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# Referendums on EU issues

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Fostering civic  
engagement

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## IN-DEPTH ANALYSIS

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Referendums give citizens a direct say over matters which would otherwise be decided by elected (or non-elected) representatives. Since 1972, Europe has seen 58 referendums on EU matters, concerning membership, treaty ratification or specific policy issues (e.g. adoption of the euro). At the same time, the degree to which EU countries make use of referendums differs significantly: while the majority of Member States have held one referendum on European integration, mostly relating to membership, a handful resort to referendums more frequently.

Despite the increased interest in some states, referendums remain controversial. On the one hand, advocates of direct democracy stress their role in engaging citizens, improving legitimacy and inclusive governance. On the other hand, criticism highlights their pitfalls, with critics particularly suggesting, in the aftermath of the French and Dutch rejection of the Constitutional Treaty in 2005, that voters tend to answer questions other than those on the ballot paper in referendums. Some critics, more generally, question the suitability of a 'yes' or 'no' vote to decide on complex, multidimensional matters within the European setting. Looking at a sample of past EU referendums, this paper provides an overview of these conflicting views, as expressed in (academic) commentary.

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## Executive summary

Referendums give citizens a direct say over matters which would otherwise be decided by elected (or non-elected) representatives. Thus, as instruments of direct democracy, they may foster citizens' involvement and legitimise important decisions. Even though the degree to which European Union (EU) Member States use referendums varies significantly, several studies suggest that the use of referendums and other direct democracy instruments has increased in recent decades, both in the EU and worldwide. Since 1972, Europe has seen 58 referendums on EU matters, concerning membership, treaty ratification, or specific policy issues (for example, on adoption of the euro); 44 of the 58 were called by EU Member States, or then EU candidate countries, while the remaining 14 were called in non-EU countries on EU matters, (Switzerland, Norway and Liechtenstein, for instance). At the same time, while the majority of Member States have held one referendum on European integration, mostly relating to membership, only a handful have resorted to referendums more frequently.

In recent years, referendums on EU-related matters seem to have taken a new direction. While referendums previously touched mainly upon EU membership and treaty ratification, some recent examples have focused on issues of 'salient national importance'. Examples include the 2015 referendum on the EU bail-out proposals in Greece, the 2016 referendum on the EU resettlement scheme in response to the refugee crisis in Hungary, and the 2016 referendum on the EU-Ukraine Association Agreement in the Netherlands. Membership-related referendums have the highest turnout (around 75 % on average) compared to other types of referendum defining the content of membership, such as those on treaty revision (overall 66 %), the proposed EU constitution (50 %), and to referendums on policy issues (around 40 %).

Nevertheless, despite the increased interest in some states, referendums remain controversial. On the one hand, advocates of direct democracy stress that referendums can, inter alia, foster citizens' engagement and thereby improve legitimacy and governance. Critics, on the other hand, highlight their pitfalls. Especially in the aftermath of the French and Dutch rejection of the proposed EU constitutional treaty in 2005, as well as the United Kingdom referendum on the withdrawal from the EU, they suggest that voters may lack sufficient knowledge and tend to answer questions other than those on the ballot paper in referendums. Some critics, more generally, question the suitability of imposing a binary 'yes' or 'no' vote to decide on complex, multidimensional matters within the European setting. Another argument against EU related referendums is the alleged 'second order' effect, which implies that voters, rather than focusing and voting on an EU issue, use the opportunity to voice their dissatisfaction regarding domestic policies decided by national governments.

This paper provides an overview of the different types of EU-related referendums; some key figures accompanied by an analysis of the most relevant conflicting views, as expressed in academic commentary; as well as a sample of referendums on EU-related issues.

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# 1. Referendums as a tool of direct democracy: The essentials

## 1.1. Context: representative and direct democracy

Representative democracy generally refers to a system of government based on elected representatives. In direct democracy however, citizens influence policy decisions without intermediaries. This implies that a direct vote through universal suffrage is decisive for the course of action to be taken. Referendums, generally understood to include procedures in which the electorate votes directly<sup>1</sup> on a specific (political, constitutional or legislative) issue, have thus been at the core of research on direct democracy. In some countries, provisions exist with regard to *citizen-initiated* referendums, often grouped together with citizens' initiatives.<sup>2</sup> In this context, in the absence of universally accepted definitions, the precise meaning and form of direct democracy mechanisms varies significantly between countries, as does their prevalence.

Traditionally, enthusiasts of direct democracy stress the importance of direct citizen engagement, and advocate it as the most (or even the only) appropriate way to take democratically legitimate decisions.<sup>3</sup> They emphasise, inter alia, the educational value of direct democracy, and its positive effects on a deliberative environment and participation. Critics, on the other hand, question the feasibility of direct democracy in modern states and point to issues regarding the difficulty of tackling complex decisions by means of a binary choice, the need for expert judgement, possible manipulation by populists and low turnout. The argument regarding citizens' competence in such complex matters is the core critique levelled at direct democracy, and has been viewed as particularly pertinent in the context of EU affairs.<sup>4</sup>

Direct and representative democracy are, however, two ideal models that do not exist in practice – there is no known modern political system which mainly, let alone

### Democratic principles in the EU Treaties

**Article 10, Treaty on European Union (TEU)** explicitly provides that the functioning of the Union shall be founded on **representative democracy**. It goes on to state that European citizens are directly represented at Union level in the European Parliament, while Member States are represented 'in the European Council by their Heads of State or Government and in the Council by their governments, themselves democratically accountable either to their national parliaments, or to their citizens'. It is important to point out the conceptual difference between representative democracy at the national and EU levels. At national level, members of national parliaments are the elected representatives of the electors, while this representative function is shared by two institutions at EU level (the European Parliament and the Council), albeit in a different form, making it possible to refer to Article 10(2) TEU as a source of 'double representation'. Article 10(3) TEU also provides that 'every citizen shall have the right to participate in the democratic life of the Union' and that 'decisions shall be taken as openly and as closely as possible to the citizen'. The Treaties also set out mechanisms of **participatory democracy**: Article 11 TEU mandates the EU institutions to maintain an open, transparent and regular dialogue with civil society, obliges the European Commission to carry out broad consultations and establishes the European Citizens' Initiative.\* This latter enables a minimum of 1 million European citizens to take the initiative to invite the Commission to table a legislative proposal.

\* See: Atanassov, N., *Revising the European Citizens' Initiative*, EPRS, June 2019.

<sup>1</sup> [Direct Democracy – The International IDEA Handbook](#), International Institute for Democracy and Electoral Assistance (IDEA), 2008.

<sup>2</sup> Mendez, F., Mendez, M. and Triga, V., *Referendums and the European Union – A Comparative Inquiry*, Cambridge University Press, Ch. 1, 2014.

<sup>3</sup> These arguments have been summarised in, for example, Hobolt, S. B., *Europe in Question – Referendums on European Integration*, Oxford University Press, 2009, pp. 5-6; Qvortrup, M. (2013), *Direct Democracy – A Comparative Study of the Theory and Practice of Government by the People* (Manchester University Press), pp. 6-7 and 89 et seq.; Mendez, F. et al (2014), p. 8 et seq.

<sup>4</sup> Ibid.

exclusively, relies on direct democracy.<sup>5</sup> It is largely agreed that while modern democracies primarily rely on representation, certain doses of direct democracy may meaningfully **complement** representative democracy. Instruments of direct democracy thus mostly exist *within* systems relying on representation and need to be considered in that context. The **interplay** between direct democracy instruments and institutions of representative democracy, including political parties and other intermediaries, is vital. Accordingly, it has been suggested that referendums can be viewed as 'a device used in representative democracies' to legitimise certain policy proposals and 'induce elected (and non-elected) representatives to govern with due regard to the prevailing sentiments of the citizens'.<sup>6</sup> Referendums are not the only instrument of direct democracy, other forms of participatory initiatives have also been developed by local, national and supranational administrations to help public institutions to face today's challenges and make institutions more responsive to societal issues.<sup>7</sup> Many of these participatory initiatives (citizens' assemblies, participatory budgeting, etc.), represent a recent trend that is driven by 'declining trust in political institutions, changes in methods of producing and sharing knowledge, and the pervasive nature of technology'.<sup>8</sup> Citizens' assemblies, fora and panels try to respond to increasing citizen demand to participate in decision-making and shape policies at EU level. For these reasons and, in line with the European Commission's priority for a new push for European democracy, its Joint Research Centre (JRC) launched the Competence Centre on Participative and Deliberative Democracy<sup>9</sup> in October 2021. Moreover, the ongoing Conference on the Future of Europe is inspired by some of these participatory experiences. This recent and prominent EU-level initiative is designed to revive civic spirit among the European public by engaging with citizens and involving them in the debate about the future of the EU.<sup>10</sup>

## 1.2. Classification: Which type of referendum?

The first element to clarify when touching upon EU referendums is that they are referendums on EU issues held at national level according to national legislation. There is no single and uniform procedure at EU level for calling and holding a referendum on EU matters. Referendums can be, for example, required or non-required (mandatory or optional), and their results may be binding or non-binding. The degree to which countries call for referendums varies and, as far as EU Member States are concerned, national referendums on EU-related matters represented a minority (43) compared to referendums on non-EU issues (147), at least during the 1957-2016 period (see Table 1).

First, a referendum can be **mandatory** according to the provisions of the respective constitution or applicable legislation. The conditions under which referendums are to be held vary, with referendums often being mandatory for questions of major political importance. In some cases, a referendum is triggered when a certain majority is not reached in Parliament, for instance in Denmark, where failure to reach the special five-sixths majority in the Danish Parliament to ratify EU treaties<sup>11</sup> triggers a mandatory constitutional referendum. In some cases, ratification of an EU treaty requires constitutional amendment, triggering the application of constitutional amendment rules

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<sup>5</sup> Hobolt, S. B., 2009, p. 5.

<sup>6</sup> Ibid., pp. 5 and 242.

<sup>7</sup> Sgueo G., [The practice of democracy: A selection of civic engagement initiatives](#), EPRS, European Parliament, 2020.

<sup>8</sup> Ibid.

<sup>9</sup> See the [Competence Centre on Participative and Deliberative Democracy](#).

<sup>10</sup> Kotanidis S., [Citizens' engagement and expectations of the Conference on the Future of Europe](#), EPRS, European Parliament, 2021.

<sup>11</sup> Section 20, subsection 2 of the [Danish Constitution](#), which requires either a five-sixths parliamentary majority or a majority in a referendum to ratify a transfer of sovereignty to an international organisation.

