



Transnational Democracy in the Making

**IRI Europe Handbook 2004
the New Challenge of European
Initiative & Referendum after the Convention**

**Edited by
Bruno Kaufmann, Alain Lamassoure and Jürgen Meyer**

Initiative & Referendum Institute Europe

"A treaty is a covenant among states. The Constitution proclaims, in its first Article, that it establishes the European Union "reflecting the will of the citizens and states of Europe". The states will sit around the table of the Intergovernmental Conference. The citizens must not be deprived of the instruments they need to express their own will. This is why several of us argued successfully for a popular initiative to be explicitly provided for by the new Constitution. This is why so many of us are committed to campaigning for national referendums to be held on the day of the next European Parliament elections, as an essential political part of the ratification process. This new IRI Europe Handbook provides essential materials for the preparation of the next important steps in the history of European democracy."

Giuliano Amato in the Foreword to "Transnational Democracy in the Making"



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The European Citizens' Initiative

Dansk

Et antal borgere på mindst en million fra et betydeligt antal medlemsstater kan opfordre Kommissionen til at fremsætte passende forslag om spørgsmål, der efter borgernes opfattelse kræver udarbejdelse af en EU-retsakt til gennemførelse af denne forfatning. Bestemmelserne om de specifikke procedurer og betingelser for fremsættelse af et sådant borgerinitiativ fastlægges ved europæisk lov.

Deutsch

Mindestens eine Million Bürgerinnen und Bürger aus einer erheblichen Zahl von Mitgliedstaaten können die Kommission auffordern, geeignete Vorschläge zu Themen zu unterbreiten, zu denen es nach Ansicht der Bürgerinnen und Bürger eines Rechtsakts der Union bedarf, um diese Verfassung umzusetzen. Die Bestimmungen über die besonderen Verfahren und Bedingungen, die für eine solche Bürgerinitiative gelten, werden durch ein Europäisches Gesetz festgelegt.

English

No less than one million citizens coming from a significant number of Member States may invite the Commission to submit any appropriate proposal on matters where citizens consider that a legal act of the Union is required for the purpose of implementing this Constitution. A European law shall determine the provisions for the specific procedures and conditions required for such a citizens' initiative.

Español

Podrá pedirse a la Comisión, por iniciativa de al menos un millón de ciudadanos de la Unión procedentes de un número significativo de Estados miembros, que presente una propuesta adecuada sobre cuestiones que estos ciudadanos estimen requiere un acto jurídico de la Unión a efectos de la aplicación de

la Constitución. Una ley europea establecerá las disposiciones relativas a las condiciones y procedimientos específicos por los que se regirá la presentación de esta iniciativa ciudadana.

Français

La Commission peut, sur initiative d'au moins un million de citoyens de l'Union issus d'un nombre significatif d'États membres, être invitée à soumettre une proposition appropriée sur des questions pour lesquelles ces citoyens considèrent qu'un acte juridique de l'Union est nécessaire aux fins de l'application de la présente Constitution. Une loi européenne arrête les dispositions relatives aux procédures et conditions spécifiques requises pour la présentation d'une telle initiative citoyenne.

Greek

Με πρωτοβουλία τουλάχιστον ενός εκατομμυρίου πολιτών της Ένωσης από σημαντικό αριθμό κρατών μελών, μπορεί να καλείται η Επιτροπή να υποβάλλει κατάλληλες προτάσεις επί θεμάτων στα οποία οι εν λόγω πολίτες θεωρούν ότι απαιτείται νομική πράξη της Ένωσης για την εφαρμογή του Συντάγματος. Ευρωπαϊκός νόμος καθορίζει τις διατάξεις σχετικά με τις ειδικές διαδικασίες και προϋποθέσεις που απαιτούνται για τη διατύπωση τέτοιου αιτήματος πολιτών.

Italiano

Su iniziativa di almeno un milione di cittadini dell'Unione appartenenti ad un numero rilevante di Stati membri, la Commissione può essere invitata a presentare una proposta appropriata su materie in merito alle quali tali cittadini ritengono necessario un atto giuridico dell'Unione ai fini dell'attuazione della Costituzione. Una legge europea determina le disposizioni relative alle procedure e alle condizioni specifiche necessarie per tale iniziativa dei cittadini.

Nederlands

Op initiatief van ten minste één miljoen burgers, afkomstig uit een aanzienlijk aantal lidstaten, kan de Commissie worden verzocht een passend voorstel in te dienen inzake een aangelegenheid waarvan de burgers menen dat een rechtshandeling van de Unie nodig is ter uitvoering van de Grondwet. Bij Europese wet worden de bepalingen vastgesteld inzake de specifieke procedures en voorwaarden voor een dergelijk initiatief van de burgers.

Portugues

A Comissão pode, por iniciativa de pelo menos um milhão de cidadãos oriundos de um número significativo de Estados-Membros, ser convidada a apresentar propostas adequadas em matéria sobre as quais esses cidadãos considerem necessário um acto jurídico da União para aplicar a presente Constituição. As normas processuais e condições específicas para a apresentação das iniciativas dos cidadãos à Comissão serão estabelecidas por lei europeia.

Svenska

Minst en miljon unionsmedborgare som kommer från ett betydande antal medlemsstater får uppmana kommissionen att lägga fram lämpliga förslag i frågor där medborgarna anser att det krävs en unionsrättsakt för att genomföra denna konstitution. Bestämmelser om de särskilda förfaranden och villkor som krävs för en sådan framställning till kommissionen skall fastställas i en europeisk lag.

Suomen

Vähintään miljoona kansalaista merkittävästä jäsenvaltioista voi tehdä aloitteen komissiolle aiheellisen ehdotuksen laatimiseksi asioista, joissa kansalaisten mielestä tarvitaan unionin säädöstä tämän perustuslain panemiseksi täytäntöön. Tällaisen kansalaisaloitteen edellyttämiä erityismenettelyjä ja –edellytyksiä koskevat säännökset määritetään eurooppalailla.

TABLE OF CONTENTS

3	The European Citizens' Initiative The Resolution for a Europe-wide Referendum on the Draft Constitution 40 Referendums on Europe	
9	Foreword by <i>Giuliano Amato</i>	
11	Introduction by <i>Bruno Kaufmann, Alain Lamassoure and Jürgen Meyer: "Welcome to the Future of European Democracy"</i>	
Chapter One: IRI Europe Survey 2004		
15	• How the Initiative & Referendum process can contribute to more and better European democracy	
Chapter Two: Convention Stories		
45	• <i>IRI Europe</i> presents a Union (a little bit) closer to its citizens	
47	• <i>Michael Efler</i> tells the amazing story of how the European Citizens' Initiative found its way into the EU Constitution	
50	• <i>Andreas Gross</i> and <i>Bruno Kaufmann</i> make the case for direct democracy in the European Union	
52	• <i>Arjen Nijeboer</i> forecasts a surprise from the Hague	
53	• <i>Susana del Rio Villar</i> discovers a new demo- cratic passion for Europe in Spain	
55	• The Draft Constitution will empower Europe's citizens, concludes <i>Joachim Fritz-Vannahme</i>	
Special Section: The European Referendum Campaign		
58	• Background and outlook on an activist net- work which will make a difference to Europe	
Chapter Three: Challenge 2004		
65	• <i>Heidi Hautala</i> imagines how the new initiative right will empower Europe(ans)	
68	• <i>Bruno Kaufmann</i> looks forward to signing a "European Alps Initiative" in Copenhagen in autumn 2007	
71	• <i>Victor Cuesta</i> evaluates the legal future of the European Citizens' Initiative.	
76	• A locomotive with a few carriages but with no network of tracks doesn't make a railway sys- tem, writes <i>Andreas Gross</i>	
79	• <i>Dan O'Brien</i> and <i>Daniel Keohane</i> explain why Europe needs referendums	
81	• <i>Bruno Vanoni</i> looks into the experience with the "citizen initiative/popular motion" in Switzerland	
83	• <i>Paul Carline</i> asks whether the Draft Constitution will be worth the paper it is writ- ten on	
85	• <i>Jürgen Meyer</i> and <i>Sven Hölscheidt</i> present three options for referendum(s) on the EU constitution	
86	• <i>Nigel Smith</i> makes the argument for not com- bining referendums with elections	
89	• And comments from the European Parliament by <i>Diana Wallis, Jo Leinen, Monika Frassoni and Sylvia-Yvonne Kaufmann</i>	
Chapter Four: Documentation		
99	Reports and conclusions from the IRI Referendum Forums in Stockholm, York, Barcelona, Berlin, Brussels and Eisenstadt in 2002/2003.	
Chapter Five: Guide		
131	The Initiative & Referendum Process in 32 European Countries	
213	Appendix: Materials, Resources, Information, Index	

RESOLUTION

The following resolution was signed by **96** members of the „Convention on the Future of Europe“ from all represented countries. It was also signed by (currently) **109** NGOs from 25 countries.



Host of the
European Referendum
Campaign

The signatories ask the Presidium of the Convention to pass this resolution and forward it to the IGC!

„Referendum on the European Constitution

The Convention recommends to the Inter-Governmental Conference that the draft European Constitution be approved not only by National Parliaments and the European Parliament but also by the citizens of Europe in binding referendums. These referendums should take place in accordance with the constitutional provisions of the member states. They should be held simultaneously on the same day, an option being the same day as the European Parliament Elections in June 2004. Those member states whose constitutions do not currently permit referendums are called upon to hold at least consultative referendums. An information campaign must be publicly funded.“

AUSTRIA: Johannes Farnleitner, EPP-ED, Austrian Government - Evelin Lichtenberger, Greens-EFA, MP - Reinhard Rack, EPP-ED, EP - Gerhard Tusek, EPP-ED, Austrian Government - Johannes Voggenhuber, Greens-EFA, EP - Anne-Marie Sigmund, Economic and Social Committee - Reinhard Bösch, UEN, National Parliament - Maria Berger, SPE, EP - Eduard Mainoni, UEN, MP **BELGIUM:** Marie Nagy, ECOLO, National Parliament - Anne van Lancker, SPE, EP - Karel de Gucht, ELD, MP - Pierre Chevalier, National Government + + **BULGARIAN:** Nelly Kuzkova, National Government - Alexandar Arabadjiev, ES, MP + + **CZECH REPUBLIC:** Zahrada, EPP-ED, MP - Josef Zielenc, EPP-ED, MP - Petr Necas, EPP-ED, MP - Frantisek Kroupa, EPP-ED, MP **CYPRUS:** Eleni Mavrou, GUE/NGL, MP - Panayiotis Demetriou, EPP-ED, MP + **DENMARK:** Jens Peter Bonde, EDD, EP - Lone Dybkjaer, ELDR, EP - Peter Skaarup, EDU, MP - Per Dalggaard, UEN, MP - Erik Carlslund, European Social Partner **ESTONIA:** Urma Reinsalu, PES, NP + **FINLAND:** Esko Olavi Seppänen, GUE-NGL, EP - Piia-Noora Kauppi, EPP-ED, EP + + **FRANCE:** William Abitbol, EDD, EP - Robert Badinter, PES, MP - Hubert Haenel, EPP-ED, MP - Alain Lamassoure, EPP-ED, EP - Roger Briesch, Economic and Social Committee - Claude du Granrut, Committee of the Regions - Olivier Duhamel, PES, EP - Jacques Floch, PES, MP - Pervenche Berès, PES, EP - Pierre Lequiller, EDD, MP + **GERMANY:** Jürgen Meyer, PES, MP - Sylvia-Yvonne Kaufmann, GUE-NGL, EP - Joachim Wuermeling, EPP-ED, EP - Göke Daniel Frerichs, EPP-ED, Economic and Social Committee + + **GREECE:** Nikos Kostantopoulos, GUE-NGL, MP - Evripides Styliandis, EPP-ED, MP + + **HUNGARY:** Peter Balázs, EPP-ED, National Government - Pal Vastagh, SPE, **IRELAND:** John Gormley, Greens-EFA, MP - Pat Carey, Fianna Fáil, **ITALY:** Giuliano Amato, PES, Vice President of Convention - Claudio Martini, PES - Francesco Speroni, NI, National Government - Elena Paciotti, PES, EP - Filadelfio Guido Basile, EPP-ED, MP - Valdo Spini, PES, MP - Gianfranco Fini, UEN, National Government - Cristiana Muscardini, UEN EP - Antonio Tajani, EPP-ED, EP - Emilio Gabaglio, European Social Partners - Marco Follini, EPP-ED, MP - Mario Sepi, Economic and Social Committee - Geacomo Filibeck, President of the Youth Convention + **LITHUANIA:** Algirdas Griucius, ELDR, MP - Gintautas Sivickas, ELDR, MP - Eugenijus Maldeikis, ELDR, MP - Vytenis Andriukaitis, SPE, MP + + **LATVIA:** Guntars Krasts, MP + + **LUXEMBOURG:** Gaston Glibéryen, UEN, MP + **MADRID:** Alfred Sant, PES, NP - Georg Vella, PES, MP **NETHERLANDS:** Frans Timmermans, SPE, MP + + **POLAND:** Janusz Trzinski, non-attached, National Government + **PORTUGAL:** Luis Quiero, EP - Alberto Costa, PES, EP - Antonio Nazare Pereira, EPP-ED, MP **ROMANIA:** Alexandru Athanasiu, NP - Adrian Severin, SPE, MP - Constantin Ene, National Government **SLOVAKIA:** Juraj Migas, EPP-ED, MP - Irena Belohorská, HZDS, MP - Boris Zala, SPE, **SLOVENIA:** Alojz Peterle, EPP-ED, MP + + **SPAIN:** Carlos Camero Gonzalez, PES, EP - Josep Borrell Fontelles, PES, MP - Inigo Méndez de Vigo, EPP-ED, Praesidium - Gabriel Cisneros Laborda, EPP-ED, MP - Diego Lopez Garrido, PES, MP - Alejandro Munoz Alonso, EPP-ED, **TURKEY:** Ekerem Akcam, AKP, NP - Ibrahim Özal, AKP, NP - Kemal Dervis, PES, MP - Nezdet Budak, PES, MP **UNITED KINGDOM:** Alexander Earl of Stockton, EPP-ED, EP - David Heathcoat-Amory, Tory, MP - Neil MacCormick, Greens-EFA, EP - Timothy Kirkhope, EP

EUROPE: Cafe Babel — dpa 2020 — Europe Now — European Citizen's Network — Initiative & Referendum Institute Europe — NDDIE, Network for Direct Democracy in Europe — newpeopans — Permanent Forum of Civil Society + **ALBANIA:** Albanian Youth Network for European Integration + + **AUSTRIA:** LEO - Liste EU Opposition — Transdanubiengleichenschwarzblau + **AUTONOME** 11.11.11.vzw - Umbrella of Flemish North-South development organisations — AlterMundus.net — Amis du Monde diplomatique-Belgique asbl — FUCID - Development education NGO — Haest Consultancy for the Organic Industry — Het Zand vzw — phoenix angel — Plattelandsontwikkeling vzw — Rudolf Steineracademie vzw — VELT - division Schoten — Vivant — Wervel — WIT — Werkgroep Implementatie Tijdsgeest — DEMOCRATIEPLUS **BULGARIA:** Civic Participation Society + + **CANADA:** Participatory Direct Democracy Association + **CZECH REPUBLIC:** D-CR — HSMS - Hnutí samospravné Moravy a Slezska — Hnutí za primou demokracii **DENMARK:** Danish Society for Direct Democracy — Folkebevægelsen mod EU — JuniBevægelsen — Kampagnen for Europæisk Folkeafstemning — Komiteen for Fair Folkeafstemning — Danmarks Retsforbund — Nødvendigt Forum — Radikalt EU-kritisk Netværk — SFU - Socialistisk Folkepartis Ungdom — Stef Tech Electric — Vanløse mod Unionen + **ESTONIA:** Movement No to EU + **FINLAND:** Amandamaji ry — Wailer Women — Women against nuclear power — Women for a different EU — Women for Peace — Alternative to EU + **FRANCE:** Association Pour la Promotion de la Démocratie Directe — Club du 21 septembre 1792 — Démocratie Active — Europe Associations — Union des Etudiants d'Europe — Centre d'Action Européen Démocratique et Laïque — Mouvement Europe et Laïcité **GEORGIA:** IACERHRG + **GERMANY:** AnStiftung - Ein Bürgerprojekt — Attac Mönchengladbach — Bundesarbeitsgemeinschaft Friedensratschlag — Foodwatch — Europäische Märsche gegen Erwerbslosigkeit — Kommunale Initiative (KI) Aachenburg — NWWP - Netzwerk für weltweite Projekte — Citizen's Initiative for the Europe of the Citizens — Frauenliste Wiesloch — Initiative Netzwerk Dreigliederung — Mehr Demokratie e.V. — Ökologisch-Demokratische Partei - Landesverband Hessen — OMNIBUS gGmbH — Verein zur Förderung des erweiterten Kunstbegriffs u der Sozialen Plastik e.V. — Bundesarbeitsgemeinschaft der Sozialhilfeninitiativen e.V. — UNIONSBURGER.de + **GREECE:** Citizens' Union PAREMVASSI — Forum of Citizens Democracy **HUNGARY:** BUDS „Rügyesckék“ Foundation for Human- and Nature Protection + **ITALY:** Cittadinanzattiva/ Active Citizenship Network — Gioventu Federalista Europea (JEF-Italy) — Movimento Federalista Europeo — Movimento Federalista Europeo Section of Genoa + **LUXEMBOURG:** Aktionskomitee für Demokratie a Rentenrechtigkeit — Initiative für demokratie-erweiderung — Institut f. integrale Praxis, mehr Demokratie u. soz. Dreigliederung + **MADRID:** NO2EU + **NETHERLANDS:** Amsterdamers Initiatief — Referendum Platform — Vrijwazig — Agora Europe **POLAND:** Demokratyczna Kobieta Gdansk — Karat Coalition - for gender Equality — Przewyborcza Koalicja Kobieta (Pre-Election Coalition of Women) + **ROMANIA:** European Movement Romania — MAMA TERRA/Mother Earth Romania — ATTAC Romania + **SLOVAKIA:** Agora - Civic Association in Support of Direct Democracy — Obcianskeho Zdruzenia - Centrum invencie Stredoeuropäna **SPAIN:** Motivados — ODEP - Otra Democracia Es Posible — Red Ciudadanas de Europa (RCE) — AJTEX -Asociacion de Jóvenes Titulados Externos + **SWEDEN:** Unga mot EU + **SWITZERLAND:** Democracy Europe — la dent diamant . atelier de création — ESCE Economic Forum Switzerland - Central/Eastern Europe + **UNITED KINGDOM:** Congress for Democracy — e-voter — the Party — The Democracy Movement + **YUGOSLAVIA:** Association of Business Women — FELICITAS - Citizens' association



www.european-referendum.org

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40 REFERENDUMS ON EUROPE

1972-2003

1	France	23.4.1972	Ratification EEC expansion
2	Ireland	10.5.1972	EC accession
3	Norway	26.9.1972	EC accession
4	Denmark	2.10.1972	EC accession
5	Switzerland	3.12.1972	Free trade treaty with EEC
6	Britain	5.6.1975	EC accession
7	Greenland	23.2.1982	EC membership withdrawal
8	Denmark	27.2. 1986	Ratification common market
9	Ireland	26.5.1987	Ratification common market
10	Italy	18.6.1989	European constitution process
11	Denmark	2.6.1992	Ratification Maastricht Treaty
12	Ireland	18.6.1992	Ratification Maastricht Treaty
13	France	20.9.1992	Ratification Maastricht Treaty
14	Switzerland	6.12.1992	EEA accession
15	Liechtenstein	12.12.1992	EEA accession
16	Denmark	18.5.1993	Maastricht Treaty
17	Austria	12.6.1994	EU accession
18	Finland	16.10.1994	EU accession
19	Sweden	13.11.1994	EU accession
20	Åland Islands	20.11.1994	EU accession
21	Norway	28.11.1994	EU accession
22	Liechtenstein	9.4.1995	EEA accession
23	Switzerland	8.6.1997	EU accession procedures. Blocking.
24	Ireland	22.5.1998	Ratification treaty of Amsterdam
25	Denmark	28.5.1998	Ratification treaty of Amsterdam
26	Switzerland	21.5.2000	Bilateral treaties with the EU
27	Denmark	28.9.2000	Euro accession
28	Switzerland	4.3.2001	EU accession procedures. Start.
29	Ireland	7.6.2001	Ratification Treaty of Nice
30	Ireland	19.10.2002	Ratification Treaty of Nice
31	Malta	8.3.2003	EU accession
32	Slovenia	23.3.2003	EU accession
33	Hungary	12.4.2003	EU accession
34	Lithuania	11.5.2003	EU accession
35	Slovakia	17.5.2003	EU accession
36	Poland	8.6.2003	EU accession
37	Czech Republic	14.6.2003	EU accession
38	Estonia	14.9.2003	EU accession
39	Sweden	14.9.2003	Euro accession
40	Latvia	20.9.2003	EU accession

FOREWORD

by Giuliano Amato

Don't deprive the citizens!

“Whatever one might think of the text the Convention has produced, the so called “Convention method” has undoubtedly proved useful as a means of bringing Europe closer to the citizens.

Never before has the preparation of relevant changes to the European architecture been accompanied by such an intense participation of citizens, associations and organisations. In sixteen months of transparent and public debates by the Convention, we can proudly say that the badly needed “European public sphere” has been significantly widened and enriched. I consider this our main success.

It is a success, though, only if it does not remain as an isolated experience. This is why several of us argued successfully for the popular initiative to be explicitly provided for by the new Constitution. This is why so many of us are committed to campaigning for national referendums to be held on the day of the next European Parliament elections, as an essential political part of the ratification process.

A treaty is a covenant among states. The Constitution proclaims, in its first Article, that it establishes the European Union “reflecting the will of the citizens and states of Europe”. The states will sit around the table of the Intergovernmental Conference. The citizens must not be deprived of the instruments they need to express their own will.

This new IRI Europe Handbook provides essential materials for the next important steps in the history of European democracy.”

Giuliano Amato served as a Vice-President of the EU Convention and was Italian Prime Minister

Welcome to the Future of European Democracy

Introduction:

"We are the people", proclaimed the citizens of central Europe in late 1989, when they brought a peaceful end to the old Communist regimes and the Cold war. The democratic idea had finally prevailed. But history did not end there. Our traditional western democracies – with decision-making limited to nation-states and parliaments - were unable to meet the new challenges of globalisation and democratisation.

The task was far more difficult and complex than expected. The ongoing transformation of the European (economic) Communities towards a European (political) Union is the best example of that: at specific moments – such as in Denmark on June 2, 1992 and in Ireland on June 7, 2001 - European citizens said "No" to the new foundations of the Union proposed to them by the national governments in Maastricht and Nice. Without doubt these two popular "No's" made a significant contribution to a growing learning process about how to define and manage the specifics of a sustainable European integration process – even if many in government circles and EU headquarters may have hated these popular rejections of their plans.

Nevertheless, there was an effect: in December 2002, the Laeken EU summit recognised an urgent need for a more democratic European Union. In order to achieve this, a constitutional convention on the future of Europe was established. The remit of this assembly, composed of representatives of the EU, national governments and national parliaments (from both the old and new member states), included the task of making "the European Union more democratic and closer to its citizens".

It wasn't a new idea. Citizens have been playing a direct role in the European integration process since 1973. 40 referendums on Europe in 22 countries have already taken place – making the European integration process the single most voted-on issue in world history!

There is much to learn from this European referendum experience: one fact is that citizens like this way of participating in politics. Compared to parliamentary elec-

tions (both to national parliaments and the EP), the average turnout at the referendums on Europe has not fallen over recent years. Another fact is that citizens in those countries which have been involved in European referendum processes know more about European integration than their neighbours who have not.

In 16 months' work, the EU Convention has developed a new foundation for the European Union. Irrespective of where you stand on the issue – whether you think that the draft constitution is a step in the right, or the wrong, direction - you could perhaps agree that the Convention method does indeed mark a final departure from the Treaty-structure of the EU towards a Constitution-structure. In practice, this is merely a natural and long-awaited recognition of the fact that today already more than half of all the laws in the EU member states come from "Europe".

The Convention's move towards a European constitution will have far reaching implications. One of them is that the national governments have finally lost their monopoly on decision-making in the EU. This change is very welcome, as key principles of modern democracy – accountability, transparency, participation – have clearly suffered restrictions under the pure intergovernmental regime.

By strengthening the powers of the EP and the national parliaments, the EU Convention has contributed to improved accountability and – in part – even transparency. But for several reasons, this is not enough: the EU Convention has also launched a debate on the introduction of direct-democratic elements in the draft constitution and has included – for the very first time in history at the transnational level - a "European Citizens Initiative". In addition, 97 members of the Convention have sent a political signal to Europe by signing a resolution strongly recommending referendums in all member states on the new constitution. This proposal is appealing to a vast majority of Europeans. According to a Eurobarometer study more than 80% of citizens across the 25 European countries are in favor of such a constitutional referendum.

All this may seem to some to be very cautious and small steps; others may fear further development towards an "EU superstate". However, the introduction of a European Citizens' Initiative was only made possible by the determined and well-researched work and pressure from citizens' groups around Europe. Together with the demand for a Europe-wide Constitutional Referendum, the Initiative Right can open a window of opportunity for even greater participation by the peoples of Europe in the future.

The main aim of the IRI Europe Handbook 2004 is to document this unique process and to inspire all interested individuals and organizations to take "transnational democracy in the making" seriously.

We begin – in *Chapter One* - with a survey on "How the Initiative & Referendum process can contribute to more and better European democracy". Here are all the essential facts and background to the roughly 40 referendums on Europe already held, as well as the prospects for the future design and use of the European Citizens' Initiative and the Europe-wide referendums on the Constitution.

Chapter Two tells the most important "Convention Stories" about the Citizens' Initiative and the Europe-wide Referendum. In a special section we cover the events and developments around "The European Referendum Campaign".

In *Chapter Three*, "Challenge 2004", the upcoming work around the Inter Governmental Conference is assessed: writers from different fields, parts of Europe and political roots give their opinion on how the new opportunities established by the Convention should be used.

Chapter Four, the "IRI Referendum Forums 2002/2003", offers another insight into the debates on transnational direct democracy around Europe.

Finally – in *Chapter Five*: "IRI country-by-country guide"- the legal foundations and concrete experience with initiatives and referendums in most European countries are summarized and analysed.

This book is the expression of an impressive and promising development in Europe. It has been made possible by the contributions of a great number of individuals and organizations. We and they both know: the big game of European democracy has only just begun. The conduct of this game will be decisive for the final result, as only "free" and "fair" initiative

and referendum procedures will provide the added value to political life in terms of better legitimacy, better dialogue and better integration – this is what we are together striving for.

The "European Initiative Right" has given us a transnational tool to develop and use; with good prospects for a "Europe-wide Referendum on the Constitution", we have the chance of generating the widest European debate ever. Let's use this double opportunity – for the Future of European Democracy!

Yours sincerely

*Bruno Kaufmann
Alain Lamassoure
Jürgen Meyer*

Amsterdam, Berlin and Brussels
September 1, 2003



Bruno Kaufmann is president of the initiative and Referendum Institute Europe.



Alain Lamassoure is former French minister and MEP.



Jürgen Meyer was member of both European conventions.

Chapter One:

IRI EUROPE SURVEY 2004

“If you want a crowd, start a fight”

IRI Europe Survey 2004 on how the Initiative & Referendum process can contribute to more and better democracy. By Bruno Kaufmann

In this survey, the Initiative & Referendum Institute - Europe's leading think-tank on direct- democratic tools and trends - offers an overview of the most important facts on the growing importance of direct-democratic tools and trends in Europe. We start with a global outlook of democracy, then assess the 40 national referendums on Europe which took place between 1972 and 2003, and present a first list of criteria for “free” and “fair” European referendum standards. The survey concludes with a look at the prospects for a Europe-wide constitutional referendum in 2004/2005, as well as for the implementation and further development of the new “European Citizens’ Initiative” up to 2009. Here we go!

- 1. Introduction**
- 2. 40 Referendums on Europe in 22 countries**
- 3. On the building site for a European Referendum Standard**
- 4. The Convention’s gift: a European Citizens’ Initiative**
- 5. The prospects for a Europe-wide constitutional referendum**

Introduction

It was an impressive crowd which gathered outside strategic buildings in central Vilnius, the Lithuanian capital, in January 1991. They were trying to defend with their own bodies the newly declared Lithuanian independence from the Soviet Union. But the feared OMON militia (special units of the Soviet Ministry of the Interior) attacked and killed 13 women and men.

Twelve years later, another big crowd gathered in Europe's geographical heart¹: thousands of Lithuanians were celebrating the overwhelming “yes” in the referendum on EU accession. Two thirds of the electorate had turned out, nine out of every ten voters approved membership. “This referendum delivered a common identity to a divided people”, says Algis Krupavicius, Professor of Political Science at Kaunas University.²

“If you want a crowd, start a fight”, said the famous 19th century American showman Phineas Taylor Barnum, founder of the Grand Traveling Circus.³ We still need them today -both the crowds and the fights. But with the help of (direct) democracy they have become far less violent. The two Lithuanian fights of 1991 (to leave the Soviet Union) and 2003 (to join the European Union) impressively demonstrate this qualitative change in the culture of fighting.

In the context of the European integration process, initiatives and referendums have become a key concept of development. According to Dan O'Brien and Daniel Keohane, referendums “inject a dose of human drama into the technocratic machinery and arid theory of EU integration” and “generate understanding and encourage participation by focusing attention on the EU and its workings”. “This should be welcomed”, conclude the two London-based political analysts, as “referendums specifically on the EU are the only way of putting the Union and what it does at political centre-stage”.⁴

In fact, Europe's citizens are pioneers in taking direct part in crucial decisions on their continent's behalf. Since 1972, no less than 40 national referendums in 22 countries have been held on European integration. No other issue worldwide has been the subject of such wide and direct participation by the citizens. But this is still by far not enough, as EU integration is still seen by most people as a remote, elitist and rather undemocratic affair.

But changes are on the way, as many more Europeans will get the opportunity to have a say on the new EU constitution next year – the constitution which was adopted in July 2003 by a constitutional convention and which is currently under evaluation by an inter-governmental conference. The EU Convention has also introduced the very first direct-democratic tool at the transnational level, the so-called “European Citizens’ Initiative”. Finally, both the European Union with its 25 old and new member states and many European NGOs are now trying to learn from the Europe-wide experience with initiatives and referen-

dums in developing common criteria for “European Initiative & Referendum Standards”.

Civil participation moves to centre-stage

A recent assessment by the United Nations Development Program (UNDP) reached two main conclusions:

- *The democratisation of societies is one of the most important positive trends of our time.*
- *The democratisation of democracy is one of the greatest challenges of the near future.*

Indeed, as recently as 1980, it was still only a minority (46%) of the world’s population which was living in countries - 54 in number - which enjoyed fundamental democratic rights such as free multi-party elections.

By the beginning of this millennium, the ‘democratic’ minority had become a clear majority: 68% of the more than 7 billion people in the world now lived in 129 nominally democratic countries.⁵ During the last two decades of the 20th century, 81 countries went through a process of democratisation, 21 of those in Europe - where “Freedom House” now characterizes only Belarus as ‘undemocratic’.⁶

However, the UN World Development Report states that: “True democratisation means more than elections. People’s dignity requires that they be free - and able - to participate in the formation and stewardship of the rules and institutions that govern them”.⁷

This was the first time that the United Nations had placed civil participation in making laws - in the form of initiatives and referendums (I&R) - at the centre of a global democratic challenge for the 21st century. European integration plays a central role in this, for in no other transnational political process does the question of democracy enjoy such a high priority as in the European Union.

Strengthening representative democracy by I&R

Since the French Revolution, democratic procedures for dealing with substantive issues have been developed as it were in the shadow of procedures for electing parliaments and assemblies. Along with the various possibilities within indirect democracy for the active and passive election of political representatives

and/or political parties, we can add the right of citizens to launch initiatives, the possibility of voting on substantive issues or of deciding - in a popular referendum initiated ‘from below’ - on the recall of a politician before the end of his/her mandated period of office: all these latter belong to the portfolio of direct democracy.⁸ With good design⁹ and working in a way in which each complements the other, the procedures of both direct and indirect democracy have the potential to strengthen representative democracy. They are also the precondition for improvements in the quality of life within and between political communities.

In federal countries such as the USA and Switzerland, I&R procedures have played a very important role in legislation for more than a hundred years.¹⁰ But it was only with the ending of the Cold War that elements of direct democracy could be incorporated into the constitutions and political practice of many other states.¹¹ Europe has played a pioneering role in this: almost all of the 27 new constitutions in the countries of Eastern and Central Europe have been adopted by their citizens in referendums. Most of these constitutions contain some direct-democratic elements. In Western and Northern Europe, the European integration process has brought about numerous national referendums. No other single issue in the world has resulted in so many referendums and individual acts of voting: since 1972 more than 250 million Europeans in 22 countries have been able to participate in the European integration process on a total of 40 separate occasions (C.F. Map 1, 40 referendums on Europe 1972 – 2003).

And yet this is only the beginning of a process of development: the proposal for referendums on the EU constitution has gained broad support. The governments of countries such as Portugal, Spain, France, Luxembourg, Ireland and Denmark have already announced citizens’ decisions for 2004/2005, even before the beginning of the IGC (the Inter-governmental Conference on the EU constitution to be held between October 2003 and May 2004). In other member states such as Austria and Belgium, the governments have announced their willingness to take part in a Europe-wide constitutional referendum in the near future. In the shadow of this dynamic development, which must be exciting to both promoters and sceptics of the referendum tool, many countries are about to strengthen the institutional foundations of participatory democracy through initiatives and referendum. The most recent example is the introduction of a municipal referendum in France.¹²

40 Referendums on Europe in 22 countries

The founding fathers of the European Union did not like the idea of including citizens directly in decision-making processes at the transnational political level. This was due less to the experience of the Second World War than to the growing threat of the Cold War, which initially spoiled the ideas for a democratic European Federation which were developed in the 1940's. This resulted in the integration process of the 1950's being dominated by economic and bureaucratic considerations: Jean Monnet's system did not provide for direct civilian participation in decision-making.

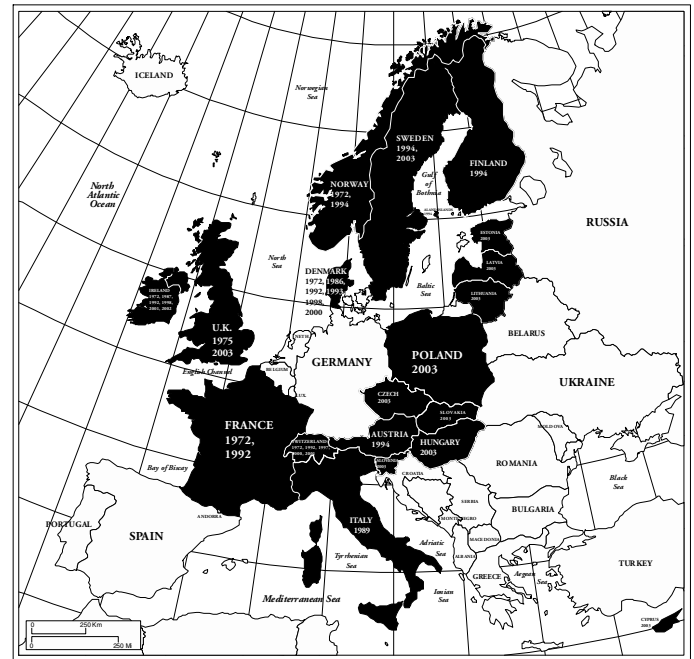
It was another great Frenchman, President Charles de Gaulle, who first formulated the challenge of a Europe-wide referendum at the beginning of the '60s:

"Europe will be born on the day on which the different peoples fundamentally decide to join. It will not suffice for members of parliaments to vote for ratification. It will require popular referendums, preferably held on the same day in all the countries concerned".¹³

It was to be another 10 years before de Gaulle's successor, Georges Pompidou, finally dared to make a start and made the citizens of his country the first Europeans to take part in a referendum on Europe: on March 23rd 1972, a two-thirds majority voted in favour of extending the then European Community northwards to include Denmark, Great Britain, Ireland and Norway. In retrospect, this decision did not only open the door to the north, but also to more (direct) democracy in Europe. In the same year (on May 10th), voters in both the Irish Republic and Denmark decided in favour of joining the EC. That was not the end of the matter 30 years ago: there were European referendums in both Norway and Switzerland. On September 26th, the Norwegians voted narrowly against accession, whilst on December 3rd 1972 the Swiss voted massively in favour of a Free Trade Treaty with the EEC (European Economic Community), with 72.5% of voters saying "Yes".

This first Europe-wide referendum year revealed the great disparity between referendum procedures in the different countries: whereas the French referendum was called by the French president and the result was merely advisory, the Irish popular decision on accession was prescribed in the constitution and was binding on the political leadership of that country. In

Map I-40 referendums on Europe (1972 - 2003)



Denmark, transfers of sovereignty to international organizations have to be put to referendum only when there is no 5/6ths majority in the national parliament.¹⁴ In Norway and Switzerland, finally, it was parliament (in the former case) and the government (in the latter case) which voluntarily decided to submit the issue of accession to the EC (Norway) and to the EEC Free Trade Treaty (Switzerland) to referendum.¹⁵

Table 1 gives an overview of all 40 national referendums on Europe since 1972, with results and basic information on procedures.

TABLE 1 40 REFERENDUMS ON EUROPE

	Country	Final voting day	Subject	Proportion of "Yes" votes	Turnout	Requirements & Quorums	Type: who triggers? Binding?	Basis in the Constitution
1	France	23.4.1972	EEC expansion	68.28%	60.27%	No	President/ No	Art. 11 & 89
2	Ireland	10.5.1972	EC accession	83.1%	70.88%	No	Obligatory referendum/ Yes	Art. 46.2
3	Norway	26.9.1972	EC accession	46.5%	79.2%	No	Parliament/ No	None
4	Denmark	2.10.1972	EC accession	63.29%	90.4%	Non-approval requirement 30%	Obligatory referendum/ Yes	Art. 20
5	Switzerland	3.12.1972	Free Trade Treaty with EEC	72.5%	52%	Double majority (cantons, people)	Obligatory referendum/ Yes	None
6	Britain	5.6.1975	EC membership	67.23%	64.03%	No	Government/ No	None
7	Greenland	23.2.1982	EC membership	45.96%	74.91%	No	Parliament/ No	None
8	Denmark	27.2.1986	Common market	56.24%	75.39%	Non-approval requirement 30%	Parliament/ Yes	Art. 42
9	Ireland	26.5.1987	Common market	69.92%	44.09%	No	Obligatory referendum/ Yes	Art. 46.2
10	Italy	18.6.1989	European constitution process	88.06%	85.4%	No	Citizens' initiative/ No	Art. 71
11	Denmark	2.6.1992	Maastricht Treaty	47.93%	83.1%	Non-approval requirement 30%	Obligatory referendum/ Yes	Art.20
12	Ireland	18.6.1992	Maastricht Treaty	68.7%	57.31%	No	Obligatory referendum/ Yes	Art. 46.2
13	France	20.9.1992	Maastricht Treaty	51.05%	69.69%	No	President/ Yes	Art. 11

	Country	Final voting day	Subject	Proportion of “Yes” votes	Turnout	Requirements & Quorums	Type: who triggers? Binding?	Basis in the Constitution
14	Switzerland	6.12.1992	EEA accession	49.7%	78%	Double majority (cantons, people)	Obligatory referendum/ Yes	(Art. 89.5 and Art.123)
15	Liechtenstein	12.12.1992	EEA accession	55.81%	87%	No	Parliament/ Yes	Art.66
16	Denmark	18.5.1993	Maastricht Treaty	56.77%	85.5%	Non-approval requirement 30%	Parliament/ Yes	Art. 42.
17	Austria	12.6.1994	EU accession	66.58%	82.35%	No	Obligatory referendum/ Yes	Art.44
18	Finland	16.10.1994	EU accession	56.88%	70.4%	No	Parliament/ No	Art. 22
19	Sweden	13.11.1994	EU accession	52.74%	83.32%	No	Parliament/ No	Chap. 8 § 4
20	Åland-Islands	20.11.1994	EU accession	73.64%	49.1%	No	Parliament/ No	None
21	Norway	28.11.1994	EU accession	47.8%	89%	No	Parliament/ No	None
22	Liechtenstein	9.4.1995	EEC	55.88%	82.05%	No	Obligatory referendum/ Yes	Art.66 bis
23	Switzerland	8.6.1997	EU accession procedures. Blocking.	25.9%	35%	Double majority (cantons, people)	Citizens’ initiative/ Yes	Art. 121
24	Ireland	22.5.1998	Treaty of Amsterdam	61.74%	56.26%	No	Obligatory referendum/ Yes	Art. 46.2
25	Denmark	28.5.1998	Treaty of Amsterdam	55.1%	76.24%	Non-approval requirement 30%	Obligatory referendum/ Yes	Art.20
26	Switzerland	21.5.2000	Bilateral treaties with the EU	67.2%	48%	No	Facultative referendum/ Yes	Art. 141

	Country	Final voting day	Subject	Proportion of “Yes” votes	Turnout	Requirements & Quorums	Type: who triggers? Binding?	Basis in the Constitution
27	Denmark	28.9.2000	Euro accession	46.87%	87.2%	Non-approval requirement 30%	Obligatory referendum/ Yes	Art. 20
28	Switzerland	4.3.2001	EU accession procedures. Start.	23.2%	55%	Double majority (cantons, people)	Citizens’ initiative/Yes	Art. 139
29	Ireland	7.6.2001	Treaty of Nice	46.13%	34.79%	No	Obligatory referendum/ Yes	Art. 46.2
30	Ireland	19.10.2002	Treaty of Nice	62.89%	48.45%	No	Obligatory referendum/ Yes	Art. 46.2
31	Malta	8.3.2003	EU accession	53.6%	91.0%	No	Parliament/ No	None
32	Slovenia	23.3.2003	EU accession	89.6%	60.3%	Turnout 50%	Parliament/ Yes	Art. 169
33	Hungary	12.4.2003	EU accession	83.8%	45.6%	Approval 25%	Parliament/ Yes	Art. 19 et 28
34	Lithuania	1.5.2003	EU accession	91.1%	63.4%	Turnout 50% Approval 33%	Parliament/ Yes	Art. 147
35	Slovakia	17.5.2003	EU accession	92.5%	52.2%	Turnout 50%	Parliament/ Yes	Art. 93.2
36	Poland	8.6.2003	EU accession	77.5%	58.9%	Turnout 50%	Parliament/ Yes	Art. 125
37	Czech Republic	14.6.2003	EU accession	77.3%	55.2%	No	Parliament/ Yes	Ad-hoc law
38	Estonia	4.9.2003	EU accession			No	Parliament/ Yes	Art. 105
39	Sweden	14.9.2003	Euro accession			No	Parliament/ No	Art. 4
40	Latvia	20.9.2003	EU accession			Turnout 50%	Parliament/ Yes	Art. 79

	Country	Final voting day	Subject	Proportion of "Yes" votes	Turnout	Requirements & Quorums	Type: who triggers? Binding?	Basis in the Constitution
*	22 countries: 17 EU 3 EFTA 2 autonomous regions	40 votes -1983: 7 84-93: 9 94-03: 24	27 accession 10 reform 1 constitution 1 enlargement 1 withdrawal	Average 62% Yes 8 x No 29 x Yes	Average 67% - 83: 70.2 - 93: 73.9 - 03: 63.3	16 countries with specific majority requirements	Top-down: 22 Bottom-up: 18	7 votes without constitutional basis

*Reading notes:

Country: EU = "old" and "new" member states; EFTA = European Free Trade Association, members Switzerland, Liechtenstein, Norway; Autonomous regions = Greenland, Åland Islands

Final voting day: in many countries the time for voting is expanded to two days or even several weeks.

Subject: Accession = to European Community, European Union, European Economic Area, Euro

Proportion of "yes" votes = results somewhat misleading due to specific Swiss Initiatives such as forbidding accession negotiations and Greenland's withdrawal proposal.

Turnout = 1994-2003: "old" member states 69%, "new" member states 61%.

Requirements & Quorums: Non-approval quorum in Denmark = 30% of the total electorate must vote "no" in order to veto a decision; double majority in Switzerland = individual votes are counted twice: 1) on a national basis, and 2) on a cantonal basis: overall approval needs a "yes" in both counts.

Type: top-down = plebiscite triggered by president, parliament or government, bottom-up= citizens decision referendum triggered by citizens or constitution.

An analysis of this overview shows that

- *in a clear majority of the 25 "old" (8) and "new" (9) member states, citizens have been able to express their opinion directly on European integration.*¹⁶
- *more than a third of all the referendums have taken place in three countries: Ireland and Denmark (six times each) and Switzerland (five).*¹⁷
- *on average, more than two-thirds of the electorate (67%) took part in the European referendums. This compares with an average of a 55.75% turnout in elections to the European Parliament since 1979.*¹⁸ *Europe's citizens are clearly more interested in taking part in referendums on Europe than in elections to the European Parliament.*
- *two issues dominate the list of referendums: membership accession to European institutions (27) and the reform of European treaties (10).*
- *Europe's citizens are being asked to vote more and more frequently. Nearly three-quarters of all the referendums on Europe have been held since 1994.*

Attention must be given to the design of referendums.

The design of direct-democratic procedures and of the ballots which they give rise to and the manner of their incorporation into parliamentary decision-making processes are decisive for the quality of I&R procedures.¹⁹

An analysis of the 40 referendums which have taken place so far reveals important divisions between:

- referendums which can be called by those majorities in power (plebiscites) - and those which can be initiated by a minority in society (popular initiative), or by parliament. Linked to this second category are the obligatory constitutional referendums, which are known in many countries.
- referendums which are purely consultative (whose result those in power can take or leave) - and those which are binding on the authorities (citizens' decisions).

A survey of the existing/chosen procedures is presented in table 2²⁰:

TABLE 2: REFERENDUMS ON EUROPE PROCEDURES

	Non-Binding	Binding
Plebiscites	FR 1972 NO 1972, 1994 GB 1975 GL 1982 FI 1994 SE 1994 ÅL 1994 MT 2003 SE 2003	FR 1992 IRL 2002 DK 1986, 1993 SL 2003 HU 2003 LT 2003 SK 2003 PL 2003 CZ 2003 EE 2003 LV 2003
Initiative & Referendums	ITA 1989	CH 1997, 2000, 2001
Obligatory Referendums		IRL 1972, 1987, 1992, 1998, 2001 DK 1972, 1992, 1998, 2000 CH 1972, 1992 Liechtenstein 1992, 1995 Austria 1994

- two categories of referendum on Europe dominate: the obligatory constitutional referendum (14), which is always binding; and the consultation exercises initiated by government or parliament (22). To this we can add four citizen-initiated referendums.
- a clear majority of the votes on Europe was binding in nature (29), with the rest being consultative (11).

Over the period in question, the proportion of obligatory and binding referendums has steadily increased:

- 1972 - 1981: only two out of six cases were binding on government.
- 1982 - 1991: just 25 % of all decisions were de jure binding on the executive.
- since 1992: the proportion of binding referendum decisions has risen to 80 % (16 out of 20).
- since 1995: all the referendums on European integration, with the exception of Malta and Sweden, have been binding.

Conclusions:

- **More and more people in more and more countries are able to participate in European politics in increasingly binding ways.**
- **The body of experience of direct democracy in relation to European issues is growing and confirms the general trend towards more direct participation at all political levels.²¹**
- **It has become a European norm to have a referendum on accession (EU/Euro).**

On the building site for a European Referendum Standard

A qualitative analysis of the 40 European referendums presents more difficulties than a merely quantitative one. Both as an institutional package and as a dynamic process, Initiative and Referendum can restrict the power of existing institutions and as a result and for very simple reasons - as UN general secretary Kofi Annan observed in a recent UNDP report²² - they frequently resist such a democratisation of democracy.

It therefore becomes necessary to make very clear what are the advantages which accrue to a modern representative democracy from a combination of indirect and direct institutions, as against the traditional and dominant model of a purely parliamentary democracy. This is especially true for the European Union, where national governments act as European lawmakers and therefore occupy a dual position of power – and, thus, such core concepts of democracy as accountability, transparency and participation cannot be met in a satisfying manner.

Complementing indirect democracy by adding direct forms of co-determination can be considered as “social innovation with beneficial economic consequences”.²³ The benefits of this social innovation include: reduced alienation from politics, greater legitimacy and transparency, a greater identification of citizens with the policies introduced and an increased capacity for learning in civil society. I&R is actually linked to an increase in per capita income and the efficiency of tax regimes (lower taxes and less tax avoidance).

In short, direct democracy can raise the quality of life of a society - provided that well-designed procedures have been chosen. Thus, for example, obligatory referendums and those resulting from citizen-initiated referendums produce higher social added value than non-binding consultations.²⁴

In relation to Europe and its integration process, the vice-president of the parliamentary assembly of the Council of Europe, Andreas Gross²⁵, listed the following among the advantages of direct democracy:

- *it makes possible a new relationship between politicians and citizens: this includes a higher level of awareness and perception and an improved dialogue between the two groups.*
- *it strengthens the citizens' role in politics: as a result of confronting substantive issues on a regular basis, citizens become more competent, more highly motivated and more ready to learn.*
- *it contributes to a strengthened force for integration. In relation to the EU, it can become a more efficient political counterbalance to the globalised economy.*

Academics such as Simon Hug, Matthias Benz and Alois Stutzer have also tried to demonstrate a quantitative effect of the qualitative aspects of referendums. Hug found out that²⁶:

- *in countries with obligatory referendums or referendums resulting from initiatives, European policies are in greater harmony with the wishes of the citizens than in countries using only plebiscites or in those with no instruments of direct co-determination at all.*
- *referendums about Europe contribute over the longer term to increased support for the integration process.*
- *governments of countries which have had referendums on Europe are in a better position to determine the agenda of treaty negotiations as compared with countries which have never had referendums on Europe.*

Benz and Stutzer show that²⁷:

- *citizens are politically better informed when they have more extended political participation rights.*

But in order to achieve these positive effects, I&R processes must meet basic requirements of "freedom" and "fairness". "Free and fair has become the catchphrase of UN officials, journalists, politicians and political scientists alike (...) But what actually constitutes a free and fair" referendum?", ask Elklit and Svensson²⁸. Since the Togoland independence referendum in 1956, hundreds of elections and referendums have been observed worldwide, intensifying the demand for standardized assessment criteria. However, the development of "checklists" has been hindered by disagreement over what should be included.²⁹

Basically, there is a common understanding that referendum monitoring must relate to the whole process, not merely to the events of the actual election day/days. The preconditions for democratic referendums must also not be ignored, leading Elklit and Svensson to the following definitions³⁰:

- **Freedom** contrasts with coercion. It deals primarily with the "rules of the game", such as the legal/constitutional basis and the timing.
- **Fairness** means impartiality and involves consistency (the unbiased application of rules) and reasonableness (the not-too-unequal distribution of relevant resources among competitors).

In practice these definitions lead us to more concrete monitoring parameters.

Freedom:

- **The ability to initiate a referendum process.**
Broad access - not restricted to governing majorities - increases freedom.
- **The binding/consultative effect of a decision.**
Non-binding votes create potential for manipulative actions.
- **The risk of invalidation of a vote by turnout and approval thresholds.**
High turnout requirements of up to 50% have undemocratic effects, as non- and 'no'-voters are counted together. Voter abstention is actually promoted instead of avoided.

Fairness:

- **The disclosure of donations and spending in a referendum campaign.**
This is the first step; a second is to apply spending limits; a third step is to introduce "affirmative action".³¹

- **The access to public media (broadcasters) ahead of a referendum.**

There should be voluntarily agreed standards of fairness in the print media as well as free air hours/minutes to designated campaign organisations in a referendum process.³²

- **The role of government and civil servants in a referendum debate.**

This has been a major concern in recent EU accession referendums, where EU Commission members regularly played a role in the debates.

The growing importance of initiatives and referendums for the European integration process has led to an increased interest in monitoring referendums in Europe and to developing "European Referendum Standards". Think-tanks such as the Robert Schumann Foundation in Paris³³, as well as activist organisations such as "Democracy International" and the "European Alliance of EU-Critical Movements: TEAM"³⁴ have developed projects and criteria for assessing referendums. Official bodies such as the EU Commission³⁵ and the Council of Europe³⁶ have begun to discuss the creation of internal European observation missions as well as proper referendum standards. Other international monitoring actors, which until now have concentrated on electoral processes, are the International Institute for Democracy and Electoral Assistance (IDEA) in Stockholm, the United Nations Electoral Assistance Division and the Democracy Agency ODHIR of the Organisation for Security and Cooperation in Europe (OSCE).

For the Initiative & Referendum Institute Europe (IRI Europe), assessing the current EU accession referendums and developing European standards has become a top priority, which is now being implemented through the "IRI European Referendum Monitoring Programme". Key elements of this Programme are conferences³⁷, reports and an IRI Europe Referendum Monitoring Team.³⁸

A first assessment of seven EU accession referendums held between March and June 2003, in both their positive and negative aspects, is summarized in Table 3.

The overview shows the large diversity of preconditions and institutional requirements in the seven monitored countries. It is however possible to define a number of shared positive and negative aspects, which the referendums have in common:

- + *The EU accession issue has been a top issue for many years in all countries.*
- *For the same reason, however, the EU accession*

issue cannot be compared directly with other issues (such as the European constitution, for example)

- + *The referendum processes have acted as a mirror for the countries concerned, showing more clearly the political, economic and societal progress achieved*
- *but also revealing the big problems which still exist, such as the deep mistrust between elected and electors in these countries (with the exception of Malta).*
- + *In almost all cases, the outcome was decided by a clear majority and a majority of the electorate turned out for the vote, giving the frequently rather discredited referendum tool a new boost for the future and delivering a feeling of common identity in these states.*
- *however, the legal and political conditions for "free" and "fair" referendums are still not sufficiently developed and require big improvements ahead of the upcoming referendums.*

There is finally a consensus between observers, promoters and opponents of EU membership that the existing I&R tools must not be abolished, but improved. In cooperation with many cooperation partners, IRI Europe will do its utmost to contribute to such improvements.

Conclusions:

- **I&R has great potential to deliver added value to democracy such as greater legitimacy, transparency, public communication, mutual understanding and, last but not least, integration of highly diversified societies.**
- **Everything depends ultimately on the concrete forms and practice, as the growing quantity of referendums alone says little about the quality of these referendums.**
- **The EU accession referendums are a step forward, as they were successful in the eyes of most people in the new member states and all the referendums did meet the – often very problematic – requirements for validity.**

TABLE 3 POSITIVE AND NEGATIVE ASPECTS OF SEVEN EU ACCESSION REFERENDUMS

Country	Date/Result: yes	Main positive aspects	Main negative aspects
Malta	March 8; 53.6 %	<ul style="list-style-type: none"> - Issue well known and debated for many years - 'Yes' and 'no' sides have access to media - Intense debate and public communication - Acceptance of result after confirmation at elections 	<ul style="list-style-type: none"> - no legal rules of the game - non-binding outcome - almost non-existent I&R culture, but very strong two-party-system - both sides try to interpret result in their own way - confirmation of referendum outcome only through elections
Slovenia	March 23; 89.6 %	<ul style="list-style-type: none"> - Relatively well established initiative & referendum traditions (including citizen-initiated referendums) - Parliament confirmed de facto binding character before voting day 	<ul style="list-style-type: none"> - EU accession did not fit into any legal form of referendum - parliament, not legal framework, controls the process - unequal access to media - 50 % turnout quorum
Hungary	April 12; 83.8%	<ul style="list-style-type: none"> - Consultation process with electorate before the referendum (letter to all households) - Website in 15 languages on all relevant documents 	<ul style="list-style-type: none"> - very poor quality of debate by both 'yes' and 'no' sides - disappointing turnout below 50% (estimate was 60-70%) - prosecution of no-side by police units (for use of swastika)
Lithuania	May 11; 91.1 %	<ul style="list-style-type: none"> - Relatively well established initiative & referendum traditions (including citizen-initiated referendums) - Fairness commission secures equal access to media (7 hrs. free air time for yes and no) - Almost no division in voting between urban areas and countryside 	<ul style="list-style-type: none"> - due to very little opposition to EU membership, critical aspects of EU membership are almost unknown, which could increase risk of public disillusion - private companies try to influence turnout by offering cheaper goods to voters - 50 % turnout quorum
Slovakia	May 17; 92.5 %	<ul style="list-style-type: none"> - first valid referendum in modern Slovak history - self-critical assessment by responsible officials after the referendum on conduct; new commission to improve I&R tools. 	<ul style="list-style-type: none"> - high mutual distrust between electorate and political elite - breach of laws on propaganda on referendum day - government not ready to accept de jure binding character of poll before the referendum - no-side promoted referendum boycott
Poland	June 8; 77.5%	<ul style="list-style-type: none"> - constitutional changes to extend voting time (to 2 days) and to make EU referendums possible even in future agreed before the vote - lively and varied debate - no referendum boycotts - demands to abolish 50 % turnout quorum after the referendum 	<ul style="list-style-type: none"> - not clear what would have happened if 50% turnout quorum had not been met - Pope (is he still a Polish citizen?) used church institutions for yes-propaganda
Czech Republic	June 14; 77.3 %	<ul style="list-style-type: none"> - first referendum experience in Czech history - binding character of the vote without any turnout requirements - president did not appeal to one side 	<ul style="list-style-type: none"> - almost non-existent I&R culture, no tradition of participating even in parliamentary elections - high mutual distrust between electorate and political elite ("do not talk to communists" campaign)

The Convention's gift: a European Citizens' Initiative

After half a century of European integration, a Convention replaced the former secret diplomacy between states in February 2002, bringing for the very first time an air of transparency and parliamentary majority into European Treaty/Constitution-making. Indeed, the Convention assembly offered the possibility for everyone to follow the work, at least in part, since the powerful presidium, with Valéry Giscard d'Estaing as an even more powerful chairman, did not meet in public.

The final result, presented on June 18 to the Italian EU presidency, immediately became the object of a passionate Europe-wide debate – provoking highly differing opinions. So the Economist asked where this new text could be filed and wrote: “There was always a risk that the convention would not design a particularly good constitution. What was harder to imagine was that the convention would produce a text which would worsen the very problems it had been instructed to address. This is what it has somehow contrived to do. In many ways the draft constitution, more than 200 pages long, makes the Union's constitutional architecture harder to understand than it was before. That is an incredible feat”.⁴⁰ Another European newspaper, the Financial Times, was far more positive in its judgment: the constitution was “not perfect but more than we could have hoped for”, and the paper argued that this text “could sow the seeds of a much more federal Europe, where issues such as foreign affairs and law and order are decided on a European rather than a domestic basis and where elections to the much-mocked European parliament would be as important as any national vote”.⁴¹ Even within the Convention Assembly, opinions on the outcome were very divided: for Göran Lennmarker (a Conservative Swedish parliament representative) it is evident, that “there has been never more democracy than now”.⁴² His Danish neighbour Jens-Peter Bonde – one of the longest serving MEPs – had a rather different final comment: “The transfer of more decision making from member states to the Union, concerning criminal justice matters and new areas of domestic policy, will make the Union more remote.”⁴³ Whereas one sees the giving of more power to the common EU institutions as democratic progress, the other argues exactly the contrary. Neither of them has been especially concerned about the right of citizens to participate politically at the European level. Lennmarker even suggested at one

moment cancelling the article on participatory democracy in the draft constitution.

Nevertheless, on the eve of the last Convention session, a citizens' initiative right was included in the draft constitution, giving citizens for the very first time in history a direct- democratic tool at the transnational level. Reuters sent out this message early on June 13:

“EU-FUTURE, RTE, Datum: 13.6. 00:48, Forum winds up work on historic EU constitution, by Gareth Jones, BRUSSELS, June 13 (Reuters) – Under one of the final amendments accepted by Giscard, EU citizens numbering at least one million spread across a “significant” number of member states could petition the Commission to submit a proposal on matters where they thought the Union should act.”

With this late adoption of a key demand by European democracy NGOs, the Convention opened a small window to transnational agenda-setting from below. It was the fruit of long and arduous work.⁴⁴

The demand for greater and more effective involvement of citizens at the European level is not new. Before the founding of the EU's predecessor and the final demise of the Coal and Steel Union, Charles de Gaulle declared (in 1949):

“I think that the organization of Europe has to proceed from Europe itself. I consider that the start shall be given by a referendum of all free Europeans.”⁴⁵

A referendum as the definitive founding act of a political Europe! This is what the Italian European federalist Altiero Spinelli imagined, when in 1964 he proposed the creation of an EU constitution which would have to be ratified by the people in a referendum(s).⁴⁶ The supporters of de Gaulle's and Spinelli's ideas had to wait patiently until the time was ripe for more transnational direct democracy: and that did not happen until the end of the '80s.

Since 1988, the European Parliament or its Commission have expressed support for the introduction of direct-democratic elements at the European level in a series of resolutions. The often vaguely formulated resolutions refer to such ideas as: “a parallel strategy to allow the popular will to express itself (...) by popular initiative referendum”⁴⁷, and the introduction of EU-wide popular consultations/opinion polls. In December 1993, the Public Liberty and Domestic Affairs Commission expressed its support for the introduction of a “European legislative referendum”⁴⁸, as well as the possibility of citizens' ballots on “Community decisions”.⁴⁹ Such impulses from the European Parliament helped to

ensure that in the run-up to and during the Amsterdam governmental conference the possibility of introducing a formal right of submission for EU citizens was discussed. The then foreign ministers of both Austria (Schüssel) and Italy (Dini) proposed that 10 percent of the citizens in Europe (with signatures from at least three countries) could present a submission to the European Parliament which this was obliged to consider. This proposal, which was not backed at the governmental conference, did not provide for a subsequent referendum. In relation to the initiative rights which, under the present rules of the EU, belong exclusively to the Commission, the Petitions Committee has recently taken up the Schüssel/Dini proposal and argued for the current right of petition to be upgraded into a right of submission.⁵⁰

After the dramatic changes of 1989 in Europe, NGOs and academic circles began to show more interest in the subject of transnational direct democracy. At more than 20 European meetings over 10 years, the European network organisation "Eurotopia", founded in May 1991, developed methods for involving citizens in a European constitutional process, as well as the first elements of direct democracy in such a constitution. The appointment of a European Convention was already proposed in the mid-90s. A "double qualified majority" was proposed for the founding referendum on a European constitution: "The Constitution must be accepted not only by a majority of all EU citizens, but also by majorities of citizens in 4/5 of all EU member states".⁵¹ From 1994 onwards, in the run-up to the Amsterdam governmental conference, numerous European NGOs formed a European network under the name of "Inter Citizens Conferences" (ICC): in the so-called "Loccum Declaration", they formulated a set of democratic requirements for a European Charter of Citizens' Rights. This included for the first time the right of submission to the European Parliament.⁵²

In Germany in the late '90s, the activist NGO "Mehr Demokratie" started to develop a European strategy and concrete proposals. Within the NDDIE network (Network Direct Democracy Initiatives in Europe), which in 2002 changed its name to "democracy international", a comprehensive set of I&R tools was elaborated, including a multi-stage right of initiative and an obligatory referendum for alterations to treaties.⁵³ The draft proposals emphasised that a "constitution is not a prerequisite for the establishment of direct-democratic rights in the EU".

Together with the Dini/Schüssel initiative proposal, the various NGO contributions paved the way for a debate inside and around the Convention on direct-

democratic elements in the future EU constitution.⁵⁴ Finally a whole package of initiative proposals was launched in the Convention, including amendments by Alain Lamassoure (EPP-ED, France), Johannes Voggelhuber (Green/EFA-Austria), Josep Borell Fontelles (PES - Spain), Sylvia-Yvonne Kaufmann (GUE – Germany), Casper Einem (PES – Austria) and Jürgen Meyer (PES – Germany).

The Meyer proposal, signed by 77 members⁵⁵ of the Convention, and launched as I-46, part I, title VI (CONV 724/03) on June 12, managed to break down the last resistance in the Convention presidium and contributed to the late and welcome breakthrough:

"Art I-46 (4): "Citizens of the Union have the right to request the Commission".

"Citizens of the Union may request the Commission to submit any appropriate proposal on matters on which they consider that a legal act of the Union is required for the purpose of implementing this Constitution. Further provisions that particularly regulate the specific procedures and the numbers of signatures that have to be gathered are to be laid down in a European law.⁵⁶"

This last draft amendment built the foundation for the final text in the constitution, presented by the Convention Chairman Giscard on June 13:

"Citizens initiative – Art. I-46.4

A significant number of citizens, not less than one million, coming from a significant number of member states, may invite the Commission to submit any appropriate proposal on matters where citizens consider that a legal act of the Union is required for the purpose of implementing this Constitution. A European law shall determine the provisions regarding the specific procedures and conditions required for such a citizens' request."

As with other promising elements in the Convention's draft constitution (working methods, incorporation of the Charter of fundamental rights, increased transparency in the functioning of the Council), the new citizens' initiative right symbolises a departure from the old-style European Union with closed debates, horse-trading and narrow political considerations. In terms of their actual content and in comparison with established democratic polities (at local, regional and national levels), these seem to be very modest steps. Moreover, in October 2003 the governments of the member states will take over the baton and it is anything but sure in what shape the constitution will be finally handed over to the parliaments and peoples of Europe for ratification.

In respect to the IGC, the very existence of the European citizens' initiative could be threatened by small member states⁵⁷, who may believe that "one million signatures" are far too many for their own citizens (the population of Malta is less than 400,000). This critique misjudges the aim and the proposed form of the "initiative right", as it is to be a device for transnational citizens' activities, and because the constitutional provisions demand that the signatures come "from a significant number of member states". Another danger is that proponents of I&R will decry the new instrument, as it will neither automatically trigger a lawmaking process in the EU nor bring about a citizen-initiated referendum.⁵⁸ Thus, there is a risk that the achievement of art.46.4 could fall between two stools during the IGC. "Governments", stresses Heidi Hautala in a contribution to "Transnational Democracy in the Making"⁵⁹, "should not be left alone to deliberate on the citizens' right of initiative".

For this reason it will be important to start a qualitative debate on the "Citizens' Initiative Right" and to use the generally positive reception of the new instrument in order to develop it in a citizen-friendly manner, as Victor Cuesta writes in an first IRI Europe assessment of Art 46.4.⁶⁰

In order to be able to place the new citizens' initiative into a realistic context of development, we have to define what such a European initiative could deliver and what not. Moreover, we have to list the most important criteria which will be decisive for the success of the new tool:

- *The European citizens' initiative (ECI) tool is very different from popular initiative rights in countries like Switzerland, Italy or Slovenia. The ECI cannot trigger any referendums. Even the power to trigger proper lawmaking will be filtered through the EU Commission. This is the consequence of the particular structure of the EU, which limits the direct initiative right to the Commission.*
- *As a step on the way from collective petitions, which are an already frequently used citizens' instrument in the EU, towards full rights to initiate lawmaking and referendums, the ECI could, and maybe also should, be directed through the Parliament to the Commission. The EP could use its informal right of initiative established in Maastricht.*
- *The ECI will work as a statutory initiative without the possibility of proposing changes to the EU constitution. At the same time, it should be possible to use the ECI also for non-legislative acts such as reg-*

ulations and recommendations.

- *In its initial form, there are very few other restrictions in the ECI (such as the exclusion of certain issues or the form in which the initiative must be presented). In terms of an international comparison of indirect citizen initiatives, the ECI is actually rather user-friendly, requiring only 0.15% of the signatures of the EU electorate.⁶¹*
- *In respect of the territorial distribution of the signatures, the Convention has specified that the signatures must come from a "significant number of states". If the EU applies the so-called Massachusetts model (no more than 25% from one county), then the signatories must come from at least five different countries. This hurdle is important to achieve the transnational dimension of the ECI.*

The experience in a lot of countries is that I&R devices do not work very well because their design is not user-friendly, with high thresholds and the exclusion of important issues from the process. For this reason, it is very important to define and develop the legal provisions for securing the functionality of the new instrument. Using the IRI Europe Country Index on Citizen lawmaking⁶² and Victor Cuesta's assessment in "Transnational Democracy in the Making", we have attempted to make a first list of design elements, the Convention proposals and possible developments. In table 4:

As long as the ECI is highly dependent on the goodwill of the EU commission, some sort of "affirmative action" will be necessary in order to build trust for the new tool with the European electorate. This means that the EU institutions (including the governments of the member states) must develop a positive attitude to the new instrument in order to promote it – IRI Europe will assist them in doing so.

TABLE 4 DEVELOPING THE EUROPEAN CITIZENS' INITIATIVE

Design element	Convention proposal (Art. 46.4)	Possible development and recommendations
ENTRY HURDLES How many signatures of electors do I have to collect in order to launch an initiative?	"A significant number of citizens, not less than one million"	1,000,000 signatures = 0.2 % of all residents in the future enlarged EU (480 million inhabitants)
TIME LIMITS How much time do I have to collect these signatures?	"A European law shall determine the provisions regarding the specific procedures"	8-16 months (in order to allow also the less powerful actors to carry through an initiative process).
LIST OF EXCLUDED ISSUES How many political issues are excluded from the direct-democratic decision making process?	"on matters where citizens consider that a legal act of the Union is required for the purpose of implementing this Constitution"	None. (As the European Citizens' Initiative is limited to the Commission's competences, no further exclusion of issues is advisable).
TERRITORIAL DISTRIBUTION From how many member states must the signatories come? What is the maximum share of signatures from one country?	"from a significant number of member states"	5-8 states in order to promote the transnational dimension of the initiative issues (the Massachusetts model makes the requirement that no more than 25% of one million signatures can come from any single member state).
COLLECTION AND VERIFICATION OF SIGNATURES How can I collect the signatures? Is there a free collection of signatures with subsequent official verification, or do citizens have to sign in local authority offices and/or under legal supervision?	"A European law shall determine the provisions regarding the specific procedures"	Collection of signatures should be as free as possible, including electronic methods (internet). Verification should be done by member states' administrations by taking random samples.
ROLE OF PARLIAMENT The direct and indirect forms of democracy need to be linked up by having the parliament debate all initiatives and giving it the possibility to present counter-proposals	"may invite the Commission"	European Parliament should have a role in the European citizens' initiative process, without however having the right to stop an initiative.
INFORMING THE ELECTORATE A great deal of effort should be made to ensure that voters are properly informed on the issues and that these can be adequately debated. As an absolute minimum, a voter pamphlet should be provided	"A European law shall determine the provisions regarding the specific procedures"	A registered citizens' initiative should receive some basic structural resources from the EU to fulfil its mission. A verified and valid citizen initiative should in addition get the resources to inform the whole EU electorate on the law proposal.
FORMAL REQUIREMENTS AND LEGAL STATUS OF INITIATIVE COMMITTEE	"appropriate proposal"	Draft European law. The initiative committee should have the right to withdraw the initiative (if, for example, the EP introduces legislation which partly meets the demand)

(5) The prospects for a Europe-wide constitutional referendum in 2004/2005

On June 13 the Convention on the Future of Europe not only adopted a draft constitution, including the already famous Art 46.4. (citizens' initiative right), but the assembly also took note of a resolution signed by 97 Convention members, alternates and observers, demanding a Europe-wide constitutional referendum on the same day as next year's elections to the European Parliament:

"We propose that the Convention recommends to the Inter-Governmental Conference that the draft European Constitution be approved not only by National Parliaments and the European Parliament but also by the citizens of Europe in binding referendums. These referendums should take place in accordance with the constitutional provisions of the member states. They should be held simultaneously on the same day, an option being the same day as the European Parliament Elections in June 2004. Those member states whose constitutions do not currently permit referendums are called upon to hold at least consultative referendums. An information campaign must be publicly funded."⁶³

Like the "European Citizens' Initiative", the "Europe-wide Constitutional Referendum" proposal was part of a comprehensive development and lobby effort coordinated by IRI Europe and More Democracy/democracy international within the Convention and backed up by the "European Referendum Campaign" in many countries. On June 13 the referendum resolution was not only signed by 97 Convention members from 26 countries, but also by 120 non-governmental organizations from 25 different countries.⁶⁴

The strong support for the referendum resolution in the Convention, including the chairman of the Presidium Valéry Giscard d'Estaing and his deputy Giuliano Amato, can be interpreted as a strong signal to the EU member states in favour of extending the power of ratification to the citizens. In contrast to the explicitly drafted "Citizens' Initiative" the "Europe-wide Constitutional Referendum" (ECR) was only "adopted" implicitly, as the Convention did not want to interfere directly with the member states' power of deciding how EU Treaties are ratified.

Nevertheless, the call by the Convention and the "European Referendum Campaign" has been heard – also by the governments. Besides the three countries which already have some tradition of treaty ratification by the citizens (Denmark, Ireland and France), the prime ministers of other member states without

such traditions – such as Portugal, Spain and Luxembourg - have already announced constitutional EU referendums:

"It's desirable that the ratification of the next Union treaty be preceded by a national referendum that involves all Portuguese in this debate and in this decision", said Durao Barroso, the Prime Minister of Portugal.⁶⁵

"José María Aznar quiere que la Constitución Europea sea sometida a referéndum en todos los países de la Unión el mismo día que se celebren los comicios europeos: el 13 de junio de 2004."⁶⁶

"In Luxemburg können die Bürger über die Europäische Verfassung entscheiden. Nach einem Kabinettsbeschluss vom Freitag soll im Verlauf des kommenden Jahres ein Referendum stattfinden. Damit unterstreiche die Regierung, welche Bedeutung sie der Europäischen Verfassung beimesse, sagte Ministerpräsident Jean-Claude Juncker."⁶⁷

A second group of heads of governments have more cautiously indicated the possibility of a constitutional referendum in their countries next year, including Austria, Belgium and Finland:

"Schüssel machte am Rande des EU-Gipfels allerdings auch klar, dass er sich nicht sperren würde, wenn sich tatsächlich alle anderen zu einer europaweiten Volksabstimmung bekennen würden"⁶⁸.

"De kans is echter klein dat er een volksraadpleging komt. Premier Guy Verhofstadt kan enkel een referendum aanvaarden als alle lidstaten daaraan deelnemen."⁶⁹

"Vanhanen har föreslagit att Finland ordnar en folkomröstning om EU:s nya grundlag"⁷⁰

A third group of political leaders has tried to exclude the possibility of a constitutional referendum on Europe in 2004/2005. This group includes the prime ministers of Slovakia and Sweden and Britain's chief representative in the Convention:

"Our constitution clearly says that a referendum is needed only when we enter a state formation", Dzurinda said, adding that a mandate had been given by the recent referendum on the EU Treaty in Slovakia".⁷¹

"Den svenske statsminister, Göran Persson, sagde i dag, at der ikke vil blive holdt nogen folkeafstemning i Sverige om den nye EU-forfatning, som nu er under udarbejdelse."⁷²

"Labour aims to kill off calls for a referendum on the future of the EU by ensuring the forthcoming restructuring of Europe is mainly a tidying up-exercise, Britain's chief negotiator, Peter Hain, predicted".⁷³

The readiness to take note of the referendum issue is impressive. Political leaders have not traditionally been keen to let the people decide, and thus to surrender political control to the citizens. And it is no coincidence that in both Sweden and Britain, where public opinion has forced a referendum on the Euro, the governments are now trying by any means possible to avoid a constitutional EU referendum. The same may be true for the new member states, as the early 'no to a referendum' statement of the Slovak PM Dzurinda shows. Just a decade ago, all these countries in which the people now have the opportunity to make a major decision on Europe would still have tried to enter the EU or the EU by decision of parliament alone. Today's Europe is fortunately different: EU accession decisions by referendum have become the norm; we can now witness how European reform decisions by referendum are also about to become the norm.

Few legal hurdles, big political challenges

As we have seen in part two of this survey ("40 Referendums on Europe"), only three member states (Denmark, Ireland and France) have used the referendum tool for the ratification of treaty reform. But changing the treaty structure of the EU into a constitutional one means that the new "Basic Law" of the EU becomes a natural issue for a referendum in many more countries, where new constitutions and constitutional amendments already have to be, or can be, voted on by the citizens in referendums (Austria, Estonia, Hungary, Italy, Latvia, Lithuania, Poland and Slovenia).

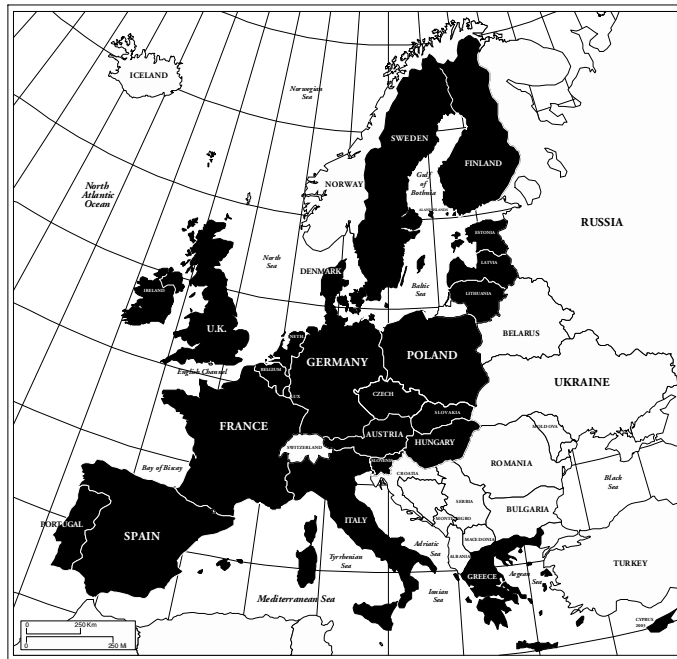
For all the other states, what the German Federal Bureau for Convention Issues already pointed out in summer 2002 holds true:

"There are neither legal obligations to hold a referendum, nor are there insurmountable legal obstacles in the way of citizens' referendums: as a consequence the political room for manoeuvre is completely wide open".⁷⁴

The first IRI Europe assessment in November 2002 on the prospects for constitutional referendums in the member states revealed the following:

- *in a majority of present and future member states – 17 out of 25 – the prospects for participating in a European referendum can be rated either "good" or "very good". Most of the countries in the "very good" category are medium to small countries.*

The Europe wide Constitutional Referendum 2004/2005



- *the prospects in the large (in part 'future') member states such as France, Germany, Great Britain, Spain and Poland, are "average" to "good". That means: there are certain legal and/or political problems, but these can be solved.*
- *however, in just three countries there are serious legal and/or political problems in the way of a European referendum: to this group belong the founder country Belgium – and the two candidate states Malta and Cyprus.⁷⁵*

These findings were confirmed and complemented by a study undertaken by the German NGO Mehr Demokratie in June 2003.⁷⁶ This report reveals that many member states, especially former Soviet republics like Lithuania, Latvia and Estonia, have extremely high hurdles for delegating sovereignty to supranational bodies. In Lithuania, for example, Article 148.1 specifies a 75% approval quorum of the electorate in a referendum for the delegation of sovereignty, making such a decision totally unrealistic.⁷⁷ For this reason, in Lithuania and in other countries which are still suffering to a certain extent from the trauma of totalitarianism - like Germany or the Netherlands - new laws have been introduced or proposed to make a "constitutional EU referendum" in 2004/2005 legally possible.⁷⁸

One cultural problem with the Convention/civil society demand for a "Europe-wide Constitutional Referendum" is the fact that no common transnational standards for introducing or amending constitutions yet exist. A recent study by IRI advisory board

TABLE 5 CITIZEN INFLUENCE ON CONSTITUTION MAKING IN THE MEMBER STATES OF THE EUROPEAN UNION

Level of influence is...	Countries	Methods to adopt & amend constitution
...fairly strong	Denmark, Latvia, Malta, Poland, Slovenia, Spain, (Romania)	Parliament: Qualified majority Referendum: Simple majority
...fairly good	France	Parliament: Simple majority Referendum: Simple majority
.. rather modest	Austria, Belgium, Cyprus, Czech Republic, Estonia, Finland, Germany, Greece, Hungary, Italy, Lithuania, Luxembourg, Netherlands, Portugal, Slovakia(Bulgaria)	Parliament: Qualified Majority Referendum: Not required
...rather weak	Britain, Sweden ⁸⁰	Parliament: Simple majority Referendum: Not required

member Dag Anckar and his colleague Lauri Karvonen at Åbo Akademi (Finland) reveals the high diversity of ways in which constitutions are amended.⁷⁹ With the help of the data in this study we can group the EU of 25 according to the degree of power citizens have in constitution making (Table 5):

Table 5 offers an additional element of explanation for our assessment of the prospects for a “Europe-wide Constitutional Referendum” in the 25 member states in 2004/2005. It is important to underline that a “rather strong” influence on constitution-making does not automatically lead to a constitutional EU referendum, as the political leadership may avoid calling the adoption of the new treaty a constitution at all. It is obvious that the extent to which the ratification process for the new EU treaty/constitution will be the subject of referendums will depend on the political dynamics around the upcoming IGC and the level of pressure such institutions as the Convention and the EP, in partnership with European civic society, will be able to produce. The task of IRI Europe in this process will be to provide facts and assessments as well as tools for developing European standards of constitution making for the people and by the people.

Before we finally look at possible design options for a “Europe-wide Constitutional Referendum”, we will

first attempt to assess the current prospects for the referendums to really take place in the 25 old and new member states of the European Union in table 6.

We can now summarise the second IRI Europe assessment on the prospects for referendums on the EU constitution in the 25 member states of the European Union:

- *The overall picture is surprisingly stable. As in November 2002, we can once again (July 2003) forecast rather good referendum prospects in 17 out of 25 member states.⁸¹*
- *Expressed as a percentage, the average probability of referendums has risen 2% since November 2002 to 62%.*
- *Nevertheless, we can see a clear trend: in the larger member states the referendum probability has risen (with the exception of Britain), whereas in the smaller member states there is a rather negative trend (with the exception of Portugal and Luxembourg). This may indicate that the bigger member states are happier with the draft constitution than the smaller ones and, thus, that the governments feel more able to let the citizens decide.*
- *One year before the planned EU constitutional referendums, the main “rising stars” on the referendum sky are Luxembourg, Portugal and Spain.*

The current IRI Europe Referendum Ranking List for the EU25:

- | | | | | |
|---------------|--------------|-----------------|-------------|--------------|
| 1. Ireland | 6. France | 11. Slovakia | 16. Hungary | 21. Czech R. |
| 2. Denmark | 7. Lithuania | 12. Netherlands | 17. Malta | 22. Greece |
| 3. Luxembourg | 8. Finland | 13. Austria | 18. Poland | 23. Sweden |
| 4. Portugal | 9. Italy | 14. Latvia | 19. Belgium | 24. Britain |
| 5. Spain | 10. Germany | 15. Slovenia | 20. Estonia | 25. Cyprus |

TABLE 6: PROSPECTS FOR REFERENDUMS ON THE NEW EU TREATY/CONSTITUTION IN 2004/2005 (July 2003)

Country	Factors in favour of a popular vote	Factors against a popular vote	Probability of popular vote as %	Probability of popular vote in a word	Trend (Summer 2003)
Austria	<ul style="list-style-type: none"> • PM in favour if referendum in all countries • Opposition leader in favour • EU referendum experience 	<ul style="list-style-type: none"> • Limited I&R tradition • PM not in favour if not all countries take part 	60 %	Open	Unsure
Belgium	<ul style="list-style-type: none"> • PM in favour if referendum in all countries • Relatively strong I&R pressure groups 	<ul style="list-style-type: none"> • Almost no I&R tradition or instruments • PM not in favour if not all countries take part 	50%	Moderate	Unsure
Britain	<ul style="list-style-type: none"> • Growing use of I&R at local and regional level • Non-partisan pressure groups for constitutional referendum • Active media campaign in favour of a vote 	<ul style="list-style-type: none"> • Despite devolution still one of Europe's most centralized countries • Labour government blocked by internal deadlock on Euro accession 	40 %	Poor	Negative
Cyprus	<ul style="list-style-type: none"> • Possibly combined referendum on reunification and constitution • Support by Cypriot Convention members 	<ul style="list-style-type: none"> • No I&R tradition or instruments • Due to the long period without peace on the island: strong leaders, weak citizens 	30%	Very poor	Unsure
Czech Republic	<ul style="list-style-type: none"> • Positive experience with accession referendum, the first in Czech history • Support by Czech Convention members 	<ul style="list-style-type: none"> • Only single experience with national referendum • Well-established mistrust between elected and electors 	40%	Poor	Positive
Denmark	<ul style="list-style-type: none"> • Art. 20 in constitution demands mandatory referendum for bigger changes to EU Treaty • a popular vote confirmed 	<ul style="list-style-type: none"> • Parliament has possibility, by 4/5 majority, of avoiding referendum 	90%	Sure	Positive
Estonia	<ul style="list-style-type: none"> • Depends on the outcome of the upcoming EU accession referendum • Roots of a well-developed I&R system (1918-1939) 	<ul style="list-style-type: none"> • Nordic model of unitary state prevails today • If neighbours (Finland, Latvia) fail to have a vote, Estonia will not have one either 	50%	Moderate	Unsure

Country	Factors in favour of a popular vote	Factors against a popular vote	Probability of popular vote as %	Probability of popular vote in a word	Trend (Summer 2003)
Finland	<ul style="list-style-type: none"> • PM and part of government coalition in favour of an EU referendum • Growing importance of pressure group for I&R elements in the Finnish constitution 	<ul style="list-style-type: none"> • Foreign Minister and parts of government are against referendums on principle • Very limited tradition of citizen participation in international affairs 	70 %	Good	Unsure
France	<ul style="list-style-type: none"> • Political elite in favour of having a referendum • Tradition of plebiscites on important constitutional questions 	<ul style="list-style-type: none"> • Political elite is not very reliable in respect to making promises • Very little pressure for more I&R in civil society 	80 %	Very good	Positive
Germany	<ul style="list-style-type: none"> • Promoters in all political camps in favour of the constitutional referendum • Few fears of federal structure of the EU • Well-established regional I&R traditions 	<ul style="list-style-type: none"> • Opponents in all political camps to a constitutional referendum (including the green Foreign minister) • Historical misunderstandings used as argument against 	60 %	Open	Positive
Greece	<ul style="list-style-type: none"> • Government increasingly interested in participatory democracy • Support by Greek Convention members 	<ul style="list-style-type: none"> • Political culture of post dictatorship mistrust in society • No relevant links to ancient Athenian Agora 	40 %	Poor	Positive
Hungary	<ul style="list-style-type: none"> • Citizens groups can demand referendum by initiative • Important steps in international politics are ratified by referendum (Constitution, NATO, EU) 	<ul style="list-style-type: none"> • EU accession not seen as a big success (low participation, poor debate) • No pressure groups for I&R reform in the country 	60%	Open	Unsure
Ireland	<ul style="list-style-type: none"> • EC/EU Treaty reforms must be and have always been ratified by binding referendums 		100%	Certain	Positive
Italy	<ul style="list-style-type: none"> • Broad support for an EU constitutional referendum in parliament and government • Only country with EU constitutional referendum experience (1989 on a popular initiative!) 	<ul style="list-style-type: none"> • Unfortunate 50% turnout quorum, which has made 18 out of 53 referendums since 1970 invalid (Law 352) • No referendum allowed on international treaties 	70%	Good	Negative

Country	Factors in favour of a popular vote	Factors against a popular vote	Probability of popular vote as %	Probability of popular vote in a word	Trend (Summer 2003)
Latvia	<ul style="list-style-type: none"> • Relatively strong traditions of I&R (8 national votes) • Depends on the outcome of the upcoming EU accession referendum 	<ul style="list-style-type: none"> • No support for European referendum in Convention delegation • Depends on the outcome of the upcoming EU accession referendum 	60%	Open	Unsure
Lithuania	<ul style="list-style-type: none"> • Relatively strong traditions of I&R (11 national votes) • Positive experience with EU accession referendum 	<ul style="list-style-type: none"> • EU Constitution is seen as a very remote subject to Lithuanian society • Fear in the political elite of losing EU membership again. 	70%	Good	Positive
Luxembourg	<ul style="list-style-type: none"> • Government and parliament have already decided to have a referendum on the constitution 	<ul style="list-style-type: none"> • Small risk of revising the referendum decision taken on June 27, 2003 when the IGC result is known. 	90%	Sure	Positive
Malta	<ul style="list-style-type: none"> • After a very hard fight between the two dominant political parties and another election, both sides accepted the popular decision • Labour opposition in favour of constitutional vote, nationalist government undecided 	<ul style="list-style-type: none"> • Very limited I&R tradition and culture • Small society with very strong political parties 	60%	Open	Unsure
Netherlands	<ul style="list-style-type: none"> • Serious debate on a constitutional referendum between parties in the parliament • Growing importance of pressure group for I&R elements in the Dutch constitution 	<ul style="list-style-type: none"> • One of the few countries in the world without any national referendum experience at all • Ruling rightist government against I&R 	60%	Open	Positive
Poland	<ul style="list-style-type: none"> • Positive experience with EU accession referendum • Ready to play an important role in the Union • Efforts to improve I&R instruments in the constitution 	<ul style="list-style-type: none"> • Uncertain support for constitutional referendum in government and parliament • Little public pressure for a constitutional referendum 	50%	Moderate	Positive

Country	Factors in favour of a popular vote	Factors against a popular vote	Probability of popular vote as %	Probability of popular vote in a word	Trend (Summer 2003)
Portugal	<ul style="list-style-type: none"> • PM and government ready to hold an EU referendum • Lessons from unsuccessful EU referendum attempts in 1998 	<ul style="list-style-type: none"> • Little I&R tradition & culture • Some risk of revising the referendum decision taken on June 27, 2003 when the IGC result is known 	80 %	Very good	Positive
Slovakia	<ul style="list-style-type: none"> • EU accession referendum conduct has been criticised by both 'yes' and 'no' sides • Right to launch an initiative campaign for EU referendum (12% of electorate) 	<ul style="list-style-type: none"> • PM Dzurinda thinks that EU accession is already mandate for public EU constitution approval • Very large mistrust between politicians and citizens 	60%	Open	Positive
Slovenia	<ul style="list-style-type: none"> • Relatively strong traditions of I&R (7 national votes since 1991) • Possibility of launching an optional referendum with 40,000 signatures 	<ul style="list-style-type: none"> • EU issues do not really fit into legal I&R structures, this gives the parliament more control • 50% turnout quorum uncontested 	60 %	Open	Unsure
Spain	<ul style="list-style-type: none"> • Consensus in government and parliament on having a referendum on the constitution 	<ul style="list-style-type: none"> • PM Aznar not very reliable • Risk of revising the referendum decision after the IGC 	80%	Very good	Positive
Sweden	<ul style="list-style-type: none"> • Culture of fairness in referendum processes • After EU accession, Euro membership also voted on by the people 	<ul style="list-style-type: none"> • Ruling social democratic party against I&R on principle (exception: EU commissioner Wallström) • Little understanding for EU as a political community 	40%	Poor	Unsure

Towards the bottom we regret to find Estonia, Latvia, Britain and Sweden. But this is perhaps only a temporary situation, as in all these countries referendums on Europe are scheduled for September this year (but much later for Britain on the Euro).

Preliminary considerations on the design of a Europe-wide referendum

Supposing that there will be a popular vote on the new EU Treaty/Constitution in all 25 member states, there are a few known facts and many unknown possibilities we should start to consider. As with other electoral & referendum processes, in general the democratic quality of such a super-referendum will be dependent on the rules of the game (freedom-dimension) and the conduct of the referendum process (fairness-dimension).

First the main fact. Since there is no legal basis for a European referendum at the European level and since the EU Convention has not proposed such a change in law, a possible Europe-wide "Vote 2004" will be held on the basis of the laws of the member states.

European law is also founded on uniformity: de jure the draft constitution will be rejected if only one referendum in a single member state produces a negative result.

So, a first important question is: What happens if the majority of the voters in one member state say 'no'?

Here the Draft Constitution of the Convention has included the following article for future revisions:

Article IV-7.4: Procedure for revising the Treaty establishing the Constitution

"If, two years after the signature of the Treaty establishing the Constitution, four fifths of the Member States have ratified it and one or more Member States have encountered difficulties in proceeding with ratification, the matter shall be referred to the European Council."

This article implies that the revisions to Constitution may be adopted and can enter into force even if up to five member states fail to ratify. In such an event, the European Council has to decide how to proceed. There seem to be three possible options:

- *The Council may decide that the "difficulties encountered" are of a nature which may allow opt-out clauses and special arrangements with the countries concerned, where a second EU*

constitutional referendum may be held. This is the already well-known practice after the Danish 'No' to the Maastricht Treaty in 1992, and the Irish rejection of Nice in 2001.

- *The European Council may also decide not to adopt the Constitution at all and to continue with the Nice Treaty.*
- *The Heads of State and Government could, finally, decide to establish an inner circle of the 20+ member states which have ratified the constitution and to establish an outer group of members (similar to the EEA Treaty for Norway, Iceland and Liechtenstein).*

It is still very hard to see the technical solutions to these different "entry into force" options. For the first time, however, the draft constitution opens the possibility of treaty revisions by qualified majority. Furthermore, the Convention's draft Constitution also provides for the very first time for a right of withdrawal from the EU:

Article I-59: Voluntary withdrawal from the Union:

"Any Member State may decide to withdraw from the European Union in accordance with its own constitutional requirements. This Constitution shall cease to apply to the state in question from the date of entry into force of the withdrawal agreement."

The new withdrawal option makes it clear that the European Union is an 'intentional' political community. Furthermore, the option enables withdrawal from the EU after failing, for example, to ratify a constitutional amendment in a referendum.

Articles IV-7.4 (4/5 majority) and I-59 (withdrawal) of the draft constitution do not provide any specific instruments for a future European referendum, but neither do they create any new hurdles for such a popular vote in the EU.

As Jürgen Meyer and Sven Hölscheidt outline in an article for "Transnational Democracy in the Making", there are three possible steps to a European Referendum method⁸²:

Step One: national referendums (in accordance with their own requirements) on the constitution in as many member states as possible on the same date (the same day as the EP elections is proposed) = this would be the Europe-wide EU constitutional referendum recommended by the Convention/Civil Society resolution.

Step Two: a Europe-wide referendum (with simple majority, but held in accordance with the requirements of the individual member states = simi-

lar to system with the EP elections) in addition to the country-by-country ratification, which may be done by parliament or by popular vote = this would be a mixture between a pan-European and a country-by-country ratification process and would imply a double (possibly even qualified) majority regime.

Step Three: a European referendum. In such a referendum the votes would be counted twice. First, a majority of all participants would be counted and then a (possibly qualified) majority of the votes in the member states = this model of double majority referendums is well known in federal polities such as Switzerland and Australia.⁸³

It is today not at all sure whether the EU constitutional referendum(s) in the next few years will even fulfil the basic requirements of Step One: referendums in all member states on the same day as the next EP elections. In addition, there are countries like Britain, where referendums on the same day as elections are forbidden⁸⁴. However, the very strong trend towards more direct democracy by initiatives and referendums offers an opportunity for developing the way towards "fair" and "free" referendums at the EU level as well. As with popular votes within countries, consideration should be given to the IRI Europe Referendum Draft Checklist:

a) **Legal & Constitutional Basis:** Trigger function?
Binding/consultative? Quorums/thresholds?
Compulsory voting? Registration (citizens/non-citizens)?
Secrecy of ballot? Appeal against the result? Counting procedures?
Voting: how, where (post, e-voting)?

b) **Timing:** Who sets the date? 1 day or more?
Weekend, weekday?
Length of time between announcement & ballot day?
Referendum on same day as other votes/elections?
'Domino effect' on other countries? Designated time period before another vote may be held on the same subject?

c) **Financial rules:** Spending limits? Disclosure?
'Affirmative action' to help underfunded campaigns?
Transparency in use of tax money?

d) **Campaign rules:** Managed by referendum commission or other independent body?
The role of the media: focused primarily on 'latest poll', not debating the issues?
International interference? Role of government, civil

servants, political parties?

Do the rules enhance the culture & practice of democracy?

At the end of this "IRI Europe Survey 2003 on how the Initiative & Referendum process can contribute to more and better European democracy" we would like to make another proposal: as soon as the new "European Citizens' Initiative" is in service, we should use this tool to propose a well-designed "European Initiative and Referendum Law", including all the basic instruments for making Europe a better and more democratic place in the world. What Europe now needs are crowds of interested citizens. But in order to get these crowds dealing with Europe, we first have to start a fight. A first such "peaceful" fight can be the first Europe-wide referendum on the EU constitution in 2004 or 2005!

