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**DRAFT REPORT ON REFERENDUMS
PREPARED BY THE SECRETARIAT**

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Introduction

1. *Since it was established, the Venice Commission has taken an interest in electoral issues, including the use of direct-democracy procedures, such as referendums, which are becoming increasingly common as democracy spreads through Europe.*
2. *Against this background, the Commission adopted Guidelines for constitutional referendums at national level (CDL-INF(2001)010) at its 47th plenary meeting (Venice, 6-7 July 2001).*
3. *Recent experience in Europe prompted the Council of Europe's Parliamentary Assembly to consider referendums and good practices in this field, in co-operation with the Venice Commission¹. Its work led to the adoption, on 29 April 2005, of Assembly Recommendation 1704 (2005) on "Referendums: towards good practices in Europe²". At the Committee of Ministers' request, the Venice Commission submitted comments on this recommendation (document CDL-AD(2005)...).*
4. *At its 8th meeting (Venice, 11 March 2004), the Council for Democratic Elections decided to carry out a new study on referendums and compile a questionnaire on their use. Based on a contribution by Mr François Luchaire (member of the Commission, Andorra) (document CDL(2004)031), this questionnaire was adopted by the Council for Democratic Elections at its 9th meeting (Venice, 17 June 2004), and by the Venice Commission at its 59th plenary session (Venice, 18-19 June 2004) (document CDL(2004)031)..*
5. *Replies to the questionnaire have been submitted by Commission members from thirty-three countries: Albania, Andorra, Armenia, Austria, Azerbaijan, Belgium, Bulgaria, Croatia, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Georgia, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Norway, Poland, Portugal, the Russian Federation, Spain, Sweden, Switzerland, "The former Yugoslav Republic of Macedonia" and Turkey.*
6. *The Commission secretariat has used these replies to prepare this summary report, appending a draft summary table of the replies themselves. Like the questionnaire, the report comprises three parts, covering national referendums, regional and local referendums and the future of referendums.*
7. *[This report was adopted by the Council for Democratic Elections at its ...meeting (Venice, ...) and by the Commission at its ... plenary session (Venice, ...).]*
8. *Following adoption of this report, the Council for Democratic Elections and the Venice Commission may wish to draw up guidelines on referendums in general.*

¹See Parliamentary Assembly document 9874 of 10 July 2003, Motion for a resolution presented by Mr Gross and others, Guidelines for good practices in the holding of referenda.

²See also doc. 10498, containing the Political Affairs Committee's report (rapporteur: Mr Mikko Elo, Finland, Socialist Group), to which is appended a working paper prepared by the Research and Documentation Centre on Direct Democracy in Geneva.

General comments

9. As democracy has spread throughout the European continent, the forms it should take have naturally been discussed, both nationally and internationally. The utility of direct democracy and the limits to its use are a fundamental aspect of this debate.

10. The constitutions and constitutional practice of many of the new democracies give referendums a prominent role - sometimes more so than those of the older democracies.

11. This means that the pros and cons of direct democracy can be gauged with reference to concrete examples. It would, however, be unwise to draw conclusions or make general recommendations on a purely empirical or, conversely, over-theoretical basis.

12. Direct consultation of the people via referendum has long been the subject of heated discussion between legal and political experts, sociologists, politicians, and indeed the general public.

13. This study sets out to identify the fundamental aspects of referendums, as used in European countries, and also points of convergence and divergence between national traditions - in short, to answer the main legal questions raised by direct consultation of the people in European democracies. This will give the basis needed to draw up general guidelines.

I – National referendums

A – Legal basis of the referendum

14. In the vast majority of states that replied to the questionnaire, the constitution provides for the organisation of national referendums. Only four states have no provision for this.

15. In *Belgium*, there is no constitutional or even legislative basis for a referendum and a decision-making (legally binding) referendum is considered unconstitutional. A consultative referendum – the constitutionality of which has been strongly disputed – was organised in 1950 further to a specific decision of Parliament. The fact that the constitution does not mention referendums could accordingly be regarded as ruling out a referendum.

16. In the *Netherlands*, no national referendum has been organised to date on the basis of the (temporary) General Law on Referendums. A consultative referendum concerning approval by the Netherlands of the Constitutional Treaty of the European Union (the "European Constitution") was held on 1 June 2005, but that referendum was based upon an *ad hoc* law. Provision for a referendum was introduced by means of a temporary law that was in force from 2002 to 2004, although it was never applied. It should be stressed that Parliament recently opposed the introduction of the referendum into the constitution. It is because no final decision has yet been taken on the introduction of referendums that there is no provision for them as yet in the constitution.

17. In *Norway*, as there were no relevant provisions in the constitution, two referendums (both on accession to the European Economic Community and then the European Union) were organised on the basis of specific acts of parliament (in 1972 and 1994). Here, the fact that there is no provision in the constitution on the subject does not rule out a referendum, but the latter is so exceptional that a general provision is not appropriate.

18. In *Cyprus*, the institution of the referendum is dealt with at legislative level. It has been used only once.

19. To sum up, the general practice in Europe is for a national referendum to be provided for in the constitution. Where there is no such provision, referendums have either not been introduced on a permanent basis or are quite exceptional.

20. Constitutions do not necessarily provide for all forms of referendum, even national ones. In *Malta*, for example, only the constitutional referendum is dealt with in the constitution.

21. The existence of constitutional rules providing for a referendum clearly does not preclude *implementing legislation*. On the contrary, it is natural for the constitution to set out the principles and for the other rules to be specified in ordinary legislation. In some states, the constitutional rule is implemented by a legal instrument that ranks higher than the ordinary law (in *Andorra* this is a "qualified" law, in *Spain*, *Georgia* and *Portugal* an "organic" law or implementing Act). In *Russia*, whose constitution contains only a few rules on referendums, the subject is regulated by a constitutional law. The situation is in theory the same in the *Czech*

Republic, although such a constitutional law has not been passed there except with regard to the country's accession to the European Union, and it has accordingly not yet been possible to organise national referendums on other subjects. When the referendum is rarely used, a special law may have to be passed each time one is organised (as in *Finland*, which has held two referendums).

B – Types of referendum – bodies competent to call referendums

22. The nature of the referendum varies according to whether it is mandatory or optional and depends on the body competent to call it. This will be considered in this section.

1. Mandatory referendum

23. A referendum is *mandatory* when certain texts are automatically submitted to referendum, perhaps after their adoption by Parliament.

24. A mandatory referendum generally relates to constitutional revisions. In some states, any constitutional revision is submitted to a mandatory referendum, with the result that the people itself becomes the constitution-making body (*Andorra, Armenia, Azerbaijan, Ireland, Switzerland* – where a majority of the people and of the cantons is required –, *Denmark* where a precondition for a constitutional revision is the holding of general elections). In other states (*Austria, Spain*), only total revisions are submitted to a mandatory referendum. A mandatory referendum may also be restricted to changes to certain provisions or rules: basic constitutional provisions (*Estonia* – the chapters of the Constitution on general provisions and the revision of the Constitution as well as the law complementing the Constitution, on accession to the European Union –, *Latvia* – democratic and sovereign nature of the state, territory, official language and flag, election of the Parliament by universal, equal, direct, secret and proportional suffrage, a rule providing for a referendum to be called for the revision of previous provisions –, *Lithuania* – an independent and democratic republic, chapters on the state and revision of the constitution, constitutional law on the country's non-alignment with post-Soviet alliances –); three provisions relating to constitutional revisions and the duration of Parliament (*Malta*).

25. A mandatory referendum may also be conditional on a preliminary procedure, as in the case of *France*, where it concerns only constitutional revisions initiated by Parliament (there has been no actual case in which it has been used) and *Turkey*, where it concerns only constitutional amendments adopted by at least three-fifths but less than two-thirds of the members of the Grand National Assembly and not returned to the Assembly by the President of the Republic for reconsideration, although such a case is unlikely. In *Russia*, the mandatory referendum may be provided for only by an international treaty.

26. Other very important instruments are sometimes submitted to mandatory referendum. Such instruments are, firstly, quasi-constitutional rules, such as, in *Switzerland*, emergency laws derogating from the Constitution for more than one year and, secondly, instruments that involve a considerable limitation of sovereignty, especially in the context of European integration, such as accession to the European Union (*Latvia*), joining collective security organisations or supranational communities (*Switzerland*), joining international organisations in the case of a transfer of powers (*Lithuania*), association with other states (*Croatia*) or joining or leaving a community with other states (“*the former Yugoslav Republic of Macedonia*”). In *Denmark*, a referendum must take place when constitutional powers belonging to the national authorities are delegated to international bodies, unless Parliament approves this by a five-sixths majority. Also

submitted to mandatory referendum are changes to a country's territorial integrity, such as a redefinition of borders (*Azerbaijan*, "the former *Yugoslav Republic of Macedonia*"). Finally, other states provide for mandatory referendums in specific fields: in *Denmark*, a change in the voting age; in *Portugal*, regionalisation.

2. *Referendums at the request of an authority*

27. Referendums at the request of an authority – or *extraordinary referendums* – exist in quite a number of states. The state body that calls for such a referendum may be the executive (in particular, the President), in which case the citizens' confidence in this body may be concerned (plebiscitary aspect) or the legislative (or part of it). If the call for a referendum comes from the majority or, indeed, the opposition, it too may have a plebiscitary character, which will not be the case if the legislative takes the decision by common consensus to hold a referendum.

28. The remarks below refer only to referendums at the request of an authority. Most of the states concerned also have provision for mandatory referendums or referendums at the request of part of the electorate.

29. In fact, very few states provide for only the executive to call a referendum. This is the case in *Turkey*, where the President can submit to the people amendments that he or she has sent back to Parliament and have been subsequently adopted by the latter by a two-thirds majority. In *Albania*, on the other hand, the President can call on the people to decide only at the request of 50,000 voters. It has to be emphasised that these two states have a parliamentary system.

30. In *France*, the President can call a referendum on the proposal of the Government or (except for constitutional revisions) a joint proposal by the two assemblies. In the case of a Government proposal, a debate must be held by the two assemblies. In the case of constitutional revisions, Parliament can decide to organise a referendum. It should be noted that the Government's involvement precludes, in principle, a call for a referendum against the advice of the parliamentary majority. In *Portugal*, there also has to be an agreement between the President and Parliament or the President and the Government. In *Croatia*, an issue may be put to the vote either by Parliament or the President, but the latter can only call a referendum on the Government's proposal and with the Prime Minister's counter-signature.

31. In some cases (such as *Azerbaijan* and *Georgia*) the President or Parliament may each have the general right to call a referendum.

32. In other states, however, the executive and the legislative have to agree before a referendum is called. In *Armenia*, this is case with the President and the Parliament (the President can also call a referendum at the Government's request with the consent of Parliament). In *Andorra*, the Head of Government and the Council General have to agree, and in *Cyprus* there must be agreement between the Prime Minister and Parliament – which should not pose any problem given the parliamentary nature of the political system. In *Ireland*, the President calls a legislative referendum on a joint proposal of the Senate majority and at least one-third of the lower house (Dáil).

33. The *Polish lower house (Sejm)* alone has the power to call a referendum, the President being able to do so only with the consent of the Senate.

34. In many countries, however, Parliament is the only authority able to call a referendum (*Estonia, Finland, Latvia* – on modifications of the terms of membership of the European Union –, *Lithuania, Luxembourg, Malta, Sweden*). In *Belgium* and *Norway*, where the constitution does not provide for referendums, Parliament has acted on the basis of a decision or specific acts of Parliament. In *Austria*, the National Council decides whether to hold a legislative or consultative referendum on issues of national importance; one-third of members of Parliament can submit a partial revision of the constitution to a popular vote. In *Bulgaria*, it is Parliament that decides, but the proposal to call a referendum may come not only from a quarter of members of Parliament but also the Council of Ministers or the President. In *Hungary*, Parliament decides following a proposal by the President, the Government, one-third of its members or 100,000 voters, while in “*the former Yugoslav Republic of Macedonia*” it decides in response to a proposal by the Government, a member of Parliament or 10,000 citizens. In *Spain*, a consultative referendum on an issue of particular importance is called by the King on the proposal of the Prime Minister following the authorisation of the Congress. In *Greece*, the President formally calls a referendum but the decision must be taken by a majority of members of Parliament on the proposal of the Government (on crucial national issues) or three-fifths of members of Parliament (on laws relating to important social issues).

35. In *Russia*, if a constituent assembly is convened, it can adopt a new constitution by a majority of two-thirds of its members or submit a proposal to referendum.

