensive vision of the Constitutional Treaty's future and EU institutional reform was offered by Dora Bakoyannis in her lecture at an event by the Allianz Cultural Foundation. See *Fifty years after the Treaty of Rome – Looking forward*, Speech of FM Ms. Bakoyannis at an event organized by the Allianz Cultural Foundation (Munich, 14.01.2007), [www.greekembassy.org/embassy/content/en/Article.aspx?office=1&folder=19&article=19502](http://www.greekembassy.org/embassy/content/en/Article.aspx?office=1&folder=19&article=19502).

<sup>113</sup> *All must assume their responsibilities on EU Treaty, PM says at EU summit dinner*, 21.06.2007, [www.ana-mpa.gr/anaweb/user/showplain?maindoc=5455155&maindocimg=5454893&service=6](http://www.ana-mpa.gr/anaweb/user/showplain?maindoc=5455155&maindocimg=5454893&service=6).

<sup>114</sup> *Eurobarometer 67, Public Opinion in the European Union. First Results*, June 2007, [http://ec.europa.eu/public\\_opinion/archives/eb/eb67/eb\\_67\\_first\\_en.pdf](http://ec.europa.eu/public_opinion/archives/eb/eb67/eb_67_first_en.pdf).

<sup>115</sup> *Eurobarometer 66, Közvéleménykutatás az Európai Unióban 2006. ŐSZ*, [http://ec.europa.eu/public\\_opinion/archives/eb/eb66/eb66\\_hu\\_nat.pdf](http://ec.europa.eu/public_opinion/archives/eb/eb66/eb66_hu_nat.pdf).

Hungary considered the TCE as a "milestone" of Europe's development, which defines and strengthens common values shared by Member States, makes the EU "more transparent and democratic," setting up conditions for deeper integration.<sup>116</sup> The authorities argued that the adoption of the TCE could enhance the EU's unity and prevent its "fragmentation," therefore they declared themselves in favour of continued ratification of the TCE and were reluctant towards the cherry-picking procedure. They were also eager to overcome the "stalemate." The achievements of the present integration model should be seen as a success, but the need to "bring the EU closer" to the citizens was also emphasised. Hungary supported the German presidency in its effort to resume work on the TCE, put on hold in mid-2005.

Owing to a large Hungarian minority in the neighbouring states, Hungary stood for the incorporation of an explicit provision on the protection of the rights of national minorities into the future treaty. The Hungarian government would also like the document to contribute to the enhancement of the EU enlargement process, primarily with Croatia and the Balkan states. Hungary is a member of the group of nine states (together with Belgium, Bulgaria, Cyprus, France, Greece, Spain, Luxembourg and Italy) that support the "strengthening of social Europe." In their opinion, the EU should ensure the "balance between economic freedom and social rights." The social Europe is defined as a set of "common values," such as social justice, equality and solidarity.<sup>117</sup> Hungary also supported the development of a common EU energy policy, which would consider the principle of solidarity among Member States in the face of various threats and the pursuit of a common position in negotiations with external partners.<sup>118</sup> However, the government's actions on this issue were severely criticised by the opposition as failing to meet the challenges of European solidarity.<sup>119</sup> Prime Minister Gyurcsány emphasises that although Hungary is very interested in the EU common energy policy, until it is there, it is his government that shoulders the responsibility for the deliveries.<sup>120</sup>

Hungary actively supported the effort of the German presidency intending to resume work on the TCE, to make it a point of departure for negotiations, and to retain as many of its provisions as possible, including the institutional package. At a meeting with Chancellor Merkel on 12 June, Prime Minister Gyurcsány, together with Romano Prodi and Valdas Adamkus, declared that it was necessary to retain the core elements of the TCE.<sup>121</sup> Hungary did, however, agree to "formal" changes and the removal of the constitutional terminology and symbols of the treaty. The MFA position emphasised the support for the concept of the EU legal personality and acceptance for the Charter of Fundamental Rights as a legally binding instrument of the EU.<sup>122</sup> Hungary harshly criticised the Polish proposal for a compromise on the voting system, objecting to it at the meeting of the Visegrad Group's Prime Ministers on 18 June (together with Slovakia).<sup>123</sup> Subsequently, already at the European Council summit, Prime Minister Gyurcsány rejected the Polish rhetoric of "historical discount" and warned against the consequences of "historical damages." He pointed out on the same occasion that a potential Polish veto would act to the detriment of not so much the "abstract EU" but rather specific countries, such as Hungary.<sup>124</sup>

Together with several other states that actively opposed excessive concessions towards the TCE criticsers, Hungary exerted pressure on the German presidency and large EU countries in this respect. Already before the European Council Summit, together with Spain, Italy, Portugal, Belgium and Luxembourg, Hungary announced that if the United Kingdom were to insist on their proposals for opt-outs, Hungary would object the appointment of the permanent president of the EU (which was top priority for the French, German and British). At the European Council summit, Hungary joined the group of states which argued that the negotiated draft mandate for the IGC offered too much to the TCE opponents and too little to

<sup>116</sup> Prime Minister Gyurcsány's Speech on Latest Foreign Policy Developments and Hungarian Standpoints, 07.03.2007, [www.mfa.gov.hu](http://www.mfa.gov.hu).

<sup>117</sup> Nine states call for revival of social Europe, 15.02.2007, [www.euobserver.com](http://www.euobserver.com).

<sup>118</sup> Kinga Göncz commented late on Thursday on the European Council's summit of March 8–9, [www.mfa.gov.hu](http://www.mfa.gov.hu).

<sup>119</sup> See e.g. We do not want to become Gazprom's happiest barrack, 09.01.2007, [www.fidesz.hu](http://www.fidesz.hu).

<sup>120</sup> Europe Day at the Foreign Ministry – Prime Minister Ferenc Gyurcsány urges new EU Constitutional Treaty until the next European Parliament elections to be held in 2009, 09.05.2007, [www.kulugyminiszterium.hu](http://www.kulugyminiszterium.hu).

<sup>121</sup> Az alkotmány a tét, *Magyar Nemzet* of 13 June 2007.

<sup>122</sup> Hungary is ready to consent to formal changes in the EU constitution, says the Foreign Minister, 19.06.2007, [www.kulugyminiszterium.hu](http://www.kulugyminiszterium.hu).

<sup>123</sup> PAP, 18.06.2007.

<sup>124</sup> PAP, 21.06.2007 quoting *Handelsblatt* (online) and APA.

the eighteen states that had ratified it and would like to keep its essence.<sup>125</sup> The most severe criticism was voiced regarding the concessions to the United Kingdom and the Netherlands as regards the greater empowerment of national parliaments in the process of European lawmaking (Belgium, also on behalf of Hungary, used the argument that under the circumstances, the treaty would not prevent the consolidation of “homophobic” laws in Poland”). Belgian Minister of Foreign Affairs Karel De Gucht noted that Hungary’s active position testifies to the fact that the EU changed considerably after the enlargement: “Some EU founding states became more Anglo-Saxon (Netherlands), while Hungary supported us.”<sup>126</sup>

The Hungarian government adopted the accepted draft mandate with satisfaction. The Prime Minister underscored that the high-profile characteristics of human rights protection was important for Hungary, including the rights of national minorities. He also stated that Hungarian proposals in this respect were taken into consideration, notably as regards the binding nature of the Charter of Fundamental Rights, which translates into the enhancement of the “social Europe” and freedom. Prime Minister Gyurcsány underscored the constructive role of Germany in forging the agreement, noting that it was binding for all EU states.<sup>127</sup> Hungary’s ratification of the treaty emerging on the basis of the agreed-on mandate by the parliament vote should not pose any problems.

## Ireland

Prior to the commencement of the European Council (21-22 June 2007), the Irish government defended the position that there was no alternative solution to the issue of the Constitutional Treaty.<sup>128</sup> Prime Minister Bertie Ahern confirmed that Ireland declared itself in favour of the TCE.<sup>129</sup> One of his statements was that the “European constitution is the right choice for Europe. It is [also] the right choice for Ireland.”<sup>130</sup> Ireland was one of the states that supported actions by the German presidency, eager to save the treaty.<sup>131</sup>

As emphasised by Prime Minister Ahern, Ireland’s objective during the European Council talks was to retain the arrangements of 2004. As viewed by the Irish, the Constitution was born as a result of the compromise reached during the negotiations on the “package,” and the compromise should be preserved in an unaltered state.<sup>132</sup> The Irish position on specific solutions contained in the Constitutional Treaty was expressed during the negotiations on the document, and did not undergo any significant changes following the rejection of the TCE in the referendums in France and the Netherlands.<sup>133</sup>

After the European Council session, the head of the Irish government expressed his satisfaction with the fact that the nature of differences between the TCE and the Reforming Treaty were mostly formal, and that both documents were 90% similar in terms of their stipulated solutions.

As regards the Charter of Fundamental Rights, Ireland, similar to Poland, reserved the right in the mandate to join the protocol sought by the United Kingdom. It provides for the potential opt-out from the Charter’s provisions. However, Prime Minister Ahern offered his assurances that Ireland would not use that option, and the reservation was raised only to carry out a detailed legal assessment of the protocol.

Ireland will examine the possibility of joining the cooperation in criminal and police matters. Following the end of the European Council, Prime Minister Ahern stated that, owing to the similarities between the

<sup>125</sup> Criticisers of the agreement, headed by Belgium, were, next to Hungary, Austria, Finland, Greece and Italy (quote from PAP), while Spain, Luxembourg, Malta and Slovenia supported them in some areas, PAP, 23.06.2006; *Le Soir* of 22-23 June 2006 and 25 June 2006.

<sup>126</sup> *Le Soir* of 22-23 June 2006 and 25 June 2006.

<sup>127</sup> *The European Union’s agreement on the reform treaty represents a success for Hungary* – Prime Minister Ferenc Gyurcsány’s statement in Brussels on June 23, [www.kulugyminiszterium.hu](http://www.kulugyminiszterium.hu).

<sup>128</sup> N. Treacy, *European Constitution – Pathways and Pitfalls*, 05.03.2006, [www.taoiseach.gov.ie/index.asp?docID=26](http://www.taoiseach.gov.ie/index.asp?docID=26).

<sup>129</sup> Parliamentary elections were held in Ireland on 24 May 2007, won by the previously ruling Fianna Fáil party, and Bertie Ahern became the Prime Minister again.

<sup>130</sup> B. Ahern, *Celebration of Europe Day*, Dublin City Hall, 09.05.2006, [www.taoiseach.gov.ie/index.asp?locID=200&docID=2616](http://www.taoiseach.gov.ie/index.asp?locID=200&docID=2616).

<sup>131</sup> Dermot Ahern, Irish Minister of Foreign Affairs, address read out at an event held to celebrate the accession of Bulgaria and Romania to the EU, Iveagh House, 10.01.2007, <http://foreignaffairs.gov.ie/home/index.aspx?id=27319>.

<sup>132</sup> B. Ahern, *Statement on the outcome of the European Council (21-23 June)*, 27.06.2007, [www.taoiseach.gov.ie/index.asp?locID=558&docID=3466](http://www.taoiseach.gov.ie/index.asp?locID=558&docID=3466).

<sup>133</sup> *White Paper on the European Constitution*, 13.10.2005.

legal systems of Ireland and the United Kingdom, Ireland might use the British solution, namely that it would not be automatically covered by cooperation in those areas, but it would be still able to join it voluntarily, under the so-called opt-in clause.

In terms of the Reforming Treaty ratification, the Minister for Foreign Affairs of the Irish MFA Dick Roche announced that the referendum would take place in Ireland.<sup>134</sup> If negotiations on the treaty finish as planned, that is by the end of 2007, the referendum will probably take place in mid-2008.

## Italy

The process of the Constitutional Treaty ratification ended on 6 April 2005. A political reshuffle – the defeat of Silvio Berlusconi and take-over by Romano Prodi – failed to provoke any changes to the views on the EU institutional reform. The Italian government was a staunch supporter of the Constitutional Treaty,<sup>135</sup> even though not all coalition forces supported the project. The Communist Refoundation Party (Rifondazione Comunista, PRC), holding 41 seats in the Parliament (6%), is one of the political forces backing the government, but it still declares its opposition against the TCE. Public opinion surveys indicate that the document was supported by 68% of Italian citizens.<sup>136</sup>

The Italian government was positive that the European Union needed an institutional reform. Following the enlargement, the EU is less efficient, a problem that would be resolved if the treaty, or an alternative solution, were adopted. Unlocking the constitutional process would allow the completion of the enlargement, with the accession of the states of the Western Balkans, and, a bit later, also Turkey. However, the rejection of the treaty in France and the Netherlands would have to be considered. Under the circumstances, Italy's Prime Minister allowed for potential negotiations on the new treaty, provided that the starting point for the negotiations would be the present project. The priority was to save the "essence" of the Constitutional Treaty.

It was expected in Italy that a plan of actions on the treaty would be prepared during the German presidency,<sup>137</sup> and that its implementation would commence after the election cycle in France. Italian politicians argued that finalising the TCE and proceeding with the institutional reform was impossible without France. They further claimed that the final agreement must be reached at the beginning of 2008, so that the EU institutional reform is closed before the elections to the European Parliament, to be held in 2009.

