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Referendums in Eastern Europe: The Effects on
Reforming the EU Treaties and on the Candidate Countries'
Positions in the Convention

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Abstract:

The paper discusses the impact of the constitutional amendment and referendum procedures of the Central and Eastern European (CEE) Candidate Countries on reforming the EU treaties and, secondly, on the Candidate Countries' positions concerning the Debate on the Future of the Union. It highlights the procedural and practical complications in Central and Eastern Europe concerning the requirement of unanimous ratification of the EU treaty amendments under 'the national constitutional procedures' (art 48 TEU). Namely, in the CEE Candidate Countries, there is a tradition of using referendums frequently, the majority of recent referendums have been invalid because of the high minimum turnout requirements, public opinion tends to be rather eurosceptic in several countries, and there are relatively long prohibition periods for re-initiating unsuccessful referendums. These factors, which would increase the likelihood of cases such as the first Irish referendum on the Nice Treaty in the post-enlargement Union, should bring the politically sensitive issue of simplifying the EU treaty amendment procedure more firmly onto the agenda. These complications also predetermine the Central and Eastern Countries' interest for an incremental integration with a view to the Debate on the Future of the Union, as a federal Union would be too difficult to 'sell' in the accession referendums. Indeed, the speeches of CEE politicians show that these countries predominantly support a looser union of nation-states instead of a federation, a constitutional treaty instead of a constitution, and a gradual strengthening of the Community institutions instead of an institutional revolution.

INTRODUCTION

As part of the discussions on reorganising the Treaties, the Convention on the Future of Europe is considering the possibility of facilitating the EU treaty amendment procedure, which currently requires unanimous ratification ‘under the national constitutional procedures’ (art 48 TEU). Although a number of political and academic actors have pointed out that the dramatic increase in the number of Member States would necessitate an easier amendment procedure, this politically sensitive issue has achieved relatively little attention. However, the Future Debate has overlooked the fact that in the acceding Central and Eastern European (CEE) countries, the procedures of referendum and of constitutional amendment are particularly complex. These procedures threaten to proliferate, in the post-enlargement Union, cases such as the first Irish referendum on the Nice Treaty, where 33% of the voters of a small country could effectively paralyse the entrance into force of the whole treaty.

This paper will discuss the major procedural and practical complications of the ‘national constitutional procedures’ in the CEE Countries. First, the ratification of new EU treaties is likely to involve the passing of a constitutional amendment and accompanying referendum in several CEE countries, because the Central and Eastern European constitutions have a ‘souverainist’ character and the treaties are progressively approaching the core of sovereignty. Second, in those countries which would not need to amend their constitutions, there is nevertheless a likelihood of ordinary referendums being held on the new treaties, because the CEE countries have a tradition of using referendums frequently. Third, referendums require high minimum turnout rates, which the majority of the recent referendums have failed to achieve. Further, public opinion tends to be rather eurosceptic in many countries. Finally, in the case of an invalid or negative result, a referendum on the same issue may not be reinitiated within 1-4 years in several CEE Candidate Countries. Highlighting these problems, the paper suggests that the resulting danger of paralysis of the EU treaty amendment after the enlargement should bring the issue of revising art 48 more firmly onto the agenda, and provides an overview of the existing proposals for alternative treaty amendment procedures.

The above factors of the referendums also influence the Central and Eastern European positions in the Convention on the EU Future, which will be discussed in the second part of the paper. The CEE politicians find it difficult to achieve a successful accession referendum as it is; ‘selling’ a federal Union would make it much harder to achieve, as the issue of sovereignty remains sensitive in the countries which have (re-)established their sovereignty only a decade ago. Therefore, CEE politicians predominantly advocate an incremental

integration in their speeches on the Future of the Union. They prefer a ‘union of nation-states’ to a federation, a constitutional *treaty* rather than an EU constitution, and a gradual strengthening of the Community method instead of an institutional revolution.

1. THE ‘NATIONAL CONSTITUTIONAL PROCEDURES’ IN THE EASTERN CANDIDATE COUNTRIES AND THEIR IMPACT ON REFORMING THE TREATIES

1.1. The ‘souverainist’ character of the CEE constitutions and their amendment procedures

The constitutional amendment procedures of the future Central and Eastern Member States should be considered to be of primary relevance to the ‘national constitutional procedures’, which art 48 TEU prescribes for ratifying the EU treaty amendments. The treaty amendments so far have consistently narrowed the Member State’s sovereignty and this trend is likely to continue with a view to the organisational difficulties of accommodating the dramatically increasing number of Member States. The ratification of these treaty amendments is likely to require prior constitutional amendments and corresponding referendums in several future CEE Member States, because the constitutions of the Central and Eastern European Candidate Countries¹ share a ‘souverainist’ character (Albi, 2002). The main aspects of ‘souverainism’ are subsequently discussed.

First, the CEE Candidate Countries’ constitutions set forth **numerous and complex sovereignty provisions** (available in detail in Table 1) and all except the Slovak constitution distinguish between *sovereignty* and *independence*. The former implies internal sovereignty, referring to the state’s power competences vested in the people; the latter signifies external sovereignty, implying independent statehood in international relations. The Baltic and Romanian constitutions are the most protectionist, while the Polish new 1997 constitution is relatively liberal towards international cooperation. In comparison, six constitutions amongst the fourteen written constitutions of the EU Member States do not mention sovereignty at all, declaring simply that the people form the source of power.² Another four use a one-sentence formula that sovereignty belongs to the people,³ regarding external and internal sovereignty as a unified phenomenon. Only three constitutions draw a distinction between sovereignty

¹ Available in English at the International Constitutional Law website www.uni-wuerzburg.de/law/.

² Germany, Belgium, Sweden, Austria, the Netherlands and Denmark.

³ Italy, France, Spain and Greece. The Finnish Constitution has two separate sentences in this regard.

and independence: Luxembourg (arts 1 and 32), Portugal (Preamble, arts 1, 2, 3.1 and 7.1) and Ireland (Preamble and art 5).

Second, the CEE constitutions **add numerous safeguards** to the provisions on sovereignty and independence. For instance, in Hungary, the state has to defend sovereignty and independence and the Prosecutor's Office has to prosecute acts against Hungary's independence. In Romania, the political organizations have to respect, and the president and the army have to safeguard the sovereignty and independence of the state; sovereignty may not be exercised in the name of any group or person. In Slovakia, the president is to be recalled for activities against sovereignty, and the national minorities may not jeopardise Slovakia's sovereignty. Poland has to safeguard its independence, while the Deputies and the President have to safeguard the sovereignty of the state. Bulgaria's foreign policy and the army have to protect and all organizations have to respect the country's sovereignty, independence and national integrity; the constitution prohibits the usurpation of popular sovereignty and recalls the irrevocable duty to guard Bulgaria's national and state integrity. The Lithuanian constitution prohibits limitation, restriction or claims to the sovereign powers of the people; the foreign policy has to safeguard Lithuania's independence. According to the Estonian and Lithuanian constitutions, the citizens have the duty to protect their country's independence.

Table 1: Provisions on sovereignty and independence and their safeguards.