36. Sometimes, a minority of parliamentarians can refer partial revisions of the constitution to the people, as in *Denmark* (1/3 of members of Parliament) or *Spain* (10% of the members of either chamber).

37. In some states, a referendum can be requested by a number of constituent entities – in *Switzerland*, eight cantons, or regional entities – in *Italy*, five regions (by decision of the Regional Council).

38. In very few states, the legislative may call a referendum on the dismissal of the executive or vice versa. Each of these two possible cases appears once in the replies to the questionnaire. In *Austria*, a referendum on the dismissal of the President can be called by a two-thirds majority of the National Council; in *Latvia*, by contrast, it is the President who can call a referendum on the dissolution of Parliament.

3. *Referendum at the request of part of the electorate*

39. Provision for a referendum at the request of part of the electorate is less common than that for a mandatory referendum or referendum at the request of an authority.

40. Referendums at the request of part of the electorate must be divided into two categories: the *ordinary optional referendum* and the *popular initiative* in the narrow sense. Both result in a popular vote without an authority taking a decision in this respect, but the authorities are least involved in the case of the popular initiative. An ordinary optional referendum challenges a text already approved by a state body, while a popular initiative enables part of the electorate to propose a text that has not yet been approved by any authority.

41. It is in *Switzerland* that the mechanisms of the ordinary optional referendum and the popular initiative are the most highly developed. A referendum can be requested by 50,000 citizens against specific laws (except for emergency laws adopted for less than one year), certain

international treaties and certain federal orders – decisions adopted by Parliament. A popular initiative can be presented by 100,000 citizens with the aim of revising the constitution and a general popular initiative, which can also lead to a change in the law, will be introduced shortly. Parliament decides solely on the validity of the popular initiative.

42. A request for an ordinary optional referendum or a popular initiative requires 500,000 signatures in *Lithuania* and 150,000 in “*the former Yugoslav Republic of Macedonia*”. In *Latvia*, 10% of voters can launch a constitutional or legislative popular initiative or request a referendum if the President suspends a law at the request of one-third of Parliament, if the law is not passed again by the latter by a three-quarters majority of its members.

43. *Italy* has both optional constitutional referendums and abrogative legislative referendums, at the request of part of the electorate (500,000 signatures are necessary). Parliament can, however, rule out a referendum by revising the basic principles and key content of the old law. *Albania* and *Malta* also have provision for abrogative legislative referendums. The system in the *Russian Federation* provides for a referendum at the request of 2,000,000 voters. This is more akin to a popular initiative, even though it may relate to a text already adopted as it is not suspensive.

44. *Croatia* has a popular initiative (at the request of 10% of the voters) but not an ordinary optional referendum. The same applies to *Georgia* (at the request of 200,000 voters). As we shall see later, in these two countries the referendum cannot relate to the text of a law.

45. Ordinary optional referendums exist in *Hungary* but not the type of popular initiative described here (200,000 signatures). The temporary law in force in the *Netherlands* from 2002 to 2004 was along the same lines (600,000 voters, following an introductory request by 40,000 voters).

46. In several states, there is also a limited form of popular initiative, with a number of voters being able to propose that another body call a referendum. This is accordingly an extraordinary referendum organised at the request of part of the electorate. In *Poland*, 500,000 citizens can ask the Sejm to organise a referendum; in *Portugal*, such a request can be submitted to Parliament by 75,000 voters; in *Hungary*, 100,000 signatures are necessary and in “*the former Yugoslav Republic of Macedonia*” 10,000 (it should be pointed out that the referendum must take place if there are 200,000 or 150,000 signatures respectively). On the other hand, 50,000 voters can ask the President of *Albania* to organise a referendum, while 300,000 can do so in *Azerbaijan*.

47. Otherwise, the *role of the authorities*, and especially Parliament, is limited in the case of the popular initiative. As pointed out above, the *Italian* Parliament can rule out an abrogative referendum by revising the basic principles and key content of the old law. *Maltese* law is similar: the referendum does not take place if Parliament repeals the impugned legislation. The *Lithuanian* Parliament debates the initiative but cannot refuse to submit it to the people unless it is unconstitutional. In *Switzerland*, Parliament examines the validity of the popular initiative and must recommend its acceptance or rejection within 30 months of its being presented. It can make a counter-proposal to the popular initiative aimed at a partial revision of the constitution, which will then be put to the vote at the same time as the initiative. Parliament may also declare the initiative invalid and refuse to submit it to the people’s vote.

C – Content

Constitutional referendums

48. A referendum is often used to amend the *constitution*. In a number of states, as noted above, this is a *mandatory referendum*, either for any constitutional provision or only for certain provisions judged particularly important.

49. *Optional constitutional referendums*, either *at the request of an authority* or part of the electorate, exist in most states that do not have mandatory constitutional referendums. For example, the *French* President or Parliament can submit to the people a constitutional amendment approved by the two assemblies. In *Azerbaijan* and *Turkey* too, the President or Parliament can call a constitutional referendum, while in *Armenia* the agreement of the President and Parliament is required. A constitutional referendum can take place on the initiative of Parliament in *Estonia*, *Lithuania* and *Malta* (subject to cases of mandatory referendums in the latter two states) and one-third of the members of one of the chambers in *Austria*. In *Russia*, it can relate to a new constitution as a whole, on the initiative of the constituent assembly.

50. The optional constitutional referendum at the *request of part of the electorate* is used in *Italy* (500,000 signatures are required), *Lithuania* (300,000 signatures) and *Hungary* (200,000 signatures; if there are only 100,000, the consent of Parliament is necessary).

51. The constitutional *popular initiative* is very common in *Switzerland* (100,000 signatures) and also exists in *Lithuania* (300,000 signatures) and “*the former Yugoslav Republic of Macedonia*” (150,000 signatures).

52. By contrast, several states exclude constitutional issues from the scope of the referendum: *Bulgaria*, *Greece*, *Luxembourg*, *Netherlands* – temporary law applicable up to 2004 –, *Portugal*.

Legislative referendums

53. Quite a number of states provide for legislative referendums. In most cases, this is an extraordinary referendum held on the initiative of the President (*Azerbaijan*, *France*), Parliament (*Albania*, *Austria*, *Azerbaijan*, *Lithuania*, *Luxembourg*), a number of members of Parliament (*Denmark*, *Greece*) or on the basis of an agreement between the President and Parliament (*Armenia*, *Ireland* – where the agreement of a majority of the Senate and one-third of the Dáil is required). In *Portugal*, the President decides on the basis of a proposal by Parliament or Government.

54. The *ordinary* legislative referendum is very common in *Switzerland* (at the request of 50,000 voters). It also exists in *Hungary*, *Lithuania* and “*the former Yugoslav Republic of Macedonia*”. In these states, it is suspensive, which increases its chances of success as voters are always more willing to oppose a legal instrument that is not in force than one they have seen applied.

55. The popular legislative initiative is less common. It exists in *Lithuania*, *Russia* and “*the former Yugoslav Republic of Macedonia*”. *Albania*, *Italy* and *Malta* provide for *abrogative legislative referendums*, on the initiative of part of the electorate. This type of referendum may however terminate a statute’s validity, not lead to its adoption.

Treaty-related referendums

56. Several states have provision for treaty-related referendums (on international treaties). They are mandatory in some states in the case of accession to the European Union (*Latvia*) or, more generally, to a supranational community (*Switzerland*), international organisations in the case of a transfer of powers (*Lithuania, Denmark*, except when a decision is taken by a five-sixths majority of members of Parliament) or in the case of joining or leaving a community with other states (“*the former Yugoslav Republic of Macedonia*”) or of an association with other states (*Croatia*). It should be noted that the accession of *Austria* to the European Union was considered a total revision of the constitution and was consequently submitted to mandatory referendum. *Switzerland* also opts for a mandatory referendum in the case of joining collective security organisations.

57. The ordinary optional treaty-related referendum exists in *Switzerland* – at least for the most important treaties – and in “*the former Yugoslav Republic of Macedonia*”, and is subject to the same conditions as the ordinary legislative referendum.

58. The treaty-related referendum may also be extraordinary. In *France*, it is initiated by the President, in *Portugal* by the President on a proposal by Parliament or the Government, and in *Malta* by Parliament. This type of referendum is also possible in *Azerbaijan* and *Russia*.

59. Certain *other instruments* may be submitted to referendum, such as *Swiss* federal orders (without general scope) in the cases provided for in the constitution or the law (ordinary optional referendum). *Azerbaijani, Estonian* and *Maltese* law provide for other instruments to be submitted to the people by Parliament (or the President in the case of *Azerbaijan*).

60. States that do *not* provide for a referendum on a *specifically-worded draft* (*Croatia, Georgia, Sweden*)³ do not provide for a vote on the actual text of the Constitution (or other texts). However, they do provide for a vote on important issues that may clearly be constitutional in nature or related to laws or treaties. In *Croatia*, for example, voting can take place on any issue falling within the competence of Parliament or any matter that the President considers important.

Matters to which referendums may relate

61. A number of states limit the matters to which referendums may relate, doing so either by drawing up an exhaustive list or excluding certain areas from the popular vote.

62. An exhaustive list is drawn up in *France* in the case of legislative or treaty-related referendums, which can relate to the organisation of the public authorities, economic and social policy reforms and the relevant public services and, finally, the ratification of a treaty not contrary to the constitution but liable to influence the operation of the institutions. In practice, this is a very wide area.

63. Apart from elections and questions submitted to the decision of judicial or administrative bodies, which are expressly excluded from referendums by *Armenian, Austrian and Azerbaijani* law and implicitly excluded by the law of many other countries, the principal matters in respect

³See I.D.

of which national law rules out a referendum are financial, budgetary and tax issues (*Albania, Azerbaijan, Denmark, Estonia, Greece, Hungary, Italy, Malta, Poland* on the initiative of the citizens, *Portugal*, and “*the former Yugoslav Republic of Macedonia*”), amnesties and pardons (*Albania, Azerbaijan, Georgia, Italy, Poland* on the initiative of the citizens, and “*the former Yugoslav Republic of Macedonia*”) and restrictions on fundamental rights (*Albania, Armenia, Georgia*). It may also relate to territorial integrity (*Albania*), states of emergency (*Albania, Estonia*), the powers of Parliament, judicial bodies and the Constitutional Court (*Bulgaria*), texts concerning the civil service, naturalisation and expropriations (*Denmark*), the monarchy and the royal family (*Netherlands* under the temporary law applicable up to 2004, *Denmark* to a certain extent), legislative acts that are submitted to a special procedure and whose content is imposed by the constitution or acts constitutionally necessary for the operation of the state (*Italy, Portugal*), and appointments and dismissals (“*the former Yugoslav Republic of Macedonia*”). The implementation of international treaties cannot be submitted to the decision of the people in *Denmark, Hungary, Malta* and the *Netherlands* (temporary law), so as to avoid a breach of international law. Similarly, *Swiss* law allows for (but does not make compulsory) an international treaty and its implementing provisions (constitutional or legislative) to be put to a single vote.

D – Form of the text submitted to referendum (formal validity)⁴

64. The text submitted to referendum may be presented in various forms :

- 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?”).

65. A number of states do not have any rules on the form of texts submitted to referendum (*Azerbaijan, Belgium, Cyprus, Finland, Latvia, Luxembourg, Norway, Poland, Russia, “the former Yugoslav Republic of Macedonia”*). Moreover, some of these states (*Belgium, Finland, Luxembourg, Norway*) do not have general rules on referendums or stipulate that the Council of Ministers (cabinet) should determine the form of the text submitted to referendum (*Cyprus*). In *Bulgaria*, it must simply be possible to reply yes or no to the question asked.

66. Other states, such as *Armenia, Denmark, France, Ireland, the Netherlands* (temporary law) and *Turkey*, only provide for a vote on a *specifically-worded draft*. There is also provision in *Italy* for an abrogative referendum, which also relates to a specific legal text.

67. By contrast, *Croatian* law excludes specifically-worded drafts (and thus takes into consideration questions of principle and generally-worded proposals); in *Portugal*, the only specifically-worded text which may be submitted to referendum is a treaty which aims at the

⁴CDL-INF(2001)010, *Guidelines for constitutional referendums at national level, adopted by the Venice Commission at its 47th Plenary Meeting (Venice, 6-7 July 2001), para. II.C.*

construction or the deepening of the European Union. Only questions of principle can be put to the vote in *Georgia* and *Sweden* (where a choice between various alternatives is possible).