(which may or may not require a referendum). In *Crotty* (1987),<sup>12</sup> the Irish High Court ruled that further transfers of sovereignty to the (then) European Communities should be put to popular vote in a referendum. The referendum called by Austria<sup>13</sup> in June 1994, is another example – the Austrian executive decided that the issue fell within the remits of a constitutionally mandatory referendum.<sup>14</sup> A referendum is required when the Austrian Federal Constitution has to be subject to a total (*Gesamtänderung*),<sup>15</sup> or a partial revision, under specific conditions and accession to the then European Communities was considered as such.<sup>16</sup> This was the first obligatory referendum in the history of the Austrian Republic. It also illustrated that the rules governing referendums vary significantly between Member States.<sup>17</sup>

In the case of an optional referendum, a government decides to put an issue to the popular vote, although it is not obliged to do so. National provisions may choose to specify issues on which a referendum is optional, as well as issues which are excluded from decision by referendum. Many countries exclude, for example, taxes, public expenditure commitments and ratification of international agreements from decision by popular vote. Until 1997, the Constitution of Portugal expressly prohibited referendums on issues concerning the legislative and political powers of the Portuguese Parliament, which included the power to approve treaties concerning the country's participation in international organisations.<sup>18</sup> In 1986, Portugal joined the then European Communities without holding a referendum. However, the Portuguese Constitution was later revised to make it possible to hold a referendum on 'the approval of a treaty aimed at the construction and deepening of the European Union'.<sup>19</sup> Similarly, Article 90<sup>20</sup> of the Slovenian Constitution states that a referendum may not be called on laws ratifying treaties. However, Article 3a of the Constitution establishes that Slovenia 'may transfer the exercise of part of its sovereign rights to international organisations which are based on the respect for human rights and fundamental freedoms, democracy, and the principles of the rule of law and may enter into a defensive alliance with states which are based on respect for these values'. Before ratification, the Slovenian National Assembly may call a referendum. Another example is Article 75 of the Italian Constitution, which envisages a referendum to repeal, in whole or in part, a law or a measure having the force of law, if requested by at least 500 000 voters or 5 regional councils. However the article expressly prohibits any referendum on laws concerning taxes, the budget, amnesty, or ratifying international treaties.

None of the four referendums on the **proposed treaty establishing a constitution for Europe** that took place in Spain, France, the Netherlands and Luxembourg in 2005 was mandatory, nor were the Danish and Swedish referendums on the adoption of the euro. Experience shows that governments can (and do) call optional referendums for various political as well as tactical reasons, including

<sup>12</sup> Judgment of the Supreme Court of Ireland, '[Crotty v An Taoiseach](#)', 9 April 1987.

<sup>13</sup> See [Referendum](#) of 12 June 1994 on Austria's accession to the European Union.

<sup>14</sup> In the German original version: 'Soll der Gesetzesbeschluss des Nationalrates vom 5. Mai 1994 über das Bundesverfassungsgesetz über den Beitritt Österreichs zur Europäischen Union Gesetzeskraft erlangen?'.

<sup>15</sup> [Article 44\(3\)](#) of the Austrian Constitution.

<sup>16</sup> Heinz, Müller M., Taking Stock of the Austrian Accession to the EU: With Regard to the Arguments of its Referendum Campaign in 1994, Institut européen de l'Université de Genève, Collection Europa, VOL. 57-2009, 2008.

<sup>17</sup> Mendez, F. et al., Ch. 2, 2014.

<sup>18</sup> Articles 118(3) and 164(j) of the 1976 Portuguese Constitution.

<sup>19</sup> [Article 295](#) of the Portuguese Constitution states: The provisions of Article 115(3) shall not prejudice the possibility of calling and holding a referendum on the approval of a treaty aimed at the construction and deepening of the European Union.

<sup>20</sup> Articles 90 and 3a of the [Slovenian Constitution](#).

resolving divisions within governing parties/coalitions, demonstrating popular support for a specific issue,<sup>21</sup> or strengthening their negotiating position at international level. Some experts note that mainly *political* rather than constitutional motives are behind the organisation of many referendums.<sup>22</sup> The 2016 referendum on the United Kingdom (UK) withdrawal from the EU is an example of this tendency. During the run-up to the 2015 general election, then Prime Minister and Conservative Party leader, David Cameron, announced that, should the Conservative Party win a parliamentary majority, the UK government would first negotiate a more favourable EU membership regime, then hold a referendum on whether the country should remain in the EU under these more favourable conditions. Nevertheless, the reasons for governments to call a referendum in respect of EU policy are many, including for the purposes of: solving internal party division, displacing attention from an unpopular government policy towards the EU, or strengthening a bargaining position vis-à-vis the other EU Member States.<sup>23</sup>

A further type of referendum includes those demanded by **citizens themselves, which are** often grouped with the EU Citizens' Initiative in the literature. Such a vote may be sought to repeal existing laws (abrogative referendum), to suspend new legislation before it can enter into force (rejective referendum), or to adopt a new law (e.g. 'Volksbegehren' in the German *Länder*). A recent example of a citizen-demanded referendum on EU-related issues is the 6 April 2016 referendum on the **EU-Ukraine Association Agreement** held in the Netherlands. Another example of the possibility for citizens to demand a referendum can be found in Section 53 of the Finnish Constitution, which entered into force in 2012, and which envisages the possibility 'to submit an initiative for the enactment of an Act to the Parliament', when at least 50 000 Finnish citizens so require. In 2015, 53 000 Finnish citizens signed a petition regarding whether Finland should have a referendum on membership of the Economic and Monetary Union, and in 2016, 33 600 citizens signed a petition requesting a referendum on whether Finland should remain in the EU or leave. Ultimately, none of the above initiatives led to a referendum, although academics argue that they proved the potential of citizen-initiated referendums to influence EU developments.<sup>24</sup>

The results of a referendum may be **binding** upon political authorities, or governments may use such results for **advisory** purposes alone (consultative referendum). Domestic provisions may establish under which conditions the results of referendums are binding. National provisions may also choose to specify a validation threshold for holding a referendum (e.g. by specifying a turnout quorum), or for its result (usually by simple majority). As far as referendums on EU-related issues are concerned, with the exception of the single 2016 citizen-initiated referendum in the Netherlands, all others were either mandatory referendums triggered by law or non-mandatory referendums called by governments.<sup>25</sup>

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<sup>21</sup> [Direct Democracy – The International IDEA Handbook](#), International Institute for Democracy and Electoral Assistance (IDEA), 2008, pp. 47-49.

<sup>22</sup> Mendez, F. et al, 2014, p. 221.

<sup>23</sup> Beach D., *Referendums in the European Union*, Aarhus University, 2018.

<sup>24</sup> Hodson D., Maher I., *The Transformation of EU Treaty Making, The Rise of Parliaments, Referendums and Courts Since 1950*, Cambridge Studies in European Law and Policy, 2018, p. 143.

<sup>25</sup> Cheneval F., Ferrin M., Referendums in the European Union: Defective by birth?, *Journal of Common Market Studies*, Volume 56, Number 5, 2018, pp. 1178-1194.

Table 1 – Number of referendums and constitutional provisions (1957-2016)

	Number of referendums on:		Constitutional provisions for:	
	EU issues	Non-EU issues	Mandatory	Non-Mandatory
Austria	1	3(2)*	Yes	Yes
Belgium	0	0	No	Yes
Bulgaria	0	3(2)	No	Yes
Croatia	1	2	Yes	Yes
Cyprus	0	1	No	Nox
Czechia	1	0	Yes	Nox
Denmark	8	9(2)	Yes	Yes
Estonia	1	3	Yes	Yes
Finland	1	0	No	Yes
France	3	6	Yes	Yes
Germany	0	0	No	No
Greece	1	3	No	Yes
Hungary	2	6(1)	Yes	Yes
Ireland	9	29(24)	Yes	Yes
Italy	1	70	No	Yes
Latvia	1	6(3)	Yes	Yes
Lithuania	1	9(2)	Yes	Yes
Luxembourg	1	3	No	Yes
Malta	1	2(1)	Yes	Yes
Netherlands	1	0	No	No
Poland	1	9(3)	No	Yes
Portugal	0	3	Yes	Yes
Romania	1	4(3)	Yes	Yes
Slovakia	1	3	Yes	Yes
Slovenia	1	16(11)	Yes	No
Spain	1	2(1)	Yes	Yes

Sweden	2	8	No	Yes
United Kingdom**	2	1	No	Yes***
<b>Total</b>	<b>43</b>	<b>201(147)</b>		

\* In parentheses, number of referendums held post-EU accession. \*\* EU Member State until 31 January 2020. \*\*\* Since 2011.

Source: Cheneval F., Ferrín M., (2018) Referendums in the European Union: Defective by birth?, *Journal of Common Market Studies*, Volume 56, Number 5. pp. 1178-1194.

Some academics question this **classification** of referendums as mandatory or optional, binding, or consultative/advisory. They suggest that it is often difficult to determine, for example, whether or not an issue to be put to vote involves a transfer of sovereignty, which in practice tends to become a political rather than a legal matter. Equally, it is not easy for governments to ignore the outcome of a (supposedly) advisory referendum, which may turn out to be *de facto* binding upon them.<sup>26</sup> For example, it is difficult to imagine a government proceeding with EU membership should citizens vote against.<sup>27</sup> While the referendums on the proposed EU constitutional treaty held in France and the Netherlands were both non-binding referendums, it was impossible for national governments to simply ignore the results, as was the case regarding the result of the advisory UK referendum on the country's withdrawal from the EU. According to some academics, 'certainly there is no example in the history of European integration referendums of a government ignoring the wishes of the voters without a second referendum'.<sup>28</sup>

Due to the shortcomings of these classifications (mandatory-optional, binding-advisory), academics generally distinguish between referendums on (1) **membership** of the EU, which includes both accession referendums and withdrawal referendums; (2) **treaty ratification**; and (3) referendums on specific **EU policy issues** (e.g. the euro).<sup>29</sup> The order of this classification is employed to present some examples of EU referendums below. In this context, an **EU referendum** is understood as a referendum on European integration. This includes referendums in neighbouring countries, such as Switzerland or Norway which, although not part of the EU, are European Free Trade Association (EFTA) members and have conducted a number of referendums on EU integration matters (see Table 2). Other academics<sup>30</sup> further identify a fourth category: **third-country referendums** on EU-related topics.

### 1.3. Referendums on the rise?

As already mentioned, the degree to which countries in and outside the EU embrace the use of referendums varies significantly. In this regard, Switzerland is normally seen as the 'world leader', coming closest to what is termed a 'referendum democracy'.<sup>31</sup> Several studies suggest that the use of referendums and other direct democracy instruments has been **on the increase** in recent decades, both in the EU and worldwide.<sup>32</sup> Academics note, for example, the 1990s introduction of

<sup>26</sup> Hobolt, S. B., 2009, p. 10.

<sup>27</sup> Mendez, F. et al, 2014, p. 37.

<sup>28</sup> Hobolt, S. B., 2009, p. 14.

<sup>29</sup> *Ibid.*, p. 23.

