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**THE GLOBAL ECONOMIC CRISIS AND
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**VOX POPULI MORE POPULAR THAN EVER:
VOTERS' CHALLENGES TO THE ENLARGEMENT PROCESS**

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***Abstract:** There exists no perspective for the European Union without explicit approval of its future shape given by its actual and potential citizens. To avoid deepening of the current institutional crisis, the decision-makers will have to listen carefully to voters' choices, the expression of which seems destined to be given by national referendums. This paper analyzes the controversy arising between the two general methods of approving EU treaties and new members' accession. It also examines a historical record and tendencies in decision-making within the parliamentary/ popular ratification dilemma. Whether the Union is ready to handle the possible negative outcomes of referendums to be held by actual and perspective Member States is another important question discussed. The growth of influence of direct democracy, with significant implications for future development of the Union, is inevitable if the latter is to legitimately overcome the economic and political crisis.*

***Keywords:** Referendum, EU Enlargement, Integration, Parliamentary Ratification, Legitimacy.*

1. Introduction

The most recent challenges to the enlargement of the European Union have been those of economic and political nature. However, one specifically legal aspect of the problem tends to pave way for implications for both constitutional law in general and democratic institutional design of Europe in particular. To consult voters on both side of the Union's current frontiers on the enlargement perspective means to give profound significance to popular will as the corner-stone of democracy. This also serves to answer criticisms of the Union's structural democratic deficit and allegedly organic insufficient legitimacy, which still cries out for corrections, even though some defficiencies have been neutralized by recent attempts to popularize politically the Union.

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Ever since the introduction of direct election to the European Parliament in 1979, the attempts to democratize the Union's institutional framework have been emerging again and again. These initiatives include ideas of introducing a President of the Union directly elected by the whole of the voting population of the Union, as well as an upper chamber of the European Parliament. Some EU-analysts have even been putting forward an idea of the introduction of a Europe-wide referendum. What has been achieved, however, is the principle of subsidiarity, established in the 1992 Treaty of Maastricht and contained in Article 5 Paragraph 3 of the Treaty on European Union (consolidated version following the adoption of the Treaty of Lisbon, effective since 2009), aimed at bringing the policies of the Union closer to the voters (EU citizens) to take part in deciding upon them and implementing them. The Union also achieved a united and personalized executive, i.e. the President of the European Council (who is sometimes – wrongly – referred to as the President of the EU).

There still remains a long list of authors proposing an introduction of elements of direct democracy in the Union decision-making in order to challenge the democratic deficit and create a „European demos“ (Feld, Kirchgässner 2003, 1-2). The key reason for the 'survival' of the criticism of the sort is that recent institutional reforms (introduced by the Treaty of Lisbon) had promised the more direct participation of citizens in creating political choices of Europe, but have so far failed to deliver it. For example, the European Citizens' Initiative represented one of the most daring innovations brought by the Treaty of Lisbon in the direction of increasing direct democracy. Article 11, Paragraph 4 of the TEU and Article 24, Paragraph 1 of the Treaty on the Functioning of the European Union – both introduced by the Treaty of Lisbon – enable one million citizens of the Union, who hold nationality of at least one quarter of the Member States (i.e. – 7 states), to ask the European Commission (the organ holding the right of initiative in the EU) to propose a normative act in a sphere in which the Member States have delegated powers to the Union. However, no significant changes in the field of strengthening democratic ties of the political elite of the Union and the voters has been achieved since the adoption of the TEU of 2009. There is plenty of support for the vitality of the comment made a decade and a half ago, according to which “since early 1990s, it has been clear that the ‘permissive consensus’ among Europe’s voters in favor of continued European integration, can no longer be taken for granted.” (Mény, Knapp 1998, 442)

The question of whether citizens of actual (twenty-seven countries) and potential (Albania, Bosnia and Herzegovina, Iceland, FYR Macedonia, Montenegro, Serbia, Turkey) Member States of the European Union approve its future shape, including any potential geographical enlargement of the Union, is of immense importance nowadays. Observations laid out in this article are based on examples provided by experiences with referendums in several European Union member states during the decades behind us. The traditional division of the methods of decision-making on the compact national scale before the eyes of all the other members of the Union – i.e. the parliamentary vs. popular ratification – is alive, but struggling to maintain its present balance of conflicting influences. This concept will be discussed in several sections of this article, which focuses on the method of referendum as an instrument to raise public awareness of contemporary problems of the Union and to democratize further the Union's institutional capacities. To understand the problem properly, readers are invited to think of that concept as of the rising of what this author chooses to name *vox populi*, the term aimed at signifying direct expression of the political will of EU citizens, as well as that of voters in countries that aspire to join the Union.

