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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

ICELAND

**DRAFT AMENDMENT TO THE CONSTITUTION
OF THE REPUBLIC OF ICELAND NO. 33/1944,
AS AMENDED
(REFERENDUMS)**

Bill for a Constitutional Act**to amend the Constitution of the Republic of Iceland, No. 33/1944, as amended (referendums)**

Sponsor:

Article 1

A new article, Article xx, shall be inserted after Article xx of the Constitution, reading as follows and with the numbering of subsequent articles amended accordingly:

Fifteen percent of those who are eligible to vote can demand that a law newly passed by the Althingi should be put before the people in a general, secret and binding referendum. The demand must be submitted to a minister within six weeks from the publication of the law and the referendum shall be held not earlier than six weeks and not later than four months after the demand has been received and confirmed. The budget act, the supplementary budget act, laws on tax matters and laws that are passed to implement international obligations may not be put before the people under this paragraph.

Fifteen percent of those who are eligible to vote can also demand that a parliamentary resolution passed under Article 21 should be put before the people in a general, secret and binding referendum. It is permitted, by means of legislation which is approved by $\frac{2}{3}$ of the votes in the Althingi, to decide that the same shall apply to resolutions that have legal effect or represent an important policy decision. The demand must be received by a minister within six weeks from the adoption of the resolution by the Althingi and the referendum shall be held not earlier than six weeks and not later than four months after the demand has been received and confirmed.

The Althingi may repeal a law or revoke a resolution in advance of a referendum, in which event it will not be held.

In order to strike down a law or resolution under this Article, the adoption of such law or resolution must be rejected by a majority of the votes cast in the referendum and at least one-fourth of all those eligible to vote.

Further provisions on the commencement and organisation of the collection of signatures, the form and collection of signatures, the dissemination of information, the conduct of referendums and dispute resolution by the courts, shall be set out in legislation approved by $\frac{2}{3}$ of the votes in the Althingi.

Article 2

This Act is effective immediately.

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1. Introduction

This bill is prepared on the recommendation of the leaders of the political parties that are represented in the Althingi and is based on the proposal of the Constitution Committee which was active in 2013-2016, cf. a bill submitted by the Prime Minister in the autumn of 2016.

A survey conducted by the Social Science Research Institute of the University of Iceland in the summer of 2019 to examine the public attitude to the Constitution found that 65% of respondents were in favour of increasing the frequency of referendums, while only 13% were opposed. Some 60% thought that the result should be binding if participation was sufficiently high, while only 17% were of the view that it should always be binding. When asked about the

minimum percentage of required signatures to demand a referendum, 25% of those surveyed said that the threshold should be set at 20% of the electorate, while 26% wanted to go further and set the minimum at 25%. Other options received significantly less support. In addition, a vast majority of those surveyed, or some 90%, felt that the President of Iceland should still have the power to refuse to sign a bill into law, even if a clause providing for the possibility to hold a referendum based on signatures was adopted.

In a subsequent survey, the respondents were not asked directly about specific percentages or thresholds to be applied in relation to demands for referendums. However, 54% of those surveyed expressed the view that the result of a referendum should only be binding if a supermajority (2/3 or more) voted in favour of the result. This ratio had been 62% at the start of the Citizens' Assembly. The survey also showed widespread support for the notion that the public should be able to force a referendum on new legislation passed by the Althingi (80%) but less so on other general issues (44%).

2. Referendums

2.1. Purpose, necessity and objectives of legislation

The Constitution provides for a referendum in three cases. First, the President of the Republic may be removed from office before his/her term expires pursuant to the third paragraph of Article 11 if approved by a supermajority of the members of the Althingi and in a referendum. Second, the President may refuse to confirm a bill pursuant to Article 26, in which case the law will become void if rejected in a referendum. Third, if the Althingi passes an amendment to the status of the Church, such amendment shall be submitted to a referendum pursuant to the second paragraph of Article 79 of the Constitution.

The Constitution of the Republic of Iceland was approved in a referendum on the basis of constitutional amendments adopted for this purpose in 1942. The Union Act of 1918 was also put to a referendum. Icelandic constitutions have not previously provided that a referendum should be required to amend or establish new constitutional laws. Since the establishment of the Icelandic republic, two referendums have taken place on the basis of Article 26 of the Constitution, on 6 March 2010 and 9 April 2011 respectively, both relating to the validity of laws providing for a state guarantee of so-called Icesave agreements. An advisory referendum was also held on 20 October 2012 on the Constitutional Council's proposals for a new constitution. Prior to the establishment of the republic, special referendums were held according to resolutions of the Althingi, namely a vote on alcohol prohibition in 1908, on conscription in 1916 and on the abolition of alcohol prohibition in 1933.

Over the past few decades, the direct participation of the electorate in the legislative and decision-making process on important issues of public concern has increased in Europe and elsewhere, albeit to varying degrees. The main arguments for granting increased power to demand referendums are that it would serve to reinforce the truth that all government power comes from the people, the direct participation of the public in the business of politics would increase and so would the public's ability to hold its elected representatives in check. The arguments that might be offered against offering such power or in favour of restricting it are chiefly that the pillars of representative democracy might be weakened, participation in referendums is often less than in other elections, and that this might invite the risk of populism or decisions that do not take into sufficient account the overall interest or the right of minorities.