Estonia	<p>Preamble: established on the inextinguishable right of the people of Estonia to <i>national self-determination...</i></p> <p>1. Estonia is an <i>independent</i> and <i>sovereign</i> democratic republic, wherein the <i>supreme power of state is vested in the people.</i></p> <p>1.2. The <i>independence</i> and <i>sovereignty</i> of Estonia are <i>timeless and inalienable.</i></p> <p>54. An Estonian citizen has a duty ... to defend the <i>independence</i> of Estonia.</p> <p>123.1. The Republic of Estonia shall not conclude international treaties which are in conflict with the Constitution.</p>
Lithuania	<p>Preamble: having for centuries defended its... <i>independence...</i>; embodying the inborn right of each person and the People to live and create freely in ... the <i>independent State</i> of Lithuania.</p> <p>1. The State of Lithuania shall be an <i>independent</i> and democratic republic.</p> <p>2. <i>Sovereignty</i> shall be <i>vested in the People</i></p> <p>3.1. No one may limit or restrict the <i>sovereignty of the People</i> or make claims to the <i>sovereign powers of the People.</i></p> <p>3.2. The People and each citizen shall have the right to oppose anyone who encroaches on the <i>independence</i> ... of Lithuania by force.</p> <p>135.1. In conducting foreign policy, the Republic of Lithuania ... shall strive to <i>safeguard ... independence...</i></p> <p>136. The Republic of Lithuania shall participate in international organizations provided that they do not contradict the ... <i>independence</i> of the State.</p>
Latvia	<p>1. Latvia shall be an <i>independent</i> democratic Republic.</p> <p>2. The <i>sovereign power</i> of the Latvian State shall belong to the <i>People of Latvia.</i></p>
Romania	<p>1.1. Romania is a <i>sovereign, independent, unitary, and indivisible Nation State.</i></p> <p>2.1. <i>National sovereignty</i> resides with the Romanian people...</p> <p>2.2. No group or person may exercise <i>sovereignty</i> in one's own name.</p> <p>8.2. Political parties...contribute to the definition and expression of the political will of the citizens, while observing <i>national sovereignty...</i></p> <p>37.2. Any political parties or organizations which... militate against ... the <i>sovereignty, integrity, or independence</i> of Romania shall be unconstitutional.</p> <p>80.1(1) The President ... is the safeguard of the <i>national independence...</i></p> <p>82.2. President's oath: 'I solemnly swear ...to defend ... Romania's <i>sovereignty, independence...</i>'</p> <p>117.1. The Armed Forces shall ... guarantee the <i>sovereignty, independence</i> ... of the State.</p> <p>148.1. prohibits amendment of the provisions on the <i>national, independent character of the state.</i></p>
Hungary	<p>2.1 The Republic of Hungary shall be an <i>independent,</i> democratic constitutional state.</p> <p>2.2 In the Republic of Hungary all <i>power is vested in the people,</i> who exercise their <i>sovereignty</i> through elected representatives and directly.</p> <p>5. The State of the Republic of Hungary shall defend... <i>sovereignty of the people, the independence</i> ... of the country.</p> <p>6.1 The Republic of Hungary ...shall refrain from the use of force and the threat thereof against the <i>independence</i> ... of other states.</p> <p>19.2. Exercising its rights based on the <i>sovereignty of the people,</i> the Parliament shall ensure the constitutional order of society...</p> <p>51.1. The General Prosecutor and the Office of the Public Prosecutor ... shall prosecute to the full extent of the law any act which violates or endangers the ... <i>independence</i> of the country.</p> <p>68.1. The national and ethnic minorities living in the Republic of Hungary participate in the <i>sovereign power of the people.</i></p>
Czech R.	<p>Preamble: at the time of the renewal of an <i>independent</i> Czech state...</p> <p>1. The Czech Republic is a <i>sovereign,</i> unified, and democratic law-observing state...</p> <p>2.1. All <i>state power</i> derives from the people...</p> <p>9.2. Any change of fundamental attributes of the democratic law-observing state is inadmissible.</p>

Slovakia	<p>Preamble: proceeding from the natural right of nations to self-determination...</p> <p>1. The Slovak Republic is a sovereign, democratic, and law-governed state.</p> <p>2.1. State power is derived from citizens...</p> <p>34.3. The enactment of the rights of citizens belonging to national minorities and ethnic groups ...must not be conducive to jeopardizing the sovereignty ...of the Slovak Republic...</p> <p>106. The National Council of the Slovak Republic can recall the president from his post if the president is engaged in activity directed against the sovereignty...of the Slovak Republic.</p>
Bulgaria	<p>Preamble: in awareness of our irrevocable duty to guard the national and state integrity of Bulgaria...</p> <p>1.2. The entire power of the state shall derive from the people.</p> <p>1.3. No part of the people, no political party nor any other organisation, state institution, or individual shall usurp the expression of the popular sovereignty.</p> <p>9. The armed forces shall guarantee the sovereignty... and independence of the county...</p> <p>44.2. No organization shall act to the detriment of the country's sovereignty and national integrity, or the unity of the nation...</p> <p>18.2 and 3. The state shall exercise sovereign rights..</p> <p>24.2 The foreign policy of ... Bulgaria shall have as its uppermost objective the ... independence of the country...</p>
Slovenia	<p>Preamble: Whereas it is in keeping with the Basic Constitutional Charter on Independence and Sovereignty of the Republic of Slovenia...</p> <p>Acknowledging that we Slovenians created our own national identity and attained our nationhood based on ... the fundamental and permanent right of the Slovenian people to self-determination...</p> <p>3.1. Slovenia is a state of all its citizens and is based on the permanent and inalienable right of the Slovenian people to self-determination.</p> <p>3.2 [Title 'sovereignty'] ... the supreme power is vested in the people.</p>
Poland	<p>Preamble: ...Homeland, which recovered ... the possibility of a sovereign and democratic determination of its fate...</p> <p>4.1. Supreme power in the Republic of Poland shall be vested in the Nation.</p> <p>5. The Republic of Poland shall safeguard the independence and integrity of its territory...</p> <p>104.2 Deputies' oath: 'I do solemnly swear... to safeguard the sovereignty ... of the State...'</p> <p>126.2. The President of the Republic shall ... safeguard the sovereignty ... of the State...</p>

Third, nine constitutions out of the ten Central and Eastern European Candidate Countries **did not contain until recently provisions on transferring competences to international organizations**. Only the Lithuanian constitution had a provision with this regard (art 136), subject to the condition of preserving Lithuania's independence and prohibition on joining organizations based on the former USSR (art 150). The Slovak constitution authorised the entrance into a 'state alliance' (art 7), which was, according to most authors, aimed at a closer relationship with the Czech Republic (Hoskova, 1994, 91). However, Poland has provisions on international organisations since adopting the new constitution in 1997; the Czech and Slovak constitutions were amended in 2001 in order to join the EU. According to the new provisions in the Czech Republic and Poland, the ratification of a treaty on joining international organisations may be preceded by a referendum. In comparison, all the constitutions of the EU Member States have a clause on delegating powers to international organizations and six of them also to the European Union. However, in contrast to their stance concerning international organisations, several commentators have correctly pointed out that the CEE constitutions have an 'international law-friendly'

character (Korkelia, 1997, 227), as a number of them clearly establish supremacy and direct applicability of international law.