68. The referendum may also relate to a text that has or has not been specifically worded, depending on its nature or purpose. In *Austria* (where two alternative drafts may be offered), *Andorra*, *Spain* and *Lithuania*, a decision-making (legally binding) referendum relates to a specifically-worded draft (or the dismissal of the President in the case of Austria) and the consultative referendum to a question of principle.

69. Other states provide both for referendums on specifically worded drafts and questions of principle (*Greece*, *Spain*, *Albania*). Finally, the three possibilities (specifically-worded draft, question of principle, generally-worded proposal) may co-exist (*Hungary*, *Switzerland*, *Malta* in the absence of a rule to the contrary). *Albania* and *Malta* also have provision for abrogative referendums, which relate to a specifically-worded text.

70. Questions of principle are defined by national law in various ways. In *Greece*, for example, they are crucial national issues and important social issues, in *Spain* issues of particular importance, and in *Cyprus* important issues of public interest; in *Switzerland*, it is the total revision of the Constitution.

Unity of form

71. The question then arises as to whether the texts submitted to referendum have to comply with the principle of unity of form (the same question must not combine a specifically-worded draft amendment with a generally-worded proposal or a question of principle).

72. States that do not provide for any rule concerning the form of the texts submitted to referendum logically do not adopt the principle of unity of form either. By contrast, when a single form is prescribed this principle is imposed by definition. Certain states that provide for several types of referendum adopt the principle of unity of form. This principle is expressly laid down in *Switzerland* but is implicit to a greater or lesser extent in quite a number of other states (for example, in *Albania* a vote is held on constitutional provisions, the repeal of legislation or a question of principle). A similar situation may be said to exist in *Andorra*, *Estonia*, *Greece*, *Hungary*, *Lithuania* and *Spain*.

Unity of content

73. The principle of unity of content means that, except in the case of a total revision of the constitution or another piece of legislation, there must be an intrinsic connection between the various 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 between them).

74. To date, most of the states that have replied to the questionnaire have not adopted any rule imposing compliance with the principle of unity of content. This does apply however in *Bulgaria*, *Italy*, *Portugal*, *Switzerland* and *Hungary*, where freedom to vote is considered to have been violated if parts of a question are contradictory, if their relationship with one another is not clear and if they do not flow from one another or are not linked by their content. Less explicitly, this principle is also applied in *Armenia*, *Austria* and “*the former Yugoslav Republic*

of Macedonia”. In the *Netherlands*, this question does not really arise since only an entire law can be put to the popular vote under the temporary law.

Unity of hierarchical level

75. Unity of hierarchical level means that the same question must not relate simultaneously to the constitution and subordinate legislation. It is complied with in the following countries: *Andorra, Armenia, Ireland, Italy, Switzerland* and, implicitly, *Hungary* and *Lithuania*.

76. Unity of hierarchical level is mandatory by definition in states that do not provide for a constitutional referendum (*Bulgaria, Greece, Luxembourg, Netherlands, Portugal*) or those that, by contrast, provide only for a constitutional referendum (*Turkey*). It applies solely to specifically-worded drafts; questions of principle and generally-worded proposals have no place in the hierarchy of rules (they are implemented by constitutional and legislative rules).

Other requirements relating to the question asked

- Clear and non-leading questions

77. Freedom to vote presupposes that “the question submitted to the electorate must be clear (not obscure or ambiguous); it must not be misleading; it must not suggest an answer; electors must be informed of the consequences of the referendum; voters must answer the questions asked by yes, no or a blank vote”⁵. A number of national legal systems explicitly uphold these rules, especially the requirement that the question be clear. In *Albania*, questions of principle (particularly important questions) submitted to the electorate must be clear, complete and unequivocal; in *Armenia*, the question must be straightforward; in *Hungary*, devoid of ambiguity; in *Portugal*, questions must be formulated in an “objective, clear and precise manner”, and may not contain any suggestion or preliminary considerations; in *France* three conditions are attached: fairness, clarity and absence of ambiguity. The requirement for clarity relates to the rules providing that the voter should be able to reply yes or no (*Austria, Croatia, Greece, Malta, “the former Yugoslav Republic of Macedonia”*) or to vote on a specifically-worded text (*Ireland*). The requirement that the question be clear and non-leading is also upheld in *Bulgaria, Italy, Poland, Portugal* and *Switzerland*. Elsewhere it should apply in pursuance of the principle of freedom to vote.

- Number of questions

78. In general, the *number of questions asked* at the same ballot is not limited. However, in *Armenia* a referendum cannot relate to more than one question and in *Portugal* no more than three. In some states, *alternatives* can be proposed (*Austria, Russia, Sweden*). In *Switzerland*, Parliament can adopt a counter-proposal to a popular initiative, which is put to the vote at the same time.

E – Substantive limits on referendums (substantive validity)⁶

79. The question of substantive limits is most important in the case of constitutional revisions. Most constitutions do not prescribe substantive limits to their revision, but this does not exclude

⁵CDL-INF(2001)010, para. II.E.2.a.

⁶Cf. CDL-INF(2001)010, para. II.D.

the possibility of such limits existing, whether they be extrinsic (international law or some of its rules) or intrinsic, entailing the precedence of certain constitutional provisions over others. This is not the place to enter into a doctrinal debate but to establish to what extent national legal systems recognise such limits to the constitutional referendum.

80. *Intrinsic* limits to the revision of the *constitution* are quite rare. In *Albania*, referendums cannot lead to interference with the country's territorial integrity or with fundamental rights. In *Croatia*, the only limit is the re-creation of a Yugoslav or Balkan state.

81. As regards *extrinsic* limits, *Switzerland* upholds the mandatory rules of international law (*ius cogens*). In *Hungary*, it is forbidden to organise a referendum on the obligations resulting from international treaties already in force and on the laws that implement them.

82. Quite a number of states do not provide for any limits (for example, *Austria, Azerbaijan, Finland, Latvia, Malta, Turkey, France* in practice).

83. On the other hand, when a referendum relates to a legal instrument of *lower rank* than the constitution, an examination is often conducted before the vote to establish whether it conforms to the constitution (*Estonia, Lithuania, Portugal, Russia, Sweden*) or with the constitution and international law (*Cyprus, Denmark, Greece, Italy, "the former Yugoslav Republic of Macedonia"*). In *Ireland*, the examination is carried out with respect to the constitution and European Union law. The latter requires that, at the very least, no law contrary to it should be in force in any member state. Such an examination can even be conducted in the case of a referendum on a question of principle or a generally-worded proposal when the latter cannot lead to a revision of the constitution (*Andorra* – the question must also comply with international treaties). In *Russia*, the question submitted to referendum must not restrict, set aside or reduce universally recognised human and civic rights and freedoms or the constitutional guarantees for exercising them.

84. In *Poland*, even though there is no explicit limit, the Sejm examines the question of conformity with higher-ranking law before deciding to call a referendum. In addition, the necessity to ensure conformity with higher-ranking law does not prevent the exclusion of preventive checks (*Armenia*).

F – Campaigning, funding and voting

*1. Campaigning*⁷

Information for voters

85. The availability of the text put to the vote is an essential precondition for the electorate to freely develop an informed opinion. Publication in the official gazette is a minimum form of publicity that actually only reaches a limited number of voters. *Lithuania* and *Russia* provide for the text to be published in the public media and on their websites. In *Ireland* the text must be made available to the public at post offices; in the Netherlands, it must be made available in town halls (under the temporary law applicable up to 2004).

⁷Cf. CDL-INF(2001)010, para. II.E.2.

86. Some countries have rules stipulating that the authorities must not only put the text at the disposal of citizens, but also provide additional *objective information*. In the *Netherlands*, a summary of the text is sent to voters. Other states arrange for an explanatory note or other information to be made available. In *Switzerland*, the text put to the vote is sent to voters together with an explanatory note from the Federal Council (Government), which must set out the various points of view in a balanced manner. In *France*, even if this is not prescribed by law, in practice the authorities have to supply objective information, by providing voters with the text and an explanatory note. The draft note is checked by the Constitutional Council, as a matter of course. In *Finland*, an objective explanatory note was sent to voters for the referendum on the country's accession to the European Union in 1994 (a special law is passed for each referendum). Such a note is drawn up in *Ireland* if the two houses of Parliament make provision for this; and it must be neutral. In *Portugal*, all the authorities are required to ensure the strictest impartiality, while in *Latvia* the Central Electoral Commission must provide citizens with neutral information, especially on the draft put to the vote.

87. In *Portugal*, it is the National Electoral Commission's task to draw up and provide any objective information on the referendum necessary for voters; in *Poland*, the State Electoral Commission is simply authorised to do this.

Sources of campaign material

88. An obligation for the authorities to demonstrate absolute impartiality and neutrality is recognised in *Portugal* and is also very widely established in *Switzerland*.

89. In *Russia* as well as in *Portugal*, authorities and officials are prohibited from campaigning. Restrictions imposed on the authorities are sometimes more limited. In *Armenia*, they only apply to the exercise of their functions (for judges, police officers and military personnel, there is an absolute ban on campaigning). In *Georgia*, the ban on campaigning applies only to members of the electoral commissions.

90. In *Austria*, the authorities must provide neutral information but they are also allowed to campaign. However, the Constitutional Court has ruled in its case law that they are prohibited from disseminating non-objective or disproportionate mass information.

91. Other states, however, allow the authorities to be involved in the campaign (*Hungary*).

92. As far as individuals are concerned, most states do not impose any restrictions. However, foreign citizens and organisations are not allowed to campaign, for example, in the following states: *Armenia, Azerbaijan, Georgia* and *Russia*. In *Russia*, religious associations and charities cannot campaign. Special status is granted in *Portugal* to political parties, coalitions of parties or groups of at least 5,000 voters.

Access to the media

Public media

93. The majority of states that replied to the questionnaire regulate access to the *public media* during the referendum campaign. Quite often, equal air time is given to the supporters and opponents of the draft proposal (*Albania, Azerbaijan, Bulgaria, Cyprus, Lithuania, Sweden, Switzerland, "the former Yugoslav Republic of Macedonia"*).

94. In some states, a balance must be ensured between the various groups participating in the campaign rather than between the supporters and the opponents. This is the case in *Italy, Malta, Poland, Portugal* and *Russia*.

95. In the *Netherlands* and *Spain*, the rules simply state that the political parties represented in Parliament can use the time allocated to them on the radio and television for the referendum campaign. In *Spain*, this time is allocated in proportion to the parties' electoral strength.

96. *French* law requires that the supporters and the opponents of the draft proposal be given "fair" coverage on radio and television. Only the parties represented in Parliament and those whose participation appears justified in view of the nature of the question asked may express their views. There is also a requirement to be fair in *Ireland*.

97. Other legal systems ensure a balance with regard to the requirements of objectivity, impartiality or neutrality. For example, in *Austria*, the public broadcasting service is generally required to guarantee that the public receives objective and impartial information and to ensure a diversity of opinions.

Private media

98. Rules concerning the *private media* are less common than those relating to the public media. However, in some states there is a requirement for both the private and the public audiovisual media to be balanced. For example, supporters and opponents have the same air time in the two types of media in *Bulgaria* and *Cyprus*. In *Austria*, the requirement of impartiality and objectivity also applies to private radio and television stations, while in *France* and *Ireland* they must provide supporters and opponents of the draft proposal with fair coverage. This was also the case in *Finland* at the time of the referendum on accession to the European Union.

99. In *Portugal*,

- the requirement for balance applies to *private audiovisual* media in the same way as to public media – including the obligation to grant air time;
- the same requirement for balance applies to *other private* media (the printed media), but only if they wish to insert campaign material;
- the use of media is free (for parties and groups); the state has to compensate publications and channels.

100. Without going as far as this, legislation may provide that unequal financial conditions must not be imposed on referendum campaigning according to its origin (*Italy, Russia* and *Spain*, where rates cannot be higher than those for commercial advertising, and *Switzerland* in principle).

2. *Funding*⁸

101. The use of public funds for or against a draft submitted to referendum is prohibited in a number of states: *Armenia, Bulgaria, Croatia, Georgia, Ireland, Portugal, Poland, Russia*,

⁸Cf. CDL-INF(2001)010, para. II.F.

Spain, Switzerland, and “the former Yugoslav Republic of Macedonia”. This clearly does not exclude the use of public funds for the organisation of the referendum, including the benefits granted both the supporters and opponents of the text in respect of postage (*Spain*) or tax exemption for activities connected with the referendum (“*the former Yugoslav Republic of Macedonia*”).

