



**BEUCITIZEN**  
BARRIERS TOWARDS EU CITIZENSHIP

## European Union and Direct Democracy: A Possible Combination?

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## EXECUTIVE SUMMARY

- 1 One of the solutions proposed both by politicians and scholars to deal with the alleged democratic deficit of the European Union is to favour direct participation of EU citizens in decision-making at the European level. The object of D.8.7 is to assess the viability of EU referenda as a mechanism of direct democracy.
- 2 Direct democracy is by no means in contradiction to representative democracy. From a normative point of view, a combination of direct democratic instruments and representative instruments seems to be the most desirable institutional setup. This also applies to the European Union.
- 3 So far, there is insufficient evidence supporting the critiques against direct democracy both at the national and the European level. On the one hand, the objections bring to light general problems of democracy that will neither disappear nor tail off by abstaining from direct democracy, but need to be addressed by legal instruments that apply in direct and representative democracies. On the other hand, both the objections and the related empirical research highlight that direct democracy needs to be in a complementary relationship with representative democracy and should be integrated within robust constitutional conditions that guarantee fundamental rights and the principle of subsidiarity.
- 4 This deliverable proposes a model for a European referendum that is: 1) held on EU internal issues of primary law; 2) mandatory; 3) simultaneous in all member states; 4) binding; and 5) simple regarding subject matter.
- 5 Empirically, this deliverable shows that current practices of referenda on EU issues in European member states produce distortions in democratic functioning, due to the ad hoc way in which the referenda are held. Firstly, optional referenda favour that the incumbent government call for a referendum only on issues for which they receive strong support. As such, optional government induced referenda are used as strategic instruments, i.e. as plebiscites. Secondly, optional referenda allow some member states to have a stronger negotiation power than others, especially when they are not held simultaneously. Thirdly, optional referenda produce discrimination among EU citizens since only a few of them are given the right to participate.
- 6 According to survey data, a majority of citizens in Europe would be willing to vote in a EU referendum. Statistical analysis shows that the Europeans who are more likely to vote in a EU referendum exhibit stronger support for the European Union. Giving the vote to EU citizens in referenda, therefore, would not necessarily block the integration process, at least not in a medium to long-term perspective.
- 7 The Swiss case is used as a paradigmatic example from which we draw a number of lessons for the European Union.

## 1. INTRODUCTION

Among the solutions that have been brought forward by political theorists in face of the alleged democratic deficit of the European Union is the expansion of direct democracy (DD) instruments to the European arena (e.g. Rose 2013). Deliverable 8.8 is in charge of the novel European Citizens' Initiative (ECI); it is the task of this deliverable to assess the potentiality of other direct democracy tools at the European level, namely referenda.<sup>1</sup> To this end, we ask: how and what types of referenda have been used until now on EU affairs? What can we learn from past experiences both inside and outside the European Union?

Despite wider theoretical debates between defenders and detractors of DD (see below), there tends to be agreement among many scholars, politicians, and citizens that decisions are factually more legitimate if taken by popular vote. Notwithstanding mixed evidence in this regard, there is a strong normative component in favour of direct democracy. This is particularly the case with regard to the European Union, often accused of taking decisions far away from the European citizens. Introducing a vote in referenda at the EU level to the now very limited set of political rights could bridge the gap between EU institutions and EU citizens and promote perceptions of legitimacy of EU decisions among the European citizenry. From the point of view of citizenship, this would certainly strengthen the notion of EU citizenship by broadening the scope of EU citizens' political rights.

Yet the benefits of a potential EU referendum remain uncertain. So far there has been no single attempt to conduct a referendum in all EU member states simultaneously. The few votes on EU issues have mainly had (as we will show in this report) a plebiscitary character, as the referenda were mostly called by the governments. For this reason, the task of this paper is particularly challenging and requires several steps. Firstly, we discuss the normative value of DD at any level of government and the theoretical problems of applicability in the European arena. From this discussion we derive potential recommendations for DD to be applied at the European level: we argue that EU referenda should be mandatory, contain only one relatively narrow issue (as opposed to a large package-deal), and be simultaneous in all European member states. Secondly, we evaluate empirically the implications of our main premise in the European context. Thirdly, we analyze EU citizens' support for referenda at the European level. And fourthly, we conclude with a comparison with the Swiss case.

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<sup>1</sup> An alternative to the use of DD would be to strengthen the role of the European parliament and its relationship with national parliaments, but we only focus on DD in this paper, since the role of the parliament is the object of Deliverables 8.1, 8.4, and 8.5.

## 2. CONCEPTUALIZATION AND NORMATIVE THEORY OF DIRECT DEMOCRACY

### 2.1 DIRECT DEMOCRACY AND REPRESENTATIVE DEMOCRACY

One of the main controversies surrounding debates on DD departs from the assumption that direct democracy represents a *pure* model of democracy, which is in contradiction with representative democracy (Hug 2008). Representative Democracy is based on the idea of free and fair elections under conditions of rule of law and fundamental freedoms. It is the democratic system claimed by all EU member states and by most democratic states in the world. A system that grants to citizens the right to a referendum and initiative combined with representative democracy in one form or another is usually called direct democracy, semi-direct democracy or hybrid democracy (Neumann 2009; Schiller 2002; Kirchgässner et al. 1999; Christmann 2012).<sup>2</sup>

There is a conceptual difference between direct and representative democracy, but they are not mutually exclusive and co-exist in reality. Even in constitutional systems in which direct democracy plays a very important role, such as Switzerland, direct democracy is connected to a representative system and most legislation is proposed by government and passed by parliament.<sup>3</sup> Where in place and properly applied, direct democracy is thus neither a totally separate element nor an appendix to representative democracy that leaves the rest of the system unchanged. It has a systematic influence on democratic decision-making. At the same time, direct democracy fulfils the strict notion of popular sovereignty even if connected to representative democracy, as we will show. It is not our intention to defend the strict voluntaristic notion of popular sovereignty as such, but rather to show that different forms of direct democracy are not in contradiction with the idea of popular sovereignty.

The basic conceptual difference between direct and representative democracy is indeed rooted in different understandings of popular sovereignty. According to the strict notion of popular sovereignty, prominently developed by Rousseau (*Du contrat social*, III, xii-xiv), representation of acts of sovereignty of the people, such as constitutional decision-making or voting of generally binding laws, is not possible without cancelling popular sovereignty and adding a particular will to the general will. Only the rightfully assembled citizens themselves and their collective decisions embody the people and express the sovereign will of the people. The irrevocable delegation of legislative decision-making power to a group of representatives transforms the general will into a particular will.

One important implication of this theory is that the application of the law to specific cases is not an act of the general will of the sovereign. It is a particular judgment to be carried out by a different actor and according to specific criteria. The sovereign people cannot apply the law to specific cases without conceptual contradiction against the general will (and tyrannical consequences). The competence to perform such acts of application of the law to specific cases, be they executive or jurisprudential, needs to be delegated to different branches of government. Direct democracy based on this strict notion of popular sovereignty thus implies separation of powers and delegation of executive and judiciary powers to special representatives of the people. A structural element of representation is thus necessarily present in a precise sense: Constitutional and legislative power cannot be delegated to representatives; executive and judiciary power must be delegated to mandatories. We will come back to the question what this means in terms of institutional design of direct democracy.

Furthermore, in direct democracy it is analytically impossible for the people's government not to be based on fundamental rules. The sovereign people are constituted by rules that can only be disrespected by the

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<sup>2</sup> We are aware that a referendum is in itself not equivalent to direct democracy (for a critique in this regard see Hug 2008: 252).

<sup>3</sup> However, in such a system the possible "threat" of referendum and potential refusal of new legislation or a concrete infrastructure project by a popular vote exerts an *ex ante* influence on the drafting of legislation. This influence can be understood as a bias towards consensual or super-majoritarian decisions in order to avoid referendum.

dissolution of the people as sovereign. Even Rousseau, a fervent defender of the sovereignty of the people, analyzed the people in these terms: without fundamental laws there is no politically sovereign people (Rousseau, *Du contrat social*, I. v). The people are constituted by *lois fondamentales* and act according to *loi fondamentales*. No conceptually sound and legitimate form of direct democracy is possible without some degree of rule of law.

Rousseau rejects delegation of legislative authority to representatives because the general will (i.e. laws based on principles that can be universalized) of the people cannot be delegated without transforming it into a different and particular will (Rousseau, *Du contrat social*, III, xv). Does this mean that according to the strict notion of popular sovereignty direct democracy can have no legislative assemblies of representatives at all? Our answer is negative on the condition that the delegation of legislative power can in general be revoked and revised case by case. The sovereign people can delegate legislation to representatives and at the same time reserve the right to replace and refuse constitutional and legislative decisions of the representatives. Popular sovereignty is not alienated if the people decide to delegate legislation and at the same time reserve the right to refusal of constitutional and legislative acts of the representatives. The same is true if the people reserve the right to propose their own constitutional amendments by initiatives.

According to Philip Pettit democratic procedures must be designed in such a manner that the people can be reasonably understood as authors and editors of the law. Some form of authoritative proposal of constitutional legislation and a right to revise or refuse legislation by the people is thus necessary (Pettit 1997; 2012). Permanently possible and institutionally guaranteed participation of the people in the drafting and revising of legislation is a necessary condition of popular sovereignty (Pettit 1997, 277). The general prohibition of revocable representation on the other hand is not a necessary condition of direct democracy. In order to illustrate this condition Pettit uses the analogy of the newspaper edition, of which he distinguishes the author of the news (*law*) – who writes the news (*law*) –, and the editor of the newspaper (*law*) – who chooses the person who writes the news (*law*). The search and identification function of new legislation that should be possible for the people translates into the condition that the citizens need to be able to understand themselves as the authors of legislation. This condition is only partially fulfilled if citizens can merely elect representatives and their political programs in free and fair elections. Authoring a text and choosing the author of a text are two different things. Besides all the formal and substantive problems of representation and majority voting, the delegation of legislation creates a problem of agency loss of the people when it comes to form coalitions between different parties with different programs and the casting of general political programs into law. The constitutional guarantee of periodic repetition of elections does not substantively change this. The politically sovereign people must therefore reserve the right to revise, refuse and eventually replace law according to constitutionally guaranteed procedures. Pettit's proposals how to do this are rather vague (Pettit 1997: 187-200). We hold that the effective realization of the condition that the people be the authors and editors of law implies direct democratic instruments of referendum and initiative within constitutional boundaries. In other words, from a normative point of view, a combination of direct democratic instruments and representative instruments seems to be the most desirable institutional setting. This is true for a single demos system. As we will show, this also holds for the EU, at least as a realistic ideal towards which the EU could evolve.

The concrete implementation of such institutional setting can still take on many different forms, which might not be equally valid for all contexts and all times. "Consequently, the debate about referenda should revolve around the question to what extent our democratic systems of representation should be and can be complemented by more direct means of citizen influence. ... And it is obviously in this context that the arguments for or against referenda have to be made and evaluated." (Hug 2008, 253). Such a debate becomes particularly complex in relation to the European Union, for a number of reasons. Firstly, the European Union does not totally match the notion of representative democracy, as we know it for the national level, although

this is explicitly stated in Title II, Article 10.1 of the Treaty of Lisbon.<sup>4</sup> Secondly, most member states already have experience with direct democracy at the national, regional, or local levels, which makes it a complex situation to establish a single direct democratic instrument. And thirdly, there has so far been no common referendum at the EU level to judge whether indeed direct democracy is a feasible option in the European Union. As a consequence, adding elements of direct democracy to the European level requires substantial democratic innovation. As the consequences of such innovation are never certain to be positive, it is prudent to construe direct democracy in the EU step by step and with a limited scope. Even if the institutional reforms of the Lisbon Treaty moved a step forward in this direction by combining elements of representative and direct democracy, the latter – especially – remains underdeveloped in the EU (see D8.8 on the weaknesses of the ECI).

## **2.2 THE CITIZENSHIP DIRECTIVE AND THE RIGHT TO SOCIAL ASSISTANCE IN THE COUNTRIES OF OUR STUDY**

Before we can start thinking about ways to improve citizen participation via direct democracy in the EU, a conceptual and normative assessment is needed. In this section we develop the notion and justification of direct democracy on the basis of its critique and of experience with existing forms of direct democracy. At least six important objections have been raised against direct or semi-direct democracy, whose refined analysis and further empirical examination deepen the understanding of democracy overall. These critiques are particularly acute when applied to the European Union. We will summarize these points and then address them in more depth. *First*, governmental representatives and political elites dispose of more information than the normal citizens. They are, hence, in a better position to make factually adequate decisions. Given the pressure of periodic elections, they take these decisions with their voters in mind, anticipating the possibility of their own imminent rejection at the ballot box. Therefore, the exercise of power in the area of legislation by representatives is not only conceptually possible from the point of view of popular sovereignty but also more advantageous for all. Furthermore, from an economic point of view, representative democracy saves information costs for the citizens (Feld and Kirchgässner 2000). *Second*, direct democracy only works in small, manageable societies, but is inadequate for rather large modern nation states. It is particularly inadequate for a polity as large as the EU. *Third*, direct democracy results in disproportionate influence of powerful pressure groups and well-financed interests. *Fourth*, direct democracy favours expressive voting behaviour and populism. *Fifth*, direct democracy violates the general accountability principle, because the people are accountable to nobody and cannot be called to account for their actions and decisions, whereas representatives can be held accountable and removed from office. *Sixth*, a heightened conformity with the majority in direct democracy is to the detriment of rights of social minorities and of individual rights. As we will show in the following lines, there is little evidence that these objections apply only to direct democratic systems, as most scholars fail to acknowledge that pure direct democracy is rarely to be found. Indeed, these six objections are systematically framed as a contradiction between direct and representative democracy, without taking into consideration that both direct and representative institutions might suffer from the same illnesses.

As concerns the first objection, it is claimed that citizens lack the necessary competence (either information or know-how) to be able to take reasoned decisions in referenda. Representatives are much better informed than the average citizen, and therefore decision-making should always be delegated to them. This critique is yet to be nuanced. On the one hand, the fact that representatives have an advantage in terms of information over those being represented, needs to be specified according to different types of relevant information for legislative decisions. With regard to possible effects of a law on the constituency, the information advantage of representatives is not self-evident. People might know better than representatives how political decisions will play out in their life-world. Referenda itself (as well as elections) might be an important source of information

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<sup>4</sup> Title II, Article 10.1 “The functioning of the Union shall be founded on representative democracy.”

for the citizens as the proposals are campaigned. There is in fact evidence that the advance in information of representatives vis-à-vis the voters is more probable but is decreasing when the intensity of campaigning increases (Kriesi 2008). All in all, lack of competence of citizens is also argued in the context of election of representatives: why should voters be more competent in deciding about a single person than about a specific policy? On the other hand, if representatives actually have an information advantage, periodic elections might not suffice to guarantee that they will not abuse the information advantage to pass laws that serve their own interests. In any case, nothing stands against the argument, that a supplementary control mechanism of legislative decisions via direct democracy increases the probability that legislators use their information advantage to pass laws that correspond to the needs and intentions of the people. Referendum might thus be an efficient instrument to ensure that representatives do not use their advance in information for their own profit. Moreover, it compels representatives to intensified public communication and the public to increased deliberation about the reasons for their decisions. Furthermore, voting campaigns have an information effect that leads to a generally better informed citizenry (Benz and Stutzer 2004), although not all citizens benefit equally from increased participation (Hopmann et al. 2015). This results in the thesis of a desired complementary relationship between representative democracy (advance in information, competent preparation of bills) and direct democratic instruments (control, mobilization, political education) (Buchanan 2001; Kriesi 2008). In practice this complementary relationship exists also where direct democracy is especially robust. For instance, the US political system is referred to as a hybrid system and the Swiss system is referred to as the semi-direct democracy (Garret 2005; Linder 2006).

