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Referendum on the EU-Constitution

Constitutional and political situation in the EU member and accession states

Negotiations in Nice in 2000 were unable to prepare the EU for the enlargement of ten new member states. These countries have formally joined the EU from May 1, 2004 under the ruling of the Nice Treaty.

Content

short version of

*+ Constitutional situation
+ Political situation*

*concerning referenda
on EU-Constitution
in 25 countries.*

vers June 17, 2004

The Convention on the Future of Europe was initiated as a democratic approach to drafting a future EU Constitution. Opinions differ, however, as to whether it really was a democratic approach since the people were not directly involved in the drafting process!

In 2003, ten referendums were held in ten countries on the EU. The people of these countries had the chance to decide on their political future.

At the EU summit in Brussels on 13 December 2003, heads of states could not agree on the future system of qualified majority voting.

The Intergovernmental Conference was suspended mainly over this question and the project of a EU Constitution appeared endangered. This breakdown showed that it is not the people who endanger the development of the EU with their calls for a referendum, but the undemocratic backdoor negotiations of the heads of states.

To have a EU Constitution with the highest democratical legitimation the people have to decide on it in fair referendums in all countries concerned!

But are Europe's political leaders willing to involve the people in constructing the future EU? In which states will a referendum be held for sure? Where is it compulsory under their national constitutions? And where expressly excluded?

According to a study conducted by Democracy International, the national constitutions of 17 out of the 25 EU member states enable a referendum on the EU Constitution.

Nine member states have already indicated their intention to hold a referendum on the EU Constitution: Belgium, the Czech Republic, Denmark, Ireland, Luxembourg, The Netherlands, Portugal, Spain and the UK.

There is therefore a good chance that a referendum will be held in more than half of the 25 states. The more states that decide to hold a referendum, the bigger the political pressure will be on the hesitating, sceptical or still refusing states.

To get all relevant information visit the media-site on the homepage of the ERC: <http://european-referendum.org/about/media.html>

June 13, 2003, last session of the Convention on the Future of Europe: ERC media event about the demand of the ERC for fair referendums on the EU-Constitution vis-à-vis the European Parliament



1) Constitutional situation:

Referendums on the EU Constitution can be binding or consultative.

Politically binding referendums are preferable because they guarantee the highest democratic legitimation.

Non-binding referendums can be an alternative, if the procedure for a constitutional amendment to enact a binding referendum requires more time than available for the ratification of the EU Constitution.

Pursuant to Art. 48 EU Treaty, the EU Constitution has to be ratified according to the requirements of the national constitutions of the member states, since the EU Constitution effects an amendment of the EU Treaties in force.

The EU Constitution implies a transfer of sovereignty from the member states to the EU. The more extensive the transferred sovereignty, the higher the legitimisation requirements by either the parliament (e.g. with qualified majority) or, as the highest level of democratic legitimisation, by the sovereign itself – the people – in a referendum.

Referendums are expressly provided for in 20 national constitutions of the 25 states concerned.

In 17 states the provisions of the national constitutions enable a referendum on the EU Constitution.

The constitutional provisions of 12 states enable a binding referendum (Czech Republic, Denmark, France, Greece, Hungary, Ireland, Latvia, Lithuania, Poland, Portugal, Slovakia and Slovenia).

In Ireland a referendum on any transfer of sovereignty is mandatory, in Denmark a referendum on international treaties can only be circumvented under specific conditions.

In three states (Finland, Luxembourg and Spain) at least a consultative referendum on the EU Constitution can be held.

A further two states (Austria and Sweden) enable a binding referendum only if the transfer of sovereignty caused by the EU Constitution effects an amendment to their national constitutions. But in both states, a consultative referendum can also be held independent of the extent of transferred sovereignty.

Malta enables a referendum only if the transfer of sovereignty to the EU Constitution effects amendments

to the fundamental principles of its constitution (in this case a referendum is also provided for in Austria, Lithuania, Poland and Spain). But these principles are guaranteed by Art. 6 EU-Treaty. Nonetheless, Malta has already held a referendum on the accession to the EU.

In two states, a referendum on international treaties is expressly excluded by their national constitutions (Estonia and Italy). Nevertheless, Estonia held already a referendum on accession to the EU and Italy on a European issue, too.

