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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 (THE PRESIDENT OF ICELAND, CABINET, FUNCTIONS OF THE EXECUTIVE, ETC.)

151st legislative session, 2020 to 2021
Parliamentary document

Bill for a constitutional Act

amending the Constitution of the republic of Iceland, No 33/1944, as amended (the President of Iceland, Cabinet, functions of the executive, etc.)

Article 1

The second and third sentences of Article 2 of the Constitution are amended to read as follows:

Executive power is vested in the President, Ministers of the Cabinet, and other public authorities pursuant to this Constitution and other provisions of law. Judicial power is vested in the Supreme Court of Iceland and other courts of law.

Article 2

Article 5 of the Constitution is amended to read as follows:

The President is elected through direct, secret and universal ballot by those who are eligible to vote in elections to the Althing. A presidential candidate must be sponsored by at least 2,5% and at most 5% eligible voters. If more than one candidate is standing for election, the candidate receiving the largest number of votes is duly elected President. If only one candidate is standing for election, that candidate is duly elected without a vote.

Presidential candidatures and presidential elections are to be governed in other respects by provisions laid down by law, whereby it may be determined that a specific number of sponsors must reside in each electoral district in proportion to the number of voters registered there.

Article 3

Article 6 of the Constitution is amended to read as follows:

The presidential term of office begins on the 1st of July and ends on the 30th of June six years later. A presidential election is to be held in May or June of the year in which a term of office expires. Each presidential tenure is limited to two consecutive terms of office.

Article 4

Article 7 of the Constitution is amended to read as follows:

In the event that the incumbent President dies or resigns prior to the expiry of the running term of office, a new President is to be elected for a period ending on the 30th of June of the sixth year after the date of the previous election.

Article 5

The following words are appended to Article 11 of the Constitution, first paragraph, first sentence: “which are countersigned by a Minister”.

Article 6

The reference to “The Ministry” in Article 13 of the Constitution, second paragraph, is replaced by: “the Government of Iceland”.

Article 7

The second to fourth sentences of Article 14 of the Constitution are replaced by the following two sentences:

The Althing may indict Cabinet Ministers for their conduct in office, or delegate prosecutorial powers to the Director of Public Prosecutions. Ministerial liability, as well as investigations, indictments, and judicial proceedings in cases of alleged misconduct in office by Ministers, are to be governed by provisions laid down by law.

Article 8

Article 15 of the Constitution is amended to read as follows:

The President determines, without ministerial advice, who is to be charged with forming a new Cabinet. The President appoints the Prime Minister and other Cabinet Ministers, and accepts their resignations. The President determines the number of Ministers and assigns their duties.

The Cabinet, as well as individual Cabinet Ministers, must have the support or the tolerance of a majority in the Althing. The President may ask the Althing to declare its support or tolerance before appointing a new Cabinet.

Article 9

Article 16 of the Constitution, second paragraph, is amended to read as follows: Laws and important executive acts, including international agreements which require amendments to Icelandic law or are important for other reasons, must be submitted to the President in the State Council.

Article 10

Article 17 of the Constitution is amended to read as follows:

Cabinet meetings must be held to discuss new legislation, proposals to the Althing, and other important government matters, and to consult on government policy. A Cabinet meeting must also be held whenever a Minister so requests to raise a specific matter. The Prime Minister presides over Cabinet meetings. The Prime Minister supervises government activities and policies and coordinates the actions of different Ministers as required.

Article 11

Article 20 of the Constitution is amended to read as follows:

The President of Iceland, Cabinet Ministers, and other public authorities appoint public officials as provided by law.

No one may be appointed to public office unless that person has Icelandic citizenship. A public official may be required to take an oath or pledge to uphold the Constitution.

The rights and duties of public officials, and their eligibility for office, are to be governed in other respects by provisions laid down by law. Such provisions are to establish a mechanism to ensure that competence and objective considerations determine appointments to public office and decisions relating to officials' retirement.

Specific categories of public officials may be excluded by law from this provision, in addition to the officials referred to in Article 61.

Article 12

Article 22 of the Constitution, cf. Article 3 of Constitutional Act No 56/1991, is amended to read as follows:

The President of Iceland opens the Althing when it reconvenes following a general election.

Article 13

Article 23 of the Constitution, cf. Article 4 of Constitutional Act No 56/1991, is amended to read as follows:

No Cabinet Minister may remain in office after the Althing has adopted a motion of no confidence.

In the event that the Althing adopts a motion of no confidence against the Prime Minister, he shall submit his personal resignation as well as the resignation of his entire Cabinet.

A Prime Minister and a Cabinet, for whom a resignation has been submitted, remain in office as a Caretaker Cabinet until a new one has been appointed, the Ministers of a Caretaker Cabinet having the obligation to limit their decisions to what is necessary.

Article 14

Article 24 of the Constitution, cf. Article 5 of Constitutional Act No 56/1991, is amended as follows:

a. In the former sentence, the words “after which the Althing shall convene not later than ten weeks after its dissolution” are deleted.

b. After the latter sentence of Article 24, a new sentence is inserted to read as follows: Before deciding whether to assent to the Prime Minister’s advice to dissolve parliament, the President shall consult the Speaker of the Althing and the leaders of the parliamentary groups.

Article 15

After the last sentence of Article 26 of the Constitution, a new sentence is inserted to read as follows: However, no vote is to take place if the Althing repeals the Act of law within five days of the President’s rejection.

Article 16

Article 27 of the Constitution is amended to read as follows:

Laws, general administrative provisions, and international agreements ratified by the Icelandic State shall be published. Provisions on the form of publication used and entry into force are to be laid down by law.

Article 17

Article 29 of the Constitution is amended as follows:

a. The first sentence is deleted.

b. At the beginning of the second sentence, the word „He“ is replaced by: “The President”.

c. In the third sentence, the words “prosecution or from a” and “imposed by the State Court,” are deleted.

Article 18

Article 30 of the Constitution is amended to read as follows:

The Director of Public Prosecutions is the highest office of prosecutorial powers. In the performance of official duties, the Director must be guided only by the law.

The President of Iceland appoints the Director of Public Prosecutions and accepts the Director’s resignation. The Director of Public Prosecutions is to enjoy, in the exercise of official functions, the same protections as judges.

In other respects, the organisation of prosecutorial authority is to be governed by provisions laid down by law.

Article 19

Article 35 of the Constitution, cf. Article 9 of Constitutional Act No 56/1991, is amended to read as follows:

A newly-elected Althing is to convene no later than on the fourth Tuesday following a general election.

The opening date of the regular annual parliamentary session, and the division of its term into legislative sessions, are to be laid down by law.

The Althing may decide to adjourn its meetings for a specified length of time. Where parliamentary meetings have been adjourned, the Speaker of the Althing may nevertheless reconvene parliament whenever necessary. Moreover, the Speaker of the Althing has an obligation to reconvene parliament if requested to do so by a majority of members or by the Cabinet.

Article 20

After the first sentence of Article 44 of the Constitution, cf. Article 14 of Constitutional Act No 56/1991, a new sentence is inserted to read as follows: All parliamentary Bills lapse automatically at the close of the parliamentary term, unless otherwise provided by the standing orders of parliament.

Article 21

This Act comes into force forthwith.

Notwithstanding Article 1, the provisions of Articles 3 and 4 are to be applied when the first ballot to elect the President of Iceland following the entry into force of this Act is held, with the exception that the next presidential election is to be held in May or June of the year in which the incumbent President's term ends.