Fourthly, the **amendment of sovereignty provisions is rather difficult**. Some constitutions prohibit the amendment of the fundamental provisions. The Romanian constitution prohibits the amendment of the national and independent character of the state. The Czech constitution prohibits the amendment of ‘the fundamental attributes of the democratic law-observing state’. The Estonian constitution declares that sovereignty and independence are timeless and inalienable and also mentions the inextinguishable right of the Estonian people to self-determination. The Slovenian constitution underlines the permanence and inalienability of the right to self-determination.

Fifthly, and of direct importance to this paper, many Central and Eastern European constitutions subject the amendment of sovereignty provisions to a **mandatory or optional referendum**, requiring a high political and popular consensus.⁴ The Romanian constitution requires a referendum for all constitutional amendments; the constitutions of Estonia, Latvia and Lithuania for amending the fundamental provisions, including sovereignty. In Latvia and Estonia, the amendment of the ordinary provisions may also optionally be subject to a referendum and in Estonia, it is prohibited to conclude treaties which are in conflict with the constitution. Poland provides a special optional referendum for amending the state-fundamental provisions of Chapter I. The Slovenian constitution provides a referendum for any constitutional amendments, if it is so required by thirty Deputies. In Bulgaria, constitutional amendment may not be submitted to a referendum, but the Grand National Assembly has to be specially elected to amend issues concerning, *inter alia*, the

⁴ The procedures of constitutional amendment and referendums are regulated in the following acts: Romania – Title VI and Art 90 of the Constitution and Law on the Organisation of Referendums, promulgated on 22.02.2001; Estonia – Chapter 15 of the Constitution and Referendum Act, 18.05.1994 (RT I 1994, 41, 659), amended in RT I 1998, 98/99, 1577, in English www2.essex.ac.uk/elect/electjp/ee_ref9499.htm; Lithuania – Chapter 14 of the Constitution and Law On Amending and Supplementing the Law on the Referendum, 15.06.1994 No. I-496, in English www3.lrs.lt/c-bin/eng/preps2?Condition1=21926&Condition2=; Latvia – Arts 76-80 of the Constitution and Law on Public Referendums and Legislative Initiatives, 31.03.1994, amended 03.09.1998; Poland – Chapter XII and Art 125 of the Constitution and Statute on Referendum, 29.06.1995; Slovenia – Part 9 and Art 90 of the Constitution and Law on Referendum and Popular Initiative, Official Gazette, 15/1994 and 13/1995; Slovakia – Arts 93-100 of the Constitution and Referendum Law, Collection of Laws No. 564/1992, in English www2.essex.ac.uk/elect/electjp/slvk_referendum.htm; Bulgaria – Chapter 9 and Art 10 of the Constitution and Law on the Forms of Direct Democracy, State Gazette 100, 22.11.1996, amended in SGN 69, 1999, in force 03.08.1999; Czech Republic – Art 9 of the Constitution, Law on referendum not yet adopted; Hungary – Art 24.3 and Art 28C of the Constitution and Law on National Public Initiative and Referendums, 17.02.1998.

changes related to the form of state or the form of government, direct applicability of the constitution, supremacy of international law and ratification of any international instruments envisaging such problems. The constitutions of Romania and the Baltic States share the most restrictive constitutional amendment procedures, while the Slovak, Czech and Hungarian amendment procedures are relatively liberal. In comparison, referendums generally have an unimportant role in the constitutional amendment procedures of the EU Member States and six of them do not use referendums at all.⁵

Further, the referendums require **high minimum turnout rates** – most extremely in Lithuania, where 3/4 of all citizens who have voting rights must consent to amend art 1 (independence). The majority of recent referendums have failed to achieve the required quorums, and unsuccessful referendums may not be reinitiated for several years – a more detailed account of these issues will be provided in the next section.

Finally, the constitutional amendment procedure, especially for amending the sovereignty provisions, is lengthy (2-3 parliamentary readings over 2-5 months, plus a referendum in some countries) and also requires a wide parliamentary consensus – 2/3 to 3/5 majority of the whole parliament or of both chambers in bicameral parliaments.⁶ In Estonia, the amendment procedure can even take several years if amended by the two successive Parliament memberships (nominal term of office 4 years).⁷ In Estonia and Lithuania, the constitutional amendment may not be re-initiated within 1 year if any of the votes fail. In Bulgaria, the amendment of the fundamental provisions by the Grand National Assembly may take 5-10 months (it is elected 3 months after the parliament's resolution and it decides upon the amendment within the 2nd to 5th

⁵ Germany, Luxembourg, Belgium, Spain, Greece and the Netherlands.

⁶ Estonia – 3 readings with 4 month total minimum interval for all three amendment procedures, referendum after 3 months; Lithuania – 2/3 majority of Parliament membership on two votes, with 3 months interval, plus referendum; Latvia – 3 readings in the presence of 2/3 Deputies, with 2/3 majority approval, plus referendum; Romania – 2/3 memberships of both Chambers or, if no agreement, 3/4 of joint session of both Chambers, plus referendum; Poland – successive approval by 2/3 of the Seim with half of the Deputies present, and the absolute majority of half of the Senate, with 60 days interval to amend Chapter I, plus optional referendum; Slovenia – proposal requires 2/3 of the Deputies present and voting, the amendment 2/3 majority of all the Deputies, plus optional referendum; Czech Republic – 3/5 majority of all the Deputies and 3/5 of the Senators present (quorum 1/3).

⁷ Unless using a referendum or the urgency procedure, which requires a very high consensus (the initiative proposal 4/5 and the Amendment Act 2/3 majority of the Parliament membership).

month of its election).⁸ Only in Slovakia and Hungary do the amendments need respectively a 3/5 and 4/5 majority of the whole parliament in a single vote.

The pattern of the constitutional amendments so far shows that the countries with a relatively simple parliamentary amendment procedure (Slovakia and Hungary) have introduced several amendments, whereas those with the most rigid amendment procedure, the constitutions of Estonia and Romania, have not been amended.⁹ Only Slovakia and the Czech Republic have adopted the EU-amendments, whereas in the countries where the amendment of sovereignty provisions requires a referendum, none of the amendments have yet concerned the fundamental provisions of sovereignty. The EU accession is therefore likely to become the first test of whether the history-aware constitutional safeguards for sovereignty have been designed flexibly enough to adapt to the needs of the changing social context. However, the following sections will demonstrate that these stringent constitutional amendment procedures are also relevant to the debate on simplification of the EU treaties.

1.2. Referendums: procedural and practical complications

Besides the constitutional amendment referendums provided for in some Central and Eastern European countries, most CEE countries also establish in their constitutions or referendum laws a possibility of using referendums for deciding issues of national importance, which may be used for obtaining a public approval for ratifying the future EU treaties.¹⁰ The following paragraphs discuss the procedure and practice of the CEE referendums, pointing out four factors which should be kept in mind when discussing the future of the EU treaty amendment system.

⁸ 2/3 majority of all the members required on three different days. Ordinary amendments by the National Assembly require 3/4 of all the Deputies on three different days.

⁹ Slovakia has amended its constitution three times – 1998 (division of powers), 1999 (direct presidential elections); and 2001 (package of 85 amendments, including international obligations); Lithuania – 1996 (Art 47 on sale of non-agricultural land to EU citizens and Art 119 on municipal councils); Slovenia – 1997 (Art 68 on sale of real estate to EU citizens) and 2000 (electoral system); Hungary – 1995 (constitutional amendment procedure), 1997 (referendum, status of ministers, court system etc); June 2000 (use of Hungarian airspace and soil by NATO); Czech Republic – 2000 (peacekeeping), 2001 (international obligations); Latvia – 1994 (voting age), 1998 (new chapter VIII on human rights, amendments of Art-s 4, 77 and 82); 1996 (creation of the constitutional court, amendments on parliament and president). Poland adopted the new constitution in 1997. There have also been no constitutional amendments in Bulgaria. Note that this list may be incomplete.

