

# From Referendum Euphoria to Referendum Phobia – Framing the Ratification Question

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## A. 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 national parliamentary ratification procedure. Against the background of the rejection of the Constitutional Treaty in the referendums in France and the Netherlands in spring 2005, the referendum euphoria changed into a referendum phobia. All Member States (except for Ireland, where a referendum is required by the national constitution) decided to ratify the Treaty of Lisbon by 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 article aims at identifying how Member States' governments publicly framed their decision on the ratification procedure of the Constitutional Treaty in comparison with the Treaty of Lisbon. This is based on the premise that it is the governments which have a specific responsibility in communicating their decisions to the public. Frames put forward by other players (such as the opposition, the media or civil society) as well as the repercussions of the different frames on each other are not in the framework of the analysis even if these might influence the governments' frame(s) to a great extent. Furthermore, the article does not seek to elaborate on the question which frames succeed in framing the public discourse and why they do, as there might be many diffuse and multi-faceted factors influencing the effect of the respective frames. This makes it difficult to attribute a particular outcome to a particular factor. Thus, the article has a rather categorizing objective which can serve as a starting point for further research on the interactions between the different frames and on their effect on public discourse.

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The article aims at contributing to a wider range of academic literature on referendums in the EU.<sup>1</sup> The existing 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 methods of ratification of EU treaties is framed, the article aims to shed light on a hitherto hardly conceptualized field of research and thus to complement the existing findings on the use of referendums in the EU.

As regards the empirical test cases, the article 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, 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 heatedly debated.

Applying a comparative approach is advantageous 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 conclusions to be drawn 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 inter-connected and contain, in large measure, similar elements, this allows conclusions to be drawn as to how different settings influence the manner in which a slightly changed issue is framed in the same arena (similar issue/same arena/different time).

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<sup>1</sup> E.g. G. Biaggini, *Direktdemokratische Legitimation der EU-Verfassung?*, in F. Cheneval (Ed.), *Legitimationsgrundlagen der Europäischen Union* 349 (2005); C. Closa, *Why Convene Referendums? Explaining Choices in EU Constitutional Politics*, 14 JEPP 1311 (2007); B. Crum, *Confusing Cues: Competition and Collusion of Party Strategies in Referendums on the EU Constitution*, Paper for the Conference on Euroscepticism – Causes and Consequences, 1-2 July 2005; S. Hug, *Voices of Europe – Citizens, Referendums and European Integration* (2002); S. Hug & T. Schulz, *Referendums and Ratification of the EU Constitution*, in Z. T. Pállinger et al. (Eds.), *Direct Democracy in Europe – Developments and Prospects* 174 (2007); D. Jahn & A.-S. Storsved, *Legitimacy Through Referendum? The Nearly Successful Domino-strategy of the EU-referendums in Austria, Finland, Sweden and Norway*, 18 *West European Politics* 18 (1995); S. Kadelbach (Ed.), *Europäische Verfassung und direkte Demokratie* (2006); T. König, S. Daimer & D. Finke (Eds.), *Plebizit und Ratifikation. Eine vergleichende Untersuchung von Referenden zur Europäischen Verfassung* (2006); L. LeDuc, *Opinion Formation and Change in Referendum Campaigns*, in C. H. de Vreese (Ed.), *The Dynamics of Referendum Campaigns. An International Perspective* 21 (2007); Z. T. Pállinger et al. (Eds.), *Direct Democracy in Europe – Developments and Prospects* (2007); C. H. de Vreese, *Context, Elites, Media and Public Opinion in Referendums: When Campaigns Really Matter*, in C. H. de Vreese (Ed.), *The Dynamics of Referendum Campaigns: An International Perspective* 1 (2007); C. H. de Vreese, & H. A. Semetko, *Political Campaigning in Referendums: Framing the Referendum Issue* (2004).

The article draws its empirical evidence not only from Eurobarometer results and academic literature, but also from public expressions made by government officials, such as speeches, articles or interviews, as these are considered to be the relevant instruments for framing a political issue in the public discourse. Yet, it is important to note that *how* the ratification issue is framed does not have to correspond to *why* a particular manner of ratification is chosen.<sup>2</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 aspired to. 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, the data source chosen might not provide insights into the *reasons* for deciding on the ratification procedure. However, for the purpose of identifying the *frames* used to justify the ratification procedure, these data resources provide appropriate evidence.

