

Use and Non-Use of Direct Democratic Instruments

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Abstract

Beginning in the late 1980s and accelerating from 2008 onwards, Liechtenstein ran into severe trouble stemming not only from a worldwide financial crisis, but moreover from growing international pressure on the crucial financial services sector. However, while there had been popular votes in the past on topics of high as well as of low importance, there were none concerning fundamental changes in this sector following the so called Liechtenstein declaration on a “white money” strategy, nor concerning subsequent public expenditure cuts. The author argues that this is due to a mix of several reasons: the inferiority of a small state to strong international pressure; a generally rather exceptional use of initiatives and referendums in Liechtenstein; a broad elite consensus concerning the reform process; the dominance of the executive in the reform process; the common feeling that public debts should be avoided; and the absence of elections when enforcing the new strategy. Direct democracy in Liechtenstein is hence embedded in a context of political culture, power sharing, and international dependency, which influences very much whether or not direct democratic instruments are actively used by the people.

Introduction

Since World War II, the Principality of Liechtenstein was a well known offshore financial centre in the middle of Europe. By assistance of this flourishing sector, taxes could be kept low in Liechtenstein, industry and trade benefited from favourable conditions, public households were balanced or they even allowed to build up financial reserves, and the per capita income was one of the highest in the world. Scandalous stories stemming from anonymous foundations from time to time attracted the international media awareness. But it was not before the late 1980s that the international community strengthened its effort to combat, at first, assistance to money laundering and financing of terrorism. Later on – and accelerated by the world economic and financial crisis as well as by increasing public debts in most countries –, tax authorities and governments intensified their activities against so called tax havens, among them Liechtenstein. In this chapter we want to describe how the international pressure was perceived in Liechtenstein, what effects resulted, and why fundamentally new policies in the financial sector services, and more, did not lead to

direct democratic interventions, although the legal instruments to launch popular initiatives and referendums are entirely developed in Liechtenstein.

Direct Democracy in Liechtenstein

Liechtenstein shows a very complex system of power sharing. On one side, power in the state is divided between the people and the prince (Ignor 1987). This is more than just a folkloristic or symbolic facet of the political system. The prince holds some crucial rights, such as the right to appoint and to dismiss the government. He plays an important role when it comes to elect new judges. Additionally, the prince has the right to sanction new laws and other decisions of the parliament. The right to sanction is not limited to decisions taken by the parliament. It also concerns decisions taken by the people in a ballot. A popular initiative aiming at limiting the veto right of the prince failed in 2012.

On the other side, the people have the right to elect the parliament, which then nominates the government. Thus, the government is only indirectly elected by the electorate. The voters have also the right to launch initiatives and referendums. The spectrum of direct democratic instruments is wide in Liechtenstein (c.f. Ehrenzeller & Brägger 2012; Marxer 2012a). It includes initiatives to amend the constitution or ordinary laws, and it allows referendums against parliament decisions concerning laws and the constitutional amendments, as well as concerning financial decisions above a defined expenditure level, and even decisions on international treaties, just to mention the ones that are used regularly.

The direct democratic tools thus are more elaborated in Liechtenstein than in Switzerland at the federal level, Switzerland being the most prominent country with respect to direct democracy.¹ Compared to Switzerland, however, the use of the instruments is not as intensive. In the long run about one popular vote happens every year on average, including years with no ballot at all, and years with two or more popular votes. Nevertheless, in an international, worldwide comparison, the case of Liechtenstein is among those with a rather high use of direct democratic instruments.²

¹ Möckli (1994) describes the Swiss instruments in detail. There is more similarity of the Liechtenstein instruments with the respective provisions at the Swiss cantonal than at the national level (c.f. Vatter 2002 concerning direct democracy at the cantonal level).

² Altman (2011, 204-208) gives an overview on the use of mechanisms of direct democracy in 195 countries all around the world from 1984 to 2009. Among the applied citizen-initiated mechanisms Switzerland occupies the first place with 167 initiatives and referendums of a total of 328. It is followed by Italy (52), Liechtenstein (33), San Marino (13), Uruguay (12) and Lithuania (11). Only in 18 countries, citizen-initiated mechanisms had been used in the observed time period at all. 109 other countries showed only top-down mechanisms of direct democracy in this time period. According to the list of Altman, 68 countries had not practiced any direct

Use of direct democratic instruments

The use of direct democracy shows a big variety in Liechtenstein, not only regarding the use of different direct democratic instruments, but also regarding the issues treated in popular votes. If we analyse the time period from 2002 to 2012, there were twenty drafts to decide on – which is significantly above the long-term average. Nine of them were popular initiatives, nine were referendums, and two were counterproposals of the parliament. The popular initiatives concerned both the constitution and also ordinary law. The referendums were launched either in order to annul financial decisions or to combat decisions on amendments of laws taken by the parliament. There was no referendum against international treaties in the respective period, however.

The issues of the popular votes are dispersed. There were some concerning the construction of roads and buildings, some were on social issues such as abortion, same-sex partnership, retirement pension insurance, and disability insurance. Others dealt with anti-smoking provisions, sustainable traffic policy, environmental planning, mobile communication, financial support for an open air music festival, reform of the education system, a law on dog ownership, and the already mentioned initiative on the weakening of the princely veto right.

