

THE EUROPEAN UNION AND NATIONAL REFERENDA: STRUCTURAL INCOMPATIBILITY?

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SUMMARY

It is particularly important to explore and to debate the seeming inconsistency between the outcome of the referendum which Athens held on 5 July and the content of the agreement thrashed on Greece so as to check whether it reveals a contradiction between the EU and the will of its peoples.

1. European construction and referenda: a fairly harmonious conciliation

- 41 of the 55 referenda on European issues have produced a “yes” vote (75%) and only 14 a “no” vote (25%) – see Table 1 ; among these “no” votes only 8 have been expressed in EU member states (on 36 referenda), i.e. a total of 20% “no” votes, versus 80% “yes” votes (see Table 1);
- The five “no” votes on a country’s membership of the EEC/EU have been fully taken on board, as well as the three “no” votes regarding participation in one or the other aspect of European integration (especially the EMU) ;
- Only the five “no” votes in referenda on more indivisible issues (EU governance or aid to Greece) were not so easily taken on board.

2. Getting 28 Member states to agree: what denial of democracy(ies)?

- No one national democracy enjoys precedence over the others : the fact that a country may have rejected a Community treaty concerning “indivisible” governance issues cannot result automatically in the rejection of that treaty if the member states as a whole do not agree ;
- To argue that a “no” vote in a referendum takes precedence over the parliamentary votes is all the more impossible in the EU as some member states cannot organise referenda on European issues (see Table 3).

3. The Greek referendum on 5 July 2015: a very specific case

- A very specific referendum in formal terms : concerning working documents, organised in extremely short delays and openly presented as a means of putting pressure on EU partners ;
- A referendum held in a “limited sovereignty” context, given that Greece has to resort to loans from public creditors, which presupposes a will to cooperate ;
- A hiatus between grass-roots democracy and national sovereignty even bigger due to the timing of the referendum, right after the 30th of June deadline.

4 - The agreement won by A. Tsipras isn’t identical to the one that his people rejected

- The list of reforms to be implemented in Greece covers the same issues but contains important differences, for better or for worse ;
 - The final agreement includes substantial improvements in financial terms (relaxation of the debt, much bigger bail out funding and investment plan).
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INTRODUCTION

The content of the agreement on Greece thrashed out at the euro area summit on 12 and 13 July 2015 appears to fly so brazenly in the face of the outcome of the referendum which Athens held on 5 July that people have seen this inconsistency as yet another instance of the EU's alleged inability to honour the will of its people. Given that the terms of the agreement have now been confirmed by all of the member states involved, and as a fresh general election looms in Greece, it is particularly important to explore and to debate this seeming inconsistency, because it transcends the individual case of Greece. It is, in effect, part of a far broader dispute over the European Union's (EU) democratic content and thus its legitimacy in serving the member states and the peoples that constitute it.

We shall do this by taking a fourfold approach to the issue:

- the historical approach: is the equation whereby “a referendum on the EU = no = failure to honour that ‘no’ vote” actually true?
- the geographical approach: is it not, rather, a denial of democracy(ies) to argue that one national vote should carry the day over twenty-seven others?
- the political approach: is the Greek referendum not a very unique, specific case?
- the legal approach: are the terms of the agreement to which Alexis Tsipras subscribed identical to those rejected in the referendum?

This analysis allows to underline that there is no inconsistency between national referenda and decisions made by the European authorities, including as regards the Greek case, particularly atypical when compared with all the 55 referenda on European issues.

It also leads to recall that several different national political wills have to coexist side by side in the Federation of Nation States that is the EU, and which no referendum will ever be able to change.

1. European Construction and Referenda: a fairly harmonious conciliation

An approach that takes into account all of the questions submitted in referenda since the start of the European construction allows us, first and foremost, to dispense with the equation arguing that “a negative referendum on the EU = failure to respect the ‘no’ vote”.

1.1. Referenda on European issues have spawned a broad majority of favourable results

In terms of sheer quantity (see Table 1), it is worth pointing out first and foremost that:

- fifty five referenda on European issues have been held since 1951¹, in other words a proportionally significant number by comparison with the over one hundred and thirty votes taken by parliamentary means (a little over 25%);
- forty one of these referenda have produced a “yes” vote and only fourteen a “no” vote, in other words 75% have ended in a “yes” vote and 25% in a “no” vote.