The objection of the lack of competence of the citizens vis-à-vis the European decision-making procedures is more critical, since knowledge of EU politics is very low.<sup>5</sup> Member states' media inform fundamentally about national politics, which makes it difficult to follow what happens in Europe. For example, in relation to the Irish Nice Treaty referendum, Moravcsik affirmed that "ignorance was so great that the slogan 'If you don't know, vote "no"' carried the day" (Moravcsik 2006, 159). Yet, in Europe even more than at the national level, this criticism also applies to the institutions of representative democracy of the EU. Complexity of European policy-making and the fact that political parties mainly compete in the national arena makes it very hard for citizens to know who is representing them at the European level. From this perspective, it might be less demanding for the EU citizens to vote on a specific issue by a referendum than to decide whom to vote for in EP elections.

The second objection about the impossibility of direct democracy in large states is a widely held view that was prominently presented by Montesquieu with regard to England (*Esprit des lois*, Book XI, ch. 6) and by Madison (Hamilton 2005 (Federalist 10)). Ever since an influential book posited the thesis that the quality of any democracy – be it direct or representative – declines if the population exceeds a certain size (Dahl and Tufte 1984), it has often been repeated in recent research. While the latest Zurich NCCR-Democracy Barometer has not found a direct correlation between state size and democratic quality, it has found that consensus democracies perform better than majoritarian democracy as measured by the examined criteria. Concordance systems, which entail the typical elements of consensus democracies, arise more easily in small states (Boschler and Kriesi 2013, 69–102). If one looks at the question about the quality of democracies only for the 30 established democracies or for the 69 democracies of the NCCR-Democracy Barometer, then this pre-selection is not taken into account. It becomes apparent, however, that the democratization of very large countries is unlikely without them being decomposed into smaller units. All this indicates that the objection, if it applies at all, should not be raised against direct democracy specifically, but against the excessive size of the state, be it governed by representative or direct democracy. The excessive size of a state is detrimental to democracy and democratization. But also this thesis cannot give any definitive criteria regarding the requested precise size of a

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<sup>5</sup> For example, on average, less than 50% of Europeans profess to know about their rights as citizens of the EU, according to Eurobarometer data 2015.

democratic or direct democratic country. On the one hand there exist conceptual controversies. Is democracy's relevant state size measured by the number of members, or also by its geographical extent, or also by the geographical distribution of the population? On the other hand, the variables that affect the ratio between size and democracy are constantly shifting due to technological changes in transport and communication. Hence it might be possible that a state used to be much "larger" at an earlier date, despite its much lower population size, than it is now. Correspondingly, democracy could be realized in "larger" units because they actually are, as measured by the conditions of communication, not larger at all. Size is a relative parameter.

The view that the quality of direct democracy declines as its size increases *and* that this loss of quality can be counter-balanced through representative democracy is based on assumptions that need to be clarified. Both the decline in voting power with an increasing number of members as well as the high decision making obstacles and information barriers of collective action are invoked as justifications for the loss of quality and for the compensation. The hurdles of aggravated collective action and of high information costs in larger groups are indeed compensated for in representative democracies by a very much smaller representative body (parliament). But such a system causes an increased loss of control, firstly because of representatives' deviating action on single proposals, and second because of the conclusion of compromise packages in parliament (Besley and Coate 2008). This loss of control is accentuated by the steadily growing importance of international relations and the resulting weight of the executive branch (Feld and Kirchgässner 2004: 206f.). The decline in citizen's voting power with increasing number of members is not balanced out by representative democracy. Last but not least, this criticism departs from the assumption that the distinction is between *pure* direct democracy and *pure* representative democracy, whereas there is no physical impediment in conducting a referendum throughout a large territory at the same time as representative institutions work.

In general, there is no definite thesis against direct democracy in large states as compared to representative democracy. In practice, direct democratic instruments are a long-lasting fact in large states, however not in its undiluted form but in a mutual relationship of control to representative democracy and the judiciary, and via further mitigation through federalism. The biggest state with a direct democracy is California with its population of about 40 million, with about 23 million people entitled to vote and an area that is more than 10 times as large as Switzerland. A total of 27, in part very large federal states of the US exhibit direct democratic instruments (Waters 2003: 12). Approximately 70% of the US population lives in a state or in a city in which representative democracy and direct democracy are in a supplementary relationship, both horizontally as well as vertically. The US and Germany, unlike Switzerland, apply direct democracy only at the level of federal states or states (Bundesländer). The reason for this is not the size, but the founders' different understandings of the sovereignty of the people and the different constitutional traditions. Influential founders of the USA and of the Federal Republic of Germany were against direct democracy, at least for the federal level. They conceived their constitutions such that constituent acts of the federation could not be carried out directly by popular vote. The modern Swiss state introduced the right to initiative already in the 1848 constitution; further direct democratic instruments were introduced on the federal level 1874. Today Switzerland applies direct democracy at all levels of government including at the federal level.

Both in theory and in practice, therefore, there seems to be no solid argument against the institutionalization of referenda at the European level, which would not apply also to representative institutions. The decision to incorporate referenda as an instrument of political decision at the European level (and the decision on where the EU wants to go) appears to depend more on the political will of European elites rather than on practical constraints. Actual institutional innovations introduced by the Lisbon Treaty, such as the ECI, suggest that the EU is slowly moving towards the Swiss model. So far, however, there are no other examples equivalent to the Swiss model (neither bigger nor smaller) that would let us evaluate how well/badly referenda could work in the European context.

The third objection that direct democracy leads to a bigger influence of powerful pressure groups than representative democracy is at odds with some studies based on game theory and with empirical studies (Buchanan 2001). Yet, there is no complete evidence that the policy outcomes of hybrid or semi-direct democracies are closer to the majority's preferences than a purely representative system. In the US, the direct democratic instruments were introduced with the explicit intention of containing the influence of pressure groups on parliaments. This argument could also be applied to the European Union, where lobbying plays a major role in policy decision-making. A report of Transparency International shows that lobbying is extremely powerful in Europe and in the European Union in particular.<sup>6</sup> "There is no precise figure available for the number of lobbyists in Brussels, but some estimates have suggested that 15,000 – 30,000 people are actively employed in trying to influence the work of the EU institutions. Two-thirds work on behalf of business interests while civil society and trade unions remain dramatically under-represented. Corporate lobbying in Brussels has long passed the one billion euro mark in annual turnover, which makes the city the world's second biggest centre of corporate lobbying power, after Washington DC. [...] There are many legitimate reasons for wanting to have a say in decision making, but the power of money combined with the complex and often unaccountable decision-making procedures within the EU – and the lack of any real scrutiny – have created an environment where big business interests can effectively capture the policy agenda. This makes Brussels a corporate lobbying paradise."<sup>7</sup>

Contrary to other contexts, therefore, the use of referenda could partially help to avoid lobbies' influence in policy decisions at the EU level. Indeed, while the costs of lobbying might be affordable if centralized in Brussels, they might be less sustainable if obliged to sustain the campaign costs in all 28 member states. Thus, referenda could be a valuable instrument to reduce the power of interest groups in the EU.

The fourth objection, that direct democracy fosters expressive and emotional voting behavior and is like cheering for one's own team during a football match rather than rational decision making, is not necessarily to be interpreted negatively. Expressive voting behavior may also mobilize moral resources (Brennan 2000). The negative interpretation of the thesis, however, on the one hand neglects the collective processes of deliberation and learning that we find in direct democracy (Smith 2007; Smith and Tolbert 2007; Tolbert 2005). To be sure, learning and deliberation depend on the quality of the media (Curran et al. 2009), yet there is no evidence to our knowledge that the press and broadcasting media are more powerful in influencing referenda than electoral campaigns. On the other hand, it is not obvious that issue-related votes are more emotionalized than elections. Persons provoke emotions over themselves and over issues. Consequently, elections are also susceptible to severe polarization and to stir up strong emotions, not least because they also involve contentious factual issues. Candidates standing for election need to sharpen their profile by means of their political program. That direct democracy would systematically favour populism more than representative democracy has not been proven. The populist tendencies in representative democracies with little or no direct democratic instruments are widely documented (Mény and Surel 2002). More so, it is easier to entirely capture a democratic system by populism via representative democracy than via a semi-direct democracy, in which every major legislative decision can be put to a popular vote. The examples of Poland, Hungary and the developments in France or the republican primaries in the USA illustrate this quite well. Switzerland on the other hand has had individual votes with populist tendencies, but the majority of votes do not have this character and the system as a whole has never tilted entirely towards populism. One can thus hypothesize that direct democracy is more robust against populism than representative systems.

This issue appears to be especially relevant in the European context, since European elections are normally ascribed as second order elections. There is considerable literature on the fact that European citizens use EP

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<sup>6</sup> 'Lobbying in Europe: Hidden Influence, Privileged Access'

[http://issuu.com/transparencyinternational/docs/2015\\_lobbyingineurope\\_en?e=2496456/12316229](http://issuu.com/transparencyinternational/docs/2015_lobbyingineurope_en?e=2496456/12316229)

<sup>7</sup> Brussels: The EU Quarter <http://corporateeurope.org/sites/default/files/publications/ceolobbylow.pdf>.

elections to express their dis/content with the incumbent government (starting from Reif and Schmitt 1980). The question is whether referenda would stimulate the same behaviour among EU citizens. Recent examples on the EU constitution are contradictory in this regard, and propel the idea that for expressive and populist votes to occur is very much dependent on the type of referendum being held (see below).

The fifth objection, that direct democracy violates the general accountability principle, because the people are accountable to nobody and cannot be held to account for their actions and decisions, applies conditionally. It is true that the people cannot be voted out of office as legislators, unlike representatives. As the addressee of laws, however, they have to bear the consequences of their own decisions. The problem is that these consequences are very unequally distributed among citizens. Yet this is not a problem of direct democracy in particular but of – direct or representative – collective action in general. Parliaments' decisions too have consequences, which affect citizens very unequally. The advantage of direct democracy is that it fosters more individual responsibility and that it allows citizens to exercise more control over these consequences and their dissemination. *Second*, the people can be a party involved in a legal proceeding, and hence they can be restrained, both in the international or the national legal system. The prerequisites here are, again, that laws constitute the people, and that direct democracy is embedded in the law in the form of the constitutional state and international law. According to the ideal of international law, sovereign peoples are accountable to each other regarding fundamental rights and various other areas. Moreover, the outer limit of direct-democratic sovereignty of the people is peremptory international law. *Third*, it is true that the individual voters cannot be held accountable for their decisions. But this again applies to those voters electing representatives. They can give any dubious person their vote in a secret ballot, without being accountable for it. The lack of accountability of the electorate is a general feature of democracy, and not specifically of direct democracy.

In any case, it is questionable if the application of the principle of accountability to voting or electing as exercising a right is appropriate at all. Either someone has the right to decide one way or another or the right itself to opt for certain options has to be questioned. That is, democracy, be it direct or representative, has to be based on a right to make free choices between legitimate options without any further accountability of the voters, or it has to legally ban certain bills, parties or candidates. Here again we encounter the general problem of the legal constitution of democracy, be it representative or direct democracy. From that point of view, direct democracy is problematic if there are no formal and qualitative control mechanisms to review initiatives. Where to draw the precise boundaries for any proposal is similarly controversial as is the issue of banning political parties in representative democracy. Instead of justifying a specific objection against direct democracy, the problem of the accountability of the people rather refers to the problematic circularity of the determination of democracy's legal framework. This problem is mitigated by the restriction of national authority, by horizontal and vertical separation of powers within and between democratic peoples, and a pluralistic as well as transnationally interconnected civil society. In short, the accountability problem of the electorate exists in both direct and representative democracies and needs to be solved by legal constraints of the electorate regarding both types of democracy. These legal constraints are crucial in the European Union if referenda are to be institutionalized, since majorities from one or more countries could determine the policies of another country, without bearing the consequences of these decisions.

According to the sixth objection the conformity with the majority in direct democracy is to the detriment of rights of structural minorities and of individual rights. This is especially well exemplified with the Swiss case. There exist some recent studies for Switzerland that find, for the period from the middle of the 19<sup>th</sup> century, that popular rights have had discriminatory effects on women, Jews and Catholics. Since around 1990, the same applies for Muslims. With increasing integration of a minority, however, the negative effect decreases. Zurich's Catholic minority received recognition as a state-church in 1963 by popular vote. Linguistic minorities, and conscientious objectors are about equally discriminated as religious minorities are. As is well known, Switzerland was also the last European country that established women's suffrage (1971), because men rejected it at the ballot box again and again. The *Landsgemeinde* (cantonal assembly) of Appenzell Innerrhoden

only allowed women to participate as of 1991. Alien residents are the most discriminated group in Switzerland, whereas homosexuals and people with disabilities are less disadvantaged. It makes a difference for discrimination if a minority possesses voting rights or not. Moreover, whether a minority will be discriminated or not depends on its degree of integration (Vatter and Danaci 2010; Vatter 2011). In the case of the US, structural minorities are not subject to discrimination by direct democracy because of the Supreme Court's constitutional jurisdiction (Heußler 2012). This does not mean that discrimination in the USA does not exist, only that its causes and structural conditions are others than direct democracy. In the European Union, there is also the danger that some minorities are discriminated; although we should not expect big differences between representative and direct democracy mechanisms of decision making. Again, the use of legal constraints is fundamental in protecting minorities in any type of democracy.

In relation to the European Union, a crucial issue is whether it is possible to aggregate preferences of differentiated demoi through referenda, without majorities superseding minorities or minorities vetoing policies which are in the benefit of the majority. The choice of the referendum rules shall be fundamental to counterbalance the different demoi.

These six objections provide neither enough reasons nor evidence to justify a ban of direct democracy, and do not disprove any of the good reasons for direct democracy named above. On the one hand, the objections bring to light general problems of democracy that will not disappear nor tail off by abstaining from direct democracy, but need to be addressed by legal instruments that apply in direct and representative democracies. On the other hand, both the objections and the related empirical research highlight that direct democracy needs to be in a complementary relationship with representative democracy and should be integrated within robust constitutional conditions that guarantee fundamental rights and the principle of subsidiarity, without it being unequivocally definite how far this has to go in particular cases.