Taking into account that the Liechtenstein parliament decides every year on approximately one hundred issues (laws, financial decisions as well as decisions on international treaties) that were publicly advertised for a referendum, the number of popular votes seems to be quite small. Direct democratic procedures thus do in fact not play the most important role in the decision making process in this small country. Nevertheless, initiatives and referendums indirectly can play a crucial role since the political representatives in parliament and government always have to be aware of the fact that a direct democratic vote on a specific issue may occur.

International treaties and direct democracy

In recent years, international treaties have a growing impact on political decision making in Liechtenstein, especially as a consequence of the membership in the European Economic Area (EEA). The membership in the EEA leads to an increasing share of parliament decisions where an autonomous scope is hardly existent. Frommelt (2011, 28) has shown

democratic mechanism from 1984 to 2009. One can doubt whether top-down initiated ballots can be interpreted as direct democracy. The Initiative and Referendum Institute Europe (2006, 91) makes a distinction between top-down and bottom-up initiated popular votes, the first being characterized as plebiscite instead of a direct-democratic mechanism.

that between 2001 and 2009 only 33 percent of all acts approved by the parliament had a national impulse, whereas 41 percent had an EU-EFTA-impulse, around 17 percent had another international impulse, 8 percent had a Swiss impulse. Thus, direct democratic interventions into the decision making process are somewhat reduced since popular initiatives are not allowed if they are in contradiction to the constitution or international treaties. It must be pre-proofed by the government and by the parliament whether or not initiatives registered at the government fulfil this requirement. If not, initiatives cannot be started. In addition, a referendum against a decision makes no sense if there is no national margin in how to transform EEA-obligations into national law.

Despite these restrictions concerning direct democratic rights, there are still many opportunities to influence politics in Liechtenstein. In the following sections we show how the international financial and economic crisis affected the Liechtenstein economy, what political effects resulted from the crisis, what direct democratic response would have been possible in theory, and what happened more specifically in reality.

Economic challenges in the context of the economic crisis

The economic challenges Liechtenstein is facing at present are at least fourfold. On the one hand, Liechtenstein has developed rapidly as a so called off-shore financial centre after World War II. Internationally coordinated and progressively intensified intentions to combat money laundering and similar practices, beginning by the end of the 1980s, strongly affected Liechtenstein. It initiated a first round of adaptations in the financial centre of Liechtenstein, especially by introducing legal acts and installing agencies for due diligence in order to prevent money laundering and similar criminal financial activities. Secondly, the collapse in part, and the eruptions in the banking sector worldwide after the Lehman Brothers' crash in September 2008 had an additional negative effect on the economy even in Liechtenstein, namely on the banking sector. Thirdly, the world economic crisis and the difficulties to export industrial goods into the European and the world market affected the industrial sector in Liechtenstein as well. The industrial sector, and not only the financial services sector, also plays a very important role in the Liechtenstein economy. And fourthly, as a consequence of the international economic crisis, of the growing depths of European countries and of the problem of tax evasion, the pressure against off-shore financial centres grew stronger and stronger, thus finally forcing Liechtenstein to completely change its economic strategy.

More detailed and in figures, it shows up like described in the following sections. The number of legal entities, of holdings, trusts and other non-domestic entities almost steadily rose from 4'500 in 1959 to 28'000 in 1975 and finally to 82'500 in 2001, which was probably about the maximum (Merki 2003, 70). There are no regular statistical figures on

legal entities before 2008, thus the cited figures are estimations. Most of the legal entities were non-domestic, and the registration in Liechtenstein went with the help of trustees. The number of legal entities is quite high compared to the population in Liechtenstein, which amounts to only 36'000 inhabitants at present. Compared to 2001, the number of legal entities was still on a very high level of about 78'000 at the beginning of 2008, but it decreased to less than 60'000 in 2010 (Regierung 2008, 369; 2011, 322). The aggravated pressure on financial off-shore places – among them Liechtenstein – began in 1989 when the informal body G7 together with the EC put the Financial Action Task Force on Money Laundering (FATF) into action.

Increasing pressure on financial centres

The FATF later released a “black list” of non-cooperative financial centres and countries. All these financial centres were facing severe disadvantages if they were not willing to implement standards to avoid money laundering. Those days, money laundering was interpreted as a financial activity with money stemming from illegal activities like smuggling of arms, drugs etc., terrorism, blackmailing and so on. It was clear to the political elite in Liechtenstein, that Liechtenstein should undertake all efforts to be removed from the black list and, later on, from the “gray list” as soon as possible. In the first FATF-blacklist of 2000, Liechtenstein is perceived as one of the fifteen uncooperative countries. In the year 2000, an act on due diligence was set into force in Liechtenstein and Liechtenstein reached the goal to be acknowledged as a co-operative financial centre. In the 2001 report of the FATF eight countries were still characterised as uncooperative, Liechtenstein not being among them any more.

