

# **A taxonomy of referendums on European integration: how does direct democracy relate to representative government action?**

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*\*Please do not quote\**

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## **Abstract.**

Since 1972 52 referendums dealing with EU treaty ratification, EU accession or specific issues like the adoption of the Euro have been organized in 26 different countries. Hitherto EU referendums have been analysed extensively, but a comparative perspective on their interference with the government at the national level is lacking. In order to understand the role of governments in referendums and referendum campaigns, we first have to find out what preconditions constrained the role of governments. What options had the 26 incumbent governments to determine the underlying content of EU ballots at those moments and which choices did they make within their national institutional contexts? Answering these questions will help us to understand the actions of governments related to EU referendums. This paper will contribute to this and presents a taxonomy of 52 referendums on European integration and their outcomes. It uses primary sources and applies a classification model depending on whether the referendum was triggered by the constitution, the government, the parliament or the people.

## 1. Introduction

In order to understand the role of governments in referendums and referendum campaigns, we first have to find out what preconditions constrained the role of governments. What options had the 26 incumbent governments to determine the underlying content of EU ballots at those moments and which choices did they make? Answering these questions will help us to understand the actions of governments related to EU referendums.

Europe's referendum story began in 1972 with France voting on the prospective accession of Denmark, Norway, Ireland and the United Kingdom. In 2012 Ireland was so far the latest country that held a referendum, in this case about the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union. According to De Vreese, the EU has been the most frequent subject matter for referendums (quoted by Closa, 2007, p.1312). Within these four decades, not less than 52 EU-related referendums took place about EU or EMU membership or other treaty ratification in 26 different countries.<sup>1</sup> Although there has been much research undertaken about referendums, "some actors classify referendums without paying attention to the strategic choices of the different actors involved" (Hug & Tsebelis, 2002, p.466).

This paper provides a comparative overview of the institutional conditions under which governments had to deal with referendums. Its structure is the following: First, we assess the different issues which have been subject to a referendum. We distinguish between Membership referendums, Treaty referendums and Policy referendums (cf. Shu, 2008, p.423). Second, we assess different classifications of the decision-making processes of referendums in order to come to a referendum trigger model. Third, based on this trigger model, we compare options the governments had in whether or not organising a referendum, within their respective institutional and constitutional contexts. Finally, a conclusion is drawn as a basis for further research.

### 1.1 What were EU referendums about and where did they take place?

Over the last 40 years, 52 referendums have been organized about the EU mainly dealing with treaty ratification, accession or specific issues, for example the adoption of the Euro (see Table 1). All EU referendums deal with treaties in one or another way. Shu classified EU referendums into membership referendums, treaty referendums and policy referendums. Where "membership referendums signify the beginning of national adoption of integration rules (...) treaty referendums determine the general direction of European integration" (Shu, 2008, pp.430-1) and policy referendums address specific integration policies as a self-adjusting process of individual member states. The demand for EU referendums is most pronounced concerning membership. This is not surprising as these kinds of referendums mark a turning point for accession countries after which

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<sup>1</sup> A list of nationwide EU referendums held between 1972 and 2012 is provided in the Annex.

they participate in the supranational constitutional legal order of the EU (Shu, 2008, pp.430-40). Sixteen member states have conducted membership referendums, and three prospective member states did, albeit with different outcomes (Croatia, Norway and Switzerland). Although membership referendums have only legal effects in the respective candidate country, treaty referendums have legal effects across all member states, as one rejecting outcome could stop the complete ratification process. Policy referendums are generally related to single issues in the respective member state (Massüger & Kuoni, 2011, p.132).

**Table 1: What are EU-referendums about and where did they take place?**

<i>Countries with &gt;1 referendum</i>	<i>Membership</i>	<i>Treaty ratification</i>	<i>Policy issue (Yes-No)</i>	<i>Number of referendums</i>
Switzerland	3	2	4	9
Ireland	1	8	-	9
Denmark	1	4	1	6
France	-	2	1	3
Norway	2	-	-	2
Sweden	1	-	1	2
Liechtenstein	2	-	-	2
Countries with 1 referendum	15 <sup>*2</sup>	3 <sup>**</sup>	1 <sup>***</sup>	19
<b>Total nr. of R.</b>	<b>25</b>	<b>19</b>	<b>8</b>	<b>52</b>

Almost half (25) of the total number of referendums was about Membership of the EC, EU or EEA. Nineteen referendums coped with Treaty ratification and the remaining eight referendums about specific policy issues, such as the accession to the Schengen or Euro area. Out of 52 referendums, three quarters -39- resulted in a Yes-vote, while 13 resulted in a No-vote. Most referendums took place in both Ireland and Switzerland, closely followed by Denmark. Compared to the other 23 states with referendums, we could label these three as countries having a typical ‘referendum culture’, which require a more thorough examination. The 25 ‘membership referendums’ dealt with the relatively simple question whether or not to join the EC/EU/EEA. Most ‘treaty referendums’ dealt with the Maastricht Treaty (4) and with the Constitutional Treaty (4). The three exceptions here were Spain, Luxembourg and the Netherland: all dealing with the Constitutional Treaty in 2005 (see Table 2). Further in this section, we will take a closer look at their respective institutional and constitutional configurations.

<sup>2</sup> \* Austria, Croatia, Czech Republic, Estonia, Finland, Hungary, Latvia, Lithuania, Malta, Poland, Romania, Slovakia, Slovenia, United Kingdom, Greenland  
<sup>\*\*</sup> Luxembourg, Spain, The Netherlands  
<sup>\*\*\*</sup> Italy

*Ireland* hold nine, constitutionally obligatory referendums: one on its accession to the EC and eight on treaty ratification, after it was forced to do so by its Supreme Court. The ratification process got struck twice: initially at the Nice and Lisbon Treaty. A second referendum on the issue had to overcome the deadlock and move the integration process forward.

*Switzerland* organised nine referendums. Membership referendums resulted in three rejections: about joining the EEA in 1992 and about whether or not the government should open EU-accession negotiations in 1997 and 2001. The first referendum took place in 1972 about the EC-EFTA Treaty, with a positive outcome. Another treaty regulating bilateral relations between the EU and Switzerland was carried in 2000. Along the last decade Switzerland finally held four policy referendums about the implementation of the Schengen and Dublin Agreements, twice related to the modified EU-rules about free movement of persons from CEECs and once about Cooperation with Eastern European States in general (Hobolt, 2009, p.8).

Also *Denmark* created a referendum tradition, albeit to a lesser extent than Ireland and Switzerland. After its accession referendum, Denmark had to organise a referendum on the SEA and the Maastricht and Amsterdam treaties, due to both legal and political constraints as explained in the next section. The Danish ratification of the Maastricht Treaty took two referendums as the Danish narrowly rejected the treaty in its first attempt. In 2000 the last Danish EU-referendum took place in which the participation in the single currency was rejected (Massüger & Kuoni, 2011, pp. 146-7).

## **1.2 Within which constitutional constraints were referendums organised?**

Why and when does representative government have a choice for an EU referendum? How is this regulated in the constitution? In order to make a suitable comparison, we have to argue which classification does fit best. As Hug and Tsebelis note, “Institutional provisions for referendums are increasingly being added to new constitutions (e.g. in Eastern Europe)” and “More and more important questions are being decided by referendums” (Hug & Tsebelis, 2002, p.465). The empirical literature on referendums often presents classifications of the institutions allowing citizens a direct say on policies, but is mostly disconnected from any theoretical framework. The majority of voters in a referendum issue can be considered as ‘veto players’ whose agreement is required for a change of the status quo (ibid., p.467).

### *Referendums and initiatives: controlled or uncontrolled*

Gallagher and Uleri distinguish in the first place between (*optional*) *referendums* and *initiatives*. The distinction between the referendum and the initiative is a central point in the analysis of the referendum phenomenon. Let us now compare these two. *Initiatives* are popular votes promoted by

petitions signed by a minimum number of voters. As such, an initiative is a request by the people to the representative government to submit a question to the voters as a whole, whilst a referendum could be initiated by the government or parliament itself. Consequently, we have *decision-promoting initiatives* (in case a certain number of voters sign a petition to put a popular initiative to the vote) and *decision-controlling initiatives* (in case a certain number of voters sign a petition to put a decision just taken to a *rejecting vote* or an implemented decision to a *abrogative vote*).

Governmentally called *referendums* are considered a '*controlled*' popular vote, as it is solely sponsored on the initiative of the government. In case the initiation is altogether outside the government's control, it is considered an '*uncontrolled*' referendum. Optional referendums may thus be promoted by agents such as the head of state or of government, the government as a whole (controlled), a majority or a minority of MPs, or a particular number of regional, cantonal or local assemblies (uncontrolled).

### *Mandatory or optional*

Referendums are either (constitutionally) prescribed or optional (and as such non-mandatory). There is a difference between the -constitutionally- prescribed referendum and the optional referendum. The former prescribes a mandatory vote, without any initial promoter of popular value. The vote must be called in order for a decision to be valid and enter into force. Some constitutions require referendums on changes to the constitutions themselves and other specific issues. The optional referendum implies that there is an actor (promoter) who begins the procedure for obtaining a popular vote on a determined 'object' or 'decision'. This could be the government, but does not have to be. Gallagher and Uleri finally came to a fourfold typology comprising of

1. decision-promoting initiative (popular initiative),
2. decision-controlling initiative (popular veto),
3. decision-promoting referendum (called by the government), and
4. decision-controlling referendum (called by the parliament); (Gallagher & Uleri, 1996, pp.7-11).

This typology, however, is decision-oriented and not actor-oriented, as done by Mueller (1993, quoted by Hug & Tsebelis, 2002, p.469), who distinguishes the:

1. constitutional mandatory referendum,
2. the government-initiated referendum,
3. the citizen initiated veto, and
4. the citizen initiative.<sup>3</sup>

Suksi added the criteria whether a referendum is required (mandatory) and whether voters are actively involved or not in triggering a referendum (ibid.). In the decision-making trajectory, the timing that public issue that may be put to the vote can be on four stages:

1. a decision that the executive or parliament intends to take;

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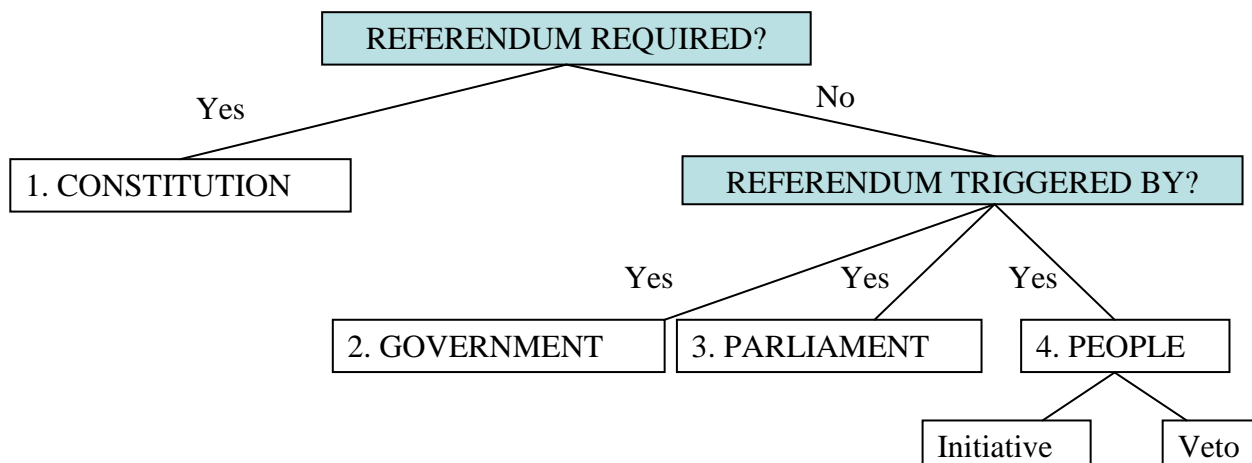
<sup>3</sup> Cf. also Butler and Ranney's almost identical classification of four basic types of referendums: 1) Government-controlled referendums; 2) Constitutionally required referendums; 3) Referendums by popular petitions: a vote made necessary by a petition from a stipulated percentage of voters; and 4) Popular referendums (also quoted by Gallagher & Uleri, 1996, pp.8-9).

2. a decision taken by the executive or parliament but which has not yet been implemented;
3. a decision which is already in force; or
4. a decision suggested by citizens themselves (popular initiative or popular veto).

In such a strategic context, it is of prime importance to know who triggers the referendum at what moment and who detains the agenda-setting power. We thus have to know who may trigger the process of a referendum and who is able to frame the question of the popular vote. These two questions are seldom pursued to their ultimate conclusions. “Stating these questions clearly and using them as the main criteria for a classification of different institutional provisions for referendums has the additional advantage of allowing theoretical claims on referendums to be easily tied into insights gained about representative democracy from veto player theory” (Hug & Tsebelis, 2002, pp.477-8). Having assessed the different conceptualisations above, we come to the following classification of four categories how referendums come about (see Figure 1):

- 1) Constitutionally mandatory referendums,
- 2) Referendums called by the government,
- 3) Referendums called by the parliament,
- 4) Referendums called by the people.

**Figure 1. EU-referendum trigger model** (based on Hug & Tsebelis, 2002)



As Hug and Tsebelis explain: If a subset of legislative veto players (one or more parties, or the government) can both trigger a referendum and ask the question, then this cancels out the remaining veto players in the political arena (other parties, government). By the popular initiative, citizens cancel out the powers of existing veto players, such as parliament and government (Hug & Tsebelis, 2002, pp. 469-90). Based on this model as elaborated in section 2, the 52 referendums can be classified according to Table 2. If a referendum is not required, it can be triggered by the government, the parliament or the people themselves.