102. Other countries link the use of public funds to compliance with the requirement of neutrality. *Ireland* and *Malta* provide for public funds to serve the purpose of providing information but not for campaigning. In *Finland*, at the time of the referendum on accession to the European Union, public funds were distributed equally among the supporters and opponents of the proposal.

103. In some countries, the authorities’ ability to use public funds during the campaign is not ruled out but is limited. In *Austria*, the moderate use of public funds by Parliament and the Government is accepted if it does not constitute disproportionate and non-objective information. In *Azerbaijan*, the authorities are prohibited from campaigning only in the period immediately preceding the vote.

104. The law of other states that replied to the questionnaire makes no mention of this question.

Payment for the collection of signatures

105. In states in which popular initiatives or optional referendums are held, there is the question of the possibility of remunerating the people who collect signatures. None of the replies to the questionnaire mentions that such payment is prohibited, so the problem does not appear to exist in practice. It goes without saying, only these who collect signatures may be remunerated, not as voters who sign a popular initiative or a request for a referendum stated in Russia’s reply.

3. *Voting*

Voting period

106. In most states, the vote takes place over *one day* in the *Czech Republic* over *two days*. *Finland* schedules two days if the referendum is held at the same time as the national elections. The vote can also take place over one or two days in *Poland*. By definition, when advance or postal voting is allowed, it takes place before the actual polling day. For example, postal voting takes place over a period of thirty days in *Sweden* and three weeks before polling day in *Switzerland*. In *Estonia*, advance voting may take place at the polling stations from thirteen days before the election (moreover, electronic voting between four and six days before the election will be allowed from 2005). Advance voting is permitted by *Russian* law for fifteen days in the case of less accessible localities, boats, polar stations and, more generally, everywhere outside the national territory.

107. If there are different time-zones within a country, is it possible for the results from some polling stations to be known before voting closes in others? This question arises in *Russia* much more than anywhere else, and the outcome of the vote is announced after the closure of all polling stations and the general counting of the votes. There is a significant time-difference between Metropolitan *France* and the overseas départements, and up to now the publication of the results has not been prohibited before the last polling stations close.

Compulsory voting

108. Compulsory voting is prescribed for referendums only in a very limited number of states: *Greece, Luxembourg, Turkey and Belgium* (where just one *ad hoc* referendum has been organised). In Switzerland, it is imposed only in one canton.

Quorum

109. Most states do not provide for a quorum to validate the result of a referendum.

110. Where a quorum does exist, it can take two forms: quorum of *participation* or quorum of *approval*. The quorum of participation (minimum turnout) means that the vote is valid only if a certain percentage of registered voters take part in the vote. The quorum of approval makes the validity of the results dependent on the approval (or perhaps rejection) of a certain percentage of the electorate.

111. A quorum of approval is considerably preferable to a quorum of participation, which poses a serious problem⁹. The opponents of the draft proposal submitted to referendum, as several examples have shown, appeal to people to abstain even if they are very much in the minority among the voters concerned by the issue.

112. A *quorum of participation* of the majority of the electorate is required in the following states: *Bulgaria, Croatia, Italy and Malta* (abrogative referendum), *Lithuania, Russia* and “*the former Yugoslav Republic of Macedonia*” (decision-making referendum). In *Latvia*, the quorum is half the voters who participated in the last election of Parliament (except for constitutional revisions, see below), and, in *Azerbaijan*, it is only 25% of the registered voters. In *Poland and Portugal*, if the turnout is not more than 50%, the referendum is *de facto* consultative and non-binding (in Portugal, the quorum is calculated on the basis of the citizens registered at the census).

113. A *quorum of approval* of a quarter of the electorate is laid down in *Hungary*. In *Albania* and *Armenia*, the quorum is one-third of the electorate. In *Denmark*, a constitutional amendment must be approved by 40% of the electorate; in other cases, the text put to the vote is rejected only if not simply the majority of voters vote against it but also 30% of the registered electorate.

114. Moreover, a particularly high quorum is sometimes required for fundamental decisions. In *Latvia*, when a constitutional amendment is submitted to referendum, it must be approved by more than 50% of the registered voters. In *Lithuania*, certain particularly important rules relating to sovereignty can only be decided by a majority of three-quarters of the electorate, while others relating to the state and constitutional revisions require a majority of the electorate. In *Croatia*, a “yes” vote of a majority of the electorate is required in the case of an association with other states.

115. The quorum of participation and quorum of approval may be combined. For example, in *Lithuania*, in the case of a mandatory referendum, the quorum is a 50% turnout and one-third of the voters must approve the draft proposal. For accession to supranational organisations, only the minimum turnout has to be achieved.

⁹Cf. CDL-INF(2001)010, para. II.O.

G – Effects of referendums¹⁰

Decision-making (legally binding) and consultative referendums

116. Most referendums organised in the states that replied to the questionnaire are of a decision-making nature, in other words the result is legally binding, in particular on the authorities.

117. Several states provide only for decision-making referendums: *Albania, Armenia, Azerbaijan, Bulgaria, Croatia, Estonia, France, Georgia, Greece, Ireland, Italy, Latvia, Russia, Switzerland, “the former Yugoslav Republic of Macedonia” and Turkey*. The only referendum organised in the *Czech Republic* (on accession to the European Union) was a decision-making one.

118. In other states, such as *Denmark*, decision-making referendums are the rule but consultative referendums are not excluded.

119. In *Hungary*, a referendum on a law or following a popular initiative launched by 200,000 citizens is always binding, while in other cases Parliament decides whether the referendum will be binding or consultative.

120. Some states distinguish between decision-making referendums and consultative referendums according to the nature of the text put to the vote. In *Andorra, Austria* and *Spain*, a referendum on an important issue is consultative, while a constitutional referendum (and a legislative referendum in *Austria*) is legally binding. In *Lithuania*, a referendum is binding if it relates to legislative provisions proposed by a popular initiative and to constitutional provisions submitted to a mandatory referendum. In other cases, it is consultative.

121. In *Poland* and *Portugal*, the referendum is binding if the majority of the electorate has voted but is otherwise consultative.

122. Finally, *Belgium, Finland, the Netherlands* and *Norway* have had only *consultative* referendums to date. In *Sweden*, while a legally binding referendum on a question relating to basic laws is possible, only consultative referendums have been held up to now.

Suspensive and abrogative referendums

123. Leaving out the case of the popular initiative, which leads to the adoption of a new text, a decision-making referendum may also be:

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

- *abrogative* or *resolutive*: the text ceases to be in force following a vote against it or failure to secure a “yes” vote within a certain time-limit after its adoption.

124. A *suspensive* referendum, since it involves voting on a text not yet applied, is more likely to result in rejection of the matter put to the vote. It is always employed when international

¹⁰Cf. CDL-INF(2001)010, para. II.N.

treaties are put to the vote in order not to incur the international liability of the state, as well as in the following countries: *Armenia, Azerbaijan, France, Greece, Hungary, Ireland, Latvia, Lithuania* and *Turkey*. In *Denmark* and *Switzerland*, the referendum is suspensive unless it relates to an emergency law (in which case it is resolutive). The only referendum organised in the *Czech Republic* (on the country's accession to the European Union) was suspensive. Although it is consultative, a referendum is also suspensive in the *Netherlands*.

125. A referendum is suspensive only in respect of constitutional issues in *Albania, Andorra, Italy* and *Spain* and, when it relates to a specifically-worded draft, (and is accordingly binding) in *Austria*. In *Malta*, a referendum is suspensive if it concerns a constitutional revision submitted to a mandatory referendum or a law proposed by Parliament.

126. By contrast, in *Russia* a referendum is in principle *abrogative*. Both suspensive and resolutive referendums exist in "*the former Yugoslav Republic of Macedonia*". It must be recalled that *Denmark* and *Switzerland*, where referendums are in general suspensive, use abrogative referendums for emergency laws. *Albania, Italy* and *Malta* have *abrogative* referendums in respect of legislative matters too.

Decisions to be taken after a referendum

127. When the vote has concerned a question of principle or a generally-worded proposal, Parliament must adopt implementing regulations. This is the case in states where specifically-worded drafts cannot be submitted to referendum, as in *Croatia* and *Georgia*. It is also the case with generally-worded texts in *Estonia* (issue of national interest), *Switzerland* (generally-worded popular initiative). *Bulgaria* (when necessary) and "*the former Yugoslav Republic of Macedonia*" (within 60 days if the referendum is not suspensive) also provide for Parliament to be called upon to pass legislation in accordance with the outcome of the referendum.

128. In *Portugal*, in the case of a legally-binding referendum with a positive outcome, Parliament or the Government is required to approve an international convention or corresponding legislative act within 90 or 60 days respectively. In *Russia*, the follow-up decisions necessary must be taken within three months of the vote.

129. In the *Netherlands*, under the temporary law, although a referendum was suspensive, Parliament had to take a new decision if the outcome of the referendum was negative and decide on the entry into force of the text if the vote was positive.

130. In order to ensure that Parliament does not bypass the popular vote, *Croatian* law provides that it may not take a decision contrary to the outcome of a referendum until one year has passed. Moreover, another referendum on the same issue may not be organised for six months. These rules do not apply in the case of a popular initiative and a referendum concerning an association with other states.

H – Parallelism of procedures and rules governing referendums

*Parallelism of procedures*¹¹

131. The scope of a popular vote depends not only on whether it is a binding or consultative one, but also on whether parliament is able to reverse the decision taken by the people. In other words, can a provision approved by referendum be revised without going through the same procedure again? If it has been rejected by the people, can it be adopted without a referendum?

132. There is no clear trend in this respect and the various national laws are divided in their approach. In general terms, the following countries apply parallelism of procedures and, consequently require proposed amendments to provisions already approved by referendum to be put to a further referendum (mandatory or consultative): *Albania, Andorra, Azerbaijan, Italy, Malta, Switzerland and “the former Yugoslav Republic of Macedonia”*. Where the referendum is abrogative (legislative referendum in Albania, Italy and Malta), a parliamentary amendment running counter to the decision taken by referendum can, in theory, enter into force, but this is viewed as a politically unwise move. In *Russia*, a provision approved by referendum may be annulled or revised only by referendum unless another procedure had been stipulated in the text submitted in the original referendum. A new referendum cannot take place for two, or even five years.

133. Some countries (*Austria, Denmark, Ireland, Latvia*) have provision for parallelism of procedures exclusively for matters submitted to mandatory referendum. In *Armenia*, not only constitutional provisions (submitted to mandatory referendum), but also laws approved by referendum may be amended only by means of a subsequent referendum; however, in theory at least, parallelism of procedures does not apply to texts rejected by referendum, which may be approved by parliament.

134. There is no provision for parallelism of procedures in *Portugal* but if a solution has been rejected in a referendum it cannot be passed by parliament until after the election of a new parliament.

135. In principle, where referendums are consultative, parallelism of procedures is not an issue. This is the case in *Belgium, Finland and Norway*. Clearly, this does not rule out a consultative referendum on a text amending a text put to referendum, as indicated in the *Netherlands* reply to the questionnaire.

136. The question is a controversial one in some states, such as *Greece*. However, in the majority of the other countries that replied to the questionnaire (eg *Bulgaria, Croatia* (after one year), *Cyprus, Hungary, Lithuania, Poland, Spain, Sweden*), it is possible – at least from a legal point of view – for parliament to take action running counter to the result of a referendum.

¹¹Cf. CDL-INF(2001)010, paragraph. II.L.

*Arrangements for revising the rules governing referendums*¹²

137. Can a constitutional or legislative provision allowing for a referendum be amended by a procedure which does not provide for a referendum?

138. The majority of countries that replied to the questionnaire indicated that there was no particular provision relating to the revision of texts setting out the rules for referendums.

139. Accordingly, the situation across the different countries varies considerably. For example, in countries such as *Norway*, *Finland* and the *Netherlands*, which have only consultative referendums, obviously the only type of referendum that could be held in this respect would be a consultative one. In *Portugal*, where referendums cannot relate to constitutional provisions, no such popular vote could be held, even if the provision in question concerned referendums. In contrast, in *Switzerland*, where the constitution is subject to mandatory referendum and legislation to optional referendum, any provision relating to referendums (except where it is regulatory) must, under the law, be submitted to referendum. Between these two extremes every possible situation is to be found. Clearly, in countries where constitutional amendments are subject to mandatory referendum (in addition to *Switzerland*, this is also the case in *Andorra*, *Armenia*, *Azerbaijan*, *Denmark* and *Ireland*), this also applies where such amendments relate to referendums. In *Italy*, constitutional provisions are submitted to suspensory referendum and legislation to abrogative referendum at the request of 500,000 voters. In *Albania*, constitutional provisions relating to referendums (like all other constitutional provisions) may not be amended without a referendum unless they have been approved by a two thirds majority in parliament.