Notes

1. The geographical center of Europe (between the Ural and the Atlantic) is situated on 25°19'54"54 . This is 25 kilometers north of the Lithuanian capital Vilnius.
2. Algis Krupavicius made this statement at the IRI Europe Referendum Monitoring conference in Svätý Jur (Slovak Republic) on June 21, 2003. Professor Krupavicius' assessment of the Lithuanian EU accession referendum will be part of the forthcoming IRI Europe Referendum Monitoring Reports, Amsterdam, 2003 and 2004.
3. Quoted by Dan O'Brien & Daniel Keohane, "Why Europe needs referendums" in "Transnational Democracy in the Making", IRI Europe, Amsterdam, 2003.
4. *ibid.*
5. The UNDP figures are taken from: Marshall, Monthy G. and Jagers, Keith, Polity IV Project: Dataset Users Manual. April 2002. Weblink: www.bsos.umd.edu/cidcm/inscr/polity
6. Countries such as the Russian Federation, Ukraine, Moldavia and Albania are labelled "partly democratic" in the yearly index of democracy published since 1972 by Freedom House. Weblink: www.freedomhouse.org/ratings/index.htm
7. UNDP Report 2002, p.14.
8. For a detailed description of the instrument of recall used especially in the USA, see. "The Recall Device" in "Direct Democracy: the politics of initiative, referendum and recall", by Thomas E. Cronin, 1989. p. 125 ff.
9. cf. the article: "The design of direct democracy - basic principles for evaluating sub-optimal procedures of citizenlawmaking", in Gross, Andreas and Kaufmann, Bruno, "IRI Europe Country Index of Citizenlawmaking", Amsterdam, 2002
10. In the USA, however, I&R rights are still limited to regional, provincial and municipal levels.
11. Between 1990 and 2000 the number of national referendums almost doubled by comparison with the previous decade. Of the 405 documented national referendums worldwide, 78 were in the Americas, 37 in Africa, 26 in Asia and 16 in Oceania. Within Europe, citizens were able to take a decision at the national level 248 times. Cf. the article: "A comparative study of Initiative and Referendum - a comparative evaluation of I&R in 32 European countries", in "IRI Europe Country Index on Citizenlawmaking 2002", Andreas Gross and Bruno Kaufmann, Amsterdam, 2002.
12. The new law provides the option for binding referendums at the level of neighbourhoods, municipalities and regions. There is still a debate between the Senate and the National Assembly on the introduction of turnout quorums.
13. Quoted by Peyrefitte Alain. C'etait de Gaulle. Fayard. Paris. 1994 in Hug, Simon. "Voices of Europe. Citizens, Referendums, and European Integration." Rowman & Littlefield Publishers. Oxford. 2002.
14. Svensson, Palle. "The Danish Perspectives - six referendums on Europe" in Kaufmann, Lamassoure, Meyer (Eds) "Transnational Democracy in the Making", IRI Europe, Amsterdam, 2003. Extract: "The 1915 constitution introduced the obligatory referendum in Danish politics as a part of the procedure for constitutional amendments. According to the 1915 constitution an amendment proposal - when passed by Parliament and afterwards by the newly elected Parliament - should be submitted to the voters for approval or rejection. An approval demanded a majority from the participating voters and at least 45 per cent of the whole electorate to cast their vote in favour of the Parliament's decision on a new constitution. In principle the same procedure for constitutional amendments holds today (article 88 of the constitution). However, the percentage required for approving a constitutional amendment has in the 1953 constitution been lowered to 40. The 1953 constitution introduced the facultative referendum in Denmark. Article 42 in the 1953 constitution describes the facultative law referendum, which states that one third of the members of the Folketing can demand a passed bill to be submitted to the voters for either approval or rejection. A rejection of the bill requires a negative majority that comprises at least 30 per cent of the electorate."
15. In Switzerland there was also the option of questioning accession by means of a facultative referendum. The government took the offensive and were rewarded with a very clear majority.
16. To be added are: the separate referendum on EU accession in the Åland Islands, which belong to Finland, but which have autonomous status; the decision of the likewise autonomous Greenland to pull out of the EU; and the referendums on Europe in the non-member states of Norway, Switzerland and Liechtenstein.
17. The citizens of France, Norway and Liechtenstein have all voted twice. To date, the following have all had a single referendum: Great Britain, Italy, Austria, Finland, Sweden, the Åland Islands and Greenland
18. For a review cf. Turnout and electoral participation, by Richard Corbett (www.corbett-euro.demon.co.uk/turnout.htm) Since the introduction of direct elections to the European Parliament, participation has slipped by 13% from 62% to 49%. However, the geographical bases of the two average turnouts are only partly identical.
19. cf. "IRI Country Index on Citizenlawmaking 2002", Andreas Gross and Bruno Kaufmann.
20. Hug, Simon (2002). P. 44.
21. Between 1990 and 2000 the number of national referendums almost doubled over the number for the previous decade. Of the 405 documented national referendums worldwide, 78 were in the Americas, 37 in Africa, 26 in Asia and 16 in Oceania. The vast majority were in Europe - 248. cf. "IRI Country Index on Citizenlawmaking 2002".
22. "Obstacles to democracy have little to do with culture or religion, and much more to do with the desire of those in power to maintain their positions at any cost. This is neither a new phenomenon nor one confined to any particular part of the world. People of all cultures value their freedom of choice and feel the need to have a say in decisions affecting their lives". UNDP Report 2002, Human Development Report 2002, Deepening democracy in a fragmented world, Oxford University Press, p.14
23. cf. Direct democracies for transition economies, Bruno Frey, 2002. Collegium Budapest. Institute for Advanced Study project on "Honesty and Trust".
24. For a survey of the arguments and benefits cf. The process of democracy and state-building, Rolf Buchi, University of Helsinki (working paper), 2002.
25. "What Direct Democracy has to offer to the European integration process". Statement by Andreas Gross, Vice-president of the Council of Europe at the IRI conference in Berlin. cf. www.iri-europe.org
26. "Voices of Europe: Citizens, Referendums and European Integration", Simon Hug, Rowman and Littlefield Publishers Inc. 2002.
27. Benz, Matthias and Stutzer, Alois. "Are Voters Better Informed When They Have a Larger Say in Politics?", Journal of Public Choice, December 2002.
28. Elklit, Jörgen and Svensson, Palle. "What makes elections free and fair?" in Larry Diamond & Marc F. latter, The Global Divergence of Democracies, The Johns Hopkins University Press, 2001, pp.200-214.
29. *Ibid.*, p.201.
30. *Ibid.*, p.203.
31. In Sweden, the No-side in the September referendum on Euro accession will receive some extra tax money for their campaign from the pro-Euro government . The Swedish Foreign Ministry has published a booklet on the design of useful elements around an accession referendum, such as financial aid to both sides and non-partisan information (<http://www.utrikes.regeringen.se/fragor/eu/pdf/publicawareness.pdf>).
32. In this respect the Referendum Unit of the UK Electoral Commission has developed a comprehensive system of rules of conduct. Cf. electoralcommission.org.uk.
33. The Robert Schuman Foundation does have a designated European Elections & Referendum Monitoring Website with well updated reports and articles: www.robert-schuman.org/anglais/oeef/.
34. The Robert Schuman Foundation has a designated European Elections & Referendum Monitoring Website with well updated reports and articles: www.robert-schuman.org/anglais/oeef/.
35. DG Justice and Home Affairs, JAI.A.5, Citizenship, Charter of Fundamental Rights, Racism and Xenophobia, Programme DAPHNE

36. The Council of Europe (CoE) is running a democracy project whose main aim is to "to consolidate common European standards". http://www.coe.int/t/e/integrated_projects/democracy/. Also the Coe Venice Commission is preparing a list of criteria for free and fair referendums.
37. A first conference was held in Svätý Jur (Slovakia) on June 20/21, a second one will take place in Tartu (Estonia) in September (25-27). For updates and reports check www.iri-europe.org.
38. Current members of the this team are Karin Gilland, Ludo de Schutter, Thomas Rupp, Douglas Stewart, Palle Svensson, Jüri Ruus, Algis Krupavicius, Paul Carline, Andreas Gross and Bruno Kaufmann.
39. This is a preliminary analysis and does not represent a final assessment by IRI Europe. Every comment is most welcome: info@iri-europe.org. For a comprehensive documentation of the EU accession referendums cf. IRI Europe Referendum Monitoring Reports, forthcoming, Amsterdam, 2003/2004.
40. The Economist, June 21, 2003.
41. Parker, George and Dombey, Daniel. Financial Times, June 20, 2003. P.15.
42. 51st Convention Newsletter by the Democracy Forum , a eurosceptic group in the EP on June 18, 2003.
43. Bonde, Jens-Peter. Alternative Report, THE EUROPE OF DEMOCRACIES.
44. A detailed insider story on how the citizen initiative right finally found its way into the draft constitution is told by Michael Efler in "Transnational Democracy in the Making", IRI Europe, Amsterdam, 2003.
45. De Gaulle, Charles (1970). Discours et messages. Dans l'attente. Février 1946-Avril 1958. Paris: Plon, Vol. II. P.309.
46. Spinelli, Altiero. Una strategia per gli stati uniti d'Europa. Bologna: Societa editrice il Mulino.
47. EP (1988). Resolution on ways of consulting European citizens about the EU. Brussels: JO C 187/231.
48. EP institutional commission. DOC A2-0332/88.
49. EP Commission. DOC A3-0031/94.
50. Koukiadis report, September 2002, Draft Report on European Citizens' Right of Petition, PE 308.157.
51. The Rostock Process, 1991-2004: "On the way to more direct democracy in Europe" (2001), p.44.
52. Erne, Gross, Kaufmann, Kleger: "Transnationale Demokratie – Impulse für ein demokratisch verfasstes Europa" (Transnational democracy – Suggestions for a democratically constituted Europe), Realotopia, Zurich (1995). p. 431ff.
53. The proposals are documented in the the IRI Regional Forums chapter in "Transnational Democracy in the Making", 2003.
54. Upon invitation by the editors of this publication in cooperation with the (former) MEPs Heidi Hautala and Diana Wallis, as well as Michael Efler the spokesperson for European Affairs in the German activist NGO "More Democracy", an "informal" Convention working group was founded including Eduarda Azevedo, Péter Balázs, Michel Barnier, Jens-Peter Bonde, John Bruton, Panayiotis Demetriou, Karel De Gucht, Gijs De Vries, Lone Dybkjaer, Alexander Earl of Stockton, Casper Einem, Douglas Stewart, Joschka, Fischer, Michael Frendo, Carlos Gonzalez Carnero, John Gormley, Sylvia-Yvonne Kaufmann, Alain Lamassoure, Jo Leinen, Linda Mc Avam, Iñigo Mendez de Vigo, Jürgen Meyer, Louis Michel, Alojz Peterle, Jacob Södermann
55. Members: Akcam, Zekeriya; Amato, Guiliano; Andriukaitis, Vytenis; Athanasiu, Alexandru; Avgerinos, Paraskevas; Belohorska, Irena; Borrell Fontelles, Josep; Costa, Alberto Bernardes; Dam Kristensen, Henrik; De Rossa, Proinsias; Demetriou, Panayiotis; Dini, Lamberto; Duhamel, Oliver; Einem, Caspar; Fayot, Ben; Giannakou-Koutsikou, Marietta; Gricius, Algirdas; Haenel, Hubert; Helminger, Poul; Kaufmann, Sylvia-Yvonne; Kiljunen, Kimmo; Laborda, Gabriel Cisneros; Lequiller, Pierre; Marinho, Luis; Mavrou, Eleni; Oleksy, Jozef; Serracino-Ingloft, Peter; Skaarup, Peter; Timermans, Frans; Vastagh, Pal; Voggenhuber, Johannes. Alternates: Abitbol, William; Alonso, Alejandro Munoz; Arabadjiev, Alexandar; Basile, Filadelfio Guido; Berger, Maria; Budak, Necdet; Carey, Pat; Carnero Gonzalez, Carlos; D'Oliveira Martins, Guilherme; Eckstein-Kovacs, Peter; Ene, Constantin; Floch, Jacques; Fogler, Marta; Garrido, Diego Lopez; Giberyen, Gaston; Gormley, John; Grabowska, Genowefa; Katiforis, Giorgos; Krasts, Guntars; Kroupa, Frantisek; Lichtenberger, Evelin; Mac Gormick, Neil; MacLennan of Rogart, Lord; Matsakis, Marios; Nagy, Marie; Nazare Pereira, Antonio; Severin, Adrian; Sivickas, Gintauta Speroni, Francesco; Spini, Valdo; Styllanides, Evripides; The Earl of Stockton, Alexander; Vassilou, Androula; Vella, George. Observers: Du Granrut, Claude; Sigmund, Anne-Marie; Sepi, Mario.
56. The amendment was delivered to the presidium with a explanation: "The effect of the above proposal is to bring Europe closer to the people, as Laeken recommended. It represents a large step in the democratisation of the Union. It will extend the existing right of petition to a right of the citizens to present legislative proposals to the Commission of the EU. The Commission has then to decide whether it will take legislative action or not. It is very important that the threshold for the signatures that are to be gathered for the European Citizens' Legislative Submission is not too high. A high threshold interferes with the process and effectively allows only powerful organizations the possibility of securing the required signatures."
57. In the Commission for European Affairs of the Finnish parliament ("stora utskottet") such concerns have already be formulated.
58. In the d-europe newsgroup a DD activist from Bulgaria wrote that "I would vote "No" to the draft constitution because I don't see real participatory rights in there but only a right to beg. The participatory democracy granted by the founding fathers is reduced to participation ONLY in exchange of views, dialogue and consultations but NOT in decision-making"
59. Hautala, Heidi. "From the petition to the initiative", in Kaufmann et al. "Transnational Democracy in the Making"
60. Cuesta, Victor. "Guide to the future European Citizen Initiative" in Kaufmann et al. "Transnational Democracy in the Making", 2003.
61. Cuestas comparison shows that indirect initiatives require a bigger portion of the electorate in most countries: Latvia 10%, Lithuania 1.47%, Austria 1.23%, Poland 0,25%, European Union 0,15%, Italy 0,08%.
62. Gross & Kaufmann, "IRI Europe Country Index on Citizenlawmaking", Amsterdam, 2002, p. 5f.
63. The text of the resolution was submitted to the Convention presidium as "Contribution 291" by Alain Lamassoure and 36 other Convention members, alternates and observers on March 31, 2003.
64. For a detailed description of these efforts see Thomas Rupp's articles on the European Referendum Campaign in "Transnational Democracy in the Making".
65. "Portugal PM calls for referendum on EU charter", Reuters, June 12, 2003.
66. "Aznar quiere someter a referéndum en los comicios europeos la Constitución de la UE", ABC, Madrid, April 12, 2003. ("José María Aznar wants the European Constitution to be submitted to referendum in all the EU countries on the same day as the next EP elections: 13 June 2004")
67. "Luxemburger sollen über EU-Verfassung abstimmen", Associated Press, June 27, 2003. ("In Luxembourg, the citizens will be able to decide on the European Constitution. The Cabinet decided on Friday that a referendum should be held sometime in the coming year. Prime Minister Jean-Claude Juncker said that this demonstrated how much importance the government attached to the European Constitution").
68. "EU-Verfassung: Konflikt um Volksabstimmung", Die Presse, Wien, June 24, 2003. ("Schüssel indicated during the EU Summit that he would not oppose it, if everyone else were to support a Europe-wide referendum").
69. "Lidstaten morrelen aan ontwerp Europese grondwet", De Morgen, June 21, 2003.
70. "En skarp men färglös doldis", Hufvudstadsbladet, Helsinki, June 25, 2003.
71. "Dzurinda: Referendum on Constitution not necessary", News Agency of the Slovak Republic, Bratislava, June 20, 2003.
72. "Persson: Ingen svensk folkeafstemning om EU-forfatning", Berlingske Tidende, København, May 27, 2003.
73. "Hain plays down any poll on EU future", The Guardian, May 14, 2003.
74. Report on the prospects for a European Referendum (draft); Office of the German Parliament.
75. Hautala, Kaufmann and Wallis: "The European Referendum Challenge", IRI Europe, 2002, Amsterdam, p.15

76. Efler, Michael. "Volksentscheid über die EU-Verfassung – Verfassungsrechtliche Vorschriften und politische Situation in den Mitglieds- und Beitrittsländern". Mehr Demokratie, Berlin, 2003. (www.mehr-demokratie.de/bu/-pdf/studie_eu-ve.pdf). The "Mehr Demokratie" report is based on research by Marian Zdeb at democracy international: "Study of constitutional conditions and probability of referendums on the EU constitution in 25 European countries", democracy international, Frankfurt, 2003. www.european-referendum.org/background/refsum.html.
77. "The provision of Article 1 that the State of Lithuania is an independent democratic republic may only be amended by a referendum in which at least three-fourths of the electorate of Lithuania vote in favor thereof", see Krupavicius, Algis, Country Report "Lithuania" in "Transnational Democracy in the Making".
78. In Germany such a proposal has been launched by the liberal group, proposing a special law for the constitutional EU referendum. Cf. Deutscher Bundestag, Drucksache 15/1112.
79. Anckar, Dag and Karvonen, Lauri. "Constitutional Amendments methods in the democracies of the world". Turku University, 2003.
80. However, in the Swedish case the two following parliaments need a simple majority to amend the constitution, giving the citizens an opportunity for control at the elections.
81. This result is not only confirmed by the Mehr Demokratie/democracy international study quoted, but also by an assessment published by Time Magazine (June 1, 2003).
82. Meyer, Jürgen and Hölscheidt, Sven. "Three ways to organize a Europe-wide constitutional referendum", in "Transnational Democracy in the Making".
83. Andreas Gross proposes in his contribution to "Transnational Democracy in the Making" to establish the following double majority requirement in a Europe-wide referendum: simple majority of the voters, 2/3 majority of the member states.
84. For an overview of the reasons for/against having referendums combined with elections see Nigel Smith's contribution to "Transnational Democracy in the Making".

Chapter Two:

Convention Stories

The Initiative & Referendum Institute

Europe presents

A European Union closer to its Citizens

including

- *The resolution for a Europe-wide Constitutional Referendum*
- *The article for a European Citizens' Initiative*

At its last sitting on July 18, 2003 the European Convention approved the inclusion of an article on a citizens' initiative right in the draft European Constitution. A minimum of 1 million citizens from a minimum number of member states (the suggested number is 8) would have the right to present a legislative initiative to the European Commission.

Art. I-46.4: Citizens' initiative

A significant number of citizens, not less than one million, coming from a significant number of member states, may invite the Commission to submit any appropriate proposal on matters where citizens consider that a legal act of the Union is required for the purpose of implementing this Constitution. A European law shall determine the provisions regarding the specific procedures and conditions required for such a citizen's request.

The Adoption of the article on direct democracy came after months of effort. The Initiative and Referendum Institute Europe (based in Amsterdam) had proposed the setting up of a working group on citizens' rights at the beginning of the Convention's work (and had co-ordinated the group – led by the Conservative French representative **Alain Lamassourre** and the German Social-Democrat representative **Jürgen Meyer** – together with the German NGO "More Democracy" since January of this year (2003). The proposals developed by the working group for a Europe-wide constitutional referendum and for a European initiative right had been supported by more than 100 EU and national parliamentarians in the Convention, but had initially been strongly rejected by the presidium. A campaign by more than 120 NGOs – coordinated by

"Democracy International" - and committed lobbying by many Convention members finally produced a weight of pressure which the presidium could not resist. The introduction of an EU citizens' initiative right represents an important first real breakthrough for direct democracy at the European level.

At the same Convention session a resolution of almost 100 Convention members was presented, proposing a Europe-wide constitutional referendum at the same time as the next European parliament elections in June 2004.

Resolution: Referendum on the European constitution

We propose that the Convention recommends to the Inter-Governmental Conference that the draft European Constitution be approved not only by National Parliaments and the European Parliament but also by the citizens of Europe in binding referendums. These referendums should take place in accordance with the constitutional provisions of the member states. They should be held simultaneously on the same day, an option being the same day as the European Parliament Elections in June 2004. Those member states whose constitutions do not currently permit referendums are called upon to hold at least consultative referendums. An information campaign must be publicly funded.

With the adoption of the article for "the European Initiative Right" and the presentation of the resolution for a "Europe-wide Constitutional Referendum" the Convention has achieved a part of the task it was given by the heads of state and government in December 2002. The Laeken Declaration recognised the need to bring Europe closer to the people and gave the impetus for the Convention on the Future of Europe.

Now it will be extremely important that the practical procedures for the implementation of the proposed EU citizens' constitutional rights are designed in a 'citizen-friendly' manner. The Initiative and Referendum Institute Europe is contributing to this work by producing the comprehensive "European Referendum Reader – Transnational Democracy in the Making", a 250-page documentation of the Convention process and the EU accession referendums edited by Bruno Kaufmann, Alain Lamassoure and Jürgen Meyer (with a Foreword by Giuliano Amato). IRI Europe is also developing a designated "European Referendum Monitoring Website" including updated materials on the further constitutional negotiations at the Inter Governmental Conference as well as debates and proceedings within EU institutions, member states and NGOs. Finally, IRI Europe is organizing "European Referendum Workshops" in many parts of Europe, where experts and citizens can meet to make use of the new windows of opportunity delivered by the Convention.

You (and your organization) are most welcome to join/support the work towards "a European Union closer to its citizens!"

Our work is in cooperation with the following **partners**: Mehr Demokratie, Democracy International, Europahaus Burgenland, Agora, Initiative & Referendum Institute America, Green/European Free Alliance Group in the European Parliament, European Liberal Democrats, Party of European Socialist, European Popular Party, EU Observer, The Swedish Center for Business and Policy Studies, Åbo Akademi, Aarhus University, Kaunas University, Latvian Center for Human Rights, Tartu University, The European Policy Centre, TEAM Alliance, Union of European Federalists, Europe 2020, Fòrum Civic per una Constitucio Europea, EP Representation Office in Barcelona, Demopunkt Net, Referendum Unit of the Electoral Commission, Permanent Forum of Civil Society, Swiss Foreign Department, Convention Task Force in the European Parliament, European Commission, Directorate-General for Education and Culture, Ainova.

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A rollercoaster ride towards transnational democracy

Michael Efler tells the story of how the European Citizens Initiative found its way into the EU Constitution.

The inclusion of the citizens' initiative in the draft constitution is a great success for all those who were involved in the campaign. It was the first time that people from different European countries lobbied for direct democracy during a reform of the European treaties and so it was somewhat surprising that this first effort was successful.

Step one: paving the way

From March 2002 to November 2002 our work was concentrated on discussing our concrete proposals and on individual meetings with Convention members. At the end of March, IRI Europe founded a network of interested Convention members and NGOs. The report "Voices of Europe – the growing importance of Initiatives and Referendums in the European integration process" was sent to all Convention members, MEPs and national parliaments. A conference organized by IRI Europe in mid-September brought together almost 100 hundred participants from 20 countries and demonstrated the growing and broad interest in the issue. After much deliberation, we decided to push for two ideas: first (also the first priority), a referendum on the European constitution; and second, the introduction of far-reaching elements of direct democracy (a right of citizens' initiative including citizens' referendums and obligatory referendums for constitutional amendments). Our strategy was not to reduce our demands at the beginning. It is interesting to note that in our first discussions, especially with MEPs, there was broad support for a Europe-wide referendum on the upcoming constitution regardless of the legal constraints (such a referendum would have required a prior amendment of Art. 48 of the European Union Treaty before adopting the new constitution, and that requires unanimity). We faced strong opposition to our proposal for national referendums in every member state on the same day, which we considered from the outset as the only legally possible and politically feasible way. But we stuck to our ideas, because we saw that some MEPs especially held a totally unrealistic and sometimes ideological view of that issue. Some of them

look at the constitutional process from a solely European perspective and ignore legal, political and logical barriers.

Step two: the breakthrough dinner

In December 2002 we wrote two short articles for the draft constitution (amendments) and we decided to initiate a working process within the Convention. But how could we do that as a couple of small NGOs (More Democracy/democracy international, IRI Europe)? So we tried to find co-invited for a working dinner in the European Parliament scheduled for Jan. 20. And we got support from nearly all the political groups: Heidi Hautala (Greens, Finland, MEP), Diana Wallis (Liberal, UK, MEP), Prof. Jürgen Meyer (Social Democrat, Germany, Convention member) and Alain Lamassoure (EPP, France, Convention member) agreed to be co-invited, in addition to Bruno Kaufmann for the Initiative & Referendum Institute Europe and myself for More Democracy and Democracy International. This working dinner was a great success and in retrospect the breakthrough for our efforts. More than 10 Convention members from several different countries and from all the political groups attended the meeting; a lot more showed their interest by e-mail. Both federalists and EU-sceptics were represented. The atmosphere was very focussed. After introductions by Andreas Gross (Vice-President, Council of Europe), Bruno Kaufmann (IRI Europe) and myself, a profound discussion took place. The referendum on the European constitution was at the centre of the debate whilst the initiative process played only a minor role even in our own contributions. All but one speaker (a Convention member from Portugal) spoke in favour of a referendum. At the end of this meeting it was agreed that John Gormley, an alternate Convention member and leader of the Irish Green party, would draw up concrete draft texts for the referendum and the direct democracy ideas to be discussed at another meeting.

Step three: an "informal" working group surprises the Convention

Two meetings were needed to reach agreement on a text on the referendum. The only concession we had to make was that in those countries whose constitutions currently do not allow referendums at least consultative referendums should be held. Our original aim was to encourage these countries (such as Germany) to change their constitutions to allow binding referendums. But with regard to the second text we were unable to reach a consensus. Some favoured creating high thresholds for citizens' initiatives, others didn't want to interfere with the European Commission's exclusive right of legislative initiative and we suggested only covering the basic principles and instruments of direct democracy, in order to avoid complicated debates on procedures and numbers. At the end of that meeting (on 27 February), only 5 minutes were left to discuss these differences – impossible to reach a consensus. It was not clear either who should be responsible for coordinating the whole process and especially for collecting signatures in the Convention. We discussed these problems and decided to coordinate the process ourselves in close cooperation with Jürgen Meyer and Alain Lamassoure. We started collecting signatures among the Convention members that day. It was very unusual for members of NGOs to collect the signatures of elected representatives, but no-one questioned our right to do so and we felt obliged to fight for our ideas and for the agreed text. We left Brussels on Friday, 28th February, with 8 signatories for the referendum proposal.

But how to proceed with the citizens' legislation? After nearly one month of discussions with individual Convention members, we decided to seek support for a text that introduced the instruments of the citizens' initiative, citizens' referendum and an obligatory referendum only in the case of constitutional or treaty amendments, without specifying the procedure, the majority requirements or the number of signatures that had to be collected. When we started to push for our second text we had already collected 33 signatures for the referendum - most of them at the Convention meeting on March 17-18 which six of us attended, and some by the federalist intergroup in the Convention. Between the meetings we distributed our text to a lot of Convention members by e-mail and fax and phoned them over and over and over again... It was a very hard and sometimes frustrating job because it was much easier to contact the politi-

cians directly in Brussels, but on the other hand it was not possible to contact them all directly. On 31st March Alain Lamassoure sent the referendum text – signed by 37 members, alternates and observers - as a contribution to the Convention secretariat. At that time we had only 3 signatories for the second text.

Step four: what kind of "democratic life in the European Union"?

At the Convention meeting on 3rd-4th April, we collected signatures for the first time for both proposals. At a very well attended press conference with Alain Lamassoure, Jürgen Meyer, Bruno Kaufmann and myself we presented the referendum text to the European media. After that meeting we had 65 signatories for the referendum and 8 for the citizens' legislation. At that meeting the presidium of the Convention published its first draft Art. 34 (principle of participatory democracy). It was a big disappointment for us - absolutely no mention of direct democracy, only structured dialogues with the so-called representative organisations and civil society. There was only one week left to submit amendments to the presidium, but after analysing the existing amendments (four or five were going in our direction) we agreed to continue the gathering of signatures until a much more impressive number of supporters is gained.

The next Convention plenary on 24th-25th April was very important for us as well. Jürgen Meyer presented both proposals in the meeting of the social democrat Convention members and gained a lot of support. At the plenary discussion on the so-called "democratic life of the Union", a lot of members spoke in favour of a referendum and of elements of direct democracy in the constitution. At the end of the debate, Giscard indicated that he would test the referendum idea in the presidium. We left Brussels with 75 and 26 signatories respectively.

The following two Convention meetings, on 15th-16th and 30th-31st May, were characterized by a growing dissatisfaction with the work of the presidium. A lot of the proposed amendments had not even been considered, on key issues such as the institutions there were still no texts and the end of the Convention's scheduled work was coming closer and closer. It became more and more difficult to find more signatories for the referendum, because we had already discussed with most of the Convention members (sometimes we felt like Convention members as well). At the second plenary meeting in May we

finalised the gathering of signatures. We distributed more than 700 leaflets with the slogan "Last call for referendum" with the help of some Belgian and Dutch activists. We finished our work with 93 and 43 signatories. Alain Lamassoure and Jürgen Meyer agreed to submit the texts to the presidium the following week.

Step five: High noon in the presidium

In the first week of June we got clear indications from members of the presidium and other Convention members that our far-reaching text on direct democracy would not achieve a consensus in the presidium (not a great surprise to us) and we agreed with Jürgen Meyer to formulate a compromise text that would give citizens the right to present proposals to the European Commission, which would then have to decide whether to take legislative action or not. This is a very small first step in the right direction, but it should not be underestimated. It is a citizens' initiative right similar to that which exists in Austria and which is very often used by the people. The Convention plenary on 5th-6th June was a roller-coaster that I will never forget. First we received the information that a huge majority of the national parliament delegates in the Convention had accepted the compromise text and that Jürgen Meyer had gathered more than 30 new signatures for the new text. At the end it was signed by 72 Convention members. In a consultation with the national parliamentarians, President Giscard announced to our total surprise that he was in favour of the citizens' initiative and that the presidium would find a way of endorsing it. Totally happy and full of optimism we went to the Place du Luxembourg in front of the European Parliament and had some drinks. Then we met a member of the presidium who told us that the presidium had just rejected the proposal by a huge majority and that Giscard was not present at that meeting. The trip back to Berlin was a very sad one indeed ...

After some days of feeling quite depressed, I called Jürgen Meyer and told him about the latest developments. We agreed not to give up and to try to get a different decision in the presidium. Democracy International activists sent hundreds of e-mails to the presidium members; I sent faxes to all of them, too, and in Brussels on 12th June we used our last opportunity to "catch" some of them for a direct discussion. After several meetings of the presidium and two joint meetings of the European parliament and national parliament delegates they agreed a joint position on

"last minute amendments" of the draft constitution. One of these seven points was the introduction of the citizens' initiative. The last presidium meeting took place at 3.00 pm on 12th June, and the results were presented by Giscard at 7.00 p.m. in the great plenary room of the European parliament. At that point of time we had absolutely no idea what the presidium had decided. We were all very glad when we heard Giscard speaking about the citizens' initiative and stating that the presidium had included the proposal in the draft constitution (leaving open the fixing of the concrete procedure by a European law).

Next steps: many hurdles ahead

There are still several hurdles to be jumped before Europe-wide citizens' initiatives are really possible. Firstly, the Intergovernmental conference must concern itself with the draft constitution. This will happen beginning in October 2003. Then the draft constitution must be ratified by the member states, be it by popular vote or by vote of parliament. This can take until 2005, so that the constitution might possibly enter into force on 1.1.2006. Parallel to the ratification process we will try to discuss with positive-minded MEPs, as well as with members of the European Commission, the draft of a European law that implements Art. I-46 (4) of the constitution, so that this can be decided on as soon as possible after the entry into force of the constitution..

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"My very special thanks go to Convention members Professor Juergen Meyer and Alain Lamassoure, who worked consistently and eloquently for more direct democracy, and to their assistants Hans Rubbel and Anne-Catherine de Bruchard. Likewise Heiko Dittmer of the Belgian organization WIT and Carsten Berg and Lars Bosselmann of More Democracy, without whose support this success would not have been possible. Very important too was the good co-operation with Democracy International (thanks to Thomas Rupp and Ronald Pabst) and the Initiative & Referendum Institute Europe (thanks to Bruno Kaufmann, Arjen Nijeboer and Paul Carline). Last but not least a very special thanks to Henrik Dahlsson for his practical and indispensable assistance." M.E.

Checkpoint Citizen – The case for direct democracy

Andreas Gross and Bruno Kaufmann insist that the time has come to introduce direct democracy into EU decision-making.

Direct democracy is much more than just another referendum: both are vastly underestimated by most of the European political class, as can be illustrated by the way this political class is dealing with the “European Constitution”. Violence is also the antithesis of democracy. It is not a surprise, therefore, that times of warfare do not help to strengthen and deepen the development of democracy.

This seems to us one of the main reasons why the never-ending process of democratisation - one of the great projects of the 19th century - stagnated so markedly in the 20th century. The two world wars and the Cold War did not favour the establishment of democracies and where they were established they did not develop very far.

In both respects times changed only in the last decade of the 20th century: more countries became democracies and democracy started to mean more than an election every now and then. Back in 1980, only 46% of the world’s population in 54 states were living in countries with fundamental democratic rights. By the year 2000 these figures had increased remarkably - to 68% of the world population living in 129 of the 190 UN member-states.

The dynamic of democratisation also underwent qualitative changes: in Central and Eastern Europe, most of the 30 new national constitutions were enacted by national referendums. More democracy and better democracy does not mean more elections, but a more direct, substantial and differentiated involvement of citizens in political decision-making. That is why the number of national referendums in the 1990s was more than triple the number of referendums in the 1980s: of the 405 national referendums worldwide between 1990 and 2000, 248 were held in Europe and more than 10% of these concerned questions around the European integration process.

The year of paradox

This year the world will face a paradox. At the same time as another war is in the making, direct democracy will be practised as never before. Several dozen referendums are timetabled in 13 different countries this year and many of them concern the European integration process and the reintegration of old European nations into the new European integration process. But the question remains: What will shape the future of transnational politics and European political culture more: the war in the Middle East, or the unique European experiences in direct-democratic citizen participation?

In this highly controversial context the European Union has an important role to play. And it has to be more serious and precise and perhaps also self-critical when it comes to constitution making, referendums and direct democracy.

The European Union should not forget that the first and oldest European institution, the Council of Europe, was founded in 1949 with the ambition of creating a trans-European parliamentary assembly which should become the constitution-making body for Europe. The Cold War thwarted this great ambition of establishing transnational democracy. 13 years after the end of the Cold War, the ambition is back and the context is much more encouraging, European integration already has a successful history - but the readiness of the elites to integrate citizens in their transnational polity and policy making is still surprisingly low.

The reluctance of the elites

On the one hand we have the Convention method as a further step in the right direction, learning the lessons of the not very fruitful Intergovernmental Conferences of the past, where important decisions were taken by a handful of exhausted Prime Ministers at four o’clock in the morning. The other lesson of the recent history

of European integration is that the citizens themselves must have a say. When the Irish voted for the second time last October on the Nice Treaty, this was the 30th occasion since 1972 of a national referendum on Europe. Twenty of these referendums took place within the last decade. And the evidence is that Europeans like the instrument of direct democracy.

Despite this, the European political elites are still reluctant. You can observe this in the Convention, but more so in the national political classes and even in the European Parliament. For decades it was impossible to argue in favour of a European constitution: the need for a real European constitution was ignored. This has changed dramatically in the last two years. But now one gets the impression that the whole issue of the constitution has been reduced to an instrument of public relations and has not been understood as a way of bringing the people back into the European integration process and giving it a new basis of legitimacy.

The reason for this banalisation of the concept of the European constitution is this: the elites do not accept the fact that since the French revolution every constitution is an agreement between citizens and that therefore you cannot make a constitution without involving the citizens. Trying to do this would be as utopian as the idea that one could go for a swim without becoming wet.

If one agrees that we have to have a European Constitution and that this is not possible without the positive support of the majority of the people in Europe and of a majority of states, then in considering how to organise such constitutional referendums one has to face up to the fundamental weakness underlying the Convention: it can only propose such procedures to the IGC, it cannot impose them on the EU Member States. Both the Convention and the necessary constitutional referendums (with the exception of the few countries in which major amendments to the EU Treaties have in law to be approved by the electorate) are still operating in legal and political vacuums. The de facto power of both instruments is greater - but it is still not great enough.

Referendums are about communication

We see two ways out of this dilemma. You either admit that the making of a real European constitution is not for now and you therefore have to convince the IGC to incorporate into the new treaty the requirement for a third Convention with this specific aim (this

option may be both too realistic and too modest, especially for the present Convention members).

Or you introduce the right of tens of millions of Europeans to ask for a real constitutional convention: an even greater challenge. The Convention would have to mobilise people in order to put the IGC under such pressure from below that it would be forced to organise a European referendum on the draft European constitution prepared by the Convention.

A modified second option would be that the IGC would decide to first consult the people of Europe on the Convention's draft, subsequently allow the Convention to integrate the different critiques and new ideas, and then organise the Europe-wide referendum with a double qualified majority requirement.

And of course: if you agree that there must be a referendum on the new European constitution to bring the people back into the process of European integration, to bring European integration back to the people and to establish a transnational polity with a genuine mandate to humanise the global economy and reinforce the European social model, you have also to agree on the right of a specified number of citizens to propose reforms to the constitution which would then once again be decided in further European referendums.

What is incompatible with the idea of a real European constitution is the answer the former Greek foreign minister, Theodoros Pangalos, gave (to one of the authors of this article) in the last session of the Parliamentary Assembly of the Council of Europe, when he said that there would be aspects of a draft constitution which are too complicated for ordinary people and that therefore referendums should not be provided for.

Arguing this way would mean not only the end of democracy, but also the disintegration of Europe: because in our time you can only integrate different people if you are prepared to make great communicative efforts. And communication is what a referendum is all about! People are happy to stay together if they are allowed to argue about their differences - but they hate staying together if they are not asked what they really want to do.

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Unwilling Dutch government ready to respect referendum outcome

Arjen Nijeboer announces a possible surprise in The Hague.

In 2002, the general I&R debate had reached deadlock in the Netherlands. The first coalition since 1917 not to include the Christian Democrats had been trying since 1994 to introduce a binding abrogative referendum in the Constitution, something which needs a two-thirds majority. This failed after 8 years of struggle because of internal opposition by the Liberals in the coalition. The new Liberal-Christian Democrat-Populist coalition decided in summer 2002 to drop these plans and even to abolish a temporary law which had been introduced 18 months earlier. The Liberals and Christian Democrats are long-standing advocates of direct democracy. After the national elections of January 2003, the proponents of direct democracy even lost their normal majority in Parliament. So it didn't look good for a referendum on the EU Constitution. Surprisingly, however, when a law proposal was presented in Parliament on May 22nd, the Liberals announced a free debate on it. Their new parliamentary leader, Van Aartsen, is a proponent of direct democracy and apparently he judged it the right time to try and change his party's position on this issue. The need for change is generally felt among politicians after the enormous rise and fall of Pim Fortuyn's party, indicating dissatisfaction and alienation among the Dutch electorate. But the Liberals are also quite euro-sceptic and may hope they can block the European Constitution in this way.

After this, the small Protestant "ChristenUnie" also said they would not automatically reject a referendum. They are a less extreme version of the Ulster Democratic Party led by the Reverend Ian Paisley, who views the European Union as a Catholic enterprise directed at taming the Northern and Western European Protestant countries. In the Senate, which normally follows the majority in the rest of Parliament, the Christian Democrats stated that they were not automatically opposed. So in both chambers of Parliament, a majority is within sight. The government is against a referendum, but has announced that it will respect the outcome if one is held. There is not much discussion among the population on the European Constitution or on a referendum on this - though a poll showed a 63% majority in favour of a referendum - but among the elites, the quality press and the institutions there is suddenly a vigorous debate. The leading liberal NRC Handelsblad has advocated the referendum in many prominent articles. Most events or public debates on Europe since then have been dominated by the referendum issue. It is not yet decided, but there is a substantial chance that next year the Netherlands will have its first national referendum ever.

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Madrid confirms a constitutional referendum in 2004

Susana del Río Villar reports from a country, where the citizens up to now had little to say in international politics.

On 13th of June this year, the Convention finished its work and Europeans now have a (draft) European Constitution. The possibility that this Constitution might be approved by all the citizens of the member states in referendums would reveal the exercise of a European demos forging in a strong way a feeling of belonging, a common consciousness represented in the fact, also symbolic, of deciding on the same day about our Constitution.

In Spain, the work of the Convention has been followed and analysed in forums, seminars and initiatives organized by various kinds of organizations and institutes.¹ Among the points that have been emphasized about the details of the text of the Constitution are the dual nature of the Union between citizens and States², and the new paragraph 4 of Article I-46 on the citizens' initiative, a form of semi-direct democracy. Within the framework of these activities and understandings, there is a key point in the already constituent journey undertaken by the Convention: that our Constitution is to be approved in a referendum.

During the work of the Convention, the first article to appear in the Spanish Press relating to a referendum on the European Constitution was written by Iñigo Méndez de Vigo³, European MEP and President of the Delegation of the EP in the Convention and member of the Praesidium. After this revealing article, several other statements appeared in the Spanish media on this theme.⁴ So, from different sectors of Spanish politics, open and positive positions have been adopted with regard to the holding of a European referendum.⁵

As regards the general position in Spain on the results of the Convention, the point of view varies according to the different perspectives, but at least as regards the referendum, there is agreement between the two big political groups: PP (in the government) and PSOE, Socialist Group.⁶ In its first reaction to the pres-

entation of the European Constitution during the Convention sessions of 12th and 13th June, at the European Summit in Thessaloniki on 20th-21st June⁷, and regarding approval of the Constitution by referendum, the Spanish government again declared its affirmative position after the last session of the Convention.⁸

The Convention was able to perform a multilevel task, in which the gathering of opinions and the search for consensus was taken to a quite extensive level, allowing civil society to speak and opening doors to new methods of dialogue and ways of doing politics. The Convention has been a constitutional experiment for our new Europe and its political dynamic, and that its fruit, the Constitution, should be approved in a referendum is a catalyst for the European demos pressing for real involvement.⁹ This great possibility gives power to the European citizenship and legitimacy to the democratic process itself. With the Convention we have shared in the democratization of the political creative process.

The connection and identification of the European Union with its citizens is the meaning of the process of European integration and also its goal and quality standard.¹⁰ The referendum on the European Constitution would allow the identification and the voice of the citizenship in Europe to be made visible. In relation to the development of a consensus on the Constitution starting with a multi-faceted debate, we have experienced a regeneration of European political life through a method of public and open debate.¹¹ We are moving within a constituent task and a triumph of civil society.

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- 1 To cite a number of them: Convención Catalana, The Fòrum Cívic per una Constitució Europea, clara, concisa i comprensible, votada en referéndum, in: <http://www.forumconstitucioeuropea.org>, The Civil Society Spanish Forum, (coordinator: ACSUR), Consejo sobre el Debate del Futuro de Europa, the debate in <http://www.futuroeuropa.es>, the Institute: Real Instituto de Estudios Elcano, Europafutura, and the Spanish European Movement. In addition, a lot of NGOs and civil society movements have participated actively in submitting their contributions to the Forum of the Convention, such as the Red de Ciudadanas Europeas. Specifically on the European referendum issue, there was the Barcelona Referendum Forum 2003: A participative Union closer to its citizens, Barcelona, European Parliament Office and Representation of the Commission, Aula Europa, Barcelona, 28th March, 2003. See the Seminar Report in: http://www.iri-europe.org/reports/barcelona_report.asp In addition, see the Real Instituto de Estudios Elcano's contribution: Informe del Real Instituto Elcano sobre el Tratado Constitucional. Una aportación española al debate sobre el futuro de la Unión Europea, Charles Powell and José María de Areilza Carvajal, 14th May, 2003, in: <http://www.realinstitutoelcano.org/documentos/54.asp>
- 2 Regarding the importance of the European citizens' involvement in this enlarged Europe and in the constitutional process formally started by the Convention, see the initiative launched by the Greek Presidency, February 2003, EUROPE VOTE: The Europe We Want, <http://evote.eu2003.gr/EVOTE/en/index.asp>
- 3 MÉNDEZ DE VIGO, IÑIGO: "Refrendar la Constitución Europea", ABC, Madrid, 24th of November, 2003
- 4 Since April, some positive positions with regard to the holding of a referendum in Spain have appeared. The declaration made by the President of the Spanish Government, José María Aznar: "Aznar propone un referéndum para una Constitución Europea", *El Día.es*, 12th April 2003, in: (<http://80.81.104.134/2003-04-12/nacional/nacional1.htm>) and the position taken by the Spanish Government in support of a referendum for the European Constitution on 30th May.
- 5 MANIFIESTO DE LA SOCIEDAD CIVIL ESPAÑOLA: the document was presented to the European Parliament Office and Representation of the Commission in Madrid in March, 2003. This group includes NGO networks and platforms. This text clearly set out the elements that should lead the European Project nowadays: an advanced and participative democratic space.
- 6 See the article of MEP CARNERO GONZÁLEZ, CARLOS: "La Constitución Europea votada en referéndum", (Prologue), *Convención Europea, conclusiones de los Grupos de Trabajo*, 11 Dossiers, Madrid, European Parliament and Comisión Representation, 2003
- 7 See: YÁRNOZ, CARLOS: "La Europa que tendremos", (La Convención sobre el futuro de Europa culmina sus trabajos), *El País*, Sunday, 15th June, 2003.
Very recently, on the Convention, the European Constitution and the Spanish position, see. BARÓN CRESPO, ENRIQUE: "La Convención y España", *El País*, 12th of June, 2003.
- 8 EUROPA PRESS: "EL gobierno prevé someter a referéndum la futura Constitución de la Unión Europea", *El Mundo*, 17th June, 2003, at: <http://www.elmundo.es/elmundo/2003/06/17/espana/1055840963.html>
On the importance of good information in the new process towards the Constitution approved by referendum see: MARÍN, MANUEL: "Un proyecto posible", *Cinco Días*, 23rd June, 2003, p.14, at: http://www.5dias.com/articulo.html?xref=20030623cdscdiopi_2&type=Tes&anchor=cdsopiA00
- 9 BENEYTO, JOSÉ MARÍA: "La invención constitucional de Europa. Más transparencia, más eficiencia, mayor control democrático", *Artículos, Nueva Revista*, March, 2002, article 80, at: http://www.nuevarevista.net/2002/marzo/nr_articulo80_1.html
- 10 On the work of the Convention in its final phase and on the fact that the existence of states, regions, nations, international organizations etc. is not justified if they are not at the service of the citizens, see the clear article: DUCH i GUILLLOT, JAUME: "El moment de la veritat s'apropa", *L'Eco d'Europa*, 9th May 2003, Day of Europe, p.2.
- 11 On the new paragraph 4 of article I-46 see the declaration of Iñigo Méndez de Vigo in euobserver (18th June, <http://www.euobserver.com/index.phtml?sid=9&aid=11775>): Iñigo Méndez de Vigo was particularly pleased that the Constitution draft includes the so-called popular initiative, a citizens' right to file a petition to the European Commission that could then introduce a new regulation or law. This would be a "big step towards the creation of a Europe-wide civil society". In addition, see the article MENDEZ DE VIGO, IÑIGO: "Los ciudadanos ganan" ("The citizens win"), ABC, 20th June, 2003.

Something for everyone ..

What is in the new draft EU constitution for the citizen? Maybe more influence in Brussels, writes Joachim Fritz-Vannahme

Citizens, take heed! To be sure, the first constitution for Europe is still in draft form. In Brussels, where it was toasted with champagne and Beethoven's "Ode to Joy" by the 210 members of the Convention from 28 countries who have been whittling away at and haggling over it for the past 18 months, the ink was hardly dry on the paper. Barely a week later, its 400-odd articles and protocols about the purpose and aims, the concepts and institutions of the European Union had already been tastefully bound in gold-embossed leather – giving it the patina of imperishability - to be formally handed over by Giscard d'Estaing to the Greek premier at the EU summit meeting in Thessaloniki. The next stage of its journey will take it to Rome, where on 18th July it will be ceremoniously presented to the Italian premier in the Palazzo Quirinale at the start of Italy's presidency of the EU.

But this opus was written neither for palaces nor for champagne toasts – nor even for the heads of state and government. It was written for the citizens. At least that was what the Convention solemnly promised when it met for the first time. Europe – this sphinx of hopes and fears – was to be "brought closer" to its citizens, made "more transparent, efficient and democratic". Though for the moment it remains a draft and the behind-closed-doors IGC in October might still make a lot of changes to it, how do these tablets of a basic law for the EU appear to the eye of the man – and woman – on the street? What does this "Big Book of Big Europe" – the product of the unique efforts of the constitutional convention – actually give the ordinary citizen? It wasn't a creation 'ex nihilo' (as the American Constitution in a sense was in the intoxicating new beginning of 1787) and it isn't a completely new start (as the revolutionary French Constitution was in 1789). Both the spirit and the letter of the new EU draft have been formed under the weight of countless national constitutions and European treaties.

At the very beginning stands Thucydides. A quote from this indispensable ancient Greek historian opens the preamble. In Article 2, the Union promises to cre-

ate for its citizens "an area of freedom, security and justice" – as well as an internal market where competition is "free and undistorted". Values and goals are listed as in a classic liberal manifesto and then coated with a wrapping of social and environmental principles. This is followed - somewhat predictably, given half a century of the European Community – by the guarantees of "free movement of persons, goods, services and capital and the freedom of establishment" for everyone anywhere in the Union. It sounds much nobler in theory than it is in practice – for the Spanish craftsman, for example, who has to pass all the German trade examinations before he can start his own business there.

Open road for the citizens' initiative

Three cheers! Now things will have to change, or we'll be taking the authorities to (the European) court. But not just yet. Before that can happen, the constitution has to be ratified by the states – and, at least in some cases, by their peoples - and that will take until 2006. For lots of institutional reforms, we shall have to wait until 2009: the supposed sovereign power in Europe – that's us, the citizens – will just have to wait a bit longer before we are 'ripe' for Europe. Anyone who's thinking of immediately prosecuting his rights at the European Court had better read the small print – which directs him to the national courts, starting with the lowest civil courts in the land.

At the very last minute and quite out of the blue, a citizens' initiative right was slipped into the Big Book in the form of Article I-46, para.4. In future, if a minimum of one million citizens "in a significant number of countries" join forces, they can use their signatures to invite the EU Commission "to submit any appropriate proposal on matters where citizens consider that a legal act of the Union is required for the purpose of implementing this Constitution". Is that clear? The impression is that the Convention members were a little afraid of their own courage in drafting this particular paragraph. The dreadfully clumsy sentence

means that citizens' initiatives are restricted to Union affairs – and cannot, for example, be used to resolve a national problem via a detour through Brussels. Perhaps someone with a better feeling for language – and meaning – can yet be found to re-word the offending formula.

Is the draft constitution at all readable for the average citizen? It is definitely more accessible than most of the EU documents since the legendary Treaty of Rome of 1957, at least in many sections of Parts I & II – from the Preamble on the aims, competencies and finances of the Union through to the Charter of Fundamental Rights. The tortuous sentence structure of Part III, on the other hand – which still has to be debated in July – will defeat any normal reader. Yet this is the section which deals precisely with the things that the normal citizen could be expected to make some practical sense of: employment, the environment, consumer protection, energy and transport. And this is exactly where the Convention members' hands were most tightly tied: the heads of government had already ruled that there were to be no changes to the essential content.

Foreign policy in triplicate

In contrast, the question of who does what is defined more clearly in the draft constitution than in any of the many preceding treaties. This clarity – from the division of competences between the Union and the member states through to the big institutions such as the European Council, the EU Commission and the EU Parliament – was specifically demanded of the Convention. It serves the citizen, who can now make better sense of the rules of the Union than before. But transparency is no guarantor of greater efficiency.

One much-discussed example makes that clear. Who will represent the European Union in future at the international level? Will it be the newly-created EU Foreign Minister – the Joschka Fischer of the post-2006 'brave new world'? In theory, yes – but not alone. The Convention – after repeated requests from London, Paris and Madrid – invented the post of President of the European Council, who will be chosen by a qualified majority of the heads of government for a term of office of two-and-a-half years. In the words of the draft constitution, he "shall ensure .. the external representation of the Union on issues concerning its foreign and security policy, without prejudice to the responsibilities of the Minister for Foreign Affairs". That's perfectly clear. But the

Commission too is charged with "ensur[ing] the Union's external representation" ("with the exception of the common foreign and security policy"). That's clear too: the Commission will be represented at important international trade or climate conferences, for example, at which aspects of today's foreign policy are negotiated. The only question is: what kind of uniformity and efficiency can be expected from such a foreign policy in triplicate?

It's clear that there was something of a lack of Cartesian discipline in the handling of this question – no more so, to be fair, than is typical of national constitutions. The German constitution, for example, leaves the overall direction of foreign policy to the Chancellor (but also has a Foreign Minister, of course); the French constitution gives both President and Prime Minister similar competences on the world stage. Practical experience shows that it's often the person rather than the post which determines things.

On the subject of foreign policy: every single public opinion poll of EU citizens shows that what people want is more public spirit and less egoism. If the draft constitution had been in place at the beginning of the Iraq crisis, or even at the outbreak of war – both Tony Blair and Gerhard Schröder would have been in breach of it. For the constitution enjoins all member states to "actively and unreservedly support the Union's common foreign and security policy in a spirit of loyalty and mutual solidarity" and "refrain from action contrary to the Union's interests or likely to impair its effectiveness". The formula seems to echo the results of the opinion polls. Whatever one's personal position on the matter, was there anything more damaging at the time than London and Berlin both going off in separate directions?

Right to very end, the British wanted to retain the principle of unanimity for foreign policy, whereas the parliamentarians in the Convention in particular fought for the introduction of qualified majority voting. The old unanimity principle made any common position on the Iraq crisis impossible – in fact, it wasn't even invoked because of the clear disunity. That must have given the supposedly 'pragmatic' British something to think about.

But behind the scenes in Brussels an experienced European foreign minister asked what would have happened if there had been a qualified majority vote? The answer: the chaos would have been even greater, the overruled minority would never have accepted the result – "the place would have fallen

apart". Ordinary people, energetically demanding a "Voice for Europe", would have turned away in disgust. The theoretical question allows us to see that any constitution is only as good as the political will which makes it a reality. Readability and the existence of literate citizens are no guarantee of quality in a constitution.

Every commentator has emphasised how much of a compromise the Brussels document is – a compromise between the larger and smaller states, between supporters of a federal Europe and supporters of a Europe of nation-states who want "Brussels" to have as few powers as possible. A compromise also between the Europe of the states and the Europe of the citizens, for example where the qualified majority rule is defined for the European Council: a decision must be approved by a majority of the member states (on important issues even a two-thirds majority) "representing at least three fifths of the population". This constitution is not a revolutionary act as the one of 1789 was. It is rather a process, which will hopefully bring about some improvements – but it doesn't touch the heart, it doesn't inspire.

Not yet, at least. What is still missing from the Big Book is its last chapter – an epilogue which can be a model exercise for a new relationship between states and citizens, between politicians and voters. In several of the states of the Union, citizens will be able to vote on this constitution in a referendum: in Ireland and Denmark for sure, most likely also in Austria, Portugal and the Netherlands. It's also traditional in France and is being vociferously campaigned for in the British press. Why should some be able to vote and others not?

The best way of turning the draft Brussels constitution into a real citizens' constitution is by having national citizens' referendums on the same day in every member state. Citizens, it's your choice! That would be the ideal final chapter.

© DIE ZEIT, 26/2003

SPECIAL SECTION:

The European Referendum Campaign

Parallel to the Convention process European democracy NGOs launched the European Referendum Campaign, writes Thomas Rupp.

One and a half years after the decision to initiate the European Referendum Campaign, 130 organisations from 28 countries now support its demand for referendums - and the number of supporters is growing. In addition, 97 members on the Convention of the Future of Europe from all the countries which were represented in this committee signed a resolution with substantially the same demand. This resolution was created during the dialog with the ERC. It addresses the presidium of the convention. ERC activists handed it to the vice-president of the Convention presidium, Giuliano Amato, as a joint resolution of Convention members and civil society. On the same day there was an ERC media event in Brussels opposite the European Parliament with a seven metre high inflatable "EU Constitution". As of now, it is certain that there will be referendums on the constitution in Denmark, France, Ireland, Luxembourg, Portugal and Spain. There are good chances in a lot of other countries, too.

Why do we need referendums?

The Convention on the Future of Europe addressed itself to the open questions posed by the Intergovernmental Conference (IGC) at the end of 2001 in the "Declaration of Laeken". One of the most urgent questions was how the European Union could be brought closer to its citizens and how the democratic legitimacy of the institutions could be improved. The procedure of having a convention deal with these questions - in a more or less open process - definitely represents progress compared with the top-secret negotiations of the IGC. But there is still a tremendous lack of involvement of "ordinary" citizens. So the Laeken demands will definitely not be met if there is no broad debate about the contents of the constitution in the countries concerned. But having referendums would be the best means of promoting the required debate: the politicians who support the constitution would have to explain it to the people. If the constitution were to be adopted without involving the people, it would in the long run damage the fur-



Media conference on June 13 with (left to right) Michael Efler, Jan-Peter Bonde Jürgen Meyer, Thomas Rupp.

ther European integration. You cannot build a European society without involving the people.

Referendums are the minimum requirement!

So the minimum requirement for improving the "democratic legitimacy" of the EU is to hold a Europe-wide referendum in all the countries concerned. This is the context and the rationale for the European Referendum Campaign. Our aim is to raise the awareness of the members of the Convention, the members of parliament of the countries affected and of the public in general about the need for a referendum. To help us achieve that aim, we want to enlist the support of as many organisations as possible in both EU member states and the applicant countries. The European Referendum Campaign has four specific demands:

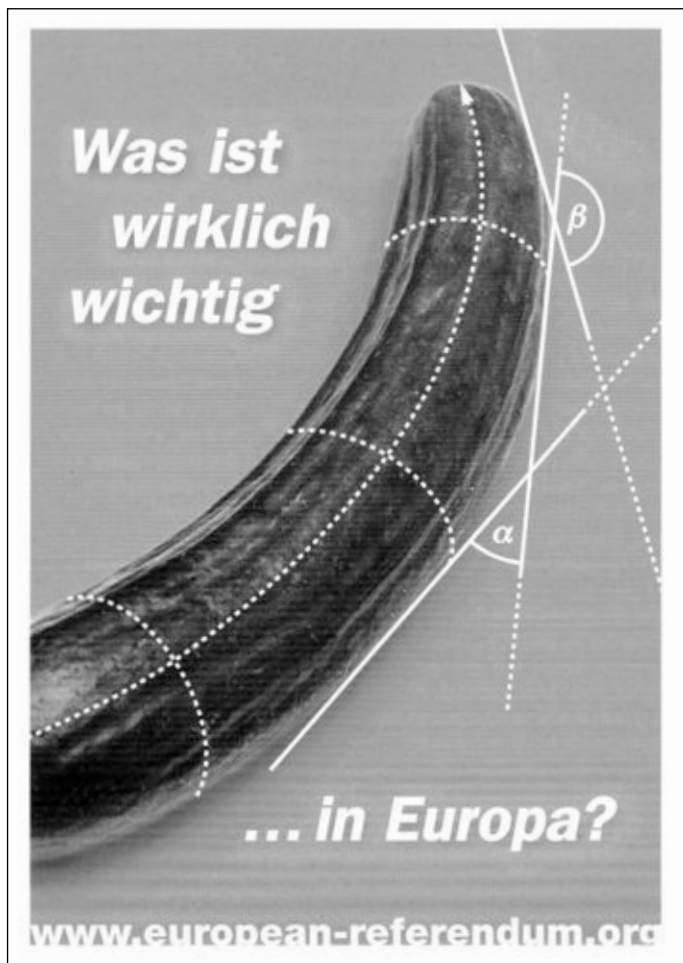
- 1.** An EU Constitution or Constitutional Treaty must be submitted to the citizens in a European referendum in all the countries concerned.
- 2.** The Parliaments of the states concerned shall make the appropriate legal and constitutional provisions for a binding referendum.
- 3.** The EU Constitution or Constitutional Treaty can

only be adopted in the countries in which a majority votes in favour of it.

4. The referendum should take place simultaneously with the European Parliament elections in 2004.

Broad coalition of NGOs all over Europe

The European Referendum Campaign will run until the middle of 2004. It addresses itself to all organisations which believe in democracy – regardless of whether they are radical or conservative, europhile or europhobe. Each individual group within the network is free to pursue its own political goals – but the campaign itself is absolutely neutral. Naturally, there would also be much to say and discuss about the contents of the draft EU constitution. But due to the very different points of view of the ERC network, this cannot be an official issue of the campaign itself. On this basis we will enlist the support of organisations from across Europe representing thousands of members



Setting standards for the curvature of cucumbers within the European Union is not as important as thinking about standards for raising the quality of democracy.

and pursuing all kinds of individual issues – and yet all supporting our common fundamental aim. The resulting impressive support network will enable us to generate considerable public awareness.

Right now the ERC has active groups and initial activities in ten countries (B, D, DK, E, F, FIN, LU, MT, NL, UK). In addition, we have individual supporters and supporting organisations in all European countries.

We will now proceed to broaden our international campaign network with support partners in all the countries of Europe. The campaign will only be successful if it can be promoted actively and independently in each country. The office of "Democracy International" in Frankfurt am Main/Germany will offer a comprehensive coordination and support service comprising:

- Development and expansion of the support network;
- Interactive campaign homepage with background information and campaign updates;
- Postcard campaign, which everyone can join;
- Organisation of Europe-wide action days in conjunction with local supporters;
- Europe-wide media coverage;
- Targeted lobbying in Brussels plus support for lobbying in the individual countries;
- International conferences;
- Creation of campaign material and lines of communication.

Thomas Rupp is journalist and coordinator of Democracy International, the umbrella organisation behind the European Referendum Campaign.

European Referendum Campaign Contact information:

Join us! Support the European Referendum Campaign! Information at: www.european-referendum.org - democracy international - Kurfürstenstrasse 18 - 60846 Frankfurt - Germany - Tel +49 69 77 03 36 98 - Fax +49 69 77 03 97 40 - Email: info@european-referendum.org

ERC activities in several countries

There are two ways in which an organisation can support the European Referendum Campaign: 1.) Be placed on the list of supporters, which is a valuable support for the ERC without any further obligations. Every new organisation which supports us increases the impact of our movement and our demands. - 2.) Or to go a step further and promote the ERC in your own country. We can only succeed as a campaign if

there are organisations in the countries actively campaigning, lobbying and building up a network on the spot. In this sense there are currently active organisations in 10 countries:

Belgium

In Belgium there is a lot of ERC activity. About 20 NGOs support the campaign. WIT - an organisation fighting for more direct democracy and citizens' participation - is coordinating the activities in Belgium. The Belgium ERC activists were involved in the recent Brussels media event. They have presented the ERC to their national politicians in many face-to-face conversations. They are building up an ERC campaigning network in Belgium, have presented the ERC at the Belgium Social Forum and are collecting signatures for a petition demanding a Belgium referendum on the EU constitution.

Contact: Bert Penninckx (bert.penninckx@planetinternet.be)

Denmark

The local ERC group is called "Kampagnen for Europæisk Folkeafstemning". They have several working groups: 1.) Media group: maintaining a database of Danish media and informing them about the campaign. - 2.) Lobby group: seeking discussion with and support of official Danish politicians. - 3.) Contact group: contacting other Danish organisations to make them ERC supporters. - 4.) News group: keeping in touch and exchanging information with the ERC network. - 5.) Mailing group: spreading the campaign by email. - 6.) Expansion group: initiating new ERC groups in other regions of Denmark.

Homepage: www.folkeafstemning-eu.dk - Contacts: Nicolas E. Fischer (fischer@zetnet.dk) and Charlotte Ryø (c.ryoe@get2net.dk)

Finland

There have been some meetings and presentations of the ERC in some media conferences in Helsinki and Tampere. Even some members of the Finnish parliament who are in contact with ERC activists strongly support the idea of a Finnish referendum on the EU constitution.

France

Several interesting organisations in France support the ERC. The main coordination is being done by the groups "Démocratie Active" and "Association Pour la Promotion de la Démocratie Directe". The think-tank "Europe 2020" and the "Newropeans" network are also supporting the campaign, as well as "le Club du 21 septembre 1792". Recently there was a meeting in

Paris to think about strategies for building up an ERC network.

Contact: Fabien Neveu (fabien@democratieactive.org)

Germany

In Germany, "Mehr Demokratie" is responsible for the ERC. As of now, 20 NGOs support it. Plan of action is: 1. Gather signatures demanding a referendum in Germany: 50.000 postcards have been printed. - 2. Intensive lobbying of parliament: done. - 3. An appeal by public law professors who will request a referendum on the EU constitution. - 4. Promotion bus: a promotion bus which will drive through Germany is about to promote the campaign. A tour throughout the European Union is also planned.

Contact: Roman Huber (roman.huber@mehrdemokratie.org)

Luxembourg

Recently our local ERC partners "Demokratie Forum Luxembourg" presented a legislative proposal to introduce initiative and referendum rights. A reduced version of this is about to be passed by the parliament. In addition, Prime Minister Jean Claude Juncker recently announced that there will be a referendum on the EU constitution. - The "Demokratie Forum Luxembourg" is already the result of some active networking to find some ERC supporting NGOs. ERC activists were among the main organisers of the first Luxembourg Social Forum.

Contact: Alfred Groff (alfredgroff@internet.lu)

Malta

The ERC in Malta is just about to start its activities. There is even the legal basis for a referendum according to the referendum act. If a certain number of sig-



Media conference on June 13 with (left to right) Michael Efler, Jan-Peter Bonde Jürgen Meyer, Thomas Rupp.

natures are collected, a binding popular referendum must be granted.

Netherlands

As in the other countries, there is also some activity in the Netherlands on a regular and systematic basis. There has been lobbying and several events have been organized to present the ERC. A network of supporting organisations is about to be built up. ERC activists are also successfully involved in the campaigning for more direct citizens' participation at the local level. - Homepage: www.europeesreferendum.nl
Contact: Arjen Nijeboer (nederland@european-referendum.org)

Spain

In Spain ERC activities are in progress. It is one of the countries which will definitely have a referendum on the EU constitution. In March 2003 the ERC was presented at the Forum La Ciudad Humanizada in Seville as well as at the Barcelona Referendum Forum. There are several groups which support the ERC.
Contact: Susana del Rio (susanadelrio@wanadoo.es)

United Kingdom

There is currently a lot of movement in the United Kingdom on the issue of a referendum on the EU Constitution. Parts of the tabloid press have taken up the campaign, not least to stir up opinion against Tony Blair. Even though most of the organisations which support the ERC in the UK are against an EU constitution, there are also some attempts to build a broad coalition including supporters of an EU constitution.
Contact: Neil Herron (metricmartys@btconnect.com)

Background and history of the European Referendum Campaign (ERC)

from 1999

Establishing "NDDIE - Network for Direct Democracy in Europe" as a Europe-wide network of grassroots' movements in favour of direct democracy. Participants from more than 23 countries attended the NDDIE conferences in Munich (2000) and Prague (2001). - The main impulses for establishing such a network came from Mehr Demokratie in Germany, WIT Belgium, the Dutch Referendum Platform, Netherlands and the transnational citizen network eurotopia.

December 2001

Declaration of Laeken: A Convention on the Future of

Europe is established. First public discussions on a possible EU Constitution.

February 2002

After a series of meetings to involve a wide range of political movements and actors the decision is taken to launch a campaign to make sure that the people will have a say on their future in Europe.

March 2002

The Convention on the Future of Europe starts its work. - The campaign idea is presented at several events throughout Europe. Goal: to get the broadest possible coalition - especially between pro- and EU-critical organisations.

April 2002

Having been agreed by a broad coalition, the demands of the ERC are put into an appeal.

from April 2002

ERC activists regularly visit the Convention meetings in Brussels.

May 2002

A first ERC pamphlet and the ERC homepage (www.european-referendum.org) are created.

June 2002

Participation at the Civil Society hearing of the Convention. First distribution of the ERC pamphlets at the Convention and EP; the idea of referendums on the European Constitution is presented. Several face-to-face meetings with Convention members.

October 2002

The ERC project-office is opened in Frankfurt, Germany.

November 2002

Official launch of the ERC at the 3rd NDDIE conference in Bratislava with participants from 22 countries. democracy international is founded as an umbrella organisation.

from January 2003

A working group of Convention members draft a resolution text, very close to the ERC appeal. This process was initiated by IRI Europe and Mehr Demokratie; ERC-campaigners cooperate with Convention members to get as many supporters in the Convention as possible.

from March 2003

Increasing level of ERC activities in nine countries; there are organisations which take responsibility for the campaign in their countries.

April 2003

The resolution of the working group is presented at a press conference in Brussels; so far 38 members of the Convention have declared their support.

May 2003

It becomes increasingly clear, that there will be referendums on the EU constitution in: Denmark, Ireland, France and Spain... that there is a good chance in Austria, Italy and Portugal... and there are serious debates and statements by leading politicians in Germany, Finland, Netherlands and Belgium. In several new member states there must be referendums by law.

June 2003

At the last plenary session of the Convention on the Future of Europe, ERC activists hand over the resolution to the presidium of the European Convention: 96 Convention members and more than 120 NGOs from 26 countries demand referendums on the European Constitution in all countries concerned. The resolution shall be approved by the presidium and be forwarded to the IGC. At a media event in Brussels, a 7 metre high inflatable EU constitution is presented.

ERC Media Event in Brussels

A resolution signed by 96 members of the Convention on the Future of Europe as well as by about 120 NGOs from 25 countries was handed over by ERC activists to the vice-president of the Convention presidium Giuliano Amato. It was a joint resolution of Convention members and civil society. The signatories ask the Presidium of the Convention to approve this

resolution - with its demand for referendums - and forward it to the IGC. On the same day there was an ERC media event in Brussels opposite the European Parliament with a seven metre high inflatable "EU Constitution". During the media event about 15 TV teams from all over Europe filmed the colossal EU constitution. It also was added to the archives of several big press agencies. The whole event was possible due to a successful cooperation between activists of the ERC network. It was attended by ERC activists from six countries. The ERC campaign bus of Mehr Demokratie, Germany, made its maiden journey to attend the Brussels event.

Joint resolution handed over to the presidium of the Convention on the Future of Europe

Convention members and activists of the European Referendum Campaign (ERC) presented a resolution on Friday afternoon. A 7 metre high "EU constitution" with an arrow pointing on it saying: "only by fair referendums" was used as a symbol for the growing demands for referendums on the European constitution to be held in all the countries concerned. This event took place opposite the European Parliament (Place du Luxembourg, Brussels). The resolution - signed by 96 members of the "Convention on the Future of Europe" and currently supported by 120 NGOs from 25 countries - was handed over to the Convention presidium that Friday morning. The joint resolution shows that a successful cooperation between official politics and civil society is possible. The resolution is addressed to the presidium of the Convention and shall be approved and forwarded to the Intergovernmental Conference as an official document of the Convention. The simple demand: all European citizens should be able to decide for themselves on the upcoming EU-constitution.

Three members of the Convention presidium - Giuliano Amato, Méndez de Vigo and Aloyz Peterle - signed the resolution, as well as at least one representative each of all the countries represented in the Convention. The resolution suggests the European Elections in June 2004 as one possible date for simultaneous referendums in all countries concerned.



At the moment it is still an open question as to how the EU Constitution will be ratified in the member states. "This resolution will not force any country to hold a referendum. It shall only be a recommendation of the Convention, to be approved by the IGC, not to

adopt the constitution without asking the people", states Michael Efler, one of the ERC coordinators. For Prof. Jürgen Meyer, who represents the German Bundestag in the Convention, a referendum on the EU constitution would be a big opportunity to bring Europe into the consciousness of the people. For that reason, even a consultative referendum would be better than no referendum at all.

"Through the constitution, we are moving from a Europe of the governments to a Europe of the people", stated French convention member Alain Lamassoure. And how could that be possible if the people are left out? The resolution is supported by a broad coalition which also includes EU critics such as e.g. Jens-Peter Bonde and critical NGOs. For some organisations a referendum is also a chance to say 'no' to further integration of the EU or at least to slow down that process.

The European Referendum Campaign, which has active groups in nine European countries and supporters in nearly all of them, will now focus on the IGC in Rome. More and more NGOs and VIPs will support the ERC demands. The main activity for next year will be to lobby the national parliaments. After all the chances for referendums are quite good. There will be referendums in Denmark, Ireland, France and Spain; there is a good chance to get one in Austria, Italy and Portugal. And there are serious debates and statements from leading politicians in Germany, Finland, Netherlands and Belgium. In several new member states there must be referendums according to their constitution. "As soon as we know that there will be referendums, we have to fight for fair referendums, because a referendum is only as good as the discussion process in its run-up", states ERC coordinator Thomas Rupp.



Media conference on June 13 with (left to right) Michael Efler, Jan-Peter Bonde, Jürgen Meyer, Thomas Rupp.

The next steps

When the ERC was launched, the only country which was definitely going to hold a referendum was Ireland. Awareness of the option and the chances for referendums was quite low - even among the politicians in the Convention. Only very few people were thinking of the issue. As of now – and certainly not only because of the ERC activities - there will definitely be referendums in six countries and the awareness that a constitution cannot be forced on people without consulting them is growing. The ERC has definitely contributed to this process. So it is a good moment to assess the current political situation and then draw some conclusions for the further work of the ERC.

Six of the 15 member states – Denmark, France, Ireland, Luxembourg, Portugal, Spain – have already decided to hold a referendum on the EU Constitution. In a number of other countries the chances are good. Most likely there will be a referendum in Austria and Italy. The debate has just started in Belgium, Finland, Germany and the Netherlands. Only in a few countries has a referendum been expressly rejected by the government. In Greece, Sweden and the UK, governments have already expressed their unwillingness to hold a referendum on the EU Constitution. But even here – especially in the UK – political pressure to hold a referendum is increasing and a final decision has not yet been made. In the accession countries, the debate on a referendum on the EU Constitution is just beginning. At the moment it's not at all clear in how many countries a referendum on the EU Constitution will take place, but as most of these countries have had good experiences with their accession referendums, it seems likely that most of them will also hold a referendum on the EU Constitution.

So all in all the chances are quite good that in most of the 25 countries a decision in favour of a referendum will be made. The more countries decide to hold a referendum, the greater will be the political pressure on those countries which remain sceptical or have so far rejected calls for a referendum to follow suit. If the momentum of the referendum process increases still further, it is not unlikely that in all countries concerned the sovereign power itself – the people - will decide on the EU Constitution in a referendum.

And now?

After the Convention's work ends, the whole issue of the EU constitution will be handed over to the

Intergovernmental Conference. In the end it will be in the hands of the national parliaments to decide whether and how to adopt it. So the ERC should concentrate its effort mainly on those countries where there is a good chance of holding a referendum, as well as on the new member states. One objective of the ERC will be to promote the building of networks in those countries and to support them, in order to put some political pressure on their parliaments and governments. This can be done by broad coalitions which systematically seek to make contact with the political actors, the public and the media. This can only be done by local residents in their own countries. Democracy international, as coordinator of the campaign, can support these activities with information, a good homepage, strategic advice, by organising some events and by generating an international dimension to the whole campaign. For many countries this is an important factor: that there are movements in all the countries and not only at home.

From next month we will have at least four to five full-time workers plus some interns in the Frankfurt office. So we can give a lot of support to the ERC, even if there is never enough manpower. We will shortly start some systematic fundraising because – as you may know – the whole campaign is being financed by donations. So if you want to support us financially – the money would be mainly invested in more manpower - this would be very welcome. On a practical level, we are planning two conferences in the autumn in cooperation with some local partners. We want to be present at the European Social Forum in Paris. There will be another media event at the EU summit in Rome. The whole homepage will be restructured. We will organise some campaign tours with the ERC promotion bus through several countries. We want to promote the building of networks in the new member states, expand the existing network in the active countries and expand our Europe-wide network of supporters; finally, we are planning to systematically lobby the European Parliament. So as you can see, there is a lot of work to be done. You are very welcome to join us either as an individual or as an NGO.

From Petition to Initiative

Heidi Hautala tries to imagine how the new initiative right will empower both the citizens of Europe and the Parliament in Strasbourg.

Many sceptics of European integration say that there is no basis for a common identity among the peoples of so many different countries. The intellectually oriented critics complain of a lack of what they call European public space. Europe could never become truly democratic, and that is why they think that there is no room for further integration, either.

This view does not seem correct, with the view to the fact that at certain moments there have been brief glimpses of a European awareness of common challenges among the citizens, and not just among the elites. At the time when Austria was attacked by all the other 14 EU member states, there was a simultaneous debate all over Europe on whether the unofficial sanctions were justified or not. Likewise, there was a strong European debate on the war against Iraq, with the result that on the same days greater numbers of people than ever before marched in the streets all over Europe.

If the citizens had tools to express common concerns, the emergence of the now so much wanted European public space would certainly be accelerated. There are cases whereby great numbers of people have gathered around common concerns and addressed the European decision-makers. These examples may still be rare but they do show that what has been believed to be impossible may become possible.

One of the very few tools that European citizens have is the right of petition. The Maastricht Treaty of 1992 created a European citizenship. One of the very few rights it did establish was the right to send a petition to the European Parliament. For this purpose, the Parliament has a petitions committee. The standard petition is one which calls on the European Parliament to investigate a violation of EU law in a member state. About half of such petitions refer to environmental protection, and most of these relate to a supposed violation of the two existing directives on the protection of nature and the one which sets minimum requirements for the environmental impact analysis of projects and plans.

Silicon breasts paved the way

If the petitions committee decides to act, it asks the European Commission to give its opinion on the possible violation of EU law. The Commission, as the guardian of the EU Treaties, is obliged to open an investigation against the member state, if it has grounds to suspect that a violation has indeed occurred. At best, the petition has obliged the member state to change its national law in accordance with EU law.

A number of petitions concern matters in which the EU has no competence to act. While some clearly concern issues which preferably should be dealt with elsewhere, there are many cases where it can be difficult for citizens to understand why the EU cannot act on their petitions when these concern precisely problems that the petitioner thought the EU was meant to help resolve – a perception often informed by quotes from high-spirited speeches by European leaders, which unfortunately leave out the finer details of the “final compromise” reached by the Council of Ministers or the European Council.

Still, the treaties do not require that a petition is a complaint against a violation of EU law, only that it concerns a “matter which comes within the (European Union's) field of activity” and that it affects the petitioner “directly” The number of petitions, the satisfaction of which would require amending or introducing rules, most of which it is not possible to deal with, points to a weakness in Parliament's possibilities to seek to improve respect for citizens and their rights. The parliament has been frustrated by its own incapacity and therefore tried to see what the next steps could be.

In the last few years, new types of petition have started to occur alongside the classic complaints against violations of EU law.

In 1998 some 7,000 women from a number of European Union countries sent a petition to the

European Parliament because they felt they had been deceived and suffered damage from silicone breast implants. They asked the Parliament, as the people's representative, to take measures against inadequate safety requirements. After several parliamentary committees – on women's rights and consumer protection – had contributed with their suggestions, the petitions committee figured out together with the Commission that an obvious thing to do would be to strengthen the directive on the "conformity assessment" of medical devices. Industry commissioner Erkki Liikanen, in charge of the matter, readily introduced an amendment to the directive. The change is already existing law. The petition by 7000 women shows that a petition is not only a tool for complaint but can also induce a legislative action. Could the petition perhaps be the embryo of a genuine citizen's' right of initiative? Would the petitions committee, which was never placed high on the ranking lists of the European Parliament, be the home of a quiet civic revolution? Some of us began to see it this way. Democracy activists and researchers contributed to the thinking on the design of such a right of initiative.

Do not leave the governments alone!

In 2002 the European Parliament stated in its resolutions that it was time to consider a further step in the evolution of the right of petition (Koukiadis report, September 2002). It finally asked the Convention to include a right of legislative initiative in the future Constitution. This was a clear reference point for all of us who wanted the Convention to follow the proposal. Another was the recognition of "participatory democracy" as a title in the first draft Constitution by the President of the Convention. There was no hint of whatever that might be. After a lot of persuading and lobbying by NGOs, the Convention at the last minute adopted article I-46.4. on a citizen's' initiative.

The governments will now study the draft Constitution in order to initiate the final proceedings in their intergovernmental conference in October 2003. One should not expect a natural tendency from them towards empowering the citizen's, even if the article on the citizen's' initiative right is firmly written into the draft text, filling the gap in the notion of participatory democracy. One should also remember that a similar proposal was already made once before by two governments, the Austrian and the Italian, in the IGC leading to the Amsterdam Treaty of 1996. It is important to study why it was rejected. I later asked

for the documents on the position of my own government on the Austrian-Italian proposal. I got some with the notion that they were strictly non-public. Clearly, governments should not be left alone to deliberate on the citizen's' right of initiative.

One reason for concern is that very few people have imagined what it would mean if one million Europeans from, say eight countries, would actually present an initiative, "inviting the Commission to submit any appropriate proposal on matters where citizen's consider that a legal act of the Union is required for the purpose of implementing this Constitution". Let us try to imagine.

Consumer protection demands

Although Brussels is like a spaceship on its distant journey far away from people, many times citizen's do find a way to approach e.g. members of the European Parliament, with similar reactions from Portugal, Sweden and Germany. The common concern may be about a European law which is just now taking shape and will be binding to citizen's all over Europe. Interests of better consumer protection unite people across borders. The question may be about risks of GMOs, or about the need to get rid of unsolicited email, so-called spam. Not many years ago, the European Parliament received an appeal of one million signatures from all countries on the need to protect birds against odd culinary habits prevailing in some parts of the continent. In June, NGO's filed a petition which calls for a moratorium on "low active sonars, suspected of killing marine mammals and damaging fish stocks."

The potential of the right of initiative is easily seen in the actions of Europe-wide non-governmental organisations. They are the pioneers of a European civil society. It is they which manage to connect the interests of like-minded people from all over Europe across its borders. European civil organisations would no doubt play an important role in mobilising for common initiatives.

The article on citizen's' initiative in the draft Constitution is the legal basis and leaves the modalities of such a right to be specified in a further European law. "Not less than one million (citizen's), coming from a significant number of member states" must be defined in more detail. One million citizens is a good starting point for the minimum number of citizens required. The architects of the proposal have

suggested eight to be an appropriate minimum number of the member states represented by those one million citizens. This combination seems to set the threshold for presenting an initiative right, not making it too difficult, nor too simple.

Small states should not be afraid

An uninformed opposition to the right of citizens' initiative may come from small or very small member states who would feel that one million signatures puts their citizens in an underprivileged position. These opponents should notice that the minimum number of countries does not make it possible just to present a German, British or Polish initiative. Some further requirements on the division of signatures across the at least eight countries may be needed in the law.

On what subjects should citizens be allowed to launch an initiative? Article I-46.4. in the draft Constitution speaks about "matters where citizens consider that a legal act of the Union is required for the purpose of implementing this Constitution". This seems to limit the initiatives to legislative and not constitutional initiatives. Questions which do not belong to the competencies of the Union will automatically fall out, whether belonging to the jurisdiction of member states or their sub-national entities, or to the domain of international agreements.

In principle one could bind the right of initiative to any subject in which a European law (or framework law) can be given in the legislative procedure, i.e. on the basis of a proposal of the Commission, with the co-decision of the European Parliament and the Council of Ministers. Why not to any "legal acts" which may be decided upon by derogation from the legislative procedure and thus exclude the Parliament as an equal legislative body?

Following how the right of petition to the European Parliament has now grown out of its own limitations, as explained above, and taking into account the significance of the Parliament in the evolution of European civil society, it would be only logical to give the Parliament a role in the treatment of a citizens' initiative. We can also observe that the earlier Austrian-Italian proposal on the initiative interestingly recognised the European Parliament as the channel between the citizens and the Commission. According to the Austrian-Italian proposal, the European Parliament would mediate the initiative to the Commission using its informal right of initiative,

established in the Maastricht Treaty. No change to the Commission's sole right of (official) initiative is proposed in the draft Constitution.

A role of the European Parliament

It seems that there are indeed very good grounds for the future European law on the design of the citizens' initiative to make the Parliament the recipient of such an initiative. This gives further reason to think about how the Parliament could respond to the initiative? Should it have the right to present a modified – or even a counter-proposal to the Commission? Here one could study the modalities of the Swiss right of citizens' initiative.

Speaking about the Swiss example one of course has to confess that Art. I-46.4. in the draft EU Constitution is a very modest beginning. In Switzerland an initiative will be returned to the citizens who, in a referendum, will say the last word having also said the first. Unlike this, the proposed EU initiative will, for instance, leave it to the goodwill of the Commission whether or not to respond to the initiative by introducing the proposed law.

One has to see that the early phase of the European Union was a completely intergovernmental structure. Gradually some democratic and civic elements were introduced. If we look into the future, we will surely recognise that the citizens' initiative right was a big leap towards a citizens' Europe - if we manage to keep it alive now.

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The initiative for Europeans

The last-minute addition of a "citizen's initiative" can let fresh air into the corridors of Brussels and Europe, writes Bruno Kaufmann

Europe, Autumn 2007. A few dozen members of the campaign group "No More Prestiges" have gathered in front of the Berlaymont, the renovated headquarters of the EU Commission in Brussels. They are there to hand a legislative proposal to the EU Commissioner responsible for marine safety demanding a ban on the transport of dangerous materials in single-hulled cargo ships within EU waters, and the clear determination of responsibility in the event of accidents. The initiative committee has collected exactly 1,489,320 signatures in 18 member states.

"Too much architecture, too little content" was the recent critical comment of "Act4Europe", an umbrella group of European NGOs, on the outcome of the EU Convention. In mid-June, the assembly, composed of 105 representatives from 28 European countries, had presented its proposals for a new EU Treaty which was to be the basis for the first European Constitution. The almost 300-page text turned out not to be as easy to read as the commissioning 'clients' – the governments of the EU member states – had imagined in their courageous and famous Declaration of Laeken. At their summit meeting in December 2001, the heads of state and government had demanded an EU that was "more transparent" and "closer to its citizens".

It was a strange mixture of shock and courage which caused the summit to issue its "Laeken Declaration". The courage came primarily from Belgian prime minister Guy Verhofstadt. But the shock came from some citizens – the citizens of a supposedly EU-friendly country: Ireland. There the people had said 'No' in a referendum on 7th June 2001 – 'No' to the ugly horse-trading which had gone on six months before on the Côte d'Azur and which had for once - despite the traditional secrecy and grandiose gestures - exposed the desperate inability of the EU leaders to tackle the question of EU reform.

Too much power often makes people forget that they have to occasionally share some of it, if they don't want to lose it all. It was this scarcely novel understanding which lay behind the courageous – because very transparent – commission to the Convention. But the fact that Chirac, Berlusconi, Blair, Schröder & Co.

were not entirely happy with the whole business was shown by the choice of President for this, the second ever Convention in the history of the EU (the first one had successfully dealt with the Charter of Fundamental Rights just before the millennium). In former French President Valéry Giscard d'Estaing, the Laeken Summit had chosen a 'political old-age pensioner' to be the most senior 'founding father' of a European Constitution, a man who had always felt much more at home with elitism and centralism than with such fundamental democratic values as participation and the sharing of power. It therefore came as something of a surprise when one of those commissioning agents of Laeken, Luxembourg's prime minister Jean-Claude Juncker, referred to Giscard's Convention, at the close of its work, as "the darkest of all darkrooms".

"One or two good ideas .."

Some others have also given the first draft constitution in history for a transnational community of states rather less than a 'thumbs up'. "The Economist", which has long campaigned for a European Citizens' Constitution, asked where the 400-article text could be binned, though it did concede that it contained "one or two good ideas...". According to the Hamburg-based "DIE ZEIT", these included the "unexpected, last-minute insertion into the 'Big Book' of the citizens' initiative". Yes indeed, there they are, modestly hidden in Article 46, paragraph 4 of Part I, the freshly-plucked and still not yet sun-ripened sentences: "A significant number of citizens, no less than one million, coming from a significant number of Member States, may invite the Commission to submit any appropriate proposal on matters where citizens consider that a legal act of the Union is required for the purpose of implementing this Constitution. A European law shall determine the provisions for the specific procedures and conditions required for such a citizens' request".

What does it all mean? It's fairly safe to assume that these six lines will have provoked some debate only in the better informed newspapers; they are hardly likely to have stunned the readers of the tabloids. As 'DIE

ZEIT' correctly observed, the "citizens' initiative" was inserted in the text "unexpectedly and at the last minute" – and yet it is the reflection of a growing recognition on the part of leading European politicians that they simply can't do it on their own any longer. The model of democracy which has evolved over centuries and is limited to national borders and parliamentary sovereignty reached its high-point long ago and is now well past its sell-by date – despite being still hotly defended by people from both the Right and the Left in many countries, especially in relation to the EU, as "the only viable form of democracy". It has been abundantly clear for decades through the European integration process, which in itself questions the sole claim to power of the nation states, that the purely parliamentary model cannot work any longer: fewer and fewer Europeans are voting in the EU parliamentary elections since the first direct vote some 25 years ago.

By contrast, what has grown in importance over the last 30 years is the direct participation in substantive decision-making in the form of initiatives and referendums. After 40 referendums on Europe in 22 countries, the referendum has almost become the norm when it is a question of accession to the EU or to the Euro. There is also a growing number of countries in which citizens can have the final, sovereign, word on important questions of reform. It is now certain that there will be referendums on the EU Constitution next year in Portugal, Spain, France, Luxembourg, Ireland and Denmark. The issue of a referendum is still contentious in Germany, the U.K., Italy and most of the new member states, but there is a good chance that here too (despite what Messrs. Blair, Hain & Co. would like to think) the new partnership between the rulers and the ruled will be allowed to express itself.

A completely new dimension

The "European Citizens' Initiative" brings a whole new dimension into European politics. Until now it has been well-resourced NGOs with a strong presence in the EU 'ghetto' which had the best chances of making their mark on the growing stream of directives issuing from Brussels. Such lobby activity had little to do with democracy. So it is not surprising, then, that it was democracy initiatives from outside Brussels which over the last 18 months and thanks to a great deal of tireless work and a lot of conviction finally induced the Convention and its presidium to put some flesh on the bones of "participatory democracy". The citizens' initiative will in future allow people

all over Europe to present their own legislative proposals to the Commission – such as a ban on single-hulled tankers – and thereby help to create a European polity.

The experiences with citizens' initiative rights, which already exist in several countries, give a clear message: this "royal instrument" of direct democracy has mainly indirect consequences. In Switzerland, where 100,000 citizens can demand a change to the constitution, only very few citizens' initiatives actually succeed at the final referendum stage. But most of these citizen-initiated proposals set off processes of thinking and learning and force the established political forces to engage with issues which, for mainly financial reasons, they had previously ignored. Whereas referendums are typically used by citizens as a 'brake' on developments, the initiative right is used as an accelerator.

One thing which the experience of the direct involvement of citizens in decision-making (now being incorporated into more and more national constitutions) teaches is that their successful use depends on how they are designed. If the initiation and participation thresholds are set too high, or if referendums are given only consultative status, it is not only the specific right of participation which is discredited, but democracy itself, which obviously cannot function without the citizens. So the fact that the draft text of the European Citizens' Initiative has been somewhat vaguely – one could also say 'openly' – worded is to be welcomed. The struggle now moves to the issue of the precise design of this new tool of European policy-making.

The devil is in the detail

There will be no lack of issues for the first direct initiatives: as well as environmental and traffic issues, organisations concerned with health (GMOs, for example) and peace issues will want to use the initiative right. One thing is clear: for the time being the new initiative right will be dependent on the goodwill of the Commission, as it is up to this hybrid mixture of an independent authority and member-state representative body to feed valid initiatives into the legislative process. The Commission ought to welcome and support the citizens' initiative as an expression of "European politics" – as should the European Parliament, which should also be given a role in the new initiative process. Under favourable circumstances and with the right support the citizens' initia-

tive can help to create something which neither EP elections nor counter-summits can – the emergence of a transnational democratic polity.

Such a polity is needed at a time when more than 50% of all the laws in every member state come from Brussels. But democracy needs more than modern instruments – it also needs time: not the two weeks which are allowed for the collection of signatures for an initiative in Austria, but plenty of time: up to a year, to allow an initiative group to campaign for their issue, to debate it and to organise the collection of signatures across Europe. Everyone interested in “more European democracy” must now try to make sure that new obstacles are not placed in the way of the European citizen (the title has existed in principle since the time of Maastricht).

Pleasures in store in Copenhagen and Budapest

I look forward, perhaps in only a few years from now, to being approached by a farmer from the South Tirol in the central station in Copenhagen and asked to sign a “European Alps initiative” which he and many others have launched to put heavy goods vehicles onto trains for their journey through the Alps; or to have a discussion with a Polish Catholic woman over a beer by the Danube in Budapest on an initiative to strengthen the protection of mothers in the EU for which she is collecting signatures. That is for the future – still. But it isn’t so very far away if we can succeed in pushing even further open the window (of opportunity) which the EU Convention opened ever so slightly in mid-June. For we know that the fresh air which can stream through the window into the Brussels corridors – and into the coffee houses and living rooms from Palermo to Helsinki – will do us all good.

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The Future of the European Citizen Initiative

The historical ineffectiveness of indirect citizen initiative rights must not prevent us from establishing a participatory-friendly regulation in the EU, writes Víctor Cuesta.

The European Convention, attempting to reduce the democratic deficit of the European Union, has included in the draft Constitution the “citizen initiative”, an institutional device of participatory democracy, in the future European law-making process. This paper presents some basic deductions from the current and provisional analysis of the article I- 46.4, establishing a preliminary comparison with several existing national citizens’ initiatives. Like the Austrian, Hungarian, Italian, Latvian, Lithuanian, Polish, Portuguese, Slovenian and Spanish popular initiatives, the Europe-wide citizens’ initiative will be an indirect institution. Despite the indirect choice of the European Convention, some recommendations coming from national experiences could be drawn in order to design a relatively functional participatory device.

It is a well-known fact that the lack of democratic legitimacy constitutes a substantial problem for the European Union. The democratic deficit has been formally recognized by the *Nice Declaration on the Future of the Union* that states “the need to improve and to monitor the democratic legitimacy and transparency of the Union and its institutions, in order to bring them closer to the citizens of the member states”. In the same way, the *Laeken Declaration on the Future of the European Union* declares that one of the necessary challenges in a renewed Union is “to bring citizens, and primarily the young, closer to the European design and the European institutions”. The European Convention, conscious of this democratic gap, has included the principle of participatory democracy within the recently approved draft constitution.¹ The principle attempts to reduce the democratic deficit by proclaiming the citizens’ right to express their own views about European matters and by recognizing the voice of representative associations of civil society² in the European public debate. This is excellent news for all of us who support the implementation of the participative notion of democracy. However, participation from the bottom needs to be translated into real institutions and to have the appropriate resources if it is to be more than an intangible principle. So the addition of the Europe-wide citizens’ initiative (ECI) to article 46 during the

last session of the Convention was even better news. This citizens’ initiative is an institutional expression of direct democratic participation in the law-making process of the European Union. As far as I know, this device will be the very first juridical expression of transnational participatory democracy. So the Europe-wide citizens’ initiative could be also regarded as a success by those democratic theorists³ who are captivated by the idea of democracy and transnational democratic participation.

Indirect and direct initiatives

It must be said that the constitutional draft, and consequently the Europe-wide citizens’ initiative, may be modified during the Intergovernmental Conference in Rome next December, even if the ECI has not so far been subjected to any special critique by the European Governments. The definitive version of the Constitution must await ratification by all the member states. In addition, the participatory device will need legislative development before it can finally come into force. Despite the interim character of article 46.4, I think it is a good time to make a first approach to the future institution. In this contribution I will seek to advance a few basic deductions from the current version of the article:

“A significant number of citizens, no less than one million, coming from a significant number of Member States may invite the Commission to submit any appropriate proposal on matters where citizens consider that a legal act of the Union is required for the purpose of implementing this Constitution. A European law shall determine the provisions for the specific procedures and conditions required for such a citizen’ request”

In this article I wish to establish a comparison with several existing national citizens’ initiatives, better known as popular initiatives⁴, as regulated by the constitutions and the statutes of some European countries. A comparative law interpretation could be useful in imagining the several ways in which the Europe-wide citizens’ initiative could be legally elaborated. As we know, comparative law is a basic tool

used to inform the law-making processes and, as ZWEIGERT & KÖTZ argue, “legislators all over the world have found that on many matters good laws cannot be produced without the assistance of comparative law”.⁵

In comparative constitutional law, a popular initiative can be sent either (1) to a referendum ballot or (2) to the legislature. The former is the direct popular initiative, a classic device of direct democracy that is traditionally represented in Europe by the Swiss *popular initiative*. Swiss citizens have a strong right of initiative at the cantonal level to submit legislative drafts to popular approval and another at the national/federal level to introduce constitutional amendments subject to the Swiss people’s consent. On the other hand, we have the indirect popular initiative that may go to Parliament, which may approve, modify or reject the measure. Some indirect initiatives, mainly used in the United States⁶, can be later put to the ballot if Parliament modifies or refuses the popular request. There is a more geographically extensive kind of indirect initiative in Europe that is fully subordinated to the representative principle of democracy. Consequently, a legislative rejection will never imply a final popular vote. This very ‘soft’ version of the initiative is nowadays recognized in the Austrian, Hungarian, Italian, Latvian, Lithuanian, Polish, Portuguese, Slovenian and Spanish constitutions.⁷ This kind of initiative is not well known in political theory and is normally dismissed by the supporters of direct democracy, who do not include the institution in the category of direct democracy and consider it a simple collective petition right.

The problem with the Commission monopoly of initiative

As article 46.4 of the European Constitutional draft states that European citizens will *invite* the Commission, it seems safe to assume that the ECI will be an indirect device. In other words, the European participatory device will be *an initiative of an initiative*. The Europe-wide citizens’ initiative will be just a very first step in the law-making process which is always launched by the Commission. Here we have a specific discrepancy between the future European initiative and the national indirect initiatives, which are always sent to the legislature. This discrepancy is a logical consequence of the particular structure of the Union and its institutional balance, which assigns legislative initiative exclusively to the Commission (article I-25.2: “Union legislative acts can be adopted only on

the basis of a Commission proposal”). We should pay special attention to this difference, because in countries such as Spain or Italy the correct submission of the initiative to Parliament initiates *per se* (automatically) the law-making process, and consequently, only the representatives are authorized to decide whether the initiative is or is not politically opportune. This automatic initiation of the legislative process is the main difference between the indirect popular initiative and the right of petition. However, the ECI will need a first examination by the Commission before the definitive submission to the legislative process. I hope that this preliminary control measure by the Commission will be merely to check that the initiative is constitutional and that it satisfies the formal conditions. In my opinion, once the initiative has satisfied these requirements, the popular request should be automatically passed on by the Commission to the lawmaking process. I would argue that the initiative does not need a prior political judgment from the Commission because this kind of control will be made later by the European Council and the European Parliament.

Not for constitutional amendments

Another conclusion to be drawn from article 46.4 is that the Europe-wide citizens’ initiative will operate as a statutory initiative. The popular proposals directed to the Commission must suggest the adoption of some European legal act. We must suppose, according to article I-32, that the European citizenry will be able to design both kinds of legal acts: legislative acts (European laws, European framework laws) and non-legislative acts (European regulations, European decisions, recommendations and opinions). It is obvious from the wording of the article that the ECI will serve to develop the constitutional charter through new statutes, but it also seems clear that the initiative will not be able to promote constitutional amendments (like the Swiss initiative *populaire constitutionnelle*), review laws in force (like the Italian *referendum abrogativo*) or demand the popular approval of enacted laws (like the Swiss *referendum facultatif*). In fact, these kinds of institutions are always oriented in comparative law to popular consultation, and, as we have seen above, referendum initiatives are excluded in the ECI model. It must be said, however, that the enactment of a new European legal act proposed by a hypothetical ECI could implicitly result in the derogation of a European statute in force.

Another important point to note is that article I-46.4 does not present a list of issues excluded from the popular request. This is also the situation with the

Italian indirect initiative that was not materially restricted by its fundamental charter; this precedent is particularly important, because the initiative was not limited later by its statutory development. On the other hand, we have the Spanish indirect statutory initiative which was substantially limited by the Spanish Constitution and later on by legislation; as a consequence, this initiative cannot be used today to promote the adoption of fundamental laws, taxation, or international affairs, nor to the prerogative of pardon. Fortunately, the European Convention has not followed the restrictive Spanish option. Nevertheless, it seems obvious that our ECI will be automatically dismissed if it conflicts with any constitutional provision, and especially if the ECI promotes policies beyond the boundaries of the European competences or does not rigorously respect the charter of fundamental rights. In addition, it must be said that all national indirect initiatives are in one way or another excluded from several legislative procedures reserved for the exclusive initiative of representatives (for instance laws on the national budget). In fact, a second reading of the European constitutional draft shows the difficulties that a popular initiative will have in promoting initiatives that deal with such specific matters as common foreign and security policy, which is excluded from the ordinary legislative process and absolutely dominated by the European Council.

Which formal requirements?

It is also significant that the article does not establish any formal requirements regarding the citizen's request. We know that the ECI must be submitted as an appropriate proposal, but there is no further detail. In comparative law, national indirect statutory initiatives must normally satisfy formal requirements on the composition of the legislative draft. Usually, initiatives must consist "of a bill drafted in articles" (Italian initiative) or "must be put forward in the form of a draft law" (Austrian initiative). In contrast, the Hungarian indirect initiative does not need any formal bill from the petitioners and the Swiss direct constitutional initiative can also be formulated in general terms. It is relatively easy to draft a general initiative, but it should not be forgotten that such a general proposal would require further intervention by representatives who would draft the final version. Despite the possible difficulties in the design of a legal draft, I venture to suggest that a bill drafted in formal articles would be a more accurate and definitive support for the citizen's demands.

What we are mainly concerned with here is to compare the "no less than one million" signatures required for the achievement of ECI with the number of signatures needed to submit the other national indirect statutory initiatives in Europe. In comparative law, the number of required signatures is based either on an absolute number of national citizens or on a proportion of the voting population. The European Convention has chosen a fixed number of signatures, one million, which could in principle be increased by the future European law on ECI. This possibility seems to me rather unlikely: if we analyze previous constitutional experience, once a constitution has established a minimum number of required signatures, legislative developments have never increased it. In the table below, we can see how the European Convention has chosen a fairly low number of signatures which represent just 0.2% of the citizens of the future enlarged EU (25 members – around 480 million inhabitants). Only the number of signatures required in Italy represents a lower percentage than the European one.

TABLE 1
Indirect statutory initiative from... Population (millions)
Signatures required Percentage (%)

Latvia	2.3	10% (230,000)	10
Lithuania	\	50,000	1.47
Spain	39.4	500,000	1.26
Austria	8.1	100,000	1.23
Portugal	0.8	75,000	0.69
Hungary	10.2	50,000	0.49
Poland	38.6	100,000	0.25
Slovenia	1.9	5,000	0.26
European Union	480	1,000,000	0.20
Italy	57.6	50,000	0.08

Let us now look at the geographic distribution of the signatures. The European Convention has specified that support for the ECI must come from several member states. The future territorial distribution could be established following the Massachusetts model, where no more than 25% of the signatures may come from any one county; in other words, the proportion of signatures coming from a member state could be limited (for instance, no more than 25% of one million signatures coming from one state means that the ECI must be supported in at least five states). Another way to determine the territorial distribution is by an absolute minimum number of involved countries. If the ECI follows this option, an additional important point to be determined will be the number of signatures required in each country for it to be included in the list of the "significant number of Member States". This territorial requirement could be perceived as a logical consequence of the transnational dimension of the EU. I argue that the territorial dis-

tribution will contribute to the creation of a Europe-wide democratic consciousness and it will encourage our emerging European civil networks. However, this requirement could also be seen as a potential added obstacle to the success of the initiative; it will be very difficult for any initiative committee to organize the collection of signatures from several different and possibly widely separated member states.

