

**From Referendum Euphoria to Referendum Phobia –  
How EU Member States Framed Their Decision on the Ratification Procedure  
of the Constitutional Treaty in Comparison to the Treaty of Lisbon**

Sarah Seeger, Center for Applied Policy Research (C·A·P), Ludwig-Maximilians-University  
Munich

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**Abstract**

*When the Treaty Establishing a Constitution for Europe (TEC) was signed on 29 October 2004, many member states of the European Union (EU) announced a referendum in addition to the parliamentary ratification procedure. From a normative perspective, it was argued that “the Constitution” symbolised a new political quality of the EU which required direct approval by the citizens. Against the background of the Constitutional Treaty’s rejection in the referendums in France and the Netherlands in spring 2005, the referendum euphoria changed into a referendum phobia. All member states except of Ireland where a referendum is legally required decided to ratify the Treaty of Lisbon via the parliamentary procedure only – even if it is widely asserted that the new treaty contains crucial elements of the TEC. Based on an analysis of the debate about direct democracy and referendums in the EU, this paper explores how member states’ governments framed their decision on the ratification procedure of the Constitutional Treaty in comparison to the Treaty of Lisbon.*

## 1. Introduction

When the Treaty Establishing a Constitution for Europe (TEC) was signed on 29 October 2004, many member states of the European Union (EU) announced a referendum in addition to the parliamentary ratification procedure aiming at giving citizens a greater role in the European constitutional process. Thus, the Constitution's legitimacy should be enhanced and the democratic deficit of the EU reduced. Against the background of the Constitutional Treaty's rejection in the referendums in France and the Netherlands in spring 2005, the referendum euphoria changed into a referendum phobia. All member states except of Ireland where a referendum is legally required decided to ratify the Treaty of Lisbon via the parliamentary procedure only – even if it is widely asserted that the new treaty contains crucial elements of the TEC.

Based on an analysis of the debate about direct democracy and referendums in the EU, this paper analyses how member states' governments framed their decision on the ratification procedure of the Constitutional Treaty in comparison to the Treaty of Lisbon. In particular, it takes a closer look at those member states where the question of holding a referendum was, for different reasons, of particular importance: First, it explores the situation in France and the Netherlands where the decision on the ratification procedure has to be taken against the background of the no-votes of 2005. Additionally, the focus is put on Spain and Luxembourg where the electorate approved the TEC by popular vote but where, at the second time, only parliamentary ratification took place. Finally, the debate in the United Kingdom is analysed, where a referendum was announced on the TEC but which, due to its rejection in France and the Netherlands, did not take place and where, in the case of the Treaty of Lisbon, the question of the ratification process was contentiously debated.

The paper aims at contributing to a wider range of academic literature on referendums in the EU (e.g. Biaggini 2005; Crum 2005; Hug 2002; Hug/Schulz 2007; Jahn/Storsved 1995; Kadelbach 2006; König/Daimer/Finke 2006; LeDuc 2007; Pállinger et al. 2007; Vreese 2007; Vreese/Semetko 2004). These studies touch upon issues such as the contribution of referendums to enhancing democracy, voting behaviour in referendums, referendum campaigns, referendums as strategic instruments etc.. By elaborating on the question how the decision on the respective way of ratification of EU treaties is framed, the paper aims at shedding light on a hitherto hardly conceptualised field of research. Applying a comparative approach is promising for two reasons: First, one can compare the variation of arguments when the same issue (TEC or Treaty of Lisbon respectively) is framed in different national arenas. This allows drawing conclusions on factors influencing how the same issue is framed in different arenas (same issue/different arenas/same time). Second, as it is assumed that the TEC and the Treaty of Lisbon are strongly connected to each other and contain, in wide parts, similar elements, it allows drawing conclusions on how a different setting influences how a slightly changed issue is re-framed in the same arena (similar issue/same arena/different time). The paper draws its empirical evidence from speeches, articles or other publications of government officials as well as from Eurobarometer results and academic literature.

## 2. The Debate About Direct Democracy and Referendums in the EU

Decisions on EU matters have become increasingly subject of popular votes. The topics submitted to a referendum concern both specific policies such as the adoption of the Euro and more systemic issues such as EU accession or reforming the treaties. But it was not until the ratification process of the TEC that referendums became a widely used instrument of civic participation in EU affairs: Ten member states (Czech Republic, Denmark, France, Ireland, Luxembourg, Netherlands, Poland, Portugal, Spain, United Kingdom) announced a popular vote with further states such as Belgium, Germany and Italy having vivid national

debates on holding a referendum, but, for different reasons, deciding to submit the TEC to parliamentary ratification only.