In October 2006, Minister of Foreign Affairs Massimo D'Alema, replying in a way to the proposal for a mini-treaty, formulated by Nicolas Sarkozy, proposed the adoption of the core, or basic treaty, that would incorporate all of the most important compromises of the Constitutional Treaty.<sup>138</sup> The problem of the name "Constitutional Treaty" was, according to the minister, of secondary importance. What was key was that the future treaty should retain the important elements of the present project. In particular, these were the position of the Minister of Foreign Affairs, who would preside over the General Affairs Council and be a member of the Commission, the establishment of the permanent chairman of the European Council, the extension of majority voting, the introduction of the double majority mechanism and direct democracy, as well as a clearer division of competencies and sources of law. The Charter of Fundamental Rights should also be binding.

The Minister of Foreign Affairs also indicated that the EU needed greater flexibility. Since the number of Member States has risen, it is required that the ability to "manage differences and otherness" is increased. This could be achieved under the condition that the EU acts on the basis of the principle of "different speeds." He argued that a common denominator for all members of the enlarged EU was undoubtedly

<sup>134</sup> *Minister Roche makes keynote address to National Forum*, Department of Foreign Affairs, Press Releases, 05.07.2007, [http://stage2.labyrinth.ie/dfa\\_live/home/index.aspx?id=29046](http://stage2.labyrinth.ie/dfa_live/home/index.aspx?id=29046).

<sup>135</sup> Government programme presented by Romano Prodi at the parliament, *Dichiarazioni Programmatiche del Presidente del Consiglio dei Ministri On. Prof. Romano Prodi alla Camera dei Deputati*, 22.03.2006, [www.governo.it/Presidente/Interventi/testo\\_int.asp?d=28210](http://www.governo.it/Presidente/Interventi/testo_int.asp?d=28210).

<sup>136</sup> *Eurobarometro 66, Opinione Pubblica Nell'unione Europea*, Autumn 2006, [http://ec.europa.eu/public\\_opinion/archives/eb/eb66/eb66\\_it\\_nat.pdf](http://ec.europa.eu/public_opinion/archives/eb/eb66/eb66_it_nat.pdf).

<sup>137</sup> P. Valentino, "Prodi e Merkel: Un manifesto per l'Europa," *Il Corriere della Sera* of 8 December 2006.

<sup>138</sup> M. D'Alema, "Nuovi obiettivi per l'Europa," *Rivista trimestrale Affari Esteri*, 26.10.2006, [www.palazzochigi.it/VicePresidente/dalema/interventi\\_interviste/testo\\_int.asp?d=29995](http://www.palazzochigi.it/VicePresidente/dalema/interventi_interviste/testo_int.asp?d=29995). Letter from the Foreign Affairs Minister on the institutional reform: "La Comunità Internazionale La seconda occasione dell' Europa," *La Repubblica*, 27 October 2006, [www.palazzochigi.it/VicePresidente/dalema/interventi\\_interviste/testo\\_int.asp?d=30025](http://www.palazzochigi.it/VicePresidente/dalema/interventi_interviste/testo_int.asp?d=30025).



common rules and an internal market. However, already in the present EU, there are groups more advanced in terms of integration, such as, for example, the Eurozone. The formation of groups of this type in the future should be allowed, under the condition that they are of an inclusive rather than exclusive nature. This would facilitate the formation of the “hard core” for others to follow, composed of states that participate in all types of cooperation and integration, including political, internal security, foreign policy and defence cooperation. As argued by the minister, this solution would be most advantageous for the political development of the EU.

After the presidential elections in France, Italy showed more flexibility on the TCE issue. Towards the end of May, while visiting France, Prime Minister Prodi clearly stated that he stood for the simplified treaty, proposed by Sarkozy, if the essence of the TCE was retained, namely the EU legal personality, the permanent chairman of the European Council, the EU Minister of Foreign Affairs, the unification of rules within the three EU pillars and the limitation of the vetoing right.<sup>139</sup>

## Latvia

Latvia belonged to the group of states that initially vehemently supported the adoption of the TCE and subsequently sought to retain its core contents when the new treaty was being drafted. During the German presidency in the first half of 2007, the debate on the Constitutional Treaty in Latvia was practically absent. In January 2007, President Vaira Vike-Freiberga said that “the lack of progress on the Constitutional Treaty represents a serious challenge for the EU.”<sup>140</sup> After the March European Council summit in Berlin, Foreign Affairs Minister Artis Pabriks stated that the Constitutional Treaty in its original form was the best possible compromise, but he simultaneously expressed his conviction that it would not come into effect in the original version.<sup>141</sup> Further, he claimed that the solution of the problem could be the adoption of a new legal act that would contain those regulations of the Constitutional Treaty that were not present in the Community law.

Pabriks also referred to the need for strict observance of the subsidiarity principle and the requirement to consolidate the Common Foreign and Security Policy (CFSP). The proposal to increase the importance of the CFSP was a recurring theme in statements by Latvian politicians. They argued that Latvia’s membership in the EU and an efficient CFSP would significantly enhance Latvia’s broadly understood security and its bargaining position in the state’s relations with Russia. Latvia also declared itself in favour of establishing the EU’s legal personality.

Interestingly, the Latvian parliament ratified the constitution in June 2005, shortly after unsuccessful referendums in France and the Netherlands, which was of certain symbolic significance. “The Constitution might not be the best but [...] it is the best compromise that we were able to arrive at” – said Pabriks on the occasion.<sup>142</sup> Only a handful of deputies from the pro-Russian post-communist Latvian Socialist Party voted against the treaty.

## Lithuania

Lithuania was the first European Union Member State to ratify the Constitutional Treaty (November 2004), only two weeks after the signature of the TCE by the European Council, with only a handful of dissenting votes. This goes on to show that the Lithuanian elites must have considered the treaty as a document that matches the Lithuanian *raison d’état*. This is further corroborated by the agreement on the Lithuanian foreign policy objectives for 2004-2008, signed in October 2004 by all major political powers.<sup>143</sup>

<sup>139</sup> Point de presse commun de M. Nicolas Sarkozy, Président de la République, et de M. Romano Prodi, Président du Conseil des ministres italien, à la suite de leur entretien, 28.05.2007, [www.elysee.fr/elysee/elysee.fr/francais/interventions/2007/mai/point\\_de\\_presse\\_commun\\_du\\_President\\_de\\_la\\_republique\\_et\\_du\\_President\\_du\\_conseil\\_des\\_ministres\\_italien\\_a\\_la\\_suite\\_de\\_leur\\_entretien.77487.html](http://www.elysee.fr/elysee/elysee.fr/francais/interventions/2007/mai/point_de_presse_commun_du_President_de_la_republique_et_du_President_du_conseil_des_ministres_italien_a_la_suite_de_leur_entretien.77487.html).

<sup>140</sup> See address by President Vaira Vike-Freiberga to the diplomatic corps, 19.01.2007, [www.mfa.gov.lv/en/news/speeches/2007/January/19-1/](http://www.mfa.gov.lv/en/news/speeches/2007/January/19-1/).

<sup>141</sup> See communication of the Ministry of Foreign Affairs of Latvia of 29 March 2008, *Foreign Ministry starts discussion on Latvia’s interests with respect to Constitution for Europe and its future*, [www.am.gov.lv/en/eu/news/4341/?pg=9145](http://www.am.gov.lv/en/eu/news/4341/?pg=9145).

<sup>142</sup> Interview by Latvia’s Minister of Foreign Affairs Artis Pabriks for *Baltic Times* of 9–15 June 2005, [www.mfa.gov.lv/en/news/speeches/2005/June/09-2/](http://www.mfa.gov.lv/en/news/speeches/2005/June/09-2/).

<sup>143</sup> See Agreement between Political Parties of the Republic of Lithuania on the Main Foreign Policy Goals and Objectives for 2004–2008, [www.urm.lt/popup2.php?item\\_id=255](http://www.urm.lt/popup2.php?item_id=255) (13.03.2007).

There has been no debate on the future of the treaty in recent months in Lithuania. The position presented on 24 January 2007 by the Minister of Foreign Affairs Petras Vaitiekūnas only shows that “whether the EU will be stronger, more effective and more democratic will depend on how the issue of the EU Constitutional Treaty is solved.”<sup>144</sup> The minister emphasised that Lithuania stands for the preservation of the core contents of the Constitutional Treaty. Already at that time, it was unofficially known that Lithuania supported the idea of incorporating energy security into the treaty, whether it was to undergo any changes or not. Later on, the position was reiterated officially by top Lithuanian authorities (President Valdas Adamkus,<sup>145</sup> Prime Minister Gediminas Kirkilas<sup>146</sup>). During the negotiations in the first half of 2007, presided over by the German presidency, Lithuania officially supported the preservation of the TCE in an unchanged format, and emphasised that in the case that the discussion on its final shape is reopened, the modified treaty should incorporate the provision on energy security. The state consented to remove state symbols and the word “constitution” from the text and opposed the inclusion on membership criteria for the new states, as well as the obligation of EU states to harmonise taxes and coordinate social policy.

It should be noted that Lithuania, unlike many other states of Central and Eastern Europe, even though it did support the preservation of the TCE in an unchanged format, expressed its relative understanding for Polish proposals for revising the voting system in the Council of the European Union. Foreign Affairs Minister Petras Vaitiekūnas said, for example, that “the veto threat is a tactical move by Poland, seeking to force Europe to look at the issue from another standpoint. Old European countries are not always willing to listen to our voice – the voice of the new or smaller states. This is somewhat unfair, and Poland attempts to fight against it.”<sup>147</sup> President Adamkus was one of unofficial mediators between Chancellor Angela Merkel and President Lech Kaczyński. Lithuania emphasised that the strategy of isolating those EU countries that oppose the minority opinions on the future of the TCE is inappropriate. On Friday, 22 June 2007, in a decisive moment of the European Council negotiations, Lithuania and the Czech Republic vehemently objected to the adoption of the negotiation mandate without Poland’s consent.

## Luxembourg

Luxembourg was the first state to continue the Constitutional Treaty ratification process following the negative outcomes of the referendums in France and the Netherlands. The society supported the document in a consultative referendum carried out on 10 July 2005.

Prime Minister Jean-Claude Juncker, Foreign Affairs Minister Jean Asselborn, as well as the Minister Delegate for Foreign Affairs and Immigration Nicolas Schmit stated on numerous occasions that they supported the retention of the essence of the TCE. They opposed the argument that the Constitutional Treaty was “dead,” underscoring that it would allow the Union to act in a more efficient and democratic manner. In their opinion, the new treaty should come into force in 2009, before the next elections to the European Parliament.<sup>148</sup> Referring to the international public law provisions, Juncker argued that as a result of the TCE signature, the signing states were required to subject it to the ratification procedure. He also expressed his dissatisfaction when EU Member States that put the ratification process on hold expressed some negative remarks about the Constitutional Treaty.<sup>149</sup> At the same time, Luxembourg’s representatives expressed their understanding for France and the Netherlands, which did not want to give the voters the same text, even though the rejection of the TCE did not stem directly from the provisions of the treaty, but rather from “national context.” As a result, they offered their consent to modifications to the document,

<sup>144</sup> See Communication of the Ministry of Foreign Affairs of Lithuania of 24 January 2007, *We stand for preservation of the contents of the EU Constitutional Treaty*, [www.urm.lt/index.php?139483566](http://www.urm.lt/index.php?139483566).

<sup>145</sup> See PAP dispatch of 20 June 2007.

<sup>146</sup> See PAP dispatch of 9 June 2007.

<sup>147</sup> See PAP dispatch of 18 June 2007.

<sup>148</sup> Jean-Claude Juncker at the Charlemagne Award presentation in Aachen, 25.05.2006, [www.gouvernement.lu/salle\\_presse/discours/premier\\_ministre/2006/05/25\\_discours\\_juncker\\_karlspreis/25juncker\\_karlspreis\\_EN/index.html](http://www.gouvernement.lu/salle_presse/discours/premier_ministre/2006/05/25_discours_juncker_karlspreis/25juncker_karlspreis_EN/index.html); J.C. Juncker, *Le besoin d'Europe*, Collège d'Europe, Bruges, 30.10.2006, [www.gouvernement.lu/salle\\_presse/discours/premier\\_ministre/2006/10/30juncker\\_bruges/index.html](http://www.gouvernement.lu/salle_presse/discours/premier_ministre/2006/10/30juncker_bruges/index.html); J. Asselborn, *Déclaration de politique étrangère 2006*, 21.11.2006, Communication from the visit of Nicolas Schmit in London, 02.10.2006, [www.gouvernement.lu/salle\\_presse/actualite/2006/10/12schmit/index.html](http://www.gouvernement.lu/salle_presse/actualite/2006/10/12schmit/index.html); N. Schmit, *Le referendum du 10 juillet 2005: un vote pour rien?*, 10.07.2006, [www.gouvernement.lu/salle\\_presse/discours/autres\\_membres/2006/07/07schmit/index.html](http://www.gouvernement.lu/salle_presse/discours/autres_membres/2006/07/07schmit/index.html).