Given these answers to substantive objections against direct democracy the normative argument that direct democracy increases legitimacy is relatively straightforward. By legitimacy we understand the broad acceptance of a polity, its government, and the governmental decisions by the citizenry *and* the acceptability of the acceptance procedures. Political legitimacy is broad acceptance by citizens of institutions and political acts under acceptable conditions. More concretely, the normative notion of democratic legitimacy is broad consent qualified by conditions such as access to alternative information, freedom of speech, freedom of assembly, inclusiveness of participation, etc. This implies, first, that democratic legitimacy increases if citizens' rights to direct participation and control of governmental decisions increase. Citizens' rights to direct participation can come under the form of referendum and initiative. In both a representative and semi-direct democracy citizens have the right to elect but in the latter citizens also have the right to trigger votes collectively, and the right to vote. The bundle of participatory rights and the realm of voting increase in a semi-direct democracy giving it a participation advantage over purely representative democracy. Government decisions are confirmed (or refuted) and are therefore certified with popular acceptance via procedures that are based on equal participatory rights. The fact that government decisions can be refuted in a legally binding manner implies their acceptance even if citizens call no referendum. Hence the right to binding referenda increases the legitimacy not only of the decisions that are taken by popular vote but also on all legislative decisions, even those that are only taken by parliament. Furthermore, there is also an upstream effect of referenda. Governments and parliaments want to avoid optional referenda. They will thus draw up compromises in their legislative decisions that include a broader range of interests, which again is an argument for increased political legitimacy.

The increased legitimacy of direct democracy can of course be upset by the acceptability of the conditions of the voting procedures. For instance the questions, who has access to citizenship and/or the rights to vote (non-national residents, ethnic minorities, women, etc.) or how campaign financing and the flow of information are regulated. It is quite obvious that a representative democracy that gives the right to vote to women and non-national residents under conditions of freedom of expression would be more legitimate than a direct

democracy of white protestant men under censorship. But these things being equal, direct democracy has a legitimacy advantage over a purely representative democracy. A strict focus on output-legitimacy does not change this normative diagnosis. Democratic decision-making, be it representative or direct, is meaningful under conditions of reasonable dissent over output and outcomes. Output-legitimacy is given if outputs are assessed and accepted by a large majority of citizens under acceptable conditions of participatory, fair and inclusive decision-making.

In the European Union, the constitutional conditions of referenda will reveal an essential part of institutional innovation. We propose in the following section a specific design for the European Union referenda.

**2.3 A POSSIBLE MODEL FOR EUROPEAN REFERENDA**

Direct democracy can take on many different forms, especially in its combination with representative democracy (Kessler 2005). A basic distinction between direct democratic instruments comes down to who initiates the procedure: the citizens, the representative authority or the Constitution itself (see Table 1). On the one hand, citizens can initiate a process to accept or refuse a text to amend the constitution or the legislation: it is a citizen right to statute and set the constitutional agenda. On the other hand, the representative authority may call a referendum on a major issue. Lastly, a referendum might be called because the Constitution provides dispositions in this regard. The term referendum refers to a popular vote, in which all adult citizens have the right to accept or refuse a legislative decision of a representative assembly. Mandatory referenda are triggered by a constitutional or legally disposition, whereas optional referenda are called at the discretion of the government or collective citizen action. Our empirical focus in this report is on forms of direct democracy triggered by the representative authorities vs. mandatory referenda because this is the dominant practice in EU member states referenda.<sup>8</sup> Both types of referenda have been used in the European context, also in relation to EU issues.

**Table 1 Direct democracy instruments**

Initiator	Type of instrument
Citizens	Optional referendum
	Citizens’ initiative
	Recall
	Citizens’ assembly
Representative authority	Optional referendum
	Counter-proposal
Constitution	Mandatory referendum

Based on the normative discussion presented above, we argue here that the calling of a referendum needs to be based on a constitutional disposition or citizen action in order to fulfil the democratic conditions elaborated in the first section.<sup>9</sup> If the referendum is triggered by the government and only consultative (plebiscitary democracy) it does not fulfil the conditions of authorship and editorship of the law by the people (see section 2.1). Rather it is an additional strategic instrument of the government. The combination of direct democracy instruments and representative democracy is only effective if citizens can directly control the decision-making process through procedures constitutionally guaranteed. Regarding the efficiency of controls that referenda should be able to exercise, research shows that the referenda need to be mandatory for certain types of primary law. Referenda that are initiated by governments discretionarily, perhaps even with non-binding

<sup>8</sup> Counter-proposals are also initiated by the government, but these originate as a reaction to a citizens’ initiative. For this reason, they are not taken into consideration in this deliverable.

<sup>9</sup> The same argument applies for citizens’ initiatives: if the referendum is based on citizen action it also fulfils the conditions of authorship and editorship of the law by the people.

effects (plebiscites), benefit governments as additional policy tools and confer them even greater influence. On the basis of this argumentation we distinguish between direct and plebiscitary democracy and we propose to favor direct over plebiscitary democracy in the EU and elsewhere (see Cheneval 2007 and Table 2). The distinction is particularly relevant in the EU context, as recent experiences have shown. Indeed, “one can argue that the problem is not the institution of direct democracy per se, but rather the dysfunctional and anti-democratic way in which it is deployed in the EU context.” (Mendez, Mendez, and Triga 2014, 192), where referenda on EU issues have only been held on the national level, and most of the times as plebiscites (we develop this analysis more in depth in the following sections).

**Table 2 Direct vs. Plebiscitary Democracy**

	<b>Direct Democracy</b>	<b>Plebiscitary Democracy</b>
<b>Trigger of individual vote</b>	constitutional/legal disposition or citizen action	government- induced
<b>Political level of application (city, state, country, EU)</b>	Multiple or all	strategically targeted
<b>Unity/simplicity of subject matter</b>	Yes	No
<b>Sequencing</b>	No	Yes
<b>Result legally binding</b>	Yes	No

We propose therefore an alternative institutional design for EU referenda: referenda on EU internal issues of primary law<sup>10</sup> should be held in all member states, triggered by a legal disposition, aggregated collectively according to a federalist procedure and binding in nature. The model we propose is similar to the Swiss model, where constitutional decisions are voted at the federal level through mandatory referenda. One could argue that the US and German models with direct democracy on the level of the states but not the federation might also be appropriate for the EU and would be closer to current practices. However, there are two main reasons to look towards the Swiss model (with direct democracy at the federal level). Firstly, while some votes are at member state level in the EU, they are about the Treaties and hence concern the EU level. Main decisions taken through referenda at the national level have therefore an impact on all member states, without all citizens being given the chance to participate in such decisions. Secondly, the ECI is a step in the direction of direct democracy at the EU level. Both elements together show that there is thus a practice in the EU and the EU member states to apply instruments of direct democracy to European issues and the member states can make the sovereign decision to hold such referenda on treaty matters. The EU practice goes in the direction of EU-level direct democracy. Unless that practice is abandoned all together it is advisable to make it more systemically coherent for all member states and to bring it more in line with standards of procedural neutrality and participatory power of citizens that guide direct democracy. Of course our model proposes something of a relatively high ideal. We do not mean to imply that while the EU remains in the gray zone between plebiscitary and direct democracy that all referenda in member states should be abandoned. On the contrary, such practices are part of a learning process and they might bring forth unforeseen results.

As anticipated in Table 2, some important additional conditions apply to the institutional design of EU referenda in order to address several of the objections raised in the previous section. Against the implementation of direct democracy on EU issues only at certain levels of government, EU referenda could

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<sup>10</sup> Accession or exit is thus excluded from this proposal and is in the competence of the member states.

deactivate second-order voting. The referenda on European issues at the national level tend indeed to become a projection point for second-order voting, guided by all sorts of frustrations that stem from national or local politics, but might have little to do with the European issue at stake. This problem is more likely to be overcome by EU referenda held simultaneously in all member states, where the issue is contested in all EU countries at the same time and thus more likely to be assessed from the point of view of a more aggregated generalized interest. Simultaneity of the voting is also intended to ensure non-discrimination. Indeed, in case of aggregation of voting outcomes of several constituencies or peoples, the sequencing of voting dates also introduces distortions that do not guarantee the same formal procedure to all citizens. Constituencies who get to vote earlier have an advantage over those who vote later because they can set a trend and create pressure; constituencies who vote later have information at hand about the vote of those who voted earlier, etc. Under conditions of unanimity the sequencing of voting is especially problematic.

Furthermore, research on direct democracy shows that if the issue voted on is a package of more than one topic, the aggregation of votes cumulates veto positions and a formal veto bias is introduced in the decision-making procedure. Even if, as Mendez, Mendez, and Triga (2014) suggest, European treaties are not appropriate to single issue voting in referenda, partial amendments might be more accessible to voters. Finally, EU referenda' results should be binding. This seems to be a very strong condition but its justification becomes quite obvious given the actual practice. If results of referenda are not taken into account the democratic legitimacy of the EU is undermined and citizens are further estranged from the institution. This has happened in the case of the vote on the Constitutional Treaty whose articles are now in the Lisbon Treaty despite being rejected in France and the Netherlands, as well as in Greece with the rescue package that was rejected by referendum only to be implemented anyway. Table 3 provides a summary of the characteristics of the ideal EU referenda we propose against the actual referenda held at the national level on EU issues.

**Table 3** *Ideal EU referenda vs. Real national referenda on EU issues*

	<b>EU referenda (Direct Democracy)</b>	<b>National referenda on EU issues (Plebiscite)</b>
<b>Trigger of individual vote</b>	constitutional/legal disposition or citizen action	government- induced
<b>Political level of application (city, state, country, EU)</b>	European	strategically targeted (state)
<b>Unity/simplicity of subject matter</b>	Yes	No
<b>Sequencing</b>	No	Yes
<b>Result legally binding</b>	Yes	No

An additional pivotal question is the aggregation rule. This question goes to the heart of the issue of the nature of a polity. Is it a centralistic state, a demoi-cratic federal state or a demoi-cratic international treaty system? In the case of the EU we can exclude variant for sure. Hence, simple majority voting as if there were a single European demos and no national dêmoi is not an option. The EU applies majority voting in its secondary legislative procedure and unanimity in primary law making. A strict unanimity condition for the aggregation of all popular votes of all member states would be the logically coherent application of direct democracy to current EU treaty making. The positive effect of this would be that treaty change would be restricted to issues that are broadly accepted by a majority of citizens in all member states. The negative effect could be that treaty change could be significantly blocked by individual veto positions of member states peoples with no possibility to break stalemates by intergovernmental deals. A more viable option would therefore be qualified double majorities. Referenda on single issues of primary law would need to be accepted by a majority of all

European citizens and by a significant majority of member states peoples in a direct vote. The exact number cannot be determined from a purely theoretical point of view, but the current system in the council could offer guidance. Further points could be added: Not all Treaty reforms could be subject to mandatory referenda. The TEU contains the basis of European law. It determines the nature and values of the polity. The TFEU on the other hand, is a secondary text that is constituted and constrained by the TEU in view of an articulation and implementation of the TEU's goals. According to Lacey (MS, forthcoming), mandatory referenda should therefore be restricted to TEU modifications whereas an optional, citizen induced referendum should be introduced for changes to TFEU. Obviously, this procedural constraint could limit direct democracy to fundamental acts of sovereignty. With reference to Switzerland Lacey (2016) also suggests a loosening of the condition of single issue voting in referenda (as opposed to initiatives). As in Switzerland so in the EU the peoples as the sovereigns should be left with the option to pass a synthetic judgment to multi-issue reform. That point is sensible, but still multiple-issue votes should be the exception rather than the rule. This is the case in Switzerland where usually a coherent body of law is voted on. The constitution as a whole has only been put to the vote three times in Swiss history. Given the fact that the TEU is a stable treaty individual changes to it can be put to vote without a vote being made on the whole treaty. This also makes the holding of a referendum much more steerable towards the issues one wants to change.<sup>11</sup> If Switzerland is in any way a real world example for the EU, in most cases the citizens will follow the recommendations of the government. Even a unanimity condition could be met in many cases if all governments agree on a treaty change. Referenda will make this process more inclusive and consensus oriented with an upstream effect. It is to be expected that transfer of competencies from the national level to the EU level will be contested with more intensity.

What to say about referenda on secondary law? Following the normative guidance, direct democracy should not be limited to constitutional law but to all generally binding law making. However, a change from mandatory to optional referenda called by collective citizen action (signatures) is sensible. Parallel to the existing aggregation rules in the EU for secondary law making, the unanimity condition can be dropped altogether. Double majorities would still be advisable (cf. Papadopoulos 2005: 456) and hurdles in the democratic EU could be higher than in Switzerland as a federal state. Hence, optional referenda voted in or out by qualified double majority rules would be the two main forms of direct democracy that should be developed for Europe's secondary law making process. Presumably, this gives citizens greater participation and control over law making but most importantly this does not only empower the people in the abstract but also the intermediary actors and grass-root civil society associations as well as the European Parliament and national parliaments. These actors will be instrumental in collecting signatures and leading or accompanying the debate.

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<sup>11</sup> As Lacey comments (2016) this proposal stands in stark contrast to Pogge's (1997) insistence that major Treaty reform should be subject to several rounds of single issue referenda.

### 3. EU REFERENDA: A POSSIBILITY FOR THE EUROPEAN UNION?

Even if the institutional design that has been proposed above is supported from a normative point of view, it is not possible to empirically test the potential benefit of the institutionalization of EU referenda. A number of aspects make this task particularly difficult. Firstly, there is so far no such thing as an EU referendum, which impact we could evaluate empirically making any attempt to make inferences from existing situations limited by the “as if” clause. Secondly, even from a comparative perspective, there are very few countries where referenda have been used regularly at the federal/national levels. Thirdly, in the European context, there is a wide variety in terms of institutional design of direct democracy making it particularly hard to think of a common EU referendum and its possible impact. Fourthly, so far there have been very few referenda on EU issues overall, and most of them have been held in the same countries. There is therefore little empirical evidence to fully assess how well/badly referenda on EU issues work in Europe at large.

For all these reasons, this paper is more focused on evaluating existing practices of referenda as an attempt to provide some support to the theoretical prescriptions presented above. In this sense it does not seek to prove that EU referenda will have a general positive impact on EU democracy. Whether direct democracy at the EU level is normatively desirable is indeed a question that we answer positively from the point of view of normative theory. However, important empirical questions need to be answered as well. As Simon Hug wrote: “it is far from obvious whether the potentially beneficial effects of referenda at the subnational or national level would simply transpose to the transnational level.”(Hug 2003, 21). In the following sections we therefore undertake two main objectives: 1) to assess current practices of mandatory vs. optional referenda: advantages and disadvantages of each of these; and 2) to analyse EU citizens’ predispositions to participate both in national referenda on EU issues and in EU referenda – would citizens be willing to participate in EU referenda? And, would citizens’ participation approximate the ‘general will’? Before we go into these two objectives, we first provide a descriptive analysis of referenda in the EU member states.

The idea of having a EU referendum has already been raised by several intellectuals: either as a pan-European referendum (Auer & Aubert 1997; Habermas 2001); a polity-wide referendum (Schmitter 2000); or a EU-wide referendum (Cheneval 2007; Rose 2013) (a critical revision of the proposals for the creation of a EU referendum is provided by Hug 2003, chapter 6). The main argument of the advocates of an EU referendum relates to the democratic deficit which has haunted the EU in the last years. According to Rose (2013), the institutionalization of a EU referendum is the only option in order to increase democratic legitimacy in the EU, by securing the political commitment of the citizens. Yet, intellectual discourse on the EU referenda is not reflected among the political elite. Quite to the contrary, referenda are viewed negatively among the political elites, as if they “see themselves as trustees acting for the collective good of Europe.”(Rose 2013, 4).

