

February 20, 2005

# Spanish Referendum on the EU Constitution



## Monitoring Report

Written by: Juan Carlos Madroñal, Spain

Published by: Mas Democracia and *democracy international*



[www.masdemocracia.org](http://www.masdemocracia.org)



[www.democracy-international.org](http://www.democracy-international.org)



[www.masdemocracia.org](http://www.masdemocracia.org)

Mas Democracia is an independent organization in Spain with the objective of extending, strengthening and defending the political freedoms of direct democracy, and specially the initiative and referendum. We are promoting the knowledge and the collaboration with other organizations or individuals acting in those fields. Mas Democracia is a member of *democracy international*.



[www.democracy-international.org](http://www.democracy-international.org)

*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.

Written in March 2005  
by *Juan Carlos Madroñal*, Spain  
contact: [jcgmadronal@yahoo.com](mailto:jcgmadronal@yahoo.com)

Proof-reading by *Paul Carline*, United Kingdom  
Cover by *Ronald Pabst*, Germany

using a picture taken by *Michael von der Lohe* on June 13, 2003:  
in front of the European Parliament in Brussels activists of *democracy international* demanded fair referendums on the EU Constitution in all member states *and* celebrated the admission of Art. 47-4 "The European Citizen's Submission Right" into the draft of the European Constitution

Version: 1.02

## Content

---

INTRODUCTION.....	3
THE ACTORS .....	4
THE ORIGINS .....	6
THE CAMPAIGN.....	8
THE VOTING DAY.....	11
THE RESULTS .....	13
CONCLUSIONS .....	14
APPENDIX .....	18
LEGAL BASIS .....	18
TIMING .....	18
FINANCIAL RULES.....	19
CAMPAIGN RULES.....	19

## INTRODUCTION

---

The purpose of this document is to summarize the results of the follow-up made by the organization **Mas Democracia** (member of the **democracy international (di)** network) to monitor the referendum process that culminated in the Spanish vote on the European Constitution on 20<sup>th</sup> February, 2005. We have selected a set of international standards for fair and free referenda defined by well-respected academic institutions and used in the monitoring of previous referenda in Europe. This set of criteria will allow us to measure how fair and free was the referendum process for ratification of the EU Constitution, and to identify the weak points of the process. Those points will help us to identify the necessary reforms that should be made to ensure that future referendums held in Spain satisfy the commonly accepted international standards.

The most complete set of criteria for fair and free referenda have been defined by the Initiative & Referendum Institute - Europe (IRIE). These criteria are also the ones best adapted to the European environment, and have been consistently used for the monitoring of previous referenda held in Europe. The criteria cover the whole process, and not only the vote on the polling day. The complete set of criteria, and our evaluation, can be seen in the Appendix. However, we will cover them in the process of describing the Spanish referendum process of 20<sup>th</sup> February in the following paragraphs.

The evaluation of the criteria in the Spanish referendum case is the sole responsibility of Mas Democracia. The opinions and conclusions included in this document do not necessarily coincide with those of the Initiative & Referendum Institute Europe, nor with those of any other institution mentioned here.

This referendum has shown the lack of experience of the Spanish government in organizing similar processes. Only two national referenda had been held previously. Although many of the formal requirements for fair and free referenda were met, there were many aspects that should be much improved in future referenda. Some of the problems related to the partiality of the government's official campaign (which was also too short and too superficial), the lack of

internal and public debate in Spanish society, the unbalanced coverage given to the supporters of ratification in private media, the extreme disparity of resources between the YES and NO supporters and the ambiguous stand of the Electoral Commission when asked to deal with the government's partiality. Most of these problems affected only the campaign phase, but had a significant impact on the results, probably increasing the number of citizens who opted to abstain on 20<sup>th</sup> February.

Other government decisions were more fortunate. Despite the non-binding character of this referendum, the Prime Minister announced on 16<sup>th</sup> February that he would accept the results as binding on his government. This statement helped to assure the fairness of the process and to mobilize voters who would otherwise have abstained.

For the sake of simplicity, we have followed a chronological order in this document. In the appendix you will see the various criteria ordered according to the two basic dimensions of freedom and justice, as defined by IRIE. In the following paragraphs we will present the various actors involved in the Spanish referendum process, the origins and legal basis of this referendum, the electoral campaign and the vote itself on polling day. We will conclude with the main results and recommendations for improving the process, and an appendix showing the whole set of criteria.

