Strasbourg, 25 February 2020 **CDL-EL(2020)001***

Engl. only

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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

DRAFT REVISED GUIDELINES ON THE HOLDING OF REFERENDUMS

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INTRODUCTION

1. In 2006-2007, the Council for Democratic Elections and the Venice Commission adopted the Code of Good Practice on Referendums (CDL-AD(2007)008rev-cor) - the Guidelines at the 18th meeting of the Council (Venice, 12 October 2006) and the 68th plenary session of the Commission (Venice, 13-14 October 2006) and the explanatory memorandum at the 19th meeting of the Council (Venice, 16 December 2006) and the 70th plenary session of the Commission (Venice, 16-17 March 2007).

2. On 23 November 2007, by Recommendation 1821(2007), the Standing Committee, acting on behalf of the Parliamentary Assembly of the Council of Europe, asked the Committee of Ministers to adopt a recommendation to member states endorsing the Code of Good Practice on Referendums. By Resolution 1592(2007), the Assembly decided to forward the Code of Good Practice to national delegations and parliaments so that it could be applied in Council of Europe member states without delay.

3. At its 14th plenary session (Strasbourg, 30 May – 1 June 2007), the Congress of Local and Regional Authorities of the Council of Europe approved the Code of Good Practice on Referendums.[1]

4. On 27 November 2008, at the 1042bis meeting of the Ministers' Deputies, the Committee of Ministers adopted a Declaration on the Code of Good Practice on Referendums for the purpose of inviting public authorities in the member states to be guided by the Code of Good Practice on Referendums.

5. In October 2016, the Venice Commission addressed recurring concerns with respect to a number of referendums in member states, relating both to the procedure for launching referendums and to the substance of the proposed changes. Regarding the procedure, the Commission first emphasised the need for referendums to respect the Rule of Law and, in particular, to comply with the legal system as a whole, especially with the procedural rules on constitutional revision. It also warned against the use of referendums to bypass important constitutional safeguards, such as the requirement for a qualified majority in parliament. As regards the substance of the proposed changes, the Commission was concerned that most of these referendums were aimed at concentrating powers and reducing democratic control by parliament.[2] On that basis, the Commission initiated the process of revision of the Code of Good Practice on Referendums.

6. In 2017, the Council for Democratic Elections and the Venice Commission adopted a questionnaire (CDL(2017)022rev2) asking for information on recent developments in the member states in the field of referendums. The replies to the questionnaire can be found in the Study on Referendums – Replies to the Questionnaire (CDL(2018)042).

7. In parallel, the Parliamentary Assembly of the Council of Europe drafted a report entitled "Updating guidelines to ensure fair referendums in Council of Europe member States" (Doc. 14791) which led to Resolution 2251(2019) entitled "Updating guidelines to ensure fair referendums in Council of Europe member States" adopted on 22 January 2019. In this Resolution, the Assembly first "welcomes the fact that a process for updating the 2007 Code has been initiated by the Venice Commission and invites the latter to take into account, in the revised Code, the following general principles:

[1] Resolution 235 (2007).
[2] CDL(2017)002, p. 3.

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3.1 referendums should be embedded in the process of representative democracy and should not be used by the executive to override the wishes of parliament or be intended to bypass normal checks and balances;
3.2. proposals put to a referendum should be as clear as possible and subject to detailed prior scrutiny, including by parliament, to ensure that they reflect voters' concerns and express their wishes;
3.3. the campaign should ensure a balance between the different sides and allow voters access to balanced and quality information in order to be able to make an informed choice."

8. The present report does not intend to determine whether and under which circumstances recourse to referendums is desirable as such. The answer to this question varies according to the nature of the constitutional system and tradition. It belongs to national constitutional law to establish whether referendums are at all foreseen, what their scope is, and what procedure must be followed to hold them. However, a number of guarantees are necessary to ensure that they genuinely express the wishes of the electorate and do not go against international standards in the field of human rights, democracy and the rule of law.