<sup>149</sup> J.-C. Juncker, *Le besoin d'Europe*, op.cit.; J.-C. Juncker, *L'Europe dans tous ses états*, Université du Luxembourg, 11.12.2006, [www.gouvernement.lu/salle\\_presse/discours/premier\\_ministre/2006/12/11pm\\_uni/index.html](http://www.gouvernement.lu/salle_presse/discours/premier_ministre/2006/12/11pm_uni/index.html).

which should, however, be limited to selected issues only, without opening the institutional package anew. Nicolas Schmit noted that Luxembourg was able to sacrifice the term “constitution.” He also emphasised that the third part of the TCE was actually a transfer of the provisions of the Treaty on European Communities and was of minor importance as compared to the first two parts, therefore it was not necessary to provide it with a “constitutional” character. In addition, in the case of potential modifications to the document, those provisions that relate to social affairs (e.g. art. I-3) should be strengthened (e.g. art. I-3).<sup>150</sup>

Authorities in Luxembourg also indicated the importance of the meeting of the “friends of the Constitution,” held in Madrid in January 2007. In their opinion, the initiative overcame dominant, eurosceptical attitudes. Conclusions of the meeting emphasised the TCE provisions should be the basis for the discussion on the reform of EU treaties.<sup>151</sup>

Views on the proposal to draft a mini-treaty, put forward by the then candidate for the French presidency Nicolas Sarkozy, were divided among Luxembourgian politicians. Ben Fayot, the leader of the socialist party and a member of Luxembourg’s delegation in the Convention was decisively against it. Similarly, Juncker opposed the idea of a simplified and shortened version of the TCE. On the other hand, Schmit argued that the proposal was worth looking at, as its point of reference was the TCE text. He primarily emphasised that the treaty should be renegotiated, relying on the compromise achieved in the TCE, rather than searching for a new solution.<sup>152</sup>

Luxembourg’s proposals on the TCE were well known before the European Council in June. They were presented as part of numerous statements and addresses to the media, as well as bilateral meetings.<sup>153</sup> The parliament also specified their expectations, which took place during the debate a week before the commencement of the Council.<sup>154</sup> Luxembourg’s representatives underscored in the first place the fact that the TCE should be the basis for negotiations and its essence must be retained. The compromise on the institutions should not be disturbed and the discussion on the institutional package should not be reopened, in particular as regards the voting system in the Council. The Luxembourgian delegation found it necessary for the scope of the qualified majority voting to be extended over the areas stipulated in the TCE. Of paramount importance for Luxembourg was the Charter of Fundamental Rights, referred to on many occasions by the state officials. Its legally binding nature was among the most prominent negotiation proposals. The Luxembourgian government indicated that the new treaty should implement the arrangements agreed on in the TCE as regards the area of freedom, security and justice, as well as the Common Foreign and Security Policy. In addition, the treaty should contain provisions on the establishment of the EU’s legal personality and the prevalence of the Community legislation. In terms of the greater empowerment of national parliaments as regards the supervision over the observance of the subsidiarity principle, Luxembourg opposed the “red card” procedure proposed by the Netherlands, but it underscored that a solution to the issue was possible. The state supported the enhanced social dimension of the EU and the common energy policy or fight against climate change. Luxembourg also declared that they were willing to abandon, not without regret, EU symbols (anthem, flag), although they proposed that the treaty should contain a reference to the euro as the common currency of the EU.

When assessing the IGC mandate worked out at the June European Council, Juncker and Asselborn stated the Luxembourgian government was “satisfied with the result of the negotiations, although not delighted.” The essence of the TCE was retained, and all proposals important for Luxembourg were included. The Charter of Fundamental Rights will be legally binding, the EU will have legal personality and the institutional package will be retained (change of the name of the Foreign Affairs Minister was considered minor), and the scope of the qualified majority voting is planned to be extended. In addition, by

<sup>150</sup> N. Schmit, *Le referendum du 10 juillet 2005: un vote pour rien?*, *op.cit.*

<sup>151</sup> Rapport sur la politique européenne du gouvernement 2006–2007, Luxembourg, 22.05.2007; N. Schmit, “Renégocier le traité, pas le réécrire,” *Le Quotidien* of 25 January 2007, [www.gouvernement.lu/salle\\_presse/Interviews/2007/01janvier/25schmit\\_madrid/index.html](http://www.gouvernement.lu/salle_presse/Interviews/2007/01janvier/25schmit_madrid/index.html).

<sup>152</sup> *EU-25/27 Watch*, *op.cit.*, pp. 89-90, N. Schmit, “Renégocier le traité, pas le réécrire,” *op.cit.*

<sup>153</sup> Press releases on statements by government representatives in the period preceding the European Council were published on the web portal [www.europaforum.lu](http://www.europaforum.lu), launched in February 2006 in order to improve the information policy on European integration and relations between Luxembourg and the EU.

<sup>154</sup> *Débat d'orientation en vue du Conseil européen des 21 et 22 juin 2007 sur le mandat d'une Conférence intergouvernementale relative au Traité constitutionnel*, C-2006-O-036-0004, [www.chd.lu/archives/ArchivesPortlet?selectedDocNum=0&secondList=&action=document](http://www.chd.lu/archives/ArchivesPortlet?selectedDocNum=0&secondList=&action=document); Motion, I-2006-O-M-0918-01, [www.chd.lu/archives/ArchivesPortlet?selectedDocNum=1&secondList=true&action=document](http://www.chd.lu/archives/ArchivesPortlet?selectedDocNum=1&secondList=true&action=document).

incorporating the provision on the economic and monetary union and the euro currency into the article on the Union's objectives (a proposal of paramount importance for Luxembourg), the common currency, referred to in the TCE as the EU's symbol, was "rooted" in the treaty. Luxembourg also welcomed the fact that the social clause (art. III-117 of the TCE) and the clause on services of general interest (art. III-122 of the TUE) were included.

According to Luxembourg, the draft of the new treaty is much better than the Nice Treaty, although much less digestible than the TCE. The main drawback of the new treaty is its lack of clarity. Juncker stated that it is "a very complicated simplified treaty." The Luxembourgian delegation considered the abandonment of the "constitutional" nature of the TCE to be a good decision, since the reference to the term "constitution" could create a false impression that the EU is developing towards the superstate model, although he regretted the resignation from the EU anthem and flag. It was underscored that concerns of some politicians about those symbols are not shared by European societies (even French or Dutch), as they spontaneously accepted both. The opt-outs negotiated by the United Kingdom met with very negative comments. Representatives of Luxembourg also expressed their lack of understanding for the arguments used by the Polish delegation and even though they regarded the IGC mandate as "objective success," they still underscored their disappointment with the atmosphere of the negotiations.

Juncker repeatedly stated that he was against the Europe of different speeds. Following the European Council, he claimed that varied integration might become a necessity if some states do not want to participate in subsequent integration processes.<sup>155</sup>

## Malta

At the beginning of 2007, the Maltese government was of the opinion that the Union needed the Constitutional Treaty in order to act effectively, play a major role in the international arena and absorb new members in the future. Minister of Foreign Affairs Michael Frendo said that Malta rejected the concept of cherry picking, that is selecting individual solutions from the TCE package.<sup>156</sup> In turn, Prime Minister Lawrence Gonzi stated that he believed in the need for the continued ratification of the Constitutional Treaty.<sup>157</sup> As argued by David Casa, a Maltese deputy to the European Parliament from the ruling National Party (Partit Nazzjonalista, PN), Maltese authorities were ready to accept some modifications to the text that reflected the citizens' concerns, provided that the core provisions of the treaty were to be retained. The document should be ratified no later than in 2009.<sup>158</sup> However, Malta's representative in the Convention, Peter Serracino Inglott, who is the current advisor to the Prime Minister, voiced his concerns that the revised version of the treaty might still be unacceptable to states such as the United Kingdom. His proposal was to change the text so that it could not be interpreted as establishing a federal structure.<sup>159</sup>

The government of Malta did not modify its position on the treaty before the June summit in Brussels. Their attitude was, however, that some flexibility must be present regarding the form of the future treaty.<sup>160</sup> Therefore, they acknowledged the potential adoption of a traditional treaty resulting in the change of previous treaties and were ready to sacrifice the symbols of the EU as a state. Even though previously eager to ensure the reference to Christianity in the preamble, Malta did not force through the proposal before the June summit.

Since Malta prioritises the retention of state sovereignty and the principle of the neutrality and equality of all Member States, it did not agree to the TCE changes in four areas. Firstly, Malta demanded six mandates in the European Parliament by the elections in 2009. Secondly, it advocated the preservation of the weight of its votes in the European Council without modifications. Malta also supported the double

<sup>155</sup> The position of the Luxembourgian delegation after the European Council summit was presented in communications published on the government website [www.gouvernement.lu](http://www.gouvernement.lu) and the portal [www.europaforum.lu](http://www.europaforum.lu).

<sup>156</sup> See "German EU Presidency priorities and Malta", *Aggornat*, No. 269, 27.01.2007, p. 1.

<sup>157</sup> See "Foreign Policy Objectives," *The Sunday Times* (Malta) of 21 January 2007, [www.timesofmalta.com/core/print\\_article.php?id=249699](http://www.timesofmalta.com/core/print_article.php?id=249699).

<sup>158</sup> See D. Casa, *Consensus Rather Than Confrontation*, European Parliament, Valletta Office, 19.01.2007, [www.europarl.europa.eu/valletta/2/uploads/EP-Valletta-Suppl-OUTPUT.pdf](http://www.europarl.europa.eu/valletta/2/uploads/EP-Valletta-Suppl-OUTPUT.pdf), p. 6.

<sup>159</sup> See *EU Constitution: Dead or Alive?*, European Parliament, Valletta Office, 19.01.2007, [www.europarl.europa.eu/valletta/2/uploads/EP-Valletta-Suppl-OUTPUT.pdf](http://www.europarl.europa.eu/valletta/2/uploads/EP-Valletta-Suppl-OUTPUT.pdf), p. 11.

<sup>160</sup> See *Illegal Immigration: The Credibility of the EU is on the line*, Ministry for Foreign Affairs, 18.06.2007, [www2.mfa.gov.mt/pages/news.asp?sec=9&id=33](http://www2.mfa.gov.mt/pages/news.asp?sec=9&id=33).

majority system, which is more advantageous for Malta than the rules currently in place. Minister Frenco stated, however, that his government adopted a flexible approach to the issue, as in most cases the consensus is sought without proceeding to voting.<sup>161</sup> Thirdly, the state was eager to ensure the definition of Malta in the document as an island state with the capital located on the mainland, as this is of importance for the allocation of Community funding. Fourthly, Malta wanted to retain control over the issues connected with illegal immigration.<sup>162</sup> In addition, it supported the greater empowerment of national parliaments in decision making at the EU level and consolidation of the subsidiarity principle, as well as the preservation of the unanimity principle in such areas as defence and foreign and tax policy.<sup>163</sup>

The Maltese government also suggested the inclusion of two new areas in the treaty. Firstly, they advocated a delegation to the Community of actions related to combating climate change. More importantly, the state was trying to convince its EU partners that the provision on solidarity and responsibility sharing in the area of illegal immigration should be included in the new document.<sup>164</sup>

The public debate on the treaty was present in Malta, but its scale was marginal. The ruling PN presented the position and arguments of the government. As argued by politicians of the party, the entry into force of the new treaty was in Malta's interest and did not threaten its sovereignty.<sup>165</sup> The second of the two major parties in the Maltese party system, namely the Maltese Labour Party (Partit Laburista, PL), finally accepted the argument that the TCE would not deprive Malta of the potential to pursue its own foreign and defence policy in accordance with the principle of neutrality. It supported the idea of incorporating those provisions that were consented to in other European countries into the treaty. However, the party's leader Alfred Sant emphasised that the final decision on the support for the treaty relied on what would actually be agreed on in the final text.<sup>166</sup>

According to the Eurobarometer survey of mid-2007, 56% of Maltese citizens supported the adoption of the treaty, 19% was against it and 25% had no opinion on the subject (in December 2006, these figures were at 60%, 12% and 28% respectively). As viewed by the Maltese society, the positive aspects of the treaty entering into force include strengthening the EU's position in the world, which would make the EU more democratic, competitive in the economic dimension and effective.<sup>167</sup>

## The Netherlands

In a consultative referendum, held in June 2005, 61.5% of Dutch citizens rejected the Constitutional Treaty. The government decided that they would not put the TCE in the present shape to a vote again. They started to support the introduction of such changes to the treaty base in force, which could remedy the shortcomings that hindered the functioning of the enlarged European Union.

Before the European Council summit in June began, the EU institutional reform, symbolised by the Constitutional Treaty, was again on the agenda of the public debate in the Netherlands. The focus of the debate was on the concerns of the society, notably as regards the democratic deficit in the EU and the criteria to be applied to future enlargements.

In February 2007, Prime Minister Jan Peter Balkenende said that the European Union did not need the TCE, yet the treaty base still needed to be changed. In his opinion, the new document should amend and

<sup>161</sup> See I. Camilleri, "Poland delays EU treaty deal," *The Times & The Sunday Times Malta* of 23 June 2007, [www.timesofmalta.com/core/article.php?id=265834](http://www.timesofmalta.com/core/article.php?id=265834).

