

Instruments of direct democracy in the member states of the Council of Europe

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1. Foreword

1.1. Object of the study

Should the people's scope for action be limited to electing their representatives, or should it include the opportunity of deciding certain issues for themselves directly? And in the latter eventuality, how and by what formal means? These are questions which are constantly being considered by national parliaments. There are in fact many countries in Europe which already have some measure of direct democracy, and we are witnessing more or less worldwide the emergence of political pressures to introduce or strengthen instruments such as the referendum or popular initiative. Most of the new democracies in central and eastern Europe have chosen to include elements of direct democracy in their constitutions.

So it is altogether understandable that the Council of Europe's Committee on Parliamentary and Public Relations should decide to take a look at direct democracy. It found in the course of its survey that no comparative study yet exists of the instruments of direct democracy in Europe. The present report seeks to fill that gap, but it seeks also to provide inspiration for countries currently setting out along the road of direct democracy or for countries which are already well down that road but want to reform their institutions.

1.2. Prior questions

Given the object in view, namely to provide an in-depth picture of the current situation, this report reflects the answers to a number of specific questions. These were as follows:

- What types of institutions of direct democracy exist in the member states of the Council of Europe?

- How do they operate?
- What is the legal basis for popular votes?
- What kind of issues are put to a vote?
- Is the result of a popular vote legally binding?
- What criteria must be met for a text to be adopted (thresholds)?
- Who has the authority to initiate a referendum?
- Who decides on the wording of the question?
- Are voters briefed about the issues, and by whom?

1.3. Data used

The data on which this study is based were supplied by the member states of the Council of Europe themselves in their replies to a questionnaire. Twenty-eight¹ out of the thirty-two² delegations, plus Croatia, replied. I should like at this point to thank all those who took the time to complete the questionnaire, which was a lengthy one. I am also grateful to the Secretary of the Committee on Parliamentary and Public Relations for his valuable assistance and to Mr Dumeni Columberg, head of the Swiss delegation to the Parliamentary Assembly, without whose help this report could not have been compiled.

1.4. Definitions

Given that the terminology of direct democracy is not precise, I have ventured to use in my report a number of definitions which are borrowed from Swiss practice. Thus:

electorate: all persons eligible to vote in an election or referendum at national, regional or local level;

direct democracy: system whereby the people themselves take certain decisions by means of a vote;

1. Austria, Belgium, Bulgaria, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, San Marino, Slovakia, Slovenia, Spain, Sweden, Switzerland and the United Kingdom.

2. Since this study, six other countries have become members of the Council of Europe: Albania, Croatia, Latvia, Moldova, "the former Yugoslav Republic of Macedonia" and Ukraine.

authorities: parliament, government (including the president), the courts and civil service machinery;

legally binding result: result of a vote which has force of law in all circumstances;

non-legally binding result: result of a vote which is or is not incorporated into legal texts as the authorities see fit;

referendum: vote on a text put to the people by the authorities;

obligatory referendum: vote which is mandatory under the legal rules currently operative;

minority optional referendum: vote held at the instigation of a number of constituent states, a minority of members of parliament or a section of the electorate who wish the people to pronounce on a text produced by the authorities;

plebiscitary optional referendum: vote held at the instigation of a majority of members of parliament, the government or president who wish, but are not obliged, to seek the view of the people on a given subject;

popular initiative: instrument allowing a section of the electorate to submit to the authorities a text which will subsequently be put to a popular vote.

Clearly these definitions cannot encompass the whole range of instruments existing in Europe or take account of the specific peculiarities of every legal system (for example the very unusual system applying in the United Kingdom).

1.5. Structure of the study

The study begins with a breakdown of the various instruments of direct democracy, both by country and political level (national, federal state/ regional, local).

We then have three sections which deal with the obligatory referendum, the optional referendum and the popular initiative (at national level only).

Lastly we have a description of the procedures followed, and a brief consideration of the relationship between political systems and degrees of direct democracy.

2. The instruments of direct democracy, by country and political level

We needed first of all to ascertain which countries already had instruments of direct democracy and at what level (see Table 3 on p. 22). We differentiated between :

- a. the obligatory referendum ;
- b. the optional referendum with a pre-existing legal basis ;
- c. the optional referendum for which an *ad hoc* legal basis has to be created ; and
- d. the popular initiative. It should be noted that the data given indicate merely that the possibility of holding a referendum or initiative exists ; whether or not one has been held is unimportant here.

The Netherlands is the only country which has no institution allowing for the exercise of direct democracy. In Greece, the plebiscitary optional referendum is possible at national level only, and only at local level in Belgium. In Poland, where there are currently no rules on the procedure to be followed for a popular vote, a law is to be adopted shortly.

The obligatory referendum exists in barely half the twenty-nine countries which replied to the questionnaire. This instrument is more widespread at national level than at regional or local level. The optional referendum with a pre-existing legal basis is far commoner than the optional referendum requiring the creation of an *ad hoc* legal basis. As for the popular initiative, the prime instrument of direct democracy, this is virtually non-existent ; only Switzerland, Lithuania, Liechtenstein, Hungary and Slovakia have introduced it at national level, though it exists in nine countries at local level.