Indeed, despite the numerous popular calls for the use of referenda on European matters, most European policymakers have been able to circumvent its use, and keep European decision-making negotiations at the intergovernmental level, and later on ratification by the national parliaments. The fear that European integration would be blocked if left to the will of the European citizens is the main justification employed against the use of referenda (Mendez, Mendez, and Triga 2014). Recent experiences show that the EU is more than able to elude or simply ignore undesirable referendum outcomes. It is the case, for example, of the signature of the Treaty of Lisbon or the current pacts with the Greek government, which look very similar to the previous plan rejected last June by the Greeks in a referendum.

The EU emulates the representative system of the member states at the European level (yet with limited competences in some areas, which member states are more reluctant to delegate), but has only incorporated the citizens’ initiative (ECI) as a direct democracy mechanism at the European level. Referenda on EU issues are strictly held at the national level where legislation foresees very different uses of referenda. Table 4 summarizes some of the characteristics of different direct democracy regimes among member states (complete information can be found in the appendix). Table 4 illustrates that 75% of the member states

regulate direct democracy in the constitution. Although almost all member states have institutionalized optional referenda (either in the constitution or in specific laws), mandatory referenda are far less common at the national level in EU member states (16 member states).

**Table 4: Legal basis of referenda in European Union member states**

	N	%
Legal provisions for mandatory referenda	16	57.1
Legal provisions for optional referenda	24	85.7
Constitutional legal basis of referenda	21	75.0

Source: Direct Democracy Dataset, International IDEA

Where institutionalized, referenda are mandatory specially to change the national constitution, and in a number of countries, to transfer authority to international bodies (see Appendix, Table A.2). On the contrary, virtually any important issue can be submitted to optional referendum; legislation is very open and the decision to hold a referendum is left totally to the discretion of governmental institutions. There are also differences across member states with regards who can initiate an optional referendum: in some countries only the president and/or the legislative majority is entitled to call a referendum; whereas in others legislative minorities and registered electors can also initiate a referendum. Results of mandatory referenda are normally binding in all member states, but there are differences with regard to optional referenda. In some countries optional referenda are also binding (e.g. Denmark), in others they are sometimes binding (e.g. Austria), and in others they are never binding (e.g. Lithuania) (see Appendix, Table A.3).

These cross-national differences provide two sorts of insights. The first is that different practices and legislations at the national level might prove difficult to translate in a common institution at the EU level. Second and rather clearly, optional referenda give more room to manoeuvre to national governments than mandatory referenda. Contrary to mandatory referenda, they can be called at the discretion of the governments (in most countries only by the majority government itself) and results are rarely binding. At first sight, then, there is a notable asymmetry between mandatory vs. optional referenda with regards effectiveness of citizens’ capacity to control and influence the decision-making process.

This is however not reflected in the number of referenda held within each of the member states. Table 5 shows the number of referenda related to non-EU issues and EU issues in all EU member states, as well as national legislation on both types of referenda (both mandatory –column 5– and optional–column 6–, as well as EU-issues referenda –column 4). As it appears, there is no strong correlation between how and what type of referenda are constitutionally regulated in a country, and the frequency with which this instrument is used in the same country. In the two countries where the most referenda have been held at the national level – Italy and Greece – only optional referenda are constitutionally regulated (see Table 6 for the mean number of referenda for each type of regulation). In contrast, in countries where both mandatory and optional referenda are regulated (e.g. Spain and Portugal), very few referenda have been celebrated at the national level. Activation of direct democracy instruments, therefore, seems not only to be a matter of regulation, with tradition and political culture also potentially playing a relevant role. The latter seems to be more difficult to circumvent than legal aspects, if an EU referendum were to be institutionalized.

**Table 5 Number of referenda on EU issues by member state and constitutional regulation**

	Number of referenda on:		Constitutional provisions for:	
	EU issues*	Other issues*	Mandatory referenda	Optional referenda
Austria	1	3	Yes	Yes
Belgium	0	1	No	No
Bulgaria	0	5	No	Yes
Croatia	1	3	Yes	Yes
Cyprus	0	1	No	No**
CzRep	1	0	No	No**
Denmark	7	15	Yes	Yes
Estonia	1	3	Yes	Yes
Finland	1	3	No	Yes
France	3	9	Yes	Yes
Germany	0	0	Yes	No
Greece	1	36	No	Yes
Hungary	1	11	Yes	Yes
Ireland	8	29	Yes	Yes
Italy	1	70	No	Yes
Latvia	1	13	Yes	Yes
Lithuania	1	20	Yes	Yes
Luxembourg	1	7	-	Yes
Malta	1	2	Yes	Yes
Netherlands	1	0	No	No
Poland	1	12	No	Yes
Portugal	0	4	Yes	Yes
Romania	1	8	Yes	Yes
Slovakia	1	14	Yes	Yes
Slovenia	1	21	No	Yes
Spain	1	2	Yes	Yes
Sweden	2	13	No	Yes
UK	1	1	No	Yes
Total	39	306		

\*Only those held at the national/federal level

\*\* But ad hoc referenda are possible

Source: own elaboration, based on Méndez et al. 2014, and c2d database (Centre for Direct Democracy, Aarau).

**Table 6 Mean number of referenda by type of constitutional regulation**

	Total	EU issues
No referenda	0.5	0.5
Only optional	18.7	1.0
Optional and mandatory	9.7	2.0
Only mandatory	0	0

Source: own elaboration, based on Méndez et al. 2014, and c2d database (Centre for Direct Democracy, Aarau).

However, the same pattern does not appear to hold in relation to referenda on EU issues. Until August 2015, there have been 39 referenda related to EU issues in the member states of the European Union (see Table 5).<sup>12</sup> Despite having been increasingly used in relation to EU affairs (and there is indeed this optimistic view about the increased use of referenda on EU-related matters), the number of referenda remains very small: the mean number of referenda per year (from 1972, the date of the first referendum on EU issues) is less than one. As compared to other issues where direct democracy seems to be well entrenched within the electoral system, the use of referenda on EU affairs is limited. Of course quantity is not the only thing that matters, but it is certainly an indicator of the residual implementation of direct democracy on European affairs.

This becomes clearer as we examine the use of referenda across countries. As already seen, referenda on non-EU issues are far more numerous than referenda on EU issues. Even when considering that some countries have only recently acceded to the EU, therefore making it unlikely that they would hold referenda on EU issues before that, the difference is significant enough to question the limited use of referenda on EU issues. Table 5 indicates also that, even with similar constitutional regulations, referenda on non-EU issues are very differently distributed across member states, with the exception of those where no constitutional regulation on referenda is provided (1 or less than 1 referendum has been celebrated in these four countries) (see also Table 6). Yet, on European issues, a clear distinction can be made between the countries which provide for constitutional regulation for mandatory referenda for all constitutional amendments and those that either provide for partial constitutional regulation or for none: in Ireland and Denmark, the number of referenda held on EU issues is substantially higher than in the other countries. The difference in the use of referenda related to EU issues as compared to non-EU related referenda is indicative of the fact that European governments avoid calling for EU referenda when they are not obliged to do so. On EU issues, therefore, legal constraints might have a stronger impact on whether a referendum is called or not (see also Table 6).

Table 7 describes the type of referenda on EU issues from 1972 to 2015 in the EU member states. Of the 39 referenda, 21 have been mandatory, while 18 have been called voluntarily by the incumbent party. Apparently, there is no relationship either between the type of referendum (optional vs. mandatory) and the type of EU issue that is voted in the referendum (accession vs. treaty/policy). This again indicates that there is ample room for discretion for governments in deciding whether to call or not to call a referendum.<sup>13</sup>

**Table 7 Number and type of referenda on EU issues**

	N	%
Optional		
Accession	7	17.9
Treaty/policy	11	28.2
<b>Total</b>	<b>18</b>	<b>46.1</b>
Mandatory		
Accession	11	28.2
Treaty/policy	10	25.6
<b>Total</b>	<b>21</b>	<b>53.9</b>
<b>Total</b>	<b>39</b>	<b>100</b>

Source: c2d database (Centre for Direct Democracy, Aarau). Authors' update with most recent referenda.

<sup>12</sup> In total 54 referenda in all European countries, both EU members and non-members.

<sup>13</sup> There are no significant differences in relation to the results of the referendum (77.7% yes votes in non-mandatory and 80.9% yes votes in mandatory).

#### 4. EMPIRICAL ANALYSIS 1: MANDATORY VS. OPTIONAL REFERENDA IN THE EU

In this section we initially revise a set of arguments contained in previous literature to refer to the problems of referenda. From these, we derive a set of hypotheses that we relate to the main components of our theoretical model: mandatory vs. optional; and simultaneity vs. non-simultaneity; and to the European level. As already mentioned, there has so far been no EU referendum whereby to evaluate its possible impact (and to test our hypotheses). Therefore, we try to provide some empirical evidence for our hypotheses by means of four case studies: 1) all referenda on EU issues; 2) the referenda of the constitutional treaty; 3) the Greece and the UK cases. Even if the analysis remains incomplete and does not allow for ensuring that EU referenda will be the optimal solution, it highlights the main problems of referenda as they are currently used.

##### a) The partisan logic

A referendum follows the logic of partisan calculus “when maximizing party and/ or presidential utility is the dominant motivating factor.” (Mendez, Mendez, and Triga 2014, 78). Optional government induced referenda are likely to prompt a partisan logic. Since authorities have discretionary power to call for a referendum, they might use it only on the issues of which they know they will receive stronger support from their partisans. Referenda can therefore be used as plebiscites in hands of the government, to justify specific actions. To the contrary, mandatory referenda would leave little room for the government to use referenda as a plebiscitary tool, since they could not decide on which issues they have to call a referendum.<sup>14</sup> In relation to the EU, optional government induced referenda will not only tend to activate a partisan logic, but also second-order voting (Reif and Schmitt 1980).

*H<sub>1</sub>: The partisan logic will be activated more frequently in optional referenda than in mandatory referenda*

##### b) Unequal negotiating power

Theorizing of political actors bargaining has only recently been applied to the EU sphere (Hug 2002). Even more recently, the bargaining power of member states has been studied in relation to the Constitutional Treaty of the European Union (Hug and Schulz 2007). The distinction between mandatory vs. optional referenda, however, is rarely taken into consideration in relation to the bargaining power of member states, probably due to lack of comparable data to test it. Yet this distinction is particularly relevant in the European context, and in relation to the possibility to establish a EU referendum. We argue here that optional referenda are more likely to produce unequal negotiating power of the member states, especially if not carried out simultaneously. In the European Union, due to large cross-country differences in the institutions of direct democracy, member states can decide whether, on what and when a referendum is hold. As such, referenda might be used to influence the negotiation outcomes, if member states perceive there is something to win from it. In addition, the fact that referenda (when called) are not simultaneous in all member states might in fact reinforce the negotiation power of some countries against others. Related to the different negotiating power of members states, is the veto power inherent to optional referenda. Since referenda are held only in a few countries, these countries have a de facto right of veto on EU decision-making. Mandatory and simultaneous referenda would put all member states on an equal footing, at least from a procedural perspective.

*H<sub>2</sub>: Optional and non-simultaneous referenda on EU issues favour that some countries have a stronger negotiation power than others*

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<sup>14</sup> This does not imply that the logic of partisanship never does show up in mandatory referenda, only that it is less probable.

c) Discrimination of the peoples

There has been very little reflection on the discriminatory effect (on the basis of ‘one man one vote’) of actual referenda on EU issues (an exception is Rose 2013; Rose and Borz 2013). It is yet (and precisely) the fact that referenda are not institutionalized at the EU level that promotes EU citizens’ discrimination; more specifically that the use of referenda is left to the will of national governments. Optional referenda do indeed favour that citizens are discriminated against. Since the decision whether to call a referendum is left to the discretion of the government, citizens from some member states are given the possibility to participate in the decision, whereas citizens from other member states are not afforded the same possibility. As such, in its current practice, referenda are highly discriminatory in the European Union, as citizens of the member states that do not conduct referenda are disadvantaged relative to citizens of the member states that do conduct referenda. We would argue that mandatory EU referenda would cancel out EU citizens’ discrimination in terms of political rights.

*H<sub>3</sub>: Optional referenda on EU issues produce discrimination among the EU citizens*

**4.1 CASE STUDY 1: REFERENDA ON EU ISSUES**

It has been shown above that in the vast majority of member states – except for those where referenda are mandatory on EU issues – the use of referenda on EU matters is left to the discretion of the national governments. We analyse the effect of this asymmetry in the use of referenda due to its optional character in relation to the hypotheses posed above.

a) H<sub>1</sub>: Partisan logic

Mendez, Mendez, and Triga (2014) provide an excellent classification on the overriding logic for holding a referendum on a EU issue: the logic of constitutionality, the logic of appropriateness, and the logic of partisan calculus. Under the logic of constitutionality a referendum is called when it is constitutionally mandatory or legislative.<sup>15</sup> The logic of appropriateness is driven by legitimacy concerns: a referendum is called either because there are external factors that push for referendum (e.g. other member states having a referendum) or pressure from the inside (e.g. citizens who are strongly in favour of referendum). The logic of partisan calculus follows partisan considerations on electoral benefits of the referendum. This classification is used in Table 8 against the two types of referenda which are of concern in this piece: mandatory vs. optional. As it can be seen from Table 8, optional referenda on EU issues tend to activate the partisan logic more frequently than mandatory referenda. Whereas only 2 of the mandatory referenda on EU issues have been called under the partisan logic, 12 out of 18 optional referenda have fallen under this logic (see Mendez et al 2014). As it appears, in so far as decision on whether to call a referendum is concerned, optional referenda are more frequently used as plebiscites.

**Table 8 The logic and type of referenda on EU issues**

	Mandatory <sup>a</sup>	Optional	Total
Logic of Constitutionality	11	0	11
Logic of Appropriateness	7	6	13
Logic of Partisan calculus	2	12	14

<sup>a</sup> No data on the referendum on Accession to European Unified Patent Court (UPC), Denmark 2014

Source: own elaboration, based on Méndez et al. 2014, and c2d database (Centre for Direct Democracy, Aarau).

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<sup>15</sup> As the authors argue, however, “Only in very few cases, however, is an element of political discretion completely absent.” (Mendez, Mendez, and Triga 2014, 75).