9. In the constitutional systems of Council of Europe Member States, decision-making ordinarily occurs through mechanisms of representative democracy, whereas recourse to referendums tends to complement such decision-making processes. This is true even in countries where legislation is generally open to referendum. In view of the foregoing, referendums and representative democracy should be harmoniously combined. In particular, recourse to direct democracy should not exclude the involvement of the representative bodies in the process. Furthermore, recourse to a referendum should not be used to upset constitutional checks and balances, e.g. be used by the president or the government in order to circumvent parliamentary amendment procedures.[3]

10. Participatory democracy and, in particular citizens' assemblies, are also complementary to representative democracy; they will not be addressed in this report. The introduction of such assemblies does not exclude nor imply referendums, and vice versa: they can be a step in a process which will lead to a referendum.

11. The present Code applies to referendums at the different levels of the state structure (national, regional, local). However, it is mainly focused on national referendums. Its general rules are to be adapted to the reality of local and regional referendums, in conformity with national constitutional traditions.

12. National law may provide for referendums:
- on specifically worded draft amendments to a legal text or a specific proposal to abrogate existing provisions of this text;
- on a question of principle;[4]
- on a concrete proposal which does not have the form of specifically worded amendments, known as a "generally worded proposal"[5].

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[3] Report on Constitutional Amendment (CDL-AD(2010)001), par. 189; Resolution 2251(2019), paras 3.1-3.3.
[4] For example: "are you in favour of introducing a presidential system of government?"
[5] For example: "are you in favour of reducing the number of seats in Parliament from 300 to 200?"

13. Issues submitted to referendum may be of a constitutional, legislative or even administrative nature (especially at the local level). They may concern (the ratification of) a treaty.[6] They can also address territorial issues, such as the creation or merger of subnational entities as well as secession, in the rare cases where it is allowed by the national Constitution.[7]

14. Distinctions have also to be made between mandatory referendums (imposed by the Constitution or legislation) and optional referendums (at the request of an authority, a minority in parliament or part of the electorate) as well as, according to the effect of the referendum, between legally binding and consultative referendums. Consultative referendums binding the executive – in the sense that it has to introduce a draft in parliament – are an intermediate category.

15. The Code of Good Practice on Referendums includes the Guidelines on the Holding of Referendums as well as an Explanatory Memorandum, which will, when necessary, refer to the various items of the Guidelines in order to elaborate on their content and background.

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[6] For instance, the 2005 French European Constitution referendum.
[7] Cf. Referendums in Europe – An Analysis of the Legal Rules in European States, CDL-AD(2005)034, pp. 10-11 and 32.

GUIDELINES ON THE HOLDING OF REFERENDUMS

I. Principles of Europe's electoral heritage

1. Universal suffrage

1.1. Rule and exceptions

Universal suffrage, in principle, means that all persons have the right to vote. This right may, however, and indeed should, be subject to certain conditions. Such conditions, where the right to vote in referendums is concerned, should be identical to the requirements for voting in elections:

a. Age:
the right to vote must be subject to a minimum age, but must be acquired, at the latest, at the age of majority;

b. Nationality:
i. a nationality requirement may apply;
ii. however, it would be advisable for foreigners to be allowed to vote in local referendums after a certain period of residence.

c. Residence:
i. a residence requirement may be imposed; residence in this case means habitual residence;
ii. a length of residence requirement may be imposed on nationals solely for local or regional referendums;
iii. the requisite period of residence should be reasonable and, as a rule, should not exceed six months;
iv. the right to vote in referendums should be granted to citizens residing abroad under the same conditions as for elections.

d. Deprivation of the right to vote:
Provision may be made for depriving individuals of their right to vote in referendums, but only subject to the following cumulative conditions:

i. it must be provided for by law;
ii. the proportionality principle must be observed;
iii. the deprivation must be based on mental incapacity or a criminal conviction for a serious offence;
iv. furthermore, the withdrawal of political rights or finding of mental incapacity may only be imposed by express decision of a court of law.