## B. The Debate on Direct Democracy and Referendums in the EU

Decisions on EU matters have increasingly become the 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 treaty reform. But it was not until the ratification process of the TEC that referendums became a widely used instrument for involving citizens 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 lively 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

<i>Year</i>	<i>Country</i>	<i>Issue</i>	<i>Result</i>
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

<sup>2</sup> For the possible reasons for announcing a referendum see, e.g. Closa, *supra* note 1; Jahn & Storsved, *supra* note 1.

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
1997	Switzerland	Withdrawal of EU membership bid	No
1998	Ireland	Amsterdam Treaty	Yes
1998	Denmark	Amsterdam Treaty	Yes
2000	Switzerland	Free movement of persons	Yes
2000	Denmark	European Monetary Union	No
2001	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	Malta	EU membership	Yes
2003	Hungary	EU membership	Yes
2003	Romania	Adjusting national law to EU acquis	Yes
2005	Spain	TEC	Yes
2005	France	TEC	No
2005	Netherlands	TEC	No
2005	Luxembourg	TEC	Yes
2005	Switzerland	Free movement of persons	Yes
2005	Switzerland	Schengen	Yes
2008	Ireland	Treaty of Lisbon	No

Source: Hug, *supra* note 1, at 27; Vreese & Semetko, *supra* note 1, at 5; own additions.

According to Article 48 of the Treaty on European Union, treaty reforms cannot come into force unless they are ratified by all Member States “in accordance with their respective constitutional requirements.” No member state except for Ireland is legally obliged to hold a popular vote on treaty revisions.<sup>3</sup> In some states, a

<sup>3</sup> For an overview on the different national ratification procedures see, e.g. R. Bieber, *Zur Koexistenz von Referenden und parlamentarischer Demokratie – Das Beispiel der Ratifizierungs-*

facultative-binding (e.g. Czech Republic, Denmark or France) or a facultative-consultative (e.g. Luxembourg or Spain) referendum can be held. In other words, even if the decision to hold a referendum is dependent on the requirements of the national constitution, it also depends on a political decision of the government. In these cases, the question how the ratification issue is framed in the public discourse 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 in which decisions in a democracy should be taken. Under analysis are the implications and differences between direct democracy and representative democracy. Advocates of direct democracy highlight the advantages participatory elements can bring 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.<sup>4</sup> At the heart of the debates is the increasing transfer of competences and sovereignty towards the European level, the 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 legitimized 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 call for a stronger involvement of citizens by fostering a culture of lively participation. Against the background of the constantly decreasing turnout at European elections, referendums are seen as a chance to enhance civic mobilization and participation, and thus to strengthen democracy and legitimacy in EU politics.<sup>5</sup>

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*. 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>6</sup>

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 would enhance the legitimacy of 'the Constitution'. Furthermore, it was argued that a EU based on a 'Constitution' would require the assent of a 'European

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*verfahren zur Europäischen Verfassung*, in S. Kadelbach (Ed.), *Europäische Verfassung und direkte Demokratie* 57 (2006); N. Hussain, *Referendums on the EU Constitutional Treaty: The State of Play*, Chatham House European Programme EP/BP 05/02 (2005).

<sup>4</sup> E.g. A. Føllesdal. & S. Hix, *Why There is a Democratic Deficit in the EU: A Response to Majone and Moravcsik*, 44 *JCMS* 533 (2006); V. Schmidt, *Democracy in Europe: The EU and National Politics* (2006).

<sup>5</sup> E.g. Vreese & Semetko, *supra* note 2 at 180.

<sup>6</sup> European Convention, *Referendum on the European Constitution*, CONV 658/03, at 3 (2003). As it does not directly touch upon the topics discussed in this article, the debate about a Europe-wide referendum is not reflected here. For more details see e.g., J. Habermas, *Europa: Vision und Votum*, 5 *Blätter für deutsche und internationale Politik* 517 (2007).

demos' based on a common European self-conception which could be triggered by a Europe-wide referendum.