Previous studies confirm that this is in fact the case, even if the type of referendum is generally not taken into consideration. To start with, there is evidence that EU citizens' votes in referendum on EU issues are directly related to partisanship and evaluations of the government (Franklin, Eijk, and Marsh 1995; this is also found by Lubbers (2008) for the Dutch case on the Constitutional Treaty); as such, it seems probable that incumbent governments will make use of referenda to gain electorally. This is further confirmed by most recent findings. During the process of ratification of the EU constitutional treaty, for example, government parties which expected electoral gains supported referenda. On the contrary, incumbent parties that expected electoral losses opposed the referenda. This trend was highly reinforced in cases where national elections were very close to the date of the referendum, and where there was high levels of support among the public for the constitutional treaty (Dür and Mateo 2011; similar arguments can be found in Closa 2007). Crum (2007) finds also that mainstream parties of countries where a referendum on the EU constitution was called endorsed the constitutional treaty, therefore increasing their changes to profit electorally. Similar findings are reported by Hug (2003) for a different period. Mendez et al. (2014) also come to the conclusion that about a third of the referenda related to EU issues are triggered by partisan calculus, especially when consensus between the incumbent and the opposition is low (see above). Although there is little evidence regarding mandatory referenda and the activation of the partisan logic, existing evidence seems to support Table 8. The partisan use of referenda seems indeed to be partially avoided when referenda are mandatory, as is the case in Ireland. In the two referenda on the Treaty of Nice, issue-voting predominated over second-order voting, which reflects the limited capacity of using referenda as a plebiscite when they are mandatory (Garry, Marsh, and Sinnott 2005). As it appears, issue voting increases (and second order voting decreases) as the salience of the EU issue becomes greater and politicization of the EU issue is greater (Garry, Marsh, and Sinnott 2005). Plebiscitary democracy seems therefore more likely to emerge if optional referenda are used.

b) H<sub>2</sub>: Negotiation power

Dür and Mateo (2010) have investigated the influence of bargaining power of EU member states on their negotiating strategies. They find indeed that a stronger bargaining power leads to a higher capacity of the member states to influence the negotiation of the Financial Perspective 2007-2013, through strong criticism and even with the threat of a veto. There is less evidence that optional referenda are also used as a threat to increase the negotiation power (see Hug and Schulz 2007). We use here the classification of Dür and Mateo on bargaining power to observe whether there is a correlation between this and the use of referenda – either mandatory or optional.

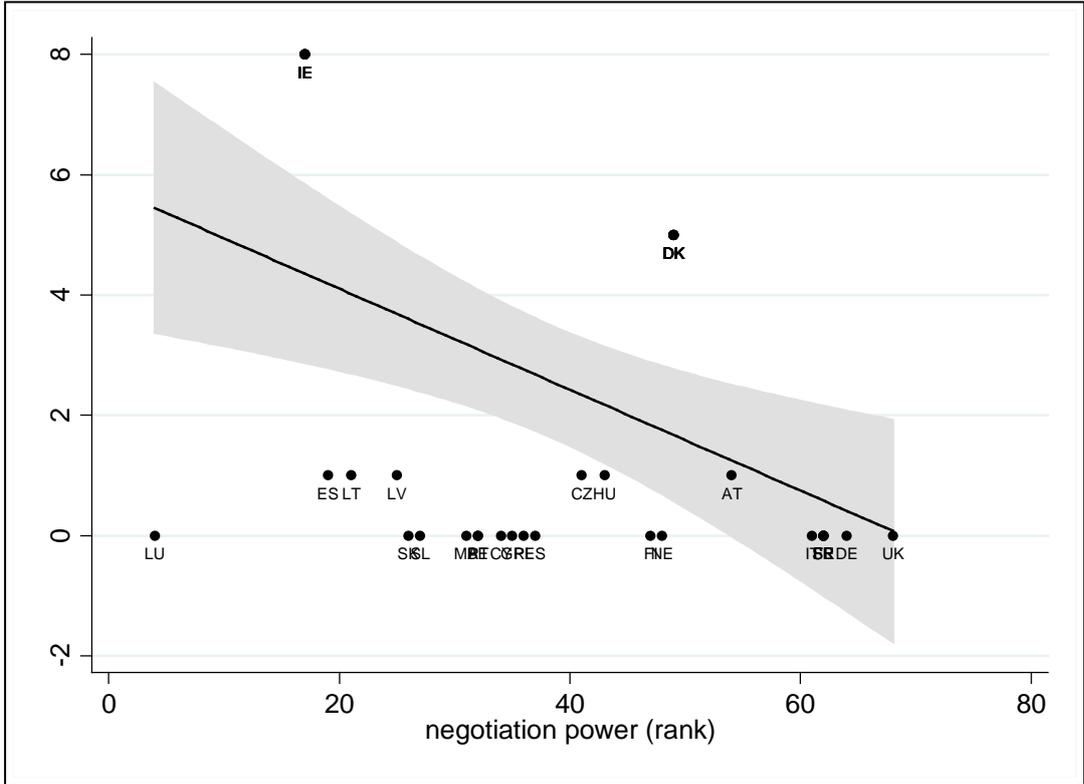
Figures 1 and 2 show the correlation between the number of mandatory (Figure 1) and optional (Figure 2) referenda and the negotiating power index as defined by Dür and Mateo 2010<sup>16</sup> (see Table 9 for the magnitude of the correlations between number of referenda and the three components of the negotiating power index).

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<sup>16</sup> Dür and Mateo (2010) construct “an aggregate index of bargaining power. The reason for using an index is that we only have 25 cases, which means that including variables for all three hypotheses and a control variable for the length of EU membership in a single model would be problematic. The data for net contribution that we use are from 2004 (Ministère du Budget, 2007, p. 37), because these were the latest data available to the Member States when they engaged in the negotiations. The data takes into account administrative transfers and the British rebate, as it was on this basis that the negotiations were carried out. Our measure of public opinion is the percentage of respondents stating that the EU was a bad thing in a spring 2005 Eurobarometer poll (Commission, 2005). Using these data, we create two indexes of bargaining power, both coming with specific strengths and drawbacks (see Table 2).<sup>7</sup> On the one hand, we establish an index by ranking all 25 countries with respect to population size, net contribution and public opinion *vis-à-vis* the EU. We ranked countries that are tied with respect to the percentage of respondents stating that the EU is a bad thing by looking at the percentage stating that the EU is a good thing. Assuming that all variables have the same weight, we sum up the ranks across the three variables to arrive at the aggregate rank-based index, which gives more points to countries with larger bargaining power.” (Dür and Mateo 2010, 568-570). This is the index that is used in the analyses in this section.

We do not expect to find any specific relationship between the number of mandatory referenda and the negotiating power of the member states, since the law determines the call of the referendum. Yet it is interesting that there is a negative correlation between number of mandatory referenda and negotiating power of the states, as it might well illustrate the fact that mandatory referenda are easily able to make countries more equal.

**Figure 1 Correlation between number of mandatory referenda in a country and negotiating power**



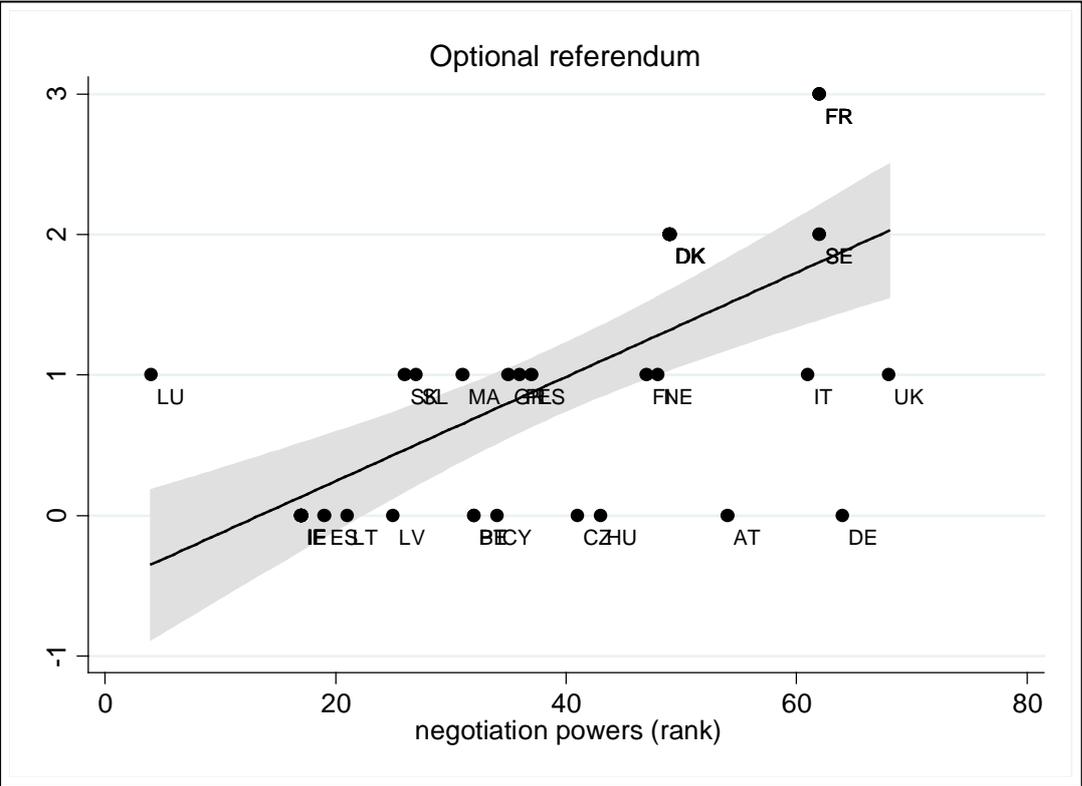
Source: own calculations, based on Dür and Mateo 2010 (see footnote 15), and c2d database (Centre for Direct Democracy, Aarau).

Of more interest to us is the relationship between the number of optional referenda and negotiating power presented in Figure 2. As it can be seen, contrary to mandatory referenda, the use of optional referenda is positively associated with the strength of the negotiating powers of the member states: the higher the rank of bargaining powers of a member state, the higher the number of optional referenda held in that same member state. The existence of a correlation might be an indication that optional referenda on EU issues are frequently used as a tool to influence the negotiating process in the European Union. Interestingly so, this tool seems to be particularly efficient among countries that already have strong bargaining powers,<sup>17</sup> specially if they are big contributors to the EU budget or if the country’s citizens are highly euroskeptic (see Table 9). As it appears, optional referenda might help to increase initial bargaining differences between member states, something which seems to be avoided by mandatory referenda.

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<sup>17</sup> It is neither impossible to say whether the use of referendum in itself ought to be included as part of the indicator of the negotiating power of member states nor to establish the causality between use of referendum and negotiating power (that is, whether referenda are used by powerful states to strengthen the already strong negotiating power or whether only because they have strong negotiating powers states are able to use referenda).

Figure 2 Correlation between number of mandatory referenda in a country and negotiating power



Source: own calculations, based on Dür and Mateo 2010 (see footnote 15), and c2d database (Centre for Direct Democracy, Aarau).

Table 9 Correlation between elements of negotiating power and number of referenda of each type

	Size of population	Net contribution to EU budget <sup>1</sup>	Euroskepticism <sup>2</sup>	Rank
Nº mandatory ref.	-0.40***	-0.28*	-0.40***	-0.45***
Nº optional ref.	0.39**	0.60***	0.59***	0.66***

<sup>1</sup> % Administrative transfers by country

<sup>2</sup> % of respondents in the country stating that membership to the EU is a bad thing

Source: own calculations, based on Dür and Mateo 2011, and c2d database (Centre for Direct Democracy, Aarau).

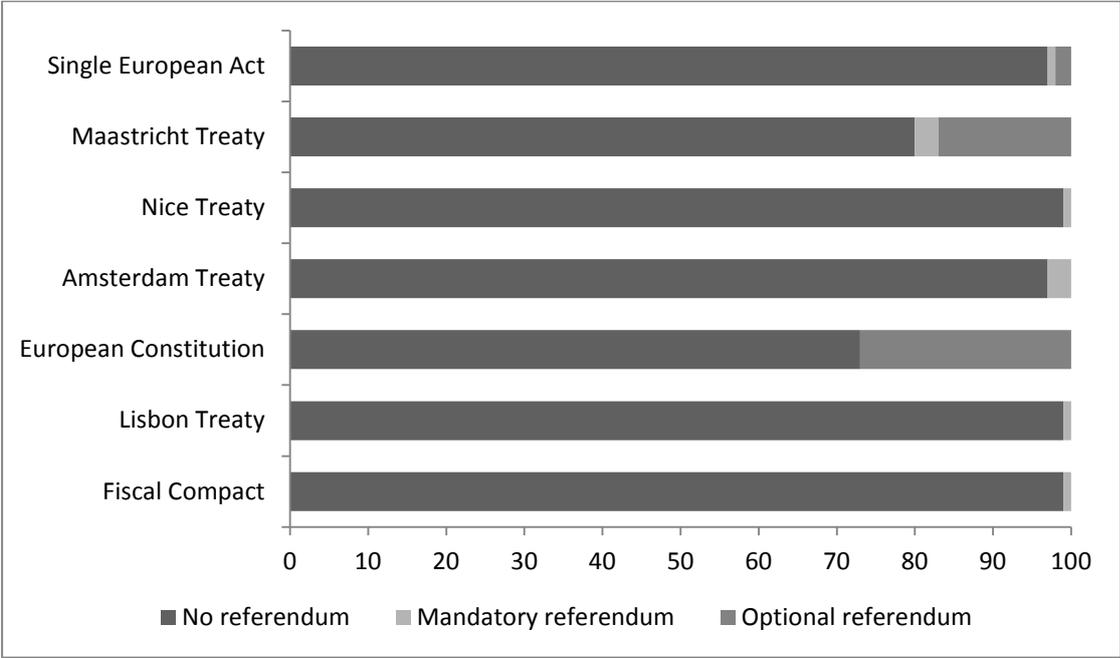
c) H<sub>3</sub>: Discrimination of citizens

Citizens’ discrimination in relation to EU referenda can be evaluated from two different angles: citizens’ perceptions of discrimination as a consequence of not having been given the opportunity to participate in EU referenda; and effective participation of EU citizens in EU referenda. Unfortunately, there is no data on citizens’ perceptions of discrimination in relation to referenda, and we therefore rely on the effective participation of EU citizens in referenda to assess levels of discrimination.<sup>18</sup> Figure 3 shows the percentage of EU citizens who have participated in referenda (either mandatory or optional), as compared to the percentage of EU citizens who have not been directly consulted on treaties. The figure shows that, in terms of political rights, a large

<sup>18</sup> We find no strong correlation between the number of referenda held in a country and levels of satisfaction with democracy or confidence in European institutions, which could be considered as a proxy for perceptions of political discrimination.

proportion of citizens are discriminated against: on average (for the period 1982-2015) only 8% of Europeans have been given the right to decide on a referendum on Treaty reform. As it stands, Figure 3 indicates that the fact that referenda are left to the discretion of national governments is highly discriminatory in the European context, since most governments opt not to use this democratic instrument.<sup>19</sup> Only where referenda are mandatory – as in Ireland – do governments call for referenda systematically.

**Figure 3 Percentage of EU citizens directly and not directly consulted on Treaties**



Source: own elaboration, based on Rose and Borz 2013

The comparison between optional and mandatory referenda on EU issues provides evidence in line with our hypotheses. Optional referenda are frequently activated (and campaigned) following a partisan logic, and used as plebiscites in the hands of incumbent parties. They are also used more frequently in member states that have strong negotiating power, maybe as a way to reinforce the influence of the member states that are already in a better position to negotiate. Finally, optional referenda derive in high levels of discrimination of the citizenry at the European level, since the majority of the population is not given the right to participate in referenda. On the contrary – and even if this cannot be extrapolated to an ideal EU referendum – mandatory referenda are negatively related to partisan use and negotiating power of the member states. Hence from a procedural perspective, mandatory referenda seem to be related to a higher level of fairness and political equality than optional referenda, specially within the European context.