<sup>30</sup> [Referendums on EU Matters](#), Policy Department for Citizens' Rights and Constitutional Affairs, European Parliament, 2017.

<sup>31</sup> [IDEA Handbook](#), 2008, p. 188; Hobolt, S. B., 2009, p. 12.

<sup>32</sup> Hobolt, S. B., 2009, p. 3; Qvortrup, M., 2013, p. 3; [IDEA Handbook](#), 2008, p. 42.

provisions on **citizen-initiated** referendums in many post-communist countries, as well as increased interest in referendums in, inter alia, the UK and the Netherlands.<sup>33</sup>

Referendums have also emerged as a recurrent and significant feature of **European politics**. While direct democracy played hardly any role in the early decades of European integration, the use of referendums since 1972 has become more common in what had initially been perceived as an 'elite-driven' project.<sup>34</sup> Since the first referendum, held in 1972, **58** referendums related to European integration have been held in Europe (see Table 2).

Referendums not only introduce a significant element of popular involvement in European affairs, experience suggests that such involvement can also have significant political and/or economic **implications**. They can – often contrary to the consensus among political elites – reject carefully negotiated treaties, thereby causing political crises, as was the case in 2005 following the French and Dutch rejection of the proposed EU constitutional treaty. Moreover, 'it is owing to referendums that Norway and Switzerland remain outside the EU and that Denmark and Sweden have stayed outside the euro-zone'.<sup>35</sup> Some experts<sup>36</sup> point out that, in recent years, referendums on EU-related matters seem to take a new direction. While EU-related referendums originally mainly touched upon EU membership and treaty ratification, some recent examples focus on issues of 'salient national importance'; the 2015 bail-out referendum in Greece, the 2015 referendum on the EU resettlement scheme in response to the refugee crisis in Hungary, for example. Other experts<sup>37</sup> note that this new shift is accompanied by an increased failure in referendums to obtain a 'yes' response from the population, with a 60 % failure rate post-2010, and 40 % between 2000 and 2010, compared to 20 % pre-2000. Finally, since 2003, the percentage of referendums resulting in EU citizens rejecting policies supported by their own government has increased, with the exclusion of referendums on EU membership.

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<sup>33</sup> Qvortrup, M., 2013, pp. 3, 26 and 51.

<sup>34</sup> Hooghe, L., Marks, G., 'Europe's Blues: Theoretical Soul-Searching after the Rejection of the European Constitution', in: *Political Science & Politics*, Vol. 39, No 2, 2006, p. 248; Hobolt, S. B., 2009, pp. 3 and 8.

<sup>35</sup> Hobolt, S. B., p. 14.

<sup>36</sup> [Referendums on EU Matters](#), Policy Department for Citizens' Rights and Constitutional Affairs, European Parliament, 2017.

<sup>37</sup> [Referendums on EU Matters](#), Policy Department for Citizens' Rights and Constitutional Affairs, European Parliament, 2017, op. cit. p. 32.

## 2. EU referendums: Some examples

The popular vote was introduced to the European integration process in 1972, when France held the first referendum on enlargement of the (then) European Communities. In total, 58 referendums relating to European integration have now been held in Europe. As Table 2<sup>38</sup> illustrates, 22 of the 27 EU Member States, as well as 3 non-EU members (Norway, Switzerland, and Liechtenstein), have held at least one referendum on EU matters. Given its tradition of direct democracy, Switzerland alone accounts for 8 EU referendums to date, whereas no EU referendum has yet taken place in Germany, Belgium, Portugal, Cyprus and Bulgaria. The bulk of EU referendums (24 of 58) concern EU **membership** referendums, with 7 of those having taken place in Norway, Switzerland and Liechtenstein.

### 2.1. Referendums on European integration, 1972 April 2016

In terms of prevalence, membership referendums are followed by **treaty ratification** referendums. Such referendums have taken place in 7 countries, with the most in **Ireland** (7) and **Denmark** (4). In fact, Ireland is unique in this sense, as the only Member State that has held a referendum on every major treaty revision since voting to become a member in 1972.<sup>39</sup> Generally, the approval rate in treaty ratification referendums is significantly lower than in membership referendums. Finally, 10 concerned **policy** referendums in Member States, in particular in Denmark (3).

The degree to which states use referendums on EU matters therefore differs significantly: Ireland (9), Denmark (7) and (non-EU) Switzerland (8) together account for **almost half** (24) of the total of 58 EU referendums, while no referendums were held in other states (e.g. Belgium, Bulgaria, Cyprus, Germany and Portugal).

Table 2 – Referendums on EU related issues, 1972 2016

Year	Country	Object	Category	Type	Turnout (%)	Yes (%)
1972	France	Enlargement of EEC	I	NR and NB	60	68.3
1972	Ireland	EEC membership	M	R and B	71	83.1
1972	Norway	EEC membership	M	NR and NB	79	46.5
1972	Denmark	EEC membership	M	R and B	90	63.3
1972	Switzerland	EEC-EFTA Treaty	T	R and B	52	72.5
1975	United Kingdom	EEC membership	M	NR and NB	64	67.2
1982	Greenland	EEC membership	M	NR and NB	79	46.98
1986	Denmark	Single European Act	T	R and B	75	56.2

<sup>38</sup> The table includes EU-related referendums in Norway, Switzerland and Liechtenstein.

<sup>39</sup> Mendez, F. et al., 2014, p. 59.

1987	Ireland	Single European Act	T	R and B	44	69.9
1989	Italy	Mandate for MEPs	I	NR and NB	85	88.1
1992	Denmark	Maastricht Treaty	T	R and B	83	49.3
1992	Ireland	Maastricht Treaty	T	R and B	57	68.7
1992	France	Maastricht Treaty	T	NR and B	70	51.1
1992	Switzerland	EEA accession	M	R and B	78	49.7
1992	Liechtenstein	EEA accession	M	NR and B	87	55.8
1993	Denmark	Maastricht Treaty	T	NR and NB	87	56.8
1994	Aland Islands	EU membership	M	NR and NB	49	73.6
1994	Austria	EU membership	M	R and B	82	66.6
1994	Finland	EU membership	M	NR and NB	70	56.9
1994	Sweden	EU membership	M	NR and NB	83	52.3
1994	Norway	EU membership	M	NR and NB	89	47.8
1995	Liechtenstein	EEA accession	M	NR and B	82	55.9
1997	Switzerland	EU candidature	M	NR and B	35	25.9
1998	Ireland	Amsterdam Treaty	T	R and B	56	61.7
1998	Denmark	Amsterdam Treaty	T	R and B	76	55.1
2000	Switzerland	Bilateral agreements	T	NR and B	48	67.2
2000	Denmark	Single currency	I	NR and B	88	46.9
2001	Switzerland	EU candidature	M	NR and B	55	23.2
2001	Ireland	Nice Treaty	T	R and B	35	46.1
2002	Ireland	Nice Treaty	T	R and B	49	62.9
2003	Hungary	EU membership	M	R and B	46	83.7
2003	Malta	EU membership	M	NR and NB	91	53.6
2003	Slovenia	EU membership	M	R and B	60	89.6
2003	Lithuania	EU membership	M	R and B	63	91.1
2003	Slovakia	EU membership	M	R and B	52	92.5
2003	Poland	EU membership	M	R and B	59	77.5

2003	Czechia	EU membership	M	R and B	55	77.3
2003	Estonia	EU membership	M	R and B	64	66.8
2003	Sweden	Single currency	I	NR and NB	83	42.0
2003	Latvia	EU membership	M	R and B	73	67.0
2003	Romania	EU membership <sup>40</sup>	M	R and B	56	89.7
2005	Spain	Constitutional Treaty	T	NR and NB	42	76.7
2005	France	Constitutional Treaty	T	NR and NB	69	45.3
2005	The Netherlands	Constitutional Treaty	T	NR and NB	63	38.2
2005	Switzerland	Schengen Agreement	I	NR and B	56	54.6
2005	Luxembourg	Constitutional Treaty	T	NR and NB	89	56.5
2008	Ireland	Lisbon Treaty	T	R and B	53	46.6
2009	Ireland	Lisbon Treaty	T	R and B	59	67.1
2009	Switzerland	Free movement of persons	I	R and B	52	59.6
2012	Croatia	EU membership	M	R and B	43	66.7
2012	Ireland	European Fiscal Compact	I	R and B	50	60.3
2014	Denmark	Unified Patent Court	I	R and B	54	62.6
2014	Switzerland	Free movement of persons	I	NR and B	56	50.3
2015	Greece	Bail-out referendum	I	NR and NB	59	38.7
2015	Denmark	Opt-out (Justice & home affairs)	I	R and B	72	46.9
2016	The Netherlands	EU-Ukraine Association Agreement	I	NR and NB	32	38.2
2016	Hungary	EU resettlement scheme	I	NR and NB	44.04	1.64
2016	UK	EU membership	M	NR and NB	72	51.9*

Notes: M = membership referendum, T = treaty ratification referendum, I = single issue referendum, NR = not required, R = required, NB = non-binding, B = binding. Red colour signifies referendums that were rejected.

Source: Hobolt, 2009, complemented with data for votes since 2008 and for Liechtenstein referendums.

\*Source: Electoral Commission, 51.9% voted to leave.

<sup>40</sup> The [Romanian Constitution](#) does not envisage the possibility to hold treaty-related referendums, however it establishes that constitutional amendments require a referendum (Article 151(3)); that treaties contrary to the Constitution cannot be ratified unless a prior constitutional revision is adopted (Article 11(3)) and; that the President of Romania has the constitutional authority to call a referendum on matters of national interest (Article 90).

While the scope of this paper does not allow an exhaustive discussion of all the referendums mentioned, the following sections provide a brief description of a sample of the more recent and significant examples, in which (a) EU membership, (b) treaty ratification, or (c) an EU policy-related issue were at stake, before a brief consideration of the literature on the use of referendums.

## 2.2. Membership referendums

Membership referendums were organised in 11 of the 13 countries that have joined the EU since 2004, with the exception of Cyprus and Bulgaria. It is worth noting that none of the six founding Members (Belgium, France, Germany, Italy, Luxembourg and the Netherlands) put the question of accession to their own citizens. The practice only began in 1972, with Ireland and Denmark approving, and Norway rejecting membership. Referendums on EU membership have become accepted as a tool to increase the legitimacy of the process. The first sign that something was about to change occurred in 1992, when the Danes rejected the Maastricht Treaty and the French only narrowly approved it (51.1%). The Danes then held a second referendum the following year, after negotiating four exceptions: on EMU, on defence policy, on justice and home affairs (JHA), and on EU citizenship, as outlined in the conclusions of the European Council meeting in Edinburgh.<sup>41</sup>

While the Amsterdam Treaty entered into force without major obstacle, the Nice Treaty encountered a negative vote in Ireland in 2002, although the Irish people approved the Nice Treaty in 2003. Again, in this case, a second referendum was preceded by a discussion among the Member States, meeting in Seville. On that occasion, the Irish government presented a national declaration which recalled, *inter alia*, that the Treaty provisions concerning foreign and security policy did not undermine the traditional Irish policy of military neutrality. In response, EU leaders welcomed the Irish declaration allowing the continuation of the ratification process.<sup>42</sup>

This opened the door to a series of referendums in 2005, to approve the proposed constitution for Europe,<sup>43</sup> resulting from the work of the European Convention (2002-2003). Although the first referendum held in Spain resulted in approval by 76.7% of voters, voters in France and the Netherlands rejected the draft constitution by 54% and 61.6% respectively. Experts claim that when this happens (i.e. the popular vote rejects a policy supported by the respective government at EU level), the national political leaders, including the prime minister, find themselves 'servants of two masters':<sup>44</sup> on the one hand, of the majority of voters that has rejected a given policy choice; and of the government which negotiated and endorsed the (rejected) policy within the EU institutions on the other hand.

