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Le droit n'est pas seulement un savoir, il est d'abord un ensemble de rapports et pratiques que l'on rencontre dans presque toutes les formes de sociétés. C'est pourquoi il a toujours donné lieu à la fois à une littérature de juristes professionnels, produisant le savoir juridique, et à une littérature sur le droit, produite par des philosophes, des sociologues ou des économistes notamment.

Parce que le domaine du droit s'étend sans cesse et rend de plus en plus souvent nécessaire le recours au savoir juridique spécialisé, même dans des matières où il n'avait jadis qu'une importance secondaire, les ouvrages juridiques à caractère professionnel ou pédagogique dominent l'édition, et ils tendent à réduire la recherche en droit à sa seule dimension positive. A l'inverse de cette tendance, la collection *Logiques juridiques* des Éditions L'Harmattan est ouverte à toutes les approches du droit. Tout en publiant aussi des ouvrages à vocation professionnelle ou pédagogique, elle se fixe avant tout pour but de contribuer à la publication et à la diffusion des recherches en droit, ainsi qu'au dialogue scientifique sur le droit. Comme son nom l'indique, elle se veut plurielle.

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Sous la direction de
Jacques Ziller

**L'EUROPÉANISATION
DES DROITS CONSTITUTIONNELS
À LA LUMIÈRE DE
LA CONSTITUTION POUR L'EUROPE**

**THE EUROPEANISATION
OF CONSTITUTIONAL LAW
IN THE LIGHT OF
THE CONSTITUTION FOR EUROPE**

Avec la collaboration de
Mel Marquis et Hidia Taoufiqi

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²⁸ En ce sens, TROPER, M., « L'Europe et les principes », *Droit et Société*, 1992, sp. 165

CHAPTER 10 Adoption and Entry into Force of the Constitution for Europe

Patricia JERÓNIMO*

Résumé en français : L'adoption et l'entrée en vigueur de la Constitution pour l'Europe.

Ce chapitre analyse en premier lieu les diverses difficultés à prévoir dans le processus d'adoption et d'entrée en vigueur du Traité établissant une Constitution pour l'Europe, du fait que l'art. 48 TUE exige l'unanimité dans le cadre de la Conférence intergouvernementale et la ratification par tous les Etats membres en conformité avec leurs Constitutions nationales respectives. Il examine notamment la suggestion présentée par le projet « Pénélope » et d'autres propositions de solutions pour le problème d'efficacité posé par l'art. 48 TUE. Dans la seconde partie, l'attention se concentre sur les inquiétudes d'ordre démocratique suscitées par ce même art. 48 et la méthode intergouvernementale qu'il institue. Les travaux de la Convention et les critiques qu'ils ont suscitées y sont examinés, avant d'évaluer la viabilité et l'opportunité du recours au référendum sur le Traité Constitutionnel que beaucoup d'Européens appellent de leurs vœux après la fin de la CIG.

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As the works of the Convention on the Future of Europe proceeded, the question of the adoption and entry into force of the Constitutional Treaty in the making began to loom large in the minds of conventioners and observers alike, concerned with a possible rejection of the draft at the Intergovernmental Conference (IGC) or at the subsequent stage of national ratification. The ambitious plan of Valéry Giscard d'Estaing and his Praesidium, was strongly challenged from the moment the first draft Articles were made public, and labelled as a mere, though good, "basis for starting" at the IGC by the European Council of Thessaloniki. It still faces the enormous challenge of winning the approval of the member states' governments and of some, if not all, of the peoples of Europe.

The Boundaries for Amendments: Article 48 of the Treaty on European Union (TEU)

The draft Constitutional Treaty will most probably be subject to significant changes before the common accord required by Art. 48 TEU is reached, if ever. And even then, there is still the possibility that the ratification of the Treaty will be rejected by national parliaments or by the people voting in referendums, preventing thus the Constitution from entering into force. It takes only one State, no matter how small, to ruin everything. It is no wonder that many tried to figure out a way of avoiding Art. 48 TEU and its quite risky general amendment procedure.

Art. 48 TEU had been under severe scrutiny by the academic world for a long time, and when the Convention started, few doubted that the "rules of change"¹ needed to be altered. Art. 48 TEU, which requires that treaty amendments be agreed to by all member states and ratified by all of them according to their respective constitutional provisions, was deemed to force poor and hasty agreements – that would postpone or sideline the more contentious issues – and to represent a permanent threat of last minute failure, as attested to by the anxieties surrounding the Maastricht, Amsterdam and Nice Treaties². It has been pointed out that this is likely to become even more problematic in an enlarged European Union because, apart from a drastic increase in the number of member states, the 'national constitutional procedures' of the acceding Central and Eastern European countries involve particular procedural and practical complications³. These include a tradition of holding referendums frequently, high minimum turnout requirements due to which the majority of recent referendums have been rendered invalid, a rather eurosceptic public opinion in several countries, and relatively long prohibition periods for re-initiating unsuccessful referendums⁴. All in all, as shown in the annexed tables, the complexity of national ratification procedures amongst 25 or more member states would be a challenge to comparative analyses.

PROPOSALS FOR REVISION OF ARTICLE 48 TEU

The amendment procedure laid down in Art. 48 TEU cried out for revision. Proposals in this regard included the replacement of unanimity by a qualified majority rule (at least at the time of ratification)⁵, the institution of different amendment procedures according to the level of constitutionality of the provisions to be amended⁶, and the expansion of the existing autonomous amendment procedures by which amendments are entrusted to EU institutions and removed from the member states' authority to approve or reject⁷. Many did not dare to directly touch Art. 48 TEU, but their

concerns with the risks entailed by the "self-contained nature of the national ratification processes"⁸ led them to argue for a harmonisation of national constitutional provisions, either by generalising the strictly parliamentary ratification procedure⁹ or by replacing the current national diachronic procedures by a European-wide referendum¹⁰.

"Penelope"

Some of the proposals described above were incorporated into an unofficial draft Constitution which was written at President Prodi's request (the so-called "Penelope" document¹¹), which argued for a drastic departure from the unanimity rule in all treaty amendments (except for accession treaties) and for a differentiation of the amendment mechanisms according to the type of provisions at stake – a demanding procedure (5/6 majority of agreements and ratifications) for revision of the "principles" and "fundamental rights" parts of the Constitution, a less demanding procedure for the "policies" part of the Constitutional and Additional Acts 1 and 2, and an even simpler procedure, akin to the one laid down for the adoption of institutional laws, for the revision of Additional Acts 3, 4 and 5.

Despite this apparent consensus, draft Art. F on the procedure for revising the Constitutional Treaty, as submitted to the Convention on the 2nd of April 2003¹², reproduced Art. 48 TEU almost verbatim. The Praesidium's explanatory note nevertheless called the attention of the conventioners to the need to address, among others, the question of whether to replace unanimity by a qualified majority and the possible adoption of autonomous amendment procedures for very limited amendments. This question is not totally closed – many amendments were proposed¹³, strong criticisms were expressed, and the Commission regretted that the Convention had not replaced unanimity by reinforced majority voting – but the lack of audacity of the Praesidium on this particular issue shows that the departure from unanimity will be far more difficult than many observers had thought. It also indicates, as if further proof were necessary, the improbability of the member states agreeing on the "Penelope" proposal for an "Agreement on the Entry into Force of the Treaty on the Constitution of the EU".

The proposed "Penelope" Agreement came about as a rescue device for all the work and investment made in the Convention. It sought to establish a mechanism that would sidestep Art. 48 TEU and the predictable implications of its deadlock scenario. "Penelope" seems to have been largely inspired by the "refoundation theory"¹⁴, according to which the future Constitution for Europe is to be conceived not just as another amendment to the EU Treaties but as a whole new start in the project of European integration. As a consequence, the rules regarding its adoption and entry into

force are not those of EU Law but of International Law, which means that member states are entirely free to define new rules in this matter¹⁵.

“Penelope” proposed that the new rules – allowing for a three-quarter majority to make the Constitutional Treaty enter into force – would be set by an “Agreement on the Entry into Force of the Treaty on the Constitution of the European Union”, to be concluded and ratified by all member states, in accordance with Art. 48 TEU. In what was termed, in Charlemagne’s opinion in *The Economist*, as “an extraordinary plan to kick awkward members out of the EU”¹⁶, “Penelope” also suggested that the States unable to ratify the Constitutional Treaty – or, in the proposed Agreement’s terms, to “make a solemn declaration confirming the resolve of its people to continue to belong to the European Union” – would have to withdraw from the EU on the date of entry into force of the Treaty on the Constitution and have their relations with the EU governed by a special agreement to be concluded in the meantime.

What is more problematic in this proposal – along with its “refoundation” presumptions (which neglect the fact, pointed out by Bruno De Witte, that, legally speaking, there can be no *tabula rasa*¹⁷) and the unlikelihood of ever reaching such an Agreement – is that it not only creates the conditions for avoiding the rule of Art. 48, but, eventually tries to bypass this Article itself. In draft Art. 6, (2) of the Agreement it is established that if, by a given date, 5/6 of the member states have ratified it, the Agreement enters into force and member states which have not ratified it are deemed to have decided to withdraw from the Union.

“Penelope”’s authors recognise that this last resort clause is a break with Art. 48 TEU, but deem it to be consistent with International Law since the Agreement offers the member state concerned every guarantee that the member state will retain its established rights and because the proposed solution requires the agreement, at the time of signature, of all the member states. This last resort clause cannot, however, be justified under general International Law. It is true that the Vienna Convention on the Law of Treaties allows for some of the parties to a treaty to decide to modify that treaty among themselves without the participation of the other original State parties, but only if such modification doesn’t affect the rights that the non-participating States draw from the original treaty – a requirement that can’t possibly be met by the future Constitutional Treaty¹⁸. Furthermore, as De Witte points out, to admit that a State could be bound by an Agreement including a similar last resort clause, just for having agreed to it at the time of signature, is to disregard the national constitutional provisions of most member states, which require parliamentary approval before ratification¹⁹.