**Table 2: How do referendums on European integration come about?**

Constitution	Government	Parliament	Popular initiative* / Popular veto
1. Ireland 1972	1. France 1972	1. Norway 1972	1. Switzerland 1997*
2. Ireland 1987	2. France 1992	2. Norway 1994	2. Switzerland 2000
3. Ireland 1992	3. France 2005	3. Greenland 1982	3. Switzerland 2001*
4. Ireland 1998	4. Switzerland 1972	4. Denmark 1993	4. Switzerland 2005a
5. Ireland 2001	5. Switzerland 1992	5. Liechtenstein 1992	5. Switzerland 2005b
6. Ireland 2002	6. United Kingdom 1975	6. Liechtenstein 1995	6. Switzerland 2006
7. Ireland 2008	7. Denmark 1986	7. Finland 1994	7. Switzerland 2009
8. Ireland 2009	8. Malta 2003	8. Sweden 1994	8. Italy 1989
9. Ireland 2012	9. Luxembourg 2005	9. Sweden 2003	
10. Denmark 1972	10. Spain 2005	10. Czech Republic 2003	
11. Denmark 1992		11. Poland 2003	
12. Denmark 1998		12. Slovenia 2003	
13. Denmark 2000		13. Slovakia 2003	
14. Austria 1994		14. Lithuania 2003	
15. Estonia 2003		15. The Netherlands 2005	
16. Hungary 2003			
17. Latvia 2003			
18. Romania 2003			
19. Croatia 2012			

We can already note that most referendums were constitutionally required. Somewhat less referendums were triggered by parliament, and the least number of referendums was initiated by the government or the people. Moreover, we can see that in referendums which took place in one country were triggered by differing categories. We also have to find out whether the outcomes of these referendums are binding or not. We expect this to be the case in constitutionally required referendums and in some cases at referendums called by the government, the people or the parliament.

## 2. The institutional context

Having unfolded the different types of referendums, we have to figure out in what situations countries found themselves confronted with EU referendums. The next paragraphs contain an inventory of all referendums on European integration from 1972 up to 2012, taking place in 26 countries, including the question which was put to the electorate and its legal base. We compare the referendums per category by which they were called: the constitution, the government, the parliament or the people. If suitable we do this per country, per topic, and in chronological order.

### 2.1 Constitutionally required referendums

Most countries have rules about referendums in their constitutions. However, this does not automatically mean that referendums on EU issues are required.

#### 2.1.1 Ireland

As the transfer of sovereign competences of the Irish parliament to the EC was not allowed according to the 1937 Constitution, amending the constitution was necessary. Constitutional Art. 46 prescribes that every proposal to amend the Constitution shall be submitted to the people, so a referendum was needed because the original two paragraphs of Art. 29(4) stipulated that the executive power was solely exercised by the government. In connection with its external relations it may only enter into ‘international cooperation in matters of common concern’, subject to certain conditions.

##### *1972 accession*

The Irish accession to the EC was regulated in the Third Amendment of the Constitutional Bill 1971, as adopted by the Irish parliament. It contained an additional third paragraph to Art. 29(4) in order to allow the state to become a member of the EC,<sup>4</sup> Especially the legal principles of supremacy and direct effect of EC law had to be adapted to these first two paragraphs of Art. 29(4). In this way, Ireland was authorised to ratify the accession treaty and constitutionally protected to implement laws and regulations which were necessary to fulfil its treaty obligations (Kaiser et al., 1995, pp. 132-3). The third paragraph was literally described on the official polling card circulated to each elector. It also included the purpose “to allow the State to become a member of the

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<sup>4</sup> **IE-Art. 29(4) 1°** The executive power of the State in or in connection with its external relations shall in accordance with Article 28 of this Constitution be exercised by or on the authority of the Government.

<sup>2°</sup> For the purpose of the exercise of any executive function of the State in or in connection with its external relations, the Government may to such extent and subject to such conditions, if any, as may be determined by law, avail of or adopt any organ, instrument, or method of procedure used or adopted for the like purpose by the members of any group or league of nations with which the State is or becomes associated for the purpose of international co-operation in matters of common concern.

<sup>3°</sup> The State may become a member of the European Coal and Steel Community, the European Economic Community and the European Atomic Energy Community. No provision of this Constitution invalidates laws enacted, acts done or measures adopted by the State necessitated by the obligations of membership of the Communities or prevents laws enacted, acts done or measures adopted by the Communities, or institutions thereof, from having the force of law in the State.



Communities commonly known as European Communities” which was prescribed by the Electoral (Amendment) Act 1972. Table 3 provides an overview of the EU referendums in Ireland and, although constitutionally mandatory, who initiates them.

**Table 3. Irish EU referendums**

Year Subject	Initiated by	Turnout %	% Yes	% No
1972 EEC Accession Treaty	Government preference	70,3	83,1	16,9
1987 Single European Act	Judicial intervention	43,9	69,9	30,1
1992 Maastricht Treaty	International imperative	57,3	69,1	30,9
1998 Amsterdam Treaty	International imperative	56,0	61,7	38,3
2001 Nice Treaty I	International imperative	35,0	46,1	53,9
2002 Nice Treaty II	Government preference	49,0	62,9	37,1
2008 Lisbon Treaty I*	International imperative	53,0	46,6	53,4
2009 Lisbon Treaty II*	Government preference	59,0	67,0	33,0
2012 Treaty on SCG of EMU*	International imperative	40,0	60,0	40,0

### *Treaty referendums*

After its accession referendum, Ireland held eight referendums on the ratification of treaties (see Tables 2 and 4): the Single European Act (SEA) and the Treaties of Maastricht, Amsterdam, Nice and Lisbon. The Irish citizens initially rejected the Nice and Lisbon treaties by a large majority, but finally the Irish electorate approved them in a second attempt. Ireland created its referendum tradition mostly due to a *Supreme Court* judgment in the *Crotty v. An Taoiseach* case in 1987. The Irish government agreed in 1986 to Treaty amendments of the Single European Act (SEA) on the assumption that this would not require a referendum but could be secured by a vote in the *Dáil* (lower house). The anti-integration campaigner Raymond Crotty challenged this assumption successfully at the Supreme Court as the Court ruled that a referendum was required when the essential scope and objectives of the EC were extended. According to the Court, this was the case as the SEA contained a transfer of sovereignty to an international organisation, particularly regarding the clause about European Political Cooperation. Ever since then, the ratification of the revised EU treaties was considered to require a constitutional amendment and therefore automatically an obligatory and binding referendum. The Supreme Court did not assess whether these subsequent treaties had already been covered by existing constitutional provisions (Massüger & Kuoni, 2011, p.147).

It set a precedent for new EU treaties that ratification of the SEA would not be compatible with the Constitution as it stood. Hence, also the Maastricht and Amsterdam Treaties were subject to referendums initiated by ‘international imperative’, which secured a safe majority until the process got stuck at Nice and Lisbon, on which the Irish citizens voted twice after a first rejection. However, the proposed texts on the official polling cards slightly changed at the second Nice and

Lisbon referendums in order to accommodate and appease domestic concerns.<sup>5</sup> Concerning the *Lisbon Treaty* of 2007, we have to keep in mind that it was a classical ‘reform treaty’ which was not supposed to reflect the failed Constitutional Treaty of 2004. Member state governments afraid of facing another negative referendum were denying this, but other European leaders had mostly domestic reasons to state that “the core is left”.<sup>6</sup> The last Irish referendum took place in 2012 and dealt with the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union, hastily drafted in 2011 in order to overcome the Euro's sovereign debt crisis. Notably, this time the treaty could already enter into force after ratification by 12 countries.

As we will see below compared to the Danish 'No' at Maastricht 1992, the Irish parliament did not have the option to circumvent a second referendum after the first failures at Nice and Lisbon. Moreover, it is striking to note that compared to the other referendums as we will see below, the Irish treaty referendums did not contain a short -easy grasping- question. The ballots all contained the complete text of the constitutional amendment, mostly adding (or modifying) a paragraph to Art. 29(4). Citizens could tick the Yes or No box on the ballot paper, if they (dis)approved the proposal.

### 2.1.2 Denmark

In contrast to Ireland, Denmark did not need to change its Constitution in order to become an EC member, as in §20(2) of the Constitutional Act was already laid down that the Danish government can cede part of its sovereignty to the EC without conflicting with the Danish constitution.<sup>7</sup> However, in order to proceed this path without a referendum a special five-sixth majority in the Danish parliament (*Folketing*) was required (Kaiser et al., 1995, pp. 133-4) as specified in §42.

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<sup>5</sup> At the Nice II referendum, an additional 9<sup>th</sup> clause was added to Art. 29(4) was added ensuring that the Irish State shall not adopt a decision taken by the European Council to establish a common defence. The Lisbon II referendum contained additional explanation and a rephrased text, albeit with the identical meaning.

<sup>6</sup> As said by Danish Prime Minister Anders Fogh Rasmussen, or “the substance is preserved (German chancellor Merkel). The French foreign minister Kouchner stated that “The Irish will be the first victim of a ‘No’ vote” (McMahon 2008); Giscard d’Estaing, president of the European Convention on the failed Constitutional Treaty: “The public will be led to adopt, without knowing it the proposals that we dare not present to them directly [...] All the earlier proposals will be in the new text, but will be hidden in some way”

<sup>7</sup> **DK-§20** (1). Powers that are granted to the authorities of the Kingdom under this Constitution may, by means of an Act and to a specific extent, be transferred to international authorities created by mutual agreement with other States to promote international legal order and cooperation.

(2). A majority of five-sixths of the Members of Parliament is required to pass Bills in this respect. If such a majority is not obtained, but the majority required to pass normal Bills is obtained, and the Government maintains the Bill, it is submitted to the parliamentary electors for approval or rejection in accordance with the rules established for referendums in Section 42.

**§42:** (1) Where a Bill has been passed by the Folketing, one-third of the members of the Folketing may, within three weekdays from the final passing of the Bill, request of the President that the Bill be submitted to a referendum. Such request shall be made in writing and signed by the members making the request. ...

(5) At the referendum votes shall be cast for or against the Bill. For the Bill to be rejected, a majority of the electors who vote and not less than thirty per cent of all persons who are entitled to vote, shall have voted against the Bill.

(6) ... Bills introduced for the purpose of discharging existing treaty obligations shall not be submitted to decision by referendum.

(7) ... Where, under the rules of sub-section (1), one-third of the members of the Folketing request a referendum on the Bill or on the Act to which the Royal Assent has been given, such referendum shall be held in accordance with the above rules. Where the Act is rejected by the referendum an announcement to that effect shall be made by the Prime Minister without undue delay, and not later than fourteen days after the referendum was held. From the date of such announcement the Act shall become ineffective.

(8) Rules for referenda, including the extent to which referenda shall be held in the Faroe Islands and in **Greenland**, shall be laid down by statute.

## Accession 1972

Denmark submitted its first application to join the EC since 1961. This happened while Denmark's main trading partner, Britain, also applied for membership. France, being very sceptical of British membership vetoed British membership twice in the 1960s. Eventually this situation ended with the succession of French president De Gaulle by president Pompidou. In this way, 12 years from Denmark's first application the country could finally enter the EC.<sup>8</sup>

In 1971 the Social Democrats, supported by Radical Liberals agreed that a decisive referendum should be held anyway, regardless of whether or not a bill was passed with a majority of five-sixths (150:179). Although a large majority in Parliament was in favour of membership, just 141 Members voted for and 34 voted against (Pedersen, 2012, p. 10). Therefore the special majority was not reached, a referendum was obligatory and required anyway in order to enable Danish accession. The issue that government and parliament put forward on the ballot was hence on 'the by the *Folketing* adopted bill on Denmark's accession to the European Communities'. Adoption required a simple majority of the votes cast. For rejection of the bill, however, the No-voters should at least contain 30% of the electorate as written in §42(5) of the Constitution. The Danish ministry of Justice was responsible for checking certain legal issues concerning the EC-accession.

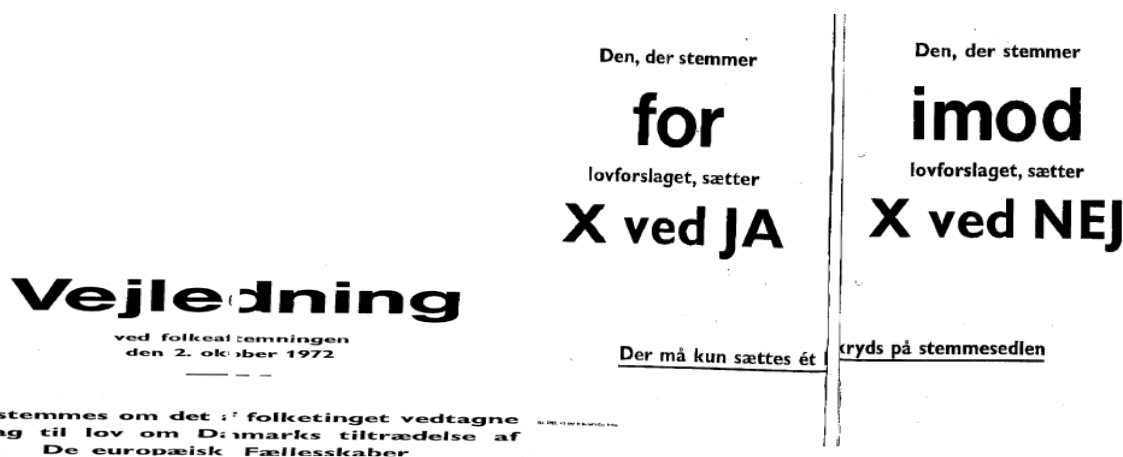


Figure 2: Voting ballot about the accession referendum of Denmark in 1972.<sup>9</sup>

## Maastricht 1992

Based on the broad political consensus the *Folketing* voted overwhelmingly (130 to 25) for the Maastricht Treaty, with only the leftist Socialist People's Party and the rightist Progress Party voting against. As this treaty contained a considerable transfer of national competences, the earlier mentioned Constitutional §20 required a referendum. The Danish ministry of Justice drafted a report on which areas this transfer would occur. Despite of the large parliamentary majority, the Danish voters rejected the treaty by a narrow majority of 50.3%. According to Petersen: "It belongs to the logic of a referendum that reasons for the vote are not given. Therefore the politicians had to

<sup>8</sup> *Folketinget* (2012). 'Danmark i EF': <http://www.eu-oplysningen.dk/dkeu/dk/afstemninger/afstemning/1972/>

<sup>9</sup> *Folketinget* (2012). 'Danmark i EF': <http://www.eu-oplysningen.dk/dkeu/dk/afstemninger/afstemning/1972/dokument/>

rely on opinion polls as well as the official arguments in order to determine, which aspects of Maastricht had been especially unpalatable to the public” (Petersen, 1998, pp.9-10). Normally, once a country rejects the ratification of a treaty by referendum, the treaty is ‘dead’. However, in this case the Danish started to renegotiate (see section 2.3.3). As Bogdanor states: “It may seem a paradox that the Single European Act, which could not have gained a majority in the *Folketing*, received a majority in the country, while Maastricht, which enjoyed the support of parties with 80 percent of the seats in the *Folketing* was rejected by the voters in 1992” (Bogdanor, 1994, p.72).