As mentioned, the Constitution provides for a referendum in three cases. Only those in power can call a referendum under these provisions. In recent years there has been much discussion in Iceland about giving the public the ability to demand a binding referendum on important issues. Provisions of this kind have increasingly been added to the constitutions of other countries, although the way in which this has been implemented varies greatly. The countries of Northern-Europe have generally been cautious in their approach. There has also been a growing debate in Iceland about the possibility that a minority of the members of the Althingi could call a referendum on matters before parliament in line with a similar provision in the Danish Constitution, which, however, restricts this power to newly passed legislation. In an advisory referendum held in the autumn of 2012, 63% of the participants, based on valid votes (73% if empty and invalid ballots are disregarded, see further details in Hagtíðindi 2013:1), were in favour

of a specific percentage of registered voters being granted the ability to put an issue to a referendum.

The purpose of a new clause on referendums is to emphasise that all government power comes from the people. It would provide an avenue for the electorate to force a referendum on important issues. It would also enhance the public's ability to keep the business of the Althingi in check. In implementing the provision, care should be taken to ensure that representative democracy will remain the hallmark of the Icelandic constitutional system.

A number of different options are available for implementing a provision that would meet these requirements. The main questions that needed to be addressed were the following:

1) *Should the voters only be allowed to demand a referendum on parliamentary decisions, or should a provision also be made for a so-called citizens' initiative?*

In preparing the bill, it was decided not to go so far as creating an avenue for a so-called citizens' initiative, whereby voters could place a matter before parliament and even force a referendum. It would be reasonable to consider such an extension when the new provision, if approved, has been implemented and put to the test.

2) *Should Article 26 of the Constitution be amended in conjunction with the insertion of a new provision granting voters the power to demand a referendum?*

In its current form, Article 26 of the Constitution states that if the Althingi has passed a bill, it shall be submitted to the President of the Republic for confirmation not later than two weeks after it has been passed and that such confirmation gives it the force of law. If the President rejects a bill, it shall nevertheless become valid but shall, as soon as circumstances permit, be submitted to a vote by secret ballot of all those eligible to vote, for approval or rejection.

The bill does not propose any amendments to the current Article 26 of the Constitution. The President's veto power, which has become a way of forcing a referendum on the validity of laws passed by the Althingi, has in recent years gained greater weight in the constitutional system. Indeed, the Constitutional Council did not propose that this power should be abolished but merely clarified further. This was rationalised by arguing that there might be instances where legislation should be put to a referendum but was not covered by the voters' power to demand a referendum, whereas no such restrictions applied to the President's power. There might also be circumstances where the President might consider it appropriate to expedite a referendum on a newly passed law. Moreover, the result of the opinion poll conducted in the summer of 2019 was conclusive in this regard, as mentioned earlier.

3) *What percentage of voters is required to force a referendum?*

The bill proposes that fifteen percent of the electorate should be required to force a referendum on newly passed legislation. This percentage is consistent with the options put forward by the Constitutional Commission, whereas the Constitutional Council proposed that this authority should require the signatures of ten percent of the electorate. When compared to other countries, the percentage proposed in the bill is quite high. On the other hand, experience in Iceland shows that it is quite realistic to collect this number of signatures in a relatively short period of time. In this regard, however, it should be considered that it presumably takes less time to collect signatures informally than in a formal manner.

4) *Should any thresholds be imposed in terms of minimum participation or acceptance, e.g. with reference to the current constitutional provisions that have a temporary effect?*

In preparing the bill, it was debated whether a simple majority of those who voted should decide the outcome regardless of the turnout or whether stricter requirements should be imposed. It is generally considered that a so-called participation threshold, which requires a certain minimum turnout, is not desirable, as may be seen, for instance, from the views expressed by the Venice Commission of the Council of Europe. In fact, the Venice Commission has warned countries against imposing any thresholds as they may have a negative effect. The countries that grant referendum powers have taken different approaches to this issue. Switzerland imposes no such threshold and the same is true of various states of the US that allow the public to vote on newly passed legislation if this is demanded. Denmark imposes a rejection threshold of 30% according to Article 42 of its constitution. The same threshold is set at 20% in the Slovenian constitution, to take another example. This issue was discussed thoroughly in preparing the bill and it was ultimately decided to propose a 25% rejection threshold. A rejection threshold means that the

decision of the Althingi will stand unless rejected by a majority of those voting and a certain proportion of all registered voters.

It is proposed that the time limit for holding a referendum should be at least six weeks and no more than four months from the time that a claim has been received and confirmed. The Act on the Conduct of Referendums, No. 91/2010, see the second paragraph of Article 4, provides for a two-month time limit from the time that the President refuses to confirm a bill, but the Constitution Committee (2013-2016) considered it advisable to have a somewhat longer time limit.

5) Is it sensible to exclude some laws from the power of the voters to call a referendum?

It is proposed that the budget act, the supplementary budget act and laws on tax matters should be excluded from the power of the voters to force a referendum. The same restrictions were suggested in one of the proposals of the Constitutional Commission in 2011 and in a proposal presented by the Constitutional Council in the same year, although the Constitutional Council also proposed further restrictions (i.e. that the matter in question should concern the public interest and that laws on citizenship should be excluded). In this respect, the provision may be said to be modelled on a clause in the Danish constitution which allows a minority of parliamentarians to demand a referendum on an approved bill. However, the Danish constitution addresses the tax law restrictions in more detail. The budget is one of the most important pieces of legislation in each legislative session, but also one of the most controversial, as it is unreasonable to expect the electorate to agree on each budget item. The budget also needs to come into effect by 1 January each year and it would be practically very difficult to be put it to a referendum. Similar arguments apply to the approval of the supplementary budget act. Taxes, which are necessary to fund government activities, are closely linked to each year's budget and it is considered appropriate that the Althingi should continue to be solely responsible for their determination within the limits set by the Constitution. Members of the Althingi will then be accountable to the voters in parliamentary elections for their fiscal and tax policies. In preparing the bill, it was decided that the restrictions imposed on the voters' ability to call a referendum should be clear and specific, and so they are not stated as elaborately as in the Danish constitution, as an example.