Article IV-8 of the Constitution for Europe

Unless all the member states decide to subscribe to and manage to ratify the proposed “Penelope” Agreement, which is highly unlikely, the adoption and entry into force of the Constitutional Treaty will have to respect the unanimity rule laid down in Art. 48 TEU. Draft Art. IV-8²⁰ on the adoption, ratification and entry into force of the Treaty establishing the Constitution confirmed this unanimity requirement:

“1. The Treaty establishing the Constitution shall be ratified by the High Contracting Parties in accordance with their respective constitutional requirements. The instruments of ratification shall be deposited with the Government of the Italian Republic.

“2. The Constitutional Treaty shall enter into force on..., provided that all the instruments of ratification have been deposited, or, failing that, on the first day of the month following the deposit of the instrument of ratification by the last signatory state to take this step”.

The explanatory note that followed the draft made express reference to the “Penelope” proposal, justifying its non-adoption not on the basis of its incompatibility with the Vienna Convention, but because it would “create problems as regards the former Treaties if one or more signatory States did not ratify the Constitutional Treaty”. Art. 24 of the Vienna Convention on the Law of Treaties establishes that “a treaty enters into force in such manner and upon such date as it may provide or as the negotiating States may agree”, so it is stated by a number of authors that the proposed solution would be admissible from a legal point of view. This International Law reasoning – not at all surprising given the support expressed by Giscard d’Estaing to the “refoundation” or “constitutional rupture” line of thought – proceeds to invoke Art. 54 of the Vienna Convention, where it is stated that a treaty can be terminated only in conformity with its provisions or by consent of all the parties. Given the fact that the current Treaties are silent on the question of their repeal, such a repeal will only be possible with the consent of all the member states that are party to them. The idea that, without the approval of the Constitutional Treaty, the EU would be left with nothing was, nevertheless, cast aside by the express statement that “unless repealed by agreement of all the member states of the Union, the former Treaties would remain in force”²¹.

Democratic Legitimacy and the Constitution for Europe

Given that Art. 48 TEU is unavoidable – and that, consequently, the Constitutional Treaty will only enter into force if a positive reply is given

by national parliaments and by the people in mandatory referendums in a number of countries (to start with, Denmark, Ireland and a few of the new member states, and most probably in optional referendums²² by the French, Spanish and Portuguese people, to mention only a few) – what must be done is simply to try and figure out ways of preventing the much anticipated paralysis and to deal with it if it materialises.

AN ENTRY-INTO-FORCE CLAUSE?

One way to prevent the kind of paralysis referred to above could be, suggests De Witte, the insertion of an entry-into-force clause in the Constitutional Treaty, restating the unanimity requirement but also including a second sentence, aimed at encouraging diligent ratification: “As soon as five-sixths of the member states have ratified this Treaty, these states may decide by common accord to open negotiations with the remaining member states in order to agree upon any other terms on which this Treaty will enter into force. All states shall seek, in a spirit of sincere cooperation, to bring such negotiations to a mutually acceptable conclusion”²³.

The Praesidium’s concern for the serious political problem²⁴ that will result from possible difficulties experienced by one or more member states in proceeding with ratification led it to include in draft Art. G a third paragraph – deemed superfluous by many²⁵ – stating that “[...] the matter shall be referred to the European Council”. Due to the resistance of a number of government representatives in the Convention as well as for reasons of sound legal formulation, this clause was eventually transformed into a “Declaration in the Final Act of Signature of the Treaty establishing the Constitution”, placed at the end of the draft:

“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 will be referred to the European Council.”

Given the impact of such a possible scenario, it is unlikely that the European Council – or indeed any other EU body – could keep itself from assessing the political consequences of the situation. This provision doesn’t seem to add anything meaningful to Article G.

A EUROPEAN REFERENDUM?

Ratification by all member states is indispensable, and thus it is important for those in charge to start thinking of ways to guarantee that the

national ratification procedures are carried out rapidly and provide a positive result.

The Accountability of Member States Argument

This seems to be the reasoning behind the argument presented, in the aftermath of the Irish Nice referendum “incident”, by Alfred E. Kellermann in defence of an “accountability of member states” that are not able to ratify the treaty amendments agreed to at the IGC. The author suggests that ratification of the treaty amendments might be viewed as a duty derived from EU membership and therefore required by Art. 10 TEC²⁶. If that is the case, then we may well demand a wholehearted commitment from the member states in ratifying the treaties they agree to. With the Irish Nice referendum in mind, the author seems tempted to hold the Irish Government responsible for not having avoided the NO vote²⁷ and, in general, for keeping in its Constitution the source of all problems. His recommendation is that the Irish Government proposes to its electorate an amendment to the Constitution by which referendums would be replaced by a parliamentary procedure²⁸.

Kellermann makes no mention of the fact that the Irish Supreme Court’s 1987 decision in *Crotty v. An Taoiseach* – which delayed the entry into force of the Single European Act²⁹ and prohibited any further transfer of sovereignty to the EC without yet a further referendum³⁰ – had already ruled on the question of whether the ratification of an EC treaty could be said to constitute a duty derived from membership in the Community. If that were the case, then it could be said to be among the acts that, being “necessitated by the obligations of membership of the Communities”, benefit from the constitutional immunity granted by Art. 29 of the Constitution. The Court’s answer was negative – “the Supreme Court took the view that, as Art. 33(1) of the Single European Act provided that it would only come into force once all member states had ratified it ‘in accordance with their respective constitutional requirements’, ratification by the State was not a *legal* obligation of membership, i.e., this presupposed that each member state had a discretion in the matter”³¹.

Kellermann also seems to overlook the fact that two Supreme Court decisions – *McKenna v. An Taoiseach* (1995) and *Coughlan v. Broadcasting Complaints Commission* (2000) – had precluded the Irish Government from spending public money to support the YES side of a referendum campaign³². Such a restriction is not, in itself, an entirely satisfying excuse, of course, but it is nevertheless of some relevance to the assessment of the Government’s work and the lack of enthusiasm with which it took up the YES cause.

Finally, in recommending a constitutional amendment to the Irish Constitution to exclude referendums from the EU treaties ratification procedure, Kellermann neglects the dimension of Irish euro-scepticism. His proposed constitutional amendment might be admissible from a strictly legal point of view, given the fact that Art. 46.1 allows the amendment of any provision in the Constitution, and that it would suffice to alter Arts. 46.2 and 47.1 to exclude the constitutional amendments imposed by the European commitment from the domain of those amendments which require both a parliamentary and a referendum approval. However, the difficulty would arise from the strong, if not unbeatable resistance that the Irish people would most certainly offer to the idea of giving up by constitutional amendment the right to vote on European treaties³³.

Nevertheless Kellermann has a point when he calls attention to the important role that member states can and should perform in improving its citizens' support for its Government's policies, namely for those which are Euro-related, and in bridging the gap that keeps its citizens away from the EU institutions and suspicious of the course that European integration is taking. The "success" of the future Constitutional Treaty depends largely on the investment that member states are willing to make in its favour.

Concern for Legitimacy and the Convention Method

One crucial investment – from the member states and the EU alike³⁴ – is to provide information and open fora³⁵ that the citizens can accede in order to get a picture (as clear as possible) of what is going on in Europe and somehow take part in the current "constitutional momentum"³⁶. This will no doubt help to ease the national ratification processes and, more importantly, to foster the democratic goal – enunciated by the Laeken Declaration and adopted by the European Convention as its motto – of bringing the EU closer to its citizens.

The priority ascribed to democratic legitimacy concerns in the current constitution-making process was the reason why a Convention was set up, despite the fact that no such preparatory stage is included in the general amendment procedure laid down in Art. 48 TEU. A departure from this provision was not only possible, given the precedent of the 1999-2000 Convention on the Charter of fundamental rights, but was also deemed extremely necessary due to the provision's well known undemocratic implications.

Art. 48 TEU – as has been insistently pointed out – constitutes an important dimension of the "democratic deficit" that corrodes the European construct. It imposes unanimity, potentially allowing a small minority to block an evolution desired by the large majority³⁷ and forcing the admittance of numerous improvised exceptions and the emergence of obscure parallel

practices that make the EU entirely incomprehensible to its citizens³⁸. More importantly, it establishes the so-called IGC method, by means of which it manages to systematically exclude the European Parliament, the national parliaments and the civil society at large from the "real" decision-making processes. The European Parliament is merely consulted, at a pre-IGC stage, about the pertinence of calling a Conference and, when it is eventually called, can only take part in it unofficially, having some of its members present as observers. The national parliaments are only given a role at the very end of the procedure and, although it can be said to be a decisive one (in the sense that it can "throw into the dustbin of History" all the work done before), it comes down to a decision to accept or reject, never renegotiate, a document that is to them a *fait accompli*³⁹. As for civil society, this segment of the polity is largely left out of the whole process, given the fact that there is little public debate and scarce information, since the diplomatic negotiations tend to happen behind semi-closed doors⁴⁰. Their legitimate representatives being silenced, European citizens seem to be left with no voice whatsoever in the matter.

The adoption at the Laeken summit of the Convention method was intended, to set things right. The Convention method was valued not only for the openness of its functioning – which broadened participation in the constitutional conversation, allowing a public *débat d'idées*⁴¹ –, but also for the prospect that it would alter the rules of change for the future. The Convention's work was expected to strengthen the roles performed in the amendment procedures by both the European Parliament and the national parliaments⁴², to formalise the "Convention method"⁴³ for future amendments, and to introduce direct democracy mechanisms such as the right of initiative or a European-wide referendum⁴⁴.

