

**The ratification process of the European Constitution in Luxemburg: a large consensus
amongst the political class for holding a referendum**

Abstract

This paper tends to explore how the Luxemburg will ratify the European Constitution with a special regard to the willingness of the national leaders for holding a referendum and consult their citizens on that issue.

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Framework

The European Council in its meeting in Laeken in September 2001 instituted a European convention in order to identify the essential questions that the future development of the Union raises and to put forth recommendations on this subject. The Convention, which met from February 28, 2002 to July 17, 2003, had made its recommendations in the form of a project of a European Constitution, intended to modify and replace the contents of the existing treaties. One and a half year later, the Convention presented in July 2003 the 'Draft Treaty establishing a Constitution for Europe' that the 25 European Heads of Government finally signed in Rome on The 29th of October 2004. So that the Constitution can come into force, all Members States (the actual and the future ones) have to ratify the text within less than two years and according to their national constitutional requirements, either by parliamentary way or by referendum. The Luxemburg will use both processes.

Luxemburg has a short experience of referendums. According to the national Constitution, the approval of a transfer of sovereignty needs the majority from the parliament (Art. 37.1 and 46 ConstLux) and does not require a consultation of the people. Although the national Constitution establishes that the ratification of international treaties is reserved to the Parliament, Prime Minister Jean Claude Juncker, after a meeting with Parliament heads and the Vice Prime Minister, Ministry of Foreign Affairs, Jean Asselborn, declared his will to hold a referendum on the European Constitution and that the Parliament will vote a resolution for it. He stated that the government "attaches such an importance to the future European Constitution" that it decided to subject its ratification to a national referendum.

According to the article 1 of the Constitution, the Luxemburg is a democratic, free, independent and indivisible State. The sovereign power resides in the Nation (Art. 32 ConstLux). This one is exerted by the Grand Duchy in accordance with the Constitution and with the laws of the country. The Chamber of Deputies represents the country (Art. 50 ConstLux) and the national system is based on the parliamentary principle (At 51.1 ConstLux). This means that the Constitution place the decision-making system in a context of representative democracy. A modification of those principles must be the object of a constitutional revision.

There are no provisions in the national jurisdiction for a citizens' initiative at the national level and no binding referendums are provided. The actual Constitution contains one article that allows referendum but only in a purely consultative result. It provides for voters to be asked to express their opinion by referendums in certain cases and under such conditions that are to be determined by the law (Art. 51.7 ConstLux). Such law does not currently exist.

The aim of this paper is to analyse how the Luxemburg will ratify the European Constitution with a special regard to the will of the political leaders to convene a referendum on that issue. The first section explores the evolution in what concern the use of the referendum and other instruments of direct democracy in the Luxemburg political system. Then the following sections examine what are the positions of the different actors concerning the ratification of the European Constitution: the government (second section); the political parties (third section) and the civil society (fourth section).

The referendum in the Luxembourg history

The Grand-Duchy of Luxembourg owes its independence with a quasi movement of direct democracy (“the petition movement” in 1860). A popular petition in the form of spontaneous referendum confirmed the citizens’ desire for independence that became an issue from that moment on. General voting rights were introduced in 1919 and Article 52.7 (now 51.7) of the new Constitution (May 1919) provided referendums. While the law provided for in this article of the Constitution has still not been adopted by parliaments, they have been two national referendums in Luxembourg’s history.

The first one was authorized by a simple law and took place on the 18th of September 1919. The first question concerned the form of the state: monarchy or republic¹. The second organised on the same day asked the Luxembourg people to decide on the question of the economic cooperation with France². The votes were purely consultative but in view of the popular circumstances and the political crisis at that time it had considerable significance.

Later in 1935, H. Clement introduced a bill that determines the form of referendums but the bill was not implemented. In May of the same year, J. Bech presented a bill (labelled the ‘muzzling’ law) aimed at banning the Communist party and similar organisations. In April 1937, a large majority voted in favour of the project (34 deputies of the right against 19 of the left and one abstention). However the bill met a large opposition in the extra parliamentary arena, particularly among the syndicates. The ruling politicians wanted to have their plan ratified by a popular plebiscite and organised a referendum on the 6th of June 1937. Despite the fact that the proposed bill had the support of a large parliamentary majority that was confident that the public would back them, the people rejected the bill³. There has been no more referendum since then in Luxembourg.