It is further proposed that laws enacted to implement international obligations should be excluded from the voters' right to call a referendum. This exemption is consistent with provisions found in many other constitutions and in constitution proposals in Iceland. However, it is suggested that 15% of the voters should be able to force a referendum on Iceland's participation in new international obligations. In other words, it would be possible to demand a referendum on a parliamentary resolution that has been approved by the Althingi. This arrangement is modelled after the Swiss constitution, under which voters can demand a referendum on new, important international obligations that are precedent-setting or international obligations that require legislative amendments, see Article 141 of the Swiss constitution of 1999 as amended. Thus, the bill proposes that international treaties as such should not be exempt from public involvement, but rather only the laws which are enacted to implement them.

6) Would it be desirable that a minority of the members of the Althingi should also have the power to force a referendum on important issues?

This point was discussed thoroughly in the Constitution Committee on the premise that there should a clear distinction between the rights of the electorate and the members of the Althingi. Consideration was given to the option of allowing a third of parliamentarians to refer parliamentary resolutions, including on international treaties, to the people. This was abandoned and instead, it was proposed that this right should be in the hands of the electorate as in the case of newly passed legislation.

7) Are other decisions of the Althingi or the government of such nature that a similar rationale might be applied in support of the notion that they should also be referred to a referendum?

This point was discussed thoroughly when preparing the bill. It was concluded that it would be logical, having regard to the other changes proposed in the bill, to provide for the possibility that certain resolutions of the Althingi, that have legal effect and concern important issues, could be referred to a referendum. The provision is drafted in such a way that it is left to the legislature to decide, with a supermajority, precisely which resolutions are eligible for a referendum. However, the requirement is imposed that the resolutions should either have legal effect or represent an important policy decision.

2.2. The main substance of the bill

2.2.1. The proposal set out in the bill

The bill proposes the addition of a new clause providing for the possibility of referring matters decided in the Althingi to a referendum. It entails that the President of the Republic should still have the power to refuse to confirm a bill, which would lead to a referendum on whether it should enter into law, as provided for in Article 26 of the Constitution. The new clause provides for three additional ways of calling for a referendum. First, fifteen percent of the electorate will be able to demand that a referendum should be held on legislation which has been approved by the Althingi and confirmed by the President, with the exception of the budget act, the supplementary budget act, laws on tax matters and laws which are enacted to implement international obligations. Second, the same percentage of the electorate will be able to demand a referendum on resolutions of the Althingi that relate to the approval of international treaties. Third, it is proposed that other parliamentary resolutions may also be subject to a referendum, namely those that have legal effect and represent an important policy decision. It is proposed that the Althingi should further set out by law precisely which resolutions of this kind may be referred to a referendum. Such a law requires the approval of $\frac{2}{3}$ of the votes in the Althingi, reflecting the importance of a broad consensus being reached on this extension of direct democracy. These provisions will ensure that all of the most important decisions of the Althingi can be referred to a referendum for a binding resolution.

As previously mentioned, the current Article 26 addresses the President's confirmation of legislative bills which have been approved by the Althingi and provides that a referendum should be held if the President refuses to confirm a bill. It is proposed that the first paragraph of a new article (Article 81) should provide that fifteen percent of those eligible to vote are able to demand that a law that has been passed by the Althingi should be put to a referendum. The demand must be submitted to the minister within six weeks from the publication of the law and the referendum shall be held not earlier than six weeks and not later than four months after a demand has been received and confirmed. The budget act, the supplementary budget act and laws on tax matters will be excluded from this authority. The same applies to laws which are enacted to implement international obligations. Similar provisions have been proposed by the Constitutional Commission in its report from February 2011 (in the form of different options) and the Constitutional Council, cf. proposals from July 2011. However, the bill provides that fifteen percent of the electorate should be needed to call a referendum rather than the ten percent proposed by the Constitutional Council. This is not considered an unreasonably strict requirement having regard to the available technical means of collecting signatures and the experience from prior collections of signatures in Iceland. The provision includes exemptions relating to the same areas as those addressed in the proposals submitted by the Constitutional Council and the options presented by the Constitutional Commission. The Constitutional Commission recommended a time limit of three months, while the Constitutional Council proposed a significantly longer time limit. It seems sensible to impose both a minimum and maximum time that may be allowed to pass until a referendum is held. The government can then assess how urgent it is to obtain a determination of whether a law or resolution should be allowed to stand.

The bill further proposes that under the second paragraph of the new article, 15% of the electorate should be entitled to demand that parliamentary resolutions of the Althingi on the ratification of international treaties should be submitted to a referendum. It is also proposed that the legislature should be entrusted with deciding precisely what other resolutions are so important that the public should be allowed to intervene and decide whether to accept or reject them. This provision creates the possibility of expanding the powers to refer matters to a referendum without the need for a constitutional amendment. Thus, it can be envisaged that during the legislative process it can be ensured that the most important administrative decisions will go before the Althingi in the form of a parliamentary resolution, thereby creating an avenue for the people to have the final say. However, the legislature is given leeway to decide whether, and if so, how quickly to take such steps.