Explanatory Notes

1. Introduction

In the coalition agreement between the Progressive Party, the Independence Party and the Left-Green Movement, providing for their cooperation in government and the strengthening of the Althing and signed in December 2017, the parties stated that they would continue the work on the comprehensive revision of the Constitution on a cross-party basis and with the involvement of the nation. The leaders of the political parties in parliament have met regularly during this term. Plans call for the comprehensive revision of the current Constitution to be completed during this and the next parliamentary term. The goal is that this comprehensive revision will result in an amended Constitution that reflects, as well as possible, the common fundamental values of the Icelandic people and lays a solid foundation for a democratic state based on the rule of law and guaranteeing the protection of human rights.

According to the plan followed, Chapter II of the Constitution, concerning the President and the executive branch, is to be revised during this parliamentary term. The party leaders sought the help of Professor Ragnhildur Helgadóttir to identify ways in which the Chapter could be brought up to date with legislative development and implementation. Following this, District Judge and Senior Lecturer Skúli Magnússon was charged with drafting, in consultation with the party leaders, a Bill for a constitutional Act entailing certain reforms.

In connection with the revision of the Constitution, the Social Science Research Institute at the University of Iceland conducted a survey of the general public's views on the Constitution during the summer of 2019. To follow this up, a debate was organised in November of that year. The results obtained were also used as a reference when drafting the proposals for amendments contained in this Bill.

2. Purpose and necessity of legislation

The Bill is the result of a revision of the provisions of Chapter II of the Constitution, which primarily concerns the President of Iceland, the Cabinet, and the functions of the executive. However, for the sake of coherence, the Bill also proposes to amend the second and third sentences of Article 2 and Article 35 of the Constitution, cf. Chapters I and IV.

The main purpose of the Bill is to bring this chapter of the Constitution closer to current legislation. As a result, it is deemed appropriate in some cases to modify the wording of provisions currently in force without introducing significant substantive amendments, see for example the amendments to the provisions concerning the cabinet and cabinet meetings. However, in those cases where the Constitution is silent on important substantive rules which are currently applied, it is necessary to propose entirely reworked provisions, see for example the provisions relating to parliamentarism and the further implementation thereof. Moreover, the Bill proposes a number of substantive amendments where practice, public debate or academic scholarship is considered to have exposed regulatory shortcomings and demonstrated the need for certain reforms, see for example the amendments to provisions concerning the investigation of cases and the impeachment of ministers for their conduct in office, as well as the amended rules on the summoning of the Althing and the adjournment of parliamentary meetings.

An effort has been made to bring forward proposals that are likely to meet with broad approval, taking due account of, e.g., the model-examples of the Constitutional Committee, the Bill submitted by the Constitutional Council, and a deliberative poll conducted in 2019, covered more closely in Chapter 5 of these Explanatory Notes. The fundamental rules governing the exercise of supreme executive power and the relationship between ministers and the President in that context, cf. Articles 11, 13, 14, 18 and 19 of the Constitution, are left untouched. The same is true in the main of the President's power to reject a legislative bill and the rules concerning the holders of presidential authority, cf. Article 8 of the Constitution. This approach is is based on the premise that the rules of the Constitution in this matter are clear, and that their customary

application (i.e. that of the President acting on ministerial advice) has not created significant problems. Moreover, these fundamental principles are considered difficult to change without risking unforeseen consequences for the constitutional system as a whole. The point of view that presidential tenure should be limited to two terms of office is accommodated, although it should be noted in that context that the provision proposes to lengthen the presidential term of office from four years to six.

Although provisions on a range of issues that were discussed by the Constitutional Committee and the Constitutional Council are absent from the Bill, such provisions could find a place in an amended Chapter II if a policy to that effect were put in place, cf. in particular the following: a) Constitutional Committee/Constitutional Council; b) Ministers' duty to provide information and truth; c) Report by the cabinet to the Althing; d) Registration of ministers' conflicts of interest and their secondary activities; note however that a government bill concerning the latter was presented at the 150th legislative session, see Parliamentary Item No 523. It should also be noted that all these matters can be provided by general law.

3. Main points of the Bill

The principal substantive amendments proposed in the Bill are as follows:

1. The term of office of the President of Iceland is extended to six years, and a new provision stipulates that the same person may not serve as President continuously for more than two terms, or 12 years in total.
2. The unqualified (legal) immunity of the President of Iceland for executive acts is rescinded, and the President's immunity is proposed to be limited to acts performed in office on the advice and responsibility of a cabinet minister.
3. The Althing is enabled to delegate to the Director of Public Prosecutions the power to prosecute in cases concerning alleged criminal offences in office by cabinet ministers, as an alternative to indictment issued by the parliament itself. It is also proposed to revoke those provisions of the Constitution relating to the State Court1 and to stipulate that investigations, indictments, and judicial proceedings be governed by provisions laid down by law.
4. The wording of the provisions concerning the formation and the role of the Cabinet is modified to clarify it and align it with long-standing practice.
5. Provisions relating to cabinet meetings are made more detailed, and the Prime Minister's coordinating role is strengthened.
6. The Principle of Parliamentarism is enshrined in the Constitution as well as the resignation of the Cabinet or an individual Minister in the event of a vote of no confidence.
7. In the event of a cabinet remaining in office after having submitted its resignation, its function as a caretaker cabinet is stipulated.
8. Provisions relating to the appointment of public officials are amended to reflect the development of rules concerning government employees and the fundamental principle that appointments to public office are to be based on professional merit.
9. The provisions relating to the role of the holders of executive power, i.e. cabinet ministers and the President, in relation to the summoning of the Althing and the adjournment of parliamentary meetings are amended in fundamental ways with a view to ensuring parliament's full autonomy in matters concerning its operations.
10. Provision is made for the duty of the President to consult the Speaker of the Althing and the leaders of the parliamentary groups before deciding whether to dissolve parliament on the Prime Minister's advice.
11. Provision is made for allowing the Althing to revoke legislation which has been rejected by the President in accordance with Article 26 of the Constitution with the effect that a national referendum on the final validity of the legislation does not take place.
12. The President's formal authority to decide on the discontinuation of a criminal prosecution is rescinded.
13. Provision is made for the Office of the Director of Public Prosecutions with a view to ensuring that the Office enjoys similar independence and protection as the judiciary.

1 Sometimes referred to as the Court of Impeachment.

4. Conformity with international obligations

Two of the substantial provisions of the Bill warrant a discussion of international obligations. In the first place, the Bill foresees to repeal the arrangement whereby the President enjoys full immunity for executive acts, and to restrict that immunity to acts performed by the President on ministerial advice. This amendment is in line with Article 27 of the Rome Statute of the International Criminal Court of 17 July 1998, which has been ratified by Iceland, see also Act No 43/2001.

In the second place, the European Court of Human Rights considered the current provisions of Article 14 of the Constitution in its judgment of 23 November 2017 in the case of Geir H. Haarde v. Iceland. One of the issued addressed by the judgment was whether the arrangement whereby the Althing's power to indict a cabinet minister for offences in office constituted a violation of Article 6 of the European Convention on Human Rights on the right to a fair trial, including whether the State Court2 could be regarded as an independent and impartial tribunal within the meaning of the Convention. The judgment, whereby the State was acquitted, must be interpreted as a finding that the current legal framework satisfies the provisions of the European Convention on Human Rights, which Iceland has ratified and codified, see Act No 62/1994. It follows that it is compatible with the Convention for the Althing to continue to legislate on the material scope of ministerial criminal liability and applicable procedures in relation to such cases, as foreseen in the Bill.