The opponents of direct democracy also bring 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 legitimizes 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.<sup>7</sup>

Moreover, it is argued that referendums are rather 'second-order votes', which means that citizens take their decision not on the issue in question but also on other factors such as the popularity of the incumbent government and national politics. As studies reveal this is especially the case regarding highly complex matters such as EU treaty revisions where voters do not exclusively take their decisions on the referendum subject but rather on domestic issues.<sup>8</sup> This provides a challenge as the nationally influenced decision of one national electorate affects all 26 other Member States, which means that a minority is able to create 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 criticized from another perspective: It is argued that the more referendums are held, the more package deals have to be made between the 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 its own interests and to have them respected in the treaties.<sup>9</sup> The increasing use of referendums on EU treaty reforms can thus lead to a highly complex treaty structure. As a result, deficiencies can easily be highlighted and be exploited for Eurosceptic campaigns.

### C. Framing the Ratification Question

As 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."<sup>10</sup> Communicating actors can offer 'short cuts' and influence the decision-making of citizens. Some aspects of the issue at stake are emphasized 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

<sup>7</sup> E.g. Biaggini, *supra* note 2, at 353.

<sup>8</sup> J. Garry, M. Marsh & R. Sinnott, 'Second-order' versus 'Issue-voting' Effects in EU Referendums, 6 *European Union Politics* 201 (2005).

<sup>9</sup> Hug & Schulz, *supra* note 1.

<sup>10</sup> D. Chong, & J. N. Druckman, *Framing Theory*, 10 *Annual Review of Political Science* 103, at 118 (2007).

produce a certain outcome. As Vreese and Semetko point out, referendums are characterized by volatile electorates, uncertainty in elite cues and a high issue complexity.<sup>11</sup> Regarding EU affairs in general and the TEC and the Treaty of Lisbon in particular, citizens lack a deeper understanding.<sup>12</sup> Therefore, the information available and the frames put forward play a role that is crucial to the perception of the ratification question.

Based upon 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:<sup>13</sup> the direct democracy frame, the European frame, the legal frame, the national frame and the technical frame. Even if some of the frames might include similar elements, they can conceptually be distinguished according to specific key words and characteristics. In other words, the emphasis which is put on different elements of the frames allows five different ideal types of framing concepts to be created.

As 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 frames might be used to justify a negative decision against the use of a referendum.

Table 2: Framing the Ratification Question

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

The *direct democracy frame* implies a normative notion. It is expected that governments referring to this frame will 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 to 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, because 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 and which might, from a normative point of view, require a referendum – even if the national constitution does not oblige the government to hold one.

<sup>11</sup> Vreese & Semetko, *supra* note 1.

<sup>12</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>13</sup> As this article proceeds in a rather exploratory manner, the list of frames might not be complete and might be complemented by findings of further research.

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 related 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 in favour of 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 in the case of the Treaty of Lisbon, because references to a common European self-conception were put forward much more frequently in the case of the TEC (pointing to the fact that 'the Constitution' ought to be ratified by a 'European demos') than in the case of the Treaty of Lisbon.

When using a *technical frame*, governments are expected to refer to technical details and specific regulations of the treaty in question compared to the *status quo* as well as to other EU treaties rather than to wider normative implications of the treaty regarding democracy and legitimacy (as is assumed in the case of the direct democracy frame). It is expected that this frame will be 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 emphasize 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 analyzed do not necessarily 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 manner in which the TEC should be ratified. However, the frame might acquire a greater influence in the second case under analysis: As all countries lack an imperative demand to hold a referendum, the decision not to hold one might be framed according to the legal frame – yet in a negative sense.

The *national frame* contains references to the national dimension. As was argued above, governments can exert significant influence during treaty negotiations by playing the referendum card.<sup>14</sup> In turn, having succeeded in securing their own interests by choosing that negotiation strategy, governments can omit holding a referendum by pointing to their negotiation success. Therefore, it is assumed that this frame is used in a negative way in cases where the government expects a

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<sup>14</sup> Hug & Schulz, *supra* note 1.



negative vote and where the negotiation successes can be framed as compensation for not holding a popular vote. Key words used to frame the ratification issue might be national sovereignty, national influence or national interest.

