



LIECHTENSTEIN-INSTITUT

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Direct democracy and European integration

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53RD MEETING OF THE EEA JOINT PARLIAMENTARY COMMITTEE



Structure

- Puzzle of direct democracy (DD) and European integration
- Typology
- General objections against DD in the EU
- Patterns of DD
- Empirical data
- Negative EU referendums
- EU-wide referendums



Puzzle of DD and European integration

- EU: Legitimacy by means of legal rationality of the policy making process
 - Based on EU treaties
 - Representative credentials of the European Parliament and governments of the member states in Council
 - Aim is to ensure high policy effectiveness
- Is the legitimacy of DD superior to a representative system?
 - Direct democracy and representative democracy are not mutually exclusive
 - Always a combination of direct democratic and representative instruments
 - DD requires a clear definition of the institutional setting and has to be compatible with the political culture of a nation

In a nutshell:

- Different ways and concepts to measure the quality of established democracies (e. g. <http://www.democracybarometer.org> based on principles freedom, control and equality)
- International comparisons of democratic systems have to be interpreted carefully



Observations from Europe

- Referendums on EU matters are the ...
 - consequential manifestation of the politicization of European integration.
 - direct venue for voters to influence decisions on European integration.
- Referendums often trigger a dualism of integration-friendly majorities in government and parliament against more skeptical citizens.
- Referendums allow Eurosceptic parties and movements to make their mark and mobilize people.
- Referendums affect the integration plans, positions and bargaining behavior of governments even before they actually take place.

In a nutshell:

- Referendums on EU matters have become a persistent feature of European integration



General objections against referendums on EU matters

- Lack of competence of the average citizen to decide in referendums
- Impossibility to have DD in large political units
- Democratic bias towards interest groups (with more resources)
- Do voters actually answer the question they are asked or are they influenced by other policies?
- Referendums can only provide dichotomous choice about a policy
 - Polarization of public opinion
- Arbitrary use of plebiscites by governments



Typology of popular vote based on form of procedure

- Citizens' Initiative
- Citizens' Initiative + Authorities' Counter-Proposal
- Citizen-initiated Referendum
- Citizen-initiated Referendum + Counter-Proposal
- Obligatory Referendum
- Plebiscite
- Veto-Plebiscite
- Authorities' Minority Plebiscite
- Authorities' Minority Veto-Plebiscite
- Agenda Setting Initiative

Initiative

- Author of ballot proposal \neq initiator of procedure
- To initiate something

Referendum

- Author of ballot proposal \neq initiator of procedure
- To confirm something
 - initiated by citizens
 - triggered by law

Plebiscite

- Authorities controlled popular votes
 - for legitimization and mobilization
 - for bypassing other representative institutions
 - for disengaging from tough policies

Source of typology: Rolf Büchi, IRI Europe

Categories of referendums on EU matters*

- Mandatory vs. optional
- Simultaneous (in more than one EU state) vs. serial (in one EU state after the other)
- Binding vs. consultative

- Membership referendum, treaty (ratification) referendum, or policy referendum?
- Initiated by citizens, by representative authorities, or constitution?

* For reasons for simplicity and in line with most of the literature I will use the term referendum when speaking about popular votes on EU matters in the EU.

