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The End of Perplexity – the Future of the EU’s Constitutional Process



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Abstract:

The paper analyses and evaluates the alternative proposals for the entry into force of the Constitutional Treaty. The author opts for a Treaty Amending the Treaty of Nice thereby transferring the core of the constitutional innovations into the existing primary law. Beyond an amendment of the current Treaties the way out of the current constitutional crisis requires also the definition of a new raison d’être for the future EU on the basis of a new grand project.

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The End of Perplexity – the Future of the EU’s Constitutional Process

The time of perplexity is reaching an end – the time to decide about the fate of the European Constitutional Treaty is approaching. Following the clear “No” of the French and the Dutch to the new primary law in May/June 2005, the European Union’s (EU) constitutional process was paralysed. Even after a self-imposed reflection phase the EU member states could not agree on a joint strategy on how to cure the constitutional malaise. For some the vote of the French and the Dutch electorates was a welcome opportunity to declare the disliked Constitutional Treaty dead and to stop their national ratification process. Others were hesitant to issue a death certificate. Even in the initial state of shock, they held on to the Constitutional Treaty. As 18 EU member states have ratified the new primary law until early 2007¹ – six of them even after the two negative referenda² –, the proponents of the Constitutional Treaty have become more optimistic that the constitutional project can be resurrected in spite of the double “No”.

The fate of the European Constitution will be decided in 2007. The German EU-Presidency has strongly taken up the cause of bringing new dynamism to the stagnant constitutional project.³ The expectations and the consequences of a potential failure are high. In case there is no conceptual agreement under the German or Portuguese Presidency in 2007 on how to proceed in concrete terms, the Constitutional Treaty will have ultimately failed and it might even be difficult to salvage its substance. The European Union would have to be governed on the basis of the Nice Treaty and it would most probably take years before a next attempt to reform the Union’s primary law can be undertaken.

In order to avoid this perspective and to enshrine the positive substance of the Constitutional Treaty one needs to answer a set of questions: Which factors have to be taken into consideration in an attempt to solve the constitutional question? Which options are there and which alternative should be recommended? And how can one increase the chances for a successful ratification of the new treaty?

1. Five preconditions

The decision on how to proceed must take a number of preconditions into consideration. On the basis of these factors one can both reduce the number of potential options and identify the necessary requirements for a successful ratification of the EU’s new primary law. Five factors should be considered:

- (1) *The original Constitutional Treaty has failed⁴* – even if 18 of the 27 EU member states, representing more than half of the Union’s total population, have ratified the Treaty. Holding on to the original text would imply that the French and the Dutch electorates would have to be asked to vote on the new primary law once again. Such referenda would be doomed to failure in both countries. Moreover, the ratification of an unmodified Constitutional Treaty would also fail in other EU countries, which have not (yet) ratified the new primary law.
- (2) *The retention of the Treaty of Nice is no option:* The enlarged EU cannot be governed on the basis of a set of rules and regulations that in essence was originally conceived for six states. Although the accession of 12 new member states in 2004/2007 has not led to an institutional chaos⁵, the current legal and institutional status quo is not sufficient to govern the EU-27 effectively and legitimately.
- (3) *Important innovations of the Constitutional Treaty should be salvaged:* Even if the Treaty, which was elaborated by the European Convention and adopted by the

Intergovernmental Conference, is by no means perfect, it does however offer numerous advantages with respect to a further parliamentarisation, personalisation and politicisation of the enlarged EU.⁶ These improvements should be salvaged.