¹⁰ See for the referendum laws and the constitutional provisions on referendum supra note 4. However, in Latvia, the Referendum Act allows initiating referendums only in four procedural cases and in the Czech Republic, the Referendum Act has not yet been adopted. Note also that in Estonia and Latvia, the constitutions prohibit referendums on treaties; in Hungary, referendums are prohibited on treaties in force.

First, the Central and Eastern countries have a **tradition of using referendums frequently**: there have been at least 25 referendums since 1989 in the ten Candidate Countries, on issues of varying importance, from privatisation to NATO membership (see for recent referendums Table 3).¹¹ Referendums have been most numerous in Lithuania – altogether 7, and Slovakia – altogether 4, since the countries’ independence in 1991 and 1993 respectively. In addition, there have been abundant referendum initiatives which have not materialised; recent examples from 2001 include the restitution of the Royal Castle in Romania and the indexing of pensions and the amendments to the Labour Code in Hungary. In this light, the ratification of the future EU treaty amendments are likely to undergo a referendum in a number of CEE countries.

Second, it is important to point out that in the CEE countries, referendums are subject to **high quorum requirements**. In most countries, the minimum turnout rate is at least 50% of the eligible voters – the details are provided in Table 2.

¹¹ See details of referendums in individual countries the Direct Democracy website <http://c2d.unige.ch/> and in country reports in the *East European Constitutional Review*.

Table 2: Minimum turnout requirements.

Lithuania	3/4 of all citizens who have voting rights	Referendum on amending art 1 on independence;
	50% turnout	Ordinary referendums and referendums on amending ordinary constitutional provisions
Latvia	50% turnout	Constitutional amendment referendums;
	Half of the turnout rate of the previous parliamentary elections	Ordinary referendums
Slovakia	50% turnout	All referendums
Bulgaria	50% turnout	All referendums
Slovenia	50% turnout	Constitutional amendment referendums;
	Simple majority	Ordinary referendums
Poland	50% turnout	Ordinary referendums, in order to be binding (otherwise consultative referendum)
	Simple majority	Constitutional amendment referendums
Hungary	25% approval of all citizens who have voting right	Since 1997 for all referendums as a result of amendment adopted before NATO-referendum;
	50% turnout	Before 1997 for all referendums
Estonia	Simple majority	All referendums
Romania	Data not available	
Czech Rep.	Referendum law not adopted	

Thirdly, more than half of the referendums within recent years have **failed to meet these high quorums**. Apart from the enthusiastic participation in the referendums of the early 1990s on independence and adoption of the constitutions, Table 3 shows that 9 out of 16 referendums from 1994 onwards have been invalid due to low turnout rates. In fact, the turnout remained far below 50% in 14 cases, but Hungary reduced the minimum turnout requirement of 50% shortly in anticipation of the NATO referendum and other referendums were declared valid on various procedural grounds explained in Table 3.

Table 3: Referendum results during recent years.

Country	Year	Issue	Turnout
Lithuania	1994	Illegal privatisation; savings compensation for inflation victims; early parliament elections	36.8%, invalid
	Oct 1996	Expenditure of state budget; compensation of the loss of assets prior to 1990; decrease in number of parliament members	52%
	Nov 1996	Purchase of agricultural land by EU nationals	40%, invalid
Slovakia	1994	Transparency of privatisation	19.98%, invalid
	1997	NATO membership; nuclear weaponry and military basis	9.5%, invalid
	1998	Privatisation of main state companies	44%, invalid
	2000	Early elections	20%, invalid
Poland	1997	New constitution	43% (no minimum for constitutional amendment referendums)
	1996	Privatisation	32.5%, consultative
Hungary	1997	NATO membership	49% (threshold majority 25% of the electorate)
Latvia	1998	Amendments to the Citizenship law	67%
	1999	Amendments to the Pensions law	25%, invalid
Slovenia	1996	Amendments to the electoral law	38% (declared successful by the Constitutional Court)
	1998	Consultative referendum on reform of local government system	Less than half, but only electors of affected border areas were asked to participate
	1999	Referendum on funding the construction of power plant TET3	27%, invalid
	2001	Amendments to Law on Infertility Treatment	33%, invalid
Estonia and Romania have had no referendums after the early 1990s, Bulgaria and the Czech Republic have had no referendums in last couple of decades.			

Fourthly, besides the danger of an invalid result, the EU-referendums have also the threat of a negative result as the **public opinion of the Candidate Countries tends to be rather euroceptic**. The public opinion studies available focus mainly on the accession referendums, but the support for the EU has a tendency to decrease rather than increase after the accession, as shows the comparative experience with the Member States who have joined previously. While the EU accession forms a paramount objective for the CEE politicians, the general public tends not to share this enthusiasm. In 2001, a number of public opinion polls, predominantly conducted by national polling agencies, show that support rates for EU accession were under fifty percent in six

Candidate Countries,¹² although it should be pointed out that the European Commission's Eurobarometer studies show higher support.¹³ Based on these national and EU studies, the support for EU accession in 2001 was lower in Estonia (36-54%), Latvia (38-46%), Lithuania (48-50%), Czech Republic (42-54%), Poland (44-54%) and Slovenia (42-56%), whereas high support rates for EU accession dominate in Slovakia (66-76%); Hungary (54-70%), Romania (76-85%) and Bulgaria (70-80%).¹⁴ Most extremely in Estonia, the percentage of people who would have voted against joining the EU reached 59% by May 2001, but, curiously, Estonia's victorious performance in the Eurovision song contest increased the amount of EU-supporters to 54% in August 2001.¹⁵ The populations of Estonia, Latvia, Lithuania and the Czech Republic have also earlier been famous for their consistently low support rates for the EU membership, fluctuating over the years between 22-45%.¹⁶ The reasons for euroscepticism vary, but they seem to relate mainly to (a) the fear of losing sovereignty with a view to the recent experience with another 'Union', and (b) the cost of speedy adoption of the EU technical, environmental and social standards. Additionally, Slovenes are concerned about having to wait for the unprepared countries, while being themselves economically ready. In Estonia, euroscepticism has more been a protest against the Government's decade of ultra-liberal policies. In the Czech Republic, the EU is seen as 'overregulating, socialist and collectivist in comparison with Czech liberalism' (Perron, 2000, 17-18). In the Baltic States, the principal argument for EU membership is their security with respect to Russia, otherwise the level of euroscepticism could be even higher.

Finally, an unsuccessful referendum **may block a treaty for several years**. In the case of an invalid or a negative result, a new referendum on the issue may not be re-initiated within 4 years in Poland, 3 years in Slovakia, 1 year in Estonia, Lithuania and Slovenia and, according to a draft referendum law, within 2 years in the Czech Republic, which also establishes the minimum turnout requirement of 50%.¹⁷ In Estonia, the parliament is also to be dissolved.