The constitutional provisions of the remaining 5 states (Belgium, Cyprus, Germany, Netherlands and the UK) do not expressly provide for referendums. Nevertheless, the UK (which has no written constitution), held a referendum in 1975 on a European issue and has announced as well as Belgium and the Netherlands to hold a referendum on the EU Constitution.

Even Cyprus - the only accession country which did not hold a referendum on the EU membership - held a referendum on the islands division.

As such, Germany is the only EU country with no constitutional basis for a referendum, no recent history of a national referendum and no intention to hold one on the EU Constitution.

Conclusion of the constitutional situation:

In 17 of the 25 EU member states a referendum on the EU Constitution can be held according to their constitutional provisions.

In 7 of the remaining 8 states referendums have already been held or will be held - in some cases without a current constitutional basis or even though referendums on international treaties are expressly excluded.

Consultative referendums can be held in all states concerned even without an explicit constitutional basis.

The detailed presentation of the precise constitutional analysis of all 25 EU states is available at:

www.european-referendum.org/background/refsum.html

Current Political situation:

The EU summit on December 13, 2003 was intended to conclude with an agreement on the draft EU Constitution. Its failure therefore postponed the timetable for the ratification process.

The project of an EU Constitution was further endangered by ideas of a core EU or of a so-called two-speed EU. It seemed likely that, if agreement could not be found before the end of 2004, the project of an EU Constitution would fail.

After series of bilateral negotiations conducted by the Irish EU Presidency, EU governments agreed to make very effort to find an agreement before the end of 2004. In particular, the Irish EU Presidency concentrated on breaking the deadlock over the thorny issue of the qualified majority voting system - the cause of the EU summits suspension in December 2003.

As a result of these efforts, heads of states agreed at the EU Spring summit on March 25/26, 2004 to find an agreement on the voting system and to finalise their negotiations on the EU Constitution by June 18, 2004 at the very latest, only one week after the elections for the European Parliament.

Nine out of the 25 member states already announced that they will hold a referendum on the EU Constitution: Belgium, the Czech Republic, Denmark, Ireland, Luxembourg, the Netherlands, Portugal, Spain and the UK.

Ten new states formally joined the EU on May 1, 2004. After the referendums on the EU accession in 2003 the political focus in these countries is switching to the question of a referendum on the EU Constitution.

In nine out of 25 EU member states the people will decide on the EU Constitution in referendums!

In most of the remaining states there were good chances for a referendum on the EU Constitution before the Intergovernmental Conference was suspended on December 13, 2003.

But as there was, and still is, no final agreement on the EU Constitution most of these governments still have no need to decide definitely about holding a referendum.

In further three states a referendum on the EU Constitution is currently very likely: France, Italy and Poland.

In ten states the question whether to hold a referendum

is still undecided: Austria, Estonia, Finland, Germany, Hungary, Latvia, Lithuania, Slovakia, Slovenia and Sweden.

Only in three countries a referendum on the EU Constitution seems at the moment unlikely: Cyprus, Greece and Malta.

The British Prime Minister Tony Blair and the Belgium Prime Minister Guy Verhofstadt were the latest who announced to hold a referendum on the EU Constitution in their countries. French President Jacques Chirac, amongst others, has come under pressure to hold a referendum and is expected to pronounce a referendum after the summit.

After an agreement on the EU Constitution the dynamics for a ratification of the EU Constitution by referendums will continue to increase.

The more states that decide to hold a referendum, the bigger the political pressure will be on the others.

Conclusion of the political situation:

Nine states – Belgium, the Czech Republic, Denmark, Ireland, Luxembourg, the Netherlands, Portugal, Spain and the UK – already intended their willingness to hold a referendum on the EU Constitution.

In most of the remaining states the chances for a referendum on the EU Constitution are good or the debate is still open.

The more countries decide to hold a referendum on the EU Constitution, the bigger the political pressure on the hesitating or still refusing states will be.

The chances are very good that in most - or even all - of the 25 countries the people will decide on the EU Constitution in fair referendums!

The detailed overview on the political situation of all 25 EU states is available at:

http://european-referendum.org/materials/di/referendum/erc_info.pdf

The detailed data about the current political and constitutional situation in all countries concerned can be found at:

<http://european-referendum.org/countries/index.html>