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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

QUESTIONNAIRE ON THE USE OF REFERENDUMS

**Adopted by the Council for Democratic Elections
at its 9th meeting
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**and the Venice Commission
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on the basis of a contribution by

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I – National referendums

A – Legal basis

1. Is provision made for referendums in the Constitution ?
2. If not, does the law provide for the use of referendums? On what matters?

B – What type of referendum may be used? Who decides?

1. Mandatory referendums

Is the referendum required by the Constitution in that it provides that certain texts are automatically submitted to referendum before or after their adoption by Parliament?

2. Referendums called by an authority

- a. Can referendums be called by an authority?
- b. If so, who may call a referendum? The Head of State, the Government, Parliament, a given number of members of Parliament, local and/or regional authorities?

3. Referendums held at the request of part of the electorate

- a. Can a specified number of members of the electorate call for a referendum? If so, what percentage of the electorate is required for the proposal to be valid? How are voters' signatures checked?
- b. Can a request for a referendum relate to a text already adopted by Parliament? Can a new text be put forward by popular initiative?

4. Procedures involving more than one authority

Must the decision to submit a text to popular vote have the approval of more than one body?

For example:

If the referendum is instigated by the Head of State, is a proposal of the Government or of one or both houses of Parliament required? Can the Head of State or the head of the Government reject the proposal?

If the referendum is requested by part of the electorate, does Parliament – or do a number of members of Parliament – have to agree?

Can a referendum be based on a popular initiative putting forward an alternative proposal to the one before Parliament?

5. Role of Parliament:

- Can Parliament oppose the holding of a referendum by adopting a counterproposal on the same matter? If so, what is the time limit for doing so? If so, is a special majority required?
- Can it submit a counterproposal to popular vote at the same time as the first proposal?
- Is it entitled only to give its opinion?
- Is there a time limit for Parliament to give its opinion, and if the time limit is exceeded what are the consequences?
- If the referendum is on a question of principle/a generally-worded proposal/a proposal to abrogate (see following paragraph), is Parliament required to adopt a (new) piece of legislation?

C - Content

1. Types of act submitted to referendum

Are referendums held only on proposals for constitutional amendments?

Is a referendum mandatory in the case of a constitutional amendment?

On what other types of measure can a referendum be called? In particular, is referendum necessary or possible for accession to the European Union or international organisations?

2. Matters to which referendums may relate

Are referendums reserved for particular matters? Are certain matters automatically put to a referendum or excluded from referendums?

D – Form of the text submitted to referendum (formal validity)

1. What form may the text submitted to referendum take:

- a *specifically-worded draft* of a constitutional amendment, legislative enactment or other measure?
- *repeal* of an existing provision?
- a *question of principle* (for example: “are you in favour of amending the constitution to introduce a presidential system of government?”)?, or
- a *concrete proposal*, not presented in the form of a specific provision and known as a “*generally-worded proposal*” (for example: “Are you in favour of amending the Constitution in order to reduce the number of seats in Parliament from 300 to 200?”)?

2. Do questions submitted to referendum have to respect¹:

- a. *unity of form* (a specifically-worded draft amendment and a generally-worded proposal or a question of principle must not be combined in the same question);
- b. *unity of content* (except in the case of total revision of the Constitution or another piece of legislation, there must be an intrinsic connection between the various

¹Guidelines for constitutional referendums at national level, adopted by the Venice Commission at its 47th plenary meeting (Venice, 6 and 7 July 2001) (CDL-INF(2001)010), para. II.C.

parts of each question put to the vote in order to guarantee freedom of suffrage (the voter must not be expected to accept or reject as a whole provisions without an intrinsic link);

- c. *unity of rank*: the question must not relate simultaneously to the Constitution and subordinate legislation.
- d. Does the vote have to be on a single question or can it be on several different ones?
- e. Does the question (or do the questions) have to be clear and suggestion-free?

E - Substantive limits on referendums (substantive validity)²

Is a referendum prohibited if the text put forward is contrary:

- to international law or some of its rules;
- to the Constitution or some of its rules;
- to other overriding legal rules.

F – Campaigning, funding and voting

1. Campaigning³

- a. Are the authorities required to provide objective information, for example by sending the text and an explanatory document to voters?
- b. If an explanatory document is provided, who draws it up? Can political parties take part in drafting it? Does the explanatory document have to provide a balanced presentation of the authorities' views and their opponents' views?
- c. Is campaigning for or against the referendum text restricted to political parties? If not, who is entitled to take part? Are national, regional or local authorities allowed to campaign?
- d. Are the public *media* required to allocate equal time to supporters and opponents of the text?
- e. What about the private media? Are financial or other conditions for radio and television advertising the same for supporters and opponents?

²Cf. CDL-INF(2001)010, para. II.D.

³Cf. CDL-INF(2001)010, para. II.E.2.

2. Funding⁴

- a. Is use of public funds to campaign for or against a proposal submitted to referendum allowed? To what extent? Is it prohibited in the period immediately preceding the vote?
- b. Is privately-funded collection of signatures for popular initiatives allowed, and if so on what conditions?

