

BEFORE VOTING DAY

- Be aware of the plebiscite trap!
The origin of a referendum is important. An entirely presidential or governmental triggered process tends to be much more “unfree” and unfair than a constitutionally or citizen-triggered referendum.
- The democratic debate needs time!
The gap between the announcement of the referendum and voting day itself is critical and should be at least six months in duration.
- Money matters!
Without complete financial transparency during the campaign, unequal opportunities and unfair practices may prevail. Disclosure rules are extremely important; spending limits and state contributions can also be useful.
- The campaign needs guidance!
Equal access to media sources (principally public and electronic) as well as the balanced dissemination of information (e.g. a general referendum pamphlet to all voters) are vital aspects of fair referendum campaigns. These may be supervised by an independent body.

ON VOTING DAY

- Avoid referendums on election day!
Having a referendum on the same day as a general election tends to mix up party-politics and issue-politics. This should definitely be avoided, especially if a country is not used to referendums.
- Expand the voting “day” to a “period”!
Since a referendum is a process with various phases, the voting phase should be longer than just a single day. In order to make participation as easy as possible, citizens should be able to vote by ballot box, postal mail (and in the future even electronic mail) over a two week period.
- Keep it secret!
During the voting period, everybody has the right to express his / her will freely. This means in absolute secrecy and without briefings on events as they develop.

AFTER VOTING DAY

- Avoid unnecessary and special majority requirements!
A democratic decision is based on a simple majority of the votes cast. Turnout thresholds exceeding 25% of the electorate tend to provoke boycott strategies. In federal polities, however, a double majority requirement (voters plus states) is recommended.
- Non-binding decisions are non-decisions!
In many countries a referendum result is non-binding. This is a democratic contradiction in terms and creates an uncertain and unfair process. The role of parliament and government in the implementation of the result must be limited. A referendum decision can only be changed by another referendum decision.
- Guarantee a free and fair post-referendum period!
It is vital to have judicial safeguards in place. For example, each citizen could have the opportunity to appeal against a referendum decision in a constitutional court.

Initiative & Referendum Monitor

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The IRI Europe Toolkit for Free and Fair Referendums and Citizens' Initiatives

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INITIATIVE & REFERENDUM INSTITUTE EUROPE

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Introduction

“Direct Democracy is a way in which representative democracy can become truly representative.”

Dear Reader,

We are in middle of a democratic revolution. Since 1989 almost all new European constitutions have seen the inclusion of some form of initiative and referendum process – many existing constitutional laws have been amended with extended popular rights.

As such, practical experience with direct democracy has grown dramatically, with the number of nationwide referendums more than doubled. This, however, is only the beginning of a new era in which citizens will have the right to have their say on substantive issues much more often than in the past.

The most comprehensive democratic reforms are about to take place on the trans-national level, where the European Union of 25 member states is about to agree on its first Constitution which will replace the existing Treaties. However, in order to merit the noble label of “Constitution” it will not be enough to use the previous indirect ratification process through the national parliaments – in a (likely) majority of member states the citizens will have the last word in a referendum.

Introducing institutions of direct democracy on all political levels leads to a more finely tuned sharing of power. This is not welcomed by all. Some critics suggest that direct democracy would undermine representative democracy. However, as comparative research shows, this is a profoundly misleading and anachronistic assumption. On the contrary, modern direct democracy complements representative democracy and offers additional mechanisms for expressing the

popular will. Thus direct democracy is a way for representative democracy to become truly representative.

As the growing quantity of initiatives and referendums says little about the quality of direct democracy, our efforts will now be directed towards the conduct and design of the process itself. As an adjunct to the worldwide efforts to make electoral processes as free and fair as possible, IRI Europe has launched a programme to monitor initiative & referendum processes across Europe. For this purpose the institute has - in cooperation with academic institutions, activists' organisations, political parties and media partners – developed basic requirements for free and fair referendums in Europe on Europe.

In this publication edited by Bruno Kaufmann we can now offer the very first overview of the 2003 EU accession referendum cycle, as well as the first list of key principles to be considered when conducting a popular vote on an issue. In addition, the “Initiative & Referendum Monitor 2004/5” also features the essential tools for everybody involved or interested in developing and practising modern direct democracy in the 21st century.

As this material will be updated and amended regularly we greatly appreciate any feedback from our readers.

Yours sincerely,



J. Niesco Dubbelboer

Chairman, Initiative & Referendum Institute Europe

**Amsterdam / London
22 March 2004**

Chapter One

MIND THE GAP

Why Europe needs more than referendums on the new treaty.

Chris Patten hates them, Pat Cox calls them the roughest form of politics and Schröder, Chirac and Blair prefer to avoid them. What are we talking about? Referendums, of course - the citizens' direct say on political issues. Since the mid 1990s referendums have become an important, but not sufficient, norm for advancing European integration. In this survey the Initiative & Referendum Institute Europe shows that Europe needs both more, and better, direct democracy, as well as a real transnational constitution.

Whenever Gerhard, Jacques and Tony meet with what they call "the public", they get a very clear message these days: "Give us a vote on the future of Europe!" Even before the political leaders of Germany, France and Great Britain had met formally with the Heads of State from the other 22 EU member states to negotiate a new Treaty, 88% of EU citizens had indicated that they viewed a constitutional referendum as "indispensable" or "essential" (Eurobarometer, November 2003).

What does this mean? Well, it shows that an overwhelming majority of Europeans want to have an additional instrument of democratic control. And many of them are fully aware of the implications: since 1972 more than 250 million citizens in 23 European states have had the opportunity to take part in one of the 41 countrywide referendums dealing with EU issues (cf. MAP 1 "The Experience"). In his famous interview with *Süddeutsche Zeitung*, EU enlargement Commissioner, Günther Verheugen, welcomed this development: "Treaties which change the constitution of a nation must be put to referendum." And whilst admitting that referendums are not

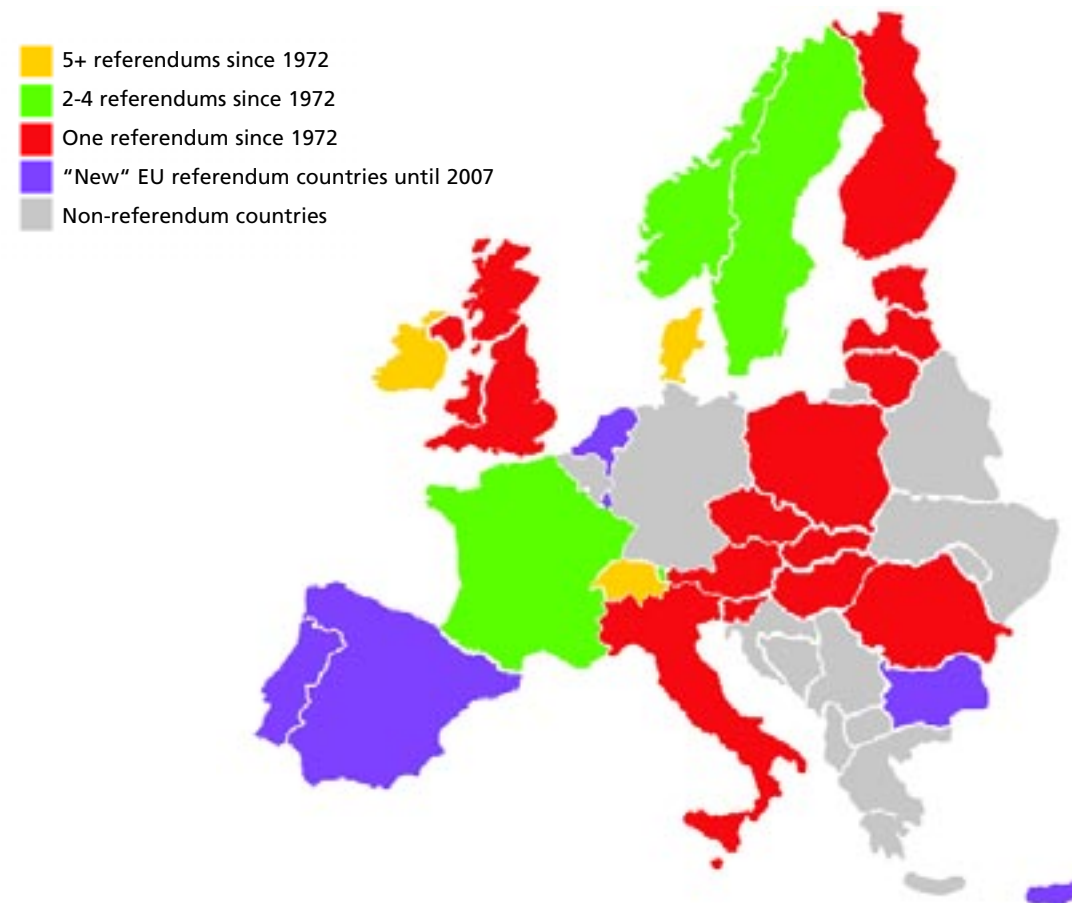
without inherent risks, Verheugen underlined that they "force the elites into dialogue with the people".

But even if politicians such as Verheugen are on the same wavelength as most Europeans, referendums are still seen by many leaders as a source of disturbance. "Referendums are in fact pure gambling," was the assessment of the EU spokesperson for the Danish Liberals, Charlotte Antonsen. And why? "There is no guarantee of a positive outcome, unfortunately," argues Antonsen, who does not want other EU countries to follow the Danish practice of letting citizens decide important steps in the European integration process: "If the other countries copy us, the EU will fall apart," she writes in her book *Towards the European Constitution*.

It is obvious that a growing gap exists between the rulers and the ruled in today's Europe, in which national governments are simultaneously leading their own countries and acting as the most important lawmakers at a European level. So even if Antonsen's position does not enjoy broader support among Europeans - not to mention the Danes - her mentality is shared by many other "decision-makers". Recently the EU commissioner for External Affairs, Chris Patten, admitted that he hated referendums, and the outgoing President of the European Parliament, Pat Cox, warned against making European political decisions dependent on the "roughest forms of politics: referendums".

Beloved by a majority of the citizens and feared by many politicians, referendums have undoubtedly become a big issue in European politics. This is no coincidence. Two developments in particular stand out in a clear trend towards more (direct) democracy. Firstly, the democratic revolutions in Eastern Europe led to no less than 27 new

Map 1 – Experience: Referendums on Europe in Europe 1972-2007



constitutions, most of which were approved by the people in referendums. Secondly, the acceleration of integration within the EU opened the floodgates to a wave of direct democracy with transnational implications: 31 of the 41 national referendums in Europe and about Europe have taken place since 1992 (cf. Table 1 – "The Record").

The first constitutional referendum took place in 1639 in the then independent American state of Connecticut. It was followed by similar referendums in Massachusetts and New Hampshire. In Europe, it was the French who took up this

American impetus: in August 1793, six million French voters were asked to decide on the new democratic national constitution (the Montagnard constitution). Almost 90% of them voted in favour of the revolutionary new rules, which included the right of 10% of the electorate to demand a referendum. But the Revolution spawned the Terror, and the French continue to have scant regard for direct democracy.

The idea of popular rights first found fertile ground in Switzerland and in many of the states of the USA. The most important phase

in the development of Swiss direct democracy occurred in the second half of the 19th century, whilst initiatives and referendums became established in the West of the USA around the beginning of the 20th century. It was only after the Second World War that instruments of direct democracy became important in many other countries of the world – notably Italy, New Zealand, South Africa and Mexico. Over the last 200 years, almost 1,400 national referendums have been held worldwide – half of them in the last 15 years.

Direct democracy as a complement to indirect democracy is neither a silly idealistic notion from the past, nor the hobby-horse of a small group of out-of-touch fantasists. On the contrary, it has shown itself to be an extremely practical idea – especially at the sub-national level. In 2003, almost 10,000 referendums were recorded in American communities alone, and since the introduction of local referendums in the southern German state of Bavaria in 1995, there have been more than 1,000 popular ballots. There is obviously no shortage of issues or active citizens in Bavaria, where the ruling Christian Democrats fought for decades against any direct democratic reforms. Eventually they discovered the vitalizing consequences of including citizens directly in politics.

The metamorphosis of Europe

Across the world, referendums are being held on an enormous range of issues: the growth of the state, constitutions, road-building projects, moral issues, town planning and taxes, to mention just a few. But the single overriding issue is the question of European integration. No-one could have predicted it.

The founding fathers of the EU did not think much of the idea of involving citizens directly in decision-making at the European political level. It was less the experience of the Second World War than the growing threat from the Cold War which meant that

the ideas for a democratic European federation developed in the 1940s were initially consigned to the waste-paper bin. As such, the process of integration during the 1950s was dominated by questions of economy and bureaucracy: the Monnet system did not provide for the direct involvement of the citizen.

It was another great Frenchman – President Charles de Gaulle – who was the first to formulate the challenge of a European referendum at the beginning of the 1960s: “Europe will be born on the day on which the different peoples fundamentally decide to join. It will not suffice for members of parliaments to vote for ratification. It will require popular referendums, preferably held on the same day in all the countries concerned.”

De Gaulle’s old idea was taken up by citizen activists all over Europe when the Convention on the Future of Europe delivered its famous draft proposal of a “Treaty establishing a Constitution for Europe” in mid-2003. The European Referendum Campaign, a network of more than 250 NGOs, demanded a referendum “in all member states simultaneously with the European Parliament elections in 2004”. When 13th June 2004 became an impossible date for a pan European referendum after Governments failed to reach an agreement on the new treaty in December 2003, the principle idea of holding such referendums only gained strength in the first half of 2004 (cf. Map 2 – The Outlook).