In philosophical terms, a distinction needs to be made between the United Kingdom’s “no” vote in 1975 and the other votes, because the UK vote was not in effect directed against the European construction, inasmuch as its aim was precisely to oppose leaving the EEC; Greenland’s “yes” vote, on the other hand, permitted just such a departure. The other thirteen “no” votes, for their part, may be considered to be votes rejecting one or the other development associated with the construction of Europe, making a total of fourteen “negative” referendum votes if we include Greenland’s “yes” in that tally.

**FOR THE SOLE
MEMBERS OF THE EU, 22%
“NO” AND 78% “YES”**

In historical terms, we can see that the first referenda did not actually take place until the 1970s (the first one was held in 1972) and that therefore the “no” votes, too, only appeared in more recent times, almost underscoring the close of the era of “permissive consensus” that the European construction enjoyed in its early stages.

In geographical terms, we can see that:

- the fourteen “no” votes come from a total of ten countries: three from Ireland, two from Switzerland, two from Norway, and one each from Denmark, France, Greece, the Netherlands, the United Kingdom, Sweden and the Åland Islands”;
- three of these States (Switzerland, Norway and the Åland Islands) are not members of the EU (five “no” votes in all), which means that the remaining nine “no” votes come from seven EU countries (in other words 25% of its member states);
- nine “no” votes from EU member states in a total of forty-eight referenda means a total of 16% “no” votes, versus 84% “yes” votes (and, for the sole members of the EU, 22% “no” and 78% “yes”);
- Ireland is the country that resorts to the referendum tool with the greatest frequency, with a total of six “yes” votes and three “no” votes; if we hive off these three Irish “no” votes from the total number of nine negative referendum votes cast in the EU’s other member states, we can see that only six “no” votes have

1. This number refers to the national referenda about European subjects within the EU member states, acceding countries, and third countries, particularly Switzerland and Norway

been recorded in the latter (in other words 16.2% of the total number of referendum votes in the EU member states).

And finally, in political terms, we can see that the “no” votes cast concern different issues stretching from participation in the European construction process to the accession to one or other of its dimensions (e.g. the euro) or support for the reform of the regulations governing the way it functions (the Treaty of Nice and the Constitutional Treaty in particular), without one type of issue appearing to be a more consistent “begetter” of referenda than another.

Table 1 ► Number and topics of EU-related referendums (1951-2015)

TOPICS	NO. OF REFERENDUMS	OUTCOMES	NO OF REFERENDUMS IN EU STATES (1)
EEC and EU accession / enlargement	24	Yes : CRO, LV, EE, CZ, PL, SI, LT, LI (x2), ROM HU, SE, MT, SK, AT, IRE, DK, F, Åland Islands, FIN =20 No : CH (x2), NO (x2) =4	17
Staying in the EU	2	Yes : UK =1 No : GL =1	1
Ratification of 'deepening Treaties'	16	Yes : IRE (x5), DK (x3), F, LUX, ES =11 No : IRE (x2), F, NL, DK =5	15
Schengen accession and rules of application	4	Yes : CH =4	-
Euro introduction	2	No : SE, DK =2	2
Fiscal Compact, and Bail out conditions	2	Yes : IRE =1 No : GR =1	2
Other topics	5	Yes : CH (x2), IT, D4 =4 No : CH =1	1
Total	55	Yes : 41 / No : 14	40 (Yes : 32 / No : 8)

Source : Data from the Centre for Research on Direct Democracy, 2015, and the College of Europe. Compilation by N Koenig & Y Bertoncini

(1) The votes from Greenland and the Åland Islands are not considered since they are not EU States

1.2. Most of the unfavourable results that have emerged in referenda have been honoured

If we are to assess the political follow up to the fourteen “negative” European referenda, we need to distinguish between three specific categories in order for us to realise that their outcome has proved easier to honour when it has concerned issues involving membership of, or a deepening of the EU while it has proved more difficult to comply with them when they have concerned more “indivisible” issues.

“ THE FIVE “NO” VOTES ON A COUNTRY’S MEMBERSHIP OF THE EEC/ EU HAVE BEEN TAKEN ON BOARD IN FULL”

The five “no” votes on a country’s membership of the EEC/EU have thus been fully taken on board: Norway (two “no” votes) was not forced to be member either of the EEC or the EU, while Greenland was able to leave the EEC. The same would happen if the British opt to leave the EU in the referendum on the issue announced by David Cameron. In this connection, only the follow up to Switzerland’s rejection of membership of the European Economic Area may be interpreted as failing to comply with the referendum’s outcome, because the signing of numerous bilateral agreements with members of the EU and of the EEA has placed Switzerland de facto in the position of a member state.