5. Consultation

As referred to in the Introduction, the Social Science Research Institute at the University of Iceland was charged with conducting a deliberative poll to gauge the general public's views on the Constitution. The deliberative poll was undertaken in six phases. An initial survey was conducted in the summer of 2019 among a random sample of people selected from the National Registry as well as the Institute's opinion group. In November of the same year participants in the survey were invited to take part in a deliberative meeting and those who accepted the invitation were sent information about the topics to be discussed. At the start of the deliberative meeting participants took a new survey to examine their opinions about the issues, after which they were divided into groups that engaged in structured, moderated debates. At the meeting participants were also given the opportunity to ask questions to experts about each discussion topic. At the end of the meeting a third survey was conducted among participants in order to detect whether their opinions had changed as a result of taking a closer look and participating in the debates.

In the first survey, 65 per cent of respondents were of the opinion that the President of Iceland should continue to be elected by simple majority vote. A total of 62 per cent were in favour of placing a limit on the President's tenure, and only 14 per cent were opposed to this. The most favoured option (chosen by 40 per cent of respondents) was to limit the tenure to three terms of office of four years each, or 12 years. A total of 70 per cent expressed the opinion that the presidential office and the powers attached to it should remain much the same as in the current constitutional system. The first survey also showed that 59 per cent of respondents were in favour of keeping the current arrangement regarding ministerial liability and proceedings instigated in relation to cabinet ministers' offences in office. When people were asked to imagine a change in this arrangement, 75 per cent believed that such cases should be handled in court in the same manner as other criminal cases.

According to the third survey, conducted after the deliberative meeting, 77 percent of participants desired to maintain a similar role for the office of the President as in the current constitutional system. In that context, the question that participants were asked to answer contained the information that the current role of the President of Iceland was primarily a formal one, although the President could in certain cases exert considerable political influence, such as by rejecting a legislative bill. A total of 86 per cent of respondents believed that the President of the Republic should represent the entire nation and stay above the fray of politics. Support for this increased during the deliberative meeting (rising from 79 per cent at the start of the meeting). Further, 75 per cent of respondents said that it was important for democracy and democratic participation to make sure that the same president did not remain in office for too long. Support

2 Referred to as the "Court of Impeachment" in the ECRHR ruling.

for this rose during the meeting, having been 64 per cent when the meeting began. A total of 72 per cent were of the opinion that the President's tenure should be limited to a certain number of terms. Also, 54 per cent believed that the President should have political influence given that no other public official is elected directly by the people. Support for this dropped somewhat during the deliberative meeting (having been 79 per cent at the start of the meeting). All of this would seem to justify the overall conclusion that no broad support exists for fundamental changes to the nature of the presidential office.

The deliberative meeting also covered the State Court3 and the Althing's power to indict cabinet ministers for offences in office. That debate clearly showed that participants desired changes to the current arrangement. 55 per cent felt that the Althing should not have the power to indict ministers and that the State Court should be abolished, rising from 24 per cent at the start of the meeting. After the meeting, a large majority of participants—a full 79 per cent—were of the opinion that the Althing's indictment powers and the State Court were capable of being misused for political purposes, support for this view having risen from 70 per cent at the start of the meeting. Conversely, only 32 per cent believed that the Althing's indictment powers, and the State Court, were necessary for the general public to have confidence in the fair and impartial handling of cases brought against the executive branch.

In a letter dated 3 March 2020, the Speaker of the Althing was asked to provide an opinion on proposals contained in the draft Bill and concerning an amendment to Chapter II of the Constitution, drawn up at the initiative of the leaders of the political parties represented in parliament. A letter received in response, dated 12 March 2020, stated, among other things, the opinion of the Speaker of the Althing that the most desirable option was for parliament to convene on a specified day, more precisely the fourth Tuesday following a general election, on which date the President of the Republic should open the parliamentary session.

6. Impact assessment

In the first place, the Bill incorporates an intention to strengthen the coordinating role of the Prime Minister within the cabinet, and to create the necessary conditions for increasing collective ministerial responsibility and cabinet solidarity. These changes are consistent with developments that have occurred in recent years, see in particular the Government Act No 115/2011, but may nevertheless warrant further examination of the mode of operation of the Cabinet and the organisation of the Government. In the second place, provision is made for changes regarding the investigative phase of cases brought against ministers, indictments as well as the judicial proceedings. These changes, as well as the objective to ensure that proceedings in such cases satisfy the requirements for a fair trial, require the revision of the Act providing for the standing orders of parliament, the Act on the State Court and possibly also the Ministerial Liability Act. In the third place, Act No 36/1945 on Candidacy and Election of the President of Iceland would clearly need to be amended to bring it in line with the modified term of office of the President, etc. In the fourth place, the rules in force applying to the appointment and remuneration of public officials would need to be given attention in light of the new principles laid down in Article 20 of the Constitution. In the fifth place, the Act providing for the standing orders of parliament would also be in need of revision in light of changes concerning the summoning of the Althing and the adjournment of its meetings, including, possibly, by providing that items of parliamentary business lapse automatically only at the close of each [four year] parliamentary term, instead of at the close of the legislative session concerned.

Commentary to the individual Articles of the Bill

Concerning Article 1

This Article of the Bill proposes to amend the wording of the second and third sentences of Article 2 of the Constitution to bring it in line with the legislation in force and with the development of the constitutional system. However, in keeping with the delimitation of the bill's subject-matter described in the general comments, there is no proposal to amend the first sentence, which concerns the holders of legislative power. There appears to be broad consensus that Article 2 should mention cabinet ministers among the supreme holders of executive power, see in particular Article 2 of the Bill submitted by the Constitutional Council (2011) and Article 2 of the

3 Sometimes referred to as the Court of Impeachment.

draft models for a new Constitution presented by Constitutional Committee (2011). This amendment also aligns with Articles 11, 13, 14, 16, 18 and 19 of the Constitution, as well as the constitutional principle that the President's authority to perform executive acts may only be exercised through the involvement of a minister who assumes responsibility for the executive act concerned. The bill submitted by the Constitutional Council and the draft models presented by the Constitutional Committee were also in agreement on the proposal that the third sentence of the Article should mention the Supreme Court of Iceland explicitly, thereby strengthening the Court's constitutional position as the nation's highest tribunal. The same applies with respect to the proposal to replace the word "judges" in the sentence with the words "other courts of law", considering that the current wording is an indirect reference to an earlier period where certain holders of executive power (district commissioners) also exercised judicial power, making it obsolete.

Concerning Article 2

This Article proposes an amendment to Article 5 of the Constitution, on presidential elections. The current organisation of presidential elections ensures neither that the President is elected with a majority of votes nor with a specified minimum percentage of the votes cast by eligible voters. However, the experience acquired after the country became a republic shows that the nation has succeeded in "coalescing around presidential candidates in a way that has avoided an unreasonable scattering of the votes" (report of the united Constitutional Committees, Parliamentary Gazette 1944, Section A, Parliamentary Item No 71, p. 165) and that each newly elected president has gone on to gain the nation's trust. This is witnessed, in particular, by the fact that an incumbent president has never lost a bid for re-election in those cases where that president decided to stand for election again. Furthermore, the results of the aforementioned deliberative poll do not reveal any deep-seated dissatisfaction with the current arrangement. Therefore, a compelling reason to implement fundamental changes to the organisation of presidential elections does not appear to exist at this point.

The Article proposes to increase the required number of sponsors, partly as suggested by the Constitutional Committee (2011). The rationale for this amendment is the rise in the number of eligible voters from the foundation of the Republic in 1944 as a consequence of a growing population and extensions of the right to vote (i.e. from approximately 75,000 people in 1944 to approximately 250,000 in 2020). It would seem appropriate for presidential candidates to be sponsored by a comparable percentage of voters as was originally intended, while continuing to keep this requirement at a reasonable level. It is considered appropriate that the percentage of voters sponsoring a presidential candidate should be not lower than when the Constitution was adopted in 1944, and that the exact minimum and maximum numbers of sponsors should from now on vary in proportion to the increase in the number of eligible voters. It is expected that the exact number of required sponsors, and the potential distribution of the sponsors between electoral districts, will be made known through a notice published by the Prime Minister, in the manner established by the Act on candidacy and election of the President of Iceland, No 36/1945, and that these numbers will be calculated using the best available information on the number of eligible voters.