Table: Milestones from 2000 to 2010

Date	Event
2000	Black list of FATF on money laundering, including Liechtenstein
2000-09-14	Amendments to act on due diligence approved by parliament
2001	Liechtenstein removed from the FATF black list
2003-05-16	Int. treaty to combat financing of terrorism approved by parliament
2004-06-18	Act on financial market authority approved by parliament
2006-12-14	Convention on laundering, search, seizure and confiscation of the proceeds from crime approved by parliament
2008-02-14	Arrestment of Klaus Zumwinkel in Germany
2008-09	Lehman Brothers crash, beginning of world economic and financial crisis
2009-03-12	Liechtenstein Declaration on white money strategy
2009-06-25	TIEA agreement with United States of America approved by parliament
2009-11	12 TIEA and DTA agreements signed, Liechtenstein removed from FATF grey list
2010-09-23	New taxation law approved by parliament

The FATF blacklist was not at all the end of the struggle, but rather the beginning. In December 2001, the Liechtenstein government informed the parliament on the main challenges arising from international developments. According to the government these were the already mentioned – and still ongoing – FATF-process, the US claim for legal assistance, the OECD-initiative regarding harmful tax practices, the EU-initiative concerning taxes on interest, the amendment of the EU-directive regarding money laundering, and, finally, the combat against financing terrorism (Landtag 2001, 1386). Several legal acts and international treaties were initiated in Liechtenstein following these constraints, for instance the treaty between the United States of America and Liechtenstein on international legal assistance³, the international treaty to combat terrorism⁴, the act on financial market authority⁵, the relevant EEA-decisions against money laundering⁶, the convention of the Council of Europe on money laundering⁷, and many others.

Up from the year 2008, a new chapter of combating financial centres like Liechtenstein was opened. The intensified pressure on the Liechtenstein banks started with a real showdown, when the CEO of the German Post AG, Klaus Zumwinkel, was arrested due to tax evasion in his home on 14 February 2008.⁸ He was suspected to have hidden millions in a Liechtenstein bank – the LGT Bank in Liechtenstein, owned by the princely family – without paying taxes for it in his home country. This was the beginning of tax investments by help of data, stolen by bank employees and sold to tax offices in other countries. Swiss banks were suffering from the same “evil” (from their point of view, of course, while tax authorities legitimize the purchase of stolen data on bank customers with their duty to collect taxes according to the law and to care for social justice and equal treatment). Up to

³ Treaty between the Principality of Liechtenstein and the United States of America on international legal assistance in criminal cases of 8 July 2002 (LGBl. 2003 no 149). Approved by parliament 13 March 2003; public invitation to referendum on 20 March (no referendum); 2003 entering into force 1 August 2003.

⁴ International Treaty of 9 December 1999 to combat financing of terrorism (LGBl. 2003 no 170). Approved by parliament 16 May 2003; public invitation to referendum on 22 May 2003 (no referendum); entering into force 8 August 2003.

⁵ Act on financial market authority (LGBl. 2004 no 175). Approved by parliament 18 June 2004; public invitation to referendum on 23 June 2004 (no referendum); entering into force 1 January 2005.

⁶ EEA-Decisions against money laundering: EEA-Decision 2003 no 98. Approved by parliament 18 December 2003; public invitation to referendum on 23 December 2003 (no referendum). EEA-Decision 2006 no 87. Approved by parliament 14 December 2006; public invitation to referendum on 19 December 2006 (no referendum).

⁷ Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime of 8 November 1990 (LGBl. 2000 no 270). Approved by parliament 16 March/15 September 2000; entering into force 1 March 2001.

⁸ Wohlwend (2011) describes in detail how the bank employee Heinrich Kieber stole data on customers from the LGT Bank and sold it to the German tax authorities which led to the Zumwinkel affair.

the present, deals with stolen data are a flourishing and profitable business for both data thieves as well as for tax authorities.

New strategy and reform of the financial centre

Although the Liechtenstein government and the hereditary prince expressed their protest against the unfriendly act of the German tax authorities, it was not to avoid that the financial sector in Liechtenstein was facing fundamental changes. Already some months after the Zumwinkel arrestment, in November 2008, the LGT Bank which was concerned by the data theft, announced to completely stop its offshore business.⁹ Since this was and still is the biggest bank in Liechtenstein and the princely family is the owner of the bank, this could be interpreted as a real change of paradigm not only of the respective bank, but subsequently also of Liechtenstein as a whole. And indeed, it only took until 12 March 2009 when the government and the hereditary prince together announced the so called “Liechtenstein declaration”, a commitment to a prospective “white money strategy”, limiting financial business in the future to legal or legalized money only. Liechtenstein now admitted that it was willing to accept the OECD standard on transparency and information exchange concerning taxes. Liechtenstein from then on offered bilateral agreements on taxes to all other countries, also including co-operation in cases of tax evasion. Negotiations with a growing number of countries started shortly after the announcement.

