

LIECHTENSTEIN-INSTITUT

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# Direct democracy and European integration

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**53<sup>RD</sup> 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 sceptical citizens.
- Referendums allow Eurosceptic parties and movements to make their mark and mobilize voters.
- 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
- Authorities' Minority Plebiscite
- Authorities' Minority Veto-Plebiscite
- Agenda Setting Initiative

## Initiative

- Author of ballot proposal  $\neq$  initiator of procedure
- To initiate something

## Referendum

- Author of ballot proposal  $\neq$  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 prescribed by 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.



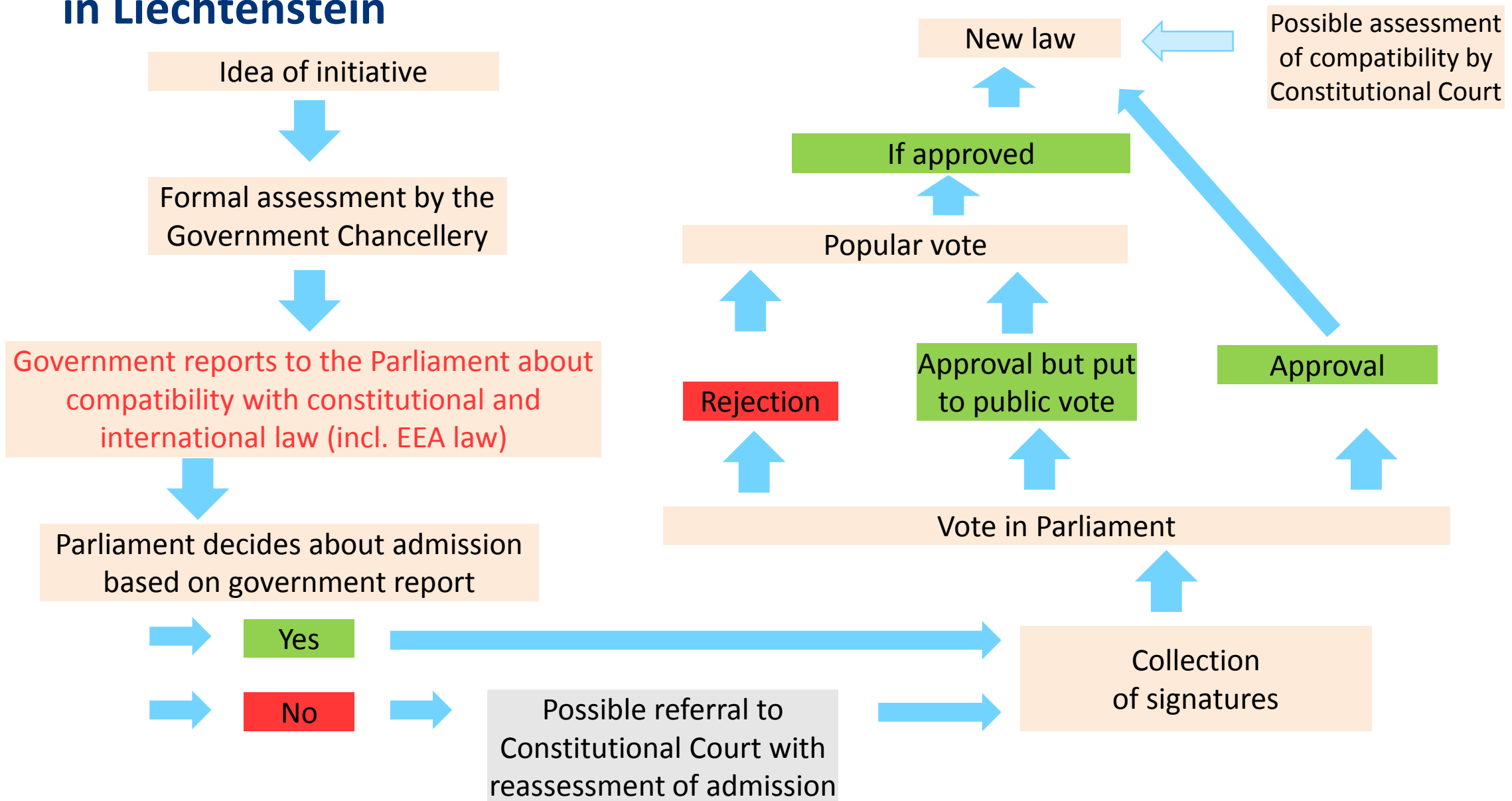
## Selected patterns of direct democracy