Recommendations for the design

As we have seen, the future European law on citizen initiative must specify all the important details that will determine the functionality of our participatory device. The statute will be drafted by the Commission and will be adopted according to the normal legislative procedure (article III-298 of the Constitution). We have reason to be especially concerned about this future law, because previous national experience has shown that the popular initiative has usually been restricted when the national legislature has come to determine its legal status. In the table below I attempt to summarize some basic points which should be taken into account:

legal requirements: only one of the five initiatives debated was ultimately adopted.⁸ This historical ineffectiveness must not prevent us from establishing a participatory-friendly regulation. The practical influence of the ECI in European politics will also depend a great deal on citizens' interest in European politics and the positive attitude of institutions towards participation. Despite the subordinated nature of the ECI, it must be stressed that the exercise of European participatory devices could, at last, contribute to citizens' involvement in European affairs, thus strengthening the levels of legitimacy of European democracy.

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Legal provisions regarding... More functional ECI Less functional ECI

Time period allowed for collection of signatures Long period Short period
 Number of countries which must support the initiative Low number High number
 Minimum number of signatures that must be collected in each country No minimum High minimum number
 Verification of signatures Presumed valid – random sampling verification Full certification
 Formal requirements of the bill Legislative draft Drafted in general terms- single subject Excluded issues? No explicit restriction List of issues explicitly excluded
 Legal status of initiative committee - Right to defend the request during the whole law-making process.
 – Right to withdraw the initiative if essential changes are introduced by representatives

- Right to be fully compensated for the costs incurred during the campaign - No intervention granted.
- No access to ECI once it is submitted to Commission.
- No reimbursement or only partial reimbursement.
 Evaluation by the Commission Technical evaluation
 Political evaluation
 Period of time for Commission to evaluate the ECI Short period Long period
 Judicial review in case of the Commission's rejection Fast judicial review No judicial review
 Period of time for legislature (Council/Parliament) to act on the ECI Short period Long period

Learning from the lessons in memberstates

It is undeniably true that national indirect initiatives have not been at all an effective way of translating citizens' requests into statutes. In Italy, out of approximately 105 popular initiatives submitted to legislature, only 8 have been enacted; in Spain, the rate of success is especially low at the national level: out of 32 initiatives, only 5 have passed all the obstacles to be debated in the legislative plenary session. The proposals have normally failed due to the cumbersome

Notes

- 1 According to DE SCHUTTER, participatory democracy is based "on the action of interest groups and citizens' initiatives: people belong to groups that build up expert and grassroots knowledge of the social issues in question. These bodies also participate in public information and communication processes, so helping to create a general perception of the common good." DE SCHUTTER, O., "Europe in Search of its Civil Society", *European Law Journal*, 2002, 8, 2, p. 202.
- 2 Civil Society is defined by the working group "Consultation and Participation of Civil Society" in the White Paper on European Governance, borrowing the definition given by the Economic and Social Committee in its Opinion of 22 September 1999: "Civil society organizations include: the so-called market players; organizations representing social and economic players, which are not social partners in the strict sense of the term; NGOs which bring people together in a common cause, such as environmental organizations, human rights organizations, consumer associations, charitable organizations, educational and training organizations, etc.; CBOs (community-based organizations), e.g. youth organizations, family associations and all organizations through which citizens participate in local and municipal life; religious communities."
- 3 The introduction of participatory devices at a transnational level is mainly supported by the cosmopolitan theory of democracy that is mainly represented by HELD and ARCHIBUGI: "What is needed now is the participation of new political subjects. According to the cosmopolitan project, they should be world citizens, provided with the institutional channels to take part and assume duties vis-à-vis the global destiny. ARCHIBUGI, D., "Principles of Cosmopolitan Democracy", in ARCHIBUGI, HELD, KÖHLER (ed.) *Re-imagining Political Community*, London: Polity Press, 1998, pp. 223- 224.
- 4 The abundant sort of popular initiatives in force in Europe could be included in this definition: the popular initiative is a device of direct democratic participation which allows a certain number of citizens to propose, either to legislature or to people entitled to vote through referendum, the adoption, approval, reform or abrogation of a legislative or constitutional rule by bearing a petition with a required number of valid signatures. CUESTA, V., *La iniciativa popular en el derecho constitucional europeo comparado*; LLM theses, Florence: European University Institute, 2002
- 5 ZWEIGERT and KÖTZ, *Introduction to comparative law*, Oxford: Clarendon, 1987, p. 15
- 6 The indirect initiative is used to submit legislative measures in Alaska, Maine, Massachusetts, Michigan, Nevada, Ohio, Utah, Washington, and Wyoming. The indirect initiative can be used to promote constitutional amendments in Massachusetts and Mississippi.
- 7 **Austria** (article 41.2): "Every motion proposed by 100,000 voters or by one-sixth each of the voters in three States shall be submitted by the main electoral board to the House of Representatives for action. The initiative must be put forward in the form of a draft law." **Hungary**: (article 28-D): "At least 50,000 voting citizens are required for a national popular initiative. A national popular initiative may be for the purpose of forcing the Parliament to place a subject under its jurisdiction on the agenda. The Parliament shall debate the subject defined by the national popular initiative". **Italy** (article 71): "The people may introduce public initiatives consisting of a bill drafted in articles and supported by at least 50,000 voters". **Latvia** (article 65): "Draft laws may be submitted to the Parliament by the President, the Government or committees of the Parliament, by not less than five members of the Parliament, or, in accordance with the procedures and in the cases provided for in this Constitution, by one-tenth of the electorate". **Lithuania** (article 68): "The right of legislative initiative in the Seimas shall belong to the members of the Seimas, the President of the Republic, and the Government. Citizens of the Republic of Lithuania shall also have the right of legislative initiative. A draft law may be presented to the Seimas by 50,000 citizens of the Republic of Lithuania who have the electoral right, and the Seimas must consider such a law". **Poland** (article 118): "The right to introduce legislation shall also belong to a group of at least 100,000 citizens having the right to vote in elections to the House of Representatives (Sejm). The procedure in such matters shall be specified by statute". **Portugal** (article 167): "The power to initiate laws and to propose referenda lies with Deputies, parliamentary groups and the Government, and further, in accordance with the terms and conditions established by law, with groups of electing citizens; the power to initiate laws with respect to the autonomous regions lies with the appropriate regional legislative assembly". **Slovenia** (article 88): "Laws may be proposed by the Government or by any deputy. Laws may also be proposed by at least five thousand voters". **Spain** (article 87.3): "An organic law shall regulate the forms and requirements for the exercise of the popular initiative for the presentation of proposals of law. In any case no fewer than 500,000 valid signatures will be required. This initiative is not applicable to organic laws, taxation, or international affairs, nor to the prerogative of pardon".
- 8 The Spanish popular initiative enacted was related to the legal regime of housing rent debts. In Italy the popular proposals approved were associated with institutional reforms (parliamentary election system), public health (organs transplant), welfare (retirement funds), housing (renting system), education (general law on education system) and environmental protection (hunting).

How much extra democracy?

A locomotive with a few carriages but with no network of tracks doesn't make a railway system writes Andreas Gross

Johannes Voggenhuber, Austrian Green representative of the European Parliament in the Convention on the Future of Europe and a man not exactly suffering from an surfeit of democracy in his own country, writing in "Die Zeit" on 26th June 2003 (p.8), described the outcome of the 18-month long negotiations of the Convention's 210 MPs and ministers from 28 different countries – the draft European constitution – as "an epoch-making pioneering event". The text of the constitution which was developed under the rather aristocratic aegis of Convention president Giscard d'Estaing in what the prime minister of Luxembourg referred to as "the darkest of all dark-rooms", is given top marks for participative democracy by Voggenhuber, who described it as "the first republican founding order of a supranational democracy".

I would like to give Johannes Voggenhuber the benefit of the doubt and believe that he genuinely wants and is now committed to a 'pioneering' European republican draft constitution. Nearly ten years ago, before Austria had joined the EU, I happened to share a platform with him in one of a series of events organised by the Greens in Salzburg. I argued for a federalistic European constitution with direct-democratic elements: Voggenhuber dismissed the idea then as idealistic and impractical. It's good to see that the opinions of European politicians are capable of change, but does the Convention's draft constitution really deserve such high marks for democracy?

The question does not imply any vehement criticism of the Convention. This second convention in the history of the EU - the first one working around the Millennium to draft the EU's Charter of Fundamental Human Rights, which the second convention wishes to see acquire legal force through its inclusion as an integral part of the new constitution – certainly represented progress in terms of the way the EU is evolving. Hitherto, that evolution was almost exclusively the monopoly of the heads of state and government, taking place behind closed doors at important 'inter-governmental conferences' and involving lots of late-night sessions and sloppy compromises – a way of

working which many European citizens simply no longer accept as a legitimate method for founding the European Union, especially after the infamous long night in Nice.

The heritage of Laeken

The second convention was born out of what was perhaps the most self-critical declaration ever made by an IGC: the declaration of Laeken at the end of 2001. Under the dynamic chairmanship of the genuinely radical liberal Belgian prime minister Guy Verhofstadt, the IGC beat its collective breast and admitted that the majority of citizens saw the EU as too elitist, too technocratic and much too centralistic and that it therefore had to be rethought and recreated from top to bottom (or, rather, from bottom to top).

But can a 'constitution' which doesn't have to be approved by the citizens whose lives will be affected by it, really be the foundation stone of a new 'republican' order? Can a democracy in which the ministers still retain legislative powers be really 'republican'? And is a "popular initiative right" which can only trigger a legislative initiative from the Commission and which contains no guarantee that the European Parliament will endorse the initiative, nor that the citizens of Europe will be allowed to vote on it, really sufficient to justify honouring this political system with the title 'republican'? The expression "popular initiative" is correct in the German sense of the word 'Volksinitiative', for in the federal states of Germany, a "popular initiative" is only the first, preliminary stage of the citizens' right of submission i.e. the right to launch an initiative can lead on to the second stage of a full submission and then still further to a binding referendum (once all the necessary conditions have been met). Within the Swiss context, the "popular initiative" proposed by the Convention is really only a kind of "popular motion" ('Volksmotion') which obliges the parliament to consider a legislative proposal – without the assurance that there will be a subsequent referendum. The proposed minimum

number of signatures - not even 0.1% of the post-2004 EU electorate – is almost exactly the same percentage required for a “popular motion” in some of the Swiss cantons (Solothurn, Schaffhausen, soon also Zürich and Basel).

Republican and democratic

We need to look a little more closely here at the term ‘republican’. It is even older than the term ‘democratic’ and was in fact used at the time of the French Revolution as a synonym for democracy. Today, it is probably most usefully linked to Abraham Lincoln’s motto – which the democracy movement in the Zürich of the 1860’s also took up – according to which everything in a genuine democracy happens “through, with and for the people”, as opposed to the liberal understanding of politics and democracy in which it is sufficient for those who consider themselves the elite (the ‘best’ in society) to intend the best for the rest – the people.

But it is this liberal, elitist political paradigm which has remained dominant in European politics even well into the period of social democracy. My most shocking experience of this came at the end of January this year in the Council of Europe, during yet another debate on the contribution of the Council to the European constitution. I suggested a small addition to the draft resolution, proposing that the Council of Europe should ask the EU Convention not to call its draft text a ‘constitution’ unless it was prepared to submit it for approval by all the citizens of Europe in a referendum, preferably in a ‘double referendum’, in which the majorities of citizens and states would be counted separately.

The then rapporteur of the Council of Europe, the former Greek foreign minister Theodoros Pangalos, rejected my request on grounds which appeared not to disturb the majority of the assembled Council of Europe parliamentarians as they did me. Pangalos said that he was sure that I was aware that a constitution was a rather complicated affair which included matters which were simply too complicated for ordinary people, which was why they could not be allowed to decide on it in a referendum – as if a constitution does not derive its soundness, its persuasiveness and its legitimacy precisely from the fact that it is the expression of the citizen’s self-awareness of his or her rights, which can only come about if that constitution has been approved by the majority of the people in a referendum and if they have been allowed to have their say in the whole constituent process.

This is precisely the reason why for far too long there was a reluctance in the EC and the EU to have anything to do with a constitution. Some maintained that the EC treaties were sufficient in themselves and were already ‘constitutional’ in nature. International treaties are just that - treaties between states - usually ratified by parliaments, only very rarely by the people. But constitutions are agreements – contracts – made by the citizens themselves: they cannot exist without this popular element, as little as a fish can live without water. Others were of the opinion that a constitution necessarily implied a state – as if cantons and Länder did not also have their own constitutions. They are the source and legitimation for all political power and more than appropriate in the case of the EU itself, which today enjoys greater legislative power than most member countries of the EU. In the last two years, many – perhaps even too many – have started talking of the need for an EU constitution, without being really prepared to pay the proper price for one: citizen-initiated referendums and the manifold involvement of the citizens in decision-making processes.

Getting on board for a genuine constituent process

In my opinion, the only really valid objection to an EU constitution derives from the need for an appropriate change-over period to manage the transition from the treaty mode to the constitutional mode. The problem is that the ‘rules of the game’ can only be changed by means of the ‘old’ rules: the current treaty can only be replaced by another treaty, which would shape the entry into the new constitution-forming process – out of which alone a true constitution could emerge. This far more than merely theoretical problem is most apparent in the fact that neither the Convention nor the IGC can institute a Europe-wide, single or double, referendum on the draft constitution. For according to the current inter-state treaties, any changes to treaties lie within the competence of the separate member states; before any Europe-wide referendum could take place, therefore, it would have to be authorised through a new treaty, which would then have to be accepted by each member state in line with its own national laws.

The ‘tidiest’ solution from a democratic point of view would thus be the modest – but in the long run possibly the most ambitious – suggestion, according to which the Convention should have proposed a new treaty to get the real constituent process moving.

That new treaty could, for example, have stipulated that one year after its adoption, all the citizens of the EU would directly elect a constitutional convention - which members of the European and national parliaments could join, which would be charged with working up a draft constitution in consultation with the citizens - in at least one or two "consultations" (Vernehmlassungsperioden). This draft constitution would then have to be accepted by the citizens of the EU in a double referendum (a simple majority of the citizens and a two-thirds majority of the states) held on the same day throughout the EU, before it could enter into force. One could also imagine that the new treaty would include a provision for a constitutional initiative triggered by a minimum of perhaps 3% - 5% of EU citizens and that the constituent process could only be launched by such an initiative. (This is not a new idea: it was first proposed by Theo Schiller in the Realotopia book on "Transnational Democracy" published in 1995 and based on a seminar held in Marburg).

When I repeated this suggestion to Voggenhuber earlier this year during a Dreisat TV debate in Baden-Baden, he responded angrily that this simultaneously modest and ambitious proposal would disrupt the current forward momentum of the EU and that it was completely unrealistic.

Pioneering 'citizens' initiative'

I would not, of course, describe the Convention's proposed initiative right as 'republican'. That would be tantamount to claiming that a locomotive and a few carriages were sufficient to operate a railway system - even if there were as yet no tracks. Some might argue that tracks were not essential; that the locomotive could, if necessary, also drive along the streets.

Nonetheless, despite my reservations, I do consider the "citizens' initiative right" included in the draft constitution to be "pioneering". For the very first time, it gives EU citizens a tool with which they can apply leverage to the EU institutions to take binding decisions. It also legitimates the citizens' right to take action, to collect signatures, to develop valid proposals and submit them. So this new right could very well be pioneering, because it could allow us, for the very first time, to demand and debate a genuinely binding constituent process, with a real citizens' initiative and real citizen-initiated referendums: now that would begin to deserve the title 'republican'! And if we can get so far as to have several million EU citizens from

all the member states signing the submissions to bring this about, it is difficult to imagine that such an expression of popular will could be ignored, even if in formal terms the initiative right only invites the Commission to consider launching its own legislative initiative.

In this sense, the Convention's proposal contains a genuinely new democratic lever, which in the hands of committed EU citizens could really help us get the locomotive and its carriages onto a more 'republican' track in the politics of the EU. That is why it is to be hoped that this last-minute addition to Giscard's constitutional text survives the next IGC intact.

We need it to survive, because with it we can take the process of democratisation further. As Joachim Fritz-Vannahme rightly observed in "Die Zeit" of 18th June, the draft constitution doesn't represent "a revolutionary act, such as 1789. It is a process which will hopefully further a good deal of progress". The process is not yet republican: only in Ireland and Denmark is it obligatory for the people to be asked to give their approval. Referendums appear likely in Austria, Portugal, Spain, the Netherlands, Luxembourg and probably also Belgium and France - but they are by no means guaranteed. The European project will only become genuinely republican when - perhaps using the new 'lever' - citizens can really take it into their own hands. In doing so, they would also be able to strengthen the EU institutions, a goal which the Convention itself has only partly achieved.

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Why Europe needs referendums

When the European Union faces a legitimacy crisis, a way to respond is to allow all EU citizens to vote on matters affecting their future – even across national boundaries, writes Dan O’Brien and Daniel Keohane.

Europe’s rulers and ruled have less in common on the European Union than on any other issue. Surveys show popular support for the Union at close to a twenty-year low. In some member countries there is clear unease at the direction of the European enterprise; in more, there is a studied lack of interest; in none do people take to the streets demanding ‘more Europe’. But popular sentiment contrasts starkly with elite opinion. Almost every conventional political party in almost every country from the Atlantic to the Urals believes EU membership to be good.

Some argue that the EU will earn greater legitimacy by doing what it is tasked to do more effectively. They say that even if people neither love nor trust the Union, they will warm to it provided it delivers the goods.

But this approach is flawed. Effectiveness does not by any means guarantee legitimacy. In Europe’s case it can even undermine it – many citizens perceive Brussels to be peopled by ruthlessly efficient Eurocrats who already have too much power over their lives. No matter how misplaced this perception (elected ministers and parliamentarians make all EU law, not civil servants), the EU has become a sufficiently important pillar of governance in Europe to warrant concern about its cracking legitimacy foundation.

In recognition of the EU’s growing importance, a new “constitutional treaty” for the Union will be agreed by 2004. If legitimacy is to be strengthened there is a compelling case to include provisions to give a direct role to the citizens of Europe, by means of referendums on treaty changes, starting with the constitution itself. And with 88% of the delegates to the European Convention – the body drawing up the EU constitution – advocating a vote on their proposals, there is considerable support for such a development.

Referendums: bringing light and life to politics

Referendums have their deficiencies, but they can also accomplish five things.

First, they generate understanding and encourage participation by focusing attention on the EU and its workings. Europe’s politicians often complain that when they talk about Europe they find that electorates show little interest. This is unsurprising. The issues that most trouble voters – public services, employment and crime – are still decided largely at the national level. The EU’s most important functions – such as the single market, international trade negotiations and competition policy – are technical and unglamorous, even if central to modern governance. Because these issues have limited salience, they are eclipsed at election time.

Referendums specifically on the EU are the only way of putting the Union and what it does at political centre-stage. This should be welcomed, not feared, by integrationists because there is a mountain of evidence to show that the more people know about the EU, the more they like it.

Second, the light cast by referendums also explodes many myths about the EU. The top-down nature of the EU and its complex functioning are a gift to opponents of integration, as well as to populists, political opportunists and conspiracy theorists. As the moderate centre is often reluctant to engage with such elements, the result is that the (usually wrong) charges against the EU go unchallenged and often seep into the public consciousness.

Referendums force the political centre to confront directly those who play on people’s fears – of foreigners in distant capitals foisting decisions on powerless citizens – in a way that simply does not happen in any other context.

Third, referendums inject a dose of human drama into the technocratic machinery and arid theory of EU integration. “If you want a crowd, start a fight” said P.T. Barnum, the 19th century showman. The vibrant controversy of real political argument is not only informative and engaging, it associates identifiable people with the project and does much to counter

the argument that Europe is run by “faceless” bureaucrats.

Fourth, referendums also appeal to modern assertive electorates. Increasingly educated and empowered citizens demand to be in control; deference towards those in positions of power is dead. The “we know best” approach to integration has been fairly successful thus far, but to continue with it would only invite a backlash from voters who trust their own instincts before politicians even when they know they are less than fully informed. By putting power in the hands of voters, people have the reassuring sense that they have the final say on further integration.

The accession referendums in candidate countries – most recently Lithuania, Slovakia, Malta, and Poland – have helped legitimise the decision to join. But as a way of rebuilding eroded legitimacy in countries that have long been members, Ireland’s experience in two referendums on the Nice treaty is probably most apposite.

In the first referendum on the Nice treaty in mid-2001, a low turnout (only one person in three voted) saw the treaty narrowly rejected, to much surprise in Ireland and abroad. For the second, last-chance referendum in October 2002, pro-EU forces – fearing a second and final rejection – came out in greater numbers. Irish integrationists, forced to unlearn their impenetrable euro-jargon, were obliged to explain to voters in plain language not only the advantages of Nice, but why the EU continues to be in their interests.

As the poll approached, the EU was discussed as never before. In the media and in public meetings, advocates and sceptics debated arcane matters – qualified majority voting, enhanced co-operation, veto power, defence obligations (Ireland’s neutrality was a passionately contested issue) – that would not be voiced even at European Parliament elections. By polling day the issues were understood and fears assuaged. The end result was a doubling of the vote in favour. The treaty was passed by close to a two-thirds majority.

All on board the Euro-express

In the case of the Irish referendums, as in other equivalent exercises, there is however a mismatch between those who *actually* voted (the Irish people) and those *affected by the outcome of the vote* (the citizens of the present EU plus the accession countries). If the

Irish had voted ‘no’ again, the entire Nice treaty would have been aborted. There is surely something undemocratic about 4 million people deciding the political future of 430 million.

It is time to establish a guiding principle: all Europeans should vote on European constitutional changes. The equivalent of this happens in fully-fledged federations, such as Switzerland and Australia. In both countries a change to the constitution must have a double majority – both of states and of voters. Such a model, adapted to include super-majorities to prevent domination by large states, is the best available option to bring the EU and its peoples closer.

Aside from the usual referendum suspects - Denmark and Ireland - most other governments have indicated that they will also probably hold referendums on the new EU constitutional treaty. That is a step in the right direction. But to address the EU’s embryonic legitimacy crisis, *all* Europeans should have their say. Only then will the EU be able to claim to represent its citizens as well as its elites.

**This essay was first published as part of an ongoing open Democracy debate on the Future of Europe on the global affairs website www.opendemocracy.net. Daniel Keohane is a research fellow at the Centre for European Reform. Dan O’Brien is a senior editor at the Economist Intelligence Unit. He specialises in European politics and economics.*

The Citizens' Initiative as a "Popular Motion" in Switzerland

Known as the 'General Citizens' Initiative', or 'Popular Motion', a new citizens' right was approved by Swiss citizens in a referendum on 9th February 2003, despite having been strongly criticised in the run-up to the referendum, explains Bruno Vanoni.

The most disputed of the package of constitutional amendments aimed at reforming citizens' rights and approved by the Swiss people on 9th February 2003 was the so-called 'General Initiative'. For the very first time at the federal level, the new instrument would make it possible for citizens' initiatives to trigger not only constitutional, but also legislative change. But the 100,000 signatures required for the initiative would secure only the right to present a general demand: parliament would be responsible for translating the general proposal into a specific constitutional or legislative text. If parliament were to be unfaithful to the original intention, the Supreme Court could be asked to intervene.

A new right of initiative

This combination of citizens' demand, parliamentary decree and a possible referral to the Supreme Court is designed to ensure that initiatives feed into the legislative process in the most constructive way – and also that they do not conflict with international commitments. The new instrument was first proposed 25 years ago by the legendary commission of experts headed by the then president of the Federal Council Kurt Fugler and which recommended a complete revision of the federal constitution. At the time, the new measure – known as the "unitary initiative" – received broad support.

The right-wing nationalist Swiss People's Party (SVP) was so taken with the idea of the 'unitary initiative' that in 1982 it put forward a motion in Parliament proposing that the new initiative be incorporated into the proposed new constitution. When the total revision of the constitution didn't happen, the SVP group demanded in 1987 that the new initiative right be implemented without further delay. Parliament agreed unanimously to have the necessary constitutional amendments drafted. But in 1991 it came to the conclusion that the reform was too complicated.

Only the SVP refused to perform the required U-turn. Having voted almost unanimously for the new initiative last October, the SVP did its own U-turn and opposed the measure when it was included in the February 9th package.

For much of the referendum campaign, the fact that what was being proposed as an innovation at the federal level was already in regular use in seven cantons, went unnoticed. None of those who opposed the initiative seemed to have taken the trouble to check whether the claimed objections were actually borne out in practice by the experience at the cantonal level. While those on the right complained that the new citizens' right was too complicated, those on the left claimed that it wouldn't be used, because it wasn't attractive enough: it required the same number of signatures as for a detailed constitutional initiative.

"Remarkably successful"

The independent Swiss "Tages-Anzeiger" newspaper did a stock-take and discovered that the new initiative right appeared to be much better than its reputation. In those cantons which already have it (under a variety of names), it is used surprisingly often and appears to work pretty smoothly. It has apparently been "remarkably successful" in the canton of Jura, the first to introduce it. As legal expert Aldo Lombardi established in a 1990 study for the Federal Justice Department, all the unitary initiatives presented during the '80s were accepted both by the cantonal parliament and subsequently by popular referendum. Since 1981, a total of 21 unitary initiatives has been submitted in Jura – about one a year.

To be sure, this newest of Swiss cantons is something of an exception in respect of citizens' rights, having only the generally formulated unitary initiative which parliament then has to convert into a formal constitutional or legislative proposal. Jura has neither the

detailed legislative initiative, which all other cantons have, nor the detailed constitutional initiative, which is otherwise the norm at both cantonal and federal levels. Interestingly, the unitary initiative is regularly used even in those cantons which also have the detailed initiative right.

Frequent use

In Baselbiet (the rural area around Basle), Thurgau and Basle City, where the new initiative right was introduced in 1987, 1990 and 1991 respectively, people use almost identical numbers of unformulated and formulated initiatives. Since 1992, there were 11 unformulated and 13 formulated initiatives in Baselbiet; since 1990 three each of the detailed draft proposals and the general initiative in Thurgau. In Basle City, the unformulated initiatives have been more popular than the formulated ones: 15 unformulated initiatives were launched, of which 8 were submitted, while the corresponding figures for formulated initiatives were 12 and 5.

In the canton of Geneva, which introduced the unitary initiative in 1993 with an 83.4% 'Yes' vote, 9 unformulated initiatives have so far been launched, of which 6 were submitted. According to Patrick Ascheri, department head in the federal chancellor's office, this represents around a third of all the cantonal initiatives.

It is only in the cantons of Wallis and Bern that no use has been made of the unitary initiative since it was introduced there in 1993 and 1995 respectively. There are simple reasons for this: in Wallis there have been no citizens' initiatives of any kind since 1990; and in Bern people prefer to use the 'Volksvorschlag' (popular proposal), a local specialty which under its other name of the 'constructive referendum' has just been rejected at the federal level.

Clear popular approval

Leaving aside the two special cases of Bern and Wallis, cantonal experience with the general/unitary citizens' initiative has been surprisingly good. According to Robert Heuss, director of the cantonal chancellor's office in Basle, the only plausible explanation for the frequent use of the unitary initiative lies in its 'citizen-friendliness': "People who want to launch an initiative and put a new political idea into the public realm don't have to produce a legally per-

fect constitutional or legislative formula."

To the amazement of the political establishment, the Swiss people voted by a large majority of 70% to approve the introduction at the federal level of what has worked so well in the cantons. All the cantons also voted in favour of the constitutional change. On the other hand, the change was approved with the lowest turnout for a national referendum in 30 years – only 28% of the electorate turned out to vote.

A sample poll of electors conducted by a well-known polling company after the referendum revealed that only the most politically conscientious voters had taken part. There was an above-average strong 'Yes' vote from women and people from rural areas. A majority of the supporters of both the SVP and the Social Democratic Party (SP) – both represented in government and both having recommended a 'No' vote – actually voted in favour.

Parliament has already implemented most of the constitutional changes agreed by the citizens' rights reform referendum. But the new General Citizens' Initiative tool will only be able to be used once the detailed legislation has been drafted and approved. The government is expected to present its proposals to parliament over the course of the next year. In a recent report, the relevant parliamentary committee referred to "a number of tricky procedural problems" which might well lead to some "intense debates". The prediction is that the new citizens' initiative will not come into force before 2006.

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Worth the paper they're written on?

Paul Carline calls for constitutions to be taken seriously

Families don't have constitutions, hunter-gatherer tribes don't have them (at least not written ones, though they certainly have well-defined rules of behaviour), but enormous numbers of other kinds of organisations do have them – from tennis clubs to amateur dramatic societies to all kinds of businesses, national and international charities and NGOs – and, of course, states.

In simple terms, constitutions define and regulate the principles, aims, structure and internal and external relationships of all these very different organisations – most of which take their constitutions very seriously. They have a legally binding character and failure to abide by the constitutional rules can have very serious consequences, both for individual members of the organisation and for the whole organisation. Lack of respect for the constitution can mean dismissal of the organisation's officials and even the enforced winding up of the organisation itself.

In a real sense, a constitution has a similar quality to the oath given in court "to tell the truth, the whole truth and nothing but the truth, so help me God", traditionally made with a hand placed on a Bible. In this sense, constitutions can and should be considered 'sacred'. It is therefore not surprising to find indications of this sacred quality in the wording of the preambles and first articles of many constitutions – "By the will of the Most High..." (Chechnya); "...aware of our responsibility before God, our own conscience, past, present and future generations..." (Ukraine); "Conscious of their responsibility before God and men." (Germany); "In the name of God Almighty!" (Switzerland); "In the name of the Holy and Consubstantial and Indivisible Trinity..." (Greece); "In the name of the most holy Trinity..." (Ireland).

In this age of multiculturalism, specific reference to a divine source of authority is now frequently avoided. Nonetheless, the sense of a 'sacred' commitment to fundamental and deeply-held values still imbues most constitutions: "Confirming our adherence to values common to all mankind..." (Belarus); "...proceeding from the high responsibility towards present and

future generations..." (Chechnya); "... pledging our loyalty to the universal human values of liberty, peace, humanism, equality, justice and tolerance..." (Bulgaria); "in the spirit of the inviolable values of human dignity and freedom, as the home of equal and free citizens who are conscious of their duties towards others and their responsibility towards the whole..." (Czech Republic); "... all citizens of the Republic, both those who believe in God as the source of truth, justice, goodness and beauty, as well as those not sharing such faith but respecting those universal values." (Poland); "the central role of the human person and his inviolable and inalienable rights" ... and the wish to "strive for peace, justice and solidarity" (draft EU constitution).

One of those values which approximately 80% of the constitutions of the countries of 'greater' Europe agree on is the principle of popular sovereignty, commonly stated in the very opening articles of the national constitutions in variations of the phrase: "All state power derives from the people". It is such a common and starkly expressed principle that it is worth quoting these variations: "Sovereignty in the Republic of Albania belongs to the people"; "The people are the source of all power. National sovereignty belongs exclusively to the people. The constituent power belongs to the people" (Algeria); "In the Republic of Armenia power lies with the people"; "Its law emanates from the people" (Austria); "The sole source of state power are the people of Azerbaijan"; "The people shall be the sole source of state power" (Belarus); "The entire power of the state shall derive from the people" (Bulgaria); "Power in the Republic of Croatia derives from the people and belongs to the people"; "All state power derives from the people" (Czech Republic); "...the supreme power of the state is held by the people" (Estonia); "The powers of the state in Finland are vested in the people"; "National sovereignty belongs to the people" (France); "The people are the sole source of state power" (Georgia); "All state authority emanates from the people" (Germany); "All powers are derived from the People [and] exist for the benefit of the People" (Greece); "...supreme power is vest-

ed in the people" (Hungary); "All powers of government, legislative, executive and judicial, derive, under God, from the people" (Ireland); "Sovereignty belongs to the people" (Italy); "The sovereign power... is vested in the people (Latvia); "Sovereignty shall be vested in the people" (Lithuania); "The sovereign power resides in the Nation" (Luxembourg); "Sovereignty ...derives from the citizens and belongs to the citizens" (Macedonia); "National sovereignty resides with the people (Moldova); "Supreme power ... shall be vested in the Nation" (Poland); "Sovereignty, one and indivisible, rests with the people" (Portugal); "National sovereignty resides with the Romanian people" (Romania); "The multinational people of the Russian Federation is the vehicle of sovereignty and the only source of power" (Russia); "Power shall be vested in the citizens" (Serbia/Montenegro); "State power is derived from citizens" (Slovakia); "Power is vested in the people" (Slovenia); "National sovereignty belongs to the Spanish people, from whom emanate the powers of the state" (Spain); "All public power in Sweden proceeds from the people" (Sweden); "The people are the bearers of sovereignty and the only source of power" (Ukraine).

" few constitutions place specific sanctions on any attempt to usurp the people's ownership and use of state power: "No part of the people, no political party nor any other organisation, state institution, or individual shall usurp the expression of popular sovereignty" (Bulgaria); "The usurpation of state power constitutes the gravest crime against the people" (Moldova).

In practice, of course, political elites conveniently forget their constitutionally subordinate roles, as Kofi Annan observed, with the result that most European 'democracies' qualify for the label famously awarded to the UK by the former British Conservative cabinet minister Lord Hailsham: that of an "elective dictatorship" (and not even a benevolent one!). I hope that it was not with a sense of irony that the EU Convention chose the quotation from Thucydides as the motto of the draft EU constitution: "Our constitution is called a democracy because power is in the hands, not of a minority, but of the greatest number".

As the potential founding moment of a new constitutional relationship between the peoples of Europe draws near, it is perhaps time for those peoples to reclaim the popular sovereignty their national constitutions accord them and to insist not only that the principle of popular sovereignty also be inscribed in

the new EU constitution, but that this principle be treated with the respect it deserves – also in day-to-day political practice. Perhaps the Moldovan principle – that the usurpation of state power "constitutes the gravest crime against the people" – should be included in the new EU constitution, and backed up by the authority of a European Constitutional Court. If popular sovereignty means anything, and if constitutions are to be worth rather more than the paper they are written on, it is the people who have the ultimate right to decide on the shape and power of the institutions they choose as the guardians of order and justice. It is no longer acceptable for political elites to maintain structures of power which place 'the state' in a position of unquestioned dominance – unless the people have specifically given their permission for this i.e. the structure of the state must be open to regular review and approval by the people, who have a right to more than a pseudo-choice between increasingly similar political parties. As Kofi Annan observed: "True democratisation means more than elections. People's dignity requires that they be free – and able – to participate in the formation and stewardship of the rules and institutions that govern them" (2002 UNDP World Development Report).

Constitutions need to be treated with the respect they deserve – but that doesn't mean preserving them in aspic. They also need to be open to change to reflect the continually rising standards of democracy. The EU constitution is a chance to incorporate the very best of all the constitutions of its member states: we should be aiming for the highest statement of principles possible – and the first principle (from which all else should follow) must be the principle of popular sovereignty.

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1. A table showing the precise wording of these principles in the various European constitutions can be found in the Appendix of "Transnational Democracy in the Making"

The Europe-wide Constitution Referendum

Jürgen Meyer and Sven Hölscheidt present three options for a constitutional citizens decision on Europe

Acceptance of the European Constitution, which the European Convention has drafted, signifies a change in the existing treaties which would take effect after it has been ratified by all the member states according to their constitutional provisions (Art. 48 ' 3 EU). Acceptance referendums would be carried out in those states in which there is the necessary provision. Incorporation of a referendum provision in the European Constitution – a provision which could then be used for the ratification of the Constitution itself – would only be possible by prior amendment of the treaties according to the formal amendment procedure set out in Art. 48 EU before the acceptance process for the European Constitution is begun. Such an amendment prior to ratification of the Constitution is impractical on time grounds alone. Nor would it be possible to create a legal basis for obliging the member states to carry out a referendum by using secondary Community law. There is neither a specific authority to do so, nor could the competences provided for in Art. 308 (for complementing treaty provisions) be used for this purpose.

The only means by which a Europe-wide direct participation of the citizens of the EU in the ratification of the European Constitution could be achieved would be if the Convention were to issue a recommendation to the member states to provide for the acceptance of the Constitution by means of a referendum. The recommendation could contain a request to the member states to make the necessary arrangements for carrying out such referendums. In addition, the Convention could work towards a commitment by the next IGC (which will be convened after the Convention's work is concluded) to a shared goal of ratifying the European Constitution by referendums in as many member states as possible. This would not create a legal obligation, but could induce a political commitment.

The European Constitution can make it a requirement that changes to the Constitution come into force only when they have been ratified by all the member states according to their own constitutional provisions, which include the provision for referendums.

This would be a permissible requirement of EU law, which the national law of the member states would be obliged to follow. The actual arrangements for the referendums would be within the competence of the member states. The legal foundation for such a Europe-wide referendum carried out separately in each member state would have to be created in those states which do not already provide for referendums. A second option would be to create a provision whereby changes to the European Constitution would have to be ratified by the citizens of Europe in Europe-wide referendums in addition to the process of ratification by the member states in line with their own constitutional provisions. This would be a European referendum, carried out in all the member states simultaneously, not organised uniformly, but according to the different rules in each country. This would be analogous to the current provisions for elections to the European Parliament. The third option would be that the European Constitution would allow changes to itself only by means of a referendum provision included in the Constitution. Changes to the Constitution would then come into effect only if those changes had been approved in a referendum arranged according to the provisions of European law. It would be possible to provide for a European ratification referendum supplementary to the current ratification by the member states according to their separate constitutional provisions; it is also imaginable that the former could replace the latter.

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The Use of Referendums in the EU

Is it a good idea to call for a Europe-wide referendum on the same day as next years European elections, asks Nigel Smith.

Recently, the EU Commissioner for External Affairs, Chris Patten, admitted he hated referendums. By parading Hitler and Mussolini in support of his argument, he simultaneously revealed how shallow his knowledge is, for he could have picked more recent examples of abuse of referendums from the many hundreds held since their time. He might even have looked at the European Commission's role in the EU accession referendums in 2003. Nor did he admit the constructive use of referendums. He overlooks the possibility that President De Klerk's use of a referendum in South Africa prevented a white backlash during the transfer to majority rule. Referendums in East Timor and Northern Ireland were integral to political transition. Even in my own Scotland, a referendum has not only entrenched the new Parliament but sustained public support for it through the first difficult years. The possibility that referendums could play a constructive role in EU democracy was beyond him. We need to dispel this ignorance if we are to see the greater use of referendums in the EU. But first we need to be honest about their limitations – referendums can be hijacked by elites, majorities and Governments - if unfairly conducted. So we are absolutely right to identify these abuses and promote the free and fair conduct of referendums.

Britains Referendum Commission

I am glad to say Britain has committed itself to free and fair referendums. The UK is not one of the leading Initiative & Referendum democracies, but it is changing. The UK has held eight major referendums in the last thirty years, with more to come, as well as many minor ones. Perhaps more importantly for this debate, in the year 2000 the UK created the only permanent Referendum Commission within the EU and this new body (known as the Electoral Commission) is already extending the free and fair principle into areas where its founding law is either silent or vague. One of these areas is the practice of combining elections with referendums or referendums with referendums. This practice came under early scrutiny because the British Government considered holding a British Euro referendum at the same time as the Scottish and

Welsh regional parliament elections. The Commission ruled against the combination because it would have overshadowed these elections as well as preventing a single common political experience for the referendum across Britain.

While the two specific combinations below are already being widely discussed, the reality is that these referendums will have to stand alone in the UK where neither combination will be allowed.

- Across EU - Combining a referendum on the Constitution with EU Parliament Elections
- In the UK- Combining a referendum on the Constitution with a referendum on the Euro

Although referendum rules and political cultures vary across the EU, at least some of the reasons why Britain has come to this conclusion have general application within Europe.

Why combine major referendums and elections anyway?

It is worth pausing for a moment to consider the arguments for combination usually advanced as

- Increased legitimacy
- Saving in costs
- Politicians seeking advantage

Increased legitimacy. Falling turnouts in the UK and other democracies have prompted much of the current interest in combined polling. The idea being that the more important political event in the combination increases voter interest and participation and thus restores legitimacy to the political process.

However, there is a danger that some voters in elections (usually higher turnouts) who have no interest in the accompanying referendum may cast a referendum vote for the status quo. Thus the increased turnout in the referendum may give a misleading legitimacy or even reverse the result. The same tendency might also affect postal voting if extended to referendums. This

conservative effect can be seen in the examples below.

- New Zealand Proportional representation referendums of 1992 and 1993
- Referendums to permit elected Mayors in the UK

Cost savings. Major referendums are costly. In the UK, combining one with an election might save £20 million. But this superficially attractive saving is no more than one euro per person and certainly does not justify the democratic loss entailed in combining elections and referendums. So cost cannot matter when a major issue is at stake.

However when there are 12 minor referendums on the ballot paper as in some countries, having separate referendums on each would be an unacceptable cost.

Politicians seeking advantage - Politicians often use a referendum to remove an issue from the party political process, thus insulating their party from the divisions it may cause within their ranks or among the voters. So when politicians seek to bring a referendum back into the party political process beware of the motives.

There are many examples, but one is sufficient. In 2002, the governing party in Northern Ireland proposed that a referendum on the Border with Ireland should be combined with the Regional Assembly elections. This was a naked attempt to use a referendum in a majoritarian way and for party advantage. The combination would not have been allowed in the UK.

Two essential qualities of a referendum

Before considering the arguments against combination it is worth identifying the particular qualities of a referendum that are at risk. While referendums differ from elections in a number of ways, two of them are of fundamental importance in understanding the problems of combination.

- *Politics beyond party* - This is direct democracy where a decision is taken out of the hands of our representative democracy (our elected MPs, Deputies, Senators and local councillors) and made directly by the people. For a long time this has been more theory than practice. But in the last 20 years, party de-alignment has become a marked feature of fairly conducted referendums. The number of voters able to distinguish between a party vote and an issue vote is increasing and may already be the majority. The losers

are not so much politicians, who continue to play an important part in the referendum, but their parties. By diluting the role of parties in a referendum, the voter is freed from party obligation and cross-party campaigns emerge to win the free votes. Non-politicians are admitted to a process where they wouldn't normally be. Referendums are politics beyond party and the nearest we get to a free vote.

- *Single issue debate* – The other essential element is the public discourse before the referendum in which there is a flow of information and argument to the voters and a concentrated focus by the media on the issue, ending with a referendum decision. It is of course an Athenian ideal never fully realised and still controversial, but it can and does work. The stand-alone debate is different from an election. No other issues are considered, no politicians or parties are at risk. With a balanced referendum broadcasting regime (present in Britain) and the Government not using taxpayers' money in support of one side of the argument (still undecided in Britain), a fair debate is possible.

If reducing the party political role and a concentrated focus on a single issue are the pillars of a referendum, then anything that drives the referendum back into the party political process and sidelines, overshadows or confuses the single issue debate undermines the very principle of a referendum. Why bother having it if such conditions prevail?

If the arguments for combining major referendums are tactical and convenient, the arguments against appear fundamental. Those of us desiring fair referendums ought to be opposed to combination in principle.

So what is separation? Probably a major referendum should not be held within three months of an election. In fact this period has been legislated in previous British referendums, but there is no current policy on the length of separation.

Major referendums

Does every referendum and initiative need this elaborate and costly process in practice? In principle yes, but in practice, I think not. Classifying them as major and minor referendums helps decide where combination should be avoided.

- Major referendums: constitutional, electoral, fundamental, complex controversial, deep social cleavage. Change likely to have further consequences
- Minor referendums: may be more policy issues like a local tax, drink law, Sunday opening of cinemas

where the case for and against is more easily stated and more readily understood and where the change proposed is complete in itself.

Beware of assuming that all initiatives fall into the minor category and vice versa. It is immediately obvious that the border between the two categories must always be a political decision

Several countries - US, Italy, Switzerland - already combine referendums as established practice. However it is worth pointing out the

- Selective participation in turnouts in Switzerland. People vote only on issues that matter to them, leaving the rest to fellow citizens. It leads to tremendous volatility in turnouts
- Italians objected to having as many as 12 issues in the 1995 ballot. There may be 30 referendums on a US ballot paper. This total leads to the phenomenon known as "roll-off", where voters decide the first few initiatives on the ballot paper and don't bother with the rest. So thirty minor issues fight to be first on the ballot paper list. Thus the arguments against combining major referendums spill over into minor referendums

Nigel Smith was chair of the all party campaign for a 'Yes' vote in the 1997 Scottish devolution referendum and has advised other referendum campaigns including the Good Friday Agreement.

The call for a referendum on the EU constitution is more than hype

Why is a referendum so desperately important for the UK too, asks Diana Wallis

Referendums and people's initiatives are not the sort of democratic mechanisms usually associated with the unwritten British constitution. In the UK model, Westminster parliamentarians are theoretically all powerful. It is a centralised representative democracy but the cracks are beginning to show. The UK model is starting to look out of date to an electorate increasingly interested in single issues and frustrated by governments with overwhelming parliamentary majorities that cannot be held to account, save at a General Election once every five years. It is only in relation to Europe that the UK has ever felt it necessary to experiment with direct democracy at a national level. The UK's first ever national referendum was on continued membership of the European Economic Community and now the people have been promised a referendum on the single currency, although no date for this has yet been fixed. Thus referendums and Europe go together in the national psyche, so it has been fertile ground for the Eurosceptic press and the Conservatives to call for a referendum on the outcome of the Convention on the Future of Europe and the following IGC, of course expecting a negative response. However, more reliable Eurobarometer polls show that 52 per cent of the British public would support a European Constitution. So perhaps it is time that the pro-Europeans showed more trust in the people and started to lead the debate.

I am hardly surprised that there is now such a rumpus about whether or not we should have a referendum on the outcome of the Convention on the Future of Europe following the submission of its proposals to the IGC. After all, I had the temerity to suggest in a parliamentary report I wrote more than 18 months ago that the outcome of the Convention should at the very least be set out on a piece of A4 paper and posted through every door in the EU. My reasoning was simple – how could we purport to be moving nearer to our citizens if we were not even prepared to tell them what we were doing? I described it as analogous to the Good Friday Agreement process in Northern Ireland: information followed by a referendum. At that time a measly 200 out of my 620 parlia-

mentary colleagues were prepared to support the idea. Now it is all the rage!

Europe has moved on

So why do I think a referendum is so desperately important for the UK? Firstly we have to stop pussy-footing about with our relationship with Europe. Either we are in there and we participate fully and willingly or we get out and leave others to get on with the project. Our continued hysteria and carping as a nation will benefit no-one, least of all ourselves.

We have only ever had one nationwide referendum and that was on our original membership of the Common Market – finally almost 2 to 1 in favour of staying in the EEC. But that is now more than a quarter of a century ago, Europe has moved on. However, the moving on has only ever been endorsed by our Parliament, not by the people, unlike in some other European countries. Of course it is possible to argue that referendums on treaties such as Nice are impossible things and an absolute bore to the electorate who will find some other issue to use the vote for other than what was intended. But hey, surely that is a citizens right to use his or her vote in a way that is effective for them? What we have to do as politicians and interested parties is ensure there is information and public debate. If over the last 30 years we had had a little more informed debate about Europe then maybe, just maybe, we would have a more relaxed attitude towards our membership of the EU. Indeed if the Government at last has the courage to give us a referendum on the Euro it will find, quite rightly, that the electorate will use it to debate our whole relationship with Europe and not just the economic benefits, as Ministers would prefer. If we had a referendum on the new constitutional settlement first, which would make more sense, then it would almost be arguable that the decision on the Euro could be left to the Government and Parliament.

To my mind, it does not really matter whether the outcome of the Convention proposals are either the

end of 1000 years of British history or a tidying-up exercise. In fact, both extremes of the current British political debate are nonsensical and the truth will probably lie somewhere in the middle. The essential is that we have a proper debate with the British public about it and allow them the choice. It is entirely fallacious to argue that they can exercise that choice at general election time when no party, not even our own, presents a coherent front on the European issue. We have become too attached to the idea of representative democracy. If the aim is to increase voter participation then people should be given an issue to vote about; a real decision to make, not just a party label to vote for. If the war with Iraq did anything, it re-engaged people in the political process. They showed they wanted to participate, to be consulted and to be listened to – parliamentary debate was not enough.

Regional assemblies' referendums as a beginning

To some extent the Blair regime recognises this. After all, it has decided that the idea of introducing devolved regional assemblies in England can only happen once the people have spoken in a referendum. In June 2003, Deputy Prime Minister Prescott announced that the three northern English regions - the North-West, the North-East, and Yorkshire and the Humber - will hold ballots in October 2004 as to whether elected regional assemblies should be introduced. The decision to introduce such assemblies was a Labour party manifesto pledge at the General Election of 2001, however, the process to bring these about became dependent on affirmation through the referendum process. So for certain things - those with a seemingly constitutional aspect - the UK is willing to embrace referendums. Yet it is a hit and miss process with no logicity. Nor does the general public have any ability to trigger the mechanism or to frame the question. For example, the Eurosceptic UK tabloid, the Daily Mail, has campaigned for a referendum on the EU Constitution and yet, having collected thousands of signatures in support, has received a rebuff from the Government and thus its campaign has reached a full stop. Such is the UK system. Even petitions to the Westminster parliament have no formal route to lead to legislation. Indeed even an MP has to win a sort of lottery to start the process to get a 'Private Members Bill', which seldom succeeds. No wonder citizens feel frustrated. There are some mechanisms which exist at a local level, for example, a petition to establish a parish council or an elected Mayor. Again these are little used, especially by the political

parties. There is a need to re-enfranchise our citizens. Elected politicians don't know it all; they need input from their electorate. Now we have an electorate which is much more educated and more informed through modern communications and the media. It is important therefore to harness this to create a modern European demos. The alternative is a fragmenting and, at times, angry citizenry that will find politicians and politics in my opinion increasingly less appealing.

So my reasons for wanting a referendum about Europe go deeper than just the current hyped up debate about our relationship with the EU. It goes to the heart of our democratic process, which I believe is sadly inadequate and out of date. I could say it is not about where or how we vote – supermarket or letter box or via text message – but rather the relevance and impact of our vote. Politicians need to trust the people again, and then they might find that the people will have more regard for politicians. It just happens that Europe is the biggest constitutional issue we face at present and democratic constitutions are usually approved by the people, not imposed from on high.

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We've got the European Constitution – now it's time for a European Referendum

Direct-democratic institutions on the European level will make the EU more stable, argues Jo Leinen.

The Convention on the Future of the EU has successfully completed its work: It has presented its proposals for an EU which is more efficient, more democratic and closer to its citizens. The acknowledgement and inclusion of participative elements as a complement to representative democracy represents a major step forward. The citizens' submission right now embedded in Article 46, which allows one million citizens to ask the EU Commission to put forward a legislative proposal, is a real innovation in the institutional structure of the EU.

What is now required is for the new constitution to be endorsed by the citizens of the Union. The European Constitution implies nothing less than a re-founding of the European Union – and that is something the citizens must decide on directly. A referendum on the constitution would emphasize the importance of this step in European integration and give the constitution the legitimacy it needs.

The idea of a referendum also raises the hope that there would be a wide public debate in the run-up to such a (Europe-wide) referendum. It is clearly in the interest of all involved that a decision on the constitution should be made by people who are as well informed about the issue as possible. The European Constitution provides a good basis for this, as the Convention has already opened up the debate. There is a great deal of information already available which could be presented to the public in the run-up to a referendum.

The next elections to the European Parliament in June 2004 offer a suitable date for such a referendum on the constitution. Only a Europe-wide referendum held simultaneously in all the member states would give the clear result which is needed. Otherwise, there is the all too likely danger of referendums being dominated by national political issues which could cloud or even totally obscure the central European ones. That is why it makes sense to ask those voting in the EP elections on 10th-13th June also to vote on the second issue of the European Constitution. That would enhance the status of both votes.

Participative democracy at the European level is a precious prize. The European Constitution can make it a piece of European reality. A referendum on the constitution would be the first expression of that Europe-wide participation. It is, of course, a fact that there are constitutional obstacles to such a (binding) referendum in some member states, but in such cases there could at least be a consultative referendum. It is still an open question whether and how referendums could become a permanent part of the European political process. On what issues, how often and according to what rules would referendums on EU questions make sense?

The referendum tool should not be introduced in an 'inflationary' way, as this would damage the credibility of referendums and of their results. There are also subjects which are not suitable for referendums or which are so specialized that they would not attract the necessary level of participation. But for future substantial changes to the European Constitution, a referendum process in two stages would make sense. In the first stage, a new Convention would be convened to debate and draft the constitutional changes; the second stage would then be ratification of the proposed changes in a referendum. The changes would be held to have been accepted if they had been approved by a qualified majority of the voters in a qualified majority of the member states. This would ensure that the evolution of the European Union was legitimised by the direct participation of the citizens, but also that the whole process was not blocked if there were a 'No' vote in one or a small number of countries.

The European Constitution brings a new quality to the EU: It is newly constituted in its dual legitimacy as a union of states and a union of citizens. It is therefore only logically consistent for the direct-democratic participation of the EU's citizens to be grounded in its constitution. The citizens' submission right is a good beginning: the referendum must now be added. This would bring the EU closer to its citizens and also make it more stable.

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People need real power

Direct democracy will be part of a fully functional and well balanced EU, writes Monica Frassoni

We live in an age of representative democracy. Competitive elections based on universal suffrage and secret ballots are used to achieve political representation. Elected representatives have political authority. Their legitimacy comes from the mandate they receive from the electorate. Electors can choose whether to vote their representatives out of office or to continue having the same politicians representing them.

Yet there is growing unhappiness with this mode of political organisation. Election turnout is falling. There is a sense of disconnection and alienation between politicians and ordinary people. People are turning away from politics. How can one ensure that citizens feel connected with the political system to which they belong?

One increasingly popular solution is to use the tools of direct democracy. Direct democracy allows citizens to directly influence the political system on the big issues of the day, through the possibility for citizens to initiate legislation and/or through referendums. It allows government not only for, but also by the people.

There are disadvantages to referendums, above all if they deal with European issues. Complex and difficult issues can become oversimplified, and the electorate will usually suffer from the fundamental problem of a lack of information. They can be used as an opportunity for politicians to absolve themselves of responsibility for making difficult decisions. In some countries such as Italy, they are forbidden for ratification of international treaties.

But referendums do provide a useful and potentially significant vehicle for strengthening democracy. With voter turnout in decline for general, local and European elections, referendums can help to create the sense of a participatory democracy - giving people real power and influence on important social and political issues. Referendum campaigns serve to inform and educate the electorate on specific issues. Referendums could be used to reinvigorate public engagement and revitalise our democracies.

This need for engagement is felt in a particularly acute fashion when one examines the functioning of the European Union. It has become common in the past few years to say that the European Union faces a

crisis of legitimacy. There is widespread talk of a "democratic deficit" in the EU. Eurosceptics claim that the EU is an elite project over which 'the people' have virtually no influence.

There is a ready-made counter-argument: Almost nothing in the EU is done without the agreement of democratically elected governments. But this fact does little to increase the social legitimacy of the EU. In a similar fashion, the directly elected European Parliament plays a crucial role in deciding on EU legislation and holding the European Commission to account. Indeed, the Parliament's powers in these areas have been increased hugely in the past twenty years. Yet the turnout at the last European election in 1999 was the lowest ever.

It is against this background that the European Convention on the Future of Europe was convened, with one of its main goals that of bringing the EU closer to its citizens. A major effort has been made to make the EU simpler and more transparent. The Convention has proposed a clear and readable set of fundamental constitutional provisions, so that citizens can clearly understand what the EU is and how it works. It has proposed a Citizens' Initiative right. Many Convention members have called for a referendum to be held on the proposed EU constitution.

Direct Democracy has a contribution to make to a fully functional and well balanced EU. It can act as an enriching complement to political representation. It can help to create the European demos that is so often talked about, but which still seems fragile, if it indeed even exists as yet. In introducing the citizens' initiative, the first step has been taken to allow European citizens a direct say at the European level. What will the future hold? I am among those who support the idea of having referendums which transcend national borders, for decisions affecting all EU citizens. This would answer the fears of those who saw the Irish 'No' vote on the Nice Treaty as a sort of blackmail by a tiny minority deciding the future of the rest of the EU.

Some propose that the President of the Commission should be directly elected by the citizens of Europe. This would give him huge personal legitimacy in a post which up to now has been at the forefront of eurosceptic attacks on the EU. This plan could see

our Member States entrusting the European Commission with even further executive powers and seeing it transformed into a true European Government.

Concentrating on the here and now, since a major goal of the Convention is to increase the social and popular legitimacy of the European Union, holding a referendum on the proposed constitution certainly seems a good idea. The modalities of this referendum would need to be thought out carefully. But I reiterate that such a referendum should be held at the EU level and the decision taken by the majority of citizens. Of course, we would have to manage the consequences of a country saying 'no'. However, I believe the advantages of having a referendum far outweigh any potential negatives. A referendum could be the perfect opportunity for governments to spell out, and for people to learn about, how the EU benefits them in their daily lives. And the fact that the result of the referendum would be taken at the EU level would prevent it from becoming a purely internal political affair. The undoubtedly vibrant discussion which would follow could allow citizens to understand and feel a sense of belonging to and ownership of the EU.

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New standards against populism

Sylvia-Yvonne Kaufmann thinks that the new European citizens initiative right can promote a transnational public space in Europe.

The decision by the presidium of the Convention – literally at the last moment – to include a passage in the draft constitution giving EU citizens a right of direct initiative for legislative proposals under certain preconditions (a minimum of 1 million signatures from “a significant number of member states”) certainly came as a surprise, but by no means by pure chance. On the one hand, the presidium had to respond to growing public criticism at the absence of radical reform measures aimed at the democratisation of the EU, while on the other hand a committed campaign launched by NGOs from a number of EU member states - IRI Europe (Amsterdam) and “Mehr Demokratie” (Berlin) - had been running for months both inside and outside the Convention pressing for referendums on the draft constitution and for the institution of a citizens’ initiative right: a campaign which ultimately secured the support of more than 100 members of the Convention.

The inclusion of that passage – Article 1-46 § 4 of the draft constitution, which provides for citizens’ initiatives at the European level - must be considered a great success. If the provision survives unscathed the IGC on the European Constitution planned for this coming autumn, a European citizens’ initiative right would for the first time be anchored in a European treaty. The European Constitution would thereby set new standards – some of the member states’ constitutions have no provision for referendums or have high participation thresholds.

Limits to both parliamentary and direct democracy

There are very good reasons for the latter: the principle of representative democracy, as practised in all the EU member states, is expressed in the representation of the citizens by elected members of parliament, with the political parties having the task of ‘bundling’ and focussing the wide spectrum of political positions. The institutionalised clash of opinions in a democracy brings about a high level of public discussion on the various issues – the pre-requisite for a functioning, living democracy. Under ideal conditions, there is an interplay between the parties and civil society which feeds back into the process of opinion-

forming and decision-making. Any ‘populist’ attempt to denounce ‘party political democracy’, by setting against it a supposedly ‘more authentic’ direct democracy, must be firmly opposed. This is nothing other than an anti-liberal, anti-democratic body of thought. The same applies to right-wing populist hopes of using referendums to remove basic elements of democracy, or even fundamental human and civil rights. I utterly reject any such intentions: Fundamental human rights can never be placed in question.

On the other hand, an approach which seeks to introduce participatory elements into democracy represents a sensible complement to the representative parliamentary system. Participation is especially important precisely where party-political democracy is not working well. This applies to a marked degree to European politics, where the pronounced lack of public debate continues to be a problem. This is precisely where the institution of a citizens’ initiative right can be of help: the implicit need to adopt a transnational perspective, as well as the intensive study of regulations and legislative procedures at the EU level, can help to create the sense of a ‘European identity’ which unfortunately continues to be a rare commodity among citizens of the EU to this day.

In short: the European citizens’ submission right, as now provided for in the draft constitution, can help to create a European public space and thus make an important contribution to bridging the chasm between Europe and its citizens.

A citizens’ referendum on the European Constitution?

As regards the ratification of the European Constitution itself, it is not sufficient, in my view, to adopt solely the parliamentary route. Referendums in all the EU member states are required because there is a need to seek direct legitimation from the citizens for the fundamental political choice of direction towards a united Europe. This is all the more pressing because the European constitution is likely to shape and influence the lives and co-existence of the people

and countries of the EU for a considerable period of time. Unfortunately, there is currently no legal basis for a national referendum in Germany. Although citizen-initiated referendums are provided for in the constitutions of some of the German Länder, attempts to introduce elements of participative democracy at the national level have so far failed to secure the required [two-thirds] parliamentary majority. The PDS (Party of Democratic Socialism) has called for national referendums for many years, unfortunately without success. In our opinion, the major EU treaty changes of Maastricht and Amsterdam should have been voted on in referendums. In 1999, the PDS group in the Bundestag once again took up the initiative for direct democracy. It introduced a proposed law on "Citizens' initiative, citizens' submission and citizens' referendum" into the Bundestag (ref. 14/1129), aimed at "giving citizens extended and direct opportunities of taking an active part in public decisions".

Unfortunately, this initiative had no chance in the Bundestag at that time; likewise, the draft law put forward by the SPD (Social Democratic Party) and Greens to introduce elements of direct democracy into the German constitution was opposed by the CDU/CSU group and failed to win the required majority on 7th June 2002. In the debate, the Union parties claimed that the call for the introduction of national referendums represented "a frivolous gambling with proven institutions which have given us a stable democracy for the first time in German history".

To date, therefore, the idea of complementing representative democracy with elements of direct co-decision making has remained a pipe dream in Germany. It is thus all the more welcome that this issue has been re-invigorated in the context of the debate around the European Constitution. There is now support to be found in nearly every party for a referendum on the text of the European Constitution. Support for a binding national referendum on the European Constitution has also come from Prof. Dr. Jürgen Meyer (SPD), Bundestag representative in the Convention. The FDP group in the Bundestag has also put forward a motion along the same lines. Although in their coalition pact the SPD and Alliance 90/Greens made a commitment to introduce elements of direct democracy at the national level, the attitude of the current government has been rather ambivalent. Thus, although Justice Minister Brigitte Zypries supported the call for a citizens' initiative right at the European level, she labelled a national referendum in Germany on the future EU constitutional treaty "very difficult .. [due to] the complexity of the subject". Unfortunately, the CDU/CSU alliance in the Bundestag

continues with its intention of blocking the introduction of plebiscitary elements. This is somewhat puzzling, as the CSU representative on the Convention, Jochen Würmeling, supports the initiative for national referendums on the EU constitution.

A challenge for Germany

The current focus on the subject ought to be used to put national referendums back on the agenda and to move forward with the amendments to the German constitution which are required to allow a binding national referendum on the EU constitution. Should there be no movement on this front yet again, legislative provision should at the very least be made for a consultative referendum. That would be very much a second-best option, but at least it would allow for a much wider public debate on the text of the proposed EU constitution. Such a debate, with the increase in public awareness which it would generate, is essential if the often-cited need for Europe to be brought closer to its citizens is to become reality.

Referendums at the European level are a necessary complement to representative democracy. Parliamentary representative democracy is unavoidable, but it also needs to evolve and be added to in order to lessen current democratic deficits. Complementing – and thus strengthening – representative democracy by the addition of elements of direct democracy is now long overdue. The citizens' initiative right at the EU level inscribed in Article 1-46 of the draft constitution points in the right direction. Certain member states – including Germany – ought to follow its example and allow citizens to vote directly in referendums on fundamental national political decisions. The PDS argued for this already in the case of the Maastricht and Amsterdam treaties. The European Constitution drafted by the Convention should be used as an opportunity and an incentive to introduce referendums at the national level, especially where in the case of decisions which have a profound effect on the daily lives of our citizens.

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Chapter Three:
Challenge 2004

9. The IRI Referendum Forums 2002/2003

“A participative Union closer to its citizens”

Between June 2002 and March 2003 the Initiative & Referendum Institute organized six Regional Referendum Forums in Europe. Working together with interested circles from civil society, academia, politics, the business world and the media, these forums paved the way for the working group in the EU Convention on direct-democratic elements in the European Constitution and the subsequent introduction of a “European Citizens’ Initiative” into the draft constitution.

Where and when?

Berlin, June 19, 2002
Eisenstadt, November 15, 2002
Stockholm, November 20, 2002
Brussels, January 21, 2003
York, February 15, 2003
Barcelona, March 28, 2003

Cooperating organizations

Swiss Embassy in Germany
Mehr Demokratie
NTV Television
Europahaus Burgenland
Democracy International
EU Observer, Internet News Magazine
The Swedish Center for Business and Policy Studies
SIFO – Swedish Polling Institute
Åbo Akademi
Aarhus University
Kaunas University
Latvian Center for Human Rights
Tartu University
Green/European Free Alliance Group in the European Parliament
The European Policy Centre
European Liberal Democrats
Campaign for Yorkshire
Fòrum Civic per una Constitucio Europea
EP Representation Office in Barcelona
Demopunkt Net

Instituto de Estudos Europeus, Lisbon
Referendum Unit, UK Electoral Commission
Permanent Forum of Civil Society
Convention Task Force in the European Parliament
European Commission, Directorate-General for Education and Culture

Participating citizens

Julie Astorg, Martin Bauschke, Holger Benzing, Charles Blankart, Florentina Bodnari, Nicolas Brühl, Denise Brühl Moser, Hanspeter Bürgin, Paul Carline, Jean-Dominique Deuschel, Heiko Dittmer, Niesco Dubbelboer, Michael Efler, Tilman Evers, Martina Fietz, Isabelle Furrer, Alberto Groff, Andreas Gross, Marika Haase, Lutz Hager, Barbara Hentschke, Sven Hölscheidt, Emanuel Jenni, Otmar Jung, Bruno Kaufmann, Sebastian Keyserlingk, Vithayapradith Khennavong, Marie-Luise Lindemann, Michael Macpherson, Elisabeth Meier-Brügger, Todor Minov, Holger Möhle, Fred Müller, Jörg Paul Müller, Rainer Münz, Arjen Nijeboer, Rainer Odenkirchen, Hans-Dieter Overweg, Melanie Piepenschneider, Christian Posselt, Ulrich K. Preuss, Stephanie Pruschansky, Alexander Ritzmann, Dirk Schattschneider, Ernesto Schilling, Adrian Schmid, Dagmar Schmidt, Marie-Louise Schneider, Jürgen Schulz-Duebi, Hussein-aga Ssadi Gow, Esmond St. Clair Reid, Jakob Tanner, Juan Carlos Tellechea, Suyapa I. Padilla Tercero, Benedikt Vogel, Heinz Walker-Nederkoorn, Alexandra Würzbach, Heinrich Yberg, Pieter Vereertbrugghen, Huub Houben, Pierre de Maere, Alexandre d’Aertrycke, Giovanna da Minico, Barbara Goldoni, Peter Serracino-Inglott, Heidi Rühle, Doris Kraus, Thomas Rupp, Kimmo Kiljunen, Ludo de Schutter, Hugo Lueders, Marco Pezzini, Kristian Groth, José Aguilar de Ben, Aivar Roop, Jo Leinen, Andrew Duff, Gianfranco Dell’Alba, Anna Unger, Philippe le Duigou, Milan Kubik, Fred Six, Chiara Carones, Jacint Ribas Deix, Carme Gimeno, Carsten Berg, Siska Castelain, Aurel Duta, Christian de Fouloy, Katrin Romberg, Jean-Paul Bresseur, Thomas Fiedler, Christine Gruwez, Nicos Yannis, Henrik Dahlsson, Frederique Chabaud, Jean-Maurice Dehousse, Francois Poty, Laura Sullivan,

Flavia Fumagalli, Sabine von Zanthier, Bruno Boissiere, Françoise De Bellefroid, Arielle Rouby, Kristina Weich Hondrila, Sarah Ludford, Markus Warasin, Sophie De Jonckheere, Claude Guillemain, Sophie Doremus, Roy Perry, Ludwig Blaurock, Lone Dykbjaer, Pal Reti, Mirsini Zorba, Maria Berger, Kristina Boberg, Philip Ebbersten, Staffan Eriksson, Eva Eriksson, Mattias Goldmann, Maria Gratschew, Jan Gustafsson-Bergh, Hediye Güzel, Per Götell, Catherine von Heidenstam, Lennart Klerdal, Per Kågeson, Nicklas Källebring, Niklas Lampi, Lars Larsson, Leif Brink, Katja Lepola, Mårten Lewander, Hans Lindqvist, Malin Bonin, Carl Melin, Niklas Nordström, Lars Ohly, Diether Pascher, Toivo Sjören, Solveig Staffas, Johan Strid, Kate Sullivan, Barbro Svedenberg, Jonas Tallberg, Arne Modig, Cia Wiberg, Dag Anckar, Margareta Andersson, Gunilla Carlsson, Peter Eriksson, Gita Feldhune, Tobias Krantz, Algis Krupavicius, Aimée Lind Adamiak, Olof Petersson, Olof Ruin, Jüri Ruus, Inger Segelström, Palle Svensson, Pippa Needs, Meriam Chatty, Herman Beunders, Alexander de Roo, Marieke Sandersten, Pii-Noora Kauppi, Ditte Staun, Giovanni Moro, Charlotte Roffiaen, Jeffrey A. Karp, Nicolas Briec, Carlo Sabatini, Eurora Lester-Smith, Dimitrios Karamatskos, Guillaume Durand, Dietrich Hammer, Aline Hammer, Bertrand du Kermel, Jos Verhulst, Wilbrecht Lambrechts, Concepció Ferrer, Antoni Gutiérrez Díaz, Joan Colom, Belén Carmona, Elisabete Cidre, Víctor Cuesta, Virgilio Dastoli, Susana del Río, Jaume Duch, Hans Göttel, Jaume Jané i Bel, George Kokkas, Joaquim Millan, Lupe Moreno, Enric Ernest Munr i Gutierrez, Josep Maria Ribot, Eduard Roig, Juan Pablo Soto, Mercedes Silvano, Víctor Cuesta, Estefania García Esteve, Rosa Garde Nicolás, Núria Fdez. Vidal, Joan Font, Gloria Feliu, Domitila Barbolla, Josep Puig, Miquel Morata, Raimón Gusi, Meritxell Fabregas, Bartolomé Lago, Margarita Pou Marfany, Miquel Riera, Oriol Escalas, Victòria Roses, Julian Artacho, Montserrat Ruiz, Ramon Castellano, Xavier Ferrer, Miquel Esquirol, Maria Àngel Espuny, Eduarda Azevedo, Péter Balázs, Michel Barnier, Jens-Peter Bonde, John Bruton, Panayiotis Demetriou, Karel De Gucht, Gijs De Vries, Lone Dykbjaer, Alexander Earl of Stockton, Casper Einem, Douglas Stewart, Joschka Fischer, Michael Frendo, Carlos Gonzalez Carnero, John Gormley, Sylvia-Yvonne Kaufmann, Alain Lamassoure, Jo Leinen, Linda McAvan, Iñigo Mendez de Vigo, Jürgen Meyer, Louis Michel, Alojz Peterle, Jacob Södermann, Stewart Arnold, Carsten Berg, Michiel Van Hulten, Heidi Hautala, Perttu Järvenpää, Diana Wallis, Jürgen Zinzel and many others.

The trend towards Direct Democracy

Bruno Kaufmann (IRI Europe, President) at the Berlin Forum

Over the course of the past year, the Initiative & Referendum Institute Europe (IRI Europe) has become an interface between academics, politicians, journalists, activists and citizens who are committed to advancing direct democracy throughout Europe. As an Amsterdam based institute, we are grateful that the Swiss Embassy has offered to host this conference here in Berlin.

The debate on Direct Democracy is still quite underdeveloped. We are here in Germany, which has forms of Direct Democracy almost everywhere at the municipal and state (Länder) level (though not at the federal level). Nevertheless, the debate about Direct Democracy is still superficial, not going into the 'what' and 'how' of a workable I&R system. That is one of the reasons why today we have published the 'Country Index on Citizen lawmaking 2002', establishing the elements of 'good' Direct Democracy and measuring the I&R rules and practices of 32 European states against these criteria.

There is a clear tendency towards more I&R around the globe. To limit ourselves to Europe: between 1981-1990, 129 national referendums were held in European states. Between 1991-2000 this increased to 248 national referendums. This includes all sorts of referendums: from plebiscites initiated 'from above' by the government, as in France; obligatory referendums such as in Ireland or Denmark; or popular initiatives on proposals coming from citizens themselves such as in Switzerland, Liechtenstein, Latvia and Slovakia.

There is a double dynamic between 'Europe' and I&R. European integration is the single most important topic for national referendums in Europe. Since 1972, 29 national referendums have been held on European integration. In the next two years, no less than 14 national referendums are foreseen on European topics: on the Nice Treaty, the Euro, and EU membership. The average turnout is high at 69.6%, a lot higher than European Parliament elections. The referendum in Denmark of 2nd October 1972, on EEC membership, had the highest turnout percentage: 90.1%. The lowest turnout rate was at the referendum in Ireland on 7th June 2001, on the Nice Treaty: 34.8%. If we look at the percentage who said 'yes', this is on average 57.4%, a clear majority. The largest 'yes'- per-

centage was at the referendum in Italy on 18th June 1989, when almost 88% of the participating Italians favoured the beginning of a constitution-making process for the EU.

The referendum in Switzerland on 4th March 2001 about starting talks on EU membership had the lowest 'yes'-percentage: 23.2%. The nature of these referendums differs, however. No less than 17 referendums were plebiscites: 13 were initiated by a parliament, 2 by a president, and 2 by a government. In a slim majority of 15 referendums, the outcome was legally binding. The other 14 referendums were only advisory.

Direct Democracy is setting new standards for the process of European integration. More and more people have had the experience of deciding directly on European affairs through I&R. People who participate in referendums are better informed about European affairs. The potential of Direct Democracy to contribute to the European integration process is obviously substantial. But in every instance, the design of the I&R process turns out to be crucial to allowing this potential to become a reality. That's why it is so important to do research on what constitutes 'good' I&R, i.e. which requirements have to be there to make I&R work.

Europe needs Democracy, Democracy needs Europe

Andreas Gross (Council of Europe, Vicepresident) at the Berlin Forum

1. Europe needs democracy, but democracy also needs Europe. If democracy remains limited to the national states, then democracy will be eroded just as quickly as the autonomy of the national states has already been eroded. Democracy must be installed at all political levels where decisions are made which affect people's lives.
2. A democracy is never complete or finished. We have to keep on building on our democracy in order to keep it democratic.
3. A Direct Democracy is somewhat less unfinished than a merely representative democracy. Representative democracy is a condition for and a part of Direct Democracy, but Direct Democracy is a little step further.
4. Direct Democracy is the antidote to the banalisation of politics. Direct Democracy opens up potentials of society which would remain unrealised in a representative system.

5. Direct Democracy at the municipal, provincial and national levels can provide citizens with the democratic self-confidence and consciousness which they need in order to believe that Direct Democracy at the European level is possible.
6. The question of what Direct Democracy can offer to the European integration process is very pertinent. Citizens see the European Union as a technocratic elite project. The European Union does not figure large in the political discussion of the general public. Direct Democracy can produce the debate needed to get citizens involved in the project of European integration.

If the European Union remains undemocratic, the result can be a dangerous renationalisation of European policies and politics: because if people have to choose between democracy and the European Union, they will choose the former. They will choose democracy, but they will make the mistake of opting for a democracy which they believe exists at the national level – where there is no longer real power – and turn their backs on the place where the real power is – but where there is not yet real democracy. This is why the transnational space needs to be democratized.

The position of the Convention on the Future of Europe is ambivalent. The European governments can do what they want with the outcome of the Convention. The vice-chairman of the Convention, Amato, spoke in the Council of Europe on the need for a European constitution as well as a bi-cameral system, such as exists in the United States and Switzerland. For the majority of the Convention members, this is still a bridge too far. The Convention offers a major opportunity, however, to renew the European Union and install instruments of Direct Democracy there.

Direct Democracy is an ensemble, consisting of several instruments which support and enhance each other. Which instruments out of this ensemble should be integrated into a transnational, federal constitution at the EU level?

1. Every constitutional topic – such as the introduction of or alteration to an EU constitution – should always be approved by the voters in a referendum.
2. Not only a majority of the European citizens should vote in favour, but also a simple, or qualified, majority of the member states.
3. Give citizens the right to present a proposal for a constitutional amendment or revision to their fellow citizens through a referendum.

The popular initiative is clearly the most important of all, as it is the central instrument of Direct Democracy – because the initiative allows citizens to vote not only on propositions made by governments and parliaments, but also on ideas, projects and revisions born in their own communities: proposals which come from the people and are voted on by the people. Through the initiative, citizens may propose changes to the constitution of the EU and alter and expand their direct-democratic rights. The popular initiative is the main constituent of the sovereignty of the citizenship.

Direct Democracy is not simply a matter of being for or against something. Direct Democracy is a process which can provide many different benefits. The design of the process is crucial for achieving these potential benefits. Direct Democracy can produce 5 main benefits:

- Closeness to the citizens. In a Direct Democracy, politicians have to leave their ivory towers and reach out to the citizens. The political sphere is opened up for the citizens.
- Legitimacy. As citizens can decide directly on political issues, a Direct Democracy is more legitimate than a system in which they can only choose between their rulers, who are all entitled to make decisions which have never been given popular approval.
- Transparency. A Direct Democracy leads to openness and more information, so that citizens know better what is going on.
- Identification. If citizens have real possibilities for participation, then the political sphere becomes their sphere too and they more are able to identify with it more.
- A reflective public sphere. In a Direct Democracy, there is more debate, more exchange, and more learning processes. The political elite does not have the privilege of not having to learn now and then.

Elaborating all this leads me to 11 main products which Direct Democracy can bring to European integration:

1. More attention by the political elite to the ideas and aspirations of citizens.
2. Better perception of the citizens by the politicians.
3. Less distance between citizens and politics. The political sphere is opened up for the citizens, and politicians have to leave their ivory towers and reach out to the public.
4. More communication between citizens and politi-

cians. If, as a politician, I know that citizens can reject my proposal, then I had better involve them in the draft proposal so that the risk of a rejection is reduced.

5. More competent citizens. More instruments of participation means more learning processes for citizens. They will become better citizens through this.
6. A higher motivation for citizens to participate in politics. Being able to take the final decisions ensures that their involvement can lead to real results.
7. More communication, more debates. This leads to more new insights, both for politicians and for citizens.
8. If citizens are better informed and all parties are more aware of each others' needs, hopes, wants and problems, then society is better able to learn; we get closer to becoming a learning society – which is perhaps the thing we most need today.
9. If Europe gets more legitimacy, it may also get more power to civilise the markets in such a way that they become more compatible with people's social needs and with the conditions for a sustainable environment; there may also be more respect for the needs of all non-Europeans.
10. A democratic Europe can also show the world how the globalisation of democracy and the democratisation of globalisation is possible without producing a centralised power which no-one can control.
11. The biggest and most valuable result of a well-designed Direct Democracy at the European level is that it creates a real integrating force for people who can then implement the integration in a freer, self-chosen and less externally enforced way.

Whether or not a direct-democratic polity can actually produce these contributions is wholly dependent on the design of the constitution in general and of the direct-democratic part of it in particular. For a better understanding of this hypothesis, I want to refer to the first report that IRIE has just produced. However, if the design of the direct-democratic polity at the European level is made like the one we have nationally in France and Italy, or at the sub-national level in Germany, we will never get any benefit for European Integration out of it and the whole effort would be of no use.

Many people oppose a European Constitution because they believe that this will force a uniform regime upon everyone and will wipe out diversity.

This would be a fundamental misconception of federal politics, of democracy and also of the market forces. In an authentic federalist state, this is not the case: the cantons in Switzerland remain themselves but nevertheless take part in something bigger. One can even go further and realise that a Constitution protects this diversity instead of suppressing it.

I come to my conclusions. We need the right speed when we want to democratize the European Union. The right speed and the right timing are crucial things in a Direct Democracy.

We have to go just so fast that everyone can come along. The size of Europe is not the main problem. This morning I spoke to Joschka Fischer, German Foreign Minister. He said: Direct Democracy with 500 million people is not possible. Size and geography are not the problem: for egoistic, non-communicative, uninformed and uneducated people even the smallest village is too big for democracy! If you think about the quality of our schools, media, newspapers and the development of our civil societies today it is easier to imagine the institution of Direct Democracy at the European Level of 25 nations today than when Condorcet proposed Direct Democracy for France in 1793, or when Switzerland organised its first constitutional referendum in 1848.

The second major argument against a European Direct Democracy is the lack of a Europe-wide public sphere and of a European community which strives to develop mutual solidarity between all the different countries and peoples. But a European Direct Democracy is actually qualified to counter these deficiencies, which are the consequence of the lack of transnational democracy and the lack of a European federal constitution. The lack of Direct Democracy is the reason and the cause of the problem; if you make a condition out of these reasons you will never get European democracy – because a public sphere and community feeling are the consequences of a well-designed and actively lived democracy. If you want these things, you cannot avoid trying democracy; if you try Direct Democracy, the chances of getting them are much greater.

No European Constitution without Referendum

Legal reflections on the democratic prospects for the EU Convention by Giovanna de Minico (Legal Expert, University at the Brussels Forum Naples)

To recover its political legitimacy, the European Union would need to strengthen the political power of the peoples of Europe. But the present-day masters of the treaties – the states – are not pursuing this aim. The EU Convention therefore does not (yet) have a constituent function. In a paper written for IRI Europe, Giovanna de Minico, Professor of Law at the University of Naples, maintains that one way of resolving this legal dilemma would be to put the draft constitution of the Convention to a Europe-wide referendum in all the member states.

The European Convention was instituted at the Laeken summit in December 2001. The 105-member assembly was charged with the task of examining “the essential questions which involve the future development of the Union and to seek the various possible solutions”. The result of the Convention’s work would form the basis for the next IGC. In effect i.e. de facto, the Convention was asked to begin the European constituent process: this is clear from the very use of the name “Convention”. But the governments gave the Convention no de jure authority to produce legally binding decisions. The only thing the Convention can do – under the prevailing circumstances – is to elaborate proposals which must then be incorporated by each member state into its own legal system.

How could a de jure constituent process be created? All possible solutions must be based on the principle that in a democracy the constituent power resides in the people. One possibility would thus be to elect a European constituent assembly. Another option would be to entrust this important task to the European Parliament, which is directly elected. A third possibility would be for the Convention to produce a draft European constitution – which would then be submitted to the peoples of Europe for approval in a Europe-wide constitutional referendum. Under the current circumstances, the referendum option is the preferred one.

The referendum option would be a means of directly tackling the problem of the deficit in democratic legitimacy of the integration process and would represent an important innovation in that process. To be sure, a European Referendum presents an enormous political and legal challenge. The debate has only just

begun. Some of the preliminary legal questions are considered here.

Should there be only one Europe-wide referendum – or should each member state hold its own referendum?

The idea of a truly European referendum is undoubtedly attractive, because it would give the EU clear and direct legitimacy. However, the political and legal considerations argue against such a uniform referendum. The argument that there is currently no single “European People” can be met by the counter-argument that such a European People would be created by the referendum itself. But other objections cannot be so easily dismissed: a law enabling such a referendum would have to be ratified by each country concerned, for no European authority legitimated to set out the form and procedure for a referendum currently exists. The preconditions for the establishment of legally binding procedures at the European level are thus not (yet) present.

There are significant political problems alongside the legal ones. If the result of an EU referendum were to be decided by a simple majority of the voters, this would mean that the fate of the European Constitution was in the hands of the citizens of a few of the larger member states. Any possible rejection of the constitution by smaller countries would carry no weight. Thus the double majority principle must be applied when assessing the votes. Existing treaties also require the prior approval of all countries involved for any change to those treaties.

There are thus very clear legal and political grounds for preferring a Europe-wide referendum in all countries affected over the option of a single European referendum – not that the first option is without its own legal difficulties.

In the first place, the legal basis for such a Europe-wide, but single-state, referendum would need to be created. This basis would have to be in conformity with the existing laws in each state. In Italy, for example, the provision which exists in countries such as Great Britain to pass ad hoc referendum laws does not exist. Under Art. 138 of the Italian Constitution, a law must be created ex novo for each new proposal, for example in relation to approving a European Constitution. But since the Italian constitution must be amended in any case whenever the Italian constitution is made subject in any respect to an EU constitution, a European referendum could fairly easily be written into the new provision.

What happens if one or more countries reject the draft constitution in the referendum?

The starting point here too must be unanimity among the countries concerned i.e. just as there is a de facto requirement for consensus in the Convention and a de jure requirement for unanimity in the IGC, so too in a Europe-wide referendum there must be majority approval in all countries for the proposed constitution. Legally binding approval cannot be allowed to depend on whether, for example, it is Germany or Luxembourg in which a majority voted ‘yes’ or ‘no’ to the constitution.

The only way around this problem would be to declare the European Referendum purely consultative de jure, but then respect the result de facto. If this were to be the case, the majority requirements would have to be spelled out very clearly beforehand. If this were not done, there would be a risk that such a referendum would only exacerbate the problem of democratic legitimacy, instead of ameliorating it. A ‘no’ vote in individual states would also mean that the new constitution would not apply there – raising the question as to whether countries in which there had been a majority ‘no’ should remain members of the EU or not.

The legal and political complexities presented by the launch of a constituent process at the European level should not distract us from the need to be also thinking about the future arrangements for constitutional change. In principle, there ought to be a uniform and transparent package of procedures for constitutional amendments – not like the multifarious and opaque procedures currently in place for EU directives and treaties.

A major task for the Convention, and later the IGC, is thus to produce concrete proposals both for initiating the constituent process and for procedures for future constitutional change. For the future, both the European Parliament and Europe’s citizens need to have their political roles strengthened, in order to remedy the current situation in which the governments of the member states have a dual power base (as the national executive and the European legislative). In the final analysis, what is needed is nothing less than an inversion of the current situation: in future it should be the citizens who have the final word in European politics, not the governments.

More Democracy in Europe

A concrete proposal for a pan-European referendum and direct democratic devices in the EU by Michael Efler at the Brussels Forum.

I. Referendum on the future of the European Union

Proposal:

The next IGC of the EU planned for 2003/2004 is expected to recommend changes to EU treaties based on the work of the Convention on the Future of Europe. Before any changes – or any proposed European Constitution – are ratified, they should be subject to referendums held on the same day in as many European member states as possible – in accordance with the constitutional provisions of the member states.

Rationale:

1. The fundamental nature of reform of the treaties.

The projected reform(s) will significantly determine the future of the EU. We therefore consider it essential that the citizens of Europe decide on the reform(s) in a referendum.

2. Transparency and co-determination

The EU is the most advanced transnational political community in the world. In the White Paper on "Good Governance" recently published by the EU Commission, it is stated that the institutions of the EU have to become more transparent and more open to participation by the citizens.

3. Opportunities for Europe

Referendums held simultaneously in the maximum possible number of EU member states could help to create a real sense of European citizenship, a transnational public space and a common sense of purpose. The elections for the European Parliament in 2004 would be a good opportunity to achieve this.

A Europe-wide referendum – or national referendums?

The question as to whether such a referendum on the results of the next IGC should be a single Europe-wide one, or whether there should be separate referendums in the individual countries is a matter of dispute. We propose referendums in all countries on the

same day, for the following reasons:

- A single Europe-wide referendum would require changes to the founding treaty of the EU. Heads of state and government would have to reach unanimous agreement on a common proposal, which would then have to be ratified by all the national parliaments. This is most unlikely to happen, because the current unanimity principle gives each member state the right of veto. Such a process would also take far too long.
- A Europe-wide referendum based on a simple majority could not impose a European constitution on a member state against its will. Holding referendums in all member states avoids this difficulty.

What happens if there is no majority in a member state?²

What happens, if there is no majority in one or more member states? In principle, the whole ratification process fails, because the European treaties and international law require the agreement of all member states for any changes to the treaties. So there is no difference here from the parliamentary ratification process. Thus, for example, the formation of the ITO (International Trade Organization) at the end of the '40s and the creation of a European defence community (EVG) in the '50s failed, because parliaments – in the one case the American, in the other the French – refused to ratify the respective treaties. The same difficulties would face a Europe-wide referendum because, under current principles of European and international law, such a referendum cannot replace national ratification. Changing the Treaty of Union to allow this – even if it were permissible under international law – would not work, for reasons of both time and politics – it would represent too great an intrusion into the foreign policy independence of member states

Because of the possible consequences of failure, it would be a first duty of the heads of government and the Convention to work out a text which gave the maximum possible consideration to the citizens' needs. If people were still not convinced, that might itself offer the Union an opportunity. For weaknesses in the European project would become visible. The key to surmounting the problems associated with a referendum rejection lies in an attitude of flexibility and in a multi-speed Europe. The member state in question could be allowed specific exemptions from certain aspects of Union policy (opting out). A second referendum would then be required. This was precisely the experience both with the Danish referendum on Maastricht in 1992 and currently with the Irish "no" to

the Nice Treaty, where there was a second referendum in October 2002. In both cases the legal technical shift was made by means of declarations by the European Council as well as by Denmark and Ireland.

It is also conceivable that an EU Constitution would only be binding on those countries where the people had voted in favour of it. Adoption might be made conditional on an agreed minimum number of countries accepting it. At first sight this appears to be a tempting option – avoiding placing obstacles in the way of further integration whilst accommodating the wishes of reluctant member states. But it raises the question: what happens to those who say “No”? Do they have to leave the EU? Or can they continue to abide by earlier European treaties, so long as they are not in conflict with the new Constitution/constitutional treaty? Another consideration is that this model likewise presumes modification of the treaties with all the attendant difficulties already referred to.

II. Direct democratic devices in the future EU

This is a proposal for a right of initiative and referendum in the EU. It is no longer sufficient to have direct democracy only at the local, regional and national levels. More than 50% of the new laws which have come into force in EU countries have been passed in Brussels – and the trend is rising. The principle of qualified majority voting already applies to 105 areas of EU politics i.e. around 60% of all decisions are made according to this principle. When the Nice Treaty comes into force, this percentage will rise to 66%.⁷ With qualified majority decision-making, individual member states can be overruled.

The EU is gaining an ever greater influence on our lives. Almost every area of politics is directly or indirectly influenced by EU legislation. This became very visible for the majority of Europeans at the beginning of 2002 with the introduction of Euro cash. But the Euro is only one example. The internal market, farming subsidies, deregulation of the markets, EUROPOL, EU foreign policy, not to mention the energetic attempts to create a unified European army – all of these issues are potential subjects for referendums or initiatives.

The proposed measures can equally well be integrated into the existing treaty structure of the EU or into any constitutional treaty or European constitution proposed by the Convention. A constitution is not a prerequisite for the establishment of direct-democratic rights in the EU. When the EU is expanded to take in the Eastern-European states, the quorums for EU citizens' initiatives or demands might need to be raised.

Which direct-democratic instruments should there be?

1. A multi-stage right of initiative: EU-Citizens' Initiative, EU-Citizens' Demand, EU-Citizens' Decision.⁸
2. Obligatory referendum for alterations to treaties or constitutions and for surrender of sovereignty to international organisations (e.g. IMF, WTO, World Bank etc.).

It is very important that citizens are granted not only direct-democratic rights of veto, but are empowered to take initiatives themselves.

What issues might be subject to EU Citizens' Initiatives and Referendums?

Decrees and guiding principles/terms of reference and changes to treaties or constitutions can be proposed by an initiative. Surrender of sovereignty (e.g. to the WTO or the UN) as well as changes to treaties and constitutions are subject to obligatory referendum. No restriction on subject matter. Initiatives can of course only relate to EU legislation.

EU-Citizens' Initiative

We propose a signature quorum of 400,000 EU citizens. No time limit for the collection of signatures and no regional distribution of signatures should be prescribed. The initiators should have the right to present their proposal(s) to the Council of Ministers and the European Parliament. An initiative can be withdrawn or amended before the EU-Citizens' Demand process is instituted. There needs to be further debate on whether the initiative to launch a EU-Citizens' Demand should be facultative or binding.

EU-Citizens' Demand

We believe that a signature quorum of 3,000,000 registered voters – or 6,000,000 signatures in the case of an EU-Citizens' Demand for changes to a treaty or constitution – is appropriate and necessary to generate the required legitimacy. We propose a period for signature collection of 1 year and – as distinct from an EU-Citizens' Initiative – a regional distribution of signatures. For example, it could be stipulated that between 0.25 and 1% (depending on the size of the population) of registered voters in at least three countries must sign. The rationale for this is that the EU-Citizens' Demand should not be an instrument of individual states wishing to put their own interests on the agenda, but that it should have a genuine European context. Signatures can be freely collected, with the

additional option of official registration. The role of the Internet (for possible e-voting) depends on further technical development and the resolution of questions about data security and the possibility of misuse.

EU-Citizens' Decision (Referendum)

If an EU-Citizens' Demand is successful, the EU-Citizens' Decision should follow within 9-18 months, unless the Demand proposal has been adopted unchanged by the competent European institutions within the set time period. The institutions may present a counter-proposal to the Demand. This offers citizens a greater choice of options in the referendum.

Which majorities should be required?

Model 1

This model takes as its basis the currently valid rules on majority voting in the Council of Ministers:

1a) Unanimity: if unanimity within the Council of Ministers is required for one or other particular area of policy (e.g. for alterations to treaties or in foreign and security policy), then the result of an EU-Citizens' Decision would be accepted if a "yes" vote had been given by both a majority of electors in each member state and by a majority of the total number of votes cast across all the member states. Currently, 40% of all EU decisions are subject to the unanimity rule.

1b) Qualified Majority: where for a given area of policy a qualified majority is required in the Council of Ministers, then an EU-Citizens' Decision would be accepted if it secured approval in a qualified majority of the member states.⁹ This procedure is used for about 50% of all EU decisions.

1c) Simple Majority: where for a particular area of policy a simple majority in the Council of Ministers is prescribed, a citizens' vote/referendum would be accepted if a majority had voted 'yes' in a majority of the member states and if a majority of the total votes cast were also 'yes' votes. This form of decision-making remains the exception within the current EU.

This model acknowledges the current nature of the EU as a community bound by treaty. The rights of countries – in particular the smaller ones – are treated as they are in the present dispensation.

Model 2

This model simplifies the majority requirements for referendums and other EU citizens' decisions.

2a) Unanimity: for any alterations to treaties (or to a possible future constitution), a majority of the votes cast must have been in favour in all of the individual member states.

2b) Simple majority: for all other types of decisions, a simple majority of the total number of votes cast (across all the member states) and a simple majority of the individual member states (currently 8 out of 15) must have been in favour. The emphasis in this model is on the need to make direct democracy workable – to achieve a practicable working method which allows direct democracy to operate. The first model places such high hurdles on a citizens' referendum that it creates an imbalance of power between the citizens and the Council of Ministers. If a citizens' initiative were to fail, it would leave the heads of government in control again. Giving up the linkage to the existing institutional majority requirements could be more than compensated for by the increase in legitimacy that would accrue to EU-wide citizens' votes. Only the most fundamental questions should be decided by a simple majority of votes in all member states.

In neither model is it possible for a citizens' decision to be validated unless it has been agreed by a majority of member states. In all cases a double majority is required. The EU is not a state, but a supranational organization characterised by an especially high level of governmental cooperation, but one which respects the sovereignty of each member state. The question as to what might be the appropriate majorities is both delicate and a potential source of conflict. This is an issue which requires much more investigation and discussion. The proposals which the Convention will eventually make might possibly produce a simplification of the currently extremely complex decision-making procedures in the EU.

Rules on distribution of information and on financing

At the European level it is especially important to ensure that the electorate is properly informed and that the initiators of EU-Citizens' Demands receive financial support from public funds. All households should therefore receive a referendum information leaflet listing the arguments pro and contra. An elected referendum commission should be responsible for ensuring a fair and balanced dissemination of information to the public. The initiators can claim a refund of expenses incurred.

The Stockholm Forum Referendum Debate

Minutes by Paul Carline

The debate with representatives of the Swedish political parties produced some interesting contributions. The main points are briefly summarised here:

Margarete Andersson (Centerpartiet):

- the experience of referendums in Sweden so far had not so far been a positive one: the public had frequently expressed a wish to subject an issue to referendum, but the government had not allowed this to take place;
- a good referendum needs an informed public;
- not a good idea for the government or parliament to abdicate responsibility to the people only when they don't know what to do;
- statutory rights of I&R should be incorporated into the constitution.

Gunilla Carlsson (Moderaterna):

- referendums tend to reinforce the fixed views of the 'yes' and 'no' sides, which tend to become even more rigid and inflexible;
- necessary to decide whether to stay with the model of representative democracy, or move to a different system (i.e. a decision on where power should be held);
- easier to decide issues at the local level;
- in general she is against referendums (at least on the basis of experience so far), but is open to other possibilities, as long as they are well thought out and organised;
- the path to improving democracy is best done by building on the representative tradition.

Peter Eriksson (Miljöpartiet):

- good experience with local democracy, which is more responsive to people's concerns;
- local discussion/decision-making process (Rådslag) in Kalix: people involved in decisions about the city centre and local taxes;
- very strongly in favour of I&R: a vote only every 4 or 5 years is not satisfactory;
- in favour of referendums on European integration: politicians do not have a mandate to make decisions on this issue!
- there should be no participation quorums: those who turn out and vote should decide.

Lars Ohly (Vänsterpartiet):

- not in favour of referendums as a principle: it is

important to defend representative democracy. All the decisions taken by the Swedish parliament should have been taken by it alone (!);

- one sole exception to this rule: the decision on membership of EU/enlargement. Here the people need to be involved;
- popular opinion on the EU differs considerably from the opinion of parliament (which is therefore not at all representative on this issue);
- legitimacy of the EP is very poor (only 30+% turnout for EP elections in Sweden, even less in Britain);
- the Left accepted the referendum result on EU membership even though they disagreed in principle (respecting the 'will of the people').

[Here Bruno Kaufmann asked whether and why such respect for the citizens should be given only on EU issues]

- other issues could be subject to referendum;
- strongly opposed to pan-European referendums: this meant an acceptance of a federal model. Decisions should be made at the national level.

Tobias Krantz (Folkpartiet):

- tends to agree with Lars Ohly: the main principle should remain that of representative democracy
- but he also agrees that the representative system is not representative [!];
- his experience that "the best ideas" are not coming from the political parties;
- nonetheless believes that the status quo should remain and that the parties should 'reclaim' their legitimacy as representatives.

Inger Segelström (Socialdemokraterna):

- in favour of local referendums on local issues only.

Given the very strong consensus (transcending party differences) among the Swedish politicians present as to the virtues of their almost totally representative system (and the degree to which they appeared to feel it necessary to defend that system vigorously against the idea of greater citizen involvement), the two admissions referred to above came as a surprise:

- 1) that the treasured system was not in fact very representative in practice;
- 2) that "the best ideas" were not coming from the political parties, but from the general public and/or other public interest groups.

In the ensuing general discussion, the following points (among others) were made:

- will the political parties indefinitely claim the exclusive prerogative of power by using the argument

that 'the people' still do not understand the issues well enough for them to be allowed to be involved in the decision-making process? What are the traditional parties doing actively to educate 'the people' in democracy? If "the best ideas" are not coming from the parties, is this not a powerful argument for DD and a challenge to a purely representative system? (Paul Carline)

The afternoon session produced an open and fruitful exchange of ideas on the principle of citizen participation in general (through the devices of I&R) and on the specific demand for a pan-European referendum on the constitutional proposals of the Convention in particular. Unfortunately, none of the politicians was present for this session. (The following represents some necessarily inadequate brief notes on this session).

Rolf Büchi (Helsinki):

- surprise at the caricature of representative democracy presented by the morning session;
- keeping the civilian population away from the debating table reflects an attitude of contempt for the ordinary citizen and a display of arrogance.

There is a Swedish Minister for Democracy – but the focus is only at the local level.

Gita Feldhune (Riga):

- there is a need to find ways of confronting politicians and challenging their positions.

Olof Petersson (SNS):

- public opinion polls are much used in Sweden. They often have de facto referendum character – but the politicians don't want referendums;
- the ideal may be to have relatively few referendums on the most important issues only;
- personally happy to leave referendums to the local level.

Algis Krupavicius (Lithuania):

- politicians tend to think very selectively: referendums are OK at the local level, but not at the national or EU levels;
- some problems with referendums: legitimacy (turnout quorums) and other quora (majority decisions);
- continuing dialogue with politicians necessary;
- need to find satisfactory ways of informing the public.

Bruno Kaufmann (IRI Europe):

- high turnout thresholds permit blocking tactics (e.g. Italy);

- a qualitative rather than a merely quantitative problem.