It transpires that contrary to common belief the instruments of direct democracy are not less widespread at national level than at regional or local level, except for the popular initiative. In Austria the regions of Burgenland, Upper Austria and Vorarlberg have the popular initiative at local level. In Finland the local council decides on matters for a local popular initiative. In Iceland one third of the electorate in a given local commune can ask for a vote on the proposed opening of an outlet selling alcohol. In the United Kingdom the local population must by law be consulted on certain issues, for example cinema openings or, in

Scotland, the sale of alcohol on Sundays. Since 1961 the people of Wales are consulted every seven years (initially by region, now by district) on Sunday pub opening. In Luxembourg, Section 35 of the Communes Act of 13 December 1988 states that a fifth of the electorate in communes with more than 3 000 inhabitants, and a quarter in other communes, may demand a vote on an issue of local interest (though the result is not legally binding). The arrangements for such a referendum will be laid down in a grand-ducal regulation.

Generally speaking, countries which have direct democracy at national level have it at regional or local level too.

As regards the effects of the vote, in thirteen countries the result is legally binding, in three countries it is not legally binding, in three other countries (Poland, Romania and Spain) it depends on the object of the vote and in one country (Iceland) the final decision is at the discretion of the authorities.

Sections 3, 4 and 5 deal only with votes held at national level.

3. The obligatory referendum

It is very clear from Table 3 that a referendum is obligatory at national level in fourteen countries on a certain number of questions.

What are the issues which make the holding of a referendum mandatory? It is essential to list them country by country here, since the situations vary so widely. In Italy, Article 132 of the constitution requires approval by a referendum for the creation of new regions. In Denmark, a referendum is obligatory for any revision of the constitution, to change the age of majority and, in some cases, to transfer powers to a supranational organisation. A referendum is obligatory in Croatia before the country joins any supranational organisation; and Spain, Hungary, Austria and Poland before any full revision of the constitution; and in Romania and Iceland, before any partial revision of the constitution. In Iceland, a referendum is also obligatory if the president refuses to ratify a law enacted by parliament. In Switzerland and Ireland, a referendum must be held prior to any revision of the constitution, whether full or not, to the signature of certain international treaties or to membership of a supranational organisation, and to any territorial modifications. In

Slovakia, the constitution stipulates that any union with another country or withdrawal from a treaty of union must be put to a referendum. In Lithuania, a referendum is obligatory for any revision of the constitution.

The result of an obligatory referendum is nearly always legally binding.

A number of countries have also introduced a minimum participation level and a required number of positive votes which determine whether or not the result is valid (irrespective of the percentage of yes votes).

In Italy a majority of the electorate has to have voted. In Denmark amendments to the constitution are approved only if there has been a participation rate of at least 40% (Article 88 of the constitution). In Croatia, Lithuania, Hungary and Slovakia the minimum participation rate has to be a majority of the electorate, whilst in Lithuania and Slovakia a text is adopted only if it is approved by a majority of the electorate. In Switzerland a joint majority of the electorate and the cantons is required for the adoption of a constitutional amendment. In Romania the minimum rate is fixed on a case by case basis.

4. The optional referendum

The optional referendum exists in twenty-five out of the twenty-nine countries (all except Belgium, Germany, Iceland and the Netherlands).

What are the issues which are put to a referendum?

In 1970 Italy introduced the “abrogative” referendum;¹ a referendum may not be held before a law comes into effect but only afterwards, with the intention of having it repealed in whole or in part. Referenda are not permitted on a number of subjects, notably fiscal or budgetary matters, amnesties and the quashing of convictions by a court, or the ratification of international treaties.² San Marino has a similar type of referendum, plus a referendum which allows the people to ratify laws pertaining to the authorities and principal powers of the state.

In Denmark certain laws and the ratification of international treaties are submitted to an optional parliamentary referendum, but certain subjects

1. In Italian law and practice this type of referendum is often the equivalent of a popular initiative. See relevant section.

2. See Article 75, paragraph 2, of the Italian Constitution.

may not be voted on in this manner, namely budgetary and fiscal laws, laws pertaining to the state and civil servants' pay, naturalisation, expropriation, laws needed to enable the state to discharge its international undertakings, and laws concerning the monarch and succession to the throne. There is also *de facto* a parliamentary referendum on the transfer of powers to a supranational organisation.

In Liechtenstein the range of issues open to a referendum is particularly wide, including revision of the constitution, all international treaties, any membership of a supranational organisation, any territorial modification, all laws and a number of decrees on public spending.

In Portugal an optional referendum may be held on any important question of national interest, including international treaties but excluding financial issues. The system is similar in Ireland where a referendum may be held on any law which is of special national importance. In Finland matters for a referendum are decided by parliament. In Luxembourg Article 51 of the constitution states that the electorate may be required to pronounce on subjects under certain conditions to be determined by law. In Spain the electorate may express its view on all important issues and on partial revisions of the constitution (Articles 92 and 167 of the constitution). In Switzerland an optional referendum may be held on all federal laws and certain international treaties.

In Poland the subject of an optional referendum has to be an issue of special interest to the state. Peculiar to the Polish system is the "pre-constitutional optional referendum" which allows a number of basic principles to be agreed before work starts on any change to the constitution. In Slovakia the range of issues open to a referendum is fairly wide and includes certain international treaties, membership of an international organisation, territorial modifications and other matters of national interest (with the exception of fundamental rights and financial questions). In Romania a referendum may be held on territorial modifications and other issues to be determined by legislation. In Greece the people may be asked to pronounce on certain laws, and in Lithuania on certain legislative provisions and questions of immediate concern to the state and the general public. In France a referendum on amendments to the constitution is effectively optional in that it is not necessary if they have the backing of three-fifths of the congress; the people may be consulted on a number of international treaties and certain laws. On 31 July 1995

the French parliament, meeting as a congress, adopted a constitutional amendment extending the scope of the optional plebiscitary referendum. In future the president of the French Republic – at the request of the government or of either of the parliamentary chambers – may also submit to a popular referendum important matters concerning economic and social policy as well as reforms in the public service.

