

NATIONAL REFERENDUMS ON EUROPEAN ISSUES: FROM CLARIFICATION TO FRUSTRATION

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This Policy Paper is the revised and extended version of an article published in "[The Schuman Report on Europe, State of the Union 2017](#)" (edited by Thierry Chopin and Michel Foucher, published by Lignes de repères, March 2017).

SUMMARY

1. National referendums on European issues reflect an often harmonious conciliation

- Almost 70% of the 59 referendums focused on European issues organised since 1951 (of which 44 in the current 28 member states) have resulted in a "yes" vote (see [table 1](#)) — there were 32 "yes" votes and 12 "no" votes in the 28 EU member states;
- The "no" votes expressed during membership referendums have been fully enforced as they only concern the member state in question – the same goes for the Brexit vote;
- The "no" votes concerning a member state's participation in specific chapters of European integration (monetary union, police cooperation) have also been taken into full consideration.

2. Negative referendums on "indivisible" European issues reflect a structural contradiction between national democracies

- A referendum on "indivisible" European issues (notably the rules concerning the functioning of the Union), which by definition involve all member states, cannot give the country using it primacy over the will expressed by the other countries;
- The adoption of amendments which by definition are subject to the agreement of all 28 member states and the drafting of interpretative declarations are a means of reconciling the will of all EU peoples;
- The first "denial of democracy" involves believing that one member state could make its will applicable to the 27 other EU member states;
- The idea of a primacy of referendum votes also reflects a denial of "representative democracy" which is all the more unacceptable in the member states which do not use referendums (Germany and Belgium in particular).

3. The referendums of the "third type" are hopeless tools of confrontation between the EU member states

- The referendums in Greece in 2015 and Hungary in 2016 were designed and perceived as a tool in a power struggle in negotiations between European states in disagreement, and yet all equally legitimate;
- Referendums based on popular initiative on European issues (such as in the Netherlands in 2016) result in national governments being caught between their partners and their people;
- This type of referendum can only maintain the anger of the peoples consulted who would not have any greater power to impose their views on other peoples of Europe and their representatives.

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INTRODUCTION

The recent succession of referendums that led to people saying “no to Europe” in countries ranging from Greece, Denmark, Hungary, the Netherlands and the UK, are leading to a radicalisation of political debate over the articulation between national democratic choices and belonging to the European Union. Often this debate leads to a challenge being made to “denials of democracy” which are said to result when national referendum results are not taken into account; it is helpful therefore to bring claims like this into perspective.

The juncture between national referendum verdicts and European choices is easy by nature when people approve the commitments made by their governments in Brussels. It is just as coherent when a people takes a decision which only affects itself (for example not entering the euro or exiting the European Union). This juncture becomes problematic however when a national referendum involves issues that affect all of the Union’s people, or when it becomes a tool for confrontation between member states, even within a member state.

The progressive shift from conciliation to contradiction, then from contradiction to confrontation, should prompt us to highlight which political conditions enable a better juncture between national referendums and European integration, not only to guarantee the smooth functioning of our democracies, but also the European Union’s ability to act effectively and legitimately.

1. National referendums and Europe: often harmonious conciliation

The analysis of the national referendum votes since the start of European integration reveals that very often, conciliation has been harmonious when the “yes to Europe” wins, but also when it is *de facto* and *de jure* possible to accommodate the “no to Europe”.

1.1. Around 3/4 of the referendums on European issues have led to the victory of the “Yes” vote

70% of the 59 referendums focused on European issues organised since 1951 have resulted in a “yes” vote (see [table 1](#)) : it has therefore been possible to accommodate these positive referendum verdicts fully, except for the Spanish and Luxembourg “yes” to the “Constitutional Treaty” in 2005, which failed because of the French and Dutch “no” votes.

In all, in the 28 member states there have been 34 “yes” votes and 12 “no” votes (ie 72% against 28%). There have been 12 “no” votes expressed in 8 states, which have been more frequent in recent times (7 “no” votes out of the 13 referendums organised since 2005). These “no” votes were fully acknowledged each time that it was possible in a Union in which one people cannot impose its verdict on the 27 others.

