

Selected regional developments in human rights and democratisation during 2016: Referendums on the rise in Europe: Powerful tool of the populists or a step towards increased citizen participation in EU politics?

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Abstract: *This article provides an overview of different types of national referendums held in 2016 in European Union member states ranging from The Netherlands, the United Kingdom, Hungary and Italy, and discusses key political and legal issues arising from these referendums. It also examines the increased occurrence of referendums in the context of wider trends in Europe, such as the rise of populist parties and scepticism towards the EU. It finds that referendums were used as a protest vote, and are becoming more and more exploited as tools by Eurosceptic parties. The article further discusses the advantages and disadvantages of referendums in relation to concerns such as the democratic deficit in the EU and the increased anxiety of member states and their citizens over losing sovereignty to Brussels. There is a risk that referendums on EU-related matters in some cases can do more harm than good for democracy in Europe. Therefore, it is important to also strengthen and promote representative democracy.*

Key words: *European Union; democracy; referendums; populism; Dutch Ukraine-EU Association Agreement referendum; Brexit; Hungarian referendum; Italian constitutional referendum*

1 Introduction

A series of different types of national referendums held in 2016 in European Union (EU) member states, ranging from The Netherlands, the United Kingdom (UK), Hungary and Italy, deserve attention and offer valuable insights into the ongoing development of the European

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integration process. Three of four of these referendums were on EU-related matters, and also the fourth referendum implicitly involved issues affecting all of the EU's people. This article provides an overview of the referendums and discusses key political and legal issues arising from them. It also examines the increased occurrence of referendums in the context of wider trends in Europe, such as the rise of populist parties and scepticism towards the EU. Before moving on to the specifics of the four referendums, we provide a brief overview of the practice and types of referendums in Europe.

Investigating the historical dynamic of EU-related referendums, a recent study has revealed that until early 2017, there have been 60 referendums on EU-related matters. These can be distinguished into four main types: (i) *membership referendums*, including the frequently-used accession referendum and the rarely-deployed withdrawal referendum, as in the UK in 2016; (ii) *treaty revision referendums* generated by all six main rounds of treaty revision (from the Single European Act to the Lisbon Treaty); (iii) *policy referendums* held by EU member states on EU-related policy matters, but not about membership or treaty revisions, as in The Netherlands and Hungary in 2016; (iv) *third-country referendums* held on the topic of European integration by states that are neither EU member states nor candidate states, voting directly on an accession treaty (Mendez & Mendez 2017: 19).

Not surprisingly, most of these referendums were related to membership issues, but the most important ones for the EU have been called for essentially partisan reasons. As of 2016, partisan considerations have alarmingly represented the most common motive for holding EU-related referendums. Coinciding with a bigger trend towards politicisation of the EU, the same study has found that 'there is an accelerating rate of failure associated with EU-related referendums. Since the advent of the Great Recession, failure has become the new norm' (Mendez & Mendez 2017: 11). Emphasis is put on the fact that 'we are entering a new phase in the practice of direct democracy in the EU', which seems as yet vastly uncharted territory. Since the mid-2000s, referendums (and how to deal with them) have come to play an ever more central role in considerations of the EU's constitutional and political future. One of the most contentious aspects of the EU's direct democratic setting is the rise of the *treaty revision referendum*. The Union's rules for changing treaties require unanimous ratification by all member states. Therefore, in the case of a negative referendum such change cannot take place. Nonetheless, other types of referendums emerging in the contemporary setting may be regarded as potentially more challenging. Since 2010 the *policy referendum* has become the most dominant type, representing 75 per cent of referendum activity. In surveying the contemporary policy referendum scene, however, a basic comparison is elaborated. The policy referendums in Denmark (2000 and 2015) and Ireland (2012) were triggered by constitutional factors and took place in countries with ample experience in EU-related referendums. The Greek and Hungarian policy referendums of 2015 and 2016, by contrast, exemplify 'a potentially new type of referendum held for partisan motives', whereas the Dutch 2016 policy referendum constitutes the EU's first citizen-initiated referendum on EU matters with a direct extraterritorial effect, which was used as 'a strategic weapon' to convey Eurosceptic political preferences (Mendez & Mendez 2017: 24-26, 30-31, 54, 58).