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

### I. 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 for ratification the law aimed at amending the constitution to the *Congrès*, which comprises the first and second chamber of the parliament, and thus avoid a popular vote. In this case, the *Congrès* has to approve the bill with a three-fifth majority. Other bills that do not affect the French constitution can also be put to a referendum (Article 11 of the constitution). Thus, even if there is no imperative obligation to hold referendums, instruments of direct democracy are not unfamiliar to French politics.<sup>15</sup>

In the case of the 2005 referendum, President Jacques Chirac had ruled out the referendum option at the beginning, but domestic pressure to hold one increased. 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.”<sup>16</sup>)

As concerns the ratification procedure of the Treaty of Lisbon, it was clear that the no vote of the French citizens 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

<sup>15</sup> A. Mayer, *Frankreich: Der Präsident entscheidet – und ist entscheidend*, in T. König, S. Daimer & D. Finke (Eds.), *Plebiszit und Ratifikation. Eine vergleichende Untersuchung von Referenden zur Europäischen Verfassung*, 47 (2006); M. Qvortrup, *The Three Referendums on the European Constitution Treaty in 2005*, 77 *The Political Quarterly* 89, at 89 (2006).

<sup>16</sup> J. Chirac, Television interview approved by M. Jacques Chirac, President of France, on the occasion of the national holiday, 14 July 2004 ([http://www.elysee.fr/elysee/elysee.fr/francais\\_archives/interventions/interviews\\_articles\\_de\\_presse\\_et\\_interventions\\_televisees/2004/juillet/interview\\_televisee\\_du\\_president\\_de\\_la\\_republique\\_a\\_l\\_occasion\\_de\\_la\\_fete\\_nationale.359.html](http://www.elysee.fr/elysee/elysee.fr/francais_archives/interventions/interviews_articles_de_presse_et_interventions_televisees/2004/juillet/interview_televisee_du_president_de_la_republique_a_l_occasion_de_la_fete_nationale.359.html)).

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>17</sup>

It was not until 6 May 2007, when the French presidential elections took place and Nicolas Sarkozy succeeded Chirac as president, that the ratification procedure of the Treaty of Lisbon (then named the Reform Treaty) became clear, as the two main candidates, Nicolas Sarkozy and Ségolène Royal, had favoured different options during their campaigns. Whereas Sarkozy 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 elaborating a 'mini traité' or a 'traité simplifié' which would contain the crucial technical and institutional provisions of the TEC, but where all constitutional aspects would be removed.<sup>18</sup> Furthermore, Sarkozy's framing strategy picked up the most prominent arguments put forward in the 2005 no-campaign: He succeeded in scrapping any mention in the EU treaty of the aim of 'free and undistorted' competition which the TEC had mentioned in Article 1 and thus reacted to the fears of a neo-liberal European economic policy. The frame chosen did not remain uncontested by other parties and the wider public. For example, the Socialists called the decision not to hold a referendum a "denial of democracy."<sup>19</sup> Yet, the Treaty of Lisbon was finally ratified by a large majority in both chambers of parliament on 7-8 February 2008.

## II. The Netherlands

The Dutch Constitution does not explicitly contain provisions for holding a popular vote.<sup>20</sup> The 2005 referendum was the first nation-wide referendum since 1815, even if there had been a debate on introducing instruments of direct democracy for some time. However, the leading political figures had for a long time prevented a constitutional revision which would have introduced regulations on referendums. 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 that the

<sup>17</sup> Flash Eurobarometer 171.

<sup>18</sup> N. Sarkozy, *L'Europe de demain – Une nouvelle vision française*, speech given towards Friends of Europe and Fondation Robert Schuman, 8 September 2006.

<sup>19</sup> E. Vucheva, *French Socialists to Back New EU Treaty*, EUobserver, 7 November 2007. For further details on the French campaign see, e.g. S. Seeger, *Die EU im Spannungsfeld von Demokratiedefizit, Politisierung und Vertragsratifikation*, in W. Weidenfeld (Ed.), *Lissabon in der Analyse – Der Reformvertrag der Europäischen Union 233* (2008).

<sup>20</sup> E.g. J. Bellmann, *Niederlande – die Verfassung als Sündenbock?*, in T. König, S. Daimer & D. Finke (Eds.), *Plebiszit und Ratifikation. Eine vergleichende Untersuchung von Referenden zur Europäischen Verfassung* 81 (2006); Hussain, *supra* note 4, at 7; Qvortrup, *supra* note 15; M. Weiner, *Nach Punktsiegen im neuen Vertrag kein Referendum*, in J. Lieb, A. Maurer & N. von Ondarza (Eds.), *In 27+X Schritten zur Reform – Die Ratifikation und Umsetzung des Lissabonner Vertrags* 72 (2008).