Now to the question of who has the authority to initiate an optional referendum. Here too, the systems vary.

a. One possibility only: a referendum is initiated by one authority only

In Finland parliament decides by a majority vote on the holding of a referendum. In Spain one-tenth of the members of the congress or senate may call for the people to be consulted on a partial revision of the constitution. In Romania the president is empowered to decide that a referendum must be held. In Austria any legal text may be put to the people if the Nationalrat so decides or if a majority of its members so requests.

b. One possibility only: a referendum is initiated jointly by several authorities

In Denmark Article 42, paragraph 1, of the constitution stipulates that one-third of the members of the Folketing (60 out of 179) have three working days after the adoption of a law in which to decide that it should be put to the people. If a referendum is requested, the majority of parliament has five working days from adoption of the text in which to withdraw it, so that a popular vote becomes unnecessary and none is held. On matters concerning the transfer of powers to a supranational organisation, one-sixth of the members of parliament may initiate a popular vote, but here too, the proposal may be withdrawn, in this case by the government.

In Portugal it is the president who has the power to call a referendum, on a proposal from parliament or the government. In France, too, this power rests with the president, but there must first have been a proposal to this effect from the government or both chambers; on revisions of the constitution (full or partial) a referendum will be held only if the congress, meeting on a proposal by parliament, does not itself adopt

them by a three-fifths majority, which means that two-fifths of the members of the congress may demand a referendum. In Spain consultative referenda on important issues are decided on by the monarch after prior proposal by the prime minister and approval by parliament. In Poland the president is empowered to hold a referendum provided the senate approves. In Luxembourg this power is shared by the Grand Duke and the Chamber of Deputies, and a referendum requires legislation.

In Greece the organisation of a referendum is a tripartite affair: the Council of Ministers must first propose a referendum on an issue of national importance; a majority of parliament must approve it, and the president then takes the final decision. A similar procedure applies for draft legislation which has already been adopted (except for financial legislation): two-fifths of the members of parliament propose a referendum, three-fifths of them approve the proposal, and the president sets a timetable. In Ireland the holding of a popular vote must follow a complex procedure involving parliament, the president and the government (see Article 27 of the constitution).

c. Several possibilities: a referendum is initiated in more than one way

In Italy Article 75 of the constitution provides for a popular vote if 500 000 voters or five regional councils ask for one.

In Switzerland a law adopted by parliament may be put to the people if 50 000 voters or eight cantons so request. In Liechtenstein a decision to hold a referendum may either be taken by a majority of parliament, by 1 000 voters (laws) or 1 500 voters (constitutional amendments), or by three or four communes. In San Marino the system is similar, since 350 voters or five *giunte di castello* (parishes) may ask for an "abrogative" referendum.

In Slovakia a referendum may be requested either by a majority of parliament or at least 350 000 voters. Likewise in Lithuania, though the minimum number of voters there is only 300 000. In Hungary a referendum may be asked for by the government, the president, fifty members of parliament or 50 000 voters. In Austria a popular vote on partial revision of the constitution may be initiated by one-third of the members of the Nationalrat or Bundesrat. In Slovenia a referendum may be requested either by a majority of parliament – or also, in the

event of a constitutional reform, by a minority of parliament – or by at least 40 000 voters.

In the case of the optional referendum a distinction must be drawn between the referendum initiated by one or more authorities which were under no obligation to hold a vote (plebiscitary referendum), and the referendum which is demanded by a section of the electorate or by parliament and is somewhat akin to a veto (minority referendum). Table 1 which follows summarises the various possibilities.

The results of optional referenda are in principle legally binding except in Finland, Denmark (plebiscitary referendum), Spain (plebiscitary referendum), and Luxembourg.

In Austria, the outcome of a referendum decided by the parliament is obligatory. But, after a certain time, the parliament is free to discuss the issue again and to take a different decision (without referendum).

Table 1: Plebiscitary and minority referenda

	<i>Plebiscitary optional referendum</i>	<i>Minority optional referendum</i>
One possibility only : referendum initiated by a single authority	Finland, Romania, Slovakia, Lithuania, Austria (laws)	Denmark (laws), Slovakia, Lithuania
One possibility only : referendum initiated jointly by several authorities	France (laws), Spain, Poland, Luxembourg, Greece, Portugal, Ireland	France (constitution)
Several possibilities : referendum initiated in more than one way	Hungary, Slovenia	Spain (partial revision of the constitution), Switzerland, Italy, Liechtenstein, San Marino, Hungary, Austria (partial revision of the constitution), Slovenia

Table 2: Optional minority referendum: voters needed to initiate a referendum

<i>Country</i>	<i>Signatures required</i>	<i>Time-limit for collecting signatures (month)</i>	<i>Signatures required as % of total electorate</i>
Hungary	50 000	–	0,63
Italy	500 000	3	1
Liechtenstein	1 000 (laws) 1 500 (constitution)	1	7,2 10,7
Lithuania	300 000	2	12
San Marino	350	2	1,2
Switzerland	50 000	3	1,1
Slovakia	350 000	–	9,3
Slovenia	40 000	2	2,6

Eight countries have introduced a minimum participation rate. Thus in Italy, Slovakia, Lithuania, Hungary, Slovenia (in the event of an amendment to the constitution) and Poland at least half the electorate must have taken part for the result to be valid.¹ In San Marino the minimum is 25%. In Romania it is set by legislation on a case by case basis.