Membership referendums account for the lion's share of referendums on EU related issues, i.e. 24 of 58. Since their inception, the European Communities – now the EU – have undergone seven enlargements, more often than not accompanied by referendums on membership held in the acceding countries. For example, before the first enlargement in 1973, Ireland voted in favour of joining the EU, while Norway voted against. The largest enlargement to date was the 2004 accession of 10 states, following referendums held in 9 of them (Cyprus decided not to hold a referendum). All of these referendums signalled overwhelming support for joining the EU, with the highest

<sup>41</sup> [Conclusions of the Presidency, Edinburgh](#), December 1992.

<sup>42</sup> [National Declaration by Ireland](#), Seville, 21 June 2002 and [Presidency Conclusions](#) of the European Council, Seville, 21 and 22 June 2002.

<sup>43</sup> See the draft treaty of the [European Convention](#).

<sup>44</sup> This expression is derived from C. Goldoni's play 'The servant of two masters' (1776), in which the main character, Truffaldino Battochio is servant to both Beatrice and Florindo, and tries to accomplish the orders given by both masters.

proportion of votes for 'yes' in Slovakia, Lithuania and Slovenia (92.5 %, 91.1 % and 89.6 % respectively). In 2012, a membership referendum took place in Croatia, the last country to join the EU to date, where membership was supported by 66.7 % of voters. In preparation for membership in 2007, Romania, held a referendum on a constitutional amendment as early as 2003. At the same time, it should be noted that membership referendums have never taken place in 11 Member States (Belgium, Bulgaria, Cyprus, France, Germany, Greece, Italy, Luxembourg, the Netherlands, Portugal, Spain).

There have also been examples of countries which – following a popular vote – decided to remain outside the EU, as was the case in Norway and in Switzerland (2001). In Norway, citizens have twice (in 1972 and 1994) narrowly rejected membership, with 53.5 % and 52.2 % votes against respectively. Iceland was also among the countries contemplating a referendum on EU membership, however no referendum has taken place to date.

The United Kingdom is the only country to hold a referendum on remaining in the then European Communities, despite being the only one of the four accession candidates (Denmark, Ireland and Norway) not to hold a referendum on EEC membership in 1972. However, once the UK joined without a referendum, the Labour party promised, prior to the 1974 elections, to hold a popular

vote on the country's continued membership. With a turnout of 64 % and a high level of support (67 % voting in favour), British voters, in the first ever national referendum held in 1975, decided to remain in the European Economic Community (EEC), under slightly renegotiated terms.<sup>45</sup>

There are also examples of state provinces/autonomous territories holding referendums on EU membership. For example, in 1982, Greenland decided to leave the EEC, while in 1994, the Åland Islands<sup>46</sup> held a separate vote on joining the Union, before joining the EU together with mainland Finland.

Of the three withdrawal referendums held to date, two were organised by the United Kingdom, in 1975 and 2016. The 1975 referendum mentioned above concerned continued EEC membership, while the second took place in a different constitutional context, as the Lisbon Treaty had explicitly

'If we were now to withdraw, it would be a leap in the dark'

In 1975, just two and a half years after joining the EEC, British voters were asked to vote on continued membership. The question posed was: 'The Government has announced the results of the renegotiation of the United Kingdom's terms of membership in the European Community. Do you think that the United Kingdom should stay in the European Community (Common Market)?' To help the electorate to answer this question, the Conservative Party produced a guide which pointed to some of the benefits of remaining in the European Community, including: providing individuals and more specifically young people with better opportunities to travel, study and settle in other countries; ensuring security of food supplies and stable prices; providing British industry with opportunities to grow thanks to access to a larger market; ensuring better job opportunities and increased investment at regional level through regional and development funds.

The guide also made a compelling point in addressing the question of British sovereignty. It stressed that, especially at international level, national interests were better served when acting together with other countries than when acting alone: 'In the modern world it is worth distinguishing between the substance and the symbols of sovereignty. The substance is the freedom to act independently of other nations – something which is now seldom possible for any single country. Certainly, any British Government has little or no absolute freedom of action of this kind.'

Source: Yes to Europe, The Conservative Guide for the 1975 Referendum Campaign, Conservative Research Department, 1975.

<sup>45</sup> J. H. Meyer, [The 1975 referendum on Britain's continued membership in the EEC](#), July 2016.

<sup>46</sup> Akintug H., [The EU referendums on Åland: An overview of the EU debates in the Åland Parliament during autumn 1994](#), Report from the Åland Islands Peace Institute, 2020.

introduced the possibility to withdraw from the EU under Article 50<sup>47</sup> of the Treaty on European Union (TEU). The third referendum of this type took place in Greenland, after obtaining home rule in 1979.<sup>48</sup> In 1982, voters in Greenland came out in favour of leaving the (at that time) European Communities, which resulted in Greenland formally separating from the Communities in February 1985 (under the [Treaty](#) amending, with regard to Greenland, the Treaties establishing the European Communities). As a constituent part of Denmark, Greenland had joined the European Community in 1973, however Greenlanders were already against joining (70 % against) in the 1972 Danish referendum<sup>49</sup> on European Community membership, while 63 % of Danes had voted in favour.

Notwithstanding the 2016 United Kingdom referendum, accession referendums have the highest approval rate (around 75 %, with 18 votes for and 6 against) compared to treaty revision referendums (overall approval of 66 %), the proposed EU constitution (50 %), and to policy referendums (around 40 %).<sup>50</sup>

### 2.2.1. Recent developments: The UK withdraws from the European Union

The 23 June 2016 referendum on whether the UK should remain in the EU was called by then Prime Minister and Conservative Party leader David Cameron, who in the run-up to the 2015 general elections announced that, should the Conservative Party win a parliamentary majority, the UK government would negotiate a more favourable membership regime with the EU. In this way, Cameron hoped to end, by popular vote, the demands of the UK Independence Party to leave the EU. Discussions between the British government and the other EU Member States began in 2015, and led to agreement on 'A new Settlement for the United Kingdom within the European Union',<sup>51</sup> formalised during the European Council meeting of 18-19 February 2016.

#### Should I stay or should I go?

The supporters of the 'leave' campaign in the UK argued that the EU operates under a democratic deficit that undermines UK national sovereignty. Leaving the EU would purportedly allow the country to better control its own borders and immigration policy; save on annual payments to the EU; enter independently into advantageous trade treaties; and free Britain from 'EU regulations and bureaucracy'.

Conversely, supporters of remaining in the EU campaigned that leaving would jeopardise UK prosperity, resulting in a diminished British influence in global affairs; undermine national security by reducing access to common European criminal databases; impose major economic costs due to the imposition of tariffs between the UK and the EU internal market; and would create an additional administrative burden and consequently delay investment in the UK.

The document aimed at clarifying some issues raised by the UK government and referred to securing additional conditions for the UK. It also recognised that the UK was entitled under the current Treaties, inter alia, to remain outside the euro area, not to participate in the Schengen area, and to

<sup>47</sup> See Cîrlig C.-C., [Article 50 TEU in practice](#), EPRS, European Parliament, 2020.

<sup>48</sup> In 1979, the Home Rule Act ([Lov om Grønlands Hjemmestyre](#)) entered into force and created, inter alia, the [Parliament of Greenland](#). It was adopted following the Greenland referendum, resulting in 70.1 % of voters (with a 63 % voter turnout) asking for increased autonomy.

<sup>49</sup> Law Library of Congress, [Greenland's National Day, the Home Rule Act \(1979\), and the Act on Self-Government \(2009\)](#), Elin Hofverberg, June 2019.

<sup>50</sup> [Referendums on EU Matters](#), Policy Department for Citizens' Rights and Constitutional Affairs, European Parliament, 2017, p. 35.

<sup>51</sup> [A new settlement for the United Kingdom within the European Union](#), Official Journal of the European Union, C 69 I/1, 23 February 2016. Poptcheva E. M., Eatock D., [The UK's 'new settlement' in the European Union, Renegotiation and referendum](#), EPRS, February 2016.

exercise control on persons at the UK border. The agreement also touched upon four additional areas: economic governance, sovereignty, competitiveness, social security benefits and free movement.

Having reached an agreement with the European Council, Cameron then announced that a referendum on UK membership would be held in June 2016, triggering the launch of a referendum campaign. On 24 June 2016, over 17 million people, representing 51.9% of the votes cast, voted in favour of the UK leaving the EU. Cameron subsequently resigned, with Theresa May replacing him as Prime Minister to begin the first ever negotiation process for voluntary withdrawal from the EU under Article 50 of the Treaty on European Union (TEU).<sup>52</sup> In November 2018, following some two years of negotiations,<sup>53</sup> Prime Minister Theresa May reached an agreement with the European Commission (the EU negotiator), which the House of Commons subsequently refused to support.<sup>54</sup> The complexity of the negotiations on and the domestic approval process for the withdrawal agreement led to the fall of May's government, the formation of a new executive led by Boris Johnson and early elections.

On 23 January 2020, Queen Elizabeth gave royal assent to the act enabling UK ratification of the agreement, which thus became law. The Presidents of the European Commission and the European Council, Ursula von der Leyen and Charles Michel, signed the agreement on 24 January 2020. On 29 January 2020,<sup>55</sup> the European Parliament gave its consent<sup>56</sup> to the terms set out in the UK withdrawal agreement by 621 votes to 49, with 13 abstentions.<sup>57</sup>

The Council of the European Union then adopted a decision<sup>58</sup> by written procedure, thereby completing the EU approval process. As of 24:00 Central European Time on 31 January 2020, the United Kingdom officially ceased to be a Member of the European Union. From that moment, a transition period began, enabling the UK and EU to negotiate their future relationship. Although, it would have been possible to extend this period once, by up to two years, the British government declined to request an extension, with the result that UK membership of the EU ended on 31 December 2020.