Increasingly aware of its growing transnational dynamics, many governments started a strategy aimed at preventing citizens from participating. In Germany the hard-pressed Chancellor attempted to divert attention with the announcement of an amendment to the basic law which would open up the political system to initiative and referendum processes. This will not take place until a later date, however. In France, President Chirac

Table 1 – The Record: 41 Referendums on Europe in Europe (1972-2003)

	Country	Final voting day	Subject	Proportion of "Yes" votes	Turnout	Requirements & Quorums	Type: who triggers? Binding?	Basis in the
1	France	23.4.1972	EEC expansion	68.28%	60.27%	No	President/ No	Art. 11 & 89
2	Ireland	10.5.1972	EC accession	83.1%	70.88%	No	Obligatory referendum/Yes	Art. 46.2
3	Norway	26.9.1972	EC accession	46.5%	79.2%	No	Parliament/ No	None
4	Denmark	2.10.1972	EC accession	63.29%	90.4%	Non-approval requirement 30%	Obligatory referendum/ Yes	Art. 20
5	Switzerland	3.12.1972	Free Trade Treaty with EEC	72.5%	52%	Double majority (cantons, people)	Obligatory referendum/ Yes	None
6	Britain	5.6.1975	EC member- ship	67.23%	64.03%	No	Government / No	None
7	Greenland	23.2.1982	EC member-ship	45.96%	74.91%	No	Parliament / No	None
8	Denmark	27.2.1986	Common market	56.24%	75.39%	Non-approval requirement 30%	Parliament/ Yes	Art. 42
9	Ireland	26.5.1987	Common market	69.92%	44.09%	No	Obligatory referendum/Yes	Art. 46.2
10	Italy	18.6.1989	European constitution process	88.06%	85.4%	No	Citizens' initiative / No	Art. 71
11	Denmark	2.6.1992	Maastricht Treaty	47.93%	83.1%	Non-approval requirement30%	Obligatory referendum/Yes	Art.20
12	Ireland	18.6.1992	Maastricht Treaty	68.7%	57.31%	No	Obligatory referendum/Yes	Art. 46.2
13	France	20.9.1992	Maastricht Treaty	51.05%	69.69%	No	President/ Yes	Art. 11
14	Switzerland	6.12.1992	EEA accession	49.7%	78%	Double majority (cantons, people)	Obligatory referendum/ Yes	Art. 89.5 & 123
15	Liechtenstein	12.12.1992	EEA accession	55.81%	87%	No	Parliament/ Yes	Art.66
16	Denmark	18.5.1993	Maastricht Treaty	56.77%	85.5%	Non-approval requirement30%	Parliament/ Yes	Art. 4
17	Austria	12.6.1994	EU accession	66.58%	82.35%	No	Obligatory referendum/Yes	Art.44
18	Finland	16.10.1994	EU accession	56.88%	70.4%	No	Parliament/ No	Art. 22
19	Sweden	13.11.1994	EU accession	52.74%	83.32%	No	Parliament/ No	Chap. 8 § 4
20	Åland-Islands	20.11.1994	EU accession	73.64%	49.1%	No	Parliament/ No	None
21	Norway	28.11.1994	EU accession	47.8%	89%	No	Parliament/ No	None
22	Liechtenstein	9.4.1995	EEC	55.88%	82.05%	No	Obligatory referendum/ Yes	Art.66 bis
23	Switzerland	8.6.1997	EU accession procedures. Blocking.	25.9%	35%	Double majority (cantons, people)	Citizens' initiative / Yes	Art. 121
24	Ireland	22.5.1998	Treaty of Amsterdam	61.74%	56.26%	No	Obligatory referendum/ Yes	Art. 46.2
25	Denmark	28.5.1998	Treaty of Amsterdam	55.1%	76.24%	Non-approval requirement 30%	Obligatory referendum/Yes	Art.20
26	Switzerland	21.5.2000	Bilateral treaties with the EU	67.2%	48%	No	Facultative referendum/Yes	Art. 141
27	Denmark	28.9.2000	Euro accession	46.87%	87.2%	Non-approval requirement 30%	Obligatory referendum/Yes	Art. 20
28	Switzerland	4.3.2001	EU accession procedures. Start.	23.2%	55%	Double majority (cantons, people)	Citizens' initiative /Yes	Art. 139
29	Ireland	7.6.2001	Treaty of Nice	46.13%	34.79%	No	Obligatory referendum/ Yes	Art. 46.2
30	Ireland	19.10.2002	Treaty of Nice	62.89%	48.45%	No	Obligatory referendum/ Yes	Art. 46.2
31	Malta	8.3.2003	EU accession	53.6%	91.0%	No	Parliament/No	None
32	Slovenia	23.3.2003	EU accession	89.6%	60.3%	Turnout 50%	Parliament/ Yes	Art. 169
33	Hungary	12.4.2003	EU accession	83.8%	45.6%	Approval 25%	Parliament/Yes	Art. 19 + 28
34	Lithuania	11.5.2003	EU accession	91.1%	63.4%	Turnout 50% Approval 33%	Parliament/ Yes	Art. 147
35	Slovakia	17.5.2003	EU accession	92.5%	52.2%	Turnout 50%	Parliament/ Yes	Art. 93.2
36	Poland	8.6.2003	EU accession	77.5%	58.9%	Turnout 50%	Parliament/ Yes	Art. 125
37	Czech Republic	14.6.2003	EU accession	77.3%	55.2%	No	Parliament/ Yes	Ad-hoc law
38	Estonia	14.9.2003	EU accession	66.8%	64%	No	Parliament/ Yes	Art. 105
39	Sweden	14.9.2003	Euro accession	42%	82.6%	No	Parliament/ No	Art. 4
40	Latvia	20.9.2003	EU accession	67%	72,5%	Turnout 50% of Turnout at last parl. elections	Parliament/ Yes	Art. 79
41	Romania	19.10.2003	Constitution Amendment for EU acc.	89.6%	55.2%	Turnout 50%	Parliament/Yes	Art. 3
*	23 countries:	41 votes	27 accession	Average 63% Yes	Average 67%	17 countries with specific majority requirements	Top-down: 23	7 votes without a constitutional basis
	18 EU	1983: 7	11 reform	9 x No	-83: 70.2		Bottom-up: 18	
	3 EFTA	84-93: 9	1 constitution	32 x Yes	- 93: 73.9			
	2 autonomous regions	94-03: 25	1 enlargement 1 withdrawal		- 03: 63			

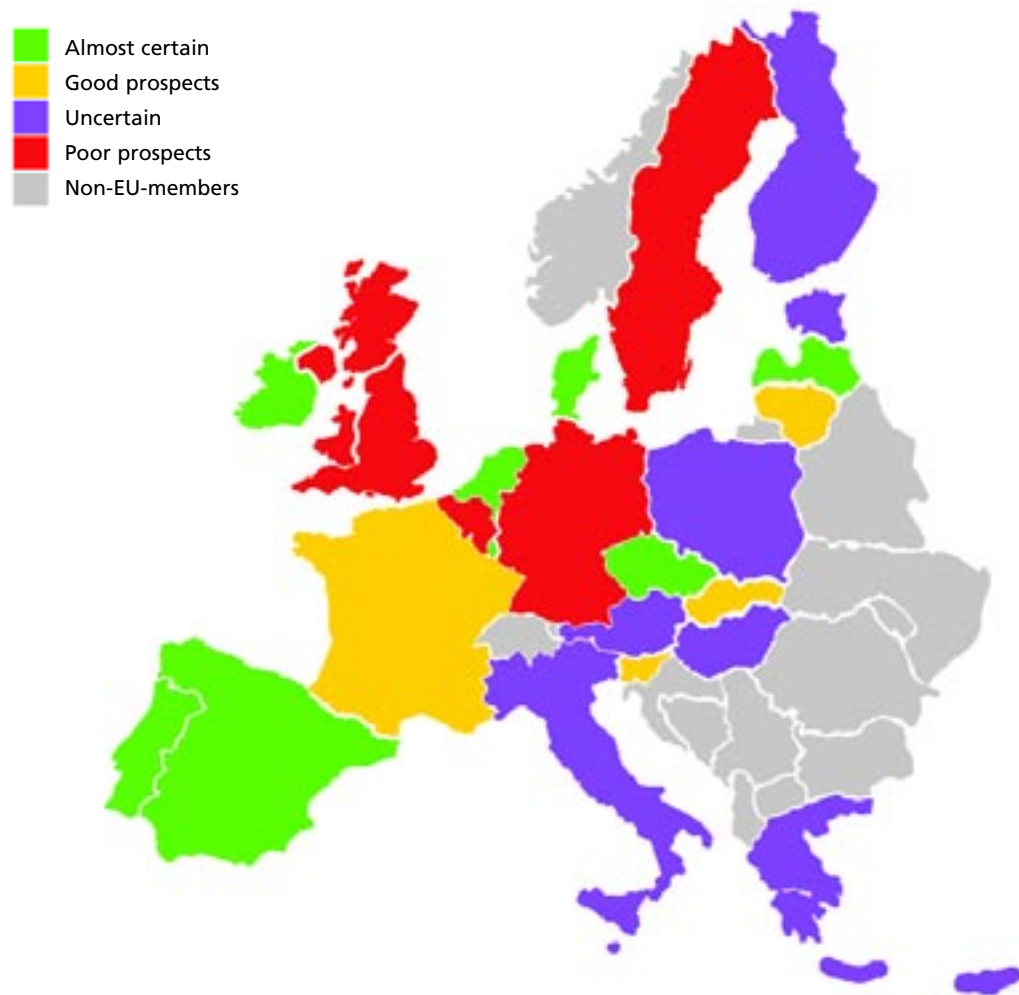
remained as silent as possible about his earlier pro-referendum promises, whilst British Prime Minister Tony Blair dismissed the new Treaty as a simple “tidying-up exercise” with very limited consequences. It was only the Swedish Premier, Göran Persson, who directly tried to discredit the referendum tool itself: “I like parliament, for this reason I do not like referendums.” All these leading politicians seem to underestimate the positive elements of including the people on the European political stage. The benefits include:

1) direct democracy gives minorities the right to a public hearing and thus contributes to the better integration of society.

2) direct democracy improves the quality of communication in politics and allows power to be more evenly distributed.

3) direct democracy strengthens the economy by easing the problem of tax evasion and contributing to a higher per capita income. It is a necessary, though not a sufficient, basis for economic prosperity.

Map 2 – Outlook: Prospects for referendums on the new EU Treaty/Constitution



Minimum requirements that really work

However, there is no automatic link between holding a referendum and enjoying all the benefits mentioned above. Decisive for the quality of the political process is the way in which the instruments of direct democracy are designed and used.

By answering just five questions we could start to determine the quality of direct democracy and its potential benefit to society:

- What issues, if any, are beyond the reach of participatory rights? Can financial issues, for example, be voted on?
- How many voters' signatures are required to launch a popular initiative or a referendum?
- How much time is allowed for the collection of signatures?
- Is the validity of a referendum ballot dependent on minimum turnout or minimum approval thresholds (e.g. as a percentage of the electorate)?
- Do the direct-democratic procedures form a coherent whole which cannot be subverted by the administration, the government or parliament; and how are those procedures embedded in the parliamentary decision-making processes?

Other essential variables for fair referendums include the way in which signatures are collected, the role played by parliament in the process and the way in which the voters are informed. What deadlines are put in place for the various participants, how much money and other resources they receive, how fair the campaigns are and how the final ballot is organised are also important factors (for detailed explanations see Chapter Three).

Many reforms which are sold to citizens as 'participatory' or 'direct' democracy only show their true colours when they are measured up against the questions above. When popular rights are being drawn up, particular attention must be paid to design flaws - whether intentional or unintentional - since any negative experience with direct democracy can result in it being rejected for a long time to come.

Test case: the European Citizens' Initiative

It is for this reason that the introduction of the "European Citizens' Initiative" will be such an interesting, though far from simple, test case. The EU Convention on the Future of Europe, which met between February 2002 and July 2003, drafted an EU constitution which included the provision for "no less than one million citizens coming from a significant number of Member States" to "invite the Commission to submit any appropriate proposal on matters where citizens consider that a legal act of the Union is required...". The option to propose a new article of the constitution, an amendment to a law or merely a new regulation would place citizens on a par with the members of the European Parliament. Compared with national rights of initiative, which in some countries are well-developed, the EU provision may appear rather modest, for the formal right of initiative will remain with the EU Commission. Nonetheless, there could be enormous indirect consequences if at some time in the future the new citizens' initiative right allowed trade unions and other organizations to mobilize millions of people in support of their concerns, whether this be to bring about a new law or new regulations. In addition, the citizens' initiative should give citizens a tool for further extending participatory democracy (note: in 2004 IRI Europe will launch the "Initiative for Europe" programme, aimed at developing citizens' initiative tools at all political levels).

Today we are struggling with the historic shortcomings of both (direct) democracy and European integration. Whilst (direct) democracy is still limited to national and sub-national levels, the European integration process still lacks a form of power sharing which can only be delivered through a mixture of both indirect and direct forms of democracy. IRI Europe's monitoring of the 2003 EU accession cycle unveils the sobering fact that most referendum processes across Europe still lack essential elements of both freedom and fairness. Nonetheless, the growing referendum experience is still a worthy learning curve. You can read more about our findings and recommendations in Chapter Two. (BK)

Chapter Two

EUROPE DESERVES BETTER

The 2003 EU accession referendums were only partly free and fair

Between March and October 2003 no less than ten national referendums on EU accession took place. These series of citizens' decisions offered an unique opportunity to assess and compare direct democratic processes. In this chapter the main findings and lessons of the monitoring are presented, assisting future referendums to become freer and fairer.

