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(VENICE COMMISSION)

STUDY ON REFERENDUM

**Draft Summary Report
relating
to national referendums**

prepared by the Secretariat

I – National referendums

A – Legal basis of the referendum

1. 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.
2. 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.
3. In the *Netherlands*, no national referendum has been organised to date. 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.
4. 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.
5. In *Cyprus*, the institution of the referendum is dealt with at legislative level. It has been used only once.
6. 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.
7. 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.
8. 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

9. 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

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

11. 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 life of Parliament (*Malta*); regionalisation (*Portugal*).

12. 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.

13. 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”*) or, in *Denmark*, a change in the voting age.

2. *Referendums at the request of an authority*

14. 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.

15. 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.

16. 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.

17. 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.

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

19. In other states, however, the executive and the legislative have to agree before a referendum is called. In *Armenia*, this is the 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).

20. 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.

21. 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).

22. 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.

23. 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).

24. 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).

25. 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*

26. 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.

27. 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.

28. 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.

29. 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.

30. *Italy* has both optional constitutional referendums and abrogative legislative referendums, which can be considered a form of popular initiative (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.

31. *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.

32. 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).

33. 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*.

34. 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.

C – Content

Constitutional referendums

35. 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.

36. *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.

37. 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).

38. 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).

39. By contrast, several states exclude constitutional issues from the scope of the referendum: *Bulgaria*, *Greece*, *Luxembourg*, *Netherlands*, *Portugal*.

Legislative referendums

40. 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, and *Portugal* – where the Government’s agreement can replace that of Parliament).

41. 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.

42. The popular legislative initiative is less common. It exists in *Lithuania*, *Russia* and “*the former Yugoslav Republic of Macedonia*”. The *abrogative legislative referendum*, which is used in *Albania*, *Italy* and *Malta*, is one form of this.

Treaty-related referendums

43. 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.

44. 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.

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

46. 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*).

47. States that do *not* provide for a referendum on a *specifically-worded draft* (*Croatia*, *Georgia*, *Sweden*)¹ 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

48. 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.

49. 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.

50. 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 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*, *Denmark* to a certain extent), legislative acts that are submitted to a

¹See I.D.

special procedure and whose content is imposed by the constitution or acts constitutionally necessary for the operation of the state (*Italy*), 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*, 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)²

51. 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?”).

52. 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.

53. Other states, such as *Armenia, Denmark, France, Ireland, the Netherlands* 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.

54. By contrast, *Croatian* and *Portuguese* law excludes specifically-worded drafts (and thus takes into consideration questions of principle and generally-worded proposals). Only questions of principle can be put to the vote in *Georgia* and *Sweden* (where a choice between various alternatives is possible).

55. 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.

56. Other states provide both for referendums on specifically worded drafts and questions of principle (*Greece, Spain, Albania*). Finally, the three possibilities (specifically-worded draft,

²CDL-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.*

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.

57. 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.

Unity of form

58. 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).

59. 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 expressly 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

60. 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).

61. 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.

Unity of hierarchical level

62. 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*.

63. 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

64. 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”³. 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 *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, “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* and *Switzerland*. Elsewhere it should apply in pursuance of the principle of freedom to vote.

- Number of questions

65. 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)⁴

66. 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 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.

67. *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.

68. 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.

³CDL-INF(2001)010, para. II.E.2.a.

⁴Cf. CDL-INF(2001)010, para. II.D.

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

70. 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.

71. 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*⁵

Information for voters

72. 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.

73. Some countries have rules stipulating that the authorities must 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.

⁵Cf. CDL-INF(2001)010, para. II.E.2.

74. 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

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

76. In *Russia*, 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.

77. 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.

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

79. 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

80. 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").

81. 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*.

82. In the *Netherlands* and *Spain*, the rules simply state that the political parties 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.

83. *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*.

84. 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

85. 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.

86. 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 *Portugal, Switzerland* in principle).

2. *Funding*⁶

87. 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, Spain, Switzerland*, and “*the former Yugoslav Republic of Macedonia*”. As expressly indicated in replies from several countries, 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*”).

88. 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.

89. In some countries, the authorities’ ability to 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.

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

Payment for the collection of signatures

91. 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

⁶*Cf. CDL-INF(2001)010, para. II.F.*

questionnaire mentions that such payment is prohibited, so the problem does not appear to exist in practice.

3. *Voting*

Voting period

92. In most states, the vote takes place over *one day*. *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.

93. 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

94. 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

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

96. 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.

97. A quorum of approval is considerably preferable to a quorum of participation, which poses a serious problem⁷. 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.

98. 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

⁷Cf. CDL-INF(2001)010, para. II.O.

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 lower than 50%, the referendum is consultative and non-binding (in Portugal, the quorum is calculated on the basis of the citizens registered at the census).

99. 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.

100. 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.

101. 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.

G – Effects of referendums⁸

Decision-making (legally binding) and consultative referendums

102. 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.

103. 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.

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

105. 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.

106. 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

⁸Cf. CDL-INF(2001)010, para. II.N.

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.

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

108. 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, resolatory and abrogative referendums

109. 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;

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

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

110. 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 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 resolatory). 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*.

111. 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.

112. By contrast, in *Russia* a referendum is in principle *resolatory*. Both suspensive and resolatory referendums exist in “*the former Yugoslav Republic of Macedonia*”.

113. *Albania*, *Italy* and *Malta* have *abrogative* referendums in respect of legislative matters.

Decisions to be taken after a referendum

114. 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.

115. 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.

116. In the *Netherlands*, although a referendum is suspensive, Parliament must take a new decision if the outcome of the referendum is negative and decide on the entry into force of the text if the vote is positive.

117. 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*⁹

118. 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?

119. 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.

120. 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.

⁹Cf. CDL-INF(2001)010, paragraph. II.L.

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

122. 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.

123. 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, 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.

*Arrangements for revising the rules governing referendums*¹⁰

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

125. 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.

126. 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.

127. 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 referendums¹¹

¹⁰Cf. CDL-INF(2001)010, paragraph II.K.

128. 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*.

129. 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*.

130. 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 *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*, signatures are not collected as such, and electors sign 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.

131. 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 are checked by the town hall. In *Croatia*, the referendum committee is responsible for checking the lists of signatures.

132. 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 review¹²

133. 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.

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

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

134. In countries which have a Constitutional Court, the latter is generally competent to review the conformity with legislation of the texts submitted to the people. This applies to all the countries cited, with the exception of *Estonia* and the *Netherlands* (where the Council of State is the competent organ).

135. 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) or the right to vote (*Switzerland*).

136. 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.

137. 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 ordinary 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).

138. 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

139. Replies from several countries (*Croatia, Greece, Hungary, Ireland, Italy, Malta* 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*).

140. However, in other countries capacity to lodge appeals is not so extensive. In *Spain*, only interested parties (political parties, institutions) may do so; in *Portugal*, only the political parties and groupings that took part in the referendum campaign; 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.

141. 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

142. 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, Croatia, the Netherlands, 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.

143. Several countries (*Armenia, Azerbaijan, Belgium, Czech Republic, Cyprus, Malta, Spain*) had experienced only one referendum at the time their replies to the questionnaire were written. Others had held only two (*Austria, Luxembourg* – in 1919 and 1937, *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).

144. 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.

145. 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).

146. *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.

147. Obviously, the question on a turn-out/approval *quorum* applies only to those countries where such a quorum is provided for¹³. 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 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.

148. 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 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.

149. 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.

¹³See above, point I.F.3.