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Direct democracy and European integration

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53rd MEETING OF THE EEA JOINT PARLIAMENTARY COMMITTEE
Structure

- Puzzle of direct democracy (DD) and European integration
- Typology
- General objections against DD in the EU
- Patterns of DD
- Empirical data
- Negative EU referendums
- EU-wide referendums
Puzzle of DD and European integration

- EU: Legitimacy by means of legal rationality of the policy making process
  - Based on EU treaties
  - Representative credentials of the European Parliament and governments of the member states in Council
  - Aim is to ensure high policy effectiveness

- Is the legitimacy of DD superior to a representative system?
  - Direct democracy and representative democracy are not mutually exclusive
  - Always a combination of direct democratic and representative instruments
  - DD requires a clear definition of the institutional setting and has to be compatible with the political culture of a nation

In a nutshell:

- Different ways and concepts to measure the quality of established democracies (e.g. http://www.democracybarometer.org based on principles freedom, control and equality)
- International comparisons of democratic systems have to be interpreted carefully
Observations from Europe

- Referendums on EU matters are the ...
  - consequential manifestation of the politicization of European integration.
  - direct venue for voters to influence decisions on European integration.

- Referendums often trigger a dualism of integration-friendly majorities in government and parliament against more skeptical citizens.

- Referendums allow Eurosceptic parties and movements to make their mark and mobilize people.

- Referendums affect the integration plans, positions and bargaining behavior of governments even before they actually take place.

In a nutshell:
- Referendums on EU matters have become a persistent feature of European integration.
General objections against referendums on EU matters

- Lack of competence of the average citizen to decide in referendums
- Impossibility to have DD in large political units
- Democratic bias towards interest groups (with more resources)
- Do voters actually answer the question they are asked or are they influenced by other policies?
- Referendums can only provide dichotomous choice about a policy
  - Polarization of public opinion
- Arbitrary use of plebiscites by governments
Typology of popular vote based on form of procedure

- Citizens’ Initiative
- Citizens’ Initiative + Authorities’ Counter-Proposal
- Citizen-initiated Referendum
- Citizen-initiated Referendum + Counter-Proposal
- Obligatory Referendum
- Plebiscite
- Veto-Plebiscite
- Authorites’ Minority Plebiscite
- Authorites’ Minority Veto-Plebiscite
- Agenda Setting Initiative

**Initiative**
- Author of ballot proposal
- initiator of procedure
- To initiate something

**Referendum**
- Author of ballot proposal
- initiator of procedure
- To confirm something
  - initiated by citizens
  - triggered by law

**Plebiscite**
- Authorities controlled popular votes
  - for legitimization and mobilization
  - for bypassing other representative institutions
  - for disengaging from tough policies

Source of typology: Rolf Büchi, IRI Europe
Categories of referendums on EU matters*

- Mandatory vs. optional
- **Simultaneous** (in more than one EU state) vs. **serial** (in one EU state after the other)
- Binding vs. consultative

- Membership referendum, treaty (ratification) referendum, or policy referendum?
- Initiated by citizens, by representative authorities, or constitution?

* For reasons for simplicity and in line with most of the literature I will use the term referendum when speaking about popular votes on EU matters in the EU.
Selected patterns of direct democracy

- Is there a material assessment of popular initiatives?
  - Compatibility with EEA law/ international law?
- How are referendums and initiatives implemented?
  - Room for maneuver for parliaments/ governments?
- How is DD embedded in the political system?
  - Institutional setting?
  - Consultation? Consensual decision-making? Double majorities?
- Is there a tradition of DD?
  - The rarer, the less predictable ...
- What are possible campaign effects?
  - Stability of attitudes
  - Effects of mobilization
Simplified illustration of procedure of a popular initiative in Liechtenstein

Idea of initiative

Formal assessment by the Government Chancellery

Government reports to the Parliament about compatibility with constitutional and international law (incl. EEA law)

Parliament decides about admission based on government report

Possible decision by Constitutional Court with reassessment of admission

Collection of signatures

Vote in Parliament

Popular vote

Approval but put to public vote

Rejection

Possible assessment of compatibility by Constitutional Court

New law

If approved

Approval

Rejection

If approved

Popular vote

Popular vote

Possible decision by Constitutional Court with reassessment of admission

New law

If approved

Approval

Rejection

If approved

Popular vote

Popular vote

Possible assessment of compatibility by Constitutional Court

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Possible decision by Constitutional Court with reassessment of admission

Collection of signatures
Comparison of direct democracy in Switzerland and Liechtenstein