A.K.:

- in Lithuania turnout thresholds are 40% for parliamentary elections and only 20% for local elections;
- possible that Swedish government would not accept the result of a European referendum if participation was "too low".

R.B.:

- in Schaffhausen, voting is compulsory and turnouts are much higher.

Johan P. Olsen (Oslo):

- there shouldn't be a clash between RD and DD: in all democracies there are many different ways for citizens to be involved in decision-making;
- the "true believers" are convinced of a single solution, an ideal of how it should work: but reality is always different;
- question of whether to aim for ideal solutions, or be pragmatic and accept practical ones;
- simple fact that over the past 20 years very many decisions have moved out of the hands of RD to the supranational level (internal and global markets; EU legislation; European Court etc);
- the important question is how the citizens can be practically involved: it is not a choice between RD and DD.

B.K.:

- no longer now a question of IF, but of HOW;
- the debate often begins with a strong challenge to the prevailing system;
- the potential of DD is still grossly underestimated (e.g. in terms of the positive economic and social effects of direct involvement).

O.P.:

- there was a moment in the 1950's when referendums were more popular;
- next year's Swedish referendum on EMU could be in effect a referendum on referendums themselves.

R.B.:

- the fundamental issue is that of the distribution of power – between elites and 'ordinary' people.

Palle Svensson (Århus):

- a question of 'opportunity structures';
- in Denmark there are no 'pure' types of democracy, but mixtures.

Aimée Lind Adamiak (Oslo):

- there is a concentration on the fears of politicians about referendums and not enough positive thinking about the potential benefits;
- there is a demand in Norway.

Paul Carline (Edinburgh):

- it is a duty of those in power to create a demand for greater democracy (just as business has to create a demand for new products);
- this is a moral duty.

P.S. :

- where do we derive values from? What is the basis for the 'moral imperative'?

Paul Carline then briefly presented the European Referendum Campaign, which had been formally launched in Bratislava on the previous weekend and which is planned should cover all existing EU member states and current applicant countries. There then followed a discussion of the practical possibilities for a pan-European referendum on the work of the Convention.

O.P. proposed that the discussion should relate to three separate (if inter-related) questions:

- possible national referendums on the Convention proposals (based on existing national law);
- a possible pan-European referendum based on a (not yet existing) transnational law;
- the possibility of introducing an initiative right at the EU level.

O.P. suggested that any pan-European referendums would have to operate at different levels/in different ways depending on the current provisions in the different countries:

- in countries with no referendum provision it would be necessary to create DD provisions;
- in countries with provision for referendums (e.g. Sweden) it would be necessary to move from non-binding to binding provisions;
- in other countries (e.g. Denmark) it would be necessary to relax the rules on EU referendums.

It was generally agreed that there were lots of questions still to be resolved e.g.:

- what majorities would be accepted;
- binding/non-binding;
- what happens to countries which vote 'no'.

The crucial point was whether there was support for a move from a Union towards something more like a Federation.

P.S. proposed 4 questions which must be answered:

- who has the right to call referendums? (will there be genuine DD, or the dominance of vested interest groups?);
- who will formulate the question(s)? (will there be a precise legal text? Or a more general formulation?);
- what is the decision-making body? Who decides on the majorities and quorums?
- Will the results be binding or non-binding?

On the question as to whether a right of initiative should be incorporated into EU procedure, the following options were mentioned:

- develop the existing right of petition; make it more accessible;
- create a genuine right of initiative (this would presumably result in a diminution of the rights of the Commission to be the initiative-making body in the EU and would also diminish the power of the IGC.

Lithuania and the prospects of a European Referendum

By Algis Krupavicius (Kaunas University of Technology) at the Stockholm Forum

Which specific referendum experience do you have on European issues?

David Held in his seminal book on models of democracy pointed out that democracy "could reasonably be divided into two broad types: direct or participatory democracy (a system of decision-making about public affairs in which citizens are directly involved) and liberal or representative democracy (a system of rule embracing elected 'officers' who undertake to 'represent' the interests and/ or views of citizens within the framework of 'rule of law')" (Held, 1987, p. 4.). However, "while there is agreement that citizens should play an informed and active role in the governance system, there is wide disagreement as to the forms and the extent that citizen participation should take" (Zimmerman, 1986, p.1.).

Briefly speaking, Lithuania during the last decade of the 20th century accumulated extensive experience in referendums practice, because this political device had played an important role in the legitimizing of a re-established sovereignty and constitutional order.

The Supreme Soviet of the Lithuanian Soviet Socialist Republic passed the first law on a referendum on November 3, 1989. Article 1 of the 1989 referendum law stated that "the most urgent issues relating to the life of the State and the Nation shall be resolved and the provisions of laws of the Republic of Lithuania may be adopted by a referendum". Of ten referendums held in Lithuania between 1990-1996, 7 of them could be classified as constitutional because the subject matter of these referendums was related to the country's independence and/or building of democratic institutions (see Table 1). Three referendums dealt with economic issues such as privatization and the restoration of bank deposits lost during the period of hyperinflation in 1991-1992, on a free sale of agricultural land.

Lithuania has no experience so far with a specific referendum on European issues. The country is currently an applicant for EU membership. However, since late 2000 public opinion has been constantly in favor of joining the EU. There is also a consensus among all mainstream political parties on having a referendum on Lithuania's accession to the European Union.

What are the basic elements (design, political and legal framework, timing, problems) of the referendum on European issues?

The 2002 referendum law introduced two different types, i.e. compulsory and consultative referendums. The compulsory referendum is designed to deal primarily with constitutional issues, including Lithuania's membership of international organisations, if such membership requires the delegation of certain sovereign functions of the Lithuanian state to supranational bodies of these international organisations (for example, the EU). Compulsory and consultative referendums can be called on all other major issues of the life of the state and society as a result of an initiative from citizens of the Seimas.

The right of initiative to call a referendum belongs to parliament and to the citizens. This right is implemented at the request of no less than one-fourth of the members of the Seimas, whereas the citizens' initiative has to be expressed by a request of at least 300,000 citizens who have the right to vote. A term of three months is set for the implementation of the citizens' right to initiate a referendum on a specific issue. This term is counted from the day of registration of a referendum petition with the Central Electoral Commission by the initiating group of citizens, consisting of at least fifteen persons. The issue is adopted by compulsory referendum if more than half of voters

approve the referendum issue. In addition, there is a requirement that at least $\frac{1}{3}$ of the total electorate must have voted "yes". If participation is less than 50% of the total electorate, the compulsory referendum is deemed invalid. Constitutional decisions which have been adopted by referendum can only be amended or repealed by referendum. Decisions of consultative referendum must be presented and discussed in the Seimas no later than one month after the declaration of the official referendum results in order to implement the referendum decisions. All this means that rules for the EU referendum in Lithuania are established and clear enough. It is certain that a compulsory referendum will be held on the EU in Lithuania.

At the time being no date has been fixed for the referendum on Lithuania's joining the EU. During the debates among political groups a few options have been discussed. The earliest suggested date is early spring of 2003 to have the EU referendum before the signing of the treaty between Lithuania and EU in mid-April 2003. Another option is to have the EU referendum on August 23rd, 2003, i.e. as a symbolic act to commemorate the anniversary of the "Baltic Way" of 1989. There are voices also for holding the referendum in the autumn of 2003 after a broader discussion on the pros and cons of Lithuania joining the European Union. All the suggested dates for the EU referendum are preliminary and no political decision has been taken yet.

How should a Pan-European referendum on an EU constitution or Constitutional Treaty be designed?

This issue is not the subject of debate in Lithuania yet, because the first step needs to be the referendum on the country's accession to the EU. As sovereignty is a sensitive issue for Lithuania, a new EU Constitution or Constitutional Treaty will be adopted only by referendum here. Certainly, a Lithuanian referendum will be based on the national referendum rules.

References:

- Held D. (1987) *Models of Democracy*. Stanford University Press, Stanford.
- Vaineikis K. (1994) *Politologijos studijos*. Technologija, Kaunas
- Zimmerman J.F. (1986) *Participatory Democracy: Populism Revived*. Praeger, New York.

Table 1. Referendums and voting results, 1991- 1996.

Date	Subject, or question	Voter turnout (%)	Percentage of "yes" votes of the total electorate
February 9, 1991	On Lithuania's independence (plebiscite).	84,7	76,46
May 23, 1992	On the restoration of the office of president in Lithuania	57,68	39,89
June 14, 1992	On an immediate and unconditional withdrawal of troops of the former Soviet Union from the territory of the Lithuanian Republic in 1992, and compensation of material damage to Lithuania.	76,0	68,95
October 25, 1992	On the adoption of a new Constitution	75,25	56,76
August 27, 1994	On illegal privatization, compensation for savings and distorted justice.	36,9	32,0
October 20, 1996	Constitutional amendment: "The Seimas consists of 111 Members, and the Seimas is considered as an acting body if no less than $\frac{3}{5}$ of its members are elected in the elections".	52,1	33,87
October 20, 1996	Constitutional amendment: "Regular elections to the Seimas is held every four years on the second Sunday of April".	52,1	33,12
October 20, 1996	Constitutional amendment: "No less than fifty percent of the national budget expenditures are devoted to the needs of social welfare, health care, education, and science".	52,1	33,0
October 20, 1996	On a compensation for savings through the fair privatization of state property.	52,1	38,98
November 10, 1996	On the free sale of agricultural land in Lithuania.	39,73	17,24

***Latvia and the European Referendum
By Gita Feldhune (Director, Center for Human Rights)
at the Stockholm Forum***

Despite being a country with numerous possibilities for referendums – both obligatory and initiated by citizens, Latvia has never had a referendum on European issues so far. The first reason for this is that Latvia was not yet sufficiently related to Europe; the second reason is that, in addition to not providing for any government-initiated referendums, the Latvian Constitution (Art.73) specifically prohibits referendums on agreements with foreign nations.

Nevertheless, there seems to be a consensus that Latvia's joining the EU would require a referendum, which was expected to take place on 23 August 2003 – simultaneously with the referendums in Estonia and Lithuania; however, currently it seems that this date is

in the process of being postponed in all three countries. To enable the holding of this referendum, a working group has elaborated draft amendments to the Constitution, which would provide that the participation of Latvia in the EU has to be decided by a popular vote initiated by the Saeima (the Parliament); any changes in the conditions of Latvia's membership of the EU would have to be decided by a referendum if so requested by at least half of the members of the Saeima. This formulation, in the opinion of the authors of the draft, would also permit withdrawal from the EU, which would also be subject to a compulsory referendum. Pursuant to the proposed amendments to Art. 79, the referendum on the membership of the EU or on the changes of conditions of membership would require the participation of at least half of the electors who voted in previous parliamentary elections and the affirmative vote of the majority of the votes cast.

The difficulty lies in the fact that Art. 2 of the

Constitution (providing that “The sovereign power of the State of Latvia is vested in the people of Latvia”) is one of the entrenched articles of the Constitution whose modification is subject to a compulsory constitutional requirement pursuant to Art. 77 of the Constitution, requiring that at least half of the total electorate vote in favor of the amendments to this Article. To be able to circumvent this requirement by providing for a special “EU membership referendum” requires the adoption of the position that membership of the EU does not affect the sovereignty of Latvia.

The authors of the draft adhere to the position that the contents of the notion of sovereignty referred to in Art. 2 of the constitution have already undergone significant changes in view of the development of international law and thus would not be further affected by Latvia’s membership. This position allows the conclusion that there is no need for a compulsory referendum, thus avoiding the minimum 50% approval requirement mentioned above and substituting instead approval by a simple majority of the votes cast, subject to the participation threshold having been reached. However, even the achievement of this simple majority is far from certain at the moment, and, moreover, heated debate can be also expected about the content of sovereignty in Art. 2.

From the Latvian perspective, where no advisory referendums are possible, but only binding ones, it is clear that the future Pan-European referendum should also be binding whether or not Latvia will have the opportunity to participate in it. If the Constitutional amendments are adopted as proposed, there would be no constitutional obstacles to holding such a referendum in Latvia, as it could be regarded as a “changes in membership” referendum and called at the initiative of the parliament. However, this would also mean that, even if the multiple majority requirement is applied at the European level – which would be new to Latvia, as it is a unitary state, but makes perfect sense – a Latvian “no” would mean a Latvian “no” and thus would require negotiations as to its future status and relationship with the EU. Ideally, the rules should be set before the referendum, so that the consequences of a “no” vote would be clear to everyone.

Finland and the European Referendum prospects

By Dag Anckar (Åbo Akademi University) at Stockholm

Finland is among a group of centralistic countries in which I&R-devices play a weak role. Following independence in 1917, no provision for national referendums was included in the 1919 Finnish Constitution, and the first national referendum in Finland in 1931, on the continuation of a prohibition law, came about by means of special legislation initiated by government. In 1987, through amendment, a referendum provision was incorporated into the constitution, the stipulation being that advisory referendums could be called by Parliament by means of special laws that prescribed the date of voting and also established the alternatives to be presented to the voters (Anckar, 1983). The second national referendum in Finland in 1994 on the matter of entering the European Union was called on the basis of this provision (Anckar, 2002). When the Finnish Constitution was thoroughly amended in the year 2000, the 1987 provisions for the organising of advisory referendums were as such included in the new constitution.

Finland is therefore among the EU member countries whose constitutions provide for the possibility of a European referendum, would such a referendum be called in connection with the ratification of a Constitutional EU Treaty. Accordingly, Finland is, it would seem, among the countries that do not raise obstacles for the holding such a referendum on the basis of national rather than European law. However, due notice must be taken of the fact that the Finnish provision is for advisory referendums, whereas a European referendum, for reasons to be spelled out shortly, needs to be binding in nature. The holding of a European referendum thus requires a readiness on the part of Finland to revise her national legislation in a way that accommodates the calling of binding referendums. So far, the issue has not been raised in the Finnish constitutional debate. The same is true of many other aspects and problems relating to the referendum device on a European basis. As I make in the following some quick and general remarks on the design of the device, it should therefore be understood that the remarks do not reflect a thought-out Finnish view, but rather are political-science inspired reflections that glance furtively at Finnish interests.

The referendum is not standard practice for ratifying or amending constitutions, its use being dependent on various factors (e.g. Ghai, 1988: 19-21). According to one count, about one third of the countries of the world had in the early 1990’s some sort of constitutional referendum (Suksi, 1993: 142-143). According to a more recent count, 36 out of the 85 democracies that existed in 1999 had a constitutional referendum

(Anckar & Karvonen, 2002). In the case of the European Union, however, strong considerations speak in favour of having a referendum on the future European Constitution. 'For most systems, it is clear that if they are threatened with stress due to a decline in sentiments of legitimacy, any efforts to understand the nature of the responses will have to take two things into consideration: the objects with respect to which legitimacy is declining and the kind of legitimacy that is on the wane', David Easton wrote, some decades ago, in his famous outline for a systems analysis of political life (1965: 287-8). Clearly, as a system the EU suffers from less than satisfactory inputs of diffuse as well as specific support, to use Easton's terms (1965: 153-170). Any effort to correct this state of affairs needs to consider, first, that the perceived distance between the EU decision-making machinery on the one hand and the citizens in various countries on the other hand is much too long, and, second, that a European identity has not yet emerged among the people of the member states. In the long run, these shortcomings cannot be overcome unless the people of Europe become involved directly in the formation of EU policy. There is certainly no better way to introduce this idea than to have the people decide on the constitution that will guide the future conduct of European political life.

The referendum device is, however, problematic in the sense that its good long-term effects on a system level are probably in many cases neutralised in the short run by negative attitudes on a subsystem level. The case of Finland makes a good illustration. The prospects for a Finnish participation in a European Referendum in 2004 are good, according to a draft of the IRI European Referendum Challenge Report (2002). The validity of this assumption must, however, be seriously questioned. This is for two very different reasons. The one is that Finland is among the countries that strongly endorse, in terms of elite attitudes and perceptions, the advancement and strengthening of the Union. A positive and confirming outcome of a European constitutional referendum being anything but certain, a Finnish hesitation on the political rationality of the use of the device is only natural. Second, Finland is a small European country in terms of population, and for small countries, for obvious reasons, the referendum appears a dubious political mechanism. From a Finnish perspective, therefore, a European referendum holds few temptations but several threats. Of course, the attitude of Finland as well as of other countries will ultimately much depend on the content of the constitution that is submitted to popular vote.

Given that an European referendum is decided, several remarks and caveats apply. First, the referendum must be in the binding rather than the advisory category. This should be evident from lessons from social choice theory. Situations that combine advisory referendums with a representational system are namely vulnerable to a paradox of representation, implying the existence of sizable and democratically valid majorities for flatly contradictory alternatives in the electorate on the one hand and in the parliament on the other (Nurmi, 1997: 47-51). The choice between the outcomes then adds up to a choice between ideologies of representation, and such a choice cannot be forced upon the member countries. In fact, the social choice literature reports situations in which a good majority of the electorate votes 'yes', and a 5/6 majority of the MPs still have a good reason to vote 'no' in the parliament, as a majority of their supporters in fact voted 'no' in the referendum. This referendum paradox in fact seriously questions the very institution of advisory referendums, be they national or international. On the one hand, if the majority of the votes cast in a referendum is to be decisive, why resort to voting in parliament at all? And on the other hand, if the majority of the votes of representatives is to be decisive, why bother with the referendum at all? (Nurmi, 1999: 77-78).

Also, the debate on a future European referendum has on occasions raised the question whether multiple questions or options are acceptable. This possibility should be firmly rejected. Again, this is for reasons that stem from social choice theory. An increase from two to three or more alternatives makes it decisively harder to arrange a referendum in a satisfactory way; in fact, to quote Hannu Nurmi (1997: 41), 'the increase in the number of alternatives subjected to a referendum opens a Pandora's box of problems'. For one thing, the interpretation of the referendum result becomes cumbersome. Good illustrations are provided in the literature on the Swedish referendums in 1957 on the pension issue and in 1980 on the nuclear power issue. The findings clearly suggest that the introduction in these two referendums of more than two alternatives carried confusion, formidable problems of interpretation and the compromising of the referendum device in its wake (Lewin, 1984: 291). Second, when multiple decision alternatives are subjected to referendum, the implication is a possible undermining of the very rationale of referendum by giving voters incentives not to reveal their true opinions about the alternatives on offer (Nurmi, 1997: 42). In fact, most voting situations in political life tend to be vulnerable to a strategic misrepresentation of

preferences. With two alternatives, however, the incentives for voters to misrepresent their preferences disappear. A related issue concerns the date of the European referendum. It has been suggested that the referendum be held in June 2004, which is the date of the next elections to the European Parliament. This sounds fine, but we cannot, of course, be at all sure that the work of drafting a coherent EU Constitution has advanced far enough at that time to be subjected to popular vote. Anyhow, the European referendums must be conducted on the same day in all member countries. This is to avoid agenda manipulation in terms of strategic timing. Decision rules should of course be designed and manipulated in order to produce a sincere vote and not in order to produce a certain outcome.

The issue of defining majority thresholds is of course crucial in terms of legitimacy, and it cannot be stressed too strongly that the threshold must be in the category of a double majority. Some years ago two Finnish political scientists summarised a good deal of research on European public opinion by stating that although a majority of Europeans favour integration, they think of themselves mostly in terms of nationalities (Wiberg & Raunio, 1995). The situation still remains unchanged, and the requirement must therefore be for majorities in terms of voters as well as nationalities. Admittedly, this requirement is anything but usual on a national level. Of the 85 democracies in 1999 a total of 33 have opted for double majorities in the process of constitutional amendment (Anckar & Karvonen, 2002). In the case of the EU, the choice of a valid combination must depart from two considerations. On the one hand, the introduction of a qualified majority threshold at the level of voters most probably carries the consequence that the proposal is defeated, regardless of its content. On the other hand, a forcing of a constitution upon a large number of member states against their will would carry devastating consequences in terms of legitimacy. It would seem, therefore, that a stipulation for a majority of voters and a $\frac{3}{4}$ -majority or perhaps even $\frac{4}{5}$ -majority of member states is about right, being, on the one hand, rigorous enough to guarantee a broadly based support for the constitution, and, on the other hand, not so rigorous as to render meaningless the whole referendum exercise.

References:

Anckar, Dag (1983). 'Finland: A Half-Hearted Step Towards Referendum', Acta Academiae Aboensis, Ser. A, Vol. 62, No. 4, Åbo: Åbo Akademi.

Anckar, Dag (2002). 'Finland: Report', to be included in Bruno Kaufmann et al., eds. The I&R Handbook of Europe. Forthcoming, Carolina Academic Press.

Anckar, Dag & Lauri Karvonen (2002). 'Constitutional Amendment Methods in the Democracies of the World', Paper to the XIIIth Nordic Political Science Congress, Aalborg, Denmark, August 15-17.2002.

Easton, David (1965). A Systems Analysis of Political Life. New York: John Wiley & Sons.

Ghai, Yash (1988). 'Constitution Making and Decolonisation', in Ghai, Yash, ed. Law, Government and Politics in the Pacific Island States. Suva: Institute of Pacific Studies, University of the South Pacific.

IRI European Referendum Challenge Report (Draft), 2002.

Lewin, Leif (1984). Ideologi och strategi. Svensk politik under 100 år. Stockholm: Norstedts.

Nurmi, Hannu (1997). 'Referendum Design: An Exercise in Applied Social Choice Theory', Scandinavian Political Studies, Vol. 20, No. 1, 33-52.

Nurmi, Hannu (1999). Voting Paradoxes and How to Deal With Them. Berlin: Springer Verlag.

The Danish Perspective

By Palle Svensson (University of Aarhus) at the Stockholm Forum

1. Specific referendum experiences on European issues

The political regime in Denmark is a representative democracy and in general based on the same values, institutions, and rules as in other Western European countries. However, the constitution to a larger extent than other Nordic countries includes specific rules on referendums. Referendums have also been used to a larger extent than in these countries and during the last three decades all but one have concerned the European issue. No less than six referendums on Europe have taken place. The first one was about Danish membership of the European Community in 1972, the second one was about the Single European Act (SEA) in 1986, the third one was

about the Maastricht Treaty in 1992, the fourth one was about the Maastricht Treaty and the Edinburgh Agreement in 1993, the fifth one was about the Amsterdam Treaty in May 1998, and the sixth and final one was on the Single European Currency in September 2000. As shown in Table 1 these referendums have been characterised by high turnouts and usually quite close decisions. The highest turnout ever in a Danish election or referendum occurred in the 1972 referendum on Danish membership of the EC. This referendum also marked the clearest majority, as

Table 1: Danish Referendums on Europe

		Turnout	Yes
1972	EC Membership	90.4%	63.4%
1986	Single European Act	75.4%	56.2%
1992	Maastricht Treaty	83.1%	49.3%
1993	Edinburgh Agreement	86.5%	56.7%
1998	Amsterdam Treaty	76.2%	55.1%
2000	Single Currency	87.2%	46.9%

almost two out of three Danish voters who turned out voted for Danish membership.

The Danish constitution allows for six possibilities for holding referendums, whereas there are no constitutional possibilities for a popular initiative. Five of the six possibilities for referendums are explicitly mentioned in the constitution and they are all legally binding:¹ (1) An obligatory referendum on constitutional amendments (article 88); (2) a facultative law referendum (article 42); (3) an obligatory law referendum on the voting age (article 29); (4) an obligatory law referendum on delegation of constitutional powers to international authorities (article 20); and (5) a voluntary referendum on laws about treaties (article 42, section 6, cf. article 19)². In addition to these constitutional provisions it is possible by law to call voluntary referendums, which legally have an advisory status as they cannot restrict the authorities, which are competent according to the constitution (Sørensen, 1969: 178f). The two first possibilities are in principle the most important ones, as the two obligatory law referendums according to articles 29 and 20, as well as the

Table 2: Forms of Danish Referendums

	Binding	Advisory
Obligatory	Art. 88: Constitution Art. 29: Voting age Art. 20: Delegation of powers	
Facultative	Art. 42	
Voluntary	Art. 42 & Art. 19	Law

voluntary law referendum on treaties, are attached to article 42.

The 1915 constitution introduced the obligatory referendum to Danish politics as part of the procedure for constitutional amendments. Previously, such amendments only demanded that the bill was passed by Parliament and, following an election, passed once again by the new Parliament. According to the 1915 constitution, an amendment proposal – when passed by Parliament and afterwards by the newly elected Parliament – should be submitted to the voters for approval or rejection. Approval demanded a majority of the participating voters and at least 45 per cent of the whole electorate to cast their vote in favour of the Parliament's decision on a new constitution. In principle the same procedure for constitutional amendments holds today (article 88 of the constitution). However, the percentage required for approving a constitutional amendment has in the 1953 constitution been lowered to 40%.

The 1953 constitution introduced the facultative referendum in Denmark. However, its history leads back to the beginning of the century and as early as the 1930s a certain agreement had been reached between the major political parties about the fundamental outlines. Article 42 in the 1953 constitution describes the facultative law referendum, which states that one third of the members of the Folketing can demand a passed bill to be submitted to the voters for either approval or rejection. A rejection of the bill requires a negative majority that comprises at least 30 per cent of the electorate. A number of bills such as financial bills are excepted from this rule. The possibility to hold referendums was introduced as a replacement for the first chamber, which was abolished in 1953, and clearly served as a minority protection – that is a conservative minority in parliament – and not as an element of direct democracy. It has only been used once, in 1963, on four bills on land reforms.

Apart from the facultative law referendum, the 1953 constitution also introduced an obligatory referendum on the voting age and on delegation of Danish sovereignty to international authorities if a bill on the latter subject is not accepted by a $\frac{5}{6}$ majority of the Members of Parliament. Both these forms of referendum apply the already mentioned principle of rejection in article 42; that is, there must be a negative majority comprising at least 30 per cent of the electorate in order to defeat the passed bill.

Both these possibilities for referendums make it easier to pass legislation, which previously had to be settled by constitutional amendments (Sørensen, 1969: 304f). This is most evident with regard to the voting age,

which was previously defined in the constitution. With regard to delegations of sovereignty the demand for a majority of five-sixths is rather restrictive, whereas the possibility of a passed bill surviving a referendum is much easier than the heavier procedure of constitutional amendments.

These possibilities for referendums represent a step away from the sovereignty of the people and direct democracy towards favouring representative democracy. In both cases, it has become easier for the Folketing to pass issues that previously had to go through difficult procedures demanding a positive majority among the voters. On these issues it is only demanded that a majority of the voters of a considerable size (30 per cent) do not reject the decision of the Folketing. This is not a minority protection, but rather gives representative democracy a clear predominance over direct democracy.

Finally, it is generally assumed that the Danish political regime includes a possibility of voluntary and advisory referendums – a possibility which is not regulated or provided for in the written constitution. After a proposal on voluntary referendums was not included in the final bill on constitutional amendments, which was accepted in 1915, it was debated whether voluntary referendums would be precluded in the future. Shortly after, however, a voluntary and advisory referendum for the sale of the Danish West Indian Islands was carried through in 1916. The general view among constitutional experts is that nothing prevents referendums outside the frame of the constitution. The result of such referendums may serve as guidance for competent governmental institutions, but they cannot legally restrict the freedom of decision-making of these institutions (Sørensen, 1969, p. 179).

2. Basic Elements on the Next European Referendum

Following the referendum on the Maastricht Treaty in 1993 – in which the treaty was rejected by the Danish voters by a narrow majority – five of the six parties in the Folketing negotiated a so-called National Compromise in order to reconcile supporters and opponents of further European integration. Denmark should have four exceptions from the Maastricht treaty: on defence, on the single currency, on justice and police, and on Union citizenship. In addition, it was agreed that all future changes in treaties regulating Denmark's relationship with the EU should be subjected to referendums in order to secure legitimacy. Agreement on the Danish exceptions was obtained with the other EC governments in Edinburgh in December 1992, and the Danish voters accepted this Edinburgh Agreement in a referendum in May 1993.

It is evident that large parts of the political class in Denmark are uneasy with the Danish exceptions. The Liberals and the Conservative parties only reluctantly accepted them in 1993, and the Social Democratic – Radical Liberal government, which survived the election in 1998, was also eager to get rid of them. Despite a promise during the campaign in 1998 not to call a referendum on the exceptions, the government called a referendum on the single currency, which it lost in September 2000.

The present government formed by the Liberals and the Conservatives is as unhappy with the exceptions as the Social Democrats and the Radical Liberals, but have promised not to call a referendum on them during the four years to follow (Berlingske Tidende, 16 May 2002). Nevertheless, the pressure for Denmark to join the single currency is strong, both from private business, the bureaucracy and the press. Opinions polls have also noted a clear majority for abolishing the Danish krone and adopting the Euro,³ which tempt the government to call a referendum.

Furthermore, the implications of the defence exception are becoming increasingly apparent, as the NATO involvement in Macedonia is likely to be replaced by an EU involvement, which means that the Danes have to leave the peacekeeping operation. Problems with Danish participation in certain minesweeping operations have also been mentioned as unintended and unexpected consequences of this exception.⁴

Finally, the increased number of refugees and more or less illegal immigration to the European countries have raised the issue as to whether Denmark should participate in common EU policies in this area.

In sum, it is most likely that the next European referendum in Denmark may concern one or more – and perhaps even all – the Danish exceptions. Whether such a referendum will take place within the next couple of years is more doubtful. It may or may not be combined with a referendum on a new European Constitutional Treaty. It has even been suggested by the Euro-sceptic Danish Peoples Party that such a referendum should decide the Danish involvement in the EU once and for all, including even membership of the EU.

3. Designs for a Pan-European Referendum on a European Constitutional Treaty

A new European Constitutional Treaty will undoubtedly have to be approved by a referendum in Denmark. If a Danish referendum on such a treaty were to be part of a Pan-European referendum it would have to follow the existing Danish rules. The only uncertainty about such a referendum would be

the precise rule to be applied and the size of a required popular majority.

It seems beyond doubt that a treaty which establishes a Constitution for the EU will have to be approved by a referendum in Denmark. A broad political agreement has developed that all major changes in the treaties regulating Danish participation in the EU have to be approved by a referendum in Denmark. This agreement has developed gradually since the early 1970s and it was strengthened in particular, when the Conservative Prime Minister Poul Schlüter called an advisory referendum in 1986 on the Single European Act. When that act was defeated in the Folketing, instead of calling an election on the issue, Mr. Schlüter called a referendum, which he won, but which also broadened the idea that the people should decide on European treaties. The agreement was formally made explicit as a part of the National Compromise in 1992. The Nice Treaty was not sent to a referendum in Denmark because it was positively claimed by the government that it did not entail any additional delegation of Danish sovereignty.

Even if the present Liberal-Conservative Government could reach an understanding with the leading opposition party, the Social Democrats, that a referendum should be avoided, they would hardly be able to mobilise the necessary 5/6 majority in the Folketing (150 seats), as the euro-sceptic parties, the Danish People's Party on the right wing and the Socialist People's Party and the Unity List on the left wing, together have 38 of the 179 seats in the Folketing. Thus, even if it is formally possible to avoid a referendum, it is not politically realistic for the time being. Thus, if a referendum should take place in all EU countries on a new European Constitution, no particular obstacles could be envisaged in Denmark to participating in such a referendum, provided it was conducted under the present rules. Depending on the content of such a new Constitutional Treaty the Danish referendum would, however, have to follow different rules with a quite different requirement for a popular majority.

If the treaty would only involve further delegation of Danish sovereignty to a specific and limited extent, article 20 could be applied. In this case the treaty would be passed in Denmark if there were not a majority against the treaty and if a majority were less than 30 per cent of the whole electorate. In this case the voters would only have a veto power.

If the treaty were to comprise more far-reaching provisions such as changing the basic rights of Danish citizens or rearranging the distribution of constitutional powers – such as the legislative power – not to mention establishing some kind of a federation of a United

States of Europe, article 88 on constitutional changes would have to be applied. In this case it would become far more difficult to pass the proposal, not only for political, but also for legal reasons. In order to pass the referendum, a majority would have to be in favour of the proposal and this majority would have to comprise at least 40 per cent of the Danish electorate. To conclude, a referendum on a new European Constitutional Treaty will undoubtedly take place in Denmark, and the more far-reaching the content of that treaty, the more difficult it will be to pass a referendum in Denmark.

Notes

- 1 In this paper the conceptualisation of the Danish professor of constitutional law, Alf Ross (1953), is applied. Referendums can be characterised according to the legal effects and to the conditions for their calling. With relation to the legal effects a distinction is made between *consultative* referendums where the result of the referendum is not legally binding for governmental authorities and the *decisive* referendums which are legally binding – a negative result means that the bill is rejected and a positive result that the bill is passed. With relation to the conditions for calling referendums a distinction is made between *obligatory* referendums, which are constitutionally required in order to pass certain decisions and *facultative* referendums which are dependent on a demand fulfilling certain constitutionally specified qualities (for instance a demand from a number of Members of Parliament or a number of voters). Finally, referendums may be voluntary, which means they are called by a law in every particular case.
- 2 Regrettably I was not aware of this legal possibility when I contributed a chapter on Denmark to Gallagher and Uleri (eds.) (1996).
- 3 A PLS Rambøll poll showed 58 pct. in favour of the Euro, 33 pct. against and only 9 pct. undecided, *Morgenavisen Jyllands-Posten*, 18 November 2002.
- 4 NATO has agreed to prolong its mission in October 2002, when the EU was to have taken over. The EU force would have been the first such operation under the new EU common defence policy, but it has been stalled because of a diplomatic blockage between Greece and NATO member Turkey over cooperation with NATO.

The Debate at the Brussels Forum on January 20, 2003

Alain Lamassoure:

- The referendum on the EU constitution should be held at the same time as the EP elections in June 2004. The referendum should be “legally speaking consultative but politically binding, of course.”
- The possibility of petitioning, or public initiative, is very important, but a lot of teaching and learning has to be done.
- France is already politically bound to a referendum on the [European] constitution.

Jens-Peter Bonde:

- A $\frac{2}{3}$ majority is needed for referendums in the Convention.
- Opting out should be a possibility for member states
 - this should be safe-guarding the existing acquis.

Earl of Stockton:

- The constitution has to be clear: it walks like a duck, it talks like a duck, so it's a damn duck, whatever you call it.
- In the UK 72% say no to the EU, according to a recent poll, but 66.6% say yes to staying in the EEC.
- However unpalatable the result of the referendum is, we have to stick to it.

Jürgen Meyer:

- PSE will start a discussion on the referendum in the last stage of the Convention.
- 'Constitutional treaty' means just another treaty, not a constitution, hence, it has to be a 'constitution.'
- Impossible to hold a union-wide referendum before June 2004, instead national referendums should be held, but then again, some member states do not allow for one, for example Germany. So, maybe consultative referendums should be held in those countries, and then let parliaments decide if the result is negative.

John Gormley:

- Ask a German about the Nice treaty and they haven't the faintest clue – the Irish know about it after two referendums. They're sick of the Nice treaty.
- You need a Union-wide referendum, not individual ones, otherwise you get problems with the dating of national referendums. Governments could say: "No, we have to have the referendum on another date, because Sweden is having it then."
- Do you need a threshold for the referendum? Considering the current interest, or lack of it, in European elections, a 50% threshold might fail the whole idea.

Sylvie-Yvonne Kaufmann:

- Dual majority needed: $\frac{2}{3}$ parliamentary ratification + an additional referendum.

Eduarda Azevedo:

- Each member state should act on its own. A referendum in Portugal, particularly in the summer-time, is impossible.

The York Forum on February 15, 2003

"Bringing Power to the People"

At the same day when dozens of million of peoples were marching against a war on Iraq – the York Referendum Challenge Forum was making the case for bringing political power back to the citizens by introducing the right to Initiatives and Referendums at all levels. The conference was organized by the Initiative & Referendum Institute Europe (IRI Europe) in cooperation with the European Liberal Democrats (ELDR).

At the conference in this historic city in Northern England, Diana Wallis, a Liberal Democrat member of the European Parliament stated: "The evidence from Saturday's march is that people want to do something. They want to be involved more directly in the decision-making process or at the very least to be able to influence it. But sadly they feel completely marginalised by our present political system".

After similar Referendum Challenge Forums in Berlin, Vienna, Stockholm and Brussels, the special focus of the Initiative & Referendum Institute Europe (IRI Europe) forum in York was on the situation in the United Kingdom. Here the government published last year its long-awaited White Paper on Governance. The paper made a sound case for power to be devolved to the English regions along the same lines as has happened in Wales and Scotland.

One of the aspects of the paper is the potential for an elected regional assembly to be set up through the use of a referendum, where there is a demand from the local population. At the moment the UK Government is taking 'soundings' as to which English regions could be included in the first wave of referendums. One of the regions that could be included is the northern English region of Yorkshire and the Humber.

"The Scottish example shows clearly that a decentralised political system which is genuinely closer to people must be based on the citizens", said Paul Carline, IRI Europe's Coordinator for Britain. Back in 1997 more than 70% of the Scottish voters backed the proposal for devolution in a referendum.

The conference heard from Adrian Schmid, the Director of Switzerland's Traffic Association, how 'popular initiatives' are contributing to a proper debate and learning processes in society. "Combining the action on the streets with direct democratic politi-

cal rights is a way of returning power to the people", said Schmid.

At the conference, Karin Gilland, a researcher from Queens University in Belfast, gave an account of the referendum process in Ireland in relation to the two votes on the Nice Treaty on EU enlargement. "The first 'No' on Nice led to a decisive change in attitude of the political elite", stated Gilland. "Now the citizens have to be taken seriously."

Finally the conference made the case for the introduction of I&R at the European level. "The European Convention now has the unique opportunity to democratise the European Union and to empower the European citizen by proposing a pan-European referendum on the constitution and the introduction of a popular initiative tool", said Bruno Kaufmann President, IRI Europe, at the York Forum.

The Barcelona Forum Report

Minutes by Susana del Rio and Paul Carline

Mr. Colom thanked IRI Europe and the Forum Civic of Barcelona for having organised the forum. It was very important to carry out this kind of exercise. Even before the present crisis [the war], there had been an unprecedented level of debate on Europe.

There had been one very big failure [in EU affairs] in recent years – the Nice IGC and the Nice Treaty: Mr. Colom described Nice as "a flop". But in fact, the whole IGC/Treaty process since Maastricht has become increasingly compromised. There was a "tug-of-war" at Maastricht, compromises were made and important issues were left unresolved. At Amsterdam, once again the planned agenda was left uncompleted. There was an attempt to tie things up in Nice, but despite working long past the official close of the conference, important issues were not resolved and decisions were left open. The inter-governmental method is now obsolete – Nice was the symbol of its failure.

The realisation has finally dawned that it is impossible to continue building the new Europe without getting the citizens involved. There is a need to widen the perspective beyond the purely economic considerations – to include especially the political and representative dimensions.

Joaquim Millan:

It is necessary for European civil society to have a say in decisions through referendums. The EU is founded on the principles of justice, democracy and social welfare. The Declaration of Laeken was a milestone in progress towards a more participative method. There must be a change from the present control of decision-making by governments to a much greater spread of power. Citizens can and must be involved. An EU Constitution needs popular support. The Convention needs to address this.

The Catalan Parliament asked the Catalan Government to set up a Catalan Convention. This has produced an 80-page set of proposals which was presented to the Catalan Parliament and the EU Convention on 3rd February. On 6th February, the Barcelona Civic Forum presented a manifesto at Barcelona University and sent a copy to Brussels.

The EU must recover its values and work to avoid conflict. Collaboration and debate have been successful in preserving peace for more than 50 years. Catalunya demands that a future EU Constitution be based on the aim of peace and justice. It demands an EU Constitution which is clear, concise and approved in a referendum.

The afternoon session:

In the afternoon session three panels of interventions and debates took place, focusing on the following thematic axes: the campaign for the European Referendum, the civic participation in the process of European integration and the analysis of the step from the elaboration of the Treaties among the States to the Constitution by and for the people.

Regional Campaign Coordinator Paul Carline's intervention at the first panel session focussed on the possibilities and actions taken by the Campaign for an European Referendum, referring to the problems arising from the present level of democracy in the Union and the ways of overcoming some barriers and of improving the democratisation of the European Union. Following this intervention, referendum expert Georges L. Kokkas, member of the Forum for Citizens Democracy in Athens, presented his view of the current relationship between political parties and NGOs and their respective roles, drawing the attention of participants to what measures should be adopted to allow an improvement in relations between political groups and organisations. Virgilio

Dastoli, representative of the Permanent Forum of Civil Society, clarifying the situation and giving an answer to the outlined question, expressed his views regarding the position and the role each group plays.

In the second session of the afternoon: "Civic Participation in the process of European integration", Susana del Río, Coordinator of the IRI Europe Institute for Spain, gave a presentation on the role of civil society in the construction of Europe. She considers civil society to be an outstanding actor and an instigator of ideas of solidarity prominent in the current debate taking place at the heart of the Convention. Further, the speaker focused her attention on the wide possibilities for dialogue and the opening of new channels of participation for a pro-active civil society together with the responsibility that the elaboration of the European Constitution entails.

Joaquín Millán, as Coordinator of the Cívic Fòrum for a European Constitution which is clear, concise and comprehensible and voted in a referendum, explained in his intervention the initiative itself as well as its importance in the context of a debate in the European Union, but also in international fora. The presentation, essentially, concerned the Forum's initiative and in particular the process, the means and the possibilities of achieving the European Constitution for all Europeans approved in a referendum by the citizens. One of the strongest points in his contribution was the underscoring of the fact that the current moment in the life of the Union is a significant step or, rather, a quantum leap in the process.

Virgilio Dastoli's detailed intervention focused on civil society, the representative democracy, participative democracy and the elements of direct democracy aimed at the establishment of reference points for the different actors, in each case with regard to their position and the functions they carry out. The political and social analysis he made, based on personal experience in the European Parliament as well as in the Permanent Forum of Civil Society and in the International European Movement, allowed the participants to take a better view of the current panorama of the debate.

The European Constituent Process

The Spanish Perspective Demopunk Net's Report for the IRI-Europe. Barcelona Forum 2003 <http://www.demopunk.net>

Introduction

We have been requested by the Initiative & Referendum Institute Europe (IRI Europe), also in connection with the European Referendum Campaign, to report on existing legislation and the practical experience with Direct Democracy in Spain, in the context of the European integration process. We have also been asked for our views on how an eventual pan-European referendum should be organised.

First at all, we would like to thank such organizations as the Civic Forum for a European Constitution and IRI Europe for creating this political and informational space – a space deliberately neglected by the parties of the hegemonic political model, their communication media and a wide segment of the academic community.

We are asked to describe the specific Spanish experience of referendums on European issues. Spanish democrats have to answer with embarrassment that there is NO such experience; that Spaniards do NOT enjoy any specific legislation which protects such political freedoms; that there has NEVER been any political or media debate at any stage of European integration.

Present legislative framework

What legislation exists in Spain to protect the political freedoms of Direct Democracy?

The present Spanish constitution, and the legislation which amplifies it, ban the binding referendum; only the consultative plebiscite is allowed (note that we refuse to use the expression “consultative referendum”). It can be called by the Spanish monarch at the request of the Prime Minister, with previous parliamentary ratification. Both the parliamentary initiative and, of course, the popular initiative for a consultative plebiscite are banned. The sole initiative right belongs to the Prime Minister.

Regarding mandatory referendums for ratification of political decisions, we have to state that in Spain – despite the constitutional assertion of popular sovereignty – there is no means by which the people can force a referendum to be held on issues such as European integration or other international treaties. There is only provision for a mandatory referendum for major constitutional amendments – as the final stage of an extravagant procedure of constitutional reform – which, as it will be shown, is an almost totally impracticable way of arranging a possible referendum on ratification of the European constitution.

Legislation on popular initiatives is disappointing too. Almost every form of popular initiative is banned. A popular initiative for a generic referendum is not allowed, neither for ratification of laws, nor of international treaties; the popular initiative for the abrogation of legislation is not possible either, nor that for the recall of elected posts. From Spain we look enviously at Article 72 of the present Venezuelan constitution, which frees the popular initiative to recall of “all posts and magistracy of popular election”, including even the head of state – a stark comparison with the hereditary head of the Spanish state.

In Spain there is only a degenerate form of legislative popular initiative, a form which never leads to a referendum; it merely tries to submit a draft law. It is banned for constitutional amendments, for all framework laws (i.e. the whole political body of the regime), and it is explicitly banned for international issues (legally blocking the use of popular initiative for the subject under discussion). Given these restrictions, this form of legislative popular initiative must be properly called a legislative collective petition. Its Promoting Committee does not have the right to defend it before Parliament, nor can it withdraw it when parliamentary consideration distorts its original spirit.

This form of collective petition does not seem a suitable way to motivate popular ratification of European decisions. Even if it were legally feasible, the level of popular disappointment with Direct Democracy is huge, due partly to the Spanish Regime's own attitude. For instance, in June 2002, one legislative popular initiative of this type was introduced, supported by almost three times the required minimum number of signatures (1,300,000 signatures out of the 33,000,000 Spanish electorate). To the enormous frustration of the democratic community, it was not even allowed to go through Parliament due to the blanket opposition of EVERY deputy. Incredible but true!

Regional and municipal legislation for Direct Democracy has some degree of development; but their description is beyond the scope of the present report. Interested readers are referred to the report about Direct Democracy in Spain published yearly by Demopunk.

Practical experience in Spain

The experience of referendums is confined to a period – over twenty years ago – known as the “Transition”. In 1978, Spaniards ratified the present constitution, and shortly afterwards, in 4 out of 17 regions, the initiative to constitute the regional government was ratified, an initiative exercised by multi-provincial institutions called “Deputations”. (I am aware that the use of the term “regional” instead of another term – such as “autonomous” – is inappropriate in almost all of the contexts. However, I beg this license for the sake of clarity for persons outside our domestic politics). Some academic circles insist on including – as part of the Spanish experience of Direct Democracy – some plebiscites held before the constitution was adopted.

That is the total of Spanish experience with referendums, except for the consultative plebiscite on NATO held in 1986, which requires some additional clarification. As we have just seen, there is no specific constitutional guarantee – such as exists in other countries – regarding decisions on integration into supranational organizations; only the consultative plebiscite initiated by the Prime Minister is possible. But in fact, the consultative plebiscite mentioned above did not consult the people on joining NATO. The 1986 decision ratified in the plebiscite was about integration into the civil structure of NATO, i.e. a similar status to that of France. The fact is that the political elites had decided five years before – without holding a plebiscite – to join NATO, but strong popular opposition delayed it. Finally, in 1997, the elites decided – again without referring it to plebiscite – on full and definitive integration into NATO. In Spain there has never been a formal referendum for ratification of accession to NATO. Spanish democrats have to put up with this deception, which is already well established in the history books.

With regard to decisions on European integration, records are even scarcer. No stage saw popular ratification: neither the decision to request accession to European institutions, nor the consecutive treaties involving the transfer of sovereignty. These decisions

by elites were ratified only by the Parliament. The Spanish electoral system, poorly proportional and with closed lists drawn up by the same elites, allows one to estimate the degree of popular legitimacy really underlying this process.

To this institutional framework we must add the absence of media and public debate. Every decision made on Europe has been markedly elitist. Neither the political establishment, nor its communication media, have ever considered promoting popular ratification or even simple public debate. All information – including television adverts – promoted a non-critical and triumphalist mythology, which was taken up easily in a country affected by ancient isolation.

We do not believe we are indulging in a puerile victim mentality when we state that Spanish society is absolutely apathetic with regard to the debate on European integration. Routine propaganda by the regime has not been able to raise any popular interest, the only idea moving around vaguely is the ‘United States of Europe’ as a new economic and military power, white and Christian; the vast majority of Spanish society cannot, and does not want to, understand the European integration process.

I apologise for the severity of my words, though I am afraid the situation is not far different in other European countries. However, we are here to speak about the political subject called ‘the Spanish people’. Our subject is not university circles, or the political establishment. We are speaking of political freedoms actually enjoyed by this subject, about the real sociological context that can be found in neighbourhoods, on industrial estates, in farming villages. And you can be sure that the situation is as worrying as I am describing.

Is it legally possible in Spain to hold a referendum to ratify a new treaty?

The record is clear: no treaty has ever been ratified by the people. Even worse, the people are not aware of them. It is quite probable that the Spanish elites will maintain this strategy, and a new treaty will be ratified only by Parliament, even one having a constitutional nature.

Based on the past record, the most likely scenario is that the eventual “constitutional treaty” will be announced by media propaganda with the ostentation of a royal wedding, or a Eurovision contest. And you can be sure that if such a referendum does hap-

pen, the propaganda pressure will convert it into a Manichean plebiscite, a plebiscite for ratification of something similar to a United States of Europe.

Certainly, it is quite probable that the Spanish Regime will stick to its strategy of avoiding popular ratification, but we have been asked to analyse the legal feasibility of a referendum. According to present legislation, the legal basis for popular ratification in Spain of an eventual European constitution or constitutional treaty admits only two paths.

The first one is the aforementioned consultative plebiscite, stated in Article 92 of the constitution and regulated by the Framework Law of December 1980. A decision to propose a plebiscite is the sole prerogative of the Prime Minister. It is very unlikely that the monarch would refuse to call it, and parliamentary approval could apparently easily be obtained. Besides, there is no restriction on subject-matter for this kind of plebiscite. In principle, this legal procedure seems to be the best suited to satisfy, to some degree, the appeal by the European Referendum Campaign and IRI Europe.

The European Referendum Campaign suggests holding the referendum simultaneously with the next European Parliament elections. However, this kind of plebiscite cannot be held at the same time as elections. The framework law just mentioned bans the calling of a plebiscite at the same time as "parliamentary or general local elections".

However, we believe that this legal prescription could admit of some interpretation; we believe it to be a minor difficulty which could be resolved by one of the usual legal interpretations (for instance, parliamentary ratification – required by the constitution – for going to war has been never needed: Spanish involvement in the Gulf war, or in bombings in Serbia, or in the invasion of Afghanistan, or the deployment of soldiers against Colombia's FARC, or in the Iraq war, are always seen as "humanitarian actions" which do not require parliamentary ratification).

Obviously, this consultative plebiscite suffers from a significant weakness: it is not a binding consultation. The second variant mentioned introduces a binding quality. Legally, it is feasible to submit a suitably written constitutional amendment which would legitimise the transfer of competences and sovereignty to an eventual European constitution. The right of initiative falls to the Government, or to one of the houses of Parliament, or even to one of the regional legislative

assemblies; in this case, the popular initiative is banned. However, the present procedure for constitutional amendment is so extravagant that it is very unlikely that Spanish and European timetables would agree sufficiently. According to Art. 168 of the constitution, this kind of amendment requires the following sequence of events:

- Initiative of a legitimate institution
- $\frac{2}{3}$ majority of the Congress
- $\frac{2}{3}$ majority of the Senate
- Dissolution of both chambers, an electoral campaign and new legislative elections two months later.
- Ratification of the beginning of the process by a majority of the new Congress
- Ratification of the beginning of the process by a majority of the new Senate
- $\frac{2}{3}$ majority in the new Congress
- $\frac{2}{3}$ majority in the new Senate

Finally, according to the Spanish constitution, we reach the obligation to hold a binding referendum; if this approves the constitutional amendment transferring sovereignty, it would implicitly ratify the new European constitution. In addition to such formal difficulties, we ought to point out that in Spain the constitutional amendment is a political taboo – due mainly to disagreements among nationalists – adding a new obstacle to this variant.

The European Constituent Process

We are aware that the painful situation described for Spain is not an exception – this emerges clearly from IRI-Europe's reports. But going beyond the mere data, we would like to express our opinion on the European Constituent Process itself.

It appears that the constituent process for the new Europe has already started. Hardly anybody knows it, but it seems to have already begun. To our surprise, the Convention – a non-elected 105-member assembly – has begun assuming constituent functions which have not been given to it – it is worth checking this in the Declaration of Laeken. Nobody seems to be surprised by the assumption of constituent functions by the Convention, not even the European Parliament!

Now at last there is an official draft of a constitutional treaty; a disappointing draft, but at least now something to work with, whereas for months there were only unofficial drafts from uncertain sources. European politicians – usually non elected – take up a position for or against simple news flashes, while

national politicians seem to be on the outside of such an important activity, and of course 99% of people involved do not know that there is already a de facto constituent assembly. A real model of a constituent process!

Neither the design of this constituent process, nor the democratic record of the EU makes us feel at ease. An awful feeling comes over us that this is just more of the same old thing again. You may appreciate that we are extremely doubtful that the future European constitution will be a new kind of constitution. We are deeply sceptical that it will be able to cope with the design of a modern electoral system, that primary elections will be protected, that the nature of current political parties as secular sects will be neutralized, that popular control of war will be introduced, that a wide range of direct-democratic political freedoms will be guaranteed; and above all, that the constituent power of the people – the European people – will be set free, that constitutional amendments or the launching of constituent processes will be allowed. We are afraid that the new European constitution will repeat the constitutional model of liberal democracy: a text empty of political freedoms, but overflowing with civil rights and public freedoms: in fact, nothing more than plastic material to be freely moulded by the hands of the elites.

On the other hand, we want to make a request to the European Referendum Campaign, as well as to the Initiative & Referendum Institute Europe. We have always thought that the goal of achieving a pan-European referendum for constitutional ratification is a quite modest aim, one we could even describe as premature. Could we be satisfied with being able to ratify by referendum a constitution empty of political freedoms? Could we consider it a success if a referendum were to ratify a constitution empty of direct-democratic rights?

That is why we must generalize our aims. The simple goal of a constitutional referendum is clearly insufficient, and may be dangerous. We cannot waste our personal and organizational efforts; we have to focus our political passion on achieving a new constitution which is well equipped with political freedoms of Direct Democracy, one that releases the constituent power of the peoples of Europe.

The creation of the Working Group on Elements of Direct Democracy – though it is not yet an official Convention working group – is a first positive step in the above-mentioned direction. We are aware of and

support the proposal by the Initiative & Referendum Institute Europe, which offers quite positive proposals around the legislative popular initiative. However, we consider them insufficient in some aspects. Demopunk Net will shortly submit its own detailed proposal to a forum created for this purpose, which we can summarise today as follows:

- The popular initiative should not only relate to legislation. There are other, equally important, types of popular initiative: the abrogative initiative, the initiative for ratification of international treaties, the initiative for the recall of public officials, and above all, the popular initiative to begin the constituent process.
- There are other significant political freedoms belonging to Direct Democracy, such as popular rights in respect of all institutions, which could be seen as the generalization of the popular initiative; or constitutional protection for the Participative Budgets at the municipal level.
- It is essential to introduce a constitutionally guaranteed popular control of war. This is not a new idea: it is a political freedom which has long been claimed.
- We support the proposal of the Initiative & Referendum Institute to regulate the right of secession or self-determination. Incredibly, despite the intensity of nationalist confrontation in Spain, Demopunk Net is one of the few forums (the only one?) where formal procedures for this political freedom are debated.
- On the other hand, we want to stress that the constitutional description of political freedoms must be stated explicitly and in full, and must not be reserved only for low-level laws. The risks are obvious.

We should all accept greater critique from others. We are absolutely focused on the normative aspects of Direct Democracy, and we can easily forget the sociological side. For many decades now, our societies have been educated within the cultural grammar of representative democracy; people have internalised their diminutive role as electors, involving the subconscious abandonment of political initiative and the acceptance of hierarchies of power. In saying this, we are pointing to the danger that we could struggle for direct-democratic political freedoms only to discover finally that there is no active subject ready to embrace them. We must therefore demand as part of the new European constitution the recognition and financing of a revitalizing of politics to end this deficit.

In conclusion: Direct Democracy does not end with the Swiss experience, or with the emerging Latin-

American Left. We must innovate. Our first aim must be to maintain political and informational pressure for a new kind of constitution based on political freedoms and not on public freedoms. If we achieve this – even partly – the pan-European referendum for constitutional ratification will be a mature fruit that will fall into our hands due its own weight.

IRI Europe report on the growing importance of Initiatives and Referendums in the European integration process

Remarks by Bruno Kaufmann, IRI Europe president at the Press Meeting in the European Parliament, Nov 7 2002.

“Having a vote gives the assurance that everyone has a voice and that every voice counts. Even for those who reject further EU-integration, this at least ensures that there is not a sense of powerlessness. After the second Irish Nice referendum, the case for continent-wide referendums on treaty changes appears more compelling than ever. The idea should interest the current Convention on the Future of Europe”.

This is not a quote from the new IRI report, but part of a comment in the International Herald Tribune (November 6). What the American newspaper in Europe asks for has in part already been answered. The Presidium of the Convention and many of its members have stated that they are interested in establishing a pan-European mechanism of direct democracy, in order to balance the power of the national governments and the European institutions in the EU, by giving citizens their sovereignty back. Encouraged and supported by this new democratic mood, the Initiative & Referendum Institute Europe has produced the first comprehensive study on the “European Referendum Challenge”. Today we can present to you its main findings:

- Referendums on Europe are not a new phenomenon: in fact citizens in a majority of EU member-states have been making important decisions on integration matters for some time. Twenty referendums on integration have been held in Europe in the last ten years alone.
- The Europeans like this way of taking part in politics. By contrast with elections to the European Parliament, turnout over the last three decades has remained steady. On average, more than two-thirds of the electorate took part in these referendums.
- The IRI Report have become stronger in two ways: by an increase in the number of citizens involved in decision-making and by having more and more binding referendums instead of non-binding plebiscites. Since 1995 all referendums on Europe have been binding.
- Empirical research shows that referendums are

- contributing to an increased support for the integration process, that the European policies of countries with referendums are in greater harmony with the wishes of the citizens, and that governments of such countries are in a better position to determine the agenda of treaty negotiations.
- In fact, direct democracy would offer the European Union precisely what it most needs: issue-related debates, legitimacy, identification and communication. Introducing I&R devices at the EU level could in addition be a way out of the current dilemma: that where the real power is today, there is as yet no democracy; and where there is still democracy, there is less and less real power.
 - In 2003 up to ten new referendums on Europe will take place, making future EU accessions without a referendum almost unthinkable. The results of these membership decisions will be binding and the troublesome participation quorums in some states are being seriously questioned or have already been abolished.
 - By changing the current treaty structure towards a constitutional structure, the EU Convention may take an important step towards a Europe which is not only closer to its inhabitants but determined by its citizens - since treaties are made by states and governments, but constitutions by peoples and citizens.
 - In a majority of the present and future member states – 17 out of 25 – the prospects for participating in a European referendum can be rated “good” or “very good”. Only in three states are there serious political and/or legal problems: Malta, Cyprus – and Belgium.
 - Since there is as yet no legal basis for a pan-European referendum, this basis has to be created by a change to the existing treaties, or by using the existing laws of the member states. As current European law is based on uniformity, any single state with a negative majority could veto the whole constitution. Thus, there is a need for let-out clauses and transitional rules for the countries concerned.
 - A European constitutional referendum is a crucial part of democratic reform in the EU. Valid referendum outcomes will have to meet double majority requirements. However, there are other important devices to be considered, such as the citizens’ initiative right for EU laws, already proposed at the Amsterdam IGC by Austria and Italy.
 - A pan-European referendum on the Convention/IGC outcome has become a real possibility. The legal problems can be solved. It remains to be seen whether the political will is or will be

strong enough.

IRI Europe not only aims to fill an information-gap, but also presents an invitation. In no other transnational political process does the question of democracy enjoy such a high priority as in the European Union. Together with the activists of the “European Referendum Campaign”, IRI Europe is now inviting all concerned and interested Europeans to take part in the debate on the design of the forthcoming European Referendum and to take a stand in favour of such an important step forward.

For a full documentation of the IRI Referendum Forums check www.iri-europe.org.

Chapter Five:

GUIDE

11. Initiatives & Referendum in Europe

IRI Europe country-by-country Guide to direct-democratic tools and trends

In brief

Austria: the inclusion in the Austrian constitution (in 1958 and 1963) of what are so far the only direct-democratic elements in Austrian politics - the referendum and the petition to Parliament - happened against the will of the two main political parties. The first of the two national referendums which have been held so far (the one in 1978 on the commissioning of the Zwentendorf nuclear power station) also turned out differently from what the ruling elite had imagined. In other words, the Austrian people have shown a clear desire for a share of political power with parliament and government, evidenced in the high level of participation in campaigns such as the recent one against the Czech nuclear power station at Temelin and for the preservation of the welfare state. The political institutions are lagging far behind the social reality.

Belgium: in common with the other Benelux countries and with Germany, Belgium appears to have a difficult relationship with national referendums. Since the Second World War, only two plebiscites have been held. Binding national referendums are still not allowed, which may lead to problems with European integration. The current prime minister Guy Verhofstadt is believed to support more direct democracy, but he is hindered in his ambitions at the national level by Walloon socialists. At the regional level, however, Flanders is on the point of agreeing a reform which, among other things, would provide for the right of popular initiative.

Britain: the United Kingdom not only has no written constitution, having instead a motley collection of written and unwritten laws and traditions, but sovereignty is not even invested in the people, but rather in Parliament: the wholly indirect democratic system has been called an "elective dictatorship". Despite this, over the past few years, there have been some significant changes, in particular the devolution

arrangements for Scotland, Wales and Northern Ireland which were chosen by referendum. In addition, there have been a number of local referendums, some of which resulted from initiatives. In 2004 three regional assemblies referendums will be held in the North of England.

Bulgaria: during the last ten years of democratic reconstruction, Bulgaria's citizens have not been able to vote on a single substantive issue. In addition, constitutional change is specifically excluded as a subject of a popular referendum, which can be launched by a majority in parliament. There is no experience of direct democracy at the local level either. The only legally-based provision for I&R is in the case of boundary changes affecting local communities. However, the Bulgarians will have to decide on EU accession in a few years' time.

Cyprus: Cyprus is the odd man out in terms of European integration, as it has been effectively divided in two since the Turkish invasion of 1974. In this country whose geopolitical exposure has made it the target of foreign forces for millennia, there have been so far only a few signs of movement towards direct democracy - apart from two presidential plebiscites in the Turkish-occupied northern half of the country. The UN proposed reunification referendum planned for March 2003 was not accepted by the Turkish-Cypriote leadership.

Czech Republic: neither in the case of the restoration of democracy, nor in separating from Slovakia, nor in the question of accession to NATO did the Czech Parliament give the people the opportunity to vote. There is something of a tradition here - the Czech Republic is one of the very few countries in the world which has never had a referendum. However a new law of initiative and referendum was worked out for the EU accession referendum on June 14, 2003, the first citizens' decision on a issue in Czech history!

Denmark: although in domestic politics the obligatory referendum functions only in relation to European issues, it has proved to have a significance extending

far beyond the country's borders. Though the initiative element is almost totally lacking, Danish referendums on the EU were responsible for bringing the I&R process and the question of European integration altogether into the European public domain. The right of initiative of a parliamentary minority has so far been of no practical significance. At the local level, there has been an increasing number of consultative referendums. In the medium-term, the 40% approval quorum for national referendums remains a problem.

Estonia: by contrast with its southern neighbor Latvia, Estonia did not take up the direct democratic traditions of the inter-war period after the country regained its independence in 1991, but rather began to orient itself towards its politically centralized northern neighbors. The result is that ordinary Estonians have no rights of initiative or referendum: these are the exclusive right of a majority in parliament. However, the obligatory constitutional referendum does exist and will be invoked for the first time during the coming decisions on integration (EU accession referendum on September 14, 2003).

Finland: the Finns have only been able to vote twice in their history on a substantive issue and at the communal level there have only been around 20 referendums in all. This rather limited experience shows that the country has a long way to go on the question of popular participation in decision-making. Proposals for relevant reforms were rejected when the new constitution was being decided in 2000 - a lost opportunity for modernization. Nonetheless, the EU referendum of 1994 was a positive experience and awakened an appetite for more democracy in many people. The new Prime Minister Matti Vanhanen has announced that the citizens shall have a say on the new EU constitution.

France: although France was a co-discoverer of direct democracy in the form of initiative and referendum during its revolution at the end of the 18th-century, in practice only the presidential plebiscite has remained. The "referendum" is therefore understood primarily as an instrument of the elite and not as a tool of the ordinary citizen. Nonetheless, there is a tradition of presenting important constitutional changes to the people, whose decision is binding. Before his re-election, President Chirac announced that he would promote the introduction of the popular initiative in his second term of office. The people of Corsica voted on autonomy on July 6, 2003. A new law for local referendums has been passed on parlia-

ment and the government has announced a citizens decision on the EU constitution.

Germany: in 2002 the necessary two-thirds majority was not achieved in the Bundestag (in support of the proposal to incorporate the popular initiative, the popular demand and the referendum into the constitution). Germany would have moved straightaway into the group of European countries with developed citizenlawmaking. Instead, Germany remains for the time being a country with no direct-democratic procedures at the national level. However, in a country of more than 80 million people, the federal states (Länder) and the communes play a very important role and here popular rights have increased enormously over the past 10 years. Nonetheless, in most places these still require reform in order to make them more people-friendly i.e. the existing quorums should be lowered or removed and the numerous difficulties in collecting signatures should be eased. The current debate on an EU constitution referendum will be a litmus test of Germany's readiness for I&R.

Greece: the democratic constitution of 1975 provided the basis for three different kinds of popular vote (initiative, referendum and constitutional referendum). However, all three forms are dependent on the readiness of the country's president to present issues to the people - and so far this has been absent. Nonetheless, for some years now strong forces within Greek society have been pressing for popular votes on such issues as European integration and secularization. In the quarrel over the removal of the declaration of religious affiliation from Greek identity cards, the Orthodox Church collected several million signatures.

Hungary: the constitution allows citizens the possibility of making initiatives on laws. 200,000 signatures collected within four months gives them the right to have a referendum. But in practice the wide-ranging list of exemptions undermines the democratic potential of this provision and, in addition, the courts, if they so wish, are able to curtail or dismantle the direct-democratic procedures and decisions. In 1997, for example, the participation quorum was cut from 50% to 25% for the NATO referendum - a ruling which in Spring 2003 has helped the government to achieve its desired EU accession.

Iceland: since its independence in June 1944, this island state in the North Atlantic has never had a referendum. However, there does seem to be some potential, even though this is dependent on the will

of the President of the country, who can submit a parliamentary decision to the people. This provision, which has existed since 1994, will prove to be important especially in questions of European integration: Iceland is currently debating whether to enter into negotiations to join the EU. Between 1908 and 1944 the Icelandic people voted on six occasions in all on questions of independence and the use of alcohol.

Ireland: Ireland is the prototype of a country with obligatory constitutional referendums. Irish citizens have the last word not only on questions of European integration, but also on moral and institutional questions. However, the electorate cannot initiate referendums itself. Neither is there any serious debate on reform of the system. Nonetheless, the role of the courts (in favor of the obligatory referendum), the current debate about the parameters (keywords: Referendum Commission; payment of expenses) and the absence of participation and approval quorums are positive features.

Italy: after Switzerland and Liechtenstein it is the Italians who have the greatest practical experience of initiative and referendum. The population of 50 million has over the last 30 years put legal issues to the vote in 53 so-called "abrogative" referendums, which are similar to popular initiatives. However the counter-productive role of the 50% turnout quorum, as well as the undemocratic monopoly of television and political power has consistently weakened the potential of Italian direct democracy. 18 referendums were invalidated.

Latvia: although Latvia has been an independent state only since 1991, Latvia's fairly comprehensive I&R procedures actually date from the country's first period of independence between the two world wars. These procedures allow for 10% of the electorate to initiate a change to the Constitution or a new law; a decision of parliament can also be subjected to referendum. However, there are extremely restrictive rules excluding certain issues and a 50% participation quorum. The upcoming decision on EU accession on September 20, 2003 will therefore be test cases for reform, as the participation quorum threatens to invalidate these accession referendums.

Liechtenstein: this small principality between Austria and Switzerland knows and practices the three basic procedures of direct democracy (popular initiative, facultative referendum, obligatory referendum) on a regular basis and with sensible parameters. However, the prince of the only direct-democratic hereditary

monarchy in the world retains a right of veto and has already threatened to leave the country if parliament were to disagree with his constitutional ideas. In spring 2003 the Liechtenstein people approved a new constitution, which gives the monarch far-reaching powers. For this reason the principality is now monitored by the Council of Europe's Venice Commission.

Lithuania: this Baltic republic has the obligatory constitutional referendum, the popular initiative and the facultative referendum. During a brief period between 1991 and 1996 there were no less than 17 national referendums. However, this practical experience revealed the clear procedural weaknesses: the 50% participation quorum resulted in 11 of the initiative referendums barely achieving legitimacy. This caused citizens to lose interest in participatory politics. The EU Referendum on May 11, 2003 was rather a positive experience, which united the people.

Luxemburg: the Grand Duchy owes its independence to a quasi direct-democratic movement (the "Petition Movement" of the 1860s). But in contrast to the principality of Liechtenstein, for example, the appetite for greater civilian rights remained weak. Since 1996 it has been possible to hold a referendum by law, which will be important for a future European referendum about a European constitution.

Malta: according to the EU Commission, this small Mediterranean island state fulfills "all the standards of democracy and human rights" and yet - with the sole exception of parliamentary elections - Malta's citizens have been unable to participate in the political life of their country in spite of an "abrogative" initiative right. Since gaining independence from Great Britain in 1964, there have not even been any more plebiscites with the only exemption of the consultative EU referendum on March 8, 2003.

Netherlands: on the one hand, the Netherlands is one of the very few countries in Europe and even the world in which there has never been a national referendum; on the other hand, it is also one of the very few countries in which the issue of the introduction of direct democratic elements brought about a government crisis. This happened in 1999 and led to the creation of a provisional referendum law, under which the question will be examined nationally and some conclusion reached by 2005. Unfortunately, because of the excessively high quorums and the restriction to a non-binding facultative referendum, the prospects do not appear very favorable and the Netherlands could be downgraded soon. A positive

sign is the adoption of a popular initiative and referendum law in Amsterdam in summer 2003.

Norway: Norway, whose constitution dates from 1814, has no de jure direct democratic procedures at all. And yet, thanks to its actual practice, Norway can be placed within the center-ground of this league-table, for its citizens have for decades always been asked to give their approval on questions of EU membership. In addition, there exists a relatively comprehensive level of direct involvement in decision-making at the communal level, where there have been more than 500 local referendums between 1972 and 2002. However, almost all the powers regarding these procedures are in the hands of parliament and the political parties, who have shown no great readiness to allow power to be more finely distributed.

Poland: the two reform referendums of 1987 not only contributed to the rapid collapse of Communist control, but also established the idea of direct democracy in Polish society. But the political parties have not yet succeeded in exploiting the potential which certainly exists. On the contrary: when, in 1996, 600,000 citizens gave their signatures to demand a referendum on the privatization of state property (500,000 was enough to satisfy the constitutional requirement), the government used its constitutional veto to deny the citizens' request. Even at local level, the high participation quorums mean that referendums are often declared invalid, which naturally tends to weaken people's motivation to take part in political life.

Portugal: In 1998 a very badly prepared and executed attempt was made to hold referendums on the questions of abortion and European integration. The first was rushed through within a matter of a few weeks, the second (on Europe) was deleted from the referendum calendar by the constitutional court. What is especially bad is that leading politicians are now attempting to discredit popular rights with grounds for which they are themselves responsible. On the other hand an EU constitutional referendum has been announced in Portugal by Prime Minister Jose Manuel Durao Barroso.

Romania: as a young democracy Romania is still suffering considerably from its totalitarian heritage. This includes the experience of the dictator's plebiscite of 1986, when Nikolai Ceausescu arranged a referendum on an issue to do with the army and achieved a 100% "Yes"-vote on a turnout of 99.99%! Despite this, there is another, older, tradition - that of the constitutional referendums which took place after 1864. In

addition, there is a right of petition which could force a parliamentary debate but which - if it did come to a referendum - is burdened by a 50% turnout threshold.

Slovakia: over the last three years this young country has made enormous steps forward, despite many traumatic experiences (Keywords: 1968; disintegration of Czechoslovakia; the Meciar regime). It has a binding popular initiative right, which among other things led in 2000 to a referendum on bringing forward new elections. However, as in many other countries of Central and Eastern Europe the conditions for more democracy are extremely modest; in addition, the 50% participation quorum threatens to invalidate almost every referendum. The country also has a 50% approval quorum. The EU accession referendum process in spring 2003 got a lot of criticism for its unfair conduct. (No country report yet)

Slovenia: the republic of Slovenia is one of the "new" I&R countries in Europe. Although citizens have only a non-binding initiative right, in practice they can subject all laws passed by Parliament to popular approval by means of facultative referendums. Thus, despite their rather modest experience to date (only four national referendums since 1990), direct democracy appears to have considerable potential. However, the 50% participation quorum, the right of parliament to make a counter-proposal and the restriction of popular rights solely to legislation are negative aspects. Only in 2003 four countrywide referendums took place, in 2003 alone.

Spain: the last time the Spanish were able to vote on a substantive issue was in 1986, in the referendum on accession to NATO. The citizens of this kingdom have no say on European issues. In some regions, for example in Catalonia, there have been a few popular initiatives, but at the national level only petitions are allowed. On the other hand, Spain does refund the expenses of initiative committees and there are no participation quorums. Popular referendums are not seen as complementing the parliamentary process, but as threatening it, because parliament would be forced to resign if a referendum went against it. An EU constitution referendum is planned for 2004/2005.

Sweden: like France, Sweden's experience of referendums is primarily one of plebiscites. However, unlike France, where the President has total control, it is the ruling Social Democratic parties which exercise this role. Referendums, which are binding only under quite specific circumstances, are (mis)used as instru-

ments of power. Citizens effectively have no rights, even at the communal level, where a right of petition which has been called an "initiative right" has produced a great deal of frustration. The forthcoming decisions on Europe provide a glimmer of hope, as well as the courage of some communities, which are using their very limited scope for autonomy to introduce greater direct democracy.

Switzerland: this federal state in the heart of Europe has the most varied, widest and most comprehensive experience of citizen lawmaking anywhere in the world. In addition, there is vigorous debate on how the procedures should be shaped and reformed. The latest package, with the introduction of a non-binding legal initiative, has clear weaknesses and in addition, such conditions as transparency and fairness continue to be undervalued by the majority and are therefore inadequately protected and institutionalized.

Turkey: although officially an EU candidate country with a representative in the European Convention, Turkey fails to come up to even the minimum standards in Europe as regards democracy and human rights. The Turkish constitution does refer to the possibility of holding referendums, but the basis for these is neither developed nor defined.

Country Reports

AUSTRIA

Public pressure led to the I&R laws of 1958 and 1963. The majority coalition of ÖVP (Austrian People's Party) and the SPÖ (Social Democratic Party) was seen as unresponsive to citizens' demands. Since 1964, 27 out of 29 citizens' initiatives reached the required threshold to oblige consideration by the first chamber of parliament (National Council / Nationalrat). However, only three of the "formally successful" initiatives have been converted into legislation. To date there have been two national referendums: in 1978 on a national law about the peaceful use of nuclear power (result: decision to prevent the Zwentendorf nuclear power station from going on-stream) and in 1994 the constitutionally mandatory referendum on the law allowing Austria's accession to the European Union.

- Population: 8,139,000
 - Area: 83,858 km²
 - Capital: Vienna (Wien)
 - Official languages: German (92%); in some districts/regions: Slovenian, Croatian
 - Religion: Roman Catholic (78%), Muslim (5%), Protestant (5%)
 - Political System: Republic (since 1918), federal structure with nine autonomous regions (Bundesländer)
 - Constitution: 1/10/1920 (without referendum)
 - Membership: EU
 - GNP/Capita: \$26,830
- I&R practice: 2 nationwide referendums (since 1945), 29 citizens' initiatives (since 1964), of which 27 reached the participation threshold.

Types of Initiative and Referendum

I. National Level

At the national level there exist the referendum, the popular/citizens initiative and the popular consultation/consultative referendum.

1. Compulsory Referendum

A referendum is obligatory if:

- a proposal for a complete or partial revision of the constitution has been submitted by at least one-third of the members of the National Council (the first chamber of the Parliament)
- a majority of the National Council decides to submit a law to a national referendum. A referendum is not possible on the basis of a referendum initiative

i.e. even an appropriately supported popular initiative does not automatically lead to a referendum.

2. Popular Initiative (Petition)

The subject of a Citizens Initiative (C.I.) must be a proposal relating to a law. It requires a minimum of about 8,000 signatures of registered voters (= 0.1% of the population), who must be Austrian citizens, to be launched. The signatures are given at the local authority offices and must be verified by production of an identity card.

The final wording of the submission or proposal is determined by the Ministry of the Interior on the basis of the submission which has been presented (a C.I. submission does not have to be precisely formulated). A C.I. proposal can be submitted by a group of voters or by a political party organization. Since 1999, it is no longer possible for a proposal to be submitted by members of the National Council.

Once the required minimum of about 8,000 signatures has been collected, the Interior Ministry decides on the period of time to be allowed for the general collection of signatures. It is open to any Austrian citizen whose main place of residence is Austria to support the initiative (proof of identity by identity card/passport is required).

C.I.s which succeed in gaining more than 100,000 signatures must be considered by the National Council. However, the N.C. is not obliged to change an existing law or enact a new one as a result of a C.I.: since 1964 only three of 27 'formally successful' C.I.s have been converted into legislation (as of August 2002). A "Welfare State" (Sozialstaat) C.I. initiated by a non-partisan committee (the aim being to have the 'welfare state principle' formally inscribed within the Austrian constitution) gathered 717,000 signatures (12.2% of the electorate) in April 2002. However, like the "Temelin Veto" initiative of January 2002 launched by the FPÖ (Freiheitliche Partei Österreichs), which gained 915,000 signatures of support, the "Welfare state" initiative will suffer the same fate: it will not become law. The most recent popular initiative concerning a constitutional law against the purchase of interceptor planes was initiated by a small extra-parliamentary group and gained 625,000 signatures (10.7% of the electorate) in July and August 2002: The government, however, had already decided to buy new interceptor planes some weeks before, and calls for a referendum by the opposition Socialist and Green parties have been futile. A C.I. must be a law-making submission to the N.C. Other than this, there are no restrictions as to content or subject-matter. There are no limits to the number of C.I.s which can be submitted in any year or any legislative period.

3. Popular consultation/consultative referendum
According to Article 49 of the Austrian Constitution, a popular consultation can be launched by a decision of the National Council or of the national government "on a subject of fundamental and national significance within the competence of the national legislature". This instrument has so far never been used in Austria. Although the coalition government (of the ÖVP and FPÖ) decided in September 2000 to initiate a consultation on lifting the measures taken against Austria by the other 14 EU member states (resulting from the participation of the FPÖ in the government), the subsequent decision of the "White Book" to lift the sanctions forestalled its implementation.

II. Regional level

In all nine of Austria's federal regions ("Länder") – with the sole exception of Salzburg – citizens have the right to submit proposals for legislation (Volksbegehren), and in most of them there are also arrangements for consultative referendums on matters of state (Land) governance. Legislative proposals require the signatures of between 2% and 5% of the electorate; consultative referendums between 2% and 11% of the electorate. Only in two of the states (Upper Austria and Styria) does a sufficiently well-supported C.I. (10-11% of the electorate) automatically lead to a referendum. Referendums resulting from decisions of the state (regional) parliaments (Landtag) are possible in all the states, but are rarely used.

III. Local level

At the local (communal) level, there is neither referendum nor C.I., as the communes have no legislative competence. All states have consultative referendums on issues of communal politics. These can be launched by a decision of the local council or as an initiative by a small percentage of the local residents. Only in rare cases (e.g. on a proposal to amalgamate communes) is the result of a consultative referendum binding.

IV. Practical Guide

Citizens do not have the possibility of launching a referendum by means of a citizens' referendum initiative. A popular initiative (Volksbegehren) must be submitted to the National Council in the form of a specific legal proposal. The initiative committee has to define the aim of the initiative and provide a text submitted for legislation. The intention to launch an initiative is conveyed to the Interior Ministry. Reaching the minimum of about 8,000 signatures necessary for the popular initiative to be officially launched requires the cooperation of several initiative groups, the support of the mass media and/or that of

a political party. There is no financial support from the state for those launching a popular initiative. Referendum, popular initiative and consultative referendum are all anchored in the national constitution (articles 43, 44 and 60 for the national referendum; articles 41 and 42 for the popular initiative; article 49 for the consultative referendum). Referendum and popular initiative have been constitutionally guaranteed since 1920. However, the appropriate enabling laws were only passed in 1958 (for the national referendum) and 1963 (for the popular initiative) and there have been various amendments, most recently in 1999, to the law on popular initiatives. The law on the consultative referendum was passed in 1989 together with other constitutional amendments.

V. Trends

It was public pressure from the mass media and criticism from academics and reformist politicians which led to the referendum and popular initiative laws of 1958 and 1963. The criticism was caused by the growing indecisiveness of the majority coalition of the ÖVP (Austrian People's Party) and the SPÖ (Austrian Socialist Party) and by the stagnation of the political system, which it was hoped could be countered by promoting more direct democracy. During the 80s and 90s, the opposition FPÖ and Green parties supported the extension of direct democracy and the FPÖ demanded the establishment of a right to a referendum initiative. The February 2000 manifesto of the ruling ÖVP/FPÖ coalition does in fact provide for the introduction of the referendum initiative: if a popular initiative (Volksbegehren) is supported by at least 15% of the electorate, a national referendum becomes mandatory, unless the National Council has, within 9 months of this threshold having been reached, introduced legislation which implements the content of the initiative. However, the coalition also wishes to restrict the subject-matter of the popular initiative by removing from its compass constitutional changes, EU and other international obligations and issues which would commit the country to extra expense or would affect national rights. Since the opposition SPÖ and Green parties are against such a reform of direct democracy, it will be impossible to achieve the two-thirds parliamentary majority which is required to ratify any change to the national constitution.

There are very few opinion polls which have tested basic general attitudes to direct democracy within Austria. The most recent such poll known to the author dates from December 1997 (Institut für Empirische Sozialforschung, N=2,000). 58% of those polled stated that they felt able to pursue their interests either very well or well through referendums and

popular initiative. 55% of them had already taken part in a popular initiative and 31% said that they would do so again in future. 63% agreed with the statement that being able to vote regularly and directly on important issues was more important than electing representatives.

To date there have been two national referendums: in 1978 on a national law about the peaceful use of nuclear power (result: decision to prevent the Zwentendorf nuclear power station from going on-stream) and in 1994 the constitutionally mandatory referendum on the law allowing Austria's accession to the European Union (result: agreement to accession). Since 1964, 27 out of 29 popular initiatives reached the required threshold to oblige consideration by the National Council (up to 1981 this was 200,000 signatures, afterwards 100,000). Support levels varied from 1.3% of the electorate to 25.7%. Only three initiatives in the 1960s actually became law, two of them due to the fact that the SPÖ, which had hitherto been in opposition, came to power in 1970 and was able to implement its demands.

The reason for the general failure of popular initiatives to achieve practical success in terms of their content stems from the fact that support for them normally comes from opposition parties or extra-parliamentary groups, whereas the parliamentary majority of the ruling parties is not interested in supporting legislative initiatives from the opposition which are frequently aimed at attacking government policy. Popular initiatives primarily serve the function of stimulating debate on political issues which are being ignored by the government, or of heightening the political profile of opposition parties or extra-parliamentary groups. The popular initiative against the Temelin nuclear power station in the Czech Republic, which was launched by one of the ruling parties (the FPÖ) against the wishes of its coalition partner, the ÖVP, and which succeeded in obtaining the support of 15.5% of the electorate in January 2002, represents an exception to this general rule. However, the hoped-for veto will not be implemented, since there is no parliamentary majority in favour of making the accession of the Czech republic to the EU conditional on Temelin being shut down. The most recent initiative was launched by Greenpeace in June 2003 and gathered approx. 130'000 signatures against the increased use of nuclear energy in the EU. Popular initiatives launched solely by extra-parliamentary groups have in practice no realistic chance of becoming law.

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Constitutional Requirements for Legislation

Chapter 1 General Provisions

Part D Federal Legislative Procedure

Article 41 [Bills]

(1) Legislative proposals are submitted to the House of Representatives either as motions by its members or as Federal Government bills. The Senate can propose legislative motions to the House of Representatives by way of the Federal Government.
(2) Every motion proposed by 100,000 voters or by one sixth each of the voters in three States shall be submitted by the main electoral board to the House of Representatives for action. The initiative must be put forward in the form of a draft law.

Article 42 [Objection]

(1) Every enactment of the House of Representatives shall without delay be conveyed by the President to the Senate.
(2) Save as otherwise provided by constitutional law, an enactment can be authenticated and published only if the Senate has not raised a reasoned objection to this enactment.
(3) This objection must be conveyed to the House of Representatives in writing by the Chairman of the Senate within eight weeks of the enactment's arrival; the Federal Chancellor shall be informed thereof.
(4) If the House of Representatives in the presence of at least half its members once more carries its original resolution, this shall be authenticated and published. If the Senate resolves not to raise any objection or if no reasoned objection is raised within the deadline laid down in Paragraph (3), the enactment shall be authenticated and published.
(5) The Senate can raise no objection to resolutions of the House of Representatives relating to a law on the House of Representatives' Standing Orders, the dissolution of the House of Representatives, the appropriation of the Federal Budget estimates, the sanction of the final Federal Budget, the raising or conversion of federal loans, or the disposal of federal property. These enactments of the House of Representatives shall be authenticated and published without further formalities.

BELGIUM

Belgium is one of the very few countries in Europe where there is no possibility of having referendums at the national level. However, I&R has been debated in the parliament on several occasions since 1983.

During the nineties, there was renewed interest in direct democracy.

The current liberal Prime Minister is promoting the introduction of I&R at all levels. But these intentions are boycotted by Walloon socialists. In polls, large majorities of Belgian citizens favor I&R in EU affairs.

- Population: 10,204,000
- Area: 30,528 km²
- Capital: Brussels (Brussel/Bruxelles)
- Official languages: Flemish (57%), French (42%), German.
- Religion: Roman Catholic (81%)
- Political System: Monarchy (1830), federal structure with three autonomous regions.
- Constitution: 1831 (without referendum)
- Membership: EU, NATO
- GNP/capita: \$25,380
- I&R Practice: 2 Plebiscites - after WWI on the annexation of a German-speaking region and after WWII (1950) on the return of the King.

Types of Initiative and Referendum

The idea of direct democracy in Belgium was already present in the 19th century. When the Socialist Party was founded in 1885, the first article of its program was formulated as follows:

Article one: "Universal voting rights. Direct law-making by the people, i.e. ratification and initiative for the people in the field of legislation, secret and obligatory voting. Elections should take place on Sunday". The principle of "one man, one vote" was realized after World War I. Curiously, this was done before the constitution was changed (the so-called "coup van Loppem"). The Belgian élite, among them King Albert I, was in a hurry to make concessions to the working class, probably because they feared a socialist revolution. After the Second World War, voting rights were also accorded to women. And elections took place on Sunday and became obligatory (these were socialist demands, because non-obligatory elections taking place on a working day would allow the capitalists to intimidate their workers).

The socialist party thus realized its entire first article, except for direct democracy. This does not mean that direct democracy is nowadays a major goal for the socialists. On the contrary, the Parti Socialiste opposes the introduction of direct democracy, at least at the national level. Direct democracy has been debated in the parliament on several occasions, for instance in 1893, in 1921 and in 1970. These discussions took place when the constitution had to be altered in other respects, and never resulted in legislative initiatives. Up to this day, Belgium remains a strictly repre-

sentative regime, especially at the federal and regional level.

a. National level

After the First World War, the German-speaking region of Eupen- Mamédy was annexed by Belgium. This annexation had to be approved by the local population. However, people wanting a return to Germany had to make their names public. Those who did not were assumed to prefer the annexation.

The "referendum" was thus a complete farce: only 209 locals dared to resist the annexation, and officially, the population of the annexed region was assumed to have preferred annexation by 33,455 votes to 271. During the Second World War (1940-1945), the region returned to Germany, but thereafter it was incorporated again into Belgium. Nowadays, the region is officially bilingual (German and French). After the Second World War, the Belgian population was divided concerning the return of King Leopold III. Because the Belgium constitution does not allow for direct democracy, the plebiscite (held on March 12th, 1950) had only a consultative character. Moreover, the political parties were divided on its interpretation. For instance, the socialist party declared that it would accept the return of the king only if two thirds of the voters preferred this outcome, whereas the Christian- Democrats declared that a simple majority would be sufficient. There was a majority for a return of the king. However, the French-speaking south of the country (Wallonia), with its traditional socialist strongholds, had voted against the return of Leopold III and refused to accept the result of the plebiscite.

There were serious riots, and finally the king abdicated, and his son Baudouin I became the new king. This episode in Belgian history, known as "the royal question" ("de koningskwestie" or "la question royale") was very traumatizing because it so clearly divided the Northern and Southern parts of the country. To this day, it is still invoked by many politicians as proof that direct democracy is impossible in Belgium.

The elections of 1999 brought to an end the coalition of Christian Democrats and socialists. There began a new federal coalition of liberals, socialists and greens. After the elections in summer 2003 the liberals and socialists continued their cooperation, the greens left the government. At the regional level, the same coalition was installed, with the nationalist Volksunie also being part of the Flemish coalition. Both in the federal and regional coalitions, there is the expressed intention of promoting direct democracy. However, these intentions are boycotted by some (especially the Walloon socialists, who openly oppose the introduction of direct democracy at the federal level).

II. Local level

There have been some official letters emanating from the minister of interior affairs, indicating that communities can organize referendums on strictly local affairs. Some of these letters even date from the 19th century. Sporadically, such local referendums have indeed been held. For instance, there was a referendum in the Flemish village of Tessenderlo on the establishment of an industrial plant presenting pollution risks (March 25, 1979), and in the Walloon villages of Andenne (October 1st, 1978) and Florenne (June 27, 1982), on the creation of a nuclear plant and a military installation respectively. During the nineties, there was a modest boom in local referendums: Mons (Sep. 17th, 1995), Ath (Oct. 1995), Liège (Oct. 9-14, 1995), Mouscron (Dec.19-23, 1995), La Louvière (Feb.11, 1996), Namur (June 2nd, 1996), Ciney (Oct.13th, 1996), Genk (Oct.13th, 1996), Begijnendijk (June 29th, 1997), Beauraing (June 28th, 1998). Many of these referendums were organized according to local regulations. Sometimes, non-Belgian citizens were allowed to take part. Nevertheless, there have been some successful referendums, for instance in the towns of Ghent and Sint-Niklaas. However, other local initiatives ended traumatically. In Ghent, a second initiative wishing to introduce free public transport (as exists in another Flemish town, namely Hasselt) was bluntly rejected by the local politicians. Instead, they organized a meaningless referendum (April 25th, 1999) on the "improvement of public transport" which attracted few voters. As a consequence, the votes were not counted and the ballot papers were destroyed. In many cases, the participatory thresholds induced boycott actions. This was the case in Genk, Ghent, and Sint-Niklaas. In one case, the local political majority invented a participation quorum that was more stringent than the threshold set by law (Boechout, June 28th, 1998).

III. Trends

During the nineties, there was renewed interest in direct democracy. This was, to a great extent, the work of the current prime minister of Belgium, Guy Verhofstadt. As an opposition leader, he promoted the idea of direct democracy and made the referendum one of the main issues in his election campaign of 1995. In that same year, a law was made introducing the referendum in Belgium at the communal level. However, the referendum was extremely restricted: not only was it merely consultative, it was also non-obligatory: when the citizens had collected signatures, they could still only make a request for the consultative referendum to be held. The law had

yet another peculiarity. Not only did it impose a participatory quorum of 40%, but it also introduced a drastic measure if this threshold was not reached: the votes are not counted and the ballot papers are destroyed. Thus Belgium is one of the few countries on this planet, where uncounted votes are burned in the name of democracy. In 1998, the law was changed: the communal referendum can be compelled, but it remains consultative. Moreover, the number of signatures required for obtaining a referendum has been raised to a planetary record: in smaller towns, 20% of the *inhabitants* (not the voters!) have to sign in order to obtain a referendum.

IV. Polls

There have been several polls concerning the referendum. In 1996, there was a national poll showing that 67% of the population wanted a referendum on the European treaty (with only 15% opposing such a referendum; see *Le Soir* 30-31/3/1996). *Le Soir* wrote: "Près de sept personnes sur dix réclament une consultation. Ils ont cependant peu de chance d'être entendus. Malgré les propositions des partis écologiste et libéral, le Premier ministre a déjà exclu la tenue d'une consultation, préférant privilégier l'approche parlementaire". ["Almost seven out of ten people want a referendum. However, they have little prospect of being listened to. Despite the proposals from the green and liberal parties, the prime minister has already ruled out a referendum, preferring to favor the parliamentary approach".] Another poll showed that 58.4% of the Belgian population wanted a referendum on the further unification of Europe (with 17.7% opposing it; *Het Nieuwsblad*, Apr.27th, 1998). However, in the same newspaper the then minister of external affairs, Erik Derycke, opposed the idea of a referendum, because the citizens did not trust the Euro. More recently, a poll among the Flemish population revealed that 71% of the citizens want direct democracy at the federal and regional levels (whereas only 5% opposed this idea; *Knack*, October 7, 1998, p.29).

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Constitutional Requirements for Legislation

Title VIII Revision of the Constitution

Article 195 [Declaration, Dissolution, New Houses Debate]

- (1) The federal legislative power has the right to declare a warranted constitutional revision of those matters which it determines.
- (2) Following such a declaration, the two Houses are

dissolved by full right.

(3) Two new Houses are then convened, in keeping with the terms of Article 46.

(4) These Houses statute, of common accord with the King, on those points submitted for revision.

(5) In this case, the Houses may debate, provided only that two-thirds of the members composing each House are present; and no change may be adopted unless voted in by a two-thirds majority.

Article 196 [Restrictions]

No constitutional revision may be undertaken or pursued during times of war or when the Houses are prevented from meeting freely on federal territory.

Article 197 [Permanent Regency]

During a regency, no changes may be made to the Constitution regarding the constitutional powers of the King and Articles 85 to 88, 91 to 95, 106, and 197.

Article 198 [Editorial Changes]

(1) In agreement with the King, the Constituting Chambers may adapt the numerical order of articles and of sub-articles of the Constitution, in addition to sub-divisions of the latter into titles, sections, and chapters, modify the terminology of dispositions not submitted for revision in order for them to be in keeping with the terminology of new dispositions, and ensure the concordance of French, Dutch, and German constitutional texts.

(2) In this case, the Houses may debate, provided only that two-thirds of the members composing each House are present; and no change may be adopted unless voted by a two-thirds majority.

BRITAIN

The British "Constitution" is an unwritten collection of statute law, common law and conventions. The democratic system is very weakly representative; British democracy has been described as an "elective dictatorship". All national and regional referendums since 1975 have been imposed by government, they were in fact plebiscites. Within the last few decades there have been approx. 35 referendums held in towns and districts. Six referendums in Scotland, Northern Ireland and Wales dealt with devolution. At the local level, the Local Government Act 2000 for the first time enables citizens to initiate and carry through a referendum process.

- Population: 59,756,000
- Area: 242,910 km²
- Capital: London
- Official language: English. Further indigenous languages are Gaelic and Welsh.

- Religion: Anglican (56%), other Protestant (15%), Roman Catholic (13%).
- Political System: Parliamentary Monarchy, with three regions (Scotland, Wales and Northern Ireland) enjoying devolved powers (1999), as well as Crown Dependencies (Channel Islands, Isle of Man) and Dependent Territories.
- Membership: NATO, EU (not EMU)
- GNP/Capita: \$21,410 (1999)
- I&R Practice: One nationwide referendum (5/6/1975), EU-membership.

Types of Initiative and Referendum

The U.K. is nominally a constitutional monarchy, though it has no written constitution and the monarch has largely symbolic status. Nonetheless, in law, the monarch is head of the executive; head of the judiciary; commander-in-chief of the armed forces; and the 'supreme governor' of the established Church of England. However, as the result of a long process of change, the monarch's formerly absolute power has been progressively reduced and the King or Queen acts exclusively on the advice of the government ministers. The UK is, therefore, currently governed by 'Her Majesty's Government' in the name of the Queen. The monarch formally appoints the Prime Minister and other government ministers, judges, officers in the armed forces, governors, diplomats, bishops and some other senior clergy of the Church of England and confers peerages, knighthoods and other honors. Paradoxically, though the monarch is also referred to as 'the sovereign', practical sovereignty is now held to be invested in Parliament (though a prominent constitutional expert, Albert Venn Dicey (1835-1922) called the referendum the "people's veto" and stated: "the nation is sovereign and may well decree that the constitution shall not be changed without the direct sanction of the nation"). In most respects, the U.K. functions as a parliamentary representative democracy. Until 1999, there was only one parliament, at Westminster, with two chambers: the House of Commons and the House of Lords. In 1997, referendums were held in Wales and Scotland on the proposals for national assemblies: 74% of the votes were in favor in Scotland, 50.3% in Wales. The referendum in Northern Ireland held a year later was more complex: the vote linked the proposal for a new Northern Ireland Assembly to approval of the peace agreement concluded in April 1998 in Belfast (known as the "Good Friday Agreement"). Simultaneous referendums were held in Northern Ireland and the Irish Republic in May 1998, both of which secured large majorities in favor of the Good Friday Agreement and the linked proposal for a National Assembly: 71.1%

'for' in Northern Ireland; 94.3% 'for' in the Irish Republic. In 1999, Scotland, Wales and Northern Ireland were granted certain devolved powers and received their own representative assemblies (the Scottish Parliament; the National Assembly for Wales; and the Northern Ireland Assembly).

The Scottish Parliament is unicameral, with 129 members (MSPs) elected for a fixed term of four years by the 'additional member' system of proportional representation (each voter having two votes: one vote for a constituency MSP and one 'regional' vote for a registered political party or an individual independent candidate), which allowed the first Green member of parliament at either Westminster or Edinburgh to be elected. Now there are 7 Green MSPs.

The devolved responsibilities of the Scottish Parliament include: health; education and training; local government; housing; economic development; many aspects of home affairs and civil and criminal law; transport; the environment; agriculture, fisheries and forestry; sport and the arts. In these areas, the Scottish Parliament is also able to amend or repeal existing Acts of the UK Parliament and to pass new legislation of its own.

Responsibility for overseas affairs; defense and national security; overall economic and monetary policy; energy; employment legislation and social security remains with the U.K. government. The Secretary of State for Scotland has a seat in the Cabinet and represents Scottish interests within the UK Government through the Scotland Office. The Scottish Executive is the devolved administration and has responsibility for all public bodies whose functions and services have been devolved to it. Since the first elections in May 1999, the Executive has been run by a partnership between Labour and the Liberal Democrats. The National Assembly for Wales (60 members elected on the 'additional member' system) has similar responsibilities to the Scottish Parliament, but cannot enact separate primary legislation. The Northern Ireland Assembly (108 members elected on the single transferable vote system) also has restricted devolved powers. The new system incorporates a certain amount of overlap in terms of political representation: all parts of the U.K. continue to send Members of Parliament to Westminster (the House of Commons has 659 members), whilst Scotland, Wales and Northern Ireland also elect separate representatives for their national assemblies. Thus Scotland elects 129 MSPs (Members of the Scottish Parliament) to its parliament in Edinburgh as well as sending 72 MPs to Westminster; Wales has 40 Westminster MPs and 60 seats in its own Assembly; Northern Ireland 18 Westminster MPs and 108 seats in its Assembly. In

addition, the U.K. sends 87 MEPs (elected by proportional representation) to Brussels (71 from England, 8 from Scotland, 5 from Wales and 3 from Northern Ireland).

In contrast to Wales, Scotland and Northern Ireland, England has no separate elected national body exclusively responsible for its central administration.

Instead, a number of government departments look after England's day-to-day administrative affairs and a network of 9 Government Offices for the Regions, each with a Regional Development Agency, is responsible for carrying out a number of government programs regionally. The local government areas do not coincide with the boundaries of the Regions.

Successive reforms since 1974 have changed the old system of division into the traditional 'counties' and the current system represents a typical compromise: 42 county councils remain alongside the 46 new unitary (or 'single-tier' authorities, most of which are larger cities).

In London there is a Greater London Authority (with an elected Mayor), a City of London Council and 32 borough councils. There are 6 Metropolitan County Areas with responsibilities divided among 36 district councils. The non-Metropolitan Counties have two-tier systems of county and district councils. County Councils are responsible for: transport; planning; highways and traffic regulation; education; consumer protection, refuse disposal, fire services, libraries and personal social services. The District Councils look after environmental health; housing; local planning applications and the collection of household waste.