1.2. Electoral registers

Fulfilment of the following criteria is essential if electoral registers are to be reliable:

a. electoral registers must be permanent or refer to a register that is constantly updated (population register or register of births, marriages and deaths);

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b. there must be regular updates, at least before every referendum. Where voters are not registered automatically, registration must be possible over a relatively long period of time;

c. electoral registers must be public;

d. there should be an administrative procedure – subject to judicial control – or a judicial procedure, allowing for the registration of a voter who was not registered; the registration should not take place as a result of a decision taken by the polling station on election day;

e. a similar procedure should allow voters to have incorrect inscriptions amended within a reasonable time;

f. provision may be made for a supplementary register as a means of giving the vote to persons who have moved or reached statutory voting age since the final publication of the register.

2. Equal suffrage

2.1. Equal voting rights

Each voter has one vote on each question submitted to referendum.[8]

2.2. Equality of opportunity

a. Equality of opportunity must be guaranteed for the supporters and opponents of the proposal being voted on. This implies a neutral attitude by administrative authorities, in particular with regard to:

i. the referendum campaign;
ii. coverage by the media, in particular by the publicly owned media;
iii. public funding of campaign and its actors;
iv. billposting and advertising;
v. the right to demonstrate on public thoroughfares.

b. In public radio and television broadcasts on the referendum campaign, equal access should be ensured to the proposal's supporters and opponents.

c. Balanced coverage must be guaranteed to the proposal's supporters and opponents in other public mass media broadcasts, especially news broadcasts. Account may be taken of the number of political parties supporting each option or their election results.

d. Equality must be ensured in terms of public subsidies and other forms of backing. Equality may be guaranteed either by:

i. Equal financing of political parties. Equality may be strict or proportional. If it is strict, political parties are treated on an equal footing irrespective of their current parliamentary strength or support among the electorate. If it is proportional, political parties must be treated according to the results achieved in the elections. In any case, both supporters and opponents of the proposal (or alternatives) should have an adequate financing;

[8] This is without prejudice to para. I.2.3 on minority issues.

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ii. Equal financing of organisations (including political parties) which support any of the alternative answers to the question put to the referendum.

e. Financial or other conditions for radio and television advertising must be the same for the proposal's supporters and opponents.

f. In conformity with freedom of expression, legal provision should be made to ensure that there is a minimum access to privately owned audio-visual media, with regard to the referendum campaign and to advertising, for all participants in the referendum.

g. Political party and referendum campaign funding must be transparent, including in-kind contributions and third-party campaigning. Campaign funding should become public at least prior to the referendum.

h. The principle of equality of opportunity can, in certain cases, lead to a limitation of spending by political parties and other parties involved in the referendum debate, especially on advertising. It can also lead to a limitation of individual donations as well as of the total amount of all donations.

i. Sanctions must be imposed in the case of breaches of the duty of neutrality as expressed in the previous paragraphs.

2.3. Equality and national minorities

a. Rules that provide for different calculation of votes as an exception to the normal vote-counting rules in the case of a referendum concerning the situation of national minorities do not, in principle, run counter to equal suffrage. The principle of proportionality must be respected.

b. Voters must not find themselves obliged to reveal their membership of a national minority.

3. Free suffrage

3.1. Freedom of voters to form an opinion

a. Administrative authorities must observe throughout the campaign period their duty of neutrality (see I.2.2.a. above), which is one of the means of ensuring that voters can form an opinion freely.

b. The use of public resources by the authorities for campaigning purposes must be prohibited. Political parties and their representatives, including those who are elected representatives or hold a public office, are entitled to take actively part in the campaign. Particular duties of reserve may apply to the persons belonging to the public authority responsible for the organisation or supervision of the referendum.

c. The question put to the vote must be clear and comprehensible; it must not be misleading; it must be unbiased, not suggesting an answer; voters must be informed of the effects of the referendum; voters must be able to answer the questions asked solely by yes, no or a blank vote. It is suitable that the questions follow a fixed format. Multiple-option questions can be envisaged (see below III.5.b).

d. An impartial body (see II.4.1 below) must exercise prior scrutiny on the clarity of the question.