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 emphasized the legitimizing role of citizens in European politics.<sup>21</sup>

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 would be ratified by parliamentary procedure only. As a survey conducted in the aftermath of the referendum revealed, the three weightiest 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>22</sup> Furthermore, a general scepticism towards deeper integration and further enlargement determined the decision of the no-voters.

Like 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) aimed at elaborating the EU's Reform Treaty was drafted.<sup>23</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.<sup>24</sup>

The decision was backed by a judgement of the State Court (*Raad van State*) 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>25</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 emphasized in the process of drafting the Treaty of Lisbon again.<sup>26</sup>

<sup>21</sup> A. Nicolai, *De politiek terug in de politiek*, 4 *Internationale Spectator* 179 (2005).

<sup>22</sup> Flash Eurobarometer 172.

<sup>23</sup> For details on the process of drafting the Treaty of Lisbon see, e.g. S. Seeger, *Die Institutionen- und Machtarchitektur der Europäischen Union mit dem Vertrag von Lissabon*, in W. Weidenfeld (Ed.), *Lissabon in der Analyse – Der Reformvertrag der Europäischen Union* 63 (2008).

<sup>24</sup> Government of the Netherlands, *Normal Procedure for New EU Treaty*, 21 September 2007, press release, ([http://www.government.nl/News/Press\\_releases\\_and\\_news\\_items/2007/September/Normal\\_procedure\\_for\\_new\\_EU\\_treaty](http://www.government.nl/News/Press_releases_and_news_items/2007/September/Normal_procedure_for_new_EU_treaty)).

<sup>25</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).

<sup>26</sup> S. K urpas et al., *Updates on the Ratification Debates. What Prospects for the European Constitutional Treaty? Results of an EPIN Survey of National Experts* 10 (2005).

Balkenende repeatedly pointed to the fact that he had successfully striven for ensuring national parliaments a greater say in European politics.<sup>27</sup>

Even if the debates on the manner of ratification of the new treaty were still contentious and some opposition parties again called for a referendum, “the referendum issue could effectively be buried.”<sup>28</sup> The first part of the ratification in the Dutch Lower House successfully took place on 5 June 2008, the Senate took its decision in favour of the Treaty of Lisbon on 9 July 2008.

### III. 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 impact 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 impact 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 by referendum. Thus, the Spanish government – at least implicitly – applied the legal frame (otherwise it would have made no sense to apply Article 92). 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<sup>29</sup> 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 legitimize ‘the Constitution’ (“La construcción Europea no puede proseguir sin los ciudadanos.”<sup>30</sup>)

Additionally, a third frame can be detected. After Zapatero had spoken out in favour of a referendum on the TEC shortly after the Spanish elections in 2004,<sup>31</sup> he reiterated that this would give Spain the opportunity to show its

<sup>27</sup> D. Hierlemann & S. Seeger, *Who Wants What and Why? FAQs About the EU Constitutional Summit*, Spotlight Europe 3 (2007); Weiner, *supra* note 20, at 73.

<sup>28</sup> Institute for European Politics (Ed.), *EU-27 Watch*, at 51 (2008).

<sup>29</sup> Bieber, *supra* note 3, at 65.

<sup>30</sup> El País, *El Gobierno someterá a referendo la aprobación de la Constitución europea*, 23 June 2004.

<sup>31</sup> K. Bernhardt, *Die Volkabstimmung in Spanien: Stärkung nach Innen und Außen*, in T. König, S. Daimer & D. Finke (Eds.), *Plebiszit und Ratifikation. Eine vergleichende Untersuchung von Referenden zur Europäischen Verfassung* 101, at 101 (2006).

strong commitment to European integration.<sup>32</sup> The vote of the citizens ought to contribute to a European spirit and be a strong signal against any Eurosceptic tendencies.<sup>33</sup> It is worth noting 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 a 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 was also intended 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 provided a safeguard to as many provisions of the TEC as possible.<sup>34</sup> This raises the question how the government framed its decision not to hold a referendum on the new treaty.