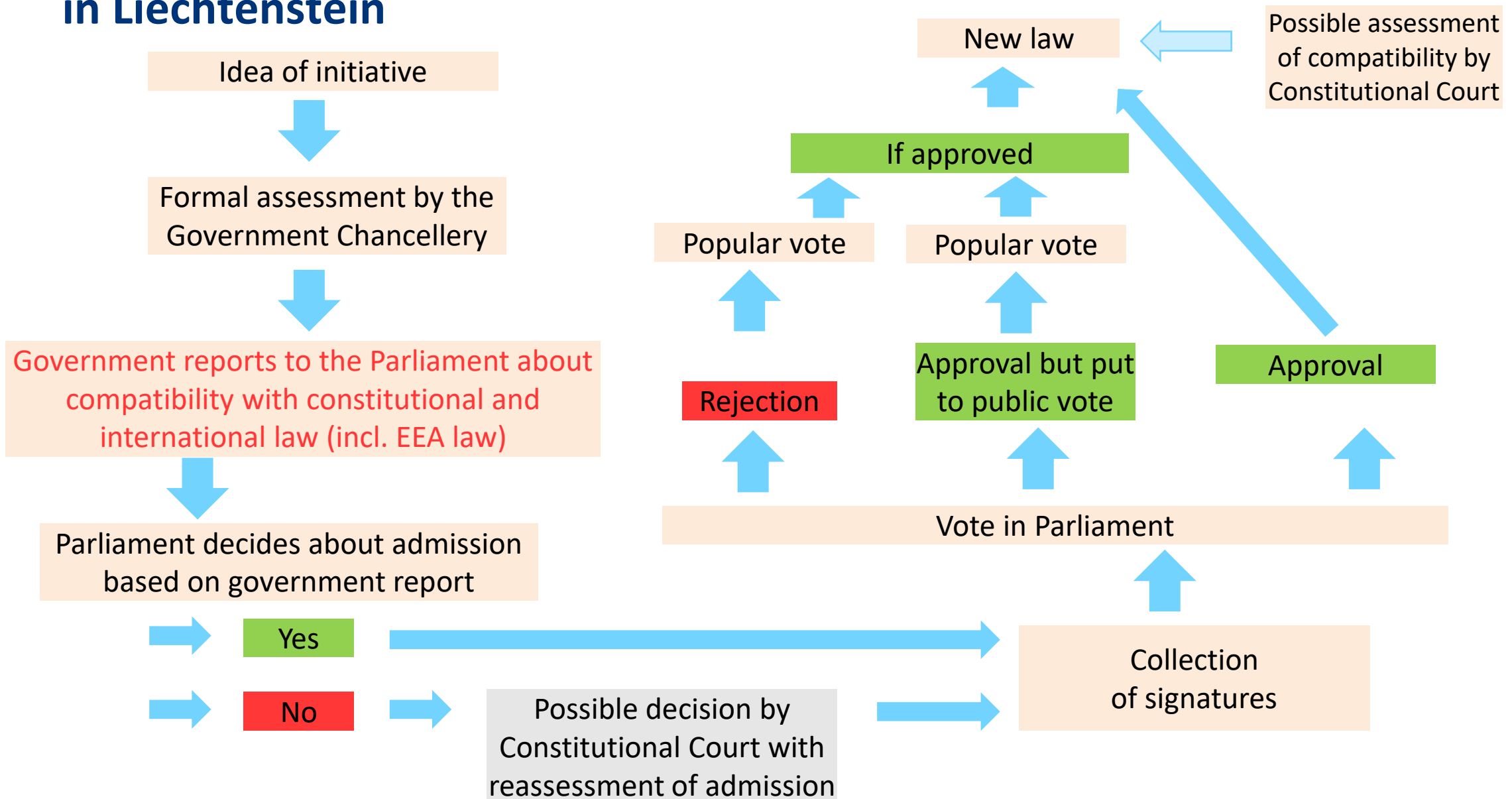


Selected patterns of direct democracy

- Is there a material assessment of popular initiatives?
 - Compatibility with EEA law/ international law?
- How are referendums and initiatives implemented?
 - Room for maneuver for parliaments/ governments?
- How is DD embedded in the political system?
 - Institutional setting?
 - Consultation? Consensual decision-making? Double majorities?
- Is there a tradition of DD?
 - The rarer, the the less predictable ...
- What are possible campaign effects?
 - Stability of attitudes
 - Effects of mobilization