- 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



# Comparison of direct democracy in Switzerland and Liechtenstein

| Pattern                        | Switzerland                                                                                                                                                                                                                                                                                   | Liechtenstein                                                                                                                                                                                                                                                      |
|--------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Instruments (at federal level) | Constitutional initiative; obligatory referendum; optional referendum                                                                                                                                                                                                                         | Constitutional initiative; law initiative; optional referendum, and various other rights                                                                                                                                                                           |
| Culture and procedure          | Defined by idea of popular sovereignty                                                                                                                                                                                                                                                        | Embedded in the principle of rule of law                                                                                                                                                                                                                           |
|                                | Strategic use (in particular of initiatives) <ul style="list-style-type: none"> <li>• Agenda setting</li> <li>• Mobilization (partisan logic)</li> </ul>                                                                                                                                      | Cautious use of initiatives <ul style="list-style-type: none"> <li>• No agenda setting</li> </ul>                                                                                                                                                                  |
|                                | Consensual decision-making <ul style="list-style-type: none"> <li>• Sometimes lengthy implementation process of initiatives (i. e. dilution etc.)</li> <li>• Extensive consultation in order to avoid a referendum</li> <li>• Information about pro and cons in official documents</li> </ul> | Consensual decision-making <ul style="list-style-type: none"> <li>• No implementation procedure (i. e. law initiative)</li> <li>• Extensive consultation in order to avoid a referendum</li> <li>• Information about pro and cons in official documents</li> </ul> |
|                                | Mainly formal assessment of initiatives                                                                                                                                                                                                                                                       | Formal and material assessment of initiative                                                                                                                                                                                                                       |
| Number of popular votes        | 304 votes (1985-2018, federal level)                                                                                                                                                                                                                                                          | 51 votes (1985-2018, federal level)                                                                                                                                                                                                                                |
| 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)
  - JCDs are treated as an international treaty
  - JCDs have to be ratified by the Parliament if constitutional requirements were indicated (Article 103 EEA Agreement)
    - No referendum on a JCD thus far
- Optional referendum on a law implementing an EEA legal act
  - Approval of such a referendum could trigger a 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?

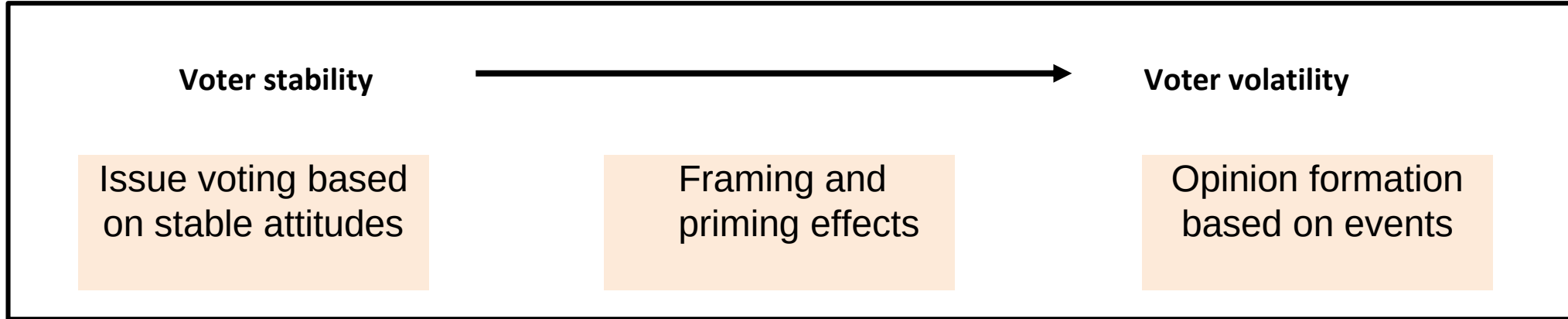


## DD in Liechtenstein and EU membership?

- 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?



# Campaign effects and voter behavior with regard to EU matters



- Patterns of voter behavior that may explain a popular vote against the EU
  - New cleavages in society between cosmopolitanism and communitarism? → *Rise of ideological Euroscepticism*
  - Decreasing trust in authorities? → *Elites in general more supportive for EU matters*
  - Expressive and emotional voting? → *Voting does not necessarily refer to question of referendum*
  - Asymmetric mobilization? → *Mobilization by specific policy (e. g. immigration) and not EU context (e. g. future of countries' EU relations)*
  - Impact of political education? → *Little knowledge about EU*