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<sup>52</sup> Cirlig C. C., [Article 50 TEU in practice](#), How the EU has applied the 'exit' clause, EPRS, European Parliament, 2020.

<sup>53</sup> Cirlig C. C., [Ratifying the EU-UK withdrawal deal State of play and possible scenarios](#), EPRS, European Parliament, 2019.

<sup>54</sup> Cirlig C. C., [The revised Brexit deal What has changed and next steps?](#), EPRS, European Parliament, 2019.

<sup>55</sup> Cirlig C. C., [Agreement on the United Kingdom's withdrawal from the EU](#), EPRS, European Parliament, 2020.

<sup>56</sup> Under Article 50 TEU, Parliament must give its consent to the final agreement for it to enter into force.

<sup>57</sup> [Brexit deal approved by the European Parliament](#), Press Release, 29 January 2020.

<sup>58</sup> [Brexit: Council adopts decision to conclude the withdrawal agreement](#), Press Release, 30 January 2020.

Table 3 – Membership referendums

Year	Country	Object	Type	Turnout (%)	(Yes %)
1972	Ireland	EEC membership	R and B	71	83.1
1972	Norway	EEC membership	NR and NB	79	46.5
1972	Denmark	EEC membership	R and B	90	63.3
1975	United Kingdom	Remaining in the EEC	NR and NB	64	67.2
1982	Greenland	Remaining in the EEC	NR and NB	79	46.98
1994	Aland Islands	EU membership	NR and NB	49	73.6
1994	Austria	EU membership	R and B	82	66.6
1994	Finland	EU membership	NR and NB	70	56.9
1994	Sweden	EU membership	NR and NB	83	52.3
1994	Norway	EU membership	NR and NB	89	47.8
1997	Switzerland	EU candidature	NR and B	35	25.9
2001	Switzerland	EU candidature	NR and B	55	23.2
2003	Malta	EU membership	NR and NB	91	53.6
2003	Slovenia	EU membership	R and B	60	89.6
2003	Hungary	EU membership	R and B	46	83.7
2003	Lithuania	EU membership	R and B	63	91.1
2003	Slovakia	EU membership	R and B	52	92.5
2003	Poland	EU membership	R and B	59	77.5
2003	Czechia	EU membership	R and B	55	77.3
2003	Estonia	EU membership	R and B	64	66.8
2003	Latvia	EU membership	R and B	73	67.0
2003	Romania	Constitutional Amendment	R and B	56	89.7
2012	Croatia	EU membership	R and B	43	66.7
2016	United Kingdom	Remaining in the EU	NR and NB	72	51.9 leave*

Notes: NR = not required, R = required, NB = non-binding, B = binding. Red colour signifies referendums that were rejected. Source: EPRS elaboration.

## 2.3. Treaty ratification: Whither the constitution for Europe?

### 2.3.1. Constitutional treaty: France and the Netherlands (2005)

Besides membership referendums, the EU has seen a number of referendums involving (EU) treaty ratification. In some countries, constitutional provisions require a popular vote in such cases, while in others, governments decide to consult citizens, although they are not obliged to do so. In 2005, four countries held a referendum (all optional) on the ratification of the proposed treaty establishing a constitution for Europe, negotiated and signed by the then 25 EU Heads of State or Government.<sup>59</sup> Two countries (Spain and Luxembourg) voted in favour of the treaty – in Spain with a 76.7 % majority of the votes cast. However, the proposed constitutional treaty was ultimately rejected, following negative voting results in France and the Netherlands, with only 45.3 % and 38.2 % of voters in favour, respectively. The most prominent explanation for the Dutch and French vote was the argument that the votes against expressed, inter alia, citizens' dissatisfaction with their national government, rather than their disapproval of the European project as such (known as 'second-order voting'). The information campaigns, as well as voting behaviour, in France and the Netherlands during the referendums, were seen to be dominated by different issues. While in France concerns regarding the (loss of) the French social model played a key role, in the Netherlands, a lack of information and concerns regarding national sovereignty and identity were among the main determinants of the votes against.<sup>60</sup> Other Member States had planned referendums on the proposed constitutional treaty, but cancelled them following the French and Dutch votes. As a result, the constitutional treaty was never ratified.

Some experts<sup>61</sup> point to an 'extraterritorial effect' of EU-related referendums to indicate that a negative result in one Member State could, de facto, prevent other Member States from moving forward on an issue. This holds true in relation to treaty ratification referendums, although the 1972 French referendum on enlargement could also have prevented future enlargement, and the most recent Dutch referendum could have prevented the entry into force of the EU-Ukraine Association Agreement.

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<sup>59</sup> The [Treaty on Establishing a Constitution for Europe](#) was signed by the then 25 Member States in Rome on 29 October 2004.

<sup>60</sup> Hobolt, S. B., 2009, Ch. 8.

<sup>61</sup> [Referendums on EU Matters](#), Policy Department for Citizens' Rights and Constitutional Affairs, European Parliament, 2017, p.36.

Table 4 – Referendums with alleged 'extra territorial effects'

Year	Country	Object	Category	Type	Turnout (%)	(Yes %)
1972	France	Enlargement of EEC	I	NR and NB	60	68.3
1986	Denmark	Single European Act	T	R and B	75	56.2
1987	Ireland	Single European Act	T	R and B	44	69.9
1992	Denmark	Maastricht Treaty	T	R and B	83	49.3
1992	Ireland	Maastricht Treaty	T	R and B	57	68.7
1992	France	Maastricht Treaty	T	NR and B	70	51.1
1993	Denmark	Maastricht Treaty	T	NR and NB	87	56.8
1998	Ireland	Amsterdam Treaty	T	R and B	56	61.7
1998	Denmark	Amsterdam Treaty	T	R and B	76	55.1
2001	Ireland	Nice Treaty	T	R and B	35	46.1
2002	Ireland	Nice Treaty	T	R and B	49	62.9
2005	Spain	Constitutional Treaty	T	NR and NB	42	76.7
2005	France	Constitutional Treaty	T	NR and NB	69	45.3
2005	The Netherlands	Constitutional Treaty	T	NR and NB	63	38.2
2005	Luxembourg	Constitutional Treaty	T	NR and NB	89	56.5
2008	Ireland	Lisbon Treaty	T	R and B	53	46.6
2009	Ireland	Lisbon Treaty	T	R and B	59	67.1
2016	The Netherlands	EU-Ukraine Association Agreement	I	NR and NB	32	38.2

Notes: T = treaty ratification referendum, I = single issue referendum; NR = not required, R = required, NB = non-binding, B = binding. Red colour signifies referendums that were rejected.

Source: EPRS elaboration.

### 2.3.2. Lisbon Treaty: Ireland (2008 and 2009)

In 2007, following a 'period of reflection' subsequent to the rejection of the proposed constitutional treaty by France and the Netherlands, the EU Heads of State or Government signed a new treaty in Lisbon. The treaty drew heavily on the constitutional treaty, yet dropped its most contentious provisions. Ireland was the only country to hold a referendum on the Lisbon Treaty. Although the country was one with generally favourable attitudes towards European integration, the Treaty was narrowly rejected in a first referendum held in 2008 (with 53.4 % voting against). The (perceived) reasons for this rejection, as well as their interpretations, are numerous. Academics have suggested

that rejection was partly due to the particular dynamics of the referendum campaign, which let the 'no' parties set the agenda in the campaign, with the 'yes' side only taking belated counter-action.<sup>62</sup> After agreeing to concessions made to Ireland during renegotiation (for example with regard to the number of Commissioners, neutrality and the right to life), the Lisbon Treaty was again put to a vote in a second referendum in 2009, in which 67.1 % of voters voted in favour.

## 2.4. Policy referendums

Referendums on a specific EU-related policy issue are the least common of EU referendums, although they have become increasingly popular since 2012. They are also the most 'heterogeneous' in legal and political terms. Examples include the Danish and Swedish referendums on joining the euro area (in 2000 and 2003 respectively), both of which resulted in a rejection. Since 2012, there has been a steady increase in the percentage of EU referendums on EU policies, and for the first time ever, the Netherlands held a citizen-initiated referendum on the EU-Ukraine Association Agreement in 2016. Prior to 2012, Member States holding referendums on policy issues include: France, which in 1972 held the first ever referendum on an EU issue; Italy in 1989; then Denmark and Sweden, on the single currency, in 2000 and 2003 respectively. Experts<sup>63</sup> point to a paradigm shift, following the Single European Act, from national referendums on EU membership to more and more referendums challenging EU policies and treaty revisions, thus questioning the EU's advance toward a closer union. The same experts argue that this is mainly due to partisan calculations, when for instance, the government wants a popular vote to endorse its choice on a given EU issue.

An interesting example of a policy referendum is the 1972 enlargement referendum in France, which paved the way for the first enlargement with Ireland, Denmark and the United Kingdom. To date, the French enlargement referendum remains the only referendum of this kind. However, with Turkish membership in mind, France has introduced constitutional provisions regarding such referendums which – albeit possible to by-pass with a super majority, i.e. a three-fifths majority in parliament – could effectively veto further enlargements.<sup>64</sup> A particular example of a policy referendum was held in Italy in 1989. Italian voters were asked<sup>65</sup> whether they were in favour of transforming the European Communities into a Union and, in order to do so, whether they would entrust the European Parliament with a mandate to draw up a draft constitution. The Italian legislator had to approve a Constitutional law (*Legge Costituzionale 3 aprile 1989 n 2*),<sup>66</sup> firstly to allow the referendum, and then to proceed with the initiative, although whether Italian voters were entitled to provide the European Parliament with a 'mandate' was questionable.

Another interesting example of a referendum on policy is provided by the 'bail-out referendum' held in Greece. Amidst the government debt crisis in 2015, Greece decided to hold a referendum on accepting the terms of a bail-out proposed by international creditors – and earned harsh criticism. This was the first referendum to be held in Greece since 1974, and the first Greek referendum on EU

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<sup>62</sup> Qvortrup, M., 2013, p. 97 et seq; O'Mahony, J., [Ireland's EU Referendum Experience](#), *Irish Political Studies*, 24(4), 2009, p. 438.

<sup>63</sup> Rose R. [Referendum challenges to the EU's policy legitimacy – and how the EU responds](#), *Journal of European Public Policy*, 26:2, 2019, pp. 207-225.

<sup>64</sup> Mendez, F. et al., 2014, pp. 68 and 220.

<sup>65</sup> See [Gazzetta Ufficiale della Repubblica Italiana](#), 1989. The question in the Italian version was: 'Ritenete voi che si debba procedere alla trasformazione delle Comunità europee in una effettiva Unione dotata di un governo responsabile di fronte al Parlamento, affidando allo stesso Parlamento europeo il mandato di redigere un progetto di costituzione da sottoporre direttamente alla ratifica degli organi competenti degli Stati membri della Comunità?'