With regard to international obligations, the authority granted in the second paragraph of the new article proposed by the bill relates to a subject area which is excluded from the power granted in the first paragraph of the article. Although voters will not be given the right to demand a referendum on laws enacted for the purpose of implementing international treaties, they will be able, during earlier stages, to demand such a vote on parliamentary resolutions providing for their

ratification. This will ensure that the voters can have a say on a decision on whether the government should take on new international obligations, i.e. when parliamentary approval is required under Article 21 of the Constitution. According to Article 21, it is the role of the executive branch to conclude treaties with other states. This refers to any treaty between Iceland with another state or international organisation, whether bilateral or multilateral, which are intended to provide for the international rights or obligations of the Icelandic state. Over recent decades, Article 21 has been construed in such a way that the approval of the Althingi is required if international obligations provided for in a treaty cannot be fulfilled without amending the law. When seeking the approval of the Althingi under Article 21, the Minister of Foreign Affairs submits a proposal for a parliamentary resolution stating that the Althingi authorises the government to ratify the respective treaty. There have been cases where the legislative bill submitted for the purpose of making the necessary amendments for accession to an international treaty seeks both parliamentary permission to ratify the treaty and also provides for its enactment into law, see e.g. Article 1 of Act No. 2/1993 on the European Economic Area. In such a case, a proportion of the electorate would be able to demand a referendum under the first paragraph and the exemption provided in respect of international treaties would not apply, as the obligation concerned would not be implemented, but rather created, through enacting the law.

However, when an international obligation has been established following a resolution by the Althingi which has not been rejected, it is reasonable that the legislation enacted in fulfilment of that obligation should be exempt from the voters' involvement. Otherwise, significant problems might arise in dealings with other states.

The third paragraph sets out a rule which has been established by practice in relation to the President's veto power under Article 26. It provides that the Althingi may repeal an act or revoke a resolution before a referendum takes place. The procedure for this is subject to the law on parliamentary business. The fourth paragraph provides that in order to strike down a law or resolution in a referendum, the majority of those voting, and at least one-fourth of the entire electorate, must reject it. Finally, the fifth paragraph sets out further details regarding various matters relating to the collection of signatures and the implementation of referendums in the law. If the bill is passed, the power to refer important decisions of the Althingi to a referendum will be expanded. However, representative democracy will remain the hallmark of the Icelandic constitutional system, as reflected by the fact that the decisions of the Althingi will stand unless the majority of those voting, representing at least a quarter of all registered voters, rejects the respective law or resolution. The arrangement proposed is that at the same time as the power to call a referendum will be expanded, specific conditions will be introduced so that a referendum will not be called unless truly warranted, either owing to the importance of the decision or significant opposition by the people.

Table: Overview of powers to call a binding referendum on laws or resolutions if the bill is passed.

Matter/Who can force a referendum?	The President	15% of the electorate
Laws	x	X
Budget act, supplementary budget act, laws on tax matters	x	
Laws to implement international obligations	x	(x, if parliamentary approval has not previously been granted)
Parliamentary resolutions authorising the ratification of international obligations		X
Parliamentary resolutions that have legal effect or represent an important policy decision, if this is decided in legislation passed by the Althingi		X

2.2.2. Previous proposals and foreign law

The Constitution Committee which was active in 2005–2007 agreed that it was appropriate to expand the possibilities for holding referendums on important issues, even if the Committee members disagreed on the precise implementation. A 2011 report issued by the Constitutional Commission noted that the results of the National Forum indicated that there was a strong demand for the increased involvement of the public in important decisions. The National Forum proposed that the right of the people to vote on important matters of public concern should be enshrined in the Constitution. Such a vote should tie the hands of the Althingi. The Constitutional Commission suggested two options for holding a referendum on the initiative of the voters, referred to as a citizens' initiative, and two options for holding a referendum on the initiative of one-third of parliamentarians. With regard to the citizens' initiative, the Commission's first proposal entailed that the Althingi should call a referendum on certain laws or matters of public concern if demanded by fifteen percent of the electorate. The result would be binding if it concerned the validity of certain laws and received the support of the majority of valid votes, provided that this represented at least 30 percent of all registered voters. A referendum could not be demanded on the budget act, the supplementary budget act, laws on tax matters, and laws enacted to implement international obligations. The second option assumed that the President of the Republic would still have involvement in referendums. The President would be obliged to refuse to confirm a law or resolution passed by the Althingi and refer the matter to a referendum if demanded by fifteen percent of registered voters. However, the President should never refuse to confirm a law that was necessary to fulfil state obligations under international law or the budget act.

The Constitutional Council proposed that ten percent of the electorate should be able to demand a binding referendum on newly passed legislation. It did not suggest any participation or acceptance thresholds. It also proposed that two percent of the electorate could place a matter before the Althingi and ten percent of the electorate could submit a bill which would be put to a referendum if not approved by the Althingi. The Althingi could submit a counter-proposal in the form of a second bill. However, the referendum would not be binding unless so decided by the Althingi. Only matters of public interest could be put to a referendum at the demand or initiative of the electorate as described above. The budget act, the supplementary budget act, laws enacted to implement international obligations and laws on tax matters or citizenship would be exempt from the provision. No substantive changes were made to the Constitutional Council's proposal during parliamentary consideration of the bill that was based on the proposal.