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e. The impartial body must provide balanced information. This implies that the text submitted to a referendum and an explanatory report or balanced campaign material from the proposal's supporters and opponents should be made available to electors sufficiently in advance, as follows:

   i. they must be published in the official gazette sufficiently far in advance of the vote;
   ii. they must be sent directly to citizens and be received sufficiently far in advance of the vote;
   iii. the explanatory report must give a balanced presentation not only of the viewpoint of the executive and legislative authorities or persons sharing their viewpoint, but also of the opposing one.

f. The above information must be available in all the official languages and in the languages of the national minorities.

g. Transparency must be ensured, in particular concerning campaign funding. Voters should also be able to identify the origin of campaign messaging. Internet intermediaries should provide access to data on paid political advertising.

h. Sanctions must be imposed in the case of breaches of the duty of neutrality and of voters' freedom to form an opinion, including breaches of the finance campaign rules and other campaign regulations.

3.2. <u>Freedom of voters to express their wishes and action to combat fraud</u>

a. Voting procedure

i. voting procedures must be readily understandable by voters;
ii. voters should always have the possibility of voting in a polling station. Other means of voting are acceptable under the following conditions (iii-vi):
iii. postal voting should be allowed only where the postal service is safe and reliable; the right to vote using postal votes may be confined to people who are in hospital or imprisoned or to persons with reduced mobility or to electors residing abroad; fraud and intimidation must be ruled out;
iv. electronic voting should be in conformity with Committee of Ministers' Recommendation CM/Rec(2017)5 on standards for e-voting. In particular, it should be used only if it is secure, reliable, efficient, technically robust, open to independent verification and easily accessible to voters; the system must be transparent; unless channels of remote electronic voting are universally accessible, they shall be only an additional and optional means of voting;
v. very strict rules must apply to voting by proxy; the number of proxies a single voter may hold must be limited;
vi. mobile ballot boxes should only be allowed under strict conditions that avoid all risks of fraud;
vii. at least two criteria should be used to assess the accuracy of the outcome of the ballot: the number of votes cast and the number of voting slips placed in the ballot box;
viii. voting slips must not be tampered with or marked in any way by polling station officials;
ix. unused and invalid voting slips must never leave the polling station;
x. the presence of observers appointed by the parties or by other groups that have taken a stand on the issue put to the vote must be permitted during voting and counting;

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xi. military personnel should vote at their place of residence whenever possible. Otherwise, it is advisable that they be registered to vote at the polling station nearest to their duty station;
xii. counting should preferably take place in polling stations;
xiii. counting must be transparent. Observers, representatives of the proposal's supporters and opponents and the media must be allowed to be present. These persons must also have access to the records;
xiv. results must be transmitted to the higher level in an open manner;
xv. electoral fraud must be punished with effective sanctions.

b. Freedom of voters to express their wishes also implies:

i. That the executive must organise all referendums provided for by the legal order;
ii. compliance with the procedural rules; in particular, referendums must be held within the time-limit prescribed by law;
iii. the right to accurate establishment of the result by the body responsible for organising the referendum, in a transparent manner, and formal publication in the official gazette.

4. Secret suffrage

a. For the voter, secrecy of voting is not only a right, but also a duty. Non-compliance must be punishable by disqualification of any ballot paper whose content is disclosed. Secret suffrage does not restrict the voters' right to express their view outside the polling station.

b. Voting must be individual. Family voting and any other form of control by one voter over the vote of another must be prohibited.

c. The list of persons actually voting should not be published.[9]

d. There should be sanctions against the violation of the secret ballot.