In ten countries an absolute majority is required for a text to be adopted under an optional referendum. Five countries have opted for a greater than absolute majority. In Denmark and Ireland a text is rejected only if a majority of those voting, who must, however, form at least 30% of

1. If a minimum participation rate of this kind were to be introduced in Switzerland hardly any constitutional amendments or draft laws would be adopted by popular vote, since the participation rate is rarely higher than 50% (see Appendix 9.3)

the electorate, have voted against the text. In Slovakia and Lithuania a majority of the electorate must have voted. In Romania the majority is set by legislation on a case by case basis.

5. The popular initiative

The popular initiative is the prime instrument of direct democracy, since it enables a section of the electorate to initiate a referendum on an issue of its own choosing, even if the authorities do not want one.¹ This option is available in just five countries: Switzerland, Slovakia, Lithuania, Hungary and Liechtenstein. The popular initiative should be distinguished from the legal one as seen in Italy, Austria, Spain, Hungary and San Marino, by which a given number of voters (50 000, 100 000, 500 000, 50 000 and 60 respectively) may put a proposal to parliament, but parliament's acceptance of it is required.

In Slovakia, Lithuania and Liechtenstein the number of signatures required to register a popular initiative is the same as for an optional referendum, namely 350 000, 300 000 and 1 000 (or 1500, depending on the case) respectively. The time-limits for collecting signatures are also the same. In Liechtenstein an initiative may also be registered by three communes. In Switzerland twice as many signatures (100 000) are needed for an initiative as for a referendum, though the promoters have six times longer to collect them, in other words eighteen months. Hungary has a similar system: 50 000 signatures for a referendum, 100 000 for a popular initiative, but no time-limit for the collection of signatures.

What types of subject may give rise to a popular initiative? In Switzerland, initiatives to revise the constitution may be formulated either as a general proposal or, in the case of a partial revision, as a ready-made text, but a proposal for full revision of the constitution must be couched in general terms only. In Slovakia there are several possibilities since both

1. Whilst a popular initiative may seek the repeal of legislation already in force, it is different from an "abrogative" referendum in that the latter, as its name suggests, aims solely to overturn legislation without offering the populace a chance to propose a text themselves. Nevertheless the "abrogative" referendum is regarded in Italy as having the same effect as a popular initiative, given that popular rejection of a law requires parliament to pass a new law which takes account of the wishes of those promoting the referendum.

approaches are permissible and the initiative may concern either a law, the constitution, membership of an international organisation, a territorial modification, the dissolution of parliament or dismissal of the president (though fundamental rights and financial matters may not be the subject of an initiative). In Lithuania an initiative may address a full or partial revision of the constitution or a particular piece of legislation. The same applies in Liechtenstein where an initiative may concern total or partial revision of the constitution (couched or formulated in general terms), a law, an international treaty, territorial modification or the dissolution of parliament.

As with the optional referendum, the popular initiative also requires a minimum participation rate in Slovakia, Lithuania and Hungary. In these three countries at least half the electorate must vote, and in Slovakia and Lithuania at least half the voters must vote yes for the initiative to be adopted. In Switzerland an initiative to revise the constitution must be approved by a majority of those voting and a majority of the cantons.

The results of popular initiatives are always legally binding.

Finally, the initiating threshold for a popular initiative is low only in Switzerland, both for it to be registered and for its result to be valid. In Liechtenstein only a majority of those voting is required, but for an initiative to be registered at least 7,2% of the electorate must be in favour in the case of a law, and 10,7% in the case of an amendment to the constitution. In Lithuania and Slovakia a high participation rate is required both for an initiative to be registered and for its result to be valid. These obstacles, and particularly the requirement that at least half the electorate (and not just those voting) must vote yes, reduces the effectiveness of this instrument accordingly.¹

6. Procedure

It is important to look at the wording of the text put before the people and the information which the authorities provide.

1. Historically speaking it is interesting to note that the thresholds were virtually the same in Switzerland during the period of the Reform Movement (1830-1848), when the right of initiative was gradually becoming established in the cantons.

In eleven countries the authorities provide the electorate with an information leaflet setting out the issues. In Italy this information is transmitted primarily through television.

Who has the authority to decide on the content of information leaflets? In Romania, Lithuania and Slovenia (3) it is parliament; in Switzerland, France and Liechtenstein (3) it is the government; in San Marino and Hungary (2) the civil service. In Denmark it is any one of these three, depending on the case. In Croatia it is a commission responsible for referenda; in Ireland it is the appropriate ministry, albeit subject to approval of the wording by the two chambers, which decides.

Who has the authority to decide what wording will appear on the ballot paper? In Finland, Switzerland, Romania, Lithuania, Great Britain and Austria (6) it is parliament; in France and Liechtenstein (2) it is the government and in Portugal and Greece (2) it is a joint decision of the government and parliament. In Croatia it is the aforementioned committee with responsibility for referenda which decides, in Hungary a constitutional committee. Poland has no specific rules, but it is generally accepted to be the authority initiating the referendum, that is either parliament or the president. In Slovakia it is either parliament, the government or the initiative committee.