The three “no” votes regarding participation in one or the other aspect of European integration have also been taken fully on board: this is true of Denmark’s refusal to take part in a number of deeper aspects provided for in the Maastricht Treaty (which led to four opt-out clauses for the country being built into the treaty²); and it is also true of Denmark’s and Sweden’s decision not to join the Monetary Union³. It would also be the case if the Danish people were to reject the revision of the opt-out clause relating to European police and legal cooperation in the referendum scheduled to be held on 3 December 2015.

In connection with these two issues (membership and deepening), negative referendum votes have been taken into full consideration because it has been both legally and politically possible to allow the member states concerned to remain on the sidelines of the European construction process without hampering the other member states’ wish to pursue greater integration.

1.3. The interlinked difficulties of referenda on “indivisible” governance issues

Five referenda on more governance “indivisible” issues, on the other hand, have not led to an easy inclusion of negative outcomes, and this, also in Greece’s case.

This was the case with the five “no” votes that greeted the “constitutional” referenda on the regulations governing the EU’s functioning, which are subject by definition to unanimous approval.

Ireland’s two “no” votes cast when ratifying the Treaty of Nice and the Treaty of Lisbon were followed by two new referenda, which finally had a positive outcome, without the text of the treaties, put to the vote and already approved by numerous other member states, having been changed in any way. In both cases, it became a matter of offering the Irish authorities safeguards regarding the conditions underpinning the two treaties’ implementation, for instance with regard to maintaining the “one member state - one commissioner” rule or complying with Irish law in the sphere of abortion.

By contrast, the follow up to the French and Dutch rejection of the “European Constitutional Treaty” in the referenda held in 2005 shows that their “no” votes were taken into greater account: the treaty in question did not enter into force, and a new treaty (signed in Lisbon) was adopted, whose content differs in several important areas from that of the European Constitutional Treaty (for example, the former contains 283 pages versus 480 for the latter)⁴; it appears that the transition from a referendum-based mode of ratification to a parliamentary mode of ratification largely explains the feeling of frustration and of expropriation voiced by those in favour of the “no” vote in those two countries.

Bearing that whole situation in mind makes it easier for us to grasp the follow up to the Greek “no” vote on 5 July 2015: it did indeed address measures which, by definition, concerned all of the member states in the euro area, because it included reforms to be implemented in Greece in return for an extension to the aid provided by those member states, and the possibility of a relaxation of the debt burden built up with them. As was the case with the “European Constitutional Treaty”, so the Greek people’s rejection of the three questions asked of them in the referendum did not mean that no other agreement could be adopted in the days and months following: in fact, the Greek authorities’ purpose was precisely to achieve a better overall agreement in the wake of the referendum. Thus we need to conduct a detailed exploration of the overall agreement finally forged if we are to assess the extent which the Greek “no” vote was or was not honoured (see §-4), after first conducting a brief overview of the democratic and political circumstances in which the agreement was thrashed out (see § 2 and 3).

2. The four opt-out clauses of Denmark respectively concern EMU, defence, freedom, security and justice as well as citizenship

3. Sweden is formally required to join, but does not respect the monetary stability criterium (*de facto* opt-out). Nevertheless, Denmark negotiated an opt-out in the Edinburgh agreement in 1992

4. For a detailed comparative analysis, see Yves Bertoncini, « Dix ans après le « non » : crever l’abcès, pour l’Union européenne et pour la gauche », Note, Fondation Jean-Jaurès, May 2015.

2. Getting twenty-eight Member states to agree: what denial of democracy(ies)?

Pondering the follow up to the Greek referendum on 5 July 2015 means answering the following political question: can a referendum on European texts and issues which also, by definition, concern the EU's other member states give the authorities of the country resorting to it some kind of precedence over the will expressed by their counterparts (regardless of whether the referendum's end result is a "yes" vote or a "no" vote)? The answer to that question can only be in the negative on both counts, as the recent Greek referendum has confirmed.

2.1. No one national democracy enjoys precedence over the others

A Community treaty cannot enter into force unless it has been ratified by the EU member states as a whole. By the same token, the fact that a country may have rejected a Community treaty concerning "indivisible" issues cannot, by definition, result automatically in the rejection of that treaty if the member states as a whole do not agree, whether the "no" in question is the result of a vote taken in parliament or in a referendum.