## THE ACTORS

---

Once the work of the **Convention on the Future of Europe** was finished, and the final draft was accepted by the Council of Ministers, the ratification process for the Constitution was launched. Even while the Convention was still meeting, the European Referendum Campaign, a network of more than 250 NGOs coordinated by *democracy international*, demanded a referendum "in all member states simultaneously". Although this objective was not achieved, many member states which did not plan to hold a referendum on this issue changed their minds, among them Spain. The constituent process itself was used as an argument against ratification by many groups, which complained especially about the non-elected character of the Convention's membership.

This referendum was announced by the **government** in July 2004. The government, led by the socialist party and its leader, Mr. Rodriguez Zapatero, wanted Spain to be the very first country in Europe to hold a referendum on this issue. The government was at that time a strong advocate of the draft Constitution, and remained so during the whole process. Mr. Moratinos, the Foreign Affairs Minister, set the ratification of the Constitutional Draft as one of his highest priorities during his period of office. From July 2004, the government tried to convince the other **political parties** to support the referendum (which they did) and to support ratification of the draft constitution, the latter with mixed results.

The main opposition party, the right-wing Popular Party, supported the YES option in the referendum from the beginning. However, it was less helpful when

it was asked to support the government in several reforms which were aimed at facilitating the referendum process (amending the Electoral Law to allow for direct funds to be distributed to the political parties campaigning in the referendum, for instance). The right-wing nationalists supported the ratification of the Constitution in Catalonia, the Basque Country and elsewhere. However, the leftist nationalist and the post-communist United Left campaigned for rejection of the Constitutional Treaty.

The referendum process is controlled by the **Electoral Commission**, to which any appeal has to be addressed. The Electoral Commission kept an ambiguous stance from the beginning of the campaign. It accepted a complaint about the partiality of the government's official campaign, and specifically against the campaign slogan: "The first with Europe". However, after that one decision the Electoral Commission rejected all further appeals and refused to enforce its first decision requiring the government to withdraw the banned slogan from official leaflets and websites.

**Civil society** remained bitterly divided on ratification of the Constitution. Some important social actors, such as the main national unions, supported ratification from the beginning. Some NGOs, however, rejected this constitutional draft and actively campaigned in support of the NO option. The Catholic Church sent mixed messages in the months prior to the referendum, but basically supported the new Constitution. Several civil society organizations and employers' associations supported ratification.

There were no europhobic or nationalist positions in the campaign, even among the NO supporters. It may appear surprising in many European countries, but many NO supporters actually want a federal Europe. Those who rejected the Treaty were not challenging the European integration process, but its almost exclusive focus on economics and the non-elected character of representatives in most Union institutions.

Almost all the Spanish communication **media** strongly supported ratification of the Treaty from the beginning. However, extensive media debate only took place during the last two weeks before the referendum. Other political issues concerning amendment of the regional charters in Catalonia and the Basque Country kept the media busy during December and January. The newspapers gave extensive coverage to the referendum and to the Constitution itself, generally emphasizing the positive aspects of the Treaty. Private TV channels also supported the YES option. The public TV channels allowed free campaign time to those political parties with parliamentary representation, where the parties supporting a NO vote also had the chance to present their views, but the overall content was strongly biased in favour of ratification. It is striking that almost no public opinion polls were published in the month prior to the referendum. Public polls are common in Spanish electoral processes, and many newspapers commissioned polls during the campaign, but none of them opted to make them public.

In addition to the Spanish actors, there were several **international** interventions both before and during the campaign. As well as the messages of support for the YES vote coming from European Institutions and their representatives (such as Mr. Durao Barroso, the president of the European Commission), several European heads of state actively participated in the campaign. This was the case with Mr. Chirac and Mr. Schroeder, who visited Spain during the campaign and took part in several events in support of the YES campaign.

The European Commission carried out an intensive campaign in favour of Treaty ratification. It funded tons of expensive booklets, TV spots and other events. The European Movement, founded by the European Union coordinated a vast campaign known as the "Civil Platform for Europe". The European Movement received and distributed funds provided by many Spanish banks and corporations.

## THE ORIGINS

There are only three kinds of referendum at the national level in Spain. For amendments to certain parts of the Spanish Constitution, a referendum is mandatory. For the rest of the Constitution, parliament can decide to call a referendum in the event of a reform proposal, but it is not mandatory. Finally, the Prime Minister can call a non-binding referendum if approved by Parliament. The referendum held on 20<sup>th</sup> February was an instance of the latter case.