- (4) *Unacceptable compromises risk ratification*: The constitutional crisis can only be overcome if all EU member states agree to the final compromise. An agreement can only be found by consensus and the new primary law can only enter into force if every single EU country has ratified the treaty. Ideas, which proposed a coming into force of a new treaty even if not all member states are able or willing to ratify the novel text, were neither accepted in the Convention nor in the framework of the Intergovernmental Conference.⁷ As a consequence, all sides – the proponents of the Constitutional Treaty and the sceptics – will have to compromise.
- (5) *Overcoming of constitutional crisis requires a complex strategy*: The current constitutional crisis does not originate in the French *non* or the Dutch *nee*. The rejection of the Constitutional Treaty is rather the expression of more substantial and complex problems on the European and national level. Three basic problems characterize the current situation:
- *Problem of legitimacy*: Citizens and increasingly also parts of the political elites in the member states question the need to further deepen cooperation within the European Union.
 - *Problem of orientation*: The EU is characterized by a lack of clarity concerning its future development. There is a conceptual schism between the member states – and in some cases even within certain countries – concerning the principal orientation of the European integration process. The arguments are ostensibly about treaty texts, though deep down it is a matter of antagonistic views of the future shape of Europe.
 - *Lack of trust*: The current crisis is the result of a fundamental lack of trust on both the European and the national level. Concerning the EU a vast majority of citizens doubt whether the enlarged Union will be able to solve the political, economic and social challenges. In parallel, there is a fundamental „crisis of the political“. EU citizens have lost their confidence in the abilities of policymakers. Declining trust is not a specific European problem, but a widespread phenomenon in all areas of political life. Yet this lack of confidence has particularly drastic consequences for the European project, which is still primarily dominated by political elites. The EU enjoys a much smaller benefit of the doubt than the nation-states, and is called into question more quickly and fundamentally than its members.

The complexity of the current situation prohibits a solution of the constitutional problem on the grounds of simple recipes or cosmetic amendments. It rather requires a complex strategy, which on the one hand shows a way out of the crisis related to the Constitutional Treaty and on the other reacts to the general public scepticism concerning the overall future of EU integration.

2. Options for solving the constitutional problem

A number of alternatives for curing the current constitutional malaise have been suggested.⁸ But what are the strengths and weaknesses of the individual proposals and which plan-B-option shows the best way out of the crisis? In this respect one can analyse and assess a series of different alternatives:

- **Nice Plus**⁹: The option of “making the most of Nice” is not sufficient to ensure the enlarged EU’s future efficiency or to enhance its democratic legitimacy. The

implementation of constitutional innovations on the basis of the existing Treaties and thus beneath the level of formal amendments to primary law – for example, in the shape of inter-institutional agreements, modified rules of procedure or accession treaties – is unlikely to be achieved in many important cases. Attempts to unravel the package as a whole and to “cherry-pick” individual elements of the Constitutional Treaty will come up against opposition from certain member states and thus fail. However, in spite of these deficiencies, the Nice-plus model might in the end prove to be the only viable option, if superior alternatives cannot be implemented.

- **Constitution Minus:** This alternative starts from the idea that the deletion of specific provisions of the Constitutional Treaty, which are heavily disputed in certain member states, could raise the chances of a successful ratification. These deletions could for example include certain articles concerning the socio-economic role of the EU, the reduction of the number of Commissioners, the Charter of Fundamental Rights (Part II of the Constitutional Treaty) or the proposed „double majority“ voting procedure in the Council. However, this option has a major disadvantage: The deletion of significant aspects of the Constitutional Treaty would downgrade the substance and the overall quality of the EU’s new primary law. As a result, it will be even more difficult to ratify the new treaty in every member state.
- **Constitution Minus-Minus:** Another option would be to present the electorate with a “shortened constitution” using the terminology of e.g., a “basic treaty” which combines Part I (60 articles on definition and objectives, institutions, competences, finances), Part II (54 articles of the Charter of Fundamental Rights) and Part IV (12 articles on General and Final Provisions) of the Constitutional Treaty. This alternative would produce a less complex and more transparent text compared to the 448 articles of the original Constitutional Treaty. However, a Constitution Minus-Minus would also be rather problematic for two main reasons. Firstly, the opponents of the Constitution will argue that it is simply duplicitous. Secondly, this option would require a substantive adaptation of the current Nice Treaty – an extremely time-consuming exercise, which would most certainly require the involvement of yet another Convention.
- **Avantgarde- or Core Europe Model:** This alternative is based on the idea that a group of EU countries substantially deepens integration on the grounds of the (optimized) Constitutional Treaty, in case not all member states are able or willing to ratify the new primary law. Proposals concerning the composition of such a group vary considerably: They range from the idea of a core including the six big member states, to a group comprising the six founding members or an avantgarde including the countries of the Eurozone.¹⁰ The idea to establish a core Europe is unrealistic and counter-productive in the context of the constitutional problem.¹¹ It is unrealistic because the notion of a closed core Europe, in which a small group of countries continues the unification process on its own, is unfeasible. The vast majority of member states will want to belong to any group moving ahead – and none of the potential core countries would deny them their participation. Moreover, even the most integration-friendly EU countries are not (yet) willing to surrender substantial national competences in order to develop some sort of a “United States of Europe”.¹² Debates about the establishment of a core Europe are also counter-productive, because threats and conceptual misunderstandings overshadow the fact that differentiation provides a key strategic opportunity. The increasing diversity of interests, the growing complexity of decision-making and diverging expectations concerning the future path of integration in an enlarged European Union (EU) call for a higher degree of differentiated integration. More than ever before Europe requires various speeds in order to remain effective. Citizens expect the EU to provide state-like services in areas as diverse as justice and home affairs, foreign,