The degree to which the constitutions of European countries provide for referendums is highly variable. However, nowhere are they the main form of collective decision-making but instead complement representative democracy. Referendums can serve either as an avenue for the electorate to initiate legislation or for decisions to be referred to a public vote after being passed by parliament. Moreover, different rules apply on who is able to initiate a referendum, what matters are exempt, and whether specific thresholds are imposed for the vote to be valid. Of the Nordic countries, only the Danish constitution includes a clause providing that the confirmation of legislation may be refused through a referendum. This happens at the demand of a minority of parliamentarians, not the head of state as in Iceland. Under the Finnish constitution, 50,000 voters may decide that a legislative bill shall be placed on the parliamentary agenda. The Norwegian constitution does not include provisions on referendums. The Swedish constitution, meanwhile, includes provisions stating that advisory referendums shall be decided by law and that a certain proportion of parliamentarians can demand a referendum on constitutional amendments.

2.3. Assessment of the effects

It is reasonable to consider that there is a broad consensus in Iceland that representative democracy should remain the cornerstone of the Icelandic constitutional system but yet there is also a demand to increase the possibilities for direct voter involvement. In recent years, experience has been gained on referendums due to the President of Iceland invoking Article 26. The bill is designed such that significant opposition is required in order to reject a law or resolution passed by the Althingi. This should help ensure that this option will only be exercised for an issue that is highly important or controversial. In any event, this is an important step towards increasing the public's influence on decision-making in Iceland.

It should be noted that the increased use of referendums will inevitably come with costs. However, as the technology that allows voting to be conducted electronically in a secure manner continues to develop, referendums will likely become less costly. It bears noting that the bill does not cover referendums decided by the Althingi. Thus, the bill does not impose restrictions on how advisory referendums should be conducted, as an example.

Further explanation of the provision

The bill proposes that the general electorate should have the ability to force a referendum on important issues that have been decided by the Althingi. The power of the voters extends to legislation newly passed by the Althingi with certain exemptions, as well as resolutions passed by the Althingi on the ratification of international treaties. The legislature may also decide that more parliamentary resolutions should be subject to the right to demand a referendum provided they have legal effect or represent an important policy decision.

Regarding the first paragraph

The first paragraph provides that fifteen percent of those eligible to vote can demand that newly passed legislation should be put before the people. The demand must be presented to a minister and, although not expressly stated, it is, of course, expected that the required number of signatures should accompany the demand.

The voters' power under the first paragraph is subject to two types of time limits. First, the demand must be submitted to a minister within six weeks of the publication of the law. This reinforces the requirement that the authority is restricted to newly passed and confirmed legislation. The deadline is relatively brief to ensure that the law will not have been implemented for a long time when the demand is presented, as legal uncertainty might arise if it was possible to demand a referendum on a law which has been in force for an extended period. Based on previous experience with signature collection in Iceland, this should be an adequate time limit for meeting the signature requirement.

Second, the government has a time limit of no less than six weeks and no more than four months to hold a referendum after receiving a confirmed demand to such effect. At this stage, the Althingi has completed its consideration of the law and is not expected to handle the conduct of a referendum to decide its validity. Voter signatures shall, therefore, be submitted to a minister. The question of who is the appropriate minister will be decided by a presidential ruling in each instance, but it is reasonable to expect that this will be the minister who is responsible for the conduct of referendums. The time limit prescribed in the provision will begin to run when the minister confirms that the demand fulfils the requirements of the constitution and the relevant laws. Until that time, the minister's handling of the matter will be subject to the general requirement concerning the swiftness of proceedings. If the minister's refusal is referred to a ruling body, the time limit will begin to run once a final ruling has been obtained on the right to force a referendum.

The budget act, the supplementary budget act and laws on tax matters may not be referred to a referendum under the power granted by the first paragraph. The same applies to laws that are passed to implement international obligations.

There is a certain connection between the exemptions that apply to the budget acts and laws on tax matters respectively. As a general rule, voters will not have the right to initiate a referendum on decisions concerning public revenue and expenditure. It is also worth noting that taxation is sometimes based on other considerations than merely generating revenue for the government. For instance, taxes may be collected to fund specific projects, for the purpose of income equalisation and to encourage changes in behaviour and lifestyle. Laws on tax matters refers to legislation providing for taxability, tax base, tax rates or the amount of taxes, in accordance with Articles 40 and 77 of the Constitution. If matters relating to tax are provided for in new comprehensive legislation or amendment legislation, such laws are excluded from the power of the voters to demand a referendum. However, it must be considered that legislation that principally pertains to other matters may be referred to a referendum if provisions on taxes make up only a part of it. Otherwise, there would be a risk that the voters' rights could be circumvented simply by adding tax provisions to a law that principally deals with other subjects. However, the term "tax matters" does not cover laws that, for instance, deal only with the administration of taxes. Thus, changes to provisions of the income tax act, as an example, may be subject to a

referendum, provided they do not deal with the matters described above pertaining to the levying of taxes.