<sup>66</sup> [Legge Costituzionale](#), 3 April 1989, No 2.

issues. A majority of Greek voters (61 %) rejected the proposal, nevertheless the Greek government returned to the negotiating table and reached an agreement on a 'new bail-out agreement' (Third Economic Adjustment Programme for Greece).

The 2016 Dutch referendum was and remains the only example of a referendum on EU issues triggered by a citizens' initiative to date. The Dutch Advisory Referendum Act (*Wet Raadgevend Referendum*) of 1 July 2015,<sup>67</sup> provided for a two-step approach to calling for a referendum. First, a preliminary request must be presented by at least 10 000 persons. Should this happen, a final request must be submitted by at least 300 000 persons.<sup>68</sup> For the referendum to be valid, a voter turnout of at least 30 % of eligible voters must be reached (Article 3). Certain matters are excluded from the scope of referendum (under Article 5, for instance, laws on the monarchy, laws on the budget or the law on the royal house). The referendum on the EU Association Agreement with Ukraine took place in October 2016, some 32.3 % of eligible voters went to the polls and 61 % of them voted against the ratification of the agreement.<sup>69</sup> Against this background and despite the referendum being merely consultative, Prime Minister Mark Rutte put the ratification process on hold, pending negotiations with the EU partners to find a solution acceptable to Dutch citizens. The Dutch Parliament only proceeded with the ratification of the agreement in 2017, after obtaining clarifications from the EU partners.<sup>70</sup> These included, inter alia, that the agreement would not confer the status of candidate for EU membership upon Ukraine; would not constitute an obligation for the EU to provide military aid to Ukraine; and would not grant Ukrainian citizens the right to freely reside and work in the EU.

The referendum on the EU-Ukraine Association Agreement is an example of a referendum that generated a large public debate, although not on the agreement as such. The referendum result put the Dutch government, which was in favour of the EU-Ukraine Association Agreement, in a difficult position, triggered an eight-month period of uncertainty and even led to a debate on whether or not a referendum is a suitable tool for complex matters such as the approval of international agreements.<sup>71</sup> The debate ultimately led to the 2018 repeal of the Dutch Advisory Referendum Act of 2015. The turnout rate in the referendum reached only 32.3 % (the threshold was set at 30 %), making it the lowest turnout in an EU referendum to date. This low turnout triggered criticism of referendums, some experts arguing that the practice incentivises non-participation, i.e. those in favour of the agreement 'strategically' abstain from voting to avoid the 30 % threshold being met.<sup>72</sup>

There is also some anecdotal evidence on the relation between this type of referendum and major crises. The 2015 referendum in Greece was organised during the most severe economic crisis. Similarly the referendum called by the Hungarian government on whether or not the EU could impose a relocation mechanism<sup>73</sup> in the absence of Hungarian Parliament approval was triggered

<sup>67</sup> The [Advisory Referendum Act](#) of 1 July 2015 was [repealed](#) in July 2018.

<sup>68</sup> [Advisory Referendum Act](#), Article 2, a 'referendum shall be held if, following a preliminary request from at least 10 000 eligible voters, at least 300 000 eligible voters have made the wish known by a final request'.

<sup>69</sup> Van Der Loo G., [The Dutch Referendum on the EU-Ukraine Association Agreement](#): Legal options for navigating a tricky and awkward situation, CEPS, 2016.

<sup>70</sup> European Council Conclusions on Ukraine and its Annex I on the [Decision](#) of the Heads of State or Government of the 28 Member States of the European Union, meeting within the European Council, on the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Ukraine, of the other part, December 2016.

<sup>71</sup> Hollande S., [Dutch Direct Democracy: From Bad to Worse?](#), 2017.

<sup>72</sup> Zeldin W., [Netherlands: Draft Law to End Advisory Referendum Law](#), Law Library of Congress, 2017.

<sup>73</sup> Radjenovic A., [Solidarity in EU asylum policy](#), EPRS, European Parliament, 2020.

in the aftermath of the 2015 migratory crisis.<sup>74</sup> The mechanism was due to relocate 120 000 individuals from most-affected Member States (Greece and Italy), to the other Member States. In October 2016, Hungarians went to the polls to answer the question whether they wanted the EU to be entitled to prescribe the mandatory settlement of non-Hungarian citizens in Hungary without the consent of the Hungarian Parliament.<sup>75</sup> Some 98% of ballots cast opposed the EU mechanism, although the referendum was not valid as the 50% voter threshold was not reached (Article 8(4)<sup>76</sup> of the Hungarian Fundamental Law). Experts argue<sup>77</sup> that the Hungarian referendum was a clear example of a policy referendum held for partisan motives and called to reinforce the power and popularity of the government leadership.

Table 5 – Policy referendums

Year	Country	Object	Type	Turnout (%)	(Yes%)
1972	France	Enlargement of EEC	NR and NB	60	68.3
1989	Italy	Mandate for MEPs	NR and NB	85	88.1
2000	Denmark	Single currency	NR and B	88	46.9
2003	Sweden	Single currency	NR and NB	83	42.0
2012	Ireland	European Fiscal Compact	R and B	50	60.3
2014	Denmark	Unified Patent Court	R and B	54	62.6
2015	Greece	Bail-out referendum	NR and NB	59	38.7
2015	Denmark	Opt-out (Justice & home affairs)	R and B	72	46.9
2016	The Netherlands	EU-Ukraine Association Agreement	NR and NB	32	38.2
2016	Hungary	EU relocation scheme	NR and B	44	1.64

NR = not required, R = required, NB = non-binding, B = binding. Red colour signifies referendums that were rejected.  
Source: EPRS elaboration.

<sup>74</sup> The [question](#) posed was: 'Do you agree that the European Union should have the power to impose the compulsory settlement of non-Hungarian citizens in Hungary without the consent of the National Assembly of Hungary?'

<sup>75</sup> The measures were firmly opposed by the Hungarian Government led by Prime Minister Viktor Orbán. The argument for a 'yes' vote, endorsed by the Liberal Party, condemned the government's policy as contrary to the EU's rules and thus jeopardising EU membership. Conversely, the argument for a 'no' vote were supported by the conviction that the right to decide about the country's future belongs to Hungarians alone and, considering the pace of immigration at that time, the quota distribution would have increased the already high number of migrants dramatically. Moreover, the Hungarian Government argued that mass immigration would have disastrous consequences for the country's security and increase the terrorist threat.

<sup>76</sup> [Hungarian Fundamental Law](#).

<sup>77</sup> [Referendums on EU Matters](#), Policy Department for Citizens' Rights and Constitutional Affairs, European Parliament, 2017.

### 3. EU reactions to negative votes

As previously mentioned, although the large majority of referendums on EU issues are not binding, neither national governments nor the EU can ignore a negative vote and risk alienating the electorate from political life or risk increasing the alleged democratic deficit of the EU (or 'Brussels'). Notwithstanding that around 75 % of the referendums on EU membership to date have resulted in a positive vote, all negative votes have been fully followed through, demonstrating that claims that democracy is denied because the people's voice is not heard at EU level are false.

The votes against amending the EU Treaties and on specific policy issues were followed by negotiations with and concessions by the EU partners. When solutions could not be found, projects were abandoned, as with the constitutional treaty. Moreover, the French and Dutch vote on the proposed constitution influenced other national governments' approaches to referendums. Both Poland and Czechia cancelled their planned referendums on the proposed constitution following the result in France and the Netherlands. Some experts<sup>78</sup> even argue that the French and Dutch 'no' constituted 'an endogenous shock which seriously undermined the political purpose of the Union', ultimately affecting European integration as well as EU enlargement policies.

To avoid gridlock, the EU<sup>79</sup> has developed an array of approaches, including making secondary concessions to adapt new policy choices to make them acceptable to Member States prior to or following a referendum, such as the European Council's decision following the Irish national declaration in 2002. On other occasions, the EU has stressed the political costs of not going ahead with an agreement already undertaken by the governments of the Member States. The Greek government, for instance, which was dissatisfied with the EU's offer of financial assistance in return for austerity policies, called and won a referendum rejecting the bail-out measures, but ultimately had to accept the EU's conditions mindful of the consequences of a refusal.<sup>80</sup> As mentioned above, secondary concessions also allowed Ireland to approve the Lisbon Treaty in 2009, after an initial rejection in 2008.

Following the UK's notification of its intention to withdraw from the European Union and during the whole negotiating process, the other 27 Member States demonstrated complete unity, sending a clear message that EU membership mattered. Safeguarding EU interests and those of its citizens was prioritised, and they refused to allow 'cherry-picking' of the most advantageous aspects of membership, preserving the unity of the institutions and Member States to ensure an orderly withdrawal in conformity with Article 50 TEU, and maximise their collective influence.<sup>81</sup>

<sup>78</sup> [Boyka S., The "No" Vote in the French and Dutch Referenda on the EU Constitution: A Spillover of Consequences for the Wider Europe](#), *PS: Political Science & Politics*, 2006-04, Vol.39 (2), pp. 251-255.

<sup>79</sup> Rose R., [Referendum challenges to the EU's policy legitimacy – and how the EU responds](#), *Journal of European Public Policy*, 26:2, 2019, pp.207-225.

<sup>80</sup> [Euro Summit Statement](#), 12 July 2015, and [Memorandum of Understanding for a three year EMS programme- Greece](#), July 2015.

<sup>81</sup> For more information on the principles and methods used by the EU to negotiate the UK withdrawal, see Círlig C.C., [Article 50 TEU in practice. How the EU has applied the 'exit' clause](#), EPRS, European Parliament, 2020.

Table 6 – EU strategies to deal with referendums on EU issues

Strategies	Consequences
Legal and instrumental coercion	2012: Fiscal Pact: Ireland accepts because there is no alternative 2015: euro-area finances, Greece accepts EU conditions
Political pressure exerted by the 27 Member States, unity	2016 EU negotiations on the UK withdrawal <sup>82</sup>
Main powers retained but secondary concessions	2006-2008: anticipatory concessions: many countries, Lisbon Treaty 2009: post hoc concessions: second Irish referendum on Lisbon 2016: minor concessions – The Netherlands, Ukraine Agreement
Risk avoidance: differential integration	Schengen 2011: Economic and Fiscal Pact – UK veto avoided 2015: Denmark granted opt-outs in home affairs

Source: Rose R., Referendum challenges to the EU's policy legitimacy – and how the EU responds, *Journal of European Public Policy*, 26:2, 2019, pp. 207-225.

While it is argued that referendums could provide a useful tool in addressing the alleged democratic deficit, it should also be noted that some EU Member States do not make use of referendums at all and thus would be systematically subject to the results of referendums held in other EU Member States. The EU and its Member States are representative democracies, where EU citizens regularly elect their representatives in national parliaments and in the European Parliament, as well as some who also elect representatives to regional parliaments. Thus, while a referendum puts the voter in front of an 'either/or' question, in parliaments, elected representatives work towards finding a compromise-based solution that considers all the different interests at stake. Along the same lines, the argument based on the non-binding nature of the large majority of referendums on EU issues, lacks consistency, if we value democracy. It is in fact politically difficult, if not impossible, for a government to ignore the results of a referendum which represents the 'will' of the electorate.