TABLE 1 ▶ Referendums on European issues (1972-2016)

EUROPEAN ISSUES	TOTAL NUMBER / IN THE EU STATES	NUMBER OF YES AND NO AND COUNTRIES INVOLVED
Membership/Enlargement	24 of the 17 in the Member States	Yes: CRO, LV, EE, CZ, PL, SI, LT, LI (x2), HU, SE, MT, SK, AT, IRE, DK, F, ROM, FIN, Åland Islands = 20 No: CH (x2), NO (x2) = 4
Staying in the EU	3 / 2	Yes: UK = 1 No: GL = 1, UK = 1
Joining Schengen and Application Rules	5 / 1	Yes: CH (x4) No: DK = 1
Deepening (including introduction of the euro)	18 / 18	Yes: IRE (x5), DK (x3), F, LUX, ES = 11 No: IRE (x2), F, NL, SE, DK (x2) = 7
Budgetary Treaty and Plan to save the euro zone	2 / 2	Yes: IRE = 1 No: GR = 1
Other issues (including relocations of refugees and EU-Ukraine Agreement)	7 / 4	Yes: CH (x2), DK, IT = 4 No: CH = 1, PB = 1, HU = 1
TOTAL	59 / 44	Yes: 41 / 32 No: 18 / 12

Source: Data from the Centre for Research on Direct Democracy, the Jacques Delors Institute and the Robert Schuman Foundation, Calculations by Yves Bertoncini.

1.2. Half of the referendum “no” votes were totally respected

The equation “referendum on Europe = no = non-respect of the no” is also invalidated by the assessment of the favourable follow-up given to negative referendums on belonging or deepening: it is indeed legally and politically possible to allow the states in question to remain on the side-lines of European integration without them preventing the pro-active integration of other states.

The five “no” votes on a country belonging to the European Union were taken into consideration: hence Norway (it has voted “no” twice) has never joined the Union¹. The same will be applied to the British, who freely chose to leave the Union on 23rd June 2016.

Three “no” votes on taking part in specific chapters of European integration were also taken into consideration: hence the Danish refusal to take part in several parts of deepening planned for in the Maastricht Treaty (rejection, which gave rise to the introduction of four exemption clauses in the country’s favour); the Swedish refusal to join the monetary union, whilst initially the country did had committed to it; finally, the Danish refusal to challenge the exemption clause regarding European judicial and police cooperation, which will soon lead to its exit of Europol.

2. Negative national referendums on “indivisible” European issues: a contradiction between national democracies

Can a national referendum on “indivisible” European issues (notably the rules concerning the functioning of the Union), which by definition involve all member states, give the country using it primacy over the will expressed by the other countries? The response to this issue is problematic by nature, but just as negative, and is therefore the source of intense political frustration. But by nature, it would only be positive if national referendums on Europe were to become tools for a twofold democracy’s denial.

2.1. A democratic contradiction settled by national interpretation or European rewriting

When “indivisible” community treaties are signed, it is only possible to acknowledge a national “no” vote (parliamentary or referendum) if all of the signatory states agree to the total withdrawal of the contested text: hence the rejection of the treaty aiming to create a “European Defence Community” by the French parliament in 1954 gave rise to the simple relinquishment of the project with the approval of the six member states involved.

This was not the case regarding the “Constitutional Treaties” that aimed to reform the functioning of the Union in the 2000’s (Nice Treaty, “European Constitution” and Lisbon Treaty), whilst most of the member states were convinced of the need to adopt such reforms, even if this meant simply adjusting the content of the treaties or their interpretation slightly.

The two Irish “no” votes on the occasion of the ratification of the Nice Treaty and the Lisbon Treaty were followed by two further referendums which were finally positive, without any changes being made to the treaty text that was the focus of the vote. In both cases it meant providing the Irish people with guarantees regarding the conditions for the implementation of the treaties, echoing the messages addressed by the “no”

¹. No more than the Aland Islands, which did not join, whilst Greenland left the EEC.

camp, for example regarding the upkeep of a European Commissioner per member state and the respect of the Irish abortion laws.