Political parties receive financial help with their electoral campaigns virtually everywhere, but this is hardly ever the case for referenda. Lithuania is the only country which has any formal provision for this. In Finland the law may sanction funding by the state, whilst in Hungary it is parliament which decides on a case by case basis. In the United Kingdom, on the occasion of the only national referendum ever held there (on membership of the European Economic Community), the two main parties each received £125 000 from the state plus reimbursement of the cost of distributing a leaflet to all households. In Denmark the state provided funding for the campaign leading up to the referendum of 18 May 1993 on the Maastricht Treaty.

7. Links between political system and direct democracy

The population of the countries studied ranges from 24 000 (San Marino) to 81 million (Germany). There appears to be no direct correlation between a country's population (or size of its electorate) and the

number of its institutions of direct democracy. It is noteworthy, however, that with the exception of Italy only countries with fewer than 8 million inhabitants have introduced the prime instruments of direct democracy, namely the popular initiative or, in some cases, the minority optional referendum.

It is not possible to confirm the hypothesis that countries with a parliamentary system – whereby parliament can dismiss the government and the government can dissolve parliament – have fewer instruments of direct democracy. Significantly, however, those countries with the lowest initiating threshold for a popular vote, namely Switzerland and Liechtenstein, do not have a parliamentary system. In Lithuania and Slovakia, both of which have a high initiating threshold, it remains to be seen whether this is compatible with a parliamentary system. Texts adopted by referendum in Lithuania have to date dealt with matters on which there was a broad consensus,¹ whilst no referendum has yet been held in Slovenia and only one referendum has been held in Slovakia since 1994.

8. Summary and conclusions

This study offers an overview of the instruments of direct democracy in use in the various member states of the Council of Europe.

The data on which it is based are drawn from a questionnaire sent out to the member state delegations in summer 1994. Twenty-eight of the thirty-two countries replied, plus Croatia.

The following table gives a breakdown of the instruments of direct democracy for the countries in question, both by type and by the political level at which they are used.

1. Referendum of 9 February 1991 on independence (yes vote = 90,5% of votes cast, 76% of the electorate); referendum of 14 June 1992 on withdrawal of troops of the former Soviet Union (yes vote = 90,8% of votes cast, 68,7% of the electorate); referendum of 25 October 1992 on the draft of a new constitution (yes vote = 75,4% of votes cast, 56,8% of the electorate). On 23 May 1992 a draft law on the powers of the president was not adopted because the turnout was lower than the minimum participation rate: 69,5% of those voting said yes, but they were only 40% of the electorate. Turnout for the referendum of 27 August 1994 was even lower, with only 37% of the electorate voting.

Table 3: The various instruments of direct democracy in the member states of the instrument and political level

<i>Political level</i>	<i>National</i>	<i>Federal state/</i>
a. Obligatory referendum	Austria, Croatia, Denmark, Germany, Hungary, Iceland, Ireland, Italy, Lithuania, Poland, Romania, Slovakia, Spain, Switzerland (14)	Austria, Germany, Switzerland (5)
b. Optional referendum with pre-existing legal base	Austria, Bulgaria, Croatia, Denmark, Finland, France, Greece, Hungary, Ireland, Italy, Liechtenstein, Lithuania, Poland, Portugal, Romania, San Marino, Slovakia, Slovenia, Spain, Sweden, Switzerland (21)	Austria, Germany, Switzerland (4)
c. Optional referendum without pre-existing legal basis	Czech Republic, Denmark, Finland, Ireland, Liechtenstein, Luxembourg, Norway, Portugal, Sweden, United Kingdom (10)	Austria, Czech Rep, Denmark, Norway
d. Popular initiative	Hungary, Liechtenstein, Lithuania, Slovakia, Switzerland (5)	Austria, Germany, Switzerland (3)

In all, or virtually all countries, at least one of the instruments of direct democracy described above is formally enshrined in the constitution. The countries where direct democracy is the least developed are the Benelux countries, the United Kingdom, Norway, Finland, Sweden and the Czech Republic. Those where it is most developed are Lithuania, Slovakia, Hungary, Liechtenstein and Switzerland. Our survey reveals that contrary to common belief direct democracy is no less widespread at national level than at regional or local level, except for the popular initiative which is concerned primarily with local issues.

The obligatory referendum most commonly concerns a revision of the constitution, territorial modification or membership of a supranational organisation.

In the case of the optional referendum, the decision whether or not to hold it is most commonly taken by the authorities ("plebiscitary optional referendum", using the terminology employed in this report). Twelve countries have only the plebiscitary optional referendum; five countries have only the "minority" optional referendum (which can be initiated by a minority of members of parliament or a section of the electorate), and seven countries have both (see Appendix 9.1).

A further feature is whether a referendum can be initiated: *a.* by a single authority, *b.* by several authorities, *c.* under some other arrangements. Six countries come into category *a*, seven into category *b* and eight into category *c*.

The popular initiative, the prime instrument of direct democracy, is virtually non-existent at national level. Only five countries have it, and only Liechtenstein and Switzerland have given it a "low" initiating threshold (that is to say, the number of signatures and minimum participation rate required are relatively small).

The following conclusions may be drawn as to the geographical distribution of the instruments of direct democracy and the various forms in which it is encountered.

