



More Democracy in Europe

Referendum on the EU-Constitution / Direct Democracy in the EU

Introduction

Europe is giving itself a Constitution. After the Convention on the Future of Europe worked out a draft Constitution for Europe in the summer of 2003, the Inter-Governmental Conference, under the presidency of Ireland, agreed on a treaty establishing a Constitution for Europe, which was signed by the heads of states and governments in October 2004. This treaty has now to be ratified by the member states of the EU. The governments of Lithuania and Hungary have already pushed the constitutional text through the parliamentary process. It is obvious that the whole ratification process will take at least another two years.

The EU Constitution will, to a certain extent, re-found the Union, since the balance of power between the member states and the EU, as well as within the institutional framework of the Union, will be rearranged. Europe will get new powers and instruments for strengthening its role on the global level. This development has to be approved by the citizens of Europe; after having been relegated to the role of mere spectators for 50 years, it is now high time that the citizens of Europe are allowed to decide for themselves on the future of the EU. If the EU wants to take a further step towards becoming a powerful organization possessing powers comparable to those of national states (foreign, security and defence policy, economic affairs, domestic and justice policy), the citizens must have the possibility of deciding the shape of the future EU. That's why we are calling for a referendum on the EU Constitution.

By insisting on our main positions, More Democracy had, at the conclusion of the Convention's work, achieved a great success. The draft Constitution contains the so-called European Citizens' Initiative (ECI), which has been often quoted since its inclusion. It provides for at least one million European citizens to invite the European Commission to initiate a legislative process (details on page 4). Our main task within the next few years will be to develop this new instrument in as citizens-friendly a way as possible. Beyond this we will continue our efforts to introduce into the future constitution if it is ever ratified – rights of initiative and binding referendum. We thus want to put two different proposals relating to direct democracy in the EU onto the political agenda in the coming years.

On the one hand, we are demanding Europe-wide referendums on the draft Constitution in all the member states of the EU. For any further steps towards a more integrated EU this should become the rule rather than the exception. On the other hand, we are making a range of proposals for establishing an initiative and referendum right at the EU level. These instruments would give the citizens a direct say on

European laws and constitutional amendments. Our aim is thus to achieve a direct-democratic vote on the Constitution and to establish instruments of direct democracy as a powerful and effective complement to representative democracy.

Our proposals are intended as an invitation to discussion. We wish to engage in a dialogue with civil society, political scientists, activists, organisations, the media, politicians and citizens from the whole of Europe East and West. We expressly invite both criticism and suggestions.

I. Referendum on the EU Constitution

The upcoming reform of the EU institutions will determine the future development of the EU. That is the reason why we are convinced that the citizens of Europe must have an opportunity to express their opinion on the Constitution. A constitution is an agreement about the content, limits, organisation, exercise and division of political power within organised communities of people. A European constitution which was set in place without the agreement of the people who were to be bound by it would be lacking in legitimacy.

The European project is endangered. Scepticism is growing, even in such traditionally EU-friendly countries as Ireland or France. Many citizens sense that the EU is intent on achieving superpower status. They fear a cold, bureaucratic superstate. The Union has to be refounded on a different basis, which can only happen if the citizens are directly involved.

During the Convention's debates, More Democracy tried to convince as many Convention members as possible to include in the final draft a recommendation for referendums on implementing the Constitution to be held on the same day. Despite the large number of supporters (roughly 100), this essential demand was not included in the Convention's proposals. The main argument against was that the decision on whether referendums should be held seen as a decision of great political importance - should be taken by the responsible politicians in each country. An EU recommendation could have been perceived in several countries as interference in national politics.

I. Referendum on the EU Constitution



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Apart from our work inside the Convention, it was primarily More Democracy which launched the European Referendum Campaign. The aim of this project was to achieve as many referendums as possible in the various member states of the EU. By publishing reports, planning Europe-wide political actions and providing background information, as well as a well-visited homepage, the successful ERC made a major contribution to putting this issue on the political agenda.