II. Conditions for implementing these principles

1. The rule of law

The use of referendums must comply with the legal system as a whole. In particular, referendums cannot be held if the Constitution or a statute in conformity with the Constitution does not provide for them, for example where the text submitted to a referendum is a matter for parliament's exclusive competence.[10]

2. Respect for fundamental rights

Democratic referendums are not possible without respect for human rights, in particular freedom of expression and of the press, freedom of movement inside the country, freedom of assembly and freedom of association for political purposes, including freedom to set up political parties.[11]

[9] On access to the lists of those who have voted, see the Interpretative Declaration to the Code of Good Practice in Electoral Matters on the Publication of Lists of Voters Having Participated in Elections, CDL-AD(2016)028.
[10] On the respect of the hierarchy of norms, international law and Council of Europe membership conditions, see below III.1.
[11] In particular, street demonstrations to support or oppose the text submitted to a referendum may be subject to notification: Any restrictions imposed on assemblies must have a formal basis in law and be based on one or

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3. Regulatory levels and stability of referendum law

a. Apart from rules on technical matters and detail (which may be included in regulations of the executive), rules of referendum law should have at least the rank of a statute and not be adopted *ad hoc* for a specific referendum.

b. The fundamental aspects of referendum law should not be open to amendments to be applied during the year following their enactment, or should be written in the constitution or at a level superior to ordinary law.

c. Adoption of legislation on referendums should take place by broad consensus after extensive public consultations with all the stakeholders.

d. Fundamental rules include, in particular, those concerning:
- the composition of electoral commissions or any other body responsible for organising the referendum
- the franchise and electoral registers;
- the procedural and substantive validity of the text put to a referendum;[12]
- the effects of the referendum (with the exception of rules concerning matters of detail);
- the participation of the proposal's supporters and opponents to broadcasts of public media.

4. Procedural guarantees

4.1. Organisation and supervision of the referendum by an impartial body

a. An impartial body must be in charge of organising the referendum. Unless there is a longstanding tradition of administrative authorities' impartiality in electoral matters, independent commissions must be set up at all levels, from the national level to polling-station level.

b. The central commission or another impartial authority should have the following powers:
- to check the validity of any proposed referendum question and approve its final wording;
- to provide official information – including, when voting on a specifically-worded proposal, the legal text submitted to referendum;
- to make official public statements in real time relating to violations or major infringements of the relevant rules;
- to supervise the conduct of the campaign, take all necessary measures to ensure that it is properly held;
- to enforce its decisions and to sanction possible breaches;
- prior to vote, and in order to avoid having to declare a vote totally invalid, to correct faulty drafting, for example:
  - when the question is obscure, misleading or suggestive;
  - when rules on procedural or substantive validity have been violated; in this event, partial invalidity may be declared if the remaining text is coherent; sub-division may be envisaged to correct a lack of substantive unity.[13]

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more of the legitimate grounds prescribed by relevant international and regional human rights instruments. *Note (to be mentioned in the Explanatory Report): see Guidelines on Freedom of Peaceful Assembly (3rd Edition, CDL-AD(2019)017, par. 25ff, 28).*

[12] See sections III.1 and III.2.

[13] See sections III.1 and III.2.

c. In case an independent body distinct from the central electoral commission is in charge of organising and supervising referendums, it should not imperatively be a permanent body in countries with few referendums, but legislation should define its composition *in abstracto.*

d. The central commission should include at least one member of the judiciary or other independent legal expert; it may include a representative of the Ministry of the Interior, as well as representatives of national minorities.

e. Political parties or supporters and opponents of the proposal must be able to observe the work of the impartial body. Membership of supporters and opponents may be limited to lower commissions, which are not permanent. Equality between political parties may be construed strictly or on a proportional basis (see I.2.2.d.).

f. The bodies appointing members of commissions must not be free to dismiss them at will.

g. Members of commissions must receive standard training.

h. It is desirable that commissions take decisions by a qualified majority or by consensus.

4.2. Observation of the referendum

a. Both national and international observers should be given the widest possible opportunity to participate in a referendum observation exercise.

b. Observation must not be confined to election day itself, but must include the assessment of the question put to the referendum, the referendum campaign and, where appropriate, the voter registration period and the signature collection period. It must make it possible to determine whether irregularities occurred before, during or after the vote. It must always be possible during vote counting.

c. Observers should be able to go everywhere operations connected with the referendum are taking place (for example, vote counting and verification). The places where observers are not entitled to be present should be clearly specified by law, and the reasons for such exclusion should be clearly stated.

d. Observation should cover respect by the authorities of their duty of neutrality.