According to Spanish law, it is also the government which sets the referendum date and the wording of the question. The government announced the referendum in July 2004, and its original plan was to hold it in November 2004. However, the earliness of this date led the government to postpone the referendum until February 2005.

According to electoral law, there should be a period of between 30 and 120 days before the polling day after the official announcement of the referendum. The time allowed by law is too short to sustain an open public debate before a referendum. In Spain, the official announcement of the referendum was on 14<sup>th</sup> January 2005, so formally only one month was allowed. However, as the unofficial announcement was made in July 2004, the debate on the European Constitution started well before the official announcement.

### ORIGIN OF THE REFERENDUM



UNFAIR  
PARTIALLY FAIR  
FAIR

### WHO SETS THE DATE



UNFAIR  
PARTIALLY FAIR  
FAIR

### PERIOD BETWEEN ANNOUNCEMENT AND BALLOT DAY



UNFAIR  
PARTIALLY FAIR  
FAIR

### PERIOD BEFORE ANOTHER VOTE



UNFAIR  
PARTIALLY FAIR  
FAIR

Had those months been spent in initiating the Spanish public into the intricacies of the European Constitution, the period allowed should have been sufficient. Unfortunately, the text of the draft constitution was only distributed to citizens through the main national newspapers in January. The Electoral Commission also refused to respond to appeals questioning several government activities in the pre-campaign phase.






Spanish law also requires that no other electoral process be held within the period from three months before to three months after the polling day. This provision also helps citizens to concentrate on the question asked in the referendum and not be distracted by other political events. Unfortunately, the campaign was disturbed by arguments between nationalist parties and the government, to which the media gave extensive coverage.

As was mentioned earlier, the referendum result is not binding on the government. We believe this to be a self-contradiction. Fortunately, the Prime Minister announced on 16<sup>th</sup> February that he would consider the result as binding on his government. We believe that this simple announcement increased the freedom and fairness of the process and helped to increase public participation in the referendum.

The wording of the question was also simple and clear. The citizens were asked: *"Do you approve the draft Treaty establishing a Constitution for Europe?"* The explicit aim of the government was to increase participation by keeping the question as simple as possible. We believe that this simplicity helped to persuade citizens to take part in the referendum.

Spanish Law does not set any special requirements as to minimum quorums or turnout to validate a referendum. As quorum requirements are very tricky and can be manipulated to support the negative option in a referendum (promoting abstention is much more effective than supporting the NO vote in this kind of referendum) this provision helped the various actors to maintain a clear stance during the process.

The ratification process for the constitution is

<p><b>BINDING RESULTS</b></p>  <p>UNFAIR PARTIALLY FAIR FAIR</p>
<p><b>FAIRNESS OF THE QUESTION</b></p>  <p>UNFAIR PARTIALLY FAIR FAIR</p>
<p><b>SPECIAL MAJORITY REQUIREMENTS</b></p>  <p>UNFAIR PARTIALLY FAIR FAIR</p>
<p><b>DOMINO EFFECT</b></p>  <p>UNFAIR PARTIALLY FAIR FAIR</p>
<p><b>SPENDING LIMITS</b></p>  <p>UNFAIR PARTIALLY FAIR FAIR</p>

subject to the rule of unanimity: all the 25 member states of the Union have to ratify the new Treaty. This meant that the result of the Spanish referendum was being very closely watched by the countries which will follow the same process in the coming months. The argument that Spain would be responsible for the failure of the whole ratification process if the result was a 'NO' was frequently used, especially during the final days of the campaign. Without doubt, this argument may well have persuaded many citizens to vote YES who might have voted otherwise (or not voted at all) if the question had related exclusively to Spain.

## THE CAMPAIGN

---

One of the most striking aspects of this referendum was the big disparity in the resources available for the supporters of the two sides. The maximum amount that political parties can spend on electoral campaigns is fixed by law.

Electoral Law sets a limit of 24 Euro cents per registered voter for the cost of the political parties' campaigns in the case of parliamentary elections. The same limits were applied for the referendum; the parties were not allowed to spend more than around 8 million Euro on the campaign. All private donations have to be made to special bank accounts and donors have to identify themselves. The limit per donor is 6000 Euro.