No definition of the term 'quarter of the country' exists in general law, and its significance is primarily a historical one. For this reason, there is a certain difficulty in ascertaining how many sponsors each candidate must have in the respective quarters, and to verify whether this number has been reached in each individual case, see for reference at present Article 3, first paragraph, of Act No 36/1945 on Candidacy and Election of the President of Iceland. In line with the model-examples of the Constitutional Committee (2011) it is proposed to replace the reference to "quarters of the country" in the Article's current second paragraph with "electoral district". It should be pointed out that, as before, this is only a provision authorising the introduction of a legal requirement for a presidential candidate to have a pre-established number of sponsors in each electoral district, leaving the legislative body free to adopt a different arrangement through legislation, see at present the aforementioned Act No 36/1945, as amended.

Concerning Article 3

The Article proposes, first, an amendment whereby presidential elections are to be held in May or June, instead of in June or July as stipulated by the current Article 3 of the Constitution,

with the presidential term of office starting on 1 July instead of on 1 August. In this regard, the main reason for the proposal is the practical one that summer holidays are usually taken in July, for which reason it is more appropriate for the election and investiture of a new President to take place before that time. Second, it is proposed to extend the presidential term by two years, resulting in a six-year term. The extension of the presidential term is considered appropriate in light of the fact that the tenure of every President of the republic (with the exception of that of the current President) has been longer than one term. This is supported by the consideration that on a number of occasions a presidential election has been decided by default since no candidates have run against the incumbent president, or else the incumbent has won with a very large margin in a poorly attended election. Third, it is proposed that the President's tenure be limited to two terms of office, in other words a total of 12 years. This proposal is in line with the results of the aforementioned deliberative poll conducted by the Social Science Research Institute at the University of Iceland, and with term limits commonly applied in other countries which are democratic republics.

Concerning Article 4

The Article proposes amendments to Article 7 of the Constitution. It is based on the amendments proposed by Article 3 of the Bill and is not in need of clarification.

Concerning Article 5

This Article proposes an amendment to Article 11, first paragraph, first sentence of the Constitution. The current wording of the provision has its origin in amendments made in 1915 to the Constitution on the Special Affairs of Iceland, and in Article 10 of the 1920 Constitution, which stipulated that the King was "immune and inviolate", a declaration modelled after those contained in all versions of the Danish Constitution going back to the first constitution from 1849. The Constitution of the Republic from 1944 limited the President's immunity under the Article to official actions, it being understood [in the Explanatory Note] that such actions were always performed on the advice and potential liability of a minister. In contrast, it was not considered justified to make the President immune in the unlikely event that he or she were to commit a criminal offence outside the limits of his or her office. Hence, the absolute inviolability of the Icelandic head of state was in fact abolished with the adoption of the Constitution of the Republic in 1944.

There appears to be broad consensus that the provision of the Constitution declaring the President immune with regard to executive acts conforms poorly with the rationale of the Republic, and that it may even run counter to Iceland's obligations with respect to international criminal law. However hypothetical, the possibility cannot be excluded that the President could become guilty of a punishable offence or liable for damages in relation to conduct in office not based on ministerial advice for which the latter could therefore not be held liable under Article 14 of the Constitution. For this reason, it is considered appropriate to state unequivocally that the immunity of the President is limited to acts performed on the advice and responsibility of a minister, which was in any event the intention when the current Constitution was drafted. Accordingly, the President will not be held criminally liable or liable for damages as the collaborator or associate of a minister, in a situation where the President has approved the ministerial proposal in accordance with Article 19 of the Constitution. In other respects, however, the liability of the President would be governed by general rules of law, see *inter alia* Chapter X of the General Penal Code No 19/1940, on High Treason.

Although if must be considered very unlikely that the liability of the President as described will materialise, this amendment also has symbolic value in that the President of the Republic will no longer be formally exempt from legal liability with respect to any and all potential act performed in office, i.e. those which might conceivably be performed without any ministerial involvement. From a legal perspective, the proposal nonetheless involves an extension of the criminal and civil liability of the President which entails that a presidential action not performed on ministerial advice may cause the President to become subject to criminal (and civil) liability in accordance with generally applicable rules of law.

It is not considered justified to modify the arrangement laid down by Article 11, second paragraph, whereby the President may not be prosecuted on a criminal charge except with the consent of the Althing, thus ensuring that the President is "shielded from undue disruption", in the words of the Explanatory Note to the Bill which became the current Constitution of the Republic.

Moreover, noting that these provisions have never been invoked during the republican era, it was considered that there is no compelling reason to propose amendments to the third and fourth paragraphs of Article 11, concerning the President's removal from office at the instigation of the Althing.

Concerning Article 6

The Article proposes an amendment to Article 13, second paragraph of the Constitution whereby the word "Ministry"4, which is an obsolete reference to the years of the "Home Rule" (1904 to 1918), is to be replaced by "the Government of Iceland"5. While the wording is identical to that used in Article 2, second paragraph, of the Government Act No 115/2011, it does not prevent individual ministries or their subordinate bodies from operating offices outside the capital in accordance with generally applicable law and regulatory provisions in force at each time.

Concerning Article 7

This Article proposes, first, that the Althing should decide for itself whether to assume prosecutorial powers in cases relating to alleged offences in office by a cabinet minister, or whether these powers should be delegated to the Director of Public Prosecutions as the highest office of prosecutorial powers, see Article 18 of the Bill. This could mean either that the power to prosecute is delegated to the Director of Public Prosecutions in an individual case, for example following a specific parliamentary investigation, or that it is delegated permanently by an act of law. The second sentence of the Article provides that not only the scope of ministerial liability, but also the investigative phase, indictments, and judicial proceedings are to be governed by provisions laid down by law. This is founded on the premise that when enacting rules concerning these matters, due consideration is given to fundamental rights, see in particular the provisions of Article 69 of the Constitution on *nulla poena sine lege* and those of Article 70, on fair trial.

Secondly, the Article foresees that the Althing should decide through legislation whether to preserve the State Court6, in one form or another, as a specialised court for ministerial criminal liability, or whether such cases are better placed within the judiciary. This is based on the consideration that the historical argument for establishing the State Court was that parliament should have a certain influence over the composition of the judicial body charged with deciding on ministers' liability. Even if that argument now appears in a different light following the introduction and development of parliamentarian principles, the most appropriate way forward is still considered to be for the Althing to decide for itself whether the State Court should continue to exist as a specialised court, and how it should then be organised. However, if the decision were made to maintain the State Court, consideration would need to be given to its relationship with the Supreme Court of Iceland as the nation's highest tribunal, see Article 1 of the Bill, and the requirements of Articles 59, 61 and 70 of the Constitution.

The proposals discussed above take into account, among other things, the fact that the results of the deliberative poll conducted by the Social Science Research Institute at the University of Iceland indicate a general consensus that the current arrangement is at risk of being misused for political purposes (79 per cent of participants agreed with that statement after the deliberative meeting) and there was a large drop in support for the statement that the Althing should continue to have indictment powers and that the State Court should decide such cases (52 per cent before the deliberative meeting and 21 per cent after the debate). It has also become clear that there is a need to revise current rules on ministerial liability, see for instance the conclusions of the working group charged by the Presidium of the Althing with reviewing statutes pertaining to parliament's supervision of the executive branch, and evaluate the need for amendments, contained in the report delivered by the group in 2009. The report mentions, among other things, the necessity to make the wording of certain provisions of the Ministerial Liability Act more pointed having regard to the greater emphasis placed by courts on the need for clearly formulated penal provisions; to look into the need for a special penal provision regarding ministers' breach of their duty to inform the Althing; and to explain in more detail to what extent the provisions of the General Penal Code on general conditions for the imposition of penalties

4 The Icelandic term is *ráðuneytið*.

5 The Icelandic term is *Stjórnarráð Íslands*.

6 Sometimes referred to as the Court of Impeachment.

can be applied to breaches under the Ministerial Liability Act. Thus, on these considerations, the proposed provisions are intended to create the necessary platform for a thorough revision by the legislature of both ministerial liability in material terms and procedural aspects.