For many, the Convention was a huge democratic success. But this is far from being the case for all. Conventioneers complained for quite some time that their contributions and proposed amendments had had no visible translation in the final draft, feeding the sardonic rumour that the new Constitutional Treaty was to magically appear from Giscard d'Estaing's back pocket⁴⁵. Some observers, in the meantime, expressed the fear that the newly arrived participants in this European forum would only seek to promote their own goals, disregarding the common European interest⁴⁶. Others bluntly doubted that everything about a Convention is necessarily a good thing, as opposed to the "bad" IGC method, and wondered whether it is really as autonomous, representative and receptive to ideas as it is supposed to be⁴⁷. As Jo Shaw puts it, the processes and outcomes upon which the Convention *acquis* is based – and which include the deliberations in working groups and plenary, the extensive work of the Secretariat and the discussions and resolutions of the Praesidium – are not all equally public. "Notably the

Praesidium has always worked behind closed doors⁴⁸. And little is to be expected from the Convention website, which is far from providing clear information to the general user, its usefulness being restricted to the "elite" composed by those who are very close to the Convention debate⁴⁹.

A REFERENDUM ON THE EUROPEAN CONSTITUTION?

Given all this, many have come to argue that the democratic legitimacy of the current constitution-making process can only be attained by means of a European wide referendum to take place on the outcome of the IGC⁵⁰. A contribution by several members, alternate members and observers was submitted to the Convention – under the title "Referendum on the European Constitution"⁵¹ – proposing that "the Convention recommend 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". As for the technicalities, the contribution goes on to suggest that these referendums be held in accordance with the constitutional provisions of the member states and on the same day, an option being the same day as the European Parliament Elections in June 2004; that those member states whose constitutions do not currently permit referendums be called upon to hold at least consultative referendums; and that an information campaign be publicly funded. In its explanatory note, the contribution also suggests that a dual majority (of citizens and of states) be required to secure ratification and that, if in any member state the proposed Constitution is rejected in the referendum, the state in question be offered the possibility of either holding a second referendum, trying to regulate its relationship to the new constitutional EU by a bilateral treaty, or simply withdrawing from the Union.

The Convention eventually decided not to follow these recommendations and left the question open to be settled by the member states during the IGC. Given the pressure applied by the referendum campaigners⁵², the statement by many politicians of their determination to have a referendum held in their respective countries⁵³, and the support of some high-profile EU figures such as Valéry Giscard d'Estaing and Giuliano Amato, it is most likely that a European-wide referendum (or at least many simultaneous national referendums on the Constitutional Treaty⁵⁴) will eventually take place. What is still to be determined is whether such an exercise in direct democracy is a wise move for European integration and if it really serves its legitimacy purposes.

The Idea of a European Referendum

The idea of a European referendum is not new. Since the early nineties the European Parliament has been stressing the need to consult the citizens by means of a referendum in its reports and resolutions⁵⁵. The academic world soon took interest in debating the issue⁵⁶, and, for some time, a Union-wide referendum was the most far-reaching idea put forward to enhance the "input legitimacy" of EU policies and institutions⁵⁷. The arguments in its favour are well known. A European referendum constitutes the proper way to ensure the quality of the democratic debate and to create a bond between the peoples and the basic Law of the Union. It has the potential to create a public space that would "bring the peoples of Europe closer politically"⁵⁸ and allow the EU to overcome the frailties resulting from the absence of a European *demos*⁵⁹. More importantly, a European referendum would provide the input legitimacy that the EU has been lacking (and that cannot possibly be guaranteed by the representative system alone⁶⁰), which in turn would foster the citizens' trust and make the Union a much more easily governable structure⁶¹.

As for the timing, it couldn't be more perfect. What better opportunity than the current constitutional momentum to give the citizens a say in the matter?⁶² It would help to endow the Constitution for Europe with an enhanced legitimacy, as it could properly be said to be an "Act emanating from the people"⁶³ instead of just another international agreement. Anyway, and on a much more pragmatic note, it can be argued that, since there are already two unavoidable referendums and many other predictable⁶⁴ ones on the horizon – involving, in addition, voters which are among the most euro-sceptical peoples of Europe – it is preferable to enlarge the spectrum of the voter base and bet on the chance of getting back a solid legitimacy from the citizens.

But, of course, the problem can also be seen from a totally different perspective. The referendum's opponents call attention to the absurd weight that such a procedure would no doubt represent in the already extremely burdensome ratification process and stress that there are no poignant democratic legitimacy reasons demanding it. A European wide referendum – whose legitimating role is deemed obvious by many⁶⁵ – is, in fact, purposeless, given that there is no European *demos* to make its voice heard through a referendum⁶⁶, as attested to by the weak participation at the European Parliament's elections, by the maintenance of a national based party system and, above all, by the linguistic and cultural barriers that keep the member states' populations ultimately apart. The democratic legitimacy argument – it is said – doesn't apply when it comes to the EU polity for it is not based in a coherent and cohesive body politic, so whatever might come out of a popular consultation will always have little representative weight⁶⁷.

The past experiences of national referendums with a European content indeed show that the citizens have little interest for European matters and that the referendum results are often determined by internal political tensions instead of by a generalised view on the state of "Europe"⁷⁶.

The *no demos* argument must be taken with caution though⁶⁹. As Joseph Weiler pointed out in his comment to the *Bundesverfassungsgericht Maastricht Decision*, the European Union doesn't have (or need) a single *demos* but several *demos* that, in their diversity, constitute one of its main resources⁷⁰. It takes a common citizenship, not *a people*, to make the European construct work⁷¹. The heterogeneity of the EU – it has been widely argued – does not prevent it from being a political community, and a democratic one for that matter. Yannis Papadopoulos invokes the Swiss example as proof that a cohesive societal structure is not such an important requirement for the existence of a political community where direct democracy instruments are successfully accommodated. What is necessary – he argues – is an engagement in the debate concerning a set of common objectives, and that is precisely what referendums are for⁷².

Nevertheless, even Papadopoulos recognises that the huge differences and loose solidarity between the peoples of Europe deserve attention when discussing the introduction of direct democracy mechanisms into the EU system, for they may well jeopardise the legitimacy of its results.⁷³

A similar stance is adopted by Jean-Pierre Cot who, while dismissing the idea that the existence of a European people is a precondition for the creation of a democratic European polity, expresses serious doubts as to whether, in such a pluralist cultural and political scenario, the referendum results (even when positive) would ever be enough to legitimate the outcome⁷⁴. The absence of a European *demos* – he says – is not without consequences in this field, as attested to by the national referendums on European issues held in the past⁷⁵. In fact, as Michael Gallagher points out, a European referendum could even have a de-legitimizing effect⁷⁶.

This risk can be minimised, however, through the establishment of a double majority rule, according to which an overall majority across Europe and a majority in every member state are required to obtain a positive referendum result⁷⁷. What is more difficult to overcome is the way the peoples of Europe look at the gigantic, distant and incomprehensible EU construct and how they perceive their place in it. Even if authors like Yannis Papadopoulos and Constance Grewe warn us against a judging the feasibility of the European referendum from the *data* provided by national experiences in this field⁷⁸, we can't help but take those data as an important sign of the citizens' enormous ignorance and lack of interest for European matters.

Direct democracy makes no sense without citizens that are well aware of what is at stake and can express their vote in full consciousness. This is true for nation states and all the more true for the European Union⁷⁹. With a "constitutional imbroglio" or the horizon – mixing enlargement, ratification procedures, European Parliament elections and the appointment of the new Executive⁸⁰ – it is most probable that the confusion in the citizens' minds will indeed escalate. A referendum on the Constitutional Treaty should therefore be out of the question.

It is true that such a referendum would help to create a European public space and to enhance the citizens' awareness of what the EU is about. But to reason this way is to neglect that both a European public space and the citizens' awareness are pre-requisites to a correct (and fully legitimate) direct democracy exercise, not just beneficial side effects. Thomas W. Pogge trusts that the citizens of Europe, if allowed a say, will rise to the occasion, deliberating carefully and making good decisions⁸¹, but we can't share his optimism. The gap between them and the EU – the reason behind all this discussion about democratic legitimacy – must be bridged through other means before the citizens can consciously express their vote in a European wide referendum. For the moment⁸², more than frequent calls for the citizens to vote in elections and referendums, what Europe really needs – as Jean-Pierre Cot puts it – is a "*démocratie au quotidien*", made of intelligible procedures, effective decision-making structures and an improved cooperation with the national political systems and the national parliaments in particular⁸³. At the same time, as stressed before, there is a need for a committed investment in providing clear and accessible information to the citizens.

The Feasibility of a European Referendum

The prospect of holding a European wide referendum on the Constitutional Treaty at the end of the 2004 IGC is also highly problematic for other reasons. First of all, it conflicts with national constitutional systems, some of which do not admit referendums (Belgium, Netherlands), or only contemplate them at a regional level (Germany), or only with a consultative character (Finland, Spain), and some of which exclude the possibility of submitting to referendum the ratification of international treaties (Italy). This is not an insurmountable obstacle, for there is always the possibility of amending the national Constitutions to accommodate the referendum in the required terms⁸⁴. And the political will is clearly pointed in that direction⁸⁵. Such a solution would nevertheless represent an extra procedural burden and a considerable delay in the ratification procedures. Not to mention its impact on citizens' puzzled minds...

As for the national Constitutions that admit referendums with a European content, they are so different⁸⁶ from each other that no pattern – regarding the circumstances in which a referendum may or must be called, the possible need for a quorum and the terms on which the results are to be interpreted – can be derived from them as a model for a new European referendum. With all these differences, it is very likely that when the modalities of such a referendum are defined, some constitutional amendments will also be needed.

There are also other relevant technicalities deserving attention. Is it to be a single European referendum or an *ensemble* of national referendums? Is it to be called by the European Parliament or the national parliaments? Who is to finance the information campaigns – the EU? The member states? Is such a referendum to be governed by EU law or by national law? Is it to be binding or merely consultative? Will a quorum be required? What would be the conditions of approval of constitutional changes by means of such a referendum? An overall majority across Europe? A majority in all, or almost all, member states separately?⁸⁷ A comparative survey of referendums in EU member states, present and future, shows how difficult the exercise might be (see annexed tables).