4.3. An effective system of appeal

a. The appeal body in referendum matters should be either an electoral commission or a court, with full power to review the facts and the law. In any case, a final appeal to a court of law must be possible.

b. The procedure must be simple and devoid of formalism, notably for the admissibility of appeals.

c. The appeal procedure and, in particular, the powers and responsibilities of the various bodies should be clearly regulated by law, so as to avoid conflicts of jurisdiction (whether positive or negative). The law must specifically designate the competent body in each case.

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d. The appeal body must be competent to deal with the sphere covered by these guidelines, in particular with:

- the franchise and electoral registers;
- the completion of popular initiatives and requests for referendums from a section of the electorate;
- the procedural and, where applicable, substantive validity of texts submitted to a referendum: the review of the validity of texts should take place before the vote; domestic law determines whether such review is obligatory or optional;
- campaign financing issues;
- respect for free suffrage:
- the results of the ballot.

e. The appeal body must have authority to annul the referendum where irregularities may have affected the outcome. It must be possible to annul the entire referendum or merely the results for one polling station or constituency. In the event of annulment of the global result, a new referendum must be called.

f. All voters must be entitled to appeal. A reasonable quorum may be imposed for appeals by voters against the results of a referendum.

g. Time-limits for lodging and deciding appeals must be short.

h. The applicant's right to a hearing involving both parties must be protected.

i. Where the appeal body is a higher electoral commission, it must be able *ex officio* to rectify or set aside decisions taken by lower electoral commissions.

4.4. Funding

a. The general rules on the funding of political parties and electoral campaigns must be applied to both public and private funding, including the rules on transparency and limitation of spending and individual donations (see above I.2.2.g-h).

b. An impartial body should control campaign financing.

c. The use of public funds by the authorities for campaigning purposes must be prohibited.[14]

III. Specific rules

1. The substantive validity of texts submitted to a referendum

Texts submitted to a referendum must comply with all superior law (principle of the hierarchy of norms).

They must not be contrary to international law, to the Council of Europe's statutory principles (democracy, human rights and the rule of law) or to Council of Europe membership conditions. States may add further limitations.

Texts that contradict the requirements mentioned under III.2 and III.3 may not be put to the popular vote.

[14] See point I.3.1.b. above.

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2. The procedural validity of texts submitted to a referendum

Questions submitted to a referendum must respect:

- unity of form: the same question must not combine a specifically-worded draft amendment with a generally-worded proposal or a question of principle;

- unity of content: except in the case of total revision of a text (constitution, law), there must be an intrinsic connection between the various parts of each question put to the vote, in order to guarantee the free suffrage of the voter, who must not be called to accept or refuse as a whole, provisions without an intrinsic link; the revision of several chapters of a text at the same time is equivalent to a total revision;

- unity of hierarchical level: the same question should not simultaneously apply to legislation of different hierarchical levels.

3. Specific rules applicable to referendums held at the request of a section of the electorate and to popular initiatives

a. Everyone enjoying electoral rights is entitled to sign a popular initiative or request for a referendum.

b. The time-limit for collecting signatures (particularly the day on which the time-limit starts to run and the last day of the time-limit) must be clearly specified, as well as the number of signatures to be collected.

c. It is advisable to require a number of signatures which is sufficiently high to ensure that only questions which are of interest to a substantial part of the electorate will be put to referendum, thereby safeguarding the character of the referendum as complementary to representative democracy. On the other hand, the requirement of a sufficient number of proponents of a referendum should not be so high as to make the possibility of a referendum merely theoretical. Furthermore, this number should be proportional to the number of registered voters.

d. Everyone enjoying electoral rights must be entitled to collect signatures. This right may be extended to other categories of people.

e. If authorisation is required in order to gather signatures for popular initiatives or requests for a referendum on public thoroughfares, such authorisation may be refused only in specific cases provided for by law, on the basis of overriding public interest for public safety and in accordance with the principle of equality.

f. Payment from private sources for the collection of signatures for popular initiatives and requests for referendums should, as a rule, be prohibited. If permitted, it must be regulated, with regard to both the total amount allocated and the amount paid to each person.

g. Signatures must be checked, until it has been established beyond doubt that the number of valid signatures required by law has been collected or there are no more signatures to check.