Concerning Article 8

This Article of the Bill proposes to amend Article 15 of the Constitution by implementing in law the customary rules for the formation of a new cabinet, including by explicitly stating the principle of parliamentarism implicit in Icelandic law.

The first sentence of the Article's first paragraph provides for the President to determine, without receiving ministerial advice, who is to be charged with forming a "Cabinet", a crucial constitutional term not found anywhere in the current Constitution. This constitutes a proposal to give the Cabinet a constitutional basis as one of the fundamental institutions of the Republic. "Cabinet"7 as a term hardly needs to be elucidated, given that it has a specific meaning both according to custom and according to the Government Act No 115/2011, and a large number of generally applicable laws and regulatory provisions refer to "the Cabinet" in one way or another.

In other respects, the provision conforms with a long practice by the presidential office and is based on the model-examples of the Constitutional Committee (2011). It is not considered justified to limit the discretion of the President when granting the mandate to form a new cabinet or to explicitly state more precise standards, such as that mandate to form government should first be given to the leader of the political party having won the largest number of seats in a parliamentary election. Nevertheless, the amendment proposed by the second paragraph of the Article clearly indicates that any decision by the President to this effect must have as objective the formation of a cabinet that enjoys the support, or at least the tolerance, of a parliamentary majority, thereby respecting the principle of parliamentarism. However, the President must have a certain discretion to assess how this objective can best be achieved in each case. The rationale for this is that the circumstances in which a cabinet is formed can vary and be unpredictable in many ways.

The new wording of the second sentence of the first paragraph does not entail a change to the rules currently in force. Rather they reflect the customary rule whereby a new Prime Minister, appointed by the President, countersigns his or her own warrant of appointment, after which the Prime Minister advises the President as to the appointment of other ministers and countersigns their warrants of appointment, as foreseen in Article 19 of the Constitution. The wording also indirectly refers to the Prime Minister as the head of the cabinet, thereby strengthening that role, see further the amendments proposed by Article 10 of the Bill and the commentary to that Article.

The second paragraph of the Article proposes to state the principle of parliamentarism explicitly in the Constitution. Although it has been argued that this principle is partly underpinned by the reference in Article 1 of the Constitution to a "parliamentary government", based, among other things, on the commentary to Article 1 of the Bill which became the current Constitution, parliamentarism in Iceland is mainly founded on an uncontested constitutional custom which can be traced all the way back to the introduction of the "Home Rule" in 1904 (cf. Article 2 of the Constitutional Act No 16/1903). There is a general consensus that the language of the Constitution should reflect this fundamental principle of the Icelandic constitutional order. The wording of the provision is based on the model-examples of the Constitutional Committee (2011). The provision therefore does not entail a proposal to deviate from customary principles of parliamentarism, commonly referred to as "negative parliamentarism", i.e. that a new cabinet is appointed without being directly voted in by parliament or having received a declaration of majority support among members. On the other hand, it is foreseen for the cabinet, or individual ministers if applicable, to submit its resignation if parliament has passed a motion of no confidence, see further Article 13 of the Bill and the commentary to that Article.

The drafting of the Bill included a debate on the merits of "positive" or "constructive" parliamentarism as practised in countries such as Sweden and Finland, motivated in particular by the proposal to that effect contained in Article 90 of the bill submitted by the Constitutional Council (2011). However, the practice of parliamentarism in Iceland does not appear to have created problems in this respect, considering that uncertainty or disagreement over parliament's support or tolerance of a cabinet at the outset is practically unheard of. Thus, questions

7 The Icelandic term is *ríkisstjórn*.

surrounding whether or not a cabinet has sufficient parliamentary support have mostly been raised at later stages and irrespective of whether the cabinet would have won the support of parliament at the time it was formed. Therefore, it does not seem urgent to implement changes to the present rules in this respect. On the other hand, positive parliamentarism undoubtedly has certain advantages, as discussed in the commentary to the bill submitted by the Constitutional Council. In order to accommodate this point of view, the second paragraph proposes an amendment whereby the President may ask the Althing to declare its support or tolerance before appointing a new cabinet. Although it is left to the President to assess whether to exercise this right, it must be considered likely that this provision, which is intended to provide complete assurance that the principle of parliamentarism is respected when a new cabinet is being formed, would only come into play in the specific and improbable situation that there was a reason to doubt whether a new government enjoyed sufficient parliamentary support.

Concerning Article 9

This Article of the Bill specifies in more detail, and in keeping with applicable rules and long practice, which issues should be brought to the President's attention in the State Council in accordance with Article 16, second paragraph, of the Constitution. It should be recalled that according to Article 26 of the Constitution, legislation voted by parliament is to be submitted to the President for approval within two weeks of being passed. This wording implies that a minister could in various cases submit an issue for confirmation by the President in accordance with Article 18 of the Constitution outside the meetings of the State Council, and that the President could validly approve the ministerial proposal in accordance with Article 19 of the Constitution between such meetings. This arrangement has in fact long been customary. As a result, laws and executive acts have in the vast majority of cases already taken force when a State Council meeting is held. Thus, this Article of the Bill entails no proposal for changes to the arrangement of State Council meetings, or to the manner in which issues are submitted to the President for approval between Council meetings.

Concerning Article 10

This Article of the Bill proposes to amend Article 17 of the Constitution on "ministerial meetings". It is uncontroversial that the term "ministerial meeting" has become obsolete, the terms employed at present being instead those proposed by the Article: "cabinet" and "cabinet meetings". It is also considered appropriate for the text of the Constitution to better describe the role of cabinet meetings to be in effect the cabinet's consultation and policy-making forum. It is further proposed to remove any doubt that all proposals submitted to parliament—in particular proposals for parliamentary resolutions—are to be presented in a cabinet meeting, as already established by law, cf. Article 6, Point 1, of the Government Act No 115/2011, and through long practice.

Recent years have seen a debate about the need for the strengthening of the cabinet as a forum of coordination and closer cooperation between ministers and their respective ministries, both as regards policymaking and the preparation of issues and as regards the response to pressing difficulties. One of the main considerations in that regard is that many of the most important governmental tasks of at each time are of a nature that makes it difficult and illogical to entrust them to a single portfolio minister. Of particular relevance is the criticism voiced in the Report on the Antecedents and Causes of the Collapse of the Icelandic Banks and Related Events, issued in 2010 by the Investigation Commission appointed by the Althing, and the clarification by the State Court of the provisions of Article 17 of the Constitution contained in the judgment delivered on 23 April 2012 in Case No 3/2011. It also appears to be more common in Iceland than in other countries for individual ministers to declare opposition to specific governmental issues, a situation that justifies the argument that joint decision-making and collective ministerial responsibility with respect to governmental issues is practised less in Iceland than in most neighbouring countries. From the perspective of the general public it may therefore, from time to time, seem questionable whether the cabinet actually operates as a whole with respect to controversial issues.