Last but not least, referendums may be 'instrumentalised'<sup>83</sup> by governments and be used as a 'tool in a power struggle in negotiations between EU Member States'. Their objective would not be to clarify a specific stance with respect to a policy issue or broader EU question, but rather to support a government in opposing an EU proposal, as was the case in the 2015 Greek and 2016 Hungarian referendums. However, in neither of the two cases did the negative vote lead to the result sought by the Greek or Hungarian governments.

<sup>82</sup> Article 50 TEU clearly states that: 'the Union shall negotiate and conclude an agreement with that State, setting out the arrangements for its withdrawal, taking account of the framework for its future relationship with the Union'. For a detailed analysis see C. Cîrlig, [Article 50 TEU in practice. How the EU has applied the 'exit' clause](#), EPRS, European Parliament, November 2020.

<sup>83</sup> Bertoncini Y., [National Referendums on European Issues: from clarification to frustration](#), Jacques Delors Institute, 2017.

Table 7 – EU facts and figures on referendums on EU issues

Issue	Number of referendums	Results
Membership (including remaining in the EU)	24	Yes (18): (1972) IE, DK,; (1975) UK, Åland Islands, FI, AU, SE, MT, SI, HU, LT, SK, PL, CZ, LV, EE, RO, HR No (6): (1972 and 1994) Norway Greenland, (1997 and 2001) Switzerland, (2016) UK
Continue membership	3	Yes: (1975) UK No: Greenland, (2016) UK
Treaty modification	12	Yes (9): (1986) DK, (1987) IE, (1992) IE, FR, (1993) DK, (1998) IE, (1998) DK, (2002) IE, (2009) IE No (3): (1992) DK, (2001) IE, 2008 (IR)
EU Constitution	4	Yes (2): ES, LU No (2); FR, IE
Policy issues (Member States only)	10	Yes (4): FR, IT, IE, (2014) DK No (6): (2000) DK, SE, EL, (2015) DK, NL, HU

Source: EPRS own elaboration. The date is indicated before the Member State only when the Member State held multiple referendums on the same issue.

Country codes EU: Austria (AT), Belgium (BE), Bulgaria (BG), Croatia (HR), Czechia (CZ), Cyprus (CY), Denmark (DK), Estonia (EE), Finland (FI), France (FR), Germany (DE), Greece (EL), Hungary (HU), Ireland (IE), Italy (IT), Latvia (LV), Lithuania (LT), Luxembourg (LU), Malta (MT), Netherlands (NL), Poland (PL), Portugal (PT), Romania (RO), Slovakia (SK), Slovenia (SI), Spain (ES), Sweden (SE).

## 4. What role for EU referendums?

As discussed above, proponents of direct democracy advocate referendums as a means to increase citizens' involvement and thus foster trust in politics by giving citizens a direct say. At the EU level, involving citizens became of even greater importance amidst accusations of a 'democratic deficit' and resulting efforts to increase legitimacy. At the same time, the actual contribution of referendums to the achievement of the above-mentioned goals has been questioned by many. Commentators investigating referendums and direct democracy have highlighted both positive and negative aspects. The overall rate of failure to achieve the stated goal in EU referendums steadily increased after the year 2000 (five out of nine). Some experts have even criticised this type of EU-related referendum precisely because no accountability mechanisms exist. While national governments are ultimately accountable to their own voters, the citizens of the other 26 Member States are impacted by the results of an EU-related referendum taking place in one Member State, without any voice in the matter nor the possibility to hold anyone accountable. Some push this reasoning even further and argue that this could result in a sort of 'tyranny of the minority',<sup>84</sup> contrary to the democratic values enshrined in Article 2 of the Treaty on European Union,<sup>85</sup> whereby people exercise 'a power that exceeds the limits within which their basic unaccountability can be compensated and justified'.

### 4.1. Voter competence and 'second-order voting'

The alleged lack of knowledge among voters enabling them to make an informed decision on complex and unfamiliar issues is among the main reproaches levelled at the use of referendums. Empirical evidence supports the claim that voters often lack even basic knowledge about national – let alone European – politics, issues and political structures.<sup>86</sup> In the aftermath of the Dutch, French and Irish referendums on the proposed constitutional treaty and Lisbon Treaty respectively, lack of knowledge emerged as one of the factors leading to negative votes. In other words, many voted 'no' because, inter alia, they did not understand the implications of the particular treaty in front of them – a position sometimes successfully exploited by 'no' campaigners before the vote.<sup>87</sup> Research has also shown that in EU referendums citizens often vote on the basis of 'second-order' factors unrelated to the ballot proposal, such as (dis)satisfaction with national government.<sup>88</sup> It is thus suggested that – instead of providing the EU with greater democratic legitimacy – such referendums induce voters to answer questions not put to them. This was the most prominent explanation for the failure of the constitutional treaty in the French and Dutch referendums, suggesting that citizens' 'no' was a protest against national governments, 'rather than a rejection of the European project' itself.<sup>89</sup>

The 'second order' vote in referendums<sup>90</sup> may have paradoxical negative effects, especially if

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<sup>84</sup> Peter A., *Referendums on the Constitutional Treaty 2004: A Citizens' Voice?*, In: *The EU Constitution - the Best Way Forward?*, The Hague, 2005, pp. 39-57.

<sup>85</sup> Auer A., *The people have spoken: abide? A critical view of the EU's dramatic referendum (in)experience*, *European Constitutional Law Review*, 2016.

<sup>86</sup> For a review of such evidence see Hobolt, S. B., 2009, p. 23 et seq.

<sup>87</sup> Qvortrup, M., 2013, p. 102.

<sup>88</sup> *Ibid.*, p. 154.

<sup>89</sup> Hobolt, S. B., 2009, p. 205; Dehousse, R. [The Unmaking of a Constitution: Lessons from the European Referenda Constellations](#), *Wiley*, 13(2), 2006, p. 152 et seq.

<sup>90</sup> [Referendums on EU Matters](#), Policy Department for Citizens' Rights and Constitutional Affairs, European Parliament, 2017.

combined with the possible 'extra-territorial effects' of some EU-related referendums. In this case, for example, a dissatisfied group of voters in a single Member State could prevent the other 26 Member States from further integration for purely domestic reasons.

More recent studies qualify these arguments to some extent, suggesting that arguments regarding citizens' lack of competence should not be accepted too easily. They stress that voters do not need to have perfect knowledge to make reasoned decisions. While agreeing that voters often lack sufficient knowledge, they suggest that voters need not be fully informed in order to vote competently (consistently with their preferences regarding the EU). Instead, when deciding, they can rely on elite 'cues' and party endorsement as substitutes for detailed information.<sup>91</sup> A comprehensive study of EU referendums by Sara Hobolt, for example, suggests that voters can act responsibly on European issues, provided sufficient information is made available to them. In this respect, it is suggested that intensive information campaigns, providing credible information, result in more competent voting ('issue-voting'), and reduce the importance of national politics or issues unrelated to the ballot proposal ('second-order factors'). By contrast, when little information is provided for voters, they are more likely to answer 'other questions' than those actually at stake.<sup>92</sup> The study does not deny that both attitudes towards the issue at hand and towards the national government will be important factors determining voting behaviour. However, it maintains that when voters are given credible information (for instance in campaigns), they do respond in a competent manner, despite the fact that 'this may not have been the response' that political leaders 'have been hoping for'.<sup>93</sup> However, not all studies are as supportive of the positive value of referendum campaigns, pointing to the risks of, inter alia, (over-)simplification of complex matters, (excessive) polarisation and fuelling populist movements.<sup>94</sup>

## 4.2. Campaign dynamics

As noted above, instruments of direct democracy exist within systems relying on representation. It is in this context that the interplay of instruments and institutions of representative democracy such as political parties becomes important, preoccupying academics.<sup>95</sup> As noted above, information campaigns are considered important in fostering issue-related (competent) voting. Studies have also shown that campaign dynamics can develop in many unpredictable ways and that support levels for the different campaigns can fluctuate significantly from 'yes' to 'no' and vice versa. The Irish experience of the Lisbon Treaty referendum (2008), for example, suggests that, due to various factors, the respective sides of a campaign can lose up to 17 % of initial support within a couple of months. It is suggested that the issue on the ballot paper and attitudes towards Europe do become intertwined with national politics, domestic concerns, ideological preferences, one-off events, political personalities and other issues, which may 'combine to create unforeseen circumstances'.<sup>96</sup> As some conclude, 'referendums are not always about the issues on the ballot paper. But then, again, nor are the general elections'.<sup>97</sup>

In this context, a further argument questions the suitability of deciding by referendums on European

<sup>91</sup> Hobolt, S. B. ('Taking Cues for Europe? Voter Competence and Party Endorsements in Referendums on European Integration', in: *European Journal of Political Research*, Vol. 46, 2007, pp. 151-182; Hobolt, S. B. (2009).

<sup>92</sup> Hobolt, S. B., 2009, pp. 24, 196 and 241.

<sup>93</sup> Hobolt, S. B., 2007, p. 177.

<sup>94</sup> For example, Dehousse, R., 2006, p. 160 et seq; Mendez, F. et al, 2014, p. 8 et seq.

<sup>95</sup> Hobolt, S. B., 2009, p.5.

<sup>96</sup> Qvortrup, M., 2013, p. 101.

<sup>97</sup> *Ibid.*, p. 153.

treaties much more fundamentally. At the core of this argument lies the very nature of the EU, which unites states with heterogeneous preferences and is thus 'condemned' to the pursuit of consensus and compromise. Such compromise – as the argument goes – is being pursued through 'patient negotiation' between the representatives of the different interests – including the European and the national, and left and right – aiming to identify common ground between all of them. Thus, while welcoming the desire to give citizens a more direct say in European policies, the argument maintains that any such device should not allow opposing coalitions and 'excessive polarisation' based on national politics to threaten the consensual nature of the system by endangering 'patiently negotiated compromises' without the need to propose an alternative.<sup>98</sup> This view, again, is not unchallenged, suggesting that the consensus model should not act as a 'shield' protecting the integration project from direct democracy.<sup>99</sup> All in all, while referendums have undoubtedly emerged as a significant element in EU affairs, the degree to which countries make use of referendums varies greatly. At the same time, despite their recent proliferation, the value of referendums remains highly contested. As the story unfolds, the quest for the ideal place for direct democracy in the EU continues for academics and political leaders alike.