The basic condition for evading a referendum which entails a transfer of sovereignty is by obtaining a five-sixth majority of all members of the *Folketing*. This majority was obtained in 1993 after the first defeat on the Maastricht Treaty and subsequently on the Treaties of Nice and Lisbon. As Peterson notes, referendums have served the purpose of insulating the EU issue from domestic politics, thereby creating a special decision-making regime for EU affairs, especially in those parties which are internally divided over the EU (Petersen, 1998, p.4).

#### *Amsterdam 1998*

As the 1996 IGC approached, the government had to think of a strategy to ensure that the Maastricht debacle would not be repeated. It was aware that public opinion had to be taken into account from the very beginning of the IGC preparations. However, it was clear from the diverging positions in parliament that the necessary five-sixth majority would not be reached in order to avoid a referendum. The major opposing Socialist People’s Party was badly split and the new right-wing Danish People’s Party conducted a vigorous campaign against the Amsterdam Treaty. A Supreme Court ruling in April 1998 on a case started in 1993 about the constitutionality of the Maastricht Treaty finally limited the transfer of powers to such an extent that Denmark would remain an independent state. Against this background, an almost evenly large majority of 55% finally voted in favour at the referendum held in May 1998. In the meantime, the government had survived its early called elections (Petersen, 1998, pp. 24-29).

#### *EMU 2000*

Part of the National Compromise of 1992 was that a decision whether or not to join the Economic and Monetary Union would be taken later on. On 6 September 2000 the parliament adopted the bill empowering Denmark’s accession to the euro, but did not reach the required five-sixth majority in order to avoid a mandatory referendum, according to §20(2) of the Constitution (Massüger & Kuoni, 2011, p.152).

“Most of the political elites, including most parties in Parliament (representing over 80 percent of the electorate) as well as the incumbent Social-Democratic-led government and all the major newspapers were on the YES side. There were two visible anti-euro parties, however, and they benefited from the fact that public

opinion was almost equally divided on this issue from the time the campaign officially began in March 2000” (De Vreese, 2004, pp.46-7).

The vote took place on 28 September 2000 and resulted in a rejection by 53.1%. Denmark opted-out from the EMU.

### 2.1.3 Austria 1994

In order to become a Member of the European Union in 1995, Austria needed to change its Federal Constitution thoroughly because EU accession touched upon the central constitutional principle of democracy as well as federalism vis-à-vis the competences of the *Länder*. The Arts. 9(2) and 50 enable the conclusion of treaties, transferring sovereignty to intergovernmental organisations.<sup>10</sup> Besides a necessary two-thirds majority in the two houses of parliament, this so-called generally interpreted ‘total constitutional revision’ (*Gesamtänderung*) required a referendum, passed by simple majority according to Art. 44(3) of the Federal Constitution.<sup>11</sup> (Kaiser et al., 1995, p. 7). The question contained whether the bill of the National Council of 5 May 1994 on the Federal Constitutional Act about the Accession of Austria to the European Union should become law.<sup>12</sup> The act authorised the Federal Government in charge of its implementation. Two Federal Constitutional Laws (*Bundesverfassungsgesetze*) were drafted: one law *ex post* (after the approved referendum) to authorise the government and parliament to conclude the accession treaty as based on the negotiation outcome of April 1994<sup>13</sup>. This short act however did not specify what the negotiation outcome was. Another law transposed all necessary EU-specific provisions into the Federal Constitution and repealed the constitutional clauses about the former EEC and ECSC.<sup>14</sup> The specific organisation of the referendum itself is regulated in the 1972 Referendum Act.<sup>15</sup> On 12 June 1994, 66.6% of the Austrians voted in favour by a turnout of 82.3%.

### 2.1.4 CEECs' accession 2003-2012: Estonia, Hungary, Latvia, Romania and Croatia

As we will see in the section on parliamentary called referendums below, the conclusion of the accession negotiations of 13 countries in Central and Eastern Europe at the Copenhagen European Council in December 2002 led to a sequence of 11 countries holding referendums. In five cases, the

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<sup>10</sup> **AT-Art. 9(2)**. Legislation or a treaty requiring sanction in accordance with Art. 50(1) can transfer specific Federal competences to intergovernmental organizations and their authorities and can within the framework of international law regulate the activity of foreign states' agents inside Austria as well as the activity of Austrian agents abroad.

**Art. 50.** (1) Political treaties, and others in so far as their contents modify or complement existent laws and do not fall under Art. 16 para. 1, may only be concluded with sanction of the National Council. In so far as such treaties settle matters within the autonomous sphere of competence of the *Länder*, they require in addition the approval of the Federal Council [*Bundesrat*].

**Art. 16.** (1) In matters within their own sphere of competence the *Länder* can conclude treaties with states, or their constituent states, bordering on Austria.

<sup>11</sup> **Art. 44** (3) Any total revision of the Federal Constitution shall upon conclusion of the procedure pursuant to Art. 42 above but before its authentication by the Federal President be submitted to a referendum by the entire nation, whereas any partial revision requires this only if one third of the members of the National Council or the Federal Council so demands. ; **Art. 45.** (1) For a referendum the absolute majority of the validly cast votes is decisive.

<sup>12</sup> “*Soll der Gesetzesbeschluss des Nationalrates vom 5. Mai 1994 über das Bundesverfassungsgesetz über den Beitritt Österreichs zur Europäischen Union Gesetzeskraft erlangen?*”

<sup>13</sup> BGBl Nr. 744/1994: *Federal Constitutional Act on the Accession of Austria to the European Union*

<sup>14</sup> BGBl Nr. 1013/1994; *Bundesverfassungsgesetz von 1920 i.d.F.v. 1929*

<sup>15</sup> BGBl. Nr. 79/1973

constitution demanded to do so, in five other cases parliament did. Only one referendum -in Malta- was governmentally driven.

### *Hungary*

Because of the overriding importance of the issue of the accession to the EU, the present binding referendum and its date was ordered by the Constitution itself (Art. 79 at that time, particularly included by parliament in December 2002 and repealed in the meantime)<sup>16</sup>. This makes the Hungarian Constitution as one of the most dynamic legal documents in comparison to other European countries. The amendment needed two-thirds parliamentary support, effectively giving the main opposition party FIDESZ of Viktor Orbán a veto over the process. After having lost the local elections, FIDESZ signed a cross-party commitment to accession and to pass the required constitutional amendment by the end of 2002. The two sides eventually agreed to hold the referendum as late as possible before the treaty signing on 16 April.<sup>17</sup> Again, the constitutional obligation was deliberately provided by parliament whereas in other cases, a national referendum is ordered by the Parliament directly and its date is determined by the President of the Republic (Art. 30). Although only 45.6% of voters turned out to cast their ballots, the referendum was valid because the referendum regulation declares a referendum valid if 25%+1 of the electorate backs the outcome (Fowler, 2004, pp.624-40). This participation rate was the lowest among the accession countries. Officials in Hungary were left wondering why the turnout was so low despite the massive 'yes' campaign in the run-up to the ballot. It remained well below the 70% the government had hoped for” (RTÉ News, 2003). Nevertheless, a large majority of 83.8% of the votes cast was in favour.

### *Estonia*

Of the eight candidate member states, Estonia was one of the last to hold its accession referendum in September 2003 due to fears that high levels of Euroscepticism might endanger the result. “Indeed, in spring 2001, public opinion polls had shown that a majority of Estonians were against joining the EU, although these numbers improved over the course of 2002 and 2003” (Pettai, 2004, p.997). Although referendums are not required on matters such as EU accession according to the Estonian Constitution, constitutional amendments had to be introduced to accommodate EU membership. Particularly the changes in Art. 3 required popular approval by referendum. Indirectly, a referendum was thus constitutionally required. On 18 December 2002 the parliament passed the

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<sup>16</sup> **HU-Art. 79.** A binding referendum shall be held on the accession of the Republic of Hungary to the European Union pursuant to the Accession Treaty. The date of this referendum shall be 12 April 2003. The question to be put in the referendum shall be: “Do you agree that the Republic of Hungary should become a Member of the European Union?”

<sup>17</sup> Three days had to be left for all possible legal procedures and the government wanted formal post-referendum parliamentary authorisation to sign the treaty.

resolution to hold a referendum on 14 September 2003 and submitted the draft act to the referendum, based on §162 of the Constitution.<sup>18</sup> A political promise to hold a referendum had already been reached and the main discussion focused on the timing and wording of the question. Finally, parliament compromised that the referendum question should consist of two questions which had to be answered at once: “Are you in favour of accession to the European Union and passage of the Act on Amendments to the Constitution of the Republic of Estonia?” (Mikkel, 2004, p.5). Eventually 66.8% voted in favour. The turnout was 64%.

### *Latvia*

In Latvia, the referendum question was more straightforward: “Do you support membership for Latvia in the European Union?” The Latvian parliament passed amendments to the constitution as this did not authorise referendums on international matters<sup>19</sup>. Salient feature was that the outcome of the referendum would only be valid if at least 50% of those who voted at the last national election turned out to vote. The timing of the referendum was deliberate on the part of the Latvian government, which thereby hoped to strengthen arguments about Latvia not becoming ‘isolated’ and so tip the balance of public opinion, which had remained divided over recent years. Opting for the date of 20 September 2003, within a week after the Estonian referendum (14 September), gave a key influence to the outcome in Latvia. In the end, a turnout of 73% and a Yes-vote of 67% preserved Latvia’s entering in the EU (Mikkel & Pridham, 2004, p.730).

### *Romania 2003*

Although Romania’s accession was suspended to 2007, the country organised its referendum by adopting a special law to revise the constitution in October 2003, particularly to add Art. 148.<sup>20</sup> Such revision is provided for in -currently- Arts. 150 and 151 (ex 146 and 147), to which parliament can decide accordingly on approval by referendum on a proposal of the government.<sup>21</sup> Subsequently, the final EU accession had to be approved by a two-thirds majority in a joint sitting

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<sup>18</sup> **EE§ 1.** On the basis of the fundamental principles of the Constitution of the Republic of Estonia, Estonia may belong to the European Union.  
**§ 2.** When Estonia belongs to the European Union, the Constitution of the Republic of Estonia shall be applied with due regard to the rights and duties arising from the Accession Treaty.  
**§ 3.** The present Act may only be amended by referendum.

**§ 4.** The present Act enters into force three months from the date of proclamation. <http://www.vvk.ee/varasemad/?v=rh03>

<sup>19</sup> Cf. **LV-Art. 79:** An amendment to the Constitution submitted for national referendum shall be deemed adopted if at least half of the electorate has voted in favour. A draft law, decision regarding membership of Latvia in the European Union or substantial changes in the terms regarding such membership submitted for national referendum shall be deemed adopted if the number of voters is at least half of the number of electors as participated in the previous *Saeima* election and if the majority has voted in favour of the draft law, membership of Latvia in the European Union or substantial changes in the terms regarding such membership.

<sup>20</sup> Law for the revision of the Constitution of Romania, No. 429/2003: **RO-Art. 148(1)** “Romania’s accession to the constituent treaties of the European Union, with a view to transferring certain powers to community institutions, as well as to exercising in common with the other member states the abilities stipulated in such treaties, shall be carried out by means of a law adopted in the joint sitting of the Chamber of Deputies and the Senate, with a majority of two thirds of the number of deputies and senators.”

<sup>21</sup> **RO-Art. 150(1)** Revision of the Constitution may be initiated by the President of Romania on proposal of the Government, by at least one quarter of the number of Deputies or Senators, as well as by at least 500,000 citizens with the right to vote.  
**Art. 151(1)** The draft or proposal of revision must be adopted by the Chamber of Deputies and the Senate, by a majority of at least two thirds of the members of each Chamber. (3) The revision shall be final after approval by a referendum held within thirty days at the most from the date of passing the draft or proposal of revision.

of the Romanian parliament (Massüger & Kuoni, 2011, p.145). The law was approved on 18-19 October by an overwhelming majority of 89% with a turnout of 56%.

### *Croatia*

Croatia is supposed to join the EU in 2013 as second Balkan state after Slovenia, as soon as all EU member states have ratified its accession treaty, as negotiated by the Croatian government between 2005 and 2011. The treaty was signed on the margins of the 9 December 2011 European Council. However, before accession could take place, a referendum was constitutionally prescribed by Art. 142 of the Constitution because some constitutional provisions had to be amended. It thus remained a constitutional obligation for Croatia to hold a referendum.<sup>22</sup> Moreover -current- Art. 149 prescribes that the decision to amend the Constitution shall be made by a two-thirds majority of MPs. The also newly elected parliament called on 23 December 2011 for a referendum to take place on 22 January 2012. It defined the referendum question as: “Are you in favour of the Republic of Croatia’s European Union membership?” Two-third of the voters approved membership, while the turnout was 43% (Čović, 2012, pp.5-6).



*Figure 3: Croatian European Union Membership Referendum Ballot 2012.*

## **2.2 Governmentally called referendums**

The second category of referendums in this taxonomy is about referendums initiated by the government. Mostly this is the case if a government want to have its policy proposal confirmed by a public vote.

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<sup>22</sup> **HR-Art. 142** “A procedure entailing the association of the Republic of Croatia into alliances with other states may be initiated by at least one-third of the deputies of the Croatian Parliament, the President of the Republic and the Government of the Republic of the Croatia... Any association of the Republic of Croatia shall first be decided upon by the Croatian Parliament by a two-thirds majority of all deputies. Any decision concerning the association of the Republic of Croatia shall be made in a referendum by a majority vote of all voters voting in the referendum. Such a referendum shall be held within 30 days from the date on which the decision has been passed by the Croatian Parliament”...



### 2.2.1 Switzerland

The Swiss Federal Constitution of 1874<sup>23</sup> regulated in Art. 89 that irredeemable or indefinite agreements or those agreements providing membership of international organisations are subject to a *facultative* referendum, as it *can* be called by 30.000 people entitled to vote or eight cantons.

Since 1977, the Constitution distinguished between a mandatory (Art. 89(5)) and a facultative (Art. 89(3) and (4)) referendum about international treaties.

#### *1972 EC accession*

Although the EC-EFTA Treaty did not fall under this Art. 89-provision, the Federal government (*Bundesrat*) argued that a Treaty without an explicit legal base and based on common law could be subject to a referendum, preconditioned by the fact that the Treaty implied ‘heavy changes of the state’s structure’ or Swiss foreign policy. Although these criteria did not apply to the treaty, the Federal government decided to make its approval to the treaty subject to a mandatory referendum because of factual and political reasons. The Federal parliament (*Bundesversammlung*) followed this argument in October 1972 (Massüger & Kuoni, 2011, p.134).