In this context, the drafting of this Bill saw a debate on the proposal contained in Article 87, third paragraph, of the bill submitted by the Constitutional Council, namely that the cabinet should reach decisions "on important issues and policies" jointly, operating therefore as a multi-member

administrative body in certain respects, in the manner customary in the constitutional system of various other countries.8 Conversely it was also pointed out that many other ways existed to achieve the goal of strengthening intra-cabinet coordination and increasing collective ministerial responsibility and cabinet solidarity, without any such radical change to the constitutional principles relating to the cabinet. It was also pointed out that a change in the direction of turning the cabinet into a multi-member administrative body would require a thorough revision of the current rules governing the cabinet's operation, and even of the organisation of the government as a whole. The Article thus only proposes to firmly recall that it is the role of the Prime Minister to coordinate the actions of ministers when needed, a rather similar provision to the one found in Article 8 of the Government Act No 115/2011. Although the provision therefore does not constitute the Cabinet as an administrative body, the Prime Minister's supervising and coordinating role is strengthened. Through this, as well as the aforementioned amendment to the Article's first sentence, the provision also removes any doubt that the cabinet has a duty to cooperate on furthering the nation's interest under the leadership of a Prime Minister who is responsible both for holding cabinet meetings and for ensuring that the actions and policies of each cabinet minister are in alignment with government policy, and coordinated between ministers as appropriate. A change of this type is consistent with the development of the rules applying to the cabinet, see in particular the aforementioned Government Act No 115/12011, as well as the increased emphasis on cooperation and coordination between ministries, see for example Articles 20 and 21 of the Public Finance Act No 123/2015.

Although this is primarily an amendment to the wording of the current Article 17 of the Constitution, for the purpose of aligning it with established statutory interpretation and the applicable rules of general law pertaining to the cabinet, the amendment could nevertheless give cause for a more thorough examination of laws, rules and customs applying to the mode of operation of the cabinet with a view to achieving closer coordination within the Government and strengthening cabinet solidarity and collective ministerial responsibility. Moreover, the Article does not exclude that the cabinet could, to a greater extent than is presently the case, be charged with certain tasks as a multi-member administrative body on the basis of specific laws, such an arrangement being currently the exception. It should also be recalled that Article 19 of the Bill foresees, among other things, that the Speaker of the Althing may reconvene parliament in a situation where its meetings have been adjourned, at the cabinet's request, which means that the Bill also foresees that the cabinet may in certain cases make actual decisions as one body. It is for the legislative body, and the cabinet itself as appropriate, to decide on more detailed rules regarding the procedures and decisions made by the cabinet in cases where it makes actual decisions jointly in accordance with specific laws or the Constitution, see for reference the aforementioned Government Act No 115/2010 and Rules No 791/2018 on the procedures of the Cabinet.

Concerning Article 11

This Article of the Bill proposes to amend Article 20 of the Constitution, with view, in particular, to align the provisions of the Article with the development of statutes applying to public officials. The provisions have been drafted based largely on the model-examples of the Constitutional Committee (2011) and the Bill submitted by the Constitutional Council (2011). The Article entails, first, that the provision no longer only applies only to the presidential appointment of officials, but also to other appointed officials. One reason for the amendment is that the last few decades have seen a considerable reduction in the number of officials appointed by the President. It is considered appropriate for comparable basic rules to apply to the appointment and remuneration of public officials irrespective of whether they are appointed by the President or by a minister—as most frequently is the case—or by yet another office. Second, it is foreseen that a public official may be required to take an oath or pledge to uphold the Constitution, instead of such an oath or pledge being mandatory as stipulated by the current second paragraph of Article 20 of the Constitution.

8 Note that under Icelandic Constitutional law decisions are taken by individual ministers after consulting the cabinet, but not *by* the cabinet. It follows that it is the minister in question and not the cabinet collectively that assumes full legal responsibility for the act in question.

The most important proposal for an amendment is contained in the third paragraph of the Article, which foresees that a mechanism must be established by law to ensure that competence and objective considerations determine appointments to public office and decisions relating to officials' retirement. The provision entails not only that officials should be appointed based on competence and objective considerations, see for example Article 96, second paragraph, of the bill submitted by the Constitutional Council, but also that this must be regulated through general law, such as by requiring that all vacant posts are to be advertised, and that processes must be in place to assess the competence of applicants, with a view to appointing the most competent candidate following a professional assessment. The provision does not exclude that the legislative body may, for the purpose of attaining specific goals, such as that of greater gender equality, designate certain considerations as objective. Accordingly, the provision would serve as the constitutional basis for rules already largely established through legislative amendments, but would nevertheless warrant a review of present rules and implementation practices in this area.

It is proposed to revoke the provisions of the current third and fourth paragraphs of Article 20 of the Constitution, with the effect of subjecting these issues to the relevant legislation laid down by parliament as well as the general provisions of labour and administrative law. In this respect the Bill follows the bill submitted by the Constitutional Council. The Constitution on the Special Affairs of Iceland of 1874 contained a provision substantively similar to the current fourth paragraph of Article 20, but that provision was revoked in connection with the constitutional revision of 1915, with reference to plans to abolish the legally mandated retirement remuneration9 of public officials and introduce a pension system. However, the provision was reintroduced in the Constitution of the Kingdom of Iceland in 1920, and has remained unchanged in substance since that time. In practice, the provision has been considered to guarantee certain rights to public officials in situations where a decision is made to transfer them between posts, and has in those cases been considered to apply, by analogy, also to public officials other than those appointed by the President. However, considering that the "retirement remuneration" of public officials was abolished a long time ago, there is uncertainty as to the nature of those rights of public officials and the leeway of the legislative body in this respect. Today, public officials are in general appointed temporarily, and greater emphasis is placed on the ability to transfer them between administrative posts. Nevertheless, the wording of the current provision creates uncertainty as to whether a public official may be entitled to some kind of remuneration after the period of appointment ends, in the situation where that official refuses to accept a transfer and opts for discharge with "retirement remuneration". The legal rights of officials who are transferred from one post to another are, however, currently much better protected, through the Government Employees Act and the generally applicable rules of labour and administrative law, as these provisions have evolved over the last few decades, including by the introduction of the right of public officials to receive compensation for unlawful dismissal. For this reason, the historical justification behind the provision that public officials need protection against potential arbitrary decisions on transfer from one post to another can hardly be said to apply any longer. Therefore, it is proposed to abolish the provision and to make the legal rights of public officials in this situation subject to generally applicable rules of law.

No change is proposed to the provision of the fourth paragraph of the Article to the effect that specific categories of public officials may be excluded by law from the provisions of the Article, in addition to those officials referred to in Article 61 of the Constitution, i.e. judges, who fall outside the scope of the Bill. This is based on the rationale that appointments to positions within specific areas may justify departure from general rules concerning publication of a vacancy notice and the assessment of competence. Special rules continue to apply to the appointment and resignation of ministers, who therefore fall outside the scope of the Article.

Concerning Article 12

This Article of the Bill, which proposes to amend the current Article 22 of the Constitution, takes into consideration Article 19 of the Bill, which foresees to fix in the Constitution the date on which a new parliament is to convene following a general election at the latest, setting that date as the fourth Tuesday following the election, see on the other hand the current Article 35 of the Constitution. The Article stipulates that the involvement of the President of Iceland, on the advice

9 The Icelandic term is *lögmælt eftirlaun*.

of the Prime Minister, in the opening of the newly elected parliament is to be limited to formally calling parliament open when it convenes for the first time after a general election. This presupposes that the President will sign, on the advice of the Prime Minister, a presidential decree stating the precise timing of the opening, in the customary manner, but henceforth in accordance with the amended provision of Article 35 of the Constitution. It is deemed unnecessary to mention specifically that the President is to "convene Althingi" following a general election. Obviously, the provision does not exclude the possibility for parliament to be convened at an earlier date than on the fourth Tuesday following a general election, in unusual circumstances. However, it is proposed that when parliament has been opened, and when its members have elected a Speaker and organised their activities, any decisions regarding the adjournment of meetings and the dates on which meetings will resume will be made by parliament itself, instead of being formally a presidential decision as is currently the case. It is therefore proposed to delete the provision of the current Article 23 of the Constitution regarding the adjournment of sessions of the Althing.

