



DEMOCRACY INTERNATIONAL

Evaluation of the French Referendum on the EU Constitution, May 2005



Written by Arsène Richard and Ronald Pabst

democracy international is a network promoting direct democracy. Our basic goal is the establishment of direct democracy (initiative and referendum) as a complement to representative democracy within the European Union and in the nation states. We also work on the general democratisation of the European Union, democratic reform and more direct and participatory democracy worldwide.

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1 Introduction

This report examines the process of the French referendum on the Treaty establishing a Constitution for Europe (TCE), which was held on 28 and 29 May 2005. The aim of our report is to enable a comparison of the referendums in different European countries and to show how the process might be improved. It is based on a set of criteria for the evaluation of referendums¹ developed by the *Initiative and Referendum Institute Europe* (IRIE). The EU accession referendums in 2003 have already been examined using this set.² *Democracy international* has also published a report on the Spanish referendum written by Juan Carlos Madroñal of our Spanish network partner *mas democracia*.³

We examine the legal basis and the timing aspects of the referendum as well as the regulations concerning finances and the campaign rules. We have slightly modified the criteria in order to keep this report reader-friendly.

Each criterion in turn, and its rating (e.g. **C 1-1: Origin of the referendum: Partly Fair**), is given in the heading of the brief sections which explain our findings on each point. The amount of information available for each criterion varies, as does the length of these chapters. We have therefore sometimes divided the further information into sub-chapters. Their headers are underlined.

The ratings range from Fair to Partly Fair to Unfair:

- ⌚ Fair: The basic preconditions for a fair procedure are met.
- ⌚ Partly Fair: The basic preconditions for a fair procedure are not met. But we detect no intention to favour one side against the other.
- ⌚ Unfair: One side is disadvantaged by the actors in charge *or* the basic preconditions for a fair procedure are violated.

2 The History of the EU Constitution

The heads of state and government of the EU signed the Treaty establishing a Constitution for Europe (TCE)⁴ in Rome on 29 October 2004. It was meant to replace the current EU treaties, which are often simply called the *Nice Treaty*.

2.1 The origin of the TCE

The *Nice Treaty* was rejected in Ireland in a referendum. Only after the Irish citizens had approved a slightly modified proposal was the treaty able to enter into force. In view of this set-back, the EU leaders declared in Laeken (Belgium) in December 2001 that the next modification of the European treaties should be prepared more carefully.

The modification was declared to be inevitable due to the challenges presented by the inclusion of ten new member states, with a further three ‘in the queue’ (Bulgaria, Romania and Turkey). The *Convention on the Future of Europe*⁵ was established and former French President Giscard D’Estaing was appointed as its president.

The Convention started its work in February 2002 and had to deal with four main questions:

- ⌚ How to organise the division of responsibilities between the Union and the Member States?
- ⌚ How to better define the respective tasks of the European institutions?
- ⌚ How to ensure the coherence and effectiveness of the Union's external action?
- ⌚ How to strengthen the Union's legitimacy?⁶

¹ available at www.referendumplatform.nl/literatuur/monitoringreport.pdf (see especially chapter two)

² <http://www.iri-europe.org/>

³ <http://www.democracy-international.org/spain.html>

⁴ http://europa.eu.int/constitution/print_en.htm

⁵ Declaration of Laeken: <http://European-convention.eu.int/pdf/LKNEN.pdf>

⁶ http://europa.eu.int/constitution/futurum/treaty_history_en.htm

2.2 The drafting of the EU Constitution

240 politicians⁷ took part in the drafting process. They represented the national governments, the national Parliaments, the European Parliament, the European Commission, the Governments and National Parliaments of the 13 candidate countries and observers (e.g. of the EU Economic and Social Committee). All were gathered under the opaque control of the Presidium. The final work of the Convention was presented on 13 June 2003.

The Convention lacked democratic legitimacy: The citizens of Europe had neither appointed, elected nor confirmed it. The role of the representatives of civil society was very limited. *Mehr Demokratie* has published a report examining the weakness of this process and of the EU Constitution.⁸

Democracy international closely monitored the work of the Convention.⁹ From the beginning, we demanded referendums on the EU Constitution in each member state. 97 members of the Convention and 300 NGOs from all over Europe supported that demand. We also fought successfully for the implementation of direct democracy within the EU Constitution. In article I-47.4, the European Citizens' Initiative was introduced - a first, though still unsatisfactory step towards direct democracy in the EU.¹⁰

2.3 The modifications by the European Council

The text drafted by the Convention had first to be adopted by the European governments as a working proposal. In Thessalonica on 21 June 2003, the heads of state and government made it the main basis for their work in the Intergovernmental Conference (IGC).

The working session of the IGC for the modification of the treaties and for the adoption of the draft TCE was launched on 4 October 2003. Large parts of the TCE were written in this phase.

The first attempt to achieve consensus on the constitution failed. It led to a first setback. On 13 December 2003, during the IGC, the EU Leaders postponed the adoption of the text. The disputed point was the future voting system in the Council of Ministers.¹¹ Finally, a compromise was found and accepted unanimously on the 18 June 2004.¹²

The final version of the TCE consists of four parts:

- ⌚ the basis of the EU, its institutions and its competencies: this part was drafted by the Convention
- ⌚ the *Charter of Fundamental Rights*: this Charter had been developed by a convention in 2000. This committee was the prototype for the *Convention on the Future of Europe*.
- ⌚ the policies and functioning of the EU: this part was written after the Convention had finished its work (321 out of a total of 448 articles of the text) and
- ⌚ general and final provisions: protocols and declarations

2.4 The players

We will now introduce the roles of the French President, the political parties and the Supreme Court. Their positions were crucial in the referendum campaign.

The President

Unlike many other European presidents, the office of the French President is quite a powerful one, especially in matters of foreign policy. Although it is the prime minister and parliament that oversee much of the nation's actual lawmaking, the French President has a sizeable influence, both formally and due to constitutional convention. The presidency is the nation's foremost

⁷ <http://european-convention.eu.int/Static.asp?lang=EN&Content=Composition>

⁸ <http://www.mehr-demokratie.de/eu-kritik.html> (English and German version available)

⁹ <http://www.democracy-international.org/erc.html>

¹⁰ <http://www.democracy-international.org/story.html>

¹¹ http://www.europe.gouv.fr/actualites_1/les_articles_2/adoption_constitution_65.html

¹² http://europa.eu.int/comm/press_room/presspacks/constit/consolidated%20version_en.pdf

office, and the president outranks all other politicians.¹³ We will see that the French President also has a lot of powers in relation to organizing the referendum. Chirac called the referendum and was in favour of the TCE.

The parties

The political landscape was split. Most of the established parties supported the TCE. Chirac's centre-right party (*Union pour un Mouvement Populaire*), the *Union pour la Démocratie Française*, the centre-left *Parti Socialiste*, as well as the Greens (*Les Verts*), were in favour of the TCE.

Most of the other parties were against: from the far- and extreme-left *Parti Communiste* (PC), *Ligue Communiste Révolutionnaire* and *Lutte Ouvrière*, to left-republicans *Mouvement Républicain et Citoyen*, to the conservative *Mouvement Pour la France* (MPF), the far-right *Rassemblement Pour la France* (RPF), and the extreme-right *Front National* (FN) and *Mouvement National Républicain*.

To understand the way the campaign developed, it is important to know that the parties officially in favour of the TCE were split.

An internal vote of the ruling **UMP** held on 6 March demonstrated good support for the EU Constitution. It was organised fairly late in the process and was designed to strengthen public support for the TCE. The UMP had started its campaign in November 2004 by sending 43 envoys around the country to organise meetings between different federations.¹⁴ Party leader Sarkozy gave assurances that opponents of the EU Constitution would be given a voice in the referendum campaign. Secretary-General of the UMP (Hortefeux) also confirmed that "the position of those in the 'no' camp will be taken into consideration; they will have room for expression and probably (financial) means."¹⁵

But an internal opposition group within the UMP had already been formed only three days after the TCE was signed. Later, even former ministers joined forces with those opposed to ratification within the party.¹⁶

In October, the party leaders of the **Socialist Party (PS)** officially supported the TCE.¹⁷ But in early November, two books were published by prominent figures in the party: Fabius opposed, Strauss-Kahn backed the TCE.¹⁸ The party was split into two camps. 52 percent of Socialist sympathisers thought that it was good that Fabius opposed the TCE.¹⁹

The PS held a disputed internal referendum which kicked off the debate in France and was taken careful note of in Europe. On 1 December 2004, the PS asked its 120,027 party members to answer the question: "Do you back the European Constitution: yes or no?" Each of them had been sent a copy of the EU Constitution, at a cost of 65,000 euros. The 'yes' and 'no' camps received 15,000 euros from party funds and campaigned actively before and after the internal vote.²⁰ 55 % voted in favour of ratification. The tiny majority shows that the left opposition party was split on the issue.