140. However, in some countries, there are specific provisions stipulating that certain regulations relating to referendums must themselves be subject to mandatory referendum. This is the case in *Latvia* and *Malta* in respect of the provision stipulating the constitutional provisions subject to mandatory referendum, in order to ensure that parliament is unable to get round the requirement for a referendum by amending the provision in question. This is also the case more broadly in *Estonia* and *Lithuania* for the sections of the constitution relating to constitutional revision, which set forth the cases where a mandatory referendum applies.

I – Specific rules on popular initiatives and ordinary optional referendums¹³

141. Where referendums are organised at the request of a part of the electorate, whether this is for an ordinary optional referendum or popular initiative, a number of questions are raised concerning the *collection of signatures*.

142. The first concerns the *time-limit for collecting signatures*. Where the referendum is not suspensory, domestic legislation may not stipulate a time-limit, as in *Albania*, *Georgia*, *Malta*, *Poland* and *Portugal*.

143. Where a time-limit is stipulated, it varies considerably: just 15 days in *Croatia*, 45 in *Russia*, 3 months in *Lithuania*, 3 months for legislative referendums and 6 months for constitutional referendums in “*the former Yugoslav Republic of Macedonia*”, 4 months in *Hungary*, 100 days for ordinary optional referendums and 18 months for popular initiatives in

¹²Cf. CDL-INF(2001)010, paragraph II.K.

¹³Cf. CDL-INF(2001)010, paragraph. II.J.

Switzerland. In *Italy*, the time-limit is 3 months for constitutional referendums while abrogative legislative referendums can be called for between 1 January and 30 September. In the *Netherlands* (according to the temporary law), signatures were not collected as such, and electors signed referendum applications in their town hall; the introductory application (40,000 signatures) must be filed within 3 weeks and the final application (600,000 signatures) within 6 weeks following the date on which the introductory application was declared valid.

144. In most cases, *checking of signatures* is centralised and carried out by the central electoral commission (*Albania, Latvia, Lithuania, Russia* – where at least 40% of the required number of signatures are checked) or an equivalent body (*Hungary, Malta*). In *Italy*, a special office of the Court of Cassation is responsible for this task; in *Switzerland*, it is the Federal Chancellery; in “*the former Yugoslav Republic of Macedonia*”, the department of state administration in the Ministry of Justice. In *Poland*, the Speaker of the Sejm checks that the required number of signatures has been collected; if this is not the case, a further two weeks are allowed; the list of signatures may be sent to the state electoral board if there is any doubt about the validity of the signatures. In the case of any dispute, the Supreme Court takes the final decision. In *Portugal*, parliament may request that the competent authorities check the signatures by sampling. In some countries, signatures may be checked at local level: in *Georgia*, all signatures must be confirmed by a notary or the local authority (although this does not also rule out checks at national level); in the *Netherlands*, signatures were checked by the town hall under the temporary law. In *Croatia*, the referendum committee is responsible for checking the lists of signatures.

145. Only *Switzerland* provides for rectification of *irregularities resulting from the content of the question*, which must be carried out before the collection of signatures begins.

J – Judicial review¹⁴

146. Judicial review in the field of referendum applies first *a priori* and addresses the decision to submit a matter to referendum. It may also take place during the procedure, and address procedure itself or the voting rights and, after the vote, the validity of results. Finally, *a posteriori* control of the text adopted by referendum is conceivable.

147. The questionnaire put the main emphasis on the *a priori* scrutiny and the scrutiny of results. The answers provided however a number of other interesting elements.

148. Many countries provide for judicial review of *decisions on whether or not to submit a matter to referendum*. Often this relates to whether the questions put to a referendum are in conformity with the constitution: *Albania, Armenia, Bulgaria, Cyprus, Estonia, Georgia, Hungary, Italy, Malta, the Netherlands, Poland, Russia, “the former Yugoslav Republic of Macedonia”*. In *Lithuania*, review relates to conformity with legislation in general; in *Portugal*, to the constitutionality of questions submitted to referendum and the legality of submitting a matter to referendum.

149. In countries which have a Constitutional Court, the latter is generally competent to review (*a priori or a posteriori*) the conformity with legislation of the texts submitted to the people.

¹⁴Cf. CDL-INF (2001)010, paragraph II.P.

This applies to all the countries cited, with the exception of *Estonia* and the *Netherlands* (where the Council of State is the competent organ).

150. In other countries, judicial review relates not to the decision on holding a referendum but solely to *procedure* (*Austria, France, Greece* – special Supreme Court, *Ireland, Spain, Sweden, Turkey* – Supreme Board of Elections –); it may lead to the invalidation of results. Judicial appeals may also be limited to the respect of the right to vote (*Switzerland*).

151. As regards *competence*, it should be noted that the Constitutional Court in many countries is the organ responsible for ruling in general terms on appeals concerning referendums (*Croatia, France* – Constitutional Council –, *Malta, Portugal*). In *Albania*, it rules not only on constitutional matters, but also on the clarity of the question (where people are asked to vote on a generally-worded text) and, with regard to an abrogative referendum, on the autonomous nature of the law of which part is to be repealed. *Portugal* 's reply states that judicial control deals namely with the lawfulness of the campaign and the vote, as well as sincerity of results.

152. There may also be provision that only the decision on holding a referendum fall under the competence of the Constitutional Court, while another body is responsible for scrutiny of the results. In *Bulgaria*, disputes over results are dealt with by the Supreme Administrative Court, in *Hungary* and *Italy*, by the administrative courts, in *Latvia*, by the ordinary courts following a decision by the central electoral commission (only decisions of the President or parliament are subject to the review of the Constitutional Court).

153. In “*the former Yugoslav Republic of Macedonia*”, the Constitutional Court is competent only for non-conformity of the law with the constitution or in cases of a violation of a constitutional right other than the right to vote or eligibility. The ordinary courts are competent to deal with disputes over the right to vote (following submission of the matter to the electoral boards).

Who may lodge an appeal

154. Replies from several countries (*Croatia, Greece, Hungary, Ireland, Italy, Malta, Russia, Switzerland* and “*the former Yugoslav Republic of Macedonia*”) stated that all electors were able to *lodge an appeal*. In the *Netherlands*, any person directly concerned could appeal; in *Andorra* legitimate interest was necessary; in *Denmark* and *Estonia*, a legal interest. In *Austria*, an appeal has to be submitted by a specific number of electors, varying from 100 to 500 depending on the province in question. Broad capacity to lodge an appeal does not however prevent certain authorities from doing so (the *Director of Public Prosecutions* in *Ireland*, the *Attorney General* in *Malta*), or the initiators of a referendum from being given special capacity in this respect (*Italy*).

155. However, in other countries capacity to lodge appeals is not so extensive. In *Spain*, only interested parties (political parties, institutions) may do so; in *Russia*, the persons or bodies who took part in the referendum; in *Bulgaria*, the bodies entitled to propose a referendum. In *France*, this capacity is granted to the central government representative in each *département* or equivalent authority, but not to the electorate except in very special cases. In *Portugal*, standing to lodge appeals includes every voter (for his or her polling station), but in particular political parties and groupings that took part in the referendum campaign;

156. Lastly, there may be provisions to restrict the capacity to lodge an appeal solely to certain authorities. In *Armenia*, this is the President of the Republic or a third of the members of parliament; in *Georgia*, the President of the Republic, a fifth of the members of parliament or the ombudsman; in *Lithuania*, a fifth of the members of parliament, the government or the courts (to which of course the matter may be referred by individual citizens).

K – Experiences of referendums

157. Countries' experiences of referendums vary considerably. With the exception of *Switzerland*, where more than 500 matters have since 1848 been put to a referendum, most states make rare use of the possibility. Several countries (*Albania, Andorra, Bulgaria, Croatia, the Netherlands* (up to 2004), *Russia*) have never had a referendum, at least under the terms of their current constitution. However, in *Albania, Andorra* and *Russia*, the constitution was adopted by referendum and the question of *Croatia's* independence was also put to referendum.

158. Several countries (*Armenia, Azerbaijan, Belgium, Cyprus, Czech Republic, Estonia, Malta, Spain*) had experienced only one referendum at the time their replies to the questionnaire were written. Others had held only two (*Austria, Finland, Luxembourg* – in 1919 and 1937 -, *Norway, Poland, Portugal, "the former Yugoslav Republic of Macedonia", Turkey*), three (*Latvia*), or four (*Hungary*). Six had taken place in *Sweden, Lithuania* (since 1992) and *Greece* (during transition periods) and nine in *France* (since 1958).

159. Accession to the European Union was the reason for the majority of referendums in countries where they are infrequent. It was the subject of the only referendums held in the *Czech Republic* and *Estonia* and the two referendums in *Norway* (to be more accurate, in 1972 it concerned accession to the European Communities). One of the two to four referendums held in *Austria, Hungary, Poland* and *Latvia*, also concerned accession to the Union.

160. Referendums are more frequent in *Denmark* (14 referendums on 17 matters), *Ireland* (28 constitutional referendums since 1937) and, especially in *Italy* (53 abrogative referendums and one constitutional referendum since 1948).

161. *The body initiating a referendum* obviously varies in line with the procedures provided for in domestic law. In *Switzerland*, it is a percentage of the electorate, except in the case of mandatory referendums; only one referendum out of more than 500 has been at the request of the cantons. In *Italy*, referendums have generally been initiated by the electorate, and only rarely by regional councils. The two referendums held in "*the former Yugoslav Republic of Macedonia*" following independence have been at the request of part of the electorate. Two referendums have been held at the request of the electorate in *Hungary* and two on the initiative of the government. The executive has initiated the referendums held in *France, Armenia, Azerbaijan, Cyprus, the Czech Republic, Spain, Turkey* and, jointly with parliament, *Luxembourg* and *Malta*. In *Finland* and *Norway*, special acts of parliament were passed. Parliament has also initiated referendums in *Austria, Belgium, Estonia, Lithuania* (with the exception of one case of a popular initiative), *Sweden, Ireland* (by adopting texts submitted to mandatory referendum), *Portugal* (one mandatory referendum, one parliamentary initiative). In *Denmark*, referendums have always been organised at the request of the authorities, but on only one occasion (on four matters) was this a request by parliament; all other referendums have been initiated by the government wishing to gain acceptance for a bill that had failed to obtain a sufficient majority in parliament, or have been mandatory referendums. In *Latvia*, one

referendum has been initiated by parliament, and two following suspension of a law by the President, at the request of one tenth of the electorate.

162. Obviously, the question on a turn-out/approval *quorum* applies only to those countries where such a quorum is provided for¹⁵. The 50% turn-out threshold was not achieved in 18 out of 53 abrogative referendums in *Italy*, in two out of six in *Lithuania*, in one out of two in “*the former Yugoslav Republic of Macedonia*” and in *Portugal*. In this latter case, the effect of the referendum was then merely consultative. With regard to approval quorums, the only referendum held in *Armenia* since the adoption of the current constitution failed as it was not approved by a third of the electorate. Similarly, one referendum (out of the four that have been held) in *Hungary* was invalidated as none of the alternatives in the question obtained the approval of one quarter of the electorate.

163. The proportion of *yes* and *no votes* in referendums varied considerably among the different countries and it is impossible to draw any general conclusions. Moreover, the raw figures given do not indicate the extent to which citizens voted in line with the wishes of the authorities, at least in countries having popular initiatives or abrogative referendums (in which a *yes* vote implies in principle a vote against the authorities and a *no* vote implies confidence in them). *Switzerland*, which has held the most number of referendums, has had more *no* votes than *yes* votes, but many of these rejections relate to popular initiatives. In *Italy*, 19 abrogative referendums have yielded a *yes* vote and 16 a *no* vote. In countries where referendums are held solely on texts submitted by the authorities, there have been 21 *yes* votes and 7 *no* votes in *Ireland*, 10 *yes* and 2 *no* in *France*, and 9 *yes* and 7 *no* in *Denmark*. In the other countries, referendums are too infrequent to be able to making any meaningful comparisons. In any event, there is no significant trend towards either a systematic *yes* or a systematic *no* vote.