Since 1987, it can be observed a new quality of the debate on referendums following the launching of the ‘Non Partisan Citizens Direct Democracy Campaign’. This initiative proposed the introduction of participative democracy (citizens’ initiative and referendum) at the national and the local levels, as well as a number of constitutional changes providing for more direct democracy. The effects of this initiative and the emergence of a number of other popular initiatives resulted with the introduction of a ‘popular consultation’ at the local level through the review of communal law. Article 35 of the communal law instituted the communal referendums in December 1988⁴. The vote is obligatory and in all cases the referendums are purely consultative. There have been very few referendums since this that change: only five. The issues were: industrial discharge, sporting and cultural centre, hostel for immigrants, discharge of non reactive substances, and development of a public square. In addition, there was one simple public consultation (Article 36 of communal law) regarding a proposed building development.

¹ With 80% of the voices, the citizens voted for the maintenance of the monarchy.

² The result of that one was that 73% of the electors pleaded in favour of an economic union with France.

³ 50,7% of the electors will answer by the negative at the question.

⁴ *The local council can ask the voters to decide by referendums on local issues under conditions determined by the council. A referendum must be held when requested by 20% of the voters in communities with a population of more than 3000, or by 25% of the voters in the remaining communities. In such cases, the local council must arrange a referendum within three months of the request.* ⁴ Article 35 of the Communal Law.

The fourth of March 1997, Anne Brasseur, Ministry of the National Education, introduced a bill in order to organise a national referendum in what concern the construction of a centre of contemporary art to the site of the "Trois-Glands". The project for the construction of a museum of modern art caused a very large opposition among the population. The Council of State in its advice considers that the popular consultation constitutes in the Luxembourg right an exceptional measure and must be implemented with the greatest prudence. Because of the bill establish a facultative participation, the Council of State doubts on its indicative and effective value. It adds also that there exists other projects of public investments more important by their financial cost and by the enthralling and impassioned debates they cause. The bill failed.

More recently, in 2001, the "Initiative for Direct Democracy" (MTK-IDEE) tried to revive the debate about direct democracy with a proposal presented at the first Luxembourg Social Forum in May 2003. Following on the Forum, a platform for the democracy has been created in order to unit members of civil society around the issue of promoting democracy and an Internet forum has also been created (www.demokratie.lu). A new advance is also that the "Initiative for Direct Democracy" starts to cooperate with other similar groups in other member states of the European Community. Together these groups form the Democracy International network, which is campaigning for pan-European referendum rights.

This has already led to some progresses. First, at the European level, several members' states of the EU, including Luxembourg decided to organise a referendum on the new European Constitution. Second at the national level, the government of Luxemburg announced its willingness to introduce instruments of direct democracy into the Constitution and put forward a bill on the 20th of May 2003 concerning the popular initiatives on legislative matters and referendums⁵. That governmental project is described by itself as a third way between representative democracy and direct democracy. Prime Minister Jean Claude Juncker said in the Speech over the State of the Nation:

*"Referendums are not a toy for the demagogues and the populists' ones. It is an instrument that, in important moments, gives a sovereign dimension to the appointments with the people. [...] The debate concerning the democratic deficit from which suffer our political systems, if it is not new, remakes surface with a new acuity these last years in the wake in of the universalization and the complexification of the political decision making process. This debate which is carried out in the whole of the Western democracies aim to define the ways and the means which could give to citizens the possibility for participate more actively to the political life and to form part of the process of the development of the legal standards. Conscious of the problem, the government decided by going beyond of the instruments which exist now and which make possible the sharp forces of the Nation to put forward their point of view within the framework of the political process of decision-making, to introduce in our political system new devices favourising the participation of the citizens in the political decision-making between the electoral meetings."*⁶

The governmental project provides three areas of use. The introduction of the popular initiative in legislative matters is the first device. This would open a new door for citizens to

⁵ 5132/02 Projet de loi relative à l'initiative populaire en matière législative et au référendum, 20 May 2003.

⁶ Jean Claude Juncker, Speech of the State of the Nation, 2003.

the place where are decided the public decisions. According to the proposition, at least 10000 registered electors on the electoral lists have the right for presenting a law proposition redacted “in due form”. The Parliament has to pronounce over it through a vote within the framework of the normal legislative procedure. If the Chamber accepts the proposition it will become a law. If in the other case, the Parliament rejects the proposition, the government allow the citizens to hold a popular initiative in order to start a referendum over the popular bill. So the right for a popular initiative (supported by at least 25000 registered electors) is added to the right for the legislative initiative. This referendum would be consultative. The House of Commons decides how to consider the result.

In its project, the government proposed also the modalities for the execution of the article 51.7 of the Constitution which concern the referendum initiated by the Chamber of Deputies. If two third of the representatives decides to hold a referendum over a project of law (this could also apply with the international agreements) or to consult the people about a question of general interest, the government must organise a referendum within six months. The result would not have an obligatory character but will certainly have a strong political incidence. On the basis of article 51.7, the submission of a question determined to a referendum must make under case by case the object of a special law adopted by the simple majority of the Chamber.