In the following months and years, a series of Tax Information Exchange Agreements (TIEA) and Double Taxation Agreements (DTA) were negotiated with foreign countries in order to fulfil the OECD standard. Already on 14 March 2009, the Liechtenstein newspapers reported on the beginning of negotiations with Germany. In September 2009, five TIEAs and two DTAs were completed, some others were in preparation. The TIEA with the United States of America, approved in parliament on 25 June 2009, was groundbreaking. In November 2009 bilateral treaty number twelve was signed and Liechtenstein was removed from the “grey” list of the OECD. Until June 2011, two dozen of treaties were signed, in August of the same year also the tax agreement with Germany.¹⁰

The impact on the Liechtenstein financial sector was severe. Figures on the banking sector had shown similar tendencies of expansion like in the trustees sector before the international efforts against off-shore finance places had started. In 1960, only three banks had been active in Liechtenstein. The number of banks increased in the 1990s to fourteen banks in 2000 and to sixteen banks at present. The net earnings of the banks rose from less

⁹ Liechtensteiner Vaterland, 11 November 2008.

¹⁰ Liechtensteiner Vaterland, 14 March, 15 September and 11 November 2009; 17 August 2011.

than two million Swiss francs in 1960 to 549 million in 2000. The peak was reached in 2005 with then 742 million Swiss francs of net earnings. In the following years the banking business turned out to be more and more difficult, although the profits were still not so far below the peak. In 2011, however, net earnings dropped dramatically by 71.4 percent: 163 million Swiss francs of net earnings set the banks back at the level of the mid 1990s (Liechtenstein statistics).

Impact on national budget

The economic crisis left its mark also on the national budget. Not only were profits decreasing, thus leading to reduced tax payments. But at the same time, the government proposed several tax reductions in the taxation law in order to attract investors, which was finally approved by the parliament. The figures read as follows: state income rose from about 500 million Swiss francs in the mid 1990s to around 1 billion in the 2000s. The maximum of 1'206 million Swiss francs was reached in 2006. Despite the negative trend afterwards, there was only one single year (2008) with a negative cash flow, i.e. state income was below state expenses. Therefore, Liechtenstein does not suffer from public depths so far, in contrast to most other – if not all other – European countries. On the contrary, there are still remarkable public financial reserves. Nevertheless, the government was regularly warning about a negative cash flow in the annual budget starting with the negative turnaround in public income, and the government urgently reminded to reduce public expenditures. There has never been any doubt neither on the side of the government nor the parliament to follow a distinct strategy to avoid public depths in the future. In order to avoid depths, public expenditures had to be cut down significantly.

In a first round, reductions of 170 million Swiss francs were postulated and approved by the parliament in slices. When the budget for the year 2013 was presented to the media in September 2012, the outlook of the government still expected a deficit of 209 millions – despite the already approved and partly implemented expenditure reductions. It was announced that additional savings were necessary, although one has to admit that the outlook in the national budget usually is too pessimistic. According to the government, the main reason for the deficit in the budget is expected lower tax incomes, decreasing by 22 percent from 2012 to 2013 (i.e. 153 million Swiss francs reduction). Therefore, in addition to the reduction of expenses, a moderate increase of taxes was discussed in the parliament, yet not decided when this article was written.

Absence of direct democratic interventions

It is amazing that the new economic strategy towards internationally accepted financial business activities was drafted, decided, announced, and implemented without any direct democratic intervention. The same holds true for amendments in the national taxation law,

leading to lower taxes for the majority of the taxpayers, but also to a growing national deficit on the other hand. Although it was clear to all stakeholders that the new strategy was a huge challenge for the financial services sector, and maybe even the end of it, no referendum and no popular initiative was launched on this issue. As mentioned earlier, there were ballots on dog ownership, abortion and many other issues. But when it came to a complete and irreversible transformation of an extraordinarily important pillar of the Liechtenstein economy, the relevant decisions were not forwarded to a popular vote. The past decade shows more than only the absence of direct democracy in this respect. It also shows that national policy is more and more determined by international developments, requirements and obligations. Furthermore it demonstrates that there is a shift from legislative to executive power, from the parliament to the government. The evolution of the response to the financial and banking crisis in Liechtenstein gives some evidence for this.

A first and quick response to the arrestment of the German Post CEO in February 2008 was brought forward by the government in alliance with the hereditary prince. Prime Minister Klaus Tschütscher later labelled the arrestment as a “historical black day” for Liechtenstein.¹¹ The first response to the arrestment consisted of a protest. The government was complaining that the German authorities were harming the sovereignty of Liechtenstein and its legal security since the arrestment was effected due to data theft. The banking secrecy was vividly defended by the official Liechtenstein at that time. There was no doubt that the customers of Liechtenstein banks should be protected. The banking secrecy was interpreted as being legitimized in a global world context where citizens were more and more screened by their respective countries and privacy was endangered. Already implemented activities to combat money laundering, terrorism etc. were estimated to be sufficient. No additional compromises, especially regarding tax evasion, should be accepted. But as described above, some months later, in November 2008, the princely bank LGT announced the end of its offshore business. In March 2009, the affiliated trustee enterprise (LGT Treuhand) was sold to another trust company, and the government and the hereditary prince together announced the “white-money strategy” (Liechtenstein declaration) some days later.

Leadership of the executive

The Zumwinkel affair of February 2008 was hardly ever addressed in a parliament debate later on. It was the first time on 12 March 2008 to have a discussion in the parliament on it, at the occasion of a debate on the report of the government on a prospective concept and on measures for the banking and financial centre Liechtenstein (the so called “Futuro” report).