"Our horizons are widening," said EU supporter Evita Gerkina (26) at a referendum party in the Old Town of Riga after the EU vote. "I don't believe that our language, our culture and our identity will disappear." The 1.3 million strong Latvian electorate, which was summoned to vote on 20th September, was the tenth European electorate to go to the polls to decide on the accession of their country to the European Union. A remarkably high proportion of them turned out to produce a very clear result. More than two-thirds (67%) of the voters of this former Soviet Republic voted in favour of membership on a turnout of 72.5%. The Latvian result meant that ten new countries could become full members of the EU in spring 2004, giving the EU 25 member states and a total population of 425 million.

The eleven referendums left a remarkably positive balance sheet, in the sense that there were high turnouts in all ten countries and clear decisions. The closest results were in Malta (a 6.8 point difference between the 'yes' and 'no' votes) and Sweden (13.9 points). The same two countries recorded the highest turnouts: on 14th September, 82.6% of the Swedish electorate voted, while the turnout in Malta on 8th March was even

higher at 91%. The referendums in Slovakia and Lithuania came at the other end of the spectrum: an 84.4 point difference between the 'yes' and 'no' votes for Slovakia, 81 points for Lithuania. The lowest turnouts were in Slovakia (52.2%) and Hungary (45.6%). The minimum turnout requirements (in some cases constitutionally stipulated) were obtained in all the countries involved (cf. Table 2 – Results of the 2003 referendum).

Border regions against more EU

These bare figures hide some interesting differences in voting behaviour. Urban voters were significantly more in favour of integration than those in the rural and border regions. In Sweden, only the capital Stockholm and Malmö in the south of the country returned 'yes' majorities in favour of adopting the Euro. At the other end of the spectrum, two-thirds of the occupants of the Latvian province of Daugavpils, which borders on Belarus and Lithuania, voted against EU accession. Here, at the outer edge of the expanded EU, only half of the adult inhabitants were able to vote: twelve years after Latvia regained its independence, wide sections of the population – predominantly those of Russian origin – remain, in practice, stateless.

"These referendums hold up a mirror to Europe," stressed Professor Algis Krupavicius from the University of Kaunas in Lithuania, who has been working with the IRI Europe Referendum Monitoring Programme. "The broad debates of the past several months have shown that most citizens want a greater degree of involvement in political decision-making," said Krupavicius, who sees a continuing need for further action in this regard. According to Professor Krupavicius, the differences in voting behaviour also show that "a 'no' to the Communist past" – a significant factor in the votes in most of the Eastern European countries – "by no means represents a blank cheque for increased EU integration in the future."

Table 2 – Results of the 2003 referendums on Europe

Date 2003	Country	Issue	Type of Referendum	Res.	% Yes	% No	Turnout %
Mar 8	Malta	EU accession	Non-Binding	Yes	53.6	46.4	91
Mar 23	Slovenia	EU accession	Binding	Yes	89.6	10.4	60.3
April 12	Hungary	EU accession	Binding	Yes	83.7	16.3	45.6
May 11	Lithuania	EU accession	Binding	Yes	89.9	8.9	63.3
May 17	Slovakia	EU accession	Binding	Yes	92.4	7.6	52.2
June 8	Poland	EU accession	Binding	Yes	77.5	22.5	58.8
June 16	Czech Rep.	EU accession	Binding	Yes	77.3	22.7	55.2
Sep 14	Estonia	EU accession	Binding	Yes	66.8	33.2	64
Sep 14	Sweden	Euro accession	Non-Binding	No	42	55.9	82.6
Sep 20	Latvia	EU accession	Binding	Yes	67	32.3	72.5
Oct 19	Romania	EU accession preparation	Binding	Yes	89.6	8.9	
Average					74.8	24.1	63.8

Prized citizens’ rights

“The proportion of those clearly supporting EU membership has risen from around 53% to over 60% since the last accession round of nine years ago,” said political scientist Sören Holmberg. A study of the result of the 14th September referendum by Holmberg and colleagues at the University of Gothenburg revealed that “the primary argument of those opposing adoption of the Euro was democracy”. Holmberg added, “Our study showed that 90% of voters questioned also wanted to be able to vote directly on important European issues in the future.”

Referendums on Europe are not a new phenomenon: since 1972, there have been no less than 40 referendums on European issues. As well as membership of the EU, the EEC and the currency union, voters have again and again been asked to decide on reforms aimed at strengthening the EC and the EU. But it is not only the simple number of referendums which has increased. There has also been a positive development in the quality of direct democracy: whereas most of the early referendums on Europe were non-binding plebiscites imposed ‘from above’, the recent trend has been for such referendums to function increasingly like the constitutional referendums in Switzerland i.e. they are mandatory and binding. Even in Sweden,

where the ‘referendum’ on the Euro was in formal terms a non-binding plebiscite, all the parties promised before the vote to respect the outcome, whatever the result. Only two weeks before voting day, Persson was still referring to the referendum as “dubious”, stating that he thought it preferable to have allowed the predominantly pro-Euro parliament to decide on the matter.

Self-critical referendum victors

Perhaps the most important outcome of the 2003 EU accession referendum cycle is that the European Union has become marginally more democratic – not least in terms of the frank self-criticism of numerous leading politicians in the new member states. “No-one can maintain that we had a fair referendum,” admitted Peter Weiss, adviser to the Slovakian Prime Minister Mikulas Dzurinda after the pro-EU victory last June. Opponents of Slovakian accession had been all too obviously disadvantaged in the public media, and the judiciary turned a blind eye to clear violations of electoral law by the pro-EU side. “A parliamentary committee is currently drafting a new law on civil rights,” said Weiss when questioned on the matter. Several countries are now considering lowering or even abolishing the 50% turnout quorum copied from the Italian constitution (cf. Table 3 – Highs and Lows in the 2003 referendums).

Table 3 – EU Referendum Monitor 2003 – Highs and Lows

Country	Date/Result: yes	Main positive aspects	Main negative aspects	Rating
Malta	March 8; 53.6 %	<ul style="list-style-type: none"> Issue well known and debated for many years Equal broadcast access and coverage Intense debate and public communication Acceptance of result after confirmation at elections 	<ul style="list-style-type: none"> very few legal rules non-binding outcome almost non-existent I&R culture, but very strong two-party system both sides attempted to interpret result in their own way confirmation of referendum outcome only through elections 	Partly free and fair
Slovenia	March 23; 89.6 %	<ul style="list-style-type: none"> Relatively well established initiative & referendum traditions (including citizen- initiated referendums) Parliament confirmed de facto binding character before voting day 	<ul style="list-style-type: none"> EU accession did not fit into any legal form of referendum parliament, not legal framework, controlled the process unequal access to media 50 % turnout quorum 	Partly free and fair
Hungary	April 12; 83.8%	<ul style="list-style-type: none"> Consultation process with electorate before the referendum (letter to all households) Website in 15 languages on all relevant documents 	<ul style="list-style-type: none"> very poor quality of debate by both ‘yes’ and ‘no’ sides disappointing turnout of below 50% (estimate was 60-70%) prosecution of no-side by police units (for use of swastika) 	Partly free and fair
Lithuania	May 11; 91.1 %	<ul style="list-style-type: none"> Relatively well established initiative & referendum traditions (including citizen- initiated referendums) Fairness commission secured equal access to media (7 hrs. free air time for ‘yes’ and ‘no’) Almost no division in voting between urban areas and countryside 	<ul style="list-style-type: none"> very little opposition to EU membership, so critical aspects of EU membership remained almost unknown - could increase risk of public disillusionment private companies tried to influence turnout by offering cheaper goods to voters 50 % turnout quorum 	Partly free, mostly fair
Slovakia	May 17; 92.5 %	<ul style="list-style-type: none"> first valid referendum in modern Slovak history self-critical assessment on conduct by responsible officials after the referendum; new commission to improve I&R tools. 	<ul style="list-style-type: none"> high mutual distrust between electorate and political elite breach of laws on propaganda on referendum day government not ready to accept de jure binding character of poll before the referendum no-side promoted referendum boycott 	Partly free, mostly unfair
Poland	June 8; 77.5%	<ul style="list-style-type: none"> constitutional changes to extend voting time (to 2 days) and to make EU referendums possible in future agreed before the vote lively and varied debate no referendum boycotts demands to abolish 50 % turnout quorum after the referendum 	<ul style="list-style-type: none"> not clear what would have happened if 50% turnout quorum had not been met Pope (is he still a Polish citizen?) used church institutions for yes-propaganda 	Partly free, mostly fair
Czech Republic	June 14; 77.3 %	<ul style="list-style-type: none"> first referendum experience in Czech history binding character of the vote without any turnout requirements President did not appeal to one side 	<ul style="list-style-type: none"> almost non-existent I&R culture, no tradition of participating even in parliamentary elections high mutual distrust between electorate and political elite (“do not talk to communists” campaign) 	Partly free, and fair
Estonia	Sept 14; 66.8%	<ul style="list-style-type: none"> broad debate as biggest party in parliament was against accession financial contribution to no-side by the government international assistance to both sides in campaign 	<ul style="list-style-type: none"> one-sided media coverage in favour of pro-camp unequal access to financial resources 	Partly free, and fair
Sweden	Sept 14; 42%	<ul style="list-style-type: none"> high turnout despite non-binding status Intense and balanced debate Majority found referendum process “fair” (63%) 	<ul style="list-style-type: none"> campaign financing only partly disclosed discrediting of referendum process by the PM 	Partly free, mostly fair
Latvia	Sept 20; 67%	<ul style="list-style-type: none"> very high turnout in spite of internal political problems low-key propaganda in campaign 	<ul style="list-style-type: none"> large segment of population unable to vote due to huge number of “non-citizens” turnout quorum of 50% at the latest parliamentary elections 	Partly free and fair
Romania	Oct 19; 89.6%	<ul style="list-style-type: none"> step-by-step approach to enable EU membership by 2007 	<ul style="list-style-type: none"> process not transparent with short time limits Abusive methods to increase voter turnout and clear the 50% participation hurdle 	Mostly unfree and unfair

As with elections, referendums must also meet basic requirements of freedom and fairness. "Free and fair" has become the catchphrase of UN officials, journalists, politicians and political scientists alike. But what actually constitutes a "free and fair" referendum?" ask Elklit and Svensson. Since the Togoland independence referendum in 1956, hundreds of elections and referendums have been observed worldwide, intensifying the demand for standardised assessment criteria. However, the development of "checklists" has been hindered by disagreement over what should be included (cf. Further article in this chapter by Palle Svensson).

Basically, there is a common understanding that referendum monitoring must relate to the whole process, not merely to the events of the actual election day / days. The preconditions for democratic referendums must not be ignored either. Elklit and Svensson came to the following definitions:

- *Freedom* contrasts with coercion. It deals primarily with the "rules of the game", such as the legal / constitutional basis and the timing.
- *Fairness* means impartiality and involves consistency (the unbiased application of rules) and reasonableness (the not-too-unequal distribution of relevant resources among competitors).

In practice these definitions lead us to more concrete monitoring parameters.

FREEDOM

- *The ability to initiate a referendum process. Broad access - not restricted to governing majorities - increases freedom.*
- *The binding / consultative effect of a decision. Non-binding votes create potential for manipulative actions.*

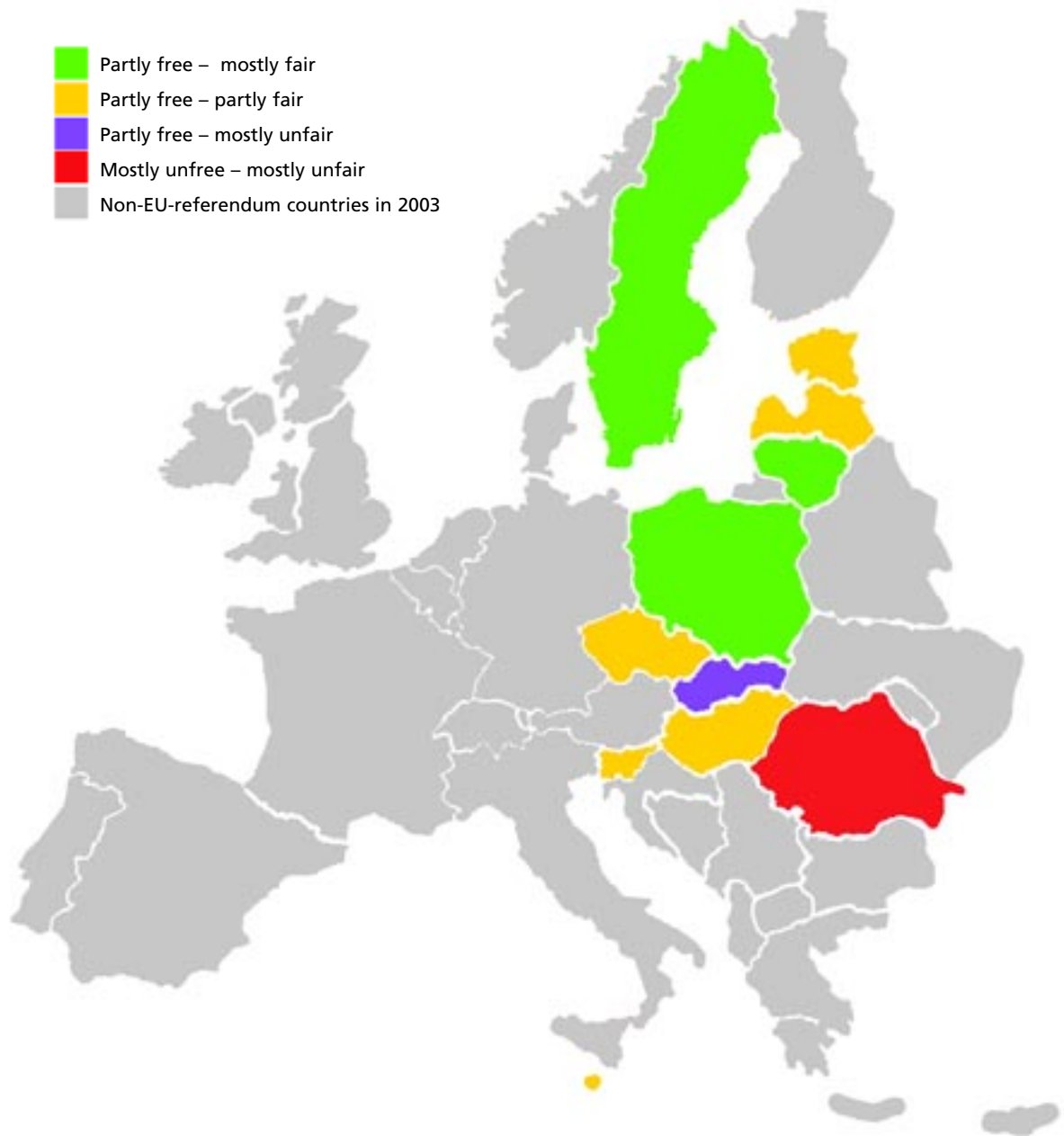
- *The risk of invalidation of a vote by turnout and approval thresholds. High turnout requirements of up to 50% have undemocratic effects, as non- and 'no'-voters are counted together. Voter abstention is actually promoted instead of avoided.*