Electoral Law also determines the amount of funding that the political parties can receive from the state to cover their campaign expenses. This amount is distributed according to the number of parliamentary seats gained in the last parliamentary election. However, this provision does not explicitly cover referenda. To avoid this problem, the government tried in the summer of 2004 to change the law to allow for official funding of the parties. However, the main opposition party (Popular Party) refused to accept this, so the funding of the political parties was managed through an extraordinary budget of 9 million Euro approved by parliament in January 2004. The parties supporting ratification received 8.1 million Euro, the parties opposing ratification 0.9 million. The rules set by electoral law to ensure transparency in the use of public money were also applied in this case.

Civil society organizations received no funds from the government. While some organizations supporting the Constitution received funds from private and corporate sources, the organizations which rejected the Treaty were obliged to make

### IDENTIFICATION OF DONORS



UNFAIR  
PARTIALLY FAIR  
FAIR

### TRANSPARENCY OF USE OF PUBLIC FUNDS



UNFAIR  
PARTIALLY FAIR  
FAIR

### PUBLIC RESOURCES FOR BOTH SIDES

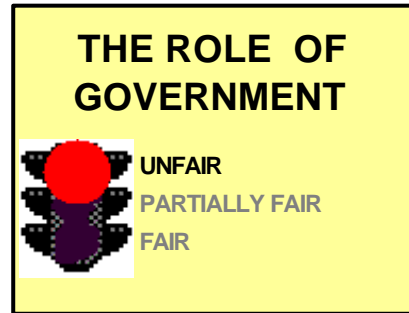


UNFAIR  
PARTIALLY FAIR  
FAIR



do with only a modest campaign and received no funds from either private or official sources. It cannot be said that the supporters of both sides had equal access to resources for their respective campaigns. All the advertisements in the print media and on radio or TV (except for the free time given to the political parties in the publicly-owned media) supported the YES option in the referendum. The NO camp was able to campaign only by distributing leaflets in the streets.

Electoral Law only allows government campaigns in electoral processes to inform the citizens about the polling date and procedures, and on how to vote by post. The governing party (PSOE) tried to change the law in summer 2004 to allow the government to support one of the options available in a referendum. Fortunately, lack of agreement with the main opposition party prevented them from changing the law. We believe that the impartiality of the state machinery is a fundamental premise for fair and free referenda.



However, the official government campaign did much more than merely inform citizens about the voting procedures. The whole campaign was strongly biased towards ratification of the Constitution, starting with its slogan: "The first with Europe", which implicitly assumed a favourable result. This campaign was funded to the tune of 9 million euros - the same amount distributed among those political parties with parliamentary representation.

On 20<sup>th</sup> January, the Electoral Commission responded to an appeal presented by several organizations (the group *Otra Democracia Es Posible*, the foundation *Centro de Estudios Jurídicos Tomás Moro* and the Catalan nationalist party *Esquerra Republicana de Catalunya*). It decided to require the government to withdraw the campaign slogan. The Electoral Commission also said in its ruling: "The government campaign should be limited to informing people objectively about the content of the Constitution and refrain from making any kind of value judgements (...)".

After this ruling, the group *Otra Democracia Es Posible* submitted another complaint about some other aspects of the official campaign which, from their point of view, were not completely impartial and therefore contradicted the Electoral Commission ruling. The same appeal informed the Commission that the banned official slogan had not been withdrawn from many official places and websites. This time, however, the Electoral Commission surprised the applicants with its extremely concise ruling of 3<sup>d</sup> February. The decision consisted of two words: "*Tomar conocimiento*" - meaning 'To take note'. But nothing was done to address the accusation of partiality or to enforce its own ruling of 20<sup>th</sup> January.



After this puzzling decision, the applicants appealed to the Supreme Court against the decision of the Electoral Commission. The first response of the Supreme Court (11th February) was to give itself a period of 10 working days to reach a decision. That meant that the final ruling from the Supreme Court would not be ready until four days after the vote itself, and five days after the campaigning had ended. The patient applicants appealed again and the Supreme Court condescended to reduce the period to 3 working days. However, the final ruling was as disappointing as the first one: the Supreme Court refused to require the Electoral Commission to answer the questions raised in the appeal.