<sup>162</sup> See I. Camilleri, "Malta to defend its 'red lines'," *The Times & The Sunday Times Malta* of 22 June 2007, [www.timesofmalta.com/core/article.php?id=265737](http://www.timesofmalta.com/core/article.php?id=265737).

<sup>163</sup> See *Malta's position on the forthcoming EU Intergovernmental Conference, which will focus on the draft EU constitution, was presented by Maltese Prime Minister Eddie Fenech Adami, in a letter sent on 8th September 2003, to Italian Prime Minister and current EU President Sig. Silvio Berlusconi*, [www.epin.org/pdf/IGCMalta.pdf](http://www.epin.org/pdf/IGCMalta.pdf); I. Scunèaitè, "Malta," [in:] N. Eschke, T. Malick (eds.), *The European Constitution...*, *op.cit.*, p. 122.

<sup>164</sup> See *Minister urges EU to accept migration proposal*, MaltaMedia News, 18.06.2007, [www.maltamedia.com/artman2/publish/eu/article\\_2329.shtml](http://www.maltamedia.com/artman2/publish/eu/article_2329.shtml); W. Böhm, "EU-Verfassung droht der Reißwolf," *Die Presse* of 19 June 2006, p. 1.

<sup>165</sup> See A. Drzewiecka, K. Mich, "Malta," [in:] K.A. Wojtaszczyk, M. Poboży, A. Wierzchowska (eds.), *Ratyfikacja traktatów...*, *op.cit.*, pp. 242–245.

<sup>166</sup> See *EU Constitution: Dead or Alive?*, *op.cit.*, p. 11.

<sup>167</sup> Figures from *Eurobarometer 67, Public Opinion in the European Union. First Results*, June 2007, [http://ec.europa.eu/public\\_opinion/archives/eb/eb67/eb\\_67\\_first\\_en.pdf](http://ec.europa.eu/public_opinion/archives/eb/eb67/eb_67_first_en.pdf), p. 77; *Eurobarometer 66, Public Opinion in the EU European Union. National Report, Malta*, Autumn 2006, [http://ec.europa.eu/public\\_opinion/archives/eb/eb66/eb66\\_mt\\_nat.pdf](http://ec.europa.eu/public_opinion/archives/eb/eb66/eb66_mt_nat.pdf), pp. 21–23.

complement the present treaties, but only where necessary. Before returning to the discussion on the new treaty, the focus should primarily be on the "reflection period" and then on enhanced cooperation in the EU, with some exceptions, such as pension systems, taxes, education and health care systems.<sup>168</sup>

The coalition agreement of the Dutch government also included provisions on the shape of the future treaty. The agreement provided that the new, European treaty, should differ "in terms of content, scope and name" from the TCE.<sup>169</sup> If quasi-constitutional elements were removed from it (especially the name "constitution"), then the State Council, which is the body appointed under the coalition agreement to decide on the mode of ratification, could opt for the "easier" parliamentary track rather than the referendum. The Dutch government declared itself in favour of a clear definition of national and Community competencies in the new document and broader competencies for national parliaments.

Before the meeting of the European Council, a joint letter from Minister of Foreign Affairs Maxime Verhagen and Minister for European Affairs Frans Timmermans, addressed to the House of Representatives on 19 March 2007, confirmed and elaborated on the country's position on the institutional reform.<sup>170</sup> It stipulated support for the "minimal treaty" and for a document that should be "shorter and more technical" and serve as a revision of the present treaty base rather than represent a constitutional document. The revision should render the EU more democratic, and the following provisions of the TCE should be retained: the citizens' initiative right and the greater empowerment of national parliaments. The ministers were eager to ensure a clear definition of the division of competencies between Member States and the EU. In order to limit EU's competencies, more effective mechanisms of the subsidiarity principle application were proposed. Such areas as the pension and educational system, social welfare, culture and health care should remain the sole competency of EU Member States. At the same time, the document supported intensified cooperation at the Community level in the following areas: energy, climate change, asylum and migration, and combating terrorism and organised crime. A more efficient, as compared to the present treaty base, decision-making process was proposed for the above areas. The authors of the letter strongly declared their support for specifying in the new treaty the criteria to be complied with in order to achieve full membership by the candidate states (currently, the Copenhagen criteria). The government was to decide whether to hold the referendum on the new treaty.

In line with their earlier statements, at the meeting of the European Council the Dutch government vehemently supported the removal of the word "constitution" from the new treaty. Unlike the United Kingdom, it did not oppose the binding nature of the Charter of Fundamental Rights, under the condition that it would not be part of the new treaty. The Netherlands also did not want references to symbols, such as the flag or anthem, in the new text and objected to regulations on the supremacy of the EU law. Further, they concluded that the treaty should feature a provision partially excluding services of general interest from the Community regulations on competition.<sup>171</sup> The Netherlands also opted for the "red card," that is a provision that obliges the European Commission to withdraw from a draft legal act it is preparing if it is objected to by the majority of European parliaments.<sup>172</sup>

After the meeting of the European Council, Prime Minister Jan Peter Balkenende stated that almost all Dutch proposals were taken into consideration: the word "constitution" was removed and there were no references to the "state" symbols in the treaty. Even though the wording did not entirely match the wording sought by the Netherlands, the adopted mandate for the Intergovernmental Conference also featured criteria for EU accession. The new treaty also provides for the greater empowerment of national parliaments, although in this respect the Dutch were supporting changes that went even further.

Currently, there is a debate in the Netherlands whether a referendum should be organised to ratify the new treaty. Minister for European Affairs Frans Timmermans stated that the State Council should issue its

<sup>168</sup> J.P. Balkenende, address in Eindhoven, 08.02.2007, from: *The DutchNews*, "Europe needs a simple treaty, says PM," [www.dutchnews.nl/news/archives/2007/02/europe\\_needs\\_a\\_simple\\_treaty\\_says\\_pm.php](http://www.dutchnews.nl/news/archives/2007/02/europe_needs_a_simple_treaty_says_pm.php) (22.02.2007).

<sup>169</sup> Coalition agreement between the parliamentary parties of the Christian Democratic Alliance, Labour Party and Christian Union, 7.02.2007, [www.government.nl/policy/balkenende4/regeerakkoord/An\\_active\\_international\\_and\\_European\\_role.jsp](http://www.government.nl/policy/balkenende4/regeerakkoord/An_active_international_and_European_role.jsp).

<sup>170</sup> Kamerbrief inzake EU-verdragswijziging, [www.minbuza.nl/nl/actueel/brievenparlement,2007/03/Kamerbrief-inzake-EU-verdragswijziging.html](http://www.minbuza.nl/nl/actueel/brievenparlement,2007/03/Kamerbrief-inzake-EU-verdragswijziging.html) (19.03.2007).

<sup>171</sup> "Dutch "hard-headed" on EU constitution," *Financial Times*, [www.ft.com](http://www.ft.com), (19.07.2007).

<sup>172</sup> *EU summit sticking points*, BBC News, <http://news.bbc.co.uk> (19.07.2007).

recommendation on the referendum during the forthcoming months, probably even before the opening of the parliamentary session in September 2007.<sup>173</sup>

## Portugal

In July 2007, Portugal assumed the EU presidency, and therefore in the preceding months the issue of the Constitutional Treaty had been high on the foreign policy agenda of the state (it still is today). Portugal feared that the issue of the constitutional reform, which, as it was rightly assessed, would not be finalised before the start of the presidency, could adversely affect other topics important for Portugal, such as EU-Africa relations or the problems of the Mediterranean. The public debate primarily revolved around the issue of how to manage the EU during the presidency and not to neglect Portugal's internal affairs.<sup>174</sup>

Portugal is one of the states that has not ratified the treaty. Following the referendums in France and the Netherlands, Portugal's Prime Minister decided to suspend the referendum, originally scheduled for 9 October 2005. Public opinion surveys indicate that support for the TCE over the last several months has remained stable, at approximately 59%.<sup>175</sup> This is only 4% less than after the referendums in France and the Netherlands, when the support figure was at its peak.

The government, supported by the Socialist Party (Partido Socialista, PS, 45% of seats in the parliament), made it clear that it was supporting the Constitutional Treaty.<sup>176</sup> The government also argued that a speedy solution to the problem of institutional reform was necessary and argued that 2007 would be of paramount importance in this respect. Portugal's Minister of Foreign Affairs Luís Amado declared<sup>177</sup> that a realistic approach should be adopted and an allowance should be made for the fact that eighteen states ratified the treaty, while two rejected it. Therefore, the agreement should be based on the consensus reached by all EU members. Considering those reservations, Amado was inclined to argue that if even the TCE were not ratified, it should be the point of departure for any negotiations that might follow as the treaty is the result of a long-term process and a complex agreement that would be hard to reach again. It was in Portugal's interest to retain the core elements of the TCE and not to depart from the balance it offered. Similarly, the entire negotiations process should not be reopened anew since it was too long, and the issue of institutional reform should be closed on the assumption of the presidency by France. Such issues as the final institutional solutions, space for the Charter of Fundamental Rights, or the shape of specific policies, would depend on the arrangements among all EU members, although appropriate stakeholding of national parliaments in the process of lawmaking in the EU should be ensured.<sup>178</sup>

As the moment of the presidency assumption approached, Portuguese leaders were dodging clear-cut declarations. Minister of Foreign Affairs Luís Amado believed that the situation at that time prevented the determination of what would happen to the Constitutional Treaty. Therefore, neither proponents nor opponents of the TCE should be backed explicitly, and no hopes related to the document should be unnecessarily inspired.<sup>179</sup> Probably it was also the rationale behind Portugal's failure to set a new date for the referendum. The government awaited the outcome of the German presidency, arguing that only then would it be able to chart future actions on the TCE and the institutional reform.<sup>180</sup> It appears that caution was the consequence of arrangements made between the German and Portuguese presidency and stemmed from the conviction that no clear-cut declarations from the state that was soon to assume the presidency would facilitate the work of the German presidency and the final agreement on the TCE.<sup>181</sup>

<sup>173</sup> "Ministers want speedy EU treaty decision," *The Dutch News*, [www.dutchnews.nl](http://www.dutchnews.nl), (18.07.2007).

<sup>174</sup> L. Amado, "As relações com África têm de ultrapassar o paradigma pós-colonial," *Público* of 9 December 2006. Also *ibid.*, "Presidência não deve distrair-nos," *Diário Económico* of 22 January 2007.

<sup>175</sup> *Eurobarómetro 66, Opinião Pública Na União Europeia*, Outono 2006, [http://ec.europa.eu/public\\_opinion/archives/eb/eb66/eb66\\_pt\\_nat.pdf](http://ec.europa.eu/public_opinion/archives/eb/eb66/eb66_pt_nat.pdf).

<sup>176</sup> *Lançamento do "Fórum para o Debate Europeu", Intervenção do Primeiro Ministro José Sócrates*, 31.03.2006, p. 6, [www.portugal.gov.pt/Portal/PT/Primeiro\\_Ministro/Intervencoes/20060331\\_PM\\_Int\\_Forum\\_Debate\\_Europeu.htm](http://www.portugal.gov.pt/Portal/PT/Primeiro_Ministro/Intervencoes/20060331_PM_Int_Forum_Debate_Europeu.htm).

<sup>177</sup> L. Amado, "O impasse constitucional e político da Europa é demasiado perigoso," *Público* of 9 December 2006.

<sup>178</sup> *Diário da Assembleia da República*, Reunião Plenária de 17 de Janeiro de 2007, series 1, No. 37, p. 19.

<sup>179</sup> Addresses of the Foreign Affairs Minister at the parliament, in: *Diário da Assembleia da República*, *op.cit.*, p. 14–15.

<sup>180</sup> *Ibid.*, p.14.

<sup>181</sup> From the beginning of 2007, the principle of triple presidency applies, currently involving Germany, Portugal and Slovenia. Towards the end of December 2006, the states presented the joint presidency agenda for the period from the beginning of 2007 until mid-2008.

Shortly before the European Council, it was noticeable that the Foreign Affairs Minister concurred with the mini-treaty concept, stating that this proposal could lead to the final consensus.<sup>182</sup> Already during the Council, Portugal declared itself in favour of adopting a clear and detailed mandate, provided that the issue of the institutional reform would not be included in the agenda of the Portuguese presidency if such mandate were not finally adopted.<sup>183</sup>

## Romania

At the beginning of 2007, both members of the Romanian government and the President unequivocally supported the plans of the German presidency in their addresses and press statements, referring to the revival and finalisation of the TCE ratification process.<sup>184</sup> Also top state officials rejected the cherry-picking method of selecting only some solutions from the TCE text. The Romanian Commissioner of the European Commission Leonard Orban emphasised the need to adopt the full document. The support for this solution was justified by President Traian Băsescu by the fact that the Union needed a “solid treaty” in order to act efficiently after the enlargement and in order for its actions to be transparent and possess the appropriate political legitimacy. Owing to the treaty, the EU will be more democratic and stronger to meet the challenges of globalisation.<sup>185</sup>

Before the June summit in Brussels, the Romanian government expressed the need to work out a compromise solution. However, they did not change their position substantially, still arguing that all core elements of the TCE should be retained and the document already ratified by eighteen states should be used as the basis for further work. Romania supported the German and French efforts in seeking a way out of the treaty stalemate.