The negotiation of guarantees regarding the interpretation of a European text under challenge was also used following the Dutch “no” to the EU-Ukraine Association Agreement in April 2016. After assessing the reasons for the “no” vote and during the European Council of December 2016, the Dutch government achieved that it would be clearly specified that this association agreement did not open up prospects for Ukraine’s membership, that it did not lead to any further financial aid being given to this country and that it would not lead to any obligation in terms of military assistance.

In contrast the follow-up given to the French and Dutch “no” votes in 2005 showed a wider consideration of the negative outcome: indeed the “European Constitution” did not enter into force and a new Treaty (signed in Lisbon), whose content was very different, was adopted and ratified by the 28 member states².

TABLE 2 ▶ The European Constitution and Lisbon Treaty: a “quantitative” comparison

	EUROPEAN CONSTITUTION	LISBON TREATY
Number of articles	448	7
Number of protocoles	36	13
Number of pages of the OJEU	480	283

Source: Official Journal of the European Union (OJEU), calculations by Yves Bertoncini

The Lisbon Treaty is different to the Treaty rejected by a majority in France and the Netherlands, both in terms of form and content (see [table 2](#)):³

- the European Constitution was a text of 448 articles⁴ clearly setting out all community treaties already in force and the changes that its authors wished to make to them;
- the Lisbon Treaty⁵ includes 7 extremely technical articles: the first presents the 61 amendments made to the Treaty on European Union⁶; the second sets out the 295 amendments made to the Treaty on the Functioning of the European Union and the five others presents cross-cutting final provisions.

The move from a “Constitutional Treaty” to a “Reform Treaty” gives rise to another significant difference in content: all the provisions of community treaties already in force which have not been modified were not included in the Lisbon Treaty, which explains why this treaty is almost half the length of the Constitution. One particularly symbolic example illustrates this difference in content: more than one third of the 161 articles which make up the fiercely debated “Title 3” (which became Part 3) on the EU’s internal policies are not included in the Reform Treaty amending the TFEU⁷.

The Greek referendum in July 2015 was also on measures involving all of the euro zone members, since it included reforms to implement in Greece in exchange for the extension of their aid. The rejection of the three texts submitted to the Greek population did not mean that another agreement could not be adopted in the days or months that followed: the aim of the Greek authorities was precisely to achieve a better agreement following this referendum. A comparative assessment leads to the conclusion that the agreement finally signed between

2. For a detailed comparative analysis, see Yves Bertoncini, « Dix ans après le « non » : crever l’abcès, pour l’Union européenne et pour la gauche », Note, Fondation Jean-Jaurès, May 2015.

3. For a full assessment of these amendments, see François-Xavier Priollaud and David Siritzky, “Traité européens après le Traité de Lisbonne : Textes comparés”, La Documentation française, 2nd edition, 2012 (in French)

4. To view the full version of the European Constitutional Treaty, visit [the website of the Official Journal of the European Union](#)

5. To view the full version of the Lisbon Treaty, visit [the website of the Official Journal of the European Union](#)

6. A few of the modifications made are “horizontal” and superficial (a shift from the term “Community” to “Union”, changes to article numbers, etc.), while most of the others are “specific” modifications concerning the substance of the Treaty (functioning of the EU or its powers and policies).

7. 28 institutional and financial provisions of the TFEU have also not been included. The same goes for seven of the articles of the TEU, etc.

Greece and the EU (declaration of the euro area summit⁸ and the third memorandum of understanding⁹) was different from the one rejected by the referendum¹⁰ (see [Box 1](#)), including in a positive manner¹¹, although it was concluded in a context of mistrust that was accentuated by the conditions in which the referendum was organised (see [paragraph 3.1](#)).