After the internal vote opponents of the TCE were expected to support the party line. Some refused and were threatened with sanctions and exclusion from the party.²¹

When he got involved in the campaign, **UDF** party leader Bayrou intended to form a coalition together with the UMP, PS and the Greens to support a 'yes' vote.²² The UDF took a stand against Turkish

¹³ http://en.wikipedia.org/wiki/French_President

¹⁴ *Le Figaro*, 16 November 2004

¹⁵ *Le Monde*, 5 January 2005

¹⁶ *Le Nouvel Observateur*, October 13, 2004 and Yahoo!News, November 10, 2004.

¹⁷ *Le Figaro*, 29 October 2004

¹⁸ *Le Monde*, Yahoo!News, 7 and 8 November 2004

¹⁹ A CSA Poll quoted by Yahoo!News, 23 November 2004

²⁰ *Le Monde*, 23 November 2004

²¹ *Le Figaro*, 3 February 2005

accession, saying that a 'yes' to the TCE involved two mutually incompatible logics.²³ Around 70 to 80 percent of the party members supported the TCE.

But even in this party prominent figures expressed their reservations: Lagarde became the first UDF MP to say that he would vote 'no', arguing against EU accession for Turkey.²⁴

The **Green Party** decided twice on the text. In November 2004, the party approved the text "For a European yes" by 46.6% for to 22.1% against. The decision was later approved again in an internal postal referendum: this time the decision was approved by a narrow majority of only 53 percent in favour. Commenting on the result, spokeswoman Duflot said: "The Greens have voted moderately, revealing their critical position with regard to the constitutional treaty". The members of the Green party were very much split on the issue.

By contrast, the parties opposed to the treaty rejected it more or less completely. There are no reports of internal struggles on this issue.

The Supreme Court (CC)

The French Supreme Court, the *Conseil Constitutionnel* (CC), has considerable responsibility for the rules of the referendum. It has three roles in the process: as advisor, supervisor and judge. It gave valuable information in a report on the process of the referendum. We refer to it as the *General Assessment* (GA).²⁵ We will have a closer look at its role when examining *Criteria 4-1 Managed by referendum commission or other*.

3 Evaluation of the French Referendum

France was the tenth country to ratify the constitution, and only the second to hold a referendum on the issue. It produced the first rejection: on 29 May 2005, 54.7 % of the voters voted against ratification (turnout 70%).²⁶ Three days later, the Dutch voters also rejected the EU Constitution.²⁷

3.1 Legal Basis

This section examines the legal framework of the referendum. First, we examine the revision of the French constitution. Then we examine the legal basis of the referendum itself.

3.1.1 The revision the French Constitution:²⁸

According to article 54 of the French Constitution, any international treaty must respect the French Constitution. In October 2004, Chirac asked the CC whether a modification of the constitution was necessary in order to allow ratification. On 19 November, the CC answered in the affirmative and listed the changes needed.²⁹

On 3 January 2005, the Government approved the draft revision of the French Constitution. It was adopted by French representatives three times:

²² Liberation, 13 December 2004

²³ Le Figaro, 17 December 2004

²⁴ Le Monde, 21 January 2005

²⁵ <http://www.conseil-constitutionnel.fr/dossier/referendum/2005/documents/bilangeneral.pdf>

²⁶ <http://www.conseil-constitutionnel.fr/dossier/referendum/2005/documents/resultat2.htm>
http://en.wikipedia.org/wiki/French_referendum_on_the_European_Constitution#Results

²⁷ http://en.wikipedia.org/wiki/Dutch_referendum_on_the_European_Constitution#Results
http://www.kiesraad.nl/nieuwsberichten/vaststelling_uitslag

²⁸ <http://www.conseil-constitutionnel.fr/dossier/quarante/notes/art89.htm>

²⁹ <http://www.conseil-constitutionnel.fr/decision/2004/2004505/eng.htm> Interpretation of the decision by a law specialist, in French: <http://www.robert-schuman.org/supplement/sup191.htm>

- ⌚ National Assembly, 1 February 2005, 450 yes - 34 no
- ⌚ Senate, 17 February 2005, 263 yes - 27 no³⁰
- ⌚ the Congress of the National Assembly and the Senate, 28 February 2005, 730 yes - 66 no³¹

The revision of the Constitution contains four articles with the following content:³²

Art. 1 regulates the transfer of powers;

Art. 2 introduces a compulsory referendum to enable future laws authorising the ratification of membership treaties;

Art. 3 mainly enforces the rights of the French Parliament;

Art. 4 states that compulsory referendums do not apply to the countries whose membership of the EU was decided before 1 July 2004 (Bulgaria and Romania).

3.1.2 Legal framework of the referendum

In France, only the President can call referendums. It is not possible for citizens to initiate a vote. No specific law regulates the process.³³ The framework is fixed *ad hoc* by decrees. This procedure gives the government a great deal of power. The French Supreme Court (CC) called this lack of a permanent ruling “shocking”(GA, p. 63). The date and the question were fixed in the convocation decree on 9 March 2005. Twelve days later, two other decrees set the rules for organisation and for the information campaign. The three decrees laid down the essential legal framework of the referendum by completing or replacing electoral code (GA, p. 8, 21 and following). This procedure created opportunities for manipulation. The CC had already called for a permanent legal framework on referendums(GA, p.63,64).

Criterion 1-1 Origin of the referendum: Partly Fair

“The President of the Republic may, on a proposal from the Government (...) submit to a referendum any government bill (...) which provides for authorisation to ratify a treaty that (...) would affect the functioning of the institutions” (French Constitution, Art.11).

The referendum was not obligatory; the citizens cannot trigger a referendum. Chirac hesitated a long time before he called the referendum. France was the last EU government to announce a referendum on the constitution. Chirac could have chosen parliamentary ratification. This fact reveals the great influence of the French president.

Of course, we welcome the French president’s decision. But we deplore the fact that there is no possibility for citizens to initiate a referendum if the administration is unwilling to call a vote on important issues.

Criterion 1-2 Character of the decision: Binding or only consultative? Fair

The French citizens are the sovereign. The result of a referendum is therefore binding (Art.2 and Art.3 of the French Constitution). This interpretation was confirmed and used by the CC. However, the French Constitution does not explicitly mention that referendums bind the government.

The CC considers that it has no competence to control the decision of the sovereign people and the law authorising it. Thus, no appeal was possible against the decision of the people once the Supreme Court released the official results (GA, p. 54).

Criterion 1-3 Special majority requirements: Fair

“The electoral corpus (...) decides based on the majority of the expressed votes.” (Organisation decree, Art.1)

³⁰ http://www.premier-ministre.gouv.fr/information/actualites_20/traite_constitutionnel_europeen_revision_51952.html

³¹ <http://www.iri-europe.net/files/050525/overview.html#France>

³² Cf., in French: The National Assembly’s dossier on the revision of the Constitution: http://www.assemblee-nationale.fr/12/dossiers/constitution_europe.asp ; the draft revision : <http://www.assemblee-nationale.fr/12/projets/pl2022.asp> and the revision : <http://www.legifrance.gouv.fr/WAspad/UnTexteDeJorf?numjo=JUSX0400284L>

³³ (cf. §7): <http://www.conseil-constitutionnel.fr/dossier/referendum/2005/documents/note.htm>

There are no special majority requirements. In many other countries, such requirements interfere with or destroy the fairness of referendum campaigns. In particular, a fixed turnout level makes a boycott campaign very attractive. In such cases, adding together no-votes and abstentions can lead to a defeat for the side which actually gained a majority of the votes. We often experience this *boycott strategy* in practice. Nevertheless, the French regulations are exemplary and should be used all over Europe.

Criterion 1-4 Accuracy and seriousness of voters list : who is and was able to vote? Partly Fair

“All French citizens of either sex who have reached their majority and are in possession of their civil and political rights may vote as provided by statute.” (French Constitution, Art.3-4)

Entitled to vote are French citizens who are 18 or above and who have their civil and political rights. The electors also have to be registered on the electoral register of the constituency they have chosen as their place of residence. French people living abroad must also be listed on a local list. It is estimated that 8 % (3 million) of the 39 million voters are not registered on the electoral registers.³⁴ An existing proposal to introduce an automatic registration of citizens on the electoral register has not yet become law.³⁵ Approximately another 3 million people living in France are not entitled to vote because they do not have French citizenship.

Please note: in order to keep the report reader-friendly we will now have a close look at criterion 1.8. We will then return to the correct numeric order.

Criterion 1.8 Voting: how, where? Unfair

The vote can only be cast at the polling station. Persons who are prevented from doing so only have the alternative of voting by proxy. Voters living abroad can vote at the polling centres opened in embassies or consulates.³⁶ These procedures are similar to those used in elections.

