

Ratification and the referendum question

*Dr Alexander Ressos, TEP
Attorney-at-Law (Switzerland), Solicitor (Hong Kong),
Solicitor (England & Wales)*

The domestic approval of the package has raised a constitutional question that is itself one of the main uncertainties of the coming years. Under the Federal Constitution, international treaties are subject to a mandatory referendum, requiring a majority of the people and of the cantons, when they provide for accession to organisations for collective security or to supranational communities. Other treaties are subject to an optional referendum, requiring only a popular majority, when they contain important law-making provisions or require the enactment of federal acts.¹ Since the package does not involve accession to the Union, the Federal Council concluded on 30 April 2025 that the optional referendum applied. It pointed to the precedents of the Bilaterals I and of Schengen, which were also submitted to the people alone.²

Opponents of the package and part of the centre argued that a treaty of such political weight should require the double majority, either through an unwritten constitutional referendum *sui generis*, which Parliament has used in exceptional cases, or through an amendment to the Constitution. The precedent most often cited is the Free Trade Agreement of 1972, which was submitted to the people and the cantons although the Constitution did not require it.³ A popular initiative launched by business figures under the name "Kompass" sought to require the double majority for treaties involving the adoption of foreign law. The Federal Council recommended its rejection.⁴

Parliament has treated the question as a matter of its own competence. In May 2026 the State Policy Committee of the National Council voted in favour of submitting the package to the people and the cantons. On 11 June 2026 the Council of States postponed the substantive decision by 24 votes to 20 and referred the question back to its own State Policy Committee, which in turn proposed by a narrow majority at the end of June a constitutional provision requiring the double majority.⁵ The Foreign

Affairs Committee of the Council of States recommended the package itself by a clear majority in September 2026. On 28 September 2026 the Council of States entered into the debate by 29 votes to 15 after a debate of about six hours.⁶

As this chapter is written, the detailed deliberations in the two chambers and the decision on the type of referendum remain open. A popular vote, in whatever form, is not expected before 2027 and may well come later.⁷ The difference between the two procedures is of practical importance, since the smaller rural cantons of central and eastern Switzerland have historically been more sceptical of European integration than the urban cantons. A requirement of the cantonal majority would therefore raise the bar for approval. Basel-Stadt, whose population weight is small and whose cantonal vote counts only as half a cantonal vote, would have little influence on the result under either procedure.⁸

1 Notes

1. Art. 140 para. 1 lit. b (mandatory referendum on accession to organisations for collective security or supranational communities) and Art. 141 para. 1 lit. d (optional referendum on international treaties) of the Federal Constitution (SR 101). To be verified. ↩
2. On the Federal Council's decision of 30 April 2025 and its reasoning on the optional referendum, see its press release and the dispatch of 13 March 2026. Status to be verified. ↩
3. On the "obligatorisches Referendum sui generis" and the precedent of the Free Trade Agreement of 1972 and the EEA Agreement of 1992, both submitted to the people and cantons, see the constitutional literature, e.g. the commentaries on Art. 140 BV. To be verified. ↩
4. On the popular initiative "For a direct-democratic and competitive Switzerland – no EU accession through the back door (Kompass initiative)" and the Federal Council's recommendation to reject it, see the communications of the Federal Chancellery and the Federal Council. Status to be verified. ↩
5. On the decision of the State Policy Committee of the National Council of May 2026, the procedural decision of the Council of States of 11 June 2026 (24 to 20) and the proposal of its State Policy Committee of 30 June 2026 (7 to 6), see the press releases of the Parliamentary Services and contemporary reports. Status to be verified. ↩
6. Recommendation of the Foreign Affairs Committee of the Council of States of 4 September 2026 (9 to 3 with 1 abstention); decision of the

Council of States of 28 September 2026 to enter into the matter (29 to 15). Status to be verified. ↩

7. On the expected parliamentary timetable (deliberations in the National Council after the Council of States, popular vote not before 2027), see contemporary reports and the communications of the Parliamentary Services. Status to be verified. ↩
8. Art. 142 para. 4 of the Federal Constitution: the cantons of Basel-Stadt and Basel-Landschaft, like the other former half-cantons, each have half a cantonal vote. To be verified. ↩

For general information only. This article does not constitute legal or tax advice, does not replace advice on an individual case and creates no lawyer-client relationship. It reflects the legal position as of September 2026.

Online version: helveticaregister.com/basel-ratification-and-the-referendum-question