Where treaties or agreements concerning "indivisible" issues, such as the functioning of the EU or the EMU, are concerned, the individual wishes of one or the other member state can be taken into consideration during the development stages:

- either by building in opt-out clauses compatible with the EU's functioning: this was the case, for instance, with the opt-out clauses won by the United Kingdom in the social sphere in the 1990s;
- or by the treaty concerned being adopted outside the Community framework, which permits the exclusion of member states that do not wish to commit to it (for instance, the "Fiscal compact", which was signed and ratified by only 25 countries, or the treaty setting up the European Stability Mechanism, signed and ratified only by euro area members). While this option appears to undermine the indivisible nature of Community treaties, it is invariably accompanied by the provision that the measures addressed by them be built into those Community treaties in the longer term.

“ IT IS ONLY POSSIBLE TO AFFORD CONSIDERATION TO A “NO” VOTE WHEN THE SIGNATORY COUNTRIES AS A WHOLE AGREE TO JETTISON THAT TREATY ”

Once an "indivisible" Community treaty has been signed, it is only possible to afford consideration to a "no" vote when the signatory countries as a whole agree to jettison that treaty: thus the French parliament's rejection of the treaty designed to set up a "European Defence Community" in 1954 led purely and simply to the project being shelved in its entirety with the agreement of the six member states involved. The same was not true, however, of the treaties aiming to reform the regulations governing the functioning of the EU (the Treaty of Nice, the Constitutional Treaty and the Treaty of Lisbon), because an overwhelming majority of member states believed in the need to adopt the reforms involved, even if it meant modifying their content. In all three cases, changes to the content of the treaties appeared to be particularly sensitive because that content had already been approved in numerous member states (see Table 2)⁵.

It is worth noting that this unanimous will to carry on on the basis of an agreement already thrashed out resurfaced, for example, when the second aid package for Greece was put to the vote. On that occasion, the Slovak parliament decided to reject the terms of the agreement at the end of 2011, in particular because a majority of its members found it difficult to entertain the prospect of aiding a country whose GDP per capita was higher than its own. The other member states' insistence prompted the Slovak Government to reschedule a second

5. During the renegotiation discussions about the European constitutional treaty, 18 member states had voted in favour of this latter.

vote on the same aid package: indeed, as an offset for this second – positive – vote, the Slovak prime minister had to pledge to hold an early general election, in which she was beaten and ended up having to step down.

In the case of the third aid package for Greece, refusal to adopt the terms put to the vote in the referendum could have led to a desire to abandon negotiations *sic et simpliciter*: but it was precisely because those negotiations were not yet complete (see §-3) that it was possible to continue pursuing them, with the consent of all of the EU’s national governments, with a view to modifying the terms of the final agreement (see §-4).

Table 2 ▶ Two illustrative examples for the shock of legitimacies

TREATY	MEMBER STATES WITH “YES” VOTES	MEMBER STATES WITH “NO” VOTES	RATIFICATION CANCELLED	AVERAGE POPULAR APPROVAL BY REFERENDUM	AVERAGE PARLIAMEN-TARY APPROVAL
Constitutional Treaty	16 (1)	2	7	54% (2)	90%
Lisbon Treaty	26	1	/	47% (3)	86%

Source: N. Koenig own compilation

(1) This excludes Bulgaria and Romania who had agreed to the Constitutional Treaty through their Accession Treaty (2005).

(2) Two referendums led to a popular approval in Spain (77%) and Luxembourg (57%) and two others to a popular rejection in France (54,6%) and in the Netherlands (61,6%)

(3) These numbers exclude Ireland’s second referendum with a positive result of 67%

2.2. The temptation to argue in favour of the precedence of referendum votes: direct democracy versus representative democracy?

While it is difficult to argue in favour of the precedence of the will expressed by any one of the EU’s national democracies over the others, it is tempting for those in favour of a “no” vote in a referendum to argue that it should take precedence over the over the parliamentary votes held in other member states⁶.

This would be impossible to argue, however, in the case of the ratification of the European Constitutional Treaty, in connection with which four referenda were held, the two “yes” votes in Spain and Luxembourg mirroring the two “no” votes in France and The Netherlands, and it is difficult to see what “democratic” reasons might be cited to suggest that the latter prevail over the former or vice-versa. Yet the precedence of the grass-roots will has been invoked in connection with the “no” vote outcome of referenda held in certain countries when there has been no matching “yes” result to pit against them: this has been the case with Ireland’s “no” vote against the Treaties of Nice and of Lisbon, and with Greece’s “no” vote in July 2015.