Before the summit, Romania fleshed out its position with details. Minister of Foreign Affairs Adrian Cioroianu argued that his state would not consent to the removal from the document of sections on such symbols as the anthem, flag, or a common currency, as he saw them as the essence of the European Union. At the same time, he did not object to adopting a shorter text that would not be called a constitution, but still he did not support the “simplified” treaty.<sup>186</sup> Cioroianu also stated that Romania opted for keeping the treaty provision on establishing the EU’s legal personality. According to Romania, the Charter of Fundamental Rights did not have to be contained in the new treaty. Nevertheless, the charter should have a clear reference to the treaty as regards the rights of EU citizens and it must be legally valid. The Romanian government did not back the Polish proposal on the voting system in the EU Council. They supported the double majority system, stipulated by the TCE, and increased the number of areas where decisions should be taken by a qualified majority.<sup>187</sup> As argued by President Băsescu, the treaty should provide for the European Parliament’s requirement to consult their decisions with national parliaments and take their views into account. The new document should still have the provisions on the Common Foreign and Security Policy (including the EU Minister of Foreign Affairs with genuine competencies) and the energy clause, requiring Member States to offer their help if one of them is in difficulty.<sup>188</sup>

The major political parties represented in the government shared their position with the Romanian government. However, dissenting voices on the future of the Constitutional Treaty also emerged. As argued

<sup>182</sup> Entrevista de David Dinis e Paulo Martins com MENE Luís Amado, *Jornal de Notícias de sexta-feira*, 15.06.2007, p. 4-6, [www.mne.publinet.com.pt/mneii/file?src=1&mid=1133&bid=605](http://www.mne.publinet.com.pt/mneii/file?src=1&mid=1133&bid=605).

<sup>183</sup> “Presidência portuguesa está à beira de enfrentar o pior cenário,” *Público* of 23 June 2007, <http://jornal.publico.clix.pt/default.asp?url=%2Fmain%2Easp%3Fdt%3D20070623%26page%3D21%26c%3DA>

<sup>184</sup> See *Joint press conference by Prime Minister Calin Popescu – Tariceanu and the Federal Chancellor of Germany, Mrs. Angela Merkel in Berlin*, Government of Romania – Press Office, 02.11.2006, [www.guv.ro/engleza/presa/afisdoc.php?idpresa=7082&idrubicapresa=&idrubicaprimm=4&idtema=&tip=2&pag=1&dr=](http://www.guv.ro/engleza/presa/afisdoc.php?idpresa=7082&idrubicapresa=&idrubicaprimm=4&idtema=&tip=2&pag=1&dr=).

<sup>185</sup> See *The President of Romania, Traian Basescu, as Head of State made the first address following accession to the plenary of the European Parliament on the 31 January 2007*, Press Release, 31.01.2007, [www.presidency.ro/?\\_RID=det&tb=date&id=8441&\\_PRID=ag](http://www.presidency.ro/?_RID=det&tb=date&id=8441&_PRID=ag).

<sup>186</sup> See “Romania answers Germany’s EU questionnaire,” *Ziarul Financial* of 20 June 2007, [www.zf.ro/articol\\_129429/romania\\_answers\\_germany\\_s\\_eu\\_questionnaire.html](http://www.zf.ro/articol_129429/romania_answers_germany_s_eu_questionnaire.html).

<sup>187</sup> See *Romania does not want EU to give up on EU symbols being mentioned in the new version of Constitutional Treaty*, Permanent Representation of Romania to the European Union, 18.06.2007, <http://ue.mae.ro/index.php?lang=en&id=31&s=35947>.

<sup>188</sup> See *Romanian President expects “treaty of amendment” at European Council*, RomanianNewsy, 24.06.2007, <http://romaniannewsy.blogspot.com/2007/06/romanian-President-expects-treaty-of.html>.



by Mircea Vasilescu, an editor at "Dilema Veche," it would be better to draft a mini-treaty based on the TCE solutions that the society would see as a new, simpler and clearer product. The former chief accession negotiator for Romania Aurel Ciobanu-Dordea supported a new solution, not based on the TCE, of a minimalist nature (greater efficiency and legitimacy of EU actions).<sup>189</sup>

According to the Eurobarometer of mid-2007, 69% of Romanians supported the adoption of the new treaty, 7% was against it, and 24% did not have an opinion on the issue (in December 2006, the figures were at 70%, 6% and 24% respectively).<sup>190</sup>

## Slovakia

The ratification of the TCE was suspended in Slovakia. During the vote in the Slovak parliament, held on 11 May 2005, a sweeping majority of deputies voted in favour of the treaty (116 votes in favour, 27 against). However, on 14 July 2005, the Slovak Constitutional Court suspended the ratification procedure. The Court found it proper to examine a complaint from a group of liberal and conservative activists, who claimed that according to the Slovak constitution (art. 7.1), the TCE could be adopted only under the constitutional provision on Slovakia's entry into a "state formation with other states," which must be preceded by a referendum.<sup>191</sup> The court did not issue a verdict in the case and President Ivan Gašparovič did not sign the agreement.

Nearly all Slovak political forces supported the TCE ratification. Actions of the government in this respect, whose main driving force is the leftist "Smer" party of Prime Minister Robert Fico, met with full support of coalition groups – the Movement for Democratic Slovakia (Ľudová strana – Hnutie za demokratické Slovensko, ĽS-HZDS) and the Slovak National Party (Slovenská národná strana, SNS). Neither the ĽS-HZDS of the former Prime Minister Vladimír Mečiar, nor the SNS raised any reservations to the TCE provisions. A wavering position was adopted by President Ivan Gašparovič, close to the government coalition, who stood for the continuation of the ratification process, but at the same time he argued that the text of the TCE should be changed, since it "failed" in the referendums in France and the Netherlands. Actions of the German presidency received full support of the opposition Slovak Christian and Democratic Union (Slovenská demokratická a kresťanská únia – Demokratická strana, SDKÚ-DS). Its leader, Mikuláš Dzurinda, still as the Prime Minister of the right-centre government, signed the TCE in Rome and promoted its speedy ratification.

Among political forces represented in the Parliament, reservations to the TCE were raised only by the conservative Christian and Democratic Movement (Kresťanskodemokratické hnutie, KDH). The party, despite being present in Dzurinda's government, opposed the TCE ratification. As argued by the conservatives, the TCE limits sovereignty, and its ratification requires approval in the referendum (the conservatives primarily attacked the incorporation of the Charter of Fundamental Rights in the treaty document<sup>192</sup>). Following the elections of 2006, the enfeebled KDH did not tackle the topic of the TCE. The treaty failed to stir up any strong emotions in the society. In accordance with the survey carried out in spring 2007, the majority of Slovak citizens supported the TCE (64%), while 22% was against it.<sup>193</sup> A sweeping majority of Slovaks also stated that the state benefits from EU membership (76%, an increase of 5% from autumn 2006), while 16% was of the opposite opinion.

As argued by the Slovak government, the TCE makes it possible to solve the problems that have long haunted the EU, and therefore Slovakia supported the actions leading to its approval to the fullest extent possible. However, the government programme declared readiness to discuss the simplification of the European legal system, a clearer distinction between EU and Member State competencies, and the

<sup>189</sup> See *EU-25/27 Watch*, *op.cit.*, p. 93.

<sup>190</sup> Figures from *Eurobarometer 67, Public Opinion in the European Union. First Results*, June 2007, [http://ec.europa.eu/public\\_opinion/archives/eb/eb67/eb\\_67\\_first\\_en.pdf](http://ec.europa.eu/public_opinion/archives/eb/eb67/eb_67_first_en.pdf), p. 77; *Standard Eurobarometer 66, First Results*, December 2006, Tables, [http://ec.europa.eu/public\\_opinion/archives/eb/eb66/eb66\\_highlights\\_en.pdf](http://ec.europa.eu/public_opinion/archives/eb/eb66/eb66_highlights_en.pdf).

<sup>191</sup> The Constitutional Court ruled that "until a legally binding verdict of the Constitutional Court is delivered, the President of RS may not ratify the agreement" (*Uznesenie Ústavného súdu Slovenskej republiky, II. ÚS 171/05-38*, [http://www.concourt.sk/servlet/dokument?id\\_spisu=18515](http://www.concourt.sk/servlet/dokument?id_spisu=18515)). The President stated, however, that he did not feel bound by the decision. See also: *EU Constitution ratification halted*, 14.07.2005, [www.euroustava.sk](http://www.euroustava.sk).

<sup>192</sup> See e.g. V. Palko, A. Zawisza, "Dlaczego sprzeciwiamy się Karcie," *Rzeczpospolita* of 11 December 2003.

<sup>193</sup> *Eurobarometer 67, Public Opinion in the European Union. First Results*, June 2007, [http://ec.europa.eu/public\\_opinion/archives/eb/eb67/eb\\_67\\_first\\_en.pdf](http://ec.europa.eu/public_opinion/archives/eb/eb67/eb_67_first_en.pdf).

building of an effective decision-making system of the enlarged EU.<sup>194</sup> By supporting the EU enlargement (primarily with Western Balkans states), Slovakia emphasised that the process should not be combined with the ratification of the TCE. The state was also willing to support “devolution” and the establishment of EU institutions in Central and Eastern Europe.

Slovakia opposed the “opening” of the TCE text and the cherry-picking procedure. It participated in the meeting of states as “friends of the constitution” (Madrid, 26 January 2007) and stood for active cooperation among the proponents of the TCE. The Slovak authorities emphasised, however, that the pace of work on the document was important, so that the “constitution” could be adopted before the European Parliament elections in 2009. They also pointed out that potential “renegotiation”, or modifications to the TCE, should take place at the Intergovernmental Conference rather than follow the Convention formula.<sup>195</sup> “If it is not possible to adopt the constitution in its present form, we should adopt anything that ensures the functioning of the EU” – said Deputy Prime Minister for European Affairs Dušan Čaplovič on 5 March 2007 in Brussels.<sup>196</sup> Slovakia declared itself in favour of the reference to the TCE in the Berlin Declaration and an indication in the declaration of the further course that the integration would take.

Slovakia wants to contribute to deeper European integration and the unification of Europe. As stated by the Slovak Prime Minister, the EU should have “its own security policy” in order to prevent situations such as the one during the Iraqi crisis. Only a uniform EU policy “will make the EU a strong international player.”<sup>197</sup> In March, Minister of Foreign Affairs Ján Kubiš stated that “the former government considered the policymaking of the United States as the main frame of reference,” while for the present government “the main frame of reference is EU policies.”<sup>198</sup>

Slovakia objects to initiatives resulting in the unification of the economies in the EU that goes too far (based on fears that this may adversely affect Slovakia’s competitiveness in the EU) and still rejects the adoption of the majority-based decision-making system for areas such as taxation and foreign and social policy.<sup>199</sup> Prime Minister Fico stated in March that the discussion on tax harmonisation within the EU was inevitable, and in May the coalition rejected a declaration submitted by KDH on fiscal sovereignty, which, if adopted, would require the government to reject all proposals for direct tax harmonisation.<sup>200</sup> When assessing Slovakia’s attitude to the TCE, it should be remembered that “Smer” is attempting to improve its image internationally, tarnished by the presence in the coalition of nationalists from SNS, and seeks credibility in the circles of the European left (the membership of “Smer” in the Party of European Socialists was suspended).

Slovakia advocates the development of a common energy policy in the EU, but also emphasises that Russia is a reliable supplier, which will remain the main partner in energy resources delivery. Slovakia acknowledges the role of nuclear energy in ensuring long-term energy security for Europe. Its appointment as the host of the EU Nuclear Energy Forum (alternately with the Czech Republic) was viewed as a success.<sup>201</sup>

Slovakia became a close ally of the German presidency. Fully supporting the position of Germany, the state did not take part in consultations conducted by the presidency prior to the summit. Hardly any discussion accompanied the specification of the Slovak position for the European Council. The government concluded that they regarded themselves as being bound by the approval of the TCE by the Slovak parliament and, as a result, even if the negotiations brought certain changes to the document, the core contents of the TCE should be retained.<sup>202</sup> The approval of the “institutional package” established in the TCE received top priority. Slovak politicians opposed its “opening” and officially criticised Poland for including the “Jagiellonian compromise” in the mandate for the Intergovernmental Conference. For instance, at the Visegrad Group meeting held on 18 June in Bratislava, Prime Minister Fico, joined by

<sup>194</sup> *Programové vyhlásenie vlády Slovenskej republiky*, [www-8.vlada.gov.sk/data/files/1900.pdf](http://www-8.vlada.gov.sk/data/files/1900.pdf).

<sup>195</sup> *Záznam z rokovania pracovnej skupiny Národného konventu o EÚ Inštitucionálne otázky*, 28.11.2006, [www.eurokonvent.sk](http://www.eurokonvent.sk).

<sup>196</sup> *Čaplovič verí, že v Berlínskej deklarácii bude aj zmienka o euroústave*, TASR, 05.03.2007.

<sup>197</sup> *Predsedia parlamentov o budúcnosti Európy*, 29.05.2007, [www.euractiv.sk](http://www.euractiv.sk).