security, defence, tax, environmental, and social policy. However, not all of the member states can or may wish to provide such services on the European level at the same time and with the same intensity. As was the case in the past with the common currency, the Schengen accords, or social policy, intensified cooperation among a smaller group of countries can help to overcome a situation of stalemate and improve the way in which the European Union functions. Bringing the notion of differentiated integration into disrepute, however, makes it difficult to utilize its formative potential to the full. One should thus avoid to link the current constitutional problem with the debate about further differentiation in Europe.

- **Constitution Plus:** This option assumes that national reservations concerning the new primary law can be reduced by adding a specific protocol or declaration to the Constitutional Treaty. Such declarations or protocols would not change the substance of the new Treaty. One specific proposal includes the idea to add a declaration on the EU's social dimension in order to counter the argument that the Constitutional Treaty has a predominantly neoliberal economic orientation – an argument, which was very prominent during the French ratification campaign.¹³ However, this option seems insufficient for two main reasons. First, the addition of a declaration or a protocol would not be enough to eliminate certain national reservations. The opponents of the new treaty would rather argue, that these kinds of attempts to salvage the Constitutional Treaty are mere “tricks” to win public opinion, but lack real substance.¹⁴ Second, additional declarations or protocols could even be counter-productive as they could make the ratification of the Constitutional Treaty in certain member states even more difficult. A social declaration could for example increase criticism towards the Constitutional Treaty in Poland, the Czech Republic or the United Kingdom, which follow a more liberal economic and social policy than France.
- **Constitution Plus-Plus:** This plan-B alternative foresees substantial additions to the content of the original Constitutional Treaty in order to increase the chances of a successful ratification by providing further arguments in favour of a fundamental reform. The most ambitious proposal is that of the British liberal Member of the European Parliament Andrew Duff, who proposes a fundamental reform of Part III of the original Constitutional Treaty in five fields – economic governance, social policy, environment, enlargement and neighbourhood policy, financial system.¹⁵ The charm of Duff's proposal relates to the fact that it anticipates the complexity of the current crisis and attempts to find an adequate solution. The proposal resembles the definition of a political programme for the fields of economy, social policy, environment and enlargement – all of which are areas in which the citizens expect the EU to provide policy solutions. However, the complexity of Duff's proposal leads to a number of problems. First, a substantial reform of Part III of the Constitutional Treaty would be a complex political exercise, which would take its time and thus impede the adoption of a binding result before the European elections in 2009. Second, one can by no means assume that the complex renegotiations of Part III will in the end be successful. In case negotiations fail, this would not only imply that the EU would have to continue to operate on the grounds of the Nice Treaty, it would also endanger the implementation of the political programme associated with the Treaty amendments. It thus seems reasonable to separate the legal-institutional reform of the Union's political system from a reorientation of the contents of European policies.