The third aspect of project concerns the referendum that is held in the case of a revision of the Constitution. A bill for the revision of the article 114 of the Constitution was introduced in 2000 in order to allow the referendum constitutional⁷. This one that is still discussed and has not yet came into force. The government proposed however the modalities for the execution of the bill.

The government submits its project to the Council of the State that gave its advice on the 12th of October 2004. According to that institution, while granting the citizen the right for the legislative initiative and by allowing them to intervene into the process of the adoption of the law, the project do not respect the spirit of the Constitution and the terms that regulate the legislative process⁸. The Council based its advice on the article 47 of the Constitution that allots the legislative initiative to the Grand Duchy and to the Chamber of Deputies. Regarding to this, the project of law is anticonstitutional. All popular initiative in legislative matter needs a preliminary modification of the Constitution⁹. Concerning the part of the bill which regulates the execution of the article 51.7 of the Constitution by establishing that the electors could be called to pronounce through a referendum over all projects or propositions of law, or over every question of general interest, when two third of the representatives demand it, the Council of the State said it is anticonstitutional because the constitution reserve that initiative to the law. The submission of a question to the referendum must be by case by case the object of a special law, adopted in the forms of an ordinary law. The Council agreed however with the third part of the project concerning he referendum in case of a modification of the Constitution.

⁷ Proposition de révision de l'article 114 de la Constitution - N° 4765

⁸ Avis du Conseil d'Etat, 5132/05 Projet de loi relative à l'initiative populaire en matière législative et au référendum 3762/01 Proposition de loi tendant à instituer un référendum d'initiative populaire, 12 octobre 2004.

⁹ A modification of the Luxemburg constitution require the majority of 2/3 of the votes from the parliament by presence of 3/4 of its members after the parliament has declared the necessity of a constitutional amendment, its disbandment and re-election, Art. 114 ConstLux.

If all these proposals are still submitted to discussions, the action of the government has the merit to revive the debate about direct democracy in the Luxemburg political life. The new governmental program from the 4th of August 2004 precise that the government want the adoption of the bill for the referendum and the popular initiative deposited to the House of Commons in 2003. In addition to the need for the regulation of the organization of referendums, the Government emphasises on the fact that he wants to promote by this skew an increased participation of the society in the public life.

The government want a referendum for the ratification of the European Constitution

If the Luxemburg government appears to give its support for more direct democracy in the political system, it also shows a very pro-European profile. On the 27th June 2003, it was one of the first who decided to subject the future European Constitution, once signed by the 25 Heads of State and Government, to ratification by national referendum. Jean Claude Juncker did not miss in his national speeches to underline the importance of the new European constitutional text¹⁰. This attitude is certainly not independent to the fact that it is the Luxemburg who will hold the presidency of the European Council from January to March of this year. The very rapid decision of the government to submit the new constitution to a referendum (while no national referendum occurred since 1936) could also be interpreted as a will to be an example for the other member states.

Here are some words pronounced by Juncker at the beginning of its presidency concerning the ratification process. *“Together we will have to take care of the ratification under good conditions of the new constitutional Treaty. Admittedly the project of Constitution is not perfect. But let us not compare it with the ideal. Let us measure it with what Europe will need to remain tomorrow an example for the world. [...] The ratification of the Treaty will not be an easy matter to achieve everywhere. I have in this context a major concern: let us not make difficulties which can raise the parliamentary ratifications and referendums a pretext to reduce our rhythm of action and our dash of decision [...] At the time of requiring the approval of the people and of the Parliaments of Europe, let us prove to them that Europe goes, that Europe advances, that Europe decides and takes its responsibilities.”*¹¹ In the context of the Presidency and the apparent pro-European profile of the government, the good unfolding and the success of the ratification process seems to be a political stake of great importance.

The position of the Political parties

The governmental Luxemburg Socialist Party (LSAP), pled for the holding of a referendum on the European Constitution with the intention to bring Europe closer to the citizens by a proximity campaign for more explications and critical debate. The party is not especially favourable to the direct democracy but individually, in some cases, it could see an interessant instrument of democratisation. *“If, in the case of the European Constitution, the subject does not seem particularly suited to the referendum, because of its complexity, it can however give*

¹⁰ Jean Claude Juncker, Speech of the State of the Nation, 2003.