¹² Reports of national polls have been taken from the *RFE/RL Newslines* (www.rferl.org). See eg "Majority of Hungarians Would Vote for Joining EU", *RFE/RL Newslines* Vol. 5, No. 140, Part II, 26.07.2001.

¹³ European Commission. Applicant Countries Eurobarometer, December 2001, at <http://europa.eu.int/comm/enlargement/docs/pdf/cceurobarom.pdf>, p 5.

¹⁴ Since the questions posed and methodology used have been different in the Eurobarometer and various national polls, the lowest and highest rates in 2001 are given, in order to provide a general overview of the support rates in different countries.

¹⁵ Reported respectively in *Postimees*, 19.05.2001, and "Euroliidu toetajate arv nelja aasta suurim" [The number of EU-supporters is the highest of four years], in *Postimees* 25.08.2001.

¹⁶ See Central and Eastern Eurobarometers, <http://europa.eu.int/comm/dg10/epo/ceeb.html>.

¹⁷ "Czech Senate Approves Bill on EU Accession Referendum", Reported by CTK News, in *RFE/RL Newslines* Vol. 5, No. 124, Part II, 29.06.2001.

1.3. The case for revising the Treaties' amendment procedure

A number of political and academic actors have pointed out that the dramatic increase in the number of member states after the imminent enlargement will necessitate an easier amendment procedure of the Treaties in order to avoid paralysis. The previous sections of this paper, having highlighted the procedural and practical complications of the 'national constitutional procedures' in the acceding Central and Eastern countries, which the Future Debate has overlooked so far, show that there is a real danger of blockage, which should bring the revision of the EU treaty amendment procedures more firmly onto the agenda.

The proposals for facilitating the treaty amendment procedure mainly proceed from the division of the treaties into two parts. The fundamental part, which would set forth the political guidelines, citizens' rights, institutional framework and the basis for the division of competences, would be amended infrequently and in accordance with the 'national constitutional procedures'. The second part, which would comprise of the provisions of technical, functional and implementing nature and would not directly affect the Member States' sovereignty, would be subject to an easier amendment procedure by the EU institutions. The idea was first officially tabled by the Dehaene-Group in October 1999¹⁸; in 2000, the Robert Schuman Centre of the European University Institute (EUI) was commissioned by the European Commission to prepare a Draft Basic Treaty,¹⁹ which was followed by a Second Report examining the modalities of facilitating the amendment procedures.²⁰ Most political and academic actors have subscribed to this division and they have focused rather on the concrete amendment mechanisms.

Opinions diverge as to whether unanimity should be retained: the need for qualified majority voting is more readily accepted for the non-constitutional part, on the condition that the European Parliament would be involved by the assent procedure.²¹ The amendments to the constitutional part should, according

¹⁸ "The Institutional Implications of Enlargement". Report by Weizsäcker, R., Dehaene, J.-L., Simon, D., delivered to the European Commission" on 18.10.1999, Brussels, available at http://europa.eu.int/igc2000/repoct99_en.pdf.

¹⁹ "A Basic Treaty for the European Union. A Study of the Reorganisation of the Treaties", EUI, RSC, Florence, 15.05.2000, www.iue.it/RSC/Treaties.html.

²⁰ "Reforming the Treaties' Amendment Procedures. Second Report on the Reorganising of the European Union Treaties," EUI, RSC, Florence, 31.07.2000, www.iue.it/RSC/Treaties.html.

²¹ For example, amendment by (super)-qualified majority or unanimity of the Council and a special majority in the European Parliament has been recommended by the "Dehaene Group", supra note 18, and Bertelsmann Foundation and Center for Applied Policy Research, "Thinking Enlarged. The Accession Countries and the Future of the European Union – A Strategy for Reform by the Villa Faber Group on the Future of the EU", October 2001, www.europa.eu.int/futurum/conothbis_en.htm#att [hereinafter the "Villa Faber Group"].

to many, still remain subject to a unanimous decision of an intergovernmental conference and be ratified by all Member States.²² However, besides the danger of blockage resulting from the potential unsuccessful referendums as demonstrated above, a number of other problems have been pointed out. P.-C. Müller-Graff is sceptical about the decrease in the need for amendments unless the Basic Treaty would be reduced to ‘a minimum of undisputed and highly abstract principles’, and he doubts that a final solution for the institutional structure could be found with a view to the continuous contest between ‘different forces of supranationality, national sovereignty and democracy’ (Müller-Graff, 2001, 16). The EUI Report notes that the IGC solutions often come down to the lowest common denominator; exceptions have to be formulated for individual Member States in an untransparent manner; and, ultimately, the unanimity requirement for amending the treaties is rare in international organizations as well as in the constitutions of the federal states.

The following alternative mechanisms have been proposed. The EUI Report recommends a super-qualified majority of 4/5 (or 9/10) of the Member States representing 4/5 of the population, with a blocking majority of at least 2 states; the minorities should be given an institutional guarantee (by increasing the influence of the Commission, European Parliament and possibly the ECJ, who would guarantee the collective European interest) and an opt-out clause (applying to the substantive scope of competences and intensity of instruments in action and not to the organisational structure and decision-making). In addition, the EUI Report recommends consideration of the following reforms: (a) a wider use of the autonomous amendment procedure by the EU institutions; (b) introduction of the ‘negative ratification’ as known from international law (treaty would enter into force unless notification of disagreement is submitted); (c) the use of the Convention model or a reformed version of the IGC; and (d) involvement of the national parliaments when designing the amendment rather than presenting them with a *fait accompli*. Such reforms would facilitate the ratification process and increase the legitimacy of the treaties. The Faber Group, recognising that the ratification process is fragile, has recommended designing mechanisms to attach specific costs to the repeated rejection of a new treaty, and constructive mechanisms to accommodate the concerns of dissenters. There are also proposals for creating special bodies for amending the secondary treaty.

The line of argument of this paper also leads to two recommendations concerning the imminent constitutional amendments in the Central and Eastern European Candidate Countries. First, the draft amendments should be addressed

²² Amongst academic studies see Dehaene group (supra note 18), Villa Faber Group (supra note 21), and Art 102 in “A Basic Treaty for the European Union. Draft Version for the Reorganisation of the Treaties”. Bertelsmann Group for Policy Research at the Center for Applied Policy Research. May 2000, www.cap.uni-muenchen.de/.

to the European Union rather than ‘international organizations’,²³ as the latter would reduce the room for interpretation when it would come to accommodating major integration steps undertaken by the future treaties in the constitutions. The ‘international organisations’ approach would be more likely to lead to constitutional amendments, with all the potential procedural complications discussed above. It should also be kept in mind that the Central and Eastern European countries are more likely to amend their constitutions instead of interpreting them broadly, because these constitutions possess a status of legal rather than political documents in the aftermath of 50-years’ experience with the declaratory communist constitutions; they are clear, up-to-date and directly applicable documents. Second, in order to reduce the danger of paralysing the EU treaty amendment procedures, as well as to avoid obstructing the countries’ participation internally, it is advisable that the draft amendments would avoid the referendum clauses for ratifying the successive EU treaties after membership²⁴ and consider instead facilitating the referendum procedures.