As the above options are not viable, there is need for another alternative in case the Constitutional Treaty cannot enter into force. A pragmatic option would be to transfer the core of the constitutional innovations into primary law in the shape of a “**Treaty amending the Treaty of Nice**”.¹⁶ The provocatively titled “Constitution” would be transformed into a modest revision of the EU's existing Treaties. To apply this

alternative, it would be necessary to identify the central reforms of the Constitutional Treaty and combine them in the shape of a treaty amending the primary law currently in force. These reforms should include (i) the improvements concerning the EU's institutional set-up (i.a., elected President of the European Council, European Foreign Minister, reduction of the number of Commissioners and strengthening of the Commission President), (ii) the development of the decision-making and voting procedures (i.a., "double majority" voting procedure in the Council, extension of qualified majority voting, increased co-decision rights of the European Parliament, stronger involvement of national parliaments), (iii) the reform and enhancement of the instruments of differentiated integration (i.a., reform of the instrument of enhanced cooperation, introduction of new instruments in the field of European Security and Defence Policy (ESDP)), and (iv) a number of other significant innovations included in the Constitutional Treaty (i.e., legally binding adoption of the Charter of Fundamental Rights, new passerelle clauses for further developing the EU Treaties, solidarity clause, withdrawal clause). A "Treaty Amending the Treaty of Nice" seems a realistic alternative, which respects the negative vote of the French and Dutch electorates, yet at the same time secures the implementation of the basic constitutional reforms. Such an amendment treaty would not require yet another Convention but could be worked out in the framework of an intergovernmental conference with a very concrete but limited mandate and a restricted timeframe, which would allow the adoption of a binding new treaty before the European Parliament (EP) elections in 2009.¹⁷ The renunciation of the original Constitutional Treaty in favour of a simple amendment treaty in the tradition of Maastricht, Amsterdam and Nice would facilitate the ratification process, as the pressure to hold national referenda could be reduced.

A "Treaty Amending the Treaty of Nice" would in spite of its advantages not mark the end of the constitutionalization process. However, it could provide the impetus for a decisive spurt ahead. The next step would be to elaborate and adopt a less voluminous text that contains only the principal constitutional provisions while relegating the detailed non-constitutional parts to a text below the constitutional level.¹⁸ The constitutional part would by and large include Part I, II and IV of the Constitutional Treaty (CT). The second part would resemble Part III (CT). However, in practice it will not suffice to pull Parts I, II and IV (CT) together in one document and to expel Part III (CT) from a new Constitution. Simplifying the EU's primary law will necessitate major changes to Part III and a number of technical and some politically highly sensible changes to the remaining parts of the Constitutional Treaty (e.g., new ratification procedure, more precise definition of competences, further politicization of the EU's institutional architecture¹⁹). The elaboration of a "Constitution II" will require yet another Convention and a subsequent intergovernmental conference. This process will take years and can only commence after the "Treaty Amending the Treaty of Nice" has been adopted and ratified. However, the EU should already at an early stage conceptually conceive the mandate of a new Convention ("Laeken II") and the rough timetable for subsequent constitutional steps.

3. A new raison d'être and a grand project

A consensus among the member states to salvage the substance of the Constitutional Treaty by reforming the Nice Treaty will alone not suffice to solve the constitutional problem. The complexity of the current crisis requires a strategy which goes far beyond the constitutional question. A mere concentration on the adoption of a new primary law would actually reduce the chances of a successful ratification of the new treaty and would not suffice to overcome the current crisis. This has mainly to do with the circumstance that citizens are not interested in legal-institutional reforms²⁰, but rather interested in the output of European policies.

National governments, the European Parliament, national parliaments and the European Commission are conscious of the problem. Attempts to intensify interaction

with citizens²¹ and to enhance the EU's popularity through concrete successes²² prove that the key actors are aware of the necessity to make the European project more "attractive". However, the efforts undergone so far are insufficient.