Simplified illustration of procedure of a popular initiative in Liechtenstein



Comparison of direct democracy in Switzerland and Liechtenstein

Pattern	Switzerland	Liechtenstein
Instruments (at federal level)	Constitutional initiative; obligatory referendum; optional referendum	Constitutional initiative; law initiative; optional referendum, and various other rights
Culture and procedure	Defined by idea of popular sovereignty	Embedded in the principle of rule of law
	Strategic use (in particular of initiatives) <ul style="list-style-type: none"> • Agenda setting • Mobilization (partisan logic) 	Cautious use of initiatives <ul style="list-style-type: none"> • No agenda setting
	Consensual decision-making <ul style="list-style-type: none"> • Sometimes lengthy implementation process of initiatives (i. e. dilution etc.) • Extensive consultation in order to avoid a referendum • Information about pro and cons in official documents 	Consensual decision-making <ul style="list-style-type: none"> • No implementation procedure (i. e. law initiative) • Extensive consultation in order to avoid a referendum • Information about pro and cons in official documents
	Mainly formal assessment of initiatives	Formal and material assessment of initiative
Number of popular votes	304 votes (1985-2018, federal level)	51 votes (1985-2018, federal level)
Success rate of initiative	11 percent	27 percent



DD in Liechtenstein and EEA membership

- Material assessment of compatibility of popular initiatives with EEA law
 - Report by the government
 - Admission by the Parliament
 - Possible control by Constitutional Court
- Optional referendum on a decision of the EEA Joint Committee (JCD)
 - Decisions of the EEA Joint Committee are treated as an international treaty
 - Have to be ratified by the Parliament if constitutional requirements were indicated (Article 103 EEA Agreement)
 - No referendum on JCD thus far
- Optional referendum on a law implementing an EEA legal act
 - Approval of such a referendum could trigger a infringement procedure due to a delayed implementation
 - Room for maneuver to implement the EU act compatible with domestic preferences? Room for maneuver for belated opt-out?

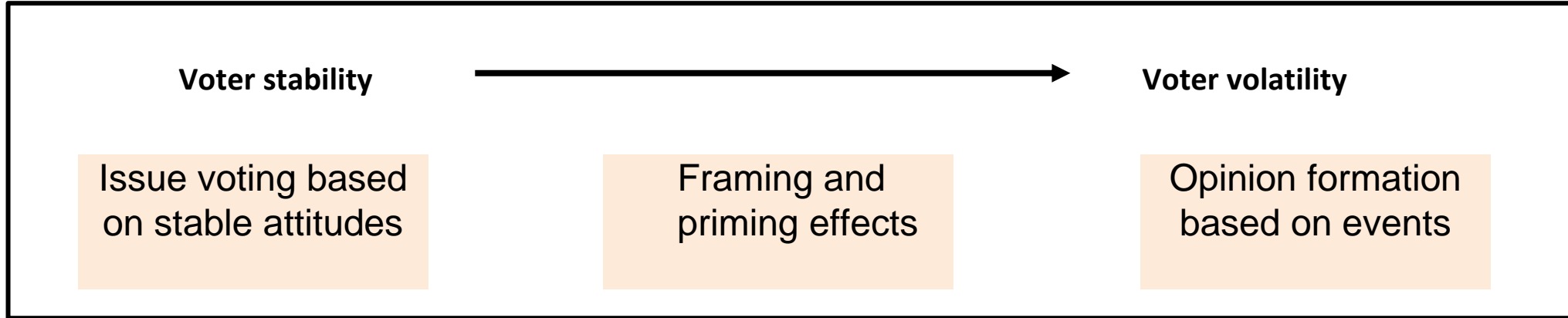


DD in Liechtenstein and EU membership?

- Popular vote on EU accession
 - Not obligatory but very likely
- Material assessment of compatibility of popular initiative with EU law instead of EEA law
 - De facto limitation of DD due to wider scope of EU law
 - But DD already limited due to regional union with Switzerland
- Optional referendum on a law implementing an EU legal act
 - Approval of such a referendum could trigger an infringement procedure due to a delayed implementation
 - Room for maneuver to implement the EU act compatible with domestic preferences? Room for maneuver for belated opt-out?