¹¹ Minutes of the Parliament (Landtagsprotokoll), 20 November 2009, p. 1935.

The report was a delayed response to a postulate of the parliament from autumn 1999. There was a long debate in the parliament, but finally the report was approved. With respect to the Zumwinkel affair and the international media response, the then minister of justice and forthcoming prime minister, Klaus Tschüscher, stated in the parliament at this session: “To me personally and to the government it seems to be the wrong way to abandon everything and to turn around just because of a media campaign abroad.”¹² The parliament debate made quite clear that the banking secrecy, assistance to tax evasion, anonymous trusts, and other instruments of the financial centre should be protected and defended. The Zumwinkel affair was again mentioned very briefly in debates in May and November 2009. But the main focus was not on the event of the arrestment of this prominent person, but on upcoming, challenging and ongoing international developments and threats with their high impact on the financial services sector in Liechtenstein.

The Liechtenstein declaration of March 2009, independently announced and promoted by the government, had not been put to a public discussion in the parliament in advance. It lasted until 22 April 2009 when the declaration was the first time mentioned in the parliament, without causing any debate though. The declaration was named in a short response to a query in the parliament concerning the proactive policy of the government. The prime minister stated that the Liechtenstein declaration was a milestone in the Liechtenstein finance place and tax policy. “Liechtenstein leaves the formerly exercised policy of reacting in a merely defensive way on questions of information exchange in tax affairs, i.e. with a purely single case approach and only where demands from abroad are addressed to Liechtenstein with pressure.”¹³

Crisis of financial centre in parliament debates

On 25 June 2009 it was the first time that the Liechtenstein declaration of March 2009 was a more extensive issue in a public parliament debate, although the new strategy was again not the core issue. In fact, the treaty with the United States of America on information exchange in tax affairs was the topic of the agenda. Prime minister Klaus Tschüscher expressed in one of his statements pretty clearly that it was the government which had defined the new financial centre strategy: “As you know, the government has laid down the

¹² Minutes of the Parliament (Landtagsprotokoll), 12 March 2008, p. 100. Original: “Hier wegen einer medialen Kampagne aus dem Ausland einfach ein für alle Mal alles auf den Haufen zu werfen und umkehren zu wollen, das scheint mir persönlich und der Regierung völlig der falsche Weg zu sein.”

¹³ Minutes of the Parliament (Landtagsprotokoll), 22 April 2009, p. 125. Original: Liechtenstein rückt damit ab von der bisher praktizierten Politik, Fragen des Informationsaustausches in Steuerfragen aus einer rein defensiven Haltung, d.h. rein einzelfallbezogen und nur dann, wenn Forderungen von aussen und unter Druck an unser Land herangetragen werden, anzugehen.

new marks for the finance place and above all for the international tax policy of Liechtenstein – publicly, with respective national and international communication. With this declaration, we and the country of Liechtenstein commit ourselves to the global OECD standard on transparency and information exchange in tax affairs.”¹⁴ During the same debate the prime minister indicated that the transformation and reform process had been confronted with a significant higher speed along the past weeks and months.

In the same parliament session the prime minister stated that the reform process in the financial services sector was largely supported by the main business associations, among them the Liechtenstein Chamber of Commerce and Industry, the Liechtenstein Bankers Association, and the Liechtenstein Chamber of Lawyers. He did not mention the Liechtenstein Association of Professional Trustees, however. The trustees were the ones who probably would suffer most from the reform process. Representatives of the industry hoped that no disadvantage would result concerning their export activities and therefore favoured good relationship with export areas and countries. They, too, had been in favour of DTAs long before the international financial crisis had arisen. They wanted to avoid any discriminating measures against the Liechtenstein economy, but, on the contrary, improve their export opportunities. The banking sector eventually could survive with new business models, concentrating on “white” (legal or legalized) money and maybe by expanding to other countries. It was crucial for the banking business that – in future – they would not be discriminated against in other countries. The trustees, on the other hand, were uncertain about their future. Their business model based particularly on instruments and legal constructions which one after the other seemed to get attacked or would even be abandoned sooner or later.

The Liechtenstein declaration was again mentioned in a parliament debate on 20 November 2009, half a year after the public announcement of the declaration. The debate took place at the occasion of an extra issue on the agenda, called information of the government on the situation and the development of the finance place. There was no debate at all in the parliament following this information, which again indicates that the whole reform process was almost completely dominated by the executive.

¹⁴ Minutes of the Parliament (Landtagsprotokoll), 25 June 2009, p. 539. Original: „Mit dieser Erklärung haben wir seitens der Regierung bekanntlich die neuen Eckwerte für den Finanzplatz und dabei insbesondere für die internationale Steuerpolitik Liechtensteins festgelegt und zwar öffentlich, mit entsprechender nationaler und internationaler Kommunikation. Mit dieser Erklärung bekennen wir uns, bekennt sich das Land Liechtenstein, zum globalen OECD-Standard für Transparenz und Informationsaustausch in Steuerfragen.“

There have been contacts between the government and the parliament which are not open to the public, though. We are speaking of special commissions of the parliament such as the commission on international relations or the finance commission. These commissions, however, do not decide on relevant issues. These are taken in the plenary session of the parliament. Additionally, the provisions on the parliament allow to have non-public sessions of the parliament. These, of course, are not open to the public, outsiders do not know details on these parliament debates, and there are no publicly available minutes on these debates. Nevertheless, the minutes on the ordinary parliament sessions contain hints on non-public sessions.