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4. Parallelism in procedures and rules governing the referendum

a. When the referendum is legally binding:

i. For a certain period of time, a text that has been rejected in a referendum may not be adopted by a procedure without referendum.
ii. During the same period of time, a provision that has been accepted in a referendum may not be revised by another method.
iii. It is acceptable to exclude any new request for referendum on the same issue during this period.
iv. The above does not apply in the case of a referendum on partial revision of a text, where the previous referendum concerned a total revision.
v. The revision of a rule of superior law that is contrary to the popular vote is not legally unacceptable but should be avoided during the above-mentioned period.

b. When a text is adopted by referendum at the request of a section of the electorate, it should be possible to organise a further referendum on the same issue at the request of a section of the electorate, after the expiry, where applicable, of a reasonable period of time.

c. When a text is adopted by referendum at the request of an authority other than parliament, it should be possible to revise it either by parliamentary means or by referendum, at the request of parliament or a section of the electorate, after the expiry, where applicable, of the same period of time.

d. It is advisable for constitutional rules relating to referendums to be put to a referendum, compulsorily or at the request of a section of the electorate.

5. Voting modalities:

a. Most questions submitted to referendum will preferably allow replies only by yes, no or a blank vote (binary question).

b. A vote on two or more alternatives is, however, not excluded (multi-option referendum). For example:

i. Parliament may be entitled to put forward a counter-proposal to a popular initiative, which will be put to the popular vote at the same time.
ii. Two or more alternatives may be proposed.

In these cases:

i. the voting system should ensure that a text is accepted only if it obtains an absolute majority;
ii. if binary questions on each proposal are possible, it should be possible to vote “yes” or “no” to each of them;
iii. if several options are submitted to the vote simultaneously; voting for the *status quo* should be possible.

If more than one option obtains a majority,
i. the one with more votes could be applied, or
ii. a subsidiary question could be asked as to which one is to be applied, or
iii. (a) run-off(s) could be organised, or
iv. preferential (alternative) vote could be applied.

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6. Opinion of parliament

When a text is put to the vote at the request of a section of the electorate or an authority other than parliament, parliament must be able to give a non-binding opinion on the text put to the vote. In the case of popular initiatives, it may be entitled to put forward a counter-proposal to the proposed text (see above III.5.b.i). A deadline must be set for parliament to give its opinion: if this deadline is not met, the text will be put to the popular vote without parliament's opinion.[15]

7. Quorum and special majorities

a. It is advisable not to provide for:

i. a turn-out quorum (threshold, minimum percentage)

ii. an approval quorum (approval by a minimum percentage of registered voters),

b. An approval quorum or a specific majority requirement may be acceptable for referendums on matters of fundamental constitutional significance.

c. The requirement of a multiple majority (the majority of voters taking part in the referendum plus the majority in a specified number of entities) is acceptable in federal and regional states, in particular for constitutional revisions.

8. Effects of referendums

a. The effects of legally binding or consultative referendums must be clearly specified in the constitution or by law. After a consultative referendum, the executive or legislature should at least recommend a course of action.

b. Before the vote, the voters should be informed about the proposed follow-up to referendums on questions of principle or generally-worded proposals.

c. The procedure for follow-up to binding referendums on questions of principle or generally-worded proposals should be laid down in specific rules.

9. Date of the referendum

a. The absolute minimum period between calling a referendum and polling day should be four weeks. A considerably longer period of preparation is desirable, however, particularly if the topic has not already been subject to widespread public discussion. [The campaign period must not be shorter than for regular elections.]

b. The law should provide for a maximum period between the submission of signatures for a referendum or a popular initiative and the vote.

c. It is suitable not to hold elections and referendums on the same day if the referendum is about the institution facing election.

Draft - restricted

[15] See also below III.9.b.