Vox Populi More Popular than Ever: Voters' Challenges to the Enlargement Process

The plan of the paper is as follows. The first section examines the controversy arising between parliamentary and direct approval of EU treaties and enlargements plans. The second section shows the historical background of how the problem has been resolved through decades. It also examines whether a trend emerges to confer the decision-making to voters directly. In the following section I attempt to illustrate more precisely whether the European Union could cope with possible no-votes in the referendums held in the future. I conclude that the raising influence of referendums, as a powerful instrument of direct democracy, has important implications for the Union's future development. It is therefore essential not to overhear the idea that citizens have a right to express their Europe-related attitudes directly. Correspondingly, the leading politicians of the Union and of the Member States have a duty to let the *vox populi* express itself without formal mediation provided by national legislatures.

2. Approval of European Treaties and Enlargement Cycles: The Two Methods

Traditionally, the European Union treaties have been confirmed on the national level either by parliamentary approvals, or by referendums. The same could be said of the approval of the EU enlargements, managed traditionally in occasional cycles, which meant that plural new Member States have been simultaneously admitted to the EU (with an exception of Croatia's admission to the full membership status in 2013). In constitutional law of European nations, no satisfactory alternative to those two methods has been found, and each treaty that redrew the institutional map of the Union has either been approved or rejected through one of those two methods. The choice of ratifying a strategic EU act *via* referendum or through parliament invites, today more than ever, answers of higher importance than a simple doctrinal controversy.

Under the existing EU rules, the coming into force of each new treaty revision (a partial reform or a total redrawing of the treaty) depends on its unanimous ratification by all Member States. Namely, Article 48 of the Treaty of Lisbon expressly states that, under "ordinary revision procedure", "amendments shall enter into force after being ratified by all the Member States in accordance with their respective constitutional requirements." The same method has been used by the Article "O" of the Treaty of Maastricht, which stipulated that an agreement by the applicant State and Member States of the Union "shall be submitted for ratification by all the contracting States in accordance with their respective constitutional requirements." Thus, each Member State holds a veto over the coming into force of any new treaty or – which is important for the subject of this paper – of any new enlargement of the Union.

The TEU, however, stops reasonably short of giving a more precise instruction as to how this *consensus universalis* of all the Member States could be attained. Nevertheless, only the constitutional legal framework of Ireland require that each European treaty must be ratified through a constitutional amendment, which further necessitates a referendum to be held in each comparable instance (these requirements played an immense role during courses of the ratification procedures in each of those two Member States, as shall be seen). It is useful to analyse the differences underlying this division of methods.

Parliamentary model of ratification may be associated with political pragmatism. The Member States may, through opting for the parliamentary ratification, choose not to over-politicize the matter of adoption (far more frequent than rejection) of a new EU treaty,

or an expected enlargement. Either through relative, absolute, or qualified majorities, approvals by national legislatures have until recently been a dominant method of confirming the treaties. However, this type of ratification depends on parliamentary arithmetic and disciplined party majorities, a subject which bears significant importance in the context of transitional South East European democracies. Further, in the instrument of parliamentary ratification lays a danger of national legislative bodies' effectively monopolizing mediation between the Union and its citizens. By practically granting to parliaments unlimited autonomy and full discretion in making long-term choices, this method bears significant consequences for national economic and social progress and the legal framework of the Member States. This is particularly true if an observer agrees that a quasi-symbiotic relationship between the legislative and the executive continues to exist in most of European countries. Therefore, a parliamentary role may be nothing more than that of a 'rubber-stamp' of an already achieved agreement between various executives of European nations. In this context, legislative ratification appears to be a hardly sustainable method as the decades of the integration-related problems have advanced.

On the other hand, parliaments enjoy the role of mediators between various, or even conflicting, public demands. The representativeness of parliaments has, more or less, been questioned throughout the twentieth century, but the notably influential role of legislative bodies cannot seriously be put into question. This hypothesis, however, does not have anything to do with a possibility of exploring a more direct participatory role that can be given to voting population of European countries, wither within the EU's current boundaries, or outside them.