In the debate of 22 April 2010 on eleven TIEA agreements, the two government parties disputed vividly on the reform course which was initiated in 2008 by the then leading Progressive Citizens' Party (*Fortschrittliche Bürgerpartei*) with Prime Minister Othmar Hasler, criticised by the junior partner in the government, the Patriotic Union (*Vaterländische Union*). After the elections of February 2009, Klaus Tschütscher became Prime Minister and the Liechtenstein declaration followed shortly afterwards. In the debate of 22 April 2010, the Progressive Citizens' Party drew attention to the change of opinion of the Patriotic Union. The core accusation, though, was that the government and the Prime Minister were not informing the parliament adequately on strategies and activities concerning the financial sector reforms and negotiations. In a common declaration, the parliamentarians of the Progressive Citizens' Party criticised the information and communication policy of the government (minutes of the parliament, pp. 414-418). In this declaration, a non-public session of the parliament in December 2008, lasting several hours, was mentioned. Some of the issues were brought to public awareness since some queries in the public parliament debate concerning challenges and strategies followed, formulated by the junior partner in the government, the Patriotic Union. Obviously, the Patriotic Union still did not feel to be good enough informed on the financial centre agenda. Again, on 16 March 2010, a non-public session of the parliament on activities concerning the financial centre must have taken place, according to the declaration of the Progressive Citizens' Party in the 22 April 2010 parliament session.

As we can see, there are more contacts between government and parliament than just those at the public sessions of the parliament. But one can also see that the parliamentarians, namely the ones with more distance to the leading party in the government, feel to some degree to be cut off of information. Repeatedly the government is criticised for its information and communication policy towards the parliament and the parliament more or less feels to be pushed to a passive role.

Opposition to the reform process

The Association of Professional Trustees – or representatives of this association – repeatedly criticised, also publicly through letters to the editor in the newspapers, that they were not enough involved into the decision making process. From their point of view, too many concessions were made in the respective bilateral international treaties regarding tax information, instead of just fulfilling the minimum standard of the OECD requirements. They argued that the customers would leave the financial centre Liechtenstein in case that there were too many financial burdens for them to bear, if legal security would not be guaranteed, and if the banking secrecy would not be saved. There was in fact a quite dramatic trend with respect to the number of legal entities in the public register. From January 2008 to December 2011 the number of deposited foundations decreased from 47'590 to 32'532, the number of trusts shrank from 14'841 to 11'654 (Regierung 2008, 369 and 2011, 322). Nonetheless, the trustees abstained from starting a referendum against any parliament decision. Instead, they initiated a media campaign with advertisements, flanked by public posters, where they directed the attention on the importance of the financial services sector and the trustees for the economical wellbeing of Liechtenstein. This was a means of manoeuvring themselves into a more positive light and strengthening their position in the political arena.

As expressed earlier, the absence of any direct democratic intervention into the reform process is astonishing if one considers that the effects of the reform process are really outstanding. If one had asked the voters and inhabitants of Liechtenstein about their preferences, probably a strong majority would have wished that things stay unchanged and life would go on as it was before. As we have already seen, beginning after World War II, the Liechtenstein economy had developed rapidly at all levels and in almost all sectors. The financial services sector was an important pillar to this development. Not only were high profits and many workplaces directly provided by this sector. It also guaranteed reasonable conditions for the other economic sectors, for industry and trade. Finally, it helped to generate high income for the state and the municipalities. Thus, Liechtenstein ended as a country with one of the highest per capita income worldwide. This favourable situation seemed to be endangered – at least to some degree – by international efforts to combat tax evasion and to harmonize tax regimes. But it was an illusion, in the end, that things would not change.

Nevertheless, at least the speed and the degree of concessions made in the international treaties could have caused opposition. Since March 2009, and the announcement of the Liechtenstein declaration, the government acted very actively or even pro-actively, as the government expressed it itself. Many observers, above all the professional trustees, criticised that too many concessions were made and that Liechtenstein should act more defensive. At the time when this article was written, treaties concerning flat rate

withholding taxes between Liechtenstein and Germany and between Switzerland and Germany were in a political debate in all of the three countries. While several German States (*Bundesländer*) demanded stricter regulations in a treaty with Switzerland, some Swiss politicians, on the other side, announced to refuse the contract because for them it was already too far going. The Liechtenstein prime minister however stated in an interview with a leading Swiss newspaper¹⁵ that even an automatic tax information exchange should not be left out of consideration. This led to a dissonance between the government and financial services stakeholders, but also between the two coalition partners in the government.¹⁶

Obviously, there was no remedy against the high speed reform policy in Liechtenstein. Concerned stakeholders from the financial sector, political parties and citizens dallied away every opportunity to launch a referendum as an emergency brake in this process – or at least to slow down the process. Once again one has to remember that other referendums and initiatives were launched during this time period, but none of them concerned the financial sector. In fact, there would have been many opportunities to decelerate or even to stop the process at the national level. Most of the parliament decisions on laws – including new tax law, the establishment of a financial market authority etc. – and decisions on international treaties were subject to a referendum. But no decision concerning the financial sector was opposed by a referendum in this period. In the following section we argue about the main reasons for this finding.