Voting at the polling station

Voters get an envelope and two ballot papers (yes and no) and cast their vote in the voting booth. The ballot papers are sent to voters together with information on the ballot, and are also distributed at the polling station. The envelope is handed out only at the polling station. The unused ballot paper remains in the booth. In addition, citizens have to sign the register to verify their identity. Disabled electors can get assistance. For the first time, ballot papers written in Braille for blind persons were offered.³⁷

The use of voting machines

Polling stations equipped with voting machines do not offer a ballot box. Voters can choose between ‘YES’, ‘NO’ and a blank vote on the machine. A null vote (making the ballot paper invalid) is not possible.³⁸

The use of voting machines has been permitted in France since 1956. They were used for the first time in the European elections of 2004 in Brest. On this occasion, no less than 56 cities used them.³⁹ The voting machines must be situated in the polling booths, or another system must be in place to ensure secrecy. The government promotes the use of voting machines with subsidies. The CC reported that electors confronted with the technique often claimed that secrecy was not protected. Nevertheless, the use of voting machines does not appear to us to be problematic and does not contribute to the poor rating of this criterion.

Voting by proxy

This is the only alternative for people who are not able to go to the polling stations, which are the only places where the envelopes used for casting the vote are provided (the voting slips themselves are mailed out with the referendum information). It can be used by:

³⁴ http://insee.fr/fr/ffc/docs_ffc/IP877.pdf

³⁵ <http://lexpress.fr/info/france/dossier/regionales/dossier.asp?ida=426852>

³⁶ List of the poll stations abroad <http://www.conseil-constitutionnel.fr/dossier/referendum/2005/documents/centres.htm>

³⁷ http://www.interieur.gouv.fr/rubriques/b/b3_elections/b31_actualites/2005_DP_referendum_soiree/5.pdf

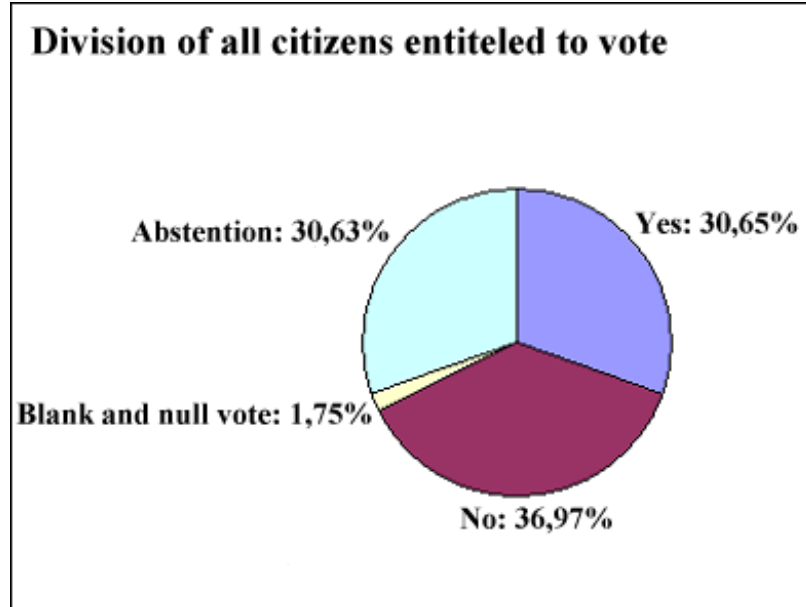
³⁸ <http://www.conseil-constitutionnel.fr/dossier/referendum/2005/textes/circmav.pdf>

³⁹ http://www.interieur.gouv.fr/rubriques/b/b3_elections/b31_actualites/2005_DP_referendum_soiree/4.pdf

- ⌚ disabled voters; voters who are in detention pending trial; prisoners who have not been deprived of their electoral rights and
- ⌚ voters who testify that there are serious reasons (holidays, professional obligations, etc.) why they cannot be present in the city in which they are registered

Depending on the size of the city, the deadline for applying for this procedure ranges from four to six weeks before polling day. Access to this system is simple: written proof is required.⁴⁰ Such voters have to find a proxy: a voter registered in the same city who will cast the vote for them at the polling booth. Each proxy can represent only one person. The voter has no means of verifying whether the proxy actually votes the way he/she intended.

This system violates the secrecy of the vote and is a considerable weakness in the French electoral system.



Nearly one third of the voters abstained (see graph). Two thirds of these stated that “something prevented [them] from voting that day”.⁴¹ It is likely that an alternative to the voting by proxy procedure would have led to a higher participation level. The CC is asking for the introduction of a secure electronic voting procedure, under the proviso that the method finds popular acceptance (GA, p.65). The easier, well-proven method of postal voting could easily solve this major shortcoming.

French living abroad

French voters living abroad can vote in referendums and elections by going to the polling stations (directly or by proxy) situated in embassies and diplomatic missions. It is complicated for members of this group to participate. This can be illustrated by the example of Australia: votes could only be cast in Sydney, even for French citizens living 4500 km away in Perth. This is difficult to understand, as there are a dozen French consular offices in Australia.

The CC report says that voters living abroad found the procedure too complicated. It states further that they were badly informed about their voting rights (GA, p.44). The result: the level of participation of this group of the electorate remained very low (33 %).⁴²

French overseas territories

In the 1992 referendum, a majority of the voters living in metropolitan France rejected the Maastricht Treaty. It was the number of yes-votes coming from the overseas territories which made ratification possible. This emphasizes the importance of the voters living there.

This time the turnout was very low. Only two out of nine territories (Reunion Island and Wallis-et-Futuna) had a participation rate of slightly over 50 %. The abstention rate in four of them was higher than 70 %, with Guadeloupe and Guyana on top at 77 %.

The number and distribution of polling stations was inadequate. The electoral code requires there to be a polling office for every 300 registered electors - but these offices may be concentrated in a few polling stations. The need for a more appropriate distribution pattern is obvious.

⁴⁰http://www.interieur.gouv.fr/rubriques/b/b3_elections/b31_actualites/Dossier_de_presse_du_referendum/Principes_generaux.pdf (page 2)

⁴¹ http://europa.eu.int/comm/public_opinion/flash/fl171_en.pdf (page 7)

⁴² <http://www.conseil-constitutionnel.fr/dossier/referendum/2005/documents/resultat1.htm>

Criterion 1.5 Secrecy of the ballot: Unfair

“Suffrage may be direct or indirect as provided by the Constitution. It shall always be universal, equal and secret.” (Constitution, Art.3-3)

Only in one case was the secrecy at a ballot booth violated: 754 votes in the city of La-Bernerie-en-Retz were cancelled. Many electors had cast their vote without using the polling booth. In addition, the CC reported complaints that the secrecy of votes cast at the voting machines was not sufficiently secured (GA, p.62 and 65).

However, we have decided that this criteria was not met. The system of *voting by proxy* (see above) forces any voter prevented from going to the polling station to reveal his/her choice to someone else in order to participate. This clearly violates the secrecy of the ballot.

Criterion 1-6 Counting procedure: Fair

The counting procedure consists of three steps: counting at the polling station; bringing together and totalling of the local results; and then the final calculation and declaration of the official result.⁴³ The CC controls the counting of the votes. It sent 1500 delegates to the roughly 65,000 polling stations.⁴⁴

The votes are counted at each polling station. The procedure is controlled by the president and other officials of the polling station and, if present, the delegates from the CC. Voting papers suspected of not being valid are kept apart and countersigned by the officials. Later they are examined closely.

An official report is written and the president of the polling station announces the results publicly.

These results are brought together in the main polling station of the city together with the official reports. Afterwards they are transmitted to the territorial counting commissions at the department level. In the overseas territories this is the community level; for foreign polling centres a special commission is set up within the Ministry of Foreign Affairs.

The territorial counting commissions decide on the validity of the doubtful voting material and on any problems with the count. Their work is not public and they release no figures on the results. The CC announces the final result. The Interior Ministry released the first provisional results by the time of the official close of polling (22:00).⁴⁵

Criterion 1-7 Appeal against the procedure and the result: Fair

Appeal against the Procedure

“Every voter has the right to dispute the legality of the vote, by registering his complaint on the official report of the ballot. (...) The CC examines and reaches a definitive decision on the complaints.” (Organisation decree, Title IV *Complaints and declaration of the results*, Art.20)

Departments and equivalent bodies of the state can challenge the voting procedures within 48 hours. This possibility was not used (GA, p.50).

Every voter has the right to complain about the procedure. The CC investigates and issues a definitive decision on these complaints within three days. In total, 30 complaints and observations were placed in the official reports by citizens, officials and delegates of the CC. Those disputing the ballot were checked by the CC. It concluded that the legality of the whole ballot was not affected.

The CC can decide whether to cancel the results of a polling office or station and adjust the results. The CC gave its ruling within 3 days after the referendum. It led to 7 cancellations, making a total of around 5300 votes. The main reason was that the official reports had not been made available to the voters or the CC delegates.

Appeal against the result

It is not possible to appeal against the result. The CC considers that the decision cannot be questioned since it represents the direct expression of the will of the national sovereign (GA, p.54). This is in accordance with French legal tradition and favours neither of the two sides.