#### *1992 EEA accession*

In 1992 the Swiss federal government had negotiated to become part of the newly established European Economic Area. The EEA-Agreement fell under Art. 89(3c) of the Constitution – adherence to an international organisation– and therefore was subject to a *facultative* referendum. However, the Federal parliament decided on proposal of the Federal government, that a mandatory referendum was to be organised due to the political and economic significance of the agreement. An explicit constitutional base for this procedure was not provided (Massüger & Kuoni, 2011, p.136). The EEA was perceived as a stepping stone on the way to membership of the EU. The proposal was narrowly rejected by 50.3%.

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<sup>23</sup> CH-Constitution 1874 (in force until 1977) Art. 89 [as amended in 1920]

- (1) Federal law and federal decrees must be approved by both Councils
- (2) Federal laws and generally binding federal decrees must be submitted to the people for approval or rejection if 30,000 Swiss citizens entitled to vote or eight Cantons so demand.
- (3) Treaties with foreign countries, which are open-ended or concluded for a period of more than fifteen years, should also be submitted to the people for approval or rejection, if 30,000 Swiss citizens entitled to vote or eight Cantons so demand.

**From 1977-1999:** [http://www.servat.unibe.ch/icl/sz01000\\_.html](http://www.servat.unibe.ch/icl/sz01000_.html)

- (2) ...50,000 Swiss citizens entitled to vote or eight Cantons so demand.
- (3) Paragraph (2) shall be applicable also to international treaties which:
  - a) are of unspecified duration and cannot be denounced;
  - b) provide for adherence to an international organization;
  - c) entail a multilateral unification of the law.
- (4) By a decision of both Houses Paragraph (2) shall be applicable to other treaties.
- (5) Adherence to collective security organizations or to supranational bodies shall be submitted to the vote of the people and the Cantons.

### 2.2.2 United Kingdom 1975

In the tradition of parliamentary sovereignty it is up to the British House of Commons to decide whether to organise consultative referendums. In April 1975, the Commons discussed the Referendum Act on which the people had to decide whether or not to stay in the EC, although the UK had acceded already in 1973. After a three-day debate on the Government's recommendation to continue British EC membership, the Act was adopted by 396 to 170 votes by the Commons and later that month by the Lords by 261 votes to 20. This was the result of Labour's return to government with Prime Minister Wilson. The Labour manifesto of February 1974 committed the new Labour Government to provide a referendum on whether Britain should stay in the Common Market on renegotiated terms, or leave the EC. In December 1974, the European Council agreed to new terms for the UK which were concluded in March 1975. A White Paper had announced the referendum already in February, based on the outcome of the renegotiation. The referendum held in June 1975 was not directly related to the White Paper but contained a much broader question: "Do you think the UK should stay in the European Community (Common Market)?" Two-thirds of the British voters answered this in the affirmative on a 65% turnout. Britain could stay in the EC (Gay & Miller, 2013, pp.10-11). Recently, the Tories tabled a so-called Private Member's bill in order to organise a second EU 'in or out' referendum by 2017 – irrespectively whether the UK will be part of a new EU treaty framework or not. It is unclear how this process will end: there are no signs of a new EU treaty framework yet, it is uncertain which majority coalition will govern the UK then and currently the EU referendum is not part of the coalition agreement between the Tories and Liberal Democrats.

### 2.2.2 Denmark 1986

In contrast to the Danish EC accession, the ratification of the Single European Act was not considering transfers of national sovereignty and therefore, parliamentary ratification sufficed according to §19(1) of the Constitution<sup>24</sup> and not an obligatory referendum according to §20 (Rideau, 1997, p.89). However, the ratification of the Single European Act failed in Parliament by a opposing coalition of Social Democrats, Social Liberals and left-wing parties. They were against more power for the European Parliament and against qualified majority voting in the Council and argued that the EU would have too much influence on social and environmental issues in Denmark. The Radicals opposed particularly because that foreign policy referred to in the treaty by means of European Political Cooperation (*Folketinget*, 2006). In order to escape this defeat, to prevent parliamentary elections and to resolve parliamentary deadlock, the Government called for an

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<sup>24</sup> **DK-§19(1)**: "The King shall act on behalf of the Kingdom in international affairs. However, without the consent of Parliament, he may not undertake any action that increases or decreases the area of the Kingdom, or enter into any obligation, for the fulfilment of which the participation of Parliament is necessary, or which is of major importance in some other way. Nor, without the consent of Parliament, can the King terminate any international agreement entered into with the consent of Parliament." <https://www.retsinformation.dk/Forms/R0710.aspx?id=112782>

advisory referendum on the so-called 'EC package'. The government succeeded in capturing the agenda with its argument that Denmark's very membership in the EC, and not just the SEA, was at stake (Petersen, 1998, pp.4-6). The parliament decided correspondingly and the Danish people approved the referendum proposal by 56.2%, which was respected in turn by parliament (Massüger & Kuoni, 2011, p.144).

#### **2.2.4 Malta 2003**

The Maltese accession did not require constitutional amendments and hence a referendum was not necessary. Nevertheless, the government wanted a referendum based on the Referenda Act of 1973 (Massüger & Kuoni, 2011, p.140). Although the accession referendum was formally consultative, it was *de facto* binding on the incumbent government. The Maltese Government announced the referendum question<sup>25</sup> and the referendum date in January 2003, being on 8 March 2003. It was the first in a row of the EU's accession countries and it was the only accession country in which the government decided whether or not to hold a referendum. The Maltese public opinion was probably the most divided over the issue compared to other candidate countries. Notably, the local elections would take place on the same day of the referendum. The incumbent PN party sought an election victory, but the Prime Minister decided that the referendum should come first<sup>26</sup>. The outcome remained unsure to the last minute. Finally, 53.6% of the voters approved Maltese EU membership by an extremely high turnout of more than 90% - although turnout for general elections has also been at comparable levels, since Maltese politics is polarised, partisan and a lot of governmental power is at stake each time (Cini, 2004, p. 588-93).

#### **2.2.5 France 1972 and 1992**

*France* was the first country ever to organise a referendum on European integration. However, it was not about its own membership or treaty ratification, but a policy referendum on the first EC's so-called Western Enlargement. According to Art. 11, bills authorising the ratification of international treaties could be put to the vote, as long as these treaties are in conformity with the constitution (Kaiser et al., 1995, p. 148). The French 1972 poll was therefore rather a policy referendum than a membership referendum, authorising the French president by law to ratify the accession treaties of Ireland, Denmark, Norway and the United Kingdom to the EC. It was issued on a presidential decree, recommended by the government, to put a government bill (*projet de loi*) to the vote, as announced in the French national assembly. President Pompidou had the discretion to

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<sup>25</sup> 'Do you agree that Malta should become a member of the European Union in the enlargement that is to take place on the 1<sup>st</sup> May 2004?' (Cini, 2004, p.588).

<sup>26</sup> The election was called the day after the referendum result was announced. It took place on 12 April 2003 (Cini, 2004, p.599).

do so regarding the French Constitution.<sup>27</sup> Question is, however, whether this accession treaty really would affect the functioning of the institutions. The president put himself central in the referendum question: “Do you approve, in the new perspectives that open up in Europe, the bill submitted to the French people by the President of the Republic, and authorizing the ratification of the Treaty concerning the accession of Britain, Denmark, Ireland and Norway to the European Communities?” The accession of these four countries was carried by a large, two-thirds majority. Ironically enough, the French population voted in favour of Norwegian EC membership in spring 1972, although the Norwegians themselves narrowly rejected this barely a month later.

Like in 1972, the referendum on the Maastricht Treaty in 1992 was based on Art. 11 of the Constitution. The president took the initiative, as can be recognized in the question: “Do you approve the bill submitted to the French people by the President authorizing the ratification of the Treaty on European Union?” However, as it was not clear whether this treaty complied with the French Constitution, the Constitutional Council had to review the treaty. The Council concluded that some treaty provisions were incompatible and consequently demanded that the Constitution was revised, according to Art. 89.<sup>28</sup> However, besides the consent of both the National Assembly and the Senate, a constitutional revision requires a confirmation by referendum, unless the President decides that the referendum is to be abstained and compensated by a three-fifths approval of the National Assembly. As the latter procedure was followed, the referendum remained to be based on Art. 11 (Massüger & Kuoni, 2011, p.147-8). In May 1992, president Mitterrand indicated that the text was not negotiable. After a heated campaign, not the least due to the Danish No in June, the French vote resulted in the *petit oui* of 50.1% in September. The Maastricht Treaty was still alive.

### 2.2.6 The Constitutional Treaty: Spain, France and Luxembourg

Spain organised a its first EU referendum ever on the Constitutional Treaty. The Spanish Zapatero-government decided to call the first referendum on the European Constitution for 20 February as part of its foreign policy (Delgado & Lopez Nieto, 2006, pp.1266-7). Although the Constitutional Court concluded that the European Constitution could be ratified by a simple law and that the

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<sup>27</sup> *Journal Officiel de la République Française du 6 avril 1972*: Constitutional Arts. 3, 11, 19, 52, 53 and 60: “The President of the Republic is authorised to ratify the treaty concerning the accession to the EEC and Euratom of the Kingdom of Denmark, Ireland, the Kingdom of Norway and the United Kingdom of Great Britain and Northern Ireland, signed in Brussels on 22 January 1972.”

**F-Art. 11.** The President of the Republic may, on a recommendation from the Government when Parliament is in session, or on a joint motion of the two Houses, published in the *Journal Officiel*, submit to a referendum any Government Bill which ...provides for authorization to ratify a treaty which, although not contrary to the Constitution, would affect the functioning of the institutions. Where the referendum is held on the recommendation of the Government, the latter shall make a statement before each House and the same shall be followed by a debate.

**Art. 52.** The President of the Republic shall negotiate and ratify treaties.

**Art. 53.** Peace Treaties, Trade agreements, treaties or agreements relating to international organization [...] may be ratified or approved only by an Act of Parliament. They shall not take effect until such ratification or approval has been secured...

**Art. 60.** The Constitutional Council shall ensure the proper conduct of referendum proceedings as provided for in articles 11 and 89 and in Title XV and shall proclaim the results of the referendum.

<sup>28</sup> **F-Art. 89.** The President of the Republic, on the recommendation of the Prime Minister, and Members of Parliament alike shall have the right to initiate amendments to the Constitution. A Government or a Private Member’s Bill to amend the Constitution must be considered within the time limits set down in the third paragraph of article 42 and be passed by the two Houses in identical terms. The amendment shall take effect after approval by referendum. However, a Government Bill to amend the Constitution shall not be submitted to referendum where the President of the Republic decides to submit it to Parliament convened in Congress; the Government Bill to amend the Constitution shall then be approved only if it is passed by a three-fifths majority of the votes cast.

transfer of competences was in compliance with Art. 93 of the Spanish Constitution. Hence, a Constitutional revision by referendum, as provided for in Arts. 167(3) or 168(3) was not necessary. Therefore the consultative referendum was based on Art. 92(1) as issue of special importance.<sup>29</sup> It is common practice that the subject of such referendums is based on a simple political question, as it was phrased: “Do you give your consent to the Treaty establishing a Constitution for Europe?” (Massüger & Kuoni, 2011, p.149). In February 2005, the Spanish voters largely supported the European Constitution by 77%, although the turnout was only 41.8%.

The *French* referendum on the Constitutional Treaty in May 2005 resembled the same procedure as the Maastricht Treaty in 1992, with two differences: the president was not explicitly mentioned in the question<sup>30</sup> and the result was negative this time. President Chirac decided in July 2004 to submit the Constitutional Treaty to a referendum. This was one month after the treaty had been adopted by the European Council, when he declared that “the French people are directly concerned and will be directly consulted”. Chirac’s original intention had been for the constitution to be ratified by parliament, but two factors contributed to his change of mind. In the first place, public opinion was strongly in favour of a direct consultation. A poll taken in April 2004 indicated that 74% of the French wanted ratification by referendum. The other reason was that Chirac’s rival for the presidency elections in 2007, Nicolas Sarkozy, strongly pleaded for a referendum. (Marthaler, 2006, pp.2-3). Moreover, after British Prime Minister Tony Blair had announced a referendum, Chirac could no longer resist the pressure. However, 54.9% voted against the Constitutional Treaty in May 2005. “The result of the referendum was a shock for President Chirac, who suffered a grave loss of credibility and an important decrease in his popularity: in June 2005, only 24 per cent of the French public were confident in his ability to rule France” (Ysmal, 2006, pp.1106-09).

Already in June 2003, the *Luxembourg* government had decided to make the future European Constitution subject to a referendum, based on Art. 51(7) and the modified Art. 114 of the Luxembourg Constitution<sup>31</sup>. The new government agreement (CSV-LSAP) confirmed this decision

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<sup>29</sup> **ES-Art. 92 1.** Political decisions of special importance may be submitted to all citizens in a consultative referendum.

2. The referendum shall be called by the King at the proposal of the President of the Government, following authorisation by the Congress of Deputies.

3. An organic law shall regulate the terms and procedures for the different kinds of referendum provided for in this Constitution.

**Art. 93** By means of an organic law, authorisation may be granted for concluding treaties by which powers derived from the Constitution shall be vested in an international organisation or institution. It is incumbent on the Cortes Generales or the Government, as the case may be, to guarantee compliance with these treaties and with the resolutions emanating from the international and supranational organisations in which the powers have been vested.

<sup>30</sup> “Do you approve the bill authorizing the ratification of the Treaty establishing a Constitution for Europe?”

<sup>31</sup> **LU-Art. 51(7):** The electors may be requested to pronounce themselves by way of a referendum in cases and under conditions to be determined by law.

**Art. 114.** *Toute révision de la Constitution doit être adoptée dans les mêmes termes par la Chambre des députés en deux votes successifs, séparés par un intervalle d’au moins trois mois.*

*Nulle révision ne sera adoptée si elle ne réunit au moins les deux tiers des suffrages des membres de la Chambre, les votes par procuration n’étant pas admis.*

*Le texte adopté en première lecture par la Chambre des députés est soumis à un référendum, qui se substitue au second vote de la Chambre, si dans les deux mois suivant le premier vote demande en est faite soit par plus d’un quart des membres de la Chambre, soit par vingt-cinq mille électeurs inscrits sur les listes électorales pour les élections législatives. La révision n’est adoptée que si elle recueille la majorité des suffrages valablement exprimés. La loi règle les modalités d’organisation du référendum.* (as revised by 19 December 2003).

in the summer of 2004, and decided in November 2004 that the date of this referendum would be 10 July 2005. Consequently, the parliament adopted a framework law enabling the adoption of another law about the organisation of the referendum, noting that the second vote in Parliament had not taken place.<sup>32</sup> The latter law had determined the date and question, being “Are you in favour of the Treaty establishing a Constitution for Europe, signed in Rome on 29 October 2004?”