**Table 1: Referendums on European Integration**

Year	Country	Issue	Result
1972	France	Enlargement of EC	Yes
1972	Ireland	EC membership	Yes
1972	Norway	EC membership	No
1972	Denmark	EC membership	Yes
1972	Switzerland	EC-EFTA Treaty	Yes
1975	Great Britain	Continuation of EC membership	Yes
1986	Denmark	Single European Act	Yes
1987	Ireland	Single European Act	Yes
1989	Italy	Mandate for MEPs	Yes
1992	Denmark	Maastricht Treaty	No
1992	Ireland	Maastricht Treaty	Yes
1992	France	Maastricht Treaty	Yes
1992	Switzerland	European Economic Area Treaty	No
1992	Liechtenstein	European Economic Area Treaty	Yes
1993	Denmark	Maastricht Treaty	Yes
1994	Austria	EU membership	Yes
1994	Sweden	EU membership	Yes
1994	Finland	EU membership	Yes
1994	Norway	EU membership	No
1998	Ireland	Amsterdam Treaty	Yes
1998	Denmark	Amsterdam Treaty	Yes
2000	Switzerland	Free movement of persons	Yes
2000	Denmark	European Monetary Union	No
2000	Switzerland	Resume accession talks with EU	No
2001	Ireland	Nice Treaty	No
2002	Ireland	Nice Treaty	Yes
2003	Sweden	European Monetary Union	No
2003	Lithuania	EU membership	Yes
2003	Latvia	EU membership	Yes
2003	Estonia	EU membership	Yes
2003	Poland	EU membership	Yes
2003	Czech Republic	EU membership	Yes
2003	Slovakia	EU membership	Yes
2003	Slovenia	EU membership	Yes
2003	Cyprus	EU membership	Yes
2003	Hungary	EU membership	Yes
2003	Spain	Treaty Establishing a Constitution for Europe	Yes
2005	France	Treaty Establishing a Constitution for Europe	No
2005	Netherlands	Treaty Establishing a Constitution for Europe	No
2005	Luxembourg	Treaty Establishing a Constitution for Europe	Yes
2005	Switzerland	Free movement of persons	Yes
2008	Ireland	Treaty of Lisbon	No

Sources: Hug 2002: 27; Vreese/Semetko 2004: 5; own additions.

According to article 48 of the Treaty on European Union, treaty reforms cannot come into force unless they are not ratified by all member states “in accordance with their respective constitutional requirements”. No member state except of Ireland is legally obliged to hold a popular vote on treaty revisions.<sup>1</sup> In some states, a facultative-binding (e.g. Czech Republic, Denmark or France) or a facultative-consultative (e.g. Luxembourg or Spain) referendum can

<sup>1</sup> For an overview on the different ratification procedures see e.g. Bieber 2006, Hussain 2005.

be held. In other words, even if the decision to hold a referendum is dependent on constitutional requirements, it also depends on a political decision of the government. In these cases, the question how the ratification issue is framed is of special importance in terms of legitimacy and credibility.

From a normative point of view, the different ways of ratification reflect diverging attitudes towards the way how decisions in a democracy should be taken. In the focus are the implications and differences between direct democracy and representative democracy. Advocates of direct democracy highlight the advantages participatory elements can add to the EU's decision-making process. Since the negative vote of the Danish citizens in the referendum on the Maastricht Treaty 1992, much has been said about the Union's democratic deficit (e.g. Føllesdal/Hix 2006; Schmidt 2006). In the focus of the debates are the increasing transfer of competences and sovereignty towards the European level, the thus related decreasing influence of member states' parliaments, the deficient responsiveness of the European Parliament, weak European intermediary actors such as parties, media and civil society organisations, the only indirectly legitimised executive (Council and Commission) as well as the lack of transparency of the EU's decision-making process. As one way of remedying these problems, voices are raised which pledge for a stronger involvement of citizens by stimulating a vivid culture of participation. Against the background of the constantly decreasing turnout at European elections, referendums are seen as a chance to enhance civic mobilisation and participation, and thus to strengthen democracy and legitimacy in EU politics (e.g. Vreese/Semetko 2004: 180).

As concerns the case of the Constitutional Treaty, it was argued that the notion of a "Constitution" required the direct approval of the citizens as *pouvoir constituant*. For the first time, the direct link between the Union and its citizens should be written down in the EU primary law. Article 1 of the TEC states that the Union is built on "the will of the citizens and States of Europe". Therefore, besides the parliamentary assent, the TEC should also be approved by the European citizenry which was to enhance the legitimacy of "the Constitution". This was already part of the deliberations going on in the Convention on the Future of Europe: „If the Constitution is to have real democratic legitimacy, then it ought to be put to the people of Europe in a Europe-wide referendum“<sup>2</sup> (European Convention 2003: 3).

The opponents of direct democracy in general and a referendum on the TEC in particular also brought forward striking arguments. From a representative democracy perspective, it is the directly elected representatives in the parliaments who should have the final say on political issues, in particular on complex ones such as EU treaty revisions. Through elections, they have received a mandate which legitimises their political decisions. As regards the TEC, it was argued that this document was elaborated in the Convention in an open, democratic and inclusive process with strong parliamentary participation which was seen as sufficient to ensure democratic legitimacy (e.g. Biaggini 2005: 353).

Furthermore, it is argued that referendums are rather "second-order votes" which means that citizens take their decision not on the issue at stake but also on other factors such as the popularity of the incumbent government and national politics. As studies unveil, this is especially the case regarding highly complex matters such as EU treaty revisions where voters not exclusively take their decisions on the referendum subject but rather on domestic issues (Gary/Marsh/Sinnott 2005). This is challenging as the nationally influenced decision of one national electorate affects all 26 other member states, which means that a minority is able to provoke a political stalemate due to rather national issues and not due to the contents submitted to the vote.