2 Dutch Ukraine-European Union Association Agreement Referendum

On 6 April 2016, Dutch voters took to the polls to answer the referendum question ‘Are you for or against the Approval Act of the Association Agreement between the European Union and Ukraine?’ This agreement aimed, *inter alia*, at creating closer political and economic ties between the EU and Ukraine in areas such as economic policy, exchange of information, potential visa-free travel, enhancing political dialogue and close co-operation in all areas of mutual interest, as well as reinforcing the rule of law and respect for human rights and fundamental freedoms. The various parts of the treaty were signed in March and June 2014. It is a so-called ‘mixed’ agreement that includes provisions falling under the competences of both the EU and its member states. Most of the ‘political’ chapters were provisionally applied since November 2014, while the provisional application of the ‘trade’ part commenced in January 2016. In any event, such application could concern only treaty provisions falling under the EU competences, while the Association Agreement would only enter into force in its entirety once ratified by all EU member states. In this regard, all other national parliaments of the member states had ratified the treaty by April 2016, while the entry into force of the Dutch Approval Act (and, therefore, The Netherlands’ ratification of the agreement) was suspended owing to the referendum procedure.

The Dutch House of Representatives (on 7 April 2015) and the Dutch Senate (on 7 July 2015) had already adopted the Approval Act for the ratification of the EU-Ukraine Association Agreement. However, 61,1 per cent of the Dutch referendum voters rejected the Approval Act and thereby the EU-Ukraine Association Agreement; 38,1 per cent voted in favour.¹ With a voter turnout of 32,2 per cent, the minimum requirement for the referendum to be valid (30 per cent) was barely met (BBC News 2016). From a legal point of view, the referendum was advisory, suspensory and non-binding. However, according to the centre-right liberal Prime Minister, Mark Rutte, it was politically impossible for his unpopular government to ignore such results and to ratify the treaty in its current form (Reuters 2016).

Following the referendum procedure, the Dutch government had to adopt a law repealing the Approval Act or a law confirming it. On 30 May 2017, the Dutch Senate adopted the ratification of this agreement. Almost two-thirds of the senators voted for it, while the opposition came mainly from far-left and far-right parties. Ultimately, the EU-Ukraine Association Agreement entered into force on 1 September 2017.

It is worth noting that a negotiation of guarantees regarding the interpretation of the Association Agreement was initiated following the Dutch ‘No’ to the Approval Act. After taking note of the outcome of this referendum and the concerns conveyed by the Dutch Prime Minister during the European Council meeting of December 2016, the Dutch government worked towards the member states adopting a common understanding that this agreement did not open up prospects for Ukraine’s

1 Whether the Dutch rejected only the Approval Act or also the Association Agreement is subject to debate, see Van der Loo 8 April 2008.

membership; that it did not lead to any further financial aid being given to Ukraine; and that it would not lead to any obligation in terms of military assistance.² However, this annexed explanatory declaration did not find the support of Dutch opposition parties campaigning against the treaty, as the latter was not amended.

3 UK-EU membership referendum

On 23 June 2016, the British referendum took place to decide whether the UK should leave or remain in the EU. Fifty-two percent of referendum voters decided in favour of a 'Brexit' from the EU, and 48 per cent voted to remain in the EU. The voter turnout was 72 per cent. In both England and Wales, 53 per cent voted to leave the EU, while in Northern Ireland and Scotland, the majority voted to remain in the EU (56 per cent in Northern Ireland; 62 per cent in Scotland) (BBC News (undated)).

The referendum about whether to remain in or leave the EU, based on a renegotiated membership deal with the EU, was part of an election promise made by then Prime Minister David Cameron and the Conservative Party. After winning the general elections in 2015, the government introduced the European Referendum Act 2015 to parliament, and Cameron started renegotiations with the EU on key issues such as immigration and safeguards for non-Eurozone member states. Cameron was satisfied with the renegotiated UK membership deal and started campaigning for the UK to remain in the EU (Wright 2016). However, the cross-party Vote/Leave campaign proved strong, with Nigel Farage of the rising far-right, Eurosceptic UK Independence Party (UKIP) and then mayor of London, Boris Johnson, of the Conservative Party emerging as figure heads of the Leave campaign.

Following the shocking result of the referendum, Cameron announced his resignation. Boris Johnson, a key figure in advocating Brexit and seen by many as Cameron's successor, announced that he did not intend to run for Prime Minister, and the Conservatives instead elected Theresa May, who assumed office on 13 July 2016. Nigel Farage, a highly-controversial figure in his support of Brexit, also resigned from his position as leader of the UKIP.