“ TO ENSURE THAT THEIR PEOPLE’S VOICE IS HEARD ON AN EQUAL FOOTING WITH THOSE MEMBER STATES THAT DO COUNTENANCE REFERENDA”

The adoption of this approach is based on a political premise which argues that participatory democracy is superior to representative democracy, inasmuch as it allows the people to express their wishes directly. This premise does encounter a certain favour at the grass-roots level on account of the democratic shortcomings of the EU, whose functioning is based largely on representative mechanisms: the citizens are represented by those whom they themselves have elected to the European Parliament and by their ministers and heads of state and government in the European Council. Yet it is even more problematical to reaffirm that premise at the Community level when we consider that some of the member states’ constitutions simply do not countenance the referendum as a tool, or else they countenance it solely in connection with a strictly limited set of issues (see Table 2). Admitting the principle whereby an Irish, French or Greek

6. On the intrinsic limits of referendum usage, including on European topics, see for instance : Hobolt, Sarah B., 2007. Taking cues on Europe? Voter competence and party endorsements in referendums on European integration. *European Journal of Political Research*, 46(2), p.151-182 ; Clark, Sherman J., 1998. A populist critique of direct democracy. *Harvard Law Review*, 112(2), p. 434-482.

referendum vote (whether positive or negative) takes precedence by its very nature over, say, a Belgian or German parliamentary vote, would lead to a denial of democracy in several member states and to a denial of their right to ensure that their people's voice is heard in the same conditions and on an equal footing with those member states that do countenance referenda.

Table 3 ► Member state legal provisions on referendums

POSSIBILITY TO HAVE EU RELATED REFERENDUM	MEMBER STATES
No legal provisions to hold referendum at national level	BE ; CY ; CZ ; D (1) = 4
Referendum possible on limited number of issues (including some EU-related ones)	HU ; PT ; MT ; SI = 4
Referendum possible on wide range of issues (including EU-related ones)	BG ; FI ; GR ; IT ; NL ; SE = 6
Referendum compulsory for some issues (including EU-related ones)	AT ; CRO ; DK ; EE ; ES ; F ; IRE ; LV ; LI ; RO ; SK ; LUX ; PL ; UK = 14

Source : Data International Institute for Democracy and electoral assistance and Committee of the regions⁷, compilation by N Koenig.

(1) Germany is a special case. National-level referendums are only possible and at the same time compulsory for two types of issues: adoption of a new Federal Constitution and re-organisation of the federal structure.

Only the holding of a pan-European referendum comprising a vote by the EU's citizens as a whole could produce a grass-roots verdict that would be acceptable to all of the people in the Union. Yet such a thing would require that several legal and political conditions be fulfilled simultaneously: national constitutions and Community treaties would have to be revised in order to authorise resorting to such referenda; the citizens and the governing authorities of a given country would have to agree to end up in a minority if the result of their national vote were to differ from the result of the vote cast by a majority of citizens in the EU's member states - reflecting the kind of leap forward in a federal direction that seems highly unlikely to be a possibility in the short term, even if very high majority thresholds are countenanced (for instance 2/3 of the electorate representing 3/4 of the member states)⁸.

3. The Greek referendum on 5 July 2015: a very specific case

The historical and geographical approach above should not make us forget the specific characteristics of the referendum held in Greece on 5 July 2015, by comparison with the forty-seven "European" referenda that preceded it. Taking these specific characteristics into account will help us to assess the extent to which it has been possible to take on board the Greek electorate's "no" vote⁹.

3.1. A very specific Greek referendum in formal terms

The referendum called by Alexis Tsipras is particularly unique if we compare it with all of the earlier referenda on European issues. Three of those unique features explain why it was given an ambivalent, or even a negative, reception by the other member states:

- First of all, its legal specificity: while referenda calling on the electorate to vote on European texts tend to concern treaties finalised and signed by the member states as a whole, the Greek authorities chose to call a referendum on working documents not yet finalised and which had not yet been adopted or signed

⁷ See E. Best, M. Augustyn and F. Lambermont, *Direct and Participatory Democracy at Grassroots Level*, study commissioned by the Committee of the regions, 2011

⁸ In this connection, see for example Mario Monti et Sylvie Goulard, *De la démocratie en Europe*, Flammarion, 2012