Just as national Constitutions may be amended, rules may be set to solve these problems. Yet how will the European Parliament or the national parliaments manage to put a clear, objective and precise question to the citizens, with the same meaning all over Europe? How can they possibly avoid a misinterpretation on the part of the citizens that the question implies that a “no” would force their country to leave the EU? In the current constituent scenario – with insidious, over-acting euro-sceptic media – it is highly unlikely that the citizens will grasp the subtleties of voting for a new Constitution that is just a simplification of the old Treaties and will realise that if their vote is negative the EU as such will not collapse, nor will their country’s place in it be diminished. This cannot be overlooked.

It is worth mentioning that the Portuguese Constitutional Court – in its decision 531/98 – dismissed the first (and to date the only one) referendum with a European content held in Portugal precisely on the grounds outlined above. The question proposed by the Parliament – “Do you agree with the continuance of the Portuguese participation in the construction of the European Union, within the framework provided by the Amsterdam Treaty”⁸⁸ – was deemed to be neither sufficiently clear nor precise, and therefore violating Art. 115/6 of the Portuguese Constitution. Taking as reference the private law concept of the “*teoria da impressão do destinatário*” (theory of impression of the recipient), the Court pointed to the need to take into consideration the perception that a normal voter would have of a question stated in such ambiguous terms. Not only would a

normal voter fear that his “no” would force Portugal out of the EU, but he would hardly understand what it means to approve the Amsterdam Treaty. To fully understand the question, the Court argued, a good knowledge of what is the present state of the EU integration process is required, as well as of the content of the Amsterdam Treaty and of what it takes for Portugal to approve and ratify that same Treaty. These circumstances interfere with the intelligibility and clarity that must characterise any referendum question, and which guarantee that the referendum is genuinely democratic⁸⁹.

We recognise that the idea of having such a huge democratic exercise in Europe is quite tempting. We admit to sharing the general curiosity as to how the European citizens would respond. But to submit the future Constitution for Europe to a European wide referendum is too daring an exercise, with significant democratic frailties and the serious risk of a delegitimising effect. What if the citizens – in an overall majority across Europe or in one member state – say no? The fact that the referendum is only given a consultative character is irrelevant⁹⁰. The EU and the member states will have to assess the significance of such a “no” and step back a little. The problem is that, to the extent to which the Constitutional Treaty is supposed merely to be an organised re-statement of what the EU Treaties said before, it is difficult to see where they can step back to. By saying “no” to the future Constitutional Treaty, would the European citizens not be saying “no” to the European Union as a whole?

Conclusion

To conclude on a more optimistic note, attention should be given to the “*passerelle*” provided for in Art. 24 of the Constitution for Europe on qualified majority:

“Where the Constitution provides in Part III for European laws and framework laws to be adopted by the Council of Ministers according to a special legislative procedure, the European Council can adopt, on its own initiative and by unanimity, after a period of consideration of at least six months, a decision allowing for the adoption of such European laws or framework laws according to the ordinary legislative procedure. The European Council shall act after consulting the European Parliament and informing the national Parliaments.”

Art. 24 might be a solution for avoiding numerous and frequent revisions of the future constitutional text according to the heavy procedure implying national ratification, as has been experienced since the Single European Act, and it might thus also justify considering the draft

Constitution as being more than a mere re-statement of the existing Treaties. The “*passerelle*” solution should be combined with a strong effort to inform the public, and with the symbolic convergence on 13 June 2004 (i.e., within a month of the symbolic signing of the constitutional Treaty on 9 May, the anniversary of the Schuman Declaration of 1951). On that day, national referendums – where held – ratification votes in national parliaments, and, the European elections might be held together. This could induce an unprecedented dynamic whereby voters would indeed answer the question of the future of Europe. One advantage is also that the citizens of new member states would not have to be asked to vote over and over again during the first few years of membership.

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Tables: see pages 193 s.

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Notes

♦ The analyses and tables relating to Central and Eastern European Candidate countries were prepared by Anneli ALBI.

¹ See DE WITTE, Bruno, “Entry into Force and Revision”, in DE WITTE, Bruno (ed.), *Ten Reflections on the Constitutional Treaty for Europe*, Florence: European University Institute, 2003, p. 214.

² See DE WITTE, cited n. 1, p. 214. In a similar sense, see also LENAERTS, Koen and DESOMER, Matlies “New Models of Constitution-Making: The Quest for Legitimacy”, in *Common Market Law Review*, 39, 2002, p. 1231-1232; FIDE London 2002, *EU Law and National Constitutions, Community Report*, p. 13-14.

³ For an analysis of the complex ratification procedures laid down in the Constitutions of the Eastern European Countries that are joining the EU as an argument for a simplification of the amendment procedure in Article 48 TEU, see ALBI, Anneli, *Referendums in Eastern Europe: The Effects on Reforming the EU Treaties and on the Candidate Countries’ Positions in the Convention*, EUI Working Papers, RSC no. 2002/65, Florence: European University Institute, p. 13-15.

⁴ ALBI cited n. 3, p. 13-15.

⁵ See ROBERT SCHUMAN CENTRE FOR ADVANCED STUDIES, *Reforming the Treaties’ Amendment Procedures. Second report on the reorganisation of the European Union Treaties – submitted to the European Commission on 31 July 2000*, Florence: European University Institute, 2000 p. 13, 21-24; FIDE, cited n. 2, p. 13-14; DE WITTE, cited n. 1, p. 218-219.

⁶ See ROBERT SCHUMAN CENTRE cited n. 5, p. 17; LENAERTS & DESOMER, cited n. 2, p. 1245.

⁷ See ROBERT SCHUMAN CENTRE cited n. 5, 20-22.

⁸ See DE WITTE, Bruno “The Closest Thing to a Constitutional Conversation in Europe: The Semi-Permanent Treaty Revision Process” in BEAUMONT, Paul, R. LYONS, Carole & WALKER, Neil (eds.), *Convergence and Divergence in European Public Law*, Oxford: Hart, 2002, p. 45.

⁹ See KELLERMANN, Alfred E. “Postscriptum. The Irish referendum on the Treaty of Nice and Article 10 EC – A recent example of constitutional problems of enlargement”, in KELLERMANN, Alfred E. DE ZWAAN, Jaap W. and CZUCZAI, Jenő (eds.), *EU Enlargement. The Constitutional Impact at EU and National Level*, The Hague: TMC Asser Institut, 2000, p. 501-502.

¹⁰ See EPINEY, Astrid “Le référendum européen”, in AUER, Andreas and FLAUSS, Jean-François (eds.), *Le Référendum Européen. Actes du colloque international de Strasbourg 21-22 février 1997*, Brussels: Bruyant, 1997, p. 297-299.

¹¹ COMMISSION EUROPÉENNE, *Etude de Faisabilité - Contribution à un avant-projet de constitution de l’Union Européenne - 04/12/2002*. The Study starts with the following notes: “A la demande du Président Prodi et en accord avec MM. Barnier et Vitorino, ce document a été élaboré par un groupe de travail placé sous la responsabilité de François Lamoureux et composé de Marie Lagarrigue, Paolo Stancanelli, Pieter Van Nuffel, Alain Van Solinge, avec l’assistance technique de Marguerite Gazze.” and “La présente étude de faisabilité n’engage pas la Commission Européenne”.

¹² CONV 647/03.

¹³ CONV 673/03.

¹⁴ See DE WITTE, cited n. 1, p. 209.

¹⁵ See *L’Agora académique pour le futur de l’Europe et la Convention européenne*, Brussels, January 9th 2003, p. 15.

¹⁶ See *The Economist*, December 14th 2002, p. 32.

¹⁷ See DE WITTE, cited n. 1, p. 209.

¹⁸ See DE WITTE, cited n. 1, p. 212.

¹⁹ See DE WITTE, cited n. 1, p. 211.

²⁰ Art. IV-7 in the first version, CONV728/03 of 26/05/2003.

²¹ CONV 647/03 of 2/04/2003, p. 14.

²² See *The Economist*, 19th of June 2003; *L’Agora* ..., cited n. 15, p. 4-5.

²³ See DE WITTE, cited n. 1, p. 212.

²⁴ See “Report of the Select Committee on the European Union of the House of Lords, presented by Lord Tomlinson and Lord MacLennan, from the 30th of April 2003”, CONV 708/03.

²⁵ See for instance Report... cited n. 24. The Praesidium decided nevertheless not to keep this paragraph (CONV 728/03 of 26/05/2003, p.12).

²⁶ “Would it not be possible,” he wonders, “as the European Court of Justice has done in some earlier cases, to give a teleological interpretation also to the provisions of Article 313 EC Treaty ‘This Treaty shall be ratified by the High Contracting Parties...’ so that these provisions can be considered as a community obligation of loyalty in the meaning of Article 10 EC? Perhaps a teleological interpretation of these Articles may enlarge the applicability of Article 10 EC to agreements concluded by unanimity by governments meeting within the European Council. Would it not be possible to interpret these agreements as decisions of the representatives of the governments of the member states meeting within the Council?” KELLERMANN, cited n. 9, p. 500-501.

²⁷ See KELLERMANN, cited n. 9, p. 501-502.

²⁸ See KELLERMANN, cited n. 9, p. 502.

²⁹ See TEMPLE LANG, John, “The Irish Court Case which delayed the Single European Act: Crotty v. An Taoiseach and Others”, in *Common Market Law Review*, 1987, 24, p. 709-718.

³⁰ See HOGAN, Gerard “The Irish Constitution and the European Union”, in www.fide2002.org/reports.htm.

³¹ See HOGAN, Gerard and WHYTE, G. Kelly, *The Irish Constitution*, 3rd ed., Dublin: Butterworths, 1994, p. 285.

³² See HOGAN, cited n. 30.

³³ See HOGAN, *cited n. 30*.