Referendums on EU treaty reforms are also rejected from another perspective: It is argued that the more referendums are held, the more package deals have to be made between the

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<sup>2</sup> As it does not directly touch upon the topics discussed in this paper, the debate about a Europe-wide referendum is not reflected here. For more details see e.g. Habermas 2007.

governments during the treaty negotiation process. According to Putnam's two-level game, each government which can credibly claim to hold a referendum can put pressure on its negotiating partners in order to pursue own interests and to have them respected in the treaties (Hug/Schulz 2007). The increasing use of referendums on EU treaty reforms can thus lead to a highly complex treaty structure. Resulting from that, deficiencies can easily be highlighted and been exploited for Eurosceptic campaigns.

### 3. Framing the Ratification Question

As it is widely asserted, framing is an influential and determinant instrument of power and can be applied "as a tactic used by political entrepreneurs to coordinate individuals around particular interpretations of their problems" (Chong/Druckman 2007: 118). Communicating actors can offer "short cuts" and influence decision-making of citizens. Some aspects of the issue at stake are emphasised while others are rather not touched upon. Key words and metaphors play an important role in order to reduce complexity and to transmit the message which is seen as most likely to reach a certain outcome. For the topic discussed in this paper, this is of significant importance. As Vreese and Semetko point out, referendums are characterised by volatile electorates, uncertainty in elite cues, and a high issue complexity (Vreese/Semetko 2004). Eurobarometer data unveil that European citizens lack a deeper knowledge of European affairs in general and on the TEC and the Treaty of Lisbon respectively.<sup>3</sup> Therefore, the information available plays a crucial role for how the ratification question is perceived.

It is important to note that the way *how* the ratification issue is framed does not have to correspond to the reasons *why* a particular way of ratification is chosen.<sup>4</sup> Different actors may advocate or reject the idea of holding a referendum for different reasons, depending on which (normative and/or strategic) goal is strived for. Particularly in the case of strategic reasons (e.g. aiming at strengthening the government's position), it is unlikely that the government will frame its decision in a strategic way as this might damage its political reputation. Therefore, it is assumed that governments frame their decision in such a way that is likely to create support for the own goals.

Resulting from the arguments put forward in the debate about direct democracy and referendums in the EU, I propose to distinguish five different frames which can be used in order to frame the decision on how ratification of EU treaties should occur: the direct democracy frame, the European frame, the legal frame, the national frame and the technical frame. As it will be elaborated below, the hypothesis is that the first two frames are used to justify a positive decision in favour of a referendum. The third frame is assumed to be used both in a positive and a negative way whereas the fourth and fifth frame might be used to justify a negative decision against a referendum.

**Table 2: Framing the Ratification Question**

Frame	Way of framing a referendum
Direct democracy frame	Positive
European frame	Positive
Technical frame	Positive/Negative
Legal frame	Negative
National frame	Negative

<sup>3</sup> For Eurobarometer data see [http://ec.europa.eu/public\\_opinion/index\\_en.htm](http://ec.europa.eu/public_opinion/index_en.htm). Specific findings on the TEC and the Treaty of Lisbon can be found in Flash Eurobarometer 168, 171, 172, 173, 245 and Special Eurobarometer 214.

<sup>4</sup> For the possible reasons for announcing a referendum see e.g. González 2006, Jahn/Storsved 1995 or Zemánek 2005.

The *direct democracy frame* implies a normative notion. It is expected that governments referring to this frame use the arguments put forward by the advocates of direct democracy. Key words might be legitimacy, democracy, participation, and mobilization. It can be assumed that governments are likely use the direct democracy frame (in a positive way) in the case of the TEC much more than (in a negative way) in the case of the Treaty of Lisbon as governments might stress the constitutional elements which, from a normative point of view, enhance the role of the citizens in contrast to “normal” EU treaties.

The *European frame* implies that governments frame their argumentation according to a European logic. One would expect key words relating to the trans-national dimension in order to justify the decision for a referendum. This frame also is assumed to have a normative notion in the sense that it touches upon questions relating to a general “European interest”, a European public sphere and a shared European sense of belonging. Cross-national references to debates in other EU member states are expected. Similar to the above mentioned frame, it is assumed to be used in a positive way, i.e. in order to speak for a referendum rather than against it. Therefore, it is expected that the European frame is used more often in the case of the TEC than of the Treaty of Lisbon.

When using a *technical frame*, governments are expected to refer to technical details and specific regulations of the treaty at stake rather than to wider implications of the treaty. It is assumed that this frame is used both in a positive and a negative way to frame the ratification decision. Regarding the TEC, this frame might be used to explain the need for a referendum by highlighting the main innovations compared to the status quo. In the case of the Treaty of Lisbon, the opposite might be the case: By emphasizing the treaty’s details, opponents of a referendum might want to emphasise the technical nature of the document and thus avoid a constitutional notion which, in turn, would be linked to direct approval by the citizens.

The *legal frame* refers to legal/constitutional provisions to justify a decision for/against holding a referendum. As concerns the examples chosen in this article, I argue that this kind of frame only plays a minor role in justifying a decision *for* a referendum as all countries analysed do not imperatively require the direct approval of the citizens. In other words, it is assumed that the legal frame did not play a greater role in the decision on the way how the TEC should be ratified. However, the frame might become much more influential in the second case under analysis: As all countries lack an imperative demand to hold a referendum, the decision to not holding one might be framed according to the legal frame – yet in a negative sense.