Solving the constitutional problem requires the elaboration of a new rationale explaining the necessity of the integration project. The EU, far more than its constituent nation-states, must offer an autonomous reason that legitimizes its existence. For this purpose the European Union must not be reinvented. It was built on a solid foundation: the peaceful unification of the continent as well as economic prosperity in a single market with a common currency remain important motives for the future. However, the old motivating factors are no longer enough to convince citizens of the future value-added of the integration project. The European Union needs to be re-interpreted in light of current challenges. What is needed is an innovative understanding of the European idea that combines the past and the future, stability and change, and the old and the new in equal terms. The redefinition of the European idea is an intellectual task that needs to be performed by European elites and communicated in the form of a new European *raison d'être*.

In order to unleash new dynamism it is not necessary to arrive at a common understanding of the ultimate *finalité* of the unification process. Due to the deep conceptual schism among EU member states concerning the future shape of Europe, such a debate would currently be counter-productive. Mutual mistrust would further increase, and one would witness paralysis instead of a new vitality. Furthermore, the continuous dynamism of globalization makes it difficult to reach agreement about a concept of the EU's finality, as one cannot predict in which direction the world and Europe will develop. In view of the uncertainties within and outside the old continent it is currently impossible to define at what point widening or deepening will actually come to an end.

What Europe needs more urgently than finality debates is a convincing and comprehensible formula to explain the ongoing need for European integration in the future. Europe needs a plain answer to a simple question. What do we need the EU for in the future – beyond the preservation of what has already been achieved?

The answer to this question is linked to the new constellations and conditions of world politics. It has to do with Europe's ability to shape developments in a new global order. After the end of the Cold War, the rise of new economic and political powers in Asia and South America, and the globalization of economy, ecology and security, Europe's future is increasingly being determined by developments taking place beyond its borders. And there is a danger that the European continent will gradually become marginalized. However, Europe has the potential to inject its own ideas into the formulation of the rules governing the new economic and political world order.

The European Union as a dynamic economic, political and security policy project that is able to shape both internal and external developments in a dynamic global environment: Putting this abstract formula in concrete terms is a prerequisite for conveying the necessity of future integration steps and thus also for the necessity to further develop the Union's primary law.

However, it will not be enough to proclaim this new *raison d'être* in the form of a solemn declaration replete with group photo. Citizens and elites will begin to sense a new fascination with the European project if the latter provides convincing evidence in everyday reality. The Union requires a grand project from which it can derive legitimacy. Individual projects in different policy areas will not suffice to increase the EU's output legitimacy. Such projects fall short of the mark because, as far as citizens are concerned, they are either not visible enough, or, taken as a whole, resemble a patchwork of unrelated individual measures. In order to revitalize the integration project there is a need for a new grand project beyond a "Europe of small projects".

European policymaking has always been particularly dynamic and successful whenever it set its sights on a large-scale and ambitious goal. The most impressive

example of this was the single market project, “Europe ‘92”. Today the art of European politics will be to combine the new *raison d’être* with an ambitious yet realistic grand project that reflects the principal idea of a new Europe. This is not about “inventing” a artificial project, but about the definition of a new grand project in the face of novel challenges.

Two areas where there is both a considerable pressure for action and where citizens particularly want the EU to deliver seem appropriate for a new grand project: the field of economic and social policy, and the area of security.

Despite its undeniable significance for the citizens of Europe, the thematic cluster of **economic and social policy** seems not very suitable for a new European grand project for a variety of reasons. First, the European Union does not possess sufficient competences in these areas and it cannot be assumed that the member states will be prepared to centralize further responsibilities. Second, a grand project that pursues the economic and social modernization of Europe would almost certainly be accompanied by drastic cutbacks for a considerable number of people – this is hardly to generate “new enthusiasm” for Europe among citizens. Third, the heterogeneity of the member states’ social models and diverging economic concepts concerning the role of the states aggravate the definition of a common grand project.²³ Finally, further integration in the areas of economic and social policy that goes beyond (i) individual measures to complete the single market, (ii) mutual learning in the context of the Open Methods of Coordination, or (iii) a mere synchronization of national economic and social policies would be questionable from an economic point of view. Is not the competition between the divergent national systems and between the member states’ economies a key reason for Europe’s economic success?