⁴³ <http://www.conseil-constitutionnel.fr/dossier/referendum/2005/documents/recensement.htm> and <http://www.conseil-constitutionnel.fr/dossier/referendum/2005/documents/pv.htm>

⁴⁴ <http://www.conseil-constitutionnel.fr/dossier/referendum/2005/documents/delegates.htm> and (General assessment, p.30)

⁴⁵ http://www.interieur.gouv.fr/rubriques/b/b3_elections/b31_actualites/2005_DP_referendum_soiree/1.pdf

Criterion 1-9 Fairness of the question: Fair

"Do you approve the law that will authorise the ratification of the Treaty establishing a Constitution for Europe?" - Question posed in the referendum

The wording of the question was decided by the President of the Republic after consultation with the CC. The CC decided that the loyalty of the consultations requires a single question to be clear. Each voter should be able to understand the meaning of the question and its significance.⁴⁶

3.1.3 First Conclusion

France is an established European democracy and the legal framework for referendums reflects this fact. The French Constitution confers a lot of power on the president. This is also reflected in the regulations on referendums. Most details of the procedure are regulated by ad-hoc regulations fixed by the president and not by permanent law. The introduction of fair and permanent regulation seems appropriate. However, there is no record of misuse of this power. Nevertheless, we have to criticise three shortcomings:

- a) Access to the vote was restricted for French voters living abroad and in the overseas territories.
- b) The *voting by proxy* procedure might prevent people from participating. Anyone unable to vote at the polling station has to reveal his decision to somebody else. He cannot check whether his voting intention is actually respected. This procedure does not meet the basic precondition for fair and secret voting.
- c) A considerable portion of the population (around 3 million) were not able to take part because they are not on the electoral register. In our view, implementation of the suggested proposal for automatic registration may overcome this problem.

3.2 Timing

The timetable of the referendum is important for the campaigning groups and for the public debate. Consequently, we examine who is responsible and how the power was used.

Criterion 2-1 Who sets the date?: Unfair

The President of the Republic had set the date in the convocation decree for 9 March 2005. The President had to consult the CC beforehand. The result was not binding, nor was it published.

The decision on timing was influenced by considerations of Chirac in favour of the yes-camp. In March polls still predicted a majority for the 'yes' but the support was declining. Thus, the early date might have been set with regard to the public opinion. At the end of 2004 it was expected that Chirac would announce the date at the European summit in June 2005. The date in May might be chosen to avoid a debate about the Turkish EU Accession in the referendum campaign. The negotiations should originally start in December 2004. France managed to postpone the start to October 2005.⁴⁷ As the decision was obviously influenced by strategic consideration and only one person decides upon the date we rate this criterion as unfair.

Criterion 2-2 Date chosen: same as other votes or elections? Special events before or after? Fair

No other votes were held on the same day. This criteria was met.

Criterion 2-3 Time between announcement and voting day: sufficient for information and public debate? Partly Fair

We can identify two time periods. The specific day was announced only three months in advance. But Chirac had already stated in July 2004 that he was willing to hold a referendum. Thus the period for preparation and public debate was longer than 10 months. The information campaigns and the public debate started before March. The issue received serious public attention with the disputed internal referendum of the Socialist Party (PS) in December 2004.

⁴⁶ <http://www.conseil-constitutionnel.fr/divers/documents/referendum.htm> (in French)

⁴⁷ Le Monde, Le Figaro, The Financial Times, The Guardian 17 December 2004

Criterion 2-4 Time for voting: one day or more? Weekend, weekdays? Fair

Metropolitan France voted on a Sunday, the operation lasted twelve hours (from 8:00 to 20:00). In Paris, Marseilles and Lyon the polling stations remained open until 22:00. In the overseas territories the vote took place one day earlier. No complaints concerning the time allowance were put to the CC. The CC feared that any further extension of the time period could threaten the secrecy of the ballot as partial results might be discovered and spread about.

Criterion 2-5 Domino effect in other countries: Partly fair

At the end of April several top European politicians declared their intention of going ahead with ratification regardless of the outcome of the referendums in France and the Netherlands.⁴⁸ But after facing two fierce no-votes, the heads of state and government “agreed to come back to the matter [of the ratification process and the construction of Europe] in the first half of 2006 to make an overall assessment of the national debates and agree on how to proceed.”⁴⁹

Several states have interrupted their ratification process.⁵⁰ By July 2005, the referendums in the UK, the Czech Republic, Denmark, Ireland, Poland and Portugal had been postponed. The UK and Finland have even halted the parliamentary process. Only in Luxembourg has a referendum been held. On 10 July a majority voted in favour of the constitution. In the meantime, parliamentary ratification has been completed by Belgium, Cyprus, Latvia and Malta.

Criterion 2-6 Time period before another vote may be held on the same subject: Partly fair

The law does not impose a waiting time before a second vote on the same subject can be held. Thus, the French could be asked to vote again on the ratification of the TCE at any time.

3.2.1 Second Conclusion

In respect of the timing of the referendum, the absence of permanent rules for referendums becomes critical. There seems to be a tendency to use the leeway offered by the law to influence the referendum. Thus the president’s influence on the timing of referendums should be reduced. A specific time period between the announcement and the carrying out of the referendum should be prescribed by law.

3.3 Financial Rules

Access to the resources of the state gives enormous power to the authorities. This should not be used to influence the outcome of the referendum. However, a neutral campaign to promote participation in the referendum is necessary. In addition, public means can be offered to both ‘yes’ and ‘no’ campaigns. These should be distributed equally to both camps, otherwise the referendum is unfair. If no organised parliamentary opposition exists (which is often the case in European affairs), it might be difficult to identify the appropriate players of the no-camp.

Criterion 3-1 Spending limits: Partly Fair

In France, spending limits usually apply to the parties and candidates in the case of elections. For referendums no special rules are permanently fixed. In this referendum the Government decided not to set a spending ceiling in order to guarantee a democratic and pluralistic debate.⁵¹

Criterion 3-2 Disclosure: Partly Fair

Party funding always has to respect the electoral code, especially concerning private donations. The amount of public funding for the party campaigns in France is known (see next criterion). But the level of expenditure on the official information campaign is not published (see C 3-4).

⁴⁸ Le Monde, Le Figaro, The Times, The Financial Times, The Independent, on 30 and 31 April 2005.

⁴⁹ http://ue.eu.int/ueDocs/cms_Data/docs/pressData/en/ec/85325.pdf

⁵⁰ http://europa.eu.int/constitution/ratification_en.htm

⁵¹ From Government spokesperson J.F. Coppé, quoted by Le Figaro, 18 March 2005

Criterion 3-3 Affirmative action to help under-funded campaigns: Partly Fair

It was the first time that public funding was granted for campaigning in a referendum. Several French party leaders asked President Chirac to introduce this.⁵²

Eight parties got state funding for their referendum campaign: they had to have either a minimum five percent share of the votes in the last European elections in 2004, or at least 5 deputies in the National Assembly.⁵³ The parties also used their own means to run their campaigns.⁵⁴ The major pro-constitution parties which received official funds were the *Union pour un Mouvement Populaire*, the *Union pour la Démocratie Française* and the centre-left *Parti Socialist* and *Verts*. Parties benefiting from funds and which campaigned against ratification were the *Parti Communiste* (PC), the *Mouvement Pour la France* (MPF), the *Rassemblement Pour la France* (RPF) and the *Front National* (FN).

Each party was able to claim a reimbursement of 800,000 Euros for their official campaign. The funds were distributed equally to both camps – in line with the criteria determining reimbursement to political parties. The kinds of expenditure for which reimbursement is permitted are strictly defined by the National Commission for Campaign Accounts and Political Funding (CNCCFP).⁵⁵ Three types of costs were reimbursed: a) the printing of posters to be put up on the communal notice boards; b) the printing and distribution of posters, brochures and leaflets; and c) costs related to the holding of events and meetings. The conditions for receiving public funding were devised by the Interior Ministry in line with advice from the CC.

Criterion 3-4 Transparency in use of tax-payers' money: Unfair

No reliable figures (other than the overall budget) on how and where public money was spent are currently available (October 2005). We identified four types of use of public money:

- ① organisation of the referendum
- ② party and official information campaigns
- ③ EU credits and expenditure
- ④ unusual public expenditure (the sweeteners).

The costs of the referendum were underestimated by the Government. Its spending on the referendum grew to an unprecedented level. Thus half of its costs had not been earmarked in the 2005 French budget. The budget is usually discussed and amended by Parliament before it approves it. One month before the ballot,⁵⁶ the Finance Ministry issued a decree in order to legalise the funding of half of the cost of the referendum. By doing so, it first of all by-passed Parliament - which was not able to oppose this extra spending - and obliged it to include this expenditure in the 2006 budget. Secondly, it went against the accounting principle of the separation between the decision-maker and the accountant. It therefore represents a potential threat to the use of public money. This is a serious consequence of the lack of a permanent legal ruling.