FAIRNESS

- *The disclosure of donations and spending in a referendum campaign. This is the first step; a second is to apply spending limits; a third step is to introduce "affirmative action".*
- *The access to public media (broadcasters) ahead of a referendum. There should be voluntarily agreed standards of fairness in the print media as well as free air hours / minutes to designated campaign organisations in a referendum process.*
- *The role of government and civil servants in a referendum debate. This has been a major concern in recent EU accession referendums, where EU Commissioners regularly played a role in the debates.*

The growing importance of initiatives and referendums for the European integration process has led to an increased interest in monitoring referendums in Europe and to developing "European Referendum Standards". Think-tanks such as the Robert Schuman Foundation in Paris, as well as activist organisations such as "democracy international" and the "European alliance of EU-critical movements: TEAM" have developed projects and criteria for assessing referendums. Official bodies such as the EU Commission and the Council of Europe have begun to discuss the creation of internal European observation missions as well as proper referendum standards. But also other international monitoring actors, which until now have concentrated on electoral processes, such as the International Institute for Democracy and Electoral Assistance (IDEA) in Stockholm, have started programmes to assess and monitor direct democratic institutions.

Map 3: Monitor: assessing the degree of freedom and fairness in the 2003 EU referendum cycle



For the Initiative & Referendum Institute Europe (IRI Europe), assessing the 2003 EU accession referendums and developing European standards marked the first opportunity to test its ability to design and assess direct democracy. At meetings in London (May 2003), Svaty Jur (June 2003), Tartu (September 2003) and Brussels (October 2003) experts from all over Europe developed a specific referendum checklist, including these 24 questions:

- **Legal & Constitutional Basis:**
Origin of the referendum process (trigger function)? The nature of the citizens' decision (Binding / consultative)? Special majority (Quorums / thresholds)? Seriousness of the voters' list (who can vote)? Secrecy of the ballot? Appeal against the result? Counting procedures? Voting: how, where (post, e-voting)?
- **Timing:**
Who sets the date?
One day or more?
Weekend, weekday?
Length of time between announcement & ballot day?
Referendum on same day as other votes / elections?
'Domino effect' on other countries?
Designated time period before another vote may be held on the same subject?
- **Financial rules:**
Spending limits? Disclosure? 'Affirmative action' to help underfunded campaigns?
Transparency in use of tax payers' money?
- **Campaign rules:**
Managed by referendum commission or other independent body?
The role of the media: focused primarily on 'latest poll', not debating the issues?
International interference?
Role of government, civil servants, political parties?
Do the rules enhance the culture & practice of democracy? (HD)

With this first checklist as a qualitative foundation the 2003 EU accession referendums were assessed – as the example of the Estonian referendum shows.

CASE STUDY: ESTONIA



- Estonia, 45227 km²,
- 1.435 million inhabitants,
- EU membership Referendum on 14 Sept 2003
- Result: 66.83% Yes;
- Turnout 64.06%.

...and the result

• In line with the predictions and trends in other post-communist candidate states, Estonians voted overwhelmingly to join the EU - by 66.83% to 33.17%. Nonetheless, the level of support for EU membership was the lowest among all post-communist candidate countries.

Comments on the Campaign

- The fact that most opposition parties (with varying degrees of enthusiasm) and some civic organisations campaigned for a Yes vote also helped to de-couple the issue of EU membership from that of confidence in the decreasing popularity of the government.
- The Yes campaign was short on specifics, playing with general slogans on economic and security gains, presenting the referendum as a "civilisation" choice, with EU accession as part of an inevitable historical choice between West and East.
- The No campaign had difficulties in staying focused on its most powerful arguments and suffered from a lack of access to the public media. The relative stability of underlying Estonian attitudes towards the EU during the preceding months and the lack of a convincing alternative to the EU made it difficult for them to make any significant impact.
- Minor role of the peripheral parties on the No side: various small groups, civic movements and organisations played the main role in the No camp.

• More surprisingly, the turnout of 64.06% was higher than at the last Estonian elections, despite the fact that, in contrast to some other accession countries, there were no turnout quorums in order for the referendum to be constitutionally valid.

• In contrast to the received wisdom – based on simplified socio-demographic factors - that the No side would be backed by the older and poorer elements in society, the most eurosceptic group appeared to be middle-aged people between 31 and 45. Older citizens thought along similar lines to the younger generation (under 30). There was no simple correlation between wealth and voting behaviour, although those with above average incomes were the most positive about EU membership.

• Partisan allegiances formed an important variable in voting behaviour. Among parliamentary parties, supporters of the strongly pro-European Reform Party were the most optimistic with 82.9% voting 'yes'. Supporters of the mildly eurosceptic Centre Party were the least enthusiastic about EU membership, with only 50.8% supporting the Yes side.

Table 4 – Monitoring a referendum, the example of Estonia

	Mostly Free & Fair	Partly Free & Fair	Mostly Unfree & Unfair	Comments
1. Legal basis				
1.1. Origin of the referendum process (Trigger function)		x		By Parliament and not the constitution or the people
1.2. The character of the citizens' decision: Binding? Or only consultative?	x			Binding
1.3. Special majority requirements	x			No participation or approval quorums
1.4. Seriousness of the voters' list: Who can vote?		x		A significant percentage of the population is excluded from the vote: 270 000 out of the total population of 1.4 million are non-citizens.
1.5. Secrecy of the ballot	x			
1.6. Appeal against the result	x			Four cases, all of which were declined
1.7. Counting procedures	x			
1.8. Voting: how, where(post, e-voting)	x			Estonia didn't use e-voting in this referendum
2. Timing				
2.1. Who sets the date?				Parliament sets the date
2.2. Time for voting: one day or more? weekend, weekday?	x			Main voting took place on a Sunday. But polling stations opened ten days ahead of the referendum.
2.3. Length of time between announcement, ballot day	x			8.5 months
2.4. Referendum on same day as other votes / elections?	x			No other events on the same day
2.5. Domino effect on other countries				Hard to estimate. Possible that Estonian referendum had some impact on Latvian referenda.
2.6. Designated time period before another vote may be held on the same subject?	x			3 months
3. Financial rules				
3.1. Spending limits		x		No spending limits
3.2. Disclosure			x	Not all expenditure - in particular from abroad - was disclosed
3.3. Affirmative action to help under-funded campaigns?			x	No affirmative action: "no" side received much less money than "yes" side.
3.4. Transparency in use of tax-payers' money?		x		Government expenditure was, for the most part, regularly monitored by the press. Inquiries could also be made at the Electoral Commission.
4. Campaign rules.				
4.1. Managed by referendum commission or other	x			Electoral Commission independent body
4.2. The role of the media: focused primarily on the latest polls, and not on debating the issues.			x	Obviously a great deal of effort should be made to ensure that voters can engage in proper debate. The media was biased towards the "yes" side.
4.3. International interference?		x		There was a regular procession of commissioners, MEPs and EU delegations who appeared on TV interviews and shows. But even the No-side received a lot of support from abroad.
4.4. Role of government, civil servants, political parties?			x	Heavily on "yes" side - no alternatives to EU membership
Overall assessment		x		The Estonian EU referendum was partly free and fair.

There is a large diversity of preconditions and institutional requirements in the seven monitored countries. It is, however, possible to define a number of shared positive and negative aspects which the referendums have in common:

+ *EU accession has been a top issue for many years in all countries.*

- *For the same reason, however, the EU accession issue cannot be compared directly with other issues (such as the European Constitution, for example).*

+ *The referendum processes have acted as a mirror for the countries concerned, showing more clearly the political, economic and societal progress achieved.*

- *But they have also revealed the big problems which still exist, such as the deep mistrust between elected and electors in these countries (with the exception of Malta).*

+ *In almost all cases, the outcome was decided by a clear majority and a majority of the electorate turned out for the vote, giving the oft-discredited referendum tool a new boost for the future and forging a sense of common identity in these states.*

- *However, the legal and political conditions for “free and fair” referendums are far from sufficiently developed and require big improvements ahead of the upcoming referendums.*

Worldwide, public participation in decision-making by means of initiatives and referendums is still dogged by the problem of the plebiscite. Unlike a genuine referendum, a plebiscite is neither triggered automatically through the constitution nor initiated by a group of citizens, but is imposed “from above”. In a plebiscite, the “powers that be” – usually the president or the prime minister – decide when the people should be asked their opinion and on what issues.

Quite often, such ballots are merely consultative and are not binding on either the parliament or the government. There is hardly a single dictator – including Napoleon III, Hitler, Pinochet and Saddam Hussein – who has not made use of the plebiscite. In reality, plebiscites discredit direct democracy and provide its opponents with misleading arguments, which many are unable to refute because they are not aware of the essential differences.

In a genuine direct democracy, there are precise rules incorporated into the constitution and into legislation as to when citizens have to be consulted and when they can decide for themselves whether to be consulted or not. It is usual for amendments to the constitution to be subject to mandatory referendums and for the public to be able to launch initiatives and referendums when there have been revisions to the constitution or changes to laws. This results in an increase in civil liberty – something that the plebiscite cannot achieve. “Beware the plebiscite trap” is the first out of the ten key points developed by IRI Europe as a result of its comprehensive Referendum Monitoring Programme (cf. BOX 2 – IRI Europe Checklist).

Improving and guaranteeing the quality of direct democracy is not an end in itself. Only well-motivated and self-confident citizens, who have had a positive experience of politics at local, regional and national levels, will have the courage and confidence to demand elements of direct-democracy where they are most needed – in relation to the European constitution. It is not only that Europe is in need of more democracy: democracy itself today needs to be firmly rooted at the transnational level (BK).

Note: Further monitoring materials and referendum assessments can be found in the Initiative & Referendum Monitor Section at www.iri-europe.org.

IRI Europe’s Ten steps to free and fair referendums on Europe in Europe

BEFORE VOTING DAY

- **Be aware of the plebiscite trap!**
The origin of a referendum is important. An entirely presidential or governmental triggered process tends to be much more “unfree” and unfair than a constitutionally or citizen-initiated referendum.
- **The democratic debate needs time!**
The gap between the announcement of the referendum and voting day itself is critical and should be at least six months in duration.
- **Money matters!**
Without complete financial transparency during the campaign, unequal opportunities and unfair practices may prevail. Disclosure rules are extremely important; spending limits and state contributions can also be useful.
- **The campaign needs guidance!**
Equal access to media sources (principally public and electronic) as well as the balanced dissemination of information (e.g. a general referendum pamphlet to all voters) are vital aspects of fair referendum campaigns. These may be supervised by an independent body.

ON VOTING DAY

- **Avoid referendums on election day!**
Having a referendum on the same day as a general election tends to mix up party-politics and issue-politics. This should definitely be avoided, especially if a country is not used to referendums.
- **Expand the voting “day” to a “period”!**
Since a referendum is a process with various phases, the voting phase should be longer than just a single day. In order to make participation as easy as possible, citizens should be able to vote by ballot box, postal mail (and in the future even electronic mail) over a two week period.
- **Keep it secret!**
During the voting period, everybody has the right to express his / her will freely. This means in absolute secrecy and without briefings on events as they develop.

AFTER VOTING DAY

- **Avoid unnecessary and special majority requirements!**
A democratic decision is based on a simple majority of the votes cast. Turnout thresholds exceeding 25% of the electorate tend to provoke boycott strategies. In federal polities, however, a double majority requirement (voters plus states) is recommended.
- **Non-binding decisions are non-decisions!**
In many countries a referendum result is non-binding. This is a democratic contradiction in terms and creates an uncertain and unfair process. The role of parliament and government in the implementation of the result must be limited. A referendum decision can only be changed by another referendum decision.
- **Guarantee a free and fair post-referendum period!**
It is vital to have judicial safeguards in place. For example, each citizen could have the opportunity to appeal against a referendum decision in a constitutional court.

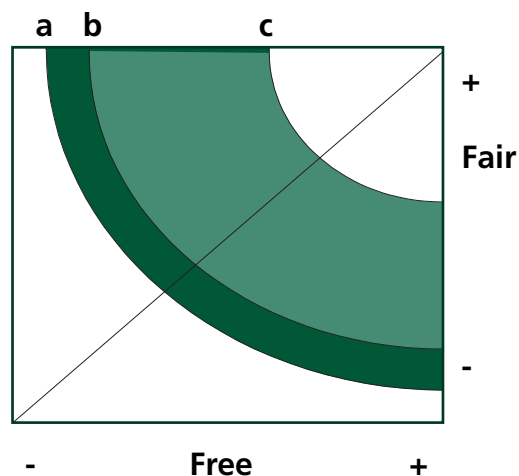
Comment: Monitoring referendums – a challenging task

Even if it is difficult to establish precise guidelines for assessing referendums and elections wherever they occur, it is still possible to establish some analytical distinctions. If we consider the two main dimensions of freedom and fairness, it seems evident that some referendums can be characterized as free and fair or at least acceptable, even if they are not perfect.