All or virtually all the member states of the Council of Europe have direct democracy, albeit to varying degrees. But ultimately the fact that elements of direct democracy exist in a country is less significant than the

rules which govern their use: in most countries the practical constraints are such that, with the exception of Switzerland and Liechtenstein, where they are commonplace, popular votes are invariably a major political event.

Usually it is the ruling majority which decides whether or not an issue should be put to a referendum. Only in Denmark, Slovakia, Lithuania, Hungary, Spain, France, Switzerland, Italy, Liechtenstein, San Marino and Slovenia is it possible under the system to initiate a referendum against the wishes of the ruling majority. One has to infer from this that in practice, direct democracy proceeds "from the top down" rather than "from the bottom up".

In general, when the ruling majority holds a referendum it does so for reasons of political expediency: thus the consultation exercise will address an issue of the national interest, where a simple decision by the government or parliament would lack the requisite legitimacy, or it will address an issue on which the government or ruling party is itself split (so that the people are asked to decide). A referendum may also be held instead of elections, when the government merely wishes to be sure that it still enjoys the confidence of the country. The number of referenda held on the question of European integration shows how seriously this issue was taken by many countries: between 1972 and 1984 the countries of western Europe held no fewer than eighteen votes on it.

Our appraisal of the forms of direct democracy prevalent in the countries of western and central Europe depends on what we understand by "democracy". On the one hand it is true that in theory, that is to say on paper, most member states of the Council of Europe have direct democracy in one form or another. In practice, however, the procedures in place do not allow the populace to have any real say in the holding of a popular vote. Existing institutions do little to encourage a system of direct democracy which would give a say in political decision-making to citizens who do not ordinarily have that say, because only in the rarest of cases do they allow a popular vote to be held if the ruling majority does not want one. It is fair to conclude that the popular vote continues to be a means for the government to exercise power rather than a means whereby the people can curb the government's power.

Appendices

9.1. The various forms of direct democracy in the member states of the

<i>Country</i>	<i>Population in 1993</i>	<i>Obligatory referendum</i>	<i>Optional referendum with pre-existing basis</i>	<i>Optional referendum with ad hoc legal basis</i>
Belgium	10 000 000	No	No	–
Bulgaria	8 459 723	No	Yes	No
Croatia	4 789 000	Yes	Yes	No
Czech Republic	10 334 013	No	No	Yes
Denmark	5 195 998	Yes	Yes	Yes
Finland	5 055 000	No	Yes	Yes
France	57 803 600	No	Yes	No
Germany	81 338 000	Yes	No	No
Greece	10 500 000	No	Yes	No
Hungary	10 277 000	Yes	Yes	No
Iceland	264 919	Yes	No	No
Italy	57 103 000	Yes	Yes	No

Lithuania	3 700 000	Yes	Yes	No
Luxembourg	400 000	No	No	Yes
Netherlands	15 341 000	No	No	No
Norway	4 300 000	No	No	Yes
Poland	38 418 100	Yes	Yes	No
Portugal	9 862 056	No	Yes	Yes
Romania	20 352 980	Yes	Yes	No
San Marino	24 000	No	Yes	No
Slovakia	5 330 044	Yes	Yes	No
Slovenia	1 989 408	No	Yes	No
Spain	40 000 000	Yes	Yes	No
Sweden	8 712 000	No	Yes	Yes
Switzerland	6 968 600	Yes	Yes	No
United Kingdom	55 500 000	No	No	Yes

Key: – = no data m = minority referendum p = plebiscitary referendum
Source : Council of Europe, *Survey of direct democracy* (as at February 1995).

9.2. Popular votes in the member states of the Council of Europe between January 1980 and August 1994

We asked member states of the Council of Europe to append to their questionnaires a list, with results, of popular votes held at national level since 1 January 1980. The tables below were compiled from these data and cover the period from early 1980 to summer 1994. (For popular votes prior to 1980 and their results, see Butler/Ranney).¹

Countries are listed in alphabetical order.

Austria

<i>Date</i>	<i>Object of vote</i>	<i>Yes vote (%)</i>	<i>Participation rate (%)</i>
12.06.1994	Membership of the European Union	66,6	82,4

Croatia

<i>Date</i>	<i>Object of vote</i>	<i>Yes vote (%)</i>	<i>Participation rate (%)</i>
19.05.1991	Referendum on the creation of a sovereign and independent Republic of Croatia	93,2	–

Denmark

<i>Date</i>	<i>Object of vote</i>	<i>Yes vote (%)</i>	<i>Participation rate (%)</i>
27.02.1986	Reform of the European Community (consultative referendum)	56,2	75,4
02.06.1992	Treaty on European Union	49,3	82,9
18.05.1993	Edinburgh agreement and Maastricht Treaty	56,7	86,6

1. David Butler/ Austin Ranney (Ed.): *Referendums around the world. The growing use of direct democracy* (Washington DC, 1994), pp. 265-284.

France

<i>Date</i>	<i>Object of vote</i>	<i>Yes vote (%)</i>	<i>Participation rate (%)</i>
06.11.1988	Future of New Caledonia	80	36,8
20.09.1992	Maastricht Treaty	51	69,7

Hungary

<i>Date</i>	<i>Object of vote</i>	<i>Yes vote (%)</i>	<i>Participation rate (%)</i>
26.11.1989	Date of the presidential election ;	50,5	54,0
	Outlawing of political organisations from the workplace ;	95,1	54,0
	Disclosure of the Communist Party's assets ;	95,4	54,0
	Disbanding of the militia	94,9	54,0
29.07.1990	Direct election of the president by universal suffrage	85,9	13,8*

* Vote invalid because participation rate was less than 50%.