2. THE IMPACT OF THE REFERENDUMS ON THE CEE POSITIONS IN THE CONVENTION ON THE FUTURE OF EU

The highlighted complications with referendums in the CEE countries also influence the EU Future Debate by predetermining the Eastern countries’ interest for incremental integration concerning the reforms prepared within the Convention. As we saw in section 1.2, it has been difficult to ‘sell’ the EU in the referendums (whether on EU-related constitutional amendment or on accession), due to insufficient turnout rates and eurosceptic public opinion, which the deal of 25% of agricultural subsidies certainly did not improve. ‘Selling’ a federal union would therefore be even harder, considering the historically conditioned anti-federalist sentiments of the CEE populations.

The possibility of an ‘incorrect’ referendum result is, in fact, seen as a real danger: in several Candidate Countries there have been efforts to find constitutional interpretations to circumvent the referendum or to lower the

²³ The ‘international organisation’ approach is taken in the Polish 1997 Constitution, the Czech constitutional amendments of 2001, the Hungarian new draft constitution of 1997 and in the initial draft amendments of Latvia, Lithuania and Slovakia – the last three were later replaced by new drafts, which were directly addressed to the EU. See for details and references Albi, 2002.

²⁴ For instance, the draft amendments by the Estonian Expert Commission (1998) subject the ratification of the future EU treaties to a referendum; the draft amendments of the Latvian Working Group (2001) provide an optional referendum for “the changes in the conditions of Latvia’s membership”; the Hungarian draft constitution of 1997 requires a referendum for ratifying treaties which transfer part of the legislative, executive or judicial powers and provides a referendum for amending the constitution if requested by 300,000 electors.

turnout requirements. For instance, the draft amendments of the Latvian Working Group have suggested reducing the turnout requirement for EU accession from 50% to half of the participants of the previous parliamentary elections.²⁵ In Estonia, the former President has suggested that the referendum should take place after a few years of EU-experience and ask whether the people want to secede from the Union;²⁶ however, a political consensus was achieved in March 2001 that an accession referendum should be held. In Lithuania, where so far seven referendums have been held, the Working Group on the EU-related constitutional amendments has said that the EU accession does not require a referendum, since the EU forms a traditional international organisation and does not impinge upon Lithuania's independence.²⁷ Its Rapporteur later mentioned that a majority with 50% turnout will be difficult to achieve (Vadapalas, 2001, 351), while, understandably, none of the Lithuanian reporters have mentioned the 3/4 approval of the whole electorate, required for amending art 1. In Poland, the Government has expressed concern about the referendum with a view to the slippage of the support for EU and consistently low election turnouts (Blazyca, Kolkiewicz, 1999, 141). In the Czech Republic, the long pending referendum law is continuing its inter-chamber odyssey precisely for the reason that the Government has been concerned about the feasibility of achieving the 50% turnout.²⁸

The fact that the future EU treaties have to be ultimately accepted by the people in the referendums has usually been overlooked by those commentators who have not seen a case for a CEE coalition concerning the issues of the Future Debate. For instance, several academic and political actors have pointed out that the history of voting patterns in the EU shows that coalitions are formed on an issue-driven basis rather than new versus old or small versus big.²⁹ This is expected to continue after the enlargement into the Eastern countries, because their size, level of development and communist history would be outweighed by the facts that amongst them, there are 'more free traders ... and those that are more protectionist; there are protestant and catholic; there are southern and

²⁵ "The Theoretical Foundation of the Amendments to *Satversme* proposed by the Working Group", Ministry of Justice of the Republic of Latvia, Riga, 23.11.2001.

²⁶ Roonemaa, "Meri: rahvas võiks aastate pärast hääletada euroliidust välja astumist" [Meri: the people could vote on secession from the EU after a few years], in *Eesti Päevaleht*, 05.05.2001.

²⁷ "Republic of Lithuania Constitutional Law on the Amendment of Articles 136 and 138 of the Constitution of the Republic of Lithuania. Draft of the Working Group established under the Seimas Chancellery", in *Stojimas I Europos Sajunga Ir Konstitucija. Seminario Medziaga 29-30.06.1999* (Eugrimas, Vilnius, 2000) 141ff.

²⁸ "Czech Senate Approves Bill...", op. cit. *supra* note 17.

²⁹ Wallace, 2001; Grabbe, 2001 (with the exception of big-country coalitions on institutional matters); Villa Faber Group, *supra* note 21, 45-44.

nearly “northern” countries; there are also small and big ones³⁰. Further, it has been argued that the Candidates have not formed a unified group in the first sessions of bickering over the Convention’s procedural rules and in nominating the Candidates’ representative in the Presidium: some see themselves as a group, others perceive drawing a line between the new and old members as artificial and prefer to make issue-based coalitions.³¹ Nor has there been much cooperation between the CEE Candidates during the accession negotiations.

However, the following sections demonstrate that there is a case for CEE coalitions at least with regard to the fundamental issues of the EU future, precisely for the overlooked factor that the CEE positions need to keep in mind the ultimate acceptability by the people in referendums. We will take in the subsequent sections a closer look at the speeches of CEE politicians on the Future of Europe, which reveal a lot of similarity towards the fundamental issues of the EU future. They advocate the approach of a ‘union of nation-states’ instead of a federation; a constitutional treaty – with the emphasis on *treaty* – instead of a constitution, and a gradual strengthening of the Community institutions, instead of an institutional revolution. Even if some, in a personal capacity, have recognized the need for fundamental reforms towards federalism, they have pointed out that the Convention’s work has to pass the accession referendums.³² It should be noted that the speeches present initial visions rather than representing official positions in the Convention, and there are occasional contradictions amongst the speeches of politicians from the same country. The speeches remain generally worded and mainly approve the need for reforms rather than offering any concrete proposals, since it is difficult to assess the problems of a system in which one has not yet participated, and the Future Debate started in many CEE countries only with the convening of the Convention in February 2002. Before, the CEE discussion focused on the accession, the negotiations and the adoption of the *acquis*, especially in the smaller Candidate Countries with a limited amount of specialists available. Joschka Fisher’s speech on a federal Europe was negatively received by the public, but it was left aside as a utopian vision of a distant future and little serious discussion on the Future of Europe was generated in the CEE media, universities and general public. However, since the convening of the Convention, the CEE governments have called for a broad social debate, opened websites on the Future Debate, and, in Latvia and Slovakia, ‘national

³⁰ Speech delivered by R. Martikonis, Deputy Minister of Foreign Affairs of the Republic of Lithuania, at colloquium “The Finalité of European Union: Ideas and Concepts of the Candidate Countries”. Centre for European Integration Studies, Bonn, Germany, 16-17.11.2001, www.europa.eu.int/futurum/documents/speech/sp171101_en.pdf.

³¹ Eg Hungary, Cyprus and Estonia.

³² Eg the Polish President Aleksander Kwasniewski, in his speech on the Future of the Union, delivered at the European University Institute, Florence, 28.02.2002.

conventions' have been opened, bringing together the representatives of academia, political parties, local municipalities and civil society.