All, or almost all, elections and referendums in well-established democracies presumably fit this description. Of course, it is also clear that some elections and referendums are not “free and fair” owing to the violation of a large number of key criteria, but such elections and referendums are scarcely to be found in Europe. Between these two extremes, however, there are a number of cases in which elections and referendums cannot be labelled “free and fair” because of any number of shortcomings, but in which it would be unreasonably explicit to declare them not “free and fair”. Perhaps they are free in a formal sense, but fairness is limited in practice - for instance, because of a very unequal distribution of resources - or perhaps they are free only to some extent, but fairly conducted within those particular limits. For referendums, in particular, freedom may vary among European countries because of more or less governmental control concerning the timing and the issue of the popular vote. When the full circumstances are taken into account and a broad view is adopted - especially in terms of the possibility of progress towards greater political competition and participation - it may be deemed that elections and referendums are “acceptable”, even if they fall short of being completely “free and fair”. These are not only the most difficult cases to assess, but also the ones that international observers are most likely to witness, since the governments in these countries are

eager to obtain the international community’s stamp of approval as a means of boosting their internal legitimacy and garnering external recognition. In practice, then, elections and referendums are most likely to fall within the shaded area (between curves a and c) of the table below i.e. neither entirely free and fair nor entirely unfree and unfair, but acceptable when technical limitations and prospects for progress towards democracy are taken into consideration.

Table5: Identifying Free and Fair Referendums



In these cases, analysis of the application of a country’s election law should take into account not only the criteria listed in table 5, but also other factors that may help observers determine how strictly those criteria should be applied. Even under more favourable conditions, it is neither reasonable nor methodologically feasible to insist on complete fulfilment of all the criteria before declaring an election or a referendum “free and fair”. Something less (e.g. curve c) may suffice, as long as basic freedoms exist, the election law is for the most part applied impartially, and the main competitors have reasonable access to campaign resources and the media.

Given the prevalence of elections and referendums that fall within the shaded area (between curves a and c), these special considerations deserve close attention. Because of the difficulty of distinguishing clearly between the dimensions of “free” and “fair”, assessments of such ballots can be represented by a straight line connecting the two most extreme points (the diagonal line in the table). Thus the crucial point is where the diagonal leaves the shaded area (in a south-western direction): here we will find the threshold between “acceptable” and “not acceptable”.

Free and fair?

The phrase “free and fair” cannot denote compliance with a fixed, universal standard of electoral competition: no such standard exists, and the complexity of the electoral process makes the notion of any simple formula unrealistic. Election observation requires the simultaneous use of multiple scales to achieve valid and reliable measurements of complex phenomena. In particular, these problems affect the large segment of elections which are neither clearly free and fair nor clearly unfree and unfair.

Election and referendum observers, therefore, face a dilemma. They could simply avoid using the phrase “free and fair”, but this would run the risk of opening the door to its use by others with less knowledge or understanding of the situation. Alternatively, observers can choose to use the phrase as a convenient shorthand, but at the cost of exposing themselves to all manner of criticism grounded in intellectual or moral considerations.

This does not mean, however, that election and referendum observation and assessment are hopeless tasks. It is undoubtedly possible to draw general conclusions about how best to conduct such activities. In the borderline cases described above - the crucial “in-between” category - observers should

identify their evaluation criteria as clearly as possible while at the same time acknowledging that their conclusions rest to some degree on estimates and subjective judgments. In relation to referendums in Europe, particular attention has to be given to the extent to which the government controls the event. This applies to the control over when a referendum is called, the issue under discussion, and the manner in which public funds are shared among competing sides. (PS)

Note: this comment is an extract from a working paper written by Palle Svensson and presented at the IRI Referendum Monitoring Conference in Tartu / Estonia (September 2003). The full version can be found in the Initiative & Referendum Monitor Section at www.iri-europe.org.

Chapter Three

Country index on citizen law-making in 2004.

The “direct-democratic geography” of Europe has a new look after last year’s ten EU accession referendums and a great deal of effort inside countries to democratise democracy. Two years after the first “Country Index”, the Initiative & Referendum Institute Europe now presents a new design and rating report with additional and extended features and building on three consecutive steps.

Direct-democratic practices through Initiatives & Referendums (I&R) show that the design of the process is of crucial importance. Good I&R means a limited entry quorum for approving an initiative and no participation quorum at all for referendums. Furthermore, the outcome of votes must be binding for them to be useful tools for citizens.

Direct Democracy through I&R has to be clearly distinguished from plebiscites, direct elections and assemblies, as well as instant-polling on the Internet. Plebiscites are votes on issues implemented from above by a government, without the support or influence of the citizens. Plebiscites have nothing to do with I&R; on the contrary, they are often used by governments which want to secure special legitimacy for their policies by bypassing existing laws and constitutional rules. It is important not to confuse I&R with direct elections for municipal mayors, for example, in which the ballot concerns an individual and not an issue. Time and dialogue are vital for the success of the I&R process. Instant polls (on TV shows or on the Internet) and opinion polls (conducted by telephone pollsters) work in a very different way and do not result in collective learning processes or

enhanced legitimacy. Finally, assembly democracy must be differentiated from modern direct democracy, which includes free and secret balloting.

STEP 1: DEFINING THE ELEMENTS OF DIRECT DEMOCRACY

In order to assess the quality of direct democracy and its performance, we can distinguish fundamental, essential, important and useful procedural elements, which can also be used to judge current, sub-optimal and direct-democratic designs.

Category1: Fundamental elements of Direct Democracy

If these elements are ignored, I&R processes cannot work.

Element	Question	Experience	IRI Europe’s Recommendation
Exclusions on issues	How many political issues are excluded from the direct-democratic decision-making process?	In many countries important issues are excluded from I&R. This weakens the direct-democratic foundation. Exclusions are often based on specific historical experiences.	Essentially, the citizens should have the same access to decisions on issues as their elected representatives. There should be NO exclusion on issues in the I&R process.
Entry hurdles	How many signatures of electors do I have to collect in order to force a referendum?	International practice shows that too high hurdles (more than 5%) prevent most individuals and organisations from using their initiative and referendum rights, while very high hurdles (such as 10% or more) make I&R rights almost impracticable.	Depending on the specific device (e.g. constitutional initiative, facultative referendum) and the level of polity (local, regional, national, transnational), the entry hurdles should not exceed 5% of the electorate. They reach absurd heights when they exceed 10%.
Time limits	How much time do we have to collect these signatures?	Time is critical to the success of direct democracy, since starting and following through an initiative and referendum process often takes several years and includes several phases. Short time limits (e.g. less than 3 months for signature gathering for a national initiative) hinder communication, the very soul of direct democracy.	In order to secure the proper time interval for launching an initiative, a minimum of half a year should be allowed. The recommended time limit is one year. In the case of a facultative referendum, a shorter time is reasonable as the issue is already on the agenda. In this case, 2 - 4 months should be sufficient.
Majority requirements / quorums	What special requirements apply to the deciding majority of the voters in referendums?	Very often special majority requirements apply to referendum decisions, putting the validity of the vote into question. In practice, many referendums with participation quorums of 40% or more produce non-valid outcomes, producing a bad experience for those who did vote. Another requirement is to demand a specific approval rate as a percentage of the whole electorate, which makes approvals as such very difficult.	For parliamentary elections, participation quorums are very rare, as they risk leaving the democratic system without representatives at all. Participation quorums higher than 25% should be avoided, as they produce undemocratic results. Approval requirements as a proportion of the whole electorate should be avoided as well.
The way signatures are collected	How can I collect the signatures? Is there a free collection of signatures with subsequent official verification, or do citizens have to sign in local authority offices and / or under legal supervision?	This is one of the big battlegrounds around direct democracy, as the authorities in many countries would like to limit the options for signature gathering. In Austria, for example, signatures for a popular initiative can only be gathered in an official office; in the US, there is a ban on signature gathering in public places such as post offices.	A well-designed direct democracy has no restrictions on the collection of signatures. The gathering of signatures must be free.

Category2: Fundamental elements of Direct Democracy

Without these elements, I&R processes cannot realise their full potential:

Element	Question	Experience	IRI Europe's Recommendation
Role of Parliament	Does parliament have the option to discuss referendum issues and recommend a decision to the people? Does Parliament have the right to put a counter-proposal on the ballot?	In many US states initiatives are put directly to the voters without first consulting parliament. Such a construction increases the conflictive potential of I&R. In Switzerland, direct and indirect forms of democracy are much better integrated.	Direct and indirect democracy should be linked up with each other. Parliament should be obliged to debate all popular initiatives and have the right to present a counter-proposal to the initiative, so that voters can choose between at least three substantive options.
Finances and Transparency	Do we know how much money both sides in a referendum campaign spend? What about the under-funded side? Is there any mechanism for balancing such inequality? How is the I&R process supervised? Is there any designated independent authority in charge of the process?	The important role of money in ballot campaigns is undisputed and in many circumstances the amount of money can even play a decisive role. Good practice makes the case not only for greater transparency, but also for "affirmative action" funding from public funds (taxes).	The process by which political opinion is formed and positions adopted must be fair (equal resources for all sides), transparent (sources of funding) and correct. Those who organize popular initiatives and referendums should receive a portion of the campaign costs – either in advance or subsequently – once the signatures have been handed in and the date set for the vote.
Supervision	How is the I&R process supervised? Is there any designated independent authority in charge of the process?	I&R processes run exclusively by the government are seen in many countries as additional tools of domination from above. In order to secure the correctness and fairness of the process, several countries (such as Ireland and the UK) have introduced designated referendum commissions. Their precise roles and competencies vary however.	A referendum electoral body may have different roles in the I&R process, including advising the initiative committees, making a preliminary examination of the proposal, verifying signatures, supervising the campaign (including checking equality and fairness), and monitoring and evaluating a referendum. A "referendum commission" may also be charged with informing the electorate – with a voter pamphlet, at the very least.

Category3: The important elements of Direct Democracy

The following can be seen as sensible procedural elements of an optimally designed direct democracy:

Element	Question	Experience	IRI Europe's Recommendation
Periods of time	How much time do the government, the administration, the parliament and the electorate have at their disposal to deal with an initiative or a referendum proposal?	Communication needs enough time to develop interactivity and collective learning processes and to allow for all sides in a referendum campaign to be heard. Sufficient time is a pre-requisite, but it is not sufficient alone for a democratic I&R.	There is an easy rule for all important phases in a referendum process: the initiative committee should have at least six months to gather their signatures; the government should then have another half year to prepare the issue. Parliament should then have six months to discuss the proposal and possibly develop a counter-proposal. Lastly, there should be another half year for the final public debate.
Additional tools of direct democracy	Are the available devices of citizen law-making sufficiently fine-tuned? Or should there be additional tools?	Democracy is an unfinished journey. In many countries the tools of direct democracy are used to further develop the devices of citizen law-making	There are three fundamental instruments of direct democracy: 1) the mandatory constitutional referendum 2) the optional citizens' referendum 3) the popular initiative. More differentiated instruments, such as the constructive referendum, are highly recommended.

Category4: The useful elements of Direct Democracy

Finally, a few elements can be seen as useful to a modern direct democracy:

1. Support for the work of the initiative group by the administration.
2. A democratic and openly communicative infrastructure in the community (free, central places of assembly; political infrastructure open to all; free advertising space in newspapers, on radio and television and in public spaces).
3. Intermediate results of a referendum should never be disclosed before the vote is completed (BK / AG).

STEP 2: ASSESSING THE STATE OF DIRECT DEMOCRACY IN 43 EUROPEAN COUNTRIES

On the background of the defined elements (under step 1) we are now looking into the political realities of 43 countries in Europe.

Albania:

Albania had one of the most totalitarian and isolated post-war regimes. The transition to democracy is still underway and is unfortunately still dominated by two antagonistic old men, who both have more in common with the old days of corruption and the misuse of power than with a new democratic will. The two leaders of the so-called socialist and democratic parties have so far been able to prevent younger people from taking over the leadership and realising the potential for real democratic change. Until this can happen, elections can be neither free nor fair and the constitutional referendum will still lack the democratic legitimacy it needs (AG).

Armenia:

In Armenia, democracy is in its earliest stages. The country has not yet experienced free and fair elections, and political disputes are still handled with violence, as the shooting in the parliament four years ago showed. The so-called referendum in the spring of 2003 was another example of the misuse of a direct-democratic element and had nothing in common with real direct democracy. The president and the not very independent parliament asked the people to accept more than eighty constitutional changes in a single vote – clearly an impossible task. Although arranged on the same date as another manipulated parliamentary election, less than 50 % of the electorate approved this kind of misuse of democracy and the constitution is still waiting to be reformed. Hopefully, the citizens will also have the opportunity to improve its direct-democratic elements (AG).

Austria:

The inclusion in the Austrian constitution (in 1958 and 1963) of what are currently the only direct-democratic elements in Austrian politics - the referendum and the petition to Parliament – took place against the will of the two main political parties. The first of the two national referendums held so far (the one in 1978 on the commissioning of the Zwentendorf nuclear power station) also turned out differently to how the ruling elite had imagined. In other words, the Austrian people have shown a clear desire for a share of political power with parliament and government, as evidenced in the high level of participation in recent campaigns e.g. against the Czech nuclear power station at Temelin, and in favour of the preservation of the welfare state. Austria's political institutions are lagging far behind the social reality (AG).