Two different frames can be identified: On the one side, the government argued that precisely because both documents resembled each other, *no* referendum was needed, as the text had already been agreed upon and legitimized by the Spanish citizens with a large majority of 76.7 per cent in the 2005 referendum.<sup>35</sup> Furthermore, the fact that former Prime Minister 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>36</sup> Thus, contrary to 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, neither of which had been ratified by referendum. Therefore, he stated that a popular vote was not needed.<sup>37</sup> Thus, the two frames used sent rather contradictory signals, which, however, could not damage the government's political reputation.

<sup>32</sup> Interestingly, it was not Zapatero's government which first called for a referendum but the Aznar government. Therefore, the reason for Zapatero's decision to hold a referendum on the TEC can also be explained by the fact that he was already bound by the expressions made by Aznar before. I am grateful to Dr. Carlos Closa for this comment.

<sup>33</sup> El País, *supra* note 32.

<sup>34</sup> El País, *La Generalitat 'da por bueno' el tratado de la UE patado en Lisboa*, 27 October 2007.

<sup>35</sup> Zapatero in a press conference after the European Council on 21/22 June 2007.

<sup>36</sup> Secretary of State for European Affairs Alberto Navarro on 17 January 2008.

<sup>37</sup> *Id.*

## IV. Luxembourg

Similar to that of the Netherlands, the direct democratic tradition of Luxembourg is weak. However, against the background of the country's general debates on opening politics to more direct democracy, Luxembourg's Prime Minister Jean-Claude Juncker had been campaigning for a popular vote on the TEC since 2003.<sup>38</sup> Succeeding in having the TEC passed by popular vote, the referendum on the Constitutional Treaty was the first one in the country since 1937. As could be expected, the frames used by the government focused on the added value of direct democracy. In an interview in the run-up to the referendum on the TEC in Luxembourg, Juncker emphasized the importance of enhancing civic participation.<sup>39</sup>

In the case of the Treaty of Lisbon, Juncker ruled out holding a referendum, but the decision was hardly contested by other political actors or by the wider public.<sup>40</sup> In contrast to the run-up to the 2005 referendum, no major debates took place on the new treaty which made it easy for the government to frame its decision.<sup>41</sup> Like 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.<sup>42</sup> 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.

## V. 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<sup>43</sup> 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.

<sup>38</sup> Qvortrup, *supra* note 15, at 91.

<sup>39</sup> J.-C. Juncker, *Europa steckt in einer tiefen Krise*, interview in d'Wort, 20 June 2005 ([http://www.gouvernement.lu/salle\\_presse/interviews/2005/06juin/20050620juncker\\_wort/index.html](http://www.gouvernement.lu/salle_presse/interviews/2005/06juin/20050620juncker_wort/index.html)).

<sup>40</sup> S. Reichel, *Luxemburg – Eine kleine Geschichte der Ernüchterung*, in J. Lieb, A. Maurer & N. von Ondarza (Eds.), *In 27+X Schritten zur Reform – Die Ratifikation und Umsetzung des Lissaboner Vertrags* 65, at 66 (2008).

<sup>41</sup> Institute for European Politics, *supra* note 28, at 48.

<sup>42</sup> Government of Luxembourg, *Traité de Lisbonne: heure d'actualité à la Chambre des députés*, 23 October 2007, press release ([http://www.gouvernement.lu/salle\\_presse/actualite/2007/10/23-pm-chd/index.html](http://www.gouvernement.lu/salle_presse/actualite/2007/10/23-pm-chd/index.html)).

<sup>43</sup> N. L. Potzeldt, *Vereinigtes Königreich: Referenden als Mittel der Wahl*, in T. König, S. Daimer & D. Finke (Eds.), *Plebiszit und Ratifikation. Eine vergleichende Untersuchung von Referenden zur Europäischen Verfassung* 111, at 115-116 (2006).