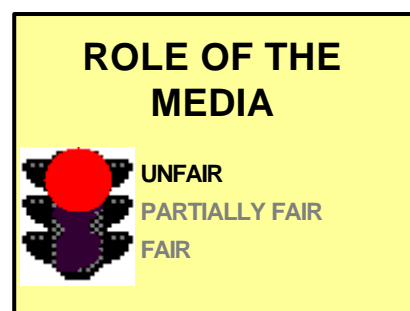
Many other appeals to the Electoral Commission were ignored, most of them complaining against campaigns launched by the Government and other public institutions, the European Commission office in Spain, the European Movement and many other legal bodies.

Neither the Electoral Commission nor the Supreme Court, the main guarantors of the fairness of an electoral process in Spain, believed it was worth while giving a detailed answer to reasoned appeals from the organisations supporting the NO vote. We believe that the institutions controlling the referendum should have been more proactive in explaining why the appeals were not valid and in ensuring that the government campaign remained absolutely impartial.

But the official campaign was not only biased towards ratification. It was superficial. The short campaign focused on presenting the *European idea* as a whole, without talking about the content of the Constitution. Selected articles were read out by football stars or artists in TV ads. Campaign teams distributed a pro-YES energy drink to youngsters. Only 4 million copies of the draft constitution were distributed through the newspapers to 35.4 million voters. The Annexed Declarations that are part of the text of the Treaty were not distributed, which provoked complaints from several groups supporting a NO-vote.

This strategy may have helped to capture public attention, but at the same time it trivialized the idea of Europe. The campaign adopted an "All or nothing" approach to Europe. The content of the Constitution was not shown even in a summarized form. The institutions and procedures the citizens were voting on were ignored in favour of the more "aesthetic" parts, such as the Charter of Human Rights. The campaign certainly contributed to the apathy shown by voters on 20<sup>th</sup> February.

The role of the private and public media was far from impartial. All the private TV channels and national newspapers favoured ratification of the Treaty. While newspapers reported some of the activities of the political parties supporting the NO option, most of the information related to the campaigns of those parties favouring ratification. Almost no mention was made of the campaign by



the civil society organisations opposing ratification.

There were few TV debates. Some were scheduled at 2:30 a.m. and 11:00 a.m. on weekdays. The information on the draft Constitution echoed that of the parties' and government campaigns. They dedicated more space to describing the EU institutions, but were careful to present the constitutional text in a positive light. Editorials and most of the articles were fiercely supportive of the constitution. The zeal of the print media was so persistent as to continue asking openly for a YES vote during the day before the referendum (when no campaigning is allowed) and even on the voting day itself. The titles of the editorial articles on 19<sup>th</sup> February included: "For a YES vote" (El País), "A YES to Europe's advance" (El Mundo), "Spain owes a YES to Europe". Editorials, articles and even comic strips continued asking openly for a positive vote during the polling day.

We believe that the lack of control of the private and public media coverage seriously affected the citizens' right to be informed impartially about what they were being asked to vote on. Some countries require private media to offer impartial, balanced and objective coverage in a referendum. A similar requirement was greatly needed in Spain to prevent such a big discrepancy in the coverage given to the two sides.

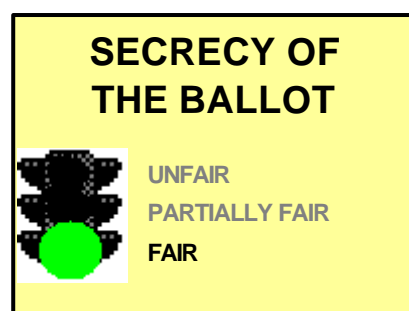
Perhaps one of the most striking aspects of the campaign and the pre-campaign was the almost total lack of internal debate on the Constitution within political parties, unions, employers' associations and other civil society organisations. In most cases, the executives of these organisations made up their own minds without allowing any internal debate. This also contributed to the lack of debate in civil society as a whole, and therefore to the public apathy during the campaign and the record abstention levels on 20<sup>th</sup> February.



## THE VOTING DAY

Except for the behaviour of some media on voting day, as was already mentioned, most of the formal aspects guaranteeing the fairness of the polls and the freedom of voters were strictly observed on voting day. The list of voters coincides with the local census, so every Spanish national registered somewhere has the right to vote. The procedure for inclusion in the census is easy and straightforward.

Votes are secret. There are private booths in all polling stations, though votes are frequently cast outside of them. Occasionally a lack of booths was reported, but we believe it was more due to



the inefficiency of electoral officials than to a desire to violate the secrecy of the vote.