Europe’s internal and external vulnerability underscores the need to develop a grand project in the area of **security**. Europe is a very exposed actor and contrary to the expectations of many Europeans, and in contrast to their intuition that the end of superpower confrontation would free them from insecurity, world affairs are experiencing a period of disorder, risks, crises and unprecedented dangers. No EU member state acting on its own is in a position to provide the resources and instruments necessary to master these complex challenges – this is true also for the six big EU countries. Greater security policy integration can procure benefits for the member states and their citizens that the individual countries can no longer provide on their own. The pooling of security resources, common responses to transnational problems such as cross-border crime, illegal immigration, weapons proliferation, terrorism, energy security and the management of regional conflicts would increase the EU’s efficiency and reduce the financial costs for member states.

EU member states have recognized the value of cooperation in the field of internal and external security. Since Maastricht the European Union has made considerable progress in the areas of justice and home affairs as well as foreign, security and defence policy. Yet many of the individual measures that have been initiated appear to be rather haphazard, and the overall picture lacks coherence. Furthermore, there is a lack of conceptual inter-linkage between the various aspects of internal and external security.

Existing projects in the area of security should be embedded within a clear-cut framework with ambitious yet realistic goals. The creation of a European Army would be an appropriate goal in the area of external security, but this would have to be complemented by an equivalent project in the area of internal security.²⁴ The successful implementation of a grand project in the area of security requires the elaboration of a coherent concept that defines European security interests in a comprehensive manner, aligns both internal and external as well as civilian and military aspects of security, identifies the specific measures that are required, and provides a timetable that is binding on the participants.

If policymakers succeed in making the European Union a coherent actor in all aspects of internal and external security, Europe will be in a position to make a

decisive contribution toward shaping the future international order. The epochal decision to embark on the unification project once brought peace and prosperity to the European continent. It is now time to view the success of the European project from a global perspective.

¹ Until early 2007 the Constitutional Treaty has been ratified in the following EU member states: Austria (8,21 Mio.), Belgium (10,46 Mio.), Bulgaria (7,8 Mio.), Cyprus (0,75 Mio.), Estonia (1,35 Mio.), Finland (5,24 Mio.), Germany (82,5 Mio.), Greece (11,07 Mio.), Hungary (10,22 Mio.), Italy (58,46 Mio.), Latvia (2,31 Mio.), Lithuania (3,42 Mio.), Luxembourg (0,45 Mio.), Malta (0,4 Mio.), Romania (21,7 Mio.), Slovakia (5,41 Mio.), Slovenia (1,99 Mio.) and Spain (43,04 Mio.). For an overview of the national ratification procedures see: www.cap-lmu.de/themen/eu-reform/ratifikation/index.php.

² The following six EU countries ratified the Constitutional Treaty after the negative referenda in France and the Netherlands: Belgium, Cyprus, Finland, Latvia, Luxemburg and Malta.

³ See e.g., German Foreign Minister Walter Steinmeier at the opening press conference of Germany's EU Presidency on 19 December 2005; speech of Chancellor Angela Merkel on 14 December 2006 in the Bundestag; programme of the German EU Presidency, *Europa gelingt gemeinsam*, pp. 4-6.

⁴ See also Janis A. Emmanouilidis, *Overcoming the Constitutional Crisis*, Munich 2005. Paper prepared for a hearing of the European Parliament on the future of the Constitutional Treaty.

⁵ Concerning the functioning of the Council see Sara Hagemann and Julia De Clerck-Sachsse, "Decision-Making in the Enlarged Council of Ministers: Evaluating the Facts", *CEPS Policy Brief*, No. 119, January 2007.

⁶ See Janis A. Emmanouilidis, "Historically unique, unfinished in detail – an evaluation of the European Constitution", *Reform-Spotlight* 3/2004, June 2004; Giovanni Grevi, "Light and shade of a quasi-Constitution – An assessment", *EPC Issue Paper* No. 14, June 2004; Ingolf Pernice and Jiri Zemanek (eds.), *A Constitution for Europe: The IGC, the Ratification Process and Beyond*, Baden-Baden 2005; Jean-Claude Piris, *The Constitution for Europe*, Cambridge 2006; Werner Weidenfeld, *Die Verfassung in der Analyse*, Guetersloh 2005; Wolfgang Wessels, "Der Verfassungsvertrag im Integrationstrend: Eine Zusammenschau zentraler Ergebnisse", in *integration* 4/2004, pp. 284-300.