2.1. A 'Union of Nation-States' instead of a federation

CEE politicians predominantly do not approve of the visions of a federal Europe, but envisage the EU's future as a looser union of nation-states. For instance, former Prime Minister of Hungary, Victor Orban would like to see 'a union based on nations' instead of 'a European United States'.³³ The Polish President Aleksander Kwasniewski says that although 'the nation-states themselves are not there from time immemorial', 'this does not mean they will soon have to give way to another form of statehood, a supranational one'; 'a federation of nation-states' could only appear in twenty years' time.³⁴ Tunne Kelam, Estonia's representative in the Convention and Chairman of the Parliament's Committee of European Affairs, says that all main Estonian political forces share the view that the EU should continue as 'a union of nation-states'.³⁵ The Slovenian Foreign Minister Dimitrij Rupel would like to see a 'United Nations of Europe' or 'Nation States of Europe', which would 'permit undisturbed life and render possible the development of the Slovene nation as a nation'; federations function better as one-nation states.³⁶ The Romanian Prime Minister Adrian Nastase recommends looking for 'an in-between formula' for the EU polity, as a radical change could be rejected in many parts of Europe.³⁷ The Latvian Foreign Minister Indulis Berzins sees the EU not as a 'centralized state'; 'it is "only" a trans-national organisation to which its member countries have delegated a part of their competence[;] [t]he elaboration and implementation of entire national policy is and will remain our business except for fields that we want to delegate to the EU'.³⁸ Several underline the need to

³³ Interview with Victor Orban in *La libre Belgique*, 11.07.2001, reported in "Orban Describes His Vision for Europe". *RFE/RL Newslines* Vol. 5, No. 130, Part II, 12.07.2001.

³⁴ Speech "Enlarged EU: Moving Towards a Political Union", delivered by A. Kwasniewski, at the Stockholm School of Economics, 10.05.2001, www.europa.eu.int/futurum/documents/speech/sp100501_en.htm.

³⁵ Presentation of T. Kelam at the *Riigikogu* (Estonia's Parliament) session of 11.04.2002. Unedited transcript available www.riigikogu.ee.

³⁶ Contribution to the Debate on the Future of the Union by D. Rupel, 2001, www.europa.eu.int/futurum/documents/other/oth030701_en.pdf 7, 8.

³⁷ Speech "The Future European Union: A Romanian Vision", delivered by A. Nastase, at the Belgian Royal Institute for International Relations, 26.06. 2001, <http://domino.kappa.ro/mae/dosare.nsf/IntegrareEng/F7578294EF2ADD20C2256AA7002F3C49?OpenDocument>.

³⁸ Contribution "The European Union – the way it is and the way we want it to be", by I. Berzins, 31.05.2001, www.europa.eu.int/futurum/documents/press/pr310501_en.htm

preserve and strengthen the national identity, language and culture.³⁹ Some recall the negative experience with federations they have earlier been part of, such as the Yugoslav or Czechoslovak Federations or the USSR.

The few open federalists amongst the top politicians of Slovakia, the Czech Republic and Estonia are usually in disaccord with general domestic political attitudes, at least in the two latter countries whose populations have consistently been famous for their lowest support rates towards the EU. In the Czech Republic, there is a clash of visions between, on the one hand, pro-federal President Vaclav Havel⁴⁰ and former Prime Minister Milos Zeman,⁴¹ and, on the other hand, the leader of a strong opposition party and former Prime Minister, Vaclav Klaus, whose inclination to the British way and support for ‘a union of sovereign nation states’ (Bugge, 2000, 27-28, 34) is shared, for instance, by most Czech local politicians (Perron, 2000, 17). In Estonia, the pro-federal speech delivered in the Berlin Humboldt University by the former Foreign Minister Toomas-Hendrik Ilves,⁴² although in strictly personal capacity, was much disliked by Estonian public opinion and it has cost him his place as the Parliament’s representative in the Convention. The current Foreign Minister Kristiina Ojuland has made it clear that she does not support the ideas of an EU constitution, a bicameral European Parliament or direct election of the Commission President, which according to her would belong to the ‘sphere of dreams’.⁴³ The federalist views of the Slovak Prime Minister Mikulas Dzurinda⁴⁴ and the support by the Foreign Minister Edouard Kukan for a gradual building of the Union into a political community⁴⁵ probably have higher domestic credibility due to high EU-support of the Slovak population.

On the academic level, the CEE studies on the Future Debate are still being developed, but the few that exist equally predict the adoption of an

³⁹ Rupel; Nastase; Berzins; Kelam; Orbán (in Orbán’s Contribution to the Debate on the Future of Europe, 05.06.2001, Budapest, www.europa.eu.int/futurum/documents/other/oth050601_en.htm).

⁴⁰ See report of Havel’s speeches in Bugge, 2000.

⁴¹ Contribution to the Debate on the Future of Europe by M. Zeman, 14.06.2001, http://www.europa.eu.int/futurum/documents/contrib/cont140601_en.htm.

⁴² Speech “Constructing a New Europe”, delivered by T.-H. Ilves at Humboldt University, Berlin 05.02.2001.

⁴³ Reported in “The Future of the European Union expects fast decisions from the Estonian politicians” (in Estonian). *Eesti Päevaleht*, 28.01.2002.

⁴⁴ Speech “The Debate on the European Constitution – A Slovak View,” delivered by M. Dzurinda at Humboldt University, Berlin, 19.02.2002; see also his address “The Slovak contribution to the discussion on the future of the European Union”, 2001, www.europa.eu.int/futurum/documents/contrib/cont200601_en.htm.

⁴⁵ Speech "Slovakia's Vision of the Future Functioning of the European Union", delivered by E. Kukan on the second special briefing to meet the new Member States, European Policy Center, Brussels, 2002, www.theepc.be/documents/.

‘intermediate’ approach. A study on the CEE Countries’ representatives in Brussels shows their support for a piecemeal integration rather than federalism; they take a pragmatic, incremental approach, as the issue of sovereignty and national independence remains sensitive (Krok-Paszkowska, Zielonka, 2000). The Faber Group, composed of academic and professional experts both from the Member and Candidate states, suggests that most CEE countries are likely to be against a federal EU, because they are unitary states or have experience with authoritarian tendencies with federations.⁴⁶ Another study on the CEE countries’ experience with federations shows that they have not been adequately conditioned by history to embrace federalism, particularly because of the unequal status of different peoples within federations, such as the Hungarians and Romanians during the Habsburg Empire, the non-Serb population in Yugoslavia and the Slovaks in Czechoslovakia.⁴⁷ In addition, given their newly acquired sovereignty, people are uneasy about the federal visions of Europe.⁴⁸ As I have discussed elsewhere (Albi, 2002), the CEE legal theory has so far depicted the EU prevalently as an ‘international organisation’, possibly in order to create a psychologically neutral bridge to the countries’ move from complete constitutional silence on international organisations towards membership of a deeply integrated supranational organisation, and joining a federal union instead could be too much to absorb. For instance, the Estonian Constitutional Expert Commission has stated that its draft EU-amendments do not permit Estonia’s participation in a federal Union, which would emerge if a EU constitution or a bicameral European Parliament were introduced.⁴⁹

2.2. Constitutional Treaty rather than a Constitution

Concerning the issue of the EU constitution, the approach of ‘union of nation-states’ finds expression in the CEE politicians’ support for ‘a constitutional treaty’, with an emphasis on *treaty*. This would provide an ‘intermediate’ step for accommodating the need for simplification of the EU treaties, as a constitution would be associated by many with the core of a sovereign state. The term ‘constitutional treaty’ is advocated by the Polish President Kwasniewski and former Prime Minister Jerzy Buzek,⁵⁰ the Bulgarian Foreign Ministry⁵¹,

⁴⁶ “Villa Faber Group”, supra note 21, at 7.