Voters have from 9:00 a.m. to 8:00 p.m. to cast their vote in polling stations located at nearby schools. Voting is easy and straightforward, and there is rarely any need to queue. Citizens can also vote by post. Voters registered in foreign countries can exercise their direct vote at embassies, consulates and by postal voting.

The government tried to encourage participation by allowing a pilot exercise in e-voting. Between the 1<sup>st</sup> and 18<sup>th</sup> February, around two million citizens (6% of the national census) in 52 municipalities (one per province), had the option of casting their vote online. However, the results of this experiment were not very impressive. To start with, only 10,543 people voted using the Internet (only 0.54% of the people who were eligible to cast their vote online). More worryingly, the Electronic Vote Observatory, an independent organisation which promotes e-voting in Spain, complained that the whole process had many security problems. Members of this organisation claim to have hacked into the servers where the results of the exercise were stored and were able to access data on the results and on voters' personal details. The main problem affecting the exercise was the lack of any independent public audit throughout all the stages of the trial.

Electoral law does not allow any other kind of election to be held on a referendum day. The original idea of the current opposition party (Popular Party) when it was in power - of holding a referendum on the Constitution to coincide with the European Parliament elections of 2004 - would have required the law to be amended.


Electoral law regulates the right of appeal to the Electoral Commission on the result of the referendum. The Electoral Commission has to decide if both the result and the vote itself are valid. If the latter is considered invalid the vote is repeated. As far as we know, no appeal has been submitted to the Electoral Commission.

**TIME ALLOWED FOR VOTING**



UNFAIR  
PARTIALLY FAIR  
FAIR

**EASE OF VOTE**



UNFAIR  
PARTIALLY FAIR  
FAIR

**OTHER VOTES ON THE SAME DAY**



UNFAIR  
PARTIALLY FAIR  
FAIR

**RIGHT TO APPEAL THE RESULTS**



UNFAIR  
PARTIALLY FAIR  
FAIR

## THE RESULTS

---

The government's motivation behind calling a referendum to ratify the European Constitution - something it was not obliged to do - was twofold:

- To bring the idea of Europe closer to the citizens, to increase their knowledge and their sense of participation in the European integration process, and to counter the apathy towards what most people see as a distant, bureaucratic and mysterious power in Brussels.
- To help Spain's friends (such as France and Britain) which have decided to ratify the Constitution by referendum: to launch a first and enthusiastic ratification of the Constitution might help to convince doubtful voters in those countries.

The voters overwhelmingly favoured ratification (76.73%) and thus the government's position. Only one voter in six voted NO (17.24%). Although the NO vote had doubled in comparison with previous public polls, ratification was the clear winner. In some regions, such as Catalonia and the Basque Country, there was a 30% NO vote, but this was not the problem that prevented the government from achieving its twofold objective. The problem was the level of participation.

In the course of the campaign, as the days passed, some scattered comments on talk-shows or in the newspapers revealed alarm at the abstention levels forecast by unspecified polls. It is significant that during the whole campaign virtually no poll results were published by the media, when they are usually a quite common element of Spanish electoral processes.

The fears of those commentators were realised. But it could have been even worse. In fact, the amazing reaction of some politicians to a participation level of 42.32% was one of relief. Some said it was a good turnout because it was above 40%. Some polls had apparently predicted an even lower turnout. Mr. Zapatero's announcement that he would accept the result of the referendum as binding on his government probably helped to mobilize voters. However, the record abstention level, compared with all previous similar processes in Europe, and with the figures from recent Spanish electoral history, was appalling.

In no other previous election in Spain have abstention levels been so high. In previous referenda in Spain, participation levels were between 20 and 25 percentage points above the results of 20<sup>th</sup> February. At the European level, of the eight referenda held since the Maastricht Treaty, only the referendum held in Ireland to ratify the Nice Treaty had a lower turnout than this one. The same applies to referenda held in the new member states on accession to the Union.

These record abstention levels made the twofold objective set by the government unattainable. The campaign and the referendum itself did not reduce the apathy of Spanish citizens towards the Union, and specifically towards the new Constitution. The citizens felt no enthusiasm towards the institutional and legal structure they were being asked to vote for. After the

referendum Spaniards do not feel more motivated towards the European integration process. The banality of the campaign, the lack of internal and public debate, and the lack of interest of government and parties in explaining those institutions and legal tools reinforced popular apathy.