Information on government spending is hard to obtain. The information published by official sources is contradictory. We got some information from French MP Jean-Louis Dumont. He told us that the total cost of the TCE referendum amounted to 157 million euros. Mr. Dumont is the special reporter of the parliamentary Finance Commission. According to him, 64.3 million euros had been earmarked in the budget laws by December 2004. Only one month before voting day, on April 29, a decree released a credit advance of 85,875,000 euros to finance the further cost of organising the referendum.

Costs of organising the referendum

In November 2004, the stated government intention was to spend only 25 million euros on organisation, but the media were already reporting that the total cost of organising the referendum was estimated at 62 million euros. In March 2005, the Interior Ministry budget reporter stated that printing and sending a copy

⁵² Le Figaro, 8 March 2005

⁵³ http://www.interieur.gouv.fr/rubriques/b/b3_elections/b31_actualites/index_html/Avis_participation_campagne.pdf

⁵⁴ Distribution and divisions of the parties in the campaign for the ratification of the TCE, in French: <http://francepolitique.free.fr/referendum2005.htm>

⁵⁵ Ruling of 1 April 2005

⁵⁶ http://www.legifrance.gouv.fr/imagesJOE/2005/0430/joe_20050430_0101_0027.pdf

of the Constitution to every citizen would cost 40 million euros. It was sent out together with the voting material. By May 2005, the cost of organisation had risen to 130 million euros.⁵⁷

The government's official information campaign

As seen in the section above (Criterion 3-3), the parties benefited from public money to run their campaigns. In addition, a public information campaign was organised. The figures released by the Government are contradictory. On 11 November, *Le Monde* and *Le Figaro* reported that the 10 million euros allocated to the information campaign were being partly funded by the European Commission. By 20 May 2005, French journalists had found that reliable figures on Government advertising spending were hard to obtain.

However, by February the planned budget had swelled and *L'Humanité* reported that the Government would spend 11 million euros on TV adverts alone. A grant of 10 million euro offered by the European Parliament made this possible and inflated the Government's campaign budget to 20 million euros.⁵⁸ But these figures are still incomplete, as no official report has been published.

Spending by the EU

The credits coming from the EU institutions are accountable as public funds, but have not been taken into account yet. We still have no figures on how much the European Commission contributed to the French information campaign budget as part of the implementation of its own "action plan" to publicise the Constitution. As mentioned above, the European Parliament contributed to the budget for the information campaign.

Unusual public spending: the sweeteners

The press reports that the government tried to influence the outcome by spending a billion euros on so-called *sweeteners*. However, these accusations have not been proven. They are based on some unusual expenditures:

- ⌚ On 21 April the Government spent 420 million euros on substantial pay increases for public sector workers. Such pay rises traditionally occur at the beginning of each year.
- ⌚ In late May, President Chirac unveiled plans to give farmers two-week holidays and tax breaks worth 740 million euros.
- ⌚ The Government also managed to get an agreement from the EU Commission for subsidised and free air travel for residents living in the overseas territories (especially students).
- ⌚ It also tried to achieve a lowering of VAT on restaurant meals. It was suggested that this could have been aimed at influencing the referendum.⁵⁹ But this tax reduction was ultimately blocked by the EU.

3.3.1 Third Conclusion

Due to the lack of permanent regulation the administration enjoys enormous power to distribute funds. In supporting the party campaigns, the French government de facto partly funded campaigning. We will see in the next chapter that the 'yes' and 'no' sides benefited equally from these funds. This is good practice, but it needs to be regulated.

There was insufficient transparency in the use of taxpayers' money. The official information campaign, which was even supported with EU taxpayers' money, was biased. The accusation that the government used public money (*sweeteners*) to influence the debate is quite remarkable.

3.4 Campaign rules

The aim of campaigners is clearly to try to influence the way citizens will vote. In France we observed a wide debate. The rules governing this interaction are crucial for a free and fair debate. The campaign rules were often disputed and questioned.

We identified three types of campaign:

⁵⁷ *Le Figaro*, 16 May 2005

⁵⁸ *Le Figaro*, 15 March 2005

⁵⁹ <http://euobserver.com/?aid=19049>

- ① information campaigns: government and the EU institutions
- ② party campaigns: eight parties represented in parliament which received financial support
- ③ independent campaigns: led by small parties, NGOs and individuals.

We modified the set of criteria by looking more closely at a number of the players in order to examine their behaviour. The original criterion: “Role of government, civil servants, political parties” has been divided into criterion 4-4 Representatives of the State; criterion 4-5 Political Parties; and criterion 4-6 Civil Society.

Criterion 4-1 Managed by referendum commission or other: Partly Fair

The French Supreme Court (CC) has considerable responsibility for the referendum rules. It has three roles in the process: as advisor, supervisor and judge.

As an advisor, the CC claims to be the co-author of the three referendum decrees. The CC also gave its advice as to which should be the ‘official’ campaigners, and to the CSA. This advice is neither published nor is it binding. As a supervisor, the CC sends its delegates to the places where voting is carried out and monitors the count. As a judge, the CC is the final appeal instance for disputing the rules set out in the decrees.

As there are many details not ruled by law, the CC can act as a law-maker. It decides how the referendum is organised. The CC also publishes the results.

The main rules of the campaign, although incomplete, were established in the organisation and campaign decree. Those responsible for regulating and monitoring the campaigns included the independent broadcasting authority (*Conseil Supérieur de l’Audiovisuel* (CSA))⁶⁰ and the National Commission for Campaign Accounts and Political Funding (CNCCFP).⁶¹

Criterion 4-2 International interference: Partly Fair

The proposed EU Constitution had a great potential impact on all EU member states. The debate naturally reflected the international relationships. We identified three types of international interference:

- ① representatives of the *EU institutions and member states* interfering in the French national debate
- ② *political decisions or events* influencing the debate,
- ③ *lobby and networking activities* which connected organisations from different European countries.

We decided to rate this criterion as *partly fair*. Representatives of the EU and its members states and NGOs appeared to influence the outcome.

Representatives of the EU institutions and member states

Intervention by officials from the member states and the EU in favour of the TCE was considerable. According to a study by a public TV channel,⁶² all the foreign interventions by officials in April were in favour of the ‘yes’-side. The CC stated that these interventions and the media coverage in a debate relating to the future of Europe and France was not reprehensible, even if most of the support went to the yes-camp. It further explained that this was merely reflecting reality and that it contributed to making sure that the citizens were well informed (GA p.58).

Several representatives of the EU institutions appeared in the debate. Among them were the President of the EU Commission, Manuel Barroso, and his predecessor Romano Prodi.

President Chirac, German Chancellor Schröder and Spanish Prime Minister Zapatero launched a joint ‘yes’ campaign on 11 February.⁶³ The two foreign politicians appeared on several occasions in France: Schröder and Zapatero spoke twice in front of the National Assembly.⁶⁴ Many other international politicians, such as Luxembourg’s Prime Minister Juncker also appeared in the debate.

⁶⁰ <http://www.csa.fr/> see also “role of media”

⁶¹ <http://www.cnccfp.fr/>

⁶² conducted by A. Windels and released in the programme “Arrêt sur images” of 8 and 15 May entitled “Référendum: les médias sont-ils neutres ?”

⁶³ as reported by the Times. Cf.: <http://www.timesonline.co.uk/newspaper/0,,174-1479153,00.html>

⁶⁴ Le Figaro, 2 March 2005

Reports say that this intervention was not always welcomed. Especially after the dispute about the Bolkestein directive (see below), Chirac tried to prevent Barroso from appearing in the French television debates.⁶⁵

Political decisions or events influencing the debate

Two topics from the wider European agenda were debated together with the public debate on the referendum: the so-called Bolkestein directive, and EU accession for Turkey.

At the beginning of 2005, one particular EU directive was being hotly debated. It was aimed at enforcing the liberalisation of services. It included the so-called ‘country of origin’ principle that services offered by a foreigner coming from another EU country should be paid for according to the ‘going rate’ in his country of origin. NGOs and parties all over (Western) Europe were concerned about jobs and wage levels being undermined. They strongly opposed this directive. The debate dominated the discussion on the EU for several weeks. As early as 26 January 2005, it was reported that support for the EU Constitution had suffered because of the debate.⁶⁶

The debate disclosed an ideological gap on the issue of economic liberalism in Europe: on the one side were the EU institutions and the British Government, which were promoting the opening up of the services market. On the other side were the defenders of the ‘social model’, including the French President himself, who became one of their spokespersons. Socialist MPs opposed to the EU Constitution launched a campaign against the directive. They accused the Socialist Party of holding two contradictory positions: “They are *against* liberal directives, but *for* the legal basis which allows them to exist.”⁶⁷

In February, several French politicians requested a review of the directive. They feared a negative impact on the outcome of the referendum. They were joined by Prime Minister Raffarin⁶⁸ and German Chancellor Schröder.⁶⁹ President Chirac stated that the directive was unacceptable, just after Barroso had refused to remove the ‘country of origin’ principle on 17 March. Chirac called for the European Commission to completely review it. Two days later, 100,000 citizens demonstrated in Brussels against the directive.⁷⁰ At the next EU Summit on 23 March President Chirac won an agreement: the services directive was put on ice in order to help the French Government avoid a defeat in the referendum.⁷¹

Public debate on Turkey’s accession to the EU also influenced the referendum debate. This question had been on the EU agenda for more than thirty years. It entered the French referendum debate early on when Former Prime Minister Fabius argued against Turkish accession in October 2004.⁷² The question came dramatically onto the agenda when it was debated during the EU Summit of December 2004. Many French politicians and even parties - such as the PC - linked both issues. Chirac finally tried to defuse this debate by promising to hold a referendum on Turkish membership.