The second model of ratification is identified with referendums. One of the main methods of introducing various national electorates' choices and attitudes concerning the EU issues has therefore, through the decades, been a referendum. According to respective constitutional frameworks of the Member States, the referendums could be mandatory (*i.e.* obligatory) or optional, with political decision-makers holding a final call on whether the voters should be consulted. In other words, even if the decision to consult the voters directly is dependent on constitutional requirements of a given country, it also depends on a political decision of the government. For example, the Dutch constitutional system does not contain any type of obligatory, or mandatory referendum (yet the results of the referendum held in 2005 are well known for its long-term effects on European scale). In similar way, the French Constitution from 1958 does not require a referendum, neither for the ratification of international treaties in general, nor for the particular case of a European treaty. Therefore in 2005, in France, as in Netherlands, a decision to submit the ratification of the Treaty establishing a Constitution for Europe to a referendum was *political* in nature (and not legal) (Pernice 2009, 363). As for the United Kingdom, the mechanism of referendum has traditionally been limited to the most important constitutional issues (McLean, 422), which so far only very rarely included the EU-related topics.

In general terms, referendums serve to give a legal form to the popular will, therefore representing an effective substitute for the legislative work and are a constitutional equivalent of regular legislation. Through post-legislative referendum popular majority may also be called to confirm or reject a decision already made by parliamentary majorities. Such direct consultations were held in the United Kingdom in 1975 (on the question of whether to remain in the European Communities, with approximately two thirds of the electorate preferring a positive outcome).

Vox Populi More Popular than Ever: Voters' Challenges to the Enlargement Process

On the other hand, topics submitted to referendum may concern both specific policies, such as the adoption of the common monetary unit (Euro), and more systemic issues such as a new accession or reform of the treaties. They may – unfortunately but inevitably – also serve as an opportunity for populist-based anti-governmental demands, and critics which bear no more than a limited, *i.e.* national, importance. Difficulties in interpreting the outcome of such referendums are frequent, because the latter fail to shed any light on the actual EU-related topics that are at stake. Treaties that reform the Union's institutional design, or provide for new enlargements may, thus, become a sort of a „hostage“ of a mixture of irresponsible governments and aggressive political opposition, or merely of a bad timing to consult the voters directly about important European (and not necessarily national) questions. It is true that the protection of national sovereignty and constitutional distinctiveness is often manifested by populist claims and misinterpretation of European integration categories and concepts. However powerful, legal and political pro-Union argumentation does not always provide for a satisfying outcome.

The no-votes of 2005 in France and the Netherlands are exemplary in this context. It is sometimes suggested that they have basically exposed all the fragility of the direct voters' consultation about the European issues. Such an assessment deserves a skeptic response. There exists, however, a virtual consensus that these developments bore an overwhelming importance for the future of the European integration, but opinions differed on the lessons to be drawn from the outcome of the two referendums, on the occasion of which two of the six founding Member States had expressed a message that something was wrong in the relation between the Union and its citizens.

A similar thing happened during the ratification procedure of the Treaty of Maastricht in the early 1990s, which led commentators to warn that “despite its multiple causes (...), the difficulty of the Maastricht ratification process delivered one simple message: where Europe's elites led, the voters would not automatically follow.” (Mény, Knapp, 444) The same could easily be said of the ratification procedure held over a decade after in France and the Netherlands. Is it, therefore, wrongful if an observer estimates that referendum remains a useful correction for representative bodies' decision-making processes?

This author agrees with a conclusion that, „from a normative point of view, the different ways of ratification reflect diverging attitudes towards the way how decisions in a democracy should be taken.“ (Seeger, 2008, 7) In this context, the complex issues of implications of divergences between direct democracy and representative democracy, are, at least partially, to be solved. We will take a look, in the next section, at the historical evidence of the dilemma in question, in order for us to come closer to note possible tendencies in the European integration and the Union enlargement processes.