The *national frame* comprises references to the national dimension. As was argued above, governments can exert significant influence during treaty negotiations by playing the referendum card (Hug/Schulz 2007). In turn, having succeeded in securing own interests by choosing that negotiation strategy, governments can omit holding a referendum by pointing to their negotiation success. Key words used to frame the ratification issue might be national sovereignty, national influence or national interest. As I assume that this frame is used in a negative way, it is likely to play a greater role in the case of the Treaty of Lisbon than of the TEC.

## 5. Adjusting the Frames – the Cases of France, the Netherlands, Spain, Luxembourg and the United Kingdom

### France

According to article 89 of the French constitution, constitutional amendments have to be submitted to a popular vote. The president, however, can decide against a (binding) referendum and submit the law aiming at amending the constitution to the *Congrès*, which comprises the first and second chamber of the parliament, for ratification and thus avoid a popular vote. In this case, the *Congrès* has to approve the bill with a three-fifth majority. Other bills without an effect on the French constitution can also be put to a referendum (article 11 of the constitution). Thus, even if there is no imperative obligation holding referendums, instruments of direct democracy are not unfamiliar to French politics (Mayer 2006; Qvortrup 2006: 89).

In the case of the 2005 referendum, President Jacques Chirac had ruled out the referendum option at the beginning, however domestic pressure increased to hold one. Thus, the president finally conceded and announced a popular vote. In his speech on 14 July 2004, Chirac mainly framed his decision according to the direct democracy frame. As he said, a referendum was needed as people would be affected directly by the Constitutional Treaty and thus had to be consulted directly (“les Français sont directement concernés et ils seront donc directement consultés“, Chirac 2004).

As concerns the ratification procedure of the Treaty of Lisbon, it was clear that the no vote of the French population of 2005 had to be taken into account. In the referendum, 69,3 per cent of the population went to the ballot boxes, much more than on the occasion of the European elections in 2004 (42,8 per cent). Thus, the vote could be seen as significant and every new initiative to reform the EU had to be linked to it. The reasons for the no were mainly related to economic and social issues: 76 per cent of the no-voters stated that the TEC either would have negative effects on the employment in France, that the economic situation in the country already was too weak or that the document was too liberal in economic terms.<sup>5</sup>

It was not until 6 May 2007, when the French presidential elections took place and Nicolas Sarkozy succeeded Chirac as president, when the ratification procedure of the Treaty of Lisbon (the then called Reform Treaty) became clear, as the two main candidates, Nicolas Sarkozy and Ségolène Royal, had favoured different options during their campaigns. Whereas Sarkoy pleaded for ratification without a referendum, Royal advocated a popular vote. Sarkozy put forward his line of argumentation according to the technical frame: In order to overcome the EU’s reform crisis after the failure of the TEC, he suggested to elaborate a “mini traité” or a “traité simplifié” which should contain the crucial technical and institutional provisions of the TEC, but where all constitutional aspects should be removed (Sarkozy 2006). Furthermore, Sarkozy’s framing strategy picked up the most prominent arguments put forward in the 2005 no-campaign: He succeeded in scrapping the EU treaty from the aim of creating a common market based on “free and undistorted” competition which the TEC had mentioned in article 1 and thus reacted to the fears towards a neo-liberal European economic policy. The frame chosen did not remain uncontested from other parties and the wider public though, e.g. the Socialists called the decision to not hold a referendum a “denial of democracy” (Vucheva 2007).<sup>6</sup> Yet, the Treaty of Lisbon was finally ratified by a large majority in both chambers of parliament on 7/8 February 2008.

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<sup>5</sup> Flash Eurobarometer 171.

<sup>6</sup> For further details on the French campaign see e.g. Seeger 2008a.

### The Netherlands

The Dutch constitution does not explicitly contain provisions for holding a popular vote (e.g. Bellmann 2006; Hussain 2005: 7, Qvortrup 2006; Weiner 2008). The 2005 referendum was the first nation wide referendum since 1815, even if there had been a debate on introducing instruments of direct democracy since some time. However, the leading political figures for a long time prevented a constitutional revision which would have introduced regulations on referendums. Therefore, the referendum on the TEC was triggered by a parliamentary bill initiated by the Social Democrats, the Greens and the liberal D66. The bill became law – against the will of Prime Minister Jan Peter Balkenende and his party, the Christian Democrats. However, due to the political pressure the initiative put on the government, the Christian Democrats changed their mind and finally backed the referendum initiative. The government framed its decision along the arguments put forward by the advocates of the referendum. Atzo Nicolai, Dutch Minister for European affairs, applied the direct democracy frame and emphasised the legitimising role of citizens in European politics (Nicolai 2005).

Regarding the ratification procedure of the Treaty of Lisbon, Balkenende was in the same position as French President Sarkozy: The results of the 2005 referendum had to be taken into account (turnout: 62,8 per cent), yet the treaty should be ratified via parliamentary procedure only. As a survey, conducted in the aftermath of the referendum, unveiled, the three most influential reasons for opposing the TEC were lack of information (32 per cent), fear of loss of sovereignty (19 per cent) and a general opposition with the government and certain political parties (14 per cent).<sup>7</sup> Furthermore, a general scepticism towards deeper integration and further enlargement determined the decision of the no-voters.