BOX 1 ▶ Substantive differences between the agreement rejected in the referendum and the final accord between Greece and the EU

- A number of the measures envisaged in terms of structural reforms are identical, for instance in the areas of pension reform, of the restructuring of the banking industry, of the deregulation of the product market and of the struggle against corruption and tax evasion.¹²
- Initially set at 23%, VAT for hotels was brought back down to 13%; the planned cut in defence expenditure amounts to 100 million in 2015 and to 400 million in 2016, as against the 400 million provided for in the original agreement; the final deal provides for the gradual abolition of the preferential tax treatment afforded to the country's shipping magnates, which the accord thrown out in the referendum did not provide for quite so explicitly.
- While the accord rejected in the referendum set a number of deadlines for bringing in the reforms at the end of 2015, in the course of 2016 and even at the end of 2016, the final agreement provides for a start being made on many of them before 15 July, then before 22 July, and even going as far as to specify that their implementation is a precondition for the issue of a third aid package.
- This decision to demand pledges from the Greek authorities also seems to be behind the creation of a "privatisation fund" whose income could amount to 50 billion euro (as opposed to the figure of 6.3 billion euro over three years envisaged in the initial agreement) and has already been earmarked for paying back the European aid used to recapitalise Greece's banks (50%), to reduce the country's debt (25%) and to be used for further investments in Greece (25%).
- While the goal of a budget surplus standing at 3.5% of GDP is still set for 2018 and beyond, the "trajectory" adopted to get there is far less demanding in the final agreement: 0.25% as opposed to 1% in 2015, 0.5% as opposed to 2% in 2016, and 1.75% as opposed to 3% in 2017.
- Concerned the financial aid granted to Greece, considerable differences may be detected: the Greek people rejected in the referendum an aid plan granting them 12 billion euro (+3.5 billion in IMF) over 5 months, with 4 payments planned at the end of June, in mid-July, in early August and in October. The final accord, on the other hand, provides for a financial aid plan worth 86 billion euro over three years.
- The document submitted to referendum in Greece on 5 July mentioned the future of the country's debt, even mentioning the extent of the relaxation and arrangements already allowed, without envisaging any further relaxation; the declaration issued at the euro summit on 12 and 13 July, however, does mention such "additional measures", specifying that they may take the shape of an extension to the "grace and repayment periods": so it is not a matter of cancelling the repayment of the debt, but of delaying the date on which repayment of the first instalment has to be made (currently 2020) and the duration of the repayment (approximately 30 years on average, as things stand today).
- The euro area summit on 12 and 13 July 2015 approved the implementation of a 35 billion euro investment plan in Greece's favour, which was not in the texts rejected in the 5 July referendum.

When all is said and done, it falls to each player, primarily to the Greek people, to judge whether the differences are sufficiently substantive to argue that the agreement thrashed out by the Athens authorities is more or less favourable than the one rejected on 5 July, or not. Whatever the answer, one thing is certain: the differences are sufficiently numerous to gainsay the argument of those who claim that the agreement is identical to the one submitted to a referendum.

8. See the [July 12 2015 Euro summit statement](#)

9. See the [Memorandum of understanding](#) for a three year ESM program – Greece.

10. See the [Proposal of the institutions](#) to the Greek government

11. For a detailed analysis on this point, see Yves Bertoncini and Nicole Koenig, "The EU and national referenda: structural incompatibility?", Policy Paper Nr. 141, Jacques Delors Institute, september 2015

12. On this point, it is important to ask ourselves whether the group of structural reforms already envisaged was regressive or positive. Take, for instance, the struggle against corruption, nepotism, and tax elusion and evasion: are these really "austerity measures", or are they not, rather, "measures for greater modernity"? Or take the deregulation measures designed to combat abuse of a dominant market position: are these really "antisocial measures", or are they not, rather, measures designed to chip away at the profits made by "oligarchies"?

2.2. Sovereignty shared by 28 people: the absence of primacy of one national democracy over the others

The adoption of national interpretative declarations without any modifications being made to the text rejected by referendum is of course frustrating for the proponents of the “no to Europe”; the same applies to the drafting of a Treaty with a different content, but which is often largely based on measures that are already the result of long negotiations between all of the member states; the move over from using the referendum as a means to ratification to one that occurs in parliament can contribute to even greater frustration and a feeling of dispossession expressed by the victors of the referendum, who waste no time in protesting that there has been a “denial of democracy.”