<sup>198</sup> *Rozhovor so šéfom slovenskej diplomacie Jánom Kubišom*, 11.03.2007, [www.jetotak.sk](http://www.jetotak.sk).

<sup>199</sup> *Zápisnica z 21. schôdze Výboru NR SR pre európske záležitosti*, 11.06.2007, [www.nrsr.gov.sk](http://www.nrsr.gov.sk).

<sup>200</sup> TASR, 18 May 2007.

<sup>201</sup> *Prague and Bratislava to host EU nuclear energy debates*, 21.06.2007, [www.euractiv.com](http://www.euractiv.com).

<sup>202</sup> *Predsedia parlamentov o budúcnosti Európy*, 29.05.2007, [www.euractiv.sk](http://www.euractiv.sk).

Hungary's Prime Minister, objected the Polish proposal for the root-based system and played down the significance of the vote counting method in the EU Council.<sup>203</sup> In turn, they emphasised the importance of incorporating the idea of social Europe into the treaty provisions.

The position of the government emphasised the support for the German presidency in the area of institutional reform and accepted non-inclusion in the treaty of the provisions on EU symbols. The application of national exclusions and opt-out clauses was criticised as disadvantageous for the final consensus. The adherence to the principle "1 state – 1 commissioner" was declared, the preservation of the EU's openness to enlargement was accentuated (the Copenhagen criteria should continue to be political rather than based on international law) and the need for the recognition of the Charter of Fundamental Rights as a legally binding document was expressed (ideally, its inclusion in the treaty).<sup>204</sup>

The opposition referred to the government position as "vague," however, political parties raised no major objections. The coalition SNS mentioned that Slovakia did not finish the ratification process, while the Hungarian minority grouping (Strana maďarskej koalície, SMK) accused the government of the lack of support for the inclusion of the Copenhagen criteria in the mandate for the IGC. Dzurinda speculated that it might result from the fact that they were problematic for Prime Minister Mečiar (currently Fico's coalition partner) in 1995–1998, but the SDKÚ-DS failed to submit any reservations, except procedural (the issue of parliamentary consultations and support for public debate). The KDH reiterated the proposal for including the reference to the civilisation roots and values in the preamble.<sup>205</sup>

At the European Council summit, the Slovak delegation was passive, and following the completion of the talks, the Prime Minister concluded that the European Union should stop debating over "internal affairs already agreed on" and tackle "more important problems that affect people." He reiterated his criticism towards Poland for its determination in pursuit of institutional change.<sup>206</sup> In his opinion, a prolonged discussion on the voting system strikes EU credibility. He considered the agreed-on draft mandate as a good foundation for the further development of the EU, which offered membership prospects to aspiring countries.<sup>207</sup> The actions of the Slovak government as regards the work on the draft mandate for the IGC were sparingly criticised by the opposition. At the meeting of the European People's Party, Dzurinda pointed out that the voting system was trivialised, and that the position for the European Council was inadequately consulted with the opposition. He further stated that an important challenge for the conference was the introduction of a clear division of competencies between the EU and Member States.<sup>208</sup>

## Slovenia

On 1 February 2005, the lower house of the Slovenian parliament offered its vehement support for the Constitutional Treaty, approving its ratification with 79 votes in favour and 4 against, and with the approval of 6 out of 7 parties represented in the Parliament. Despite this overwhelming support in the parliament, dissenting voices emerged that the general public had not been provided with sufficient information on the solutions offered by the treaty, which was linked, for example, with an insufficiently long information campaign.

Slovenia did actually lack a broad debate on European affairs, except for issues that touched upon the everyday lives of the citizens. This is all the more surprising if we consider that the Slovenian presidency in the Council falls on the first half of 2008, when the topic of institutional reform is very likely to be of the key topics of the discussion, as it transpires from the joint, triple presidency agenda, drafted together by Germany, Portugal and Slovenia for the period from the beginning of 2007 until June 2008.

Slovenia's position on the Constitutional Treaty has always been straightforward. Statements by its politicians, including President Janez Drnovšek and Prime Minister Janez Janša, mentioned the support for

<sup>203</sup> PAP, 18.06.2007.

<sup>204</sup> *Zápisnica z 21. schôdze Výboru NR SR pre európske záležitosti, op.cit.*

<sup>205</sup> *Zápisnica z 17. schôdze Zahraničného výboru NR SR, 13.06.2007, www.nrsr.sk; "Fico: Euroústava nikoho nezaujímá," Pravda of 12 June 2007.*

<sup>206</sup> Fico stated that "some big European countries wanted to show at the European Council summit that they are stronger than smaller states, which was a mistake, because the discussion on the internal functioning of the European Union should have been closed long time ago." PAP, 23.06.2007.

<sup>207</sup> *Predseda vlády SR Robert Fico sa dnes, t.j. v pondelok 25. júna 2007 stretol s poľským exprezidentom Aleksandrom Kwaśniewskym, 25.06.2007, www.vlada.gov.sk.*

<sup>208</sup> "Dzurinda v Bruseli napadol Fica," *Sme* of 22 July 2007.

the treaty in an unchanged form. They argued that solutions contained in the TCE were more advantageous for Slovenia than the provisions of the Nice Treaty. Their shared conviction was that the ratification of the TCE should continue irrespective of difficulties.<sup>209</sup> The government even offered assurances that they would make every effort to continue the ratification in subsequent EU states during the forthcoming Slovenian presidency. Also Minister of Foreign Affairs Dimitri Rupel referred to the treaty ratification as a “key step on the road to the European future.” In his opinion, the TCE was an appropriate document for Slovenia. He also encouraged searching for solutions for the constitution that would be acceptable for all Member States.<sup>210</sup>

At the beginning of the German presidency, it appeared that Slovenia was willing to accept only minor changes to the already ratified document.<sup>211</sup> Reluctance towards the introduction of major modifications to the treaty was probably a consequence of close cooperation with Germany, whose efforts to find compromise solutions were fully supported by Slovenia.

In the end, Sarkozy’s mini-treaty concept, which met with the understanding of the German presidency after the elections in France, similar to many other Member States, was also accepted by Slovenia. Statements of the Foreign Affairs Minister from before the June European Council indicated that the form of the treaty was of secondary importance.<sup>212</sup> The crucial factor remained to be the contents, in particular the preservation to the fullest extent possible of the agreed-on provisions already contained in the Constitutional Treaty. The minister underscored that Slovenia attached importance to the inclusion of provisions that would ensure the binding nature of the Charter of Fundamental Rights in the new treaty. He also referred to the need to arrive at a compromise quickly, so that negotiations on institutional reform could be finished by the end of 2007, which would allow the completion of the ratification process in Member States before the parliamentary elections in 2009.

## Spain

The Spanish, centre-left government of José Luis Zapatero declared itself in favour of the Constitutional Treaty. The results of the consultative referendum on the issue, held on 20 January 2005, were positive (with 76.7% of voters in favour of the adoption). Social support for the TCE remained very high, at 62%.<sup>213</sup> The Constitutional Treaty was also supported by the main, centre-right opposition party (Partido Popular, PP).

Together with Luxembourg, Spain was the most avid proponent of the document. On the initiative of both states, a meeting of “friends of the constitution” was held on 26 January 2007 in Madrid, attended by representatives of 16 states that ratified the document, as well as Ireland and Portugal, which were also in favour of ratification. The goal of the organisers was to demonstrate the view that the starting point for the discussion on the EU institutional reform should be the TCE.<sup>214</sup>

Based on the report, drafted by the government of Spain on the future of the EU, it could be argued that the TCE met Spanish expectations and, in their opinion, was conducive to the European integration process.<sup>215</sup> As a starting point, the Spanish claimed that future negotiations should focus on what to do in order for the Constitutional Treaty to be ratified by all states. Negotiations should be based on the assumption that in case of any problems, both during the negotiations, or any further ratification, all states should come back to the document ratified by eighteen Member States. They agreed to modifications to the TCE, in order to facilitate the agreement of other states to the treaty provisions. However, changes should

<sup>209</sup> Statement by Prime Minister Janez Janša, 24.07.2006, [www.kpv.gov.si/index.php?id=230&L=1&tx\\_ttnews%5Btt\\_news%5D=1136&tx\\_ttnews%5BbackPid%5D=225&cHash=bc4deb1cb2](http://www.kpv.gov.si/index.php?id=230&L=1&tx_ttnews%5Btt_news%5D=1136&tx_ttnews%5BbackPid%5D=225&cHash=bc4deb1cb2).

<sup>210</sup> Communication from the visit of Foreign Affairs Minister Dimitri Rupel to the Netherlands, 17.05.2006, [www.mzz.gov.si/index.php?id=13&tx\\_ttnews%5Btt\\_news%5D=11091&tx\\_ttnews%5BbackPid%5D=](http://www.mzz.gov.si/index.php?id=13&tx_ttnews%5Btt_news%5D=11091&tx_ttnews%5BbackPid%5D=).

<sup>211</sup> Communication from the meeting of Foreign Affairs Ministers of Slovenia and Italy, 10.01.2007, [www.mzz.gov.si/nc/en/tools/news/news/browse/7/article/140/22807/?cHash=a9d548fb2b](http://www.mzz.gov.si/nc/en/tools/news/news/browse/7/article/140/22807/?cHash=a9d548fb2b).

<sup>212</sup> *Minister Rupel at the GAERC session*, 18.06.2007, [www.mzz.gov.si/index.php?id=13&tx\\_ttnews\[tt\\_news\]=23259&tx\\_ttnews\[backPid\]=](http://www.mzz.gov.si/index.php?id=13&tx_ttnews[tt_news]=23259&tx_ttnews[backPid]=).

<sup>213</sup> *Eurobarómetro 66, Opinión Pública En La Unión Europea, Otoño 2006, Informe Nacional España*, p. [http://ec.europa.eu/public\\_opinion/archives/eb/eb66/eb66\\_es\\_nat.pdf](http://ec.europa.eu/public_opinion/archives/eb/eb66/eb66_es_nat.pdf).

<sup>214</sup> B. Wojna, “Przyjaciele Traktatu Konstytucyjnego – wnioski ze spotkania w Madrycie,” *Biuletyn (PISM)*, No. 6 (420) of 31 January 2007.

<sup>215</sup> *Reflexiones sobre el futuro de la Unión Europea (II). Actualización del Informe del Gobierno al Congreso de los Diputados del 21 de diciembre de 2006*, Secretaría de Estado para la Unión Europea, Ministerio de Asuntos Exteriores y de Cooperación, published by Real Instituto Elcano, DT n° 8/2007 – 28/02/2007, <http://www.realinstitutoelcano.org>.

be minor, such as technical changes or touch ups. No agreements made should be deleted, but, rather, new ones in the area of social policy, immigration and climate change should be added.

As seen by the government, losing the agreements already present in the treaty is going to bring disorder to the general agreement negotiated and disturb the delicate balance of Member States' interests. By approving the Constitutional Treaty, Spain agreed to the package that combined a number of areas that often reach beyond institutional aspects. For instance, it accepted the double majority voting system, since a new division of votes in the European Parliament, benefiting Spain, was agreed upon. The Spanish representatives emphasised that they were not interested in, and they would not attempt at a revision of the double majority system.<sup>216</sup> They also attached importance to new solutions contained in part III of the document, as they allowed the progress of integration in the areas of energy policy, immigration policy, police and judicial cooperation in criminal cases, as well as greater consistency in external actions of the EU.

As the European Council of 2007 approached, the Spanish allowed for the option to adopt a mini-treaty, or another treaty in a limited form, under the condition that the essence of the TCE would be retained and arrangements contained in the TCE would be included in the new treaty as a modification to the treaties currently in force.<sup>217</sup> They rejected the option of limiting the future reform to institutional arrangements only. They claimed that if renegotiations were heading in that direction, this could reopen the discussion on the population threshold required to reach the qualified majority, or the composition of the European Commission. The prevailing concept was to call a short Intergovernmental Conference, equipped with a clear mandate, to commence works before the 2007 holiday period.

## Sweden

This state opted for the parliamentary ratification of the Constitutional Treaty, without resorting to a referendum. In December 2004, the agreement signed by Prime Minister Göran Persson and major parliamentary groups provided that the ratification by the parliament would be sufficient.<sup>218</sup> Undoubtedly, one of the reasons behind this was the experience of the 2002 referendum on joining the Eurozone, which turned out to be unsuccessful (56% of votes against and 42% in favour). The ratification procedure for the TCE was suspended until further notice by the government in June 2005, following the arrangements of the European Council summit in Brussels.

As a result of the elections of September 2006, a new government was formed by the coalition Agreement for Sweden (Moderate Party, Liberal Party, Centrist Party and Christian Democrats) – signatories to the said agreement of December 2004. In his opening address, Prime Minister Fredrik Reinfeldt did not tackle the topic of the TCE, limiting himself to expressing his support for further enlargement and the commencement of preparatory work for the Swedish presidency in 2009.<sup>219</sup> Circumspect support was offered for the efforts by the German presidency to put the treaty back on the agenda, and he also emphasised the need for changes, as something that the Union was waiting for.<sup>220</sup> Minister for European Affairs Cecilia Malmström referred to the constitution treaty specifically, underscoring the importance of institutional consolidation and improved decision-making process in the EU, as well as the incorporation of the fundamental rights issue into the text of the TCE.<sup>221</sup>

<sup>216</sup> Answering a question at one of the press conferences, Spanish Secretary of State for EU affairs Alberto Navarro stated that Spain did not plan to cooperate with Poland to defend the voting system provided for in the Treaty of Nice. Alberto Navarro prevé la firma de una nueva versión del Tratado Constitucional, Agencia EFE, 28.02.2007, [www.hablamosdeeuropa.es](http://www.hablamosdeeuropa.es).