⁷ See European Policy Centre, *Constitution of the European Union*, 17 September 2002, pp. 27-28; European Commission, *Feasibility Study – Contribution to a Preliminary Draft Constitution of the European Union*, 4 December 2002.

⁸ See Udo Diedrichs and Wolfgang Wessels, "Die Europäische Union in der Verfassungsfalle", *integration* 4/2005, pp. 293-306; Andrew Duff, "Plan B: How to Rescue the European Constitution", *Studies and Research* N° 52, Notre Europe, Paris 2006; Janis A. Emmanouilidis and Bettina Thalmaier, "Non, Nee, Ne, Nie or No – Consequences, Options, and Recommendations if the Constitution is Rejected", *Reform-Spotlight* 3/2005; Daniel Göhler and Mathias Jopp, "Die europäische Verfassungskrise und die Strategie des ‚langen Atems‘", *integration* 2/2006, p. 105; Charles Grant, *What Happens if Britain Votes No? Ten Ways out of a European Constitutional Crisis*, Centre for European Reform, March 2005; Sebastian Kurpas, "Should Ratification Proceed? An Assessment of Different Options After the Failed Referenda", *Policy Brief* Nr. 75, Centre for European Policy Studies, June 2005; Andreas Maurer, "Nachsitzen, Sitzenbleiben oder Klassenverweis", *SWP-Studie* 4, February 2006; Andreas Maurer and Daniela Schwarzer, "Alle Karten auf dem Tisch!", *SWP-Aktuell* 28, June 2006; Jörg Monar, "Optionen für den Ernstfall. Auswege aus einer möglichen Ratifizierungskrise der Verfassungsvertrags", in *integration*, 1/2005, pp. 16-32; Philippe de Schoutheete, "Scenarios for escaping the constitutional impasse", *Europe's World*, Summer 2006, pp. 74-79; Jo Shaw, "What happens if the Constitutional Treaty is not ratified?", *European Policy Brief*, Federal Trust, September 2004; Bettina Thalmaier, "Nach den gescheiterten Referenden: Die Zukunft der Verfassungsvertrages", *C•A•P Analyse*, November 2005.

⁹ See Daniel Thym, "Weiche Konstitutionalisierung – Optionen der Umsetzung einzelner Reformschritte des Verfassungsvertrags ohne Vertragsänderung", in *integration* 4/2005, pp. 307-315.

¹⁰ See Guy Verhofstadt, *The United States o Europe*, Eupen 2005; "Sarkozy stellt Achse Berlin-Paris in Frage". in *Financial Times Deutschland*, 23 June 2004; "Sarkozy urges EU six to lead integration", *euobserver.com*, 26 September 2005.

¹¹ See also Janis A. Emmanouilidis, "Der Weg zu einer neuen Integrationslogik – Elemente flexibler Integration in der Europäischen Verfassung", in Werner Weidenfeld (ed.), *Die Europäische Verfassung in der Analyse*, pp. 149-172, here pp. 170-171; Janis Emmanouilidis and Almut Metz, "Renewing the European Answer", *Reform-Spotlight* 2/2006, November 2006.

¹² See Guy Verhofstadt, *The United States of Europe*; see also Janis A. Emmanouilidis, "Institutional Consequences of Differentiated Integration", *C•A•P Discussion Paper*, Munich 2007, p. 15.

¹³ "Merkel will mit Sozial-Erklärung EU-Verfassung retten", in *Handelsblatt*, 18 December 2005.

¹⁴ See Maurer and Schwarzer, "Alle Karten auf dem Tisch", p. 5.

¹⁵ See Duff, "Plan B", p. 15, and the same author, *Constitution Plus: renegotiating the treaty*, Brussels, 2007.