<table>
<thead>
<tr>
<th>Pattern</th>
<th>Switzerland</th>
<th>Liechtenstein</th>
</tr>
</thead>
<tbody>
<tr>
<td>Instruments (at federal level)</td>
<td>Constitutional initiative; obligatory referendum; optional referendum</td>
<td>Constitutional initiative; law initiative; optional referendum, and various other rights</td>
</tr>
<tr>
<td>Culture and procedure</td>
<td>Defined by idea of popular sovereignty</td>
<td>Embedded in the principle of rule of law</td>
</tr>
</tbody>
</table>
| Strategic use (in particular of initiatives) | • Agenda setting  
|                                        | • Mobilization (partisan logic)                  | Cautious use of initiatives  
|                                        |                                                  | • No agenda setting |
| Consensual decision-making            | • Sometimes lengthy implementation process of initiatives (i.e. dilution etc.)  
|                                        | • Extensive consultation in order to avoid a referendum  
|                                        | • Information about pro and cons in official documents | Consensual decision-making  
|                                        |                                                  | • No implementation procedure (i.e. law initiative)  
|                                        |                                                  | • Extensive consultation in order to avoid a referendum  
|                                        |                                                  | • Information about pro and cons in official documents |
| Mainly formal assessment of initiatives |                                                  | Formal and material assessment of initiative                |
| Success rate of initiative            | 11 percent                                       | 27 percent                                                   |
DD in Liechtenstein and EEA membership

- Material assessment of compatibility of popular initiatives with EEA law
  - Report by the government
  - Admission by the Parliament
  - Possible control by Constitutional Court

- Optional referendum on a decision of the EEA Joint Committee (JCD)
  - Decisions of the EEA Joint Committee are treated as an international treaty
  - Have to be ratified by the Parliament if constitutional requirements were indicated (Article 103 EEA Agreement)
    - No referendum on JCD thus far

- Optional referendum on a law implementing an EEA legal act
  - Approval of such a referendum could trigger an infringement procedure due to a delayed implementation
  - Room for maneuver to implement the EU act compatible with domestic preferences? Room for maneuver for belated opt-out?
DD in Liechtenstein and EU membership?

- Popular vote on EU accession
  - Not obligatory but very likely

- Material assessment of compatibility of popular initiative with EU law instead of EEA law
  - De facto limitation of DD due to wider scope of EU law
  - But DD already limited due to regional union with Switzerland

- Optional referendum on a law implementing an EU legal act
  - Approval of such a referendum could trigger an infringement procedure due to a delayed implementation
  - Room for maneuver to implement the EU act compatible with domestic preferences? Room for maneuver for belated opt-out?
Patterns of voter behavior that may explain a popular vote against the EU

- New cleavages in society between cosmopolitism and communitarism? \(\rightarrow\) *Rise of ideological Euroscepticism*
- Decreasing trust in authorities? \(\rightarrow\) *Elites in general more supportive for EU matters*
- Expressive and emotional voting? \(\rightarrow\) *Voting does not necessarily refer to question of referendum*
- Asymmetric mobilization? \(\rightarrow\) *Mobilization by specific policy (e.g. immigration) and not EU context (e.g. future of countries’ EU relations)*
- Impact of political education? \(\rightarrow\) *Little knowledge about EU*
Referendums on EU matters

<table>
<thead>
<tr>
<th>Number of referendums on:</th>
<th>Constitutional provisions for:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Mandatory referendum</td>
</tr>
<tr>
<td><strong>EU issues</strong></td>
<td><strong>Non-EU issues</strong></td>
</tr>
<tr>
<td>Austria</td>
<td>1</td>
</tr>
<tr>
<td>Belgium</td>
<td>0</td>
</tr>
<tr>
<td>Bulgaria</td>
<td>0</td>
</tr>
<tr>
<td>Croatia</td>
<td>1</td>
</tr>
<tr>
<td>Cyprus</td>
<td>0</td>
</tr>
<tr>
<td>Czech Rep</td>
<td>1</td>
</tr>
<tr>
<td>Denmark</td>
<td>8</td>
</tr>
<tr>
<td>Estonia</td>
<td>1</td>
</tr>
<tr>
<td>Finland</td>
<td>1</td>
</tr>
<tr>
<td>France</td>
<td>3</td>
</tr>
<tr>
<td>Germany</td>
<td>0</td>
</tr>
<tr>
<td>Greece</td>
<td>1</td>
</tr>
<tr>
<td>Hungary</td>
<td>2</td>
</tr>
<tr>
<td>Ireland</td>
<td>9</td>
</tr>
<tr>
<td>Italy</td>
<td>1</td>
</tr>
<tr>
<td>Latvia</td>
<td>1</td>
</tr>
<tr>
<td>Lithuania</td>
<td>1</td>
</tr>
<tr>
<td>Luxembourg</td>
<td>1</td>
</tr>
<tr>
<td>Malta</td>
<td>1</td>
</tr>
<tr>
<td>Netherlands</td>
<td>1</td>
</tr>
<tr>
<td>Poland</td>
<td>1</td>
</tr>
<tr>
<td>Portugal</td>
<td>0</td>
</tr>
<tr>
<td>Romania</td>
<td>1</td>
</tr>
<tr>
<td>Slovakia</td>
<td>1</td>
</tr>
<tr>
<td>Slovenia</td>
<td>1</td>
</tr>
<tr>
<td>Spain</td>
<td>1</td>
</tr>
<tr>
<td>Sweden</td>
<td>2</td>
</tr>
<tr>
<td>UK</td>
<td>2</td>
</tr>
<tr>
<td>Total</td>
<td>43</td>
</tr>
</tbody>
</table>