Legislation enacted to implement international obligations is exempt from the voters' right to demand a referendum. Under the bill, a proportion of the electorate can nevertheless demand a referendum on a decision by the Althingi to approve such obligations in the form of a parliamentary resolution. It should be noted, however, that if the Althingi has approved an international obligation through legislation without a previous resolution, such legislation will not be excluded from the voters' right under the first paragraph of the article proposed by the bill. In such cases, the legislation is not being enacted for the purpose of implementing an international obligation, as the obligation will not have been established under international law before the legislation was passed. Consequently, legislation of this kind would be subject to the voters' right under the first paragraph and the required proportion of the electorate could demand a referendum on it based on that paragraph. As with the exemption provided in respect of laws of tax matters, one must account for the possibility that a piece of legislation might only in part contain provisions on the implementation of international obligations. It would be unreasonable for such legislation to be exempt from the intervention of the voters, and the courts are expected to resolve any disputes that might arise regarding the voters' right in this regard.

The power granted under the first paragraph applies to laws in their entirety and voters cannot restrict the application of that power to only a portion of a law.

When the power to refer a matter to a referendum is exercised, the legislation has already been published and entered into force in accordance with its terms. The legislation will then be revoked (or will not enter into force if the legislation provides that it will enter into force on a date after the referendum) if rejected in the referendum on the terms contained in the provision.

Regarding the second paragraph

The second paragraph provides for the right of the voters to demand that resolutions passed by the Althingi under Article 21 should be put before the people in a referendum. The provision covers the ratification of international treaties. Under Article 21, the approval of the Althingi is required for any such treaty which is concluded by the President and entails renouncement of, or servitude on, territory or territorial waters, or if it requires changes in the State system.

The power granted under the second paragraph only applies to parliamentary resolutions. It is expected that the Althingi will generally employ parliamentary resolutions in the cases specified in the provision, although in some cases legislation may also need to be passed in conjunction with a resolution. As with the first paragraph, the first sentence of the second paragraph applies to parliamentary resolutions in their entirety. Thus, voters cannot restrict their demand to a portion of the controversial international treaty. It is expected that the government authorities will wait to ratify a treaty until the time limit for demanding a referendum on the Althingi resolution has expired. If such a demand is made and confirmed, ratification should be delayed pending the outcome of the referendum.

The second sentence of the second paragraph of the provision applies to resolutions that have legal effect or represent an important policy decision. Under the current law, this power would extend to parliamentary resolutions on a plan for the protection and energy exploitation of land, i.e. the so-called Master Plan, see Act No. 48/2011 on the Plan for Nature Protection and Energy Utilisation, and a parliamentary resolution on the National Conversation Registry under the Nature Conservation Act No. 60/2013. It might also cover parliamentary resolutions on a plan for the development of the national electricity transmission system and a plan for the use of public land, depending on the definition of the term "legal effect" and how the resolutions themselves are worded. The provision is drafted in such a way that the legislature is entrusted with further defining what parliamentary resolutions are covered by it. It is proposed that a supermajority will be required in the Althingi for the adoption of such law, reflecting its importance and its connection with the fundamental right of the people to demand a referendum.

The second paragraph sets out the same time limits as in the first paragraphs. The voters shall submit their demand to a minister. The demand shall be presented within six weeks of the passing of the matter in the Althingi. The time limit for holding a referendum is the same time as that prescribed in the first paragraph.

Regarding the third paragraph

The third paragraph provides that the Althingi can repeal a law or revoke a resolution before a referendum is held. It is proposed that this shall be subject to the same procedure as when the

decision was taken on the controversial law or resolution, as further set out in the law on parliamentary business. This rule has been applied to the exercise of Article 26 of the Constitution. For instance, the Althingi repealed legislation dealing with the media in 2004 which the President had refused to confirm, even though a referendum had not taken place. It has been considered that by confirming the bill to repeal the law, the President effectively acknowledged that he did not consider this practice to be in violation of the Constitution. This rule must be considered reasonable in light of the fact that the repeal of the law accomplishes the goal of those who forced a referendum with their signatures.

Regarding the fourth paragraph

The fourth paragraph provides that a simple majority in a referendum suffices to reject the legislation or parliamentary resolution being voted on. In Iceland, it is customary to only count valid votes in determining this. However, the majority must represent at least one-fourth of the entire electorate. In explaining the provision, it is appropriate to consider the first paragraph of Article 33 of the Constitution, which addresses the right to vote in elections to the Althingi. According to this paragraph, all Icelandic citizens who are 18 years of age or older and are domiciled in Iceland have the right to vote, with a further provision that exemptions from the domicile requirement may be stipulated by law. The rationale for imposing this additional requirement is that a proposal will already at this stage have been considered by the elected representatives in the Althingi and received majority support there. It should, therefore, require quite strong and general opposition to defeat such a proposal. The provision entails that if the votes are split fairly evenly, a 50% turnout is required to strike down a decision of the Althingi.

Regarding the fifth paragraph

Finally, the fifth paragraph states that various further details shall be provided for by law. For instance, the law should stipulate when the collection of signatures may begin, as it needs to be ensured that the signatures adequately reflect the electorate's view of the final decision of the Althingi. The legislature also needs to lay down further details regarding the collection of signatures, particularly how the organisers of such signature collection should be permitted to conduct it and how they should be allowed to represent those signing. The form and implementation of signature collection should be decided by legislation, and it is necessary to decide whether it should be permitted to collect signatures electronically and what information should be required from those signing. Signature collection requirements must not be too onerous given that the time limit for collecting the required number is short, but of course, it must be possible to verify that the signatures are genuine. Such legislation could also prohibit payment being made for signatures if deemed necessary.