3. Voting

- a. Does voting take place on one day or over a number of days?
- b. If there is a large time-lag between different voting centres, is it possible for the results from some of them to be known before voting closes in other centres?
- c. Is it compulsory for all voters to cast a vote?
- d. *Quorum*:⁵ For the result of the referendum to be valid, is it necessary for it to have won a given percentage of registered voters? Or is a minimum turnout required?

G - Effects of referendums⁶

1. What are the effects of referendums? Is the electorate asked for an opinion (*consultative referendum*) or a decision (*binding referendum*)?

2. Does the referendum make it necessary to take other decisions (see item B.5) ?

3. Where a referendum deals with a text that has already been adopted by an authority, is that referendum:

-suspensive: the text may not enter into force unless it has been approved by the electors or unless a request to hold a referendum has not been made within the time-limit established by the Constitution or by law;

-resolutive: the text ceases to be in force following a "no" vote or failure to secure a "yes" vote within a certain time-limit after its adoption; or

-abrogative: the acceptance of the referendum leads to the repeal of a provision in force?

H – Parallelism of procedures and rules on referendums

1. Can a provision agreed to or rejected in a referendum be revised or adopted by a procedure which does not allow a referendum?⁷

⁴Cf. CDL-INF(2001)010, para. II.F.

⁵Cf. CDL-INF(2001)010, para. II.O.

⁶Cf. CDL-INF(2001)010, para. II.N.

⁷Cf. CDL-INF(2001)010, para. II.L.

2. Can a constitutional or legislative provision which allows referendums be revised by a procedure which does not allow a referendum?⁸

I – Specific rules on popular initiatives⁹

1. What is the time-limit for collecting signatures?
2. Who is entitled to collect signatures?
3. How are signatures checked?
4. Is there an authority which has the power to correct irregularities resulting from the content of the question? (Examples: problems of formal validity, obscure, misleading or suggestion-making questions)

J – Judicial review¹⁰

1. Is it possible to appeal to a court against a decision to hold or not to hold a referendum? Or is there automatic judicial review? Is judicial review concerned in particular with the outcome of popular initiatives?
2. If judicial review exists, under what circumstances may the court rule against the holding of a referendum (failure to respect unity of form or content, unclear questions, etc.)?
3. Are the results of referendums subject to judicial review?
4. Who may lodge an appeal?

K – Experiences of referendums

1. How many referendums have been held since the country has had a Constitution? Specify what type of referendums were held (see above I.C)?
2. On whose initiative has each referendum been held?
3. Have any referendums been invalid because of a low turnout?
4. In how many referendums has the electorate voted yes?
5. In how many referendums has the electorate voted no?
6. Can any of the results be largely accounted for by factors unrelated to the question?

⁸*Cf. CDL-INF(2001)010, para. II.K.*

⁹*Cf. CDL-INF(2001)010, para. II.J.*

¹⁰*Cf. CDL-INF (2001)010, para. II.P.*

7. Can any of the positive results be accounted for by the popularity of the person putting the question?
8. Can any of the negative results be accounted for by an unpopular government? Or by general discontent? Or by a misunderstanding of the issues at stake?

II – Regional or local referendums

A – Legal basis

1. Is there provision in the national Constitution for local referendums?
2. If there are no constitutional provisions, does national law allow local referendums?
3. Have the federate, regional, autonomous or other types of body adopted provisions for holding referendums?
4. On what matters is it possible to call a referendum?

A1 – At what level?

1. Federate states?
2. Provinces? Regions?
3. Lower levels? Districts?
4. Municipalities?
5. On what matters?
6. May national or federal authorities intervene, and in what conditions?

B – What type of referendum can be held? Who decides?

Reply, *mutatis mutandis*, to the same questions as in I-B (stating in particular which federate, regional or local authorities can intervene).

C – Content

Reply to the same questions as in I-C.

In particular:

- Can a referendum be held on a proposal to secede from the State?
- Can it relate to geographical boundaries?
- Are any other subjects permitted?

D – Form of the text submitted to referendum (formal validity)

Reply to the same questions as in I-D.

E - Substantive limits on referendums (substantive validity)

Reply to the same questions as in I-E (particularly the question of conformity with central-government rules).

F – Campaigning and voting

Reply to the same questions as in I-F.

G – Effects of referendums

Reply to the same questions as in I-G.

H – Parallelism of procedures and rules on referendums

Reply to the same questions as in I-H.

I - Specific rules on popular initiatives

Reply to the same questions as in I-I.

J – Judicial review

Reply to the same questions as in I-J, making the appropriate distinction between judicial review at central-government level and at federate or regional level.

K – Experiences of referendums

1. Have there been many local referendums?
2. If so, at what level? Federate level? Provinces or districts? Municipalities? Other levels? Specify what type of referendums were held.

III – The future of referendums

1. Is the referendum system currently being reformed?
2. If so, for what reason?
3. If so, what is the general tendency of this reform?