Campaign effects and voter behavior with regard to EU matters



- Patterns of voter behavior that may explain a popular vote against the EU
 - New cleavages in society between cosmopolitanism and communitarism? → *Rise of ideological Euroscepticism*
 - Decreasing trust in authorities? → *Elites in general more supportive for EU matters*
 - Expressive and emotional voting? → *Voting does not necessarily refer to question of referendum*
 - Asymmetric mobilization? → *Mobilization by specific policy (e. g. immigration) and not EU context (e. g. future of countries' EU relations)*
 - Impact of political education? → *Little knowledge about EU*

Referendums on EU matters

	<i>Number of referendums on:</i>		<i>Constitutional provisions for:</i>	
	<i>EU issues</i>	<i>Non-EU issues</i>	<i>Mandatory referendums</i>	<i>Optional referendums</i>
Austria	1	3(2)	Yes	Yes
Belgium	0	0	No	Yes
Bulgaria	0	3(2)	No	Yes
Croatia	1	2(0)	Yes	Yes
Cyprus	0	1	No	No ^a
Czech Rep	1	0	Yes	No ^a
Denmark	8	9(2)	Yes	Yes
Estonia	1	3(0)	Yes	Yes
Finland	1	0	No	Yes
France	3	6	Yes	Yes
Germany	0	0	No	No
Greece	1	3(0)	No	Yes
Hungary	2	6(1)	Yes	Yes
Ireland	9	29(24)	Yes	Yes ^d
Italy	1	70	No	Yes
Latvia	1	6(3)	Yes	Yes
Lithuania	1	9(2)	Yes	Yes
Luxembourg	1	3	No	Yes
Malta	1	2(1)	Yes	Yes
Netherlands	1	0	No	No
Poland	1	9(3)	No	Yes
Portugal	0	3	Yes ^d	Yes
Romania	1	4(3)	Yes	Yes
Slovakia	1	3(0)	Yes	Yes
Slovenia	1	16(11)	Yes	No
Spain	1	2(1)	Yes	Yes
Sweden	2	8	No	Yes
UK ^b	2	1	No	Yes ^c
Total	43	201(147)		

In a nutshell:

- Referendums on EU matters are a persistent feature of European integration
- Correlation between number of votes on non-EU issues and votes on EU issues

Source: Cheneval, F. & Ferrin, M. (2018), Referendums in the European Union: Defective by Birth?, JCMS.
IDEA Direct Democracy Database; c2d database

Referendums on European integration in non-EU states (*not exhaustive*)

Case & Year	Issue
Liechtenstein 1992	Accession to EEA
Switzerland 1992	Accession to EEA
Liechtenstein 1995	Accession to EEA
Switzerland 1997	Popular initiative to let people decide on joining EU
Switzerland 2001	Popular initiative referendum on EU accession negotiations
Switzerland 2000	Bilateral treaties with the EU
Switzerland 2005 (b)	Bilaterals (extension of free movement)
Switzerland 2005 (a)	Bilaterals (Schengen)
Switzerland 2006	Bilaterals (extension to Eastern European countries)
Switzerland 2009	Bilaterals (free movement to Bulgaria and Romania)
San Marino 2013	Accession negotiations with the EU
Switzerland 2014	Migration quotas (affects bilateral treaties)

Additional votes not covered by the table exported from study for the EU Parliament:

Norway 1994 *Accession to EU*

Iceland 2010 *Icesave bill 2*

Iceland 2011 *Icesave bill 3*

Mendez, F. & Mendez, M. (2017), Referendums on EU Matters. Study. European Parliament. Da



Referendums on EU matters in Switzerland

Ballot measure and institutional type	Year	Outcome	Turnout rate
Treaty on the European Economic Area (compulsory referendum)	1992	Rejected (49.7% Yes)	78.7%
"EU membership application: let the people decide" (popular initiative)	1997	Rejected (25.9% Yes)	35.3%
Bilateral agreements (optional referendum)	2000	Accepted (67.2% Yes)	48.3%
"Yes to Europa" (popular initiative)	2001	Rejected (23.2% Yes)	55.8%
Association to the Schengen and Dublin agreements (optional referendum)	2005	Accepted (54.6% Yes)	56.6%
Extension of the agreement on the free movement of persons to new EU member states (optional referendum)	2005	Accepted (56.0% Yes)	54.5%
Federal Law on the cooperation with Eastern European countries (optional referendum)	2006	Accepted (53.4% Yes)	45.0%
Renewal of the agreement on the free movement of persons and its extension to Romania and Bulgaria (optional referendum)	2009	Accepted (59.6% Yes)	51.4%
"Stop Mass Immigration" (popular initiative)	2014	Accepted (50.3% Yes)	56.4%

Sciarini, P. (2019), The drivers of Swiss voters' decisions in direct democratic votes on European integration. Blog. Efta-Studies.org.; *Red color indicates that the people decided against the recommendation of the government.*



Negative EU referendums and what happens after?