The outcome of the vote did not only shake up the British parties. The result was widely seen as a defeat for the EU and caused many to speculate whether other member states would follow the example of the UK, given the rise of Eurosceptic parties across the continent. In the aftermath of the vote and following the plunge of the British pound, it also became clear that many Leave voters did not understand the consequences of their vote, and soon started to experience 'Regrexit' (Sinclair 2016). On the day following the referendum, the two main questions on the EU in the UK were 'What does it mean to leave the EU?' and 'What is the EU?' (Tamblyn 2016). This shows that the success of the Leave campaign was only

2 See Decision of the Heads of State and Government of the 28 member states of the European Union, meeting within the European Council, on the Association Agreement between the European Union and the European Atomic Energy Community and their member states, of the one part, and Ukraine, of the other part, Annex of the European Council Conclusions of 15 December 2016 (European Council, 15 December 2016a).

partially related to concerns about the EU, but was rather the result of a combination of factors that include grievances over immigrants that seem to threaten social cohesion and economic fears that are reinforced by 'inequality of income, opportunity and power' (Chu 2016).

4 Hungarian referendum

On 2 October 2016, a referendum on whether Hungary should accept an EU quota system for relocating migrants took place.³ The government of the conservative Prime Minister, Viktor Orbán, initiated the vote and heavily campaigned against accepting the resettlement quotas.⁴ His campaign focused prominently on concerns that Islamic State of Iraq and the Levant (ISIL) terrorists posed as migrants in 2015 while returning from Syria along the 'Balkan route' of Eastern EU member states. The majority of referendum voters (nearly 98 per cent) agreed, but the voter turnout (40,4 per cent) was too low to meet the validity threshold of 50 per cent (BBC News 2016). This result was mostly due to the democratic opposition parties and civil society organisations urging Hungarians not to participate or to vote in an invalid manner.

It is worth noting that the Hungarian vote came as the Austrian Minister for Europe, Integration and Foreign Affairs, Sebastian Kurtz, said that the EU should abandon its plan to distribute 160 000 refugees among member states. He cautioned that disagreement over the plan could threaten 'the cohesion of the entire European Union', and warned against western countries such as Germany taking the 'moral high ground' counter to the more recently-joined eastern member states, which refused the primarily Muslim refugees as a threat to their Christian identity and culture (Rothwell et al 2016).

5 Italian constitutional referendum

On 4 December 2016, the referendum on the constitutional reform, proposed by the government of then Prime Minister Matteo Renzi and

3 It was at a press conference on 24 February 2016 that Prime Minister Viktor Orbán announced the government's decision to call a referendum on the 'compulsory resettlement quotas', noting that the head of Cabinet had referred the referendum question to the National Election Commission for confirmation. The latter confirmed it in its decision 14/2016 on 29 February 2016. The endorsed question was: 'Do you want the European Union to be able to mandate the obligatory resettlement of non-Hungarian citizens into Hungary even without the approval of the National Assembly?' See Harris 2016.

4 At the same time, four petitions for the review of the administrative decision about the referendum were lodged with the Hungarian Supreme Court, which was decided on 3 May 2016. The three issues considered by the Court during these appellate proceedings were whether the referendum question referred to commitments under inter-national agreements; whether the question fell within the remit of the Hungarian Parliament; and whether the question was unambiguous. The referendum question was found to comply with the Hungarian Constitution and the Referendum Act and, accordingly, the Court approved the relevant National Election Commission's decision. See Juhasz 50.

approved by the Italian Parliament earlier the same year,⁵ had a high turnout of 65,47 per cent, with 59,11 per cent of voters against and 40,89 per cent in favour (Ministero dell'Interno (undated)). The Italian electorate was called to approve or reject the constitutional review Bill concerning provisions to overcome 'perfect' bicameralism; reduce the number of parliamentarians; contain costs arising from institutional activities; eliminate the National Council for Economics and Labour; and review Title V, Part II of the Italian Constitution. This major reform would have amended a third of the Constitution (47 provisions out of a total 139) and overhauled the national parliamentary system by differentiating in composition and functions the two chambers as well as revising the division of powers between state, regions and administrative entities.⁶ The most common objections raised by Italian jurists are the following: first, the introduction of a complex article describing several differentiated legislative procedures, potentially less efficient and creating confusion about the two chambers' competences, with a risk of disputes between them, which in turn might need to be brought up to, and settled by, the Italian Constitutional Court (paradoxically against the declared intention to simplify the dynamics of the Constitution, in general, and of the law-making process, in particular); second, doubts concerning the ability of mayors and members of regional assemblies to serve also as actively present and informed (part-time) senators; third, the potential disproportionate increase of governmental power with regard to the opposition as a result of the combination of constitutional reform with the rigid electoral system in force at that time (as the *Italicum* would have granted the ensuing winning party 54 per cent of the parliamentary seats even if its actual share of votes were considerably smaller).⁷