Similar to Sarkozy, Balkenende used the technical frame and pointed to the fact that due to the influence of the Dutch government the constitutional concept had been given up during the EU's June summit 2007 when the mandate for the Intergovernmental Conference (IGC) aiming at elaborating the EU's Reform Treaty was drafted.<sup>8</sup> As the Prime Minister stated, "the new EU treaty is a regular reform treaty, [therefore] the normal approval procedure will be followed. The government does not feel that a referendum is an appropriate instrument. The government sees the new treaty as similar to those of Maastricht, Amsterdam and Nice, and like those earlier treaties, it can be approved via the normal procedure. The reform treaty will thus be debated and voted on by parliament" (Government of the Netherlands 2007). The decision was backed by a judgement of the State Court (*Rat van Staate*) which came to the conclusion that the new EU treaty did not contain constitutional elements and thus would not affect Dutch sovereignty, and by Queen Beatrix, who confirmed in her Speech from the Throne on 18 September 2007 that the Treaty of Lisbon would be submitted to parliament for ratification.<sup>9</sup>

Besides, a national frame can be observed, which is not surprising when looking at the reasons, why the Dutch voters rejected the TEC. Fears of losing sovereignty were already articulated during the referendum campaign on the TEC and were emphasised towards the process of drafting the Treaty of Lisbon again (Kurpas et al. 2005: 10). Balkenende repeatedly pointed to the fact that he had successfully strived for ensuring national parliaments a greater say in European politics (Hierlemann/Seeger 2007; Weiner 2008: 73). Even if the debates on the way of ratification of the new treaty were still contentious and some opposition parties again called for a referendum, Balkenende succeeded in framing the ratification question and "the referendum issue could effectively be buried" (Institute for European Politics 2008: 51). The first part of the ratification in the Dutch Lower House successfully took place on 5 June 2008, the Senate is likely to take its decision (which,

<sup>7</sup> Flash Eurobarometer 172.

<sup>8</sup> For details on the process of drafting the Treaty of Lisbon see e.g. Seeger 2008b.

<sup>9</sup> The speech can be downloaded at [http://www.government.nl/Government/Speech\\_from\\_the\\_Throne\\_2007](http://www.government.nl/Government/Speech_from_the_Throne_2007).



despite the negative outcome of the Irish referendum on 12 June 2008, is expected to be positive) in summer 2008.

### Spain

On 11 January 2005, the *Cortes Generales*, the Spanish parliament, unanimously decided to hold a referendum on the Constitutional Treaty according to article 92 of the Spanish constitution. It was the country's first referendum on EU affairs. Apart from decisions amending the constitution which can be put to a referendum according to article 187 of the Spanish constitution, article 92 states that decisions with far reaching relevance can be submitted to a (consultative) popular vote. It is the prime minister who takes the decision of putting a certain issue to a referendum. Therefore, the decision to hold a referendum implied one important aspect: The TEC was implicitly framed to be of far reaching relevance which, from a legal point of view, required the direct approval of the citizens – in contrast to the other EU treaties which had not been ratified via referendum. Thus, the strategy of the Spanish government can – at least implicitly – be seen as corresponding to the legal frame. It is important to note, however, that the decision to apply article 92 of the constitution is rather surprising as the Spanish constitutional court had explicitly ruled out already in October 2004 that the TEC had a major impact on the Spanish constitution (Bieber 2006: 65) which challenges the legal frame used by the government.

The legal frame was complemented by the direct democracy frame. The party manifesto of Prime Minister José Luis Rodríguez Zapatero's party PSOE contained references to the need to involve citizens more closely in European politics. Zapatero repeatedly stated that citizens should have a say and legitimise "the Constitution" ("La construcción Europea no puede proseguir sin los ciudadanos", *El País* 2004).

Additionally, a third frame can be detected. Since Zapatero had spoken out in favour of a referendum on the TEC shortly after the Spanish elections in 2004 (Bernhardt 2006: 101), he reiterated that this would give Spain the opportunity to show its strong commitment to European integration. The vote of the citizens should contribute to a European spirit and should be a strong signal against any Eurosceptic tendencies (*El País* 2004). It is worth to note that Zapatero might not only have had normative, but also strategic reasons for applying the European frame. After the parliamentary elections in March 2004 which ended with a defeat of the conservative Aznar government, Zapatero aimed at strengthening Spain's reputation as European actor. Since the negotiations on the Treaty of Nice, Spain had lost significant influence in European politics due to José Maria Aznar's uncompromising claims for a stronger voting position in the Council. Furthermore, the position of the Aznar government on the war against Iraq isolated the country from the Franco-German tandem. Against this background, a positive outcome of the referendum on the TEC should also contribute to bring Spain back into the centre of European decision-making.

As concerns the Treaty of Lisbon, there was a broad consensus among Spanish political elites that no referendum was needed. In a press conference after the EU's June summit 2007, Zapatero stated that the new treaty would be put to parliamentary ratification only. The decision was not really contested by the opposition or the wider public which might come as a surprise as the government stressed the fact that the new treaty had safeguarded as much as possible from the TEC's provisions (*El País* 2007). This raises the question how the government framed its decision to not hold a referendum on the new treaty.

Two different frames can be identified: On the one side, the government argued that exactly because both documents resembled each other, *no* referendum was needed as the text had already been agreed upon and legitimised by the Spanish citizens with a large majority of 76,7 per cent in the 2005 referendum.<sup>10</sup> Furthermore, the fact that former Prime Minister

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<sup>10</sup> Zapatero in a press conference after the European Council on 21/22 June 2007.