³⁴ See WOUTERS, Jan "Institutional and Constitutional Challenges for the European Union. Some Reflections in the Light of the Treaty of Nice", in KELLERMANN, DE ZWAAN & CZUCZAI, *cited n. 9*, p. 44-46.

³⁵ See DE BÜRCA, Gráinne, "Post-Nice or Anti-Nice? The Debate on Europe's Constitutional Future After Ireland's No Vote", in *Hibernian Law Journal*, vol. 2, 2001, p. 2 and 6. Consider also the investment made by the Greek Presidency of the EU in promoting a "re-invention" of democracy through e-democracy.

³⁶ See LENAERTS & DESOMER, *cited n. 2*, p. 1233.

³⁷ See LENAERTS & DESOMER, *cited n. 2*, p. 1232; EPINEY, *cited n. 10*, p. 303-304.

³⁸ See ROBERT SCHUMAN CENTRE, *cited n. 5*, p. 9-10.

³⁹ See ROBERT SCHUMAN CENTRE, *cited n. 5*, p. 11.

⁴⁰ See DE WITTE, *cited n. 1*, p. 214.

⁴¹ See DE WITTE, *cited n. 1*, p. 215. See also LENAERTS & DESOMER, *cited n. 2*, p. 1246.

⁴² See ROBERT SCHUMAN CENTRE, *cited n. 5*, p. 18; LENAERTS & DESOMER, *cited n. 2*, p. 1232; WOUTERS, *cited n. 34*, p. 53.

⁴³ Consider for instance the proposal made by the Convention Working Group on national Parliaments to institutionalise the Convention method as a preparatory mechanism for future treaty changes. See also ROBERT SCHUMAN CENTRE, *cited n. 5*, p. 24; DE WITTE, *cited n. 1*, p. 215-217.

⁴⁴ See DE WITTE, *cited n. 1*, p. 219; LENAERTS & DESOMER, *cited n. 2*, p. 1246; EPINEY, *cited n. 10*, p. 302-303.

⁴⁵ See SHAW, Jo, "What's in a Convention? Process and substance in the project of European constitution-building", in SHAW, Jo, MAGNETTE, Paul, HOFFMANN, Lars and VERGÉS, Anna (eds.), *The Convention on the Future of Europe: Working towards an EU Constitution*, Federal Trust/Kogan page, 2003.

⁴⁶ See FOLLESDAL, Andreas "Drafting a European Constitution - Challenges and Opportunities", in *Constitutionalism Web-Papers*, CONWEB no. 4/2002, <http://les1.man.ac.uk/conweb/>.

⁴⁷ See SHAW, Jo, "Process, Responsibility and Inclusion in EU Constitutionalism", in *European Law Journal*, vol. 9, no. 1, 2003, p. 54 *et s.*

⁴⁸ See SHAW, *cited n. 45*.

⁴⁹ See SHAW, *cited n. 45*.

⁵⁰ Clearly, the pro-referendum barricades are not only filled with partisans of more democracy, but also with euro-sceptics whose aim is to block further integration. See ULERI, Pier Vincenzo, "Europe et «référendum européen»: entre réalité et idéaux. Pour une théorie de la genèse du phénomène référendaire", in AUER & FLAUSS, *cited n. 10*, p. 226-227.

⁵¹ CONV 658/03 of 31/03/2003.

⁵² See for instance www.iri-europe.org; www.european-referendum.org; www.euobserver.com; www.theepc.be; www.euractiv.com; www.alainlamassoure.com; www.mehr-demokratie.de.

⁵³ See for instance, on the British parliamentarians' "struggle" for such a referendum – and their probable success –, *The Economist*, the 20th of February (*Bagebot's column*) and the 30th of May 2003.

⁵⁴ See *L'Agora ...*, *cited n. 15*, p. 4-5.

⁵⁵ See PAPADOPOULOS, Yannis, "Peut-on imaginer d'organiser des référendums à l'échelle européenne et à quelles conditions?", Policy Paper n. 2, November 2002, Groupement d'Études et de Recherches Notre Europe, p. 6.

⁵⁶ See for instance AUER & FLAUSS, *cited n. 10*.

⁵⁷ See FALKNER, Gerda and NENTWICH, Michael – *European Union: Democratic Perspectives after 1996*, Wien: Service Fachverlag, 1995, p. 149.

⁵⁸ See the explanatory note that follows the Contribution "Referendum on the European Union". See also GREWE, Constance "La contribution de l'Europe à l'idée et à la consécration de la démocratie directe", in AUER & FLAUSS, *cited n. 10*, p. 65.

⁵⁹ See PAPADOPOULOS, *cited n. 55*, p. 12-15.

⁶⁰ See PAPADOPOULOS, *cited n. 55*, p. 3-5; KUPER, Richard "Democratization: a constitutionalizing process", in HOSKYN, Catherine and NEWMAN, Michael (eds.), *Democratizing the European Union. Issues for the Twenty-First Century*, Manchester and New York: Manchester University Press, p. 160.

⁶¹ See PAPADOPOULOS, *cited n. 55*, p. 1.

⁶² Most authors agree that a referendum is primarily justified for the adoption of EU primary law. See FALKER & NENTWICH, *cited n. 57*, p. 144; FLAUSS, Jean-François "Le référendum européen dans tous ses états", in AUER & FLAUSS, *cited n. 10*, p. 329; LOUIS, Jean-Victor Louis, "Le référendum comme instrument de réformes constitutionnelles de l'Union Européenne", in AUER & FLAUSS, *cited n. 10*, p. 321 and 324. For a dissenting view on the subject see for instance DE WITTE, *cited n. 1*, p. 219; PAPADOPOULOS, *cited n. 55*, p. 11-12.

⁶³ See LENAERTS & DESOMER, *cited n. 2*, p. 1252.

⁶⁴ See *L'Agora ...*, *cited n. 15*, p. 4-5; ULERI, *cited n. 50*, p. 226-227.

⁶⁵ See GALLAGHER, Michael, "The referendum in Europe", in AUER & FLAUSS, *cited n. 10*, p. 76.

⁶⁶ See COT, Jean-Pierre, "À propos du référendum européen: le référendum sans le peuple", in AUER & FLAUSS, *cited n. 10*, p. 277 and 281.

⁶⁷ See PAPADOPOULOS, *cited n. 55*, p. 12-13.

⁶⁸ See AUER, Andreas, "Le référendum européen: définitions, repères historiques et jalons d'étude", in AUER & FLAUSS, *cited n. 10*, p. 23; WEILER, Joseph H. H., HALTERN, Ulrich and MAYER, Franz, *European Democracy and its Critique. Five Uneasy Pieces*, EUI Working Paper RSC no. 95/11, Florence: European University Institute, 1995; WOUTERS, *cited n. 34*, p. 40; BELLAMY, Richard and CASTIGLIONE, Dario "The Uses of Democracy. Reflections on the European Democratic Deficit", in ERIKSEN, Erik Oddvar and FOSSUM, John Erik (eds.), *Democracy in the European Union. Integration through Deliberation?*, London and New York: Routledge, 2000, p. 74.

⁶⁹ See FLAUSS, *cited n. 62*, p. 340; EPINEY, *cited n. 10*, p. 291.

⁷⁰ See WEILER, Joseph H. H., "Does Europe Need a Constitution? Reflections on Demos, Telos and Ethos in the German Maastricht Decision", in GOWAN, Peter and ANDERSON, Perry (eds.), *The Question of Europe*, London-New York: Verso, 1997, p. 268 *et s.*

⁷¹ See BRYDIE, Brun-Otto "Le peuple européen and the European people", in AUER & FLAUSS, *cited n. 10*, p. 254 and 257; FLAUSS, *cited n. 62*, p. 340.

⁷² See PAPADOPOULOS, *cited n. 55*, p. 12-15.

⁷³ "Les référendums donnent lieu à des votes majoritaires, dont la minorité doit reconnaître la légitimité. Au fond, cela requiert que la distance entre les préférences de la majorité et celles de la minorité ne soit pas excessive, ou que des intérêts vitaux de la minorité ne soient pas affectés par la décision majoritaire. Autrement, cette dernière risque d'être perçue comme tyrannique. (...) Nous vivons une époque où prolifèrent les mouvements populistes avec leurs conceptions très restrictives de la solidarité (nationalistes et régionalistes) : ce risque ne doit donc pas être ignoré", PAPADOPOULOS, *cited n. 55*, p. 12-13.

⁷⁴ See COT, *cited n. 66*, p. 276-278 and 281. See also RASMUSSEN, Hjalte, "Propos non conformistes sur les référendums nationaux d'intégration européenne", in AUER & FLAUSS, *cited n. 10*, p. 117.

⁷⁵ See COT, *cited n. 66*, p. 277. "En l'absence d'un peuple européen, son utilisation risque d'être contestée dans son principe et dans son résultat. Il est difficile de concevoir que les Etats acceptent de soumettre à l'incertitude d'une consultation globale une affaire importante, c'est-à-dire qui engage des intérêts nationaux. Il est encore plus difficile, aujourd'hui et sans doute pour

longtemps, d'imaginer qu'États et peuples d'Europe s'inclinent devant un résultat globalement positif, mais nettement négatif dans tel ou tel État de l'Union", *Idem*, p. 279.

⁷⁶ "The voters of 'Eurosceptic' states, having rejected an integration measure themselves, are unlikely to be mollified by the knowledge that the measure must come into operation because voters across the EU as a whole have approved it. Indeed, such a combination of circumstances is more likely to feed the feeling of loss of sovereignty and being 'ruled by foreigners', GALLAGHER, *cited n. 65*, p. 77. See also RASMUSSEN, *cited n. 74*, p. 116 and 121.

⁷⁷ See GALLAGHER, *cited n. 65*, p. 77. See also EPINEY, *cited n. 10*, p. 304-306.

⁷⁸ See PAPADOPOULOS, *cited n. 55*, p. 1-3 and 7-10; GREWE, *cited n. 58*, p. 64.

⁷⁹ See GREWE, *cited n. 58*, p. 65.