After the President has opened parliament, the parliamentary session lasts, in effect, continuously until the date of the next election. Even if parliament has been dissolved pursuant to Article 24 of the Constitution, its members retain their mandates, and parliament therefore continues to be authorised to make decisions. Any decision on whether the President of Iceland would be invited to open every annual legislative session, as explicitly stipulated by the current Article 22 of the Constitution, or whether that act would be performed by the Speaker of the Althing, would be up to the Althing itself, see the aforementioned proposals to amend Article 35 of the Constitution contained in Article 19 of the Bill.

Concerning Article 13

As outlined in the commentary to Article 12, it is foreseen to delete the provisions of the current Article 23 of the Constitution on the adjournment of parliamentary meetings. It is therefore proposed that a new Article 23 stipulate the arrangement to be followed when the Althing has passed a motion of no confidence against a cabinet as a whole, or against an individual minister, as well as the role of so-called caretaker cabinets. The provisions of the Article, which further stipulate the implementation of parliamentarism, cf. Article 8 of the Bill, have the main purpose of codifying written and unwritten rules regarding the significance and consequences of the loss of parliamentary confidence by the cabinet or an individual minister, see for reference at present Article 1, second paragraph, of the Government Act No 115/2011.

The first paragraph of the Article proposes an amendment to firmly state the fundamental principle of "negative parliamentarism", adhered to from the introduction of parliamentarism in Iceland, that no cabinet minister may remain in office after the Althing has adopted a motion of no confidence. The second paragraph makes it clear that should the Althing pass a motion of no confidence against the Prime Minister; this logically amounts to a declaration of no confidence in the cabinet as a whole. However, the wording of the provision does not exclude the common formulation whereby the Althing is invited to "declare no confidence in the cabinet" without a specific reference to the Prime Minister, see also the wording of the current second paragraph of Article 1 of the aforementioned Government Act No 115/2011.

The third paragraph of the Article dresses the function of a caretaker cabinet, i.e. a cabinet that has submitted its resignation following a declaration of no confidence or for some other reason. The provision codifies the principle that a cabinet which has submitted its resignation should remain in office until a new cabinet has been appointed, thereby ensuring that the country always has an operating cabinet. In that context, it is also proposed that the role of a caretaker government be restricted inasmuch as ministers should only make decisions that are considered necessary, i.e. decisions that for some reason cannot be postponed until a new cabinet has been appointed. Although this is a discretionary criterion of the limits of a caretaker cabinet's powers, it cannot be excluded that a flagrant breach of this principle could render a minister liable under Article 14 of the Constitution and statutory provisions on ministerial liability. Thus, the provision is intended to ensure, to the extent possible, that ministers who are part of a caretaker cabinet exercise caution in the application of their powers. The rationale of the provision and implemented practice dictate that a similar criterion must also apply to an individual minister who has submitted his/her resignation, whether following a vote of no confidence by the Althing or for other reasons. In general, it can be expected that the appointment of a new minister, or the temporary or

permanent transfer of the portfolio to another minister, will occur very rapidly in that situation. It must therefore be concluded that a cabinet minister who has, for instance, suffered a vote of no confidence has very limited powers, although this also depends on the situation prevailing at each time.

Concerning Article 14

Item (a) of the Article proposes to rescind the special rule of the current Article 24 of the Constitution that the Althing is to reconvene no later than 10 weeks after an announcement to dissolve parliament. The amendment entails that the date on which the Althing reconvenes in such circumstances will, as in other cases, be determined by the categorical rule laid down in Article 19 of the Bill (cf. the planned amendment to Article 30 of the Constitution) that a newly-elected Althing is to convene no later than on the fourth Tuesday following a general election. A consequence of the proposal is a shortening, albeit insignificant, of the total length of the period elapsing between the dissolution of parliament and the date on which a new parliament convenes.

Item (b) proposes an addition to the provisions of the current Article 24 of the Constitution stipulating that before deciding whether to assent to the Prime Minister's advice to dissolve parliament, the President must consult the Speaker of the Althing and the leaders of the parliamentary groups. Under currently applicable rules, the President does not have authority to decide on the dissolution of parliament except through the involvement of a minister who is responsible for that decision, cf. Articles 13 (first paragraph), 14, 18 and 19 of the Constitution. Flipping the coin, there is no doubt that the President cannot be coerced by a minister into assenting to a proposal to dissolve parliament.

Since, following the amendments made to the Constitution in 1991, members of parliament retain their mandates until the day of the general election and parliament therefore continues to be authorised to make decisions irrespective of any decision to dissolve it, including the right to pass a vote of no confidence against the sitting cabinet, a cabinet is no longer able to avoid a vote of no confidence by the Althing by asking the President to approve a ministerial proposal to dissolve parliament. Nevertheless, a decision to dissolve parliament and call a general election (within 45 days) is highly consequential for the workings of the Althing and the government of the State. Therefore, it is considered appropriate to stipulate the obligation of the President to consult the Speaker of the Althing and the leaders of the parliamentary groups before accepting the Prime Minister's proposal to dissolve parliament and call a new election. This ensures that all doubt is removed as to whether the sitting cabinet still has the confidence of parliament, as well as whether the formation of a new cabinet would be possible without a new general election.

It is not considered necessary to add to the Constitution a provision to the effect that a decision to dissolve parliament cannot be withdrawn, for example in a situation where a new Prime Minister has taken over from the resigning Prime Minister and the new cabinet has sufficient parliamentary support. Therefore, any withdrawal of such a decision will be governed by generally applicable rules. However, it can be assumed that under such circumstances, i.e. where a new Prime Minister requests the withdrawal of a decision to dissolve parliament and call a new election, the President would consult the Speaker of the Althing and the leaders of the parliamentary groups, in a similar way as when considering the decision to dissolve parliament.

Concerning Article 15

This Article of the Bill proposes to amend Article 26 of the Constitution without altering the President's fundamental role in approving legislation. This approach is in alignment with, *inter alia*, the results of the opinion poll referred to in the general part of the commentary.

The current provision stipulates that legislation voted by the Althing must be submitted to the President for approval not later than two weeks after it has been passed, without any indication of a deadline within which the President should decide whether to approve or reject the legislative bill, whereas the law enters into force when the President has decided one or the other. Thus, the only legal effect of a presidential rejection of a legislative bill is that the law is submitted to a popular referendum to decide whether it is to remain in force.10 Although it can certainly lead to complications in certain cases if legislation which has already come into force is later rejected in

10 Note: Also the rejection by the President has the effect of entering the law into force.

a referendum, no change is proposed in this respect. This is based, first, on the consideration that the issue was discussed thoroughly when the Constitution of the Republic was adopted in 1944, whereupon it was concluded that the President should not have the power to impose a so-called “postponing veto” upon legislation passed by the Althing, but only the power to submit it to popular vote. It must also be considered that in those cases where the President has decided not to approve a parliamentary bill, this does not appear to have caused significant problems. Finally, it should be clear that both natural and legal persons will only be able to attach very limited expectations to a law awaiting final confirmation in a popular referendum, and it must also be assumed that the authorities will exercise great caution in the application of such legislation against private persons or entities or for their benefit, such as through the granting of permits on the basis of that legislation.