The implementation of referendums should also be decided by law, see the current Act on the Conduct of Referendums, No. 91/2010. Moreover, the law shall provide for the resolution of disputes in the courts. Such legislation would presumably also stipulate who could be a party to legal proceedings. It is clear that contentious issues might arise as to whether voters are permitted to demand a referendum under the first paragraph given the exclusion of certain subject areas. The minister might also reject the voters' demand on the grounds that the collection of signatures does not meet the legal requirements. Contrary to what generally applies to disputes between the holders of government powers regarding the exercise of these powers, citizens are generally entitled to have a dispute concerning their rights and obligations vis-à-vis the government resolved by the courts, see Article 60 of the Constitution. It follows from this that the law should provide for the authority of those demanding a referendum to seek the resolution of the courts of any dispute that might arise.

Due to the importance of the legislation that needs to be passed to implement the provisions of the bill, the approval of $\frac{2}{3}$ of the votes in the Althingi is stipulated. A similar requirement is imposed regarding changes to election district boundaries and rules on the allocation of parliamentary seats, see the sixth paragraph of Article 31 of the Constitution.

Regarding Article 2

The article does not require explanation.

Attachment

Act on the Conduct of Referendums, No. 91 25 June 2010

(potential changes to facilitate the implementation of the bill for a constitutional act are marked in red)

Article 1

If the Althingi resolves that a general secret referendum is to be held on a particular matter or draft legislation, it shall be held in accordance with this Act. The outcome of such a referendum shall have advisory value.

This Act shall also apply to referendums held under the third paragraph of Article 11, Article 26, Article xx and the second paragraph of Article 79 of the Constitution.

Article 2

The right to vote, and electoral registers for use in referendums according to Article 1, shall be the same as for parliamentary elections. Electoral registers shall, however, be based on the residence lists of the National Register three weeks prior to the referendum day.

Constituency boundaries shall be the same as they were in the last parliamentary election.

Article 3

Parliamentary resolutions according to the first paragraph of Article 1 shall, after the National Electoral Commission has made its comments, contain provisions on the wording and presentation of the question to be put to the electorate.

The question shall be clearly presented on the ballot paper, asking whether the voter approves the proposal stated, with two answers to choose from: "Yes" and "No".

In a referendum under the first paragraph of Article 1, the Althingi may decide that the ballot paper shall contain more than one question, and that there shall be more answering alternatives, or that they shall be worded differently.

The Ministry shall determine the wording and presentation of questions on ballot papers in referendums under the third paragraph of Article 11, Article 26, Article xx and the second paragraph of Article 79 of the Constitution.

The Minister shall set further rules³⁾ on the appearance and design of ballot papers.

Article 4

A referendum under the first paragraph of Article 1 shall be held not less than three months after, and not more than one year after, the parliamentary resolution has been passed by the Althingi. Referendums shall be held within two months after the approval by the Althingi of a resolution under the third paragraph of Article 11 of the Constitution or the refusal by the President to confirm a bill under Article 26 of the Constitution.

A referendum shall be held not less than six weeks after, and not more than four months after, a demand by the electorate under Article xx of the Constitution has been confirmed.

Referendums under this Act may be held together with parliamentary or presidential elections. If a referendum is held together with a parliamentary election, the provisions of the second sentence of the first paragraph, and the second paragraph, of Article 2 shall not apply.

Article 5

The Althingi shall determine the dates of referendums under the first paragraph of Article 1 of this Act and the third paragraph of Article 11 and Article xx of the Constitution within the time-frame stated in Article 4. The Ministry shall determine the dates of referendums under Article 26 and Article xx of the Constitution.

The Ministry shall advertise referendums once in the Official Gazette and three times on the Icelandic National Broadcasting Service at the most opportune time and not later than one month before the referendum. The question to be put to the electorate shall also be published there.

Article 6

The Althingi shall organise extensive publicity of the matters put to referendums under the first paragraph of Article 1. The Speaker's Committee of the Althingi shall set further rules on the form that publicity is to take.

The Ministry shall, at the first opportunity and not later than one week prior to a referendum under Article 26 ~~and Article xx~~ of the Constitution, send all households in the country off-prints of the legislation or resolution ~~that the President has refused to confirm~~ concerned. Recipients' attention shall also be drawn to the fact that the draft legislation or resolution, and all documents relating to the treatment of the matter has received, are accessible at a conspicuous place on the Althingi web page.

Article 7

The local and constituency electoral commissions, and the National Electoral Commission, shall be the same as for parliamentary elections.

Article 8

The Ministry shall provide the constituency electoral commissions with ballot papers to be used in the referendum. The constituency electoral commissions shall ensure that they are forwarded to the local electoral commissions in the same way as ballot papers in parliamentary elections.

Article 9

After the referendum, the local electoral commissions shall without delay send the chairmen of the constituency electoral commissions the ballot boxes, unused ballot papers and spoiled ballot papers in the envelopes specified in the Parliamentary Elections Act. At a previously announced place and time, the constituency electoral commissions shall open the ballot boxes, after which the counting of votes shall proceed in the same way as is laid down in the Parliamentary Elections Act. The Parliamentary Elections Act shall apply regarding whether ballot papers are considered valid and the handling of disputed ballot papers.

The National Electoral Commission shall appoint agents in each constituency whose function shall be to take account of differing points of view regarding voting, the counting of votes and the resolution of disputes.