**4.2 CASE STUDY 2: REFERENDA ON THE CONSTITUTIONAL TREATY (AND LISBON TREATY)**

Although referenda on EU issues had already been held at the beginning of the integration process (first referendum was in 1972), it was not until the referendum on the European constitution that a full awareness of the potential repercussions was aroused. Up until that moment, the majority of referenda on EU issues were

<sup>19</sup> It could be argued that citizens are in fact not discriminated against since decisions are taken by national parliaments who are representative of the citizens. Yet, de facto, voting in referenda on EU issues entitles a reduced group of citizens to an additional political right. Indeed, even if the vote takes place at the national level, it effectively has an impact on all EU citizens.

related to accession to the European Union (21 of 31 of the referenda held from 1972 to 2003).<sup>20</sup> Voting in referendum therefore only affected a few citizens, namely those who were to join the European Union. Referenda on treaty ratification or policy matters were more infrequent and were basically held in two small countries: Ireland and Denmark. As such, referenda on treaty ratification or EU policy matters did not have troubling consequences, since it only affected the countries where the referendum was held (e.g. a revised Treaty of Maastricht was approved only in a second referendum in Denmark, without any influence on the Treaty of Maastricht; or the no-vote in the referendum on the Euro in Sweden did not impede that the Eurozone continued to work as it had done since 1999). With the Constitution of the European Union, it could be seen for the first time how the results of the referenda have had an impact on the whole constituency of the European Union.<sup>21</sup> At this moment there was indeed a change, as the mechanism – the referenda – that ought to legitimize what was intended to be a constitution for Europe completely failed to fulfil its purpose.

Unsurprisingly, calls for an EU-wide referendum gained considerable prominence during the convention process that produced the Draft Constitutional Treaty. Initially some thirty-five of the convention's members put forth a proposal for an EU-wide referendum to be held on the Constitutional Treaty on the same day across all the member states, and for it to be binding where constitutionally possible; by the end of the convention process some ninety-seven convention members had signed a petition for a Europe-wide referendum which was also supported by the Liberals and the Greens in the European Parliament. The Praesidium, however, chose not to pursue this option. (Mendez, Mendez, and Triga 2014, 195).

Rather than replacing the treaty ratification procedures, the promoters of the European constitution thought of institutionalizing a completely new mechanism of ratification, which would give stronger legitimacy to the constitutional treaty. Yet, the idea was forgotten, and the decision to hold a referendum was left to the discretion of each member state. From June 2003 to July 2004, ten countries announced they would have a referendum (in that order: Spain, Luxembourg, Denmark, Netherlands, Portugal, Czech Republic, Poland, United Kingdom, Belgium – then withdrawn – and France). Except for Ireland – where a referendum was even not announced since it was required – it is interesting that it was the decision in all these countries to hold an optional referendum. The first referendum was held in Spain, where the yes-vote was only marginally victorious. The following referenda were held in France and the Netherlands, where the Constitutional Treaty was rejected. Despite the triumph of the yes-vote won in Luxembourg after France and the Netherlands, the process was stopped, to begin a period of reflection after the defeat of the Treaty in France and the Netherlands. In a way, the use of referenda (even if optional) had a positive impact, since it promoted reflection and deliberation on an issue that was of major relevance for the integration process and the European citizens. On the negative side, due to the fact that referenda were not mandatory and were not held in all member states simultaneously, the referendum had a de-legitimizing effect on the constitutional treaty in particular, and the EU as a whole. Since referenda were optional, member states could withdraw their announcement of referendum at the time the Lisbon Treaty was ready for ratification. As a consequence and even if ratified by national parliaments, the Lisbon treaty might suffer from a lack of legitimacy.<sup>22</sup> In relation to the referenda as an instrument of direct democracy, the feeling prevailed that referenda only promoted disruption and deadlock of the integration process, and the idea of a EU referendum was dismissed by the political elites.

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<sup>20</sup> On how referenda on accession were used to increase legitimacy see Jahn and Storsved 1995.

<sup>21</sup> This also coincides with the end of the era of permissive consensus and the beginning of stronger politicization and euroskepticism (Hooghe and Marks 2005).

<sup>22</sup> For example, Stuart Wheeler (one of the major donors of the Conservative Party at the time and later on strong supporter of UKIP) brought a case Court against the UK government claiming that the government was legally bound by an election promise to hold a referendum on the Lisbon Treaty. The government said that the promise was no longer valid as it was for the constitutional treaty for which the referendum was promised.

Interestingly, negative views on the constitutional referenda have rarely considered that their malfunction might have been caused by birth defects, namely the fact that the referendum has not been mandatory in all EU member states, and that they have been held sequentially. An in-depth study of the constitutional referenda by Hug and Schulz (2007) shows that calling for a referendum has in fact led to an advantage to negotiations during the EU constitutional process, especially if governments had scheduled a referendum before the IGC and voters had a strong preference for the status quo. In addition, partisan logic was activated in three out of the four constitutional referenda (Luxembourg, Spain and the Netherlands) (see Mendez et al 2014), although first order voting seemed to prevail (Glencross and Trechsel 2011).

This experience had important implications at the time of the ratification of the Treaty of Lisbon. Firstly, there was no other attempt to introduce direct democracy instruments to legitimize the new Treaty. Secondly, the Irish referendum (the only country where a referendum was mandatory) was used in some countries to influence the ratification process. Purporting past experiences with referenda on EU Treaties, the no-vote in the first Irish referendum was used as a tool by some countries to delay approval of the Lisbon treaty in the parliament (and it was in fact the main reason why the treaty was not approved in January 2009 as initially planned). In the Czech Republic, it was decided that they would not sign until Ireland has ratified the treaty; in Poland, after the no-vote in the Irish referendum the prime minister said that it would be pointless to sign the treaty before a solution to the Irish referendum was found. Either way, therefore, referenda were prey to tendentious use by member states governments and parties alike.

#### **4.3 CASE STUDIES 3 & 4: GREECE AND UK – NEGOTIATING PARTICULAR ISSUES**

Greece 2015: The referendum that took place in Greece on 5 July 2015 to vote on the bailout conditions proposed by the EU provides another example of the use of optional referenda as plebiscite. Yet in this case, both the member state and the EU were two clearly differentiated political actors. On the one hand, the government lead by Tsipras called for a referendum as a last attempt to increase its negotiating powers in front of the European Union.<sup>23</sup> On the other hand, the European Union campaigned actively against the 'No' in the referendum with increasing pressure on the Greek government. For the first time, the European Union adopted a strong position in a national referendum, and played an active role in the referendum process.<sup>24</sup> Worse from the point of view of direct democracy is that the results of the referendum have not been binding and practically the same if not a more severe agreement was signed between Greece and the EU after the majority of the Greek population had voted against it.

UK: The UK uses the optional exit referendum as a tool to achieve stronger negotiating powers in the EU. Both pro- and anti-EU parties are in favour of this referendum in the UK as it considerably increases the negotiating power of UK. The reason for this is the option of renegotiation with the EU. The referendum is used as a pressure tool to transform the EU to the liking of the UK, one could say (Glencross 2015, 308). This point is somewhat mitigated by the fact that the UK has consulted widely with other member states and presents points that are backed by a coalition of member states. Referenda can also be understood as a manifestation of the rise of populism in UK and the EU, rather than as a democratic practice (Wellings and Vines 2015)

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<sup>23</sup> See, for example: <http://www.bbc.com/news/world-europe-33492387>

<sup>24</sup> [http://europa.eu/rapid/press-release\\_STATEMENT-15-5314\\_es.htm](http://europa.eu/rapid/press-release_STATEMENT-15-5314_es.htm)

## 5 CITIZENS' PREFERENCES FOR EU REFERENDA

Another relevant aspect in relation to the referenda question is whether European citizens do in fact support the existence of a EU referendum. Several studies have addressed EU citizens' attitudes and behavior in referenda on EU issues. Previous evidence shows that EU referenda increase public support for European integration, especially immediately after they have voted in an EU-related referendum (Christin and Hug 2002). The use of referenda seems therefore to positively affect citizens' perceptions of the European Union project. Hobolt (2006) also finds that exposure to information makes Europeans more aware of the importance of the EU and promotes issue voting (rather than second order voting) in EU-related referenda. Less has been investigated, however, on EU citizens' preferences to direct democracy in general, and to the institutionalization of direct democracy in the European Union in particular. Would citizens be willing to participate in EU referenda if they were given the opportunity to do so?

Data on turnout of European parliament elections and referenda on EU issues provide some evidence in this regard. Table 10 shows the difference in turnout in referenda on EU issues minus average turnout in EP elections. As can be seen from the table, turnout in referenda on EU issues is higher than in EU parliament elections. Only in two countries and in three referenda has turnout been lower in referenda than in EP elections (Ireland 2001, Ratification of the Treaty of Nice; Ireland 1987, Ratification of the Single European Act; Spain 2005, Ratification of the EU constitution). In all the other referenda held on EU issues turnout has been much higher than in EP elections. On average (between all referenda in all countries) turnout has been 22% higher in referenda than in EP elections. This data might therefore be an indication that EU citizens are likely to participate in EU referenda and that this higher participation indeed would enhance the legitimacy of the EU. Also important, and considering that one of the main critiques of the EP elections is the low turnout rate, it seems that referenda perform better in terms of activating citizens' participation than representative institutions.

**Table 10 Turnout in referenda as compared to EP elections\***

	> EP	> Referendum (0-10%)	> Referendum (11-20%)	> Referendum (21-30%)	> Referendum (31-40%)	> Referendum (>40%)
non-mandatory	1	1	4	4	6	2
mandatory	2	6	2	4	5	2
Total	3	7	6	8	11	4

\*Average turnout in referenda on EU issues minus average turnout in EP elections for each of the countries.

>EP: turnout in EP elections is higher than turnout in referenda

>Referendum (0-10%): turnout in referenda is up to 10% higher than turnout in EP election

> Referendum (11-20%): turnout in referenda is up to 20% higher than turnout in EP election

> Referendum (21-30%): turnout in referenda is up to 30% higher than turnout in EP election

> Referendum (31-40%): turnout in referenda is up to 40% higher than turnout in EP election

> Referendum (>40%): turnout in referenda is more than 40% higher than turnout in EP election

Source: own elaboration, based on c2d database (Centre for Direct Democracy, Aarau) and European Election Database – NSD.

Citizens' preferences for direct democracy are better described by means of survey data. Two surveys at different points in time include a question related to referenda. The European Election Study (EES) was conducted before the elections to the European parliament in 2009. In between a list of questions related to different issues (such as welfare policies, immigration, etc.), a question was posed that asked whether the respondents agree that *EU treaty changes should be decided by referendum*. The question leaves open to

interpretation how and at which level<sup>25</sup> the referendum should be held, and is very specific about the type of issue which should be voted in referenda: EU treaty changes. An Eurobarometer survey conducted in February – March 2006 (relatively shortly after the last constitutional referendum had been held in Luxembourg in July 2005<sup>26</sup>) asks EU citizens how likely they would be to participate in *voting in referenda organized on the same day in all European Member States on European issues*. Contrary to the EES, this item specifies the level of the referendum – the EU – while also broadening the range of issues that might be voted in referenda. At face value, this item approximates the normative ideal proposed in this paper to a higher degree: an EU referendum held simultaneously in all member states. Although the two items cannot be directly compared, since they ask about different types of attitudes (one is about a preference – whether they think or not that EU treaties should be voted in referenda – and another about a behavior – how likely it is that they would vote in a referendum if there was one, independent of whether they are in favour of its existence or not), it is precisely this difference which makes them interesting for analysis, as they provide complementary pieces of information.

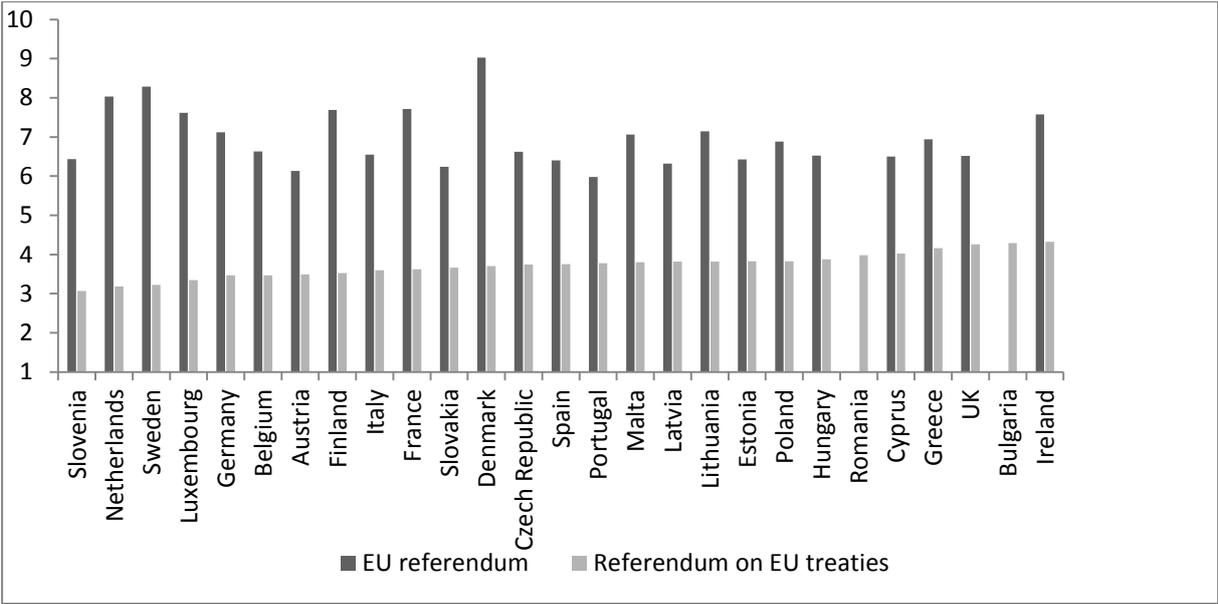
The two questions are graphically represented in Figure 4. Light grey in the figure presents mean levels of agreement with having a referendum on EU treaties in each member state (EES question; the graph is ordered according to this question); while dark grey represents how likely citizens of each member state – mean for each country – would participate in an EU referendum (Eurobarometer question). Figure 4 is indicative of a number of things. Firstly, most Europeans tend to agree that EU treaties should be voted in referenda: the mean for all countries is above 3 (the ‘neither agree nor disagree’ option). Some countries are specially in favour of having a referendum on EU treaties, namely Ireland, Bulgaria, the UK and Greece; which might not come as a surprise in the case of Ireland, where it is mandatory that EU treaties are voted in referenda. As it appears, EU citizens have a medium to strong preference for the use of referenda in EU treaties. Secondly, there is a relatively high variance in EU citizens’ willingness to participate in EU referenda if they were given the opportunity. The likelihood to vote in EU referenda is very high in Denmark for example (mean is 9.0), but is rather low in Portugal (mean is less than 6). Standard deviation is 3.1 points, which indicates a large variation across Europe. Third, at the aggregate level, there seems to be a sort of decoupling between citizens’ preferences for referenda on EU treaties and citizens’ behavior if given the chance to participate in referenda. Cross-country correlation between the two indicators is weak and even negative (-0.23). On average, this data suggests that it is not in the countries where citizens are more in favour of voting on EU treaties in referenda that turnout in EU referenda will be the highest. Quite the contrary, being strongly in favour of having national referenda on EU treaties seems to reduce the chances that citizens of a country will be willing to vote in an EU referenda. This might be interpreted as a consequence of the different nature of the questions, and what each of them is capturing. We therefore analyse in more detail the correlation of these two questions.