⁸⁰ See *L'Agora* ..., *cited n. 15*, p. 4-5.

⁸¹ See POGGE, Thomas W., "How to Create Supra-National Institutions Democratically. Some Reflections on the European Union's 'Democratic Deficit'", in FØLLESDAL, Andreas and KOSLOWSKI, Peter (eds.), *Democracy and the European Union*, Berlin-Heidelberg: Springer, 1998, p. 183-185. See also KUPER, *cited n. 60*, p. 170.

⁸² See BEAUD, Olivier, "Propos sceptiques sur la légitimité d'un référendum européen ou plaidoyer pour plus de réalisme constitutionnel", in AUER & FLAUSS, *cited n. 10*, p. 129.

⁸³ See COT, *cited n. 66*, p. 279.

⁸⁴ See RIDEAU, Joël, "Les référendums nationaux dans le contexte de l'intégration européenne", in AUER & FLAUSS, *cited n. 10*, p. 83-84. On the influence that Europe has had over the definition of direct democracy mechanisms in the Member States constitutional systems, see FLAUSS, *cited n. 62*, p. 336-337; and, on the Portuguese case, see GOMES CANOTILHO, J. J., *Direito Constitucional e Teoria da Constituição*, 3rd ed., Coimbra: Almedina, 1999, p. 292.

⁸⁵ See *L'Agora* ..., *cited n. 15*, p. 4-5; *General Report on European Union Law and National Constitutions*, FIDE *cited n. 2*, p. 43; Rideau, *cited n. 85*, p. 93.

⁸⁶ See RIDEAU, *cited n. 85*, p. 71 and 78-79, 84-85.

⁸⁷ See DE WITTE, *cited n. 1*, p. 219; See EPINEY, *cited n. 10*, p. 303-306.

⁸⁸ "Concorda com a continuação da participação de Portugal na construção da União Europeia no quadro do Tratado de Amsterdão?". Resolução da Assembleia da República no. 36-A/98.

⁸⁹ "Neste caso, a cabal compreensão da pergunta exige conhecimentos quanto à situação do processo de construção da União Europeia, em geral, quanto ao conteúdo do Tratado de Amsterdão e quanto à situação do processo que, em Portugal, é necessário para a aprovação e ratificação do mesmo Tratado. Tal circunstância repercute-se na inteligibilidade ou compreensibilidade e clareza que devem caracterizar as perguntas referendárias e que garantem a «genuinidade democrática do referendo». Não estão assim presentes, no caso, as condições adequadas de esclarecimento 'para aqueles que, afinal, terão necessariamente de proceder a uma mediação explicativa perante a opinião pública'. Nestas condições, não parece que as deficiências da pergunta possam ser supridas através da campanha eleitoral a realizar para o efeito, já que nada garante que o seu carácter intrinsecamente equívoco se não mantivesse e fosse aproveitado até ao momento da votação".

⁹⁰ See Joël RIDEAU, *cited n. 85*, p. 86.

Comparative Tables

Tables I and III were prepared for the May 2003 Workshop by Patrícia Jerónimo.

© Tables II, IV and V were first published in Albi A. *Referendums in Eastern Europe: The Effects on Reforming the EU Treaties and on the Candidate Countries' Positions in the Convention*. European University Institute, Robert Schuman Centre Working Paper, No 2002/65 and Albi A. "Referendums in the CEE Candidate Countries: Impact on EU Treaty Amendment Procedure". In Hillion C. *EU Enlargement: A Legal Approach*. (Oxford: Hart, forthcoming 2003).

Table I: Approval and ratification of International Agreements
Current member states

Austria (Federal Constitutional Law of 1 X 1929)	According to Art. 50/1 (in conjunction with Art. 9/2), political treaties, and others in so far as their contents modify or complement existing laws, cannot be concluded without the sanction of the House of Representatives. The sanction must be conveyed by the President to the Senate (art. 42/1, in conjunction with Art. 50/3), which has 8 weeks to raise a reasoned objection. If an objection is raised, it is possible for the House of Representatives to renew its original resolution in the presence of at least half of its members (art. 42/2-4). If the international treaty modifies or complements the Constitutional Law (states Art. 50/3), then Art. 44/ 1 and 2 apply, meaning that a quorum of half the members of the House of Representatives and a 2/3 majority of votes cast are required for its adoption.
Belgium (Constitution of 17 II 1994)	The King concludes treaties, but these may take effect only following approval of the Houses (art. 167/2).
Denmark (Constitution of 5 VI 1953)	The King acts on behalf of the Realm in international affairs; he cannot, however, enter into any obligation whose fulfilment requires the concurrence of the Parliament (or which otherwise is of major importance) without the latter's consent (art. 19/1). Powers vested in the authorities of the Realm may be delegated to international authorities set up by mutual agreement with other states. Such delegation takes the form of a bill passed by a 5/6 majority of the members of the Parliament. According to Art. 20/2, if this majority isn't obtained (whereas the majority required for the passing of ordinary bills is obtained) and if the Government maintains it, the bill is submitted to the Electorate for approval or rejection in a referendum. However, due to a formal agreement concluded in 1971 between the government and the Parliament, the constitutional practice – supported by a constitutional convention – is that of always holding a referendum irrespective of the actual votes cast in the Parliament whenever amendments to the European Treaties are made indicating any further transfer of sovereignty. (See Koch, <i>cited n. 90</i> , pp. 110-111; Rasmussen, <i>cited n. 72</i> , pp. 117-118.

Finland (Constitution of 11 VI 1999)	The Foreign policy of Finland is directed by the President of the Republic in co-operation with the Government. However, the Parliament accepts Finland's international obligations and their repudiation and decides on the bringing into force of Finland's international obligations (art. 93/1). The acceptance of the Parliament is required for such treaties and other international obligations that contain provisions of a legislative nature, are otherwise significant, or otherwise require approval by the Parliament (art. 94/1). A decision concerning the acceptance of an international obligation or the denouncement of it is made by a majority of the votes cast. However, if the proposal concerns the Constitution, the decision must be made by at least 2/3 of the votes cast (art. 94/2). The provisions of treaties and other international obligations, insofar as they are of a legislative nature, are brought into force by an Act (art. 95/1). A Government bill for the bringing into force of an international obligation is considered in accordance with the ordinary legislative procedure pertaining to an Act. However, if the proposal concerns the Constitution, the Parliament must adopt it, without leaving it in abeyance, by a decision supported by at least 2/3 of the votes cast (art. 95/2).
France (Constitution of 4 X 1958)	The President of the Republic negotiates and ratifies the treaties (art. 52/1). Those treaties that pertain to international organisations, that commit the finances of the State, or that modify provisions which are matters for statute, may be ratified or approved only by virtue of an Act of Parliament, and will not take effect until such approval and ratification take place (art. 53/1 and 2). If the Constitutional Council declares that an international commitment contains a clause contrary to the Constitution, authorisation to ratify or approve the international commitment in question may be given only after amendment of the Constitution (art. 54).
Germany (Basic Law of 23 V 1949)	The amendments to the EU treaties are received in the German juridical system by means of a statute approved by 2/3 of the members of the House of Representatives and 2/3 of the votes of the Senate (art. 79/2, by reference from Art. 23/1 <i>in fine</i>).
Greece (Constitution of 9 VI 1975)	The President of the Republic concludes international treaties (art. 36/1), which are subsequently ratified by means of a statute voted by the Parliament (art. 28/1 in conjunction with Art. 36/2). Whenever the treaty in question vests authorities provided by the Constitution in agencies of international organisations, a majority of 3/5 of the total number of Members of Parliament is necessary to pass the Law ratifying it (art. 28/2). Greece can proceed by Law passed by an absolute majority of the total number of members of Parliament to limit the exercise of national sovereignty (art. 28/3).
Ireland (Constitution of 1 VII 1937)	The Government conducts external relations (art. 29/4/1), but every international agreement to which the State becomes a party must be presented to the Representatives Chamber, the Dáil Éireann (art. 29/5/1). In the matters pertaining to the European Communities and European Union, and following the Irish Supreme Court decision <i>Crotty v. An Taoiseach</i> (1987), amendments to the EU treaties which represent a further transfer of sovereignty to the EU may only be ratified by Ireland after an amendment to the Constitution (by means of a bill to amend the Constitution which is passed by both Houses of the Parliament – Oireachtas – and which is subsequently approved by a majority of voters at a referendum). (Hogan, <i>cited n. 28</i> . Such constitutional amendments are required because the Irish Constitution