However it is important to stress that the first “denial of democracy” is committed by those players and observers who think that a “no” vote in a national referendum should apply to all of the other Europeans, whilst many of them have a diverging position. It is a demonstration of extreme intellectual laziness or political bad faith if one professes the idea that negative referendum verdicts regarding European issues are the successive illustration of a chasm between “Brussels and the people”: these referendums in fact show a worrying split between the people of Europe, but it is not the sign of “democratic deficit”. The thing that would not be democratic would be to approve the primacy of one people over all of the others! We would not be able to use referendum results to impose our views on others, nor to interpret the difficulty in finding a new compromise close to that rejected as the symptom of Europe’s democratic deficit.

Unravelling the contradiction between national democracies, without denying the usefulness of calling on the people would suppose the organisation of pan-European referendums open to all citizens whose verdict would have to be accepted by voters and by the representatives of their States who would find themselves relegated to a minority. Failing this, compromises with the 28 national democracies would have to be forged, none of whom would be able to dictate their law over that of another.

2.3. Denial of representative democracy: what primacy of referendum votes?

The second denial of democracy results from the idea that a popular “no” is more legitimate than a parliamentary “yes”. It is hardly surprising that this is undertaken by minority political forces, who fail to take power by way of representative democracy, because they lack the confidence of the majority of the citizens. This explains their predilection for referendums, in the wake of which their circumstantial unnatural alliance of protest potentially helps win a majority of votes, even if it does not ultimately lead to a constructive alternative.

Even if their reputation is suffering, national representative authorities should not concede to the monopoly of the people by political forces which criticise elected representatives beyond simple European issues, because they themselves do not hold enough seats. As for the European representative authorities they can no more accept the primacy of the democracy of the national referendum, since it is sometimes impossible to use the referendum to decide on European issues in certain Member States (Germany and Belgium), without this depriving these States of having their say in the matter (see [table 3](#)).

TABLE 3 ▶ Member state legal provisions on referendums

POSSIBILITY TO HAVE EU RELATED REFERENDUM	MEMBER STATES
No legal provisions to hold referendum at national level	BE ; CY ; CZ ; DE ¹ = 4
Referendum possible on limited number of issues (including some EU-related ones)	HU ; PT ; MT ; SI = 4
Referendum possible on wide range of issues (including EU-related ones)	BG ; FI ; GR ; IT ; NL ; SE = 6
Referendum compulsory for some issues (including EU-related ones)	AT ; CRO ; DK ; EE ; ES ; F ; IRE ; LV ; LI ; RO ; SK ; LUX ; PL ; UK = 14

¹Germany is a special case. National-level referendums are only possible and at the same time compulsory for two types of issues: adoption of a new Federal Constitution and re-organisation of the federal structure.

Source: Yves Bertoncini and Nicole Koenig, "The EU and national referenda: structural incompatibility?", op.cit. Data of the International Institute for Democracy and Electoral assistance.

3. The referendums of the “third type”, an hopeless tools of confrontation between the Member States of the EU

In the absence of pan-European referendums, national popular votes of a third type revive debate opened up by democratic contradictions that have emerged since 2005. The referendums organised in Greece in July 2015, in the Netherlands in April 2016 and in Hungary in October 2016 are not just significant because they led to further victories for the “no to Europe” camp, but especially because they have transformed the use of the referendum into a tool of confrontation between Member States - without erasing the need to respect the equally legitimate positions expressed by the 27 others.

3.1. Referendums that are tools used in a power struggle between Member States

The referendums initiated by Aléxis Tsípras and Viktor Orbán are particularly singular. Two particularities explain why they were received negatively by the other Member States, which assimilated them to a betrayal of the “principle of loyal cooperation” that features in the community Treaties.

- Legal particularity: the Greek referendum of 2015 and that in Hungary in 2016 were organised ahead of and after the conclusion of community negotiations. The Greek authorities chose in July 2015 to submit some working documents, which had neither been adopted nor signed by the Heads of State and government to the vote. The Hungarian authorities chose to submit the rejection of the solidarity mechanisms on refugees in October 2016 that had however been approved more than a year earlier by a qualified majority of the Council of Ministers, against which they had already lodged an appeal with the Court of Justice.

- Political particularity: the Greek and Hungarian referendums’ main goal was not to give voice to the people for it to clarify a presumably undecided position regarding a European issue; they were organised for the very first time by the national authorities inviting the population, whose response was relatively foreseeable, to vote “no to Europe” (anti-austerity in Greece, anti-obligation to take in refugees in Hungary).