As there are some countries which have already ratified the EU Constitution, a single Europe-wide referendum is no longer feasible. Moreover, the legal basis for such a referendum does not yet exist, and could only have been achieved by a unanimous decision within the EU. Unfortunately, the proposed draft Constitution does not include a Europe-wide referendum either, so it is unlikely that the next major constitutional amendments could be voted on in a Europe-wide, binding referendum.

We demand that binding referendums be held in those member states which have not yet ratified the Constitution. If all the remaining referendums were to be organized on the same day, so that the vote of one country would not influence the vote of others, the European character of the vote could be emphasized. But because of the wide spread of dates on which the constitutional referendums are to be held in the different countries, this option is also relatively out of the question. One remaining option would be for at least some of the countries to agree on holding their referendums on the same day. This is imaginable, for example, for the Benelux states.

In Germany, a constitutional amendment (Article 23) would be required to establish the legal basis for holding a binding referendum on this issue. The German Liberals (FDP) have twice submitted a proposal to parliament aiming at such a move. The governing coalition also seemed to be more and more in favour of a national referendum; after having hesitated for a long time, they opened up a debate last summer. But since the end of 2004, they have changed their minds radically again. Their preference is now for ratifying the EU Constitution as quickly as possible without any substantial public debate, in order for Germany to send a positive signal to other countries where a 'yes'-vote seems uncertain. Only a few SPD (Social Democrat) MPs are opposed to this kind of procedure. Several leading politicians of the main opposition party (CDU-CSU) have also called for a referendum, but the majority remains sceptical and still rejects the idea.

If Germany were to opt for a referendum, it would be the next country to join the nine member states in which referendums will definitely take place. In addition to Ireland and Denmark, where a referendum is constitutionally mandatory, the nine include Portugal, Spain, Luxembourg, the Netherlands, the Czech Republic, the UK and France. It is quite remarkable that some countries which have never held a national referendum in their history will give their citizens a say on this important issue. This is especially true for the Benelux states. In other countries such as Poland, a constitutional referendum seems to be very likely. Never before in European history have as many people had the opportunity to vote on the same topic within such a short period of time as on this occasion.

What happens if there is no majority in favour in one member state?

In principle, the whole ratification process fails, because the European treaties 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 40's and the creation of the European Defence Community (EDC) in the 50's failed because parliaments in the one case the American, in the other the French refused to ratify the respective treaties.

A failure of the Constitution would mean that the Union would have to continue on the legal basis of the Nice Treaty. This would of course not be an ideal solution, but it would nevertheless guarantee a relatively high level of integration. Another option would be to convene a new Convention, whose main task would be the working out of a second draft Constitution. A second Convention would be aware of the main reasons for the earlier failure and could consequently take them into account. Since such a long political process would make the weaknesses of the EU more visible, it could offer a valuable opportunity for wider debate and reform.

From recent European history we are also aware of two cases in which two countries Denmark and Ireland held two referendums on the same treaty. Of course, the Danes and Irish did not vote on exactly the same treaty, but on a modified text, which gave them opt-out rights. This precedent could also be used in future.

It is also imaginable that countries which do not agree on the constitutional text could withdraw from the EU. So it is not true that countries which reject the project of a European Constitution automatically block further deepened integration.

Direct Democracy within the EU

In addition to our demand for referendums on the EU Constitution, More Democracy made every effort to have elements of direct democracy included in the draft constitution. We are convinced that this alone would have guaranteed a permanent citizens' involvement in European affairs. We wanted to establish a three-stage model of direct democracy (Initiative, Submission and Referendum), which is already well practiced in several member states. But at this stage of European integration these proposals were not enforceable.