At the time, 67 percent of French voters and 71 percent of the members of Chirac’s UMP party were against Turkish accession.⁷³ This was later confirmed by an internal vote in the UMP.⁷⁴

Transnational movements and organisations

Several international NGO networks also interfered in the debate. Organisations such as the *European No Campaign*,⁷⁵ ATTAC⁷⁶ and the *European Campaign for the Yes*⁷⁷ emphasized the international

⁶⁵ <http://news.ft.com/cms/s/e8e8cb6e-a181-11d9-95e5-00000e2511c8.html>

⁶⁶ Le Figaro, 26 January 2005

⁶⁷ Le Figaro, 20/21 January 2005

⁶⁸ Le Monde, 2 February 2005

⁶⁹ euobserver.com, 16 February 2005

⁷⁰ Politis, March 24.

⁷¹ The Times, EUobserver, 23 March 2005

⁷² Yahoo!News, 21 October 2004, quoting an interview from La Croix.

⁷³ Le Figaro, 12 December 2004

⁷⁴ Le Monde, 21 March 2004

⁷⁵ <http://www.europeannocampaign.org/>

⁷⁶ <http://www.attac.org/>

⁷⁷ <http://www.europeancampaign.net/>

ramifications of the referendum. They organized debates with foreign speakers and offered information on their websites. The media reported frequently on their activities.

Criterion 4-3 Role of media: Partly Fair

The electoral code distinguishes several types of media which are treated in different ways. The press and the Internet are not regulated. TV, radio and the official poster campaigns have to meet detailed requirements.

TV and radio

The broadcasting authority – the CSA - does not act as a censor and respects the basic principle of freedom of speech. It gives recommendations, monitors the content and publishes the figures. In addition, it warns media when they violate the regulations. It has only limited power to sanction. This makes respect for the principles theoretical. The CSA monitored the referendum campaign from 4 April until the end of voting. It asked for the ‘principles of equality and plurality’ to be applied in the campaign.⁷⁸ These require equal coverage for both sides and the mirroring of the diversity of opinions. Thus, the whole political spectrum should be able to participate in the debate. However, by the end of May the ‘yes’-camp had enjoyed nearly two thirds of the airtime.

Studies on the public TV program “C dans l’air” highlighted the fact that the ‘yes’ side was able to submit more representatives and they also got more airtime. Result: the ‘yes’ camp was given a better chance of reflecting its diversity. According to a survey of the public TV channel *France 5*, the ‘yes’ side received 55% of the TV airtime between 4 April and 8 May.

As it turned out, independent and qualitative studies contradicted the figures presented by the CSA, putting their reliability into question. For example, even if both sides had been given the same amount of airtime in a TV program, media watch company Acrimed noticed that representatives of the ‘no’-side were given their turn to speak mainly at the end of the debate and allowed only short contributions which were often interrupted. This trend was fiercely criticized. 200 journalists denounced the biased TV programs: an appeal to the CSA launched by them calling for fair treatment of the no-side was signed by 15,000 people.⁷⁹

A significant weakness in the system is that monitoring of TV airtime is managed by the channels themselves; they then report to the CSA, which checks their records. As an independent body, the CSA should be given the means to fully manage control of broadcasting.

News Broadcasting

The CSA also collected the records from the news channels. It checked whether the presentation of any political news or issue on TV or radio had been deliberately used for or against either of the two possible results of the referendum. It applied the usual ‘principle of reference’, which states that airtime must be shared out in accordance with the level of representation in the National Assembly. The majority in parliament has twice as many deputies as the opposition. As the four major parties were in favour of a ‘yes’-vote, little room was left for the representatives of the ‘no’-side in the non-campaigning broadcasting.

The political media campaigns

“Broadcasting political advertisements either on TV or the radio is forbidden”.⁸⁰

Campaigners can only enter the TV and radio debates if they have been invited by the broadcasting operator. This rule is enforced by the threat of large fines.⁸¹

The first division of airtime was regulated by the government. The first proposal to split the share of airtime according to the number of seats held by the parties was criticised.⁸² It was replaced by a more complicated calculation aimed at balancing the share, but it was still unequal between the camps.

⁷⁸ March 23: http://www.csa.fr/infos/textes/textes_detail.php?id=23317

⁷⁹ *Le Monde*, 19 May 2005

⁸⁰ Electoral code, art. 52-1 Cf. in French: http://www.csa.fr/infos/textes/textes_detail.php?id=23317

⁸¹ Electoral Code, articles 90 and 91

⁸² *derstandard.at*, 11 March 2005

140 minutes were dedicated to the official campaign from 16 May to 27 May. 90 minutes were given to the 'yes'-side and 50 minutes to the 'no'-side.⁸³ Each party was able to decide the content of its own spots - the production had to observe the strict CSA rules.⁸⁴

10 minutes were given to each of the eight parties as a way of ensuring a minimum of airtime. The other 60 minutes were shared out according to the representation of these parties in the National Assembly. On the 'yes'-side, the *Union pour un Mouvement Populaire* got 32'30", the *Union pour la Démocratie Française* 16'30", the *Parti Socialiste* 28'30" and *Les Verts* 12'30". On the 'no'-side, the *Parti Communiste* got 13'00", the *Mouvement Pour la France* 12'30", the *Rassemblement Pour la France* 11'00", and the *Front National* 13'30".⁸⁵

The press

The print media have no obligation to respect the representation of different views. The freedom of the press has been permanently recognized in law by the CC (GA, p.57). Political advertising is also forbidden in the press. Several print media journalists took part in the campaign, publishing editorials and columns strongly favouring one or other side.

Observers noted that the press was mostly in favour of the 'yes'-side.⁸⁶ This applied especially to the national papers. Only two nationals - the left-wing weekly magazine *Politis* and the daily *l'Humanité* - claimed to be in favour of the 'no' camp.⁸⁷ The local press took sides even more clearly.

The diversity of the media does not necessarily ensure a fair representation of the diversity of opinions. The interests of owners and shareholders may contradict with the citizen's right to unbiased information. In fact, concern over consolidation of media ownership has grown. The Government created a commission on media consolidation in February 2005.⁸⁸

Poster campaigns

These campaigns were allowed until 8 May (Campaign decree, art. 2). The electoral code normally requires them to stop three months before an election. However, public means were allotted to eight parties. Each of them had a single space on the widespread electoral communication boards to display their official campaign posters⁸⁹

Internet

"Electronic communication is free." (Electoral Code, art. 1)

Several players used the Internet. The Government set up a website. Dozens of other sites posted the arguments of campaigners from both sides. They were run by political parties, academics, civil society organisations and individuals. It became an important source of information: keywords relating to the "European Constitution" were the most popular on search engines for weeks and sites received millions of hits: over 2 billion website visits were monitored between January and May 2005.⁹⁰ Monitoring of the associated keywords showed that people were primarily interested in understanding the TCE ("text", "referendum", "draft", "understanding"), secondly in the ideological arguments and public opinion ("no", "polls") and thirdly in the wish to debate the issue ("forum").⁹¹

The Internet appeared as the complementary opposite of the 'traditional' media by widely promoting the 'no' arguments.⁹²

⁸³ Cf.: *Le Monde*, 19 May 2005.

⁸⁴ <http://www.conseil-constitutionnel.fr/dossier/referendum/2005/documents/csa2.htm>

⁸⁵

http://www.interieur.gouv.fr/rubriques/b/b3_elections/b31_actualites/index_html/ARRETE_TEMPS_AN_TENNE.pdf and <http://www.conseil-constitutionnel.fr/dossier/referendum/2005/documents/csacampagne.pdf>

⁸⁶ <http://www.acrimed.org/article1950.html>

⁸⁷ <http://www.politis.fr/article1305.html>

⁸⁸ <http://www.acrimed.org/article1924.html> <http://www.acrimed.org/article1955.html>

⁸⁹ posters of the parties: <http://www.election-politique.com/ref2005.php#affiches>

⁹⁰ <http://www.xitimonitor.com/etudes/actualite1.asp>

⁹¹ Cf.: <http://www.xitimonitor.com/etudes/actualite0.asp>

⁹² <http://www.utc.fr/rtgi/index.php?rubrique=1&sousrubrique=0&study=constitution>

Criterion 4-4 Role of the representatives of the state: Partly Fair

The official information campaign

On 10 November 2004 the French Government made a first launch⁹³ of its campaign, which uses public funds and should provide *neutral* information about the EU constitution and the referendum. The budget was 7.39 million euros.⁹⁴ This campaign published adverts on TV, radio and the Internet.⁹⁵

Only a month later, on 10 December 2004, a second launch was announced.⁹⁶ The Government stated that the EU Constitution would be made available to 14,000 post offices and 36,000 town halls in France. This was a reaction to a letter by P. Mazeaud (President of the CC) who, on 22 November 2004, had called for greater neutrality.⁹⁷

By providing the public with the text and debating tools, the focus changed from advertising to informing. This could be qualified as *fairly* neutral.