3. Parliamentary or Popular Ratification: A Historical Perspective and Recent Trends

Put into historical perspective, the dominant concept of approving the modifications of treaties, or accession of new Member States, has been the one of the parliamentary legislation. The referendum has, therefore, been a secondary instrument in this process, mostly serving the purpose of either fulfilling a specific mandate of a given national constitution (in Ireland), or giving the possibility to voters to express their opinion on the

most relevant European issues. In most notable cases the outcomes were negative mainly because of the factors of resounding national political controversies, not necessarily related to the questions of Europe's development (for the full list of referendums held, see: *Referendums on the European Union*, 2012).

Any brief chronology of the matter in question must accentuate several rejections of treaties by voters of various European countries. One would have to start the analysis with a referendum held in 1972, in which Norway rejected to join the European Economic Community. The same country rejected the accession once again (through means of the referendum held in 1994). Also, Denmark held two referendums before finally accepting the Treaty of Maastricht, and only after several opting-outs had been negotiated with the EU have the voters approved the treaty (in 1993). Similarly, Irish voters rejected the Treaty of Nice rejected in 2001, but accepted it one year later, following an immense governmental campaign (as well as the one heralded by the European institutions) in favor of the treaty adoption. Finally, Greenland's voters decided in 1982 for the country to withdraw from the EEC, and Switzerland held two referendums (in 1997 and 2001) on the candidacy for membership (and not the membership itself), both with predominant no-votes.

Historical evidence, of course, can only be completed by the information on the positive outcome of the voting. Thus, considering the French referendums tradition (as much as the European integration is in question), it is useful to mention the first enlargement of the Union. In 1974, France allowed the new candidate States (Denmark, Ireland, Norway, and United Kingdom) to join the European Communities only after it had held a successful referendum a year earlier. It is also useful to remind the reader on Danish and Irish referendums on the adoption of the Single European Act (held in 1986 and 1987 respectively), and of the Treaty of Amsterdam (both referendums having been held in 1998). We should note the narrow adoption of the Treaty of Maastricht by Irish and French voters in 1992. In 2003, nine out of ten new Member States (with notable exception of Cyprus) held referendums from March until September, for the enlargement that would follow a year later, and all were in favor of joining the Union, although support for membership of those countries came "on the background of low participation rates". (Doyle, Fidrmuc, 9)

Similarly, referendums of 2005 on ratification of the Treaty establishing a Constitution for Europe (Constitutional Treaty) did not exclusively have a negative outcome (as was the case in France and the Netherlands). Namely, Spain and Luxembourg held successful referendums, with predominant majority being in favor of adoption of the constitutional model of the treaty. In addition, referendums were planned in six others States in 2005, but never took place because of the rejection in two founding Member States, earlier in the year. Finally, Croatian voters approved the membership in January 2012, confirming continuous governmental commitment for the country to join the Union in 2013.

It should be noted that, in certain cases, legally required threshold of a given percentage of voters was constitutionally mandated to validate referendum outcome was barely obtained (Doyle, Fidrmuc, 2003, 2). In any case, even if the difference between positive and negative voices (or *vice versa*) is extremely low, there remains an obligation for the defeated to abide, if the democratic mechanisms of a constitutionalist society are to be retained. In fact, as the history of the European integration shows, some treaties were verified with a slim margin of victory (for example, the French electorate's approval of the Treaty of Maastricht in 1992). This problem could more easily be understood if one considers a tendency of declining turnouts in the elections for the European Parliament,

Vox Populi More Popular than Ever: Voters' Challenges to the Enlargement Process

which have dropped consistently on every occasion since the first election in 1979 (being below 50% from 1999 onwards!).

One interesting process puts the dominant historical tendency into question. Namely, there seems a trend to be growing in the European Union Member States to specifically confer the decision on further enlargements to the voters directly. Thus, for example, the French President stated in 2006 that each further enlargement of the Union would have to be approved by the French people directly. An amendment to Article 88, Paragraph 5 of the French Constitution, which was introduced in 2005, required a referendum on approval of any new accession. In April 2008, the government approved the removal of that clause, and in July the same year, the French bicameral parliament adopted the revised clause, which now states that "any government bill authorizing the ratification of a treaty pertaining to the accession of a state to the EU shall be submitted to referendum by the President of the Republic." (*Loi constitutionnelle n° 2008-724 du 23 juillet 2008 de modernisation des institutions de la Ve République*, 2008).