Despite of the French defeat, Luxembourg put through its referendum, only a couple of weeks after the end of Luxembourg’s presidency of the Council of the EU. The June 2005 European Council was marked by the ‘reflection pause’ of the ratification process: a decision that the ratification process should continue; the treaty was not renegotiable. Prime Minister Juncker implicitly suggested his parliament to postpone the referendum, however the Chamber decided to let the process continue as planned and confirmed that the referendum would be held on 10 July. The Chamber approved the treaty in its first reading on 28 June. The referendum was consultative in nature but the parliament agreed on 8 June 2005 to abide by the people’s majority vote. Juncker had said he would resign if the poll resulted in a No vote. After an intense campaign, and as under Luxembourg law voting is compulsory, 91.9% turned out to vote of which 56.5% voted in favour of the text (Dumont & Poirier, 2006, pp.1184-92).

## 2.3 Parliamentary called referendums

Besides the constitutional obligations and the deliberate choice of governments to call for popular votes, many national parliaments have initiated EU-referendums although they were not strictly necessary. Most of these were accession referendums, and only a few about treaty or policy issues.

### 2.3.1 Norway 1972 and 1994

In contrast to the constitutionally mandatory referendums Ireland and Denmark, there are no constitutional rules in Norway about referendums. Art. 93 of the Constitution<sup>33</sup> only regulates that a three-quarters parliamentary majority (with two-thirds of its members present) could decide about a transfer of national competences to an international organisation (Kaiser et al., 1995, p.133). Hence the control of the instrument is entirely in the hands of its parliament, the *Storting*, which does not only decide whether to hold a referendum, but also the details of its implementation – and in strict

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<sup>32</sup> *Loi du 4 février 2005 relative au référendum au niveau national, Mémorial A – No. 27 du 3.3.2005;*

*Loi du 14 avril 2005 portant organisation d’un référendum national sur le Traité établissant une Constitution pour l’Europe, signé à Rome, le 29 octobre 2004, Mémorial A – No. 48 du 18.4.2005.*

<sup>33</sup> **NO-Art. 93:** In order to safeguard international peace and security or to promote the international rule of law and cooperation, the Storting may, by a three-fourths majority, consent that an international organisation to which Norway belongs or will belong shall have the right, within specified fields, to exercise powers which in accordance with this Constitution are normally vested in the authorities of the State, although not the power to alter this Constitution. For the Storting to grant such consent, at least two thirds of its Members shall be present, as required for proceedings for amending the Constitution.

The provisions of this Article do not apply in cases of membership in an international organisation whose decisions only have application for Norway exclusively under international law.

constitutional terms: whether or not to accept the voters' advice (Gallagher & Uleri, 1996, p. 139). On 21 April 1972 the *Storting* decided according to Law Nr. 20 to organise a consultative referendum of which the outcome, however, would be respected. The question posed by parliament to the Norwegian people in September 1972 was hence simply "Should Norway join the European Community"?<sup>34</sup> The timing was deliberately chosen by parliament, as the referendum would take place after those in Ireland and the UK in order to maximize chances for approval. (The Danish referendum would take place in October.) Over the preceding decades, Norway had generally followed Britain's lead in relations with the European continent. The *Storting* overwhelmingly reaffirmed its commitment to accession negotiations in 1970, but by 1971 the membership issue had become so divisive for the non-socialist coalition government, that it was forced to hand over power to a minority Labour government which should conclude negotiations and lead the nation into the EC, although it was internally divided over the issue. However, the efforts did not help enough as 53.5% rejected EC membership (Nelsen, 1991, pp.2-6).

The same procedure was repeated in 1994 in the framework of the so-called Nordic enlargement round together with Sweden, Finland and Austria. One important difference with 1972 was that in 1994 the historical context predetermined the debate. The Labour government had applied for membership of the EU in November 1992, and the issue had played a major role during the campaign for the general election of September 1993. In March 1994 the government reached an agreement with the EU on the membership conditions. The *Storting* adopted a law in June 1994 to join the European Union after the conclusion of the accession negotiations in order to hold a consultative referendum (Massüger & Kuoni, 2011, p.137). It was deliberately chosen as the last-in-a-row referendum after those in Austria, Sweden and Finland. The question was as simple as in 1972: "Should Norway join the European Union?". However, again this was not enough: in November 1994, 52.3% of the Norwegians rejected the accession, almost the same percentage as in 1972.

### **2.3.2 Greenland 1982**

Greenland had become a member of the EC when Denmark joined the EC in 1973, although a majority of 71% Greenland's citizens had voted against EC membership. The overall positive result in Denmark led, according to the former constitutional status of the island, to Greenland's provisional accession. The Greenlandic Home Rule Act of 1978 enabled a separate decision about Greenland's EC membership. However, this Act did not contain any regulations about referendums and until 1988, Greenland was still subject to the Danish Constitution, meaning that the issue had to

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<sup>34</sup> Historisk Statistikk 1994: 24. og 25. september 1972 - "ja" eller "nei" til spørsmålet "Bør Norge bli medlem av De Europeiske Fellesskap?": <http://www.ssb.no/a/histstat/tabeller/kap25.html>

be solved by law<sup>35</sup> – which finally did not occur. However, after the Eurosceptical Siumut had won the elections in 1979, the Parliament of Greenland agreed in the spring of 1981 to hold a consultative referendum on the continued membership, albeit with an unclear legal base (Massüger & Kuoni, 2011, p.135). As a result of the referendum in February 1982, a 53% majority opted to leave the Community by 1 February 1985. The turnout was 74.9%. On its withdrawal from the Community, Greenland obtained special fisheries arrangements with the EC and is included as one of the so-called Overseas Countries and Territories enjoying association arrangements with the current European Union (*Folketingets EU-Oplysning*, 2013).

### 2.3.3 Denmark 1993

After the narrow Danish No on the Maastricht Treaty in 1992, subsequently, the Danish political parties constituted the so-called ‘National Compromise’ demanding exemptions on the issues of common foreign policy and common defence, common currency, supranational decision-making on Justice and Home Affairs and union citizenship. The Danish government demands were accepted during the Edinburgh European Council. In return Denmark promised not to prevent the other members from extending their cooperation in the exempted areas (Petersen, 1998, p.10-11). Though the National Compromise (supported by all political parties) would easily reach the five-sixth majority requirement and thereby circumvent the mandatory referendum of §20 of the Constitution, political agreement determined otherwise. Therefore, the new framework was presented in another referendum in May 1993, based on §42(6) and a special law.<sup>36</sup> Although foreign policy matters and acts for the implementation of treaty obligations cannot be put to a referendum, some foreign policy matters *can* be submitted to a referendum if a majority of Parliament so decides based on an Act passed under §19 (on foreign policy matters). Parliament must first pass an Act to the effect that the resolution must be submitted to a referendum. This option was used for the first time with this referendum, although it was contested whether parliament justifiably applied (Pedersen, 2012, pp. 23-4). Finally the Danish voters ratified the Maastricht-Edinburgh compromise by a significant majority of 56%.

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<sup>35</sup> **DK-Art. 42(8)** Detailed rules on referendums, including the extent to which they are to take place in the Faeroe Islands and in Greenland, are established by an Act.

<sup>36</sup> **DK-Art. 42** (1) Where a Bill has been passed by the Folketing, one-third of the members of the Folketing may, within three weekdays from the final passing of the Bill, request of the President that the Bill be submitted to a referendum (...)

(3) Where a referendum on a Bill has been requested the Folketing may, within a period of five weekdays from the final passing of the Bill, resolve that the Bill shall be withdrawn.

(4) Where the Folketing has made no resolution in accordance with sub-section (3), notice that the Bill is to be submitted to a referendum shall be given without delay to the Prime Minister, who shall then cause the Bill to be published together with a statement that a referendum is to be held. The referendum shall be held, in accordance with the decision of the Prime Minister, not less than twelve and not more than eighteen weekdays after the publication of the Bill.

(5) At the referendum votes shall be cast for or against the Bill. For the Bill to be rejected, a majority of the electors who vote and not less than thirty per cent of all persons who are entitled to vote, shall have voted against the Bill.

(6) ... Acts for the implementation of existing treaty obligations cannot be the subject of referendums. The same applies to Bills for the Acts discussed in Sections 8, 9, 10 and 11 and any resolutions stated in **Art. 19** which may be in statutory form unless it is decided by a special Act that such a referendum is to take place for the latter...

(8) Rules for referenda (...) shall be laid down by statute.



### 2.3.4 The Netherlands 2005

Besides the second Danish referendum on the Maastricht Treaty, the Netherlands has been the only other country so far in which parliament pushed through a referendum on EU-treaty ratification. The Dutch Constitution does not provide for referendums and therefore a legal base for a consultative referendum on the Constitutional Treaty had to be created by law first. Although the Christian-democratic-Liberal government did not support the parliamentary referendum initiative, it would implement it and respect its outcome. Moreover, the Dutch government had signed the Constitutional Treaty in Rome on 29 October 2004 and committed itself to the ratification process. After a first proposal for a consultative referendum on the eventual outcome of the European Convention made by opposition Labour MP Timmermans had failed in 2002 a new motion of Green, Labour and Social-Liberal MPs was adopted.<sup>37</sup> Their tripartite proposal was not guaranteed of securing a parliamentary majority. It was the Liberal party (VVD) which held the key and lent decisive support to the referendum proposal in both the Second and First Chamber, although this took them until February 2005 – four months before the referendum was scheduled. Though the Dutch Constitution does not contain a legislative prohibition for non-binding referendums, its usage requires a special justification. The Council of State provided in its advice that the European Constitution had to contain constitutional elements to justify such a referendum.<sup>38</sup> The general rule of Art. 91 of the Dutch Constitution that international treaties are to be ratified by parliament should remain unchanged (Massüger & Kuoni, 2011, p.150).

The Referendum law was principally concerned with the establishment of an Independent Referendum Commission. Although this commission preferred a relatively late date of 29 June 2005, under pressure from the Interior Ministry the referendum was announced for 1 June. In contrast to other EU-referendums, the commission formulated a somewhat complex question.<sup>39</sup> The establishment of the institutional framework for the referendum was very much a matter of 'learning by doing'. Despite of the consultative nature, in practice a consensus progressively emerged amongst almost all of the main political parties that the result would be respected. After a fierce campaign, the Dutch electorate voted massively to reject the Constitutional Treaty by 61.5% with an unexpectedly high turnout of 61% (Harmsen, 2005, pp.1-3). The official treaty was taken off the parliamentary agenda.

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<sup>37</sup> Act on the consultative referendum on the European Constitution - (*Wet raadplegend referendum Europese Grondwet van 27 januari 2005*, *Staatsblad 44/2005*).

<sup>38</sup> Advice of the Council of State of 14 July 2003

<sup>39</sup> "Are you in favour of or against approval by the Netherlands of the Treaty establishing a Constitution for Europe?" (Lucardie & Voerman, 2006, p.1201).

### 2.3.5 Liechtenstein 1992 & 1995

The principality of Liechtenstein had always kept close economic relations with Switzerland and followed its genuine neutrality policy. At the end of 1991, the Treaty about the Accession of Liechtenstein to the Swiss Customs Area was adapted in such a way that Liechtenstein could join international organisations, inasmuch as Switzerland was also a member. Consequently, the *Landtag* decided to join the European Economic Area and made this decision subject to a binding referendum to be organised by the government, according to the recently added Art. 66*bis* of the Constitution of Liechtenstein.<sup>40</sup> Although a majority of 55.8% of the voters approved the accession proposal in December 1992 by a turnout of 87% (Liechtenstein government, 1992), this could not be implemented due to the rejection of the same issue by Switzerland one week earlier, based on the former requirement that Switzerland should be a member of the same international organisation (Massüger & Kuoni, 2011, p.136-7). After another modification of the Swiss-Liechtenstein treaty, the citizens adopted the proposal to join the EEA for a second time in April 1995, by almost the same outcome: 55.9% voted in favour with a somewhat lower turnout of 82% (Liechtenstein government, 1995).

### 2.3.6 Finland 1994

The Finnish Constitution provided only consultative referendums as outlined in Art. 22a (now Art. 53). The national parliamentary constitutional committee concluded after long discussions that the EU accession treaty would be treated as international treaty which ratification needed once a two-thirds parliamentary majority (Kaiser et al., 1995, p.8). Based on Law 571/1987 which regulated popular votes in general, parliament enacted Law 578/1994 on a consultative popular vote to take place on 16 October 1994 – the first of the three Scandinavian accession referendums. The question was straightforward: “Should Finland become a member of the European Union in accordance with the treaty which has been negotiated?” (C2D, 2011). Nevertheless, many MPs declared in public that they were morally committed to the referendum result (most of them to the national, but also a few to the result in their constituency). For the incumbent Centre Party a referendum was the only possible method of deciding the issue given that a clear majority of its supporters opposed entering the EU. Only the incumbent Conservatives had an unambiguously positive attitude towards EU membership and could count on most of their supporters (Gallagher & Uleri, 1996, p.53). Eventually 56.9% of the Finns voted in favour with a 70.9% turnout. Subsequently the Finnish parliament ratified the accession treaty it on 18 November by 152 vs. 45 votes, reaching the necessary two- thirds majority of 134 votes. It is necessary to note that only two

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<sup>40</sup> **LI-Art. 66*bis*:** 1) Every resolution of Parliament concerning assent to an international treaty (article 8) shall be subject to a popular vote if Parliament so decides or if at least 1,500 Liechtenstein citizens eligible to vote or at least four municipalities submit a request to that effect, in the manner provided for in article 64, within 30 days of the official announcement of the resolution of Parliament. *Landesgesetzblatt 1922 Nr. 27.*

days after this decision, also the 18,000 citizens of the Åland Islands (a part of Finland) were also entitled to a consultative vote on the issue. A narrow majority of 51.9% voted in favour by a turnout of 60.4%. The Åland Parliament approved EU-membership of 2 December and On 1 January 1995, Finland officially became a member state of the EU.

### 2.3.7 Sweden 1994 and 2003

The Swedish Constitution provides for binding referendums (concerning changes to the constitution), but all referendums held so far have been non-binding. The *Riksdag* parliament decides if a referendum is to be held, when it is held, and the wording of the issue on the ballot. The *Riksdag* also interprets the results. The referendum on Swedish accession to the EU was the result of a political compromise, as the constitution provides consultative or constitutional referendums.

