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(Final version)

Updating guidelines to ensure fair referendums in Council of Europe member States

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A. Draft Resolution

1. Experience drawn from referendum practice since the Code of Good Practice on Referendums (hereinafter “the Code”) was adopted in 2007 by the European Commission for Democracy through Law (Venice Commission), upon a request from the Parliamentary Assembly, calls today for strengthening the rules on conducting referendums, enhancing compliance by Council of Europe member States and sharing good practice throughout the continent.
2. In particular, in some countries, recent referendums have raised concerns about the process and/or the fairness of the outcome. Other countries have explored innovations in referendum practice which could be of benefit to policy makers in all member States. Moreover, the growth of the internet, and especially social media, has fundamentally changed the nature of political campaigning and of people’s expectations of democracy.
3. The Assembly therefore welcomes the fact that a process for updating the 2007 Code has been initiated by the Venice Commission and invites the latter to take into account, in the revised Code, the following general principles:
 - 3.1. referendums should be embedded in the process of representative democracy and should not be used by the executive to override the wishes of parliament or be intended to bypass normal checks and balances;
 - 3.2. proposals put to a referendum should be as clear as possible and subject to detailed prior scrutiny, including by parliament, to ensure that they reflect voters’ concerns and can reasonably be expected to deliver on voters’ wishes;
 - 3.3. the conduct of the campaign should ensure balance between the sides and allow voters to have access to balanced and quality information on the options in order to be able to make an informed choice.
4. With regard to specific aspects of the conduct of referendums, the Assembly invites the Venice Commission to consider including in the revised Code the following elements:
 - 4.1. it should not be possible for the executive to call a referendum on a constitutional proposal, except where the decision to hold a referendum has already been endorsed by the legislature or where the proposal that is put to a referendum has been passed by the legislature;

Amendment 1

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In the draft resolution, after paragraph 4.1, insert the following paragraph:

“it should not be possible to hold referendums at the same time as other elections, in order to allow voters to make well-informed decisions while casting their votes;”

- 4.2. where possible, referendums should be post-legislative; where this is not possible, a process should be set out requiring two referendums if the first referendum does not allow voters to choose between the options that are ultimately available;
- 4.3. to avoid the danger of low participation while maintaining the principle that referendum results should not be subject to turnout thresholds, referendums should, as far as possible, be called only on subjects that are likely to attract significant public interest;
- 4.4. it should not be possible to put to referendum a proposal which would run counter to Council of Europe membership conditions, such as a proposal to reintroduce the death penalty;
- 4.5. questions requiring replies other than “Yes” or “No”, including multi-option questions, should be allowed if they give voters a clearer choice;
- 4.6. an impartial body should check any proposed referendum question to ensure it is clear, accessible and unbiased. Where a fixed format for referendum questions is used, this should be reviewed periodically to ensure that it provides for a ballot paper which fulfils these criteria;
- 4.7. in the case of citizen-initiated referendums, the number of signatures required to trigger a referendum should be high enough to ensure that the proposal has genuinely wide support; the development of procedures whereby a citizens’ petition would not lead directly to a referendum, but rather to a citizens’ assembly which would recommend follow-up action could be encouraged;
- 4.8. there should be sufficient time for all sides to develop and make their points and for voters to hear the arguments and form an opinion. While a considerably longer period of preparation is desirable, particularly if the topic has not already been subject to widespread public discussion, the absolute minimum time between calling a referendum and polling day could be set at four weeks;
- 4.9. the prohibition for the authorities to use public funds for campaigning purposes should last throughout the campaign period;
- 4.10. in the case of public funding, the principle of equality between the sides should take precedence over that of proportional distribution of resources;
- 4.11. the principle of transparency should apply both to the sources of campaign funding and to how those funds are spent; spending and/or donation limits should be encouraged and foreign donations prohibited;
- 4.12. new rules on the transparency of campaign materials are needed, including clear labelling of who produces all advertising; rigorous independent press regulation and impartial fact-checking should be encouraged for the purpose of tackling misinformation;
- 4.13. the responsibility to provide official information should be entrusted to an independent body, rather than the authorities; information should include, as a minimum, the referendum question and details of when and how to vote

and, where possible, explanations and analysis of the proposals;

- 4.14. sanctioning powers should cover all aspects of campaign regulation, including breaches of the campaign finance rules; fines should be commensurate with the scale of campaign funding.
5. The rise of digital media and the increasing convergence between printed, broadcast and digital media, especially social media, calls for regulation across all media sectors in relation to all electoral processes. The Assembly notes that the Venice Commission is currently working on these issues and hopes that relevant guidelines will be developed for both referendums and elections.
6. Considering that compliance is occasionally lacking in the following areas, the Assembly calls on member States to ensure that:
 - 6.1. all fundamental aspects of referendums, as defined in the current Code, with particular emphasis on rules governing the franchise, are fixed in legislation for referendums in general (rather than on an ad hoc basis); such legislation cannot be changed less than a year before a referendum is held;
 - 6.2. the body supervising the referendum is independent of government and has powers to enforce the rules, including the power to impose sanctions in case of breach;
 - 6.3. public funds are not used by the authorities for campaigning purposes throughout the campaign period;
 - 6.4. optimal solutions are developed, in co-operation with internet companies, with a view to designing repositories of online political advertising.
7. The Assembly considers that the existence of an independent body which would check any proposed referendum question, supervise the conduct of the campaign, take all necessary measures to ensure that this is properly conducted and possess the means to enforce its decisions and sanction possible breaches, would be one of the most efficient means to enhance member States' compliance with referendum rules. It therefore calls on the Venice Commission to consider recommending in the revised Code the creation of such bodies in Council of Europe member States.
8. The Assembly underlines that promoting citizens' participation in democratic deliberation, both before and after a referendum is called, can address voters' lack of trust in and feeling of disconnection from decision-making processes. Thus the Assembly, recalling also its Resolution 1746 (2010) "Democracy in Europe: crisis and perspectives"; and drawing from existing practice in some member States:
 - 8.1. encourages all member States to explore opportunities for citizen deliberation both prior to referendums and during the campaign, for instance through citizens' assemblies;
 - 8.2. invites the Venice Commission to highlight, in the revised Code, the role citizens' assemblies and other similar mechanisms could play to ensure proper scrutiny of

proposals before a referendum is called and improve the quality of information and debate during the referendum campaign.