Ireland

<i>Date</i>	<i>Object of vote</i>	<i>Yes vote (%)</i>	<i>Participation rate (%)</i>
07.09.1983	Banning of abortion	66,9	53,4
14.06.1984	Giving foreigners the vote	75,4	45,5
26.06.1986	Repeal of the ban on divorce	36,5	60,6
26.05.1987	Ratification of the Single European Act	69,9	43,9
18.06.1992	European Union	69,1	57,3
25.11.1992	"Right to life" (termination of pregnancy) ; Travel abroad(to secure an abortion) ; Information on clinics offering abortions	34,6 62,4 59,9	75,0

Italy

<i>Date</i>	<i>Object of vote</i>	<i>Yes vote (%)</i>	<i>Participation rate (%)</i>
18.05.1981	Repeal of the public order act ;	14,9	79,4
	Repeal of the law on bearing arms ;	14,1	79,6
	Abolition of life imprisonment ;	22,6	79,4
	Ban on abortion ;	32,0	79,4
	Ban on abortion (amended text)	11,6	79,4
09.06.1985	Repeal of a decree on wage indexing	45,7	77,9
08.11.1987	Authorities to select sites for nuclear power stations ;	80,6	65,1
	Abolition of subsidies to communes providing land for nuclear power stations ;	79,7	65,1
	Abolition of funding for foreign nuclear projects :	71,9	65,1
	Third-party liability of judges ;	80,2	65,1
	Abolition of provisions to make ministers answerable only to parliament	85,0	65,1
19.06.1989	Powers of the European Parliament (consultative referendum)	88,0	80,7
04.06.1990	Repeal of the law on hunting ;	92,2	43,4*
	Partial repeal of the law on hunting	92,3	42,9
	Repeal of the law on pesticide use	93,5	43,1
10.06.1991	Partial repeal of the electoral law	95,6	62,4
18.04.1993	Powers of the department of the environment ;	82,5	76,9
	Drugs ;	55,3	77,0
	Public funding of parties ;	90,3	77,0
	Management of the state saving banks ;	89,8	77,0
	Abolition of the ministry for state investment ;	90,1	76,9
	Election of the senate ;	82,7	77,1
	Abolition of the agriculture ministry ;	70,1	77,0
	Abolition of the ministry for tourism	82,2	76,9

* Because the requisite 50% quorum was not reached, the laws in question were not repealed despite the overwhelming yes vote.

Liechtenstein

<i>Date</i>	<i>Object of vote</i>	<i>Yes vote (%)</i>	<i>Participation rate (%)</i>
07.09.1980	Funding for a fine arts centre (optional referendum) ;	50,3	75,7
	Funding for a conference centre (optional referendum)	47,1	75,7
10.05.1981	Initiative on the majority clause	47,1	89,7
01.07.1984	Franchise for women	51,3	86,2
03.02.1985	Law on hunting (optional referendum)	37,5	68,5
02.06.1985	Increasing the number of members of parliament		
	Initiative I	40,0	71,5
	Initiative II	43,6	71,5
01.12.1985	Initiative on equal rights	23,3	70,9
	Counter-proposal by the Landtag	28,3	70,9
07.12.1986	Nationality act	52,0	78,6
13.09.1987	"Twice yes" initiative	62,9	54,1
24.01.1988	Increasing the number of mandates ;	51,7	69,0
	Law on professional insurance	51,4	69,0
02.10.1988	Repairs to the Gnalp-Steg tunnel (optional referendum)	53,8	55,6
19.03.1989	Initiatives for referendum on international treaties ;	43,2	64,9
	Health insurance funds act (optional referendum)	59,0	64,9
13.12.1989	Initiatives on supervision of the machinery of justice ;	55,1	51,1
	Initiative on the right of minorities to exercise supervision	58,3	52,0
21.10.1990	Taxation act	24,0	70,5
22.09.1991	Initiative on noise protection ;	20,3	69,1
	Initiative on the schools act (six-day week)	34,7	69,1
15.03.1992	Constitutional initiative concerning a referendum on international treaties	71,4	64,7

Liechtenstein (continued)

<i>Date</i>	<i>Object of vote</i>	<i>Yes vote (%)</i>	<i>Participation rate (%)</i>
28.06.1992	Lowering of the age of political majority (eligibility to vote and stand for election)	43,7	36,5
08.11.1992	Constitutional initiative to abolish the 8% quorum	32,3	53,6
	Constitutional initiative on the banning of discrimination	24,6	53,6
13.12.1992	Agreement on the European Economic Area	55,8	87,0
07.03.1993	Funding for the Landtag parliament building	20,4	59,5

Lithuania

<i>Date</i>	<i>Object of vote</i>	<i>Yes vote (%)</i>	<i>Participation rate (%)</i>
09.02.1991	Independence of Lithuania	90,4	84,5
23.05.1992	Introduction of the presidential system	69,4*	57,2
14.06.1992	Withdrawal of troops of the former Soviet Union	90,8	76,0
25.10.1992	Draft constitution	75,4	75,2
27.08.1994	Eight laws on the legality of certain earlier privatisations of the devaluation of investments and savings	31,0	36,9

* Text not adopted because the quorum of 50% of the electorate was not reached.