It must be emphasised that this referendum generated intense debate and a high level of polarisation in both the Italian party system and in society. Most political parties were against it, including some important groups within the very Democratic Party contributing to the constitutional reform. The latter was presented by Renzi as a crucial aspect of his agenda aimed at streamlining decision-making procedures, hoping that the lift deriving from a 'Yes' could have enabled him to re-invigorate the slow implementation of his reform plans. However, the decrease of his government's support rating (mostly owing to the country's weak economic growth and low level of gross domestic product (GDP) per capita, as well as its high unemployment rate) was exploited by the opposition parties calling for a 'No' vote during the referendum campaign.

5 On 8 April 2014, the Constitutional Review Bill was introduced in the Senate and, after several amendments, received first approval on 13 October 2015 (Senate) and 11 January 2016 (Chamber of Deputies). Its second and final approval on 20 January 2016 (Senate) and 12 April 2016 (Chamber of Deputies) did not reach a qualified majority of two-thirds. Therefore, in accordance with article 138 of the Italian Constitution, a referendum (without quorum) was called after the formal request of more than one fifth of the members of both houses.

6 The core content of the reform relied on the following points: only the lower chamber would be directly elected and would maintain a 'confidence relationship' with the executive, while the reformed Senate would have reduced legislative powers and be composed of mayors and members of regional assemblies (who would not vote on motions of confidence); the government would be allowed to ask the lower chamber to examine draft Bills in 85 days, but its power to pass decree laws would be constrained; instruments of direct democracy would be reinforced; a range of competences devolved to regions in 2001 would return to the state. For a comment, see Guidi 2016.

7 See Rodotà 2016), Pasquino 2016, Celotto 2016 and Scarpetta 2016.

A large part of the electorate did vote 'No' to express serious discontent about the government's policies. At the same time, another part feared that their defeat in the referendum would create long-lasting political instability in view of the existing fragmented opposition.

However, the significance of the referendum went beyond the substance of the proposed constitutional reform. Renzi had promised to resign if Italians rejected this reform, which in effect led to the referendum becoming a plebiscite on the Prime Minister. Given this outlook, some international commentators highlighted a risk for more political and economic uncertainty for the country with implications for its future in the Eurozone and beyond (Harris 2016; JH 2016). After Renzi's resignation, the new Italian government has been challenged by a worsening sovereign debt issue, a fragile banking system, and tangled public finances, besides the task of approving a new electoral law (Jones 2016).

6 What do these cases mean?

One feature all of these referendums have in common is that in various ways their outcomes pose problems for the EU. Some of the pitfalls of the increased use of referendums are outlined below.

Brexit and the Dutch referendum make it clear that the referendums were only partially concerned with the actual yes/no question at stake. Instead, voters used this opportunity to demonstrate their discontent with the status quo, with the policies of the governments in power, and with policy making in Brussels. The referendums were used as a protest vote. According to newspaper accounts, Dutch voters 'said they were opposing not only the treaty but wider European policymaking on matters ranging from the migrant crisis to economics' (Reuters 2016). The fact that, following the Brexit decision, many people even had to Google what the EU is also highlights the fact that large sections of the Leave voters used the poll as an economic vote of protest against government policies that have over decades increased income inequality. Although the case of Hungary is different in that the referendum result supported the stance of the government on migrant relocation quotas, it is still clear that Hungarian voters are not satisfied with policies at EU level. By having tied his political fate to the outcome of the Italian referendum on constitutional reform, Renzi also gave voters a chance to express their disapproval of government policies, particularly when it comes to reviving the economy. Furthermore, referendums increasingly are used as tools for Eurosceptic parties. In her day, Margaret Thatcher called referendums 'a device of dictators and demagogues' (Economist 2015). The situation today underlines the usefulness of referendums as a tool for populist politicians, who use it to spread fear and advance their own agenda.

The Dutch referendum came shortly after the introduction of the national Advisory Referendum Act in The Netherlands in July 2015, which allows the Dutch public to submit most types of primary laws (that have already been approved by the parliament) to a referendum, provided that at least 300 000 signatures can be collected in favour of such a vote. The Eurosceptic political group Citizen's Committee EU realised that the EU-Ukraine Association Agreement was one of the first opportunities to make

use of the new Bill, and they mobilised to gather the necessary signatures. It was a move motivated by concerns over losing sovereignty to the EU, as evidenced by statements made by the initiators of the referendum: 'We don't care about Ukraine at all. A Brexit-referendum is not possible at this point, so we use all other means possible to put pressure on the relationship between The Netherlands and the EU' (Pardijs 2016).