	only gives constitutional immunity to "laws enacted, acts done or measures adopted by the State which are necessitated by the obligations of membership of the Communities" (art. 29/4/5).
Italy (Constitution of 27 XII 1947)	The Chambers authorise by Law the ratification of international treaties that are of a political nature, or that imply financial burdens or modifications to laws (art. 80); the President of the Republic ratifies such international treaties (art. 87/8).
Luxembourg (Constitution of 17 X 1868)	The Grand Duke concludes treaties, but these do not come into effect until they have been sanctioned by Law (art. 37/1). According to Art. 37/2 (in conjunction with Art. 49a), the treaties which vest the exercise of the powers reserved by the Constitution to the legislature, executive and judiciary in institutions governed by international Law may only be sanctioned by a Law voted under the conditions laid down in Art. 114/5, i.e., with a quorum of ¾ of the Chamber's members and by a 2/3 majority of the votes cast.
The Netherlands (Constitution of 17 II 1983)	The Kingdom is only bound by international treaties after the Parliament's approval (art. 91/1). Any provisions of a treaty that conflict with the Constitution or which lead to conflicts with it may be approved by the Chambers of the Parliament only if at least 2/3 of the votes cast are in favour (art. 91/3).
Portugal (Constitution of 2 IV 1976)	The Government negotiates and agrees international conventions (art. 197/1/b), which are subsequently submitted to the Assembly of the Republic for its approval (art. 161/i). Once they have been duly approved, these international agreements are presented to the President of the Republic for ratification (art. 135/b).
Spain (Constitution of 27 XII 1978)	It is incumbent on the King to express the consent of the State to obligate itself internationally through treaties (art. 63/2). Whenever the treaties in question are of a political nature or involve modification or repeal of some Law or require legislative measures for their execution, the prior authorisation of the Parliament is required [art. 94/1/ a), e)]. The treaties that vest the exercise of the powers provided by the Constitution in international organisations must be sanctioned by an organic Law (art. 93), which means that an absolute majority is required (art. 81/2). The conclusion of an international treaty which contains stipulations contrary to the Constitution requires a prior constitutional revision (art. 95/1), which has to be passed by the Parliament and, if so requested, by 1/10 of the members of either Chamber within 15 days after its passage, or be ratified by the people through a referendum (art. 167/3).
Sweden (Constitution of 27 II 1974)	The Government concludes agreements with other states or with international organisations (chap. X, Art. 1). The Government may not, however, conclude any international agreement binding upon the Realm without Parliament's approval, if the agreement presupposes the amendment or abrogation of a Law or the enactment of a new Law, or if it otherwise concerns a matter which is for the Parliament to decide (chap. X, Art. 2/1)., The Parliament's prior approval is also required whenever the agreement is of major importance (chap. X, Art. 2/3). If the interest of the Realm so requires, the Government may act without obtaining Parliament's approval of the agreement, but only after having conferred with the Foreign Affairs Advisory Council (chap. X, Art. 2/3 <i>in fine</i>). Any right of decision-making which is directly based on the Constitution and which purports at to lay down prescriptions, the use of State property, or the conclusion or repudiation of international treaties or commitments may be

	entrusted, to a limited extent, to an international organisation for peaceful cooperation of which Sweden is a member or is to become a member, or to an international court of law. The provisions relating to the enactment of fundamental laws apply in respect of any decision concerning such delegation. If a decision in accordance with such provisions cannot be suspended, the Parliament may approve a delegation of the right of decision-making by a majority of no fewer than 5/6 of those present and voting and no fewer than 3/4 of the total membership of the Parliament (chap. X, Art. 5/1). Any judicial or administrative function not directly based on the Constitution may be entrusted to an international institution or community by means of a decision of the Parliament. Where the function concerned involves the exercise of public authority, the Parliament's decision must be taken by a majority of no fewer than 3/4 of those present and voting (chap. X, Art. 5/3).
United Kingdom	The Foreign Minister ratifies treaties on behalf of the Crown. There is no formal need to submit the treaty to the Parliament for approval, but the constitutional practice requires the transmission to the Parliament of every treaty subject to ratification for information and debate. In any event, an Act of Parliament is required to give legal force to the treaty. See Lenaerts & Desomer, <i>cited n. 2</i> , p. 1229.

Table II:
Provisions on sovereignty and independence and their safeguards.
Constitutions of Central and Eastern European Candidate Countries

Bulgaria	Preamble: in awareness of our irrevocable duty to guard the <i>national and state integrity</i> of Bulgaria... 1.2. The entire <i>power of the state</i> shall derive from the people. 1.3. No part of the people, no political party nor any other organisation, state institution, or individual shall usurp the expression of the <i>popular sovereignty</i> . 9. The armed forces shall guarantee the <i>sovereignty... and independence</i> of the country... 44.2. No organisation shall act to the detriment of the country's <i>sovereignty and national integrity, or the unity of the nation...</i> 18.2 and 3. The state shall exercise <i>sovereign rights...</i> 24.2 The foreign policy of ... Bulgaria shall have as its uppermost objective the ... <i>independence</i> of the country....
Czech R.	Preamble: at the time of the renewal of an <i>independent</i> Czech state... 1. The Czech Republic is a <i>sovereign</i> , unified, and democratic law-observing state... 2.1. All <i>state power</i> derives from the people... 9.2. Any change of fundamental attributes of the democratic law-observing state is inadmissible.

Estonia	Preamble: established on the inextinguishable right of the people of Estonia to <i>national self-determination...</i> 1. Estonia is an <i>independent</i> and <i>sovereign</i> democratic republic, wherein the <i>supreme power of state is vested in the people</i> . 1.2. The <i>independence</i> and <i>sovereignty</i> of Estonia are <i>timeless and inalienable</i> . 54. An Estonian citizen has a duty ... to defend the <i>independence</i> of Estonia. 123.1. The Republic of Estonia shall not conclude international treaties which are in conflict with the Constitution.
Hungary	2.1 The Republic of Hungary shall be an <i>independent</i> , democratic constitutional state. 2.2 In the Republic of Hungary all <i>power is vested in the people</i> , who exercise their <i>sovereignty</i> through elected representatives and directly. 5. The State of the Republic of Hungary shall defend... <i>sovereignty of the people, the independence ...</i> of the country. 6.1 The Republic of Hungary ... shall refrain from the use of force and the threat thereof against the <i>independence ...</i> of other states. 19.2. Exercising its rights based on the <i>sovereignty of the people</i> , the Parliament shall ensure the constitutional order of society... 51.1. The General Prosecutor and the Office of the Public Prosecutor ... shall prosecute to the full extent of the law any act which violates or endangers the ... <i>independence</i> of the country. 68.1. The national and ethnic minorities living in the Republic of Hungary participate in the <i>sovereign power of the people</i> .
Latvia	1. Latvia shall be an <i>independent</i> democratic Republic. 2. The <i>sovereign power</i> of the Latvian State shall belong to the <i>People of Latvia</i> .
Lithuania	Preamble: having for centuries defended its... <i>independence</i> ...; embodying the inborn right of each person and the People to live and create freely in ... the <i>independent State</i> of Lithuania. 1. The State of Lithuania shall be an <i>independent</i> and democratic republic. 2. <i>Sovereignty</i> shall be <i>vested in the People</i> . 3.1. No one may limit or restrict the <i>sovereignty of the People</i> or make claims to the <i>sovereign powers of the People</i> . 3.2. The People and each citizen shall have the right to oppose anyone who encroaches on the <i>independence ...</i> of Lithuania by force. 135.1. In conducting foreign policy, the Republic of Lithuania ... shall strive to <i>safeguard ... independence...</i> 136. The Republic of Lithuania shall participate in international organisations provided that they do not contradict the ... <i>independence</i> of the State.
Poland	Preamble: ...Homeland, which recovered ... the possibility of a <i>sovereign</i> and democratic determination of its fate... 4.1. <i>Supreme power</i> in the Republic of Poland shall be vested in the Nation, 5. The Republic of Poland shall safeguard the <i>independence</i> and integrity of its territory... 104.2 Deputies' oath: 'I do solemnly swear... to safeguard the <i>sovereignty ...</i> of the State...' 126.2. The President of the Republic shall ... safeguard the <i>sovereignty ...</i> of the State....

Romania	<p>1.1. Romania is a <i>sovereign, independent, unitary, and indivisible Nation State</i>.</p> <p>2.1. <i>National sovereignty</i> resides with the Romanian people....</p> <p>2.2. No group or person may exercise <i>sovereignty</i> in one's own name.</p> <p>8.2. Political parties...contribute to the definition and expression of the political will of the citizens, while observing <i>national sovereignty</i>...</p> <p>37.2. Any political parties or organisations which... militate against ... the <i>sovereignty, integrity, or independence</i> of Romania shall be unconstitutional.</p> <p>80.1(1) The President ... is the safeguard of the <i>national independence</i>...</p> <p>82.2. President's oath: 'I solemnly swear ...to defend ... Romania's <i>sovereignty, independence</i>...'</p> <p>117.1. The Armed Forces shall ... guarantee the <i>sovereignty, independence</i> ... of the State.</p> <p>148.1. prohibits amendment of the provisions on the <i>national, independent character of the state</i>.</p>
Slovakia	<p>Preamble: proceeding from the natural right of nations to <i>self-determination</i>...</p> <p>1. The Slovak Republic is a <i>sovereign, democratic, and law-governed state</i>.</p> <p>2.1. <i>State power</i> is derived from citizens....</p> <p>34.3. The enactment of the rights of citizens belonging to national minorities and ethnic groups ...must not be conducive to jeopardising the <i>sovereignty</i> ...of the Slovak Republic....</p> <p>106. The National Council of the Slovak Republic can recall the president from his post if the president is engaged in activity directed against the <i>sovereignty</i>...of the Slovak Republic.</p>
Slovenia	<p>Preamble: Whereas it is in keeping with the Basic Constitutional Charter on <i>Independence and Sovereignty</i> of the Republic of Slovenia....</p> <p>Acknowledging that we Slovenians created our own national identity and attained our nationhood based on ... the fundamental and permanent right of the Slovenian people to <i>self-determination</i>...</p> <p>3.1. Slovenia is a state of all its citizens and is based on the <i>permanent and inalienable</i> right of the Slovenian people to <i>self-determination</i>.</p> <p>3.2 [Title '<i>sovereignty</i>'] ... Supreme power is vested in the people.</p>