As for the traditional Eurosceptic electorate of the United Kingdom, it is apparently going to have a word on the country's future membership in the EU soon enough. Namely, the British government announced that the UK plans to hold a referendum in 2017 on whether it shall remain in the Union. It is important to mention that in the UK a referendum was announced in 2005 on the Constitutional Treaty, but due to its previous rejections in France and the Netherlands, never took place. (Seeger, 2008, 4) Similarly (and characteristically), heads of state and heads of government of several Member States announced that referendums will be held for any future enlargement of the Union, notably in the case of the accession of Turkey (*Referendums on the European Union* (2012), 10). Mr. Günter Verheugen, The European Commissioner for Enlargement (1999-2004) had announced in 2000 that Germany (his native country) should hold a referendum on future enlargements of the Union (Majone 2009, 11). With the renowned attitude of the Dutch and French electorate in 2005 in mind, one could easily conclude that half of the Member States constituting the "Inner Six" (i.e. the founding States of the European Coal and Steel Community of 1951) find it difficult not to let their respective electorates give their direct opinion on the important issues on what the future Europe will look like and how it will work.

The mentioned type of announcements might, of course, be commented upon as being delivered by politicians tending to communicate with their own national constituency, which would potentially harm their obligation of fidelity towards the Union. But nothing would be further from truth than claiming that statesmen in question enjoy (or had once enjoyed) a privilege of irresponsibility for the future prospects of European integration. Therefore, messages of this type are always to be reflected upon when the problem of ratification is discussed.

Certainly, nothing stops theoreticians to claim that referendums are basically *not* more democratic than a parliamentary decision. Without underestimating the argument that a referendums are closer to the citizen, some authors argue that the democratic model of society does not require, nor does it prefer, that the decisions of immense importance are to be made directly by individual voters. This (perhaps a surprising) claim is methodologically sustained by the comparative constitutional analysis, by which it is demonstrated that direct democracy "is not the regular mode in most of the EU Member States, nor is it common, at least at the national level, in the American or any other constitutional system in the world". (Pernice 2009, 363) On the other hand, a specific constitutional momentum, brought upon

by the signature of the Constitutional Treaty in 2004, led many Member States of the Union to announce a referendum as a means of confirming the Treaty in addition to the parliamentary ratification. This meant that, “from a normative perspective“, an argument was rightly made that the Constitution (as such) “symbolised a new political quality of the EU which required direct approval by the citizens“. (Seeger, 2008, 3)

This argument could not easily be dismissed by the fact that the formal constitutionalization of the European Union lasted for less than a year (up to the mid-2005), because the long-run tendency of the Constitution-model treaty developments ever since the European Communities were created, remains visible. The constitutionalist momentum of the early 2000s seems today to have been lost exactly by the citizens’ votes, but back in 2005 it did not appear a foregone conclusion that potential obstacles in the process of constitutionalizing of the Union might arrive, and that any difficulties might as well be overcome by concerted effort of EU, national, and non-governmental actors. Notably, it has to be mentioned that if the voters become more aware of the importance of the EU policies, they are also called upon to observe modifications of the EU treaties and enlargements in a more thorough and critical manner. And if the referendums on the European Treaties in the past have had any good effect, it lays in the “rising awareness of the citizens that this European joint venture really matters for each of them.” (Pernice 2009, 378)

It is also manifest that reluctance to identify with the supposedly discredited method of referendum seems to have become a “scapegoat” for certain Member States’ political elites’ lack of capacity to present and defend the European idea before their own electorate. That is why it is truly necessary to pose the question whether it is, for example, conform to general democratic principles that after the Dutch and French no-vote to the Constitutional Treaty, the governments of those two countries “proceeded to “repack” the substance of the reform into the traditional form of an international treaty amending the EU and EC Treaties and then failed to submit this amending treaty to another referendum“. (Pernice 2009, 359-362) The history of the Constitutional Treaty’s rejection in the referendums of 2005 changed the “referendum euphoria” into “referendum phobia”, with all Member States (except Ireland) decided to ratify the Treaty of Lisbon by the method of parliamentary approval. (Seeger, 2008, 3) This attitude of leading politicians of any given Member State is understandable if the European integration process needs to continue at a full speed (with certain risks considering legitimacy, though!), but that apparently is not the case today. The more responsible approach would be to deliver the question of the European future to those same electorates, in order for them to give the answer on the proposed modification or enlargement, whether it would be positive or not.