In the UK, the UKIP was created with one key policy at the centre of its platform: to leave the EU. In recent years, it successfully exploited concerns over immigration, which for several years had been on the rise in the UK, to rally popular support against EU policies and in favour of leaving the EU.

In Hungary, the situation is even more complicated, as the current Prime Minister can arguably be counted among the more Eurosceptic politicians. Viktor Orbán used the referendum on the EU migration quota for his own anti-EU agenda, also trying to claim sovereignty back from the EU: 'Mr Orbán says he is leading what he calls a counter-revolution against EU centralisation, a pushback against Brussels' bossiness' (BBC News 2016). A twofold legal and political particularity may help to explain why the referendum was negatively received by other member states as a betrayal of the 'principle of loyal co-operation' embodied in EU treaties. First, the referendum was organised after the conclusion of community negotiations. The Hungarian authorities submitted their rejection of 'the solidarity mechanisms on refugees' in October 2016, a full year after it had been agreed by a qualified majority of EU interior ministers,⁸ and after having lodged an appeal against it with the European Court of Justice in December 2015.⁹ Second, the Hungarian referendum's core aim was not to give voice to the people for it to clear up an apparently unresolved position on a European issue; it was initiated to invite the population to vote 'No to Europe' (and to the EU migrant quota). Therefore, the Hungarian referendum was intended, and perceived, as a tool in a power confrontation in negotiations between EU member states, through a basic instrumentalisation of the concerned people 'as part of a weak to strong deterrence strategy'. The majority voting 'No' did not modify such power relations and did not advance the Hungarian authorities' negotiation position. Rather, it made relations between governments and people more tense, as it supported contradictory positions, thus accentuating voters' sense of frustration (Bertoncini 2017: 11-12).

In the case of Italy, despite Renzi's criticism against EU-imposed austerity measures, his government coalition held a more pro-European stance than most of the opposition parties. Tying his resignation as Prime Minister to the referendum on constitutional reform fuelled international concerns for several reasons, such as a political stalemate in Italy following its rejection; the likelihood of new elections or (in any case) the benefit to

8 The relocation decision of September 2015 was adopted based on a qualified majority voting (rather than unanimity), and Slovakia, Hungary, the Czech Republic and Romania voted against it. It referred to the relocation of an additional 120 000 asylum seekers from Greece, Italy and other member states who may potentially request it. They were to be distributed according to Commission calculations based on member states' size and wealth, with Hungary obliged to take 1 294 people and Slovakia to take 902. See European Council 2015.

9 On 6 September 2017, the ECJ decided that the EU Council decision of September 2015 was valid (Zalan 2017).

anti-establishment and Eurosceptic groups such as the Five-Star movement (who even advocated a referendum on leaving the Euro); and potentially destabilising effects on the Italian economy (risking to again become a target for financial speculation, as in 2011) and by extension across the Eurozone and beyond. The position expressed by US President Barack Obama and the encouragement by German Chancellor Angela Merkel were emblematic in this regard, and, while their effectiveness as instruments for exercising direct pressure remains uncertain, their interest in avoiding shockwaves across an already weak system is clear.¹⁰

Populist, anti-establishment and Eurosceptic parties are not only on the rise in the countries discussed here. Across Europe, 'insurgent' parties are increasingly gaining popular support and are using referendums as a powerful tool. Researchers of the European Council on Foreign Relations (ECFR) found in a 2016 report that these parties have planned 34 popular referendums 'on subjects from their country's membership to the EU to specific policy issues such as refugee relocation quotas' (Dennison & Pardijs 2016). There is some good news here, however, since the European Council on Foreign Relations (ECFR) researchers found that while challenger parties may be able to change the system, the system can also change them, making them more moderate once they are in power, as was the case with Greece's Syriza Party, the Finn Party in Finland, and the Patriotic Front in Bulgaria (Pardijs 2016).

However, this does not mean that the EU should lean back and calmly watch the rise of populist parties. The increased use of referendums in the EU and on EU matters in recent years highlights several issues that the EU has been grappling with for quite some time now. This leads to a further crucial question: Can referendums help the EU address concerns such as a lack of transparency, democratic deficit, and increased anxiety of member states and their populations over losing sovereignty to what are seen as out-of-touch, elitist decision makers in Brussels?