Reasons for the absence of direct democratic decisions

The fact that direct democracy has not been activated throughout the reform process of the financial services sector in Liechtenstein cannot be put down to one single reason. It is rather a combination of different reasons. One cannot identify distinctively, though, how high the impact of the single reasons really was.

Firstly, Liechtenstein is too weak to give resistance to international pressure. Liechtenstein has a self-perception of being a small and vulnerable country which needs assistance from other countries. In its own history there have been tight connections to neighbouring Austria in the 19th century and a still lasting liaison to Switzerland in the 20th century, underlined by a common customs union, the Swiss franc as national currency and other

¹⁵ Tages-Anzeiger, 5 September 2012.

¹⁶ The dissonance between the *Vaterländische Union* and the *Fortschrittliche Bürgerpartei* was initially disputed in the respective party newspapers (*Liechtensteiner Vaterland* and *Liechtensteiner Volksblatt*) on 18 to 21 September. The *Fortschrittliche Bürgerpartei* urged the coalition partner to state clearly that an automatic tax information exchange would be refused.

modes of co-operation. Since 1995 Liechtenstein is also a member of the European Economic Area, which opens the European market to the Liechtenstein economy. Through these historical experiences the idea of national sovereignty is somewhat mitigated in Liechtenstein. Whereas other countries, even small countries like Switzerland or Norway, defend strongly their national sovereignty – although this might more and more turn out to be an illusion – Liechtenstein pursues a pragmatic path. While Switzerland resists as long as possible to international pressure on the financial centre, on legal provisions and practices, Liechtenstein gives in sooner. There is not much to do if there are strong demands from e.g. the United States of America, from Germany and other powerful nations, one could say. Good relationship to such partners is seen to be crucial for the Liechtenstein economy – for the industrial as well as for the banking sector. This attitude is not only shared by the government and the parties, but it is to a vast extent also shared by the relevant stakeholders. Therefore, flexible and pragmatic solutions are preferred in order not to risk severe conflicts with superior powers.

Secondly, direct democratic instruments are used only exceptionally in Liechtenstein, but if so, at the starting point, there is usually the conviction – or at least the hope – to be successful. One has to take into consideration that, in the long run, there is not much more than one popular vote on national level per year at average. Every year, about one hundred parliament decisions are subject to a referendum, not to speak of the unlimited opportunities to launch a popular initiative. This shows that the direct democratic instruments are used very selectively in Liechtenstein. Thus the situation is quite different from Switzerland where initiatives and referendums are used quite often. Additionally, there is no mandatory referendum in Liechtenstein, even not when it comes to constitutional amendments or international treaties. Direct democracy in Liechtenstein has been characterised as having the effect of a safety valve (popular initiative) or of an emergency brake (referendum), which indicates its exceptional position in the political system (Marxer & Pällinger 2007, 23; Marxer 2012b, 49-50). Due to the tininess of the country and the short distances between the people and the political elite, it is in most matters in fact easier to get in direct touch with the government, with parties and with members of the parliament, instead of collecting signatures for an initiative or a referendum. In political contexts of bigger countries, the motivation to start an initiative or a referendum may be one of just creating public awareness with an agenda setting purpose. In Liechtenstein it seems rather inefficient to use direct democratic instruments just for agenda setting and decision shaping reasons. The instruments are preferably used when the initiators are convinced that there is a realistic perspective to be successful in the process. In contrast to Switzerland where most initiatives fail, the success rate of popular initiatives in Liechtenstein is at about 40 percent. In cases of a referendum, more than 50 percent of the popular votes end with the refusal of the parliament decision, meaning that the

referendum initiators were successful. In the case of the reform process of the financial sector one can assume that the concerned stakeholders were not optimistic about the success of a direct democratic intervention and that they, for this reason, preferred to influence politics by other means – though not very successfully.

Thirdly, and this is closely linked to the second argument, there was a stable elite consensus accompanying the transformation process. As mentioned above, there was some critique towards the speed and the direction of the reform process. But all in all, a big majority within the political parties supported the reform process, most of the relevant chambers and associations did not oppose to the fundamental changes, and last but not least the princely family supported the process – in its function as head of the state as well as in its function as the owner of the biggest Liechtenstein bank. The elite consensus, though, is not a sufficient reason for the absence of direct democratic procedures, nor is direct democracy in Liechtenstein generally dominated by parties.¹⁷ There have been many popular votes in the past, may it be initiatives or referendums, which were launched against the unanimous elite, and which were successful in many cases. An example is the introduction of the possibility to have a referendum on international treaties in 1992. This was approved by 71 percent of the voters, although the dominant parliament parties were against it. Another example is the rejection of an environmental planning law in 2002, strongly supported by the parliament, but rejected in a referendum by 74 percent of the voters.