⁹ Our thanks to Henrik Enderlein for his remarks on the part 3 and 4 of this Policy paper.

by the heads of state and government, and the adoption of which was uncertain at the time of the referendum decision¹⁰;

- Its political specificity: the call to a referendum was perceived, and even presented, as a means of bringing pressure to bear on the negotiations between Greece and its European partners, and the sudden decision to hold it may, in that respect, have been perceived as running counter to the “principle of loyal cooperation” enshrined in the European treaties¹¹;
- Its chronological specificity: never before in the history of the European construction had a government called on its people to vote in such a short time frame (around 15 days between when the referendum was announced and the date it was held); this short delay prompted the Council of Europe to voice reservations regarding the citizens’ ability to forge a sufficiently enlightened opinion, especially in consideration of the technical nature and of the complexity of the texts they were being called on to approve or to reject.

These three specific aspects did not prevent the referendum from being held on 5 July 2015, this being a sovereign decision pertaining to the Greek authorities: yet they do explain why the holding of the referendum sparked certain reservations, not to say a certain mistrust, on the part of Greece’s European partners and of the European authorities, a fact which certainly did not help to improve the Greek Government’s negotiating position.

3.2. A very specific context, too: the hiatus between grass-roots democracy and national sovereignty

“National sovereignty shall vest in the people, who shall exercise it through their representatives and by means of referendum”: article 3 in the French Constitution illustrates the contradiction into which the Greek people fell in a referendum held in a “limited sovereignty” context.

“THE HIATUS BETWEEN GRASS-ROOTS DEMOCRACY AND NATIONAL SOVEREIGNTY WAS HIGHLIGHTED BY THE TIMING OF THE REFERENDUM”

Given that the Greek authorities have de facto lost their ability to fund their country’s functioning on the money markets and that they have had to resort to loans from the EU and the IMF, they are currently experiencing a certain loss of sovereignty which the “memoranda of understanding” merely serve to define de jure: they will be able to make good that loss of sovereignty only when they regain those markets’ confidence, just as the authorities of Ireland and of Portugal have done. In the meantime, they are confronted with an uneven balance of power with their public creditors on the basis of a dialogue resting on solidarity and control, which presupposes a will to cooperate and to compromise, and thus unlikely to countenance the possibility of a break in those ties even if such were the wish of the grass roots.

This hiatus between grass-roots democracy and national sovereignty was highlighted even more by the decision to hold the Greek referendum on 5 July, because the referendum was announced just before the 30 June, a fateful date for Greece from a financial point of view on two counts: one, because it was the date on which the EU’s second aid package came to an end; and two, because it was also the date on which repayment fell due on a major IMF loan¹².

¹⁰ The length of the 2nd greek program was limited to the 30 June 2015. It could have been extended when it was still in effect, but not after it ended. The 5th July referendum focused on a text relative to the finalization of the 2nd program and therefore asked a question which was not legally speaking on the table since the 2nd program had not been extended

¹¹ See in particular the article 4 of the Treaty on the European Union on this principle of loyal cooperation between the EU and its member states.

¹² We should mention in this connection that Greece is currently only obliged to pay back the IMF and the ECB, and that the reimbursement of loans granted by the ESM and member states is not to start before 2020

This concentration of events had two consequences: the referendum's announcement de facto prevented the finalisation or the conclusion of a third aid package, because the Greek authorities had chosen to put its content to the vote; and at the same time, it deprived the ECB of the clear legal and political framework that would have allowed it to modify the level of financial assistance granted to the Greek banking system. In that context, the fact that the Greek authorities were not able to honour the repayment instalment owing to the IMF plunged the country into a critical situation made even worse by the fact that the uncertainty occasioned by the result of the referendum prompted numerous savers to withdraw their savings.

It seems unreasonable to argue that this deterioration in Greece's financial situation, which was singularly at odds with its people's will to reaffirm their sovereignty, was due to a desire for retaliation on its creditors' part caused by the principle of the call to a referendum. One thing is certain: if the referendum called by Alexis Tsipras had been held ahead of the 30 June deadline (for instance, in late May) rather than after it, that referendum would have been held in a far less critical situation – a fact which also contributed to weaken the Greek authorities' negotiating position.