Felipe González was elected president of the committee of wise men was seen as a guarantee to have democracy and legitimacy in the EU respected and as a compensation for the lack of a citizens' involvement in the process of ratifying the Treaty of Lisbon.<sup>11</sup> Thus, against the expectations pointed out in the previous chapter, the direct democracy frame was used in a negative way to rule out a second referendum.

On the other side, Alberto Navarro, Secretary of State of European Affairs, stated that the Treaty of Lisbon was nothing more than an amending treaty, just as the Treaty of Amsterdam or the Treaty of Nice, which both had not been ratified via referendum. Therefore, he stated that a popular vote was not needed.<sup>12</sup> Thus, the two frames used sent rather contradictory signals, which, however, could not damage the government's political reputation.

### Luxembourg

Similar to the Netherlands, the direct democratic tradition of Luxembourg is weak. However, against the background of the country's general debates on opening politics for more direct democracy, Luxembourg's Prime Minister Jean-Claude Juncker had been campaigning for a popular vote on the TEC since 2003 (Qvortrup 2006: 91). Succeeding in doing so, the referendum on the TEC was the first one in the country since 1937. As could be expected, the frames used by the government focused on the value added of direct democracy. In an interview in the run-up of the referendum on the TEC in Luxembourg, Juncker emphasised the importance of enhancing civic participation (Juncker 2005).

In the case of the Treaty of Lisbon, Juncker ruled out to hold a referendum, the decision was hardly contested by other political actors or by the wider public (Reichel 2008: 66). In contrast to the run-up of the 2005 referendum, no major debates took place on the new treaty which made it easy for the government to frame its decision (Institute for European Politics 2008: 48). Similar to the Spanish government, the Prime Minister put emphasis on the fact that the Treaty of Lisbon resembled the TEC in large parts. It was argued that, as the TEC had been adopted by the citizens in a referendum, no second vote was needed on the new treaty (Government of Luxembourg 2007). The parliamentary ratification procedure of the Treaty of Lisbon could be completed on 29 May 2008 with 47 members of parliament backing the treaty and one opposing it. Again, the hypothesis that the direct democracy frame only would be applied in a positive way is not confirmed.

### United Kingdom

According to the constitutional tradition of the UK, there is no written obligation to hold a referendum on the reform of EU treaties. However, elements of direct democracy can be applied by a referendum bill (Potzeldt 2006: 115-116) which has to be endorsed by a majority of the parliament. In the case of the TEC, the "European Union Bill" contained the provisions which would have allowed submitting the document to a popular vote.

For a long time, Blair had been reluctant to announce a referendum, however he changed his mind after coming under pressure because of the upcoming national elections (Kurpas et al. 2005: 13). In a speech before the House of Commons on 20 April 2004, Blair demanded: "Let the people have the final say. The electorate should be asked for their opinion" (Blair 2004). As he argued, „[it] is time to resolve once and for all whether this country, Britain, wants to be at the centre and heart of European decision-making or not [...]. Let the Eurosceptics whose true agenda we will expose, make their case. Let those of us who believe in Britain in Europe not because we believe in Europe alone but because, above all we believe in Britain, make ours“ (Blair 2004). Thus, Blair used the European frame to justify the choice for a

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<sup>11</sup> Secretary of State for European affairs Alberto Navarro on 17 January 2008.

<sup>12</sup> Ibid.

referendum, although not in a normative sense as described in the previous chapter but implicitly according to the national frame by emphasising the importance of the referendum for Britain's national interest.

When the Treaty of Lisbon started to gain shape under the German presidency, Blair made clear that no referendum would be held on the document. Gordon Brown, who succeeded Blair as prime minister in June 2007, followed this line of argumentation, even if he had spoken out for a referendum on the TEC (e.g. Stuart 2007). As could be expected, this was challenged by a broad coalition including supporters of Brown's own Labour Party, the Conservatives, the Liberals, the mass media, members of trade unions and civil society organisations (e.g. Seeger 2008a). Even if the arguments put forward differed widely, the campaigns resembled each other in one aspect: It was stated that the new treaty contained the crucial provisions of the TEC. This was backed by a report of the European Scrutiny Committee of the House of Commons which mentioned that „the Reform Treaty produces a general framework which is substantially equivalent to the Constitutional Treaty“ (House of Commons European Scrutiny Committee 2007b: 16).

Against this background, the government focused on a three-dimensional way of framing its decision against holding a popular vote. On the one side and according to the assumptions of the previous chapter, a technical frame was used in order to point out both the differences between the TEC and the Treaty of Lisbon and the continuity between the new treaty and previous EU treaties (House of Commons European Scrutiny Committee 2007a). Furthermore, the strong parliamentary tradition of the United Kingdom was highlighted, i.e. the ratification decision was additionally framed in a legal way. As the government repeatedly stated, a referendum would not be necessary, as no referendum had taken place on all previous EU treaties. Furthermore, the national frame was used. The government pointed to the fact that during the process of drafting the IGC mandate and during the IGC itself, Britain's national interest had been respected in a satisfactory way. The four British “red lines” – maintaining special provisions in the areas of justice and home affairs, in foreign and security policy, in social policy in with regard to the Charter of Fundamental Rights – were respected in various treaty provisions, protocols and declarations. Hence, a referendum was not needed as “we have defended the British national interest“ (Brown 2007). Even if the government faced strong criticism for its decision to not hold a referendum, the parliamentary ratification procedure could be concluded on 18 June 2008, shortly after the Irish voters had rejected the Treaty of Lisbon.