This is mainly a result of the monopoly on initiative that the European Commission exclusively possesses. Opponents of our proposals saw this exclusive right of the EU Commission potentially threatened by the instruments of direct democracy. Nevertheless, after intensive negotiations in the final stage of the Convention's work, we achieved a first step in direct democracy in the Constitution. This success was only possible thanks to our close cooperation with other NGOs such as WIT (Belgium) and the Initiative and Referendum Institute (Amsterdam soon Brussels and Marburg).

II. Direct Democracy within the EU



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Without any doubt, this first step towards direct democracy would not have been achievable if we had not had the support of several Convention members, especially that of Professor Jürgen Meyer, the German Bundestag representative.

Article I-47 (4) reads: “Not less than one million citizens who are nationals of a significant number of Member States may take the initiative of inviting the Commission, within the framework of its powers, to submit any appropriate proposal on matters where citizens consider that a legal act of the Union is required for the purpose of implementing the Constitution. European laws shall determine the provisions for the procedures and conditions required for such a citizens' initiative.....”

From our point of view the ECI is definitely a great success, because until the very last sessions of the Convention it did not at all appear possible to include a first step of direct democracy in the Constitution. While this development is of course positive, it is also obvious that some problems remain. The concrete wording of Article I-47 (4) leaves some room for interpretation which could be used by opponents of direct democracy to weaken this new instrument. It is, for example, not clear what “a significant number of member states” is or if one million signatures as a total number will really be sufficient. That is why the European laws which will clarify those aspects are, in our view, of huge importance. More Democracy will involve itself in the work on those laws and will submit its own draft law. We have already started to discuss this issue with representatives of other NGOs, of the European Parliament, of the EU Commission and with political scientists. Our main goal is to avoid the ECI – which is already a relatively weak instrument of direct democracy – being further weakened by the provisions of the European laws. Our aim is to make the European Citizens' Initiative backed by supportive European legislation into an effective gateway for direct democracy in the EU.

In the longer-term perspective we do not consider the ECI to be satisfactory. The EU is gaining an ever greater influence on our lives. This became very visible for the majority of Europeans at the beginning of 2002 with the introduction of the Euro. But the Euro is only one example. Consumer protection, domestic policy, justice, foreign and security policy – including the aim of creating a common European Defence Force – are other areas where national decisions are increasingly influenced by Brussels. Nearly 60% of the new laws which have come into force in Germany have been passed in Brussels. This transfer of power to the European level, which will be strengthened by the provisions of the Constitution, has not been accompanied by an extension of democratic rights. As a result, we can observe a growing gap between the politics of the EU and its legitimacy. This development leads, in the eyes of many citizens, to a sense of powerlessness vis-à-vis the EU institutions. If citizens' rights of participation in decision-making are not improved in the coming years, there is a real threat to the whole integration project, because euroscepticism is likely to increase.



We will continue our efforts to introduce binding rights for citizens to put issues on the political agenda and to decide them for themselves. We have worked out two proposals on direct democracy which we wish to include in the next constitutional revision. On the one hand we are demanding various citizens' initiative rights (citizens' initiative, citizens' demand and citizens' referendum). On the other hand we are demanding a right of obligatory referendum for constitutional amendments and the transfer of sovereignty to international organizations.

More Democracy is presenting the following model of direct democracy within the EU. We hope to involve as many participants as possible in a deep discussion in order to further develop these proposals.

What issues might be subject to European citizens' initiatives and referendums?

- Directives and regulations
- Proposals for treaty or constitutional amendments
- Transfer of sovereignty (e.g. to the WTO or the UN) and treaty or constitutional amendments should be subject to obligatory referendum
- No restrictions on subject-matter

EU Citizens' Initiative

- Signature quorum: 400,000 signatures of EU citizens
- No time limit for the collection of signatures
- No prescribed regional distribution of signatures
- Representatives of the initiators to present their proposal(s) in person to the Council of Ministers and to the European Parliament
- Option of withdrawing or altering the initiative before initiating the EU citizens' demand
- It remains to be discussed and decided whether an initiative which launches an EU citizens' demand
- should be a statutory or a facultative one.