In a nutshell:
- Referendums on EU matters are a persistent feature of European integration
- Correlation between number of votes on non-EU issues and votes on EU issues

IDEA Direct Democracy Database; c2d database
Referendums on European integration in non-EU states (*not exhaustive*)

<table>
<thead>
<tr>
<th>Case &amp; Year</th>
<th>Issue</th>
</tr>
</thead>
<tbody>
<tr>
<td>Liechtenstein 1992</td>
<td>Accession to EEA</td>
</tr>
<tr>
<td>Switzerland 1992</td>
<td>Accession to EEA</td>
</tr>
<tr>
<td>Liechtenstein 1995</td>
<td>Accession to EEA</td>
</tr>
<tr>
<td>Switzerland 1997</td>
<td>Popular initiative to let people decide on joining EU</td>
</tr>
<tr>
<td>Switzerland 2001</td>
<td>Popular initiative referendum on EU accession negotiations</td>
</tr>
<tr>
<td>Switzerland 2000</td>
<td>Bilateral treaties with the EU</td>
</tr>
<tr>
<td>Switzerland 2005 (b)</td>
<td>Bilaterals (extension of free movement)</td>
</tr>
<tr>
<td>Switzerland 2005 (a)</td>
<td>Bilaterals (Schengen)</td>
</tr>
<tr>
<td>Switzerland 2006</td>
<td>Bilaterals (extension to Eastern European countries)</td>
</tr>
<tr>
<td>Switzerland 2009</td>
<td>Bilaterals (free movement to Bulgaria and Romania)</td>
</tr>
<tr>
<td>San Marino 2013</td>
<td>Accession negotiations with the EU</td>
</tr>
<tr>
<td>Switzerland 2014</td>
<td>Migration quotas (affects bilateral treaties)</td>
</tr>
</tbody>
</table>

Additional votes not covered by the table exported from study for the EU Parliament:

- **Norway 1994**  Accession to EU
- **Iceland 2010**  Icesave bill 2
- **Iceland 2011**  Icesave bill 3

Referendums on EU matters in Switzerland

<table>
<thead>
<tr>
<th>Ballot measure and institutional type</th>
<th>Year</th>
<th>Outcome</th>
<th>Turnout rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Treaty on the European Economic Area (compulsory referendum)</td>
<td>1992</td>
<td>Rejected (49.7% Yes)</td>
<td>78.7%</td>
</tr>
<tr>
<td>“EU membership application: let the people decide” (popular initiative)</td>
<td>1997</td>
<td>Rejected (25.9% Yes)</td>
<td>35.3%</td>
</tr>
<tr>
<td>Bilateral agreements (optional referendum)</td>
<td>2000</td>
<td>Accepted (67.2% Yes)</td>
<td>48.3%</td>
</tr>
<tr>
<td>“Yes to Europa” (popular initiative)</td>
<td>2001</td>
<td>Rejected (23.2% Yes)</td>
<td>55.8%</td>
</tr>
<tr>
<td>Association to the Schengen and Dublin agreements (optional referendum)</td>
<td>2005</td>
<td>Accepted (54.6% Yes)</td>
<td>56.6%</td>
</tr>
<tr>
<td>Extension of the agreement on the free movement of persons to new EU member states (optional referendum)</td>
<td>2005</td>
<td>Accepted (56.0% Yes)</td>
<td>54.5%</td>
</tr>
<tr>
<td>Federal Law on the cooperation with Eastern European countries (optional referendum)</td>
<td>2006</td>
<td>Accepted (53.4% Yes)</td>
<td>45.0%</td>
</tr>
<tr>
<td>Renewal of the agreement on the free movement of persons and its extension to Romania and Bulgaria (optional referendum)</td>
<td>2009</td>
<td>Accepted (59.6% Yes)</td>
<td>51.4%</td>
</tr>
<tr>
<td>“Stop Mass Immigration” (popular initiative)</td>
<td>2014</td>
<td>Accepted (50.3% Yes)</td>
<td>56.4%</td>
</tr>
</tbody>
</table>

Negative EU referendums and what happens after?