In January 2005, the Government appointed a communications agency to manage the information campaign. From then on the campaign was run under the name of “Mission Europe”. It aimed at “separating the political questions from the pedagogic aspects”. New means were introduced:

- ① Copies of the TCE appeared in libraries and schools; the TCE was sold in bookshops for 4 euros
- ① a call centre was set up to answer citizens’ questions: it recorded 2500 calls a day and 110,000 calls in total up to voting day (one call for every 380 voters)⁹⁸
- ① some means were specifically allocated to certain sectors of the public, such as the ‘educational leaflets’, partly financed by the European Commission, which were sent to young people (under voting age) in schools, and to associations, institutions and trade unions⁹⁹
- ① incentives, along with specialist lecturers (from TEAM Europe, supported by the Commission), were offered to organisations which would promote debates and provide citizens with fair information,¹⁰⁰ and a debate organised by the Ministers in charge took place across different metropolitan regions.

President of the Republic

"I will campaign without any reservation for a ‘yes’ because it is in the interests of France, of the young and of Europe." Chirac, 16 November 2004

President Chirac clearly supported the yes-camp. He was able to present his views very often, especially in the media. A single television show on 14 April lasted for two hours.¹⁰¹ The CSA decided to exclude Chirac’s appearances from its monitoring of the airtime. This decision was questioned, but the CC backed the President’s role. It declared that it was in accordance with the republican tradition and the constitutional organisation of public powers: the president has the right to make as many speeches on TV as he thinks are required in the interests of the nation.

The CC argued that “the one who is asking the people to decide on a draft law entailing the future of the nation must be able to speak to it (the people) two or three days before the ballot, in order to present the reasons why he considers, as the head of state and representative of all French people, elected by direct and universal vote, that the adoption of this project serves the interests of the country” (GA, p.57). According to the CC, the president does not speak for a party or a political group (GA, p.24).

⁹³ http://www.europe.gouv.fr/actualites_1/les_articles_2/gouvernement_lance_264.html

⁹⁴ See ‘Financial rules’ of this monitor report. (Cf.: Deputy J.L. Dumont)

⁹⁵ <http://www.acrimed.org/article1938.html>

⁹⁶ http://www.europe.gouv.fr/ressources_9/les_documents_information_10/claudie_haignere_277.html

⁹⁷ Ricard-Nihoul and M. Larhant: Constitutional referendum in France, the political landscape one month before the outcome. Notre Europe - Etudes and Reseachers. April 2005 (page 2). available at: <http://www.notre-europe.asso.fr/IMG/pdf/accompagnement.pdf>

⁹⁸ http://www.premier-ministre.gouv.fr/information/les_dossiers_actualites_19/constitution_europeenne_les_resultats_458/constitution_europeenne_efficacite_democratie_52532.html day

⁹⁹ Le Figaro, 6 January 2005

¹⁰⁰ <http://www.constitution-europeenne.fr/index.php?id=29>

¹⁰¹ Le Figaro, 15 April 2005

The Ministers

To begin with, only the Minister for Europe (Haigneré) and the Foreign Minister (Barnier) had intervened in the controversial debates about Turkish accession and the Bolkestein directive. Both had attended around 30 forums across the country. Haigneré argued in favour of the treaty: “This treaty will allow us to better protect public services and to make sure they are not threatened by directives such as this one [Bolkestein]”¹⁰². After polls had several times forecast a *non*, ministers got more involved in the campaign.¹⁰³

According to the new strategy, every minister publicly supported ratification. It began with Prime Minister Raffarin on 29 March, followed by Education Minister Fillon, Justice Minister Perben, Interior Minister de Villepin, Defence Minister Alliot-Marie and Minister for Employment Borloo¹⁰⁴. Their statements were made only shortly before 4 April and, hence, did not appear in the monitoring of the media by the CSA.

The voting material prepared by the government

The government prepared the voting material sent to the electors. It consisted of:

- ⌚ the complete text of the TCE
- ⌚ a pamphlet containing the President’s ‘convocation decree’, an explanation of the Government’s arguments for ratification, and the draft law authorising the ratification containing the referendum question
- ⌚ the amendments to the French Constitution, with a brief explanation
- ⌚ ‘yes’ and ‘no’ ballot papers.

This material was the subject of several complaints to the Constitutional Court. According to *La Poste*, voters received the voting material during the first three weeks of May. The CC decided that the administration was not bound to a specific deadline for distribution of the material as long as the voters were sufficiently well informed before the ballot. The CC also stated that the draft law had to be distributed together with an explanation of the arguments. Finally, the CC considered that the explanation of the government’s arguments attached to the draft law were aimed at presenting its main characteristics and that emphasising its own interests did not go beyond this aim.

The government’s explanation of its support for the TCE was the main reason for the protest. The voting pack contained no material which presented any opposing arguments. Thus it did not reflect the diversity of views. Adopting the Swiss model of presenting the arguments of both sides in the voting pack would improve the debate.

The CC had recommended to the Government as early as 2000 that a leaflet from each authorised party should be sent out together with the voting material. This time it considered that the public funding provided to both sides for campaigning was sufficient to fulfil this aim (GA, p.63).

Criterion 4-5 Role of political parties: Partly Fair

As we have already shown, most of the established parties favoured ratification. But the revelation of the strong internal opposition – such as became evident in the internal referendum of the PS - helped to alert the public to the different viewpoints of the ‘yes’ and ‘no’ sides. The prominent ‘party dissidents’, in particular, had a certain influence on the result in that they shattered the image of united parties.

Officially, the political parties which opposed the treaty had no internal opposition. It seems that they rejected the treaty more or less unanimously. This explains the high level of mobilisation against the treaty.¹⁰⁵

¹⁰² Le Monde, 2 February 2005, Le Figaro, 11 February 2005

¹⁰³ <http://fr.news.yahoo.com/050330/202/4c8i0.html>

¹⁰⁴ Times, Le Figaro, Le Monde (all April 2, 4) and Yahoo!News (March 25)

¹⁰⁵ ‘Constitutional referendum in France: the political landscape a month before the outcome’, by Gaëtane Ricard-Nihoul, Morgan Larhant, 2005

Criterion 4-6 Role of the civil society: Fair

The trade unions, as well as other NGOs, were divided on the issue.¹⁰⁶ Some argued for and some against the constitution. This was a valuable input for the voters. We report some examples of their actions:

- on 19 October 2004, the appeal "Say no to the constitutional treaty to build Europe!" was published. It had been signed by 200 representatives of left-wing groups.¹⁰⁷ Specific political interest groups (e.g. feminists, academics¹⁰⁸ or computer engineers) campaigned for their own stance, mostly for a 'no'.

Many public meetings were organised in France: run by local organisations ranging from residents' associations to trade unions, feminists, unemployed or prisoners' rights associations and national or international organisations like ATTAC. Numerous leaflets and posters were published and distributed: in Toulouse, 22,000 issues of a brochure from ATTAC (8 pages, 20 cents) were sold.¹⁰⁹

Surprisingly, intellectuals hesitated to argue publicly for or against the TCE. This group is usually very much involved in public affairs.¹¹⁰

One hundred business leaders signed a "Companies' appeal in favour of a 'yes' to the constitutional referendum", promoted by BNP Paribas President Pébereau in May.¹¹¹ In addition, 500 legal experts mounted an online petition for a 'yes'-vote, giving 10 reasons for it.¹¹²

3.4.1 Fourth Conclusion

In the public arena, the yes-camp was better represented. The government favoured it openly - using public means to support its view. The organisation of the official information campaign did not sufficiently respect the principle of neutrality. Parts of the media adopted positions which were far from neutral, supporting one or other camp more or less openly.

What is remarkable is the fact that parties representing both political camps got an equal share of public funds.

In total, the 'yes' camp had better access to public resources and attention. Nevertheless, there was strong opposition to ratification. The close votes of the PS and the Green Party support this interpretation. Civil society organisations took a lively part in the debate. The result was a wide debate.

Events at the EU level influenced the debate. It is remarkable that Chirac reacted by expanding the level of citizen participation. He introduced a referendum on Turkish EU accession. The debate on the Bolkestein directive shows that the citizens of Europe need new tools for expressing their will at the EU level.