The arguments in favour of introducing some form of direct democracy, such as referendums, are well known. They could help bridge the gap between EU citizens and the EU institutions, and more broadly the EU itself. The latter is often perceived as complex machinery whose intricacies prevent average citizens from understanding how decisions are taken and how policies are developed in Brussels. Thus, one of the options to increase legitimacy would be to engage citizens in key moments such as treaty revisions or major policy choices. The arguments against referendums are also well known, these include, for instance, the lack of knowledge among average citizens to equip them to decide on complex issues; the asymmetry of information in large political units, and the possibility that large and well-structured interest groups may over-influence the conduct and results of referendums.<sup>100</sup> Direct democracy instruments also seem more prone to 'emotional voting', an element particularly relevant at EU level. There is extensive literature referring to this phenomenon, described as 'second-order elections', when considering European elections.<sup>101</sup> Other arguments point specifically to non-mandatory referendums that might be discretionally triggered by governments. It is argued that governments may be tempted to call a referendum for partisan reasons, to solve internal parties' debates. In 2014, Mendez et al. concluded that around a third of the referendums held on EU issues were called for partisan reasons, and in particular when there is very little consensus between incumbent and opposition.<sup>102</sup> Other experts<sup>103</sup> underline the paradox of some past EU referendums, referring for instance to the major political reflection about the future of the European Union (EU) following the 2005 French and Dutch referendums that rejected the proposed constitutional treaty, whereas the whole process was started with the intention of bringing the Union closer to citizens. It seems fair to argue that direct democracy and representative

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<sup>98</sup> Dehousse, R., 2006, p. 160 et seq.

<sup>99</sup> Glencross, A. and Trechsel, A. 'First or Second order Referendums? Understanding the Votes on the EU Constitutional Treaty in Four EU Member States', in *West European Politics*, 34(4), 2011, p. 769.

<sup>100</sup> Cheneval F., Ferrín M., Referendums in the European Union: Defective by birth?, *Journal of Common Market Studies*, Volume 56, Number 5, 2018, pp. 1178-1194.

<sup>101</sup> Diaz Crego, M., [Transnational electoral lists, Ways to Europeanise elections to the European Parliament](#), EPRS, European Parliament, 2021.

<sup>102</sup> Mendez, F., Mendez, M., Triga, V., *Referendums and the European Union: A Comparative Inquiry*, Cambridge University Press, 2014.

<sup>103</sup> Binzer Hobolt S., [Taking Cues on Europe? Voter competence and party endorsements in referendums on European integration](#), *European Journal of Political Research*, 2007, pp. 151-182.

democracy are not incompatible, but rather they complement each other and both satisfy different objectives.

Finally, under the current circumstances, the use of referendums on EU issues diverges widely between Member States, which may generate criticism, as instead of promoting democracy it could create a discriminatory practice whereby 'some EU citizens are given the opportunity to have their say on EU issues while, while others are not'.<sup>104</sup> Thus, citizens of those Member States in which referendums are not allowed could find themselves in a situation of disadvantage compared to citizens of Member States where referendums are possible.<sup>105</sup>

## 5. The option of a pan-European referendum

In 2000, the European Parliament called<sup>106</sup> for a consultative referendum on the new European constitution, to be held on the same day in all Member States. Such a referendum would 'ensure the quality of the democratic debate and create a bond between the peoples and their Constitution'. The idea was to confer a strong democratic legitimacy on an act of fundamental importance in view of the development of the European project.

In a 2017 resolution<sup>107</sup> on possible evolutions of and adjustments to the current institutional set-up of the EU, Parliament stressed that 'citizens should be endowed with more instruments of participatory democracy at Union level'. Parliament proposed 'the introduction, in the Treaties, of provision for a referendum at EU level on matters relevant to the Union's actions and policies be evaluated'. In its 2021 resolution on citizens' dialogues and citizens' participation in EU decision-making, Parliament stressed the importance of strengthening any reform of the Union by directly engaging with citizens through participatory mechanisms.

During the Convention on the Future of Europe in 2002, a call for an EU-wide referendum gained momentum. Indeed, 35 members of the Convention proposed an EU-wide referendum on a European constitution, to be called in all Member States and take place on the same day. This proposal became a petition signed by 97 Convention members, although ultimately it was not endorsed. Each Member State would have had the choice of whether or not to hold a referendum at national level on the basis of its own domestic legislation. Nevertheless, several members, alternate members and observers to the European Convention did recommend that the draft European constitution be approved by EU citizens in binding national referendums, ideally to take place simultaneously, if possible on the same day as the 2004 elections to the European Parliament.<sup>108</sup> One of the arguments tabled was the fact that a 'Europe-wide referendum would create a common political space' by engaging EU citizens together on a common project, thus partially overcoming the 'second order voting' issue.

Eleven Member States (Belgium, Czechia, Denmark, France, Ireland, Luxembourg, the Netherlands, Poland, Portugal, Spain and the United Kingdom) decided to hold a referendum. In 2005, Spain

<sup>104</sup> Cheneval F., Ferrín M., Referendums in the European Union: Defective by birth?, *Journal of Common Market Studies*, Volume 56, Number 5, 2018, pp. 1178-1194.

<sup>105</sup> Bertoncini Y., National Referendums on European Issues: from clarification to frustration, Jacques Delors Institute, 2017.

<sup>106</sup> European Parliament Resolution on the [constitutionalisation of the Treaties](#), A5-0289/2000, October 2000.

<sup>107</sup> European Parliament Resolution on [possible evolutions of and adjustments to the current institutional set-up](#) of the European Union, A8-0390/2016), February 2017.

<sup>108</sup> Contribution submitted by several members, alternate members and observers: [Referendum on the European Constitution](#), March 2003.

successfully held a referendum, however with a low turnout (42 %); Belgium eventually decided not to hold one; the French and Dutch rejected the draft constitution; while Luxembourg approved it. On the one hand, it may be argued that, despite the negative results in France and the Netherlands, the referendums and the campaigns that led to them stimulated an unprecedented reflection on the EU. On the other hand, however, the negative results were perceived as confirming the existence of a democratic deficit in the EU and *de facto* restrained the integration process.

In 2006, a Special Eurobarometer Survey<sup>109</sup> reported that a third of Europeans interviewed (31 %) were favourable to the idea of holding a European referendum organised on the same day in all EU Member States to ensure that policy-makers heard the voice of European citizens. Only 19 % of the respondents supported the idea of signing a petition to address problems at EU level instead of at national level. However, a few years later, in 2020, when another Special Eurobarometer Survey<sup>110</sup> asked how to ensure that policy-makers hear the citizens' voice, a large majority (67 %) of respondents replied that 'voting in elections is the best way', followed by signing a petition (27 %), participation in public citizens' debates and assemblies (21 %) and public demonstrations (20 %).

Probably one of the best-known proposals on a Europe-wide referendum was formulated by the German philosopher and social scientist Jürgen Habermas in 2007. On the occasion of the 50th anniversary of the signature of the Treaty of Rome, Habermas suggested<sup>111</sup> the idea of a Europe-wide referendum to ask EU citizens whether the EU 'should have a directly elected president, its own foreign minister and financial base'. In his 2012 book *The crisis of the European Union, A Response*, Habermas further argued that EU referendums would legitimise the EU *demos*, making it less elitist, and would help the EU project to be more responsive to societal challenges. According to Habermas, countries acting alone had 'lost a considerable part of their controlling and steering capabilities' and therefore needed to act together as a global community to address common risks and challenges.<sup>112</sup>

It is argued<sup>113</sup> that some factors prevent referendums on EU issues from serving their intended purpose. The first weakness is the inconsistency between Member States as to whether the referendum is mandatory. The second concerns timing, where the published results of a referendum in one Member State may influence the electorate in another Member State. This is evidenced by the Czech government's 2009 decision, following the negative results on the Lisbon Treaty in Ireland, to put the signature of the treaty on hold until Ireland returned a positive result. Equally, the Polish government declared that a solution to the Irish referendum should be found before ratifying the treaty.<sup>114</sup>

To avoid that the result of a referendum in a given Member State influences the electorate of another Member State, some suggest<sup>115</sup> that simultaneous, compulsory referendums are held in all Member States. To ensure a sufficient representativeness, it is proposed that the number of citizens' signatures should reach a certain threshold, covering at least a minimum number of Member States. This double threshold (number of signatures and of Member States) would help to ensure the

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<sup>109</sup> [Special Eurobarometer Survey](#) on the Future of Europe, European Commission, May 2006.

<sup>110</sup> [Special Eurobarometer Survey](#) on the Future of Europe, European Commission and European Parliament, March 2021.

<sup>111</sup> [The only way out is a Euro-wide referendum](#), Jürgen Habermas, April 2007.

<sup>112</sup> Rensmann L., [A Differentiated "Dual Track" European Union as a Remedy in Times of Crisis? Debating Habermas, Arendt, and the Theoretical Foundations of Graduated European Integration](#), EUIDEA, July 2020.

<sup>113</sup> Cheneval F., [Caminante, no hay camino, se hace camino al andar: EU Citizenship, Direct Democracy and Treaty Ratification](#), *European Law Journal*, Vol.13, No 5, 2007, pp. 647-63.

<sup>114</sup> Jasik K., [Poland and the ratification of the Treaty of Lisbon](#), *Bonner Rechtsjournal*, 2/2009.

<sup>115</sup> Cheneval F., Ferrin M., Referendums in the European Union: Defective by birth?, *Journal of Common Market Studies*, Volume 56, Number 5, 2018, pp. 1178-1194.

legitimacy of the process. Moreover, holding a referendum on the same day would ensure that early voters do not influence those coming to the polls at a later stage. Holding a referendum not on exactly the same day but within a short period of time (four to five days) without releasing the results until the last ballots are closed could also be considered, as is the case for European Parliament elections. The issue of the content of the referendum also deserves further reflection, i.e. EU treaties and policies are very complex and therefore decisions concerning them are not suitable to be decided by a binary question, while circumscribed treaty amendments would be easier to grasp. Finally, it would also be interesting to explore if and to what extent EU institutions should be actively involved in campaigns related to referendums on EU issues. The 2015 Greek bail-out referendum<sup>116</sup> and the 2016 United Kingdom referendum on withdrawal from the EU provide two interesting examples.

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<sup>116</sup> [Greece: Remarks by Vice-President Dombrovskis at the press conference following the referendum](#), European Commission, 2015.

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Referendums put citizens back at the centre of the political stage. As instruments of direct democracy, they may foster citizens' involvement and legitimise important decisions. Referendums have been on the rise in Europe and elsewhere in the world in recent decades, and have become a recurrent feature of European politics. Despite the increased interest in some Member States, however, referendums remain controversial. On the one hand, advocates of direct democracy stress that referendums can foster citizens' engagement and thereby improve legitimacy and governance. Critics, on the other hand, highlight the fact that voters tend to answer questions other than those on the ballot paper. Some critics, more generally, question the suitability of a binary vote to decide on complex, multidimensional matters within the European setting.

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