- Not the end of the story
- Considerable room for maneuver in responding to them

<table>
<thead>
<tr>
<th>Response</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>Acquiescence</td>
<td>Governments abandon the integration agreement without replacing it</td>
</tr>
<tr>
<td>Substitution</td>
<td>Governments abandon the integration agreement, but replace it with a weaker agreement</td>
</tr>
<tr>
<td>Revision</td>
<td>Governments do not abandon the integration agreement, but revise it substantially</td>
</tr>
<tr>
<td>Differentiation</td>
<td>Governments do not abandon the integration agreement, but grant opt-outs</td>
</tr>
<tr>
<td>Reinterpretation</td>
<td>Governments do not abandon the integration agreement, but reinterpret its rules</td>
</tr>
<tr>
<td>Dilution</td>
<td>Governments water down the implementation of the referendum outcome</td>
</tr>
<tr>
<td>Disregard</td>
<td>Governments ignore the referendum outcome</td>
</tr>
</tbody>
</table>

Source: Schimmelfennig, F. (2019), Getting around no: how governments react to negative EU referendums, JEPP.
### Data on negative referendums on EU matters

<table>
<thead>
<tr>
<th>Year</th>
<th>State</th>
<th>Issue</th>
<th>Issue type</th>
<th>Procedure</th>
<th>Pro-EU vote %</th>
<th>Govt. EU Pos.</th>
<th>Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>1994</td>
<td>NO</td>
<td>EU membership</td>
<td>ACC</td>
<td>Government</td>
<td>47.8</td>
<td></td>
<td>Acquiescence</td>
</tr>
<tr>
<td>2000</td>
<td>DK</td>
<td>Euro adoption</td>
<td>ACC</td>
<td>Required</td>
<td>46.8</td>
<td>5.19</td>
<td>Acquiescence</td>
</tr>
<tr>
<td>2003</td>
<td>SE</td>
<td>Euro adoption</td>
<td>ACC</td>
<td>Government</td>
<td>42</td>
<td>5.5</td>
<td>Acquiescence</td>
</tr>
<tr>
<td>1972</td>
<td>NO</td>
<td>EU membership</td>
<td>ACC</td>
<td>Government</td>
<td>46.5</td>
<td></td>
<td>Substitution</td>
</tr>
<tr>
<td>1992</td>
<td>CH</td>
<td>EEA membership</td>
<td>ACC</td>
<td>Required</td>
<td>49.7</td>
<td></td>
<td>Substitution</td>
</tr>
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<td>2015</td>
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Source: Schimmelfennig, F. (2019), Getting around no: how governments react to negative EU referendums, JEPP.
Do we need EU-wide referendums?
Challenges due to current practice

- Different practices and legislations at the national levels
- Referendums likely to prompt a partisan logic
- Referendums likely to produce unequal negotiating power among member states (i.e. strategic use of referendums as a threat)
- Discriminatory effect of country-specific referendums
- Results in earlier referendums asymmetrically impact referendums held elsewhere
- Arbitrary use of plebiscites by governments
- More general
  - Criticism of EU democratic deficit due to limited set of political rights of citizens
  - Supplementing EU Citizens’ Initiative
Do we need EU-wide referendums?
Challenges for implementation

- Difficult to translate different practices and legislations in a common institution at EU level
- Activation of direct democratic instruments not just a matter of regulation
  - Tradition and political culture
- Contrary to concept of *demoicracy*?
- Increased polarization?
- Decreased policy effectiveness?
Conclusions

- Referendums on EU matters are part of European integration
  - “unavoidable element” or “adequate element”? 
  - Important venue for the politicization of European integration
  - But: government and/or EU strategies of working around referendums

- DD can increase democratic legitimacy of a policy
  - Depending on institutional setting and political culture
  - DD not just an add-on to representative democracy

- Liechtenstein model of DD better compatible with EU integration than Swiss model
  - Political culture implies a more cautious use of DD
  - DD embedded in principle of rule of law → assessment of compatibility of a popular initiative with constitutional and international law
More information: Efta-studies.org