Article 10

When the counting of votes is complete, the constituency electoral commissions shall send the National Electoral Commission a transcript of their records, together with any ballot papers over which there has been a dispute between the agents and the constituency electoral commissions. When the National Electoral Commission has received transcripts of the records of all the constituency electoral commissions and the disputed ballot papers, it shall announce, with suitable notice so that the agents will be able to attend, where and when it will meet to rule on the validity of the disputed ballot papers and announce the results of the referendum. When this meeting has been held, the National Electoral Commission shall inform the Ministry of its conclusions.

The Ministry shall advertise the result of the referendum in the Official Gazette and on the Icelandic National Broadcasting Service.

If approval of a bill is rejected in a referendum under Article 26 ~~or Article xx~~ of the Constitution, the Ministry shall also publish a special advertisement to this effect in Series A of the Law and Ministerial Gazette not later than two days after the result of the referendum is known.

Article 11

For a question or a proposal that is put to a referendum to be considered approved, it must receive a majority of the valid votes cast in the referendum, see however the second paragraph. For a law or a resolution to be considered rejected under the fourth paragraph of Article xx of the Constitution, a majority of the valid votes must be cast against it, provided that this represents at least a quarter all those eligible to vote, see the first paragraph of Article 2.

Article 12

On matters not covered here, the Parliamentary Elections Act shall apply, as appropriate, regarding the actual referendum, preparations for voting, pre-referendum voting and voting at polling stations.

The electoral commissions shall use the same records books as they use for parliamentary elections.

The provisions of Article 114 and Chapters XIX, XX, XXIV and XXV of the Parliamentary Elections Act shall apply, to the extent appropriate, to referendums under this Act.

Article 13

Complaints alleging the invalidity of a referendum, other than criminal charges, shall be submitted to the National Electoral Commission for resolution not later than two days before the meeting provided for in the first paragraph of Article 10.

Flaws in a referendum shall not entail invalidation of the referendum unless there is a reason to believe that they influenced the outcome.

Article 13a

Only those who have the right to vote in parliamentary elections may demand, with their signatures, a binding referendum on legislation passed by the Althingi which has been confirmed by the President of Iceland or specific resolutions of the Althingi under Article xx of the Constitution.

Article 13b

The Minister shall be notified if there is an intention to begin the collection of signatures to demand a binding referendum on legislation passed by the Althingi or specific resolutions of the Althingi under Article xx of the Constitution. The notification shall be signed by at least three individuals meeting the requirements of Article 13a and the notification shall clearly state the reason for the signature collection and the person(s) responsible for it. The person(s) responsible for the signature collection shall be one or more individuals. A person responsible means the person organising the collection of signatures.

The Notification shall be delivered to the Minister within two weeks after the relevant legislation has been published in the Law and Ministerial Gazette or after the relevant resolution has been passed by the Althingi under Article xx of the Constitution.

Article 13c

If the Minister considers that the proposed collection of signatures is manifestly flawed, he/she shall notify this to the person(s) responsible as soon as possible.

Article 13d

The collection of signatures may commence once a notification under Article 13b has been received by the Minister. It shall conclude no later than six weeks after the relevant legislation has been published in the Law and Ministerial Gazette or after the relevant resolution has been passed by the Althingi.

Article 13e

If signatures are collected on paper, voters shall write down their name, the date of signature, their identification number and their address. Each sheet of paper shall have room for the same number of signatures. The signatures list shall clearly state the reason for the signature collection, the name(s) of the person(s) responsible, when it began and when it will conclude. It shall also state that the offering or receiving of payment for a signature is prohibited.

Those who are unable to sign their name themselves may entrust others to sign their name on their behalf, provided it may be verified that such authority has been granted in a valid manner.

Article 13f

If signatures are collected electronically, the person(s) responsible shall conclude an agreement for such electronic collection of signatures with Registers Iceland. Registers Iceland will then handle the implementation and ensure that the signature collection meets the requirements for identification and security.

Registers Iceland will provide the necessary means for collecting signatures electronically, including a website, means of identification and lookups in the national register, and the recording and counting of signatures.

Article 13g

Before the six-week time limit for collecting signatures expires, the person(s) responsible shall obtain confirmation from Registers Icelandic that the required number of voters has signed a demand to hold a referendum. If signatures have been collected wholly or partly on paper, the person(s) responsible shall deliver these lists to Registers Iceland in the original but also in electronic form.

Article 13h

The Minister or a person representing the Minister will receive the signatures together with confirmation from Registers Iceland and confirm their receipt.

Article 13i

The Minister shall determine, as soon as possible and within no more than two weeks, whether all the requirements for holding a referendum have been fulfilled. Deficiencies in the signature collection cannot be remedied after the six-week time limit has expired.

If more than one person responsible has undertaken a collection of signatures on the same parliamentary decision, the signatures shall be combined if necessary so that the required minimum is reached.

If the same person has signed his/her name more than once on a list or lists of signatures relating to the same parliamentary decision, his/her signatures shall be counted as one.

The Minister will determine how it should be verified that signatures are genuine.

Article 13j

The person(s) responsible may refer the decision of the Minister to reject a demand for a referendum to the Supreme Court within two weeks of receiving the decision.

Article 13k

Neither the person(s) responsible nor the government are permitted to provide information to an unauthorised third party on who has signed a demand for a referendum. Violations of this Article shall be punishable by a fine.

Article 13l

It is prohibited to offer or receive payment for signing a name on a demand for a referendum. Violations of this Article shall be punishable by a fine.

Article 13m

The Minister may issue a regulation on the conduct of the collection of signatures, the form of lists of signatures and the verification of signatures.

Article 14

This Act is effective immediately.