I. Political System

Counties in England are divided into electoral divisions, each returning one councillor. Districts in England and Northern Ireland are divided into wards returning one or more councillors. In Scotland the unitary councils are divided into wards and in Wales into electoral divisions; each returns one or more councillors. Parishes (in England) and communities (in Wales) may be divided into wards, returning at least one councillor. The procedure for local government voting in Great Britain is broadly similar to that for parliamentary elections. In Northern Ireland district councils are elected by proportional representation. Eligibility rules for voters are also similar to those for parliamentary elections, except that citizens of other EU member states may vote. To stand for election, candidates must also either be registered as an elector or have some other close connection to the electoral area of their candidature.

The electoral arrangements of local authorities in England are kept under review by the Local Govern-

ment Commission and in Wales and Scotland by the Local Government Boundary Commissions. Electoral arrangements for parishes and communities in England and Wales can be reviewed by local councils.

a) Decision-making in local authorities

In most authorities the arrangements are based on one of three executive frameworks: a mayor and cabinet; a council leader and cabinet; or a mayor and council manager. Council constitutions are required to incorporate rigorous arrangements for review and scrutiny of councils' policies and the decisions they make. Some decisions, such as the acceptance of policies and the budget, are reserved for the full council, but most of those relating to the implementation of policy are for the executive. The executive is also responsible for preparing the policies and budget to propose to the council. Decisions may be taken by the executive collectively, by individual members of the executive, by committees of the executive or by officers of the authority. The executive is also able to delegate decision-making to area committees and to enter into partnership arrangements with other authorities.

The new arrangements (introduced by the Local Government Act of 2000) are supposed to ensure that people know who in the council is responsible for taking decisions, how they can make their input into decision-making and how to hold decision-makers to account. The Local Government Act 2000 also laid down the right of the public (including the press) to be present at meetings of the executive when key decisions are being discussed. They also have access to agendas, reports and minutes of meetings and to certain background papers. Local authorities must publish a Forward Plan setting out the decisions which will be taken over the coming months. Local authorities may exclude the public from meetings and withhold papers only in limited circumstances.

b) Local authority finance

Local government expenditure accounts for about 25% of public spending (91.1 billion in 2000-2001). Local government capital expenditure is financed primarily by borrowing within limits set by central government and from capital receipts from the disposal of land and buildings. Local authorities in Great Britain raise revenue through the council tax, which meets about 25% of their revenue expenditure. Most of their spending is financed by grants from central government and by the redistribution of revenue within each country from their national non-domestic rate, a property tax levied on business and other non-domestic properties. District councils in Northern

Ireland raise revenue through the levying of a domestic rate and business rates.

c) Local government complaints system

Local authorities are encouraged to settle complaints through internal mechanisms, and members of the public often ask their own councilor for help in this. Local authorities must also appoint a monitoring officer, whose duties include ensuring that the local authority acts lawfully when carrying out its business. Complaints against inefficient or badly managed local government may be investigated by independent Commissions for Local Administration, often known as the 'Local Ombudsman Service'. There are three Local Government Ombudsmen in England and one each in Wales and Scotland. A report is issued on each complaint fully investigated and, if injustice is found, the Local Ombudsman normally proposes a solution. The council must consider the report and reply to it. In 2000-1 the Local Government Ombudsmen for England received 19,179 complaints (a 9% increase over the previous year). In Northern Ireland a Commissioner for Complaints deals with complaints alleging injustices suffered as a result of maladministration by district councils and certain other public bodies.

d) Pressure groups

There is a huge range of groups, covering politics, business, employment, consumer affairs, ethnic minorities, aid to developing countries, foreign relations, education, culture, defense, religion, sport, transport, social welfare, animal welfare and the environment. Some have over a million members (many times more than even the largest political party!); others only a few. The existence of so many pressure groups in the U.K. is a direct result of the almost total absence of participatory democracy and the perceived failure of the representative system to be responsive to the concerns of ordinary citizens. Where statutory instruments are lacking, people are forced to petition and campaign through informal means – in effect begging the government to listen to their concerns, a system little changed in essence since the Middle Ages.

e) Democracy?

Despite committing themselves before the 1997 elections to introducing proportional representation for national elections if elected, the ruling Labour Party has conveniently forgotten its promises. Two landslide victories have given it a taste for virtually unchecked power which it is reluctant to lose. The existing FPTP ('first-past-the-post' – a metaphor taken from horseracing) system is manifestly unfair. In the last

two national elections, in 1997 and 2001, the voting was as follows:

The most obvious point is that, instead of enjoying large majorities in two elections, the Labour Party would have had no overall majority in either election and would have had to enter into coalition with another party (probably the Liberal Democrats) in order to create a government. The other main point is that minority parties are massively discriminated against. For example, in the 2001 general election, the Green Party secured 2.85% of the total votes. On a simple proportional basis, this would have given them 17 parliamentary seats. In fact, they got none. In a representative system, proportionality is surely a *sine qua non* of democracy.

Legitimacy of government is questioned when, as in 2001, the ruling party is elected by only 40% of less than 60% of the electorate i.e. by less than 25% of the total electorate and when 6 out of 10 of those who did vote voted against the party which 'won' the election.

f) Turnout

Voter turnout in all types of election has slumped badly over the last ten or so years. General elections: 78.7% (1959); 71.4% (1997); 59.4% (2001) Local elections: (always a lower turnout than in general elections) 47.2% (1990); 41.38% (1995); 29.6% (2001); 35% (2002). European Parliament elections: (1999) 23.1% (lower than in any other EU country). (Turnout in the new 'mayoral referendums' averaged 29%, with a high of 74% and a low of 10% - about the same as for normal local elections. There was no significant difference in the turnout where the referendum had taken place as a result of a local petition – 5% of local electors in England; 10% in Wales).

II. National level

"I could not consent to the introduction into our national life of a device so alien to all our traditions as the referendum". (Clement Attlee, British Prime Minister 1945-1951) Apart from what some might consider the relatively trivial right to opt for election of a local mayor by referendum, British citizens have no statutory right of referendum. All referendums so far have been 'gifted' by government and require separate legislation for each one. Nonetheless, the fact that the referendum is being used more and more frequently in Britain will inevitably have positive consequences for the public's experience of and attitude to democracy. The official party candidates in at least two cities were defeated by local independents. Britain's referendum record so far:

1973 - Northern Ireland border poll: 98.9% in favor of remaining within the U.K.

1975 - Referendum on renegotiated terms of entry to E.C. (the only UK wide referendum so far): two to one in favor of entry.

1979 and 1997 - Referendums on devolution in Scotland and Wales (the first unsuccessful; the second successful in both countries).

1998 - Referendum on proposals for a Greater London Authority with an elected mayor: 72% in favor. Northern Ireland referendum on the "Good Friday" peace agreement: more than 70% in favor; turnout 81% (a simultaneous referendum on the same issue in the Irish Republic produced an overwhelming 94% in favor).

1999 and 2001 - Local council tax referendums in a number of English cities.

2001 and 2002 - Referendums on mayoral elections.

The Labour government has promised future referendums on: conversion to the Euro (not before 2005); English regional assemblies (autumn 2004); the future of Gibraltar; and, voting systems/proportional representation.

III. Trends

There are currently no signs of radical change being seriously considered by any of the major parties. The Labour Party is enjoying a second term with a massive parliamentary majority and is not anxious to undermine its electoral success. Despite devolution in Scotland, Wales and Northern Ireland, the actual trend is towards greater and greater centralization and manipulation of power by government. The Conservative Party recently announced a solid commitment to retaining the current political system (it has also benefited in the past from the inequities and iniquities of the majority system and hopes to use it to its advantage in the future). As mentioned above, the LibDems have expressed a commitment to introduce some form of I&R if they ever form a government, but have done nothing to promote the idea since their manifesto pledge in 2001.

I&R is not on the political, public or media agenda. It is doubtful if even 1% of the electorate would be able to say what 'direct democracy' meant.

There are a number of smaller and larger pressure groups (including Charter 88) which campaign for electoral reform and greater democracy, but there is no active group specifically campaigning for I&R. As expressed above, the main hope is that I&R will be incorporated into EU law in the not-too-distant future and that Britain will then be forced to take it seriously. However, the possibility that more

reactionary and regressive forces in Britain will gain the political upper hand and even engineer Britain's withdrawal from the EU cannot be discounted. The growth in the use of referendums presents the other main cause for optimism.

Paul Carline with additional remarks by Michael Macpherson. Carline is IRI Coordinator for Britain in Edinburgh. paul@carline.fsnet.co.uk Macpherson is teacher in Berlin.

Legislative requirements

Despite the extremely unfavorable environment for I&R in Great Britain (no rights of initiative or referendum except for the recently introduced right to petition for a referendum on whether to directly elect the mayor, and a right of petition to the Scottish Parliament) a recent Act (the Political Parties, Elections and Referendums Act 2000) has set out the legal framework for the future conduct of major referendums in the UK. The Act applies to referendums held across the UK, or a referendum held in Scotland, Wales, England or Northern Ireland, or to regional referendums within England. No referendums have so far been held under this Act.

The Act also established an Electoral Commission with the following main functions:

- to comment on the referendum question
- to register campaign groups and regulate campaign fund-raising and expenditure
- to certify the result of the referendum(s)

The wording of a 'referendum' question will ordinarily be specified in the Bill providing for the referendum (i.e. these are not genuine referendums, but plebiscites in which the question is decided by government). The Commission must consider the wording of all referendum questions and can publish a statement of its views, if any, as to the 'intelligibility' of the question (how effective the question is in presenting the options clearly, simply and neutrally)

Any campaign groups, including political parties and individuals, who intend to spend more than £10,000 on referendum expenses must register with the Commission as a 'permitted participant'. A total spending limit of £500,000 will then apply. Higher limits apply to registered political parties and to any 'designated organizations'.

The Commission has the power to designate *one* permitted participant to represent each possible outcome of a referendum as a 'designated organization'. Permitted participants may apply to the Commission for designation, but if no applicants are considered to

be properly representative, the Commission may decide not to designate anyone. If the Commission does designate a campaign group for *one* outcome, it must also designate groups for the other outcomes. Designated groups are eligible for certain types of assistance – including the free postal delivery of a leaflet to each household in the referendum area, and referendum broadcasts.

BULGARIA

Since Bulgaria became a Parliamentary Democracy again in 1991 no nationwide referendum has taken place. However, a nationwide referendum will be held about EU membership in 2005.

The institutional provisions for direct participation by the people are very restricted and exclude constitutional amendments, parliamentary issues, financial issues and competences of the Courts.

At the local level, the citizens have more power, as they can trigger a referendum. However, the threshold of 25% to qualify a local initiative is too high. In practice, local referendums are only held to decide territorial questions – the division or unification of municipalities.

- Population: 8,257,000
- Area: 110,994 km²
- Capital: Sofia (Sofija)
- Official language: Bulgarian
- Religion: Orthodox (86%), Muslim (13%)
- Political System: Republic (since 1990)
- Constitution: 13/06/1991 (without referendum)
- Membership: Candidate to NATO and EU
- GNP/Capita: \$1,220 (1999)
- I&R Practice: Three nationwide referendums: 1922 Charges against war criminals; 1946 Republic vs. Monarchy; 1971 Socialist Constitution.

Types of Initiative and Referendum

There are four different I&R institutions in Bulgaria:

- national referendum;
- local referendum;
- popular assembly (meeting);
- initiative

The instruments of I&R can be found as a principle in the Bulgarian Constitution: article 84, paragraph 5 of Chapter III – "National assembly" – and article 136, paragraph 1 and 2 of Chapter 7 – "Local self-government and local administration".

The use of I&R instruments is also regulated in law.

Since 22.11.1996 there has been a special law for I&R instruments. This law was changed in 1999. According to the amended law, the four forms listed above – national and local referendum, popular assembly and initiative – provide for the direct participation of the citizens in the state government.

I. National Level

At the national level there is only the national referendum. By means of the national referendum, the citizens can decide/vote on basic issues that are in the competence of the National Assembly. They cannot vote through national referendums on issues related to:

- changing the Constitution;
- the competence of the Great National Assembly;
- the national budget;
- the competence of the Constitutional court and other juridical institutions;

A national referendum can be called if requested by:

- 1/4 of all members of Parliament
- The Council of Ministers
- The President.

After one of these institutions has proposed a referendum, the National Assembly votes "YES" or "NO". The referendum in Bulgaria is binding - the decision taken through it is obligatory. Since 1989 no national referendum has been held.

II. Local Level

At the local level there are 3 forms of DD instruments; referendum, assembly, and petition.

1) Referendum

This referendum is called only on local issues that are in the competence of the local authorities. For instance, through a local referendum citizens of one municipality can vote for:

- loans from banks and other financial institutions;
- sales or rents of municipal property that is very important for the municipality and so on;
- problems issues concerning the local infrastructure and other projects requiring investment;

A local referendum can be called if asked for:

- not less than 1/4 of the voters
- not less than a 1/4 of the municipal council
- the mayor;
- the regional governor.

The municipal assembly then regulates the manner and the form in which this referendum will be held. There are a lot of examples of local referendums in Bulgaria. Usually they are held to decide the boundaries of a municipality - the division or the unification of municipalities.

2) Assembly

This is almost the same as the local referendum. The difference is that it takes smaller groups of people to decide smaller issues. It is usually held in villages where most of the people are known to each other.

3) Petition

Through the petition, people can make proposals to the municipal council. These proposals concern problems in the municipality or the district. An initiative can be launched by a minimum of least 100 voters or a minimum of 1/5 of the voters, where the population is less than 200.

III Trends

a) History of I&R in Bulgaria.

National referendum - 3 national referendums have been held in the most recent Bulgarian history. In brief:

- 1922 - first referendum. In this referendum the Bulgarian people voted in favor of assigning the blame for the national catastrophes to the old bourgeois parties.
- 1946 - second referendum. In this referendum the Bulgarians voted to replace the monarchy with a republican form of rule.
- 1971 - third referendum. This referendum confirmed the socialist constitution.

Today there is the need for a fourth national referendum concerning the future joining of the EU. Our country is already negotiating entering the European Union.

I&R at the local level - examples of this kind of direct democracy are many. There is a stable trend for these forms of DD to be used frequently at the local level. But they are used for only one purpose – the definition of boundaries.

b) Polls

Overall, there is no strong civil awareness of direct citizen participation. We can show the results of 2 sociological inquiries that our organization has made. It is important to note that these results are not representative of all the Bulgarian people. These are small investigations that have only one aim - to record the

opinions of freely chosen casual groups of people in Sofia and Razgrad about civil participation and DD instruments.

- First inquiry - October 2000, Sofia. Results (unrepresentative): the inquiry contained 22 questions about politics, the authorities, attitude to DD and EU and was aimed at freely chosen citizens aged between 20 to 50. In summary, most of those asked did not want to vote for people (MPs) to represent their interests. But at the same time they refuse to take the responsibility of becoming part of the decision-making process, which is the point of DD. When it concerns difficult day-to-day problems, most of the people asked would like to be involved in deciding on them. But a paradox emerged - those asked do not approve of DD as a form of participation in public life and yet at the same time they do wish to have a referendum about joining the EU.
- Second inquiry (Direct democracy and civil participation) – April 2001, Razgrad. Results (unrepresentative): The inquiry contained 12 questions about direct participation in public life and the responsibilities of being a citizen and was aimed at 53 freely chosen citizens, aged between 18 and 50. This poll showed high voting motivation, defined by the high level of interest in local politics and local authorities. At the same time, this high level of voter interest is accompanied by ignorance of the meaning of DD. Most of the people think that a referendum should be held in order to decide on measures to deal with high levels of criminality, improvement of the infrastructure, where there is a high level of social or ethnic tension and so on. The citizens were hesitant about answering questions concerning their own individual responsibility. For instance the question: "Would you participate in an event organized by other people?" got mostly neutral answers such as: "Yes, but only if this event has social benefit", or: "No, if this event is of a self-seeking nature". At the same time, almost all of the people asked said that they would definitely organize an event whose purpose was to clean up their residential area.

These polls showed a lack of civil knowledge, but at the same time - in certain situations and on certain topics and issues - people do want to be active and to participate in the decision-making process. According to our analyses, there is not enough information about the opportunity of using the instruments of DD. And this is a problem to be addressed not only by the state institutions, but also by all the NGOs and

civil organizations that are working to spread civil values and build a stable civil society in Bulgaria.

Nelly Ivanova Sirakova.

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Constitutional Requirements for Legislation

Article 45 [Petition]

Citizens have the right to lodge complaints, proposals, and petitions with the state authorities.

Article 87 [Initiative]

(1) Any Member of the National Assembly or the Council of Ministers shall have the right to introduce a bill.

(2) The State Budget Bill shall be drawn up and presented by the Council of Ministers.

Article 136 [Election, Referendum]

(1) A municipality is the basic administrative territorial unit at the level of which self-government shall be practiced. Citizens shall participate in the government of the municipality both through their elected bodies of local self-government and directly, through a referendum or a general meeting of the populace.

(2) The borders of a municipality shall be established following a referendum of the populace.

(3) A municipality shall be a legal entity.

Article 150 [Initiatives]

(1) The Constitutional Court shall act on an initiative from not fewer than one-fifth of all Members of the National Assembly, the President, the Council of Ministers, the Supreme Court of Cassation, the Supreme Administrative Court, or the Chief Prosecutor. A challenge to competence pursuant to Paragraph (1.3) of the preceding Article may further be filed by a municipal council.

(2) Should it find a discrepancy between a law and the Constitution, the Supreme Court of Cassation or the Supreme Administrative Court shall suspend the proceedings on a case and shall refer the matter to the Constitutional Court.

CZECH REPUBLIC

Czech citizens have experienced only 30 years of democracy during the last 100 years and are suffering from a lack of trust in their own ability.

The ruling Social Democratic Party has proposed a legislative popular initiative. According to this draft law, 300,000 citizens would get the right to trigger a nation-wide vote.

At the local level many important issues are excluded from the referendum option. Additionally, the initiators must present a financial plan to meet the upcoming costs.

In the I&R debate there is often a confusing between I&R and the direct election of the President and/or local mayors.

As a referendum about EU membership has become a Europe-wide minimum standard, the Czechs will get their first opportunity to decide an issue in 2003 or 2004.

- Population: 10,292,900
- Area: 78,865 km²
- Capital: Prague (Praha)
- Official languages: Czech (96%). Other languages: German, Slovakian.
- Religion: Roman Catholic (39%), Protestants (2,5%)
- Political System: Republic (since 1993)
- Constitution: 1993 (without Referendum)
- Membership: NATO, EU candidate
- GNP/Capita: \$13,991
- I&R practice: The Czech Republic is one of the very few European Countries without any I&R practice at all.

Types of Initiative and Referendum

An independent Czech state was re-constituted in 1918, after the end of WWI. It was a unitary state of Czechs and Slovaks. At that time, Czechs, Moravians and Slovaks were considered members of one and the same Czechoslovak nation. The political system of that state was parliamentary democracy headed by the first President, T.G.Masaryk. From the establishment of that state, or more precisely from the adoption of the first constitution (1920), general suffrage, including female suffrage, was implemented. In that constitution, the right to referendum was also included. We must point out, however, that the first draft of the constitution proposed the adoption of the Swiss model, i.e. the people's right to initiate referendums and pass laws. However, in the final version of the constitution, only the right of the Government to address people directly remained; but this possibility was never made use of. In 1989, the communist regime, established after 1948, was abolished. In 1993, Czechoslovakia split into the Czech and Slovak Republics. In 2000, the first elections for the newly established 14 regions were held. The current constitution was adopted in 1993; it allows direct popular decision-making, if so stipulated by constitutional law. So far, such a law has never been passed. The proposals put forward by the Czech Social Democratic Party have already been rejected three times by the

Parliament, especially owing to the votes cast by the right-wing parties. One of the most resolute adversaries of the referendum is the liberal right-wing ODS; a somewhat more moderate opponent is the US, also right-wing. At present negotiations are in progress concerning the proposal to pass a law which would regulate the organization of a single referendum dealing with the issue of joining the EU. No other referendums would be admitted by that law.

I. National I&R

So far, in the Czech Republic it is not possible to hold nation-wide referendums. The constitutional law necessary for this purpose has not yet been adopted, owing to resistance on the part of right-wing parties.

II. Regional I&R

Referendums are not possible even at this level.

III. Local Level

Czech legislation only permits the holding of popular referendums at the level of communes, towns and town districts: Law No. 298/1992, updated by the law No. 132/2000 of the code.

The right to vote is reserved for citizens of minimum age 18 and whose permanent place of residence is the commune in question. It is not permitted to hold a referendum concerning:

- the communal budget
- local duties
- election and recall of the mayor, deputy-mayor, communal council and members of other authorities elected by the council
- cases of contradiction with generally binding legal regulations
- issues treated by administrative processes
- issues already subjected to a referendum during the preceding 24 months
- any issue during the last six months of the mandate of the council
- issues decided by the council after a referendum proposal has been presented, except if the petitioner insists on his/her proposal and presents a new justification within 2 weeks after receiving the decision of the council
- the splitting of the commune, should this result in the establishment of a commune having less than 300 permanent residents The proposal to hold such a referendum can be presented by a citizen who obtains a sufficient number of signatures. For communes and town districts, this number is set at:
 - Up to 3,000 inhabitants - 30% of qualified voters
 - Up to 20,000 inhabitants - 20% of qualified voters

- Up to 200,000 inhabitants - 10% of qualified voters
- Above 200,000 inhabitants - 6% of qualified voters.

The referendum proposal has to contain: the wording of the question, petition forms stipulating the name, address and I.D. number of every supporter of the proposal, the exact information about the area concerned and the initiator's identification data. The referendum proposal also has to contain an economic analysis of the cost incurred if the proposal presented is approved by referendum, and an indication of resources by which the cost is meant to be covered. This last mentioned requirement, in particular, is a potential brake hampering the use of local referendums in the Czech Republic. In many cases, it is difficult for a-citizens' initiative to express in figures the cost of the proposed solution, or the cost incurred if the referendum were to reject the solution presented by the local council.

Up to now, only about five local referendums have been held in the Czech Republic.

IV. Practical guide

For information on holding a local referendum, it is possible to look at the web-site of the Ministry of Interior of the Czech Republic. There, the wording of the laws in question can be found. It is also possible to contact the Ecological legal service - an association of lawyers volunteering to give legal advice to other citizens' initiatives, especially with regard to environmental cases, but also concerning local referendums. Their internet address is www.i-eps.cz.

The Czech Movement for Direct Democracy can be found at www.pdemokracie.ecn.cz. Besides the right to popular initiative and referendum, this movement also advocates the citizens' right to demand the recall of representatives and MPs at both local and national levels.

V. Trends

As mentioned above, it is especially the liberal right-wing parties which belong to the adversaries of the referendum - at present the ODS, the US, and the ODA, which used to be influential, but is no longer so. The Christian Democratic Union - the Czech People's Party - also used to belong to the adversaries, but recently (2001), its president has begun to speak of the merits of DD methods.

In the Czech context, these methods are often misunderstood as referring to the direct election of the president who, so far, has been elected by parliament. The author of this text does not consider direct presi-

dential election as a DD instrument, because it does not in any way strengthen public control of political power. Rather, it could tend to renew the cult of strong personalities, leaders who stand above the citizens.

The Social Democratic Party is a supporter of the referendum, but even within it, there are voices which reject the referendum, especially if initiated by independent citizens. Consequently, the support given to the idea of I&R by this party is rather weak. It does not promote these ideas among the public.

On the other hand, the citizens' right to I&R is amply promoted by the KSCM, the successor organization of the KSC (Czech Communist Party). In 1948, the KSC established a totalitarian regime in Czechoslovakia, a regime which lasted under its leadership until 1989. The KSCM is generally considered a party which has not sufficiently disavowed its totalitarian past. Despite this, they obtained 18% of the votes at the last elections in June 2002.

Besides these parliamentary parties, there are a lot of groups whose programs contain passages concerning direct democracy, including statements about the right of citizens to I&R. These groups are scattered across the whole political spectrum, from the Anarchists to the Neo-Nazis claiming adherence to the legacy of Adolf Hitler. Neo-Nazi and extreme right-wing groups see in the referendum an instrument for the establishment of their own power and the promotion of their authoritarian and racist programs. Their members do not exceed a few hundreds, but they enjoy considerable support from abroad. The anarchist groups consist of very young people (mostly between 16 and 25). They are often characterized by ideological intransigence and sectarian seclusion, which contributes to making their impact on public opinion rather negligible.

A special case are Czech environmental initiatives which, so far, have rejected DD methods in principle, but have been willing to initiate large-scale petitions demanding a single referendum concerning the closure of the Temelin nuclear plant. At the time, the majority of public opinion was on their side. However, they are still not willing to cooperate in efforts to push through the citizens' right to I&R. They mostly distrust the citizens and consider them both as non-qualified and easily exposed to manipulation.

The Czech media side completely with the ruling elites and refuse to publish anything about direct democracy. The only exception are certain IT periodicals whose impact is, of course, very limited. In general, the Czech Republic has been deeply afflicted by the events of WWII. Here, the Nazi occupation lasted from 1939 to 1945. As early as February 1948, the Communists seized

power and established a totalitarian regime. This means that Czech citizens have experienced only 20 years of democracy, from 1918 to 1938. Thus the most important task is to get rid of this totalitarian heritage. This manifests itself in many forms. For the citizens, it is a question of their having very little trust in their own ability; almost non-existent mutual solidarity; a lack of belief in citizen involvement, etc. citizen activity, to continue the promotion of the ideas of direct democracy, and especially in the growing-up of a new generation, not scarred by the totalitarian regime.

Milan Valach

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Constitutional Requirements for Legislation

Chapter One Basic Provisions

Article 9 [Constitutional Laws]

- (1) The Constitution may be amended or altered solely by constitutional laws.
- (2) Any change of fundamental attributes of the democratic law-abiding state is inadmissible.
- (3) Legal norms cannot be interpreted as warranting the removal or threatening of the foundations of the democratic state.

DENMARK

The compulsory referendum plays a very important role, as it introduced an I&R dimension to the European integration process.

A minority of the Parliament does have the right of legislative initiative, triggering a nationwide referendum. But this right is not used. It does not seem likely that the political parties in Parliament will extend I&R rights to the citizens in the near future. There are no provisions for citizen-initiated referendums.

At the local level, more than 160 referendums were held between 1970 and 2002. The most prominent issues for citizens' decisions were: schools, infrastructure, territorial questions. Even if the local citizen decisions are de facto only advisory, they have an important impact on the political decision-making process itself.

- Population: 5,301,000
- Area: 43,094 km²
- Capital: Copenhagen (København)
- Official languages: Danish (97%), German

- Religion: Lutheran (90%)
- Political System: Parliamentary Monarchy (since 1953), with the autonomous regions of Greenland and the Faroe Islands (both have their own parliaments).
- Constitution: 5/6/1953 (Referendum, 78% Yes)
- Membership: EU, NATO
- GNP/Capita: \$33,040 (1999)
- I&R practice: 19 nationwide referendums (since 1916), 6 regional votes (Greenland, Faroe Islands, Slesvig)

Types of Initiative and Referendum

The degree of decentralization in Denmark is relatively high. In addition to the central state administration, Denmark is divided at a regional level into 14 counties plus the metropolitan areas of Copenhagen and Frederiksberg, and at a local level into 273 municipalities. The Local Government Reform of 1970 transferred many of the state tasks to counties and municipalities. Today, they administer approx. 33% of the gross national product and employ almost 75% of the public servants. A popularly elected council headed by a mayor chosen by the council leads counties and municipalities. Each has its own administration. Elections for county and municipal councils take place every four years.

The Faeroe Islands have had home rule since 1948, Greenland since 1979. They both have their own parliaments and governments, but the Government in Copenhagen is responsible for their foreign and defense policy. Negotiations are being held between the Government of the Faeroe Islands and the Danish Government on releasing the Faeroe Islands from the Danish realm. A independence referendum on the Islands, scheduled for May 25, 2001, was cancelled and at the last elections (April 30, 2002) the pro-independence parties lost their majority in the Parliament (the Lagting).

An electoral hurdle of 2% means that the party landscape is relatively fragmented, with small parties of the Center entering into various alliances with the larger parties to the right and left of the political spectrum:

The Liberal Party (with historical origin among Danish Farmers) is the strongest political force in the country, with approximately one third of parliamentary seats (57).

The second biggest party is the Social Democratic Party (52), followed by the right-wing Danish People's Party (22) and the Conservative People's Party (16). The smaller parties of the Center are the Radikale Venstre (Social-Liberal Party, 9 seats) and the Christian People's Party (4).

Since 21 September 1994, when the new Red-Green Alliance (4) entered the Folketing, it has been competing on the left of the party spectrum with the Socialist People's Party (12), which is closer to the center (it split from the Communists in 1956).

In addition there are two Eurosceptic movements: "People's Movement against the European Union" and the "June Movement". They only run for offices in the European Parliament and do not run for offices in the Folketing.

Traditionally, Denmark has often been governed by minority governments; there have only been three majority governments since the Second World War. The need to compromise faced by any minority government has left its mark on Denmark's parliamentary culture.

In the Folketing elections held on 20 November 2001, the Parties right of the center won a majority. The ruling coalition of Liberal and Conservatives (together 73 seats) is supported by the Danish People's Party.

In the first 37 years after the Second World War, Denmark established a far-reaching social security system (introduction of a state pension, grants for all young people under the age of 18, establishment of comprehensive social benefits in all spheres of life).

In spite of critical discussions on the future of the welfare state, the dominant view seems to be that high taxes and contributions are justified in order to guarantee the existing high level of state care. Social assistance payments are, however, dependent on recipients' participation in "social activation" measures.

I. National level

The *Danish Constitution* requires or enables national referendums in a number of instances. On the other hand there exists no means for national initiatives. In the following, the different legal provisions concerning the national referendum shall be briefly described. The outcome of these referendums is binding.

1. To *change the Danish Constitution* a number of prerequisites must be fulfilled; one of them is the approval in a mandatory referendum by a majority of the voters. This majority must comprise no less than 40 % of the total electorate. (Constitution, Section 88).
2. A facultative legislative referendum (Section 42). This article enables a minority of one third of the Parliament's members, i. e. 60 members, to *postpone the final passing of a bill and to decide that the bill must be subject to a referendum* - and obtain a majority - among the voters before the bill can come into effect. Section 42 contains the detailed regulations, one of them being that at

the referendum votes shall be cast for or against the bill. For the bill to be rejected, a majority of the electors who vote and no less than thirty (30) percent of the total electorate must have voted against the bill. Certain bills cannot be submitted to decision by referendum, e. g. finance bills, government loan bills, civil servants' bills, salaries and pension bills, naturalization bills, expropriation bills, direct and indirect taxation bills as well as bills introduced for the purpose of discharging existing treaty obligations.

3. *Alteration of the age qualification for suffrage* requires a mandatory referendum (Section 29). A bill passed by the Folketing for the purpose of such enactment can come into effect only after having been submitted to a referendum in accordance with Sub-section 5 of Section 4 of the Constitution, which has not resulted in the rejection of the provision.
4. A mandatory legislative referendum *concerning the delegation of powers vested in the authorities of the realm under the Danish Constitution to international authorities set up by mutual agreement with other states for the promotion of international rules of law and cooperation*. For the enactment of a bill which delegates such power to international authorities, a majority of five-sixths of the members of the Folketing shall be required. If this majority is not achieved, but the majority required for the passing of ordinary bills is obtained, and if the government wishes to retain the bill, it shall be submitted to the electorate for approval or rejection. (Section 20).
5. A facultative and binding referendum on *bills concerning the entering of international treaties involving renunciation of sovereignty* (Section 42, Subsection 6, cf. Section 19).
6. Finally it should be mentioned that facultative referendums may be arranged in other instances even if not provided for by the constitution. Unlike the types of referendums which are provided for in the constitution, such referendums will be of a consultative character only, as they do not bind the authorities that are constitutionally responsible and empowered.

In comparison with many other countries, the institution of referendum is very explicitly regulated in the Danish constitution.

Denmark is one of the countries with the largest number of referendums. Between 1915 and 2000 nineteen referendums have taken place in Denmark. Three of these were mandatory constitutional referendums (1920, 1939 and 1953). Four were facultative

referendums on land property regulations; five were mandatory referendums concerning the age of suffrage; four were mandatory referendums concerning the EEC or EU (Denmark's joining of the EEC, 1972; Maastricht Treaty, 1992; Amsterdam Treaty, 1998; European single currency, 2000). Finally three were facultative referendums: a consultative referendum concerning the sale of the Danish West Indies to the USA (1916), a consultative referendum concerning the European Single Market (1986) and a binding referendum in 1993 about the Maastricht treaty with the Danish opt-outs (the Edinburgh Agreement).

II. Regional and local level

Danish legislation doesn't provide any formal rules enabling local referendums or initiatives. However, a large number of local consultative referendums have taken place over the years. Between the municipality-reform of 1970 and 2000, more than 160 local referendums have been held in approximately 80 municipalities. A total of 88 of the local referendums have been about the closure of local public schools. In addition there have been referendums concerning various construction projects (24 referendums), road closures (9 referendums), and boundary regulations between municipalities.

The results of a local referendum of this sort are not formally binding. However, the results have an important impact on the political decision-making process itself.

III. Trend

Since 1975, a few of the political parties in the Folketing have tried to convince the major parties to enact legislation which would give the voters the opportunity to initiate referendums in specific areas within the municipal competence.

In recent years there have been several debates on whether the use of referendums should be increased. One of the options would be to introduce a bill which would enable the local municipal councils or the voters to initiate referendums of a legally binding character.

In 1975 and again in 1996 a bill was proposed, which would enable a certain percentage of voters in a municipality or a county to require a binding referendum concerning a given local subject. A vast majority in the Folketing rejected these bills. However, in summer 2003 the former Minister for Foreign Affairs, Niels Helveg Petersen launched a new attempt to establish proper I&R rules in the Danish constitution – these proposals have met a rather positive response both in the Parliament and in society. Also, the Danish Prime Minister has announced that Denmark will hold a ref-

erendum on the European Constitution in 2004. The Danish political parties have expressed their views in their most recent political manifestos. Several parties support the idea of making room for a larger number of consultative or advisory local referendums. A few public surveys or opinion polls have been carried out. They seem to indicate that approximately one half of the voters is in favor of more I&R's while almost the same number of voters are opposed.

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Constitutional Requirements for Legislation

Part X [Constitutional Amendments]

Section 88 [Constitutional Amendments, Electors' Vote]

When the Parliament passes a Bill for the purposes of a new constitutional provision, and the Government wishes to proceed with the matter, writs shall be issued for the election of Members of a new Parliament. If the Bill is passed unchanged by the Parliament assembling after the election, the Bill shall within six months after its final passing be submitted to the Electors for approval or rejection by direct voting. Rules for this voting shall be laid down by Statute. If a majority of the persons taking part in the voting, and at least 40 per cent of the Electorate has voted in favor of the Bill as passed by the Parliament, and if the Bill receives the Royal Assent it shall form an integral part of the Constitution Act.

ESTONIA

In the first Estonian Constitution (1920), I&R institutions were very strong and included citizen-initiated referendums: with 25,000 signatures a legislative initiative triggered a binding ballot. But in practice I&R never worked in Estonia, as authoritarian forces gained power and changed the system towards a plebiscitary model in the 1930s. This old trauma and the orientation after the regaining of independence in 1991 towards the strictly non-I&R countries of Scandinavia led to the establishment of an almost purely representative system. However, the compulsory referendum for constitutional change and the upcoming EU membership vote could change the pattern. A further trend towards more I&R in Estonia is the strong commitment to e-democracy in this small country.

- Population: 1,450,000
- Area: 45,227 km²
- Capital: Tallinn (Reval)
- Official languages: Estonian (62%); other language: Russian (35%)
- Religion: Lutheran, Russian-Orthodox
- Political System: Republic (since 1991)
- Constitution: 28/6/1992 (referendum, 91% Yes)
- Membership: EU and NATO Applicant
- GNP/Capita: \$3,360 (1999)
- I&R practice: 8 nationwide referendums (since 1923), one citizen-initiated referendum (19/2/1923) on reintroducing religious education. On March 3, 1991, 78.4% voted in favor of independence from the Soviet Union.

Types of Initiative and Referendum

Estonia is a parliamentary democracy with a president elected by parliament. The Constitution of 1992 establishes Estonia as a republic with separation of powers. Most formal powers are concentrated in the parliament and in the government that is dependent on parliamentary sanction. The presidency holds a mainly ceremonial role. Levels of government: National level, counties (15). There are 247 local governments in Estonia - 42 cities and 205 rural municipalities. As it is a unitary state, all/most taxes are raised at the national level. According to the constitution, Estonia has one-tier local government, which delegates extensive powers to the municipalities. Nearly half of the budget of rural municipalities (including indirect support, this is as much as 75% in some areas) comes from the state. The budget funds are mainly used to preserve the existing resources – to repair roads and buildings, fund the fire service and to pay the salaries of the people employed by the municipality. Local governments are more mediators of state welfare than an economic and political power.

I. National level

There are also provisions in the constitution for the kind of direct democracy represented by referendums. In the Estonian Constitution, the referendum had been regarded as a complementary, but exceptional, feature of the traditional decision-making process. All citizens of Estonia have the right to elect the parliament (Riigikogu) and participate in referendums (article 56).

1) Compulsory referendum

Any change to the general provisions as well as any amendments to the constitution necessitates an obligatory Referendum. The general provisions establish

the legal basis of Estonia as a democratic independent state and are:

Article 1. (Sovereignty): Estonia is an independent and sovereign democratic republic in which the supreme power of the state is held by the people. Estonian independence and sovereignty are permanent and inalienable.

Article 3. (Rule of law and international law):

Government power shall be exercised solely on the basis of this constitution and such laws which are in accordance with the constitution. Universally recognized principles and norms of international law shall be an inseparable part of the Estonian legal system. Laws shall be published in the prescribed manner. Only laws which have been published shall have obligatory force.

Article 161: The right to initiate amendments to the constitution shall rest with a minimum of one-fifth of the members of Parliament and with the president of the republic. The constitution may be amended by law which has been adopted by 1) a referendum; 2) two successive complements of the parliament. A draft law to amend the constitution shall be debated in three readings in the parliament, whereby the interval between the first and second readings shall be at least three months, and the interval between the second and third readings shall be at least one month. The manner in which the constitution is to be amended shall be decided at the third reading; 3) the parliament, in matters of urgency (article 163 Proceedings). However, in the Constitution of the Republic of Estonia Implementation Act (§8) is stated that "The right to initiate an amendment of the Constitution during the three years following the adoption of the Constitution by a referendum also rests, by way of public initiative, with no less than ten thousand citizens with the right to vote. A proposal to amend the constitution made by public initiative shall be entered on the agenda of the Riigikogu as a matter of urgency and shall be resolved pursuant to the procedure provided by paragraph one of this section." Article 162 of Chapter 1 (general provisions) and chapter 15 (Amendments to the Constitution) state that these may be amended only by referendum: The right to initiate laws shall rest with: 1) members of parliament; 2) factions of the parliament; 3) parliamentary committees; 4) the government of the republic; 5) the President of the Republic (article 103). In order to put a proposed amendment of the constitution to referendum, the approval of a three-fifths majority of the full membership of parliament shall be mandatory. The referendum shall not be held earlier than three months from the time that resolution is adopted in the parliament (article 164: Majority of

referendum). The law to amend the constitution shall be proclaimed by the President of the republic and it shall enter into force on the date determined by the same law, but not earlier than three months after its proclamation (article 167). An amendment to the constitution dealing with the same issue may not be re-introduced within one year of the rejection of the respective draft by referendum or by the parliament (article 168).

2) Referendum Law

The referendum is regulated by a special law on Referendums (1994) and according to this law it is up to the Riigikogu to decide whether a referendum will be held or not at all, the timing of such a referendum, as well as the questions to be posed.

Article 104: (Procedures, Qualified majority)

Procedures for the adoption of laws shall be determined by the law on parliamentary Byelaws.

Techniques and procedures of popular votes are established by the law on referendums adopted in May 1994. The following laws can be adopted or amended only by a majority of the full house of the Parliament: law on citizenship, law on parliamentary elections, law on electing the president of the republic, referendum law (article 104). Article 105 and Referendum Law state clearly: 1) The parliament shall have a right to put draft legislation or other national issues to a referendum. Several drafts of legislation can be put to the referendum simultaneously. The questions to be put to popular vote should have a clear content understandable to every citizen.

However, the State Court, if requested to intervene by the Chancellor of Justice, has a right to block the law by declaring the bill unconstitutional; 2) The decision of the people shall be determined by the majority of those participating in the referendum; 3) A law which has been adopted by referendum shall be immediately proclaimed by the president of the republic; 4) Should the draft law which has been put to referendum not receive a majority of 'yes' votes, the president of the republic shall declare early elections for the parliament. (So far this has never happened.)

There are also some restrictions on the range of issues that may be referred to the citizens. Article 106 (Financial laws) of the Constitution states: 1) Issues related to the budget, taxes, the financial obligations of the state, the ratification of foreign treaties, and the enactment and ending of a state of emergency may not be put to referendum; 2) Procedures for referendums shall be determined by the referendum law. A popular referendum can be held not sooner than 3 months and no later than six months after the parlia-

mentary decision. (Article 15 - Referendum Law). Voting is performed by secret ballot. The proposal submitted to the referendum will be recorded on the ballot paper as well as the words "for" and "against". The central election commission as well as county and district commissions are responsible for the practical arrangements for the popular vote. They count the signatures, ascertain the results, inform the president of the republic and make the official public announcement about the outcome. The law on referendums sharply limits the former right of popular initiative. Thus, the law states that only MPs, parliamentary factions, parliamentary committees or the government can initiate referendums. In addition, no referendums can be held on questions concerning national defense, the financial obligations of the state, or ratification of treaties with foreign countries.

II. Regional and local level

Other laws regulating direct democracy: Article 154 (Local Government Functions): 1) All local issues shall be decided on and regulated by local government, which shall operate independently in accordance with the law. Obligations may be imposed upon local government in accordance with the law or in agreement with the local government. Expenses relating to the obligations imposed on the local government by law shall be covered by the national budget.

Local governments derive their powers largely, though not solely, through representative democracy; every three years people elect the council and the council makes decisions on behalf of the people. To bring the local government closer to the interests of the people, it has been seen to be necessary to introduce additional elements of participatory democracy. In fact, such elements do exist in the organization of local government in Estonia, in certain circumstances; people have the right to initiate the adoption, repeal and amendment of council legislation. Also, the council is empowered to hold opinion polls on important issues. (www.estonica.org)

III. Trends

The first constitution (1920) allowed the popular initiative. 25,000 votes were required to initiate or change any laws passed by the Estonian Riigikogu (Article 31). In practice, this happened only once. The law on restoring religious instruction in secondary schools came into force after popular adoption in 1923 (those voting 'Yes': 71,7%; turnout: 66,2%). Between 1919 and 1933, the average term of office of national governments was only eight months. Political instability was greatly aggravated by the social effects of the great depression. Pressures for

political reform mounted, particularly from the right-wing League of Freedom Fighters, an association of veterans of the war of independence. In October 1933, their proposal for constitutional reform won by 72.7 % of the votes in a referendum (turnout 77%). The following March, the acting president Konstantin Päts made use of the new authoritarian constitution to declare a state of emergency, close Parliament and disband the league of freedom fighters. A referendum on a new Constituent Assembly formally legalized his caretaker regime in 1936. He ruled by presidential decrees until 1938.

Soviet provocation against the Baltic states intensified at the beginning of 1991. Among other things, Soviet forces attacked and occupied strategic locations in the other Baltic capitals, with the loss of several innocent lives. Estonia, Lithuania, Latvia, Georgia and Armenia refused to take part in discussions on the new Union agreement, since they now declared that they wanted full independence. Gorbachev attempted to apply pressure on these and other republics to sign a new Union treaty by holding a referendum on preserving the union. Talks with Moscow on independence stopped. The parliaments of six republics adopted decisions preventing the holding of a referendum in their territories. This in itself was a demonstration of the ability of the republics to go against the will of Moscow. As an alternative to the Soviet Union referendum, the Baltic republics, Georgia and Armenia held referendums on independence in their respective republics.

Two referendums were held during the transitional period in Estonia. The first - the referendum on independence - was held in March 1991, before Estonia regained independence. The second - the referendum on the draft constitution - was held in June 1992, when Estonia was already independent.

The conditions under which those two referendums were held were entirely different. The referendum on independence was held during an extremely critical and volatile period. In January 1991, coups had been attempted in Riga and Vilnius and Estonia was expecting attacks from the Russian military special rapid deployment forces - Omon.

The referendum demonstrated the opposition of pro-Estonia and pro-Russian empire forces especially clearly. As aspirations toward independence had been strengthening among Estonians, a referendum became a topical issue.

The question put to the referendum was: Do you want the restoration of the state sovereignty and independence of the Republic of Estonia? A 'Yes' vote was cast by 77.8 % and a 'No' vote by 21.4% of those who answered the question. The percentage of no-

votes shows the strength of the devoted and active group of pro-Empire forces among the adult population of Estonia.

In a transitional period, three major decisions must be faced: what nation-state is this? What form of government shall it have? What policies shall it follow? The thirty-three referendums in Eastern Europe and the former Soviet Union since 1987 can be readily placed into three categories. Twelve of these referendums were concerned with sovereignty or independence, nine with constitutions or the form of governance and twelve with policy issues including confidence in leaders, the economic system and the disposition of armies and militia. (Henry Brady and Cynthia Kaplan(1994): "Eastern Europe and the former Soviet Union, in: Referendums around the World. The growing use of direct democracy", edited by D. Butler and A. Ranney.p.180, The AEI Press)

1) The Constitutional Referendum 1992

A constitutional assembly composed of members of the Estonian Congress and the Estonian Supreme Council prepared and came up with a draft constitution. During the spring of 1992, the main issues of debate in the Supreme Council were the constitution and the power of the presidency, as well as citizenship laws. In April 1992, it was decided that the draft constitution should be put to a public referendum. The question whether people who had applied for citizenship should be allowed to vote in the coming parliamentary elections was also to be decided by the electorate. In essence, it was discussed whether a new constitution would mean the creation of a new state, whereby it would be difficult to regard the present Republic of Estonia as the legal successor of the Estonian Republic of 1918-1940. Some political groups more nationalistically oriented – the Estonian National Independence Party, Conservatives and Liberals – argued that the 1938 constitution should be re-established.

The main article of disagreement concerning the referendum, however, was who should have the right to vote. More moderate politicians – the Centre party, the Estonian Democratic Labour Party – wanted all the residents of Estonia to be included, and the more nationally-minded wanted only Estonian nationals to participate. The assembly's aim was to reinstate the republic as soon as possible and decided that the restoration of the republic of Estonia was a matter which concerned mostly Estonians.

The formulation of the main additional questions put to the referendum on the draft constitution were as follows: The main question: Are you in favor of the draft constitution of the republic of Estonia and for

the draft law on the application of the Constitution? Answer "Yes" or "No". The additional question: Are you in favor of allowing applicants for Estonian citizenship who have applied before 5 June 1992 to take part in the first parliamentary and presidential elections after the constitution becomes effective?

Answer "Yes" or "No". As we have seen before, in the referendum on independence, there was a clear-cut conflict between the supporters of independence and the supporters of the empire, and nearly every person knew how to answer.

However, the situation was much more complicated with regard to the Constitution. First, a serious conflict with the Russian community was likely, as they would not agree to being ousted from politics (i.e. barred from voting); also there were conflicts between two groups of independence supporters. The more radical and left-centrist groups recommended that the constitution be accepted and a "Yes" vote cast also for the additional question. The right-centrist political forces – liberals and monarchists – had differences among themselves. The most radical politicians thought that the 1938 pre-war Constitution should be put into effect. As to the additional question, the right-centrists were against it, the majority of centrists and left-centrists did not voice any opinion, and the communists, some of the left-centrists and those supporting the restitution of the 1938 constitution were for expanding the circle of electors. In general, the prevailing standpoint was that only Estonian citizens should have the right to make decisions concerning the Estonian state. Immigrants – non-citizens – should take no part. Moreover, the majority of non-citizens had voted against independence in the referendum on independence. The new draft constitution was approved by 91.3% of those who went to the polls. The share of 'Yes' votes for the additional question was 46.1% and that of 'No' votes 53 %.

2) Litmus test for democracy

All referendums tend to be litmus tests of democracy, although they are limited by the machinations of elites, who can decide if and when to hold them, what will be asked, what will be said through the media, how success will be defined and whether the results are binding etc. In the Baltic states, referendums bestowed legitimacy on independence movements by allowing them to counter claims that their desire for independence was extremist or a minority opinion. In the best circumstances, elites took them seriously and tried to find a peaceful path to independence. In the worst circumstances, elites countered with force. In the USSR for example, the refer-

endums in the Baltic states in February and March 1991 probably caused Gorbachev to rethink his strategy for the union treaty, but they also contributed to the reactionary coup attempt of August 1991. The failure of this coup then made it possible for the Baltic and other republics to leave the Soviet Union. Referendums have been used in an attempt to break political stalemate, to resolve contentious issues at the stage of constitution-building. The fact that only two referendums have been held so far in post-communist Estonia emphasizes the fact that the political system is based very much on representative rather than direct democracy. Although, admittedly, the constitution sets limits to the use of direct democracy and strongly emphasizes the representative component, the political elite could nonetheless have tried to involve the Estonian people in the decision-making process more intensively if they had wished to. Firstly, parties have not made any proposals concerning nationwide or local referendums since 1992. One reason for this reluctance might be that the big majority parties have emphasized the role of parliament; perhaps also, most parties saw possibilities for more progressive politics within the framework of representative institutions. The only party which only recently started to propagate popular initiatives on local levels as binding decisions for councils is the Center party. Secondly, the parties themselves are modifying their programs and are in the process of determining a firm ideological basis for the institutions. Their political positions have not yet stabilized and consolidated. So far there has been no serious interest in referendums, probably because the political situation is still too unstable - coalition governments are frequently changing and the political parties lack stable membership and frequently merge or split. A third reason could be a fear that the referendums would undermine and reduce the significance of party politics. Fourth, politicians realize that arranging referendums is very expensive. Thus the political culture of this small post-communist state has concentrated on the representative component, consciously neglecting the instrument of direct democracy. Firstly, this is due to the fact that civil society is weak. People are only in the process of learning that they have to stand up for their interests. Secondly, the constitutional provisions make access to direct democracy rather difficult.

3) The forthcoming EU citizens' decision

As in many western democracies, Estonia makes only occasional use of referendums. The referendum is used on an ad hoc basis when the parliamentary majority decides to have a referendum. Popular initiatives are not widely accepted in Estonian democracy today.

However, one might expect that the number of referendums will increase. Estonia as a country which has made a decisive break with its communist past, which is physically close to the European Union, which has civil traditions and a history of social self-organization, and which has already undertaken the basic steps of nation-building may well be able to establish civil society. There is a sense that the distance between routine political decision-making processes and the life of citizens has grown wider, and distrust of parties and politicians has increased. In this kind of atmosphere, referendums and other forms of direct democracy are often seen as means whereby such feelings of alienation might be countered and diminished: citizens are given a chance to participate actively in decision-making. Another factor explaining the increased public interest in Estonia in the idea of referendum is the prospect of the country's imminent membership of the EU. The Referendum on accession will be held on September 14, 2003.

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Constitutional Requirements for Legislation

Chapter XV Amendments to the Constitution

Article 161 [Initiative]

(1) The right to initiate amendments to the Constitution shall rest with at least one-fifth of the complement of the Parliament and with the President of the Republic. (2) Amendments to the Constitution may not be initiated, nor the Constitution amended, during a state of emergency or a state of war.

Article 162 [Referendum] Chapter I 'General Provisions' and Chapter XV 'Amendments to the Constitution' may be amended only by referendum.

Article 163 [Proceedings] (1) The Constitution may be amended by a law which is adopted by: 1) referendum; 2) two successive complements of the Parliament; 3) the Parliament, in matters of urgency. (2) A draft law to amend the Constitution shall be considered during three readings in the Parliament, whereby the interval between the first and second readings shall be at least three months, and the interval between the second and third readings shall be at least one month. The manner in which the Constitution is amended shall be decided at the third reading.

Article 164 [Majority for Referendum] In order to put a proposed amendment to the Constitution to referendum, the approval of a three-fifths majority of the complement of the Parliament shall be mandatory.

The referendum shall not be held earlier than three months from the time that such a resolution is adopted in the Parliament.

Article 165 [Majority for Adoption by Parliament] (1) In order to amend the Constitution by two successive complements of the Parliament, the draft law to amend the Constitution must receive the support of the majority of the complement of the Parliament. (2) If the next complement of the Parliament adopts the draft which received the support of the majority of the previous complement, without amendment, on its first reading and with a three-fifths majority of its complement, the law to amend the Constitution shall be adopted.

Article 166 [Very Qualified Majority] A proposal to consider a proposed amendment to the Constitution as a matter of urgency shall be adopted by the Parliament by a four-fifths majority. In such a case the law to amend the Constitution shall be adopted by a two-thirds majority of the complement of the Parliament.

Article 167 [Proclamation] The law to amend the Constitution shall be proclaimed by the President of the Republic and it shall enter into force on the date determined by the same law, but not earlier than three months after its proclamation.

Article 168 [Limit to Re-Introduction] An amendment to the Constitution dealing with the same issue may not be re-introduced within one year of the rejection of the respective draft by referendum or by the Parliament.

FINLAND

I&R plays a very weak role in this centralistic country, which has had even more centralistic Sweden as a model and an even less democratic Russia as a big neighbor to the east. European integration has, however, given both the important experience of a rather well-designed referendum and the need to revitalize democracy. There are no tools or devices which the citizens can use to trigger referendums. Moreover, the constitutional reform debate of the 1970s about the possible introduction of I&R was not repeated when the new constitution of 2000 was being prepared. At the local level, the popular initiative is more like a non-binding petition. The provision for local ballots is "Aunderused", with just 20 referendums in 448 municipalities.

- Population: 153,000 (2001)
- Area: 338,144 km²
- Capital: Helsinki (Helsingfors)

- Official languages: Finnish (93%), Swedish (6%), Sami
- Religion: Lutheran (85%), Finnish-Orthodox
- Political System: Republic (since 1919), with the autonomous region of Åland, which has its own parliament and right to decide on EU membership/reform
- Constitution: 1/3/2000 (without referendum)
- Membership: EU (1994)
- GNP/Capita: \$24,280 (1999)
- I&R practice: Two nationwide ballots (1931 on prohibition of alcohol, 1994 on joining the EU), two referendums on the Åland Islands, approx. 20 local refs.

Types of Initiative and Referendum

The current constitution dates from 2000 and is a general revision of the 1919 independence constitution. At war against the Soviet Union 1939-40 ("The Winter War") and again 1941-44 ("The Continuation War"). Entry into the United Nations 1955, into the European Union 1995. Finland is a unitary state; however, the Åland Islands (population 25,000) enjoy a developed autonomy and have their own legislature, Lagtinget. Levels of government: national, provinces (6), municipalities (448). The municipalities have considerable competence.

I. National level

There is no provision in Finland for the popular initiative at a national level. Neither has the device been debated or analyzed in Finland in recent years to any noticeable degree. It is not to be expected that the popular initiative will be introduced in the foreseeable future. Provision for national referendums, however, does exist. Such provision was not included in the 1919 Constitution and the first national referendum in Finland in 1931 came about by means of special legislation initiated by the government. This advisory referendum concerned the continuation of a prohibition law that was passed in 1919, and the alternative recommending a cancellation of the law received a vast majority of the votes cast. In 1987, through amendment, the referendum provision was incorporated into the constitution. The stipulation was that advisory referendums could be called by Parliament by means of special laws that prescribed the date of voting and also established the alternatives to be presented to the voters. The second referendum in Finland in 1994 was called on the basis of this provision. This referendum was one in a series of European referendums on the matter of entering the European Union, and the voters decided by a majority of 57 per cent to approve Finland's entry into the Union. In

terms of institutional design, the parliament was given rather a free hand in shaping the use of the device, as it was stipulated that general matters of principle as well as detailed law proposals could be subjected to popular vote. Furthermore, besides "yes" and "no", other alternatives for answering, the number of which may exceed two, could be decided by Parliament. The Finnish Constitution was thoroughly amended in the year 2000, the purpose of this endeavor being, however, to accommodate a general revision and systematization of the old constitution, rather than to introduce a full new text. The 1987 provisions for the organizing of advisory referendums were as such included in the new constitution. In Finland, therefore, the referendum device provides no tools of direct democracy and opens no channels for direct citizen participation. The device is operated and implemented from above, its non-binding character adding to its meekness as an alternative political method.

II. Regional and Local level

There are presently no I&R instruments at the provincial level. However, I&R instruments work at the municipal level. They have in fact a historical tradition in the country as the Municipal Law of 1917 stipulated that a certain proportion of the local population had the right to demand that decisions made by the Local Council should be submitted to local referendums. The institution was, however, applied only once, and already in 1919 was removed from Municipal Law, being incompatible with the principles of representative government that were established that year for the national level. The present Municipality Law of 1995 provides three separate devices for introducing I&R measures at the municipal level; however, none of these devices is in the category of a direct initiative. First, the holding of non-binding referendums in municipal matters may be decided by the Local Council. Second, a popular initiative for the holding of a non-binding referendum in a municipal matter requires signatures of at least 5 per cent of the electorate; when and if such an initiative is filed, the Local Council must decide without delay whether or not the referendum shall be held. Finally, individual citizens and groups of citizens may file an initiative on matters within the municipal sphere of competence, which is defined in the Municipal Law. The municipal authorities must report back to the signatories on measures taken, if any, on the basis of the initiative. If such an initiative is signed by more than 2 percent of the electorate, the Local Council is obliged to deal with the matter within two months. There are no standard procedures prescribed in laws or decrees for

the management of citizens' initiatives in terms of review, drafting assistance or the method of certifying signatures. Separate municipalities follow slightly differing procedures, which are laid down in an administrative statute. However, initiatives must be addressed to the Local Council, and are for registration purposes submitted to the local office, or in larger towns to the town registry. It is probably only fair to say that the I&R instruments have proven rather insignificant in terms of use and impact. One investigation (Sjöblom) of the use of the initiative device during the years of 1977-1979 in Finland's second largest town Åbo (Turku) reports that a total of 387 initiatives was filed. One third of these resulted in decisions that were in accordance with the demands raised in the initiatives, and almost half were partly or totally rejected. Concerning outcome biases, it is evident from the study that established organizations which act on matters within their specific fields of interest have had the best prospects for success, whereas, on the other hand, politically weak actors have had only limited possibilities of advancing their goals by means of initiatives. A later investigation (Sutela) shows that the municipal referendum institution is underused in Finland when compared to some other countries. Some twenty referendums have been held, dealing primarily with matters of municipal amalgamation (which are, in any case, finally decided by state authorities), and road constructions. (These investigations, which are by far the most thorough studies in Finland of the initiative institution, are unfortunately published in only either Swedish or Finnish. They provide, however, useful English language summaries. Bibliographical data: Stefan Sjöblom, *Medborgarinitiativ i kommunalt beslutsfattande*, Åbo: Åbo Academy Press, 1988. ISBN 951- 9498-35-4; Marja Sutela, *Suora kansanvalta kunnassa*, Helsinki: Lakimiesliiton kustannus, 2000. ISBN 952-14-0287-3).

III. Trends

Throughout Europe and in fact the globe, representative democracy encounters difficulties. Turnout falls, party membership declines, belief in government is eroded. All these features are present also in Finland; for instance, the turnout in the latest national election in 1999 was an alarmingly low 65 per cent. However, the possibility of vitalizing representative democracy by introducing direct democratic methods as correctives is not much debated in Finland by parties, politicians or the public. When in the early 1970's plans were initiated for a thorough reform of the Finnish Constitution, the introduction of the popular initiative was discussed in the committee that was appointed to prepare a proposal for the revision of

the constitution. However, the vast majority of the committee members rejected the idea of the popular initiative, which gained support only amongst small and peripheral political groupings. When in the 1980's steps were taken to achieve more modest partial constitutional reforms, the initiative device was no longer on the agenda. There are probably two main reasons for the unresponsive attitude of the political establishment towards I&R devices, both of which are culture-bound. On the one hand, Sweden still forms in many respects a model and a frame of reference for Finnish policy-making, and the restrictive attitude in Sweden towards direct democratic methods most likely has a restraining effect in Finland. On the other hand, the necessity in post-war Finland of maintaining good relations with the neighboring Soviet Union soon created a political and mental climate that was suspicious of the power of public opinion. Although the overall impact of this factor has certainly much declined in recent years, the suspicion of popular demands still has spill-over effects in other sectors of political life than those directly related to foreign policy and international affairs. A recent and still quite preliminary debate on the method for deciding an eventual entry of Finland into NATO clearly indicates that the political authorities still take exception to the use of the referendum device. However, the new Prime Minister Matti Vanhanen is in favour of having a referendum on the EU constitution.

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FRANCE

The Initiative & Referendum process is partly a French innovation, with the first constitutional referendum having been held on August 8, 1793. The tradition since then has been to let the people decide on fundamental changes to the constitution and the law. In a centralistic republic, it is the president and not the people or their representatives who has the right to initiate referendums. This trend has been strengthened during the Fifth Republic, founded by Charles de Gaulle in 1958 – by referendum. Most citizens (65%) would like to have more participatory rights, including I&R. In his recent re-election campaign, President Chirac promised to introduce the popular initiative at both local and national levels. But there is a problem in that there are no organized forces ready to promote I&R, since virtually none of the political parties are interested in such reforms.

- Population: 59,500,000
- Area: 547,030 km²
- Capital: Paris
- Official languages: French (93%), and regionally Basque, Breton, Corse.
- Religion: Roman Catholic 90%, Muslim 3%, Protestant 2%, Jewish 1%, unaffiliated 4%
- Political System: Republic (since 1875), with 4 overseas provinces and 5 overseas territories
- Constitution: 28/9/1958 (referendum: 79% yes)
- Membership: EU, NATO
- GNP/Capita: \$24,170 (1999)
- I&R practice: 27 nationwide plebiscites (referendums) since 1793, nine since 1958 including the Maastricht-referendum (1992) and the referendum to cut the presidential term from 7 to 5 years (2000).

Types of Initiative and Referendum

The executive branch consists of three parts: first, the President, as the chief of state directly elected by popular vote for a five-year term; second, the Prime Minister, as head of government nominated by the National Assembly majority and appointed by the President; and third, the Council of Ministers which is appointed by the President at the suggestion of the Prime Minister. This form of "divided government" can produce constellations in which the President and the Prime Minister are from opposing parties, also called "cohabitation". The legislative branch consists of a bicameral Parliament. It is composed of the National Assembly (Assemblée Nationale) and the Senate (Sénat). The National Assembly has 577 seats. Its members are elected by popular vote under a single-member majoritarian system to serve five-year terms. The Senate has 321 seats - 296 for metropolitan France, 13 for overseas departments and territories, and 12 for French nationals abroad. Its members are indirectly elected by an electoral college to serve nine-year terms; although a victor in World Wars I and II, France suffered extensive losses in its empire, wealth, power, and rank as a dominant nation-state. Nevertheless, France today is one of the most modern countries in the world and is a leader among European nations. Its reconciliation and cooperation with Germany have proved central to the economic and political integration of Europe. Universal suffrage at the age of 21 has existed since 1848 for men and since 1944 for women; the voting age was lowered to 18 in 1974. Levels of government: national, the regions (22), the departments (96), the communes (36,000) and the overseas territories (9). Political power is highly concentrated at the national level: thus the influence of local units of government is limited. There is however development towards decentralization.

I. National I&R

There is no provision in France for the popular initiative at a national level. The former Constitution of the Revolution in 1793 however provided constitutional initiatives and optional law-referendums. Due to high hurdles, referendums were exclusively used to decide on the constitutions of 1793, 1795 and 1799. Afterwards, different Napoleons misused plebiscites to increase personal power. This long tradition of plebiscites at the national level has remained as the only means of direct democracy until the present. The French citizens voted on their current Constitution by referendum on Sept. 28, 1958. Initial acceptance was widespread. In metropolitan France, 85 percent of the electorate voted, 79 percent in favor and 20 percent against, and among the overseas territories only Guinea rejected the new constitution and consequently withdrew from the French Community. The constitution of the Fifth Republic of France came into effect on October 4, 1958, and is based on the principles of Western democracy. Article 3.1 clearly states: "National sovereignty belongs to the people, who exercise it through their representatives and by means of referendums." Significant provisions for referendums are made in Art. 89 and Art.11. Article 89 provides for a constitutional referendum. The initiative for amending the Constitution belongs both to the President of the Republic on the proposal of the Prime Minister and to the members of Parliament. If the amendment has passed both houses of parliament, the amendment shall be submitted to a referendum. "The proposed amendment shall however not be submitted to a referendum when the President of the Republic decides to submit it to Parliament convened in Congress." (Article 89.3). The amendment is approved if it is accepted by a three-fifths majority of the votes cast. In other words, the referendum can be bypassed if there is an agreement among the two houses of Parliament and the President. The Constitution also made provision for legislative referendums, by which the President of the Republic has the authority to submit a proposed bill to the people relating to the general organization of the state (Article 11). Furthermore, Article 53 provides: "No cession, exchange, or adjunction of territory shall be valid without the consent of the populations concerned." In practically all cases it is the President and not the people or their representatives who has the right to initiate referendums. The referendum was used twice in settling the Algerian problem, first on Jan. 8, 1961, to approve self-determination (when 75% voted in favor), and again on April 8, 1962, approving the Evian Agreement, which gave Algeria its independence from France (when 91% voted in

favor). The use of referendums to amend the constitution without going through the preliminary phase of obtaining parliamentary approval is unconstitutional, but was practiced and led to a significant result when, on Oct. 28, 1962, the direct election of the President of the Republic by universal suffrage was approved by 62.25% of those voting. The direct election of the French President strengthened his role considerably and transformed France from a parliamentary system into a semi-presidential system. Usually French Presidents use referendums in a very controlled way and only if they feel safe about the issue. On April 27, 1969, however, in a referendum concerning the transformation of the Senate into an economic and social council and the reform of the regional structure of France, only 47.6% voted in favor, bringing about de Gaulle's resignation. In the 1970s and '80s the procedure was used only twice, in 1972 for a decision on the enlargement of the European Economic Community (EEC) by the proposed addition of Denmark, Ireland, Norway, and the United Kingdom, and in 1988 for a decision on the proposed future status of the overseas territory of New Caledonia. The turnout was low in both cases, particularly the latter. In the '90s, the referendum was used only once. In 1992, only 51% of the French people voted in favor of the Maastricht Treaty. On September 24, 2000, Chirac held a referendum on the length of the French presidential term. France then decided to elect its President for a five-year rather than a seven-year term. It was approved by about 73% of those who actually participated. However the abstention rate was 70% – a record for the nine referendums held during the Fifth Republic.

II. Trend

But this does not mean that the French dislike referendums as such. On the contrary, when the issue is one that inspires passion, the turnout is high. About 70% of the electorate voted on the Maastricht treaty in 1992. And in an opinion poll published in *Le Figaro* (25.9.2000), 67% of the respondents said they favored more referendums - but only on major political issues such as taxation or pension reform. When asked about the introduction of the "popular initiative as in Switzerland or Italy", 65% said they favored this idea, while 27% would reject it. In polls carried out in 1988, only 52% were in favor of the idea, 39% rejecting it. Evidently there is a growing demand for further institutional reform, including popular initiative and referendums. On the day of the referendum, President Chirac said that the referendum should be used more frequently and that there should be more referendums at the local level. He also called for the intro-

duction of referendums based on popular initiatives. Chirac also included this demand in his manifesto for the Presidential Elections in 2002 (*Le Monde* 15.03.2002). However, expectations should remain modest, since over the last 15 years all parties have promised to reform direct-democratic elements in France. In reality, nothing has been done either at the national or at the regional level. French local law is however under revision. In certain municipalities, there is a participatory budget process including popular initiative rights.

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Constitutional Requirements for Legislation

Title XVI - On The Amendment Of The Constitution

Article 89 The President of the Republic, on a proposal by the Prime Minister, and Members of Parliament alike, shall have the right to initiate amendment of the Constitution. A government or a Member's bill to amend the Constitution shall be passed by the two assemblies in identical terms. The amendment shall take effect after approval by referendum. However, a government bill to amend the Constitution shall not be submitted to referendum where the President of the Republic decides to submit it to Parliament convened in Congress; the government bill to amend the Constitution shall then be approved only if it is adopted by a three-fifths majority of the votes cast. The Bureau of the Congress shall be that of the National Assembly. No amendment procedure shall be commenced or continued where the integrity of the territory is jeopardized. The republican form of government shall not be the object of an amendment.

GERMANY

Germany has seen a very strong trend towards more direct democracy since reunification in 1990. The most developed of the federal states is Bavaria, where at the regional level more than a quarter (31) of the 131 popular initiatives in the 16 Länder have been started and where 5 of the 10 citizen-initiated referendums (since 1990) have taken place. However, bad (non citizen-friendly) design of the I&R instruments has been a big problem, weakening the innovative and positive potential of citizen law-making. Locally approx. 200 referendums are held on average in Germany every year. In Bavaria alone (where I&R was established in

1995), more than 1,260 initiatives have been launched and 560 referendums held. At the national level, the Christian Democrats have blocked the introduction of direct democracy promoted by almost all the other parties.

- Population: 82,047,000
- Area: 357,022 km²
- Capital: Berlin
- Official languages: German (91%), and in certain regions also Danish, Sorbian, Friesian
- Religion: Protestant (34%), Roman Catholic (33%)
- Political System: Federal Republic (since 1949), with 16 autonomous States (own constitution, parliament)
- Constitution: 1949 (without referendum)
- Membership: EU, NATO
- GNP/Capita: \$26,570
- I&R practice: 6 nationwide before WWII (3 referendums, 3 Hitler plebiscites), growing regional (54) and local (1000s) referendum experience.

Types of Initiative and Referendum

The Bundesrepublik is a federal country. Re-unified Germany consists of 16 states (Länder), 323 districts (Landkreis) and 13,854 local authorities (Kommune), of which 2,047 are towns and cities. The federal states have important, primarily administrative, powers, for example in the areas of transport, education, culture, policing and the environment. They contribute to national taxation. The states participate in national legislation on matters which concern them via the Bundesrat (national parliament), which is composed of representatives from all the state governments. The local authorities have certain decision-making areas of competence, such as local taxation, energy supply and refuse collection, roads and transport, infrastructure, planning permission etc.

I. National level

Germany is one of the few EU countries which so far has no experience of national referendums. The constitution provides only for national referendums on changes to administrative boundaries. During the Weimar Republic, there were three popular initiatives and two national referendums (in 1926 and 1929); during the National Socialist period, three plebiscites were held, with biased questions and blatant manipulation of results.

II. Regional level

Of the 11 states of the former Federal Republic (the 'old' Bundesländer), six – Bavaria, Berlin, Bremen, Hesse, Nordrhein-Westfalen and Rheinland-Pfalz –

incorporated both initiative and referendum into their new constitutions immediately post-1945. Baden-Württemberg and the Saarland followed suite in the 1970s. From 1990 on, the peaceful revolution in the former GDR unleashed a wave of reform which meant that by 1994, all 16 'old' and 'new' federal states had introduced elements of direct legislation. In all states, popular participation in the formulation and passing of laws is divided into three stages B though since the specific procedures have been elaborated by the individual states themselves, they vary considerably in detail. The following gives a broad outline of the most important provisions:

a) First stage petition ("Popular Initiative", an application for the commencement of a process which may ultimately lead to a referendum)

- the first stage is when citizens present a formal application/request to initiate the process. In Brandenburg and Schleswig-Holstein, the state parliament is involved already at this stage, advising and also deciding on the application – which can be called a popular initiative.
- the legality of the application is checked at this stage
- the quorum (minimum required number of signatures to launch the initiative) varies between 3,000 (Nordrhein-Westfalen) and c. 120,000 (Hesse) signatures (usually expressed as a percentage of the electorate).
- initiatives on legislative and constitutional matters are in principle allowable. However, in Berlin, Hesse and the Saarland, constitutional issues are excluded.
- in practice, only legislative proposals (draft laws) are allowed, though in principle "other political issues" can be raised in Brandenburg, Hamburg and Schleswig-Holstein.
- initiatives dealing directly or indirectly with the economy (so-called 'finance tabu'), taxation and the salaries of politicians and officials are excluded.

b) Second stage initiative ("Popular Demand", Volksbegehren)

- the second stage involves the collection of signatures supporting the initiative
- signature quorums usually vary between 8% and 20% (of the state electorate). Only Brandenburg, Hamburg and Schleswig-Holstein have low, 'citizen-friendly', quorums of 4% and 5%.
- registration procedures vary. Nine states permit the free collection of signatures within time limits of between 3 and 12 months. In the 7 remaining states, signatures have to be recorded in designated official places, and time limits of between

2 weeks and 2 months are allowed.

- a 'Volksbegehren' which achieves the required number of signatures must be debated in the state parliament (Landtag). If the latter accepts the proposal as it stands, no referendum need be held. If the proposal is not accepted and the issue is taken to referendum, the parliament has the right to make an alternative – competing – legislative proposal.

c) Citizens decision ("Referendum", Volksentscheid)

- a referendum result is legally binding. However, in most states – in contrast to the rule in elections – a simple majority does not automatically win the day.
- in referendums on straightforward laws most states demand a minimal approval of either 20%, 25% or 33% of the electorate. Nordrhein-Westfalen demands a participation quorum of 15%, Rheinland-Pfalz of 30%. Only Bavaria, Hesse, Nordrhein-Westfalen and Saxony do not require such a threshold.
- in constitutional referendums, all states have a minimum approval quorum of 50%. Moreover, this quorum is further linked to a supermajority of two-thirds for the reform, which makes any changes literally impossible. Bavaria demands an approval quorum of 25%.

In practice, around a quarter of all citizens' initiatives are declared invalid on legal grounds. By 2002, 131 popular initiatives/petitions ("Volksinitiativen") had been started. 41 of them reached the second step, the popular demand ("Volksbegehren"). Finally, 10 went to referendum. The largest proportion of Popular Initiatives (31 out of 131) and referendums (5 out of 10) were in Bavaria – the only state which can claim any relatively regular and active use of these instruments of direct democracy in Germany.

The overall balance-sheet is somewhat sobering: only in 4 of the 16 federal states has there been a citizen-initiated referendum. In terms of statistical averages, a referendum takes place in each federal state only once in every 43 years. The direct success rate of all launched initiatives is around 20%. As well as legislative referendums, other types of referendums can be noted. 14 state constitutions were accepted by popular referendum. In Bavaria and Hesse, there is also the statutory constitutional referendum, which has been invoked on 5 occasions in each of these states. A further 7 referendums have been held on boundary changes. In all, there have been 34 referendums since 1946 in all the federal states combined.

III. Local level

The wave of reform which spread after 1989 also affected the local authority level as it had done the state level. Whereas prior to this the right of popular involvement in decision-making by local referendum (Bürgerentscheid) was known only in Baden-Württemberg, today DD at the local authority level has been introduced in 15 of the 16 states. Only in Berlin is there as yet no DD at the district level within the city. Bavaria and Hamburg are special cases. Here the right to local referendum was introduced by the people themselves in state-wide referendums, even though in both cases the state government was opposed to it. It is not surprising, therefore, that it is in just these two states that the most liberal (by a wide margin) procedures are to be found. In all the states, the popular decision-making process is in two stages:

a) Popular Initiative (Bürgerbegehren)

- in the majority of states, certain important local issues are excluded from the process (these are listed in a so-called 'negative catalogue'). Only Bavaria, Hamburg, Hesse and Saxony for the most part forgo such exclusions. In half of the states there is a sliding scale of signature quota depending on the size of the community: in Hamburg from 2%-3%, in Sachsen-Anhalt from 6%-15%. In the remaining states there is a uniform threshold, varying from 10% to 20% between states. Time limits for signature collection apply only where the initiative is aimed against some decision taken by the local authority. The period of time allowed varies from 4 weeks to 3 months. Normally it is the local authority itself which decides on the admissibility of an initiative. A negative decision can be appealed by the initiative group. The local council can accept the initiative, in which case the issue does not go to referendum.

b) Citizens decision (Bürgerentscheid)

- in almost all the federal states there is a participation quorum of between 20% and 30%. Initially, Bavaria had no quorum, but the state government (Landtag) then introduced a sliding scale of between 10% and 20% depending on the size of the community. Only in Hamburg is a simple majority of the votes accepted, without further qualifications or restrictions.
- where a local referendum has been successful, the majority of states impose an exclusion period of between 1 and 3 years, during which time the referendum result can only be repealed, or allowed to lapse, by a new referendum. Across Germany, around 200 local referendums are held on average every year. League leader by far is Bavaria, where

there were more than 1,260 initiatives and 578 referendums in the first 6 years since I&R was instituted. This still means that each community in Bavaria only has a referendum on average once every 24 years. In the other federal states, where the hurdles are higher, local referendums are less frequently used. Thus, for example, in Lower Saxony there have been only 54 initiatives and 18 referendums, giving an average rate per community of only one referendum every 344 years.

IV. Trends

There is a clear trend in Germany towards more direct democracy. However, the path towards a workable popular right to direct participation in decision-making is still long and arduous. The ruling SPD/Green coalition put a bill on citizens' initiative and referendum to the Bundestag in the summer of 2002. However, the proposal did not reach the needed required supermajority of two-thirds of the votes in the parliament. The federal government elected in 1998 - a coalition of the SPD, the citizens' rights party Bündnis 90 and the Greens - had promised to introduce a national right to citizen participation in legislation. Three of the five parties represented in the Bundestag supported this intention. But without the support of the CDU, the two-thirds majority required in the Bundestag for constitutional change could not be achieved. There is still a chance that the initiative element of I&R – the possibility of forcing parliament to debate a topic chosen by the people – might be introduced. All parties in the Bundestag promised that there will be a new attempt in connection with the debate on the EU constitution in 2004/2005. This could be the first stage of a gradual introduction of DD at the national level.

c) Polls - Opinion polls show that between 70% and 85% of the public support the idea of national referendums. In September 2001, Mehr Demokratie launched a national campaign under the slogan 'Menschen für Volksabstimmung' ('People for Popular Referendum'). The campaign is supported by an alliance of 80 different organizations representing the environment, citizens' rights, trade unions, employers, churches and social groups. At the state and local authority levels – in particular as a result of the wave of reform beginning in the early 90s – there has been a dramatic increase in the number of popular initiatives. However, for the majority of initiatives at the federal state level, the experience has been sobering. Despite wide popular support, they have typically fallen foul of the high quorums set in the current procedures. As a result, some states have

already seen a fall in the numbers of initiatives.

b) Wave of reforms - There is an urgent need to reform DD institutions in the federal states. After the initial successes of Mehr Demokratie in Bavaria and Hamburg, all subsequent popular initiatives aimed at extending citizens' direct-democratic rights have been blocked by state governments and constitutional courts. The usual, highly contentious, justification for the blocking is that a general extension of the right of citizens to be directly involved in decision-making, including the drafting, passing and repealing of laws, violates the norms of German democracy. The attempt is being made to assert that the present, quite unsatisfactory, state of German direct democracy represents the maximum that is legally achievable. Such judgments once again reflect the enormous distrust of the people which still characterizes many in positions of power in Germany, especially within the political and legal elites. Despite this, state parliaments in Bremen, Hamburg, Nordrhein-Westfalen and Rheinland-Pfalz have recently decided on their own initiative to lower the hurdles for DD at the state and local authority levels (though the reforms were fairly meager in extent). Other states are also debating the possibility of simplifying the rules for popular initiatives.

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Constitutional Requirements for Legislation

Chapter VII Federal Legislative Powers

Article 79 [Amendment of the Constitution]

- (1) This Constitution can be amended only by statutes which expressly amend or supplement the text thereof. In respect of international treaties, the subject of which is a peace settlement, the preparation of a peace settlement or the phasing out of an occupation regime, or which are intended to serve the defense of the Federal Republic, it is sufficient, for the purpose of clarifying that the provisions of this Constitution do not preclude the conclusion and entry into force of such treaties, to effect a supplementation of the text of this Constitution confined to such clarification.
- (2) Any such statute requires the consent of two thirds of the members of the House of Representatives [Bundestag] and two thirds of the votes of the Senate [Bundesrat].
- (3) Amendments of this Constitution affecting the division of the Federation into States [Länder], the participation on principle of the States [Länder] in legislation, or the basic principles laid down in

Articles 1 and 20 are inadmissible.

HUNGARY

At first glance, the Hungarians have good opportunities for citizen-initiated referendums. Not only are these opportunities almost unused, but the few attempts to initiate a new law by ballot have all been unsuccessful. The reason for this defeat of I&R are the excessive restrictions: 1) Many interesting issues are excluded from the process; 2) The Constitutional Court is in many respects free to restrict and change the rules of I&R; 3) The participation threshold was 50% until 1997, and was then reduced to 25%+1 identical answers. This was a precondition of the validity of both the NATO and the EU accession referendums.

- Population: 10,175,000
- Area: 93,030 km²
- Capital: Budapest
- Official language: Hungarian (98.5%)
- Religion: Roman-Catholic (62%), Calvinist (20%).
- Political System: Republic (since 1989)
- Constitution: 1949, basic changes: 1989/90 (both without referendum)
- Membership: NATO (1999), EU Applicant
- Per capita GDP (2001): \$5,066.
- I&R practice: 6 nationwide referendums (since 1989). 1989: four decisions about ending communism. 1991: direct election of president (turnout 12%). 1997: NATO

Types of Initiative and Referendum

I. National level

Article '28 of the constitution and the Third Law of 1998 on national referendums and initiatives are the existing instruments. Everyone who is eligible to vote in the national elections can participate in referendums and initiatives. According to the constitution, a referendum can be either consultative or binding. There are cases when a referendum is obligatory; otherwise Parliament can choose whether to order one or not. A referendum is obligatory if 200,000 eligible voters initiate it; if the referendum is valid, the outcome is binding on Parliament. Parliament can decide whether or not to hold a referendum if the president of the republic, or the government, or one third of the Members of Parliament, or 100,000 voters initiate one. Issues excluded from national referendums are: the budget; central government taxes; duties; the central regulation of local taxes; international treaties; paragraphs of the constitution dealing with I&R; personal and organizational issues in the jurisdiction of

the Parliament; dissolution of the Parliament or local government; the Government's program; declaration of war or state of emergency; use of the military inside and outside the country; general amnesty. Before the collection of signatures can begin, a copy of the signature forms must be presented to the National Election Committee (NEC) for verification. The NEC can deny verification only if the question is not in the jurisdiction of Parliament, or is not eligible for a national referendum and/or the formulation of the question and/or the form for collecting signatures does not comply with the law. The initiative can be presented to the chairman of the NEC within 4 months after verification, but only once; additional signatures presented later are invalid. An obligatory referendum is automatically binding. Also binding is a referendum on a law adopted by parliament but not yet signed by the president of the republic. A referendum initiated by the president, the government or one third of the members of parliament can be either consultative or binding depending on the decision of the parliament. The binding referendum is successful if more than 50% of the valid votes cast are in favor - and these must also represent more than 25% of the electorate. A national initiative can be presented by a minimum of 50,000 voters. Parliament has to put the question in the initiative on its agenda. Two months are allowed for collecting the signatures.

II. Local level

The local council has to order a referendum on issues such as: the amalgamation or splitting-up of communities; setting up a new community; other issues defined by local decrees. The local council may order a referendum on any issue within its jurisdiction, except the budget, local taxes, personal and organizational issues and the dissolution of the council. A referendum can be presented to the mayor by a minimum of 25% of the councilors; a committee of the council; the governing body of a local civic organization; 10-25% of the voters (defined in a local decree). In the last case the council is obliged to order a referendum. A local referendum is valid if more than 50% of the eligible voters have cast their ballots and successful if more than half of the valid votes are in favor. The result is binding. At the local level, the referendum is in practice mostly used for the amalgamation or secession of villages and for communities wishing to join a different county. In most of these cases the referendums initiated by civic organizations have been both valid and successful. Local referendums on environmental issues have been less attractive. The jurisdiction of national referendums is still not clear, because of changing rules and CC

(Constitutional Court) decisions. Initiatives have come mostly from opposition political parties.

III. Trends

Law XVII of 1989 on the referendum was adopted in May 1989 by the last communist parliament, just before the National Roundtable Negotiations started. Later that year, the institution of the referendum was also incorporated into constitutional law. After the free elections in 1990, the local referendum became part of local government law. In 1998 a new law on referendum and popular initiative was adopted. In parallel with the legislation, the Constitutional Court's decisions had a significant impact on the institution of referendums. In 1990, the CC declared that a decision by the people in a referendum is binding for legislation. Three years later - in answer to the question as to whether it is possible to hold a referendum on the dissolution of Parliament - the CC limited the possible jurisdiction of a referendum, saying that the question put to referendum may not contain a hidden modification of the constitution. According to the CC, the primary form of popular sovereignty is representation; the referendum is only an additional means of influencing it. This point was reinforced by a CC decision in 1999, which banned a referendum on the direct election of the president of the republic (according to the Hungarian constitution, Parliament elects the president of the republic). Incidentally, this was the fourth unsuccessful initiative since 1989 on the direct election of the president, which according to several opinion polls is supported by 70-80 % of the population. While the CC defined the referendum as a secondary tool compared to representation, it also said that in those rare cases when direct democracy is used, it has primacy over parliament's decisions. There is no broad political debate on I&R. There are some publications in professional journals, noting the fact that the CC and legislation are gradually restricting the range of I&R, which was very broadly but simply defined (partly unregulated) in 1989. A retired constitutional judge in his recent study (Kilényi Géza: A képviselői és a közvetlen demokrácia viszonya a magyar államszervezetben - The relationship between representative and direct democracy in the Hungarian state; Magyar Közigazgatás 1999/12.) came to the conclusion that: "the legal institution of the referendum in its present form is hardly more than a silver button on the coat of the nation". There have been 3 national referendums in the 13-year history of modern Hungarian democracy. The first one, in November 1989 - the so-called "four-yes" referendum - was valid (51 % participation). People decided that the president of the republic should only be elected after

the first free parliamentary elections, which in practice diminished the chances of directly electing a reform communist as president for a 5-year term, just before the final move to democracy. In July 1991, another referendum was held on direct election (of the president), but the turnout was only 12%. The third national referendum was held in 1997 about NATO membership, with a participation of 49%. 108 days before the referendum, parliament reduced the success threshold from 50% of the electorate + 1 person to 25% + 1 valid votes in favor. For this reason the recent referendum on EU membership was valid with a turnout well below the 50% quorum.

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Constitutional Requirements for Legislation

Chapter XII Fundamental Rights and Duties

Article 64 [Appeal]

In the Republic of Hungary everyone has the right to present, individually or together with others, written petitions or complaints to the relevant public authority.

Chapter II The Parliament

Article 19 (5) The Parliament shall have the right to call a national referendum. A majority of two-thirds of the votes of the Members of Parliament present is required to pass the law on national referendums.

Article 28B (1) The subject of national referendums or popular initiatives may fall under the jurisdiction of the Parliament.

(2) A majority of two-thirds of the votes of the Members of Parliament present shall be required for the Parliament to pass the law on national referendums and popular initiatives.

Article 28C (1) A national referendum may be held for reaching a decision or for an expression of opinion. Carrying out a national referendum may be mandatory or may be the result of the consideration of a matter.

(2) A national referendum shall be held if so initiated by at least 200,000 voting citizens.

(3) If a national referendum is mandatory, the result of the successfully held national referendum shall be binding for Parliament.

(4) After considering the issue, Parliament may order a national referendum on an initiative by the President of the Republic, the Government, by one-third of Members of the Parliament or by 100,000 voting citizens.

(5) National referendums may not be held on the following subjects: a) on laws on the central budget, the execution of the central budget, taxes to the central government and duties, customs tariffs, and on the

central government conditions for local taxes, b) obligations set forth in valid international treaties and on the contents of laws prescribing such obligations, c) the provisions of the Constitution on national referendums and popular initiatives, d) personnel and restructuring (reorganization, termination) matters falling under parliamentary jurisdiction, e) dissolution of Parliament, f) the Government's program, g) declaration of a state of war, a state of emergency or a state of national crisis, h) use of the Armed Forces abroad or within the country, i) dissolution of the representative body of local governments, j) amnesty. (6) A national referendum shall be considered successful if more than half of the voting citizens cast valid votes and a minimum of 25% + 1 of all voting citizens gave the same answer to the referendum question.

Article 28D At least 50,000 voting citizens are required for a national popular initiative. A national popular initiative may be for the purpose of forcing the Parliament to place a subject under its jurisdiction on the agenda. The Parliament shall debate the subject defined by the national popular initiative.

IRELAND

Ireland can be described as a referendum-friendly country. The citizens have a say on quite a large number of issues, ranging from technical matters to institutional changes, moral issues and votes on European integration. The compulsory binding referendum is a basic standard. On the other hand there are no provisions for citizen-initiated referendums in the Irish Constitution. A recent proposal to introduce the initiative has been rejected by all mainstream political parties. In connection with the Irish referendum on the Nice Treaty, the role of the so-called Referendum Commission has been debated. This Commission has to provide basic information and arguments for both the 'yes' and 'no' sides before a vote. The Supreme Court plays a rather positive role in protecting I&R.

- Population: 3,744,700
- Area: 884,421 km²
- Capital: Dublin (Baile Atha Cliath)
- Official languages: Irish and English
- Religion: Roman Catholic (88%)
- Political System: Republic (since 1937)
- Constitution: 1/7/1937 (Referendum, 56% Yes)
- Membership: EU
- GNP/Capita: \$18,710 (1999)
- I&R practice: 28 nationwide referendums (since 1937).

Types of Initiative and Referendum

Under the terms of the Anglo-Irish Treaty signed in December 1921, twenty-six counties gained independence from Britain as the Irish Free State. Six Ulster counties remained within the United Kingdom. In 1948 the Republic of Ireland Act severed the remaining constitutional links between Britain and the Twenty Six counties. Universal suffrage was achieved in 1923. The current constitution was drafted in 1937 and approved by the electorate in a referendum. Ireland may be described as a centralized parliamentary democracy, with rather weak local government. The degree of decentralization is relatively low. Although significant reform of local government structures has taken place in recent years, Irish local authorities still enjoy little autonomy, carry out a limited range of functions and remain largely dependent on central government for financial resources. The Department of the Environment and Local Government oversees the operation of the local government system and implements policy in relation to local government structures, functions, human resources and financing. Local government in Ireland consists of a number of local and regional authorities at different levels: - at county/city level: 34 local authorities are the providers of local-government services – 29 county councils and five city councils. At sub-county level: 80 town authorities. At regional level: eight regional authorities. Two additional regional Assemblies were established in 1999 under new structures for regionalization Ireland's parliament consists of two houses: the lower, directly elected, Dail consisting of 166 members elected from 41 constituencies; and the upper house, the indirectly elected Seanad, which has 60 members.

I. National level

The Irish Constitution of 1937 allows for the use of the referendum, but not the initiative. The 1922 Constitution made provision for the initiative, but due to the political climate of the time, it was not activated. The passage of the Constitution (Amendment No 10) Act in 1928 removed the Initiative from the Constitution of the Irish Free State. The 1922 constitution was based on parliamentary acts implementing the Anglo-Irish Treaty. The present 1937 constitution was adopted by referendum of the people. It states that sovereignty rests with the people; it may only be amended by popular referendum.

a) Referendum Law

The law relating to the referendum is contained in Articles 27, 46 and 47 of the Constitution of Ireland; the Electoral Act, 1992; the Referendum Act, 1994;

the Electoral (Amendment) Act, 1996; the Referendum Act, 1998 and the Referendum Act 2001. There are two types of referendum provided for in the Irish Constitution: a referendum to amend the Constitution (Article 46), and a referendum on a proposal other than a proposal to amend the Constitution (Articles 27 and 47). All referendums held in the Irish State since the 1937 constitution was adopted are of the former kind, that is, they have been on proposals to amend the constitution put before the people under Article 46. Irish referendums are a form of direct legislation, in which citizens vote on a bill that is put before them by a majority in parliament, whether it is a bill to amend the constitution or to enact some other item of legislation. Articles 27 and 47 of the Constitution provide for a referendum on a proposal other than a proposal to amend the Constitution - referred to in law as an 'ordinary referendum.' This may take place when the President, on receipt of a joint petition from a majority of the members of the Seanad and not less than one-third of the members of the Dail and following consultation with the Council of State, decides that a Bill contains a proposal of such national importance that the will of the people on it ought to be ascertained before the measure becomes law. In this instance the President must decline to sign the Bill unless it is approved by the people at a referendum within 18 months of the President's decision or it is approved by a resolution of the Dail within the 18-month period after the holding of a general election. The procedure is similar to that in relation to a constitutional referendum, except that the proposal is held to have been vetoed by the people if the majority of votes are cast against the proposal and such votes represent at least one-third of the presidential electors on the register of electors. No such ordinary referendum has been held to date. As it needs to be triggered by a majority of the Seanad, the likelihood of such a vote is slight due to the nomination procedure for the Seanad. This procedure allows the Taoiseach (prime minister) to nominate eleven of its sixty members, thus allowing the government of the day almost always to command a majority in the house.

b) Conduct of referendums

In recent years there has been an increased tendency for cross-party support for referendum proposals, particularly in referendums on European integration. This has led to intensified activity on the part of pressure groups. There has also been an increase in the involvement of the courts in regulating campaigns in recent years. Most of Ireland's European referendums derive from the 1987 Crotty case. Ireland's accession

to the European Community in 1973 required a constitutional referendum to permit European law to override Irish law in case of conflict in matters covered by the European treaties. Thirteen years later, when the Single European Act treaty was being ratified, the government proposed to do this by parliamentary majority, which is the normal mode of ratifying treaties. An Irish citizen, Mr. Raymond Crotty, contended that as the Single European Act contained amendments to the original Community treaties such that further legislative, executive and judicial powers were being transferred to the European institutions, this could only be done by the people themselves as the ultimate repository of sovereignty. The Supreme Court upheld this view and the Government had to get the approval of citizens in a referendum before it could ratify the treaty. An amendment was inserted into the constitution saying that the state might ratify the Single European Act. The Crotty case held up the introduction of the S.E.A. by six months. Later Irish referendums on Community and Union treaties – the Treaty of Maastricht of 1992, the Treaty of Amsterdam of 1998 and the Treaty of Nice of 2001 – have stemmed from the Supreme Court's judgment in the Crotty case, as these treaties all required the surrender of further portions of sovereignty to the EC/EU and so required popular consent. In the 11 constitutional referendums held between the adoption of the Irish constitution in 1937 and the 1987 referendum on the Single European Act, the political party and other organized interests on each side financed their campaigns out of their own resources. Irish law did not provide for any public funding of referendum or election campaigns. In 1987, when the government of the day had to hold a referendum on the S.E.A treaty before it could be ratified, it amended the Referendum Act to permit a substantial sum of public money to be spent on advertising urging voters to vote 'Yes'. This practice of using public funds which come from citizens holding both 'Yes' and 'No' viewpoints to advance the position of the government side alone, was repeated in the 1992 Maastricht referendum and in three other constitutional referendums between 1987 and 1995. Two judgments in constitutional cases brought by individual citizens since then have had a profound influence on the operation of Irish referendum campaigns. In 1995, in a case brought by Green Party MEP Patricia McKenna, the Supreme Court declared that in expending monies in the promotion of a particular vote, the government was in breach of the Constitution and the rights of citizens to equality, democracy and fairness in constitutional referendums. So far as the use of public funding went, there had to be equality as regards the

'Yes' and 'No' propositions: either no funding at all, as had been the case in referendums between 1937 and 1987, or else some 50:50 arrangement. In 2000, the Supreme Court, in a case brought by Anthony Coughlan, applied the principle of equality as regards the use of public resources to the allocation of free broadcasts by political parties and other interests in referendums. There should either be no free broadcasts or else such broadcasts should be allocated on a 50:50 basis between the opposing camps in a referendum campaign. The government responded to the McKenna judgment by introducing the 1998 Referendum Act. This provided for the establishment of an independent statutory Referendum Commission whose primary role was to explain the subject matter of the referendum to the voters, and who must ensure that the arguments of those who oppose the proposal and of those who defend it must be put forward in a way that is fair to all the interests concerned. (The Act provided for the allocation of public funds to the Commission for this purpose, to be spent on advertising in the print and broadcast media and on any other means which it saw fit for promoting public debate and discussion on a referendum proposal.) Four Referendum Commissions have been established to date under the 1998 Referendum Act, although they all had the same individual membership. They interpreted their statutory obligation to be "fair to all interests concerned" as requiring a 50:50 allocation of advertising funds to the 'Yes'-side and 'No'-side arguments, taking the view that every citizen has an interest in a referendum and that the Commission was bound by the equality principles laid down by the Supreme Court. Considerable controversy has surrounded the Referendum Commission's efforts. The Commission was criticized for the mechanical character of its radio and TV advertisements, in which 'Yes' and 'No' arguments were rather artificially propounded by supposed husband-and-wife pairs, or by disputing friends. Critics of the Commission accused it of being responsible for an absence of campaigning vigor by the political parties, especially in the 1998 Treaty of Amsterdam and the 2001 Treaty of Nice referendums. Its defenders pointed out that in these two referendums the Commission had an inherently difficult job to do, as it had to publicize more than one referendum at the same time. Thus, on its first outing in 1998, the Commission's plans to sponsor televised public debates between proponents of each side on the Amsterdam Treaty had to be cancelled when it was given the referendum on the Northern Ireland Agreement to publicize for the same day. In the 2001 Nice referendum, the government gave it three unrelated referendum issues to

publicize and the Commission's chairman, a former Chief Justice, complained of having insufficient time. Supporters of the Referendum Commission idea pointed out that whatever criticism might be made of its Yes/No advertisements, these did have to be relevant to the referendum proposition. They could not be spin-doctored or contain irrelevancies, in contrast to adverts placed by political party or private interests and were the only assured way that citizens could have the pros and cons of a particular referendum proposition put adequately before them. On the issue of how to encourage vigorous political debate on referendums, it is probably true to say that when the key Yes/No arguments were being publicized impartially by a public body, there may have been a tendency for political parties and other interests to spend less of their own money even if they were concerned about an issue and be less involved in that sense. It should be noted that in some Irish referendums, political parties are the initiators of the referendum issue and are much involved with it. In others, their role has been marginal compared with that of private lobby groups. In December 2001, following the refusal of Irish voters to change the Constitution to permit the ratification of the Treaty of Nice - a referendum in which the sum of 2.5 million Irish pounds had been allocated to publicizing the Treaty and the arguments for and against it - the government pushed a new Referendum Act through the Irish Parliament, going through all its stages in less than two days. This removes from the Referendum Commission its function, under section 3 of the 1998 Act, of preparing a statement or statements concerning the referendum proposal, setting out the arguments for and against, and of fostering and promoting, and, where appropriate, of facilitating debate or discussion in relation to the proposal. A new function of promoting awareness of the referendum and encouraging citizens to vote is also included in the Act.

II. Regional and local level

There are no formal regulations to allow for regional or local referendums and initiatives.

III. Trends

Ireland can be described as a referendum-friendly country. Despite the narrow basis for the holding of referendums as outlined in Article 46, in reality the people have been consulted on quite a large number of issues, ranging from technical matters to institutional changes, to moral issues, to votes on European integration. All decisions by the people are binding. The people have been consulted on 25 occasions since they first accepted the Constitution by referendum in

1937. 18 of the proposals were accepted, 6 rejected (the most recent being the rejection of the Treaty of Nice referred to above and the pro-life [anti-abortion] referendum). There has been very little debate about direct democracy in Ireland. The public is largely unaware of the possibilities inherent in the initiative process. In 1996 the Constitutional Review Group briefly explored the possibility of introducing the initiative (this Review Group was set up to advise the government on possible changes to the Constitution). Their Report (May 1996) looked at whether provision should be made for a popular initiative to amend the Constitution otherwise than by the existing provision of Articles 46 and 47. The consensus in the Group was that there should be no provision to allow constitutional change to be proposed either directly or indirectly by means of an initiative, concluding that it would be inappropriate to a representative democracy. The Review Group did recommend that the possibility of introducing a pre-referendum system might usefully be kept under review. The mainstream political parties - the centre-right Fianna Fail, Fine Gael and Progressive Democratic parties, and the centre-left Labour Party-show very little interest in the greater involvement of the people in areas outside those laid down in the Constitution. There is greater support for referendums on a wider range of issues from smaller parties, such as the Greens. Voters rarely express an opinion on the question of whether there should be more referendums, though there have been exceptions. In 2001, opinion polls showed there was strong support for another referendum on abortion (70%), despite the contentious nature of former referendums in this area. This figure dropped later. Significantly, there was a strong expectation that Fianna Fail, the main governing party in the Fianna Fail/Progressive Democrat government, would deliver on an election promise to hold a referendum before joining NATO's Partnership for Peace. Its failure to do so left a residue of resentment amongst voters, who had expressed a 70% support in polls as to the desirability of a referendum on the issue.