⁴⁷ Mastny, V. “The Historical Experience of Federalism in East Central Europe”, (2000) 1 *East European Politics and Societies*, 96, as cited in Motoc, 2001, 188-189.

⁴⁸ Also Motoc, 2001, 189.

⁴⁹ *Võimalik liitumine Euroopa Liiduga ja selle õiguslik tähendus Eesti riigiõiguse seisukohalt*. [Potential accession to the European Union and its legal consequences in the light of Estonian constitutional law.] The Report of the Constitutional Expert Commission, 1998.

⁵⁰ Speech delivered by J. Buzek at the Royal Institute of International Affairs, Brussels, 26.06.2001.

Romanian Prime Minister Nastase and Foreign Minister Mircea Geoana⁵², Latvian Foreign Minister Berzins, and, according to Slovak Prime Minister Dzurinda, the notion ‘European constitutional treaty’ has crystallised in the Slovak discussions.

Dzurinda explains that the notion ‘European constitutional treaty’ brings together the concept of ‘constitution’ as ‘one of the fundamental attributes of a sovereign state’, and ‘treaty’, which formally would mean the primary source of law and in substance, it would be an international treaty.⁵³ Kwasniewski states that a constitutional treaty should be adopted at some point in the future, if the EU ‘becomes more political in nature’; currently, there is not enough democratic legitimacy and citizen understanding of the EU and the term ‘constitution’ would thus be devalued. The former Hungarian Foreign Minister Janos Martony envisages a two-step development – first, incorporation of the Charter into the simplified treaties, which could later ‘become a pre-figuration of a future constitution’, since an immediate constitution ‘would be too much to expect from the next few years’.⁵⁴ The Bulgarian Foreign Ministry and the Romanian Prime and Foreign Ministers support forming the ‘constitutional treaty’ on the basis of simplification and division of the treaties, with national ratification procedures for the constitutional treaty and an easier amendment procedure for the secondary treaty.

The adoption of an EU constitution is supported by the above-mentioned pro-federal politicians from the Czech Republic, Slovak Foreign Minister Kukan and, in personal capacity, the Estonian former Foreign Minister Ilves, who adds that the constitutions have proved to protect the smaller states. Estonia’s current Foreign Minister Ojuland does not support the idea of an EU constitution; the Lithuanian Deputy Foreign Minister Dalia Grybauskaite recommends enhancing the applicability and comprehensibility of the treaties by codification.⁵⁵

⁵¹ “Initial Position of the Republic of Bulgaria on the Debate on the Future of the European Union”, report by the Ministry of Foreign Affairs of the Republic of Bulgaria, February 2002, www.europa.eu.int/futurum/documents/bulgarie0202_en.pdf.

⁵² Contribution to the Debate on the Future of the Union by M. Geoana, 2001, www.europa.eu.int/futurum/documents/speech/sp090901_en.htm.

⁵³ Dzurinda, 2002, *supra* note 44.

⁵⁴ Speech delivered by J. Martony on the Future of Europe at the informal meeting of the EU foreign ministers in Genval, 08.09.2001, [/www.europa.eu.int/futurum/documents/](http://www.europa.eu.int/futurum/documents/).

⁵⁵ Contribution “Debate on and for the Future of Europe” by D. Grybauskaite, 2001, www.europa.eu.int/futurum/documents/speech/sp040601_en.pdf.

2.3. The gradual strengthening of the Community institutions

In the domain of institutional architecture, the approach of ‘union of nation-states’ correlates to the support for incremental strengthening of the Community institutions, instead of an ‘institutional revolution’. All but one of the mentioned politicians support the strengthening of the Commission and the widening of the powers of the European Parliament;⁵⁶ some mention that the Community institutions have during the history proved to protect the small states, to benefit the less developed countries, to promote the common European interest and to form an engine for integration.

All the speeches insist on increasing legitimacy and accountability by enhancing the role of the national parliaments, their control over governments and by interweaving the national parliaments more closely with the European Parliament. Amongst the more detailed propositions, Nastase recommends creating a parliamentary institution by analogy with the Community bodies of representatives of regions and social partners, for instance for amending the secondary treaty. The Bulgarian Foreign Ministry recommends increasing the deadlines for coordination within the national parliaments, introducing flexible *ad hoc* meetings between the European and national parliamentarians, and organizing the EP elections on the basis of a mixed system of national and European electoral polls.

Institutional reforms of more radical character are addressed by few politicians, possibly because they have made it clear that they support a gradual strengthening of the Community institutional structure. Those against a second chamber to the European Parliament (Grybauskaite, the Bulgarian Foreign Ministry, Kukan and Ojuland) mainly argue that a new structure would increase the complexity and clumsiness of the EU decision-making. The second chamber is supported by the pro-federalists Ilves and Czech Foreign Minister Kavan⁵⁷, as well as by Martony and Polish Prime Minister Leszek Miller⁵⁸. The direct election of the Commission President has found support only by Martony, the others are against it (Rupel, Ilves, Nastase, Ojuland) or advocate its election by the European Parliament (Kavan, Kwasnieski (2001), Bulgarian Foreign Ministry). Those against the direct election raise arguments such as its

⁵⁶ The Romanian Prime Minister expresses caution towards strengthening of the Commission, as the national model of government cannot be applied to the different political system at the European level.

⁵⁷ Speech “The Future Functioning of the European Union”, delivered by J. Kavan at the European Policy Center, Brussels, 22.02.2002, www.theepc.be/documents/kavan.asp.

⁵⁸ Joint article of L. Miller and T. Blair, “Bringing Europe Closer to Its Citizens: A Polish/British Contribution”, 02.10.2001, www.rp.pl/gazeta/wydanie_020314/publicystyka/publicystyka_a_2.html.

disadvantage to the small Member States (Ilves); the inapplicability of the national model to the EU and the absence of a European-wide political party (Nastase); the Slovenian Foreign Minister has recalled the experience with the difficulty of restricting the former Yugoslav Prime Minister's powerful role vis-à-vis the heads of republics' governments. Rupel, Kavan and Kallas want their countries to have a representative in the European Commission. The Council reform should mainly consist of increasing transparency and publicity (Nastase, Miller, Bulgarian Foreign Ministry). With regard to the EU presidency, Miller recommends introducing a 'group presidency'; Slovakia's Prime and Foreign Ministers recommend re-assessing the presidency principles with a view to thirty Member States.

CONCLUSION

The paper has discussed the impact of the constitutional amendment and referendum procedures of the Central and Eastern European Candidate Countries on reforming the EU treaties and, secondly, on the Candidate Countries' positions concerning the Debate on the Future of the Union. Highlighting the procedural and practical obstacles of the 'national constitutional procedures' in Central and Eastern Europe, it recommends bringing the politically sensitive issue of revising the EU treaty amendment procedure more firmly onto the agenda. Namely, the factors such as the tradition of using referendums frequently, the high number of invalid referendums deriving from the high minimum turnout requirements, the eurosceptic public opinion and long prohibition periods for re-initiating unsuccessful referendums, threaten to proliferate in the post-enlargement Union cases such as the first Irish referendum on the Nice Treaty. These complications concerning referendums also predetermine the Eastern Countries' interest for an incremental integration with a view to the Debate on the Future of the Union, as a federal Union would be too hard to 'sell' in the accession referendums.

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