Fourthly, the executive was dominating the reform process widely. The government acted very fast and almost uncontrolled in the observed period. The parliament and the relevant stakeholders were only weakly involved into the reform process. There were hardly any profound debates in the public parliament on issues of the new financial services strategy and the reform process. Of course, many decisions concerning amendments of laws, financial market agencies and international treaties had to be taken by the parliament. But the parliament usually was only involved towards the end of the process, and there was almost no room for manoeuvre left to the parliament. The story of the reform process demonstrates clearly that the executive, i.e. the government, played an active and dominant role. The government had a bigger radius of operation than the parliament, since it was the government which initiated the reform process, it announced all by itself – in accordance with the princely family – a new strategy (the “Liechtenstein declaration”), the government installed new financial market agencies, and it negotiated with foreign states on Tax

¹⁷ Contrary to this, Hornig (2011) observes a dominance of parties in direct democracy in Western Europe (“Partyness of Direct Democracy”) in the sense that most ballots confirm the majority of attitudes among the parties towards a specific issue. Analysis of Buetzer (2011) and Kriesi (2007) shows that, in Switzerland, the success of a ballot is strongly correlated with the elite consensus on the draft.

Information Exchange Agreements and Double Taxation Agreements. To a high degree the direction of the financial market policy was predefined by the government. This is not only due to the objectively accelerated speed in international politics, but also a question of how the government interprets its own role. All along this executive-based process, direct democratic interventions are limited since there is no referendum allowed on executive activities. Only at the end of the process a referendum is possible, when it comes to approval to treaties and decisions on laws in the parliament. However, a rejection at the end of the process – either by the parliament or by the people – would probably have caused more damage than advantages.

Fifthly, there is a common feeling that public debts should be avoided. At this point we refer to the amendments on the taxation law and even more on decisions in order to cut down public expenditures. Of course the fiscal situation was and is still quite comfortable in Liechtenstein. Taxes are rather low compared to other countries, the state and the municipalities still have financial reserves, and the population as well as the economy benefits from favourable circumstances. When it came to income reductions of the public budgets, the political response was not to raise taxes, but to make the tax system even more attractive to enterprises and others, and to reduce the public expenses significantly instead. In contrast to the negotiations on international treaties and the reform process of the financial sector, the new law on taxes and strategies for budget reductions were more extensively promoted and communicated by the government and discussed in the public parliament. But there was hardly any protest against these political decisions, although almost everybody is touched by it to some degree. Nobody threatened the government and the parliament with a referendum. Obviously, it was acknowledged by the people and the stakeholders that these measures were necessary in order to avoid public debts in the future and in order to sustain favourable conditions for entrepreneurship.

Sixthly, no upcoming elections disturbed the governmental scope of action. The government was nominated by the parliament and approved by the hereditary prince soon after the parliament elections of February 2009. The elections ended with a victory of the Patriotic Union (*Vaterländische Union*) which gained thirteen of twenty-five seats in the parliament. The Progressive Citizens Party (*Fortschrittliche Bürgerpartei*) lost one seat and ended with eleven seats. The Free List (*Freie Liste*) lost two seats and retained one seat only. Like before, but in a reverse composition, the two big parties formed a coalition government, the Patriotic Union holding the majority in the government and nominating the prime minister who had already been a member of the government in the previous period. Thus, the prime minister gained public support by the voters right in the middle of the quarrel on the future perspective of offshore centres in general and of Liechtenstein in particular. But there was apparently a contrast between the image created before the

elections – which was one of defending the achievements of the past, for example when protesting against the arrestment of the German Post CEO on February 2008 – and the announcement of the “Liechtenstein declaration” only one month after the elections of March 2009. Since the elections were over and a new four year period of governing had started – preconditioned that the parliament or the government would not be dismissed before the end of the period – the government and the prime minister were relieved from the burden of a soon voters’ evaluation. This was of course a more comfortable situation than being confronted with upcoming elections. Towards the end of the mandate period, in summer 2012, four of the five members of the government, including the prime minister, announced to withdraw from the government by the end of the running period. One does not know when exactly the decisions were personally taken. If they were taken long before it was publicly announced, this would give an additional argument that trespassing the border of the traditional consensus oriented political culture in Liechtenstein was easier than under normal circumstances, when members of the government hope to be re-elected.

Conclusions

The story of the reform process shows that direct democracy in Liechtenstein is embedded in a context of political culture, power sharing, and international dependency, which influences very much whether direct democratic instruments are actively used by the people or not. As we have seen, beginning in the late 1980s, but aggravating in the years from 2008 onwards, Liechtenstein ran into severe trouble stemming from a worldwide financial crisis, but moreover from growing international pressure on the financial services sector which is crucial for Liechtenstein. However, while there had been past popular votes in Liechtenstein on topics of high and also of rather low importance, there were none concerning the fundamental changes in public revenues and expenditure, nor were there any with respect to legal provisions or international treaties with challenging effects to the financial sector. It is argued in this article that this is not due to one single reason, but to a mix of several reasons that all together led to a non-use of direct democratic instruments in Liechtenstein on an issue of outmost importance.

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