164. The questionnaire asked whether factors unrelated to the question asked in the referendum, or the popularity (or lack of it) of an authority may have played a role in the result. A few replies were received that suggested this might have been the case, mentioning the role of the executive (*Azerbaijan, France, Malta, Spain*), whereas the reply from *Switzerland* did not rule out such factors (at least in some of the over 500 questions put). However, it is likely that such factors play a role to varying degrees in other countries.

¹⁵See above, point I.F.3.

II – Local and regional referendums

A – Legal basis for referendums

165. Provision is less common for local or regional than for national referendums. Of the states that replied to the questionnaire, *Andorra, Azerbaijan, Cyprus, Georgia, Latvia, Lithuania, Norway* and *Turkey* do not allow such referendums. In *Denmark*, local consultative referendums can be held only on the basis of specific laws. In *Lithuania*, municipalities can only conduct surveys.

166. Any provision for local or regional referendums is usually made in central government texts. However, there are fewer constitutional references to such referendums than to national referendums. Provision is made for them, for instance, in the basic law of *Albania, Belgium, Bulgaria, France, Hungary, Italy, Luxembourg, Poland, Portugal, Russia* and *Switzerland*. In the *Czech Republic*, the Charter of Fundamental Rights and Freedoms, which ranks as constitutional law, makes indirect provision for local referendums. In *Spain*, provision is made in the constitution for referendums on the Statutes of Autonomy and amendments to them, and there is a law providing for municipal referendums.

167. By contrast, provision for local or regional referendums is made solely at the legislative level in the following states: *Armenia, Croatia, Estonia, Finland, Ireland, Malta, Russia, Sweden* and “*the former Yugoslav Republic of Macedonia*”. This was also the case under the temporary law applicable in the *Netherlands* from 2002 to 2004.

168. Even where a constitutional provision allows referendums at a sub-national level, *implementing legislation* has often also been adopted, as is the case in *Albania, Bulgaria, the Czech Republic, France, Hungary, Luxembourg* and *Poland*. In *Portugal*, the implementing legislation is an “organic” law.

169. In federal and regional states, if national law allows local or regional referendums, the rules governing such referendums are often laid down at the level of the entities. In *Austria*, this institution is mentioned in the constitutions of the nine Länder; in *Russia*, many local and regional entities have introduced regulations relating to referendums; in *Switzerland*, the federal constitution simply makes provision for cantonal constitutional referendums, leaving it up to the cantons to define the institution of the referendum. In *Italy*, the constitution allows the regions’ Statutes (basic laws) to make provision for referendums on regional legislative acts and administrative decisions; the Statutes also make provision for local referendums. Regional implementing provisions also exist in *Spain*.

170. Specific rules may also be adopted at local level in unitary states: in *Hungary*, for instance, the law simply lays down the basic framework; the details are dealt with in municipal regulations. Local, provincial or regional authorities in *Croatia, Estonia, the Netherlands* and “*the former Yugoslav Republic of Macedonia*” have also adopted provisions on referendums.

A1 – Level at which referendums are held

171. Stating that referendums are possible at a sub-national level does not answer the question as to the precise level at which they can be held. Referendums may be solely regional, solely local, or both, not to mention the fact that they can be held at intermediary levels. Firstly, this depends to a large extent on the types of territorial authorities within a state, since provincial referendums, for instance, are only conceivable in those states that have provinces.

172. The replies to the questionnaire are consequently very wide-ranging.

173. In federal and regional states, there is provision for referendums in the federate states, autonomous communities and regions, as well as in the municipalities. This is the case in *Austria, Italy, Russia* and *Switzerland*. In *Spain*, referendums can be held at the level of the autonomous communities, provinces and municipalities.

174. In *Belgium*, however, there is currently provision for referendums in provinces and municipalities, but they are still in the process of being introduced at regional level.

175. There is provision for referendums at both the local and regional levels in *Albania, Bulgaria, Croatia, Hungary* and *Sweden*. In the *Netherlands*, referendums could be held in provinces and municipalities from 2002 to 2004; in *Poland*, in regions, districts and municipalities. *France* provides for local referendums at the regional, *département* and municipal levels; it also holds institutional referendums within specific territories (overseas territories, Corsica), relating to the status of the territory in question as a unit of government. The *Portuguese* constitution provides for regional referendums in the Azores and Madeira autonomous regions, but an “organic” law must be passed before such referendums can be held.

176. By contrast, only municipal referendums are held in *Armenia, the Czech Republic, Estonia, Finland, Ireland, Luxembourg, Malta*, “*the former Yugoslav Republic of Macedonia*” and *Portugal* (in municipalities and their constituent districts, until the “organic” law on regional referendums is passed). In *Lithuania*, municipal authorities can conduct surveys.

Role of central government authorities

177. The questionnaire asks whether national or federal authorities can intervene in local and regional referendums.

178. Generally speaking, they cannot, with the exception of judicial reviews of the compliance of referendums and texts adopted by referendum with higher-ranking legislation. The matter may be referred to a court by an executive organ; in *France*, for instance, the central government representative can apply to the Administrative Court for preliminary or ex post facto review. In “*the former Yugoslav Republic of Macedonia*”, the central government representative can suspend the application of any municipal regulation on grounds of unconstitutionality or illegality, but must then refer the matter to the Constitutional Court. In *Estonia*, such matters may be referred to a court by district governors; in *Malta*, by the Attorney-General.

179. In *Spain*, however, local referendums are subject to the authorisation of the national government.

180. A national electoral commission may also be involved in local and regional referendums, as is the case in *Poland*.

B – Types of referendum – bodies competent to call referendums

181. As at national level, a distinction must be made at local level between mandatory referendums, referendums called by an authority and referendums at the request of part of the electorate.

Mandatory referendums

182. In federal states, revisions of the constitutions of the federate entities are sometimes submitted to mandatory referendum. This is the case in *Switzerland* and in two *Austrian Länder*. Similarly, in *Spain*, amendments to the Statutes of Autonomy adopted in accordance with a special procedure in the first few years following the constitution's entry into force are submitted to mandatory referendum.

183. One area in which there is generally provision for mandatory referendums is that of *geographical boundary changes*. In *Italy*, this applies to changes to regional boundaries and the establishment of new regions. In *Albania*, a referendum is generally mandatory in the event of geographical boundary changes, although the final decision rests with Parliament, in the form of legislation; the same applies to *Hungary*, where there is provision for this institution in the event that municipalities are merged or divided up, or that a municipality is transferred from one district to another. In the *Czech Republic*, mandatory referendums are held only in the event that a municipality is divided up, in the part of the municipality wishing to separate.

184. *Swiss* cantonal law provides for many other situations in which referendums are mandatory, particularly in relation to legislation. In *Hungary*, local laws can also provide for other situations in which referendums are mandatory.

Referendums called by an authority

185. National law may provide for regional referendums to be held at the request of regional authorities: in *Austria*, depending on the Land, a referendum may be called by the Landtag (Parliament) or a specified number of its members.

186. Referendums called by the municipal legislature exist at local level, for example in the following states: *Belgium*, the *Czech Republic*, *Estonia*, *Finland*, *Ireland*, *Luxembourg*, the *Netherlands* (temporary law) and “*the former Yugoslav Republic of Macedonia*”; in *Hungary*, a referendum may be called by the municipal council itself, a quarter of its members or one of its committees. Where the decision to hold a referendum is taken by the assembly, it may be initiated by part of the assembly or by an executive organ: in *Bulgaria*, for instance, at municipal level, the initiative may come from a quarter of the municipal councillors, the mayor of the municipality or the regional governor; in *Portugal*, from members of the assembly or the local executive; in both of these states, the assembly takes the final decision as to whether or not to hold a referendum, which, as will be explained further on, can be requested by a specified number of citizens.

187. In some states, local referendums require the agreement of the municipality's legislative and executive organs. This is the case in *Russia*, where the agreement of the representative body

and that of its head are required, and in *Spain*, where mayors can hold referendums with the agreement of a majority of the municipal councillors and that of the national government.

188. At both local and regional levels, referendums can also be called by the authorities: in *Croatia* and *Sweden*, referendums can be called by municipal, town or regional assemblies; in *France* and *Poland*, by the deliberative assembly of each local or regional authority. In *Switzerland*, a number of cantonal laws provide for such referendums at various levels.

189. Referendums *called by lower-ranking territorial authorities* exist at regional level in *Albania*: they are organised at the request of commune or municipal councils representing at least a third of the region's population. A number of *Austrian* Länder also provide for referendums to be held at the request of a specified number of municipalities.

Referendums at the request of part of the electorate

190. Most of the states that have local or regional referendums allow referendums at the request of part of the electorate. Where national law provides that the deliberative body is free to decide whether or not to hold a referendum following such a request, the number of signatures required is generally fairly low: at local level, in *Estonia*, 1% of the population, but at least 5 signatures; in *Finland*, 5% of voters. By contrast, where a request for a referendum must be followed by a popular vote, the number of signatures required is often higher: 30% of voters in municipalities with up to 3000 inhabitants in the *Czech Republic*, 20% in "*the former Yugoslav Republic of Macedonia*", 10% in *Malta* and *Albania* (but no more than 20 000 in the latter), but 5% in *Armenia* and *Russia*. In *Bulgaria*, requests for referendums must be supported by at least a quarter of registered voters, but a municipal council is obliged to hold a ballot only if it is requested by half the registered voters. In *Italy*, a regional referendum may be requested by 20 % of the region's voters.

191. Owing to the considerable variations in the number of inhabitants in different territorial communities, the percentage of voters necessary in order to request a referendum is often higher in smaller municipalities than in large ones: in *Luxembourg*, the requirement is a fifth of voters in municipalities with more than 3000 inhabitants, and a quarter in other municipalities; similar rules apply in the *Czech Republic*.

192. In *Belgium* and in *Portugal*, the percentage is calculated according to the population, at both provincial and local levels. As stated above, *Albania* has an upper limit of 20 000 on the number of signatures. In *Hungary*, each local or regional authority decides on the necessary percentage of voters, within a range of 10 to 25 %.

193. In federal states, the law of the federate entities also governs referendums requested by part of the electorate: this is the case in *Switzerland* (where referendums and popular initiatives are very frequent), *Austria* and *Russia*.

194. As with national referendums, the *role of the authorities* in triggering the referendum process also varies in respect of local and regional referendums. The question of intervention by national authorities has already been discussed above. In the case of referendums called by the authorities or requested by part of the electorate, subject to an authority's approval, local and regional authorities can decide whether or not to hold a ballot. This is the case in *Finland*; in *Bulgaria*, where the request comes from less than 50 % of registered voters; in "*the former Yugoslav Republic of Macedonia*", where it comes from less than 20 % of registered voters. In

the event of a request from part of the electorate, local or regional authorities in some states can rule on its compliance with higher-ranking legislation (*Poland, Switzerland*); otherwise, they essentially have the task of organising the ballot. In the *Czech Republic*, however, a municipal council receiving a request for a referendum from part of the electorate can, with the referendum committee's agreement, rule on its substance without holding a referendum.

C – Content

Types of act submitted to referendum

195. Most of the replies to the questionnaire state that, generally speaking, it is not so much the legal nature of the act that determines whether or not it can be submitted to local or regional referendum; rather, the decisive factor is whether or not the act comes within the remit of local or regional authorities. This is the case in the following states: *Albania, Armenia, Belgium, Bulgaria, Croatia, Finland, France* (in respect of local referendums), *Hungary, the Netherlands, Portugal, Russia, Sweden* and “*the former Yugoslav Republic of Macedonia*”). In other words, this means that, in these states, all acts of local or regional authorities can theoretically be submitted to referendum. *Denmark, Estonia, Luxembourg* and *Poland* do not have any specific rules, from which it may be inferred that a similar situation exists.

196. Some states impose restrictions, however, as to the legal nature of the acts that may be submitted to referendum. In the *Czech Republic*, municipal regulations cannot be submitted to referendum; in *Malta*, on the other hand, they are the only possible subject-matter of a referendum; in *Ireland*, this instrument is confined to draft financial schemes. In *Switzerland*, a wide range of acts are submitted to referendum: except for referendums on cantonal constitutions, which are mandatory under the federal constitution, these acts – at both cantonal and local level – are specified by cantonal law; at cantonal level, for instance, there is usually provision for referendums on laws and on certain items of expenditure (financial referendums). In *Austria* too, the law of the federate entities (Länder) specifies the acts that can be submitted to referendum: at the level of the Länder, these are usually bills passed by the Landtag (regional Parliament); at local level, municipal council decisions.