Poland

<i>Date</i>	<i>Object of vote</i>	<i>Yes vote (%)</i>	<i>Participation rate (%)</i>
29.11.1987	Economic reform Democratisation	66,0* 69,0*	44,28 46,26

* Text not adopted because the quorum of 50% of the electorate was not reached.

San Marino

<i>Date</i>	<i>Object of vote</i>	<i>Yes vote (%)</i>	<i>Participation rate (%)</i>
25.07.1982	Repeal of the law on loss of citizenship on marriage to a foreign national	42,0	69,8

Spain

<i>Date</i>	<i>Object of vote</i>	<i>Yes vote (%)</i>	<i>Participation rate (%)</i>
12.03.1986	Nato membership	52,5	59,4

Sweden

<i>Date</i>	<i>Object of vote</i>	<i>Yes vote (%)</i>	<i>Participation rate (%)</i>
23.03.1980	Nuclear power: – question 1 – question 2 – question 3	18,9 39,1 38,7	75,6

9.3. Popular votes in Switzerland since 1993

Year	Date	Object of vote	Type of text ¹	Participation rate (%)
1993	7 March	Increase in duty on fuel	Opt.	51,3
1993	7 March	Lifting of the ban on gambling houses	Obl.	51,2
1993	7 March	Initiative against animal experiments	Init.	51,2
1993	6 June	Initiative against military parade grounds	Init.	55,6
1993	6 June	Initiative against fighter aircraft	Init.	55,6
1993	26 Sept.	Federal decree against the misuse of weapons	Obl.	33,9
1993	26 Sept.	Change of canton for Laufonnais	Obl.	39,5
1993	26 Sept.	Date of the national day holiday	Init.	39,9
1993	26 Sept.	Measures against an increase in health insurance costs	Opt.	39,8
1993	26 Sept.	Measures on unemployment insurance	Opt.	39,7
1993	28 Nov.	Tax system (VAT at 6,2%)	Obl.	45,4
1993	28 Nov.	Contribution towards making good the federal financial deficit (6,5%)	Obl.	45,4
1993	28 Nov.	Support measures for the social security system	Obl.	45,4
1993	28 Nov.	Special taxes on consumption	Obl.	45,4
1993	28 Nov.	Initiative "On the prevention of alcohol-related problems"	Init.	45,5
1993	28 Nov.	Initiative "On the prevention of smoking-related problems"	Init.	45,5
1994	20 Feb.	Motorway tax disc	Obl.	40,8
1994	20 Feb.	Flat-rate levy on road haulage traffic	Obl.	40,8
1994	20 Feb.	Levy on road haulage traffic in proportion to engine capacity	Obl.	40,8
1994	20 Feb.	Initiative on protection of the Alpine regions	Init.	40,9
1994	20 Feb.	Revision of the air navigation act	Opt.	40,7
1994	12 June	Promotion of culture	Obl.	46,6
1994	12 June	Easier naturalisation	Obl.	46,8
1994	12 June	Peace-keeping (blue helmets)	Opt.	46,8
1994	25 Sept.	Abolition of the price cut on wheat	Obl.	45,5
1994	25 Sept.	Ban on racial discrimination	Opt.	45,9
1994	4 Dec.	Health insurance act	Opt.	43,8
1994	4 Dec.	Curbs on the legal rights of foreign nationals	Opt.	43,8
1994	4 Dec.	Initiative "For a healthy system of health insurance"	Init.	43,8

"Yes" votes	"No" votes	% "Yes"	Approval Cantons	Rejection No. of votes ²	Final result
1 259 373	1 051 067	54,5			approved
1 665 247	633 203	72,5	20 6/2	0	approved
1 651 333	634 758	27,8	0	20 6/2	rejected
1 249 893	1 390 812	44,7	6 2/2	14 4/2	rejected
1 074 661	1 435 744	42,8	3 2/2		rejected
1 539 373	245 026	86,3	20 6/2	0	approved
1 188 941	392 893	75,2	20 6/2	0	approved
1 492 285	289 122	83,8	20 6/2	0	approved
1 416 209	342 002	80,5			approved
1 225 069	515 113	70,4			approved
1 347 400	674 031	66,7	19 6/2	1	approved
1 163 887	852 439	57,7	15 6/2	5	approved
1 258 782	752 472	62,2	19 6/2	1	approved
1 212 002	786 396	60,6	17 6/2	3	approved
516 054	1 527 165	25,3	0	20 6/2	rejected
521 433	1 521 885	25,5	0	20 6/2	rejected
1 259 609	579 877	68,5	18 6/2	2	approved
1 324 242	509 222	72,2	20 6/2	0	approved
1 221 630	597 911	67,1	18 6/2	2	approved
954 491	884 342	51,9	13 6/2	7	approved
1 081 844	689 715	61,1			approved
1 059 029	1 018 188	51,0	10 2/2	10 4/2	rejected
1 114 158	994 457	52,8	9 2/2	11 4/2	rejected
899 626	1 203 736	42,8			rejected
1 288 697	706 379	64,6	20 6/2	0	approved
1 132 662	939 975	54,6			approved
1 021 175	950 360	51,8			approved
1 435 040	533 297	72,9			approved
460 674	1 504 477	23,4	20 6/2	0	rejected

1. Obl. = Obligatory referendum; Opt. = Optimal referendum; Init. = Popular initiative.

2. Number of cantons voting includes half cantons.

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