**Table 3: Frames Used by the Selected Governments**

	<b>Framing the decision in favour of a referendum on the TEC</b>	<b>Framing the decision against a referendum on the Treaty of Lisbon</b>
<b>France</b>	Direct democracy frame	Technical frame
<b>The Netherlands</b>	Direct democracy frame	Technical frame National frame
<b>Spain</b>	Legal frame Direct democracy frame European frame	Direct democracy frame Legal frame
<b>Luxembourg</b>	Direct democracy frame	Direct democracy frame
<b>United Kingdom</b>	European frame	Technical frame Legal frame National frame

## 6. Framing the Same but Different – Determining Factors

Once the different frames have been identified, one has to ask why governments choose a particular way of framing their message. Of course, the development of European politics has to be kept in mind when analysing the various frames. After it had become clear that the TEC was partly rejected because people were afraid of an emerging European super-state which the notion of a “Constitution” might have implied, political elites tried to avoid the impression that a new constitutional document was drafted. Rather, the instruments of “normal” treaty revision were given special importance, i.e. a “classic” IGC took place without any similarity to the Convention process of 2002/2003 and referendums should be avoided (e.g. Wessels/Faber 2007). Shortly after the EU member states had agreed on the Treaty of Lisbon, Valérie Giscard d’Éstaing stated that the document was made as much complex as possible in order to omit popular votes, even if both documents resembled each other strongly (Spongenberg 2007). A second ratification failure should be avoided in any case. As member states have bound themselves to take the necessary steps to get the treaty ratified, announcing a referendum without being legally obliged might have put the respective state in political isolation. Therefore, the arguments used to justify not holding a referendum on the Treaty of Lisbon first of all have to be seen in relation to the failure of the Constitutional Treaty. Against this background, the fact that France, the Netherlands, and the United Kingdom used a technical frame to justify their decision to submit the new treaty to parliamentary ratification only is not surprising. However, Luxemburg and Spain did not apply the technical frame, and other governments did not exclusively focus their framing strategy on the technical frame either. This raises the question what other factors might determine the choice of the frames.

To answer this question, the comparative approach pursued in this paper can enable valuable insights. First, the same issue is framed at the same time in different national arenas, which allows drawing conclusions on influencing factors between different domestic settings. Second, as it is assumed that the TEC and the Treaty of Lisbon are strongly connected to each other and contain, in wide parts, similar elements, it allows drawing conclusions on factors which determine how a (similar) issue is re-framed in the same arena at a different time. When identifying factors with an impact on the frames chosen, I will pursue in a rather exploratory manner, i.e. the list of factors might not be complete. However they might generate first interesting findings which can be elaborated on in further studies.

First, I assume that a government of a country where the ratification of EU treaties is not foreseen by constitutional provisions has to frame the decision to hold a referendum differently than a government of a country where the constitution obliges the political actors to do so. The hypotheses would be that the more a decision to hold a referendum or not differs from the legal requirements or the tradition of direct democracy, the less it is framed in a *positive* way with legal arguments. Consequently, the more a decision to hold a referendum or not differs from the legal requirements, the more it is framed in a *negative* way with legal arguments. When looking at the selected countries, the Netherlands, Spain and Luxembourg are those countries with the weakest European referendum tradition. In contrast, France and the UK already had experiences in submitting European issues to a popular vote. Therefore, one would expect that the application of the legal frame in a positive way is more likely in the case of the TEC in France and the UK than in the other three countries. In turn, one would assume that the frame has a greater impact in the Netherlands, Spain and Luxembourg in the case of the Treaty of Lisbon. However, in the case of the TEC the frame only played a major role in Spain when the prime minister applied article 92 of the Spanish constitution. Thus, the findings do not exactly match the expectations as Spain is not among those countries with stronger legal requirements or a stronger tradition of direct democracy. Furthermore, in the case of the Treaty of Lisbon the frame was not applied in the Netherlands and Luxembourg as was assumed. Generally speaking, the legal requirements and the direct

democracy tradition may be influential, but not determining factors for the way how the ratification issue is framed.

Second, analysing the party system and the political scenery might also tell a lot about how the ratification issue is framed. A government which is faced with several strong competitors, e.g. a strong opposition party, is likely to be constrained in the process of choosing a frame. As it has been the case in the past, it is usually the opposition calling for a referendum which tries to use it as a strategic instrument to enhance the own position. The arguments put forward are often framed in a normative, however populist way in the sense that not holding a referendum is accused as a way of depriving citizens of their right to participate in politics. I assume that if the government is in favour of a referendum and faces a strong opposition, it is likely to highlight the value added of direct democracy in order to avoid a populist defeat by its opponents. In contrast, if the government refuses to hold a referendum, I assume that it might focus on technical details of the treaties and thus might try to avoid a general debate about direct democracy and legitimacy. This assumption is well reflected in the data gathered. All selected governments except for the UK chose the direct democracy frame in the case of the TEC, irrespective of the role of the opposition. However, in the case of the Treaty of Lisbon, only Spain and Luxembourg chose this frame. Both countries were not confronted with a major opposition to their decision to not hold a referendum. In contrast, in those countries where, in the case of the Treaty of Lisbon, the calls for a referendum from the opposition were significant, such as France, the Netherlands, and the UK (e.g. Seeger 2008a), the government avoided references to the direct democracy frame as this would have given the opposition a major point for criticism. They rather applied a technical frame in order to point out the differences between the TEC and the new treaty and to underline the technical nature of the document and the continuity to previous amending treaties.