Matters to which referendums may relate

197. In many cases, there is no restriction on the list of matters that may be submitted to referendum either (*Albania, Croatia, Czech Republic, Estonia, Finland, France, Lithuania* – where it is more a question of surveys -, *Malta, Poland* and “*the former Yugoslav Republic of Macedonia*”). In *Switzerland*, cantonal law, which governs this area, generally adopts the same approach.

198. One of the most common subjects of local and regional referendums is that of changes to the boundaries of local and regional authorities, even where the final decision is a matter for national law, as stated, for instance, in the replies from *Albania, Croatia, Estonia, Hungary, the Netherlands* and *Russia*; in *Austria*, municipal boundary changes can be the subject of a referendum in some Länder. In *Switzerland*, the federal constitution provides for the approval of the electorate concerned in respect of any change to a canton's geographical boundaries. In *Italy*, regional boundary changes and the establishment of new regions are submitted to mandatory referendum. In *Portugal*, local referendum (the only one which exists for the time being) may deal with territorial changes of a municipality only in the framework of proceedings for

consultation of local bodies, proceedings which the legislature has to follow. By contrast, referendums cannot be held on geographical boundary changes in *Belgium*.

199. In *France*, institutional referendums within specific territories (overseas territories, Corsica) relate to the status of the territory in question as a unit of government.

200. A number of states exclude certain areas from the scope of referendums, however. Firstly, these may relate to matters for the exclusive jurisdiction of elected bodies (*Armenia*). In that country, referendums relating to areas delegated by the national authorities, or affecting fundamental rights, are also excluded. In *Russia* too, referendums cannot lead to restrictions on fundamental rights.

201. Matters excluded from referendum may relate, for instance, to appointments and staffing matters (*Armenia, Belgium, Hungary and Russia*) or to budgetary, financial and fiscal matters (*Armenia, Belgium, Croatia, Italy, Portugal, Russia and Spain*).

202. In *Ireland*, by contrast, local referendums can relate only to draft financial schemes (but none has been held to date).

203. In *Bulgaria* too, local referendums relate to financial matters: loan contracts with banks or other financial institutions; sales, concessions, leases or rentals of municipal assets of considerable value or of particular importance to the municipality; the construction of buildings, infrastructure works or other facilities to meet the municipality's needs and investments that cannot be paid for out of the municipality's ordinary revenue. The *Dutch* Temporary Law (in force until 2004) also set out a detailed list of subjects on which referendums could or could not be held; provincial and municipal regulations could add other subjects, except, naturally, where the Temporary Law ruled out a referendum.

204. Generally speaking, elections cannot be challenged by a referendum, as is expressly provided in the *Czech Republic, Hungary and Russia*. In *Poland* and some *Austrian* Länder, however, it is possible for an elected body to be dismissed following a referendum at the request of voters (*recall*).

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

205. To an even greater extent than for national referendums, the legislation of the various states often has nothing to say about the form (specifically worded draft, question of principle, generally worded proposal) of the acts that may be submitted to local or regional referendum.

206. *Armenia, France and Italy* allow only specifically worded drafts. In *Malta*, where only municipal regulations can be submitted to referendum, specifically worded texts are also required. By contrast, the *Czech Republic* and *Portugal* provide for referendums only on questions of principle or generally worded proposals, and *Belgium* restricts them to questions of principle. In *Ireland*, the subject-matter of local referendums (draft financial schemes) means that they are generally worded texts.

207. In the other states, referendums on questions of principle, generally worded proposals or specifically worded texts may therefore coexist, as is expressly provided in *Hungary* and *Switzerland* (under cantonal law). Some legislative systems also provide simply that it must be

possible to answer yes or no to the question, which does not rule out any of these forms (*Bulgaria, Croatia*). In *Austria*, the approach adopted varies according to the Land.

Unity of form

208. Explicit provision is made for unity of form in *Switzerland*, and implicit provision in *Hungary*. Unity of form is also required in those states that submit only specifically worded drafts to referendum (*Armenia, France, Italy*) or, on the contrary, only questions of principle or generally worded proposals (*Belgium, Czech Republic, Portugal*).

Unity of content

209. The rule of unity of content is not imposed any more often in respect of local and regional referendums than for national referendums. It applies, for instance, in *Armenia, Bulgaria, Italy, Portugal, Switzerland* and *Hungary*, where, as is the case in national referendums, parts of a question must not be contradictory, their relationship with one another must be clear and they must flow from one another or be linked by their content. In *Austria*, the approach adopted depends on the Land.

Unit of hierarchical level

210. *Swiss* law states that, in the cantons which provide for the so-called “unique” popular initiative – which can be of a constitutional or a legislative nature – the initiators have to determine its hierarchical level and may not provide at the same time a revision of the Constitution and of ordinary law.

Other requirements relating to the question asked

- Clear and non-leading questions

211. As already stated in respect of national referendums, freedom to vote presupposes that the question put to the vote must be clear and non-leading, even though not all national legislative systems contain explicit provisions to this effect.

212. Generally speaking, the national rules applicable in this respect are the same as for national referendums.

213. In *Albania*, the question submitted to the electorate must be clear, complete and unequivocal; in *Armenia*, the question must be straightforward; in *Hungary*, devoid of ambiguity; in *France*, conditions of fairness, clarity and absence of ambiguity are imposed. The requirement for clarity also emerges from the rules providing that voters should be able to answer yes or no (*Belgium, Bulgaria, Croatia, Czech Republic, Finland, Malta, “the former Yugoslav Republic of Macedonia”*). The requirement that the question be clear and non-leading is also upheld in *Italy, Poland* and *Switzerland*.

- Number of questions

214. As in national referendums, there is not usually any limit on the *number of questions asked* at the same time. In *Armenia* there cannot be more than one question per ballot, and in *Portugal*

no more than three. Alternative replies are also allowed in *Russia*, and in *Switzerland* and *Austria* on the basis of the law of the federate entities.

E – Substantive limits on referendums (substantive validity)

215. Substantive limits are inevitably more numerous in the case of local and regional referendums. While there are often doubts as to the existence of legal rules ranking higher than the (national) constitution, the very existence of the state implies that the law of the (federal or unitary) central state prevails over that of the federate entities, regions and other subordinate local authorities.

216. Accordingly, almost all the replies to the questionnaire emphasise the need for texts submitted to referendum to comply with higher-ranking legislation, particularly national or federal law. This requirement may be explicit or implicit. Some replies emphasise the need to respect fundamental rights (*Russia*) or to keep within the municipality's remit (*Finland, Hungary*); once again, this is an expression of the more general principle of the need to comply with higher-ranking legislation.

217. Referendums must also comply with the rules of higher-ranking territorial authorities (for example, regional rules in the case of local referendums), in accordance with the general principle of the hierarchy of rules.

218. The regulations governing purely consultative referendums can be more flexible, since no legal rules are adopted by popular vote, thereby excluding any breach of higher-ranking legislation. However, the principle is that consultation must remain within the remit of the local or regional authority in question, as stated in the reply from *Belgium*. In *Lithuania*, where municipalities conduct surveys instead, the latter must relate to areas within the municipality's remit.

F – Campaigning, funding and voting

1. Campaigning

219. The rules governing election campaigning are often less stringent in respect of local and regional referendums, in view of the more limited stakes of such ballots. However, the replies from the following states indicate that the same rules apply, *mutatis mutandis*, as at national level: *Austria, Hungary, Italy, the Netherlands, Portugal, Switzerland, Spain* and “*the former Yugoslav Republic of Macedonia*”.

220. The authorities have an obligation to supply *objective information* in *France, Poland* and *Switzerland*, in particular.

221. As far as *sources of campaign material* are concerned, prohibitions on campaigning by the authorities, which are in place in *Armenia, Portugal* and *Russia*, for instance, apply to all referendums. In *Austria*, this also holds for the principle whereby the authorities, although allowed to campaign, cannot disseminate non-objective or disproportionate mass information; in *Hungary*, the authorities can be involved in campaigning.

222. In view of the limited stakes, states impose fewer regulations in respect of the *media* for local and regional ballots than for national ballots. In *France*, provision is made for campaigning

on television channels or radio stations only in the case of institutional referendums, and then only on local public channels and stations; in such cases, as at national level, supporters and opponents of the draft proposal must be given fair coverage. In *Portugal*, free access to the media is guaranteed, but this does not extend to radio or television. In *Spain*, free access does not exclude the broadcast media, but is confined to those parties represented in the regional or provincial Parliament. In *Malta*, a balance must be ensured between supporters and opponents in the public media; however, no local referendum has been held to date.

2. *Funding*

223. Relatively few states regulate the funding of referendum campaigns at local, or even regional, level. Prohibitions on using public funds for campaign purposes are mentioned in the replies from *Armenia, Portugal, Russia* and *Switzerland*. In *Austria*, the moderate use of public funds is accepted, as it is for national referendums; in *Malta*, public funds can be used for information purposes, but not for campaigning; in *Spain*, campaign mailings are subject to special, preferential postage rates. In many cases, administrative costs are borne not by the central government, but by the local authority organising the vote, as is the case in *Croatia, Poland* and “*the former Yugoslav Republic of Macedonia*”.

224. *Payment for the collection of signatures* is not prohibited in any of the states that replied to the questionnaire. This consequently does not seem to raise any problems, any more than it does at national level.

3. *Voting*

Voting period

225. Voting over *one day* only is the rule in local and regional referendums, even more so than in national referendums. The *Czech Republic* schedules two days if the vote coincides with local, regional or national elections.

226. As in the case of national referendums, postal voting may also be allowed, for instance over a period of 30 days in *Sweden* and three weeks in *Switzerland*. The early voting permitted by *Russian* law (over a period of 15 days in less accessible locations, on boats, at polar stations and abroad) also applies to federate entities and municipalities.

Compulsory voting

227. Compulsory voting is virtually unheard-of in connection with local and regional referendums. It exists in one *Swiss* canton.

Quorum

228. Quorum requirements are uncommon in local and regional referendums.

229. A *quorum of participation* of 50 % of voters is required in *Bulgaria, Croatia, the Czech Republic, Malta* and *Russia* (but not in *Italy*, unlike at national level). In *Poland*, the quorum is 30 %, and in *Belgium* just 10 % of inhabitants at provincial level and 10 to 20 % at municipal level. In *Portugal*, referendums are legally binding only if the turnout is more than 50 %..

230. Other states provide for a quorum of approval. In *Hungary*, a referendum is valid if the same answer is given by 25 % of registered voters; in *Armenia*, the approval of a text necessitates a third of registered voters; in *Ireland* and the *Netherlands* (according to the temporary law applicable up to 2004), on the other hand, the rejection of a text requires a third, or 30 %, respectively, of registered voters. Lastly, in the *Czech Republic*, the separation or merger of municipalities requires the approval of 50 % of registered voters.

G – Effects of referendums

Decision-making (legally binding) and consultative referendums

231. Like national referendums, local and regional referendums are usually legally binding. This is always the case in *Armenia*, *Bulgaria*, *France*, *Hungary*, *Poland*, *Spain* and “*the former Yugoslav Republic of Macedonia*”. In *Portugal*, referendums are legally binding only if the turnout is more than 50 %.

232. Generally speaking, referendums are also legally binding in *Austria* and *Switzerland*, but *Länder* or cantonal law, respectively, can provide for consultative referendums.

233. In other states, referendums are legally binding, unless they relate to a question necessitating the passing of a law at national level. In *Albania*, for instance, referendums relating to geographical boundary changes, which necessitate a national law, are consultative; in *Italy*, the establishment of new regions and the transfer of an area from one region to another are the subject of consultative referendums; in the *Czech Republic*, more generally, referendums are consultative when they relate to a question that comes within the municipality’s consultative remit. In *Malta*, a consultative referendum is conceivable.

234. A number of states have only consultative referendums at local level: this is the case in *Belgium*, *Denmark*, *Estonia*, *Finland*, *Ireland*, *Lithuania* (where it is more a question of surveys), *Luxembourg*, the *Netherlands* and *Sweden*.

Suspensive and abrogative referendums

235. Most local or regional referendums are *suspensive*. This is the case in *Armenia*, *Spain*, the *Netherlands* (temporary law, even though referendums were consultative) and, in almost all cases, *Switzerland* (nevertheless, cantonal law can provide for an abrogative referendum). In *Austria*, the effect of a referendum depends on *Länder* law.