In practice, every decision by the President to reject a legislative bill in accordance with Article 26 of the Constitution has been made known by unambiguous declaration, and doubt therefore appears never to have arisen with regard to the President’s stance in this respect, or when a law will enter into force following a rejection by the President. It is also considered self-evident that the President himself or herself should make it known how long he or she will take to decide, in accordance with Article 26 of the Constitution, on a law passed by the Althing, or explain that decision if requested to do so. Therefore, it is not proposed for the Constitution to stipulate a specific deadline within which the President should announce his or her decision. However, controversy has arisen—in particular following the President’s decision to reject the so-called Media Act of 2004—as to whether the Althing has the permission to withdraw its consent, that is, whether it can revoke the law in question, and whether in that case the legal consequence is that of cancelling the popular referendum. It is considered appropriate to remove all doubt regarding this by stipulating that a revocation of the law by the Althing has this effect, provided the vote is passed immediately after the Presidents rejection, i.e. within five days of that decision. Providing this power to the Althing is clearly accompanied by the risk that the same law will be passed later either unchanged or with minimal amendments, possibly even leading to deadlock between the Althing and the President. However, the Althing must be trusted to exercise the proposed possibility in accordance with reason. In any event the President always has the option to apply Article 26 of the Constitution a second time if he or she believes that a new law is comparable to that which has already been rejected.

The implementation of a popular referendum on the basis of Article 26 of the Constitution is at present governed by Act No 91/2010, and such referendums have taken place twice, in 2010 and in 2011, without any sign of significant problems with respect to their *modus operandi*. Therefore, it does not appear justified to include more detailed provisions on the organisation of referendums in the Article.

Concerning Article 16

The Article proposes to amend Article 27 of the Constitution to bring it in line with applicable law and established case-law. The Article is not in need of elucidation.

Concerning Article 17

This Article of the Bill proposes to delete the first sentence of Article 29 of the Constitution, with reference to general consensus to the effect that the provision is in conflict with the principles of prosecutorial independence, cf. Article 18 of the Bill. Considering that it is foreseen to revoke the (formal) authority of the President to decide that an ongoing prosecution is to be discontinued, there is no reason to maintain the reference in the current third sentence of the Article to the discontinuation of a prosecution against a cabinet minister.

Concerning Article 18

This Article of the Bill proposes to delete the current provisions of Article 30 of the Constitution on the authority of the President to grant exemption from laws “in accordance with established practice”. The provision can be traced to the Danish Constitution of 1849 and has a historical basis that ceased to apply a long time ago. There is general agreement that it is appropriate to abolish the provision in its entirety. It is further proposed to replace the text of the current Article 30 with new substantive provisions relating to the organisation of prosecutorial authority, the independence of the Director of Public Prosecutions as the highest office of prosecutorial powers,

and the protection of the Director in the exercise of official functions. The substantive content of the Article is in line with the model-examples of the Constitutional Committee (2011) and Article 104 of the Bill submitted by the Constitutional Council (2011) and is not in need of elucidation.

Concerning Article 19

The first paragraph of this Article of the Bill foresees to fix in the Constitution the date on which a new parliament is to convene following a general election held pursuant to Article 35 of the Constitution, that is, to stipulate that parliament should convene on a specific date at the latest. The aim is for the Althing to meet at soon as reasonable and practicable after an election, i.e. on the fourth Tuesday following the election. The proposal is based on the model-examples of the Constitutional Committee and the bill submitted by the Constitutional Council, with the modification that instead of stipulating a deadline of two weeks it is deemed practicable, after consultation with the Speaker of the Althing, to stipulate the fourth Tuesday, considering that elections are usually held either on a Saturday or on a Sunday.

It is important for a new parliament to convene as soon as possible to decide on its own administration and organisation, including by electing the Speaker of the Althing, in order to become operational. The provision thus does not intend to imply that the Althing must commence regular parliamentary business on the date in question, any decision to that effect being made by parliament itself under the direction of the Speaker. However, when the Althing has been opened provisions such as those of the third paragraph of the Article become applicable, after which the Speaker of the Althing may at any time summon parliament to meet, either at the Speaker's own initiative or as requested by a majority of members, or by the cabinet. Members retain their mandates in every case until the date of the next general election, which means that no dissolution of parliament occurs until that time. This applies irrespectively of the division of the parliamentary term into separate legislative sessions. It goes without saying that the provision does not exclude that parliament is summoned to convene before the aforementioned date in special circumstances.

The second paragraph of the Article proposes an amendment whereby the annual opening date of the Althing (the "regular annual parliamentary session") is henceforth to be decided by the standing orders of parliament, releasing parliament from a constitutional restriction in this regard. In the same way, it is proposed that any decision on the division of the parliamentary term into legislative sessions be that of parliament itself, although this arrangement does not change the fact that the parliamentary session lasts the entire year and in effect continuously until a new general election is held and the members lose their mandates. This also entails that it is left to parliament to make its own decisions on whether and when an item of business lapses within the parliamentary term, the authority of parliament in this respect being restated in Article 20 of the Bill. The provision is in full alignment with the model-examples of the Constitutional Committee and the bill submitted by the Constitutional Council.

The third paragraph of the Article proposes, first, that a decision to adjourn the meetings of the Althing should be made by parliament itself. Thus, instead of the meetings of the Althing being adjourned by presidential decree on the advice of the Prime Minister (although in practice this usually happens after the Althing has voted a resolution on the matter pursuant to the second sentence of Article 23 of the Constitution) it is foreseen that holders of executive power will henceforth have no involvement in a decision to adjourn the meetings of parliament. The wording of the provision indicates that the Althing is most likely to adjourn its meetings by resolution, but this would be further regulated by legislation providing for the standing orders of parliament. The second sentence of the third paragraph of the Article proposes that the Speaker of the Althing be authorised to reconvene parliament whenever he/she considers this necessary. This is consistent with the provision of Article 52 of the Constitution stipulating that the Speaker of the Althing "presides over its proceedings". It is further proposed that the Speaker should reconvene parliament if requested to do so by a majority of members or by the cabinet. The provision mostly follows the model-examples of the Constitutional Committee and the bill submitted by the Constitutional Council, which were based on the premise that it was inconsistent with the principle of parliamentary autonomy to entrust the executive branch with the formal decision to convene parliament, as happens under the current rules. Thus, the amendment is in alignment with the

general aim of the Constitutional Council to strengthen the Althing's position *vis-à-vis* the holders of executive power.

Concerning Article 20

Although the second paragraph of Article 19 of the Bill provides that the Althing is to decide autonomously on the organisation of the parliamentary term and its division into legislative sessions, it is considered appropriate to remove all doubt that a bill of law should lapse automatically only at the close of the parliamentary term, unless otherwise provided by the standing orders of parliament.11 Accordingly, parliament has indisputable power to decide whether to preserve the current rule to the effect that bills lapse automatically at the close of the legislative session concerned.

Concerning Article 21

It is foreseen that the provisions of Article 6 on the length of the term of the President of Iceland and term limits, as well as those of Article 7 on the election of a new President in the event of the death or resignation of an incumbent President prior to the expiry of the term of office, cf. Articles 3 and 4 of the Bill, will apply from the next presidential election to be held after the entry into force of the law. The length of the term of the President in office on the entry into force of the law would therefore change only minimally. However, the Article clearly states that the timing of the next presidential election is to be determined in accordance with Article 3 of the Bill, that is, that the election is to be held in May or June instead of in June or July of the term of the president in office on the entry into force of the law. The term of office of the President in force when the law comes into force would therefore end on 30th June instead of on 31st July. In other respects the Article is not in need of elucidation.

11 Note: The current Article 44 of the Constitution is understood as postulating that a Bill automatically lapses at the end of each parliamentary session, not each parliamentary term.