Azerbaijan:

Azerbaijan is another Caucasian democracy in the making which is still dominated by the authoritarian political culture closer to that of the Soviet Union than to a modern European democracy. Like all the elections which have been held since Azeri independence in 1991, the so-called referendum of August 2002 was an example of a manipulated exercise which had more to do with the president's desire to change the constitution in the interests of his oligarchy than with the expression of popular will. Twenty-five changes to the constitution had to be approved by answering only five questions; the vote was held in the middle of the summer holidays; the precise wording was made known publicly only three months before the vote; and the Parliament was not really able to debate the issues. The Azeri and Armenian "referendums" of 2002 and 2003 are examples of how elements of direct democracy may be turned into plebiscites and instruments for the manipulation of weak societies, which does not contribute at all to the strengthening of democracy (AG).

Belgium:

In common with the other Benelux countries and with Germany, Belgium appears to have a difficult relationship with national referendums. Since the Second World War, only two plebiscites have been held. Binding national referendums are still not allowed, which may lead to problems with European integration. The current prime minister Guy Verhofstadt is believed to support more direct democracy, but he is hindered in his ambitions at the national level by Walloon socialists. At the regional level, however, Flanders is on the point of agreeing a reform which, among other things, would provide for the right of popular initiative. But as in neighbouring Netherlands, things are changing and a real Initiative and Referendum system may be established in Belgium in the second half of this decade (AG).

Belarus:

The country of de facto dictator Lukashenko is an example of a post-communist country in which the communist understanding of "democracy" lives on. With no fewer than eleven heavily manipulated plebiscites, the weak democratic structure of newly independent Belarus was "killed" in 1995/1996, giving the president full powers and re-establishing a regime based on fear. Today, Belarus is the only European country rated as "unfree" by Freedom House (BK).

Bosnia-Herzegovina:

On 1 March 1992, a referendum was organised with the official question: "Do you approve of an independent and sovereign Bosnia-Herzegovina, a State constituted by citizens with equal rights – Muslims, Serbs, Croats and the members of all other nations living therein?" Of the 62% of registered voters who turned out in this referendum, more than 99% answered 'yes'. However, as the Serb population boycotted the referendum, it did not lead to a solution of the ethnic conflicts in this post-Yugoslavian region but instead became one of the factors which led to the

outbreak of the bloodiest war in Europe since 1945. No surprise, therefore, that the new constitution of the country does not, as yet, provide for any instruments of direct democracy (BK).

Britain:

Not only does the United Kingdom have no written constitution - it is governed under a motley collection of written and unwritten laws and traditions – but its sovereignty is also invested in Parliament and not in the people. Despite this, there have been some significant changes over the past few years, notably the devolution arrangements for Scotland, Wales and Northern Ireland which were voted in referendums. In addition, there have been a number of local referendums, some of which resulted from initiatives. In 2004, three regional assembly referendums will be held in the North of England. Britain can be seen as a society with considerable potential for real democracy and the empowerment of society, but the elites (political, scientific and economic), as well as, and in cooperation with, the dominant popular press have somehow been able to prevent citizens from taking a fairer share of the power which belongs to them. There continues to be, however, some low-level pressure for constitutional change which will provide a longer-term challenge to those elites (AG).

Bulgaria:

During the years of democratic reconstruction, Bulgaria's citizens have not been able to vote on a single substantive issue. As the country is heading towards important decisions on EU membership and nuclear energy issues, the parliament is considering the introduction of a fully-fledged I&R system, including the right of 100,000 citizens to trigger a legislative referendum (200,000 in the case of a constitutional referendum). The new law will also waive the restriction banning referendums on municipal budgets and

local tax-rates. Within a month following the promulgation of a specific resolution by the Municipal Council, one tenth of the electorate can initiate a referendum. The government has also announced that a EU accession referendum will take place in 2006 (BK).

Cyprus:

Cyprus is the odd man out in terms of European integration, as it has been effectively divided in two since the Turkish invasion of 1974. In a country whose geopolitical exposure has made it the target of foreign forces for millennia, there have so far only been a few signs of movement towards direct democracy - apart from two presidential plebiscites in the Turkish-occupied northern half of the country. The UN-proposed reunification referendum planned for March 2003 was not accepted by the Turkish-Cypriot leadership, but with the prospect of EU-membership for the southern part of the island (and Turkey itself), political life changed in the northern part too. The whole island may well hold its first referendum on both unification and joining the EU in 2004 – according to either a self-designed plan or an alternative proposed by UN Secretary General Annan (AG).

Czech Republic:

I&R has never been an integral part of Czech politics. Neither in the case of the restoration of democracy, nor in separating from Slovakia, nor in the question of accession to NATO did the Czech Parliament give the people the opportunity to vote. This changed when, in 2003, the Czechs had to decide whether they wanted to join the European Union. On 14 June 2003, 77% of the electorate approved this step in the very first referendum in Czech history. As the issue of Europe remains controversial in this central European country, the parliament in Prague will also put the new EU constitutional treaty to a referendum. However, a new law to introduce citizen law-making by popular initiative has not yet

obtained the necessary majorities in both chambers of the parliament (BK).

Denmark:

Although the obligatory referendum in domestic politics functions only in relation to European issues (and Denmark itself has little experience of I&R processes), they have proved significant in extending far beyond the country's borders: Danish referendums on the EU have been responsible for bringing the I&R process and the question of European integration as a whole into the European public domain. However, the right of initiative of a parliamentary minority has so far been of no practical significance. At the local level, there has been an increasing number of consultative referendums. In the medium-term, the 40% approval quorum for national referendums remains a problem (BK).

Estonia:

In contrast to its southern neighbour Latvia, Estonia did not take up the direct-democratic traditions of the inter-war period once the country had regained its independence in 1991. Instead it began to orient itself towards its politically centralised northern neighbours. The result is that ordinary Estonians have no rights of initiative or referendum: these remain the exclusive right of a majority in parliament. However, the obligatory constitutional referendum does exist and was invoked for the first time when Estonia was deciding on joining the EU in 2004. As this binding citizens' decision was rated as "partly free, partly fair", pro-democracy forces in the small Baltic republic see an opportunity to develop more tools of citizen law-making (BK).

Finland:

The Finns have only been able to vote twice in their history on a substantive issue and at the communal level there have only been around 20 referendums in total. This rather limited experience shows that the country has a long way to go on the question of popular participation in decision-making.

Proposals for relevant reforms were rejected when the new constitution was being decided in 2000. However, they were revived recently when certain factions in the government and the parliament identified weak points in the current constitutional set up. Locally, but also on transnational issues such as the EU and NATO, a bigger popular say is currently being considered (BK).

France:

Although France was a co-founder of modern direct democracy in the form of initiatives and referendums during its revolution at the end of the 18th-century, in practice it is only the presidential plebiscite which has remained. The "referendum" is therefore understood primarily as an instrument of the elite and not as a tool of the ordinary citizen. Nonetheless, there is a tradition of presenting important constitutional changes to the people in a binding referendum. In addition, the political elite loves to talk about popular sovereignty and regularly makes expansive promises about the introduction of I&R. A new law for local referendums has been passed by parliament, and both the President and the government are considering a citizens' decision on the new EU constitutional treaty. Nevertheless, the French know how to make use of one unique inheritance of the French Revolution - a kind of "voting with the feet". If any French social movement is able to get a million citizens onto the streets of Paris for a clear political issue (e.g. university reform, private schools and respect for public services), no government, left or right, will risk rejecting the demands. However, it is not possible to mobilise such a number of people more than once every two or three years (BK).

Georgia:

In the winter of 2003 / 2004, the citizens of Georgia demanded a government that would adhere strictly to democratic principles. They forced President Eduard Shevardnadze to resign when he tried to certify fraudulent election results and

elected a new, more trusted president, Mikheil Saakashvili. In this most western part of Caucasian Europe, there is little in the way of a good format for referendums, which are more often used by the leaders to outwit democracy and manipulate the people. In Georgia, referendums were (mis)used in the 1990s by authoritarian separatist leaders of regions like Abkhazia. The Parliamentary elections at the end of March 2004 will give us an indication of the real democratic will of the new Georgian leaders and whether they are aware that they owe their power to the people (BK).

Germany:

In 2002 the necessary two-thirds majority was not achieved in the Bundestag (in support of the proposal to incorporate the popular initiative, the popular demand and the referendum into the constitution). Had it been, Germany would have moved straightaway into the group of European countries with developed procedures of citizen law-making. Instead, Germany remains for the time being a country with no direct-democratic procedures at the national level at all. Soon it will be the only country in the EU of 25 without any experience of a national referendum - an unnecessary tribute to a history which is now long past, and not the expression of the democratic maturity of current German society. However, in a country of more than 80 million people, the federal states (Länder) and the communes play a very important role and it is here that popular rights have increased enormously over the past 10 years. Nonetheless, in most places they still require reforms in order to make them more citizen-friendly i.e. the existing quorums should be lowered or removed and the numerous difficulties in collecting signatures should be eased. Unfortunately, the German elites might still resist being carried along by the European momentum for referendums on European issues which can be seen in many other new and old EU member states (AG).

Greece:

The democratic constitution of 1975 provided the basis for three different kinds of popular vote (initiative, referendum and constitutional referendum). However, all three forms are dependent on the readiness of the country's president to present issues to the people - and so far this has been absent. Nonetheless, for some years now strong forces within Greek society have been pressing for popular votes on issues such as European integration and secularisation. In the quarrel over the removal of the declaration of religious affiliation from Greek identity cards, the Orthodox Church collected several million signatures – and in opinion polls the Greeks are among the most referendum-friendly in Europe (BK).

Hungary:

The constitution allows citizens the possibility of making initiatives on laws. 200,000 signatures collected within four months gives them the right to have a referendum. But in practice the wide-ranging list of exemptions undermines the democratic potential of this provision. What is more, the courts have the option to curtail or dismantle the direct-democratic procedures and decisions. In 1997, for example, the participation quorum was cut from 50% to 25% for the NATO referendum - a ruling which in spring 2003 helped the government to achieve its desired EU accession. The pro-accession vote of 12 April 2003 has not, however, led to a more positive general attitude towards citizen law-making (BK).

Iceland:

This island state in the North Atlantic seems to be too small and, perhaps most of all, too homogeneous to give pro-direct democracy movements the opportunity to make their case. It is the president of the country, which has been independent since 1944, who has the right to submit a parliamentary decision to the people. This provision, which has existed since 1994, may

prove to be particularly important in questions of European integration: Iceland is currently debating whether to enter into negotiations to join the EU. Between 1908 and 1944 the Icelandic people voted in a total of six occasions on questions of independence and the use of alcohol (BK).

Ireland:

Ireland is the prototype of a country with obligatory constitutional referendums. Irish citizens have the last word not only on questions of European integration, but also on moral and institutional questions. However, the electorate cannot initiate referendums itself. Neither is there any serious debate on reform of the system. Nonetheless, the role of the courts (in favour of the obligatory referendum), the current debate about the parameters (keywords: Referendum Commission; payment of expenses) and the absence of participation and approval quorums are positive features (BK).

Italy:

After Switzerland, Ireland, Denmark and Liechtenstein, it is the Italians who have the biggest practical experience of initiative and referendum. Over the last 30 years, the population of 50 million has put legal issues to the vote in 53 so-called "abrogative" referendums, which are similar to popular initiatives to improve existing laws. However, the counter-productive role of the 50% turnout quorum, as well as the undemocratic monopoly of television and political power has consistently weakened the potential of Italian direct democracy. More and more Italians became fed up with the referendum in general after 18 referendums were declared invalid. Unfortunately, the number of those who could and would enlarge and reform the Italian referendum system towards a positive initiative process is still too few and too marginal, given the elitism of too many of today's opposition parties (AG).

Latvia:

Although Latvia has only been an independent state since 1991, her fairly comprehensive I&R procedures actually date from the first period of independence between the two world wars. These procedures allow for 10% of the electorate to initiate a change to the constitution or a new law; a decision of parliament can also be subjected to referendum. There are, however, restrictive rules excluding certain issues and the requirement that at least 50% of the turnout at the last general election must participate in a referendum. After the EU accession referendum on 20 September 2003, it is very probable that the new EU treaty will also become the subject of a referendum. Latvia's biggest problem is the continuous exclusion of a major part of the population, considered to be non-citizens since Soviet times (BK).

Liechtenstein:

This small principality between Austria and Switzerland has and uses the three basic procedures of direct democracy (popular initiative, facultative referendum, obligatory referendum) on a regular basis and with sensible parameters. However, the Prince of the only direct-democratic hereditary monarchy in the world dominates political life – and not only with his far-reaching veto rights - in a way which is incompatible with real democracy. He has already threatened to leave the country if parliament and the people were to disagree with his constitutional ideas. This amounts to nothing less than an attempt to blackmail the people who do not wish to leave their unique mix of a monarchical direct democracy. The Prince was able to avoid being monitored by the Council of Europe, but had to pay the price that Europe is now aware of his unique democratic weaknesses (AG).

Lithuania:

This Baltic republic has the obligatory constitutional referendum, the popular

initiative and the facultative referendum. During a brief period between 1991 and 1996 there were no less than 10 national referendums. However, this practical experience revealed the clear procedural weaknesses: the 50% participation quorum resulted in many invalid votes. A new referendum bill, which lowered the special majority requirements, contributed to a much more positive experience with the EU accession referendum on 11 May 2003. There are justified hopes that this Baltic republic will continue to improve its institutional conditions as well as its practical record in the future (BK).