Table III: Referendum
Current member states

Austria	<p>Every enactment of the House of Representatives will be submitted to a referendum if the House of Representatives so decides or if the majority of members of the House of Representatives so demands (art. 43). Any total revision of the Federal Constitution (and partial revisions, if so demanded by 1/3 of the members of the House of Representatives or the Senate) is to be submitted to a referendum upon conclusion of the procedure pursuant to Art. 42, i.e., after the approval by the House of Representatives and before authentication by the Federal President (art. 44/2).</p> <p>It is also possible to hold referendums on matters of fundamental importance for Austria, at the request of the House of Representatives or the Federal Government's members, if the House of Representatives so decides (art. 49b/1). The request must include a proposal for the question to submit to popular vote (art. 49b/2). Matters pertaining to the competences of the courts or of the administrative authorities, or pertaining to elections, cannot be the object of a referendum (art. 49b/1 <i>in fine</i>).</p> <p>The referendum takes place at the order of the Federal President (art. 46/3). For a referendum, an absolute majority of the valid votes cast is decisive (art. 45/1).</p> <p>A referendum – by demand from the Federal Assembly – may also be used to depose the Federal President (art. 60/6).</p>
Belgium	xxx
Denmark	<p>Where a bill has been passed by the Parliament, 1/3 of the members of the Parliament may request of the President that the bill be subjected to a referendum (art. 42/1). The Prime Minister is given notice to the effect that the bill will be put to a referendum and then causes the bill to be published together with a statement that a referendum will be held (art. 42/4). At the referendum votes are to be cast for or against the bill. For the bill to be rejected, a majority of the voters (however, not less than 30% of all persons entitled to vote) vote against the bill (art. 42/5). Some kinds of bills may not be decided by referendum, including among others, bills introduced for the purpose of discharging existing treaty obligations (art. 42/6).</p> <p>In an emergency, a bill that may be subjected to a referendum may receive Royal Assent immediately after it has been passed, provided that the bill contains a provision to that effect. If so demanded by 1/3 of the members of the Parliament, an <i>ex post</i> referendum may take place and, if rejected by the referendum, the Act will become ineffective from the date of the announcement of the referendum results (art. 42/7).</p> <p>For the approval of a new constitutional provision, the bill passed by the Parliament must be submitted to the electors for approval or rejection by direct voting. If a majority of persons taking part in the voting, and at least 40% of the electorate has voted in favour of the bill as passed by the Parliament, and if the bill receives Royal Assent it shall form an integral part of the Constitution (art. 88).</p>
Finland	<p>The decision to organise a consultative referendum is made by an Act, which shall contain provisions on the time of the referendum and on the choices to be presented to the voters (art. 53/1).</p>

France	<p>The President of the Republic may, on a proposal from the Government or on a joint motion of the two assemblies, submit to a referendum any government bill which deals with the organisation of the public authorities, or with reforms relating to the economic or social policy of the Nation and to the public services contributing thereto, or which provides for authorisation to ratify a treaty that, although not contrary to the Constitution, would affect the functioning of the institutions (art. 11/1). Where the referendum decides in favour of the government bill, the President of the Republic promulgates it within 15 days following the proclamation of the results of the vote (art. 11/3).</p> <p>Any amendment of the Constitution must be passed by the two assemblies in identical terms and subsequently approved by the people in a referendum (art. 89/2). The referendum stage may be avoided if the President of the Republic decides to submit the amendment bill to Parliament convened in Congress; the bill will then be approved only if adopted by a 3/5 majority of the votes cast (art. 89/3).</p>
Germany	<p>The Constitution only admits a regional referendum to confirm federal statutes that establish a new delimitation of federal territory. The referendum is held in the States from whose territories or partial territories a new State or a State with redefined boundaries is to be formed. (Arts. 29/2 and 3).</p>
Greece	<p>Upon a proposal of the Cabinet, the members of the Parliament may take a resolution, which must be passed by an absolute majority of the total number of members of the Parliament, to conduct a referendum on crucial national matters. Subsequently, the President of the Republic proclaims the referendum by decree (art. 44/2/1).</p> <p>A referendum on bills passed by Parliament regulating important social matters is to be proclaimed by decree by the President of the Republic, if this is decided by 3/5 of the total number of Parliament's members, following a proposal of 2/5 of the total number of its members (art. 44/2/2).</p>
Ireland	<p>Every proposal for an amendment of the Constitution must be initiated in the Representatives Chamber as a bill and, once passed by both Houses of the Parliament, be submitted to the people by means of a referendum (art. 46/2). The proposal will be held to have been approved by the people if a majority of the votes are cast in favour of its enactment into law (art. 47/1).</p> <p>Every proposal, other than a proposal to amend the Constitution, which is submitted by referendum to the decision of the people, will be held to have been rejected by the people if a majority of the votes cast at such referendum are cast against its enactment into law and if the votes so cast amount to at least thirty-three and one-third percent. of the voters on the register (art. 47/2/1).</p>

Italy	<p>A popular referendum is called – by the President of the Republic (art. 87/6) – to decide on the total or partial repeal of a law (or of an act having force of law), whenever requested by 500 thousand voters or by 5 regional councils (art. 75/1). There can be no referendum on tax or budget laws, amnesties or pardons, or on laws that authorise the ratification of international treaties (art. 75/2). The proposal submitted to referendum is approved if a majority of those eligible have participated in the voting, if it has received a majority of valid votes (art. 75/4).</p> <p>The laws amending the Constitution and other constitutional acts are submitted to popular referendum when requested by 1/5 of the members of either Chamber, by 500 thousand voters or by 5 regional councils. If not approved by a majority of valid votes, the law will not be promulgated (art. 138/2). The referendum will not take place if the law is approved by each Chamber, in the second vote, with a majority of 2/3 of its members respectively (art. 138/3).</p>
Luxembourg	<p>The voters may be requested to pronounce their will (in respect of policy questions) by way of a referendum in cases and under conditions determined by law (art. 51/7).</p>
The Netherlands	xxx
Portugal	<p>Following a proposal by the Parliament or the Government, the President of the Republic may decide to call for a referendum, (art. 115/1). A referendum may also be held at the initiative of citizens, addressed to the Parliament (art. 115/2). The only subjects for a referendum shall be those matters of national interest in respect of which the power of decision rests with the Parliament or the Government through the approval of an international convention or the enactment of legislation (art. 115/3).</p> <p>The referendum cannot have as its object amendments to the Constitution, taxes and other budgetary matters, matters falling under the political and legislative powers (art. 161) or the exclusive legislative powers (art. 164) of the Parliament (art. 115/4). Despite this, a referendum may be called on issues of relevant national interest that must be the subject of an international agreement (art. 115/5).</p> <p>Each referendum shall deal with a single subject; the questions shall be formulated in objective terms, clearly and precisely, so as to permit an answer of yes or no (art. 115/6). The President of the Republic must submit the referendum proposals to the Constitutional Court for a compulsory anticipatory review of their compliance with the Constitution and the law (art. 115/8).</p> <p>A referendum only has binding force where the number of voters is greater than one half of the voters registered in the census (art. 115/11).</p>
Spain	<p>Political decisions of special importance may be submitted for a consultative referendum of all the citizens (art. 92/1), called for by the King (art. 62/c) at the proposal of the President of the Government after previous authorisation by the House of Representatives (art. 92/2).</p> <p>The ratification of partial amendments to the Constitution may be submitted to referendum if so requested, in the 15 days after its passage, by 1/10 of the members of either Chamber (art. 167/3). A total revision of the Constitution must be, after its passage in order to be ratified,, submitted to a referendum (art. 168/3).</p>

Sweden	A referendum is to be held on a decision held in suspension for an amendment of a fundamental law on a motion to this effect by no fewer than 1/10 of the members of the Parliament, provided that no fewer than 1/3 of the members vote in favour of the motion (chap. VIII, Art. 15/3). The bill is 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 takes up the bill for final consideration (chap. VIII, Art. 15/4).
United Kingdom	The Constitution is silent on the admissibility of referendums but, as was the case in 1976, the Parliament may well decide to hold <i>ad hoc</i> referendums.

Table IV: Referendums in CEECs: turnout requirements and prohibition periods for re-initiating referendums on the same issue

Country	Minimum turnout	Type of referendum	No repetition
Bulgaria	50% turnout	All referendums	
Czech Rep.	Simple majority	Currently referendum may be held only for EU accession	2 years
Estonia	Simple majority	All referendums	1 year for const. amend. refer.
Hungary	25% approval of all citizens who have the right to vote	Since 1997 for all referendums as a result of amendment adopted before the NATO referendum	-
	50% turnout	Before 1997 for all referendums	
Latvia	50% turnout	Constitutional amendment referendums	-
	Half of the turnout of previous elections	Ordinary referendums	
Lithuania	3/4 of all citizens who have voting rights	Referendum on amending Art. 1 on independence	-
	50% turnout	Ordinary referendums and referendums on amending ordinary constitutional provisions	
Poland	50% turnout	Ordinary referendums, in order to be binding (otherwise consultative referendum)	4 years
	Simple majority	Constitutional amendment referendums	
Romania	50%	All referendums	Information not available
Slovakia	50% turnout	All referendums	3 years
Slovenia	50% turnout	Constitutional amendment referendums	1 year
	Simple majority	Ordinary referendums	

Table V: Referendum results during recent years in CEECs

<i>Country</i>	<i>Year</i>	<i>Issue</i>	<i>Turnout</i>
Hungary	1997	NATO membership	49% (threshold majority 25% of the electorate)
Latvia	1998	Amendments to the Citizenship law	67%
	1999	Amendments to the Pensions law	25%, <i>invalid</i>
Lithuania	1994	Illegal privatisation; savings compensation for inflation victims; early parliamentary elections	36.8%, <i>invalid</i>
	Oct 1996	Expenditure of state budget; compensation of the loss of assets prior to 1990; decrease in number of Parliament members	52%
	Nov 1996	Purchase of agricultural land by EU nationals	40%, <i>invalid</i>
Poland	1997	New constitution	43% (no minimum for constitutional amendment referendums)
	1996	Privatisation	32.5% (consultative)
Slovakia	1994	Transparency of privatisation	19.98%, <i>invalid</i>
	1997	NATO membership; nuclear weaponry and military basis	9.5%, <i>invalid</i>
	1998	Privatisation of main state companies	44%, <i>invalid</i>
	2000	Early elections	20%, <i>invalid</i>
Slovenia	1996	Amendments to the electoral law	38% (declared successful by the Constitutional Court)
	1998	Consultative referendum on reform of local government system	Less than half, but only voters in affected border areas were asked to participate
	1999	Referendum on funding the construction of power plant TET3	27%, <i>invalid</i>
	2001	Amendments to Law on Infertility Treatment	33%, <i>invalid</i>

Estonia and Romania have had no referendums after the early 1990s. Bulgaria and the Czech Republic have had no referendums in the last couple of decades.