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Constitutional Requirements for Legislation

[Chapter XIV] Amendment of the Constitution Article 46 [Amendment]

(1) Any provision of this Constitution may be amended, whether by way of variation, addition, or repeal,

in the manner provided by this article.

(2) Every proposal for an amendment of this Constitution shall be initiated in the House of Representatives as a Bill, and shall upon having been passed or deemed to have been passed by both Houses of Parliament, be submitted by Referendum to the decision of the people in accordance with the law for the time being in force relating to the Referendum.

(3) Every such Bill shall be expressed to be "An Act to amend the Constitution".

(4) A Bill containing a proposal or proposals for the amendment of this Constitution shall not contain any other proposal.

(5) A Bill containing a proposal for the amendment of this Constitution shall be signed by the President forthwith upon his being satisfied that the provisions of this article have been complied with in respect thereof and that such proposal has been duly approved by the people in accordance with the provisions of Article 47 (1) and shall be duly promulgated by the President as a law.

ITALY

Italy has, after Switzerland and Liechtenstein, the most extensive I&R experience in Europe. After the delayed legal implementation of the citizen-initiated "abrogative referendum" in 1970, the Italian people were frequently called to the ballot boxes. Several of these referendums have played a significant role in the democratization of Italian society and (party) politics. The particular Italian I&R procedures and the almost complete TV-channel monopoly of prime minister and media magnate Silvio Berlusconi have however raised some doubts about the quality of Italian I&R practice.

- Population: 57,646,000
- Area: 301,336 km²
- Capital: Rome (Roma)
- Official languages: Italian (90%), German, French, Slovenian.
- Religion: Roman Catholic (90%)
- Political System: Republic (referendum 2/6/1946), federal structure with 20 autonomous regions.
- Constitution: 1/1/1948 (without Referendum) referendum
- Membership: EU, NATO
- GNP/capita: \$20,170 (1999)
- I&R Practice: 54 nationwide referendums (since 1929)

Types of Initiative and Referendum

In the 1990's, the functioning of the Italian political system changed considerably. The center-right Christian democratic party (which had governed the country without interruption since 1946) and most of its smaller coalition partners collapsed as prosecutors discovered the involvement of several leading politicians in a dense web of political corruption. Subsequently, several abrogative referendums led to a new electoral system based on majoritarian representation, which compelled the Italian political classes to organize themselves into two new major political alliances, namely the conservative "house of freedom" (led by the media magnate Silvio Berlusconi) and the "olive tree" alliance, a coalition of socialists, centre-left Christian democrats, liberals, Greens and Italian communists. Whereas the "olive tree" coalition governed the country from 1996 to 2001, Silvio Berlusconi became Prime Minister in May 2001. Berlusconi's victorious coalition includes his own "political club", *Forza Italia; the National Alliance*, a party with political roots in fascism; the *Northern League*, a xenophobic regional party of Northern Italy; and two small centre-right Christian democratic parties.

I. National/Federal level

On 2 June 1946 the Italian people voted in an ad-hoc institutional referendum (which was initiated by the anti-fascist provisional government) against monarchy and in favor of a new Italian republic. Subsequently, the constituent assembly approved a new Constitution that includes two types of national referendums and two articles on regional referendums. Moreover, in 1989, the Italian Parliament adopted an ad-hoc "constitutional law" (a constitutional amendment that is not formally incorporated in the body of the Constitution) in order to enable an ad-hoc referendum on a European Constitution-making mandate for the European Parliament. Finally, Italian legal dictionaries also mention the "trade union referendum" as a noteworthy feature of Italian I&R practice.

a) The "abrogative referendum" (referendum abrogativo) to repeal a law (or parts of it) at the national level - Article 75 of the Italian Constitution states that a popular referendum shall be held to decide on the total or partial repeal of a law or of an act having force of law whenever it is requested by 500,000 voters or by five regional councils. This means that (only) 1% of the electorate is able to initiate a popular vote about a complete or partial abrogation of a particular law. The latter possibility indicates that the electorate does not only play a negative role,

because it can change the meaning of a law by abrogating some of its articles. This use of the "abrogative referendum" compensates for the lack of a law proposing popular initiatives; but only partially, as issues that are not already covered by existing laws cannot be made the subject of a popular vote. Some matters are constitutionally excluded from the scope of abrogative referendums, namely tax or budget laws, amnesties or pardons, or laws authorizing the ratification of international treaties. Finally, the result of an Italian "abrogative referendum" is only valid if it fulfils the following participation quorum: to be legally binding a particular proposition must not only receive a majority of the valid votes cast, but a majority of those eligible to vote (i.e. more than 50% of the total electorate) must have participated in the ballot. Law n° 352 of 25 May 1970 practically implements Article 75 of the Constitution. It states that the 500,000 signatures can be collected freely on the streets and must be gathered within a period of 90 days before 30 September each year. Moreover, it regulates the procedure of judicial review and defines the (rather marginal) roles of the Italian executives (president and government) and the parliament in the referendum process. The constitutional court reviews the legal conformity of the abrogative referendum before the actual vote takes place. Since the procedural provisions concerning Law n° 352 are open to conflicting interpretations, the constitutional court has acquired wide discretionary powers in this matter. Finally, Law n° 352 indicates that abrogative referendums must normally take place on a Sunday between 15 April and 15 June in the year following the collection of signatures. Despite its constitutional recognition, the first abrogative referendum took place only many years after the adoption of the Constitution in 1948. Parliament did not transform the constitutional principle into practice until the adoption of Law n° 352 of 25 May 1970, since the governing political parties never displayed any great interest in enabling the "abrogative referendum". This is hardly surprising, since this instrument might counterbalance and limit the power of the government. In 1969/70 this situation accidentally changed, when the major governmental party, the Christian democrats, brokered a deal with its coalition partners whereby they would support the adoption of Law n° 352 in exchange for Christian democrat support for a law that allowed civic divorce. Whereas enabling civic divorce was a high priority of the secular coalition partners, most Christian democrats were – in principle – against the legalization of divorce, but at the same time feared that a veto could alienate their coalition partners. Given this dilemma, many Christian democrats (mis-

takenly) hoped that the introduction of the “abrogative referendum” would eventually enable the abrogation of the civic divorce law, without risking the ruling coalition. However its attempted abrogation failed, as almost 60% of the voters backed it in the first Italian abrogative referendum (12.05.1974). Hence, the introduction of the citizen-initiated “abrogative referendum” is not merely a result of a democratization of Italian society in the late 1960s, but the unintended consequence of an instrumental (mis-)calculation of the major governmental party.

On June 15/16, 2003 the Italians voted on two issues. The first referendum was about a controversial labour law regarding the reinstatement of unfairly sacked workers. The second concerned the right of electricity companies to pass cables or antennae on private property.

87% of the participating voters were in favour of abolishing the new labour law introduced by Silvio Berlusconi's rightist government. At the same time 86% wanted to abolish the electricity law. However, both decisions were not valid as the participation did not reach the required threshold of 50% of the electorate by far. Only approx. 25% of the Italians did take part. For the first time, Italian citizens living abroad could also participate in the referendums.

b) The “constitutional referendum” (referendum costituzionale or referendum) over a constitutional amendment which has been passed but not yet implemented - Article 138 of the Constitution states that constitutional amendments must not only be approved by an absolute majority of both chambers of parliament, but also submitted to a popular vote when, within three months of their publication, a request is made by one fifth of the members of either chamber or by 500,000 electors or by five regional councils. The law thus submitted to vote should not be promulgated unless approved by a majority of the valid votes cast. The result of the vote is legally binding regardless of the turnout, in contrast to the vote on “abrogative referendums”. However, no vote will be held if the amendment has been approved by each Chamber and with a majority of two-thirds of its members. The first constitutional referendum took place on 7 October 2001, as more than one-fifth of the Italian parliamentarians had called for a constitutional referendum about the spring 2001 “federalism reform” of the “Olive tree” majority. This constitutional amendment was endorsed by referendum (64.2% yes-votes), despite its low turnout (35.8%). Given the commitment of the current Berlusconi go-

vernment to fundamental modification of the Italian constitution, in particular concerning (once again) its federal structure and functioning and Italy's judicial system, it is likely that additional “constitutional referendums” will take place in the near future.

c) The 1989 ad-hoc Referendum on a European Constitution - Article 71 of the Italian Constitution states that the legislative Initiative belongs not only to the Government and to each Member of Parliament, but also to 50,000 voters. Generally such popular law “initiatives” are not successful, because parliament is not obliged to put them either on its own agenda or to a popular vote. In one case, however, such an initiative was very successful. In June 1988, the Italian section of the European federalist movement sent a proposition with 114,000 signatures to the Italian Parliament. The proposition called for a referendum on conferring a European-Constitution-making mandate on the European Parliament. In November 1989 the two chambers of Parliament backed this proposition by means of an ad-hoc constitutional amendment. The referendum took place in parallel with the European elections on 18 June 1989 and attained a high turnout (81%) and an 88% yes-vote.

d) The labour union's referendum (referendum sindacale) - In Italy political decision-making does not only take place in Parliament. In contrast to the Anglo-Saxon liberal-democratic tradition of “territorial democracy”, policy-making in the field of economic and social policy can also be the result of collective bargaining and “social pacts” between the trade unions, the employers' organizations and the government. Therefore, it is helpful to refer also to the I/R-procedures in this arena of so-called “functional democracy”. On May 20, 1970, the Italian Parliament adopted Law n° 300, the so-called “workers statute”, whose article 21 introduced the “trade union referendum”. According to this provision, the unions can initiate referendums on “trade union questions” involving the whole workforce of a single enterprise, an economic sector or even the whole national economy. After an initially negligible use of the instrument, this expression of direct democracy gained in importance in 1988, when the three Italian metalworkers' unions began to jointly submit their bargaining agendas and demands to a workers' referendum. In 1995, the three Italian trade union confederations even initiated a national inter-professional “trade union referendum” in which Italian workers approved an essential pension of the Dini-government. Conversely, in autumn 2001, a trade union referendum over a national wage

agreement in the metal industry was successfully barred by the two smaller, centrist unions - the Catholic CISL and the secular UIL - even though the biggest, left-wing, CGIL union had collected 350,000 signatures of metal industry employees (approximately 50% of the whole constituency) in favor of it. This situation reflects the failure of Italian labour law to regulate the right of Initiative for the "trade union referendum" in cases where the three representative unions disagree among themselves.

II. Regional and local levels

a) The regional referendum (referendum regionale) - Article 123 of the Italian Constitution states that every region shall have a statute, which determines the form of government and the fundamental principles of the organization and the functioning of the region, in accordance with the Constitution. This statute shall also regulate the exercise of "consultative" or "abrogative referendums" on regional laws and regional administrative decisions, and the publication of regional laws and regulations. Despite these constitutional provisions, the regional referendum has not (yet) acquired practical significance. It is likely that this will change, given the increasing competencies and importance that the Italian regions gained with the adoption of the 2001 federalism reform.

b) The territorial Referendum on regional boundaries (referendum territoriale) - Article 132 of the Italian Constitution states that existing regions may be merged, or new regions created, provided that: the population of any new region is at least one million; when it is so requested by as many municipal Councils as represent at least one third of the population involved; and when the proposal has been approved by the majority of the involved population in a Referendum. By means of a referendum consent may also be given for provinces and municipalities that request it to be detached from one region and attached to another. Territorial boundaries never became a political issue in modern Italy.

c) Local I&R (instruments and requirements) - At a local level consultative "referendums" can take place, according to the national "Bassanini" Law n° 142 of 8 June 1990 on local government. However, the municipalities and provinces are not obliged to introduce the referendum into their local statutes. Moreover, the results of these popular consultations are not legally binding. Similar provisions already existed in the Kingdom of Italy in 1903, but the

increasing introduction of "consultative referendums" in many local statutes is a recent development. The specific requirements governing local referendums differ considerably from place to place. In most municipalities the mayor, a qualified or a simple majority, or a qualified minority of the municipal council can initiate a "consultative referendum". However, in many municipalities (including, for instance, Rome, Turin, Florence and Genoa) popular consultations can also be initiated by a number of citizens, the number of required signatures varying quite significantly from place to place. In contrast to national I/R-practice, citizens can not only abrogate but also propose bye-laws. However, the instrument of local consultative referendums is not (yet) a frequently used one.

III. Trends

Despite its institutional roots in party politics, the abrogative referendum became in the late 1970's an important tool of political forces that were closer to civil society than to the political system, for example civil liberty, women's and environmental groups. Later, the major (opposition) parties also increasingly made use of the abrogative referendum. At the beginning of the 1990's two referendums about the electoral system (1991 and 1993) played an important role in the transformation of Italy's "blocked democracy" into a new bipolar party system. Today, the (abrogative) referendum is an established institution in Italy. Nevertheless, some of its limitations also became visible: In 1995, Italians had to vote on 12 Initiatives on the same day. This made a proper public debate about each subject impossible. Moreover, 3 of the 12 abrogative referendums were aimed at breaking up Berlusconi's almost complete private TV-channel monopoly in order to guarantee fair political and economic competition. These attempts were not successful, in all probability precisely due to Berlusconi's excessive use of his private TV-channel monopoly. His best TV-commentators and presenters simply persistently "informed" the TV-public, that no good movies or TV-shows would be able to be broadcast any longer, if the Italian people accepted the anti-trust propositions of the 1995 referendum. After the 2001 elections, the conflict of interest between Berlusconi's private role as media magnate and richest man in Italy and his public role as politician has become even more evident. Fair political competition seems to be very much in danger, given that in addition to his own private media empire he now also controls the public broadcasting system. Silvio Berlusconi has used his immense political, media and economic power in order to also gain

control of the judicial system and to succeed in summer 2003 – ahead of the Italian EU Presidency – in stopping the “corruption” trials of Italian attorneys and prosecutors against himself. This could lead to a constitutional referendum in the near future that would put fundamental legal and democratic principles to a decisive test.

Secondly, the turnout threshold of 50% has turned out to be problematic, at least from the point of view of a deliberative democracy. In 1990, the opponents of an “anti-hunting” proposition successfully realized that a boycott of the vote and of the prior public debate would be more effective than a no-campaign. Indeed, given that approximately 20% of the Italian electorate never participate in any voting, the opponents of an abrogative referendum can win, even if they represent a minority of politically active citizens. Subsequently, boycotting the ballot has become a frequent strategy. This led to the paradoxical result that referendums which secured more than 90% yes-votes were nonetheless rejected because they narrowly failed the 50% turnout threshold. The consequence has been a decline in the extent of political discussion favoring the use of the referendum process. Thirdly, the manipulation of laws by abrogating particular articles often led not only to a change in their meaning - as desired by the initiators of the respective referendum - but also to awkward laws that made subsequent revisions of the law by parliament a technical necessity. These subsequent revisions, in turn, often caused heated discussion and disappointments, as parliamentarians frequently interpreted the results of a popular consultation in a different way from its initiators. Thus the idea of introducing the right of popular Initiative (*referendum propositivo*) did gain a certain exposure in constitutional debates, without however so far becoming a major political issue.

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Constitutional Requirements for Legislation

Section II Amendments to the Constitution.

Constitutional Laws

Article 138 [Procedure for Constitutional Amendment]

(1) Amendments to the Constitution and other constitutional acts shall be adopted by each of the two Chambers twice with an interval between the votes of not less than three months, and shall be approved by a majority of the members of each Chamber in the second voting.

(2) Such laws shall be submitted to popular *referendum* when, within three months of their publication, a request is made by one fifth of the members of either Chamber or by 500,000 electors or by five regional Councils. The law submitted to *referendum* shall not be promulgated unless approved by a majority of valid votes.

(3) No *referendum* may be held if the law has been approved by each Chamber, in the second vote, with a majority of two thirds of its members.

Article 139 [Limit to Constitutional Amendments]

The Republican form of the State may not be changed by way of constitutional amendment.

LATVIA

Latvia is one of the few countries in Europe in which the citizens do have a full range of I&R rights enabling them to launch initiatives in order to amend the constitution, create a new law or veto a decision by parliament. The restrictions and framework are rather complicated and not at all very citizen-friendly. The biggest hurdle is the 50% acceptance quorum, which makes it very difficult to get valid referendum decisions. The acceptance quorum is also a problem for the upcoming EU membership decision. It is likely that the government and parliament will agree on a special law for this specific referendum.

- Population: 2,336,818
- Area: 64,589 km²
- Capital: Riga
- Official language: Latvian (55%), other languages: Russian (37%)
- Religion: Lutheran (55%), Roman Catholic (24%).
- Political System: Republic (since 1991)
- Constitution: 1922 (without referendum)
- Membership: NATO- and EU Applicant
- GNP/Capita: \$2420 (1999)
- I&R practice: 7 nationwide ballots (since 1923). Two citizen-initiated ballots (referendums): 3/10/1998 on naturalization, and on 13/11/1999 on the pension system.

Types of Initiative and referendum

Latvia is a republic, with its 100-member Saeima (the parliament) being elected on the basis of proportional elections in five districts using the Saint-Lague formula with the application of a nation-wide 5% threshold. The President of the state is elected by the Saeima and is the head of state, whereas the Cabinet of Ministers led by the Prime- Minister is responsible to the Saeima. Latvia is a centralized state dominated

by the capital city Riga with its more than one-third of the population, and with no constitutional guarantee for local government; the reform of the latter is currently under discussion.

I. National level

The Latvian constitution provides for three kinds of initiative and four kinds of referendum. Procedural details are further dealt with by the 1994 Law "On Public Referendums and Legislative Initiative" and two instructions issued by the Central Electoral Commission, namely, the instruction "On the procedure in which the Central Electoral Commission accepts a draft law or a draft constitutional amendment" and the instruction "On the collection of signatures for the initiation of a referendum on a law whose publication has been postponed"¹

1) Popular Initiative:

a) Constitutional: Art. 65 of the constitution mentions one-tenth of the electorate as one of the subjects possessing the right of legislative initiative, and Art. 78 further provides for the right of not less than one-tenth of the electorate to submit a fully elaborated draft of an amendment of the constitution to the President, who then presents it to the Saeima. Consideration of the draft constitutional amendment is mandatory, and if the Saeima does not adopt it without change as to its content, a referendum is held on the draft as originally submitted.

b) Legislative: Art. 78 contains identical provision also in relation to a fully elaborated draft law – one-tenth of the electorate may submit it to the President, who then forwards it to the Saeima. The failure of the Saeima to adopt the draft law without change to its content entails a referendum on the initial version of the draft. Both the legislative and the constitutional initiative have two stages. During the first stage the signatures of at least 10,000 citizens entitled to vote have to be collected. The collection of them is entirely up to the initiators of the initiative, the initiative does not have to be registered, and the period of time for the collecting of the required signatures is not limited. It must also be noted that the initiative group does not have any formal status. The signatures have to be certified either by the notary public or by the competent local government authority, which necessarily entails expenditures on the part of the signatories or the initiators. When the required 10,000 signatures are collected, the initiators may submit the draft to the Central Election Commission which reviews the signatures and may require the citizenship and immigration authorities to certify that the persons who have signed the initiative possess the right to vote. If, after the invalidation of the signatures of persons who do not

meet this requirement, the number of signatures is still at least 10,000, the second stage of the initiative begins: the official collection of signatures is announced. The opportunity of supporting the initiative has to be ensured by local electoral commissions, and at least one place for signing has to be provided for every 10,000 electors; this stage is financed from the state budget and there is no requirement of official certification of the signatures. Unlike the referendum, when the vote is secret, the initiation of a law or a constitutional amendment is open, and in the second stage a stamp is put in the passports of those expressing their support for the initiative by signing the lists². The Law limits the time of the second stage of the initiative to 30 days, and excludes from these days the days when elections – general or local – are held: no collection of signatures takes place on these days. If within this 30-day time period at least one-tenth of the citizens who voted in the last general election has signed the initiative, the president submits the draft to the Saeima. The Saeima has to consider the draft during the same session it was submitted to it or, if it has been submitted between sessions, in the next ordinary session or in an extraordinary session convened specifically for the consideration of the draft.

c) Popular veto initiative: According to Art. 72 of the constitution, the President may suspend for the period of two months the publication of a law adopted by the Saeima, either on his own initiative or if so requested by at least one-third of the members of the Saeima within seven days after the adoption of the law. Within these two months the Central Electoral Commission has to ensure 30 days for the collection of signatures, and if at least one-tenth of the electorate has supported the initiative, a referendum is held on the repeal of the law. There is one exception to this rule: if the Saeima takes a new vote on the law and it receives a favorable vote of no less than three-fourths of all members of the Saeima, no referendum takes place and the law is promulgated.

2) Referendum

a) Mandatory constitutional referendum: Art. 77 of the constitution provides that if the Saeima has amended Art. 1, Art. 2, Art. 3, Art. 4, Art. 6 or Art. 77 of the constitution, the amendments, in order to come into force, have to be confirmed by a referendum. The referendum has to be held not earlier than one month and not later than two months after the adoption of the amendments by the Saeima, and, according to Art. 79 of the constitution the constitutional amendment submitted to a referendum is deemed adopted if at least half of the electorate has voted in its favor.

3) Citizens' decision (ballot vote)

a) Initiative ballot vote: Pursuant to Art. 78 of the constitution, if the Saeima has not adopted without change to its content the draft law or constitutional amendment initiated by the people, a referendum is held on the original version of the draft not earlier than one month and not later than two months after the rejection by the Saeima of the draft law or constitutional amendments, or their adoption with change to its substance. The constitutional amendment is adopted if at least half of the electorate has voted in its favor, while the adoption of the draft law requires the turnout of at least half of the citizens who voted in the last elections to the Saeima, with the majority of the votes cast favoring the adoption of the law (Art. 79 of the constitution). This type of referendum has been called "automatic", but it could also be called "conditional", since it automatically takes place if the condition of non-adoption of the original version of the draft is satisfied.

b) Referendum or popular veto ballot vote: Pursuant to Art. 72 of the constitution, if the popular veto initiative has been successful in collecting the required number of signatures and if the Saeima has not overridden the referendum request by re-adopting the law with the three-fourths majority of its total membership, a referendum is held on the repeal of the law, the promulgation of which has been postponed. It is held not earlier than one month and not later than two months after the Central Electoral Commission has verified the result of the collection of signatures and announced the holding of the referendum, and the repeal of the law (or constitutional amendment) requires the turnout of at least half of the citizens who voted in the last elections to the Saeima, with the majority of the votes cast favoring the repeal of the law (Art. 74 of the constitution). It must be noted that even if the popular veto referendum has not succeeded in repealing the law, and also if the promulgation of the law has not been postponed, thus giving no opportunity for popular veto initiative and referendum, the possibility for legislative initiative, and possibly resultant automatic referendum, to amend or repeal the law still remains available.

c) Constitutionally defined Presidential Plebiscite: Art. 48 of the constitution gives the president the right to propose the dissolution of the Saeima. A referendum is held following this proposal not earlier than one month and not later than two months after the President has announced this proposal to the Central Electoral Commission. This is the only referendum in the Latvian constitution that takes place on the issue, and not on the text of a law,

the only one for whose initiation the will of a single actor – the President – is sufficient, and also the only one that does not contain a built-in quorum requirement. If the majority of the votes cast favors the dissolution of the Saeima, the Saeima is considered dissolved, whereas if the majority of the votes cast opposes the dissolution, the President himself loses his office – a construction that has, at least so far, forestalled any legal efforts to dissolve the parliament. Several things have to be noted concerning the first three types of referendum (namely, the mandatory constitutional referendum, initiative ballot vote and popular veto ballot vote or referendum) – as already mentioned, the latter type of referendum is, in several respects, an exceptional one. Firstly, a referendum is only possible on a text of a draft law; no generally worded questions can find their way to a referendum. Secondly, no referendum can be brought about by the will of a single actor. The mandatory constitutional referendum takes place pursuant to a constitutional requirement; initiative ballot vote or automatic referendum on the adoption of the law takes place only if the Saeima has not, without substantial changes, adopted the popularly initiated draft law B but the Saeima is first given the opportunity to adopt the draft, and no law can be taken to a referendum directly, as the aim of this initiative is the law, not the referendum. The popular veto referendum requires joint action of either the President or one-third of the members of the Saeima and one-tenth of the electorate. Thirdly, a quorum requirement is built into all kinds of referendum with the exception of the referendum on the dissolution of the Saeima: if less than half of the electorate participates in the referendum, it produces no legal result, however overwhelming the majority of the votes cast. Next, there is no such thing as a consultative referendum: the results of any type of referendum are legally binding; although there are no legal obstacles against parliamentary re-adoption of a law that has been repealed by a referendum or against parliamentary amendment of the law adopted by a referendum, good reasons would be required for such action to substantiate its appropriateness. Finally, Art. 73 of the constitution lists exempted areas, stating that the budget and laws concerning loans, taxes, customs duties, railroad tariffs, military conscription, declaration and commencement of war, peace treaties, declaration of a state of emergency and its termination, mobilization and demobilization, as well as agreements with other nations may not be submitted to national referendum. This also means that the promulgation of the laws related to these areas cannot be postponed pursuant to Art. 72, since the aim of such

postponement is a referendum, but it does not exclude legislative initiative in these spheres, although in these cases the failure of the Saeima to adopt the draft without change as to its content will not have the effect of entailing the automatic referendum. Another category of laws that cannot be submitted to a referendum and obviously it only concerns popular veto referendum – is laws that the Saeima has, by a two-thirds majority, declared urgent (Art. 75). Several practical issues have to be mentioned. Perhaps one of the problems easiest to imagine is the case with the popular legislative and constitutional initiative if the Saeima does not adopt it without changes: how are the editorial changes dictated by the requirements of legal drafting to be distinguished from changes as to its contents? No rule specifies who is to determine whether this condition has been fulfilled or not, and it might seem that this task falls to the Central Electoral Commission, as it has to organize the referendum if the draft has been rejected by the Saeima or adopted with changes as to its contents; it is difficult to speculate whether the issue would be regarded as ad iudicabile by courts in case the decision of the Central Electoral Commission were challenged. Secondly, it has been considered that the formulation of the issue in the case of the popular veto referendum is confusing: if the question put to the referendum is “Are you in favor of the repeal of law X?”, the supporters of the law need to vote in the negative, while those against it have to vote in the affirmative. There is no requirement for official summary of the law or for its house-to-house mailing, but the text of the law has to be made available at the places of the collection of signatures.

II. Regional & local level There is no division of Latvia into regions except a historical one, which is used for the purposes of dividing the country into electoral districts, but with no competencies pertaining to the regions, and consequently no legal rule providing for I&R at the regional level. There are currently no legal rules providing for local I&R.

III. Practical guide As already noted, there are three types of initiative – constitutional and legislative, for which identical rules apply, and the popular veto initiative. The object of the first two is the initiation of a draft law or constitutional amendment, and it does not necessarily entail a referendum, whereas the popular veto initiative seeking to initiate the popular veto referendum can only take place if the precondition for it – namely, the postponement of the promulgation of the law – has been fulfilled. Legislative and constitutional initiatives are governed

by Art 2. '65 and '78 of the constitution and the popular veto initiative by Art. 72, and all three types of initiative are dealt with in a more detailed manner by the already mentioned Law “On Public Referendums and Legislative Initiative” and the instructions issued by the Central Electoral Commission - the instruction “On the procedure in which the Central Electoral Commission accepts a draft law or a draft constitutional amendment” and instruction “On the collection of signatures for the initiation of a referendum on a law whose publication has been postponed”. In the case of constitutional and legislative initiatives, the basic steps are as follows. The initiators of the draft have to collect the signatures of at least 10,000 electors; there are no official forms and no time limits, but the requirement is that each sheet of paper, or each set of sheets contain a full text of the draft. The signatures have to be certified by a notary public or a local government authority; in both cases also the name, last name and the personal ID code of the signatory has to be indicated, as it will be used by the Central Electoral Commission to verify that the person who signed is a Latvian citizen possessing the right to vote. Three of the signatories submit the collected signatures to the Central Electoral Commission, and if, after the verification of signatures and invalidation of the invalid ones, their number still exceeds the required 10,000, the Central Electoral Commission announces the official collection of signatures that will last 30 days and can take place only in specifically designated places. The designation of these places is up to each municipality, but there has to be at least one such place for every 10,000 electors. If the total number of signatures collected satisfies the requirement of the one-tenth of the citizens who had the right to vote at the last elections to the Saeima, the initiative has been successful and the Saeima has to consider the draft. In the case of the popular veto initiative there is no initiating stage of the initiative: if the promulgation of the law has been postponed, the Central Electoral Commission announces the official collection of signatures after it has been informed about the postponement by the President. Thus, there is no initiative group, although campaigning is still desirable for the timely collection of the required number of signatures, and in the case of the popular veto initiative even more than in the case of other initiatives: while in the latter case the signatures collected at the initiation stage of the initiative count also for the purposes of the one-tenth of the electorate requirement, there are no such pre-collected signatures when the popular veto referendum is being initiated, and hence the deadline is more pressing. The server of the Central Electoral Commission (currently

only in Latvian), at www.cvk.lv contains the official information of the Commission and can be used to verify whether there are any referendums announced or there is any initiative in its official stage; unfortunately, there are no data on the server about previous initiatives and referendums.

IV. Trends The provisions for direct democracy being part of the renewed 1922 constitution, there has been no debate as to their desirability or acceptability: they have been simply accepted as given. Nor was the issue regarded as a contentious one by the drafters of the constitution, who found their ideological inspiration in the Swiss constitution, and the inspiration for actual construction of the instruments of direct democracy in the constitution of the Weimar Republic. In the interwar period, or, more exactly, until the 1934 coup d'état, there have been 6 popular veto initiatives - 2 popular veto and 4 legislative ones. The first popular veto referendum took place in 1923, aiming to repeal the law that handed over the Lutheran church of St. James to the Roman Catholic Church to serve as the archbishop's cathedral, and, despite the overwhelming support for the repeal, failed for the lack of quorum. In the autumn of the same year, a legislative initiative was successful in getting the Saeima to adopt a law dealing with land reform. Another popular veto initiative aimed at the repeal of amendments to the citizenship law was successful in 1927. However, the Saeima availed itself of the possibility of avoiding the referendum by re-adopting the law with the three-fourths majority of its membership. In the same year a legislative initiative dealing with the repeal of the privileges in acquiring land succeeded, and no referendum followed. In 1931 the Saeima refused to adopt the popularly-initiated law on handing over the largest church in Riga – the Doma church – to the Lutheran parish, and a referendum followed. This is an interesting case as it illustrates the persuasive element of referendum: although the automatic referendum failed for the lack of quorum, more than 30% of the electorate favored the draft, persuading the Saeima to reconsider its view and adopt the draft it had initially rejected (or, more exactly, to adopt an analogous law). The last referendum in pre-war Latvia took place in 1933, and again failed for the lack of quorum; this time the Saeima was not persuaded by the popular support for the draft and did not reconsider its view. Thus, while there had been successful initiatives, all referendums prior to World War II failed due to the quorum requirement. After the restoration of independence direct democracy has resurged, and thanks to the decision of the Central Electoral Commission to sche-

dule the popular veto referendum on the same day that the general elections were held on October 3, 1998. Latvia can even boast a referendum in which the quorum requirement was satisfied; another referendum on independence took place in 1991 prior to the re-entry into force of the 1922 constitution. In 1995, an initiative aimed at introducing the recall of individual members of the Saeima was on the agenda; although it reportedly collected the required initial 10,000 signatures, it was never submitted to the Central Electoral Commission; given the unofficial character of the initial stage of the initiative, it is impossible to ascertain whether there are any other initiatives that have failed to receive the 10,000 signatures or whose initiators have decided not to proceed with them despite the evidence of initial support. In 1996, a legislative initiative aimed at making the citizenship law more stringent failed to receive the support of one-tenth of the electorate. However, in 1999 an initiative to repeal the amendments to the state pensions law failed at the referendum stage: although 94% of the votes cast favored the repeal, the turnout amounted to only 35.25% of the electors voting at the previous general election. The 1998 popular veto initiative on the repeal of the amendments to the citizenship law has so far been the only one that has not only satisfied the initiative requirements, but also the turnout requirement at the referendum; due to the scheduling of the referendum at the time of elections no obstructive tactics of inviting the opponents not to participate could be used, the turnout thus amounting to 97% of the electors who had voted at the previous general elections; 52.54% of the votes were cast against the repeal of the amendments. The June 2000 initiative was successful in obtaining the signatures of 22.9% of the electorate on the draft law seeking to prohibit the privatization of the state-owned energy enterprise "Latvenergo"; the law was adopted by the Saeima and hence no referendum followed. Currently there are two constitutional initiatives at the initial stage: a draft of a new Constitution sponsored by the Social Democratic party, and another draft constitutional amendment seeking to introduce the direct election of the President; no data is available on these, and it is not impossible, albeit improbable, that their initiators are postponing their introduction at the Central Electoral Commission to use them as part of their campaign for the parliamentary elections. Currently the main debate is about the possibility and need for a referendum relating to Latvia's planned and hoped-for membership of the EU. The present constitution does not permit a government-initiated referendum on the issue of joining the EU, while at the same time it is

obvious that Latvia's membership in it requires constitutional regulation - also because of the entrenched Art. 2 whose modification is subject to compulsory constitutional referendum requiring the consent of half the electorate. A working group under the auspices of the Ministry of Justice has currently produced a draft constitutional amendment specifically providing for a compulsory "membership of the EU" referendum, which, according to the idea of the authors of the draft, would take place after the conclusion of the membership treaty with the EU, yet prior to its ratification by the Saeima; the "membership of the EU" formulation is supposed to imply that withdrawal from the EU would also be subject to compulsory referendum. A turnout of at least half of the citizens who voted in the last elections to the Saeima, with the majority of the votes cast favoring membership, is required, the authors of the draft adhering to the view that the contents of the notion of sovereignty referred to in Art. 2 of the constitution has already undergone significant changes in view of the development of international law and thus would not be further affected by Latvia's membership. This position implies that there is no need for a compulsory constitutional referendum, and makes it possible to avoid the one-half of the electorate support requirement; opposing views have been expressed, however, and a heated debate can be expected. The draft also provides for a referendum on changes to the conditions of Latvia's membership of the EU if requested by at least half the members of the Saeima - a construction that has been criticized for limiting standing to the members of the Saeima only; it certainly would be consistent with the construction of referendum and initiative under the Latvian constitution to give the right of initiative also to one-tenth of the electorate.

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1. It must be explained that stamps in passports are nothing unusual in Latvia, since in the General elections (which are proportional) an individual may vote in any district of his Choice, thus there are no electoral rolls and a stamp is put in the passport to exclude the Possibility of multiple voting. A submission has been made to the National Human Rights Office challenging the requirement of stamping the passport during the process of Popular initiative, and despite the opinion of the National Human Rights Office that what Matters is the secrecy when the vote is actually cast, one may hope that further Computerization of the country will soon permit the abolition of this requirement.
2. Each legislature has 4 legislative sessions. In other words, one legislative session amounts to one year's parliamentary work.
3. Published in Latvijas Vestnesis (Official Gazette) 20.04.1994, amendments published 02.08.1995, 08.09.1998. Both instructions were published in Latvijas Vestnesis (Official Gazette) 10.07.1998
4. The President of the Republic, after consultation with the Parliament and the Council of Ministers and according to article 133.1, line e) of the Constitution, has decided to dissolve Parliament, following the result of

the last elections held on 16 December 2001. A new Parliament was elected on 17 March 2002.

Constitutional Requirements for Legislation

Chapter IV: The Government

Article 69 [Promulgation] The President shall proclaim laws passed by the Parliament not earlier than the seventh day and not later than the twenty-first day after the law has been adopted. A law shall come into force fourteen days after its proclamation unless a different term has been specified in the law.

Article 70 [Formula of Promulgation] The President shall proclaim adopted laws in the following manner: *"The Parliament (that is, the People) has adopted and the President has proclaimed the following law: (text of the law)."*

Article 71 [Request for Revision] Within seven days of the adoption of a law by the Parliament, the President, by means of a written and reasoned request to the Chairperson of the Parliament, may require that a law be reconsidered. If the Parliament does not amend the law, the President may not then raise objections a second time.

Article 72 [Withholding Promulgation] The President has the right to suspend the proclamation of a law for a period of two months. The President shall suspend the proclamation of a law if so requested by not less than one-third of the members of the Parliament. This right may be exercised by the President, or by one-third of the members of the Parliament, within seven days of the adoption of the law by the Parliament. The law thus suspended shall be put to a national referendum if so requested by not less than one-tenth of the electorate. If no such request is received during the aforementioned two month period, the law shall then be proclaimed after the expiration of such period. A national referendum shall not take place, however, if the Parliament again votes on the law and not less than three-quarters of all members of the Parliament vote for the adoption of the law.

Article 73 [Matters Excluded from Referendum] The Budget and laws concerning loans, taxes, customs duties, railroad tariffs, military conscription, declaration and commencement of war, peace treaties, declaration of a state of emergency and its termination, mobilization and demobilization, as well as agreements with other nations may not be submitted to national referendum.

Article 74 [Annulment by Referendum] A law adopted by the Parliament and suspended pursuant to the procedures specified in Article 72 shall be repealed by

national referendum if the number of voters is at least half the number of electors who participated in the previous parliamentary election and if the majority has voted for repeal of the law.

Article 75 [Urgency] Should the Parliament, by not less than a two-thirds majority vote, determine a law to be urgent, the President may not request reconsideration of such a law, it may not be submitted to national referendum, and the adopted law shall be proclaimed no later than the third day after the President has received it.

Article 76 [Amendment of the Constitution] The Parliament may amend the Constitution in sittings at which at least two-thirds of the members of Parliament participate. The amendments shall be passed in three readings by a majority of not less than two-thirds of the members present.

Article 77 [Referendum About Amendment] If Parliament has amended Articles 1, 2, 3, 4, 6, or 77 of the Constitution, such amendments, in order to come into force as law, shall be submitted to a national referendum.

Article 78 [Amendment by Popular Initiative] Electors, in number comprising not less than one tenth of the electorate, have the right to submit a fully-elaborated draft of an amendment to the Constitution or of a law to the President, who shall present it to the Parliament. If the Parliament does not adopt it without change as to its content, it shall then be submitted to national referendum.

Article 79 [Referendum After Popular Initiative] An amendment to the Constitution submitted for national referendum shall be deemed adopted if at least half of the electorate has voted in favor. A draft law submitted for national referendum shall be deemed adopted if the number of voters is at least half the number of electors as participated in the previous parliamentary election and if the majority has voted in favor of the draft law.

Article 80 [Right to Vote in Referendum] All citizens of Latvia who have the right to vote in elections of the Parliament may participate in national referendums.

LITHUANIA

In a period of only five years (1991-1996), Lithuanians had a direct say on 10 different issues: from independence to privatizations and institutional questions. But before and since this five-year period no referendum decisions have taken place. In Soviet times, and even before – during the first period of independence – there were no provisions, but after

1996 the current design with very high hurdles and thresholds does not seem citizen-friendly enough. However, there will be new ballot votes on the agenda concerning membership of the EU, and for this reason the deterrent threshold on the 50% +1 vote quorum of the total electorate has been changed (in 2002) to a simple majority of the participating citizens.

- Population: 3,490,000
- Area: 65,301 km²
- Capital: Vilnius
- Official language: Lithuanian (82%), other languages: Polish (6.7%), Russian (6.3%)
- Religion: Roman Catholic (85%)
- Political System: Republic (since 1991)
- Constitution: 25/10/1992 (referendum, 78 % Yes, turnout 75%)
- Membership: NATO- and EU Applicant
- GNP/Capita: \$2,540 (1999)
- I&R practice: 17 nationwide ballots (since 1991); out of 10 legislative and constitutional citizen initiatives only one reached the 50% participation threshold.

Types of Initiative and Referendum

Lithuania is a centralist unitary state; regional institutions are strongly subordinated to central government. Heads of regional authorities are appointed by central government. Local self-government has considerable competencies in housing, urban planning, healthcare, local transport systems, police and public safety, education and environment. Local government is elected according to a proportional electoral formula.

I. National I&R

According to Article 68 of Lithuania's Constitution, legislative initiative is vested in the Seimas, the Government, the President and in groups of at least 50,000 citizens. The Supreme Soviet of the Lithuanian Soviet Socialist Republic passed the law on referendums on November 3, 1989. This law was amended by the Seimas of the Republic of Lithuania in 1990, 1992, 1994, 1995, 1996, 1997, 1999 and 2000. A new referendum law was passed by the Lithuanian Seimas in June 2002.

a) Popular Initiative - Article 1 of the 1989 referendum law stated that "the most urgent issues relating to the life of the State and the Nation shall be resolved and the provisions of laws of the Republic of Lithuania may be adopted by a referendum". This means that all politically, economically and socially relevant issues can be the subject of referendums. The

President of Lithuania must within five days sign and officially promulgate laws and other acts adopted by referendum. The 2002 referendum law introduced two different types, i.e. compulsory and consultative referendum. Compulsory referendum is designed to deal primarily with constitutional issues, including Lithuania's membership of international organizations, if such membership requires the delegation of certain functions of the Lithuanian state to supranational bodies of these international organizations (for example, the EU). Compulsory and consultative referendums can be called on all other major issues of the life of the state and society as a result of a citizens' or Seimas initiative. The right of initiative to call a referendum belongs to parliament and to the citizens. This right is implemented at the request of no less than one-fourth of the members of the Seimas, whereas the citizens' initiative has to be expressed by a request of at least 300,000 citizens who have the right to vote. However, before the 1996 amendments to this article, it was required that more than half of the members of the Seimas propose a referendum. After 1996, the procedure was made easier for the members of parliament in that a minimum of only one-third of the Seimas members was required to initiate a referendum. The 2002 referendum law once again decreased the threshold for the members of the Seimas. The Referendum law guarantees citizens and various organized groups the right to campaign freely in the process of petitioning for a referendum. Both supporters and opponents of the specific issue in a referendum have a guarantee of seven hours of debates each on national TV and radio.

b) Requirements - All procedures for the organization and execution of compulsory and consultative referendums are the same. *Time-frame and procedure for referendum petitions:* a term of three months is set for the implementation of the citizens' right to initiate a referendum on a specific issue. This term is counted from the day of registration of a referendum petition with the Central Electoral Commission by the initiating group of citizens, consisting of at least fifteen persons. The act of registration must be recorded at the time of the registration and one copy of the record must be sent to the Speaker of the Seimas no later than on the day following the registration. *Collection of signatures:* citizens' signatures are collected on special citizens' signature collection lists and a citizen who signs the referendum petition must indicate his/ her name, surname, date of birth, permanent place of residence and passport number. Signatures are counted and judged valid or non-valid by the Central Electoral Commission.

c) Citizens' decision - Calling a ballot vote: upon receiving the documents for the calling of a ballot vote, the Central Electoral Commission has to check them within fifteen days. After the signatures have been checked, the concluding statement of the citizens' initiative group together with the citizens' requests and the conclusion of the Central Electoral Commission that the documents are in conformity with the law are submitted to the Seimas. The parliament considers the issue of calling the referendum at its next sitting, which representatives of the referendum initiative must be invited to attend. The referendum must be held no earlier than two months and no later than three months after the day of the adoption of the Seimas resolution.

Organization and execution of the ballot vote: the Central Electoral Commission prepares and conducts the referendum and all costs of organizing the referendum are covered by the state. Citizens, political parties and NGOs have free access at all stages, from the preparation of the referendum to the vote-count. *Establishment of the referendum results:* the provisions of a law or any other decision is adopted by referendum if more than half of all registered electors have approved the referendum issue. If participation is less than 50% of the total electorate, the referendum is deemed invalid. Constitutional decisions, which have been adopted by referendum, can only be amended or repealed by referendum. Decisions of a consultative referendum must be presented and discussed in the Seimas no later than one month after the declaration of the official referendum results, in order to implement the referendum decisions.

d) Petition - The legislative initiative belongs not only to members of the Seimas, the President of the Republic, and the government, but also to citizens: "a draft law may be submitted to the Seimas by 50,000 citizens of the Republic of Lithuania who have the right to vote. The Seimas must consider this draft law". The procedure for the submission of a draft law by citizens is regulated by the law on legislative initiatives passed by the Seimas on October 22, 1998. The requirements for initiating a law or changes to an existing law are simpler than those for a referendum petition in that a final legislative proposal needs to be signed by only 50,000 voters.

II. Regional and local I&R

As the initial Lithuanian Referendum Law was passed during the last days of the Communist regime amid a period of mass political upheaval, it was designed only for decisions on nation-wide issues. The referendum

law does not apply at regional and local levels. The new law of 2002 still has no provisions which might make it possible to organize regional and local referendums. Municipalities have made no attempts to introduce their own referendum bye-laws or to allow the popular initiative. It is in theory still possible to use the right of legislative initiative at regional and local levels, but it has never been employed since 1998, i.e. after the adoption of the law on the legislative initiative.

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Constitutional Requirements for Legislation

Chapter 14 Amending the Constitution

Article 147

(1) In order to amend or append the Constitution of the Republic of Lithuania, a proposal must be submitted to the Parliament by either no less than one-fourth of the members of the Parliament, or by at least 300,000 voters.

(2) During a state of emergency or martial law, amendments to the Constitution may not be made.

Article 148

(1) The provision of Article 1 that the State of Lithuania is an independent democratic republic may only be amended by a referendum in which at least three-fourths of the electorate of Lithuania vote in favor thereof.

(2) The provisions of Chapter 1 and Chapter 14 may be amended only by referendum.

(3) Amendments of other chapters of the Constitution must be considered and voted upon in the Parliament twice. There must be a lapse of at least three months between each vote. Bills for constitutional amendments shall be deemed adopted by the Parliament if, in each of the votes, at least two-thirds of all the members of the Parliament vote in favor of the enactment.

(4) An amendment to the Constitution which is rejected by the Parliament may not be submitted to the Parliament for reconsideration for the period of one year.

Article 149

(1) The adopted law on an amendment to the Constitution shall be signed by the President of the Republic of Lithuania and officially promulgated within 5 days.

(2) If the President of the Republic of Lithuania does not sign and promulgate such a law in due time, this law shall become effective when the Chairperson of

the Parliament signs and promulgates it.

(3) The law on an amendment to the Constitution shall become effective no earlier than one month after the adoption thereof.

[Chapter 15] Final Provisions

Article 150

(1) The constituent parts of the Constitution of the Republic of Lithuania shall be:

(2) The 11 Feb 1991 Constitutional Law "*On the State of Lithuania*";

(3) The 8 June 1992 Constitutional Act "*On the Non-Alignment of the Republic of Lithuania with Post-Soviet Eastern Alliances*".

Article 151

This Constitution of the Republic of Lithuania shall become effective the day following the official promulgation of the results of the Referendum, provided that in the Referendum more than half of the electorate of Lithuania voted in favor thereof.

Article 152

The procedure for the enforcement of this Constitution and separate provisions thereof shall be regulated by Law of the Republic of Lithuania "*On the Procedure for the Enforcement of the Constitution of the Republic of Lithuania*", which, together with this Constitution of the Republic of Lithuania, shall be adopted by referendum.

Article 153

Upon the adoption of this Constitution in the Referendum, the Parliament of the Republic of Lithuania may, by 25 Oct 1993, amend by three-fifths majority vote of all the Parliament members the provisions of the Constitution of the Republic of Lithuania set forth in Articles 47, 55, 56, 58 (2) Nr. 2, 65, 68, 69, 84 Nr. 11 & 12, 87 (1), 96, 103, 118 and 119.

Article 154

Upon their adoption by referendum, the Constitution of the Republic of Lithuania and the Law of the Republic of Lithuania "*On the Procedure for the Enforcement of the Constitution of the Republic of Lithuania*" shall be signed and promulgated within 15 days by the President of the Supreme Council of the Republic of Lithuania.

NETHERLANDS

The Netherlands is one of the only five countries world-wide that have never held a nationwide referendum (ballot). At the local level some 85 referendums have been held since 1912. Most of them were plebiscites. In the 1990s many municipal constitutions were amended to allow for citizen-initiated referen-

dums. An popular initiative right was introduced in Amsterdam in 2003. The first local referendum was held in 1995 in the City of Leiden. However, high participation and approval quorums made it very difficult to get successful results. At the national level one party (D66) made I&R a priority: the issue became part of the "lilac" coalition agreement in 1994, triggered a government crisis in 1999 and led to the Temporary Referendum Law in 2002. In the current government period, a two-thirds majority in parliament will be needed to introduce a binding referendum. However, the rightist-populist government has announced its intention of abolishing all citizen-initiated referendums.

- Population: 16,000,000
- Area: 41,526 km²
- Capital: Amsterdam
- Official languages: Dutch, Friesian (regional)
- Religion: Roman Catholic (36%), Protestant (26%)
- Political System: Parliamentary monarchy (since 1848), with the overseas territories of Dutch Antilles and Aruba.
- Constitution: 17/2/1983 (without referendum)
- Membership: EU, NATO
- GNP/Capita: \$25,140 (1999)
- I&R practice: NO practice at national level, 6 regional referendums in the Antilles (1994-2000), 100 local referendums (since 1912).

Types of Initiative and Referendum

The Netherlands is a centralist unitary state (93% of all taxes are raised at the national level); the provinces and especially the municipalities have considerable responsibilities and competences (provinces: environment, spatial planning, water, public utilities; municipalities: housing, healthcare, spatial planning, welfare, social and city renewal, traffic, police) but these are in the spirit of 'co-rule' generally carried out within the framework of national rules. Some large municipalities (i.e. cities) have municipal parts with separate elected bodies. The Kingdom of the Netherlands is composed of the Netherlands, the Dutch Antilles and Aruba (islands in the Caribbean).

I. National level

On January 1, 2002, the *Tijdelijke Referendumwet* (Temporary Referendum Law; TRW) entered into force and introduced a citizen-initiated 'consultative corrective referendum' (non-binding rejective referendum) at the national, provincial and municipal levels. It was supposed to exist until the introduction of a binding version in the Constitution, but the new rightist-populist government announced that it would

break with the I&R policy of the last two "lilac" governments and abolish all citizen-initiated referendums.

Requirements at the national level: Only laws can be subject to a referendum, as well as treaties which are, within the Kingdom, only valid in the Netherlands, including revisions of laws and treaties. Excluded are constitutional changes, laws on the monarchy, the royal house, the budget (but not taxes), laws which are valid in the entire Kingdom, and laws which only serve to implement international decisions. After the monarch signs a law which has been adopted by the parliament, or a treaty has been accepted, the Home Secretary announces within a week - in the state newspaper (*Staatscourant*) - whether the law can be the subject of a referendum. If so, then a three-week period starts in which citizens can make an 'initial request' for a referendum by delivering 40,000 signatures. After the Central Voting Bureau publicly announces whether enough valid signatures have been delivered, a 6-week period begins in which citizens can make the 'definitive request' by delivering 600,000 signatures. Signatures must be entered on the official forms by citizens in person at the municipal office of their municipality. The mayor may indicate other places within his municipality. In the definitive phase, citizens can also send their signature on an official form by mail to their municipal office. The government may decide by executive measure that citizens can also give signatures electronically, but there is no sign that this will happen soon. Signatures are counted and considered valid or invalid by the voting bureaus, of which each municipality has at least one. They send the results to the provincial voting bureaus, which total the numbers in their province, and send them on to the national central voting bureau (the Election Council), which checks and totals the numbers given by the local and provincial voting bureaus. If the prime voting bureau announces that enough valid signatures have been delivered, then a date for the referendum will be decided not earlier than 50 days and no later than 4 months after their announcement. If an election takes place within this period, the referendum is held on the same day as the election. It is possible to hold more than one referendum on the same day. The TRW does not say who will draft the question nor which rules should be applied. The context suggests it is the government. The Prime Minister is responsible for writing a summary of the law or treaty, which will be mailed by the mayor to the address of each voter no later than 2 weeks before the referendum. The text of the law or treaty is freely available at each municipal office 4 weeks before the referendum.

Approval quorum: the outcome is only valid when a majority votes against the law, and when this majority comprises at the same time at least 30% of the electorate. Citizens can challenge before the administrative court (*Raad van State*) the decision on whether a law or decision can be the subject of a referendum and decisions of the prime voting bureau of a political unit about the initial request, the definitive request and the outcome of the vote. Citizens cannot challenge decisions of lower voting bureaus and the decision on the date of the referendum. The freedom of lower government levels is very much restricted: provinces and municipalities can only hold rejective referendums on decisions of the provincial and municipal councils according to the rules of the TRW. Municipalities and provinces can only hold referendums with their own specific requirements on topics which are not dealt with by the TRW (both explicitly allowed and excluded), and on decisions of other governmental institutions than the provincial and municipal councils. The municipalities and provinces which had their own referendum bye-law on February 15th, 2001, can keep this until the introduction of a binding rejective referendum in the constitution (planned for 2005). However, municipalities and provinces are entirely free to introduce (through a municipal or provincial bye-law) popular initiatives with self-made requirements, as well as government-initiated referendums (plebiscites). There is one exception: The Constitution prohibits binding referendums. Municipalities and provinces can adopt a bye-law which prohibits referendums about municipal and provincial taxes or the salaries of elected officials. The TRW is valid until January 1st, 2005 when, according to plan, a rejective referendum with the same requirements but with legally binding outcomes will have been adopted. However, the incoming rightist-populist government (July 2002) announced that it would break with the I&R policy of the last two "lilac" governments and dismantle all forms of citizen-initiated referendums. As the TRW and Constitutional change also provide I&R rights at the provincial and municipal levels, the abolition of these would also mean a blow to I&R at the local level. However, the freedom of local governments to install their own I&R bye-laws would only be greater in this situation.

II. Regional level

The same requirements exist as at the national level, except: Referendums can be held on 'decisions' of the provincial parliament if they form a 'generally binding regulation'; on provincial decisions to take part in private organizations; on name changes of the province and on arrangements in which several

provinces, municipalities or water authorities take part. No referendums can be held on decisions which serve to execute international treaties or decisions of international organizations (or laws which have this purpose); on subjects that don't belong to the competence of the province; and on zoning plans. The provincial parliament can decide by bye-law that no referendum can be held on provincial taxes and salaries and compensations of politicians and their relatives. The Provincial Council acts on issues where at the national level the Administration acts. The signature quorum is 0.33 per cent of the electorate for the 'initial request' and 5 per cent of the electorate for the 'definitive request'. The prime voting bureau of the province is responsible for checking the number of signatures and votes, and for determining the outcome of the vote. Only the province of North Holland has, since 1995, had its own referendum bye-law, which makes possible a citizen-initiated rejective referendum with many excluded topics and a participation quorum of 50% of the turnout of the last provincial elections. This remains valid for now as stated above.

III. Local level

The same requirements exist as at the national level, except: The Council of Mayor and Aldermen act on issues where, at the national level, the Administration acts. The topics about which referendums can and cannot be held, are the same as at the provincial level. Furthermore, referendums can be held on readjustments of municipal borders when all involved municipalities agree on them. The municipal council can decide by bye-law that no referendums can be held on municipal taxes and salaries and compensations of politicians and their relatives. At the municipal level, the signature quorum of the 'initial request' and 'definitive request' is respectively: a) in municipalities with less than 20,001 voters, 1 per cent of the voters (minimum of 50 and maximum of 125); respectively 10 per cent of the voters (minimum of 200 and maximum of 1250) b) in municipalities with 20,001 to 40,000 voters, 0.7 per cent of the voters (maximum of 200); respectively 7 per cent of the voters (maximum of 2250) c) in municipalities with 40,001 to 100,000 voters, 0.5 per cent of the voters (maximum of 300); respectively 6 per cent of the voters (maximum of 5000) d) in municipalities with more than 100,000 voters, 0.33 per cent of the voters; respectively 5 per cent of the voters. The prime voting bureau of the municipality is responsible for checking the number of signatures and votes, and for determining the outcome of the vote. At least 61 out of 537 municipalities introduced their own referendum bye-law between 1990 and the beginning of 2001. These

remain valid for now as stated above. Most allow a government-initiated and/or a citizen-initiated 'consultative' referendum (a non-binding rejective referendum on a government decision which is held before the government formally takes this decision). Currently only two municipalities (Nijmegen and Oosterhout) allow the popular initiative. The requirements vary with each municipality, but most have a participation quorum (often lower than the Temporary Referendum Law) and most exclude topics on the budget, politicians' salaries, 'vulnerable groups' (asylum seekers, prostitutes etc.), and 'urgent decisions'. Some cities (e.g. Amsterdam, Amersfoort) also allow referendums at the city district level.

IV. Practical guide

Additional rules are set by various executive rules: A General Executive Measure (*Tijdelijke Referendumbesluit*, STB 2001 389) provides rules on many topics. A Ministerial Arrangement (*Tijdelijke Referendumregeling Modellen*, CW 2001/82245) sets, among other things, a standard for the ballot question (the name of the law, followed by the options "for" and "against" and a standard for the signature-gathering forms. Several executive papers (*circulaires*) instruct municipal and provincial governments regarding the consequences for their internal organization: CW 2001/82050 and 82554. There is de facto free signature-gathering for activists (only) in the 'definitive phase': activists can obtain official forms from the municipal offices, copy them, ask citizens to sign, and send them in bulk back to the municipal offices. They cannot obtain forms from a provincial or national government. Also here there is no government support (financial or otherwise) for the citizen groups which requested the referendum. The 'referendum booklet', which will be distributed to all households, will apparently consist solely of a formal summary of the law or decision. However, at the local level there is a tradition that governments subsidize the initiating citizen committees. On the website www.referendumwet.nl, the Home Office keeps - among other things - up-to-date lists of laws on which currently, or in the near future, a referendum can be held, and blank forms with which citizens can file an initial request. They must, however, take the form to the municipal office and write their signature on it in the presence of a civil servant. The full text of all I&R legislation, including all executive papers, can be downloaded (in Dutch only) from the Referendum Platform's website www.referendumplatform.nl.

V. Trends

The Netherlands is one of only five countries world-

wide that have never held a national referendum (cf. Butler & Ranney). Only at the municipal level have at least 101 rejective referendums been held from 1912 until August 2002. Most of them were plebiscites. Only in the 1990s were municipal bye-laws adopted which gave rights to citizens to enforce (mostly rejective) referendums through a prescribed number of signatures; the first citizen-initiated referendum was held in 1995 in the city of Leiden. Of these 101 referendums, no less than 51 referendums (almost all plebiscites, especially in the '70s and '80s) were held on restructuring municipal borders i.e. abolishing small municipalities. Also popular were building plans (15 referendums), reorganizations of municipal government (11) and traffic and parking policy (6). Furthermore, 3 referendums were held in the overseas territories on a change to their status within the Kingdom. Because high participation quorums were often adopted, many important subjects were excluded and the outcomes were not legally binding, many municipal referendums failed. This caused some cynicism among the political elite, which had (falsely) hoped that the widespread political malaise among the population would disappear once some referendums had been held. Nevertheless, the debate about direct democracy dates from the end of the 19th century, when the Social Democratic League (since 1882) and the Social Democratic Workers Party (since 1895) demanded the introduction of 'direct citizen lawmaking'. Since 1903, the Parliament has held seven debates on introducing the referendum or initiative. Five commissions were set up to investigate I&R. These initiatives were mainly blocked by the Christian democratic parties, who were at the centre of every government coalition from 1917 to 1994. In 1994, a coalition without the Christian democrats was formed with the pro-referendum party D66, which was able to make the inclusion of a binding rejective referendum part of their coalition agreement. Because of the binding outcome, a constitutional change (which needs a two-thirds majority) was deemed necessary. Mainly because of resistance from the right-wing liberal coalition party VVD, the end-proposal was not exactly far-reaching. Nevertheless, during the final vote in the Senate in May 1999, a majority including one VVD senator voted against. D66 caused a government crisis by angrily leaving the coalition. They returned after a promise by the VVD leaders that they would present the constitutional change again to Parliament, and would support a non-binding version of this proposal by ordinary law in the meantime. This became the Temporary Referendum Law. According to the old plan, the constitutional change should be adopted by 2005. But the new rightist-po-

pulist government that was formed after the turbulent elections of May 2002 in which maverick politician Pim Fortuyn was murdered – announced their intention of breaking with the I&R policy of the last two “lilac” governments and abolishing all citizen-initiated referendums – a move which caused some cynicism among commentators and the public as the new government pays much lip service to “political renewal” and “giving the country back to the citizens”. Instead, the government may hold an occasional plebiscite. The public supports I&R: 80% of the Dutch are in favor of “deciding directly on important issues, the so-called referendum”; 15% are against and 5% undecided (SCP poll, end 1998). An October 1995 NIPO poll found, however, that only 49% were in favor of the government proposal for a rejective referendum (10% were against and 40% undecided). We know of only one poll on the difference between the referendum and the initiative, conducted among the Amsterdam population in 1992: if they had to choose between the rejective referendum and the initiative, 60% preferred the latter, 20% the former and 20% were undecided. A majority of politicians is against I&R. The most ‘moderate’ poll is a 1994 poll of the University of Leiden among local politicians, which showed 36% in favor and 52% against the rejective referendum. The debate centers very much on the rejective referendum. However, interest in the initiative option has apparently grown somewhat lately. Currently, the parties which are in favor of the referendum PvdA, D66, GroenLinks & SP (the VVD, CDA, Christen-Unie & SGP are all opposed) - also moderately favor the initiative. As the TRW leaves this area unregulated, a beginning could be made with the introduction of popular initiatives at the municipal and provincial levels. The support of political parties is necessary for this. At the same time, experiences with the referendum can be made through the TRW. Because of criticism of the high quorums, parliament will evaluate the practical effects of the TRW in 2004. The advocates of I&R hope that this will lead to more democratic provisions in the constitutional change.

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Constitutional Requirements for Legislation

Chapter 8 Revision of the Constitution

Article 137

(1) An Act of Parliament shall be passed stating that an amendment to the Constitution in the form proposed shall be considered.

(2) The Second Chamber may divide a Bill presented for this purpose into a number of separate Bills, either upon a proposal presented by or on behalf of the King or otherwise.

(3) The two Chambers of the Parliament shall be dissolved after the Act referred to in the first paragraph has been published.

(4) The newly elected Chambers shall consider the Bill and it shall be passed only if at least two thirds of the votes cast are in favor.

(5) The Second Chamber may divide a Bill for the amendment of the Constitution into a number of separate Bills, either upon a proposal presented by or on behalf of the King or otherwise, if at least two-thirds of the votes cast are in favor.

Article 138

(1) Before Bills to amend the Constitution which have been given a second reading have been ratified by the King, provisions may be introduced by Act of Parliament whereby: (a) the proposals adopted and the unchanged provisions of the Constitution are adjusted to each other as required; (b) the division into chapters, sections, and articles and the headings and numbering thereof are modified.

(2) A Bill containing provisions as referred to under Paragraph (1)(a) shall be passed by the two Chambers only if at least two-thirds of the votes cast are in favor.

Article 139

Amendments to the Constitution passed by the Parliament and ratified by the King shall enter into force immediately after they have been published.

Article 140

Existing Acts of Parliament and other regulations and decrees which are in conflict with an amendment to the Constitution shall remain in force until provisions are made in accordance with the Constitution.

Article 141

The text of the revised Constitution shall be published by Royal Decree in which the chapters, sections and articles may be renumbered and references to them altered accordingly.

Article 142

The Constitution may be brought into line with the Charter for the Kingdom of the Netherlands by Act of Parliament. Articles 139, 140 and 141 shall apply by analogy.

NORWAY

As early as 1891, the Labour party proposed that the popular legislative initiative should be incorporated into the Norwegian constitution. Since then the

national Parliament has debated I&R proposals 26 times, but has so far failed to implement any provisions at all. However, as a majority of the parliament (also at the local level) can trigger a non-binding referendum, important issues like monarchy, prohibition and European integration have been issues for referendums. At the local level a special initiative right gave 5% of the electorate the right to trigger a binding referendum on the sale of alcohol. But this institution (established in 1894) was abolished in 1989. A far less attractive initiative instrument still exists for language issues. Nonetheless, more than 500 local referendums took place between 1970 and 2002 – and there is a national debate about how to strengthen I&R legislation.

- Population: 4,510,000
- Area: 323,759 km²
- Capital: Oslo
- Official languages: Norwegian (Bokmål, Nynorsk), Sami (regional)
- Religion: Lutheran (86%)
- Political System: Parliamentary Monarchy
Parliamentary monarchy (since 1905)
- Constitution: 1814 (without referendum)
- Membership: NATO, UN
- GNP/Capita: \$33,470 (1999)
- I&R practice: 6 nationwide referendums. 1905: union with Sweden & monarchy; 1919 & 1926: alcohol prohibition; 1972 & 1994: EU membership. More than 1000 local referendums in almost 450 municipalities.

Types of Initiative and Referendum

Referendums are not a part of the Norwegian constitution. The word “referendum” is not even mentioned, though many attempts to incorporate it have been made. However, no one has questioned the right of Parliament (Storting) to ask the people for advice through voluntary referendums. A majority of representatives in the Storting can decide to submit an issue to the whole electorate. But legally, the referendum can only be advisory, since the sovereignty of parliament cannot be undermined. Ultimate responsibility resides in parliament. Thus nation-wide referendums in Norway are by definition advisory referendums.

I. National level

The referendum device has been discussed in the Storting on a number of occasions. Up to the turn of the century there were 26 debates in the Storting relating to proposals for a constitutional amendment to allow for referendums. Most proposals concerned

facultative referendums that would give a minority in the Storting the right to submit a bill that had already been passed to the electorate for approval or rejection. In such referendums, the people play the role of an appeal instance and have the right to accept or reject a decision by parliament. More generally, this type of referendum illustrates the role the referendum often plays in political debate: demands originate from the opposition, and the referendum is a tool in the hands of the minority. Political parties in an entrenched and seemingly ever-lasting opposition had supported the referendum as their last chance of exercising some power. However, once they are elected themselves, their interest in referendums seems to diminish. The direct popular initiative has attracted little interest among the Norwegian political parties. Initiatives give voters themselves legislative authority and the right to decide an issue. Labour’s first party manifesto of 1891 mentioned the people’s right to participate in the legislative process. The phrase was taken from the famous German Gotha-manifesto but disappeared from the party manifesto of 1903 and has never reappeared. However, demands for initiatives and other types of referendums have been put forward since then by the Progress Party. No other party has so firmly defended direct democracy as they have. As a right-wing populist party that is not surprising. Populism and support for referendums do tend to go together, given the populists’ trust in the people and their mistrust of politicians and the establishment. All proposals for a constitutional amendment to include referendums in the constitution have been rejected in the Storting. Amendments require a two-thirds majority, and most of these proposals have not even come close to being passed. Usually, there has been only minority support for a referendum-proposal. A proposal in 1968 was the only one to exceed 50 per cent support in the Storting. However, Norwegian reluctance to support referendums in principle has not stood in the way of six nation-wide referendums in its history.

a) Foundations of a Kingdom - The first two referendums were held in 1905, and in both cases pressure from abroad played a central role. In 1905 the unpopular union with Sweden was unilaterally dissolved by Norway, and it was declared a sovereign country. Sweden responded that this could only be accepted if certain conditions were met, one of them being that the people themselves would agree in a referendum. The result of the referendum left no doubt: 99.9 per cent of the votes (only men were allowed to vote) favored the dissolution of the union. Then the question arose as to whether Norway was to be a republic or a monarchy. The government pro-

posed that a Danish prince should be appointed king of Norway. Some republicans protested and demanded that the question about monarchy versus republic ought to be decided in a referendum. The Danish prince picked up the demand for a referendum and declared that a prerequisite for him becoming king was that the people would endorse the idea. As many as 78.9 per cent (restricted to men) voted in favor of the Danish prince.

b) Prohibition - The next two (in 1919 and 1926) concerned the prohibition of alcohol. In the first one, a majority (61.6 %) supported the prohibition of all liquors containing more than 12% alcohol (by volume). In 1926 prohibition was repealed with an even clearer majority (64.8%). In the inter-war period the prohibition issue was a burning question. One reason for the political turbulence as well as one reason why a referendum was held in the first place was that some of the major political parties were split on the issue. That was especially the case with the Liberals, which at that time were the most important party. As some voters became increasingly committed and personally involved in prohibition, the party split became highly visible. In fact, as the largest party, the Liberals had the power to decide if a referendum should be held or not. Suddenly, after a long period of resistance, the party leader became a proponent of a referendum. As the Liberals were regarded as defenders of prohibition, the party had lost a lot of voters in the cities among those who disapproved of alcohol restrictions. The demand for a referendum seems partly to have been an attempt to disassociate the party from the issue. The voters should decide, not the political parties.

c) European Integration - Prohibition triggered a lot of problems. But it was not possible to end prohibition without a new referendum. What the people have once decided can only be nullified by the people themselves. The same logic can be applied to the referendums about Norwegian membership of the European Union. The people have twice rejected membership, in 1972 and 1994. The results were almost identical: 53.5% against membership the first time and 52.4% the second time. In reality, referendums concerning membership of the European Union have been obligatory since 1972. That was not the case when the Storting decided in 1962 to hold a referendum concerning membership of the Common Market, as the European Union was called at that time. No other country had then arranged a referendum in connection with their entry to the Common Market. Norway's first application for membership was blocked by President de Gaulle's veto against UK membership. The 1962 referendum decision has in

many ways a similar background to the 1919 prohibition referendum: the most important party in 1962 (Labour) was divided, and a demand that the people should be asked arose in the minority who opposed membership. Saying 'yes' to the demand for a referendum, the Labour leadership de-coupled the EU-issue from ordinary party-politics. The Labour voters who disagreed with the party-leaders' pro-membership attitudes could be mollified: the voters would decide. That made it possible to combine being a Labour voter and being against membership. The political establishment was defeated in the two EU-referendums just as it had been in the 1919 prohibition referendum. The periphery won and the centre lost.

II. Local level

Norway has a long tradition of local referendums. At the local level there has also been access to direct popular initiative, but this is restricted to only two issues: the sale and purchase of alcohol and the choice of language in the primary school. There are two official languages in Norway, "Nynorsk" and "Bokmål". "Nynorsk" is based on the dialects spoken in the countryside in Western Norway: it is a rural language. "Bokmål" is influenced by the urban areas and is more similar to Danish than "Nynorsk" is. In fact, the differences between them are rather small, but they have symbolic significance. The rules regarding popular initiative in the language issue have differed somewhat. For a long period, either the municipal council or as much as 25 per cent of the electorate had the right to approve the use of referendums. The result was binding on the school board if the majority comprised at least 40 per cent of the electorate. There has been some dispute about who is entitled to vote in a language-referendum: should it be all the citizens living in the school district, or should it be restricted to the parents or care-takers of children under the age of 14? The first alternative has been defended by the proponents of "Nynorsk". They argue that language is a cultural question with far-reaching consequences. Consequently, it involves the whole local community. However, to understand this argument it is also necessary to underline a tactical aspect. The "Nynorsk" movement has traditionally had a stronger foothold in the local elites, among teachers and local politicians, than among the grassroots. In fact, spokesmen for "Nynorsk" had been suspicious of I&R. Thus, they have supported the line that in order to accept the people's voice as the last word, various requirements have to be met. But in spite of these requirements, over recent decades "Nynorsk" has been in retreat. The use of initiative

has been a weapon against “Nynorsk”, and this weapon is easier to use when the right to demand a referendum or to vote is limited to parents only. In 2000, they again changed the definition of who is entitled to vote - from parents only, to all the citizens in the school district - after a mushrooming of initiatives with the aim of replacing “Nynorsk” with “Bokmål”. This change was a rescue operation for “Nynorsk”. In contrast to the “Nynorsk”-movement the temperance movement has been one of the strongest grassroots-movements in Norwegian history. The main strategy of the temperance movement was to ban the sale of alcoholic beverages step by step, using local referendums, with the ultimate aim of making the whole country dry. The history of local alcohol referendums started in 1894 and ended nearly a hundred years later. In 1989, the rules on decisive referendums and people’s initiatives were abandoned. Times had changed, and the fight against alcohol was lost. That put an end to a long history of referendums and initiatives. Prior to 1989, five percent of the voters had the right to approve the use of referendums to establish a new license for selling alcohol or to ban an old one. Both men and women were included in the electorate. Actually, nearly 20 years before women were generally given franchise, they had the right to vote in these referendums. The municipal council also had the right to demand a referendum. Up to 1989, you had to use a referendum to authorize a license to sell alcohol in a municipality. Over a period of nearly a hundred years, the popular initiative changed its political role. At the start, it was a weapon in the hands of those who wanted to ban alcohol; at the end it was a weapon for those who wanted the right to purchase alcohol. In municipal law the words “referendum” and “initiative” are absent. But that does not prevent the various municipal councils from organizing advisory referendums. Usually every year there is at least one referendum about merging municipalities. Inhabitants are usually against being “swallowed up” by neighboring municipalities. Leading politicians have argued that no municipality should be dissolved and become a part of a larger one without the consent of the inhabitants. However, there are no laws requiring referendums in these cases. A survey among all Norwegian municipalities indicates that at least 514 local referendums were held between 1970 and 2000 (an average of 16 per year). About half of these ballot votes involved the whole local electorate, while the other half took place in larger or smaller parts of the municipality. The issues of alcohol and language were by far the most frequent, representing 75% of the total. The other

themes were “local territorial” (mainly merging of municipalities – 58), “school district regulation” (63), “environmental issues” (4) and “identity” (name of city and status of township or city : 2). In 2001 and 2002 (up to 30.04.02) at least three local referendums were held on three different issues (alcohol, identity and environment). Over this fairly short period, almost half of Norway’s 435 municipalities have had experience of local referendums. Further investigation revealed that the use of local referendums does not depend on the number of citizens in the municipality, so that there has been a fairly even use of the instrument.

III. Trends

Norway is a country which has almost no statutory rules on I&R but which enjoys a long historical tradition of referendums. The two issue areas with special laws demanding local referendums reflect a past time. The procedure for deciding the language question is still used, but the reduced status of “Nynorsk” makes that less relevant. There is little demand for the use of the referendum. However, proposals have been submitted for popular initiatives at the local level in order to revitalize democracy. In the second half of the 1990s, an organization (Kommunenes Sentralforbund) started a campaign to improve local democracy. The background was concern about the decline in turnout in local elections from 81.0 per cent in 1963 to 60.4 in 1999. One of their proposals was that five per cent of the citizens could urge the municipal council to arrange advisory referendums. The idea was that all the municipalities should adopt this rule. What is clear is that the decline in voter-turnout at the local level has been accompanied by a pronounced increase in participation in single-issue actions over recent decades. It is easy to draw a parallel to referendums which are also linked to single issues. However, this indication of improved conditions for organizing referendums has not led to a boost in direct democracy.

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Constitutional Requirements for Legislation

E. General provisions Article 112

If experience shows that any part of this Constitution of the Kingdom of Norway ought to be amended, the proposal to this effect shall be submitted to the first, second or third Storting after a new General Election

and be publicly announced in print. But it shall be left to the first, second or third Storting after the following General Election to decide whether or not the proposed amendment shall be adopted. Such amendment must never, however, contradict the principles embodied in this Constitution, but solely relate to modifications of particular provisions which do not alter the spirit of the Constitution, and such amendment requires that two thirds of the Storting agree thereto. An amendment to the Constitution adopted in the manner aforesaid shall be signed by the President and the Secretary of the Storting, and shall be sent to the King for public announcement in print, as an applicable provision of the Constitution of the Kingdom of Norway.

POLAND

After the collapse of the communist system, Poland returned to life as a sovereign country in 1989, and the present constitution was passed by parliament and came into force in 1997. The Republic of Poland has a two-house parliament, elected for a term of 4 years, composed of the sejm (lower house, 460 deputies) and the senate (100 senators). The President and the Council of Ministers are the executive authorities at the national level; the President is elected for a term of 5 years in direct elections and may be re-elected only for one further term. Since January 1st, 1999, there are 3 levels of local government in Poland: province (województwo) (16), municipality (powiat) and commune (gmina). Provinces and municipalities have twofold authorities: one nominated, which represents the government and the state administration, and one elected. Communes are fully self-governmental, with locally elected authorities. The present division of responsibilities and competences between local government levels and between nominated and elected authorities was introduced by the 1999 reform of territorial division and administration and seems to be not yet fully established. Poland is a member of the Council of Europe, the Central-European Initiative (ISE), the Central European Free Trade Agreement (CEFTA), the Council of the Baltic Sea States (CBSS), and a candidate country to the European Union.

I. National level

The Constitution of the Republic of Poland states that: "A nationwide referendum may be held in respect of matters of particular importance to the State". The right to trigger a nationwide referendum is vested in the Sejm. The right to ask for a referendum belongs to the Sejm itself, the Senate, and the

Council of Ministers. This right also belongs to a group of at least 500,000 registered voters; however, the national budget, defence and the right of pardon are excluded. The result of a nationwide referendum is binding only if more than 50% of the electorate has participated. The subject-matter of a referendum cannot be put to referendum again within 4 years. Nationwide referenda are conducted by:

- the National Voting Commission (which also acts in elections as a general supervisor according to the Electoral Law);
- Provincial Referendum Commissions (composed of court judges);
- District Referendum Commissions (appointed by executive organs of communes), which conduct ballots.

Political parties have the right to nominate their representatives to Referendum Commissions at all levels. There are Electoral Bureaus at national and provincial level which give technical support to the Commissions; local government gives it at the level of the self-governmental communes. The validity of a nationwide referendum, on the basis of a report of the National Voting Commission, is determined by the Supreme Court and promulgated in the Law Journal of the Republic of Poland (Dziennik Ustaw).

The Constitution of the Republic of Poland states that: "The right to introduce legislation shall also belong to a group of at least 100,000 citizens having the right to vote in elections to the Sejm". The signatures of supporters are collected by a Committee formed by at least 15 citizens. The Committee has to present, together with the signatures, a draft of the bill proposed, consistent with the Constitution and with the rules of procedure of the Sejm. The validity of the signatures is checked by the National Voting Commission. A member of the Committee, or his representative, is entitled to participate in the work on the bill in the Sejm according to its rules of procedure. The Committee covers the expenses of pursuing the Initiative. The member of the Committee is obliged to submit a financial report of the Committee to the Ministry of Finance.

II. Local level

The Constitution of the Republic of Poland states that: "Members of a self-governing community may decide, by means of a referendum, matters concerning their community, including the dismissal of an organ of local self-government established by direct election."

The right to vote in a local referendum belongs to the permanent residents in a given unit of local self-government who have the right to vote in elections to its constitutive organs. Local referenda - communal, municipal and provincial - are ordered by constitutive organs of the above-mentioned units at their own initiative or at the initiative of at least:

- 10% of the inhabitants of a commune or municipality;
- 5% of the inhabitants of a province.

The signatures of the supporters of a referendum are collected by a "referendum initiator", which may be:

- a group of at least 15 citizens, or in the case of a communal referendum, 5 citizens;
- an authorized group of a political party acting in a given unit of local self-government;
- a public organization possessing legal status and the authorization to act in a given unit of local self-government.

The chairman of the executive organ of a unit of local self-government, after obtaining a referendum proposal, notifies the initiator of the referendum as to the number of citizens having the right to vote. In the case of a referendum on a matter other than the dismissal of an organ of local self-government, the constitutive organ of the unit of local self-government appoints a commission with the task of examining the referendum proposal; the commission invites a representative of the initiator of the referendum to take part in its work as an observer. If the commission finds no technical flaws in the proposal, the constitutive organ takes a resolution about the referendum. The result of a local referendum is binding if at least 30% of those having the right to vote have participated in it. Local referenda are conducted by:

- Territorial Referendum Commissions (provincial, municipal, communal);
- District Referendum Commissions.

In the case of a referendum on the matter of the dismissal of an organ of local self-government, both Referendum Commissions are appointed by the Provincial Voting Commissioner (who also acts in elections of the local self-government organs). In the case of a referendum on another matter, Territorial Commissions are appointed by constitutive organs of given units of local self-government, and the Territorial Commissions appoint District Commissions. The executive organ of a unit of local self-govern-

ment and the initiator of a referendum have the right to nominate their representatives to the Territorial Commission and to all District Commissions. The acting representative of the referendum initiator is obliged to submit a financial report about the initiator's income and expenditure relating to the referendum to the executive organ of the unit of local self-government or - in the case of a referendum on the matter of the dismissal of an organ of local self-government - to the Provincial Voting Commissioner.

III. Practical Guide

Since 1995 about 70 legislative acts relating to I&R have been promulgated in Poland. Among them there are 3 key acts:

- the Referendum Act, on June 29th, 1995,
- the Act on the Execution of Legislative Initiatives by Citizens, on June 24th, 1999,
- the Local Referendum Act, on September 15th, 2000.

These acts, beside the basic provisions discussed above, specify details of I&R procedures. In relation to referenda they specify:

- the content of resolutions and notifications on referenda, the proclaiming organs, and ways of promulgation;
- the time limits for some stages of the procedures
- the scopes and competencies of organs conducting referenda;
- the content of voting cards and the manner of completing them during a ballot;
- the manner of determining the ballot result by District Referendum Commissions and the way of reporting the results;
- the rules of referenda campaigns and penalties for violations of them.

The Referendum Act moreover contains a chapter about the Constitutional Referendum.

In the matter of citizens' initiative, the Act on Execution of Legislative Initiative by Citizens specifies that:

- a group of 15 authorized voters, who form a Committee to introduce legislation, shall submit a written declaration about the formation of their Committee, with their full names, addresses, identity numbers in the PESEL system and the name of a nominated representative of the group. The Committee's name must be given, together with

the title of the proposed bill and the Committee's official address. The notification about the formation of a Committee can be delivered to the Marshal of the Sejm after the collection of the first 1000 signatures of support, and the list of supporters must include the same personal data as the list of the Committee members;

- in the case of a rejection of the notification by the Marshal of the Sejm, the representative has the right to submit a complaint to the Supreme Court within 14 days from the date of delivery of notification of rejection. The complaint shall be considered by the Supreme Court within 30 days;
- the rules of the promotional campaign are the same as the rules of election campaigns determined in the Electoral Law;
- supporters' signatures shall be collected on forms decided on by the Prime Minister, and a draft of the bill proposed has to be available in the places where the signatures are collected;
- the representative of a Committee shall deliver to the Marshal of the Sejm a draft of the bill proposed together with the required numbers of signatures within 3 months from the date on which he received the Committee's notification.

The Act also specifies penalties for any violation of regulations.

IV. Trends

It was a referendum which accompanied Poland's regaining of its independence after WWI - according to the Treaty of Versailles the Polish-German frontier was decided by plebiscite in 1920. After WWII, the first voting act on the national scale on Poland's territory was a referendum carried out by the communist authorities in 1946 relating to a move to a one-house parliament, a new economic system resulting from nationalization and the abolition of large estates, and the setting of the western frontier along the Nysa and Odra rivers (Oder-Neisse line).

In post-communist Poland, 4 nationwide referenda have taken place - none of them as the result of a citizens' initiative. Two of them, on the subject of the de-nationalization of state-owned property, were held together in 1996. The first concerned "some directions for the use of state-owned property", and the second "the general enfranchisement of citizens". The third nationwide referendum was the Constitutional Referendum conducted in 1997. There was a citizens' initiative for a nationwide referendum on the subject of re-privatization which had the support of 600,000 signatories, but the proposal was

rejected by a vote in the Sejm. Since the formation of a new self-government structure in post-communist Poland, quite a number of referenda have taken place at the local level, many of them relating to the dismissal of organs of local self-government. During the first term of the local self-government organs, 40 referenda were conducted, only 3 of them (7.5%) valid, the rest invalid because of insufficient turnout. During the second term there were 104 referenda, 8.7% of them valid. During the third term, 69 referenda were conducted, 23.3% of them valid. The most recent countrywide referendum in Poland took place on June 8 on EU accession.

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PORTUGAL

In 1998 Portugal tried out – for the first time – its very restricted set of I&R institutions. The experience proved to be very negative: at no referendum was the required 50% turnout reached, thus making the ballots non-binding exercises; an important popular test of European integration at the ballot was thwarted by the Constitutional court, which ruled that the Amsterdam-referendum did not respect "the requirements of objectivity, clarity and accuracy" demanded in the Constitution. The right of petition – falsely called a citizens' referendum initiative – is very weak, as crucial issues like the constitution, taxation and the legislative competence of Parliament are excluded from referendum. However, ballots on international treaties are possible.

- Population: 10,355,824
- Area: 92,345 km²
- Capital: Lisbon (Lisboa)
- Official language: Portuguese
- Religion: Roman Catholic (90%)
- Political System: Republic (since 1910)
- Constitution: 2/4/1976 (without referendum)
- Membership: EU, NATO
- GNP/Capita: \$11,030 (1999)
- I&R practice: 3 nationwide referendums (since 1933). The first ballot was a de facto fascist plebiscite on the constitution; in the second (on legalizing abortion, 28/6/1998) and the third (on regionalization, 8/11/1998) the 50% turnout quorum was not reached – making the 'No'-results (50.2 % abortion, 63% regionalization) non-binding.

Types of Initiative and Referendum

Portugal is a parliamentary republic, with a President elected by direct, universal and secret vote by Portuguese citizens above the age of 18. His term is for 5 years, and he cannot be re-elected for a third consecutive term. The Government is formed by the Council of Ministers, headed by the Prime Minister. The Prime Minister is politically responsible to the President and Parliament. Legislative power is exercised by Parliament, the representative assembly of the people. It is made up of a single house of deputies with a minimum of 180 and a maximum of 230 parliamentary seats. Members of Parliament are elected for 4 years by the universal, direct and secret vote of Portuguese citizens above the age of 18 according to the system of proportional representation and the Hondt method of the highest average. Within the limitations prescribed by the Constitution, the President has powers to dissolve Parliament, appoint a Prime Minister and dismiss the Government. The present Constitution was approved in 1976, and marked the end of the process of replacing the dictatorship, which was wound up in 1974. It has been revised several times.

I. National level

The right to citizens' legislative initiative is not considered under Portuguese legislation. There is only the citizens' referendum initiative. Article 521 n12 of the constitutional revision of 1989 added the principle by which certain collective petitions presented to Parliament would be given consideration in plenary sessions. Article 1781 n13 states that the petitions presented to Parliament will be considered by the committees, or by a committee specifically appointed for that purpose. The committee can consult other relevant committees on the matter and can even call for evidence from citizens. Politically, these petitions may have the effect of a citizens' legislative initiative.

a) Referendum (ballot) - In accordance with Artº 115º of the Constitution, law nº15-A/98 of 3 April regulates the procedures for national referendums. A referendum can only deal with questions of relevance to national interest and which are decided by Parliament or the Government, as in the approval of international conventions or in enacting legislation. The following are excluded from referendums: changes to the constitution; issues or procedures relating to taxation and to annual state budget matters; matters within the absolute legislative competence of the parliament, with the exception of general laws about the educational system. Each referendum can only deal with a single issue. A maximum of

three questions is allowed in each referendum, with simple answers of either 'yes' or 'no'. The final decision to call a referendum belongs to the President of the Republic. The referendum can be proposed to the President by: the government (on matters within its own competence); or parliament (on matters within its specific competence). Initiatives addressed to parliament may come from: the deputies; the government; or the citizens.

b) Petition - "citizens' referendum initiative" - The citizens' petition is presented in written form and is addressed to parliament. The petition must be supported by the signatures of at least 75,000 citizens, who must be registered electors residing on national territory. Portuguese citizens living abroad are asked to participate if their specific interests are affected. The referendum request must detail the full name and identity card number of all those signing it. Parliament may verify, through public administration services and by sampling, the authenticity of the signatures and identities of the signatories. The petition states the questions to be put to the referendum. If appropriate, the petition will refer to the specific acts passed by, or under consideration by, parliament; otherwise, the petition will be presented as a proposal for legislation. The citizens' petition assumes the form of a resolution-proposal to be discussed and voted on in parliament. After being accepted by parliament, the citizens' petition is published in the Parliament's newspaper (Diário da Assembleia da República).

The petition must name a minimum of 25 representatives, designated by the citizens. The representatives must appoint an executive committee. Within two days, the President of the Parliament consults the relevant committee(s) about the referendum petition. After receiving the committee's advice, the President of the Parliament can either accept the petition proposal as it stands or (within 20 days) return it to the citizens' representatives for them to modify the text. Once accepted, the petition is referred to the relevant committee. The Committee can question the citizens' representatives in order to clarify any details necessary to the understanding and formulation of the petition, after which the committee has 20 days to formulate the resolution-proposal, which includes the text of the referendum petition. The President of the Parliament is required to schedule consideration of the resolution-proposal for one of the next 10 parliamentary plenary sessions. After debate and a vote, the proposal embodying the citizens' petition is either approved or rejected. A rejected petition cannot be re-presented within the same legislative session. In the 8 days following publication of the Parliament's

decision, the President of the Republic submits the referendum proposal to the constitutional court for an assessment of its constitutionality and legality. If the court finds it unconstitutional or illegal, the President of the Republic cannot promote the referendum petition. Following the final decision of the constitutional court, the President of the Republic has 20 days to call the referendum. If the President decides not to call it, then he should notify Parliament and the citizens' representatives. The referendum is binding only if participation is greater than 50% of the registered electorate. If the voting results in a positive binding answer to the question(s) referred to referendum, the Parliament, or the Government, will approve the international convention or piece of legislation concerned (within 90 days for the former, or 60 days for the latter). The President of the Republic cannot refuse to ratify an international treaty, or to sign an act that approves an international agreement or the promulgation of a legislative act if he disagrees with the result of a binding referendum. If, on the other hand, the voting result is negative, neither Parliament nor Government can approve any international convention or piece of legislation relating to the questions(s) and the negative result(s), unless: there is an election for a new Parliament; a new referendum is called resulting in a positive answer. Referendum proposals resulting in a negative response from the voters cannot be re-presented in the same legislative session, unless: there is an election for a new Parliament; or, in the case of a governmental petition, until the establishment of a new Government.

II. Regional level

The process as such does not exist because there is no regional division of administration. Administrative regions are foreseen in Art. 1. 2551-2621 of the Constitution. Their effective establishment would require a special referendum envisaged in Art. 1. 2561 of the Constitution and Art. 1. 2451-2511 of the law n115-A/98, which approves the specific "Organic Law of the Referendum Regime". The specific rules comprise: the decision to call the referendum is taken by the President of the Republic, under a proposal put forward by Parliament (a direct proposal by the Government is not allowed); the referendum has 2 questions, a national one and another one relating to each regional area; outside the regional areas to be established, the referendum only deals with the national question; in the question relating to the regional area, only the voters registered for that area participate. On November 8, 1998 a national referendum was held on the practical establishment of the

administrative regions for mainland Portugal. The result was negative. The constitutional revision of 1997 introduced the possibility for a referendum in the Autonomous Regions of Madeira and Azores by adding a n12 to Art. 1232 1. It says: " It is the competence of the regional Parliament to put forward proposals for referendums through which the electorate of the region will be called by the President of the Republic to have a direct binding opinion on matters of relevant regional interest, whereupon Art.1151 1 will be applied with the necessary changes." So far, there has been no referendum in the Autonomous Regions.

III. Local level

The local referendum entails direct consultation with the voters registered for a local authority, namely parishes and municipalities. Local consultation investigates issues that are the absolute competence of the local authority. Tax issues or other matters already subject to an irrevocable decision are excluded from local referendums. Only parish/municipal registered voters are allowed to vote. The local consultation is binding. The decision to call a local referendum is taken by the parish council or the municipal council. Proposals for a local authority consultation can be put forward by the councils or by the executive boards of the local authorities. Within 8 days, the president of the local assembly forwards the application to the constitutional court for an assessment of its constitutionality and legality. If the court confirms constitutionality and legality, then the referendum must be held within not less than 70 and not more than 90 days. Since 1998, there have been several local referendums on matters such as: the creation of a new parish; the demolition of an old water reservoir; a road layout; designation of an environmental area.

IV. Trend

It was only following the revolution of 1974 that the emergence of a decentralized state became a reality in Portugal. Indeed, the 1976 constitution established three tiers of local democratic government to replace the centrally controlled administration characteristic of the former regime. The three tiers comprised parishes, municipalities and regional government; the first two were put in place in 1976, but the regional tier of government has never been established. From 1976, local government became autonomous and democratically elected. In administrative and financial terms, although accountable to central government and under the principle of 'general competence', it can undertake any actions that are for the well-being of the inhabitants of their specific territory. The ongo-

ing failure to create any form of regional government has ensured the continuing importance of local authorities and their pivotal role in the creation of new forms of governance. Local authorities are clustered into districts, each run by a Civil Governor appointed by the Government. There have been important changes in the relationships between different levels of government (supranational, national, regional, local), the roles of different sectors (public, private, voluntary, community) and between locally based institutions (business organizations, community groups, education and training establishments, etc). Key aspects of this change include moves to greater state decentralization, changes in the nature of local government, the influence of supranational resources and policy agendas, changing national state policy, a broader base of participating actors, and greater localized variation. The rejection by the national referendum of 1998 of the proposal to create regional administrations means that existing regional institutions, such as the centrally-controlled regional planning authorities (CCRs), retain a central role; it also gave an impetus to the development of new forms of regional level governance, most notably through the creation of the Regional Development Agencies (RDAs). The EU has played a central role in the development of sub-national governments in terms of both finance and organization. Financially, regional and local levels have benefited from EU resources in almost all fields of activity. Alongside the Regional Operational Programs principally for the construction of basic infrastructures, municipalities have also benefited from the EU Initiatives and from the Cohesion Fund. Organizationally, the administration of EU funds has sponsored a significant development of the 5 CCRs.

Since 1974, there have been two referendums in Portugal:

28 June 1998 "Do you agree that the voluntary interruption of pregnancy should not be penalized, when decided by the woman during the first 10 weeks [and carried out] in a legally authorized health centre?"

The referendum was not binding. Only 31.94% of the registered voters participated, of which 50.91% answered no, and 49.09% answered yes.

08 November 1998 Question one: "Do you agree with the practical establishment of administrative regions?" The referendum was not binding. Only 48.29% of the registered voters participated, of which 63.51% answered no, and 36.49% answered yes.

Question two: "Do you agree with the practical establishment of an administrative region in your electoral area?" (only for the citizens registered in the regions

foreseen in law n119/98 of 28 April). The referendum was not binding. Only 48.29% of the registered voters participated, of which 63.93% answered no, and 36.07% answered yes. The negative response led to the revocation of law n°19/98. On 29 June 1998, the Parliament proposed to the President of the Republic a referendum on: "Do you agree that Portugal should continue to participate in the construction of the European Union within the Amsterdam Treaty?" On 29 July 1998 the Constitutional Court judged the referendum unconstitutional, because it did not respect "the requirements of objectivity, clarity and accuracy" demanded in Art1. 1151 2621 n16 of the Constitution. Prime Minister Jose Manuel Durao Barroso announced in June 2003, that Portuguese citizens will get the last word on the new EU constitution.

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Constitutional Requirements for Legislation

Section II Revision of the Constitution

Article 284 Competence and Time of Revision (1) The Assembly of the Republic may revise the Constitution once five years have elapsed after publication of any revision law. (2) The Assembly of the Republic may, however, by a majority of four-fifths of its members entitled to vote, assume powers of constitutional reform at any time after revision provided for in the foregoing article.

Article 285 Power to Initiate Constitutional Reform

(1) Members of the Assembly are competent to initiate constitutional reform. (2) Once a plan for constitutional reform has been tabled, any further such plans must be tabled within 30 days.

Article 286 Approval and Promulgation (1)

Amendments to the Constitution are approved by a two-thirds majority of the members of the Assembly entitled to vote. (2) Changes in the Constitution which are approved are incorporated in a single revision law. (3) The President of the Republic may not refuse to promulgate the revision law.

Article 287 New Text of the Constitution (1)

Amendments to the Constitution are inserted in their proper place with the necessary substitutions, deletions, and additions. (2) The new text of the Constitution is published together with the revision law.

Article 288 Limits to the Revision on the Substance

The laws revising the Constitution safeguard: a) National independence and the unity of the State; b)

The republican form of government; c) The separation of the Churches from the State; d) The rights, freedoms, and safeguards of the citizens; e) The rights of the workers, workers' committees, and trade unions; f) The co-existence of the public, the private, and the cooperative and social sectors, with respect to the property of the means of production; g) The existence of economic plans within the framework of a mixed economy; h) Universal, direct, secret, and periodic suffrage for the appointment of the elected members of the organs of supreme authority, the autonomous regions, and the organs of local government, as well as the system of proportional representation; i) Plurality of expression and political organization, including political parties and the right to a democratic opposition; j) Separation and interdependence of the organs of supreme authority; K) The scrutiny of legal provisions for active unconstitutionality and unconstitutionality by omission; L) The independence of the courts; M) The autonomy of local authorities; N) The political and administrative autonomy of the archipelagos of the Azores and Madeira.

Article 289 Circumstantial Limits to Revision No act may be undertaken to revise the Constitution while a state of siege or emergency is in force.

ROMANIA

A few institutions are provided for in the Romanian Constitution, but they are equipped with such quorums and requirements that the practical experience is almost zero. The totalitarian heritage is hindering the democratization of the country, as the state structure is still very centralistic and based on the powers of the president. In 1986 the then-dictator Ceausescu organized an army-reduction plebiscite with a turnout of 99.99% and the following result: 100% yes. However, since 1864 there has been the tradition of letting the citizens decide on the constitution. The upcoming decisions on joining NATO and the EU will probably lead to a new referendum experience, influencing also the local level, where a new law of autonomy gives greater freedom.

- Population: 22,458,000
- Area: 238,391 km²
- Capital: Bucharest (Bucuresti)
- Official languages: Romanian
- Religion: Romanian Orthodox (86%)
- Political System: Republic (since 1991)
- Constitution: 8/12/1991 (referendum; 79.11% yes).
- Membership: EU- and NATO-applicant
- GNP/Capita: \$1,470 (1999)

- I&R practice: seven nationwide referendums since 1864. Only one since 1991: on December 8, 67% of the electorate participated in a constitutional referendum. No local experience at all.

Types of Initiative and Referendum

I. National level

a. National referendum - The law (nr.3/2000) on national and local referendums was adopted on February 22, 2000. There are 3 possible subjects of a national referendum: modifying the Constitution; dismissing the President of Romania; and issues of national interest. Several referendums on separate issues may take place on the same day (but on separate referendum forms). The constitutional articles (concerning the character of the state and the fundamental rights and liberties of the people) which cannot be modified, cannot be the subject of a referendum. At least 50% + 1 of the electorate must participate for a referendum to be valid. A referendum is compulsory within 30 days of parliament having voted either to modify the constitution or dismiss the president. In the case of issues of national interest, the president may request a national referendum after consulting parliament. In the case of modifying the constitution or removing the president, the date and the aim of the referendum must be determined by parliament by means of a special law. The president decides by decree the date and the issue which will be the subject of a referendum concerning questions of national interest. The date and the issue must be the subject of an information campaign in the media. The campaign has to start at least 20 days before the date determined for the referendum. Issues of national interest are considered to be: A. Making decisions about economic reform and national strategy. B. Making special political decisions concerning: 1. The general rules on private and public property 2. The organization of the public local administration, the territory, and the general rules about local autonomy 3. The general organization of the educational system 4. The structure of the national defense system, the organization of the army, the participation of the army in certain international actions 5. International actions committing Romania for an undetermined period or a period longer than 10 years 6. The integration of Romania into the European and Euro-Atlantic structures. There are no provisions by which citizens, acting on their own, can legally require a referendum.

b) The legislative initiative of the citizens - In the Romanian legal system there are 3 kinds (and levels) of laws: simple, organic and constitutional laws.