Referendums do allow for more direct citizen participation and can counter voter apathy because they create public debate on EU policies. Therefore, it might be tempting for the EU and national governments to favour referendums, particularly at a time when most establishment parties are challenged by populist movements and need to prove that they are representing the masses. But referendums are anti-democratic as well. With a threshold of only 30 per cent of voter turnout, which was barely met in the referendum on the EU-Ukraine deal in The Netherlands, the outcome can hardly be seen as representative of the position of the wider public. In the UK, the decision to leave the EU was to a large degree determined by voters in the older age brackets. A controversial study argues that many of these older Leave voters have died since the referendum (Bowden 2016). Whether or not the cited numbers are accurate, what remains true is that many young Britons complain that the Brexit decision leaves them to suffer disproportionately from the policies

10 Indeed, Italy has been and is still considered a relevant partner in the Atlantic Alliance, with the potential to play an equilibrium role within the increasing contrasts with Russia. The third economy of the 27 EU member states has been seen as fundamentally important to maintain a credible European system frightened by Brexit. It has also remained decisive for the geopolitical equilibrium in the Mediterranean and Middle East. See Armellini 2016.

voted for by their older compatriots. In this way, referendums are undermining democracy by creating divisions rather than helping to solve policy problems. There is also the danger that complexities of policy issues are not sufficiently taken into consideration, as referendums look at policy issues in isolation (Economist 2016).

Referendum outcomes are also notoriously unpredictable, especially when citizens are asked questions on the EU (Economist 2015). In times of crises and populist backlashes, which the EU is currently experiencing, the unpredictability of referendums can become particularly dangerous for the European project. Governments sign treaties which are then ratified by legislatures, and adding referendums to this mix complicates the matter of agreeing on transnational policies even further. Europe-wide policies can be blocked by minorities in small countries, as was the case with the Dutch Ukraine referendum (Economist 2016).

Furthermore, it is worth considering that referendums have generally been organised at the discretion of national authorities,¹¹ while the Dutch referendum was based on a popular initiative, displaying a novelty that might undermine the smooth running of the EU. The 61 per cent of voters rejecting the EU-Ukraine Association Agreement expressed the Dutch people's mistrust of their own political representatives as well as of the questioned European agreement. However, this did not alter the power relations established among the member states whose national parliaments had already approved the treaty, as the European Council of December 2016 showed.¹² The low turnout of 32 per cent also denoted the doubtfulness of a political modification at the European level. However, should this type of referendum grow in The Netherlands or in other member states, it would weaken the credibility of national authorities' commitments with their European counterparts and thus challenge the legitimate and effective functioning of the EU. It might easily fuel the resentment of the consulted citizens, whose views might not have primacy over the will expressed by other citizens within the EU. Indeed, increasing the turnout threshold for the validity of this type of referendum would reduce the problem in question,¹³ as would excluding from its field of application those rules on the functioning of the EU, which by definition concern all member states.

Implementing such measures to restrict referendums might seem beneficial, but they should be combined with serious efforts to strengthen and promote representative democracy. Direct democracy may work in small countries such as Switzerland and Liechtenstein, but it is hard to imagine a functioning Europe based on referendums. Its greater democratisation would require reinforcing parliamentary representatives'

- 11 This has its exception in the case of a referendum *de jure* required for constitutional reasons, for instance, if in Ireland there is a transfer of sovereignty over to the EU.
- 12 The European Council reconfirmed its commitment to international law and the territorial integrity of Ukraine as well as the conclusion of the EU-Ukraine Association Agreement, including the establishment of a Deep and Comprehensive Free Trade Area. At the press conference after the meeting, President Donald Tusk said: 'Now the responsibility lies with The Netherlands. The ratification is important not only for Ukraine, but also for Europe's geopolitical standing and credibility. We are counting on our Dutch colleagues' (European Council 2016b).
- 13 The invalidity of the referendum on the relocation of refugees organised by Viktor Orbán relied on its failure to mobilise at least 50% of the registered voters, which appears a democratic, minimum rationale.

control over their national authorities as well as transparency in European decision-making processes. Considering that many extremist and Eurosceptic parties all over the continent are currently exploiting such mechanisms, putting a stop to the referendum craze in Europe would seem a good idea. However, such a step would merely treat a symptom of the EU's current troubles. The underlying causes of anti-EU votes and of the rise of populist political movements run much deeper and are not simply fixed by restricting referendums.