Luxemburg:

The Grand Duchy owes its independence to a quasi direct-democratic movement (the "Petition Movement" of the 1860s). But monarchies (or royal traditions) do not normally provide fertile ground for the development of citizen law-making devices. Nonetheless, as Luxembourg is also a very European country, there has been a legal provision since 1996 to hold a referendum, and in 2003, the parliament decided to hold the first citizens' decision in the modern history of the small Duchy, once the new EU constitutional treaty is finally ratified (BK).

Macedonia:

Although never directly involved in the wars after the collapse of the former Yugoslavia, Macedonia is a deeply divided society and threatens to separate into its majority Slav part (about two-thirds) and its Albanian minority. After teetering on the edge of a real civil war soon after the millennium, the international community was able to help broker a peace agreement (the "Ohrid-Agreement") which the country is struggling to implement. The change of power after the elections of 2002 showed a certain democratic capacity which still remains fragile. Such divided societies are also great challenges for direct democracy, because without decentralisation of power at the subnational level and special

measures to ensure fair outcomes, the simple majority rule in a referendum would exacerbate the dividedness of the country instead of contributing to its integration founded on a diversity in unity (AG).

Malta:

According to the EU Commission, this small Mediterranean island state fulfils "all the standards of democracy and human rights" and yet - with the sole exception of parliamentary elections - Malta's citizens have been prevented from participating directly in the political life of their country in spite of their "abrogative" initiative right. Since gaining independence from Great Britain in 1964, there have not even been any more plebiscites, with the sole exception of the consultative EU referendum on 8 March 2003 (AG).

Moldova:

This tiny country sandwiched between its big neighbours Ukraine and Romania is not only the poorest in Europe, but is also divided by the separatist "Transnistrian Republic", whose status is still waiting to be fixed by common agreement. In the mid 1990s, the parliament agreed to change from a presidential to a more parliamentary democracy and thus avoided the plebiscitary misuse of referendums. The policy errors of the liberals and democrats enabled the unreformed communists to gain a two-thirds majority in the 2001 elections, which were, for the most part, fairly conducted. Since then, the communist leader and the parliamentary majority have had many problems with the opposition movements in the street and have not so far been able to implement the reforms needed to integrate the country and to raise it above the poverty line (AG).

Netherlands:

On one hand, the Netherlands is one of the very few countries in Europe, and even the world, in which there has never been a national referendum; on the other hand, it is also one of the very few countries in

which the issue of the introduction of direct-democratic elements brought about a government crisis. This happened in 1999 and led to the creation of a provisional referendum law, under which the question will be examined nationally and a conclusion reached by 2005. At the same time, the parliament has decided to hold the very first national referendum on the new EU constitutional treaty, allowing only 50 days of official debate. A recent positive sign is the adoption of a popular initiative and referendum law in Amsterdam in 2004 (BK).

Norway:

Norway, whose constitution dates from 1814, has no de jure direct-democratic procedures at all. And yet, thanks to the practical steps it has taken, Norway can be placed within the centre-ground of the citizen law-making index, as its citizens have for decades always been asked to give their approval on questions of EU membership. In addition, there exists a relatively comprehensive level of direct involvement in decision-making at the communal level, where there have been more than 500 local referendums since 1972. In 2003, the national parliament introduced a further initiative tool which was subsequently used by 300 citizens in Oslo to place an issue on the agenda of the local parliament (BK).

Poland:

As a key country in the EU enlargement process, the EU accession referendum in Poland was monitored closely by many Europeans. The debate on the issue was intense, including the exact provisions of the amended referendum law, which had been passed by the Sejm, the Polish parliament, less than 2 months before the referendum on 7-8 May. The opponents of EU accession put forward 308 draft amendments on a text of 216 words. The new law enabled a referendum on international treaties and extended voting from one to two days. The debate in the Legislative Committee took 2

days, and voting in the Sejm 4 hours. Since the EU referendum, debate has opened up on further elements of I&R in the Polish constitution (BK).

Portugal:

In 1998 a very badly prepared and executed attempt was made to hold referendums on the questions of abortion and European integration. The first was rushed through within a matter of a few weeks, the second (on Europe) was deleted from the referendum calendar by the constitutional court. What is especially bad is that leading politicians are now attempting to discredit popular rights on grounds for which they are themselves responsible. On the other hand, a referendum on the EU constitution has been announced by Prime Minister Jose Manuel Durao Barroso. Portugal is an example of how a badly designed referendum process can undermine the whole potential of direct democracy and discredit it for years. Portugal needs to invest a lot of effort and genuine goodwill into overcoming this experience (AG).

Romania:

As a young democracy, Romania is still suffering considerably from its totalitarian heritage. This includes the experience of the dictator's plebiscite of 1986, in which Nicolai Ceausescu arranged a referendum on a military issue and achieved a 100 % "Yes" vote on a turnout of 99.99%! Despite this, there is another, even older, tradition - that of the constitutional referendums which took place after 1864. In addition, there is a right of petition which could force a parliamentary debate but which - if it did come to a referendum - would be burdened by a 50% turnout threshold. A first national referendum test in Autumn 2003 ended with a clear 'Yes' to EU accession preparations, but also represented an example of unfair campaign practices (BK).

Russia:

Since the collapse of the Soviet Union, Russia has experienced many elections and even

referendums, but not one was close to being free and fair. Under President Putin, this embryonic democracy has further regressed, so that many speak both in and about Russia as a "directed democracy". The Kremlin is the centre of all power, the Parliament is as weak as it is dependent, nationalism has experienced a revival and the liberal opposition parties failed to get into Parliament in the last manipulated elections of December 2003. It is more than doubtful that Putin will be able to change this for the better in his second term; direct democracy cannot be on the Russian agenda when indirect democracy is so weak and scarcely in evidence (AG).

Serbia:

Together with neighbouring Bosnia-Herzegovina, Serbia is one of the few European countries without any I&R provisions at all. In 1998, a plebiscite organized by the then dictator Slobodan Milosevic produced a 94% majority against the "international supervision of Kosovo", paving the way to another war in this part of Europe a year later. The heritage of nationalism still hampers democratisation in Serbia, which is mirrored in strange institutional provisions such as a 50% turnout quorum for parliamentary elections. This country is far from a functioning direct democracy, but it has started to break away from its undemocratic past (BK).

Slovakia:

Over the past three years, this young country has made enormous steps forward, despite many traumatic experiences (Keywords: 1968; disintegration of Czechoslovakia; the Meciar regime). It has a binding popular initiative right, which among other things led in 2000 and 2004 to referendums on bringing forward new elections. However, as in many other countries in Central and Eastern Europe, the conditions for more democracy are extremely modest; in addition, the 50% participation quorum threatens to invalidate almost all referendums. Although

this requirement was met in the 2003 EU accession referendum, the referendum was heavily criticised for its unfair nature (BK).

Slovenia:

The republic of Slovenia is one of the "new" I&R countries in Europe. Although citizens only have a non-binding initiative right, in practice they can subject all laws passed by Parliament to popular approval by means of facultative referendums. Thus, despite their rather modest experience to date (only four national referendums since 1990), direct democracy appears to have considerable potential. However, the 50% participation quorum, the right of parliament to make a counter-proposal and the restriction of popular rights solely to legislation are negative aspects. Four national referendums were held in 2003 alone. The April 2004 "referendum" - on a topic which the Constitutional Court ruled to be a human rights' issue and not open to the referendum process - illustrates the need to reform the design of I&R in Slovenia in order to prevent further discrediting (AG).

Spain:

The last time the Spanish were able to vote on a substantive issue was in 1986, in a plebiscite on accession to NATO. In some regions, for example in Catalonia, there have been a few popular initiatives. Indirect initiatives are also allowed on the national level. In addition, Spain refunds the expenses of initiative committees and there are no participation quorums. Finally, the government has announced an EU referendum on the new constitutional treaty (BK).

Sweden:

Like France, Sweden's experience of referendums is primarily one of plebiscites. However, unlike France, where the President has total control, it is the ruling Social Democratic parties which exercise this role. Referendums, which are binding only under

quite specific circumstances, are (mis)used as instruments of power. Citizens effectively have no rights, even at the communal level, where a right of petition, which has been called an "initiative right", has caused a great deal of frustration. However, most opposition parties (representing a majority in parliament) now understand the pressing need to strengthen the citizens' role in Europe's last "one-party state" (BK).

Switzerland:

This federal state in the heart of Europe has the longest, most detailed and most comprehensive experience of citizen law-making anywhere in the world. In Switzerland citizens really do have a say and cannot be ignored or marginalised in politics. But, even here, there is no perfect system of direct democracy. This very liberal society should take much more care over the fairness and the transparency of the process which leads to the vote. Too often one side outspends the other in a way which undermines the legitimacy of the result - something which those who lose may one day no longer accept. Such an outcome should be avoided at all costs to preserve a strong direct democracy (AG).

Turkey:

The new government shows that a Muslim culture is not incompatible with democracy. No other government has done as much as this one to improve the democratic standards of Turkey and the emancipation of Turkish democracy from military supervision. In doing so, Turkey has illustrated its desire to join the EU - a process which is important not only for Turkey and Europe, but also for all those across the world who want to avoid the clash of civilisations. Although the Turkish constitution refers to the possibility of holding referendums, the basis for these is neither developed nor defined. It is to be hoped that the current momentum towards real indirect democracy will also bring about its strengthening in the direction of direct democracy (AG).

Ukraine:

The biggest country in Europe has as much difficulty in implementing the rule of law, human rights and democracy as Russia and the Caucasian republics. For ten years now, the president, who is still in power, has been manipulating both elections and referendums, which have more to do with the power of the administration to implement the will of the president's oligarchy than with the will of the people and their common interest. It remains to be seen whether this will change in the forthcoming elections this Autumn, because - like many rulers whose time drawing near - this president fears prison more than further manipulation of the constitution. The people of the Ukraine deserve the kind of change which took place in Georgia, but this is much more difficult in this large, rich country where many people are still afraid of politics - a legacy of the totalitarian rule of Stalin, who killed millions of Ukrainian men and women in the 1930s (AG).

STEP 3: COUNTRY-RATING JUST IN SEVEN CATEGORIES

Combining theory and practice, we can now compartmentalise the state of direct democracy in the assessed countries into seven categories.

Cat.1 - The Radical Democrats.

Citizens have access to a broad spectrum of direct-democratic procedures. As well as the binding popular initiative, these include the right of facultative referendum and obligatory referendums for alterations to the Constitution and state treaties.

Country: **Switzerland**

Cat 2. - The Progressive.

In the countries in this category citizens have, at least in part, the possibility of initiating national referendums without the

express permission of the organs of the state (parliament, government, president). There are also procedures for obligatory referendums.

Countries: **Denmark, Ireland, Slovenia, Slovakia, Netherlands, Italy, Lithuania**

Cat. 3 -The Cautious.

The electorate does have practical experience of popular initiatives and / or national referendums. But these procedures are essentially plebiscitary in nature i.e. they are not protected or controlled by the citizens themselves or by the law, but are controlled "from above" by parliament (political parties) or by the executive.

Countries: **Luxembourg, Bulgaria, Portugal, Czech Republic, Belgium, France, Spain, Austria, Norway, Poland, Liechtenstein**

Cat. 4 - The Hesitant.

The political elites in the countries of this category appear to be afraid of popular participation in political decision-making, whether out of a fear of having to share power or because of concrete historical experiences. Even here, however, there are still some traces of statutory I&R procedures, which may form the basis for future improvement.

Countries: **Hungary, Sweden, Britain, Finland, Estonia, Germany, Romania, Malta**

Cat. 5 -The Fearful.

Almost entirely lacking institutional procedures and practical experience, the countries in this category make it very hard for themselves to complement indirect democracy. In addition, the political and cultural circumstances scarcely provide a stimulus for the introduction or the strengthening of elements of popular decision-making. Nonetheless, the issue is occasionally debated.

Countries: **Croatia, Iceland, Greece, Cyprus**

Cat. 6 – The Beginners.

These countries have only recently started their democratisation process, including a respect for basic freedoms and human rights. Parliaments have been elected by the people, but there is still a great deal of mistrust between governors and governed, making the introduction of additional instruments like direct democracy extremely difficult.

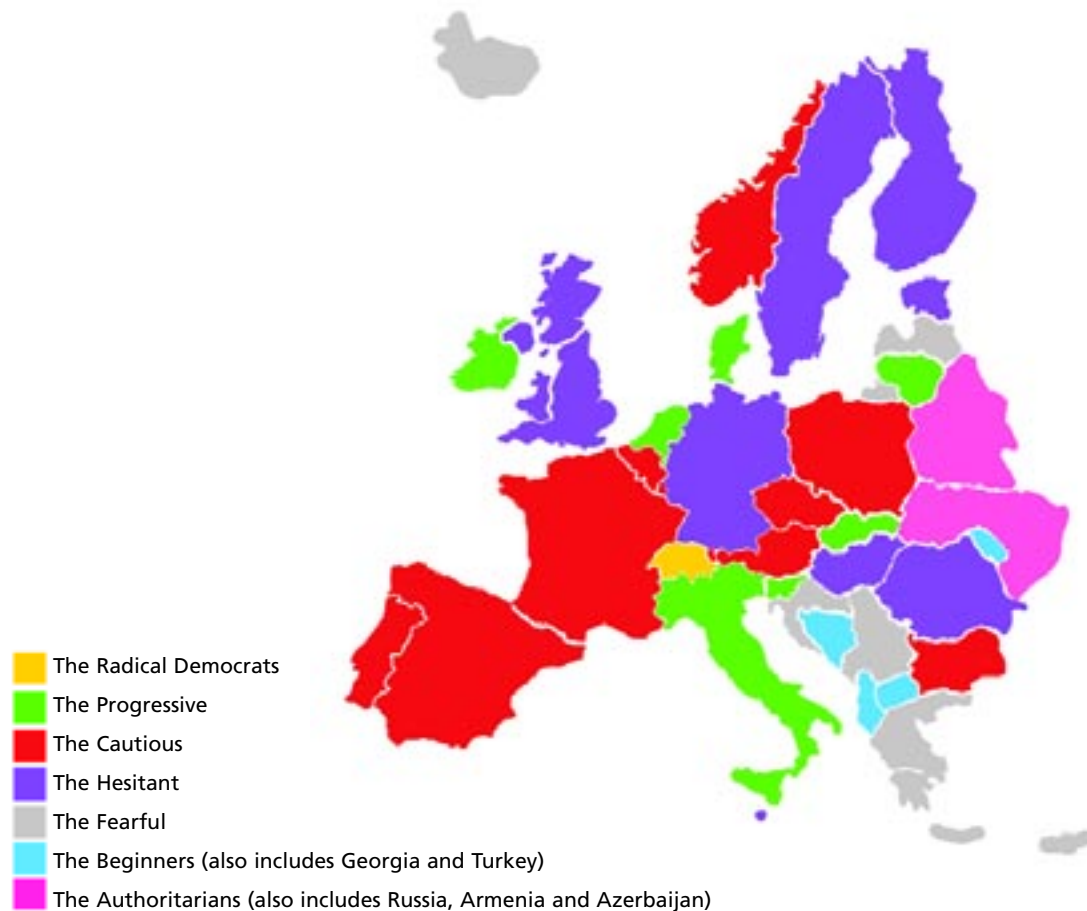
Countries: **Bosnia, Serbia, Albania, Macedonia, Moldova, Georgia, Turkey**

Cat. 7 – The Authoritarians.