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- ¹⁶ See Center for Applied Policy Research (C•A•P) and Bertelsmann Foundation (eds.), *Treaty Amending the Treaty of Nice*, Munich/Guetersloh, June 2006 (second edition; first edition: June 2005) (download under: <http://www.cap-lmu.de/publikationen/2005/vertrag.php>).
- ¹⁷ For a more detailed roadmap see Janis A. Emmanouilidis, „Die Zeit der Entscheidung: Optionen, Erfolgsvoraussetzungen und Fahrplan für ein neues EU-Primärrecht“, *C•A•P Analyse*, February 2007, here pp. 21-24.
- ¹⁸ Emmanouilidis and Metz, „Renewing the European Answer“, p. 3.
- ¹⁹ On the issue of politicisation of the EU see Stefano Bartolini, „Should the Union be ‚Politicised‘? Prospects and Risks“, in *Politics: The Right or the Wrong Sort of Medicine for the EU?*, *Notre Europe Policy Paper* No 19, 2006, pp. 28-49; Andrew Moravcsik, „What Can We Learn from the Collapse of the European Constitutional Project?“, in *Politische Vierteljahresschrift*, Vol. 47 2 (2006), pp. 219-241; Simon Hix, „Why the EU needs (Left-Right) Politics? Policy Reform and Accountability are impossible without it“, in *Politics: The Right or the Wrong Sort of Medicine for the EU?*, *Notre Europe Policy Paper* No 19, 2006, pp. 1-27; Bettina Thalmaier, „Partizipation und Politisierung als Antwort auf die Akzeptanz- und Legitimationskrise der Europäischen Union“, *C•A•P Analyse*, March 2006; Loukas Tsoukalis, „Long on policies but short on politics, the EU needs a breath of fresh air“, *Europe’s World*, Spring 2007, pp. 86-91; Werner Weidenfeld, Janis A. Emmanouilidis and Almut Metz, „Europe’s Strategic Responses“, *C•A•P Analyse*, October 2006, here pp. 19-21.
- ²⁰ See European Commission, special Eurobarometer, *The Future of Europe* (fieldwork: February-March 2006), May 2006.
- ²¹ See *Aktionsplan für eine Verbesserung der europäischen Kommunikation*, SEK (2005) 985; Michael Bauer, Almut Metz and Sarah Seeger, „Der Plan-D der Europäischen Kommission und die Reflexionsphase zur Verfassung und Zukunft der Europäischen Union“, *C•A•P Aktuell* 3/2005, November 2005; Katharina Gröber and Sabine Riedel, „Die neue Kommunikationspolitik der EU: Nach dem Scheitern des Verfassungsvertrages nun Plan D?“, *SWP-Aktuell* 54, December 2005; *Informationsvermerk von Vizepräsidentin Wallström an die Kommission: Plan D – Eine erweiterte und intensiviertere Diskussion über Europa*, SEC (2006) 1553, 24 November 2006, *Plan D*, KOM (2005) 494; Sarah Seeger, „Das Weißbuch der Kommission über eine europäische Kommunikationspolitik – ein Neuanfang europäischer Kommunikation?“, *C•A•P Aktuell* 1/2006, February 2006; *Weißbuch über eine europäische Kommunikationspolitik*, KOM (2006) 35, 1 February 2006.
- ²² See José Manuel Barroso, *A Citizen’s Agenda – Delivering results for Europe*, speech held on 10 May 2006; speech of the British Prime Minister Tony Blair in the European Parliament held on 23 June 2005; Jacques Chirac, „Für ein starkes und solidarisches Europa“, in *Frankfurter Allgemeine Zeitung*, 26 October 2005; speech by Chancellor Angela Merkel in the German Bundestag held on 11 May 2006.
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- ²⁴ Concerning the establishment of a European Army see Franco Algieri, Thomas Bauer and Jürgen Turek, „An einer europäischen Armee führt kein Weg vorbei“, *Frankfurter Rundschau*, 29 September 2003; Weidenfeld, Emmanouilidis and Metz, „Europe’s Strategic Responses“, pp. 17-18.