Third, another important constraining factor is public opinion on European integration in general and on the issue at stake (the TEC and the Treaty of Lisbon respectively) in particular as it can be assumed that the government is eager to take into account public opinion in order to increase support for the decision on the ratification procedure. If the respective citizenry is rather Eurosceptic, governments might be reluctant to announce a referendum as it can be used to express a general antipathy towards the EU instead of judging the issue at stake. If the government announces a referendum under such rather risky conditions (risky in the sense that the government has committed itself to ensure proper ratification by signing the respective treaty), the way how the ratification question is framed is expected to differ strongly from the same decision under rather "favourable" conditions in a more Europhile environment. It is assumed that a government with a rather Eurosceptic citizenry chooses the national frame and puts emphasis on key words such as national interest and sovereignty in order to create a favourable atmosphere and convince citizens that a referendum is not necessary as other concessions can be offered. In contrast, one might argue that the more Europhile the electorate is, the less the arguments are focused on the national but rather on the European interest. At a first glance, it seems that the findings only partly confirm the hypothesis. Whereas the fact that the Spanish government chose the European frame in the case of the TEC can partly be explained by the strong public support for European integration, this is not the case in the UK, where the European frame was also used in the case of the TEC. However, as Blair did not use the European frame in a normative sense but rather as a means to highlight the national interest, the findings match the assumption much better. In the case of the Treaty of Lisbon, the expectation is also confirmed both in the UK and in the Netherlands: Fears of losing sovereignty and a general sceptical attitude towards deeper integration and further enlargement could be observed in both countries, in the Netherlands these issues determined many voters to reject the TEC. Against this background, both governments framed their decision to not hold a referendum on the Treaty of Lisbon in a national way by pointing to the provisions which ensured national sovereignty, such as the newly introduced provisions on the role of national parliaments or the British "red lines".

Interestingly, only the UK and Spain applied the European frame whereas all other countries avoided references to the European dimension. Especially in the case of the TEC this might be rather surprising as normative aspects were emphasised both during the work of the Convention and the ratification process. This indicates that debates about the EU in general and about treaty reforms in particular are still perceived in a national way and that creating a common European sense of belonging by enhancing trans-national awareness does not have a strong priority for governments. The hopes that the Constitutional process would contribute to strengthen a European public sphere with cross-border debates were rather dashed by the findings of this paper. Instead, great differences in how the ratification issue is perceived are unveiled, strongly depending on the domestic setting.

## 7. Conclusion

Against the background of an analysis of the debate on direct democracy and referendums in the EU, this paper analysed how governments of five EU member states (France, the Netherlands, Spain, Luxembourg, UK) framed their decision on the ratification procedure of the Constitutional Treaty in comparison to the Treaty of Lisbon. While all these countries decided to ratify the TEC via referendum, the Treaty of Lisbon should be ratified by parliamentary procedure only, which indicates that the referendum euphoria changed into a referendum phobia. As it is widely asserted that the Treaty of Lisbon contains many of the reforms of the TEC, it is interesting to ask how governments framed their decision to not submit the new treaty to a popular vote.

The paper elaborated five different frames: The direct democracy frame, the European frame, the technical frame, the legal frame and the national frame. As could be shown, all governments except for the UK related to the direct democracy frame in the case of the TEC. The Spanish government additionally applied the legal frame and the European frame. The British government also used the European frame. In the case of the Treaty of Lisbon, three countries referred to the technical frame: France, the Netherlands and the UK. Regarding the fact that the process of drafting the Treaty of Lisbon was generally framed as rather technical in comparison to the TEC, this does not come as a surprise. However, what is important to note is that both countries where the TEC was approved by a referendum in 2005 did not use the technical frame. Rather, they related to the direct democracy frame by stressing the fact that the TEC and the new treaty *did* resemble each other strongly. Interestingly, and against the expectations, the legal frame did not play a greater role in the cases of France, the Netherlands and Luxembourg, even if in particular in the case of the latter two direct democracy had not played a greater role in political decision-making before. Matching the expectations, it was the two governments with rather Eurosceptic populations in the Netherlands and the UK where the national frame was applied in the case of the Treaty of Lisbon.

These rather mixed findings suggest that, apart from the general European context, domestic factors, such as constitutional provisions/direct democracy tradition, the party system or public opinion, determine the framing strategy. However, whereas the findings on the influence of the party system and public opinion match the expectations, the role of constitutional provisions/direct democracy tradition is not absolutely clear. This underlines the great relevance of the political/strategic dimension of the respective ratification procedure.

In the light of the debate of the democratic deficit of the EU and the search for ways to enhance legitimacy and citizens' acceptance of the EU, it is challenging when the same issue is framed differently in different national arenas at the same time or when one (slightly different) issue is framed differently in the same arena at different times. As the contentious debates in France, the Netherlands and the UK on the way of ratification of the Treaty of Lisbon show, credibility of EU politics is at stake. This might backfire at a later stage with people refusing their support for further deepening and widening the European Union.

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