Already in 1990 the Social Democratic government had unexpectedly announced to apply for membership. This move was endorsed by three bourgeois opposition parties (Conservatives, People's Party and Centre Party), but the Left and Environmental Party immediately spoke out against membership and requested a referendum, as well as Conservative leader Carl Bildt. Two problems rose: the internal party division and the fact that the conclusion of the accession negotiations coincided with the general election of autumn 1993, which made the outcome highly uncertain. The compromise found was that the referendum would take place six weeks after the elections on the proposal 'Yes or No to membership based on the agreement reached in Brussels' (Gallagher & Uleri, 1996, p.171). Although the necessary revision of the Swedish constitution was not put to a direct vote but circumvented by a double election, the consultative referendum on EU accession was based on Ch. 8 (Art. 2) of the *Regeringsformen*<sup>41</sup>. Consequently, the Parliament adopted law Nr. 1994:1064<sup>42</sup> on the Referendum on EU Membership, fixing the polling date on 13 November and confirming the applicability of the 1979 Referendum Law. The question was somewhat broader compared to other accession referendums<sup>43</sup>. Finally, 52.3% of the Swedes voted in favour with a high turnout of 83.3%.

Soon after Sweden entered the European Union, the issue whether Sweden would join the single currency became of a hot potato for the Government as clearly described by Widfeldt:

“Legalistically speaking, the Swedish position was not entirely clear. The EU accession agreement included no formal exemption from the parts of the Treaty of Maastricht dealing with the single currency. In connection with the entry agreement, however, the then Minister for European affairs, Ulf Dinkelspiel, made a verbal declaration that Sweden reserved the right to subject entry into the third stage of the EMU to a separate decision. In 1996, a Commission of Inquiry recommended a ‘wait and see’ strategy in the so-called ‘Calmfors Report’. This was adopted as official government policy in 1997, which meant that Sweden did not introduce

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<sup>41</sup> Instrument of Government, one of the four Swedish fundamental laws. **S-Ch.8 (Art.2)**. Provisions concerning the following shall be adopted by means of an act of law: (...) 5. the holding of a consultative referendum throughout the Realm and the procedure for holding a referendum on a matter of fundamental law

<sup>42</sup> Law Nr. 1994:1064: [http://www.riksdagen.se/sv/Dokument-Lagar/Lagar/Svenskforfattningssamling/sfs\\_sfs-1994-1064/](http://www.riksdagen.se/sv/Dokument-Lagar/Lagar/Svenskforfattningssamling/sfs_sfs-1994-1064/)

<sup>43</sup> “Parliament has decided that there should be a referendum on Swedish membership in the European Union (EU). The vote is about whether Sweden should join the European Union under the agreement negotiated between Sweden and the EU Member States. Do you think Sweden should join the European Union in accordance with the agreement between Sweden and the EU Member States?”

the euro at the time of its initial launch in January 2002. Still, the issue was never off the agenda. Prime Minister Göran Persson would have preferred to avoid a referendum, with opinion polls indicating public scepticism” (Widfeldt, 2004, p.1145).

However, the decision to decouple EU and EMU membership made another referendum likely but far from certain. Sweden has had neither a political need for referendums on treaty reform, nor a constitutional requirement. Referendums were not deemed necessary for ratification of the Amsterdam and Nice treaties. However, at an extraordinary party congress in March 2000, the Social Democratic leadership was forced into granting a referendum in order to secure an EMU-positive congress resolution. “When Social Democrats eventually opted for the EMU referendum, partly to circumvent internal divisions and partly to accommodate the small Eurosceptical parties, their use of a consultative referendum was supported by all parties except the conservative Moderates” (Sitter, 2009, p.90). The Swedish Social Democrats’ decision to call a referendum on EMU in 2003 was a consequence of their claim that the original EU referendum in 1994 did not cover EMU membership. In late November 2002 the parliamentary parties agreed to hold the referendum on 14 September 2003, as laid down in Law Nr. 2003:83<sup>44</sup>, based on a simple question: “Do you think that Sweden should introduce the euro as its currency?” In the run-up to the vote, when a No result looked likely, Prime Minister Persson questioned the decision to put the issue to a popular vote in the first place. A political murder changed the course of the campaign dramatically:

“The vote was preceded by an unusually heated campaign, which came to a premature halt four days before the referendum when the Minister for Foreign Affairs, Anna Lindh, was assassinated...All campaigning was stopped after the assassination. Both sides agreed to refrain from attacks and criticism, and only supply voters with factual information” (Widfeldt, 2004, pp.1144-7).

The Swedes rejected the widely by parliament supported proposal to join EMU by 58% with a turnout that was almost identical to the referendum of 1994: 83%. Until this moment there is no prospect of changing this situation.

### **2.3.8 CEECs' accession 2003: the Czech Republic, Poland, Slovakia, Slovenia and Lithuania**

Besides five CEECs which were constitutionally obliged to hold a referendum, the Czech, Polish, Slovakian, Slovenian and Lithuanian parliaments decided to do so as well. As Henderson observes, most EU applications were submitted by one government while another conducted the bulk of the accession negotiations. "Therefore, all the referendums except Malta's were inherently likely to be symbolic demonstrations of the united will of citizens emancipated from communist rule and determined to return to the Europe of which they felt they should always have been part" (Henderson, 2004, p.659).

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<sup>44</sup> Law Nr. 2003:83: [http://www.riksdagen.se/sv/Dokument-Lagar/Lagar/Svenskforfattningssamling/sfs\\_sfs-2003-83/](http://www.riksdagen.se/sv/Dokument-Lagar/Lagar/Svenskforfattningssamling/sfs_sfs-2003-83/)

## *Slovenia*

Since the Second World War the referendum instrument has always been present in Slovenia, albeit never on a national level. The Slovenian independence started based on a plebiscite with 95% voting in favour. Moreover, before the EU and NATO accession referendums, nine other questions had been decided by referendum. The legal base of referendums is found in Art. 90 about Legislative and Art. 170 about Constitutional referendums, which were only binding in case of a specific proposed law. Already at the start of the accession negotiations in July 1997, parliament had decided that any final decision on EU membership should be made by a popular vote. As the final phase of accession negotiations coincided with efforts to join NATO, question was whether the referendums on EU and NATO accession should be held simultaneously but involving two separate questions, or completely separately. As NATO looked like less popular than EU accession and some believed that Slovenia's political elite had tried to improve the NATO referendum result by linking it with the EU, eventually it was decided to conduct both referendums simultaneously but as two separate issues.

Most candidate members had waited to ratify the EU accession treaty until it had been signed on 16 April 2003. However, there was pressure to conduct the referendum on NATO as other NATO members had expected this decision to be taken by 26 March. On the other hand, some feared that a referendum in February would leave too little time for the campaign. Eventually, the National Assembly agreed on the date of both referendums being 23 March (the last possible day for a referendum on NATO membership – in the midst of the Iraq crisis). As EU accession was not about a specific proposed law, and parliament and public opinion had demanded binding referendums, the only solution was to amend the Constitution. Hence, in order to enable EU-accession, the National Assembly included the new article 3a in order to make a binding referendum possible on the transfer of sovereign rights to international organisations and to enter in defensive alliances.<sup>45</sup> Detailed referendum provisions are regulated in the Law about Referendums and Popular Initiatives 1994. In contrast to the issues mentioned above and in other countries, there was not controversy about the wording of the referendum question<sup>46</sup> and not having a minimum voter turnout requirement. An overwhelming majority of almost 90% approved EU-accession. The turnout was 60.4% (Krašovec and Lajh, 2004, pp.606-15).

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<sup>45</sup> **SI-Art. 3a\*** Pursuant to a treaty ratified by the National Assembly by a two-thirds majority vote of all deputies, Slovenia may transfer the exercise of part of its sovereign rights to international organisations which are based on respect for human rights and fundamental freedoms, democracy, and the principles of the rule of law and may enter into a defensive alliance with states which are based on respect for these values. Before ratifying a treaty referred to in the preceding paragraph, the National Assembly may call a referendum. A proposal is passed in the referendum if a majority of those voting have cast valid votes in favour of the same. The National Assembly is bound by the result of such referendum. If such referendum has been held, a referendum regarding the law on the ratification of the treaty concerned may not be called.

\* As amended by the Constitutional Act Amending Chapter I and Articles 47 and 68 of the Constitution of the Republic of Slovenia, which was adopted on 27 February 2003 and entered into force on 7 March 2003 (Official Gazette of the Republic of Slovenia No. 24/03)

<sup>46</sup> 'Do you agree with the proposal that the Republic Slovenia should become a member of the European Union?'

## *Lithuania*

The Lithuanian Referendum law had remained unchanged since Gorbachev's 'democratization era' until the late 1990s. Only in 1999 did parliament begin to discuss proposals to amend the law, evidently connected with the forthcoming referendum on EU accession. According to Art. 9 of the Lithuanian Constitution “the most significant issues concerning the life of the State and the People shall be decided by referendum”. However, the question of what is ‘the most significant issue’ was to be determined by those who initiated the referendum. Therefore the discretion to hold a referendum is in the hands of the parliament (in cases to be established by law) or a popular initiative involving the collection of 300,000 signatures.<sup>47</sup> Moreover according to Art. 4(1:5) of the Referendum law, a transfer of competences to international institutions, should be accompanied by a mandatory referendum (Massüger & Kuoni, 2011, pp. 141-2).

Numerous and often controversial changes were made to the Lithuanian legislation in the run up to the 2003 referendum. When a first draft proposal for a new Referendum law entered into force, further discussions started again.<sup>48</sup> A second draft of the Referendum law was also proposed, but withdrawn again as became clear that it contained a clause which implied that the EU referendum would only have a consultative status. The final Referendum law contained two thresholds: turnout had to be more than 50% of all eligible voters and a simple majority of the participants was required for a pass. Finally on 24 February 2003, leaders of all main *Seimas* factions decided to establish a coordinating council to organize a referendum on Lithuania’s future membership in the EU. The initiative was supported by a majority of 105 MPs (76%). On 27 February the *Seimas* passed a decision to organize a mandatory referendum on Lithuania’s entry to the EU in 2004, to be held on 10–11 May 2003. (Krupavicius, 2004, pp.1063-4). The referendum question was rather an affirmative statement: “I am for Lithuania’s membership of the European Union”. The referendum would be decisive and binding, with no possibility for parliament to ratify the Accession Treaty in the event of a low turnout. Although the hurdle for a positive decision was lowered twice compared to the 1989 Law, the conditions stipulated in the referendum legislation were still the strictest compared with other candidate countries. The issue of securing the required 50% turnout on May 10-11 appeared to be a major problem. However, in the end 63.4% turned out to vote and a huge majority of 91.1% voted in favour. The EU Accession Treaty was ratified by the *Seimas* on 16 September (Mažylis & Unikaite, 2003, pp.1-3). Thereafter, the *Seimas* adopted the Constitutional Act on EU Membership and supplemented to the Constitution.

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<sup>47</sup> **LT-Art. 9** The most significant issues concerning the life of the State and the Nation shall be decided by referendum. In the cases established by law, the Seimas shall announce a referendum.

A referendum shall also be announced if not less than 300,000 citizens with the electoral right so request.

The procedure for the announcement and execution of a referendum shall be established by law.

**Art. 67** The Seimas:... 3) shall adopt resolutions on referendums;

<sup>48</sup> On 21 January 2003, a draft proposal of the parliamentary decision for an obligatory referendum on EU accession to be held on 11 May 2003 was tabled in parliament. (An alternative date, 7 September 2003, was rejected).

## Slovakia

The Slovak Constitution of 1992 already contained the possibility to enter a state union, by adopting a constitutional law which must be confirmed by a referendum (Art. 7)<sup>49</sup>. However, this provision was merely to be applied with regard to the relations of former Czechoslovakia and could therefore not serve as a legal basis for calling a popular vote on the accession to the EU. Art. 7 had been amended slightly in 2001 by adding a paragraph specifying that the Slovak Republic could transfer the exercise of a part of its powers to the European Union. Such an agreement was valid with just the approval of the National Council, as specified in Art. 7(4).<sup>50</sup> Besides, the Slovak Constitution has the most number of articles about the regulation of referendums.<sup>51</sup> The National Council made use of its competence provided by Art. 7(4) and although it was not obliged to obtain the popular approval, it submitted a resolution to the President to call a referendum on a 'crucial issue of public interest' according to the Arts. 93(2) and 95(1).

Actually there was hardly any contestation as Henderson put it: "the vital question was not whether Slovaks wanted the EU, but whether the EU wanted them" (Henderson, 2004, p.656). The referendum was not addressing the real EU issue but a debate on domestic politics. This also would have effects on the minimum turnout requirement of 50%.<sup>52</sup> This requirement gives No voters a strong incentive to stay at home and there was concern that parliament would be left in the awkward position of having a strong Yes vote in a referendum that was not valid. According to Henderson, it was "highly likely that in the case of an invalid vote, parliament would have gone ahead with EU accession, providing that this was legitimated by a strong 'yes' vote and a turnout approaching 50%"

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<sup>49</sup> **SLK-Art. 7** (1) The Slovak Republic may enter into a state union with other states upon its free decision. The decision on entering into a state union with other states, or on withdrawal from this union, shall be made by a constitutional law which must be confirmed by a referendum.

<sup>50</sup> (2) The Slovak Republic may, by an international treaty ratified and promulgated in a manner laid down by law, or on the basis of such treaty, transfer the exercise of a part of its rights to the European Communities and European Union. Legally binding acts of the European Communities and European Union shall have primacy over the laws of the Slovak Republic. Undertaking of legally binding acts that require implementation shall be executed by law or a government ordinance pursuant to Article 120, paragraph 2.

(4) In order for any international treaties on human rights and fundamental freedoms, international political treaties, international treaties of military nature, international treaties establishing the membership of the Slovak Republic in international organizations, international economic treaties of general nature, international treaties whose execution requires a law and international treaties which directly constitute rights or obligations of natural persons or legal persons to be valid, an approval of the National Council of the Slovak Republic is required prior to their ratification. *As amended by Constitutional Law No. 90/2001.*

<sup>51</sup> **SLK-Art. 93** (1) A referendum is used to confirm a constitutional law on entering into a union with other states, or on withdrawing from that union. (2) A referendum can be used to decide also on other important issues of public interest.

**Art. 95** (1) The referendum is called by the President of the Slovak Republic if requested by a petition signed by a minimum of 350,000 citizens, or on the basis of a resolution of the National Council of the Slovak Republic, within 30 days after the receipt of the citizens' petition, or the resolution of the National Council of the Slovak Republic.