On the external front, it is difficult to say that Spain has sent an enthusiastic message of support for the EU Constitution to its European allies. In fact, the turnout may confirm the scepticism of many doubtful voters in those countries. The superficiality of the public debate (many European media claimed that the results were a 'yes' to Europe, rather than a 'yes' to the Constitution) did not help to send this message either.

Some of the government decisions had the admirable intention of encouraging participation in the referendum. These included the simple and clear question asked and the commitment to the result, as accepted by Mr. Zapatero.

What went wrong? Perhaps the government's desire to ensure as high a measure of support for ratification as possible from the voters. They may have thought that an extensive public debate on such a complex text could have caused doubts in many voters. They may have been right. But it is clear that even in this case, the NO vote would probably not have exceeded 30% overall. This would still have represented a clear YES victory: if there had been a lively debate in the media and in public the participation levels would have been higher. As in most electoral processes in Spain, a higher than 60% turnout could have been achieved. This hypothetical result (60% turnout, 70% YES vote) would have achieved both of the government's objectives - a citizenry more aware and more involved with the European project and institutions, and a clear message of europhile enthusiasm to European voters. The lack of trust in the people's common sense and in the virtues of public debate achieved almost catastrophic results from the point of view of participation.

## CONCLUSIONS

---

Although many of the most important criteria used to monitor the fairness and freedom of the Spanish referendum process were met in an acceptable way (secrecy of the vote, accuracy of the voters list, etc.), the lack of experience of the Spanish government in the organization of such electoral processes made this referendum far from perfect.

Apart from the short-term consequences of those mistakes (such as the low participation levels), we believe that some aspects of the process, and especially during the electoral campaign phase, did affect the fairness of the whole process.

However, this lack of fairness would have had more serious consequences if there had been more equal levels of support for each of the options. In that case, an unfair campaign would have raised doubts about the validity of the referendum process itself, which would have had more serious consequences

both for the future position of Spain in the European Union and for the credibility of the political system.

The lack of internal debate in parties, unions and NGOs, and therefore the resulting lack of debate in civil society (caused also by the lack of resources of the NO camp and the unilateral stance shown by the public and private media), resulted in missing an opportunity to increase the knowledge of Spanish citizens about the European Union. This, together with the short and superficial official campaign launched by the government, also increased (or at least confirmed) the apathy of the electorate towards the European Constitution and the referendum itself.

In general, the legal basis of the referendum process was correct. The only major deviation from international standards related to the non-binding character of the referendum. However, the last-minute statement by the Prime Minister accepting the result as binding on his government managed to increase the seriousness of the whole process and certainly increased participation levels on 20<sup>th</sup> February.

The main problems affecting the fairness of the process appeared in the campaign phase of the referendum. The lack of consistent control by the Electoral Commission, and their refusal to respond in detail to those appeals presented to them, was the most worrying aspect of the campaign. This alone is sufficient to question the credibility of the whole process.

There have been three attempts to modify the Spanish referendum process in the last two years, but all of them failed. The first was the plan by the Popular Party, when in government, to hold a referendum on the European Constitution at the same time as the 2004 European Parliament Elections. This would have required an amendment to the Referendum Law, which forbids any electoral process during the period from three months before to three months after the referendum date. We believe that, at least as long as there are so few referenda in Spain, this provision should remain, because it makes citizens focus on and consider the questions asked in a referendum independently of other political affairs.

The second attempt to modify the law came from the current government, when it tried to modify the Electoral Law to allow for the financing of the political parties' campaigns in a referendum. We support this amendment, but only provided that the public funds are also distributed to other civil society organizations, and that this distribution ensures equal access to funds by the proponents of both options.

The final attempt to modify the referendum process also came from the current government, when it tried to allow the government to support one of the options presented in a referendum. We believe that a minimum requirement for fair and free referenda require the absolute impartiality of the government during the whole process. The role of government should remain as impartial as possible in this kind of process.