# Referendums on EU matters

|                 | <i>Number of referendums on:</i> |                      | <i>Constitutional provisions for:</i> |                             |
|-----------------|----------------------------------|----------------------|---------------------------------------|-----------------------------|
|                 | <i>EU issues</i>                 | <i>Non-EU issues</i> | <i>Mandatory referendums</i>          | <i>Optional referendums</i> |
| Austria         | 1                                | 3(2)                 | Yes                                   | Yes                         |
| Belgium         | 0                                | 0                    | No                                    | Yes                         |
| Bulgaria        | 0                                | 3(2)                 | No                                    | Yes                         |
| Croatia         | 1                                | 2(0)                 | Yes                                   | Yes                         |
| Cyprus          | 0                                | 1                    | No                                    | No <sup>a</sup>             |
| Czech Rep       | 1                                | 0                    | Yes                                   | No <sup>a</sup>             |
| Denmark         | 8                                | 9(2)                 | Yes                                   | Yes                         |
| Estonia         | 1                                | 3(0)                 | Yes                                   | Yes                         |
| Finland         | 1                                | 0                    | No                                    | Yes                         |
| France          | 3                                | 6                    | Yes                                   | Yes                         |
| Germany         | 0                                | 0                    | No                                    | No                          |
| Greece          | 1                                | 3(0)                 | No                                    | Yes                         |
| Hungary         | 2                                | 6(1)                 | Yes                                   | Yes                         |
| Ireland         | 9                                | 29(24)               | Yes                                   | Yes <sup>d</sup>            |
| Italy           | 1                                | 70                   | No                                    | Yes                         |
| Latvia          | 1                                | 6(3)                 | Yes                                   | Yes                         |
| Lithuania       | 1                                | 9(2)                 | Yes                                   | Yes                         |
| Luxembourg      | 1                                | 3                    | No                                    | Yes                         |
| Malta           | 1                                | 2(1)                 | Yes                                   | Yes                         |
| Netherlands     | 1                                | 0                    | No                                    | No                          |
| Poland          | 1                                | 9(3)                 | No                                    | Yes                         |
| Portugal        | 0                                | 3                    | Yes <sup>d</sup>                      | Yes                         |
| Romania         | 1                                | 4(3)                 | Yes                                   | Yes                         |
| Slovakia        | 1                                | 3(0)                 | Yes                                   | Yes                         |
| Slovenia        | 1                                | 16(11)               | Yes                                   | No                          |
| Spain           | 1                                | 2(1)                 | Yes                                   | Yes                         |
| Sweden          | 2                                | 8                    | No                                    | Yes                         |
| UK <sup>b</sup> | 2                                | 1                    | No                                    | Yes <sup>c</sup>            |
| Total           | 43                               | 201(147)             |                                       |                             |

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

Source: Cheneval, F. & Ferrin, M. (2018), Referendums in the European Union: Defective by Birth?, JCMS.  
IDEA Direct Democracy Database; c2d database

# Referendums on European integration in non-EU states (*not exhaustive*)

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

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*

Mendez, F. & Mendez, M. (2017), Referendums on EU Matters. Study. European Parliament.



# Referendums on EU matters in Switzerland

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

Sciarini, P. (2019), The drivers of Swiss voters' decisions in direct democratic votes on European integration. Blog. Efta-Studies.org; *Red color indicates that the people decided against the recommendation of the government.*



# Negative EU referendums and what happens after?

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

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

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





## Data on negative referendums on EU matters

|    | Year | State | Issue                 | Issue type | Procedure             | Pro-EU vote % | Govt. EU Pos. | Response         |
|----|------|-------|-----------------------|------------|-----------------------|---------------|---------------|------------------|
| 1  | 1994 | NO    | EU membership         | ACC        | Government            | 47.8          |               | Acquiescence     |
| 2  | 2000 | DK    | Euro adoption         | ACC        | Required              | 46.8          | 5.19          | Acquiescence     |
| 3  | 2003 | SE    | Euro adoption         | ACC        | Government            | 42            | 5.5           | Acquiescence     |
| 4  | 1972 | NO    | EU membership         | ACC        | Government            | 46.5          |               | Substitution     |
| 5  | 1992 | CH    | EEA membership        | ACC        | Required              | 49.7          |               | Substitution     |
| 6  | 2015 | DK    | JHA opt-in            | ACC        | Required              | 46.9          | 5.82          | Substitution     |
| 7  | 2005 | FR    | Constitutional treaty | INT        | Government            | 46.6          | 5.71          | Revision         |
| 8  | 2005 | NL    | Constitutional treaty | INT        | Government            | 38.2          | 5.12          | Revision         |
| 9  | 2008 | IE    | Lisbon treaty         | INT        | Required              | 46.6          | 5.87          | Revision         |
| 10 | 1992 | DK    | Maastricht treaty     | INT        | Required              | 49.3          | 6.38          | Differentiation  |
| 11 | 2001 | IE    | Nice treaty           | INT        | Required              | 46.1          | 5.63          | Reinterpretation |
| 12 | 2016 | NL    | Ukraine association   | INT        | Non-govt. (non-bind.) | 38.2          | 5.32          | Reinterpretation |
| 13 | 2014 | CH    | Movement of persons   | WDR        | Non-govt. (binding)   | 49.7          | 4.02          | Dilution         |
| 14 | 2016 | UK    | EU membership         | WDR        | Government            | 48.1          | 3.14          | Dilution         |
| 15 | 2015 | EL    | Bail-out terms        | WDR        | Government            | 38.7          | 2.18          | Disregard        |

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 in Liechtenstein
  - DD embedded in principle of rule of law → assessment of compatibility of a popular initiative with constitutional and international law before the vote



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