The Constitution offers the possibility of the civic legislative initiative for all three kinds of laws, excepting laws concerning taxes, international issues, amnesty and commutation of penal sentences. For simple and organic laws, at least 250,000 signatures from at least a quarter of Romania's 41 counties (at least 10,000 from each of these counties) must be gathered. For modifying the constitution through the citizens' initiative at least 500,000 signatures from at least half of Romania's counties (at least 20,000 from each county) must be gathered. According to law nr. 189 /1999 an initiative committee composed of a minimum of 10 citizens having the right to vote must be formed. The members of this committee must elect a president. Members of the government, the president and people who are not allowed to be members of political parties (judges, military personnel, policemen and so on), cannot be members of this committee. The committee must be constituted through a legally registered declaration. The legislative proposal and the names of the executive committee must be published in Romania's Official Monitor (for free). The proposal must be formally presented to Parliament within 3 months. The Legislative Council of Parliament also has to approve the proposal (within a maximum of 30 days) before it is published. The list of collected signatures must contain: the name of the legislative proposal and the number of the country's Official Monitor which published it, the full name and address of the citizens, their ID number, their personal number and, of course, their signatures. The mayors or the police have to check that those who have signed actually exist. The lists are public and any challenge to a signature means that the person whose signature has been contested must provide evidence for it. The Constitutional Court must confirm (within a maximum of 30 days for normal and organic laws and 60 days for modifications to the constitution): It is very important that after this phase the legislative proposal does not become law and does not automatically become the subject of a national referendum; the initiative only becomes a legislative proposal after it has been discussed and approved in parliament. Parliament makes the final decision as to whether a referendum will be held by approving – or rejecting – the legislative proposal through an ordinary vote. There have been a number of attempts, but so far no initiative has cleared all the hurdles. The most recent one is currently in the process of being published: a civic coalition which brings together many NGOs under the title of "The Civic Initiative for the Responsibility of the Political Act" is promoting a project to replace the current electoral laws with an unique "Electoral Code". The proposed Electoral Code

would substantively change the whole Romanian electoral system. Three earlier attempts at gathering the 250,000 signatures required have failed; this is now the fourth one.

II. Local level

A local referendum can be held when there are questions of particular interest to the local community. Any legislative proposals to modify the boundaries of the administrative divisions must be first subjected to a local referendum of the citizens living in those administrative divisions before being sent to parliament. For other issues, referendums can be organized at all levels of the administrative division. A referendum is carried by a simple majority of 50% +1 of the votes cast. The mayors or the chairmen of the local councils draw up the referendum proposals or the issues which are to be addressed by the referendum. These have to be announced at least 20 days before the chosen date for the referendum. A local referendum must be held on a Sunday. The rest of the process is the same, the only difference being in the level of the Electoral Office involved - which is at the local level of the referendum. A local referendum took place recently in some counties of Romania regarding the modification of some local administrative divisions, whose citizens claimed autonomy in their relations with the neighboring villages. The result was the creation of several new local divisions within the county. For both levels, the referendum has to be organized very similarly to the elections: the citizens vote in the voting sections with the same security measures; the local, regional and national (in the case of a national referendum) electoral offices oversee the whole process. Citizens have to go to the voting sections and present their identity card, which is checked against the data available on the electoral lists (identity card number, address, and date of birth). The citizens cast their votes in closed booths and on secret referendum voting-slips. The electoral office is composed of a president (a judge, prosecutor, lawyer or, in case this is not sufficient, a person of good repute) and a maximum of 6 representatives of the parliamentary political parties (in the case of a national referendum) or of the parties represented in the local councils (in the case of a local referendum). The presidents are responsible for the whole process in their section. Their powers extend to a radius of 500 meters around the voting section, where they have to keep order and prevent any attempt to influence the free expression of the popular will. In the event that problems should arise, the president of the electoral office may suspend the process for a maximum of one hour. Any conflicts have to be resolved

within a maximum of 24 hours by the superior electoral offices. People who are house-bound can vote through a special mobile collecting team arranged by the same president. Each electoral office counts the votes and sends the result to the superior electoral office. The Constitutional Court has to confirm the correctness and the result of the referendum and present a special report to Parliament.

III. Trends

The only national referendum to have taken place in the past 12 years was the referendum to adopt the present constitution. It was carried out before adopting the constitution and before a referendum law based on a special law of the Constituent Assembly had been passed. Through this law, the citizens of Romania were called, on the 8th of December, to express their sovereign will by answering either 'yes' or 'no' to the following question: "Do you approve the Constitution of Romania adopted by the Constituent Assembly on the 21st of November 1991?" The process was similar to the one described above. For the immediate future no broader use of the referendum is foreseeable. But there are discussions and projects for modifying the Constitution in 2003. If they manage to proceed to the final stage, there will be a national referendum. The changes in the constitution could also imply a new, broader initiative and referendum system for the future.

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Constitutional Requirements for Legislation

Title VI Revision of the Constitution

Article 146 [Initiative] (1) Revision of the constitution may be initiated by the President of Romania on a proposal of the Government made by at least one quarter of the total number of Deputies or Senators, or by at least 500,000 citizens with the right to vote. (2) The citizens who initiate the revision of the constitution must belong to at least half the number of counties in the country, and in each of the respective counties, or in the City of Bucharest, at least 20,000 signatures must be recorded in support of this initiative.

Article 147 [Majority, Referendum] (1) The draft or proposed revision must be adopted by the Chamber of Deputies and the Senate by a majority of at least two thirds of the members of each Chamber. (2) If no agreement can be reached by a mediation procedure, the Chamber of Deputies and the Senate shall decide thereupon, in joint session, by the vote of at least

three quarters of the number of Deputies and Senators. (3) The revision shall be final after approval by a referendum held within 30 days from the date of passing the draft or proposed revision.

Article 148 [Limits to Amendment] (1) The provisions of this Constitution with regard to the national, independent, unitary, and indivisible character of the Romanian State, the Republican form of government, territorial integrity, independence of the judiciary, political pluralism, and official language shall not be subject to revision. (2) Likewise, no revision shall be made if it results in the suppression of the citizens' fundamental rights and freedoms, or the safeguards thereof. (3) The Constitution shall not be revised during a state of siege or emergency or during war.

SLOVENIA

Slovenia allows minorities (of parliament and of the people) to trigger a referendum. But the result of the referendum is only valid if more than 50% of the electorate participates. As regards the popular initiative, the Slovenians can only make petitions to parliament, but the citizens have exclusive rights in the area of optional referendums. Referendum experience is not very large, and still varied: the independence referendum was a big demonstration in favor of it (88.5% 'Yes'; 93.2% turnout). In 1996, parliament could, by inserting a counterproposal, avoid all possible majorities in favor of a new electoral system. But the Constitutional Court retroactively changed the result and introduced a proportional system. The Slovenian I&R system is weak in innovations (initiatives) and rather strong in respect of the popular veto. There were referendums on both the EU and NATO memberships on March 23, 2003.

- Population: 1,986,000
- Area: 20,253 km²
- Capital: Ljubljana
- Official languages: Slovenian, and regionally Croatian, Hungarian, Italian
- Religion: Roman Catholic (70.8%)
- Political System: Republic (since 1991)
- Constitution: 25/6/1991 (without referendum)
- Membership: EU- and NATO-Applicant
- GNP/Capita: \$10,078 (1999)
- I&R practice: four nationwide referendums, one plebiscite (1990: independence), one popular referendum (1996: electoral system) and two parliamentary referendums (1999: energy; 2001: artificial insemination for unmarried women).

Types of Initiative and Referendum

The constitution of the Republic of Slovenia was formally accepted in December 1991. In the preamble, it is stated that it is based on the charter of independence, on fundamental human rights and freedoms, on the right to national self-determination and on the fact that during the war for national liberation during WWII, Slovenia had proven its independence and affirmed its statehood. When the new Slovenian state emerged, a process of centralization began. Laws on local autonomy required that each municipality have at least five thousand inhabitants. Following a non-binding referendum, municipalities and their territories were determined by the National Assembly. Prior to the 1998 elections, there were 192 municipalities in Slovenia, which varied widely in terms of economic power, size and number of inhabitants. Urban municipalities have a special status and must have at least 20,000 inhabitants and fulfill certain additional conditions. In 1999, a law promoting harmonious regional development was passed. The principal objectives of the law are as follows: to reduce differences in economic development and opportunities among Slovenian regions; to maintain the population over the entire territory of Slovenia, taking into account the polycentric trend of population movement; to promote an environmentally-friendly economy and the protection of natural wealth, cultural heritage and other public goods.

I. National level

The Constitution states that the National Assembly can call a referendum on any issue regulated by law, and the National Assembly will be bound by the outcome of the referendum. The National Assembly must call a referendum to decide on its own legislative initiative if at least one-third of its members, or the National Council, or a group of forty thousand voters demand it. All citizens who are eligible to vote have the right to participate in referendums. The initiative is passed into law if a majority of all voters participating in the referendum vote in favor. The Law on referendum and popular initiative regulates the referendum on a constitutional amendment, and the legislative and consultative referendums on the issues which fall within the competences of the National Assembly. It also regulates the means of carrying out a popular initiative for the amendment of the constitution and the passing of a law.

a) The referendum on a constitutional amendment - This allows citizens to decide whether to approve a constitutional change previously passed by

the National Assembly. The National Assembly must call a referendum if at least 30 members demand it and if the demand is issued prior to the proclamation of the amendment. The National Assembly must call a referendum within 7 days after the demand is issued. The amendment is confirmed by the referendum if participation is at least 50% + 1 of the total electorate and if the majority of those casting their votes voted in favor of the amendment. The National Assembly is bound by the outcome of the referendum.

b) Legislative referendum - Of two kinds: prior and subsequent referendums (before and after legislation has been passed). A legislative referendum can be called upon any matter governed by law, subject to the decision of the Constitutional Court. The legislative referendum must be called if one third of parliamentarians, the National Council or 40,000 voters demand it; in the last case, the 40,000 signatures must be delivered within 35 to 45 days, dependent upon the nature of the referendum (in order to start the initiative, 200 valid signatures must be delivered). Signatures must be put on official forms by citizens in person at the administrative office of their municipality. Signatures are counted and considered valid or invalid by the administrative offices. If the competent office of the National Assembly decides that enough valid signatures were delivered, then a date for the prior referendum will be set not later than 30 days after the issue of the demand for a referendum. The National Assembly must call a subsequent referendum not later than 7 days after the issue of the demand. The proposal for which the referendum was called is accepted if the majority of the voters who have cast their votes were in favor of the decision. The National Assembly is bound by the outcome of the referendum. The National Assembly must abide by the decision passed by the prior referendum and must not pass a law that would oppose the outcome of the referendum or repeat the referendum on the same question within a year after the execution of the referendum.

c) Consultative referendum - The National Assembly can call a consultative referendum on the questions that fall within their competence and are of broader interest for the citizens. The National Assembly can call a consultative referendum for the whole area of the state or for only a part of this, if the matter in question concerns only the inhabitants of that part. The National Assembly can call a consultative referendum before it finally decides on a given question. The National Assembly is not bound by the outcome of a consultative referendum.

II. Local level

The provisions of the law on referendum and popular initiative are applied logically also for a referendum in the local community unless it is provided otherwise by the law in question. The issues on which referendums are held in the municipalities vary from readjustments of municipal boundaries, through the foundation of a new municipality and the name of the municipality, to the self-imposed contributions etc. All municipalities allow popular initiatives.

III. Practical guide

The act relating to the calling of a referendum is published in the official bulletin of the Republic of Slovenia at least 15 days before the referendum is called. Two or more referendums can be called on the same day, which has to be a Sunday or other non-working day. The referendum must be held not earlier than 30 days and not later than 45 days from the date the referendum is called. The right to vote in the referendum belongs to those citizens who are entitled to vote in the general elections. The procedure is directed by the same authorities which arrange the procedures for the general elections. The municipal voting bureau selects the polling stations, nominates the voting committees and announces the result of the vote in the voting district. The national results are announced by the Republican, i.e. the national, Electoral Bureau.

IV. Trends

Slovenia, having been a relatively independent political unit in Yugoslavia, implemented its first constitution as early as January 1947. In December 1990, the Assembly of the Republic of Slovenia organized a national plebiscite at which 88.5% of voters voted for the establishment of an independent Slovenia and only 4% voted against. The turnout was 93.2% of the total electorate. In January 1999, a referendum was called for by one-third of the deputies of the National Assembly on a legislative initiative relating to the financing of the construction of the Thermolectric Power Station No. 3 in Trbovlje. 78% of participants voted against the proposed law and, as a consequence, the National Assembly did not pass the legislation. Perhaps the most dramatic use of the referendum took place in December 1996, when the National Council demanded a referendum on revisions to the electoral system. The original legislative initiative proposed a combined electoral system similar to the German one. A nationwide referendum was called which also included the option of a majority electoral system. The latter option was inserted at the request of the Social Democrats of Slovenia and was support-

ed by a petition signed by more than 40,000 voters. In addition to these two possible electoral systems, a third proposal was included in the referendum which involved the possibility of introducing a proportional electoral system. This insertion was proposed by 30 members of the National Assembly. None of the proposals won an absolute majority of those casting a vote in the December 1996 referendum. As a consequence, the National Assembly dropped the idea of reforming the electoral system. Then, just prior to the end of the mandate of five of its empanelled justices, the Constitutional Court retroactively changed the referendum rule with a slim margin of five to four. Their ruling meant that the proposal for a majority electoral system won the referendum with only 44.52% of the vote. The proportional system had received 26.19% and the combined system, 14.38%. The participation level of voters in the referendum was only 37.9%. Numerous National Assembly members opposed the order of the Constitutional Court by appealing to constitutional provisions in Article 82 which state that members of the National Assembly are not bound by any instructions. Finally, in 2000, the National Assembly, in order to avoid questions of the legitimacy and legality of future elections, amended the constitution and adopted what is principally a proportional electoral system. According to the government's Law service proposal, the requirements for the constitutional amendments of the legislative referendum are as follows: a) The exclusion of specific questions that could not be decided upon in a referendum, such as: the budget, fiscal laws, amnesty, the wages of public sector employees, laws passed in cases of natural disaster and laws about the ratification of certain international treaties. b) The exclusion of the option of the prior referendum, due to problems in the interpretation of the decision adopted at the referendum and the binding of the National Assembly to the results of the referendum. c) The reduction in the number of agents entitled to initiate a call for a referendum. d) The institution of a quorum, especially for the subsequent referendum.

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Procedure for Amending this Constitution

Article 168 Proposal for the Initiation of Amendment

(1) A proposal to amend this Constitution may be initiated by no less than twenty Deputies of the National Assembly, by the Government or by no less than thirty thousand voters. (2) Any such proposal

shall only proceed for determination in the National Assembly upon the vote of a two-thirds majority of those Deputies of the National Assembly present and voting.

Article 169 Amendment of This Constitution The National Assembly may only enact legislation to amend this Constitution upon the vote of a two-thirds majority of all elected Deputies.

Article 170 Ratification of Constitutional Amendment by Referendum (1) Any proposal for the amendment of this Constitution before the National Assembly must be presented to the electorate at a referendum if the same is demanded by no less than thirty of its Deputies. (2) An amendment shall be deemed to have been carried at such a referendum if a majority of all voters eligible to vote voted in the referendum, and a majority of those who voted, voted in favor of the same.

Article 171 Proclamation of Amendments to this Constitution An amendment to this Constitution shall take effect upon its proclamation in the National Assembly.

SPAIN

I&R procedures are moderately varied. Popular sovereignty appears clearly only in mandatory referendums for significant constitutional/statutory reforms. No I&R procedures are launched by citizens, except legislative petitions which are subject to stringent restrictions. I&R practice is almost non-existent, and there is no debate on I&R. Citizen-friendly aspects of the existing I&R procedures are: financial compensation for legislative petition groups (up to 180,000 Euro at national level; up to 30,000 Euro at regional level). No participation quorum. The weak points are: popular I&R initiative rights are almost non-existent and severely restricted. Legislative petitions do not lead to a referendum (ballot). Joining NATO's civil structure has been a referendum issue, but not European integration and joining NATO's military structure.

- Population: 40,200,000
- Area: 504,782 km²
- Capital: Madrid
- Official languages: Spanish, and regionally Catalan, Galician, Basque
- Religion: Roman Catholic (98%)
- Political System: Parliamentary monarchy (since 1978), with autonomous regions (17) and provinces (52)
- Constitution: 7/12/1978 (referendum, 91% Yes)

- Membership: NATO, EU
- GNP/Capita: \$14,800 (1999)
- I&R practice: 5 nationwide referendums. Two plebiscites organized by Franco (1947, 1966); two reform referendums (1976, 1978); and the NATO plebiscite (12/3/1986, 56% Yes).

Types of Initiative and Referendum

In Spain there are devices for constitutional referendums, consultative referendums and legislative petitions, even if they are rarely used. The new political system was designed in a context where the fear of excessively weak political parties dominated and this prevented a more generous regulation of its usage.

I. National level

Citizens have the right to initiate legislation at this level under the following conditions: most issues are in practice excluded from direct citizen initiative – taxation, general state budgets, economic planning, international affairs, constitutional reform, and the prerogative of pardon, as well as those areas subject to organic laws and thus considered of special national interest. (Article 81.1 - Organic laws are those relating to the development of fundamental rights and public freedoms; those approving Statutes of Autonomy [regional states]; the general electoral framework; and those set out in this Constitution). There have been only four national legislative referendums. All except the third (Mar/1999) were rejected. 1) November 1999. Popular petition to reduce the working week to 35 hours. Rejected 2) March 1999. First law to originate in a legislative petition: Law of Horizontal Property. 3) December 1998. Popular petition to get cost-free status for schoolbooks. Rejected. 4) December 1996. Popular petition to guarantee a budgetary minimum for education. Rejected. Since popular initiatives introduce draft laws (proposiciones de ley), they must be submitted to parliament as such (in the form of articles, etc.) together with an appropriate rationale and a detailed account of the members of the sponsoring committee. Within 15 days, the Presiding Council of the Congress of Deputies (or lower house of parliament) shall decide on the initial admission of the initiative. It can be rejected for dealing with excluded or heterogeneous matters, failing formal requirements, when another initiative with the same or equivalent content has already been presented during the current term, or when it overlaps with an approved motion or a previous draft in an advanced stage of the parliamentary process. The sponsoring committee can challenge the decision before the Constitutional Court. If the rejection was due to certain specific irregularities, the sponsoring committee may decide whether to remove

the initiative or retain it after making the appropriate adjustments. After the initiative has been accepted, a 6-month period starts in which the sponsoring committee tries to collect a minimum of 500,000 authenticated signatures from adult Spanish citizens registered in the electoral census. The Presiding Council can extend this period for three additional months if it considers that exceptional circumstances occurred. Signatures, specifying full name, ID-card number, and municipality where the signatory is registered, must be put on forms previously sealed and numbered by the Central Electoral Board and accompanied by a copy of the draft. They must be certified by the usual responsible figures (notaries, etc.) or by persons whom the sponsoring committee can designate for that purpose. Signatures are delivered to the provincial electoral boards, which in turn must send them to the Central Electoral Board within 15 days. Here they are checked and the valid votes counted. Once the Central Electoral Board has announced that the figure of 500,000 or more signatures has been achieved, the Presiding Council orders the publication of the initiative and it is included in the agenda of the plenary sitting of the Congress of Deputies. Then the draft follows the normal stages of the parliamentary process of an ordinary law. As such, the bill may be partially or fully amended, approved or rejected. Neither the sponsoring committee nor any other representative of the signatories can participate in that process. The time frames (15 days, 6 months) are good procedures. However, once the petition is accepted, no time periods for the study and amendment of the petition are laid down. Indeed, the first petition (Dec/1996) took three (yes three!) years to be rejected. The State must compensate the sponsoring committee up to a maximum of 180,700 Euro for the mailing and collecting expenses if the initiative is accepted for parliamentary processing. One important aspect is that the legislative petition does not lead to a referendum, so no parliamentary counter-proposal is generated. This is why the expression "legislative petition" is more correct than "legislative initiative", in order to distinguish it from the full initiative practiced in other countries. Non-mandatory, non-binding referendums can be held at the national level under the following requirements: Only 'political decisions of overriding importance' may be submitted to a consultative referendum. No further details are provided in this respect, but approved or existing legislation is clearly excluded. Only the prime minister can propose the convening of a consultative referendum, after requesting authorization before the Congress of Deputies. The request must spell out the exact terms of the referendum. The authorization is granted by

overall majority. The King calls the referendum by means of a royal decree agreed upon by the Council of Ministers. The decree must contain the full text of the decision, the wording of the question or questions, and the date of the referendum. The referendum must take place between 30 and 120 days after the publication of the decree in the Public State Gazette. It cannot be held when a state of emergency or siege is in force or within 90 days after its ending, nor within 90 days before or after national parliamentary or local elections. If a referendum is already scheduled when these circumstances occur, it is automatically cancelled and must be called again. No approval quorum is required. The outcome is not legally binding, though it is hard to imagine a government going against the decision of the electorate when it has shown a clear preference. Only parties with parliamentary representation and those which gained at least 3% of the popular vote at the last general elections have the right to express their point of view in the public media. Binding referendums may be held to ratify changes to the Constitution. Once approved by both houses of parliament, reform proposals must be put to national referendum if demanded by at least one tenth of the members of either house within 15 days. In case of a total revision, or a partial revision that affects the Preliminary Title (guiding principles), Title II (the monarchy) or Chapter II, first section of Title I (basic rights and public liberties), the approval must be followed by general elections. If the newly elected Parliament ratifies the constitutional reform, then it shall be automatically put to a national referendum. Of course, a mandatory referendum is a great thing. However, no Spaniard wants to make use of it, since the popular initiative for constitutional reform is forbidden, and such a mandatory referendum is the last step in a sequence which includes, among other requirements, the resignation of parliament and new legislative elections. According to referendum law, the time allowed for campaigning is between 10-20 days. The right of petition is different from the so-called "legislative initiative": it was instituted only in Nov 2001 (23 years later than the constitution which protects it). Up to then, the rules for petitioning the dictator, dating back to Dec 1960, were used. It is a well-designed law, which sets out the procedure for asking the institutions to take action. They are given three months to respond, and are legally bound to do so - a significant factor.

II. Regional level

All Autonomous Communities have introduced their own laws on the Citizens' legislative initiative at this

level. These are very similar, reproducing, in essence, the procedure and requirements set out for the national level. Apart from those areas outside their competence, all Autonomous Communities agree on excluding questions of taxation from the remit of the citizens' initiative. They differ on other restrictions, but these are mainly of secondary nature. Minimum number of signatures: between 6,000 and 75,000 (depending on the size of the community), which in most cases means around 1.5% of the total electorate. In Extremadura, the signatures of at least 5% of the electorate are needed; in Castile-León, 25,000 signatures representing at least 1% of the electorate of every constituency are required. The periods for collecting and delivering the signatures range from 3 to 6 months. Verification is entrusted to the appropriate electoral boards or a control board constituted specifically for that aim (Aragón and the Canary Islands). Financial compensation for accepted expenses. A remarkable innovation is the possibility of initiatives originating in the municipal councils of six communities. When this is the case, the initiative must be approved by an overall majority of the municipal council. The support of a certain number of town halls is required, and/or a specific proportion of the electorate must be covered by the municipalities concerned. In four communities (Aragón, Balearic Islands, Canary Islands and Galicia), the sponsoring committee can defend the bill before the regional parliament. In Aragón, in addition, it can remove the initiative if it considers that the original sense is being distorted by the parliamentary process. Reform of the basic laws (Estatutos de Autonomía) of the four regions that first gained full autonomy (the Basque Country, Catalonia, Galicia and Andalusia) must always be put to a binding referendum of the electorates involved.

III. Local level

Facultative, non-binding referendums in a few municipalities must follow these requirements: a) Referendums can be held on matters of 'municipal competence and local character of special interest to the residents'. They cannot be held on subjects related to local finance. b) The initiative must be approved by a full majority of the municipal council. The mayor can call the referendum after authorization by the central government, which is always required. c) Some Autonomous Communities have further developed this legislation. In Catalonia, for instance, the citizens themselves can request the town hall to hold a referendum. The petition must be signed by a certain proportion of residents (from 5% to 20% depending on the number of inhabitants of the municipality) and it is always subject to the approval of the municipal

council and the central government.

IV. Practical guide

With regard to citizen legislative initiatives, at both national and regional levels, the sponsoring committee plays a central role until the bill is accepted in Parliament. No restrictions are set on the nature of these committees, except for the requirement of a minimum number of members (from 5 to 10) in the Autonomous Communities of Aragón, Castile-La Mancha, Extremadura and Galicia. In some cases, the Electoral Boards have imposed further requirements in addition to those fixed by law, such as specifying the home address or date of birth with the signature. Furthermore, a sizeable proportion of delivered signatures (on one occasion estimated at 15%) turns out to be invalid on the final count.

V. Trend

The construction of the new Spanish political system was strongly influenced by two factors that prevented a more flexible regulation of referendums. First, the Franco regime had used plebiscites to consolidate its own power and this created a suspicion that referendums belonged to a kind of pre-modern populist democratic tradition. Secondly, most political parties shared the fear that they were very weak in societal and organizational terms and that the existence of any means (such as referendums) of reducing their role in decision-making would further erode their likely future. In fact, during the Constitutional debate only the party of the Franco supporters, AP, was in favor of a larger role for procedures of direct citizen participation, whereas the Left made the greatest efforts to avoid any significant role for them. After 25 years of democratic life, the general skepticism of political elites towards the referendum has not changed, even if the particular attitudes of given parties have been reversed. During this period referendums have been used for different purposes. In the first democratic decade, referendums played a crucial role in helping to legitimize the new democratic institutions: the break-up of laws passed under Franco leading to the first general election, the new Constitution or the Constitutions of many of the new regions were approved through referendums. Only the last of these regional referendums was controversial (except in the Basque Country, where the referendum on the Spanish Constitution was clearly Aheated@). The referendum on the Andalusian Estatuto needed a majority of the vote in each of the 8 provinces of the region and it achieved it in 7, while in the 8th only 49% of the votes were in favor, thus making the whole result invalid. Surely the most con-

troversial referendum in Spanish history has been the 1986 one on NATO. To hold a consultative referendum on leaving NATO was a promise of the Socialist party in opposition, but the party changed its mind once in government. There was first of all huge pressure for the referendum to be actually held and then a very strong campaign from both sides. The result in favor of remaining in NATO greatly disappointed the peace movement which had strongly supported the use of the referendum, so that once again referendums gained the image of an instrument which was easy to manipulate among significant sectors of the population. There was also a controversy on whether a referendum should be held to ratify the signing of the Maastricht agreement, but the major parties argued that it was not necessary, since both Parliament and polls showed a large majority in favor. From time to time there is some debate on whether a referendum would be a reasonable solution to solve the conflict in the Basque Country. The debate became probably stronger than ever in autumn 2001, when the Basque government proposed the holding of two referendums in future: one to show ETA that the Basque people rejects terrorism and another to make a decision on the future relationship of the Basque Country with Spain. The Spanish government strongly opposes the idea, arguing that it is unconstitutional and not needed. Some of the initiatives at the regional level (especially in Catalonia) have had a large social mobilization behind them and have received wide publicity. However, the fact that most of them have either not been approved or have been strongly modified by Parliaments has limited their potential spread. In any case, the limited role of referendums in Spanish politics has not been a crucial issue, except at some very specific times. No major movement or organization has mounted any strong and consistent campaign in favor of a wider use. Even if there have been some limited efforts to encourage its use at the local level, they have not gained wide acceptance. On the other hand, non-legal referendums with a purely symbolic meaning have been organized by social groups at all political levels. For example, a referendum to abolish the external debt of Third World countries organized by a citizen platform on the same day as the 1996 General Election was widely publicized and attracted a million voters. In Madrid the educational administration called in 1999 for a referendum on public schools to approve a continuous (single-term) school timetable, requiring an approval quorum of 80%. In 106 schools, parents of 53,000 schoolchildren, a majority of over 80%, voted for a continuous school timetable. However, one single person, the Regional Director of Education

(Gustavo Villapalos) subsequently decided that the referendum was not binding. This led to huge demonstrations - but no change to existing practice.

Guillem Rico with additional remarks by Juan Pablo de Soto. Rico is a Political Scientist in Barcelona.

Constitutional Requirements for Legislation

Title X Constitutional Amendment

Article 166 [Initiative] The right to propose a Constitutional amendment shall be exercised under the terms contained in Article 87 (1) and (2).

Article 167 [Procedure] (1) Bills on Constitutional amendment must be approved by a majority of three-fifths of the members of each Chamber. If there is no agreement between the Chambers, an effort to reach it shall be made by setting up a Joint Commission of Deputies and Senators which shall submit a text to be voted on by the House of Representatives and the Senate. (2) If adoption is not obtained by means of the procedure outlined in the foregoing paragraph, and provided that the text has obtained a favorable vote by an absolute majority of the Senate, the House of Representatives may approve the amendment by a two-thirds vote. (3) Once the amendment has been passed by the Parliament, it shall be submitted to a referendum for its ratification, if so requested by one tenth of the members of either Chamber within fifteen days after its passage.

Article 168 [Revision] (1) When a total revision of the Constitution is proposed, or a partial revision thereof, affecting the Preliminary Title, Chapter II, Section 1 of Title I, or Title II, the principle shall be approved by a two-thirds majority of the members of each Chamber, and the Parliament shall immediately be dissolved. (2) The Chambers elected must ratify the decision and proceed to examine the new Constitutional text, which must be approved by a two-thirds majority of the members of both Chambers. (3) Once the amendment has been passed by the Parliament, it shall be submitted to ratification by referendum.

Article 169 [Restriction] A Constitutional amendment may not be initiated in time of war or when any of the circumstances set out in Article 116 are in operation.

SWEDEN

Referendums ("folkomröstningar") have been used as a tool by the political majorities, hence mainly as plebiscites. Today the same forces which have manip-

ulated the ballot decisions are against stronger I&R devices, using the argument that the experience of referendums is bad. However, the process has been reformed very slowly at all political levels e.g. by introducing the binding national referendum and the citizens' petition at the local level. Further improvements are currently being debated, such as the nationwide referendum triggered by a minority of the parliament and the citizen-initiated referendum at the local level. The 1994 EU membership referendum was the first de facto binding referendum, setting the standard for further major integration steps such as EMU-membership and a possible future EU constitution. The EMU referendum will be held in 2003.

- Population: 8,857,000
- Area: 449,964 km²
- Capital: Stockholm
- Official languages: Swedish, and regionally Sami and Finnish.
- Religion: Lutheran (89%)
- Political System: Parliamentary monarchy (1809)
- Constitution: 1/1/1975 (without referendum)
- Membership: EU
- GNP/Capita: \$26,750 (1999)
- I&R practice: 6 nationwide referendums (since 1910). Alcohol prohibition (1910&1922); driving left/right (1955); pension system (1957); nuclear energy (1980); EU membership (13/11/1994, 52.3% Yes; 83 % turnout). More than 60 local referendums (since 1977).

Types of Initiative and Referendum

Sweden is a unitary state with limited powers to the provinces, but a large degree of local independence for the municipalities (289), ruled by popularly elected local councils. The Sami in the north of the country (population 25,000) enjoy some degree of autonomy through their own parliament, Sametinget, which however is mainly of an advisory status. Sweden has been a member of the UN and of almost all of its associated organs and branches since 1946. It has been a non-aligned country and a member of the European Union since 1995. Prime Minister Göran Persson has headed a Social Democrat minority government since 1994. The government has co-operated with the Left Party and the Green Party in budget issues and most other main political issues since 1998. The Conservatives dominate the opposition.

I. National level

According to the constitution, Sweden has no devices for the popular initiative at a national level, and only

a small fraction of the parliament has any wish to introduce the popular initiative. National referendums can be held according to two different provisions, established in the constitution. No issues automatically trigger a referendum. Since 1979 it has been possible for the Parliament to call an advisory referendum as established by the constitution (Regeringsformen 8:4), as well as the special law about referendums (SFS 1979:369). A simple majority of the Parliament can call for a popular vote on any issue, including constitutional changes, and the referendum can be held on any date. The government formulates the alternatives to be presented to the voters, including the alternatives favored by the opposition parties. The electorate is the same as for national elections, however the Parliament can include people who are normally only allowed to vote at the municipal level. A binding referendum can be held according to the constitution (Regerings-formen 8:15). This can only be held in conjunction with bills seeking to change the constitution, and is mandatory if at least one tenth of the parliamentarians call for it (35 members), with at least a third of the parliamentarians in favor (117 members). After the bill has been approved by the Parliament, a call for a binding referendum must be made within 15 days. The referendum must then be held on the day of the national elections. Only those who are eligible to vote at the national level can participate in the referendum. The bill is rejected only if a majority of the electors who vote cast a 'no'-vote (meaning that all blank votes count as 'yes'-votes), and only if the 'no'-votes number more than half of the electors that voted in the national election. If the latter provision is not fulfilled, the Parliament will decide on the matter, which is why some scholars call this mechanism semi-binding. Both for the advisory and the binding referendum, the Parliament can choose how to put the question to the people at its own discretion, and also what answers the voters can choose from, with the possibility of having more than two alternatives. Up to this date, no binding referendum has been held in Sweden. All five national referendums have been held according to the 8:4 advisory clause. These are: *27th of August 1922*: 'Yes' or 'No' to prohibition for alcoholic beverages. 50.9% No-votes. 55.1% voter turnout (clear 'yes'-majority among women, higher male turnout a decisive factor for the result). *16th of October 1955*: Driving on left/right side. 82.9% voted for continued left-side driving, 15% for changing to the right side (1.6% blank votes). 53% voter turnout. In 1967, right-side driving was introduced. *13th of October 1957*: General supplementary pensions (ATP). Three alternatives: 1) Compulsory supplementary pen-

sions, received 45.8%; 2) Voluntary supplementary pensions, through the normal insurance companies, received 15%; 3) As 2, but with the possibility of agreements between employers and trade unions, received 35.3%. The voter turnout was 72.4%, with 3.9% casting blank votes. The result was unclear, since compulsory pensions won a majority, but some kind of voluntary pension won an absolute majority of the votes. The referendum led to the dissolution of the parliament, and the introduction in 1959 of compulsory supplementary pensions. *23rd of March, 1980: Nuclear Power.* Three alternatives were presented: 1) Discontinuing the use of nuclear power at a pace set by the industry's needs, received 18.9%; 2) Identical, but with the nuclear power being owned by the state and municipalities, received 39.1%; and 3) A total discontinuation of the use of nuclear power within ten years, received 38.7%. The voter turnout was 75.6%, with 3.3% blank votes. In this election, by a special provision, those who normally cannot vote in national elections were also eligible to vote. Only 15% of the electors declared themselves satisfied with this referendum, with discussions about the result going on to this date. *13th of November, 1994: Swedish membership of the European Union.* Yes or No to membership according to the agreement reached by the EU and Sweden. 52.3% voted Yes; 46.8% voted No; and 0.9% cast a blank vote. The voter turnout was 83.3%. On *1st January 1995, Sweden joined the European Union.* As we have seen, in several referendums more than two alternatives have been proposed to the electorate, which, when none of them gained an absolute majority, led to much discussion about which line of action to take. A large part of the population feels that national referendums have been manipulated, in the sense that they were designed so that the political decision-makers could act according to their own wishes, regardless of the result in the referendum. All in all, the Swedish referendum is an instrument in the hands of the politicians, not the voters.

II. Regional levels

Regional referendums can be held according to the legislation for local referendums (see below). However, no referendum has been held at the regional level, although some proposals for this have been made.

III. Local level

At the municipal level, a simple majority in the Local Council (*kommunfullmäktige*) suffices to call for a non-binding referendum, with no limits on which issues can be decided on, and no restrictions regarding when the referendum should be held. There are

no limits on the number and frequency of ballot measures. Who should be eligible to vote is also an issue entirely decided by the local political authority. This was introduced in the municipality jurisdiction of 1977, and remained unchanged in the renewed municipality law of 1991. In addition to the authority-initiated referendum, on the 1st of July 1994 a local initiative right was introduced. If 5% of those eligible to vote at the local level demand a referendum in writing, the Local Council must decide whether or not to hold such a referendum. However, they are free to decide, using any argument, that a referendum should not be held. If a referendum is to be held, the Local Council decides how to formulate the question(s) and when the referendum is to be held. The 5% minimum initiative must be verified by the signatures, printed names and addresses of the initiators, all checked by the municipal electoral council. About 60 local referendums have been held since 1977, called for by the politicians. A large part of these were held within a year of the national referendums. About half of them have concerned whether or not to change the municipal boundaries, normally creating a new, separate municipality. The most common other subject has been infrastructure; roads, bridges, etc. More than 90% of all proposals for referendums raised in the local councils were turned down, however, most often with arguments such as: that the issue had already been decided; that the issue was not yet ready for a decision-making process; that the issue was too complicated or that it was so simple that it did not warrant the complicated and expensive procedure of a referendum. Of the 70 initiatives called for by the people, often with more than 10% of the electorate signing, only two have resulted in referendums. Most of the initiatives concerned the same type of issues that have been the subject of referendums initiated by the politicians in the local council.

IV. Trends

The referendum was first discussed in the Swedish Parliament in 1897, and first introduced into the constitution in 1922, with the possibility of calling for advisory referendums. In the early 1950's, the Parliament came close to strengthening the instrument with binding referendums and the right for a parliamentary minority to call a referendum. These were mainly proposals from the right-wing parties aimed at diminishing the Social Democratic hegemony. The matter was not resolved until 1974, when the Parliament decided to keep the instrument as it was established in 1922. In 1979, the right of a minority of one third of the parliamentarians to call for a binding

referendum in constitutional matters was established. Sweden has been dominated by the Social Democrat Party during most of the 20th century, and has until recently been culturally very homogenous, with basically one ethnic group, one religion and one language. As a small and non-aligned country, Sweden has also felt the need for wide agreements on political issues of great importance, especially concerning foreign policy. These are three historic reasons for the rather restrictive use of referendums in Sweden. The changing reality of the country post-Cold War, now a member of the European Union, with a more mixed population due to the influx of immigrants, and with a less hegemonic position for the Social Democrats, all imply that the ground is now more fertile for new methods of reaching political decisions. This trend is strengthened by the fact that voter turnout is declining, fewer people are involved in party politics and the electors are becoming more skeptical towards the elected, all suggesting the need to reform today's model of Swedish representative democracy. All political parties in the Parliament have agreed on holding a national referendum about whether Sweden should join the European Monetary Union. This citizen decision will take place in 2003. However, this suggests that important changes in Sweden's status will be decided directly by the people in the future. At the municipal level, direct democracy is on the rise.

Recent initiatives - such as the municipality of Kalix asking its inhabitants what the level of local taxation should be and how the money should be spent - have been popular and attracted international attention, suggesting that more municipalities will follow suit. The initiative will most likely be strengthened, since today's system has only led to more frustration as hundreds of thousands of people have participated in asking for a referendum, only to be turned down by the city council. Opinion polls and surveys suggest that referendums and popular initiatives are vastly more popular with the people than with the political parties and elite. 59% of the electorate (Poll by Gallup and Votia Empowerment, July 2002) support adding elements of direct democracy to the political agenda, while only three minor political parties in the Parliament (the Greens, the Post communists the Rural Center) regularly propose such measures. A vast majority in the Riksdagen has so far rejected bills proposing binding referendums, popular initiatives and the right of a political minority to trigger a referendum, but little by little, and starting from the municipal level, we can expect to see more and more direct democracy. On September 14, 2003 fourteen local referendums will take place in Sweden - together with the countrywide referendum on Euro accession

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Constitutional Requirements for Legislation

Chapter 8 Laws and Other Regulations

Article 4 Provisions concerning consultative referendums throughout the whole of the country and concerning the procedure for holding referendums on matters concerning the fundamental laws shall be laid down by an Act of law.

Article 13 (1) In addition to what follows from Articles 7 to 10 the Government may issue by statutory order 1) regulations concerning the enforcement of laws; and 2) regulations which under the fundamental laws are not to be issued by the Parliament. (2) The Government may not by virtue of Paragraph (1) issue any regulations which concern the Parliament or its agencies. Nor may the Government by virtue of Paragraph (1.2) issue regulations which concern local taxation. (3) The Government may delegate to a subordinate authority the task of issuing regulations in the relevant matter by means of a statutory order under Paragraph (1).

Article 15 (2) The Parliament may not adopt as a decision in suspense any Bill on a fundamental law which conflicts with any other draft legislation of the same nature which is held in suspense, unless the Parliament at the same time rejects the Bill it first adopted. (3) A referendum shall be held on a decision held in suspense for an amendment of a fundamental law on a motion to this effect by no fewer than one tenth of the members of the Parliament, provided that no fewer than one third of the members vote in favor of the motion. Such a motion must be made within fifteen days from the date on which the Parliament adopted the Bill held in suspense. Such a motion shall not go for consideration by any Committee of the Parliament. (4) The referendum shall be held simultaneously with the election for the Parliament referred to in Paragraph (1). All those entitled to vote in the election may declare in the referendum whether or not they accept the Bill on the fundamental law which is pending decision. The Bill shall be deemed to be rejected, if the majority of those taking part in the referendum vote against the proposal, and if the number of voters exceeds half the number of those who registered valid votes in the election. In all other cases the Parliament shall take up the Bill for final consideration.

Article 17 No law shall be amended or repealed otherwise than by law. Articles 15 and 16 apply *mutatis mutandis* with respect to any amendment or abrogation of a fundamental law.

SWITZERLAND

The basic lesson about I&R in Switzerland is:

Switzerland did not create the referendum; the referendum created Switzerland. There is a full range of compulsory and citizen-initiated referendum institutions at all levels of government (federal level, 26 cantons, and 2,973 municipalities). The I&R institutions were established step-by-step: 1848 compulsory referendum, 1874 optional referendum, 1891 popular initiative at the federal level. Average turnout is approx 50% (trend has recently become positive again after participation had been falling for a long time). Younger citizens are participating more in I&R decisions than in elections. Women's suffrage was introduced as late as 1971 at the national level. New transparency laws have been adopted very recently.

- Population: 7,136,000
- Area: 41,284 km²
- Capital: Berne (Bern)
- Official languages: German (63%), French (20%), Italian (8%), Romansch
- Religion: Roman Catholic (46%), Protestant (40%)
- Political System: Parliamentary Federation (since 1848)
- Constitution: 1/1/2000 (referendum: 59% yes)
- Membership: UN, EU non-active candidate.
- GNP/Capita: \$38,380 (1999)
- I&R practice: more than 500 federation-wide referendums since 1848, many thousands at the cantonal level, hundreds of thousands at local level. On March 3, 2002, Switzerland became the first country in the world in which the citizens decided to join the United Nations (55% yes).

Types of Initiative and Referendum

The forms of direct democracy in Switzerland derive from various historical sources. As specific institutions, referendum and initiative appeared in the Montagnard Constitution of June 24, 1793 (article 10 and article 56-60), during the French Revolution. Before this, both direct-democratic (for example, the so-called 'Volksanfragen' – popular consultations – in the Cantons of Zürich, Bern, Solothurn and Neuenburg) and hybrid federal-democratic (community referendums in Graubünden, 'Zendenreferenden' - district referendums in Wallis) mechanisms of decision-making had been preserved, some of which go back as far as the 15th century. It was because of its own longstanding democratic traditions (community citizens' assemblies = Landsgemeinde) that during the modernization of democracy in the Swiss cantons after the Restoration (post-1830) the idea of I&R fell

on such fertile ground. In the search for forms which would preserve the traditions of co-determination whilst permitting a more modern form of government, Initiative & Referendum presented themselves as acceptable compromise formulae for the competing positions of the various political factions. Historically, the introduction of I&R reveals three main strands: 1) The introduction of political co-determination for citizens reveals a temporal succession of forms. First to be established is the right of veto; then comes the statutory constitutional referendum; then follows the legislative referendum; and finally the right of initiative. 2) The direction of movement in the introduction of citizens' rights is from below upwards. The rights are introduced first of all in the member states (cantons), then later on also at the federal level. 3) Rights are normally established by a broad coalition of differing interests. When the federal state was established in 1848, only the statutory constitutional referendum was grounded in the constitution. The legislative referendum became law in 1874. Finally, the right of initiative was established in 1891. The 20th century saw the gradual extension and refinement of direct democracy. The referendum on international treaties was established in 1921: opened and irrevocable treaties were now subject to facultative referendum. Direct-democratic control of foreign policy was extended in 1977. The scope of the optional referendum was now widened to cover accession to international organizations and to acts involving the multilateral standardization of laws. Also subjected to mandatory referendum were the accession to organizations for collective security (e.g. UNO) and that to supranational communities (e.g. the EU). 1949 saw the introduction of the dissolving referendum in cases of urgent federal resolutions. Other possible extensions – such as the legislative initiative or the referendum on the national budget – have so far been rejected by the people. The new federal constitution of 2000 contains for the first time explicit limitations on the subject-matter of initiatives. Mandatory rules of international law (“*ius cogens*” e.g. fundamental human rights such as the principle of ‘Non-Reversal’ – non-refoulement) cannot be subjected to referendum, and initiatives launched on such matters are declared invalid by parliament (cf. note 1). Direct-democratic rights also had a lasting influence on Swiss institutions, due to the fact that it was by means of initiative that the right to proportional voting was secured, which then led to the proportionalisation of the whole of political life. Proportionalisation is reinforced by the power of referendum of the most important social groups. In Switzerland, it can be said that if the citizens' initia-

tive is the daughter of the referendum, then proportional voting for the National Council (parliament) is its granddaughter and the so-called ‘magic formula’ (proportionally elected government) its great-granddaughter.

I. National level

The various instruments can best be described by quoting from the relevant articles of the constitution:

a) Popular initiative

Article 138 Popular Initiative for Total Revision of the Federal Constitution (1) 100,000 citizens entitled to vote may propose a total revision of the Federal Constitution. (2) This proposal has to be submitted to the people by referendum.

Article 139 Popular Initiative for Partial Revision of the Federal Constitution (1) 100,000 citizens entitled to vote may propose a partial revision of the Federal Constitution. (2) The popular initiative for a partial revision of the Federal Constitution may be in the form of a general suggestion or a formulated draft. (3) If an initiative does not respect the principle of unity of form, the principle of unity of subject matter, or mandatory rules of international law, the Federal Parliament shall declare the initiative invalid, in whole or in part. (4) If the Federal Parliament approves an initiative in the form of a general suggestion, it shall prepare a partial revision in the sense of the initiative, and submit it to the vote of the People and the Cantons. If it rejects the initiative, it shall submit it to the vote of the People; the People shall decide whether the initiative should be followed. If the People approve the initiative, the Federal Parliament shall formulate a corresponding draft. (5) An initiative in the form of a formulated draft shall be submitted to the vote of the People and the Cantons. The Federal Parliament shall recommend its approval or its rejection. If it recommends its rejection, it may submit its own counter-draft. (6) The People and the Cantons shall vote simultaneously on the initiative and the counter-draft. The voters may approve both drafts. They may indicate which draft they prefer, should both be approved; should one of the drafts obtain the majority of the People's votes and the other the majority of the votes of the Cantons, neither of them shall come into force. The time-period allowed for the collection of signatures commences as soon as the Swiss federal chancellery (Bundeskanzlei) publishes the proposed new constitutional text in the Official Gazette of the Confederation (Bundesblatt). Signatures can be collected anywhere – including in public places. The signatures are checked by the local government office

(Gemeindekanzlei) and given a certificate of eligibility. The initiative committee then passes them on to the Swiss federal chancellery (Bundeskanzlei). Once 100,000 signatures have been collected, the initiative is declared to be formally in existence. It then goes to the Parliament to be checked for validity. The requirement of unity of subject-matter means that the subject-matter of an initiative must not include a diversity of different disparate proposals. The purpose of this is to ensure that the clear will of the people can be expressed (i.e. that there is no confusion as to what the people actually wants). Otherwise the electorate might, for example, accept something with which they do not agree, simply because the overall merit of the proposal outweighs the demerits of one or more parts of the proposed constitutional change. Unity of subject-matter is required only for constitutional change (via Citizens' Initiative or Government proposals). It is not required for international treaties, such as EMU, which are subject to statutory referendums. The fact that it is parliament and not a constitutional court which decides on the validity of initiatives is a matter of dispute within Switzerland. The initiative committee can decide to withdraw the initiative: as a rule, a clause to this effect must be included in the initiative text. A formally successful initiative (one which has secured the minimum 100,000 signatures) must be put to referendum within 39 months from the date on which the signatures were handed in. The procedures to be followed where there is a counter-proposal date only from 1987. Prior to this, parliament routinely used the counter-proposal as a divide-and-rule tactic, with the aim of splitting votes between the initiative and the counter-proposal. Since the introduction of the new procedures, direct counter-proposals have become rare

b) Compulsory referendum

Article 140 compulsory Referendum

(1) The following shall be submitted to the vote of the People and the Cantons: a. Revisions of the Federal Constitution; b. The entry into organizations for collective security or into supranational communities; c. Federal Statutes declared urgent which have no constitutional basis and whose validity exceeds one year; such Federal Statutes must be submitted to the vote within one year after their adoption by the Federal Parliament. (2) The following shall be submitted to the vote of the People: a. Popular initiatives for total revision of the Federal Constitution; b. Popular initiatives for partial revision of the Federal Constitution in the form of a general suggestion which were rejected by the Federal Parliament; c. The question whether a total revision of the Constitution

should be carried out if both Chambers disagree. When an issue is presented to both the people (national level) and the "Stände" (cantons) for decision in a referendum, it means that an absolute majority of the valid votes cast and a majority of the cantons must be in favor. When a referendum is only put to the people, an absolute majority of the valid votes cast decides the issue. In this case, the cantons do not all carry the same weight. For historical reasons, six out of the total of 26 Swiss cantons (Obwalden, Nidwalden, Basel-Stadt (the city of Basle), Basel-Land (the area surrounding Basle), Appenzell Ausserrhoden and Appenzell Innerrhoden) carry only "half-weight".

c) Optional referendum

Article 141 Optional Referendum (1) The following are submitted to the vote of the People at the request of 50,000 citizens entitled to vote, or of eight Cantons: a. Federal Statutes; b. Federal Statutes declared urgent with a validity exceeding one year; c. Federal decrees to the extent the Constitution or statute foresee this; d. International treaties which: 1. are of unlimited duration and may not be terminated; 2. provide for the entry into an international organization; 3. involve a multilateral unification of law. (2) The Federal Parliament may submit further international treaties to optional referendum.

Article 142 Required Majorities (1) Proposals submitted to the vote of the People shall be accepted if the majority of those voting approves them. (2) Proposals submitted to the vote of the People and the Cantons shall be accepted if the majority of those voting and the majority of the Cantons approve them. (3) The result of a popular vote in a Canton determines the vote of that Canton. (4) The Cantons of Obwald, Nidwald, Basle-City, Basle-Land, Appenzell Outer Rhodes and Appenzell Inner Rhodes have each one half of a cantonal vote. The 50,000 signatures must be collected, verified as to voter eligibility by the communities, and delivered to the Swiss federal chancellery (Bundeskanzlei) within 100 days of the publication of the text of the law in the Official Gazette of the Confederation (Bundesblatt).

II. Regional and local level

Direct democracy originated historically in Switzerland at the local and cantonal levels. Until 1848, apart from a brief period, the national level in Switzerland existed only as a loose confederation of states. There is thus a rich variety of forms of local and regional democracy, to which justice cannot be done in such a limited space. Today, in around 2350 communities there is the community assembly, in

which citizens decide publicly on community issues. In the 500 larger communities which have no community assembly, the assembly is replaced by the referendum and by the local community parliament. In all Cantons except the two remaining citizens' assemblies Cantons - Appenzell Innerrhoden and Glarus (Landsgemeindekantone) - there are both mandatory and optional referendums as well as the initiative. Many Cantons also have an optional, some even a mandatory, referendum on budget matters.

a) Political and social agents Although in Switzerland the signature quota – relative to the number of registered voters ($100,000:4,715,000 = 2.1\%$) – are not very high, it does not mean that just anyone can launch an initiative whenever she or he wants. The current estimated cost per signature is 2 Swiss francs (for printing, secretarial work, advertising etc., even if no paid signature collectors are employed). Thus a referendum initiative costs at least 100,000 Swiss francs just for signature collection, leaving aside the costs of the subsequent referendum campaign. As a result, referendums are usually launched by existing organizations or parties – reflecting, as in any democracy, the existing relationships of power in society. This applies somewhat less in the case of the citizens' initiative, which can be launched even by relatively small groups. In such cases, the initiative – which can typically take several years from its inception to the eventual referendum – often leads to the formation of new political affiliations, which are then more capable of launching referendums in future. The term "capable of launching referendums" (referendumsfähig) has in Switzerland become a synonym for "to be taken seriously politically". The filtering function of the signature quota should not be judged negatively. A direct democracy without filters would simply burden citizens with a plethora of proposals, leading to public annoyance and the demise of the very instruments of DD.

b) Outcomes and experiences The success or otherwise of direct democracy cannot be measured simply by concrete political outcomes. Direct democracy is a process for political decision-making which offers the maximum possible participation of the general public in the decision-making process within modern societies which are organized into states. This participation should be seen as a human right. Within the framework of other fundamental human rights, the recognition of the human right to political co-determination is not dependent on whether the results of referendums, either in general or in particular, satisfy one's own personal interests. Such a judgment would

in fact reflect a fundamentally anti-democratic attitude. The actual outcomes of direct democracy must therefore be judged against this background. The fact is that, in these terms, Switzerland does not differ fundamentally from other affluent countries with indirect, parliamentary systems. Some reforms happen more quickly, some more slowly. The end result in terms of actual legislation is very similar. This should not be surprising, since the same kinds of power relationships exist in direct-democratically organized societies as they do in other affluent industrialized countries which have purely parliamentary systems. If one, for example, compares Switzerland with the predominantly two-party, first-past-the-post systems in Great Britain and France, one can see that the existence of citizens' participatory rights exerted pressure for compromise at an earlier stage, but that it has been increasingly recognized even in bi-polar systems that elections are predominantly won on the centre ground. Even though the mechanisms differ, the trend is towards convergence over the longer term. There are presumably differences in the attitude towards the state and towards taxation, as well as in the level of political awareness, though no studies have to date been carried out on these issues. Political awareness/keeping up-to-date with political events and issues is more likely to be advantageous under direct democracy, since one can then play a constructive part in referendums. Negative attitudes towards taxation and tax avoidance itself are probably less prevalent under direct democracy, as one has the possibility of sharing in the decisions on public spending and any tax increases have to be approved by the public. There is empirical evidence that this linkage exists at the local and regional levels. Although Switzerland is not exempt from talk of political alienation and apathy, it may be presumed that this is less evident than in purely representative systems.

III. Trends

Direct democracy is held in high regard by the Swiss people. This probably explains why open attacks on the instruments of DD by politicians are rare, even though by no means all Swiss politicians enjoy the limitations placed on their power by DD – any more than do politicians anywhere else. In recent years, especially in the run-up to referendums on European integration (EMU), space was increasingly given in the media to the voice of academics critical of DD - primarily from neo-liberal circles (cf. note 3). However, there was also support for DD coming from the same quarter (note 4). It is unlikely that such attacks will result in any reduction of direct democracy in

Switzerland. On the other hand, increasing political and economic integration does tend to reduce political freedom of movement in individual countries. Decisions about many new regulations and standards are increasingly being taken at the transnational or international level, whether in the United Nations or in the EU. On March 3, 2002, a majority of 54.6% voted in a national referendum in favor of entering the UN. However, because a majority in the cantons was also required, ultimately one Canton swung the vote in favor of an accession to the UN. Switzerland's full membership of the UN enjoys an especially high level of legitimacy, as being the first country in which the people themselves voted in favor of entry. The question of possible accession to the EU is a much more difficult issue for Swiss citizens. They fear a severe restriction of their direct democracy, because accession would mean that all the areas of competence of the EU would automatically be removed from direct-democratic control (note 5). On the other hand, there are people who stress the fact that Switzerland has little opportunity of contributing reform proposals to the ongoing work of the EU Convention on a possible European constitution. They believe that the growing interest in DD in many EU countries enhances the chance of rights of Initiative and Referendum being introduced at the EU Level in the medium term and that this could compensate for the loss of citizen-influence at the lower level.

Paul Ruppen with additional remarks by Hans-Urs Wili, Rolf Büchi and Bruno Kaufmann. Ruppen is Editor of AEuropa Magazin@ in Zürich. forum@europa-magazin.ch.

Constitutional Requirements for Legislation

Title 6 Revision of the Federal Constitution and Temporal Provisions

Chapter 1

Revision Article 192 Principle (1) The Federal Constitution may be subjected to a total or a partial revision at any time. (2) Where the Federal Constitution and implementing legislation do not provide otherwise, the revision shall follow the legislative process.

Article 193 Total Revision (1) A total revision of the Federal Constitution may be proposed by the People or by one of the Chambers, or may be decreed by the Federal Parliament. (2) If the initiative emanates from the People or if the Chambers disagree, the People shall decide whether a total revision shall be undertaken. (3) Should the People accept a total revision, both

Chambers shall be newly elected. (4) The mandatory provisions of international law may not be violated.

Article 194 Partial Revision (1) A partial revision of the Federal Constitution may be requested by the People, or be decreed by the Federal Parliament. (2) A partial revision must respect the principle of the unity of subject matter; it may not violate the mandatory provisions of international law. (3) A popular initiative for partial revision must, moreover, respect the principle of the unity of form.

Article 195 Entry into Force The Constitution revised in total or in part shall enter into force as soon as it is accepted by the People and the Cantons.

Appendix

JUNE 2001: THE ROSTOCK APPEAL

Eurotopia's call for a democratic route to a European Constitution with elements of direct democracy.

The following appeal was discussed and agreed by the members of **eurotopia** – the European Citizen's Movement for Transnational Direct Democracy – at their 20th plenary assembly held in Rostock between 15th - 17th June 2001.

Ten years ago very few dared to speak of a European Constitution as the future cornerstone of the EU. Even **eurotopia** found the courage to do so only some time after the foundation of the movement in Rostock in the spring of 1991.

But it was not long before **eurotopia** began to put forward suggestions relating to the process of European integration and to the nature of a federal European constitution (which would include elements of *direct democracy*), with the aim of offsetting the one-sidedly economic character of the EU on the one hand and on the other of halting the steady erosion of an exclusively nationally-based democracy.

The conclusion which we draw from our work – work which over the years has become more strongly grounded and specific – is that the EU needs *more direct democracy* and a *much stronger indirect democracy*. If democracy is to meet the challenge of economic globalisation, it needs to draw strength from a firmer grounding at the transnational level – in the first place, at the pan-European level.

During the past 12 months, the idea of a European constitution has moved forward strongly, especially in the German-speaking countries of Europe. In addition to the German Foreign Minister, President and Federal Chancellor, the Italian president, the Finnish and Austrian heads of government and the Belgian prime minister Guy Verhofstadt – whose country currently (June 2001) occupies the EU presidency – have all emphasized their desire to push forward the process of developing a European constitution. They aim to dot the 'i's and cross the 't's on effective proposals at the Belgian summit in Laeken in December.

What this means for **eurotopia** and for all the other citizens' and pro-democracy groups in Europe is

twofold: on the one hand we have to state clearly which procedures we wish to see incorporated into the constitution-forming process, so that committed individuals and citizens' groups can be genuinely involved in the process and have their voices heard. On the other hand, we also have to be clear as to which elements of direct democracy we wish to see embedded in a future European Constitution and why.

In this Appeal we concentrate on the first aspect – how to shape the European constitution-forming process so that it can be genuinely democratic and inclusive. A second Appeal – to be launched at the 22nd plenary assembly of **eurotopia** planned for London in Spring 2002 – will deal with the application of the idea of Direct Democracy at the European level.

After the problematic experiences with previous alterations to EU treaties (Maastricht, Amsterdam, Nice), there is really only one option left for citizens who are serious about democracy: the constitution-forming process has to be one in which committed citizens are genuinely involved and in which their views are taken into account.

A. Relating to the democratic shaping of the European constitution-forming process.

A1.

With regard to the constitutional convention, (This was before the convention on the future of Europe was called into being by the the Laeken IGC.) we propose the establishment of a 'Convention-Plus' model. We share the view that the convention, (i.e. The first EU Convention, which was established to draft the EU chapter of Fundamental Rights. The chapter was proclaimed at the European council meeting in Nice on 7th December 2000.) which over the last three years has developed the EU's Charter of Human Rights, represents a considerable advance over earlier ways of working out basic EU principles; but we see the possibility of making significant improvements to the model. The membership of a 'Convention-Plus' should

include – in addition to the representatives of governments, of EU and national parliaments and of the European Council – representatives from the extra-parliamentarian sector of civil society.

We therefore propose that the representatives of “official politics” (legislature, executive, judiciary, EU Commission) should make up only one half of the ‘Convention-Plus’. The other half should be made up of citizens from all the member states who have been directly elected as ‘constitutional councillors’; the numbers from each country being proportional to the population of the country. By this means we aim to introduce a vital element of openness and transparency into the portentous project of the European Constitution and thereby encourage the widest possible public debate on the project. Such public discussions would play an important role in helping to integrate a European Community which is currently severely fragmented into diverse groups of sceptics, critics and outright opponents, who rarely meet within the framework of day-to-day politics and are even more rarely involved in constructive dialogue.

A2.

All committee and plenary sessions of the Convention should be carried in real time on the Internet, with a standing invitation to all citizens of EU and European Council countries to submit their comments and make their own individual contributions.

A3.

We consider it to be vitally necessary that at regular 4-monthly intervals, the convention and all its sub-committees should present a progress report (both online and in printed format) in the form of a summary of the main resolutions and invite interested organisations of all kinds to submit their comments within 14 days (again, both in writing and by e-mail). Their engagement must be matched by the guarantee of a response from the convention within 1 month, including the reasons why a particular submission has been rejected - wholly or in part – or indeed adopted as a resolution by the convention or by one of its sub-committees.

A4.

After 18 months, the convention should present an interim draft document for submission to a wide-ranging and lengthy consultation process lasting several months. The second reading of the draft should discuss and vote on all the proposed amendments resulting from the consultation process and provide reasons for any whole or partial rejection of these.

B. A European Constitution must be ratified by a European Referendum

B1.

A constitution normally acquires democratic legitimacy only after it has been approved in an obligatory referendum by a majority of those citizens who will be subject to it. For **eurotopia** such a referendum is an absolute minimum requirement. This is the only secure guarantee of public interest and participation and of the essential transparency of the political process, all of which are the sine qua non for the future direction, legitimacy and integrative power of a new transnational European Constitution.

B2.

We propose a *double majority* system for the founding referendum of a European Constitution i.e. a European Constitution must be approved not only by a majority of all EU citizens, but also by as large a majority as possible of all member states.

Whether this should be by a qualified majority of $\frac{4}{5}$ or even of *all* EU member states remains a topic of discussion within **eurotopia**. Some consider the latter option to be appropriate and desirable for the founding referendum on such an important matter as the European Constitution, whilst others are concerned that this would emphasize and overvalue *national* identity against identity as a European citizen and allow one country – the most conservative – to single-handedly hold back all the others and block progress towards a European Constitution.

B3.

Citizens should have the right not only to decide on whether a European Constitution is to be approved, but also on whether and how such a constitution is to be developed, amended or improved. Exactly how many citizens would be required to launch European initiatives (and therefore potential referendums); what exactly the procedures should be; and what, if any, additional participative rights should be included in the package of European Direct Democracy – all these considerations will be set out in the second **eurotopia** Appeal which will be the fruit of the London conference in Spring 2002.

Issued by those citizens from 7 European countries who met in Rostock on 16th and 17th June 2001.

“We call upon the responsible representatives, ministers and officials of all those countries involved in the constitution-forming process to pay good heed to this

Appeal, to reflect on it seriously and to take the points raised in it into consideration during their discussions on the shaping of a European Constitution which are due to reach their conclusion at the end of the Belgian presidency in the Laeken conference in December 2001”.

December 2001: More Democracy proposal for direct democratic elements in the European Constitution.

1. Draft referendum text

The Convention recommends to the IGC that it should decide to submit the draft European Constitution/constitutional treaty for approval not only by the national parliaments and the European Parliament, but also by all the citizens of Europe in binding referendums. Such referendums would take place in accordance with the constitutional provisions of the member states. The best date for the referendums would be the day of the elections to the European Parliament in June 2004. Those member states whose constitutions do not currently permit referendums are called upon to create the necessary constitutional provisions to allow them to take place. If in any member state the proposed constitution is rejected in the referendum, the state in question can – in accordance with the relevant provisions of international and European law – use one of the following options. It could – after negotiating special status – hold a second referendum. It could try to regulate its relationship to the new “constitutional” European Union by a bilateral treaty or it could choose to leave the European Union.

2. Draft text on elements of direct democracy

Art. 34 Direct Democracy/European Citizens' Legislation

- 1) Citizens of Europe have the right to participate in the legislative activity of the European Union by means of the European Citizens' Initiative, the European Citizens' Demand and the European Citizens' Referendum.
- 2) If 400,000 European citizens sign a European Citizens' Initiative, the initiators of the initiative have a right to have their initiative debated in the relevant organs of the European Union.
- 3) If 3,000,000 European citizens (or 6,000,000 in the case of amendments to the constitution or to treaties) give their signatures to a European

Citizens' Demand within 1 year and no more than 50% of the signatures come from a single member state, a European Citizens' Referendum will be held on the subject of the Citizens' Demand, unless the relevant organs of the European Union have adopted the Citizens' Demand unchanged.

- 4) The relevant organs of the European Union can together decide to submit their own legislative proposal to a European Citizens' Referendum alongside the proposal contained in the European Citizens' Demand.
- 5) Any constitutional amendments decided on by the relevant organs of the European Union must be submitted for approval by the citizens of Europe in a referendum.
- 6) A European Citizens' Referendum is accepted if:

Option 1: the majority of those voting were in favour and either a simple, a qualified or a unanimous majority of the member states was also in favour. The same majority applies as applies in the relevant organs of the European Union.

Option 2: the majority of those voting were in favour and a majority was also in favour in more than half of the member states. For changes to the constitution, there must be a majority in every member state.

- 7) Further provisions are laid down in European Union legislation.

Mehr Demokratie e.V. (More Democracy),
Greifswalder Straße 4, DE- 10405 Berlin
Phone 0049 30 420 823 70, Fax: 0049 30 420 823 80,
www.mehr-demokratie.de

March 2002: Draft Strategy Paper and Working Programme of the Initiative & Referendum Institute Europe

I. INTRODUCTION

"An unprecedented democratic Convention to chart the constitutional future of the European Union opened on Thursday..." reported Reuters at the end of last month.

Without overestimating this new forum, we are witnessing the possible beginning of a new era of transnational decision-making, including exciting prospects for the direct-democratic process we are dealing with.

Thus, for the next 15-18 months the EU-Convention will become a focus-point and the centre of gravity of the European Democracy debate. Already there are some promising signs, as several prominent members of the Convention – such as President Valérie Giscard d'Estaing, Vice-President Giuliano Amato and the German Bundestag representative Jürgen Meyer - have proposed a referendum in all member states on the outcome of the Convention.

However, the design of such a European Referendum, as well as the introduction of the Initiative process in the EU, are still very open questions. Because we believe that basic elements of direct democracy would be beneficial to the development of the European integration process, IRI Europe is now challenged to make a major contribution.

In this paper we briefly draft the background to the current challenge and consider how we could meet this challenge, as well as what role IRI Europe could play.

IRI Europe has been founded in order to deliver added-value to everyone working on I&R issues in Europe, from activists to academics, journalists to politicians, by informing, analyzing and educating about the strengths and weaknesses of different DD-practices in different contexts. There are no easy gains, no easy solutions - everything has to be developed with great care and modesty.

We look forward to receiving your feedback on this paper – any criticisms you may have, but also what commitment you have to this work. Let us know what you and/or your organization would like to contribute in knowledge, active work and - last but not least - financial support.

II. THE CONTEXT

From national EU-referendums to...

Direct Democracy is not a new element in the European integration process. In fact, over the last three decades, referenda have come to shape the process of European integration. The numbers are impressive: More than 150 million citizens in 11 countries (AT, DK, FI, FR, IR, IT, LI, NO, SE, CH, UK) and 3 autonomous states (Faroës, Greenland, Åland) have since 1972 had a direct say in 27 referendums, making the European integration process the single most important direct-democratic issue trans-nationally in the world.

Major debates on democracy and reform have been triggered by referendums in countries like Denmark ('No' to Maastricht on June 2, 1992) and Ireland ('No' to Nice on June 9, 2001). Over the next few years, important national decisions on joining EMU or the Union as such will be the subject of many new referendums.

This development, which many Europeans are obviously not conscious of, was partly anticipated by the French President Charles de Gaulle in the early 1960s, when speaking of a future European Union: "...Europe will be born on the day on which the different peoples, deep down, decide to join. It will not suffice that members of parliaments vote for ratification. It requires popular referendums, preferably held on the same day in all countries concerned".

...an initiative and referendum process at the European level.

Whereas the decision to join the Union by popular vote (referendum) has become standard, the ratification of new Treaties has - with the well-known exceptions of Ireland and Denmark - remained mainly restricted to parliaments.

In the aftermath of the EU Laeken summit, however, even De Gaulle's second appeal, for "popular referendums held on the same day in all countries concerned", has become an option, since the constitutional Convention is equipped with an open mandate to elaborate and propose new forms of democracy in the European Union. Further, the idea of a popular initiative at the Union level has been developed step-by-step during the last decade, and now has the potential to be introduced into a European Constitution.

III. THE GOALS

We wish to assist and advise all those, both inside and outside the EU Convention, who are dealing with I&R questions, by providing direct knowledge (at meetings, hearings, electronically), information (publications, website) and events (seminars, conferences).

A first priority is to assist the Convention in developing and agreeing on the need for a referendum in all member states on the outcome of the Convention/IGC. There is a growing number of proposals and fears connected with this option. These we have to analyze and evaluate. By providing different options and scenarios for a Constitutional Referendum we are preparing the potential start of a Europe-wide Alliance for a "European Referendum".

Secondly, we have to anticipate the debate and possible agreements in the Convention about the introduction of direct-democratic devices into the Treaties/Constitution. As with the Referendum, we have to do some groundbreaking work on the "European Initiative".

In sum, we want to make a contribution to having first the Referendum and then the Initiative...

- a) ...placed on the Convention agenda
- b) ...discussed in the Convention
- c) ...included in the Convention's final proposals.

This could lead to....

- a) ...having the results of the Convention or the following Intergovernmental Conference (IGC) put to the ballot in referendums in all Member States.
- b) ...having a statutory EU-wide referendum on an EU Constitution written into the Union's Treaties.
- c) ...having new forms of citizen initiated referendum (popular initiative and popular referendum) included in the Treaties/Constitution.

IV. NOTA BENE

In our work we should never forget that...

- a) ...the national governments will not voluntarily be ready to share their unique position of power - being both the executive nationally and the legislative in the EU...

= THUS IT WILL BE OF DECISIVE IMPORTANCE FOR US TO BE ABLE TO SHOW AND EXPLAIN THE (POSITIVE) POTENTIAL OF DIRECT DEMOCRACY FOR THE INTEGRATION PROCESS.

- b) ..,despite the growing use and practice of I&R devices in many European States - and as stated especially in the framework of the integration process - there is in general still very little understanding and awareness of possible models of DD at the transnational European level.

= THUS IT WILL FURTHER BE OF DECISIVE IMPORTANCE TO PRESENT CONCRETE PROPOSALS for EU-WIDE I&R ELEMENTS WHICH BOTH RESPECT THE UNIQUENESS OF THE TRANSNATIONAL EU-POLITY AND THE BASIC REQUIREMENTS of "GOOD" DD.

V. THE WORK

1) FILING PHASE (March-April)

- i) Fact sheets on DD in the integration process (Commented list on all 27 referendums in European States held since 1972)
- ii) Overview of models of transnational DD (Concrete Proposals for DD at the transnational level from NGOs, academics, officials).

- iii) Establish Contacts to (and meet with) Members of the Convention/EP.
- iv) Fact sheets on the Convention (List of participants, Addresses, Task descriptions, Working methods)
- v) Establish network of activists committed to follow-up and lobby the Convention.
- vi) Make initial contributions to European Media about e.g. "Why the Convention must evaluate the options for Direct Democracy for Europe".

2) QUALIFYING PHASE (May-November)

- i) Explore and summarize the possibilities in all member states of putting the Results of the Convention and/or the IGC to a popular vote (obligatory/non-obligatory referendum opportunities).
- ii) Organize/Participate in professional seminars on the issue of I&R at the EU-level:
 - 13th & 14th May in Berlin with Stiftung Mitarbeit/Evang. Akademie Berlin/Europahaus Eisenstadt > follow-up in Eisenstadt 14.&15.11.
 - September in the European Parliament in Brussels/Strasbourg
 - Project "Europe by the Citizens" IRI Europe and Europahaus Burgenland
- iii) Draft, discuss and finally agree on a common platform/manifesto with basic but concrete proposals on how DD could be incorporated into a future Constitution-structure/the existing Treaty-structure.
- iv) Continuing and deepening contacts with Members of the Convention.
- v) Organizing a high-level public event at the Swiss Embassy in Berlin on "what DD has to offer to the European integration process". (Date not yet confirmed, first half of June).
- vi) Establishing a network of Organizations and Individuals to become part of a pan-European ad-hoc Alliance for EU-DD

3) DECIDING PHASE (December 02-March 03)

- i) Presenting IRI Europe Report on transnational European DD
- ii) Presenting EU-DD-Alliance agreement on a concrete EU-DD proposal
- iii) "Europe for the citizens, Europe by the citizens" - Public Event/Happening on the eve of the decisive Convention sessions (in Brussels)
- iv) Launching a pan-European campaign for a pan-European referendum on the outcome of the Convention/IGC

4) DIVISION OF LABOUR/COORDINATION

IRI Europe personnel and financial resources are still very limited. Nevertheless, the Convention process is an opportunity for the Institute, as a DD competence centre and European I&R Platform, to offer its know-how and services.

As IRI Europe we see our main contributions in the field of:

- 1) Research-related activities, such as writing fact-sheets and reports
- 2) Organizing and participating in professional seminars
- 3) Offer expert know-how to the EP and advising the Convention

However, the success of this enterprise will be highly dependent on cooperation with partner organizations such as the co-founders of the Institute, especially MEHR DEMOKRATIE, AGORA and EUROTOPIA, as well as other European and national NGOs such as the PERMANENT FORUM OF THE CIVIL SOCIETY, EUROPEAN MOVEMENT, NDDIE, TEAM-ALLIANCE, ICC, STIFTUNG MITARBEIT, EUROPAHAUS BURGENLAND. All these organizations could also be the basic partners for future alliances and campaigns.

As we will have to agree on the launch of the project - the I&R process in the European Union - you are warmly invited to give your feedback and comments on this strategy paper as soon as possible. I also would like to know what are your expectations of the Institute in this field and how you would like to participate/take responsibility.

Please mail your comments to kaufmann@iri-europe.org.

Attached is a report on the opening of the EU-convention published by EUobserver.com:

01.03.2002

Giscard: referendum for EU constitution by 2004

VALERY GISCARD D'ESTAING - President of the Convention on the future of th EU. With his speech delivered in French, English and German, after he had addressed the audience in the European Parliament's

semicircular in all 11 official EU languages, Mr Giscard d'Estaing invited everybody to "dream of Europe." (Photo: EUobserver.com) The president of the Convention on the future of the EU Valéry Giscard d'Estaing said on Thursday that the work of the Convention will carry weight if members of the Convention can achieve broad consensus on a single proposal. "We could thus open the way towards a constitution for Europe," Mr Giscard said in his speech inaugurating the Convention on the future of the EU.

European elections in 2004.

Written by Daniela Spinant

Edited by Daniela Spinant, Lisbeth Kirk

The former french president also pointed out that the European constitutional treaty could be approved through a EU-wide referendum at the time of the European elections in 2004.

Four presidential speeches

On Thursday afternoon four European presidents opened the Convention on the future of the EU, which is to reflect on far-reaching reforms of the EU system and write a European constitution. Spanish Prime Minister José Maria Aznar for the European Council, European Parliament's president Pat Cox, the Commission's president Romano Prodi and the president of the Convention Valery Giscard d'Estaing all solemnly mentioned the historic character of the opening of the Convention which is expected to mark a qualitative leap in the history of the EU.

Questioning the objectives

For the Convention's president Giscard d'Estaing, the reflection has to start from the question "What do Europeans expect of Europe at the beginning of the 21st century?" The president pledged the Convention would listen to "governors and governed", and to the civil society and would pay special attention to two groups: young people and the citizens from candidate countries in order to gauge what is the direction they want the European Union to go. Mr Giscard also urged special attention to be given to the question of who does what in Europe: defining the respective powers of the European Union and of member states.

Constitutional treaty

Valéry Giscard d'Estaing proposes that the text the Convention would eventually produce should be called "a constitutional Treaty", and not "constitution" or "treaty", in order to avoid any disagreement over semantics. On the adoption of the constitutional Treaty, Mr Giscard said that Treaties are adopted by national parliaments, but traditionally constitutions are endorsed by popular votes. He consequently imagines that the future constitutional treaty should be approved by referendum, simultaneously with the

March 2002: Invitation to MEP's and active citizens to the first meeting of the IRI Europe Convention Network

Dear colleague

Since 1972, more than 250 million people in 11 European states have had the opportunity of taking part in national Referendums about the European integration process. Now the idea of a transnational European Referendum has been launched by the President of the EU-Convention, Valerie Giscard d'Estaing. The prospect of having citizen decisions in all EU member states about the EU Charter of Fundamental Human Rights and/or the upcoming new Treaty/Constitution raises both hopes and fears, but above all a lot of questions about the design of such a European Referendum (ER).

Just a few of these questions: How can an ER be integrated into the existing process of Treaty ratification? Would such a Referendum be binding on or only advisory to the EU institutions? Which majorities would and should be applied? And what will be necessary to make an ER really happen?

As the EU Convention has a unique opportunity to reshape European Democracy and to bring the citizens back onto the political center stage, the Initiative & Referendum Institute Europe (IRI Europe) - a transnational competence center for all questions of direct democracy - is ready to advise and assist the Members of the Convention on these important Referendum issues. In addition, our team of highly-skilled experts and academics is ready to advise and assist NGOs in developing and designing their support for the European Referendum idea.

On the eve of the first working session of the EU Convention, you are warmly invited to participate (in person or by sending a representative) in the first Meeting of the IRI Europe Convention Network.

Wednesday, March 20, 16.00-18.00

Venue: Room A1E1 at the European Parliament in Brussels

Important note: If you do not already have an Entry Badge to the European Parliament, please register as soon as possible (but not later than 1pm on Tuesday afternoon) by sending an email to me at: kaufmann@iri-europe.org. Meeting point will be the entrance area of the EP at 15.30 on Wednesday.

If you (or your representative) are not able to join this meeting, but you would like to be briefed on the subject and the IRI Europe offer of assistance, do not hesitate to contact me and we will find time on Wednesday or Thursday for a bilateral meeting. Last but not least, you are welcome to indicate your interest in the issue, and we will update you regularly by email on developments of the Referendum issue.

I look forward to receiving your feedback - and hopefully to seeing you this Wednesday.

Yours sincerely,

Bruno Kaufmann

December 2002: IRI Europe Strategy paper I&R in the EU Constitution

Instruments of direct democracy as a complement to parliamentary democracy have come to stay. In 2003 another ten national referendums are scheduled, beginning in Malta in March and ending in Latvia in September.*

Drawing on this experience of integrating the citizens into the decision-making process on Europe, the Convention should find answers to at least two questions:

In what way shall the peoples of Europe be part of the upcoming ratification process for the future Constitution?

How will the citizens be able to take part in the Constitution-making and -amending process in the future?

As a way forward the Convention could consider a step-by-step process:

STEP ONE: SIMULTANEOUS REFERENDUMS IN ALL MEMBER STATES ON THE NEW TREATY IN CONNECTION WITH THE NEXT EUROPEAN ELECTIONS

After 40 national referendums on Europe in the member states, the upcoming Treaty/Constitution should not only be ratified by governments and parliaments, but also by the peoples of Europe. This can become a reality by organizing simultaneous binding referendums in all member states in connection with the next European elections in June 2004.

As this Treaty must include procedures for the transition from the current treaty structure to a constitutional structure, the Convention should draft a proposal which respects both the legal requirement for unanimity of the member states and also enables a qualified majority of member states to establish an EU Constitution.

In the first Europe-wide referendum, the citizens could therefore be asked to answer two questions:

Are you in favour of the new EU Treaty drafted by the Convention (and agreed by the IGC)
Should your country accept the new EU Constitution as proposed by the new EU Treaty?

The new Treaty will be accepted if a majority of all participating citizens and majorities in ALL member states have said yes to it. The new Constitution will be established if a majority of all participating citizens and majorities in 3/4 of all member states have said yes to it.

The countries whose electorate has rejected the Constitution should have a second chance to join it after having negotiated possible opt-outs and after having the compromise accepted in a second referendum.

STEP TWO: A RIGHT OF SUBMISSION TO THE EUROPEAN PARLIAMENT FOR A CERTAIN NUMBER OF CITIZENS IN EUROPE.

Participation in decision-making should not be reduced to being a veto option. For this reason we propose to incorporate in the new Treaty a right of submission by 500,000 citizens from at least three member states. This proposal was already on the agenda of the Amsterdam IGC in 1996, at that time launched by Italy and Austria. Since then the Petitions Committee of the European Parliament has worked on further developing the existing petition right to allow it to become a genuine popular right of submission. Interestingly, this would also strengthen the "initiative right" of the Parliament. This instrument could already be implemented during the transition phase from the Treaties to the Constitution.

STEP THREE: A MANDATORY AND BINDING CONSTITUTIONAL REFERENDUM FOR ALL SIGNIFICANT FUTURE CHANGES TO THE EUROPEAN CONSTITUTION

The Convention method is a suitable method for preparing constitutional changes also in the future European Union. There is no reason to believe that this would be the last time that parliaments, govern-

ments and European institutions identify necessary changes to the Constitution.

By having a founding constitutional referendum (step one), the principle of popular sovereignty is consolidated at the EU level; this principle necessarily requires a mandatory and binding referendum for all significant future changes of the constitution, for which a double qualified majority is needed.

The model of a second chance with opt-out-clauses for member states rejecting such changes should be considered.

STEP FOUR: A RIGHT OF CONSTITUTIONAL INITIATIVE

In a modern democracy, the right of constitutional initiative should not be limited only to certain European institutions or national governments, but also lie with the citizens. We propose to give six million citizens from at least five member states the right to initiate an amendment to the EU Constitution. After filing the initiative the initiators of the amendment shall have 24 months to gather the required signatures. The European Parliament (and possibly the Council) will have the possibility of launching a counter-proposal. The final decision is taken by the citizens in a referendum on the initiative proposal (and a possible counter-proposal), in which a double qualified majority is required (as in step three).

STEP FIVE: EXTENDING THE INITIATIVE & REFERENDUM PROCESS TOWARDS EUROPEAN LAWMAKING.

Steps one to four will enable European citizens to gain important experience with direct democracy as a complement to representative decision-making at the EU level. As a consequence, we also see the need to consider the establishment of an I&R process for European legislation (in addition to purely constitutional matters). This could include a facultative legislative referendum and a legislative popular initiative. We recommend that the Convention formulate this option in the draft for a new Treaty and the Constitution.

The history of European integration has shown how important the integration of the citizens into the decision-making processes is. By establishing instruments of direct democracy also at the EU level, far-reaching positive effects could be achieved, including the aspect of combining higher stability with the possibility for dynamic reforms and changes.

Draft by Bruno Kaufmann, kaufmann@iri-europe.org

January 2003: Invitation to Convention working dinner on I&R.

INVITATION

Initiative & Referendum in the future European Constitution

Dear Convention colleague,

we would like to invite you to a working dinner about the inclusion of elements of direct democracy in the future European Treaty/Constitution, with specific reference to the following formulations in the draft (skeleton) constitution published by the Convention Praesidium:

1. PART ONE: Title VI: The democratic life of the Union - Art. 34: the principle of participatory democracy
2. PART THREE: Last Title: Revision procedures; Adoption, ratification and entry into force

This meeting will take place on
MONDAY, JANUARY 20, 2003
following on from the Convention session,
at approx. 8 pm in
SALON IN THE MEMBERS' RESTAURANT
ASP 00G 275

This working dinner is hosted by the signatories below and will be introduced by a short presentation and overview of the main experiences, issues and existing proposals relating to EU Popular Initiatives and Referendums. The purpose of the meeting is 1) to establish an informal working process which will lead to a concrete proposal in the Convention, which 2) will be signed by members of all political groups and 3) will lead to concrete articles in the final draft produced by the Convention.

In preparation, we are supplying you with a personal issue of "Voices of Europe", a new study by IRI Europe on the "growing importance of Initiatives and Referendums in the European integration process". (French, Spanish, German, Slovak and Danish versions are available at www.iri-europe.org).*

Please let us know by January 15 if you are able to join us by sending an e-mail to kaufmann@iri-europe.org.

Please also use this e-mail address for all your feedback, comments and proposals.

Yours sincerely,

Jürgen Meyer, MdB, Convention Member, SPD, Germany
Diana Wallis MEP, ELDR, United Kingdom
Alain Lamassoure, MEP, Convention Member, EPP, France
Heidi Hautala, MEP, Green/EFA, Finland
Bruno Kaufmann, Initiative & Referendum Institute Europe, Netherlands
Hans Göttel, Europahaus Burgenland, Austria
Michael Efler, Democracy International, Germany

February 2003: First I&R Draft in the European Convention presented

BRUSSELS, February 6 - At the second meeting of the informal working group on direct democracy in the European Convention, Irish MP John Gormley presented a first draft of "a Europe-wide referendum on the European constitution". Gormley, as member of the Convention proposes a constitutional referendum based on dual majorities (states and peoples), as well as a range of petition and initiative rights. The working group will now continue to develop the text in order to prepare a concrete proposal for the final Convention draft in June.

A EUROPE-WIDE REFERENDUM ON THE EUROPEAN CONSTITUTION

Draft presented by John Gormley, Feb 6, 2003

Introduction

The Laeken Declaration recognised the need to bring Europe closer to the people. This was the impetus for the Convention on the Future of Europe, which will produce a Constitution for Europe. If the Constitution is to have real democratic legitimacy, then it ought to be put to the people of Europe in a Europe-wide referendum. Not to do so would simply reinforce the impression of a deep democratic deficit in Europe; it would also send a signal that Europe is not about the people but about the governing elites.

If Europe is to be brought closer to the people, we must embrace the concept of direct democracy and ensure that referendums are used to the maximum extent possible.

Why a Europe-wide referendum?

It has been argued that there is no European demos, that Europe consists solely of member states which ratify treaties according to their own constitutional requirements. While it is the case that a 'European People' does not exist, it is equally clear that a Europe-wide referendum would create a common political space. It would be a means of bringing the peoples of Europe closer politically; it would ensure that the people were more engaged with and had a greater knowledge of the project.

Legal difficulties

Such a proposal does not come without political or constitutional difficulties. Currently, ratification of a European treaty requires unanimity. Theoretically, therefore in a Union of twenty-five, one country can block the European treaty. Not only can this be seen as unfair and undemocratic, it must also be recognised that the present position puts undue pressure on certain member states which have a constitutional obligation to hold a referendum. For example, during the second Nice Referendum in Ireland, the most compelling argument to ratify had nothing to do with the treaty itself and everything to do with the fact that Ireland would block the treaty by voting 'no'. In a Europe-wide referendum, held on the same day in member states, arguments could centre on the merits or otherwise of the constitution and not on the political consequences of voting 'yes' or 'no'. Member states which have at present no constitutional provision for holding a referendum would need to immediately introduce appropriate measures to enable such a possibility. In certain member states a referendum could have the status of a plebiscite, but it would undoubtedly carry enormous political weight.

Method

As Europe consists of citizens and member states, the fairest and most democratic means of consulting the people would be by a referendum based on a dual majority, i.e., a majority of citizens and a majority of states would be necessary to secure ratification. If a dual majority is achieved, and if certain member states have voted 'no', these states should have the option of accepting a majority decision and thus the new constitution, or of regulating their relationship with the EU. This could include the most extreme option of seceding. It is therefore necessary to include a secession clause in the new Constitution.

Direct democracy/European Citizens Legislation

European citizens should have the right to participate in the legislative activity of the European Union by means of a European Citizens' Initiative, European Citizens' Demand and European Citizens' Referendum.

If 400,000 European citizens sign a European Citizens' Initiative, the proposers should have the right to have their initiative debated in the relevant institutions of the European Union. If three million European Citizens sign a petition as part of a European Citizens' Demand within one year and no more than half of the signatures come from a single member state, then a European Citizens' Referendum will be held on the subject of the Citizens' Demand, unless the relevant organs of the European Union have adopted the Citizens' Demand as proposed.

A European Citizens' Demand involving amendments to the Constitution or to the Treaties will require the signatures of six million European citizens.

The effect of the above proposals is to bring Europe closer to the people as Laeken recommended. It represents the largest step yet in the democratisation of the Union. It empowers the European citizen as opposed to the member states. It undoubtedly enhances the role of the European citizen in shaping the future of the European Union.

Which direct democratic instruments?

There ought to be a multi-stage right of initiative consisting of an EU Citizens' Initiative, an EU Citizens' Demand, and EU Citizens' Referendum. Changes to Treaties or Constitutions or a surrender of sovereignty to International Organisations such as the IMF, WTO, World Bank, etc., should also be made by way of referendum.

Rules regulating distribution of information and finance.

In any EU Referendum Campaign it is vital that the electorate is properly informed and that the initiators of an EU Citizens' Demand receive financial support from public funds.

All households, therefore, should receive a referendum information leaflet listing the arguments 'for' and 'against'. An elected Referendum Commission should be responsible for ensuring a fair and balanced dissemination of information to the public. The initiative should be able to claim a refund of expenses incurred.

CONCLUSION

The Convention should recommend to the Intergovernmental Conference that the draft European Constitution be approved not only by National Parliaments and the European Parliament but also by the citizens of Europe in binding referendums. These

referendums should take place in accordance with the constitutional provisions of the member states. The best possible date to hold these referendums simultaneously would be on the same day as the European Parliament Elections in June 2004.

Those member states whose constitutions do not currently permit referendums are called upon to introduce the necessary changes to allow a referendum to take place. In the White Paper on "Good Governance" recently published by the EU Commission, it is stated that the institutions of the EU have to become more transparent and more open to participation by the citizens. If the Convention fails to make such a recommendation to Intergovernmental Conference, a real opportunity to democratise the European Union and empower the European citizen will have been missed.

March 2003: Einem - proposal.

Suggestion for amendment of Article

Article 34a: Direct Democracy/
European Citizens' Legislation

Suggestion for Part III

By Mr: Caspar EINEM

Status: Member

Article 34a: Direct Democracy/European Citizens'
Legislation

- 1) Citizens of Europe have the right to participate in the legislative activity of the European Union by means of the European Citizens' Initiative, the European Citizens' Demand and the European Citizens' Referendum.
- 2) If 0.1% of the European citizens sign a European Citizens' Initiative, and no more than half of the signatures come from a single member state, the initiators of the initiative have a right to have their initiative debated in the relevant organs of the European Union.
- 3) If 1% of the European citizens representing at least 1.5% of the population in at least one-third of the Member States, or a qualified majority of the members of the European Parliament, give their signatures to a European Citizens' Demand within 1 year, a European Citizens' Referendum will be held on the subject of the Citizens' Demand, unless the relevant organs of the European Union adopt the Demand unchanged.
- 4) Any constitutional amendments decided on by the relevant organs of the European Union must be submitted for approval by the citizens of Europe in a referendum.
- 5) A European Citizens' Referendum is accepted if the majority of those voting were in favour and a majority was also in favour in more than half of the member states. For changes to the constitution, there must be a majority in at least half of the states representing two-thirds of the population of the Union.
- 6) Further provisions that also regulate a fair and balanced dissemination of information to the public through an elected referendum commission and an information leaflet to all households are to be laid down in an European law.

Explanation (if any) :

March 2003: Voggenhuber - proposal.

Suggestion for amendment of Article : 34 doc Suggestion for Part III

By Ms / Mr : Voggenhuber, Wagener, MacCormick, Lichtenberger, Nagy.

Status : - Member – Alternate

Article 34: The principle of participatory democracy

1. Every citizen person shall have the right to participate in the democratic life of the Union. The Union recognises that freedom of information and active citizenship are fundamental for the legitimacy of its decisions and actions, wherefore it takes its decisions as openly and closely as possible to the citizen.
2. The Union institutions shall, by appropriate means (plebiscites regarding legislation and popular referenda), give citizens and representative associations the opportunity to take part in the decision making process and to make known and publicly exchange their opinions on all areas of Union action.
3. The Union recognizes and promotes the specific and autonomous role of social partners in the democratic life of the Union
3. The Union institutions shall maintain an open, transparent and regular dialogue with representative associations, the social partners and civil society.

March 2003: Leinen - proposal.

Article 80 – Direct democracy

- (1) The Union's citizens have the possibility of taking part in the Union's legislative process by petitioning for a referendum and voting in a referendum.
- (2) If five per cent of the Union's citizens (subject to a maximum of thirty percent from any one Member State) sign a petition calling for a referendum, the European organs shall be obliged to submit the draft legislation or proposal for amending the Constitution in question to a referendum.
- (3) The European Parliament and the European Senate may decide by majority vote to submit a draft law or a constitutional amendment to a referendum.
- (4) The draft legislation or proposal for amending the Constitution shall be adopted if supported by a majority of Union citizens but only on condition that at least fifty percent of the electorate participate in the referendum.

Article 94 – Acceptance of the Constitution

- (1) This Constitution shall come into force after it has been approved in a referendum by a majority of the Union's citizens and a majority of the Member States.
- (2) Member States in which this Constitution is not ratified may decide whether they nevertheless wish to participate on the basis of this Constitution, or whether they wish to leave the European Union. In this latter case the provisions of Article 57, Paragraph 2, will apply.
- (3) This Constitution shall come into force two months after ratification.

Contact: Jo Leinen MdEP, Europäisches Parlament, Rue Wiertz 60, ASP 12 G 158, B-1047 Bruxelles Tel. 0032-2-284.58.42/Fax 0032-2-284.98.42,
e-mail:jleinen@europarl.eu.int

March 2003: Press Invitation

Monday, March 31, 2003

The Initiative & Referendum Institute Europe MEP Alain Lamassoure (Member of the European Convention, France) Prof. Jürgen Meyer (Member of the European Convention, Germany) and Democracy International, the host of the European Referendum Campaign

invite you to a Press Conference

The Convention Working Group will present its proposal for a Europe-wide Constitutional Referendum and the inclusion of elements of Direct Democracy in the future European Constitution

DECISIVE STEPS TOWARDS A EUROPE CLOSER TO ITS CITIZENS

A working group of European Convention members has reached agreement on how citizens should be directly involved in the ratification process for a European Constitution and in the future legislative process in Europe.

Today, the proposal for a Europe-wide Referendum on the EU Constitution was submitted to the Convention Praesidium. This proposal has been signed by 38 Convention members so far. A second proposal on direct democratic elements in the Constitution will be submitted during the coming days.

Both proposals, once implemented and put into practice, will be a major boost to the strengthening of the citizens' role in the European integration process: a process which until now has been one-sidedly dominated by the governments of the member states.

At the Press Conference we will present the two working group proposals, their background and the further strategy to make the first Europe-wide Referendum a reality!

Thursday, 3 April 2003
at 14.00
in room P0C50
The European Parliament
Brussels

With **Bruno Kaufmann**, President Initiative and Referendum Institute Europe, **Alain Lamassoure**, Member of the EP and the Convention (EPP-France), **Prof. Jürgen Meyer**, representative of the German Bundestag in the Convention (PES) and **Michael Efler**, Democracy International.

March 2003: Referendum - proposal

The European Convention
The Secretariat

CONV 658/03
CONTRIB 291

Brussels, 31 March 2003

COVER NOTE

from Secretariat to The Convention Subject:
Contribution submitted by several members, alternate
members and observers:
"Referendum on the European Constitution"

The Secretary-General of the Convention has received
the contribution in Annex from:

Peter BALASZ (Gov., EPP-ED, H), Irena BELOHORSKA
(Parl., SK) Jens Peter BONDE (EP, EDD, DK), Panayiotis
DEMETRIOU (Parl., EPP-ED, CY), Olivier DUHAMEL (EP,
PES, F), Johannes FARNLEITNER (Gov., EPP-ED, A),
Algirdas GRICIUS (Parl., LT), Hubert HAENEL (Parl.,
EPP-ED, F), David HEATHCOAT-AMORY (Parl., UK),
Sylvia-Yvonne KAUFMANN (EP, GUE, D), Alain LAMAS-
SOURE (EP, EPP-ED, F), Eleni MAVROU (Parl., GUE, CY),
Jürgen MEYER (Parl., PES, D), Alojz PETERLE (Parl.,
EPP-ED, SLO), Johannes VOGGENHUBER (EP, Greens /
ALE, A),

Members

William ABITBOL (EP, EDD, F), Robert BADINTER (Parl.,
PES, F), Filadelfio BASILE (Parl., EPP-ED, I), Pervenche
BERES (EP, PES, F), Carlos CARNERO GONZALEZ (EP,
PES, E), Lone DYBKJAER (EP, ELDR, DK), John GORM-
LEY (Parl., Greens / ALE, IRL), Piia-Noora KAUPPI (EP,
EPP-ED, SF), Evelin LICHTENBERGER (Parl., Greens /
ALE, A), Marie NAGY (Parl., Greens, B), Antonio
NAZARE-PEREIRA (Parl., EPP-ED, P), Elena PACIOTTI
(EP, PES, I), Reinhard RACK (EP, EPP-ED, A), Esko
SEPPÄNEN (EP, GUE, FI), Gintautas SIVICKAS (Parl., LT),
Francesco SPERONI (Gov., I), Alexander STOCKTON (EP,
PPE-DE, UK), Janus TRZCINSKI (Gov., PL), Gerhard
TUSEK (Gov., EPP-ED, A), Joachim WUERMEILING (EP,
EPP-ED, D)

Alternate Members

Roger BRIESCH (EESC, F), Claude du GRANRUT (CoR,
EPP-ED, F), *Observers.*

ANNEX

Referendum on the European constitution

ADOPTION, RATIFICATION AND ENTRY INTO FORCE
PROCEDURE

NOTES

Background

The Laeken Declaration recognised the need to bring
Europe closer to the people. This was the impetus for
the Convention on the Future of Europe, which will
produce a Constitution or a constitutional treaty for
Europe. If the Constitution is to have real democratic
legitimacy, then it ought to be put to the people of
Europe in a Europe-wide referendum. Not to do so
would simply reinforce the impression of a deep dem-
ocratic deficit in Europe; it would also send a signal
that Europe is not about the people but about the
governing elites.

Why a Europe-wide referendum?

It has been argued that there is no European demos,
that Europe consists solely of member states which
ratify treaties according to their own constitutional
requirements. While it is the case that a 'European
People' does not exist, it is equally clear that a
Europe-wide referendum would create a common
political space. It would be a means of bringing the
peoples of Europe closer politically; it would ensure
that the people were more engaged with and had a
greater knowledge of the project.

The demand for greater and more effective involve-

ment of European Citizens in the political process is not new. In 1949, before the emergence of the European Economic Community (EEC), Charles de Gaulle declared, "I think that the organisation of Europe has to proceed from Europe itself. I consider that the start shall be given by a referendum of all free Europeans".¹

Similarly, Altiero Spinelli proposed, in 1984, the creation of an EU Constitution, which would have to be ratified by the people in a referendum.²

Many members of the Convention have already spoken in support of a Europe-wide Referendum. The Convention President, Valéry Giscard d'Estaing, stated at the opening of the assembly that treaties should be concluded by countries, but a constitution by the people. Mr. Amato and the other Vice-President, Mr. Dehaene, have supported him in his call for a referendum. In the European Parliament, the Liberals and the Greens have both declared their support for a European Referendum. As the work of the Convention reaches a conclusion, an increasing number of leading European political figures are speaking in favour of a Europe-wide Referendum.