References

- Armellini A 'La riforma costituzionale che attrae gli osservatori internazionali' *Affarinternazionali* 29 October 2016, available at <http://www.affarinternazionali.it/2016/10/la-riforma-costituzionale-che-attrae-gli-osservatori-internazionali/> (last visited 10 December 2017)
- BBC NEWS 'Hungary PM claims EU migrant quota referendum victory' *BBC News* 3 October 2016, available at <http://www.bbc.com/news/world-europe-37528325> (last visited 10 December 2017)
- BBC NEWS 'Netherlands rejects EU-Ukraine partnership deal' *BBC News* 7 April 2016, available at <http://www.bbc.com/news/world-europe-35976086> (last visited 10 December 2017)
- BBC NEWS 'EU referendum results' (undated), available at http://www.bbc.com/news/politics/eu_referendum/results (last visited 10 December 2017)
- Bertoncini Y 'National referendums on European issues: From clarification to frustration' *Jacques Delors Institute* 4 April 2017, available at <http://www.institutdelors.eu/wp-content/uploads/2018/01/euandreferendums-bertoncini-ijd-frs-april17.pdf?pdf=ok> (last visited 10 December 2017)
- Bowden G 'Leave voters dead: Have 120 000 Brexiteers really died since June?' *Huffington Post UK* 9 December 2016, available at http://www.huffingtonpost.co.uk/entry/leave-voters-dead-reality-check-of-claims-120000-brexiteers-have-died-since-june_uk_584ace23e4b0b7ff851cf71b (last visited 10 December 2017)
- Celotto A *Referendum Costituzionale: le ragioni del NO* (2016), available at <http://www.questavoltano.it/area-download/> (last visited 10 December 2017)
- Chu B 'Think you know why people actually voted for Brexit? Think again' *The Independent* 17 July 2016, available at <http://www.independent.co.uk/voices/brexit-theresa-may-when-article-50-why-did-people-vote-wages-housing-market-young-people-a7141206.html> (last visited 10 December 2017)
- Dennison S & Pardijs D (2016) *The world according to Europe's insurgent parties: Putin, migration and people power* London: European Council on Foreign Relations, available at http://www.ecfr.eu/publications/summary/the_world_according_to_europes_insurgent_parties7055 (last visited 10 December 2017)
- Economist* 'Referendum results are notoriously unpredictable' *Economist* 15 October 2015, available at <http://www.economist.com/news/special-report/21673504-referendum-results-are-notoriously-unpredictable-herding-cats> (last visited 10 December 2017)

- Economist* 'Let the people fail to decide' *Economist* 19 May 2016, available at <http://www.economist.com/news/leaders/21699122-putting-big-political-issues-directly-voters-not-more-democratic-and-usually-gets> (last visited 10 December 2017)
- Economist* 'Referendumania' *Economist* 21 May 2016, available at <http://www.economist.com/news/europe/21699146-direct-democracy-spreading-across-europe-not-always-good-thing-referendumania> (last visited 10 December 2017)
- European Council Conclusions of the European Council meeting (15 December 2016) EUCO 34/16, available at <http://data.consilium.europa.eu/doc/document/ST-34-2016-INIT/en/pdf> (last visited 10 December 2017)
- European Council 'Remarks by President Donald Tusk after the European Council meeting on 15 December 2016' 15 December 2016b, available at <http://www.consilium.europa.eu/en/press/press-releases/2016/12/15/tusk-remarks-european-council/> (last visited 10 December 2017)
- European Council Council Decision (EU) 2015/1601 of 22 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and Greece, OJ L 248, 24.9.2015 22 September 2015, available at http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2015.248.01.0080.01.ENG (last visited 10 December 2017)
- Guidi M 'Why Italians should support Renzi's constitutional reform' 16 November 2016, available at <http://blogs.lse.ac.uk/europpblog/2016/11/16/why-italians-should-support-renzis-constitutional-reform/> (last visited 10 December 2017)
- Harris C 'All you need to know about Hungary's refugee referendum' *euronews* (1 October 2016), available at <http://www.euronews.com/2016/10/01/all-you-need-to-know-about-hungary-s-refugee-referendum> (last visited 10 December 2017).
- Harris C 'Renzi, reform and the paradox of Italy's referendum' *euronews* (28 November 2016), available at <http://www.euronews.com/2016/10/17/renzi-reform-and-the-paradox-of-italy-s-referendum> (last visited 10 December 2017)
- JH 'Why is Italy's constitutional referendum important?' *Economist* (27 September 2016), available at <http://www.economist.com/blogs/economist-explains/2016/09/economist-explains-18> (last visited 10 December 2017)
- Jones E 'After the Italian referendum: What comes next' *Foreign Affairs* (5 December 2016), available at <https://www.foreignaffairs.com/articles/italy/2016-12-05/after-italian-referendum> (last visited 10 December 2017)
- Juhász K 'Assessing Hungary's stance on migration and asylum in light of the European and Hungarian migration strategies' (2017) 13 *Politics in Central Europe* 35
- Mendez F & Mendez M (2017) *Referendums on EU Matters* Brussels: Directorate-General for Internal Policies, Policy Department for Citizen's Rights and Constitutional Affairs, Study PE 571.402, available at [http://www.europarl.europa.eu/RegData/etudes/STUD/2017/571402/IPOL_STU\(2017\)571402_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2017/571402/IPOL_STU(2017)571402_EN.pdf) (last visited 10 December 2017)
- Ministero Dell'interno 'Referendum costituzionale: i risultati elaborati dal servizio elettorale' [Online], available at <http://www.interno.gov.it/it/notizie/referendum-costituzionale-i-risultati-elaborati-dal-servizio-elettorale> (undated) (last visited 10 December 2017)
- Pardijs D 'Will Europe's bloody summer change migration policy' *ecfr.eu* (4 August 2016), available at http://www.ecfr.eu/article/commentary_will_europes_bloody_summer_change_migration_policy_7090 (last visited 15 December 2017)
- Pardijs D 'Putin, poultry and politics: 5 remarkable things about the Dutch Ukraine referendum' *ecfr.eu* (5 April 2016), available at <http://www.ecfr.eu/article/>