<sup>217</sup> *España y Francia están decididas a poner "alta velocidad" a la Unión Europea*, Conferencia de prensa de Rodríguez Zapatero y Sarkozy, 31.05.2007, [www.la-moncloa.es/ActualidadHome/310507Sarkozy.htm](http://www.la-moncloa.es/ActualidadHome/310507Sarkozy.htm); *Zapatero garantiza a Merkel que será flexible para lograr nuevo Tratado UE*, Berlín, 15.06.2007, [www.es-ue.org/default.asp?newid=518&lg=2&displaying=other](http://www.es-ue.org/default.asp?newid=518&lg=2&displaying=other).

<sup>218</sup> See M. Czaplicki, *Ratyfikacja Traktatu Konstytucyjnego w państwach Unii Europejskiej*, February 2005, [www.isp.org.pl](http://www.isp.org.pl).

<sup>219</sup> Statement of Government Policy presented by the Prime Minister, Mr. Fredrik Reinfeldt, to the Swedish Riksdag, 6.10.2006, [www.sweden.se](http://www.sweden.se).

<sup>220</sup> Statement of Government Policy in the Parliamentary Debate on Foreign Affairs, 14.02.2007, [www.sweden.gov.se](http://www.sweden.gov.se).

<sup>221</sup> Speech by Cecilia Malmström, Minister for EU Affairs, annual conference *Why Europe? Possibilities and limits of European integration*, 16.11.2006, Swedish Institute for European Policy Studies (Sieps), [www.sweden.gov.se](http://www.sweden.gov.se).

Already before the Brussels summit, Swedish decision makers were waiting for a compromise on the TCE, declaring their readiness to ratify the present document on the one hand, while on the other hand making it dependent on its final shape. Germany's efforts were closely watched, along with the positions of those states where the TCE failed in referendums. There was growing support in the Swedish society for the TCE,<sup>222</sup> although the last several months devoted to reflection failed to provoke a broad public debate on the EU.<sup>223</sup> Despite repeated proposals to organise the referendum<sup>224</sup> put forward by the opposition parties (Left Party, Green Party), it does not seem that the mode of ratification is going to be changed, and the referendum on the reforming treaty is rather unlikely.

Preparing herself for the "resuscitation" of the TCE, the German Chancellor met the Swedish Prime Minister in early June 2007, obtaining his support for the effort of the German presidency. When commenting on the meeting, Angela Merkel stated that if all countries shared Sweden's position, "the task would be easy."<sup>225</sup> In line with his declaration, Prime Minister Reinfeldt supported the presidency's position during the Brussels summit.<sup>226</sup> He was praised for this attitude in some public opinion comments, which hoped that such an attitude would pay off in the future, while others criticised him, arguing that he did not fight for Swedish interests.<sup>227</sup> It could be argued that the division reflects the political dissent between the ruling coalition and the opposition.

The negotiation clash with Poland and, to a lesser degree, the United Kingdom, dominated the reports from the summit. The Polish proposal for the voting system in the Council (the Penrose system based on the mathematical root) found no support among the Swedish delegates, even though the system had already been considered.<sup>228</sup> The German presidency needed Swedish support owing to the approaching Swedish presidency in the Union (2009). This means that Sweden will be responsible for implementing the institutional package of the new treaty.

## United Kingdom

Following the rejection of the TCE in referendums in France and the Netherlands, Tony Blair's government adopted a wait-and-see attitude (we need to wait until June 2007 and see what the German presidency comes up with) and stalling tactics, unwilling to present their full position on the future of the treaty and initiate public debate on the subject.<sup>229</sup>

The general position of the UK at the beginning of 2007 was largely ambiguous. This was considerably affected by the prospects of the change in the position of the Prime Minister. The new government could not afford to accept the treaty in the form similar to the TCE at the initial stage in the office, as it was very likely to be rejected in the referendum (especially if the changes were to meet, first and foremost, the proposals of France and Germany), which would rule out the Labour Party victory in the 2009 or 2010 elections. Under the circumstances, the British government could accept only the changes that would not require approval in the referendum.<sup>230</sup> Statements of the government representatives indicated that an option could be minor modifications to the present treaties, which would allow for the effective functioning of the Union with 27 members and would be uncontroversial (then it could be approved by the parliament).<sup>231</sup> The support for a shorter treaty – the mini-treaty, definitely without the name "constitution," and containing rather uncontroversial solutions – was also possible. Some opinions also surfaced that the government would

<sup>222</sup> See [http://ec.europa.eu/public\\_opinion/archives/eb/eb66/eb66\\_se\\_exec.pdf](http://ec.europa.eu/public_opinion/archives/eb/eb66/eb66_se_exec.pdf).

<sup>223</sup> *Report on the EU debate in Sweden during the period of reflection, 2005–2006*, Committee for Debate on the EU, [www.eu-debatt.nu](http://www.eu-debatt.nu).

<sup>224</sup> *Qualified satisfaction, referendum calls greet EU summit outcome*, [www.eubusiness.com](http://www.eubusiness.com).

<sup>225</sup> *Talks on EU Constitution*, [www.sr.se](http://www.sr.se).

<sup>226</sup> *Reinfeldt welcomes EU deal*, [www.thelocal.se](http://www.thelocal.se).

<sup>227</sup> *Reinfeldt's Low Key EU Summit*, [www.sr.se](http://www.sr.se).

<sup>228</sup> See [http://blogs.ft.com/brusselsblog/2007/03/suspect\\_polish\\_.html#comment-63205296](http://blogs.ft.com/brusselsblog/2007/03/suspect_polish_.html#comment-63205296).

<sup>229</sup> See P. Świeboda, *Szansa nowego traktatu: sześćdziesiąt procent i rosnące*, Commentary, 18.02.2007, [www.demosEuropa.demos.europa.eu/upload/editor/demos/File/KOMENTARZE/Szansa....pdf](http://demosEuropa.demos.europa.eu/upload/editor/demos/File/KOMENTARZE/Szansa....pdf).

<sup>230</sup> See *Editorial: Mr Brown comes to Brussels*, European Newsletter, The Federal Trust, Autumn 2006, [www.fedtrust.co.uk/admin/uploads/Autumn\\_Newsletter.pdf](http://www.fedtrust.co.uk/admin/uploads/Autumn_Newsletter.pdf), p. 2; P. Webster, "Forget constitution or we veto all plans, Britain tells the EU," *The Times* of 1 February 2007, <http://business.timesonline.co.uk/tol/business/law/article1308628.ece>.

<sup>231</sup> See "Blair rules out secret deal on the EU treaty," *Reuters*, 31.01.2007, <http://today.reuters.co.uk>.

support a solution in between the changes to the existing treaties and a mini-treaty.<sup>232</sup> The sense of ambiguity was even more present with the proposals put forward by, for example, Minister of Foreign Affairs Geoffrey Hoon, on utilising the existing treaties to implement the necessary changes. The proposals concerned, among others, the energy policy, migration policy and employment as well as the judiciary.<sup>233</sup>

Before the June summit in Brussels, the position of the British government on the treaty became clear. Shortly before his resignation, Tony Blair often commented on the treaty. He believed in a realistic approach and argued that the negative result of the referendum in France and the Netherlands must be taken into consideration, similar to the outcome of the public debate. He claimed that there would be no agreement in the EU concerning the adoption of the Constitutional Treaty. The only feasible agreement was that on the new, regular treaty, to amend previous treaties. This is necessary to ensure the efficiency of actions for the Community institutions and in order to be able to solve primary problems of the Union and its citizens, e.g. ensuring competitiveness of the European economy.<sup>234</sup>

Blair's approach to the Polish proposal for the voting system in the Council was sceptical, and he supported the system provided for in the TCE. He also offered his support for extending the number of areas where decisions should be taken by the majority of votes, however, he explicitly excluded justice and internal affairs, the Common Foreign and Security Policy, as well as the tax and social benefits system. In the first two areas, the United Kingdom was against solutions that would deprive the country of full control over its own legal system, the judiciary, or the police, as well as reduce the importance of British foreign policy. Hence, the UK also opposed the establishment of the EU legal personality and was sceptical about the introduction of the EU Foreign Affairs Minister (at the same time understanding the need for better coordination in EU foreign policy, which should be managed by the Council of the EU). In addition, the country proposed the removal of the Charter of Fundamental Rights from the treaty, as it saw it as a threat to their sovereignty (owing to the assignment of additional competencies to the European Court of Justice). In any case, the UK did not allow any change to British law to be introduced by the Charter. They also opposed the introduction of state symbols, such as the anthem, flag and the name "constitution."<sup>235</sup>

The position on the remaining important issues was already known. The United Kingdom agreed to a more general wording of the preamble than the one in the TCE, the introduction of the position of the permanent presidency of the European Council – with its own administration, but with limited competencies, as well as the stakeholding of national parliaments in legislative action at the EU level. The UK was neutral towards the legislative initiative of citizens stipulated by the TCE. According to the British government, the subsidiarity and proportionality principles were not properly defined in the TCE, but it did not seem that a better definition, acceptable for all Member States, was feasible. The UK government supported a clear division of competencies between national states and the EU, however, the division offered by the TCE failed to meet UK expectations (too many shared competencies). Blair was of the opinion that important issues concerning the treaty could be agreed on in June 2007, and then details could be worked out and the new document ratified.<sup>236</sup>

Gordon Brown will probably continue Blair's policy. This results from several factors. Firstly, the new leader of the Labour Party must consider the prospects of the elections in 2009/2010. He will not support an ambitious institutional reform in order not to lose his electorate and not to expose himself to attacks from the Eurosceptical press. Secondly, Brown is a "pro-European realist." He rejects the attempts to build a federation and supranational integration, and he perceives the TCE as a legal act that promotes such developments. Thirdly, he showed his disapproval of the TCE, arguing that its adoption would have

<sup>232</sup> See "EU leaders plan return of EU Constitution," *Open Europe Bulletin*, 21 December 2005-12 January 2006, p. 5, [www.openeurope.org.uk/research/constitutioncomingback.pdf](http://www.openeurope.org.uk/research/constitutioncomingback.pdf); *EU-25/27 Watch*, *op.cit.*, p. 96.

<sup>233</sup> See "Written Ministerial Statements, House of Commons," *Daily Hansard*, 5.12.2006, Column 10WS, [www.publications.parliament.uk/pa/cm200607/cmhansrd/cm061205/wmstext/61205m0001.htm](http://www.publications.parliament.uk/pa/cm200607/cmhansrd/cm061205/wmstext/61205m0001.htm).

<sup>234</sup> See K. Niklewicz, "Tony Blair: Dobrze być Europejczykiem," *Gazeta Wyborcza* of 20 April 2007, [www.gazetawyborcza.pl/gazetawyborcza/2029020,76842,4074379.html](http://www.gazetawyborcza.pl/gazetawyborcza/2029020,76842,4074379.html).

<sup>235</sup> See M. Stabenow, "Blair will bis Juni Einigkeit über EU-Reform," *Frankfurter Allgemeine Zeitung* of 20 April 2007, [www.faz.net](http://www.faz.net); H. Mahony, "Four concessions needed to avoid EU treaty referendum, says Blair," *EU-Observer*, 18.06.2007, <http://euobserver.com/9/24304/?rk=1>; A. Reiserer, "Blairs letzter Spagat um den Vertrag," *Die Presse* of 19 June 2007, p. 2.

<sup>236</sup> See "Editorial: Mr Brown comes to Brussels," *op.cit.*, p. 2; M. Dragsevic, "Great Britain," [in:] N. Eschke, T. Malick (eds.), *The European Constitution...*, *op.cit.*, p. 53-54; Answers to PISM questionnaire, 02.04.2007, author's own records.

negative consequences. Therefore, Brown stated that he would support a modest, minimalist text that would not require a referendum, but would be approved by the parliament.<sup>237</sup>

Public debate on the treaty was present in the British media in the first half of 2007. Politicians of the Labour Party backed the governmental position. The debate was initiated mainly by the Conservative Party, headed by David Cameron, which criticised the government and accused them of attempting to usher in the treaty through the "back door," in agreement with Chancellor Angela Merkel.<sup>238</sup> The conservatives also presented their proposals. Cameron was of the opinion that the EU was functioning properly without a Constitutional Treaty. He was against adopting this legal act at any price, referring to the "obsession" of European politicians. He also recommended focusing on finding solutions to real problems that the EU faces, such as challenges related to globalisation, poverty, climate change, the fight against terrorism and illegal immigration. Some conservative politicians supported the option of changes to the Nice Treaty.<sup>239</sup>

According to the Eurobarometer survey of mid-2007, 43% of British citizens supported the adoption of the treaty, 36% was against it and 21% had no opinion on the subject (in December 2006, the figures were at 40%, 35% and 24% respectively).<sup>240</sup>

<sup>237</sup> Cf. C.M. O'Donnell, R.G. Whitman, "European policy under Gordon Brown: perspectives on a future Prime Minister," *International Affairs* 2007, No. 1, p. 261–262.