In the countries belonging to this category, there is at present no basis at all for the development of direct democracy.

Countries: **Russia, Armenia, Azerbaijan, Belarus, Ukraine (BK / AG)**

Map 4 – Index: The Initiative & Referendum process in European countries



Initiative & Referendum Glossary

A (referendum) vote or ballot

Procedure by which those eligible to vote may accept or reject a proposal of the Federal Assembly or of the People. Voting may take place at the polling station using a voting form or by post.

Citizen-friendly

In the context of initiatives and referendums, the degree to which the I&R rules on thresholds, hurdles, quorums, voting methods etc. make the process as free and fair as possible for the voter.

Citizen law-making

The political system of proposing, approving, amending and deleting laws by popular initiatives and referendums.

Consensus democracy

A form of popular sovereignty which aims to involve as wide a cross-section of actors (parties, unions, minorities, civil groups etc.) as possible in the political process and to reach consensus decisions. Because it is relatively easy to overturn parliamentary decisions in popular referendums, parliament - and, before the parliamentary debates begin, the government as well - will have to look for compromises which will satisfy as many important (those which are considered capable of forcing a referendum) political groups as possible. Historically, it was the referendum which shaped consensus democracy.

Constructive referendum

A popular proposal relating to a referendum proposal, which is linked to the calling of a referendum. The constructive referendum gives a certain number of voters the right to present a counter-proposal to a decree which is subject to the facultative or optional referendum.

Consultative referendum

Politically important, but not legally binding, decision of the electorate (sometimes also including those who are not registered citizens). The consultative referendum can in principle relate to any issue which the state deals with or might deal with.

Deciding question

When both an original initiative and a counter-proposal are to be decided upon in a referendum ballot, it could result in a 'double Yes' (because it is possible to vote for both proposals). The deciding question is used to determine which of the two proposals should be implemented when both have been accepted.

Double 'Yes'

If the Federal Assembly in Switzerland submits a counter-proposal in response to a popular initiative, the voters may approve both the counter-proposal and the initiative and at the same time indicate which of the two they would prefer if both were approved. The proposal (initiative or counter-proposal) that is ultimately accepted is that which receives the most yes votes. (*)

E-voting / electronic voting

Form of voting in which voters are able to vote with the aid of a special electronic voting system by completing an "electronic ballot paper", which is then sent via a data network to the office responsible for the vote.

Facultative / optional referendum

Referendum that is held if a certain number of voters have requested a referendum on, for example, a new or amended act or on an international treaty.

Federalism

Federalism (from the Latin 'foedus', meaning 'a treaty') is a form of state in which the individual members of a federal state or confederation retain, to a large extent, their sovereignty while also sharing

in government. Many important functions of a federal state are determined by the parts under their own powers.

Finance referendum

Also known as the 'expenditure referendum'. This is linked to a parliamentary decision on public spending and is therefore different from a referendum on legislation. All decisions which involve, or may potentially involve, public expenditure fall within the remit of the 'expenditure referendum'. The expenditure referendum is governed by cantonal law.

Fundamental human rights

Basic human rights do not only guarantee legally enforceable claims by individuals; as objective principles, they also permeate the entire rule of law. They are binding on all the organs of the state, especially the legislature.

Human rights

Rights which belong to every individual and which cannot be removed by law - for example, the right to life, the right to freedom of religion and expression.

Indirect counter-proposal

A draft which is not a formal counter-proposal to the initiative. It can be presented by parliament or the government and follows a different decision-making path from the initiative.

Individual initiative

In the Swiss canton of Zurich an initiative can be launched by a single individual. The initiative will go to referendum if it is supported by the Cantonal Council.

Initial signature quorum

Minimum number of signatures required to launch an initiative.

Legislation

The enactment of laws. In a democracy, legislation is enacted by parliament as one of the three separate powers of state. Laws passed by parliament are implemented by government and by the relevant authorities and controlled by the judiciary. In a direct democracy the people have extensive rights of co-determination in legislation.

Legislative initiative

A legislative initiative is used to demand the creation, amendment, extension to, or repeal of, a law. The legislative initiative exists in all the cantons.

Legislative referendum

Laws passed by parliament are subject to popular ballot in every canton. The referendum is either obligatory or facultative.

Multiple option ballot

The voter is able to choose between a number of different versions of the same basic proposal. Multiple option ballots occur, for example, in Switzerland when an initiative proposal and a counter-proposal by the Parliament, two or more initiative proposals or a referendum proposal by Parliament and a counter-proposal handed in by voters (popular proposal) are set against one another.

(Minimum) participation / turnout quorum (normally expressed as a percentage) in a (referendum) vote

It is possible to make the validity of the ballot dependent on a minimum number of voters taking part. Minimum participation quora used to be required in some places. The subject is once again a matter for debate in certain areas. The demand for minimum quora is based on the argument that a referendum vote is not representative if only a minority of the electorate has actually voted.

Participation / turnout (in a referendum vote or election)

The number of citizens (expressed as the actual number or as a percentage of the electorate) which turned out to vote in a referendum ballot or election. The turnout figure is the total of all the voting slips, whether valid, invalid or blank.

Petition

Written submission with no particular form that any person may send to a state authority. A petition may contain a proposal, a criticism, or a request, and the subject matter may be any state activity. The authorities must acknowledge a petition, but need not respond to it.

Plebiscite

"Referendum" launched and controlled by above.

Popular initiative

Popular initiative by which a minimum of voters may propose a new law or constitutional amendment.

Popular referendum

Optional referendum that is held if the People, i.e. a minimum of 50 000 voters, so request.

Popular sovereignty

The principle (inscribed in the constitutions of most European countries and in the draft EU constitution) which states that all powers of the state derive from and reside in the people.

Postal voting

Method of voting in which voters send their ballot papers to the office responsible for the vote and are not required to go to the polling station in order to vote.

Referendum booklet (explanatory booklet or pamphlet)

A pamphlet or booklet in which the proposal(s) submitted to the voters are explained, and in which the arguments of the committee responsible for the initiative or referendum together with the opinion of the Government are summarised. It is published by the Electoral Commission in the official national languages and sent to the voters via the communes along with the other voting documents.

Referendum initiated by authorities

Some constitutions provide for the president, government or parliament to submit to referendum a decree which is not subject to an obligatory referendum.

Right of recall

Citizens have the right to recall parliament or the government. This right is exercised by means of a citizens' initiative.

Right of recall (of an initiative)

A popular initiative can be recalled (withdrawn) by the initiative committee. At the federal level, recall is allowed until such time as the government sets the date for the referendum. An initiative submitted as a general proposal cannot be recalled after it has been approved by parliament.

Right of veto

Voters have the right to a referendum vote on an administrative or governmental decision of parliament. The finance referendum is a form of administrative referendum.

Right to vote

An obligation on the part of voters to take part in elections and referendum votes. The voter is not obliged to physically exercise his right to vote - he (or she) can hand in a blank voting slip. Compulsory voting exists in certain states.

Simple majority

Proposals which are put before the people for decision in a ballot are accepted if a majority of the turnout votes in favour - or rejected if a majority votes against.

Unity of subject matter.

Registered voters can only vote 'Yes' or 'No' to referendum proposals (unless they refrain from voting altogether). Under these circumstances, a free and unequivocal expression of political will is only guaranteed if the referendum proposal can be reduced to a single political question. The principle of unity of subject matter should apply to all popular ballots, regardless of whether they have originated in a popular initiative or in an obligatory or facultative referendum. (PC, NB, RB, BK)

Links and Literature

Think-Tanks and Research Institutes

- Academia Istropolitana Nova (Slovakia): www.ainova.sk
- C2D - Research and Documentation Centre on Direct Democracy: c2d.unige.ch
- Eurocomment: www.eurocomment.be
- Friedrich Ebert Stiftung: www.fes.de
- Initiative & Referendum Institute at The University of Southern California: www.iandrinstitute.org/
- Initiative & Referendum Institute Sweden: www.iri-sverige.org
- Institute for Democracy & Electoral Assistance: www.idea.int
- Marburg University, Research Center Direct Democracy: www.forschungstelle-direktedemokratie.de
- Referendum Unit at Electoral Commission: www.electoralcommission.gov.uk/referendums
- Scientific Research Institute for Direct Democracy: www.widd.ch
- SlovakForeignPolicyAssociation: www.sfpa.sk
- Swiss Development Agency DEZA: www.deza.ch
- The Federal Chancellery of Switzerland: www.admin.ch/ch/d/pore/index.html
- University of Tartu Eurocollege: www.ec.ut.ee/ec/index.php?eng

Political Organizations and Campaigns

- ERC (Finland): www.kansanaanestys.fi
- ERC (Netherlands): www.europeesreferendum.nl
- European Convention: european-convention.eu.int
- European Referendum Campaign and Democracy International: www.european-referendum.org
- Kampanjen for Europaeisk folkeafstemning (Denmark): www.folkeafstemning-eu.dk
- More Democracy (Germany): www.mehr-demokratie.de
- Swedish Referendum Campaign: www.folkomrostning.nu
- TEAM (EU skeptical network): www.teameurope.info
- UEF (Federalist network): www.eurplace.org/orga/uef/uef.html
- Vote 2004 (London): www.vote-2004.com
- WIT (Belgium): www.wit-be.org
- Europe Aid: europa.eu.int/comm/europeaid

New IRI Europe Literature 2004:

- Direct Democracy in Europe. Edited by Bruno Kaufmann and M. Dane Waters. Carolina Academic Press. ISBN 0-89089-262-8.
- Direct Democracy in Switzerland. DVD. Edited by Swisinfo and IRI Europe. Presence Suisse.
- The European Constitution – Bringing in the People. The options and limits of direct democracy in the European integration process. Edited by the Swiss Mission to the EU and IRI Europe.
- Transnational Democracy in the Making. IRI Europe Handbook 2004. Edited by Bruno Kaufmann, Alain Lamassoure and Jürgen Meyer.

About the Initiative & Referendum Institute Europe

The Initiative & Referendum Institute, Europe (IRI Europe) was founded in 2001 and has quickly become the premier research and educational institute on I&R in Europe.

IRI's mission is to develop insights into the theory and practice of I&R among politicians, the media, NGOs, academics and the public throughout Europe. IRI Europe is an independent, non-partisan and non profit-making organisation. The institute advocates the I&R process and is dedicated to offering facts, promoting research, providing services to the public and bringing together key actors in the field of democracy.

The first working years were dedicated to developing new information channels, networks and educational tools. In the context of the European integration process and the debate on the European Constitution, IRI Europe initiated, coordinated and evaluated major efforts to bring more participation by the citizens into the political processes on all levels – concentrating first and foremost on promoting new I&R tools and securing the quality of existing ones.

- IRI established a pan-European network of I&R experts in politics, academia, media and civil society, providing meeting places, interactive communication tools and an improved understanding of the potentials of direct democracy.
- With major publications such as the IRI Europe "Initiative & Referendum Monitor" (featuring a ranking of I&R tools in 43 states and assessing the EU accession referendums), the "IRI Europe Handbook – Transnational Democracy in

the Making" (following up the EU-dimensions of the I&R process) as well as the Initiative and Referendum Almanac "Direct Democracy in Europe" (the most comprehensive reference book on European I&R), the Institute laid the foundations for further well-informed development.

- IRI established expert and working groups around governmental and parliament structures in the EU and other countries. As the initiator and coordinator of the EU Convention's working group on "direct-democratic tools in the European Constitution", the Institute contributed to the establishment of the "European Citizens' Initiative" in the draft EU Constitution.

IRI will increase its fundamental commitment to offering the basics for stronger European democracy/ies by offering new tools of information and education.

- The DVD "Direct Democracy in Switzerland" is part of a comprehensive publication programme on the Swiss case, which offers a reader-friendly insight into the most experienced I&R country in the world.
- On the European level, IRI is coordinating state-of-the-art expert work around the new "European Citizens' Initiative" in close cooperation with the EU and developing a list of 'Basic Criteria for Free and Fair Referendums in Europe', which will contribute to quality checks for most future referendums.
- By following up the networking work inside the European Convention, during which more than half of all members from 25 European states joined the call for more I&R, IRI is establishing competence centres in many countries, offering a platform for the specific needs around I&R in these countries.

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