For a long time, Prime Minister Tony Blair had been reluctant to announce a referendum, but he changed his mind after coming under pressure because of the upcoming national elections.<sup>44</sup> 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.”<sup>45</sup> 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.<sup>46</sup>

Thus, Blair used the European frame to justify the choice for a referendum, although not in a normative sense as described in the previous chapter but implicitly according to the national frame by emphasizing 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.<sup>47</sup> 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.<sup>48</sup> 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.”<sup>49</sup>

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.<sup>50</sup> Furthermore, the strong parliamentary tradition of the United Kingdom was

<sup>44</sup> Kurpas *et al.*, *supra* note 26, at 13.

<sup>45</sup> T. Blair, ‘Let the People Have the Final Say’ on New European Treaty, Statement to the House of Commons, 21 April 2004 (<http://www.fco.gov.uk/en/newsroom/latest-news/?view=Speech&id=1897432>).

<sup>46</sup> *Id.*

<sup>47</sup> E.g. G. Stuart, *If Brown Won’t Listen, How Can We Trust Him?*, The Telegraph, 29 July 2007.

<sup>48</sup> E.g. Seeger, *supra* note 19.

<sup>49</sup> House of Commons European Scrutiny Committee, European Union Intergovernmental Conference. Thirty-fifth report of Session 2006-07, at 16 (2007).

<sup>50</sup> House of Commons European Scrutiny Committee, European Union Intergovernmental Conference: Government Responses to the Committee’s Thirty-fifth report of Session 2006-07 and the Committee’s Third report of Session 2007-08 (2007).

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 any previous EU treaties.

However, as probably the most dominant approach, 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 satisfactorily respected. The four British 'red lines' – maintaining special provisions in the areas of justice and home affairs, in foreign and security policy, in social policy and 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."<sup>51</sup> Even if the government faced strong criticism for its decision not to 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

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

## E. Framing the Same but Differently – 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

<sup>51</sup> G. Brown, Press Conference in Lisbon, 19 October 2007 (<http://www.number-10.gov.uk/output/Page13571.asp>).



be avoided.<sup>52</sup> Shortly after the EU Member States had agreed on the Treaty of Lisbon, Valérie Giscard d'Éstaing stated that the document was made as complex as possible in order to omit popular votes, even if both documents resembled each other strongly.<sup>53</sup> A second ratification failure ought to 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 state in question in political isolation. Therefore, the arguments used to justify not holding a referendum on the Treaty of Lisbon have to be seen, first of all, 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 only to parliamentary ratification 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 article can enable valuable insights. First, the same issue is framed at the same time in different national arenas, which allows conclusions to be drawn 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 conclusions to be drawn 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 proceed 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 research.

First, I assume that a government of a country where the ratification of EU treaties by a referendum is not envisaged by constitutional provisions has to frame the decision to hold a referendum differently from 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 have already had experience in submitting European issues to a popular vote. Therefore, one would expect that the application of the legal frame in a positive manner is more likely in the case of the TEC in France and the UK than in the other three countries. In

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<sup>52</sup> E.g. W. Wessels & A. Faber, *Vom Verfassungsvertrag zurück zur Methode Monnet? Die Entstehung der 'Road Map' zum EU-Reformvertrag unter deutscher Ratspräsidentschaft*, 4 *Integration* 370 (2007).

<sup>53</sup> H. Spongenberg, *Lisbon Treaty Made to Avoid Referendum*, *Says Giscard*, *EUobserver*, 29 October 2007.

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 have some influence but are 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 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, but populist way in the sense that not holding a referendum is alleged to be 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 added value 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 particular in the case of the Treaty of Lisbon. Only Spain and Luxembourg chose this frame. Neither of the two countries was confronted with major opposition to their decision not to 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,<sup>54</sup> 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 in question (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 in question. 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 the ratification question is framed is expected to differ strongly from the same decision under

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<sup>54</sup> E.g. Seeger, *supra* note 19.

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 led many voters to reject the TEC. Against this background, both governments framed their decision not to 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 emphasized 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 article. Instead, great differences in how the ratification issue is perceived are revealed, strongly depending on the domestic setting.

## **F. Conclusion**

Against the background of an analysis of the debate on direct democracy and referendums in the EU, this article analyzed 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 with the Treaty of Lisbon. While all these countries decided to ratify the TEC by referendum, the Treaty of Lisbon was 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 article proposed distinguishing 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 with 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 on the democratic deficit of the EU and the search for ways to enhance legitimacy and citizens' acceptance of the Union, 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 withholding their support for further deepening and widening the European Union.