**Art. 96** (1) The motion to pass a resolution of the National Council of the Slovak Republic on calling a referendum may be introduced by Members of Parliament, or by the Government of the Slovak Republic.

(2) A referendum shall be held within 90 days from the day it was called by the President of the Slovak Republic.

**Art. 98** (1) The results of the referendum are valid if more than one-half of eligible voters participated in it and if the decision was endorsed by more than one half of the participants in the referendum.

**Art. 99** (1) The National Council of the Slovak Republic may amend or annul the result of a referendum by means of a constitutional law no sooner than three years after the result of the referendum came into effect.

(2) A referendum on the same issue may be repeated no sooner than three years from the day it was held.

**Art. 100** A law shall lay down the manner in which the referendum will be carried out.

**Art. 102** (1) The President ... n) calls referendums,

**Art. 125b** (1) The Constitutional Court decides whether the subject of the referendum to be called on the basis of a citizens' petition, or a resolution of the National Council of the Slovak Republic pursuant to Article 95, paragraph 1, is in compliance with the Constitution or a constitutional law.

<sup>52</sup> "While it has been argued that referendums sometimes fulfil the function of second order national elections (Franklin et al. 1995),

Slovakia had twice experienced something approaching the reverse: national elections, in 1998 and 2002, that were in part referendums about whether Slovakia should join the EU" (Henderson, 2004, p.653).

(Henderson, 2004, pp.657-8).<sup>53</sup> Finally the President called the referendum as required by the Slovak Constitution. It was held on 16 and 17 May 2003 on the simple question: “Do you agree that the Slovak Republic should become a Member State of the European Union?” The turnout requirement was narrowly achieved by 52.1%, but those who did vote did so in favour by an overwhelming majority of 93.7%.

### *Poland*

The Polish Constitution provides in Art. 90 that Poland may delegate certain state competences to an international organisation or institution. Although the ratification of such agreements requires a two-thirds majority of both houses of parliament, it may also be passed by a nationwide referendum in conformity with Art. 125 – as it deals with matters of particular importance to the State.<sup>54</sup> The *Sejm* can decide in this way by a two-thirds majority or, alternatively, the President can with the consent of a simple majority of the Senate (Massüger & Kuoni, 2011, p.143). Consequently, the *Sejm* decided in April 2003 that a referendum would take place over the period of two days (Saturday and Sunday, 7–8 June 2003) to allow voters more flexibility with their time and provide easier access to the polls. The question was: “Do you approve the accession of the Republic Poland to the European Union?” While the opinion polls consistently indicated that the supporters of EU accession decidedly outnumbered the opponents, the referendum was never considered a mere formality, although Art. 125 specifies that the result of a nationwide referendum shall only be binding, if more than half of the electorate went out to vote. A potential controversy might have emerged if turnout in the referendum fell below 50%. However, nor the Constitution neither the new Law on National Referenda in March 2003 (subsequently amended in May 2003) specified what should happen if the turnout were lower. To remove this ambiguity, the *Sejm* adopted a new law which included a separate section regulating referenda related to ratification of international agreements.<sup>55</sup> Art. 75 of this Law however implicitly enabled the *Sejm* to take the issue in its own

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<sup>53</sup> “Prior to the referendum, all parties reached an informal consensus that for the sake of sufficient turnout and positive results, the breaking of some rules of correct campaigning, in particular campaigning during the first day of voting, would be tolerated” (ibid.).

<sup>54</sup> **PL-Art. 90** The Republic of Poland may, by virtue of international agreements, delegate to an international organization or international institution the competence of organs of State authority in relation to certain matters.

A statute, granting consent for ratification of an international agreement referred to in para.1, shall be passed by the *Sejm* by a two-thirds majority vote in the presence of at least half of the statutory number of Deputies, and by the Senate by a two-thirds majority vote in the presence of at least half of the statutory number of Senators. Granting of consent for ratification of such agreement may also be passed by a nationwide referendum in accordance with the provisions of Article 125.

Any resolution in respect of the choice of procedure for granting consent to ratification shall be taken by the *Sejm* by an absolute majority vote taken in the presence of at least half of the statutory number of Deputies.

**Art. 125** A nationwide referendum may be held in respect of matters of particular importance to the State.

The right to order a nationwide referendum shall be vested in the *Sejm*, to be taken by an absolute majority of votes in the presence of at least half of the statutory number of Deputies, or in the President of the Republic with the consent of the Senate given by an absolute majority vote taken in the presence of at least half of the statutory number of Senators.

A result of a nationwide referendum shall be binding, if more than half of the number of those having the right to vote have participated in it.

The validity of a nationwide referendum and the referendum referred to in Article 235, para. 6, shall be determined by the Supreme Court.

The principles of and procedures for the holding of a referendum shall be specified by statute.

<sup>55</sup> Article 73.1 of the Law stipulates that: ‘The result of a referendum on granting of consent to ratification of an international agreement . . . shall be valid if more than half of those eligible to vote have cast their vote’.



hands and give or deny the President the authorisation to ratify the treaty (Jasiewicz & Jasiewicz-Betkiewicz, 2004, p.1108-10). However, this question had not to be answered, as the turnout turned out to be 58.9% and 77.4% voted in favour.

### *Czech Republic*

The 1992 Czech Constitution, hastily adopted during the months preceding the break-up of Czechoslovakia, made a limited, theoretical provision for referendums (and other forms of direct democracy. Article 10a(1) of the Czech Constitution provides that the ratification of a treaty by which certain national powers are transferred to an international organization or institution requires the consent of Parliament, unless a Constitutional Act provides that such ratification requires the approval obtained in a referendum<sup>56</sup>. Hence, the Constitution does not demand a referendum per se, but major political parties agreed that it was necessary. In the course of the 1990s, there were many unsuccessful attempts in the Czech parliament to legislate for referendums.<sup>57</sup> Some tried to introduce the referendum as a general institution, others to legislate only for a referendum on EU accession. Hanley sketches well-targeted the Czech referendum context:

"Both historically and in the post-communist period Czech political elites have been deeply resistant to referendums and other forms of direct democracy. Both historically and in the post-communist period Czech political elites have been deeply resistant to referendums and other forms of direct democracy... The resultant political deadlock appeared to threaten the prospect of any referendum on accession taking place. However, a constitutional act providing for a referendum on EU accession (Constitutional Law no. 515/2002), but not on another issue, was finally passed in October 2002 with near unanimity using accelerated procedures" (Hanley, 2004, p.697).

The act stated that parliament's normal powers of decision and treaty ratification on accession were to be replaced by a referendum. It contained the organisation, question<sup>58</sup> and binding nature. Despite the efforts of ODS legislators to insert one, unlike in neighbouring Poland and Slovakia, there was no minimum turnout requirement. As in Czech parliamentary elections, voting was to take place over two days with the President determining the exact dates of polling. Although, it was

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Article 75 stipulates further that: 'If the result of a referendum on granting of consent to ratification of an international agreement is not decisive, the *Sejm* may adopt anew a resolution on the method of granting consent to ratification of that agreement'

<sup>56</sup> **CZ-Art.10a** (1) Certain powers of Czech Republic authorities may be transferred by treaty to an international organization or institution. (2) The ratification of a treaty under paragraph 1 requires the consent of Parliament, unless a constitutional act provides that such ratification requires the approval obtained in a referendum.

**Art. 39** (4) The concurrence of three-fifths of all Deputies and three-fifths of all Senators present is required for the adoption of a constitutional act or for giving assent to the ratification of treaties referred to in Article 10a para. 1.

**Art. 62** (1) The President of the Republic... shall call a referendum on the Czech Republic's accession to the European Union and declare the result thereof.

The following clause was added by the referendum: [Art. 87 (1)] m) to determine whether the manner in which a referendum on the Czech Republic's accession to the European Union was held is in harmony with the Constitutional Act on the Referendum on the Czech Republic's Accession to the European Union and with the statute issued in implementation thereof.

**Art. 87**(2) Prior to the ratification of a treaty under Article 10a or Article 49, the Constitutional Court shall further have jurisdiction to decide concerning the treaty's conformity with the constitutional order. A treaty may not be ratified prior to the Constitutional Court giving judgment.

**Art. 89** (3) Decisions of the Constitutional Court which declare, pursuant to Article 87 para. 2, that a treaty is not in conformity with the constitutional order, are an obstacle to the ratification of the treaty until such time as they are brought into conformity with each other.

<sup>57</sup> "While President Havel, the Social Democrats (CSSD) and small centre-right parties such as the Civic Democratic Alliance (ODA), the Christian Democrats (KDU-CSL) and elements of the Freedom Union (US) saw referendums as a legitimate and desirable means to promote citizen participation, the right-wing Civic Democratic Party of then Prime Minister Václav Klaus opposed them as undermining 'standard' West European style parliamentary democracy" (Hanley, 2003, p.3).

<sup>58</sup> "Do you agree with the Czech Republic becoming a member state of the European Union according to the EU-Czech Republic Treaty of Accession?"

initially expected that the referendum would take place on 15-16 June, President Klaus eventually fixed polling for 13-14 June.<sup>59</sup>

The referendum was supposed to take place within 90 days of signing the Accession Agreement. In the event that the Agreement was not approved, another referendum on EU accession could take place after at least two years (Linek & Mansfeldová, 2004, p.982). In practice, this suggested that minor modifications to the terms of accession would make an earlier repeat referendum possible. Law 114/2003 of April 2003 regulated the organisation of the referendum and the modification of complementary laws. Although the unexpected election of Václav Klaus as President by the Czech Parliament in February 2003 was a complicating factor for the referendum campaign, the pro-accession camp scored a convincing victory, with 77.3% of those voting backing EU membership and 22.7% voting against. Turnout was comparable with last elections: 55.2% (Hanley, 2004, pp.698-706). The Czech result of the accession referendum had almost the identical outcome as the Polish one of one week earlier.

## 2.4 Popular initiatives and popular vetoes

This final category can remain rather short in comparison to the preceding ones. Popular initiatives regarding European integration issues have solely taken place in Switzerland and Italy (though some other constitutions provide for popular initiatives on this matter). Seven out of nine Swiss EU-related referendums fall in this category. Actually we have to distinguish here between popular initiatives and popular vetoes. The former means that a certain number of citizens put a new, own issue to the vote (based on Art. 139(1) of the Swiss Constitution<sup>60</sup>), while the latter means that a certain number of citizens may ask a referendum on an issue on which government and parliament have already decided (based on Art. 141(1)).

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<sup>59</sup> This reflected both the Czech tradition of holding national elections over a Friday and Saturday and concern on the part of politicians that polling over a Sunday and Monday would depress turnout" (Hanley, 2004, p.698-9).

<sup>60</sup> **CH-Art. 139 Popular initiative requesting a partial revision of the Federal Constitution in specific terms**

1. Any 100,000 persons eligible to vote may within 18 months of the official publication of their initiative request a partial revision of the Federal Constitution.
2. A popular initiative for the partial revision of the Federal Constitution may take the form of a general proposal or of a specific draft of the provisions proposed.
3. If the initiative fails to comply with the requirements of consistency of form, and of subject matter, or if it infringes mandatory provisions of international law, the Federal Assembly shall declare it to be invalid in whole or in part.
4. If the Federal Assembly is in agreement with an initiative in the form of a general proposal, it shall draft the partial revision on the basis of the initiative and submit it to the vote of the People and the Cantons. If the Federal Assembly rejects the initiative, it shall submit it to a vote of the People; the People shall decide whether the initiative should be adopted. If they vote in favour, the Federal Assembly shall draft the corresponding bill.
5. An initiative in the form of a specific draft shall be submitted to the vote of the People and the Cantons. The Federal Assembly shall recommend whether the initiative should be adopted or rejected. It may submit a counter-proposal to the initiative.

### 2.4.1 Failed popular initiatives on EU membership

The first popular initiative on EU matters in 1997 dealt with the so-called 'Initiative on EU Accession Negotiations for the People'.<sup>61</sup> It was launched by the Swiss Democrats and *Lega dei Ticinesi*, supported by several MPs. It contained the proposal that the people and the *Ständerat*<sup>62</sup> should decide about the opening of EU accession negotiations, instead of the *Bundesrat*. However, the both the *Bundesversammlung* and *Bundesrat* deliberately advised to reject the initiative. It argued i.a. that the EU negotiations were not related to EU-accession, as after the rejection of Swiss EEA membership in 1992, accession negotiations had never taken place. In case of EU accession, an obligatory referendum should be held anyway (Bundesrat, 1997, pp.3-9). The electorate largely followed this reasoning and rejected the initiative by 74.1%. The turnout was only 35%.

The popular initiative 'Yes to Europe' of 2001 mirrored the one of four years earlier. It was initially drafted in 1996 and adapted to the total revision of the Swiss Federal Constitution in 1999. It proposed Swiss participation in the European integration process and therefore strived for EU membership and forced the immediate start of accession negotiations. However, it also noted that during and after the accession process the Swiss authorities should guard the federal and democratic fundamental rights, the competences of the cantons, and social and ecological accomplishments. Although the *Bundesrat* at that time also had EU membership as long-term objective, it recommended rejecting the initiative on procedural grounds: particularly it was up to the *Bundesrat* when to start negotiations: this was too fast and not the right moment. The *Bundesversammlung* was more divided. The *Nationalrat* rejected the initiative by 94 to 69 votes, the *Ständerat* by 33 to 6 (Bundesrat 2001, pp.4-9). Eventually, only 23.2% of the Swiss voters supported the initiative by a turnout of 55%.

### 2.4.2 Failed popular vetoes on European agreements

According to Art. 141(1) of the 1999 completely revised Constitution, treaties can be subject to a facultative referendum, if more than 50,000 Swiss citizens demand this within 100 days after its enactment. So far this has occurred five times:

1. Respecting the negative perspectives on EU accession, Swiss business and political leaders, however, were concerned that Switzerland would be isolated. The Swiss government pursued a policy of bilateral agreements with the European Union. The 2000 referendum was called to block seven bilateral agreements concluded between Switzerland and the EU.

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<sup>61</sup> Die Volksinitiative lautet: Die Übergangsbestimmungen der Bundesverfassung werden wie folgt ergänzt: Übergangsbestimmungen Art. 20 (neu) 1. Sämtliche vor der Abstimmung von Volk und Ständen über die eidgenössische Volksinitiative "EG- Beitrittsverhandlungen vors Volk!" eingeleiteten Verhandlungen über einen Beitritt der Schweiz zur Europäischen Gemeinschaft (EG) werden abgebrochen. 2. Neue Verhandlungen können nur mit Zustimmung von Volk und Ständen aufgenommen werden. (<http://www.admin.ch/ch/d/pore/vi/vis242t.html>)

<sup>62</sup> Council of States: smaller Chamber of the *Bundesversammlung* -Federal Assembly- of Switzerland (upper house); the other Chamber is the National Council. The *Bundesrat* -Federal Council- is the Swiss executive government.