EU Citizens' Demand

- Signature quorum: 3,000,000 signatures of registered voters; in the case of a demand for treaty or constitutional amendments 6,000,000 signatures
- Time limit for the collection of signatures: 1 year
- Regional distribution of signatures mandatory e.g. the requirement might be made that as a minimum between 0.25% and 1% of the electorate (depending on the size of population in the country) in at least three countries must give their signatures.
- Signatures can be freely collected (in all public spaces), with the additional option of official registration. The role of the internet needs to be examined.

Typical counterarguments

Three typical arguments against direct democracy in the EU

1. Europe is too big. Only well-financed lobby groups can exploit these instruments.

Lobby groups already successfully influence EU politics. They do not need direct democracy. Of course, the size of Europe is a problem for smaller initiatives and organisations so public assistance for initiatives must be greater than at the national level. That is why we propose refunding expenses, financing an information leaflet (from public funds), and a referendum commission.

2. There is no such thing as a European public

DD is an ideal means of creating a European public. European politics will only become relevant to the peoples of Europe, when they have real participation in decision-making. If this does not happen, they will continue to feel alienated and apathetic and the EU will remain a bureaucratic, elitist organisation.

3. EU citizens' referendums would destroy the diversity of member states

This is precisely what happens now due to over-regulation by European institutions. In order to avoid this happening with direct democracy, we propose double majorities and regional distribution requirements. The rights of the smaller states must be respected.

3. Democracy International a network for direct democracy in Europe

More Democracy will accelerate the foundation of a Europe-wide network for direct democracy Democracy International within this year. In the last couple of years, Democracy International, as the name of our campaign, has already proved its attractiveness. We now want to build on this basis a binding framework which should nevertheless not be too formalized. The main goal of this organisation is to fight for more elements of direct democracy in the EU. Initiatives at the national level which are attempting to achieve rights of direct democracy in their countries will be supported. Apart from questions directly linked to the issue of direct democracy, the aim of Democracy International will also be to develop proposals on how to democratise the EU in general. The international work of More Democracy will then exclusively be carried out under the umbrella of Democracy International. The first two main projects of Democracy International will be to work out a draft European law on article I-47 (4) and to develop further our comprehensive proposals on direct democracy in the EU.

EU Citizens' Referendum

- Option of an official (from the EU institutions) counter-proposal to the citizens' one
- Referendum to be held within 9-18 months after the citizens' demand has been formally presented.
- No referendum is held if the proposal is adopted unchanged.

Rules of dissemination of information and financing

- All households to receive an information leaflet with arguments for and against.
- An elected referendum commission (on the Irish model) has the responsibility of ensuring a fair and balanced dissemination of information to the public.
- The initiative committee/group has the right to a refund of expenses involved in bringing the initiative to referendum. 10 cents per vote for the referendum and 5 cents per signature for the citizens' demand.

What majorities should be required?

We propose two models for discussion:

Model 1: This model takes as its basis the currently valid rules of majority voting in the Council of Ministers. If a qualified majority is required in a specific area of politics in the Council of Ministers, the same majority requirement would be valid for a citizens' referendum. In accordance with the proposed Constitution, a qualified majority is achieved, if 55% of the individual member states representing 65% of the EU-wide population vote 'yes'. The same principle could be applied to area of politics where a simple majority or unanimity is prescribed. This model would emphasize the character of the EU which is described by the Constitution as based on the will of its citizens and member states.

Model 2: We propose to distinguish only between two types of majority requirements for EU citizens' referendums. In case of constitutional amendments, a majority of voters in each member state would have to be achieved. All other types of decisions would require, besides an EU-wide majority of voters, a simple majority of member states (currently 13 out of 25). This model stresses the need to make direct democracy workable.



**democracy
international**

Democracy International

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