Mas Democracia has defined a set of recommendations to avoid the shortcomings of the 20<sup>th</sup> February referendum process in future electoral processes. Most of them only require an amendment to the Referendum and Electoral Laws, but some of them do not require any amendment to the law:

- The Law should be amended to extend the period between the official announcement of the referendum and the polling date, from the current one to three months to at least six months.
- The Referendum and Electoral Laws should state clearly the right of civil society organizations (not only political parties) to participate in referendum campaigns and to have access to public resources for their campaigns.
- The coverage provided by private media to the proponents of the various options should be controlled by an independent institution. The Referendum Law should be amended to require private media to offer similar coverage to all the options.
- The Electoral Law should be amended to allow political parties and other organisations to receive government funds to finance their respective campaigns.
- The distribution of state funds to finance the parties' and other organisations' campaigns should try to be fair to both options. Proponents of both options should receive a similar amount of money from the government. Specifically, the rule determining the distribution of funds to the parties according to the votes received in previous parliamentary elections should be withdrawn.
- Every voter should receive clear and detailed information on the issue they are being asked to vote on. This information should not only include the issues to be voted on (in this case the draft constitution), but the for and against arguments provided by proponents of each option.
- The official campaigns launched by the government should be limited to informing voters about the voting procedure and the issues on which they will be consulted. The government should maintain strict impartiality throughout the whole referendum process.
- The institutions in charge of ensuring the fairness of the process should be more proactive at the time of enforcing their own rulings, and should respond to all appeals presented to them in detail and as soon as possible.

In addition to these short-term recommendations, Mas Democracia believes that wider and deeper reforms are required in the current Spanish Law to improve the use of referenda as democratic tools. Those reforms require the Spanish Constitution to be amended, but we believe that they should be taken into account in the medium term:

- All referenda held in Spain should be binding on the government. We believe that the concept of a "non-binding referendum" is self-contradictory. When citizens are asked to give their vote for one of a number of options, the result of this vote should be assumed to be binding by all parties involved.



- Apart from the obligatory referendum in the case of constitutional reform, and the referendum called by the government (such as the one on the EU Constitution), the Spanish Constitution should also provide for referenda resulting from popular initiatives (for instance, through the collection of a certain number of signatures) to amend or reject existing laws and to propose new ones. This initiative right should also cover constitutional amendments.

## APPENDIX

ISSUE	Mostly Fair	Partially Fair	Unfair	COMMENTS
<b>LEGAL BASIS</b>				
Origin of the referendum		X		Government
Character of decision (binding/consultative)		X		Consultative. The Spanish Constitution only allows consultative referendums except for reforms to the constitution or the regional charters. However, the government made a statement accepting the result as binding.
Special majority requirements	X			Simple majority
Accuracy of voters list	X			Yes
Secrecy of the ballot	X			Yes
Appeal against the result	X			Yes
Voting: how, where, e-voting	X			Voting on Sunday. Electronic voting available in some municipalities.
Fairness of the question	X			The question was : "Do you approve the draft Treaty establishing a Constitution for the European Union?"
<b>TIMING</b>				
Who sets the date		X		Government. Parliamentary approval is required.
Time for voting	X			One day on the weekend
Length of time between announcement and voting day		X		The date was unofficially announced at the end of July 2004, so there were seven months until the referendum day. However, the campaign itself lasted only 20 days, which was clearly not enough.
Same day as other votes (elections, etc.)	X			No
Domino effect in other countries		X		Yes. The Treaty must be unanimously accepted by all countries to be adopted, so a negative result in Spain would affect the whole process.
Time period before another vote may be held	X			Three months before and after the ballot day

ISSUE	Mostly Fair	Partially Fair	Unfair	COMMENTS
<b>FINANCIAL RULES</b>				
Spending limits		X		Yes, but only for the expenses of the political parties during the voting campaign. There were no controls on the money spent by the civil society organizations on their campaigns.
Disclosure	X			Yes, but only for the contributions made to the political parties for their campaign expenses.
Transparency in use of tax-payers' money		X		Civil organizations supporting ratification received funds from the government which were beyond the scope of the Electoral Law, so its use was not expressly monitored.
<b>CAMPAIGN RULES</b>				
Managed by referendum commission or other		X		Yes. An electoral commission controls the referendum process, but its performance during this referendum was ambiguous.
Role of the media			X	Unfair. Most media was strongly in favour of the EU Treaty, and gave ample coverage to this option.
International interference			X	Several European heads of state took part in the campaign in support of the YES option.
Role of government, civil servants, etc.			X	The government openly supported ratification of the Treaty, despite the fact that Electoral Law forbids it to do so. The Electoral Commission did not enforce the law as consistently as would have been desirable.
Role of Civil Society			X	Civil society organizations should be allowed access to the same financial and media resources as the political parties.
Public resources available for both sides			X	Only for political parties, and distribution was not equal for the supporters of both options.