4 Conclusions

The French referendum is a positive example of direct democracy. The French voters took their responsibility very seriously. This interpretation is supported by the fact that more than one million books *about* the EU Constitution were sold in French bookstores. Some of these titles led the bestseller lists for months.¹¹³ As shown in this report, the yes-camp had better access to public resources such as funds and the media. However, the debate on the EU Constitution was not decided by money, but by education.

Democracy international promotes the idea of modernizing representative democracy by introducing citizen-initiated referendums. Direct democracy is obviously a good tool for involving citizens in the

¹⁰⁶ see Nihoul/Larhant 2005 (page 5/6)

¹⁰⁷ Le Figaro, Le Parisien, 20 October 2004

¹⁰⁸ Le Monde, 22 May 2005

¹⁰⁹ http://yonne.lautre.net/article.php3?id_article=1145#forum4752 <http://www.attac-toulouse.ouvaton.org/>

¹¹⁰ Source: Le Monde, 30 March 2005

¹¹¹ <http://constitution-europeenne.info/semaine26.htm>

¹¹² <http://constitution-europeenne.info/semaine27.htm>

¹¹³ <http://www.democracy-international.org/bestseller.html>

decision-making process. The French Supreme Court has also already mentioned the idea of modernising representative democracy by introducing some forms of direct democracy.¹¹⁴

Finally, we present six theses. You are welcome to send your feedback and join in the discussion on direct democracy.

1. There is a serious lack of permanent rulings on referendums in France. This confers a lot of power on the president and the government. The leeway for state representatives to fix the details of the referendum should be reduced. This is obvious in relation to the decision on timing and the use of public money.
2. New voting methods - especially postal voting - should be introduced to improve the serious shortcomings in the voting procedure. Access to the vote should be easier for French voters living abroad and in the overseas territories. The proposed automatic registration in the electoral register should be implemented.
3. It is remarkable that both camps received an equal amount of public money for their campaign. This money was only distributed to political parties. Any public funding of campaigns should respect the principle that both camps receive the same share.
4. The debate was not limited to the EU Constitution. Other important issues on the political agenda of the EU were discussed. This proves that citizens have too little influence on European affairs. This should be increased by adding appropriate tools of transnational direct democracy. Otherwise, support for the European project as such is endangered.
5. Ratification of the TCE also has an international dimension. This dimension is not sufficiently represented in single national referendums. *Democracy international* has campaigned from the beginning for referendums in all EU member states on the same day. This would have strengthened the international dimension of the debate and suppressed unwanted international interference.
6. The influence of a result in one country on the outcome of referendums held in other EU countries can be easily reduced. They should be organized simultaneously.

Thank you for your attention!

¹¹⁴ <http://www.conseil-constitutionnel.fr/dossier/referendum/2005/documents/communique.htm>

5 Table: Overview of the set of criteria

Key: F = Fairness (F = Fair; PF = Partially Fair; U = Unfair; ■ = no permanent ruling)

Criteria		Evaluation / Summary
1. LEGAL BASIS		
1.1. Origin of the referendum: trigger function by citizens or by the state?	PF	Only the French President can call referendums.
1.2. Character of the decision: binding or only consultative?	F	The referendum is binding.
1.3. Special majority requirements	F	No quorum is stipulated.
1.4. Accuracy and seriousness of voters list: Who is and was able to vote?	PF	All French citizens can take part in the vote. Existing proposals for an automatic registration of voters have not been passed into law.
1.5. Secrecy of the ballot	U	Voting by proxy, the only alternative to voting at the polling station, violates the secrecy of the vote.
1.6. Counting procedures	F	Counting procedure under the surveillance of the Constitutional Court.
1.7. Appeal against the procedure and the result	F	Appealing against the result is impossible in France. Every voter has the right to complain about the procedure. CC examines and reaches a definitive decision on these complaints within three days.
1.8. Voting: how, where, e-voting?	U	Electors can only vote by showing up at the polling station or by proxy. This procedure is too complicated. Citizens living abroad or in the overseas territories may face unreasonable difficulties in participating.
1.9. Fairness of the question	F	The wording of the question was fair.
2. TIMING		
2.1. Who sets the date?	U	The French President set the date. The decision was obviously influenced by strategic considerations.
2.2. Date chosen: same as other votes or elections? Special events before or after?	F	No other votes or special events...
2.3. Time between announcement and voting day: for information and public debate	PF	In general enough time for public debate, but the precise date was announced too late.
2.4. Time for voting: one day or more? Weekend, weekdays?	F	One day. In the overseas territories, voting took place one day before metropolitan France went to the polls.

Criteria		Evaluation / Summary
2. TIMING		
2.5. Domino effect on other countries	PF	Important impact on the ratification process in other EU member states.
2.6. Time period before another vote may be held on the same subject	PF	The French President can call another referendum on the same text.
3. FINANCIAL RULES		
3.1. Spending limits	PF	No spending ceiling was set .
3.2. Disclosure	PF	Party funding is regulated; the cost of the official information campaign was not published.
3.3. Affirmative action to help under-funded campaigns	PF	Parties representing both camps received money for campaigning.
3.4. Transparency in use of taxpayers' money	U	There is not adequate transparency; taxpayers' money was used to support the 'yes' side.
4. CAMPAIGN RULES		
4.1. Managed by referendum commission or other	PF	The Constitutional Council has a decisive impact on the control of the referendum debate..
4.2. International interference	PF	Prominent international support for the 'yes' side. EU-related topics were discussed in the campaign. This shows that greater citizen influence on decision-making at the EU level is urgently needed.
4.3. Role of media: focused on polls or debate? Favours one side or actor?	PF	Media tended to favour the 'yes' camp. The use of the Internet was significant.
4.4. Role of the <i>President</i> , Government, ...	PF	State representatives used the leeway offered by law to influence the result. Diversity of opinions was not reflected.
4.5. Role of political parties	PF	Political parties figured in the debate, showing a diversity of opinions, especially in their internal debates. Unfortunately, dissidents from the official line were in part threatened with being banned.
4.6. Role of civil society	F	Views for and against were forcefully presented.

6 Useful Links

Institutions

Constitutional Council: <http://www.conseil-constitutionnel.fr/dossier/referendum/2005/>

> General assessment (GA): <http://www.conseil-constitutionnel.fr/dossier/referendum/2005/documents/bilangeneral.pdf>

> Referendums in the Fifth Republic: <http://www.conseil-constitutionnel.fr/dossier/quarante/q17.htm>

<http://www.conseil-constitutionnel.fr/divers/documents/referendum.htm>

National Assembly: http://www.assemblee-nationale.fr/12/dossiers/constitution_europe.asp

Senate: http://www.senat.fr/europe/cig_2003/index.html

Government: http://www.interieur.gouv.fr/rubriques/b/b3_elections/b31_actualites/index_html/

> The Information Centre on Europe (edited by “Source d’Europe”): <http://www.constitution-europeenne.fr/>

CSA: • http://www.csa.fr/infos/controle/television_elections_detail.php?id=24604

French Documentation: • <http://www.ladocumentationfrancaise.fr/dossiers/constitution-europeenne/index.shtml>

Legal matters

The French Constitution: <http://www.conseil-constitutionnel.fr/langues/anglais/cst1.pdf>

Treaty establishing a Constitution for Europe (TCE): http://europa.eu.int/constitution/index_en.htm

Legal texts and their individual relevant parts

• <http://www.conseil-constitutionnel.fr/dossier/referendum/2005/documents/textes.htm>

The “**convocation decree**” n° 2005-218; The “**organisation decree**” n° 2005-237; The “**campaign decree**” n° 2005-238, The “**advance credits decree**” n°2005-401

• http://www.legifrance.gouv.fr/imagesJOE/2005/0430/joe_20050430_0101_0027.pdf

Jurisprudence: <http://www.conseil-constitutionnel.fr/dossier/referendum/2005/documents/tables.htm>

Litigation: <http://www.conseil-constitutionnel.fr/dossier/referendum/2005/documents/contentieux.htm>

Eurobarometer: ‘post-referendum survey in France’, n°214: http://europa.eu.int/comm/public_opinion/flash/fl1171_en.pdf

List of Acronyms

ATTAC: Association pour une Taxation des Transactions financières pour l'Aide au Citoyen

CC: Conseil Constitutionnel (French Supreme Court)

CNCCFP: Commission Nationale des Comptes de Campagne et des Financement Politique

CS: Council of State

CSA: Conseil Supérieur de l'Audiovisuel

EU: European Union

FN: Front National

GA : General Assessment published by the Conseil Constitutionnel

LCR: Ligue Communiste Révolutionnaire

LO: Lutte Ouvrière

MEP: Member of European Parliament

MFA: Ministry for Foreign Affairs

MNR: Mouvement National Républicain

MP: Member of Parliament

MPF: Mouvement Pour la France

NGO : Non Governmental Organisation

PCF: Parti Communiste Français

PS: Parti Socialiste

PSE: Parti Socialiste Européen

RPF: Rassemblement Pour la France

UDF: Union pour la Démocratie Française

UMP: Union pour un Mouvement Populaire