The institutionalization of the consultation of voters on new treaties or the European enlargement/admission is not necessary. This means that constitutional revisions are not required constitutionally – neither in the current Member States (besides, apparently in Ireland), nor within legal frameworks of the candidate or aspiring States – in order for the respective national political leaders to envision an effective approval (or rejection) on behalf of the voters. What seems to suffice is, therefore, a clear announcement that a direct consultation would be in accordance with pronounced principles of the legitimacy of the EU, as well as of the European democracies, tending to join the Union, or to remain within its boundaries. We will explore in the following section the manner in which certain fears of the future of the enlargement, connected to the possible (or probable) referendums to be held, do not correspond with the long term political interests of the integrated Europe.

4. Referendums Held by the 'Old' and New Members States: Is the Union Prepared to Hear a "No"?

The expanding of the Union through the accession of South Eastern European countries is not conditioned only by the identification of the latter's adoption of values and adjustment of political capacities with those of the Union. Approval of particular enlargement cycles maintains necessity for all partners in the process, with a growing tendency of using the mechanism of popular referendum, instead of the one of parliamentary ratification. A scheduled expansion, adding Iceland, Turkey, and several countries of the South Eastern Europe who desire to become Member States, will have to give a proper answer to the question of whether parliamentary ratifications of enlargement would be sufficient or, in fact, possible.

Citizens of Europe are to benefit most directly from the European integration process, and the same must be concluded for the future citizens of the Union. States aspiring for the membership need to prove that they are able to assume all the obligations of membership. The crucial question in this context is: what kind of representativeness does the decision about planned EU enlargements require?

According to the Copenhagen criteria of the European Council (established at the Council's summit held in 1993), prospective entrants need to express the consent of their citizens to the accession to the EU – either through national legislature, or by referendum. As for the instrument of measuring democratic capacities of the aspiring States, each Candidate State has the obligation to fulfill certain economic and political conditions. The economy-linked requirements contain the proof of "the existence of a functioning market economy as well as the capacity to cope with competitive pressure and market forces within the Union". On the other hand, the political set of conditions requires a democratic model of government with stable institutions and recognized freedoms and personal rights (including the protection of minorities) and respecting the rule of law. (*Presidency Conclusions*, 1993) Nowhere are the Copenhagen criteria explicit on the mode of ratification of accession documents. This option has logically been contained in the EU treaties that have been adopted ever since, and, therefore, each State is entitled to define its own domestic constitutional ratification procedure.

There is an argument that in order to reclaim its dedication to the European integration, Serbia potentially may have to organize the constitutional revision (possibly *via* referendum). Also, the parliamentary committee on foreign affairs of the Icelandic parliament called at the ending of 2012 for a referendum to determine the issue of accession to the EU. Finally, the Turkish head of state announced in 2012 that the referendum for the membership in the Union will be held as soon as the accession process of Turkey is completed. (*Referendums on the European Union*, 2012, 10-11) This announcements and prognosis put a strange shadow over the enlargement process, because of possible negative outcomes at the referendums to be held. It is useful to offer an explanation why it is not politically dangerous in the long term to actually invite these aspiring states to organize referendums on perspective accession to the EU.

First of all, to practically disallow a referendum might signify that the majoritarian pro-European stance of a given population is implicitly called into question. Imagine the case in which the parliament (i.e. main political parties), head of state, and the government of a given State, all share certain skepticism on the question of European integration, but in

which also an opportunity for voters directly to express pro-European stance of the State in question seems remarkably democratic and perfectly legitimate (even though risky, from the *ex post* point of view). Lacking the sanction of direct support by referendum may also be a signal for anti-European political forces to reclaim the attitude that the EU institutions remain one of the main challenges to the nation state democracy, as has been observed many times before. (Mény, Knapp, 1998, 10-11)

Response from voters is nowadays more or less predictable. Therefore, an opportunity arises to narrow the political gap between voters and the project of the European construction, if the political leaders, main parties, non-governmental organizations and citizens' initiatives, as well as the European institutions themselves, sustain a pro-Union attitude within the electorate. Whether such a plebiscite is winnable is completely another thing. In addition, if the national electorate finds certain issue regarding the EU enlargement or treaty adoption to be perfectible from the national point of view, it would constitute no mistake to take the voters' attitude into account on any resolution of the problem in question. The Irish experience might be instructive in this respect, because after the European Commission had clarified the question of the competence for the abortion issue, the majority of the voters in that Member State adopted the Treaty of Lisbon in 2009. Similarly, thanks to a declaration of the European Council of December 1992, the Danish voters were allowed to benefit from some political and monetary derogations, and voted again in May 1993 to support the Treaty of Maastricht. To conclude: if the "second parachute" opens, the lesson that Europe learned includes suggestive methods for overcoming obstacles and legitimacy crisis, and not a predominantly emotional setback against a Member State that opposed the treaty.