¹¹ Discourse of presentation of the program of the Presidency by Jean Claude Juncker, President in office of the European Council, 12 of January 2005, European Parliament of Strasbourg.

place to an awakening of the political elites and citizens over the nature of the stakes and the need for bringing the European construction closer to the citizens."¹²

The second governmental party, the Social Christian Party (CSV), is not favourable to direct democracy. They estimated that the system proved reliable and it has to be maintained. Nevertheless, the party accepts some amounts of direct democracy introduced with the watchword for a more participative democracy. According to Frank Engel, "*the Constitution of the Grand Duchy stipulates that the basis of the national political system is the parliamentary representative democracy. For that reason it is for the moment impossible to go further as regards to direct democracy and that there will not be, in the near future, constitutional modifications in that domain.*"¹³ However, about the question of a referendum in order to ratify the European Constitution, the party has always been in favour of it. The Christian socialists' see the passage for the EU towards a constitutional order as an intermediate result in the European integration process. For that reason, the assent of the electors for this process has to be reached once and for all.

The Democratic Party (DP) pleads since a long time in favour of the use of the referendum. In its last national program for the legislative elections, it asserts its use for questions of general interest. According to the party, it would contribute to a substantial democratisation of the national political life by giving the people the faculty to participate in more actively. This would bring the citizen closer to the public space and allow them to express beyond the legislative elections that takes place every 5 years. However, they specify "*it is not a question to cut down the Parliaments' prerogatives or to confront it with a plethora of referendums on unspecified subjects. In order to guarantee the necessary seriousness of it, its organisation must be limited to exceptional circumstances and subjects of paramount importance. There is no question for copy the Swiss model. Men and women are elected for assuming their responsibilities within the exercise of their mandate. It is for that reason that the different referendums are submitted to restricted conditions, just as the popular initiative for legislative matters.*"¹⁴ In what concern the ratification of the European Constitution, the party always pled in favour of a broad participation of the population through a national referendum. This one is perceived as a very important vote for the advance of the European construction. The party also estimates that it is primordial not to exclude non Luxembourg people European citizens who are living in Luxembourg. According to that position, they showed their deception concerning the advice of the Council of the State that prevent for non Luxembourg citizens to go to vote¹⁵. The members of the party pled for the modification of the Constitution within the shortest times in order to allow the European electors to take part in referendums relating to questions that touch them directly. Finally, the party will support the 'yes' campaign. The text is considered as a fundamental one for all European citizens that "*will be unified by the same document which include universal values of peace and humanity that we share*"¹⁶. They consider the treaty as a founder text of a community that will see it's

¹² Ben Fayot, President of the parliamentary group, 18th of February 2005. Personal communication with the author.

¹³ Frank Engel, representative of the party in the Parliament, 17th of February 2005. Personal communication with the author.

¹⁴ *Ibidem*.

¹⁵ According to a recent advice (the 18th of January 2005) of the Council from the State, worked out at the request of the government (the 8th of December 2004) on the definition of the electoral body called to take part in the referendum, the national constitution allow only the Luxembourg people to go to vote.

¹⁶ Dan Thiesen, representative of the party in the Parliament, 18th of February 2005. Personal communication with the author.

geographical and historical bounds tightened. The party underline that the constitutional text has the merit to allow realising progress in term of simplification and rationalisation of the decisions' procedures and instruments of action and this will conduce undoubtedly to a European Union more powerful at the institutional level. Regarding to the deficit of information and knowledge of the national citizens about the new constitutional treaty, the party invite the government to make up this deficit by an information campaign worthy of this name. They ask for not attach the ratification to personal destinies which can hinder the awakening of the European stakes.

The Green Party (DÉI GRÉNG), as the Democratic Party, strongly regrets the advice of the Council of the State. It would be a unique occasion to bind, for the first time and with such a poll of historical range, the destinies of the Luxemburg and the non-Luxemburg people residing in the Grand Duchy. On that issue, the greens proposed a revision of the constitution which allows in the future the legislator to define the electorate for the elections and the referendums through an ordinary or a special law in accordance with its will and with the engagement of the government¹⁷.

Finally, the ADR party that is the 'Committee of Action for Democracy and social Justice', *"made of the introduction of the referendum in the Luxemburg and European political life one of its principal topics. They are delighted that the project of the European constitutional draft treaty envisages this possibility. At the national level, they asked in 2003 for the organisation of a referendum over that constitutional treaty. At the beginning, they were the only ones who supported the idea. But by after all the other parties joined them. The party asked for a decisional referendum while the other ones pleaded in favour of a consultative one"*¹⁸.

