



Commentary

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The 2015 Greek Referendum

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The Greek government called a snap referendum on the proposals advanced by the EU partners and creditor, i.e. the draft Agreement submitted by the EU/IMF to the Eurogroup of 25 June 2015. There has been a major controversy among Greek constitutional lawyers about whether this referendum meets constitutional requirements. No doubt, the constitutional validity of this referendum could be challenged on pure normative terms (nature of the question, time limit)¹; yet this shock call for a referendum appeared as the only political solution for the Greek government facing the dilemma of whether to take the plunge of having five-months of negotiations transformed into a negative-sum game.²

After a long-running standoff with creditors, the Greek government reached a point of no return, rejecting the proposal for a five-month bailout extension. Under intense pressure to fail, the referendum appeared as the only political alternative for the Greek government in order to continue the negotiations and to reduce the threats against its credibility within its own ranks. The Greek government is using the referendum as a bargaining tool to pressure EU partners and creditors in order to get a 'better' proposal to mitigate the 'austerity dose' and/or reach a concrete commitment to Greek debt relief.

In other terms, since the referendum has been dictated by a political imperative for SYRIZA and an economic one for Greece, this inevitably raises several constitutional questions. Firstly, the referendum operates under the extremely stringent time limit of five days in a context of fiscal and banking emergency while the Greek Constitution requires at least a one-month period for calling a referendum on a critical issue. The Greek government reiterated more than once its position that the proposed referendum focuses solely on the institutions' proposals without raising directly or indirectly any issue regarding Greece's membership of EMU, to which the Greek government is fully committed.³

In case we take for granted the government's position, we can consider that the question of the July 5th referendum is excessively focused on technocratic issues since it calls on Greek citizens to approve or reject a very specific (draft) agreement.⁴ This thus raises concerns about whether the question is sufficiently clear, brief and with a definite meaning – while the negotiations remained open challenging

¹ The Secretary General of the Council of Europe, Thorbjorn Jagland, told the Associated Press that the vote "has been called on such a short notice" and "the questions that are put to the people are not very clear" (1.07.2015).

² See the statement by the Greek Finance Minister, Y. Varoufakis, in the press conference after the Eurogroup refusal to extend Greece's bailout, 27.06.2015.

³ Letter of Greek Prime Minister A. Tsipras addressed to H.E. B. Xavier, Prime Minister of the Grand Duchy of Luxembourg, 28.6.2015.

⁴ The draft agreement consists of two parts; the first document is entitled "Reforms to the completion of the Current Program and beyond" and the second "Preliminary Debt Sustainability Analysis".

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the final holding of the referendum itself⁵ – and whether it really concerns a crucial national matter.⁶ Moreover, given the fact that it became impossible to set up a committee that supports the NO (with the risk of associating the position of the governing party with Golden Dawn's position against the EU partners and lenders' proposal), the interparliamentary committee decided that the air time for campaigning will be allocated equally between the NO supporters and the YES supporters. The airtime is allocated 2/3 to political parties based on their electoral power and 1/3 to the other organisations.

In reality, political opponents of the Greek government – EU institutional actors, European political leaders as well as domestic opposition parties – and a considerable portion of Greek citizens definitively transformed the issue into a matter of national concern by turning the Referendum question into Yes-or-No to the euro/EU, with the risk of assimilating legally and politically distinctive stakes (negotiating process, Greece's EMU membership, EU membership). New proposals put forward by the European Commission on Monday, June 29th, as well as by the Greek government on Tuesday, June 30th, confirm the open-ended character of the referendum.⁷

Although the referendum probably defies some constitutional principles, its political instrumentalisation by all interested parties – although for different purposes – may prove to be the only way to keep negotiations alive and come up with new proposals. While until now the Greek government actively campaign for a NO vote, the course of the pre-referendum negotiations could transform the impact of a YES vote, allowing Tsipras either to preserve its political capital and temporarily leave Greek politics (in case of negotiations to fail) or to accelerate the process of SYRIZA's 'normalisation' as a moderate government party (in case of a new deal).

⁵ Martin Schultz, the President of the European Parliament, underlined in the press conference on Greek crisis (29.06.2015) that the document of 25 June 2015 is not the last version proposed by the three institutions at the negotiating table.

⁶ According to the Greek constitution, a referendum can be held on two cases, either on legislative bills (specific proposals) with the exception of fiscal issues or on crucial national matters (art.44§2). The referendum on an issue concerning the national interest must be formulated in a general and abstract manner (a matter of principle). In the case of a national issue, the outcome of the referendum has an indirect political binding effect since the Government should submit to the popular will by specifying its action.

⁷ During the pre-referendum week, the IMF has reiterated again his traditional view that a debt relief should be an integral part of any package.