In that context, only an openly-stated will on Greece's part to forgo a third aid package and to quit the euro area, and the certain knowledge that that "Grexit" would be a source of intense concern for Greece's partners, could have improved the balance of forces between Athens and its creditors. Yet not a single one of those conditions was met: on the one hand, because a broad majority of member states seemed ready to take a "Grexit" in their stride; and on the other, because an equally broad majority of the Greek people rejected the prospect of a return to the drachma – it is on that grass-roots wish that Alexis Tsipras chose to rely when he resolved to conclude an agreement with his creditors.

4. The aftermath of the Greek referendum: Is the agreement won by Alexis Tsipras really identical to the agreement that his people rejected?

If we analyse the terms of the agreement thrashed out between the EU and the Greek authorities, as defined at the euro area summit on 12-13 July and then finalised in the course of negotiations concluded in August, we can also gauge the extent to which the referendum tool in general is compatible with the construction of Europe. In this connection, a brief comparison of the three texts rejected by the Greeks on 5 July¹³ with the terms of the final compromise (declaration of the euro area summit¹⁴ and the third memorandum of understanding¹⁵) proves that it is unrealistic to argue that the two agreements are identical in terms of their content.

This comparison is naturally sensitive because the texts put to vote on July 5th made way for an extension of the second programme and therefore a timespan of nine months while the Memorandum of Understanding makes way for a third programme and a timespan of three years. Nevertheless, it is possible to compare the essentials of the two programs.

13. See the [Proposal of the institutions to the Greek government](#)

14. See the [July 12 2015 Euro summit statement](#)

15. See the [Memorandum of understanding](#) for a three year ESM program – Greece.

4.1. *Bis in idem* – or even worse?

A careful examination of the substance of the list of reforms to be implemented in Greece as submitted to the Greek people on 5 July 2015, then agreed to by their authorities that August, shows, quite naturally, that they address the same issues, grouped by a number of different categories and goals: in both cases it is a matter of “restoring the budget sustainability” of the country, of “safeguarding its financial stability”, of sustaining “growth, competitiveness and investment”, and of promoting “a modern state and public administration”.

Above and beyond these formal similarities, though, a detailed analysis of the list of reforms countenanced in the two agreements shows us, first and foremost, that a number of the measures envisaged are identical, for instance in the areas of pension reform, of the restructuring of the banking industry, of the deregulation of the product market and of the struggle against corruption and tax evasion. These numerous similarities allow us to highlight the fact that the two agreements bear a strong resemblance to one another¹⁶.

“WE CAN PLAY “SPOT THE DIFFERENCE” IN OUR ATTEMPT TO IDENTIFY THE DIFFERENCES BETWEEN THE AGREEMENT REJECTED IN THE REFERENDUM AND THE FINAL ACCORD”

Aside for these similarities, we can almost play “spot the difference” in our attempt to identify the differences between the agreement rejected in the referendum and the final accord: initially set at 23%, VAT for hotels was brought back down to 13%; the planned cut in defence expenditure amounts to 100 million in 2015 and to 400 million in 2016, as against the 400 million provided for in the original agreement; the final deal provides for the gradual abolition of the preferential tax treatment afforded to the country’s shipping magnates, which the accord thrown out in the referendum did not provide for quite so explicitly; and so forth. Whether we consider the differences between the provisional and final agreements to be positive or negative, the very fact that they exist at all serves to confute the argument that the two accords are identical.

From the Greek people’s point of view, two new factors may probably be considered negative. While the accord rejected in the referendum set a number of deadlines for bringing in the reforms at the end of 2015, in the course of 2016 and even at the end of 2016, the final agreement provides for a start being made on many of them before 15 July, then before 22 July, and even going as far as to specify that their implementation is a precondition for the issue of a third aid package. This decision to demand pledges from the Greek authorities also seems to be behind the creation of a “privatisation fund” whose income could amount to 50 billion euro (as opposed to the figure of 6.3 billion euro over three years envisaged in the initial agreement) and has already been earmarked for paying back the European aid used to recapitalise Greece’s banks (50%), to reduce the country’s debt (25%) and to be used for further investments in Greece (25%).

On a more positive note from the Greek point of view, there is another crucial element worth highlighting in the agreement concluded by Greece and its creditors, concerning the goals established in connection with the country’s primary budget surplus (in other words, before it pays interest on its debt): the more or less tough structural reforms that need to be implemented in Greece are pegged to the level of that budget surplus and to the pace at which it materialises. While the goal of a budget surplus standing at 3.5% of GDP is still set for 2018 and beyond, the “trajectory” adopted to get there is far less demanding in the final agreement: 0.25% as opposed to 1% in 2015, 0.5% as opposed to 2% in 2016, and 1.75% as opposed to 3% in 2017.