<sup>238</sup> See D. Cameron, "With reform, Europe can be a force for good," *Daily Telegraph* of 4 February 2007, [www.telegraph.co.uk/opinion/main.jhtml?xml=/opinion/2007/02/04/do0402.xml](http://www.telegraph.co.uk/opinion/main.jhtml?xml=/opinion/2007/02/04/do0402.xml); Ch. Tannock, *Conservatives support further EU enlargement but warn that a new constitution is not needed*, Conservative Party, News, 14.12.2006, [www.conservatives.com/tile.do?def=news.story.page&obj\\_id=134142](http://www.conservatives.com/tile.do?def=news.story.page&obj_id=134142).

<sup>239</sup> See M. Kite, "Cameron fights 'back door' EU constitution," *Sunday Telegraph* of 4 February 2007, [www.telegraph.co.uk/news/main.jhtml?xml=/news/2007/02/04/neu04.xml](http://www.telegraph.co.uk/news/main.jhtml?xml=/news/2007/02/04/neu04.xml).

<sup>240</sup> Figures from: *Eurobarometer 67, Public Opinion in the European Union. First Results*, June 2007, [http://ec.europa.eu/public\\_opinion/archives/eb/eb67/eb\\_67\\_first\\_en.pdf](http://ec.europa.eu/public_opinion/archives/eb/eb67/eb_67_first_en.pdf), p. 77; *Standard Eurobarometer 66, First Results*, December 2006, Tables, [http://ec.europa.eu/public\\_opinion/archives/eb/eb66/eb66\\_highlights\\_en.pdf](http://ec.europa.eu/public_opinion/archives/eb/eb66/eb66_highlights_en.pdf).



## Visegrad Group

In the pre-accession period, the states of the Visegrad Group (V4) declared their intent to cooperate on the institutional future of the EU. Following the EU summit in Nice, VG Prime Ministers concluded with satisfaction that "states of the Central-European region will have appropriate representation in the EU Council."<sup>241</sup> Already in 2003, the V4 wanted to work out a common position on the emerging Constitutional Treaty. Soon, however, it turned out that serious differences of opinions on the draft the TCE were found to exist, related mainly to the proposed voting system for the EU Council. The Czech Republic, Slovakia and Hungary accepted the double majority system, whereas Poland defended the Nice system, which contributed to the crisis in Visegrad cooperation.

Following their accession to the EU, Poland, the Czech Republic, Slovakia and Hungary declared their intent to use the V4 as a forum for consultations and arrangements on common interests in the EU.<sup>242</sup> The then leaders of V4 states also recognised that the adoption of the TCE would be the best way for the Union to be able to face internal and global challenges in the future. Following the rejection of the TCE in France and the Netherlands, V4 Prime Ministers, at the V4 summit in Kazimierz Dolny (10 June 2005), expressed their support for the idea of continued ratification.<sup>243</sup> This, however, had no positive impact on the credibility of the grouping, as the government support for the TCE in two states, namely Poland and the Czech Republic, was challenged by the opposition, soon to take power. No ratification of the TCE took place in those states, and the ratification stopped before completion in Slovakia.

Currently, Poland and the Czech Republic are collaborating closely with each other, as their attitudes towards the institutional shape of the EU are similar, and they prefer bilateral consultations on the subject to cooperation in the V4 format. In turn, for Slovakia and Hungary, seeking ways to improve their bilateral relations, the community of positions on the TCE has also become an area of cooperation.<sup>244</sup> Joint actions for the approval of the TCE provisions represent an opportunity for the leftist governments of Slovakia and Hungary, whose reputations have been severely tarnished from 2006 onwards, to strengthen their position in the EU. They also serve the purpose of emphasising the community of interests present despite tension in the relations between the two countries. Therefore, as expected,<sup>245</sup> both countries used the V4 forum to present their joint position before the European Council.

At the meeting of V4 Prime Ministers, held on 18 June in Bratislava, Prime Ministers Gyurcsány and Fico objected to the Polish proposal for the root-based system and played down the importance of the vote counting method in the EU.<sup>246</sup> They argued that an average EU citizen had no idea what the whole dispute over the square root was about and urged that "the EU should stop being preoccupied with itself, as there are more important issues to tackle." Prime Minister Jarosław Kaczyński rejected those arguments, referring to the rhetoric used as "unnecessary" and "exacerbating." The Polish proposal, referred to as the "Jagiellonian compromise" was supported by Czech Prime Minister Mirek Topolánek. He emphasised that the Czech Republic supported the Polish concept as "good," but considering that Poland indicated it might use the right of veto, stated that his government did not have the mandate from the ruling coalition to "die for the Polish proposal." In turn, Gyurcsány claimed that if any state used the vetoing right at the next European Council, this would be harmful not so much for the EU itself, but for the remaining 26 states.<sup>247</sup>

A significant rift within the V4 does not mean, however, that the group is unable to seek the realisation of specific common interests during the discussion on the EU reform. These are: ensuring best-possible conditions for the consolidation of the eastern dimension of the European Neighbourhood Policy and the opening of the EU to new members, as well as the support for the establishment of the common energy

<sup>241</sup> M. Szczepaniak, "Odnowienie wyszehradzkiej współpracy politycznej," [in:] B. Fijałkowska, A. Żukowski (eds.), *Unifikacja i różnicowanie się współczesnej Europy*, Warszawa 2002, p. 2007.

<sup>242</sup> *Guidelines on the future areas of Visegrad co-operation*, 12.05.2004, [www.visegradgroup.eu](http://www.visegradgroup.eu).

<sup>243</sup> *Joint Declaration of the Prime Minister of the V4 countries on the EU* (Kazimierz Dolny, 10.06.2005), [www.visegradgroup.eu](http://www.visegradgroup.eu).

<sup>244</sup> See e.g. *Príhovor O. Algayerovej na konferencii Slovensko a Maďarsko v EÚ: hľadanie spoločných záujmov*, 26.02.2007, [www.foreign.gov.sk](http://www.foreign.gov.sk).

<sup>245</sup> See L. Jesień (ed.), *Current Status of Debate...*, *op.cit.*, p. 36.

<sup>246</sup> PAP, 18.06.2007.

<sup>247</sup> *Ibid.*; *Lidové noviny* of 19 June 2007.

policy in the EU.<sup>248</sup> The Czech Republic, currently presiding over the V4 (until June 2008) suggested that it would like to formulate priorities of their presidency in the EU (due in the first half of 2009) together with their Visegrad Group partners.<sup>249</sup> According to the agenda of the Czech presidency in the V4, approved by the Prime Ministers in Bratislava on 18 June 2007, the priority task would be to improve the cooperation efficiency of the Visegrad Group within the EU. As regards the EU reforming process, the document declared that the V4 would focus on this process and “in relation to the discussion on the new institutional framework, V4 states are going to consult their positions in order to contribute to the solution to the problem in a way that respects the interests of all EU member states.”<sup>250</sup> The EU institutional reform is to be one of the topics at the meeting of the European Affairs commission of V4 parliaments, to be held on 2-4 September 2007 in Bojnice.<sup>251</sup>

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<sup>248</sup> See *Joint Political Statement of the Visegrad Group on the Strengthening of the European Neighbourhood Policy*, 22.01.2007, [www.visegradgroup.eu](http://www.visegradgroup.eu).

<sup>249</sup> ČTK, 29.03.2007.

<sup>250</sup> *Czech Presidency of the Visegrad Group (June 2007 – June 2008)*, [www.visegradgroup.eu](http://www.visegradgroup.eu).

<sup>251</sup> *Zápisnica z 22. schôdze Výboru NR SR pre európske záležitosti*, 18.06.2007, [www.nrsr.sk](http://www.nrsr.sk).

## Annex 1: The German Presidency Negotiators' Questionnaire

*The questionnaire was prepared by senior negotiators of the German presidency in the EU for meetings with representatives of Member States between 23 April and 4 May 2007*

The TCE revision topic	Member States with a clearly defined positions on the topic
1. Preservation of the present treaty structure for the establishment of the EU's legal personality (without a treaty that covers all areas)	France (consolidated mini-treaty replacing the currently binding treaties) The United Kingdom (technical changes to the treaty will render the referendum obsolete) The Netherlands, the Czech Republic (avoiding any associations with the constitution)
2. Retention of part I of the TCE as the core of the reforming treaty	France (see above) supported by Italy
3. Modification of the wording typical of constitutions (and notions that are associated with the state, such as the Foreign Affairs Minister, or Law)	The Netherlands The United Kingdom (see above) Passively supported by the Czech Republic and Poland
4. Abandonment of articles on EU symbols	The Netherlands The United Kingdom The Czech Republic, broadly supported by almost all delegations (except Belgium and Luxembourg)
5. Abandonment of articles on the supremacy of Community law over national legislation	The Netherlands The United Kingdom The Czech Republic supported by German political circles
6. Replacement of part II of the TCE (Charter of Fundamental Rights) with a reference indicating that the Charter exists and is binding	The United Kingdom supported by Poland
7. Retention of the institutional reforms package of the TCE	"Friends of the TCE", supported by Denmark, Sweden, Portugal and Ireland (strong objection from Poland only, passively supported by the Czech Republic)
8. Retention of other changes contained in the TCE as the basis for new treaties	Open issue, as doubts emerged during the negotiations that are not covered in this questionnaire; the question offered an opportunity for the Netherlands and the United Kingdom to propose the strengthening of the vetoing right for national parliaments as part of the protocol on subsidiarity with the TCE
9. Addition of new treaty elements (and thus appropriate competencies) in the area of energy/climate and illegal immigration	The United Kingdom Poland Estonia Lithuania Latvia Hungary Austria (energy and climate) Germany The Netherlands (illegal immigration)
10. Strengthening of the Copenhagen criteria by their specification in the treaty, or reference to them in the treaty	France, The Netherlands Support by Austria Germany, and the EPP-ED grouping of the European Parliament

11. Enhancement of EU social dimension in the treaty	France Germany Belgium The PES grouping of the European Parliament
12. Addition of specific solutions allowing for opt-outs of states in certain areas and/or special rules for enhanced cooperation	Opt-outs: the United Kingdom, Poland;  Enhanced cooperation: Belgium, Italy, Luxembourg, Germany

## Annex 2: Analytical Questionnaire

Leszek Jesień, January 2007

### Questions on the positions of individual EU member states as to the contents and future of the Constitutional Treaty and EU institutional reform

1. Should TCE ratification continue in the states that haven't ratified it yet?
2. After the failed referendums in France and the Netherlands, which path is the most proper one to follow:
  - a. Continued ratification, hoping for repeated attempts at TCE ratification in the Netherlands and France;
  - b. Selection of TCE elements, formulation of the new treaty and submitting it for the new ratification process;
  - c. Abandoning TCE and beginning the constitutional reform anew;
  - d. Abandoning TCE and incorporation of some elements of institutional reform with the help of new instruments (inter-institutional agreements, accession treaties for new states, etc.)
3. If TCE fails, will it be proper to begin negotiations before the institutional reform, hoping for the formulation of a new, comprehensive treaty?
4. Is it appropriate to retain the Charter of Fundamental Rights as a legally binding document?
5. Is it appropriate for the act containing provisions on the constitutional reform to have a preamble?
  - a. Should the preamble meet certain political criteria? If yes, what are they?
  - b. What should the preamble contain, if it is necessary at all?
6. Considering that negotiations on TCE contents begin anew:
  - a. Is it appropriate to open the institutional package again?
  - b. Is it appropriate to open negotiations on the shape of individual EU institutions?
  - c. How big should the European Commission be? Who (what institution) should it be responsible to?
  - d. Should the method for measuring the influence of member states in the EU Council be defined again? How?
  - e. Should the method for measuring the impact of member states in the European Parliament be defined again? How?
  - f. How to recreate the institutional balance in the EU, among the Council, Parliament and Commission?
7. What is your attitude today towards the institution of the EU Minister of Foreign Affairs?
  - a. Should the EU Minister of Foreign Affairs be responsible to the EU Council, the Commission, or both?
8. What is your attitude today towards the institution of the permanent chairman of the European Council?
  - a. Should the chairman of the European Council have his/her own administrative centre?
  - b. What competencies should such a person have?
9. Is the change of names, from the traditional "directives," "regulations," etc. into "European Laws, European framework Laws, European regulations, European decisions, recommendations and opinion" appropriate?
10. Is the citizens' legislative initiative (at least one million citizens for various member states) an appropriate formula to implement direct democracy in the EU?
11. Is it appropriate for the Union to define its political symbols: currency, flag, anthem, motto, day?
12. Have the subsidiarity and proportionality principles been appropriately specified in TCE? If not, how would you amend or supplement them?
13. Is the division of competencies in the EU into exclusive, shared and complementary appropriate?
14. Is it appropriate to have the co-decision procedure in place for secondary law-making in the EU?
15. From when are the institutional changes in the EU necessary/ when should they become effective?
16. In the present state, does the EU function improperly, or disappointingly enough for institutional reform to be required?