- commentary_putin_poultry_and_politics_5_remarkable_things_about_the_du6
070 (last visited 15 December 2017)
- Pasquino G 'Nessun allarmismo per l'esito del referendum italiano' *Affarinternazionali* (3 October 2016), available at <http://www.affarinternazionali.it/2016/10/nessun-allarmismo-per-lesito-del-referendum-italiano/> (last visited 10 December 2017)
- Reuters 'Dutch referendum voters overwhelmingly reject closer EU links to Ukraine' *The Guardian* (7 April 2016), available at <https://www.theguardian.com/world/2016/apr/06/dutch-voters-reject-closer-eu-links-to-ukraine-in-referendum> (last visited 15 December 2017)
- Rodotà S 'Contro l'apatia e il disincanto' in A Grandi & A Pace (eds) *La Costituzione bene comune* (2016) Roma: Ediesse
- Rothwell J, Foster P & Cseko B 'Hungary referendum: 98 per cent of voters say "no" to EU migrant quotas' *The Telegraph* (3 October 2016), available at <http://www.telegraph.co.uk/news/2016/10/02/hungary-votes-no-to-migrant-quotas-polls-suggest---but-what-does/> (last visited 15 December 2017)
- Scarpetta V 'All you need to know about the Italian constitutional referendum' *UCL: The Constitution Unit* (13 October 2016), available at <https://constitution-unit.com/2016/10/13/all-you-need-to-know-about-the-italian-constitutional-referendum/> (last visited 10 December 2017)
- Sinclair H 'Brexit: Farmers who backed Leave now regret vote over subsidy fears' *The Independent* (30 July 2016), available at <http://www.independent.co.uk/news/uk/farmers-brexite-regret-bregret-funding-common-agricultural-policy-a7163996.html> (last visited 15 December 2017)
- Tamblyn T 'Following Brexit, "What is the EU?" becomes one of the most searched terms in the UK' *Huffington Post UK* (24 June 2016), available at http://www.huffingtonpost.co.uk/entry/brexit-google-what-is-the-eu_uk_576d4f06e4b0232d331ded24 (last visited 15 December 2017)
- Van der Loo G 'The Dutch referendum on the EU-Ukraine Association Agreement: Legal options for navigating a tricky and awkward situation' *CEPS* (8 April 2008), available at <https://www.ceps.eu/publications/dutch-referendum-eu-ukraine-association-agreement-legal-options-navigating-tricky-and> (last visited 10 December 2017)
- Wright O 'EU renegotiations: David Cameron gets "unanimous agreement" as Britain is given "special status" in Union' *The Independent* (20 February 2016), available at <http://www.independent.co.uk/news/uk/politics/eu-renegotiations-david-cameron-unanimous-agreement-britain-europe-a6885206.html> (last visited 10 December 2017)
- Zalan E 'EU court overrules Hungary and Slovakia on migrants' *euobserver* (6 September 2017), available at <https://euobserver.com/migration/138904> (last visited 10 December 2017)