Regarding this double legal and political register, the Greek and Hungarian referendums were therefore designed and perceived as tools in a power struggle in negotiations between European states via the instrumentalization of the people involved as part of a “weak to strong” deterrence strategy. The victory of the “no” hardly changed the power relations between States, nor did it improve the negotiation position of either the Greek or the Hungarian authorities. At most it made relations between governments and people just that more tense, as it defended contradictory, yet totally legitimate positions, therefore accentuating the feeling of frustration on the part of the voters.

3.2. Referendums based on popular initiative on European issues: national governments caught between their partners and their people

Until recently the organisation of referendums was left to the discretion of the national authorities¹³, but the Dutch referendum based on a popular initiative in April 2016 illustrated another fearsome innovation that could also challenge the smooth functioning of the Union.

Indeed it involved a consultation organised in application of a national bill passed in 2015 that allowed 300,000 Dutch citizens to submit a decision approved by Parliament, which they deemed questionable, to referendum. This consultation led to 61% of them rejecting the EU-Ukraine Association agreement, firstly expressing the mistrust of the Dutch people of their own representatives, and then that of the contested European text.

It was all the more difficult for this rejection to change the power relations established at European level since the association agreement had already been approved by all of the national parliaments, after having settled the compromises established after very difficult negotiations. The fact that this referendum, that was but consultative from a legal point of view, only produced a 32% turnout meant that it was even less likely to modify the political situation at EU level.

If this abrogative type referendum were to grow in the Netherlands or in other States, there is no doubt that it would weaken the national authorities’ ability to make credible commitments with their European counterparts and therefore undermine the smooth running of Europe. This type of referendum especially would simply maintain the anger of the peoples consulted, who would not have any greater power to impose their views on other peoples of the EU.

Undoubtedly it would at least be helpful to increase the turnout threshold on the basis of which referendums like this would be deemed valid¹⁴, and even rule out “indivisible” European issues from their field of application.

¹³. Except when the referendum is de jure obligatory for constitutional reasons, as is the case in Ireland if there is a transfer of sovereignty over to the EU.

¹⁴. The referendum on the relocation of refugees organised by Viktor Orbán was declared invalid since it failed to mobilise at least 50% of those registered, which seems to be the only democratic, minimum rationale.

CONCLUSION

There is no mechanical contradiction between referendums and the decisions taken by the European authorities, but several national democratic opinions must necessarily co-exist in the European Union — which no referendum will ever change.

The use of the referendum cannot summarize the quest for the greater democratisation of Europe, and will only feed increasing frustration *vis-à-vis* supposed European and also national “denials of democracy”. Democratisation must notably be achieved via the strengthening of the control held by parliamentary representatives over their national authorities, which is extremely sophisticated in countries like Germany and Denmark, but highly flawed in countries like France and Romania. It must also, for example, result in strengthened transparency in European decision-making processes, in particular with regard to the “comitology” procedures around the Commission¹⁵, the votes in the Council of Ministers or when conducting international trade talks...¹⁶

It is also important to stress that the governance of the EU entails an inevitable representative aspect, even though the representatives of the peoples of Europe are sometimes discredited on grounds that have very little to do with European issues. National authorities must be able to commit their country and their people, consulting them ahead of their participation in European decisions, so that the European Union can function and serve its States and people efficiently. Faced with multiple crises and challenges that demand resolutions and action, the EU will find it extremely hard to accommodate a rise in national referendums, whose results contradict the positions defended by the authorities of the country in question, but especially those of other peoples of the Union, which would become ungovernable without it becoming any more democratic.

15. On this subject, see the interesting proposals recently put forward by the Juncker Commission: [Proposal for a regulation of the European Parliament and of the Council, COM \(2017\) 85 final](#) dated 14 February 2017

16. On these issues, see Yves Bertoncini and Antonio Vitorino, “Reforming Europe’s governance. For a more legitimate and effective Federation of Nation States”, Studies & Reports no. 105, the Jacques Delors Institute, September 2014

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