- Within 100 days after the Federal decision of 8 October 1999, more than 66,000 signatures were collected and consequently, the referendum was announced on 16 February 2000 and held on 21 May.<sup>63</sup> Despite of the attempt, a two-thirds majority of 67.2% of the Swiss voters confirmed the Federal decision by a turnout of 48%. The 2000 referendum contained a spill-over to new referendums about the extension of the free movement of persons.
2. The EU required Switzerland to join the Schengen and Dublin Agreements in order that other areas of the relationship, such as trade agreements, could continue.<sup>64</sup> Now about 87,000 signatures demanded a referendum. It was filed by an Action Committee Against Schengen-/EU-Accession and a Federal Committee for a directly-democratic, sovereign and neutral Switzerland. This time the outcome was somewhat more balanced: on 5 June 2005 54.6% voted in favour of the Agreements. Turnout was 56%.
  3. The referendum of 25 September 2005 protested against the extension of these free movement rights to the new CEEC members of the EU.<sup>65</sup> It was initiated by four nationalist Swiss movements which collected 93.000 signatures.<sup>66</sup> The result was comparable with the second referendum: the extension of the movement rights was accepted by 56% with a turnout of 54.5%.
  4. The 2009 referendum was an extension of the same free movement of persons to the acceded EU members Bulgaria and Romania.<sup>67</sup> Four -partly the same- initiators collected almost 52.000 signatures.<sup>68</sup> Nevertheless, the Swiss voters adopted this proposal even by a larger majority of 59.6% (turnout was 51.4%).
  5. A relatively odd EU-related referendum in 2006 concerned the proposed cooperation with Eastern European Countries.<sup>69</sup> Action committees against EU-related contributions collected almost 82.000 signatures.<sup>70</sup> However, also this proposal was carried by a Swiss majority of

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<sup>63</sup> **CH-Art. 141 Optional referendum**

1 If within 100 days of the official publication of the enactment any 50,000 persons eligible to vote or any eight Cantons request it, the following shall be submitted to a vote of the People:

a. federal acts; b. emergency federal acts whose term of validity exceeds one year; c. federal decrees, provided the Constitution or an act so requires; d. international treaties that: 1. are of unlimited duration and may not be terminated; 2. provide for accession to an international organisation; 3. contain important legislative provisions or whose implementation requires the enactment of federal legislation.

<sup>64</sup> *Wollen Sie den Bundesbeschluss vom 17. Dezember 2004 über die Genehmigung und die Umsetzung der bilateralen Abkommen zwischen der Schweiz und der EU über die Assoziierung an Schengen und an Dublin annehmen?*

<sup>65</sup> Federal Resolution on 1) the approval and implementation of the Protocol on the extension of the free movement agreement to the new EC Member States between the Swiss Confederation and the European Community and its Member States; and 2) on the approval of the revision of the accompanying measures on free movement of Persons. "

*Wollen Sie den Bundesbeschluss über die Ausdehnung des Personenfreizügigkeitsabkommens auf die neuen EU-Staaten und über die Revision der flankierenden Massnahmen annehmen?*

<sup>66</sup> Überparteiliches Komitee gegen Ost-Personenfreizügigkeit; Eidgenössisches Komitee für eine direkt-demokratische, neutrale und souveräne Schweiz; Referendumskomitee gegen Lohn- und Sozialdumping; Alliance de Gauche (Parti du Travail – Indépendants).

<sup>67</sup> *Personenfreizügigkeit Schweiz-EU: Weiterführung des Abkommens und Ausdehnung auf Bulgarien und Rumänien: Wollen Sie den Bundesbeschluss vom 13. Juni 2008 über die Genehmigung der Weiterführung des Freizügigkeits abkommens zwischen der Schweiz und der Europäischen Gemeinschaft und ihren Mitgliedstaaten sowie über die Genehmigung und die Umsetzung des Protokolls über die Ausdehnung des Freizügigkeitsabkommens auf Bulgarien und Rumänien annehmen?*

<sup>68</sup> Überparteiliches Komitee gegen die EU-Personenfreizügigkeit; Comitato contro Libera Circolazione a Bulgaria e Romania; Komitee gegen unkontrollierte Osteinwanderung; Junge SVP+Young4FUN; Presseclub Schweiz

<sup>69</sup> *Wollen Sie das Bundesgesetz vom 24. März 2006 über die Zusammenarbeit mit den Staaten Osteuropas annehmen?*

<sup>70</sup> Referendumskomitee gegen die Milliardenzahlungen an die EU; Komitee gegen die Ost-Milliardenzahlung / Schweizer Demokraten.

53.4% and the lowest turnout (45%) compared to the other four popular vetoes (Schweizerische Bundeskanzlei, 2013<sup>71</sup>).

### **2.4.3 Italy 1989**

Article 71 of the Constitution allows for a consultative referendum if this is requested by an ad hoc constitutional law. It states that the legislative initiative belongs not only to the Government and to each Member of Parliament, but also to 50,000 voters. However parliament is not obliged to put them either on its own agenda or to a popular vote. Nevertheless in 1988 the Italian section of the European federalist movement sent such a proposition with 114,000 signatures to the Italian Parliament. The proposition called for a consultative guideline-referendum on conferring a mandate on the European Parliament to create a European Constitution (Erne, 2004).<sup>72</sup> The Italian Parliament adopted an ad hoc constitutional law to enable the organisation of this referendum. On 18 June 1989, the same day as the European Parliament's elections, a great majority of Italians (89.1%) answered "yes". The participation rate was 81%. In November 1989 the two chambers of Parliament backed this proposition by means of an ad-hoc constitutional amendment. (Gallagher & Uleri, 1996, p.107). Despite the considerable use of referendums in Italy, it is unlikely that without constitutional amendment further referendums on European integration will occur: Art. 75 of the Constitution explicitly excludes international treaties from the rules regulating referendums (Hug, 2003, p.38).

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<sup>71</sup> [http://www.admin.ch/ch/d/pore/rf/ref\\_2\\_2\\_3\\_2.html](http://www.admin.ch/ch/d/pore/rf/ref_2_2_3_2.html)

<sup>72</sup> "Do you believe that we should proceed in transforming the European Community into a true Union, that has a government that answers to Parliament, and that provides European Parliament with the mandate to draw up a draft European Constitution that will be ratified by the organisms of the Community Member States?" (<http://constitution-europeenne.info/special/italy.pdf>)

### 3. Conclusion

This paper researched the options which 26 incumbent governments had to determine the underlying content of referendums on European integration at those moments and which choices they made within their national institutional contexts. Referendums on European integration have been studied extensively by looking at the behaviour of political parties, media and voters, but not by looking at how the constitutional constraints predetermined the role of representative government. We did not just find out on what subjects the 52 referendums were conducted, but also arrived at applying a model which classifies the trigger function of the constitution, the government, the parliament or the people. We have provided a comprehensive taxonomy of EU-related referendums both looking at their legal and political context of their coming about.

Although many countries have organised Membership referendums about their accession to a European supranational organisation (EC, EFTA, EU, EEA) only a few countries were subject to more than one referendum. Some countries even changed their constitution (without a referendum being necessary) just before their EU-accession in order to make a public vote possible about this. Most countries which joined the EU in the 2000s organised referendums: a sequence of referendums in CEECs took place in 2003. Moreover, we can identify that many of these countries have extensively amended their -dynamic- constitution in order to embed the EU's procedures, fundamental rights and norms. Switzerland, Ireland, and (albeit until 2000) Denmark can be considered as typical EU-related referendum countries: Ireland has never escaped the referendum. We can conclude that although more than 50 EU-related referendums have taken place, we cannot speak of a uniform set of EU-referendum criteria, except for the fact that obtaining a simple majority for or against is decisive everywhere. Just in 10 cases it was the deliberate choice of the government whether or not to hold a referendum.

In other cases mostly the constitution had already prescribed a referendum, parliament had the final say to do so or sometimes a popular initiative popped up. Depending on the context and the issue, the same countries sometimes followed different paths of this model: while Ireland has always been bound to constitutionally triggered referendums, Denmark, for instance, is not always bound to this. One time the government had only to opt for a referendum after the Danish parliament refused to ratify the Single European Act. On other occasions, however, parliament chose to hold a referendum despite of the consensus about the National Compromise reached about the Maastricht-Edinburgh compromise.

Hence, if there is a choice for holding a referendum or not, the outcome it is often the result of a political compromise or the change of a government. Here the wording and timing of the referendum question become important issues. In most countries, certainly regarding membership, the question was often short and straightforward without too much formal wording. However, in

case of treaty referendums, the question could range from one sentence up to texts including complete constitutional amendments. Political parties tend to prefer referendums taking place on an optimal moment to generate the desired outcome or in order to optimize their position vis-à-vis elections. For instance the 1994 referendums on enlargement were planned in such a way that the Eurosceptical Norwegians might be influenced by the preceding positive outcomes in Sweden and Finland. However, sometimes constitutions also provide an option for the electorate itself to put a European issue to a direct vote: this is most common practice in Switzerland. This may increase the potential for policy change through reducing the power of legislative veto players, but only few constitutions contain provisions for such referendums.<sup>73</sup>

Besides constitutions, national referendum laws often prescribe further details about the organisation of the referendum, if not specified in the constitution already. Almost all countries which held referendums contain constitutional provisions about this. A few are dependent on parliament (the UK, the Netherlands, Norway). It is furthermore striking to note that in a couple of countries this includes minimum thresholds for blocking the referendum proposal or minimum turnout requirements, sometimes even depending on the size of the electorate of the previous election.<sup>74</sup> Moreover, a few countries have a compulsory voting system. Hence, governments can cope differently with constitutional provisions and change them if necessary, certainly when these provisions are not uniformly described. Although not all referendum outcomes are binding for the political decision-makers, we can conclude that in practice the result has always been respected. A consultative vote tends to develop in an effectively binding referendum by acquiring a binding character competing with the parliament as formal decision-maker.

Finally, further research is needed on the course of the campaigns and the role of governments therein, as we now know their constitutional constraints. Do referendum campaigns help the public to legitimize policy choices as they are intended to? Did governments learn from each other? How did this influence the referendum itself and its outcome? Looking at this taxonomy we can expect that the European referendum story is far from over yet.

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<sup>73</sup> Taking EU-referendum countries into account, this applies to Latvia, Liechtenstein, Lithuania, Slovakia, Slovenia and Switzerland

<sup>74</sup> Denmark, Latvia, Lithuania, Poland, Slovakia

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**ANNEX: Table 4. Referendums on European Integration**

Year	Country	%Turnout	%Yes	%No	Subject
1994	Austria	82,3	66,6	33,4	EU Membership
2012	Croatia	43,5	66,7	33,3	EU Membership
2003	Czech Republic	55,0	77,3	22,7	EU Membership
1972	Denmark	90,4	63,4	36,6	EC Membership
1986	Denmark	75,4	56,2	43,8	SEA
1992	Denmark	83,1	49,3	50,7	Maastricht Treaty
1993	Denmark	86,5	56,7	43,3	Maastricht Treaty
1998	Denmark	76,0	55,1	44,9	Treaty of Amsterdam
2000	Denmark	88,0	46,9	53,1	EMU Membership
2003	Estonia	64,0	66,8	33,2	EU Membership
1994	Finland	70,8	56,9	43,1	EU Membership
1972	France	60,2	68,3	31,7	Enlargement of EC
1992	France	69,8	51,1	48,9	Maastricht Treaty
2005	France	69,0	45,3	54,7	Constitutional Treaty
1982	Greenland	74,9	53,0	47,0	EC Membership
2003	Hungary	46,0	83,7	16,3	EU Membership
1972	Ireland	70,3	83,1	16,9	EC Membership
1987	Ireland	43,9	69,9	30,1	SEA
1992	Ireland	57,3	69,1	30,9	Maastricht Treaty
1998	Ireland	56,0	61,7	38,3	Treaty of Amsterdam
2001	Ireland	35,0	46,1	53,9	Nice Treaty
2002	Ireland	49,0	62,9	37,1	Nice Treaty
2008	Ireland	53,0	46,6	53,4	Treaty of Lisbon
2009	Ireland	59,0	67,0	33,0	Treaty of Lisbon
2012	Ireland	40,0	60,0	40,0	Treaty on SCG of EMU
1989	Italy	81,0	88,1	10,9	Future European Constitution
2003	Latvia	73,0	67,0	33,0	EU Membership
1992	Liechtenstein	87,0	55,8	44,2	EEA Accession
1995	Liechtenstein	82,0	55,9	44,1	EEA Accession
2003	Lithuania	63,0	91,1	8,9	EU Membership
2005	Luxembourg	89,0	56,5	43,5	Constitutional Treaty
2003	Malta	91,0	53,6	46,4	EU Membership
1972	Norway	79,2	46,5	53,5	EC Membership
1994	Norway	89,0	47,7	52,3	EU Membership
2003	Poland	59,0	77,5	22,5	EU Membership
2003	Romania	56,0	89,4	10,6	EU Membership
2003	Slovakia	52,0	92,5	7,5	EU Membership
2003	Slovenia	60,0	89,6	10,4	EU Membership
2005	Spain	42,0	76,7	23,3	Constitutional Treaty
1994	Sweden	83,3	52,3	46,8	EU Membership
2003	Sweden	83,0	42,0	58,0	EMU Membership
1972	Switzerland	52,0	72,5	27,5	EC-EFTA Treaty
1992	Switzerland	78,0	49,7	50,3	EEA Accession
1997	Switzerland	35,0	25,9	74,1	EU candidature
2000	Switzerland	48,0	67,2	32,8	Bilateral agreements
2001	Switzerland	55,0	23,2	76,8	EU Candidature
2005	Switzerland	56,0	54,6	45,4	Schengen Treaty
2005	Switzerland	54,5	56,0	44,0	Free movement of persons CEECs
2006	Switzerland	45,0	53,4	46,6	Cooperation Eastern Europe
2009	Switzerland	51,4	59,6	40,4	Free movement of persons Bulgaria and Romania
2005	The Netherlands	63,0	38,2	61,8	Constitutional Treaty
1975	United Kingdom	64,5	67,2	32,8	EC Membership