The public opinion

The last Standard Eurobarometer from December 2004¹⁹ reveals a large support of the Luxemburg people for the membership of their country to EU. The country is clearly situated at the head of all member states. The percentage of residents of the Grand Duchy that does not approve the membership of their country to EU is very low (4%) when the European average is 13%. More that two third of them estimated that their country benefited from the membership of EU, opinion shared by only the half of the citizens at the European level. For 61% of the national citizens, the European Union evoke a very positive image or rather positive, opinion shared with 50% of the European citizens. With that rate, the Luxemburg is situated among the first places after Ireland, Italy, Spain and Slovenia. According to that survey, 77% of the citizen's support the European Constitution, 14% does not support it and 9% doesn't know. That results are very high. The country is situated at the fourth place after Belgium, Slovenia and Germany. The European average for that support is 68%.

¹⁷ Proposition for revision of the article 9, 51.7, 52 and 53 of the Constitution, deposited on the 26th of January 2005 by Felix Braz.

¹⁸ Jean Yves Henckes, representative of the party in the Parliament, 22nd February 2005. Personal communication with the author.

¹⁹ Eurobarometre Standard 62, « *L'opinion publique dans l'Union européenne* », Commission européenne, December 2004.

Another Eurobarometer entirely devoted to the subject²⁰ and based on a survey made during June and July 2004 shows that the feeling of information over the European Constitution of the Luxemburgers is situated above the European average. While this one is 30%, 43% of the Luxemburgers feel well informed over the questions related to the European constitution. 88% are in the meaning that the EU should adopt a constitution and 73% that without it, the EU is likely to see a blocking of its institutions.

At least, a Special Eurobarometer²¹ based on a survey realised in November 2004 indicates that to the question “have you personally heard about the draft European Constitution?” 23% of the population of Luxembourg responds “yes, but know very little about its contents” (European average: 33%) and 55% “yes, and overall know its contents” (European average: 56%). The Luxemburg has the second place for that question, after Netherlands. We can suppose that these good results are due to the recent Dutch presidency of the European Council and the actual Luxemburg one. The level of the Luxemburgers support for the future Constitutional Treaty rise with 57% favourable and 12% opposed, while this percentages for the European average are 49% and 16%. The three main arguments they advanced for that, is that “it is essential in order to pursue European construction”, “it is essential for the smooth running of the European institutions”, and that “it is the first step towards/Symbol of a social Europe”. Amongst the arguments why they are opposed to the European Constitution, the main one is “the lack of information”. If we consider that the main argument against the Constitution is the lack of information, if the government could fill it by ruling a complete and neutral information campaign before the referendum poll. The consequence will be that the citizens will feel more informed and more inclined with voting in favour of the text. Another thing that is worth noting is that the argument of the loss of national sovereignty is relatively weak in comparison to the other European countries (ten percent under the European average). Effectively, Luxemburg is a relatively small country and that influence the attitude of the citizens vis-à-vis of a larger entity as the EU on which they belong. The national feeling is well existing because the European identity is relatively high. With the addition of the fact the Luxemburg is one of the founder countries of the EU, we understand that the people support for Europe is relatively important.

Conclusions

In order to ratify the Constitutional treaty, in addition to a parliamentary vote, the Luxemburg government decides to convene the citizens to pronounce through a national referendum. This one will occur on the 10th of July on the basis of the Article 51.7 of the national Constitution. While the vote will be obligatory, the result will not be binding. However, it was said that the Chamber would take the political engagement to respect the verdict of the citizens.

Consultation of the people did not take place since 1937. Although the use of the referendum is not a practice in the national political life, the majority of the leaders seem to agreed on the fact that the importance of the stake need to question the people on that issue. The referendum over the European Constitution will then inevitably mark the political history of the country but will also influence, in a certain way, the integration process of the EU. On this subject, much will depend on the result of the poll.

²⁰ Flash Eurobarometre 159/4, « *La future Constitution européenne (vague 2)* », Commission Européenne, July 2004.

²¹ Special Eurobarometre , « *The Future Constitutional Treaty. First results* », European Commission, January 2005.

There are many reasons for thinking that the outcome of the referendum would be positive. First, because of all the main national parties support the constitutional text. Any of them have made critics over its contents and they all seem to want to incite citizens to vote “for”. Moreover the government strongly support the project of Constitution. This is due to the Luxemburg presidency from January to March, but also because Luxemburg is one of the founder member states for which the European construction is very important to support. Second, if it appears that the political class do not contest the project, the civil society either present any mark against it. In contradiction to other countries, it does not exist any association or groups of individuals that are ruling a “no” campaign. In parallel, citizen’s attitude seems to be very positive. Different surveys show that a large majority of the population support the European Constitution. Considering all of these elements, we can suppose that the referendum will lead to a positive result.

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