236. *Abrogative* referendums are less common at local and regional level. They are mentioned explicitly only in the reply from *Malta*, and no such referendum has been held as yet. In *Italy*, *Austria* and *Switzerland*, provision is made for them in the law of some federate or regional entities.

Decisions to be taken after a referendum

237. National authorities usually have to decide what action to take on a legally binding referendum relating to a question of principle or a generally worded proposal, as the reply from *Switzerland* explains. In *Portugal*, in the event that the outcome of a legally binding referendum is positive, and that the answer to the question requires the competent local body to take a

decision, the latter must do so within 60 days. In *Russia*, if a follow-up decision is necessary, it must be taken within three months.

238. In some states that have only consultative referendums, provincial or municipal bodies may nevertheless have to follow a specific procedure after the vote. In *Belgium*, provincial or municipal councils must give reasons for their decisions in relation to matters that have been the subject of popular consultation; in the *Netherlands*, according to the temporary law, they had to take a new decision if the outcome of the referendum was negative, and decide on the entry into force of the text if the outcome was positive.

H – Parallelism of procedures and rules governing referendums

Parallelism of procedures

239. As in the case of national referendums, a number of legislative systems provide that rules adopted by referendum at a lower level can be revised only by referendum, so as to ensure respect for the popular will. However, such rules are less common than for national ballots.

240. Firstly, the revision of texts submitted to mandatory referendum may be submitted to the same type of referendum, but this is less common than at national level¹⁶. In *Switzerland*, any rule submitted to referendum (mandatory or optional) can be revised only by the same procedure. The same applies in *Italy* and “*the former Yugoslav Republic of Macedonia*”, which has only optional referendums at local level. In *Armenia*, texts adopted by referendum can be revised only by the same procedure.

241. The *Czech Republic*, *Russia* and *Hungary* have the most stringent legislation. In the *Czech Republic*, a decision adopted by referendum can be modified only by another referendum, after a period of 24 months. In *Russia*, a question submitted to referendum can be reopened only after two or five years, depending on the circumstances, and by referendum; the rule submitted to referendum can, however, provide for a different procedure. In *Hungary*, if a quarter of voters supported or opposed the proposal, the matter can be addressed only by a new referendum, after a period of one year. In *Croatia*, on the other hand, the prohibition on reversing a decision taken by referendum without holding a fresh referendum applies for just one year.

242. By contrast, in other states it is permissible – at least from the legal point of view – to address issues that have been the subject of a popular vote without holding a fresh referendum, as is the case in *Bulgaria*, *France*, *Hungary*, *Poland* and *Spain*. It remains to be seen whether this is politically feasible. That is also the case in *Portugal*, but only during a new term of the local body concerned. The same principle applies to a new referendum on the same question (in case the result of the first one was negative). It remains to be seen whether going against the people’s vote is politically feasible.

243. As already stated in respect of national referendums, the question of parallelism of procedures does not normally arise in respect of consultative referendums (*Belgium*, *Denmark*, *Estonia*, *Finland*, *Ireland*, *Luxembourg* and *Sweden*), even if, as indicated in the reply from the *Netherlands*, a consultative referendum can be held on the same subject.

¹⁶For specific examples, see point II.B above.

Procedure for the revision of rules governing referendums

244. As stated above¹⁷, where rules governing referendums are submitted to referendum, this is due to their nature (usually constitutional) rather than their substance, except for certain constitutional rules relating to referendums. Few constitutions contain provisions relating to local or regional referendums: it is consequently fairly unusual for them to be submitted to referendum. In *Armenia*, for instance, only the constitutional provision allowing the institution of the referendum can be amended solely by referendum, and it does not explicitly mention local referendums.

245. *Switzerland* is an exception, since all federal and cantonal constitutional and legislative texts are submitted to referendum. In *Italy*, referendums may also be held on a considerable number of rules, at either state or regional level, including – naturally – those relating to referendums.

I – Specific rules on popular initiatives and ordinary optional referendums

246. Where provision is made for referendums to be called at the initiative of part of the electorate (a popular initiative or an ordinary optional referendum), the *time-limit for collecting signatures* varies, as is the case at national level: thirty days in *Armenia*, one month in *Hungary*, forty-five days in *Russia*, sixty days in *Poland*, three months in *Italy*. In *Austria* and *Switzerland* the time-limit depends on the federated entities' law. In the *Netherlands*, the temporary law established a time-limit of three weeks for the initial motion and six weeks for the final one, as at national level.

247. Here too, some states apply no time-limit for consultative or abrogative referendums. This applies to *Albania*, *Belgium*, the *Czech Republic*, *Estonia*, *Finland*, *Luxembourg* and *Malta*.

248. In *Albania*, *Malta*, *Poland* and *Russia* it is the Central Election Commission which *checks signatures*.

249. However, in some states checking of signatures is performed at regional or local level. In *Hungary* it is the responsibility of the local or district election commission, depending on the level at which the referendum is being held. In *Italy* the local judicial authorities or special bodies of the regional councils have competence for regional referendums, and special branches of local authorities for local referendums. In the *Czech Republic* signatures are checked by the municipal council. Lastly, in *Austria* and *Switzerland* the federated entities' legislation determines the competent body.

250. In *Armenia* and *Switzerland* correction of flaws in the question's substance is possible before signature collection begins.

J – Judicial review

251. According to the replies to the questionnaire, the rules governing judicial review are generally not as well-developed in the case of regional or local referendums as they are for

¹⁷Point I.H.

national referendums. The lesser importance of the issues at stake helps to limit the number of proceedings.

252. One specific means of exercising oversight regarding use of local referendums is designation of a supervisory authority, which exists for instance in *Belgium*. Automatic prior review of the question put to the vote may also be performed by a judicial authority: in *Italy* the special office of the Court of Cassation gives decisions concerning referendums on changes to regional boundaries or the creation of new regions; in *Portugal* the Constitutional Court obligatorily rules on the constitutionality and lawfulness of the question put to the vote in terms of both form and substance.

253. Centralisation of judicial review is less frequent than for national referendums. That is, however, the case with the Constitutional Court in *Malta*, which has few local authorities. Otherwise, it may be a matter for the administrative courts (*Belgium, Finland, Poland* and *France*, where jurisdiction in proceedings concerning institutional referendums lies with the Conseil d'Etat, the administrative court of last instance) or the ordinary courts (*Armenia, Bulgaria, the Czech Republic, Hungary* – the local or district court depending on whether the referendum is held at municipal or district level - and *Russia*, where federal courts have jurisdiction). In *Croatia* the competent bodies are the State Election Commission and the Constitutional Court. In the *former Yugoslav Republic of Macedonia* the ordinary courts or the election commissions are competent for infringements of voting rights, and the Constitutional Court for violations of the Constitution. In *Italy* the question's substance and form are a matter for the Constitutional Court, and the administrative courts deal with appeals concerning results.

254. Holding of referendums may be excluded from the courts' jurisdiction, as in *Ireland*. The Central Election Commission may also give last-instance decisions concerning results, as in *Finland*.

255. Lastly, in *Austria* and *Switzerland* it is respectively the Länder and the cantons which determine the bodies competent for deciding appeals at their level. The Swiss Federal Court rules at last instance on infringements of political rights at cantonal level.

256. Judicial review of the constitutionality or lawfulness of the question put to the vote, once approved, is also, more often than not, possible on appeal to the courts normally competent in such matters, as for any rule-making instrument.

257. Only a few respondents provided information as to *who may lodge appeals*. As is the case for national referendums, this right may be conferred on any member of the electorate (*Czech Republic, Hungary, Malta, Russia, Switzerland*), or it may be confined to bodies or groups of voters entitled to propose the holding of a referendum (*Bulgaria*). In *Portugal*, the standing to lodge appeals is recognised to every voter (for his or her polling station), but in particular to parties or groups having participated in the campaign.

K – Experience of referendums

258. As is the case with national referendums, it is in *Switzerland* that regional or local referendums are most frequent (at cantonal and municipal level).

259. Recourse to referendums is fairly frequent in *Hungary, Italy, the Netherlands* (solely at municipal level), *Sweden* and “*the former Yugoslav Republic of Macedonia*”. Local

referendums are held from time to time in the *Czech Republic*, *Denmark* and *Russia* (over 130 examples, but the number of local and regional authorities must be borne in mind). In *Estonia* and *Finland* local referendums primarily concern mergers of municipalities. In *France* nine institutional referendums have been held since 1958, including five in 2003; consultative referendums were held in a large number of municipalities before the introduction of local decision-making referendums. *Belgium* has a few experiences of consultative referendums at local, but not provincial, level. Only two local referendums have taken place in *Portugal*, and only one in *Malta*. In *Poland* local referendums have only been held concerning dismissal of directly elected authorities. In *Spain* only five regional referendums have been held, all relating to approval of statutes of autonomy.

260. Lastly, a number of states where regional or local referendums are permitted have no practical experience of them to date. They include *Albania* and *Armenia*.

III – The future of referendums

261. The last questions concerned the future of referendums, more precisely reforms being undertaken in this field.

262. In the *Czech Republic* a constitutional law must be passed to permit the holding of constitutional referendums at national level, as provided for in the Constitution. A bill exists, but has not yet been voted. Another bill should be tabled concerning the referendum on the European Constitution.

263. Similarly, in the *Netherlands*, although the Constitution does not require the introduction of referendums, following the expiry of the temporary law in this field on 1 January 2005 the issue should be the subject of further debate. The referendum on the European Constitution was held on the basis of an *ad hoc* law.

264. Reforms are under way or at least being discussed in a number of other states. They may be part of a complete revision of the Constitution, as is the case in *Austria*, where the Convention working on the revision process is considering the possibilities of extending public voting rights at federal level. In *Belgium* a revision of the Constitution to introduce regional referendums and give the regions competence for these matters is being envisaged. In *Luxembourg*, apart from the *ad hoc* referendum on the European Constitution (held in July 2005), a bill on popular initiatives and legislative referendums was tabled in 2003. Lastly, in “*the former Yugoslav Republic of Macedonia*” the principal aim is to bring all the relevant provisions together in a single legal instrument.

265. In *Sweden*, although no change in the law is being discussed, a political debate is taking place regarding cases in which it would be appropriate to resort to a referendum, particularly ratification of the European Constitution.

266. In addition, a number of replies stated that new legislation had just been passed. This applied to *Lithuania* (2003), *Poland* (2004), and the *Czech Republic* (2004 - solely for local referendums). In *Portugal*, the Constitution was revised in 2005 in order to allow for a referendum on the approval of a treaty aiming at the construction or the deepening of the European Union. In *Poland* the quorum of 50% of turnout required for a referendum to be decisive nonetheless remains a controversial matter. In *Russia* the law of 28 June 2004 introduced the following changes, inter alia: extension of the right to initiate referendums, more complex rules on popular initiatives, stricter regulation of campaigning. In *Switzerland*, following the recent constitutional amendment introducing general popular initiatives (adopted in 2003 but not yet in force), a more global reform is still being discussed, although it should not be implemented in the near future.

Conclusion

267. This study confirms what was suspected from the outset: when it comes to referendums, national laws and practices vary widely. Europe has democracies which are almost entirely representative, democracies which are semi-direct, and any number of intermediary forms. Referendums are sometimes seen as a tool used by the executive branch of government, sometimes as an instrument used by groups of citizens to further their views outside traditional political party structures.

268. However, a number of general trends give us some idea of the form which a European constitutional law on referendums might take. For example, it is customary to provide for referendums (at least at national level) in national constitutions, to prohibit compulsory voting, or, more specifically, to allow private funding of the collection of signatures for popular initiatives— when this system exists.

269. The rules which states share are usually minimum rules guaranteeing the democratic nature of the vote. To be truly democratic, referendums - like elections - must satisfy certain requirements. One, which recurs throughout this report, is respect for procedures provided for in law. Others are common to both elections and referendums, and cover respect for the principles inherent in Europe's electoral heritage, which apply *mutatis mutandis* to referendums¹⁸. Those which are obvious are not detailed here, but those which may apply in a special way to referendums, such as the rules on election campaigns or judicial review, are examined in more depth.

270. Finally, other common democratic requirements are specific to referendums. This applies, for example, to certain aspects of voter freedom, such as respect for the principle of unity of content, and the rule that questions put to the public must be clearly phrased.

271. Thus, like the rest of constitutional law, referendums combine diversity with the need to respect the principles of Europe's constitutional heritage.

¹⁸See the *Code of Good Practice in Electoral Matters* adopted by the Venice Commission at its 52nd plenary session, CDL-AD(2002)023rev.