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<sup>25</sup> In all likelihood they consider the national level, since most of the other issues of this battery of items relate to the national level.

<sup>26</sup> This is of relative importance, considering the defeat of national referenda on the constitutional treaty.

**Figure 4 Preferences for referenda on EU treaties and likelihood to vote in EU referenda**



EU referendum: *Using a scale from 1 to 10, how likely would you participate in the following: Voting in referenda organized on the same day in all European Member States on European issues (10-point scale)*

Referendum on EU treaties: *Now I will read out some statements to you. For each of the following statements, please tell me to what degree you agree or disagree with each statement. Do you ‘strongly agree’, ‘agree’, ‘neither agree nor disagree’, ‘disagree’ or ‘strongly disagree’? EU treaty changes should be decided by referendum (5-point scale)*

Source: Eurobarometer 65.1, 2006 and EES 2009

To this aim, we have estimated a multilevel model, taking each of the questions as a dependent variable. Since the main objective of this exercise is to define the profiles of the citizens, especially concerning whether they are more/less in favour of referenda, our independent variables are aimed at capturing respondents’ attitudes to the European Union. This is not only relevant with regards acknowledging which types of citizens are more willing to support the use of referenda; but also to address one of the main suspicions of European politicians against referenda: that the EU integration process would be blocked if citizens are allowed to vote in referenda. We have estimated two separate models for each of the dependent variables. In the first model, we only incorporate individual level variables; in the second model, we incorporate in addition, a macro level variable, which accounts for the number of referenda on EU issues held in each of the countries. The models differ slightly for the two dependent variables, due to differences in the number of questions in each of the questionnaires. Yet all the indicators refer to citizens’ attitudes and evaluations of the European Union. In addition to these, we control for age, gender, level of education, and ideology. Results are presented in Tables 11 and 12.

Results confirm that the profile of the respondents supporting referenda on EU treaties and those who are more likely to vote in EU referenda differ. Table 11 shows that respondents who are more supportive of referenda on EU treaties tend to be more negatively oriented to the European Union and to evaluate it worse than respondents who are less supportive of this type of referenda. All four independent variables included in the model (whether EU membership is a good thing; whether the EU parliament takes into account the concerns of European citizens; whether the EU institutions are trustworthy; and whether the EU has a positive influence on the country’s economy) are negatively and significantly correlated to our dependent variable. As it appears, stronger support for referenda on EU treaties reflects mistrust for the European Union and stronger preferences to keep decisions and autonomy at the national level. Interestingly, model 2 shows that citizens’ support for referenda on EU treaties is independent on the number of referenda on EU issues held in the

country (although the relationship is positive, it is not significant). Preferences for referenda on EU treaties do not derive from previous experience, but rather encapsulate citizens' attitudes to the European Union.

**Table 11 Support for referenda on EU Treaties (EES 2009)**

VARIABLES	Model 1	Model 2
Age	0.000689 (0.000726)	0.000733 (0.000727)
Gender (male=1)	-0.0292 (0.0198)	-0.0294 (0.0198)
Level of education (from low to high education)	-0.0334*** (0.00358)	-0.0335*** (0.00358)
Ideology (0=left; 10=right)	-0.00434 (0.00312)	-0.00433 (0.00312)
Membership to the EU is a good thing	-0.224*** (0.0145)	-0.224*** (0.0145)
EU parliament takes into account concerns of EU citizens	-0.0291*** (0.00910)	-0.0291*** (0.00910)
Confidence in political institutions	-0.0777*** (0.00941)	-0.0775*** (0.00941)
The EU has a positive influence in country's economy	-0.0633*** (0.0109)	-0.0634*** (0.0109)
Number of EU referenda in country		0.0441 (0.0319)
Constant	4.435*** (0.0781)	4.371*** (0.0893)
Observations	17,444	17,444
Number of groups	26	26

Standard errors in parentheses

\*\*\* p<0.01, \*\* p<0.05, \* p<0.1

Source: own calculations, EES 2009.

On the contrary, citizens who affirm to be more willing to vote in EU referenda are those who are more positively oriented to the EU: they tend to believe that membership of the EU is a good thing, and tend also to be in favour of transferring larger competences to the European Union. In this case, experience in referenda on EU issues at the national level has a positive impact on the likelihood to be willing to vote in a EU referendum.<sup>27</sup>

<sup>27</sup> Results are consistent with <https://www.bertelsmann-stiftung.de/en/topics/aktuelle-meldungen/2015/oktober/eu-citizens-still-trust-in-the-european-union-and-the-euro/>

**Table 12 Support for EU referenda (Eurobarometer 65.1, 2006)**

VARIABLES	Model 1	Model 2
Age	0.00429*** (0.00141)	0.00434*** (0.00141)
Gender (male=1)	0.212*** (0.0434)	0.212*** (0.0434)
Level of education (from low to high education)	0.150*** (0.00917)	0.150*** (0.00916)
Ideology (0=left; 10=right)	0.00318 (0.0101)	0.00305 (0.0101)
Membership to the EU is a good thing	0.627*** (0.0325)	0.625*** (0.0325)
The EU should broaden its scope of government	0.0361*** (0.00345)	0.0362*** (0.00344)
Number of EU referenda in country		0.203*** (0.0520)
Constant	5.525*** (0.171)	5.223*** (0.170)
Observations	16,703	16,703
Number of groups	25	25

Standard errors in parentheses

\*\*\* p<0.01, \*\* p<0.05, \* p<0.1

Source: own calculations, Eurobarometer 65.1, 2006

These results contradict the general idea that allowing European citizens to decide on European issues in a referendum will block the integration process (respondents in favour of enlarging the scope of the European Union are also more willing to participate in EU referenda). The type of referendum seems yet to be determinant, and in line with the hypotheses anticipated in this paper: while national referenda (most of the times non-mandatory) would tend to bias European policy making towards the preferences of the citizens who are more negative about the European Union (even if the results are only binding at the national level), it looks as if EU referenda would be more effective at reconciling EU citizens' preferences.

## 6. DIRECT DEMOCRACY: LEARNING FROM THE SWISS CASE?

In this section we summarize aspects of direct democracy in Switzerland that we find relevant for the EU. The lessons we draw from this section are formulated in the conclusions of this report. Direct democracy is today well-entrenched in the Swiss political system, and strongly supported by the public (more than 90% of the Swiss consider that their country is an example of democracy, according to Point de Suisse 2015). In fact, direct democracy has evolved in parallel to state formation, and has become a fundamental aspect of Swiss identity (see Deliverable 4.2). Even if there are contradictory stories on the development of direct democracy in Switzerland (either as a direct successor of local direct democracy or as influenced by the French occupation (Kobach 1994), there is no doubt that it has become part of the definition of the Swiss system.

The evolution of direct democracy in Switzerland has been gradual, although no major change in the different instruments of direct democracy has taken place since the beginning of the 20<sup>th</sup> century (see Table 13).

The most important direct democratic institutions that are actually in operation on all state levels are the mandatory referendum to sanction constitutional change, the optional referendum to challenge already passed legislation, and the citizens' initiative to revise the Constitution (or laws in the cantons) from outside parliament. (Serdült 2014, X)

In 2003, there was a positive vote on a popular 'general initiative', but this additional instrument never entered into force since it was later rejected by popular vote in 2009 (Art. 139 Swiss constitution; Biaggini 2011). All federal forms of direct democracy are binding, not consultative.

The main instruments of direct democracy at the federal level in Switzerland are the mandatory referendum, the optional referendum and the initiative. The description that follows is based on Linder 2007. The mandatory referendum must be called by the government in relation to any constitutional amendment or ratification of treaties on membership in supranational organizations. In addition, governments are obligated to call a referendum in cases where urgent federal legislation has been introduced without the required constitutional basis, whose validity exceeds one year. In order to be passed a mandatory referendum requires a double majority of the population and the cantons (see Table 13).

The optional referendum is held in relation to laws, federal ordinances, or permanent international treaties on membership in an international organization. Optional referenda are called if 50000 citizens or eight cantons request it, and they enter into force if approved by simple majority.

Finally, citizens' initiatives are used to propose partial amendment or total revision of the constitution. "If a popular initiative meets the current 18-months deadline, it is debated by the Federal Council and the Parliament and then presented to the voters with a recommendation, which is usually negative. The Parliament may simultaneously submit a counterproposal." (Linder 2007, 106).<sup>28</sup>

As can be seen in Figure 5, the use of direct democracy has grown considerably over time. This applies to all types of referenda, even if the use of the initiative seems to have been extended in recent times. Yet on average, all types of direct democracy instruments have increased in use across time, although literature points to the fact that periods when there are more referenda usually correspond to an increase in party competition (Leemann 2015).

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<sup>28</sup> At the cantonal level, the use of direct democracy varies greatly between the cantons, both in the form and the effective participation. We do not elaborate on cantonal direct democracy here, since our main focus is on the federal level.

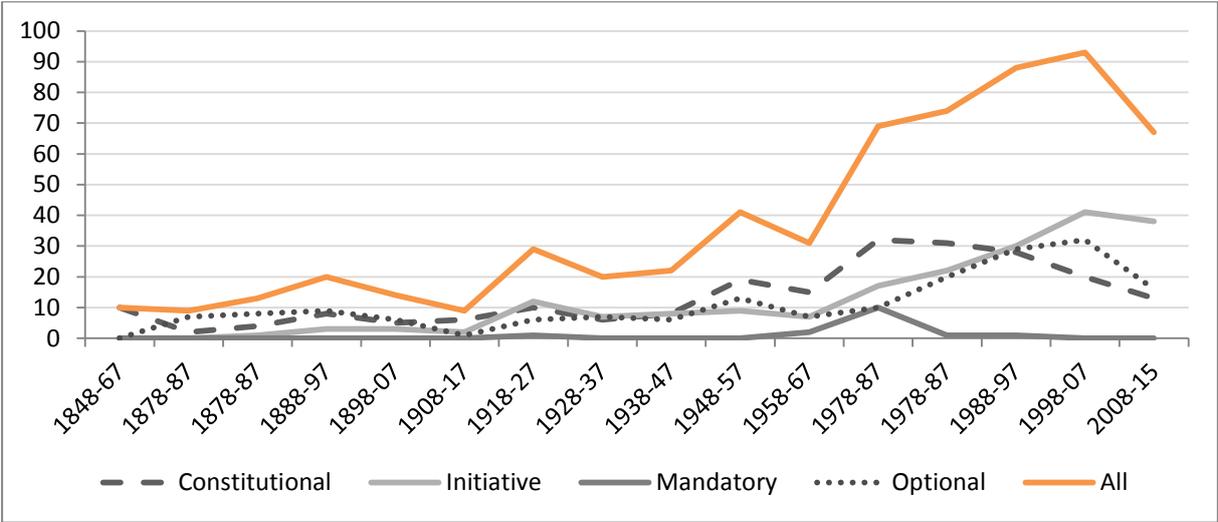
**Table 13 Swiss Federal Institutions of Direct Democracy**

Institution	Date of introduction	Promoter	Nature object of vote	Majority required
Mandatory constitutional referendum	1848	-	constitutional amendment	double
Mandatory constitutional referendum on the principle of a total revision of the Constitution	1848	-	question of principle	simple
Popular initiative for a total revision of the Constitution	1848	100000 electors	question of principle	simple
Optional legislative referendum	1874	50000 electors or eight cantons	federal law	simple
Popular initiative for a partial revision of the Constitution (precisely formulated)	1891	100000 electors	Constitution	double
Popular initiative for a partial revision of the Constitution (formulated in general terms)	1891 (modified 2009)	100000 electors	question of principle	simple
Counterproposal to a popular initiative for a partial revision of the Constitution (precisely formulated)	1891	-	constitutional amendment	double
Optional referendum for international treaties	1921 (extended in 1977)	50000 electors or eight cantons	international treaty	simple
Mandatory referendum for unconstitutional, 'urgent' laws applicable for more than one year	1949	-	urgent law	double
Optional referendum for constitutional, 'urgent' laws applicable for more than one year	1949	50000 electors or eight cantons	urgent laws	simple
Mandatory referendum for certain international treaties	1977	-	international treaty	double

Source: Updated from Kriesi and Trechsel 2008, page 51.

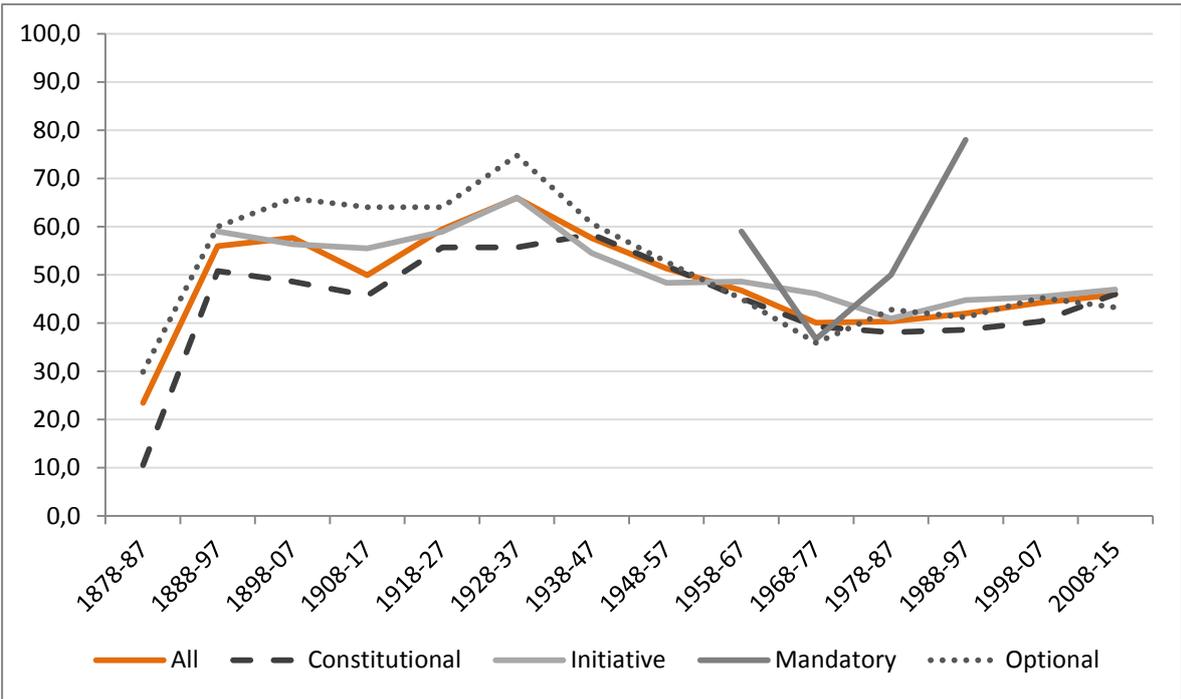
One of the main criticisms direct democracy is subjected to in Switzerland is low level of turnout. Figure 6 shows that turnout crossed the threshold of 50% in the 1950s and has never again surpassed this border. This period seems to coincide with the highest increase in number of referenda shown in Figure 5 above, which might be an indication of a sort of 'overload' of direct democracy in Switzerland. Excessive offers of direct democracy would result in lower interest from Swiss citizens to participate although this critique has been challenged by recent evidence. As it appears, turnout is not dramatically low in Switzerland if one considers the aggregated turnout of all referenda held in a year. Indeed, although citizens do not vote systematically in all referenda, they participate on average in some of them per year. This is called selective participation, in which citizens select to participate in the referendums related to the issues they are more interested in (Sciarini et al. 2016). According to these authors, this is not bad news for direct democracy, rather the contrary. Since citizens vote only in the issues they are more interested in, their votes are better informed than if they would have voted in all issues.