- Not the end of the story
- Considerable room for maneuver in responding to them

Response	Definition
Acquiescence	Governments abandon the integration agreement without replacing it
Substitution	Governments abandon the integration agreement, but replace it with a weaker agreement
Revision	Governments do not abandon the integration agreement, but revise it substantially
Differentiation	Governments do not abandon the integration agreement, but grant opt-outs
Reinterpretation	Governments do not abandon the integration agreement, but reinterpret its rules
Dilution	Governments water down the implementation of the referendum outcome
Disregard	Governments ignore the referendum outcome

Data on negative referendums on EU matters

	Year	State	Issue	Issue type	Procedure	Pro-EU vote %	Govt. EU Pos.	Response
1	1994	NO	EU membership	ACC	Government	47.8		Acquiescence
2	2000	DK	Euro adoption	ACC	Required	46.8	5.19	Acquiescence
3	2003	SE	Euro adoption	ACC	Government	42	5.5	Acquiescence
4	1972	NO	EU membership	ACC	Government	46.5		Substitution
5	1992	CH	EEA membership	ACC	Required	49.7		Substitution
6	2015	DK	JHA opt-in	ACC	Required	46.9	5.82	Substitution
7	2005	FR	Constitutional treaty	INT	Government	46.6	5.71	Revision
8	2005	NL	Constitutional treaty	INT	Government	38.2	5.12	Revision
9	2008	IE	Lisbon treaty	INT	Required	46.6	5.87	Revision
10	1992	DK	Maastricht treaty	INT	Required	49.3	6.38	Differentiation
11	2001	IE	Nice treaty	INT	Required	46.1	5.63	Reinterpretation
12	2016	NL	Ukraine association	INT	Non-govt. (non-bind.)	38.2	5.32	Reinterpretation
13	2014	CH	Movement of persons	WDR	Non-govt. (binding)	49.7	4.02	Dilution
14	2016	UK	EU membership	WDR	Government	48.1	3.14	Dilution
15	2015	EL	Bail-out terms	WDR	Government	38.7	2.18	Disregard

Source: Schimmelfennig, F. (2019), Getting around no: how governments react to negative EU referendums, JEPP.



Do we need EU-wide referendums?

Challenges due to current practice

- Different practices and legislations at the national levels
- Referendums likely to prompt a partisan logic
- Referendums likely to produce unequal negotiating power among member states (i. e. strategic use of referendums as a threat)
- Discriminatory effect of country-specific referendums
- Results in earlier referendums asymmetrically impact referendums held elsewhere
- Arbitrary use of plebiscites by governments
- More general
 - Criticism of EU democratic deficit due to limited set of political rights of citizens
 - Supplementing EU Citizens' Initiative



Do we need EU-wide referendums?

Challenges for implementation

- Difficult to translate different practices and legislations in a common institution at EU level
- Activation of direct democratic instruments not just a matter of regulation
 - ➔ Tradition and political culture
- Contrary to concept of *demoicracy*?
- Increased polarization?
- Decreased policy effectiveness?



Conclusions

- Referendums on EU matters are part of European integration
 - “unavoidable element” or “adequate element”?
 - Important venue for the politicization of European integration
 - But: government and/or EU strategies of working around referendums
- DD can increase democratic legitimacy of a policy
 - Depending on institutional setting and political culture
 - DD not just an add-on to representative democracy
- Liechtenstein model of DD better compatible with EU integration than Swiss model
 - Political culture implies a more cautious use of DD
 - DD embedded in principle of rule of law → assessment of compatibility of a popular initiative with constitutional and international law



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