16. They should also prompt us to ask ourselves the broader question of whether the group of measures already envisaged was regressive. Take, for instance, the struggle against corruption, nepotism, and tax elusion and evasion: are these really “austerity measures”, or are they not, rather, “measures for greater modernity”? Or take the deregulation measures designed to combat abuse of a dominant market position: are these really “antisocial measures”, or are they not, rather, measures designed to chip away at the profits made by “oligarchies”?

4.2. Substantial improvements in financial terms

In addition to the document listing the reforms to be implemented, the other two texts submitted to referendum on 5 July 2015 concerned the financial aid granted to Greece and the future of its debt.

Where the first of these two issues is concerned, considerable differences may be detected: the Greek people rejected an aid plan granting them 12 billion euro¹⁷ over 5 months, with 4 payments planned at the end of June, in mid-July, in early August and in October. The final accord, on the other hand, provides for a financial aid plan worth 86 billion euro over three years.

“AN EXTENSION TO THE “GRACE AND REPAYMENT PERIODS” OF THE GREEK DEBT”

Where the second issue – an especially symbolic one – is concerned, the differences are equally as remarkable: the document submitted to referendum in Greece on 5 July mentioned the future of the country’s debt, even mentioning the extent of the relaxation and arrangements already allowed, without envisaging any further relaxation; the declaration issued at the euro summit on 12 and 13 July, however, does mention such “additional measures”, specifying that they may take the shape of an extension to the “grace and repayment periods”: so it is not a matter of cancelling the repayment of the debt, but of delaying the date on which repayment of the first instalment has to be made (currently 2020) and the duration of the repayment (approximately 30 years on average, as things stand today)¹⁸.

Last but not least, the euro area summit on 12 and 13 July 2015 approved the implementation of a 35 billion euro investment plan in Greece’s favour, which was not in the texts rejected in the 5 July referendum. This is an especially important contribution for sustaining growth and employment in the country and it should make it possible, along the way, to contribute to mechanically bringing down its debt-to-GDP ratio.

The terms governing financial assistance provided for in the final accord had undoubtedly already been raised in the course of the negotiations between Greece and its creditors (relaxation of the debt and investment plan), as had the adjustment of certain structural reforms. But given that they did not appear in the proposals which Alexis Tsipras’ government chose to submit to a referendum, it is only logical that we should include them in the list of substantive differences with the accord rejected on 5 July.

When all is said and done, it falls to each player, primarily to the Greek people, to judge whether the differences identified above are sufficiently substantive to argue that the agreement thrashed out by the Athens authorities is more favourable than the one rejected on 5 July, or not. Whatever the answer, one thing is certain: the differences are sufficiently numerous to gainsay the argument of those who claim that the agreement is identical to the one recently submitted to a referendum.

17. In addition to this 12 billion, 3.5 billion in IMF aid was also mentioned

18. On that subject precisely, the press revealed the morning after the referendum announcement that the German government had been ready to introduce exactly this formula in the last hours of negotiations about the extension of the 2nd program.

CONCLUSION – THE ELECTION ON 20 SEPTEMBER 2015: AN OPPORTUNITY TO BALANCE THE REFERENDUM BOOKS BOTH IN GREECE AND IN THE EU?

The holding of a fresh, democratic general election in Greece on 20 September has one unquestionable advantage: this general election is going to reveal in concrete terms whether or not a majority of the Greek people will be voting for parties hostile to the agreement thrashed out with the EU, including on the grounds that it is supposed to be a “denial of democracy” with regard to the outcome of the referendum. Otherwise, it will be only logical for us to argue that the conclusion of the agreement was not at variance with the will of the Greek people after all, because they have chosen to grant the majority of their votes to parties in favour of the accord’s implementation, including on the grounds that its content is better than the content that they threw out in the referendum.

In any event, this is unlikely to mean that the promoters of the European construction process will have finished having to reckon with the disputes spawned by the allegedly unsatisfactory follow up to a few other “no” votes seen in the Irish, French and Dutch referenda. But it is on the basis of a historical, geographical, political and legal approach that they will be able to stress that there is no inconsistency between referenda and decisions made by the European authorities, while pointing out that several different national political wills have by necessity to coexist side by side in the “Federation of Nation States” that is the EU, and which no referendum will ever be able to change.

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