If the main fear is that enlargement could effectively be halted by the current Member States' public opinion expressed in referendum, than the problem of the European political construction lays somewhere else. In that case, notably, it is possible that the EU really might not for some time be fully encapacitated for enlargement. After all, the Copenhagen Criteria state that "The Union's capacity to absorb new Members (...) is also an important consideration in the general interest of both the Union and the candidate countries". (Copenhagen Document, 1) It is perhaps better not to proceed with the integration reluctantly, than to avoid giving response to the crucial question regarding the Union's legitimacy and coherence, because any enlargement which would be controversial in this aspect might represent one of the sources of potential malfunction of the Union. This is true even if we admit that major determinants of the outcome of referendums sometimes stand out of the circle of exclusively EU-related topics, including such apparently technical issues as the timing of the vote.

It is important in this context to outline one experience, namely the Irish no-vote in the procedure of ratification of the Lisbon Treaty. The European Council decided to treat this referendum's outcome as an exclusively Irish national problem, instead of regarding it as a wider issue of the European integration. This attitude was unwise and counter-productive, because the "Irish no-vote should be treated as part of a broader and more general Europe-wide crisis of popular legitimacy; otherwise it is a short-sighted strategy which may well prove damaging in the longer term". (De Burca 2009, 2-3) The comparable position in some future situation might bear devastating political consequences, particularly if "administrators and politicians" of the European countries remain "obstinate and hard of hearing". (Voermans, 2008, 19) A useful demonstration of this political culture of EU

Vox Populi More Popular than Ever: Voters' Challenges to the Enlargement Process

leaders represents their view of referendums as an “unconscionable risk for the integration process”, called also “the *referendum roulette*” (Majone 2009, 2). Regarding the argument against popular ratification of European treaties that citizens cannot be expected to interpret complex texts, it could easily be dismissed by claiming that, “carried to its logical conclusion”, the mentioned argument “would lead to severe restrictions of the franchise even at the national level.” (Majone 2009, 15)

Most of the aspirant countries are consistently pro-European. An additional reason why nobody should be frightened by perspective of holding referendums throughout the South Eastern Europe region (including Turkey), rests in fact that constitutions and legal frameworks of the EU aspirant States have undergone significant changes, in order for these countries to approximate the political culture model of the Union. These modifications can rightly be interpreted only if they are read side by side with the European treaties and the EU legislation, as well as the relevant acts of the Council of Europe (particularly concerning the protection of human rights). (Pernice 2009, 374)

This also seems to be the case with a great number of current Member States. In this context, even a negative outcome of a EU-related referendum in the 'old' Member States is not necessarily a sign of their voters' declining support for Europe. For example, when French voters only by a slim majority approved the Maastricht Treaty, an important reason for such a polarization of the electorate was that “the deep unpopularity of [President] Mitterand and his [Socialist] party, quite independently of Maastricht, was certainly a factor in the French referendum.” (Mény, Knapp 1998, 444) Similarly, evidences exist that many Dutch voters still supported European integration, but found increasingly that “the form it has taken is questionable if not utterly disliked”. (Toonen, Steunenbergh, Voermans 2005, 610). The same could happen once (and if) the voting population of aspiring Member States are to be called to vote on the accession treaties, with the citizens' evaluation of national practice of implementation of European norms and policies put into operation. It is therefore important to delineate different factors which are relevant in the process of voters' decision-making.

Any observer must also bear in mind that such demagoguery and Europhobic attitudes may not necessarily represent a leading position in aspirant countries' public opinion. Remarkable extension of democratic institutions and procedures into the Eastern, Central, and Southern European countries at the end of the 20th century serves as basis for expectations that on both sides of the current EU frontiers a rational political choice would be the one sustaining the envisioned enlargement to the European South East. The exaggerated importance ascribed to Euroscepticism at the expense of voters' rationality serves only to delay the completion of the European unity.