Legal difficulties

Such a proposal does not come without political or constitutional difficulties. Currently, ratification of a European treaty requires unanimity. Theoretically, therefore, in a Union of twenty-five, one country can block the European treaty. Not only can this be seen as unfair and undemocratic, it must also be recognised that the present position puts undue pressure on certain member states which have a constitutional obligation to hold a referendum. For example, during the second Nice Referendum in Ireland, the most compelling argument to ratify had nothing to do with the treaty itself and everything to do with the fact that Ireland would block the treaty by voting 'no'. In a Europe-wide referendum, held on the same day in member states, arguments could centre on the merits or otherwise of the constitution and not on the political consequences of voting 'yes' or 'no'. Member states which have at present no constitutional provision for holding a referendum would need to immediately introduce appropriate measures to enable such a possibility. If this is not achievable at least consultative referenda should be held. They would undoubtedly carry enormous political weight.

Method

As Europe consists of citizens and member states, the fairest and most democratic means of consulting the people would be by a referendum based on a dual majority, i.e., a majority of citizens and a majority of states would be necessary to secure ratification. If in any member state the proposed constitution is rejected in the referendum, the state in question can – in accordance with the relevant provisions of international and European law – use one of the following options. It could - after negotiating special status – hold a second referendum. It could try to regulate its relationship to the new "constitutional" European Union by a bilateral treaty; or it could choose to leave the European Union. It is therefore necessary to include a secession clause in the new Constitution. We thereby avoid two extremes: no country can be forced under the new constitution against the will of its citizens and on the other hand one country alone cannot block the whole constitutional process by its veto.

In any EU Referendum Campaign, it is vital that the electorate is properly informed about the issues. That is why we propose a referendum information leaflet to all households listing the arguments 'for' and 'against'. An elected Referendum Commission which would be responsible for ensuring a fair and balanced dissemination of information to the public could be an additional instrument.

In the White Paper on "Good Governance" recently published by the EU Commission, it is stated that the institutions of the EU have to become more transparent and more open to participation by the citizens. If the Convention fails to make such a recommendation to the Intergovernmental Conference a real opportunity to democratise the European Union and empower the European citizens will have been missed.

1. De Gaulle, Charles (1970). "Discours et messages. Dans l'attente. Février 1946 – Avril 1958. Paris: Plon, Vol II. P.309.
2. Spinelli, Altiero: "Una strategia per gli stati uniti d'Europa". Bologna: Società editrice il Mulino.

March 2003: Lamassoure - proposal

Proposition d'amendement à l'Article 34 (bis)

Déposée par Monsieur : Alain Lamassoure

Qualité: – Membre

Article 34bis : droit de pétition et référendum européen

1 – Les citoyens européens ont un droit de pétition dans le cadre de l'Union.

Si deux pour cent des électeurs de l'Union, répartis dans les deux tiers des Etats membres à raison d'au moins un pour cent dans chacun de ceux-ci, en font la demande, un débat est ouvert au sein des institutions européennes sur le sujet soulevé dans la pétition.

Si cinq pour cent des électeurs, répartis dans quatre cinquièmes des Etats membres à raison d'au moins deux pour cent dans chacun de ceux-ci, le proposent, la Commission est tenue de soumettre au Parlement et au Conseil un projet de loi européenne ou l'abrogation d'une loi européenne existante.

2 – Le Conseil européen, après avis conforme du Parlement européen, peut décider de soumettre un projet de loi ou un traité signé par l'Union à la ratification d'un référendum populaire.

La ratification est obtenue par l'obtention d'une majorité simple de l'ensemble des électeurs de l'Union et d'une majorité simple dans la moitié des Etats membres.

Explication:

Il s'agit d'introduire les procédures de la démocratie directe dans la vie de l'Union. Combinées avec l'amendement déposé sur la révision constitutionnelle, ces propositions ouvrent quatre possibilités différentes : droit des citoyens d'obtenir un débat ; droit de proposer une loi nouvelle ou l'abrogation d'une loi existante ; droit d'être consultés par référendum sur un projet de loi ou de traité (par exemple un traité d'adhésion) ; droit d'obtenir le recours au référendum pour ratifier une révision de la Constitution.

June 2003: the last appeal

On elements of direct democracy in the future european treaty/constitution and the signatories of the proposals for a europe-wide constitutional referendum and an eu citizens' initiative right.

Amsterdam/Brussels, June 10, 2003

URGENT UPDATE: JUNE 10, 9 am

The Convention Presidium may try to ignore the claim for a bigger democratic say in the future EU constitution – we have to act NOW!

Dear Convention colleague,

We have done our job. Over the last half year we have worked out the foundations for new tools for democratic participation in the future EU constitution. A proposal for a Europe-wide referendum on the EU constitution has been signed by almost 100 Convention members in 27 states. A proposal for an EU popular initiative right was signed by close to 50 members and submitted last week. A compromise proposal limiting the popular initiative right to a citizens' submission right was launched last week, signed by more than 70 members and discussed at a meeting of the national parliament representatives, where it was clearly approved. In the end, also the Chairman of the Convention also explicitly welcomed this idea!

The submission right proposal was finally discussed at the presidium meeting last Friday, but surprisingly was NOT accepted as a compromise. It seems that the presidium underestimates the support in the Convention and the need in the constitution for such a reform, which could at last bring the European Union somewhat closer to its citizens. The very last chance to show the presidium that the article on participatory democracy must not remain EMPTY in the new constitution will be ahead of tomorrow's presidium session at 3 pm. Please try to contact your affiliate in the presidium and emphasize to her/him the importance of a citizens' submission right as proposed last week.

“The citizens' submission process in the European constitution”

Art. I... Citizens of the Union have the right to request the Commission

Citizens of the Union may request the Commission to submit any appropriate proposal on matters on which they consider that a legal act of the Union is required for the purpose of implementing this Constitution.

Further provisions that particularly regulate the specific procedures, the numbers of signatures that have to be gathered and the majority requirements are to be laid down in an institutional act.

Many thanks for your cooperation and good luck for the last decisive days!

Yours sincerely,

Jürgen Meyer, Member of the Convention

(Parl., PES, Germany)

Alain Lamassoure, Member of the Convention

(MEP, EPP-ED, France)

Bruno Kaufmann, Initiative & Referendum Institute Europe, Netherlands

Michael Efler, Democracy International/More Democracy, Germany

April 4, 2003: Media coverage and comments on Referendum proposal.

Media: Agence France Press, April 3

UE-élargie-convention

Proposition pour un vote le même jour dans toute l'UE sur la Constitution

BRUXELLES, 3 avr (AFP) - Une cinquantaine de membres de la Convention sur l'avenir de l'Europe ont proposé d'organiser le même jour, par exemple en juin 2004, des référendums dans les vingt-cinq pays de l'Union élargie pour ratifier la future Constitution européenne, de façon à renforcer sa légitimité démocratique.

"L'Europe doit être fondée sur les citoyens", a déclaré jeudi lors d'une conférence de presse l'un des signataires de la proposition, Alain Lamassoure (PPE, centre-droit).

Cette proposition demande à la Convention de recommander de tels référendums à l'échelle de l'Europe à la Conférence inter-gouvernementale (CIG). Celle-ci aura le dernier mot sur le projet de la Constitution en cours d'élaboration par la Convention.

Le député français de la Convention s'est félicité que cette proposition de référendums dans l'ensemble de l'Europe ait reçu le soutien "aussi bien des eurosceptiques que des euroenthousiastes" et que les signataires appartiennent à différentes sensibilités politiques.

Parmi les signataires, figurent également les représentants de plusieurs gouvernements, en particulier d'Europe centrale, ainsi que des eurosceptiques notoires, comme le député souverainiste danois Jens-Peter Bonde.

Dans les pays comme l'Allemagne où l'organisation d'un référendum n'est pas prévue par la constitution, les auteurs de la proposition préconisent de tenir au moins des référendums consultatifs.

Les référendums, ajoutent-ils, pourraient se tenir dans l'ensemble de l'Union élargie en juin 2004, en même temps que les élections pour le nouveau mandat du Parlement européen.

De tels référendums permettraient aux Européens "pour la première fois" d'avoir "un vrai débat sur l'Europe", a souligné Alain Lamassoure.

Interrogé toutefois sur les risques que présenteraient une telle initiative pour l'intégration européenne, en cas de rejet du projet de Constitution par les électeurs, le député a répondu: "oui, c'est un risque, comme c'était un risque au milieu du 19-ème siècle de passer au suffrage universel".

"Il faut introduire le citoyen au coeur du système" européen, a-t-il conclu.

Media: Agence Europe, April 3

EU/CONVENTION: 50 Convention members seek ratification for European constitution in EU-wide referendum on same day as European Parliament elections

Brussels, 03/04/2003 (Agence Europe) - Around fifty Convention Members are seeking ratification of the European Constitution by an EU-wide referendum on the same day as elections to the European Parliament. They have also adopted a common declaration: "We propose that the Convention recommends to the Intergovernmental Conference that the draft for the European Constitution be approved by both national parliaments and the European Parliament, as well as by European citizens in binding referendums. These referendums are expected to be organised according to the Constitutional provisions of Member States. They should be organised the same day. One option would be to hold them on the same day as elections to the European Parliament in June 2004. Member States, whose constitutions do not presently allow for referendums are called on to hold consultative referendums at the very least. An information campaign on public funds will also be organised". For the instant, the signatures of 15 Convention members, 20 Deputy Members and 2 Observers have been submitted, as well as a dozen others having been recorded. Those supporting the declaration expect to gain around sixty signatures.

Convention Members, Alain Lamassoure (French MEP, EPP) and Jürgen Meyer (German parliament, PES) presented this proposal to the press on Thursday. Mr Lamassoure insisted on the fact that the declaration was signed by representatives from "all political

groups, all the institutions, including around half a dozen government representatives (Poland, Austria, Hungary, Italy etc), by both Euro-sceptics and Euro enthusiasts alike". Lamassoure and Meyer both believe that a referendum would be a means for conferring democratic legitimacy on this Constitution.

Declaration signatories do not yet have a common position on the consequences of a rejection of the Constitution in one or several referendums but intend to work on it. Mr Lamassoure explained that introducing a referendum "is a risk, as universal suffrage was in the 19th century...up to now we have built a European Union without European citizens really controlling the process...We should introduce citizens into this process". He recognised that with 25 Member States, "it is practically certain that statistically there will be a "no" somewhere". For Mr Lamassoure, the Constitution would not apply to countries that had not ratified it.

Media: Schweizerische Depeschagentur, April 3

EU-Konventsmitglieder wollen Referendum über EU-Verfassung

Brüssel (sda) Über die künftige EU-Verfassung sollen Bürgerinnen und Bürger in einer Volksabstimmung entscheiden: Ein entsprechender Vorstoss im EU-Reformkonvent ist von gegen der Hälfte der Konventsmitglieder unterzeichnet worden.

Die Initianten stellten ihren Vorschlag am Donnerstag in Brüssel den Medien vor. Ausgearbeitet hatte ihn eine Arbeitsgruppe im Reformkonvent der Europäischen Union (EU). Dies in Unterstützung mit der vom Schweizer Bruno Kaufmann geleiteten Europäischen Instituts für Initiativen und Referenden (IRI) in Amsterdam.

Im Juni 2004

Der Vorschlag will, dass die künftige EU-Verfassung nicht nur vom EU-Parlament und den Parlamenten der EU-Staaten, sondern auch von den Bürgern genehmigt werden soll. Dazu sollen alle EU-Staaten Referenden durchführen, und zwar am gleichen Tag im Juni 2004 zusammen mit den Wahlen ins EU-Parlament.

Gefordert werden bindende Referenden. Wo dies die Verfassung eines EU-Staates nicht erlaubt, soll es wenigstens eine konsultative Volksbefragung geben.

Bis Donnerstag wurde der Vorstoss von gut über 40 Konventsmitgliedern unterzeichnet. Diese kämen aus allen Fraktionen und im Konvent vertretenen Institutionen und umfasse «Euroskeptiker wie Euroenthusiasten», sagte der konservative EU-Parlamentarier und frühere französische Minister Alain Lamassoure.

Auf Bürger stützen

Laut Lamassoure muss sich Europa auf seine Bürgerinnen und Bürger abstützen, und diese müssten das letzte Wort haben. Mit der demokratischen Legitimierung begründete auch der Konventsvertreter des deutschen Bundestags, Jürgen Meyer, den Vorstoss: «Wenn etwas einem Referendum unterstellt werden soll, dann ist das die Verfassung.»

Laut Meyer wäre ein Referendum auch der beste Weg, die Bürger über Konvent, Verfassung und die EU selbst zu informieren. In einer Erklärung zu ihrem Vorschlag verweisen die Initianten denn auch auf einen der Ursprungsgedanken der EU-Reformen, die EU den Bürgern näher zu bringen und gegen Demokratiedefizite vorzugehen.

Risiken eingeräumt

Lamassoure räumte zwar ein, dass Referenden wegen der EU-Skepsis in Teilen der Bevölkerungen auch ein Risiko für den europäischen Integrationsprozess sein können. Die Erfahrungen der Schweiz würden studiert, sagten sowohl Lamassoure wie Meyer. Unklar blieben sie aber zur Frage, was bei einem Nein einzelner Länder zur Verfassung geschehen solle.

Lamassoure sieht allerdings das Problem vor allem zu Beginn, wenn in Referenden auch nationale Unzufriedenheiten zum Ausdruck kommen. Dann könnte aber laut den Initianten gerade ein europaweites Referendum eine europäische Öffentlichkeit schaffen.

Der EU-Konvent erstellt seinen Verfassungsentwurf zuhanden einer Regierungskonferenz der EU-Staaten. Beraten wird der Entwurf möglicherweise an einem EU-Sondergipfel am 30. Juni.

Media: EU Observer, April 4

Convention members propose Europe-wide referendum on the Constitution

If the idea is accepted, citizens of the enlarged EU will have the opportunity to vote on the draft European Constitution on June 2004.

EUOBSERVER / BRUSSELS – June 2004 is the earliest date that Europe's citizens can decide whether to back the European Convention's draft constitution.

A working group of members of the EU Convention on the Future of Europe proposes to hold one common referendum on the draft European Constitution in all 25 member states of the enlarged EU.

According to the idea, the referendum (that could be held simultaneously) should follow the approval of the document by the National Parliaments and the European Parliament.

The group believes this move would directly involve citizens in the future of the EU debate and enhance democratic legitimacy.

"We should show the people that this is an EU where they have a say", Bruno Kaufmann told the EU Observer. The president of the Initiative and Referendum Institute Europe added that it would be practical to hold the referendum together with European Parliament elections that are due in June 2004.

According to the group, the referendum could be either legally-binding or consultative, in case the national legislation of certain EU countries, such as Germany, does not permit legally-binding referenda.

The idea has been submitted to the Convention which is expected to take a decision on the matter in the coming months. So far, the proposal has been signed by approximately 50 (out of 105) Convention members.

The group will now lobby the idea in the National Parliaments to convince politicians of its necessity.

Media: Deutsche Depeschen Agentur, April 4

EU-Konvent erwägt Europa-Steuer - Forderung nach Volksabstimmung

Brüssel (dpa) - Der Brüsseler Konvent für eine

europäische Verfassung peilt die Schaffung einer gemeinsamen Unionssteuer an.

Entsprechende Vorstellungen fanden in der Debatte über die künftigen Grundlagen der EU-Finzen am Freitag aber auch Widerspruch. Viele Befürworter argumentierten, die Bürger könnten Kosten und Nutzen der Europäischen Union anhand einer EU-Steuer besser erkennen.

"Der Konvent sollte erwägen, der Union eine begrenzte eigene Steuereinnahme zu eröffnen", sagte der Bundestagsvertreter Jürgen Meyer. Der französische Parlamentarier Pierre Lequiller und der Europa-Abgeordnete Elmar Brok (CDU) stimmten dem SPD-Politiker Meyer zu. "Dann müsste das Europäische Parlament auch vor dem Bürger begründen, warum es mehr Geld haben möchte", sagte Brok. Deshalb sollte der Konvent mit der geplanten EU-Verfassung zumindest die rechtliche Grundlage für eine solche Steuer schaffen.

Auch der Vertreter der Bundesregierung, Staatssekretär Martin Bury, befürwortete eine solche Rechtsgrundlage. Zugleich warnte er vor zusätzlichen Steuerbelastungen. Diese widersprächen dem Ziel, in Europa mehr Wachstum und Beschäftigung zu schaffen. Klar gegen eine EU-Steuer sprachen sich unter anderem der baden-württembergische Ministerpräsident Erwin Teufel und der Lette Guntars Krasts aus, der im Konvent das Parlament des Beitrittslandes vertritt. Eine solche Steuer würde die EU den Bürgern nicht näher bringen, meinte Krasts. Das Vorschlagsrecht für den Haushaltsplan solle der EU-Kommission übertragen werden, sagte der Däne Henning Christophersen als Vorsitzender der Konventsarbeitsgruppe zu Finanzfragen. Bisher legt der Rat der Mitgliedstaaten diesen Entwurf für das EU-Budget vor.

"Das werden wir ändern", sagte Christophersen. Wie etliche andere Redner sprach sich Christophersen zudem dafür aus, im Rat mit Mehrheit über Haushaltsfragen zu entscheiden. Die bisher gültige Einstimmigkeit werde zur Lähmung führen, warnte EU-Kommissar Michel Barnier.

In einer ersten Stellungnahme zu den Vorschlägen des Konventspräsidiums zu institutionellen Veränderungen der Union bezeichnete der britische Regierungsvertreter Peter Hain diese als "sehr zufriedenstellend". Die fraglichen Artikelvorschläge sehen unter anderem eine Austrittsklausel für die EU-Staaten vor. Die Generaldebatte über diese Punkte ist für Ende April vorgesehen.

Eine Reihe von Konventsmitgliedern legte unterdessen eine gemeinsame Erklärung vor, die eine Abstimmung der EU-Bürger über das Verfassungswerk fordert. Solche obligatorischen Volksabstimmungen

sollten möglichst am selben Tag stattfinden. Denkbar wäre der Tag der Europawahlen im Juni 2004. Wo die nationale Verfassungen keine derartige Volksabstimmung vorsehen, sollten diese zumindest mit beratendem Charakter angesetzt werden. Die Bürger müssten in den Prozess einbezogen werden, hieß es zu Begründung.

Media: Neue Zürcher Zeitung; April 4

Vorstoss für ein Referendum über eine EU-Verfassung

Brüssel, 3. April. (sda) Im Reformkonvent der Europäischen Union (EU) hat ein Vorstoss für eine Volksabstimmung über eine künftige Verfassung erhebliche Unterstützung gefunden. Gegen die Hälfte der Konventsmitglieder unterzeichnete die Initiative, die am Donnerstag in Brüssel den Medien vorgestellt wurde. Der Vorschlag will, dass die künftige Verfassung nicht nur vom EU-Parlament und von den Parlamenten der EU-Staaten, sondern auch von den Bürgern genehmigt werden soll. Dazu sollen in allen Mitgliedsländern Referenden durchgeführt werden, zusammen mit den Wahlen ins EU-Parlament im Juni 2004.

Media: St. Galler Tagblatt; April 5

EU erörtert Austrittsklausel

Neue EU-Verfassung soll Möglichkeit enthalten, aus EU auszutreten - Abstimmung nach Schweizer Vorbild

Mitglieder der EU sollen auch wieder austreten können. Dies schlägt das Präsidium des EU-Reformkonvents vor. Fast die Hälfte der Konventsmitglieder fordert Elemente der direkten Demokratie.

Steffen Klatt/Brüssel

Das Präsidium des EU-Reformkonvents hat gestern vorgeschlagen, dass die künftige EU-Verfassung auch eine Austrittsklausel enthalten soll. Dem in Brüssel tagenden EU-Konvent unter Leitung des früheren französischen Präsidenten Valéry Giscard d'Estaing lag ein Vorschlag vor, wonach ein freiwilliges Ausscheiden zwei Jahre nach einem Antrag möglich sein soll. Es ist nicht notwendig, dass die übrigen EU-Staaten die Gründe eines Austritts akzeptieren. Einzelheiten und anschliessende Beziehungen sollten in einem Abkommen festgelegt werden, was aber keine Bedingung für einen Austritt darstellt.

Noch kein Entscheid

Wie bisher soll eine Mehrheit von vier Fünfteln der EU-Länder die Mitgliedschaft eines Landes suspendieren können, wenn ein Mitglied Grundwerte wie Rechtsstaatlichkeit und Demokratie missachtet. Die Reaktion der 105 Konventsmitglieder auf den Vorschlag fiel unterschiedlich aus. Vertreter aus EU-skeptischen Ländern wie Grossbritannien lobten den Entwurf als hervorragend. Der frühere belgische Premier Jean-Luc Dehaene warnte dagegen, dass allein die Diskussion über eine Austrittsmöglichkeit zum gegenwärtigen Zeitpunkt falsche Signale setzen könnte. Die bisher eingebrachten Vorschläge für eine Verfassung der EU sind allesamt heftig umstritten. Eine Entscheidung stand vorerst nicht an.

Giscard d'Estaing fand für eine dritte Form des Ausschlusses aber keine Mehrheit. Er hatte vorgeschlagen, dass alle jene Länder automatisch die EU verlassen müssten, die den Verfassungsvertrag nicht ratifizierten. Damit wollte er verhindern, dass einzelne der künftig 25 Länder die Verfassung blockieren könnten. Das Präsidium des Konvents schlug nun vor, dass wie bisher alle Mitglieder den Vertrag ratifizieren müssten. Wenn aber ein oder mehrere Länder dies etwa aufgrund negativer Abstimmungen nicht tun, sollten Lösungen gesucht werden. Denkbar wären Sonderregelungen.

EU-Volksabstimmung

Immer mehr der 105 Mitglieder sind der Ansicht, dass der künftige EU-Verfassungsvertrag vom Volk ratifiziert werden müsse. Am Donnerstag schlugen der französische Konservative Alain Lamassoure und der deutsche Sozialdemokrat Jürgen Meyer eine EU-weite Volksabstimmung vor. Sie regten auch an, Elemente der direkten Demokratie in die EU-Verfassung einzufügen. Vorgesehen wären Volksabstimmungen und Initiativen wie in der Schweiz. Die beiden Vorschläge unterstützten fast 50 Konventsmitglieder aller politischen Lager. Die Führung des Konvents aber war skeptisch. Der EU-Konvent arbeitet noch bis Ende Juni an der Verfassung und will sie danach verabschieden.

Media: Südostschweiz, Die; April 5

Austritt aus der Europäischen Union wird möglich

Mitglieder der EU sollen auch wieder austreten können. Dies schlägt das Präsidium des EU-

Reformkonvents vor. Fast die Hälfte der Konventmitglieder fordert Elemente der direkten Demokratie.

Von Steffen Klatt, Brüssel

Die Europäische Union (EU) soll nicht länger eine Einbahnstrasse sein. Das Präsidium des EU-Reformkonvents hat gestern vorgeschlagen, dass die künftige EU-Verfassung auch eine Austrittsklausel enthalten soll. Danach soll ein Land einseitig erklären können, dass es die EU verlassen will. Die Einzelheiten und die anschließenden Beziehungen sollten in einem Abkommen festgelegt werden, das aber keine Bedingung für den Austritt darstellt.

Wie bisher soll eine Mehrheit von vier Fünfteln der EU-Länder die Mitgliedschaft eines Landes suspendieren können, wenn ein Mitglied nicht mehr Grundwerte wie Rechtsstaatlichkeit und Demokratie achtet. Diese Klausel war 1999 in den Vertrag von Nizza aufgenommen worden, nachdem in Österreich die rechtspopulistische FPÖ Jörg Haiders den Sprung in die Regierung geschafft hatte.

Schweiz als Vorbild

Für eine dritte Form des Ausschlusses fand der Präsident des Konvents, der ehemalige französische Präsident Valéry Giscard d'Estaing, keine Mehrheit. Er hatte vorgeschlagen, dass all die Länder automatisch die EU verlassen müssten, die den Verfassungsvertrag nicht ratifizierten. Damit wollte er verhindern, dass einzelne der künftig 25 Länder die Verfassung aufhalten könnten. (Dänemark hatte 1992 mit einem Volks-Nein den Maastricht-Vertrag blockiert, Irland 2001 den Nizza-Vertrag.) Das Präsidium des Konvents schlug nun vor, dass wie bisher alle Mitglieder den Vertrag ratifizieren müssten. Wenn aber ein oder mehrere Länder dies etwa auf Grund negativer Abstimmungen nicht tun, sollten Lösungen gesucht werden. Denkbar wären Sonderregelungen, wie sie Dänemark erhalten hatte.

Immer mehr der 105 Mitglieder des Reformkonvents sind der Ansicht, dass der künftige Verfassungsvertrag vom Volk ratifiziert werden müsse. Am Donnerstag schlugen der französische Konservative Alain Lamassoure und der deutsche Sozialdemokrat Jürgen Meyer ein EU-weites Referendum vor. Sie regten auch an, Elemente der direkten Demokratie in die EU-Verfassung einzufügen. Vorgesehen wären wie in der Schweiz Referenden und Initiativen. Die beiden

Vorschläge werden von fast 50 Konventsmitgliedern aller politischen Lager unterstützt.

Skeptische Führung

Die Führung des Konvents steht dem skeptisch gegenüber. «Referenden sind für mich nicht der Gipfel der Demokratie», sagte etwa Vizepräsident Jean-Luc Dehaene. Koordiniert wird die Bewegung für mehr direkte Demokratie vom Referendumsinstitut in Amsterdam, das vom Schweizer Journalisten Bruno Kaufmann und vom Zürcher SP-Nationalrat Andreas Gross massgeblich geprägt wird.

Der EU-Konvent arbeitet noch bis Ende Juni an der Verfassung. Diese soll dann von den Staats- und Regierungschefs der 25 bisherigen und künftigen EU-Länder diskutiert und verabschiedet werden.

Media: Neue Presse, April 5

EU: Brüssel denkt über Europa-Steuer nach

Abgabe soll Bürgern Kosten und Nutzen der EU näher bringen. Forderung nach Volksabstimmung.

Auch Brüssel will uns in die Tasche greifen: Der Konvent für eine europäische Verfassung peilt die Schaffung einer gemeinsamen Europa-Steuer an.

Die Befürworter argumentierten, die Bürger könnten Kosten und Nutzen der Europäischen Union anhand einer EU-Steuer besser erkennen. „Der Konvent sollte erwägen, der Union eine begrenzte eigene Steuereinnahme zu eröffnen“, sagte der Bundestagsvertreter Jürgen Meyer.

Der französische Parlamentarier Pierre Lequiller und der Europa-Abgeordnete Elmar Brok (CDU) stimmten dem SPD-Politiker Meyer zu: „Dann müsste das Europäische Parlament auch vor dem Bürger begründen, warum es mehr Geld haben möchte.“

Deshalb sollte der Konvent mit der geplanten EU-Verfassung zumindest die rechtliche Grundlage für eine solche Steuer schaffen.

Auch der Vertreter der Bundesregierung, Staatssekretär Martin Bury, befürwortete eine solche Rechtsgrundlage. Zugleich warnte er vor zusätzlichen Steuerbelastungen. Diese widersprächen dem Ziel, in Europa mehr Wachstum und Beschäftigung zu schaffen.

Klar gegen eine Europa-Steuer sprachen sich unter anderem der baden-württembergische Ministerpräsident Erwin Teufel und der Lette Guntars Krasts aus, der im Konvent das Parlament des Beitrittslandes vertritt. Eine solche Steuer würde die EU den Bürgern nicht näher bringen, meine Krasts.

Eine Reihe von Konventsmitgliedern legte eine gemeinsame Erklärung vor, die eine Abstimmung der EU-Bürger über das Verfassungswerk fordert.

BRÜSSEL, onl.

Media: ABC, April 12

Aznar propone un referéndum simultáneo en toda la UE sobre una Constitución europea para 2004

Lamenta que «extremistas y radicales» hubieran preferido una guerra más larga en Iraq Palacio se congratula por la consecución de los objetivos militares y la caída de Sadam

El presidente del Gobierno, José María Aznar, presentó ayer en Madrid el documento «Una aportación al futuro de Europa», en el que la propuesta más destacable la constituye la celebración de un referéndum simultáneo en todos los países de la Unión Europea acerca de la Constitución Europea para 2004. Asimismo, el presidente, reunido con el Partido Popular Europeo, arremetió contra los «extremistas y radicales» que «preferirían que en Iraq el conflicto siguiese, que hubiese un gran conflicto». En este sentido señaló que hay para Europa «retos que tenemos que abordar».

José María Aznar presentó ayer en Madrid el documento «Una aportación al futuro de Europa», conocido ya como el «Documento Aznar» por considerarse al jefe del Ejecutivo impulsor del texto, en el que el Partido Popular Europeo (PPE) realiza una serie de propuestas para alcanzar «más Europa y una Europa mejor». Una de las propuestas más importantes del documento es la celebración de un referéndum simultáneo en todos los países de la UE acerca de la futura Constitución Europea, que está redactando la Convención presidida por Valéry Giscard d Estaing, en la que se propone que coincida con las próximas elecciones europeas, previstas para el 13 de junio de 2004.

A pesar de que la Carta Europea de Derechos Fundamentales será ratificada por cada uno de los parlamentos nacionales, el PPE considera aconsejable

«despejar cualquier duda respecto al respaldo de los ciudadanos».

El texto presentado apuesta por un presidente estable del Consejo Europeo, ya que, según Aznar, «no me parece posible que el Consejo siga funcionando como hasta ahora», y, en este sentido, apostó por la mayoría cualificada frente a la unanimidad, a la hora de la toma de decisiones generales. Además, defendió la creación de la figura de un ministro de Exteriores de la UE, con el objetivo de alcanzar una verdadera política exterior y de defensa común. En el terreno económico, pide que los principios del pacto de estabilidad queden recogidos en la constitución. Además, hizo votos por un crecimiento sostenido en la UE, porque si no la Unión acabaría siendo «una utopía empobrecedora y absolutamente decadente». Lo que necesita la UE, resumió, no son más instituciones, sino más fuertes, con la libertad y la democracia como pilares básicos.

Flanqueado por el presidente del PPE, Wilfried Maertens, y el presidente de la UMP francesa, Alain Juppe, Aznar se refirió, durante su intervención celebrada en el Palacio de Congresos, a la guerra de Iraq, al aseverar que «la vida sigue después de la crisis». En ese momento, arremetió contra los «extremistas y radicales» que «preferirían que en Iraq el conflicto siguiese, que hubiese un gran conflicto», y añadió: «Lo siento, pero no han tenido razón. Esos radicales y extremistas, para bien de todos, no han tenido razón».

En este sentido, Aznar indicó que, tras las dos guerras de Iraq, «existen para la sociedad civil europea retos y preocupaciones que tenemos que abordar y que exigen profundizar en el espacio europeo de libertad, seguridad y justicia». Al tiempo, el presidente del Gobierno arremetió contra la «minoría miope, que en España existe y además lo ha dicho, que no consideran una prioridad las buenas relaciones entre la UE y EE UU», la «solidaridad atlántica», que tiene tanta prioridad como el conflicto de Oriente Medio.

En su defensa del vínculo trasatlántico, Aznar indicó que «es tarea de todos», y en su argumentación de esta «tarea continental» citó a numerosas islas europeas, todas ellas importantes. Pero no se quedó ahí el jefe del Ejecutivo, que lanzó una advertencia a los estados de la UE para que resistan «la tentación de uniformidad o la dispersión en pequeños Estados tal vez satisfechos por su Historia pasada o por su bienestar, pero incapaces de construir un proyecto común para el futuro».

Por otro lado, Palacio compareció por la tarde en el Senado para expresar su satisfacción por el desarrollo de la guerra de Iraq, y ofreció dos motivos: la consecución de los objetivos militares y la desaparición de

un régimen tiránico. La titular de Exteriores aseguró que la UE «está mayoritariamente con las tesis de España» y que las relaciones con los países árabes e Iberoamérica son «excelentes».

Media: Neue Zürcher Zeitung; April 14

Aznar für ein Referendum über die EU-Verfassung

Madrid, 13. April

Der spanische Regierungschef Aznar hat Ende letzter Woche an einem Europa-Seminar seines Partido Popular in Madrid ein allgemeines Referendum[59] über die künftige Verfassung der Europäischen Union vorgeschlagen, das gleichzeitig mit den Wahlen zum EU[59]-Parlament im Juni 2004 abgehalten werden könnte. Der Reformkonvent unter Leitung von Giscard d'Estaing will den Verfassungsentwurf in diesem Sommer vorlegen, über den dann zunächst eine EU-Regierungskonferenz entscheiden muss. Der Vorschlag einer Volksbefragung wurde im Konvent bereits erörtert. Aznar hat sich gleichzeitig sowohl gegen einen «uniformen» europäischen Staat als auch gegen eine föderale Lösung ausgesprochen. Gleichzeitig warnte er - nicht zuletzt in Erwartung der EU-Erweiterung - vor einer «Explosion kleiner Staaten», die das eigene Wohlergehen suchten, aber zu einem gemeinsamen Projekt zur Stärkung Europas unfähig seien.

Er bezeichnete die transatlantische Bindung als Priorität der EU, deren «stabile Staaten» die Führungsrolle für die politischen Direktiven - namentlich in der Wirtschafts- und Sicherheitspolitik - behalten müssten. Damit hat er sowohl den Anspruch Spaniens auf eine führende Rolle neben Frankreich und Grossbritannien bekräftigt als auch seine Kritik an den «Extremisten» - einschliesslich der Sozialisten und der öffentlichen Meinung - im eigenen Land, die gegen den Irak-Krieg waren, aber sich dabei getäuscht hätten.

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June 2003: Breakthrough coverage

12/13 June 2003

EU-FUTURE Agency: RTE , Date: 13.6. 00:48

Forum winds up work on historic EU constitution
By Gareth Jones, BRUSSELS, June 13 (Reuters) – (...) Under one of the final amendments accepted by Giscard, EU citizens numbering at least one million spread across a “significant” number of member states could petition the Commission to submit a proposal on matters where they thought the Union should act. (...)

EU/Konvent/Agency: DPA , Date: 12.6. 19:57

(Überblick 2000) Konventspräsidium nimmt Bürgerbegehren in Verfassungsentwurf auf = Brüssel (dpa) - Die Bürger der Europäischen Union sollen eine Möglichkeit für Bürgerbegehren auf der EU-Ebene bekommen. Diese Anregung der nationalen Abgeordneten im EU-Konvent nahm dessen Präsidium am Donnerstag in seinen Entwurf für eine europäische Verfassung auf. Solche Initiativen sollten behandelt werden, wenn mindestens eine Million Menschen aus mehreren EU-Ländern dies fordern, sagte Konventspräsident Valéry Giscard d'Estaing.

UE-Convention, Agency: AFP , Date: 12.6. 21:21

Ultimes retouches, Giscard propose un droit d'initiative populaire dans l'UE

BRUXELLES, 13 juin (AFP) - Le président de la Convention Valéry Giscard d'Estaing a présenté jeudi soir d'ultimes retouches au projet de Constitution pour l'Union élargie, introduisant notamment un droit d'initiative populaire dans l'UE.

EUROPA/VERFASSUNG ZF

Agency: RTD , Date: 12.6. 21:58 FOKUS 1-Breiter

Konsens über EU-Verfassung vor Gipfel in Sicht

Brüssel, 12. Jun (Reuters) - Der EU-Reformkonvent steht nach Einschätzung aus allen wichtigen Lagern kurz vor einem Konsens über den Entwurf der künftigen EU-Verfassung. (...) Eingeführt wurde zudem die Möglichkeit von Bürgerbegehren.

UE-Convention

Agency: AFP , Date: 12.6. 16:12

Convention: mises en garde contre des surenchères de dernière Minute.

BRUXELLES, 12 juin (AFP) – (...) Parmi les rares modifications de dernière minute envisageables, M. Dehaene a cité l'introduction d'un "droit d'initiative populaire", suggéré par le Parlement européen. La nouvelle Constitution pourrait ainsi contraindre la Commission à faire une proposition législative sur un sujet donné, si un million de citoyens dans huit pays différents le demandaient.

Un million d'Européens pourraient imposer leur volonté à la Commission.

BRUXELLES 11/06 (BELGA)

La Commission européenne pourrait à l'avenir être obligée de déposer une proposition législative sur un thème donné si une pétition signée par un million de citoyens issus de dix pays de l'Union lui est adressée. C'est en tout cas le souhait affiché par plusieurs membres de la Convention pour l'avenir de l'Europe. L'eurodéputé français Alain Lamassoure a indiqué mercredi que cette proposition d'amendement au texte de la future Constitution européenne était soutenue par l'ensemble des parlementaires européens et par un grand nombre des parlementaires nationaux présents à la Convention. Il a ajouté qu'elle avait récolté le soutien des différentes tendances politiques européennes, des souverainistes aux fédéralistes.

Le praesidium de la Convention se rendrait coupable d'un "abus de droit" s'il ne reprenait pas cette proposition dans sa prochaine version du texte, a affirmé M. Lamassoure, jugeant qu'une Constitution, à la différence d'un traité, devait être rédigée "pour les citoyens".

La Convention pour l'avenir de l'Europe a entamé mercredi l'une de ses dernières séances plénières, consacrée à une relecture de la première partie de la Constitution.

June 2003: Initiative ÷ proposal

Suggestion for amendment of Article : I-46, part I, title VI (CONV 724/03)

By Mr: Prof. Dr. Jürgen Meyer,
Delegate of the German Bundestag

Status: - Member -

Members: Akcam, Zekeriya; Amato, Guiliano; Andriukaitis, Vytenis; Athanasiu, Alexandru; Avgerinos, Paraskevas; Belohorska, Irena; Borrell Fontelles, Josep; Costa, Alberto Bernardes; Dam Kristensen, Henrik; De Rossa, Proinsias; Demetriou, Panayiotis; Dini, Lamberto; Duhamel, Oliver; Einem, Caspar; Fayot, Ben; Giannakou-Koutsikou, Marietta; Gricius, Algirdas; Haenel, Hubert; Helminger, Poul; Kaufmann, Sylvia-Yvonne; Kiljunen, Kimmo; Laborda, Gabriel Cisneros; Lequiller, Pierre; Marinho, Luis; Mavrou, Eleni; Oleksy, Jozef; Serracino-Inglott, Peter; Skaarup, Peter; Timermans, Frans; Vastagh, Pal; Voggenhuber, Johannes.

Alternates: Abitbol, William; Alonso, Alejandro Munoz; Arabadjiev, Alexandar; Basile, Filadelfio Guido; Berger, Maria; Budak, Necdet; Carey, Pat; Carnero Gonzalez, Carlos; D'Oliveira Martins, Guilherme; Eckstein-Kovacs, Peter; Ene, Constantin; Floch, Jacques; Fogler, Marta; Garrido, Diego Lopez; Giberyen, Gaston; Gormley, John; Grabowska, Genowefa; Katiforis, Giorgos; Krasts, Guntars; Kroupa, Frantisek; Lichtenberger, Evelin; Mac Gormick, Neil; Maclennan of Rogart, Lord; Matsakis, Marios; Nagy, Marie; Nazare Pereira, Antonio; Severin, Adrian; Sivickas, Gintautas; Speroni, Francesco; Spini, Valdo; Styllanides, Evripides; The Earl of Stockton, Alexander; Vassilou, Androula; Vella, George.

Observers:

Du Granrut, Claude; Sigmund, Anne-Marie; Sepi, Mario.

Article I-46 (4): Citizens of the Union have the right to request the Commission

Citizens of the Union may request the Commission to submit any appropriate proposal on matters on which they consider that a legal act of the Union is required for the purpose of implementing this Constitution.

Further provisions that particularly regulate the specific procedures and the numbers of signatures that have to be gathered are to be laid down in an European law.

Explanation:

The effect of the above proposal is to bring Europe closer to the people, as Laeken recommended. It represents a large step in the democratisation of the Union.

It will extend the existing right of petition to a right of the citizens to present legislative proposals to the Commission of the EU. The commission has then to decide whether it will take legislative activity or not.

It is very important that the threshold for the signatures that are to be gathered for the European Citizens' Legislative Submission is not too high.

A high threshold interferes with the process and effectively allow only powerful organizations the possibility of securing the required signatures.

July 2003: Draft constitution extracts

Compiled by Jens Peter Bonde, MEP
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The emphases and comments in italics and in brackets are not part of the draft Constitution

PREAMBLE

Our Constitution is called a democracy because power is in the hands not of a minority but of the whole people.] Thucydides II, 37

Conscious that Europe is a continent that has brought forth civilisation; that its inhabitants, arriving in successive waves since the first ages of mankind, have gradually developed the values underlying humanism: equality of persons, freedom, respect for reason,

Drawing inspiration from the cultural, religious and humanist inheritance of Europe, whose values are always present in its heritage, and which has embedded within the life of society its perception of the central role of the human person and his inviolable and inalienable rights, and of respect for law,

Believing that reunited Europe intends to continue along this path of civilisation, progress and prosperity, for the good of all its inhabitants, including the weakest and most deprived; that it wishes to remain a continent open to culture, learning, and social progress; and that it wishes to deepen the democratic and transparent nature of its public life, and to strive for peace, justice and solidarity throughout the world,

Convinced that, while remaining proud of their own national identities and history, the peoples of Europe are determined to transcend their ancient divisions, and, united ever more closely, to forge a common destiny,

Convinced that, thus "united in its diversity", Europe offers them the best chance of pursuing, with due regard for the rights of each individual and in awareness of their responsibilities towards future genera-

tions and the Earth, the great venture which makes of it a special area of human hope,

Grateful to the members of the European Convention for having prepared this Constitution on behalf of the citizens and States of Europe,

[Who, having exchanged their full powers, found in good and due form, have agreed as follows:]

TITLE I: Definition and objectives of the Union

The European Union (EU) established by the will of both citizens and states

Article I-1: Establishment of the Union
Member States confer competences on the EU

1. Reflecting the will of the citizens and States of Europe to build a common future, this Constitution establishes the European Union, on which the Member States confer competences to attain objectives they have in common. The Union shall coordinate the policies by which the Member States aim to achieve these objectives, and shall exercise in the Community way the competences they confer on it.

Open to European states sharing the same values

2. The Union shall be open to all European States which respect its values and are committed to promoting them together.

Values of the Union

Article I-2: The Union's values
Dignity, liberty, democracy, equality, rule of law, human rights, tolerance, justice, solidarity, equality and non-discrimination – these values must be accepted by all Member States and applicants

The Union is founded on the values of respect for human dignity, liberty, democracy, equality, the rule of law and respect for human rights. These values are common to the Member States in a society of pluralism, tolerance, justice, equality, solidarity and non-discrimination.

Objectives of the Union

Article I-3: The Union's objectives

Peace, its values and its peoples' well-being.

1. The Union's aim is to promote peace, its values and the well-being of its peoples.

The Union is an area of freedom, security and justice without internal frontiers and a single market with free competition.

2. The Union shall offer its citizens an area of freedom, security and justice without internal frontiers, and a single market where competition is free and undistorted.

Sustainable development, balanced growth, social progress, full employment, environmental protection, scientific and technological advances, to combat social exclusion, to promote social justice, equality between men and women, solidarity between generations, to protect children, to respect diversity and to defend Europe's heritage.

3. The Union shall work for a Europe of sustainable development based on balanced economic growth, with a social market economy aiming at full employment and social progress.

It shall aim at a high level of protection and improvement of the quality of the environment. It shall promote scientific and technological advance.

It shall combat social exclusion and shall promote social justice and protection, equality between women and men, solidarity between generations and protection of children's rights.

It shall promote economic, social and territorial cohesion, and solidarity among Member States.

The Union shall respect its rich cultural and linguistic diversity, and shall ensure that Europe's cultural heritage is safeguarded and enhanced.

Promotion of its values in the wider world.

4. In its relations with the wider world, the Union shall uphold and promote its values and interests. It shall contribute to peace, security, the sustainable development of the earth, solidarity and mutual respect among peoples, free and fair trade, eradication of poverty and protection of human rights and in particular children's rights, as well as to strict observance and development of international law, including respect for the principles of the United Nations Charter.

The Constitution will outline limits to the Union's actions.

5. These objectives shall be pursued by appropriate means, depending on the extent to which the relevant competences are attributed to the Union in this Constitution.

Discrimination

Article I-4: Fundamental freedoms and non-discrimination

Free movement of persons, goods, service and capital, and freedom of establishment guaranteed.

1. Free movement of persons, goods, services and capital, and freedom of establishment shall be guaranteed within and by the Union, in accordance with the provisions of this Constitution.

No discrimination on grounds of nationality

2. In the field of application of this Constitution, and without prejudice to any of its specific provisions, any discrimination on grounds of nationality shall be prohibited.

Union-Member State relations

Article I-5: Relations between the Union and the Member States

Obligation to respect national identities.

1. The Union shall respect the national identities of its Member States, inherent in their fundamental structures, political and constitutional, including for regional and local self government. It shall respect their essential State functions, including for ensuring the territorial integrity of the State, and for maintaining law and order and safeguarding internal security.

Member States shall assist the Union to implement EU law.

2. Following the principle of loyal cooperation, the Union and the Member States shall, in full mutual respect, assist each other to carry out tasks which flow from the Constitution.

The Member States shall facilitate the achievement of the Union's tasks and refrain from any measure which could jeopardise the attainment of the objectives set out in the Constitution.

Legal personality

Article I-6: Legal personality

Union will make binding agreements with 3rd countries in all policy areas. The three pillars disappear.

The Union shall have legal personality.

EU-CITIZENSHIP

TITLE II: Fundamental rights and citizenship of the Union Fundamental Rights

Article I-7: Fundamental rights The EU recognises the Charter of Fundamental Rights.

1. The Union shall recognise the rights, freedoms and principles set out in the Charter of Fundamental Rights which constitutes the Second Part of this Constitution.

Council of Europe's Convention of Human Rights will not affect the Union's competences.

2. The Union shall seek accession to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Accession to that Convention shall not affect the Union's competences as defined by this Constitution. Fundamental rights will form the general principles of EU law³. Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms, and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law.

EU Citizenship

Article I-8: Citizenship of the Union

Double citizenship: national and EU

1. Every national of a Member State shall be a citizen of the Union. Citizenship of the Union shall be additional to national citizenship; it shall not replace it.

EU citizens' rights and duties:

2. Citizens of the Union shall enjoy the rights and be subject to the duties provided for in this Constitution.
They shall have:
 - *free movement and residence in the EU*
 - the right to move and reside freely within the territory of the Member States;
 - *right to vote and stand for election in all local and EU elections*

- the right to vote and to stand as a candidate in elections to the European Parliament and in municipal elections in their Member State of residence under the same conditions as nationals of that State;
- *Protection under all Member States' diplomatic authorities*
- the right to enjoy, in the territory of a third country in which the Member State of which they are a national is not represented, the protection of the diplomatic and consular authorities of any Member State on the same conditions as the nationals of that State;
- the right to petition the European Parliament, to apply to the Ombudsman, and to write to the institutions and advisory bodies of the Union in any of the Union's languages and to obtain a reply in the same language.

DEMOCRATIC LIFE

Title VI: The democratic life of the Union Equality

Article I-44: The principle of democratic equality
Principle of equality of all EU citizens

In all its activities, the Union shall observe the principle of the equality of citizens. All shall receive equal attention from the Union's Institutions.

Article I-45: The principle of representative democracy
Principle of representative democracy

1. The working of the Union shall be founded on the principle of representative democracy.
EP represents citizens directly, governments in the council are accountable to national Parliaments, which represents citizens directly
2. Citizens are directly represented at Union level in the European Parliament. Member States are represented in the European Council and in the Council by their governments, themselves accountable to national Parliaments, elected by their citizens.

Decisions shall be taken as openly and as closely as possible (The Praesidium has not included a proposal on transparency signed by 170 members of the convention)

3. Every citizen shall have the right to participate in the democratic life of the Union. Decisions shall be taken as openly as possible and as closely as possible to the citizen.

European parties form a European awareness

4. Political parties at European level contribute to forming European political awareness and to expressing the will of Union citizens.

Article I-46: *The principle of participatory democracy*
Right to discuss opinions with the institutions.

1. The Union Institutions shall, by appropriate means, give citizens and representative associations the opportunity to make known and publicly exchange their views on all areas of Union action.

Channels for dialogue with civil society

2. The Union institutions shall maintain an open, transparent and regular dialogue with representative associations and civil society.

Commission shall consult all parties concerned.

3. The Commission shall carry out broad consultations with parties concerned in order to ensure that the Union's actions are coherent and transparent.

Citizens' initiative

- *a million citizens required*
 - *can ask Commission to submit proposal - but Commission can refuse.*
4. A significant number of citizens, no less than one million, coming from a significant number of Member States may invite the Commission to submit any appropriate proposal on matters where citizens consider that a legal act of the Union is required for the purpose of implementing this Constitution. A European law shall determine the provisions regarding the specific procedures and conditions required for such a citizens' request.

Article I-47: The social partners and autonomous social dialogue. *The union recognises and promotes autonomous social dialogue.*

The European Union recognises and promotes the role of the social partners at Union level, taking into account the diversity of national systems; it shall facilitate dialogue between the social partners, respecting their autonomy.

The Ombudsman

Article I-48: The European Ombudsman Appointed by EP.

Receives, investigates, and reports on complaints of maladministration

A European Ombudsman appointed by the European Parliament shall receive, investigate and report on complaints about maladministration within the Union's Institutions, bodies or agencies. The European Ombudsman shall be completely independent in the performance of his duties.

Transparency

Article I-49: Transparency of the proceedings of the Union's institutions "*as openly as possible*"

1. In order to promote good governance and ensure the participation of civil society, the Union's institutions, bodies and agencies shall conduct their work as openly as possible.

Council and EP shall meet in public (Does not apply to the many working groups, where the real lawmaking occurs)

2. The European Parliament shall meet in public, as shall the Council when it is discussing and adopting a legislative proposal.

Right of access to documents...

3. Any citizen of the Union, man or woman, and any natural or legal person residing or having its registered office in a Member State, shall have a right of access to documents of the Union's Institutions, bodies and agencies in whatever form they are produced, in accordance with the conditions laid down in Part Three.

... according to rules decided by the EP and Council (An amendment from the vast majority of members in the Convention would make openness the automatic rule unless there is an agreed derogation)

4. A European law shall lay down the general principles and limits which, on grounds of public or private interest, govern the right of access to such documents.

Each body determines own specific rules within the limits of the above mentioned law

5. Each institution, body or agency referred to in paragraph 3 shall determine in its own rules of procedure specific provisions regarding access to its documents, in accordance with the European law referred to in paragraph 4 above.

Personal data

Article I-50: Protection of personal data *Protection of personal data*

1. Everyone has the right to the protection of personal data concerning him or her.

The processing of personal data shall be controlled by an independent authority

2. A European law shall lay down the rules relating to the protection of individuals with regard to the processing of personal data by the Union's Institutions, bodies and agencies, and by the Member States when carrying out activities which come under the scope of Union law, and the rules relating to the free movement of such data. Compliance with these rules shall be subject to the control of an independent authority.

Churches

Article I-51: Status of churches and non-confessional organisations

The EU respects the status under national law, but the constitution does not permit any differentiation between, say, Christians, Muslims or Atheists

1. The Union respects and does not prejudice the status under national law of churches and religious associations or communities in the Member States.
2. The Union equally respects the status of philosophical and non-confessional organisations.

EU dialogue with churches

3. Recognising their identity and their specific contribution, the Union shall maintain an open, transparent and regular dialogue with these churches and organisations.

Charter of fundamental rights of the European Union

PREAMBLE

Values and goals of the Union

Aim is to strengthen the protection of fundamental rights

TITLE V: CITIZENS' RIGHTS

Article II-39:

Right to vote and to stand as a candidate at elections to the European Parliament

1. Every citizen of the Union has the right to vote and to stand as a candidate at elections to the European Parliament in the Member State in which he or she resides, under the same conditions as nationals of that State.
2. Members of the European Parliament shall be elected by direct universal suffrage in a free and secret ballot.

Article II-40: *Right to vote and to stand as a candidate at municipal elections*
Every citizen of the Union has the right to vote and to stand as a candidate at municipal elections in the Member State in which he or she resides under the same conditions as nationals of that State.

Article II-41: Right to good administration

1. Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions, bodies and agencies of the Union.
2. This right includes:
 - a) the right of every person to be heard, before any individual measure which would affect him or her adversely is taken;
 - b) the right of every person to have access to his or

her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy;

- c) the obligation of the administration to give reasons for its decisions.
3. Every person has the right to have the Union make good any damage caused by its institutions or by its servants in the performance of their duties, in accordance with the general principles common to the laws of the Member States.
 4. Every person may write to the institutions of the Union in one of the languages of the Constitution and must have an answer in the same language.

Article II-42: Right of access to documents
Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, has a right of access to documents of the institutions, bodies and agencies of the Union, in whatever form they are produced.

Article II-43: Ombudsman
Any citizen of the Union and any natural or legal person residing or having its registered office in a Member State has the right to refer to the Ombudsman of the Union cases of maladministration in the activities of the Community institutions, bodies and agencies with the exception of the Court of Justice and the Court of First Instance acting in their judicial role.

Article II-44: Right to petition
Any citizen of the Union and any natural or legal person residing or having its registered office in a Member State has the right to petition the European Parliament.

Article II-45: Freedom of movement and of residence

1. Every citizen of the Union has the right to move and reside freely within the territory of the Member States.
2. Freedom of movement and residence may be granted, in accordance with the Constitution, to nationals of third countries legally resident in the territory of a Member State.

Article II-46: Diplomatic and consular protection
Every citizen of the Union shall, in the territory of a third country in which the Member State of which he or she is a national is not represented, be entitled to protection by the diplomatic or consular authorities of any Member State, on the same conditions as the nationals of that Member State.

Edited by Jens-Peter Bonde, jbonde@europarl.eu.int

The constitutional foundations for referendums on Europe

Compiled by Marian Zdeb, democracy international*

Country	Special regulations on transference of power to EU	Approval for transference of power <i>without</i> effect of constitutional amendment	Approval for transference of power <i>with</i> effect of constitutional amendment	Procedure of constitutional amendment	Referendum foreseen for transference of power?
Austria	Transference concerning the Common Defence Policy and an integration of the WEU into the EU has to be approved by a majority of 2/3 of both chambers with the presence of at least 1/2 of their members, Art. 23f I, 44 I, II ConstAustria.	Majority of votes of parliament and senate if its competencies concerned. A notice of opposition given by the senate can be outvoted by the parliament with a majority of votes with the presence of at least 1/2 of its members, Art. 50, 42 ConstAustria.	Majority of 2/3 of votes of parliament with the presence of at least 1/2 of its members, Art. 50 I, III, 44 I, II ConstAustria. Same Majority of senate required if its competencies concerned, Art. 50 I, III, 44 I, II ConstAustria.	Approval by a majority of 2/3 of parliament with the presence of at least 1/2 of its members, Art. 42 I ConstAustria, and of senate if its competencies concerned, Art. 44 II ConstAustria. An overall revision of the constitution has to be approved by a referendum, Art. 44 III ConstAustria. A partial revision requires additionally a referendum if it is demanded by 1/3 of the members of one of the chambers, Art. 44 III ConstAustria.	Yes , if the EU-Constitution is held to be as a total revision of the national constitution. If it is held to be as a partial revision it can take place if 1/3 of the members of one of the chambers demand it.
Belgium		Majority of the members of both chambers required, Art. 167 § 2, 53 ConstBelgium.	Majority of the members of both chambers, Art. 167 § 2, 53 ConstBelgium. Additionally a constitutional amendment required.	Dissolvement of both chambers and re-election, approval by both chambers with the presence of at least 2/3 of their members with a majority of at least 2/3 of votes, Art. 195 ConstBelgium.	No. Binding referendum requires enactment by constitutional amendment. Consultive referendum can be held anyway if ordered by ad-hoc-law.

Cyprus		Majority of votes of parliament, Art. 169 II Const. Cyprus. President and Council can veto the decision of parliament, Art 50 A. I a Const. Cyprus. International Treaties relating to commercial matters, economic co-operation have to be approved by the council of ministers, Art. 169 I Const Cyprus.	Not expressly regulated, but constitutional amendment required.	Majority of 2/3 of Members of parliament, Art. 182 III, II Const Cyprus. Basic articles of constitution cannot be amended, Art. 182 I Const. Cyprus.	No. Binding referendum requires enactment by constitutional amendment. Consultative referendum can be held anyway if ordered by ad-hoc-law.
Czech Republic	Majority of votes of both chambers, Art. 49, 39 II ConstCzRep	Majority of 3/5 of members of parliament and 3/5 of the votes from senate, Art. 10 a I, 39 IV ConstCzRep. With constitutional law a referendum can be ordered. Art 10 a II ConstCzRep.	Previous constitutional amendment required if constitutional court decides that an international treaty is not in conformity with the constitution, Art. 89 III, 87 II ConstCzRep.	Only by constitutional act that requires 3/5 of members of parliament and 3/5 of the votes of senate, Art.9 I,39IV ConstCzRep.	Yes, it can be ordered by a constitutional act.
Denmark		Majority of 5/6 from the members of parliament required, § 20 ConstDenmark.	Not expressly regulated but constitutional amendment required.	Disbandment of parliament and a re-election, approval by parliament and additionally a mandatory and binding referendum, § 88 ConstDenmark.	Yes. Binding referendum mandatory if constitutional amendment effected. Otherwise only evitable if not approved by a majority of 5/6 from members of parliament.
Estonia		Majority of votes of parliament, Art. 121,73 Const. Estonia	International treaties that are in conflict with the constitution shall not be ratified, Art. 123 Const.Estonia. As a result constitutional amendment required	Parliament orders approval by Referendum , by two successive approvals from parliament first with majority of it's members, second with majority of 3/5 of it's members or in case of urgency by Majority of 2/3 of it's members, Art. 163 , 164, 165, 166. Amendment of fundamental principles of constitution and of rules about amending the constitution by Referendum , Art. 162 Const. Estonia	No. Binding referendum provided for several cases but referendum on international treaties expressly excluded. Consultative referendum can be held anyway if ordered by ad-hoc-law.

Finland		Majority of votes of parliament, §§ 93, 94, 95 ConstFinland.	Majority of 2/3 of votes of parliament, § 94 II ConstFinland. Limit for transference is an endangerment of the fundamental democratic rights of the constitution, § 94 III ConstFinland.	<p>(1) A proposal of the enactment, amendment or repeal of the Constitution or on the enactment of a limited derogation of the Constitution shall in the second reading be left in abeyance, by a majority of the votes cast, until the first parliamentary session following parliamentary elections. The proposal shall then, once the Committee has issued its report, be adopted without material alterations in one reading in a plenary session by a decision supported by at least two thirds of the votes cast.</p> <p>(2) However, the proposal may be declared urgent by a decision that has been supported by at least five sixths of the votes cast. In this event, the proposal is not left in abeyance and it can be adopted by a decision supported by at least two thirds of the votes cast.</p>	Yes. Binding referendum requires enactment by constitutional amendment. Consultative referendum expressly provided for in the constitution.
France		Majority of both chambers, Art. 53, 46 ConstFrance. Additionally by proposal of the government or a joint proposal of both chambers the president can prescribe a referendum about any law that substitutes the approval of the chambers. The approval of international treaties can only be replaced by this presidential plebiscite if a constitutional amendment is not effected, Art. 11 ConstFrance.	Previous constitutional amendment required, Art. 54 ConstFrance. Limit for transference is the integrity of state and the republican form of government, Art. 89 IV ConstFrance.	Approval of both chambers and a referendum on the constitutional amendment, Art. 89 ConstFrance. The referendum is not realised if both chambers foregathered as the Congress by proposal of the president approves the constitutional amendment with a majority	Yes. Binding referendum if constitutional amendment effected or ordered by presidential plebiscite.

Germany		Majority of votes from both chambers, Art. 23 I 2 ConstGermany.	Majority of 2/3 of the members of parliament and 2/3 of the votes of senate, Art. 23 I 3, 79 II ConstGermany required. Limit of transference is the "eternal clause" relating to the republican form of the state and fundamental human and civil rights, Art. 23 I 3, 79 III, 20 ConstGermany.	Approval of both chambers with majority of 2/3 of the members of Parliament and 2/3 of the votes of Senate, Art. 79 II ConstGermany required.	No. Binding referendum requires enactment by constitutional amendment. Consultative referendum can anyhow be held if ordered by ad-hoc-law.
Greece		Majority of the members of parliament required, Art 28 III ConstGreece.	Majority of 3/5 of the members of parliament required, Art. 28 II ConstGreece.	Approval of parliament on proposal of at least 50 deputies twice with at least one month in between by a majority of 3/5 of its members. Additionally the amendment has to be approved by the next parliament by at least a majority of its members. The majorities can also be vice versa. A constitutional amendment is excluded for the fundamental principles of the constitution, the form of government as a parliamentary republic and fundamental human and civil rights, so called "clause of eternity", Art. 110 ConstGreece.	No. Binding referendum on a subject of very important national interest.
Hungary	International Treaties which effect matters of national defence must be confirmed by national law, Art. 40c II. ConstHungary	Majority of votes of parliament with the presence of at least 1/2 of it's members, Art. 30a I lit. B, 24I, II, Const Hungary	Not expressly regulated, but constitutional amendment required.	Majority of 2/3 of members of parliament, Art. 24 III Const Hungary.	Yes. Binding and consultative referendum can be held.
Ireland	A decision taken of the European Council to establish a common defence shall not be adopted if Ireland would be included, Art. 29 IV 9 ConstIreland.	Majority of both chambers required, Art. 29 V, VI ConstIreland.	Not expressly regulated, but a prior constitutional amendment required.	Approval of both chambers and a mandatory and binding referendum, Art. 46, 47 ConstIreland.	Yes. Binding and consultative referendums can be held.

Italy		Majority of votes of both chambers required, Art. 80, 72 ConstItaly.	Not expressly regulated, but a prior constitutional amendment required.	Approval of both chambers twice with at least three months in between, in the second voting with a majority of their members, Art. 138 ConstItaly. A referendum on the constitutional amendment is to be held if demanded by 1/5 of the members of one of the chambers.	No. Binding referendum if constitutional amendment effected but referendum on international treaties expressly excluded. Consultative referendum can anyhow be held if ordered by ad-hoc-law.
Latvia		Majority of votes of parliament, Art. 68, 24 ConstLatvia	Not expressly regulated, but constitutional amendment required	Majority of 2/3 of the votes with the presence of at least 2/3 of the members initiated by the parliament, Art. 76 ConstLatvia. Amendment can also be initiated by 1/10 of the electorate. If Parliament refuses this amendment a Referendum has to be called, Art. 78 ConstLatvia. Amendment has to be approved by the majority of all electors, Art. 79 Const. Latvia. For amendment of fundamental principles of the constitution approval by referendum is required. Art. 77 ConstLatvia.	No. Binding referendum provided for several cases but expressly excluded on international treaties. Consultative referendum can anyhow be held if ordered by ad-hoc-law.
Lithuania		Majority of parliament, Art. 138, 67 nr. 16, 69 Const Lithuania	Not expressly regulated but constitutional amendment required.	Two successive approvals by parliament with majority of 2/3 of its members initiated by 1/4 of the members of parliament or at least 300'000 of the electorate, Art. 147, 148 III ConstLithuania. Amendment of the democratic and republican form of state has to be approved by Referendum by majority of 3/5 of the electorate, Art. 148 I ConstLithuania. Other fundamental principles of the state or the provisions for amending the constitution can only be amended with approval by referendum , Art. 148 II ConstLithuania.	Yes. Binding referendum if constitutional amendment to fundamental principles of state effected but Art. 6 EU guarantees the integrity of these principles. Otherwise binding referendum can be held as a very significant issue for the state and the people.

Luxembourg		Majority of parliament required, Art. 37 I, 46 ConstLuxembourg.	Majority of more than 2/3 of the members of parliament by the presence of at least 3/4 of the members required, Art. 37 II, 49a, 114 V ConstLuxembourg. In contradiction to Art. 51 EC a temporary transference is allowed within Art. 49a ConstLuxembourg.	After the parliament declares the necessity of a constitutional amendment, its disbandment and re-election, the amendment has to be consented by a majority of 2/3 of the votes with the presence of 3/4 of its members, Art. 114 ConstLuxembourg.	No. Binding referendum requires enactment by constitutional amendment. Consultative referendum expressly provided.
Malta		No constitutional regulation	Not expressly regulated, but constitutional amendment required.	Majority of 2/3 of members of parliament, amendment of fundamental principles by Referendum , Art. 66 Const Malta	Yes. Binding referendum if amendment to fundamental principles of the constitution effected but Art. 6 EU guarantees the integrity of these principles. Consultative referendum can be held anyway if ordered by ad-hoc-law.
Netherlands		Majority of votes of both chambers required, Art. 91 I, 67 II ConstNetherlands.	Consent by 2/3 of the votes of both chambers, Art. 92, 91 III ConstNetherlands.	After a law declares the necessity of a constitutional amendment, the disbandment of both chambers and their re-election the amendment has to be consented by both chambers by a majority of 2/3 of the votes, Art. 137 ConstNetherlands.	No. No. Binding referendum requires enactment by constitutional amendment. Consultative referendum can be held anyway if ordered by ad-hoc-law.
Poland	Majority of members of parliament and senate, Art 89 I, 120 ConstPoland. Requirements for approval can be regulated by law, Art.89 III Const Poland.	Majority of both chambers with 2/3 of votes with the presence of at least 1/2 of their members, Art. 90 II. Const. Poland. Additionally a referendum in accordance with Art. 125 Const. Poland can be called. Art 90 III Const Poland.	Not expressly regulated, but constitutional amendment required.	A bill submitted by at least 1/5 of the members of parliament, the senate or the President has to be approved by a majority of 2/3 votes of parliament with the presence of at least 1/2 of its members and majority of the members of senate. Art. 235 IV ConstPoland. Amendment of fundamental principles of the constitution requires additionally a confirmatory referendum , Art. 235 VI ConstPoland.	Yes. Binding referendum if amendment to fundamental principles of the constitution effected but Art. 6 EU guarantees the integrity of these principles. Binding referendum also expressly provided for on international treaties and subjects of particular importance.

Portugal		Majority of votes of parliament, Art. 166 V, 161 lit. i, 116, 168 ConstPortugal.	Not expressly regulated, but a previous constitutional amendment required.	Approval by a majority of two-thirds of the members of parliament, Art. 286 I ConstPortugal. Limit of the amendment are fundamental principles such as the republican form of government or the separation of the churches from the state, Art. 288 ConstPortugal.	Yes. Binding referendum expressly provided for on international treaties.
Slovakia	Majority of votes of parliament, Art. 86 lit. d, 84 II ConstSlovakia. Majority of members of parliament required if rights are conferred or duties imposed directly on natural persons or legal persons. Art 7IV, 84 IV Const. Slovakia	Majority of 3/5 of members of parliament, Art. 7 II, 84 IV ConstSlovakia.	Not expressly regulated but constitutional amendment required.	Majority of 3/5 of members of parliament, Art. 84 IV ConstSlovakia.	Yes. Binding referendum provided for on important issues of public interest.
Slovenia	Majority of votes of parliament Art. 86	Majority of 2/3 of members of parliament. Before ratification binding referendum on the transfer of power can be called by the parliament, Art. 3a. ConstSlovenia.	Not expressly regulated but constitutional amendment required.	Majority of 2/3 of members of parliament, the government or at least 30,000 of the electorate confirmed by the parliament with a majority of 2/3 of the votes, Art. 168, 169. ConstSlovenia. If demanded by at least 30 members of parliament, the proposed amendment has to be approved by binding Referendum in which more than 50% of the electorate participated. Art 170 ConstSlovenia.	Yes. Binding referendum constitutional amendment effected. Otherwise mandatory and binding referendum provided for if demanded from at least 30 members of parliament.

Spain		Previous approval from both chambers required, Art. 94 ConstSpain	Previous amendment of the constitution required, Art. 95 94 ConstSpain .	The draft of an amendment has to be approved by a majority of 3/5 of both chambers. If this majority cannot be reached a committee drafts a new text which can be approved by a majority of 3/4 of the members of parliament and the majority of the members of the senate, Art. 167 ConstSpain. A referendum on the constitutional amendment is required if it is demanded by 1/10 of the members of one of the chambers , Art. 167 III ConstSpain. In case of a total revision of the constitution or the amendment of special parts of the constitution both chambers have to consent by a majority of 3/4 and have to consent it by the same majority after disbandment and reelection of both chambers. Additionally, a referendum on the constitutional amendment has to be held in this case, Art. 168 ConstSpain.	Yes. Binding referendum if constitutional amendment, a total revision or an amendment of fundamental principles of the constitution effected. Otherwise binding referendum requires enactment by constitutional amendment. Consultative referendum expressly provided for in the constitution.
Sweden		Majority of parliament according to the particular area of competency required, X § 2 ConstSweden.	Approval by means of a constitutional amendment. The procedure foreseen for the constitutional amendment can be excluded by a majority of 5/6 with the presence of at least 3/4 of the members of parliament if it would take too long. Limits on transference are regulations about the order of the parliament, the constitution and fundamental human and civil rights, X § 5 ConstSweden.	The parliament has to approve the amendment twice. The second approval has to be given by a newly elected parliament and at least 9 months after the first. The constitutional committee can allow an earlier second consent with a majority of 5/6 of its members. A referendum on the amendment has to be held contemporaneously with the election of the new parliament if 1/10 of the members of the parliament demand it and at least 1/3 of the members of parliament consent, VIII § 15 ConstSweden.	Yes. Binding referendum if constitutional amendment effected. Otherwise binding referendum requires enactment by constitutional amendment. Consultative referendum expressly provided for in the constitution.

The full survey can be seen at www.european-referendum.org/background/refsum.html

The Peoples and Constitutions of Europe

Compiled by Paul Carline, IRI Europe

	Countries	Written constitution	The people are sovereign	Direct exercise of sovereignty	Use of referendum mentioned
1	Albania	X	X	X	X
3	Armenia	X	X		X
4	Austria	X	X		X
5	Azerbaijan	X	X	X	X
6	Belarus	X	X	X	X
7	Belgium	X	X		
8	Bosnia-Herzegovina	X	no mention		
9	Bulgaria	X	X	X	X
10	Chechnya	X	X	X	X
11	Croatia	X	X	X	X
12	Cyprus	X	no mention		
13	Czech Republic	X	X		X
14	Denmark	X	(hereditary monarchy)		X
15	Estonia	X	X		X
16	Finland	X	X		X
17	France	X	X		X
18	Georgia	X	X		X
19	Germany	X	X		Regional level
20	Great Britain		(hereditary monarchy)-Parliament supreme		
21	Greece	X	X		X
22	Hungary	X	X	X	X
23	Iceland	X	no mention		
24	Ireland	X	X		X
25	Italy	X	X		X
26	Latvia	X	X		X
27	Liechtenstein	X	"Prince Regnant and the People"		X
28	Lithuania	X	X	X	X
29	Luxembourg	X	Grand Duke/"The Nation"		X
30	Macedonia	X	X	X	X
3	1Malta	X	no mention		X
32	Moldova	X	X	X	X
33	Netherlands	X	(hereditary monarchy)		Local level
34	Norway	X	(hereditary monarchy)		Local level
35	Poland	X	X	X	X
36	Portugal	X	X		X
37	Romania	X	X		X
38	Russia	X	X	X	X
39	Serbia/Montenegro	X	X	X	X
40	Slovakia	X	X	X	X
41	Slovenia	X	X	X	X
42	Spain	X	X		X
43	Sweden	X	X		X
44	Switzerland	X	(implied)X		X
45	Turkey	X	not known		
46	Ukraine	X	X	X	X

Popular Sovereignty in the Constitutions of Europe

Compiled by Paul Carline, IRI Europe

Country	Constitution	How states describe themselves	Sovereignty	Exercise of sovereignty defined and/or qualified
Albania	04/08/1998	"Albania is a parliamentary republic". (Art.1 (1))	"Sovereignty in the Republic of Albania belongs to the people ". (Art.2 (1)) >	"The people exercise sovereignty directly or through their representatives". (Art.2 (2))
Armenia	05/07/1995		"In the Republic of Armenia power lies with the people ". (Art.2) >>	"The people exercise their power through free elections and referenda, as well as through state and local self-governing bodies and public officials as provided by the Constitution. The usurpation of power by any organization or individual constitutes a crime". (Art. 2)
Austria	1929	"Austria is a democratic republic". (Art.1) >>	>> "Its law emanates from the people ". (Art. 1)	"The legislative power of the Federation is exercised by the House of Representatives jointly with the Senate." (Art.24)
Azerbaijan	12/11/1995	Republic	"The sole source of state power in the Azerbaijan Republic are the people of Azerbaijan". (Art.1(1)) "Sovereign right of the Azerbaijanian people is the right of free and independent determination of their destiny and establishment of their own form of governance". (Art. 2 (2))	"The people of Azerbaijan exercise their sovereign right directly-by way of nation-wide voting-referendum, and through their representatives elected based on universal, equal and direct suffrage by way of free, secret and personal ballot. " (Art.2 (2)) "State power in the Azerbaijan Republic is based on a principle of division of powers: the Parliament [Milli Majlis] of the Azerbaijan Republic exercises legislative power; executive power belongs to the President of the Azerbaijan Republic; law courts of the Azerbaijan Republic exercise judicial power." (Art.7 (3))
Belarus	01/03/1994	"The Republic of Belarus shall be a unitary, democratic, social state based on the rule of law." (Art.1 (1))	"The people shall be the sole source of state power in the Republic of Belarus". (Art.3 (1)) >>	"The people shall exercise their power directly and through representative bodies in the forms and within the limits specified in the Constitution". (Art.3 (1)) "Political parties and other public associations acting within the framework of the Constitution and laws shall contribute to ascertaining and expressing the political will of citizens and participate in elections." (Art. 5 (1))
Belgium	1970	"Belgium is a Federal State made up of Communities and Regions." (Art.1)	"All power emanates from the Nation" (Art.33 (1)) >	"The power is exerted in the manner established by the Constitution". (Art.33 (2)) "The federal legislative power is exerted collectively by the King, the House of Representatives, and the Senate." (Art.36) "The federal executive power, as stipulated by the Constitution, belongs to the King." (Art.37) "(1) Judiciary power is exerted by the courts and tribunals. (2) Rulings and court decisions are carried out in the name of the King." (Art.40)

Bosnia-Herzegovina	01/12/1995	Bosnia and Herzegovina shall be a democratic state, which shall operate under the rule of law, and with free and democratic elections.	No mention of sovereignty (Constitution heavily influenced by principles of globalization).	
Bulgaria	12/07/1991	"Bulgaria is a republic with a parliamentary form of government." (Art.1 (1))	"The entire power of the state shall derive from the people ". (Art.1 (2)) >>	"The people shall exercise this power directly and through the bodies established by this Constitution." Art.1 (2)). "No part of the people , no political party nor any other organization, state institution, or individual shall usurp the expression of the popular sovereignty". (Art.1 (3))
Croatia	Dec. 1990	".. the Republic of Croatia is hereby founded and shall develop as a sovereign and democratic state". (Preamble) "The Republic of Croatia is a unitary and indivisible democratic and social state". (Art.1)	"Power in the Republic of Croatia derives from the people and belongs to the people as a community of free and equal citizens." (Art.1)	"The people shall exercise this power through the election of representatives and through direct decision-making." (Art.1) "The Croatian Parliament (Sabor) or the people directly shall, independently and in accordance with the Constitution and law, decide: -on the regulation of economic, legal and political relations in the Republic of Croatia; - on the preservation of natural and cultural wealth and its utilization; - on association into alliances with other states." (Art.2)
Cyprus	16/08/1960	"The State of Cyprus is an independent and sovereign Republic with a presidential regime.." (Art.1)		"The President of the Republic is the Head of the State and takes precedence over all persons in the Republic. The Vice-President of the Republic is the Vice-Head of the State and takes precedence over all persons in the Republic next after the President of the Republic." (Art.36)
Czech Republic	16/12/1992	"The Czech Republic is a sovereign, unified, and democratic law-observing state, based on the respect for the rights and freedoms of the individual and citizen." (Art.1)	"All state power derives from the people ;" (Art.2 (1))	"they exercise their power by means of their legislative, executive and judicial bodies" (Art.2 (1))
Denmark	05/06/1953	"The form of government shall be that of a constitutional monarchy." (Section 2)	No mention of sovereignty - only of 'Royal Power'	"The Royal Power is inherited by men and women in accordance with the provisions of the Succession to the Throne Act, 27th March, 1953." (Section 2). "The legislative power is jointly vested in the King and the Parliament. The executive power is vested in the King. The judicial power is vested in the courts of justice". (Section 3). "Subject to the limitations laid down in this Constitution Act, the King shall have the supreme authority in all the affairs of the Realm, and he shall exercise such supreme authority through the Ministers". (Section 12). "The King shall not be responsible for his actions; his person shall be sacrosanct". (Section 13)
Estonia	28/06/1992	"Estonia is an independent and sovereign democratic republic.." (Art.1 (1)) >>	>> ".. wherein the supreme power of the state is held by the people ". (Art.1 (1)) >>	"The people shall exercise their supreme power through citizens who have the right to vote by: 1) electing the Parliament; 2) participating in referenda." (Art.56 (Sovereignty)) "Legislative power shall rest with the Parliament". (Art.59)
Finland	11/06/1999	"Finland is a sovereign republic." (Section 1 (1))	"The powers of the State in Finland are vested in the people ". (Section 2. (1)) >>	"who are represented by the Parliament". (Section 2.(1)). "Democracy entails the right of the individual to participate in and influence the development of society and his or her living conditions". (Section 2 (2))

France	28/09/1958	"France is an indivisible, secular, democratic, and social Republic". (Art.2 (1))	"National sovereignty belongs to the people ". (Art.3 (1)) >>	>> "who exercise it through their representatives and by means of referendums". (Art.3 (1)). "No section of the people , nor any individual, may abrogate to themselves or to him or herself the exercise thereof". (Art.3 (2)). "Political parties shall be instrumental in the exercise of the suffrage. They must respect the principles of national sovereignty and democracy". (Art.4)
Georgia	1991	"Georgia is an independent, unified and indivisible law-based state" (Art.1 (1)) "The people of Georgia whose strong will is to establish a democratic social order..." (Preamble)	"The people are the sole source of state power in Georgia". (Art.5 (1)) >>	"State power is only exercised within the framework of the Constitution". (Art.5 (1)) "Power is exercised by the people through referendum, their representatives and other democratic forms". (Art.5 (2))
Germany	23/05/1949	"The Federal Republic of Germany is a democratic and social Federal state." (Art.20 (1))	"All state authority emanates from the people ". (Art.20 (2)) >>	"It is exercised by the people by means of elections and voting and by separate legislative, executive and judicial organs". (Art.20 (2))
Great Britain	No formal constitution		Sovereignty is held to reside in Parliament on behalf of the monarch. Citizens are 'subjects'.	
Greece	11/06/1975	"Greece is a Parliamentary Democracy with a President as Head of State". (Art.1 (1))	"Popular sovereignty is the foundation on which the form of government rests. (Art.1 (2)). All powers are derived from the People [and] exist for the benefit of the People and the Nation". (Art.1(3))	"...and are exercised in the manner determined by the Constitution". (Art.1 (3)) "Greece is a Parliamentary Democracy with a President as Head of State". (Art.1 (1)) Article 26 [Legislative Power] (1) The legislative power shall be exercised by Parliament and the President of the Republic. (2) The executive power shall be exercised by the President of the Republic and by the government. (3) The judicial power shall be exercised by the courts and their decisions shall be executed in the name of the Greek People .
Hungary	20/08/1949	"The Republic of Hungary is an independent, democratic constitutional state." (Art.2 (1))	"In the Republic of Hungary, supreme power is vested in the people " (Art.2 (2))	"who exercise their sovereign rights directly and through elected representatives". (Art.2 (2))
Iceland	17/06/1944	"Iceland is a Republic with a parliamentary government". (Art.1)		"Althingi and the President of Iceland exercise jointly legislative power. The President and other governmental authorities in accordance with this Constitution and other laws exercise executive power. Judges exercise judicial power". (Art.2)
Ireland	01/07/1937	"Ireland is a sovereign, independent, democratic state." (Art.5)	"All powers of government, legislative, executive and judicial, derive, under God, from the people ." (Art.6 (1)) >>	>> "whose right it is to designate the rulers of the State, and, in final appeal, to decide all questions of national policy, according to the requirements of the common good". (Art.6 (1))

Italy	22/12/1947	"Italy is a democratic Republic founded on labour." (Art.1 (1))	"Sovereignty belongs to the people ." (Art.1 (2)) >>	"who exercise it in the forms and within the limits laid down by the Constitution". (Art.1 (2))
Latvia	15/02/1922	"Latvia is an independent democratic republic". (Art.1)	"The sovereign power of the State of Latvia is vested in the people of Latvia" (Art.2)	"The Parliament shall be composed of one hundred representatives of the people ". (Art.5)
Liechtenstein	24/10/1921	"The Principality is a constitutional, hereditary monarchy on a democratic and parliamentary basis". (Art.2)	"the power of the State is inherent in and issues from the Prince Regnant and the People " (Art.2) >> "The Prince Regnant is the Head of State and shall exercise his sovereign authority in conformity with the provisions of the present Constitution and of the other laws. 2) His person is sacred and inviolable." (Art.7 (1))	>>"and shall be exercised by both in accordance with the provisions of the present Constitution ." (Art.2) "Every law shall require the sanction of the Prince Regnant in order to acquire validity." (Art.9)
Lithuania	25/10/1992	"The State of Lithuania shall be an independent and democratic republic". (Art.1)	"The State of Lithuania shall be created by the People . Sovereignty shall be vested in the People ". (Art.2) "No-one may limit or restrict the sovereignty of the People or make claims to the sovereign powers of the People ". (Art.3 (1))	"The People shall exercise the supreme sovereign power vested in them either directly or through their democratically elected representatives". (Art.4)
Luxembourg	17/10/1868	"The Grand Duchy of Luxembourg is a democratic, free, independent, and indivisible State." (Art.1)	"The sovereign power resides in the Nation." (Art.32 (1))	"The Grand Duke exercises it in compliance with this Constitution and the laws of the country." (Art.32 (2))
Macedonia	17/11/1991	"The Republic of Macedonia is a sovereign, independent, democratic and social state". (Art.1 (1))	"Sovereignty in the Republic of Macedonia derives from the citizens and belongs to the citizens ". (Art.2 (1))	"The citizens of the Republic of Macedonia exercise their authority through democratically elected Representatives, through referendum and through other forms of direct expression". (Art.2 (2))
Malta	1964	"Malta is a democratic republic founded on work and on respect for the fundamental rights and freedoms of the individual ." (Section 1.(1))	No mention of sovereignty	

Moldova		(1) The Republic of Moldova is a sovereign, independent, unitary and indivisible state. (2) The form of government of the State is the republic. (3) Governed by the role of law, the Republic of Moldova is a democratic State in which the dignity of people , their rights and freedoms, the open development of human personality, justice and political pluralism represent supreme values, that shall be guaranteed. (Art.1)	"National sovereignty resides with the people of the Republic of Moldova..">>> (Art.2 (1)	>> "... who shall exercise it directly and through its representative bodies in the ways provided for by Constitution." (Art.2 (1)) "No private individual, national segment of population, social grouping, political party or public organization may exercise state power on their own behalf. The usurpation of state power constitutes the gravest crime against the people ." (Art.2 (2))
Netherlands	17/02/1983	No self-description	No mention of sovereignty	"The Parliament shall represent the entire people of the Netherlands". (Art.50)
Norway	17/05/1814	"The Kingdom of Norway is a free, independent, indivisible and inalienable Realm. Its form of government is a limited and hereditary monarchy." (Art.1)	No mention of sovereignty.	"The Executive Power is vested in the King". (Art.3) "The King's person is sacred; he cannot be censured or accused". (Art.5) "The people exercises the Legislative Power through the Storting, which consists of two departments, the Lagting and the Odelsting". (Art.49)
Poland	02/04/1997	"The Republic of Poland shall be a democratic state ruled by law and implementing the principles of social justice." (Art.2)	"Supreme power in the Republic of Poland shall be vested in the Nation" (Art.4 (1))	"The Nation shall exercise such power directly or through their representatives". (Art.4 (2))

Portugal	02/04/1976	<p>Portugal is a sovereign Republic, based on the dignity of the human person and the will of the people, and committed to building a free and fair society that unites in solidarity. (Art.1) The Portuguese Republic is a democratic State based on the rule of law, the sovereignty of the people, plurality of both democratic expression and democratic political organization as well as respect for and the safeguarding of fundamental rights and freedoms; its aim is to achieve economic, social, and cultural democracy and to push participatory democracy further. (Art.2)</p>	<p>"Sovereignty, one and indivisible, rests with the people .." (Art.3 (1)) >></p>	<p>>> "who exercise it in accordance with the forms laid down in the Constitution." (Art.3 (1))</p>
Romania	08/12/1991	<p>"1) Romania is a sovereign, independent, unitary, and indivisible Nation State. (2) The form of government of the Romanian State is a Republic. (3) Romania is a democratic and social State governed by the rule of law, in which human dignity, the citizens' rights and freedoms, the free development of human personality, justice, and political pluralism represent supreme values and shall be guaranteed." (Art.1)</p>	<p>"National sovereignty resides with the Romanian people ..." (Art.2 (1)) >></p>	<p>>> "... who shall exercise it through its representative bodies and by referendum." (Art.2 (1))</p>

Russian Federation	12/12/1993	"The Russian Federation -- Russia is a democratic federal rule-of-law state with the republican form of government." (Art.1) "Humans, their rights and freedoms are the supreme value. It is a duty of the state to recognize, respect and protect the rights and liberties of humans and citizens." (Art.2)	"The multinational people of the Russian Federation is the vehicle of sovereignty and the only source of power in the Russian Federation." (Art.3.1)	"The people of the Russian Federation exercise their power directly, and also through organs of state power and local self-government".(Art.3.2) "The referendum and free elections are the supreme direct manifestation of the power of the people." (Art.3.3) "No one may arrogate to oneself power in the Russian Federation. Seizure of power or appropriation of power authorization are prosecuted under federal law." (Art.3.4)
Serbia/Montenegro	27/04/1992	"The Federal Republic of Yugoslavia shall be a sovereign federal state, founded on the equality of citizens and the equality of its member republics." (Art.1)	"In the Federal Republic of Yugoslavia, power shall be vested in the citizens". (Art.8 (1))	"Citizens shall exercise power directly and through freely elected representatives". (Art.8 (2))
Slovakia	01/09/1992	"The Slovak Republic is a sovereign, democratic, and law-governed state". (Art.1)	"State power is derived from citizens.. (Ch.1, Art.2) >>	>> "who execute it through their elected representatives or directly". (Art.2 (1))
Slovenia	23/12/1991		"In Slovenia, power is vested in the people" (Art.3)	"Citizens exercise this power directly and through elections". (Art.3)
Spain	1978	"Spain constitutes itself into a social and democratic state of law which advocates liberty, justice, equality, and political pluralism as the superior values of its legal order". (Art.1 (1))	"National sovereignty belongs to the Spanish people, from whom emanate the powers of the state". (Art.1 (2))	"The political form of the Spanish State is the parliamentary Monarchy". (Art.1 (3)) "Political parties express democratic pluralism, assist in the formulation and manifestation of the popular will, and are a basic instrument for political participation". (Art.6)
Sweden	01/01/1975	"The public administration shall promote the ideals of democracy as guidelines in all sectors of society." (Art.2 (3))	"All public power in Sweden proceeds from the people" (Art.1 (1))	"Swedish democracy... shall be realized through a representative and parliamentary polity and through local self-government". (Art.1 (2))

Switzerland	18/04/1999	No specific self-description. The constitution lists the following 'purposes' under Art.2: (1) The Swiss Confederation protects the liberty and rights of the people and safeguards the independence and security of the country. (2) It promotes common welfare, sustainable development, inner cohesion, and cultural diversity of the country. (3) It ensures equal opportunities for all citizens to the extent possible. (4) It strives to safeguard the long-term preservation of natural resources and to promote a just and peaceful international order.	"The cantons are sovereign insofar as their sovereignty is not limited by the Federal Constitution". (Art.3)	???
Ukraine	28/06/1996	"Ukraine is a sovereign and independent, democratic, social, law-based state". (Art.1)	"The people are the bearers of sovereignty and the only source of power in Ukraine." (Art.5)	"The people exercise power directly and through bodies of state power and bodies of local self-government. The right to determine and change the constitutional order in Ukraine belongs exclusively to the people and shall not be usurped by the State, its bodies or officials." (Art.5)

- Abromeit, Heidrun.** Democracy in Europe: Legitimising Politics in a Non-State Polity. Bergham Books, Oxford (1998).
- Ahlert, Christian.** Weltweite Wahlen im Internet. Möglichkeiten und Grenzen transnationaler Demokratie. Campus, Frankfurt (2003).
- Anckar, Dag & Lauri Karvonen** (2002). Constitutional Amendment Methods in the Democracies of the World. Paper to the XIIIth Nordic Political Science Congress, Aalborg, Denmark (2002).
- Auer, Andreas & Flauss, Jean-Francois (Ed).** Actes du colloque international de Strasbourg, 21-22 février 1997. Bruylant, Bruxelles (1997).
- Benz, Matthias & Stutzer, Alois.** Are Voters Better Informed When They Have a Larger Say in Politics? Evidence from the European Union and Switzerland. Public Choice (2003).
- Bjørklund, Tor.** The Three Nordic Referenda concerning Membership of the European Union. Cooperation and Conflict 31 (1996).
- Butler, David & Ranney, Austin.** Referendums around the World. The Growing Use of Direct Democracy. Macmillan. Washington (1994).
- Cronin, Thomas E.** Direct democracy – The Politics of Initiative, Referendum and Recall: A Twentieth Century Fund Book; Harvard University Press, Cambridge (1999).
- Erne, Roland/Gross, Andreas/Kaufmann, Bruno/Kleger, Heinz** (Ed). Transnationale Demokratie, Impulse für ein demokratisch verfasstes Europa, Zürich (1995).
- Everts, Steven.** The case for a Europe-wide referendum. Centre for European Reform. London (2002).
- Forum Helveticum** (Ed). Die schweizerische Verfassungsgeschichte: Eine Quelle von Anregungen für die Zukunft Europas ? Lenzburg (2002).
- Frey, Bruno S. & Stutzer, Alois.** Happiness, Economy and Institutions. Economic Journal 110 (1999).
- Frey, Bruno S.** Arts and Economics. Springer Verlag. Heidelberg (2000).
- Frey, Bruno S.** Direct Democracy for Transition Economies. Working Paper presented for the Collegium Budapest (2002).
- Frey, Bruno S.** Direct Democracy: Politico-Economic Lessons from the Swiss Experience. American Economic Review 84 (1994).
- Gallagher, Michael & Uleri, Pier Vincenzo.** The Referendum Experience in Europe. MacMillan, London (1996).
- Gerhardt, J. & Oberreuter H. (Eds).** Die Zukunft der Direkten Demokratie (forthcoming, 2003).
- Göttel, Hans** (Ed.). Almanach 2002. Europahaus Burgenland. Eisenstadt (2002).
- Gross, Andreas.** Auf der politischen Baustelle Europa. Realotopia. Zürich (1996).
- Gross, Andreas & Klages, Andreas.** Die Volksinitiative in den Kantonen am Beispiel des Kantons Zürich, in: Auer, (1996).
- Gross, Andreas.** Plebiszit und Direkte Demokratie. Utopie und Geschichte 5. Basel(2002).
- Gross, Andreas & Kaufmann, Bruno.** IRI Europe Country Index on Citizenlawmaking. IRI Europe. Amsterdam (2002)
- Gross, Andreas.** Die schweizerische Direkte Demokratie, in: Heussner/Jung: Mehr direkte Demokratie wagen. München (1999).
- Gross, Andreas.** Direkte Demokratie in Gliedstaaten der USA , Reformwelle vor 100 Jahren – Parallelen zur Schweiz, in: NZZ 14. /15. August (1999).
- Hautala, Heidi & Kaufmann, Bruno.** Little Tricks for Big Europe. Eu Observer 11/12-01 (2001).
- Hautala, Heidi/Kaufmann, Bruno & Wallis, Diana.** Voices of Europe. IRI Europe Report on the growing importance of the initiative and referendum process in the European integration process. Amsterdam (2002).
- Hug, Simon.** Voices of Europe. Citizens, Referendums and European Integration. Rowman & Littlefield Publishers, Boulder (2002).
- Jeantet, Thierry.** Démocratie Directe, Démocratie Moderne. Editions Entente. Paris (1991).
- Kaelble, Hartmut.** Wege zur Demokratie. Von der französischen Revolution zur Europäischen Union. DVA, Stuttgart (2001)
- Kaufmann, Bruno & Köppen, Peter** (Ed.). The Rostock Process. 1991-2004: On the Way to More Direct Democracy in Europe. Geschichtswerkstatt Rostock (2001).
- Kaufmann, Bruno** (Ed.). Demokratins utmaningar. Folkstyrets problem och möjligheter på lokal, regional, nationell och gränsöverskridande nivå. Padrigu. Göteborg (1996).

- Kaufmann, Bruno.** Mehr freie Wahlen. Zwei Drittel der Menschheit leben heute in demokratischen Staaten. Weltwoche 42.02 (2002).
- Kaufmann, Bruno & Waters, M. Dane (Ed).** The Initiative and Referendum Almanac: A Comprehensive Reference Guide to the Initiative and Referendum Process in Europe. Carolina Academic Press (Forthcoming, 2004).
- Kaufmann, Bruno.** Power to the people – on the way to transnational democracy. Master's thesis. Padrigu. Göteborg (1996)
- Kattenhusen, Ines & Lamping, Wolfram (Eds.).** Demokratien in Europa. Der Einfluss der europäischen Integration auf Institutionenwandel und neue Konturen des demokratischen Verfassungsstaates. Leske & Budrich, Opladen (2003).
- Kirchgässner, Gebhard & Feld, Lars & Savioz, Marcel R.** Die direkte Demokratie: modern, erfolgreich, entwicklungs- und exportfähig. Helbling und Lichtenhahn. Basel (1999).
- Kleger, Heinz u.a. (Ed).** Europäische Verfassung. Zum Stand der europäischen Demokratie im Zuge der Osterweiterung. Lit Verlag, Münster (2001).
- Kobi, Silvia.** Democracy and Decentralisation. A British-Swiss contribution to the debate on the future of Europe. Centre for Reform, London (2003).
- Linder, Wolf.** Schweizerische Demokratie. Institutionen – Prozesse – Perspektiven. Bern (1999).
- Luthardt, Wolfgang.** Direkte Demokratie. Ein Vergleich in Westeuropa. Baden-Baden (1994).
- Petersson, Olof (Ed.).** Från Fischer till Giscard. SNS Förlag. Stockholm (2002).
- Mittendorfer, Volker & Schiller, Theo (Eds).** Direkte Demokratie. Westdeutscher Verlag, Wiesbaden (2002).
- Müller, Jörg Paul.** Die demokratische Verfassung. Verlag Neue Zürcher Zeitung, Zürich (2002).
- Qvortrup, Mads.** A Comparative Study of Referendums. Manchester University Press (2002).
- Rensi, Giuseppe.** La Democrazia Diretta. Piccola Biblioteca 350. Adelphi. Milano (1995).
- Sahlfeld, Konrad W. (Ed).** Information & Recht. Helbling & Lichtenhahn, Basel (2003).
- Schmidt, Marcus.** Direkte demokrati i Danmark. Om indførelse af et elektronisk andetkammer. Nyt Nordisk Forlag Arnold Busck. København (1993).
- Schiller, Theo.** Direkte Demokratie. Eine Einführung. Campus Verlag. Frankfurt a.M (2002).
- Schiller, Theo (Ed.). Direkte Demokratie in Theorie und kommunaler Praxis. Campus, Frankfurt (1999).
- Schmitter, Phillipe C.** How to Democratize the European Union..and Why Bother? Lanham/Oxford, Rowman & Littlefield Publishers, 2000.
- Siedentop, Larry.** Democracy in Europe. The Penguin Press. London (2000).
- Trechsel, Alexander.** Feuer Volksrechte. Die Volksabstimmungen in den schweizerischen Kantonen 1970-1996. Helbling & Lichtenhahn, Basel (2000).
- Waters, M. Dane.** The Battle over Citizen Lawmaking: A Collection of Essays. Carolina Academic Press (2001).
- Vatter, Adrian.** Kantonale Demokratien im Vergleich. Opladen: Leske.
- Vaubel, Roland.** Europa Chauvinismus. Der Hochmut der Institutionen. Universitas. München (2001).
- Vesterdorf, Peter L.** Demokrati utan gränser. Om demokrati och den Europeiska Union. Rabén Prisma. Stockholm (1996).
- Waters, Michael Dane.** Initiative and Referendum Almanac. The I&R process in the US. Carolina Academic Press (2003).
- Weiler, J.H.H. (Ed.).** The Constitution of Europe. Cambridge University Press. Cambridge (1999).
- Zagrebel'sky, Gustavo.** Il Federalismo e la Democrazia Europea. La Nuova Italia Scientifica. Roma (1995).

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- IRI Europe Handbook 2004 The New Challenge of European Initiative(s) & Referendum(s) after the Convention

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About the Initiative & Referendum Institute

The Initiative & Referendum Institute Europe (IRI Europe) was founded in 2001 to become the premier research and educational institute on I&R in Europe. Our mission is to develop insight into the theory and practice of I&R among politicians, the media, NGOs, academics and the public throughout Europe. IRI Europe is an independent, non-partisan and non profit-making organisation. We are advocates of the I&R process and we are dedicated to offering facts, promoting research, providing services to the public and bringing together key actors in the field of democracy.

The core of IRI Europe consists of a dedicated team with both academic and practical experience of I&R, as well as general political, organisational and scientific experience. All Board members have been working for years and sometimes even for decades with I&R. The Advisory Board consists of some of the leading European experts on I&R. And through our continent-wide network of correspondents we are able to report on the latest news and in-depth analysis of I&R events in Europe.

I&R makes a difference

The Initiative and Referendum (I&R) process is on the march in Europe. Of the almost 30 European countries which have adopted new constitutions since 1989, only 3 did not include instruments of Direct Democracy. And "old" democracies are increasingly introducing I&R too - such as Germany, Portugal, Britain, the Netherlands, France and Sweden. Referendums are increasingly shaping the European integration process. Between 1972 and 2003, more than 300 million citizens in 22 countries made "European" decisions in a total of 40 referendums. Other citizens' decisions are in the offing around the ratification of the new EU Treaty establishing a European Constitution.

On the other hand, public understanding of I&R is not well developed and there has not so far existed any reference point to which governments, the media,

NGOs and interested citizens can turn if they are looking for an analysis of the strengths and weaknesses of existing I&R systems, want to invite experts for a hearing, or commission a report or conference. Thus opportunities for the introduction of 'good' I&R systems are being missed. In this situation, the Initiative & Referendum Institute Europe will make a difference.

Our Projects

In 2003/2004 we are working with I&R information, communication and education at all levels:

- The IRI European Referendum Monitoring Programme is observing the EU accession referendums and developing guidelines for future referendums on Europe.
- As a follow-up to the IRI Europe-coordinated working group on direct-democratic elements in the EU constitution, the Institute is co-hosting seminars on the future of the "European Citizens' Initiative"
- The Initiative and Referendum "Manual to Europe" is in its final production phase and will become the reference volume on direct democratic institutions in Europe.
- The CHDD Pocket Guide to Swiss Direct Democracy being prepared by IRI Europe will be the first comprehensive and reader-friendly insight into the most experienced I&R country in the world.

And also:

- The regular IRI Europe Survey on the European Referendum Challenge assesses the state of the art and the future prospects for direct-democratic tools in Europe.
- Our research department looks behind the surface of the public I&R debate and provides regular reports on important areas such as "the economy and I&R", "arguments against I&R" and "good I&R design".
- Our website at www.iri-europe.org, with information on all aspects of I&R: current I&R regulations in

Europe, I&R news, theory and background, polls and quotes, literature.

- IRI Europe Watch, our e-mail news service on I&R in Europe
- A comprehensive database, with results of I&R votes, which will be made available online through our website www.iri-europe.org (under construction).
- We are also developing an IRI Educational Programme with courses and seminars in many European countries.

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The work of IRI Europe is dependent on donations and cooperation with individuals and organisations. Please consider becoming a Friend of IRI Europe and support our cause with a one-off or regular donation. Contact us for questions on tax deductibility and how to make payments.

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