Figure 5 Number of referenda of each type by period



Source: c2d database (Centre for Direct Democracy, Aarau)

Figure 6 Levels of turnout by type of referendum across time



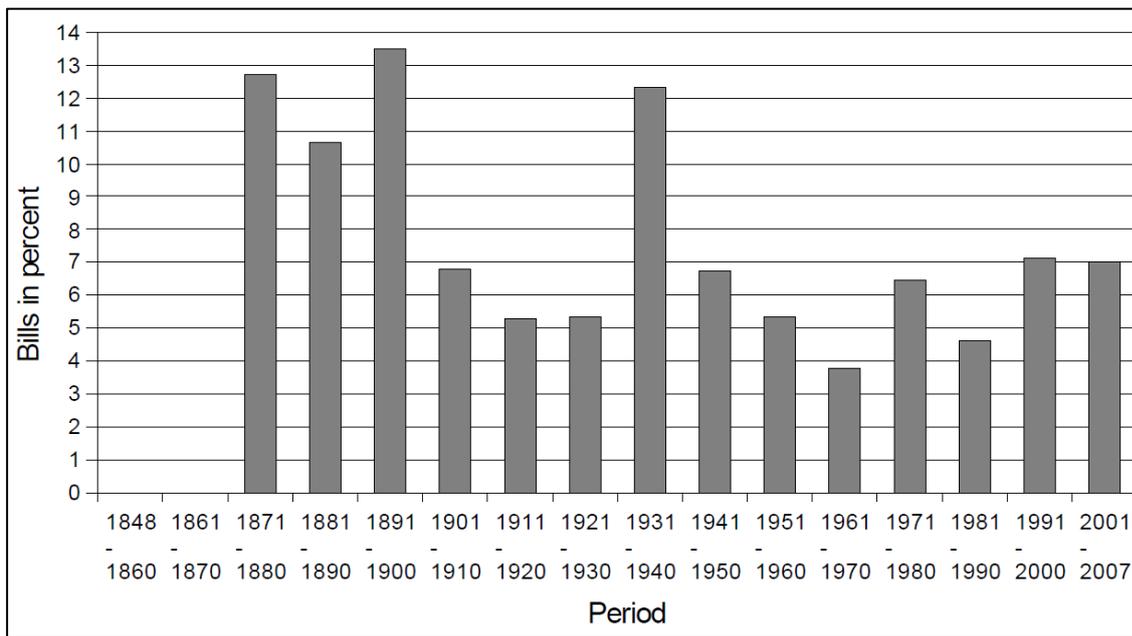
Source: c2d database (Centre for Direct Democracy, Aarau)

Another criticism of direct democracy in Switzerland (and against direct democracy in the EU) is that its use limits the control of the decision-making process by the political elite; and brings to a deadlock the decision-making process (and of integration at the EU level). Evidence from the Swiss case shows that the extensive use of direct democratic instruments does not impede the normal functioning of democratic representative institutions (Trechsel and Sciarini 1998). Indeed,

“most legislation is passed by parliament without interference from the voters. Roughly 93 per cent of all bills formally subjected to the optional referendum are actually not challenged (Kriesi and Trechsel 2008: 57). In fact, most of the bills going through parliament are even prepared by the administration under the auspices of the executive. But all issues that are put to a ballot vote are debated in parliament beforehand. Hence, the literature often refers to the Swiss political system as being a semi-direct democracy.” (Serdült 2014; see also Figure 7).

This does not mean that direct democracy institutions have had no impact on representative institutions in Switzerland. However, rather than blocking decision-making or limiting the control of political elites, the Swiss system has arrived – partly thanks to direct democracy – on a *negotiation* democracy (Kriesi and Trechsel 2008, 58).

**Figure 7 Percentage of parliamentary bills voted in a referendum**



Source: Serdült 2007, page 1

## 7. CONCLUSIONS

1. Evidence provided in this paper has shown that optional referenda are unhealthy when used in a plebiscitary manner by national governments.

2. Based on existing literature, we have proposed that referenda should be held simultaneously at the European level. While one might be inclined to think that countries that do hold referendums on EU Treaty change contribute to the legitimacy of the EU decisions, important inequalities are introduced by this practice that potentially cancel the positive effect altogether or even turn it into a negative effect. Citizens who get to vote in a Treaty referendum have greater control over the European constitutional project than those who do not. Moreover, the lack of simultaneity between countries that actually do hold referenda produces distortions. Positive results in earlier referenda asymmetrically impact public debate on referendums held elsewhere later on, whereas negative results by earlier referenda effectively cancel the results of later referenda still to be held in other countries. The meaning and opportunity for public debate that the referendum is supposed to engender is thereby undermined.

3. As it appears from the evidence produced in this report, many European citizens are likely to participate more in European votes if they would be given the opportunity of referenda.

4. While comparing the Swiss case with the EU has proven to be very beneficial in some areas, it becomes difficult with regard to direct democracy. There is no such thing as direct democracy as we have defined it at the European level and in the member states. Yet, understanding the Swiss case might help to better frame a model for referenda for the European Union.

*Lesson 1 for the EU:* direct democracy has evolved gradually in Switzerland and its use has also been gradually extended through interplay between the cantonal and federal levels. EU referenda should not be introduced without introducing direct democracy on the country levels. Country level referenda should not be introduced in a manner that is totally decoupled from the EU level.

*Lessons 2 for the EU:* even if the extensive use of referenda seems good a priori, it might lead to low turnout (and therefore in the case of the EU – low legitimacy). Unless well-entrenched in the political system, it seems more beneficial to have referenda only on the most important issues. From this perspective, it might be more advisable for the EU to only have mandatory referenda on single issues of treaty reforms (evidence on EU initiatives does however not indicate that the number of initiatives has increased dramatically since its institutionalization, but it might be too early to say).

*Lessons 3 for the EU:* direct democracy exerts the role of control and legitimization on the decision-making of representative institutions in Switzerland. In addition, direct democracy in Switzerland has promoted consensus among the different political actors.

*Lesson 4 for the EU:* In relation to the difference between mandatory and optional referenda, there is a claim that the Swiss government has used referenda as a way to impose (and legitimise) policy preferences

(Papadopoulos 2005; see also Lane 2013). Evidence, however, points to the fact that, even in Switzerland, optional referenda might be activated more often under a partisan logic than mandatory referenda (Kriesi 2006). According to Serdült and Welp (2012) optional referenda are used by some parties to concentrate power and serve as a partisan strategy. Even in a context where direct democracy is extended, optional referenda seem to be used for partisan purposes.

*Lesson 5 for the EU:* The EU need not limit direct democratic opportunity structure to primary law. In fact secondary law might be even more adequate for this practice as it does not necessitate a unanimity criterion. Referenda on secondary law would not need to be subject to a unanimity requirement. The QMV formula could be adapted here (cf. Papadopoulos 2005: 456), presenting a slightly higher hurdle to the success of a referendum than is present with Switzerland's double majority requirement.

*Lesson 6 for the EU:* European politics is consensual and can be expected to remain so if it became a semi-direct democracy. Introducing the optional referendum in secondary law making is therefore unlikely to have a transformative effect in this sense. In Switzerland it helped to constitute consensual forms of democratic politics. But the optional referendum can be expected to empower a variety of actors in different ways as intermediaries in the direct democratic process. In particular, national parliaments, the European Parliament and grassroots CSOs may be empowered by these new mechanisms of direct democracy. These kinds of actors are important for collecting signatures and significantly contribute to the campaigns precluding popular votes in Switzerland.

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APPENDIX

Table A.1 Characteristics of referenda in member states

Country	Mandatory referenda	Optional referenda	Legal basis	First referendum	Any referendum since 1980?
Austria	Yes	Yes	C; SL	1,938	Yes
Belgium	No	No		1,950	No
Bulgaria	No	Yes	C; SL	1,922	
Croatia	Yes	Yes	C; SL	1,991	Yes
Cyprus	No	No, but ad hoc referenda are possible		1,950	Yes
Czech Republic	No	No, but ad hoc referenda are possible		2,003	Yes
Denmark	Yes	Yes	C; SL	1,916	Yes
Estonia	Yes	Yes	C; SL	1,923	Yes
Finland	No	Yes	C; SL; R	1,931	Yes
France	Yes	Yes	C; SL	1,793	Yes
Germany	Yes	No	C	1,926	
Greece	No	Yes	C; SL	1,920	
Hungary	Yes	Yes		1,989	Yes
Ireland	Yes	Yes	C; SL	1,937	Yes
Italy	No	Yes	C; SL	1,929	Yes
Latvia	Yes	Yes	C; SL	1,923	Yes
Lithuania	Yes	Yes	C; SL	1,991	Yes
Luxembourg		Yes		1,919	Yes
Malta	Yes	Yes		1,870	Yes
Netherlands	No	No	R	2,005	Yes
Poland	No	Yes	C; SL; R	1,946	Yes
Portugal	Yes	Yes	C; SL	1,933	Yes
Romania	Yes	Yes	C; SL; R	1,864	Yes
Slovakia	Yes	Yes	C; SL; R	1,994	Yes
Slovenia	No	Yes	C; SL	1,990	Yes
Spain	Yes	Yes	C; SL	1,947	Yes
Sweden	No	Yes	C; SL	1,910	Yes
United Kingdom	No	Yes	SL	1,975	
C= Constitutional basis SL= Specific laws/ legislation R= Regulations Source: Direct Democracy Dataset, IDEA					

**Table A.2 Characteristics of referenda in member states (continued)**

<b>Country</b>	<b>Issues in relation to which referenda are mandatory at the national level</b>	<b>Issues in relation to which referenda are optional at the national level</b>
Austria	# Constitutional amendments # Transfer of authority to international bodies # National sovereignty, national self-determination	# Constitutional amendments # Adoption of international treaties # National sovereignty, national self-determination # Conflict between constitutional organs # Devolution # Civil service # Taxes and public expenditure commitments
Belgium		
Bulgaria	None	Any issue of national importance, except those excluded
Croatia	Adoption of international treaties	Any issue of national importance
Cyprus		
Czech Republic		
Denmark	# Constitutional amendments # Transfer of authority to international bodies # Altering the voting age	# Adoption of international treaties # Bills
Estonia	Constitutional amendments	Any issue except those excluded and obligatory (see sources)
Finland	None	Not specified by legislation
France	# Constitutional amendments # Treaties pertaining to the accession of a state to the EU and to the European Communities	# Adoption of international treaties # Civil service # Economic or Social Reforms
Germany	Total revision of Constitution	None
Greece	None	# Any issue of national importance, except those excluded # Existing laws on important social issues
Hungary		
Ireland	Constitutional amendments	Any issue of national importance
Italy		
Latvia	# Constitutional amendments # Adoption of international treaties # Transfer of authority to international bodies # Dissolution of the Parliament	Adoption of a law
Lithuania	# Constitutional amendments # Transfer of authority to international bodies # National sovereignty, national self-determination # See comments	Any issue of national importance, except those excluded
Luxembourg		
Malta		
Netherlands	None	None
Poland	None	# Constitutional amendments # Adoption of international treaties # Transfer of authority to international bodies
Portugal	Devolution	Any issue of national importance, except those excluded
Romania	# Constitutional amendments # Removal of President	Any issue of national importance, except those excluded
Slovakia	Entering into or withdrawing from a union with other states; Dismissal of President	Any issue of national importance, except those excluded

Slovenia	None	# Constitutional amendments # Transfer of authority to international bodies # Any issue of national importance, except those excluded
Spain	Constitutional amendments	Any issue of national importance
Sweden	None	# Constitutional amendments # Any issue of national importance
United Kingdom	None	Any issue decided by legislation

Source: Direct Democracy Dataset, IDEA

**Table A.3 Characteristics of referenda in member states**

Country	Initiative for optional refer.?	Requirements to pass	Results binding?
Austria	# Legislative majority # Legislative minority	# Mandatory - simple majority # Optional - simple majority	# Mandatory - always # Optional - sometimes
Belgium			
Bulgaria	# Legislative majority # Registered electors	Optional - simple majority	Optional – always
Croatia	# President # Legislative majority # Registered electors	# Mandatory - simple majority # Optional - simple majority	# Mandatory - always # Optional - always
Cyprus			
Czech Republic			
Denmark	# Legislative majority # Legislative minority	# Mandatory - simple majority # Optional - simple majority	# Mandatory - always # Optional - always # Consultative - may not be binding.
Estonia	# President # Legislative majority # Legislative minority # Also factions, committees of parliament.	# Mandatory - simple majority # Optional - simple majority	# Mandatory - always # Optional - always
Finland	Legislative majority	Not specified by legislation	Never
France	# Government # President # Legislative majority	No data	Always
Germany	Not applicable	No data	No data
Greece	# Government # Legislative majority	Optional - simple majority	Always
Hungary			Sometimes
Ireland	President	# Mandatory - simple majority # Optional - simple majority	# Mandatory - always # Optional - always
Italy			Always
Latvia	# Registered electors # See also comments	# Mandatory - simple majority # Optional - simple majority	# Mandatory - always # Optional - always
Lithuania	# Legislative minority # Registered electors	# Mandatory - simple majority # Mandatory - qualified majority # Optional - simple majority	# Mandatory - always # Optional - never
Luxembourg			Sometimes
Malta			Sometimes

Netherlands			Not applicable
Poland	# President # Legislative majority	# Optional - simple majority	Optional – always
Portugal	# Government # President # Legislative majority # Registered electors	# Mandatory - simple majority # Optional - simple majority	# Mandatory - always # Optional - always
Romania	President	# Mandatory - simple majority # Optional - simple majority	# Mandatory - always # Optional - never
Slovakia	# Government # Legislative majority # Registered electors # See comments	# Mandatory - simple majority # Optional - simple majority	
Slovenia	# Legislative majority # Legislative minority # Registered electors	# Optional - simple majority # Consultative - not applicable	Binding, except consultative
Spain	# Government # Legislative majority	Not specified by legislation	# Mandatory - always # Optional - never
Sweden	Legislative majority	No special requirements	Optional - never
United Kingdom	Legislative majority	Not specified by legislation	# Sometimes # Not specified by legislation

Source: Direct Democracy Dataset, IDEA