As we have seen, multiplied inner political problems and heterogeneous resistances may add up to growing concerns that referendums may result with a no-vote. However, the danger of voters' preference for simplistic and demagogic 'solutions' to national or European problems will not fade away by simply ignoring the possibility of the direct popular consultation. The widespread Enlargement-fatigue, caused by internal political fragilities, political dissensus, but also the economic crisis, needs to be publicly confirmed or voted out exactly by the EU citizens themselves. One of the main arguments sustaining this position lay in the national constitutions of Member States themselves, because citizens of States with full membership in the Union retain (at least nominally) without exception the status of ultimate holders of national sovereignty. In terms of credibility and democratic

legitimacy, therefore, the final decision on any important issue must be that of the citizens. The critical question is: what will work to bring the (actual and future) citizens of Europe ever closer to Europe itself? This paper suggests that all the reasons for not asking the citizens directly on the future of the EU might logically be put aside simply by taking into consideration the Union's long-term interests in sustaining and encouraging democracy, legitimacy, and solidarity between European peoples and individual States. More frequent listening to what voters have to say is a promising approach in the desired direction of a potent, united democratic Europe.

5. Conclusion

Judgments of democratic political elites of the EU Member States will apparently have to be either sustained or overruled by popular majorities, expressed directly via referendums. Oversight and augmented control of citizens over the enlargement process and future development of integration and the Union's desired consolidation seems to be a necessity. Without answering the question of whether citizens of actual and potential member States approve the future enlargement, truly democratic Europe rests a potentiality, or a limited development, rather than an accomplishment.

An aim to unify political, economic, and social hopes of the peoples of the Union must always be sustained by the voluntary concept of each State's membership. As we have seen in this article, the EU legal framework offers no definite response on the agreeable method of ratifying new European treaties or enlargements. However, to augment effectiveness and coherence of the Union in the future, it seems that a growing tendency of direct consultations of the electorate by the method of referendums is more than welcome, if the European project is to be successfully understood and supported by the European population at large. It is often said that referendums have from one time to another halted the European integration, but that is not necessarily true. Some of the experiences gained by negative outcomes of several referendums effectively helped to reshape the EU and bring it closer to its citizens. At the same time, it is not the aim of this article to develop a thesis that representative bodies are outdated and hopelessly irrelevant in the context of approval of European treaties. An ill-informed electorate can obtain much necessary relevant information exactly by the devoted and conscientious parliamentarians.

Even though constitutionally unnecessary, it is certainly useful to ask from time to time the voters on what would they have to say about the future of the Union, even in unfavorable political consequences of a given country. Taking into account what voters have to say on European themes and problems is a condition of diminution of the infamous legitimacy deficit, if not of democratic future of the Union itself.

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Vox Populi More Popular than Ever: Voters' Challenges to the Enlargement Process

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**VOX POPULI POPULARNIJI NEGO IKADA RANIJE:
IZAZOVI PROŠIRENJU PUTEM KONSULTOVANJA GRAĐANA**

Rezime: *Evropska Unija nema perspektivu bez izričite podrške koju bi njenom budućem izgledu dali njeni sadašnji i budući građani. Kako bi bila izbegnuta postojeća institucionalna kriza, donosioci odluka će biti dužni da pažljivo slušaju izbor birača, koji će biti izražen na referendumu. U ovom radu analizirana je rastuća kontroverza između dva generalna metoda potvrđivanja ugovora o EU i pristupanja novih država članiva. On je posvećen i istraživanju istorijskih iskustava, ali i tendencija u donošenju odluka o razrešenju dilema između potvrde putem odlučivanja u parlamentu i neposrednog odlučivanja putem referendumu. Važno je utvrditi da li će EU biti spremna da izađe na kraj sa mogućim negativnim ishodima referendumu koji će biti organizovani od strane postojećih članica, ali i država koje su kandidati za članstvo. Rast uticaja direktne demokratije, sa velikim značajem za budući razvoj Unije, neophodan je ukoliko ona treba na legitiman način da prebrodi ekonomsku i političku krizu.*

Ključne reči: *Referendum, Proširenje Evropske unije, Integracije, Parlamentarna ratifikacija, Legitimitet.*