

COUNCIL OF EUROPE

COMMITTEE OF MINISTERS

RECOMMENDATION No. R (96) 2

OF THE COMMITTEE OF MINISTERS TO MEMBER STATES ON REFERENDUMS AND POPULAR INITIATIVES AT LOCAL LEVEL

*(Adopted by the Committee of Ministers on 15 February 1996
at the 558th meeting of the Ministers' Deputies)*

The Committee of Ministers of the Council of Europe, under the terms of Article 15.b of the Statute of the Council of Europe,

Considering that the right of citizens to have their say in major decisions on long-term or virtually irreversible commitments involving a majority of citizens is one of the democratic principles common to all member states of the Council of Europe;

Convinced that this right can be most directly exercised at local level and that the management of important local affairs should involve more effective citizen participation while losing none of its efficiency;

Considering that the local referendum may be seen as an instrument of direct participation which places responsibility on all citizens and can provide democratic solutions to situations of conflict and help strengthen local autonomy by reinforcing the individual's feeling of belonging to a community;

Considering that consultative referendums can provide an opportunity to foster the participation of foreigners in local public life in accordance with Article 4 of the Council of Europe Convention on the Participation of Foreigners in Public Life at Local Level, which was opened to signature on 5 February 1992;

Considering that the local referendum may allow minority groups to express themselves and participate in local affairs;

Noting that local referendums provide a foundation or legitimacy for collective decisions and thus facilitate their acceptance and application by the population concerned;

Considering nevertheless that representative democracy must remain the basis of local democracy, without detracting from the system of direct democracy which in cases where it is part of the country's institutional tradition may, as appropriate, replace or coexist with it;

Considering that the practice of local referendums, however, presents a number of potential risks (for example, cumbersome nature of the process, risk of delegitimising the representative character of local institutions, difficulty in expressing choices in a subtle way, possibility of contradictory decisions by contiguous authorities on a matter of common interest) which it is important to avoid;

Believing that the institutionalisation of local referendum and popular initiatives within the framework of regulations is a suitable means of guaranteeing the proper use of these instruments of direct democracy and limiting their potential risks;

Having regard to Resolution No. 2 on local referendums adopted by the European Ministers responsible for Local Government meeting in The Hague on 15 and 16 September 1993 ;

Having regard to the declaration of the Council of Europe summit of heads of state and government held in Vienna in October 1993, particularly concerning the protection of national minorities and the active participation of all citizens in political life,

Having regard to Opinion 2 (1995) of the Chamber of Local Authorities of the Congress of Local and Regional Authorities of Europe,

Recommends to the governments of the member states, having regard to the appendix to this recommendation :

a. to acknowledge that local and regional authorities may, within the autonomy granted to them, make provisions for referendums and/or popular initiatives at local level, by specifying, if appropriate, the matters for which these instruments are admitted or forbidden as well as the consultative or decision-making character of the referendums or, alternatively ;

b. to lay down, if appropriate and after duly consulting the relevant associations of local authorities, a legal framework for referendums and/or popular initiatives at local level, by specifying the matters for which these instruments are admitted or forbidden as well as the consultative or decision-making character of the referendums.

Appendix to Recommendation No. R (96) 2

Guidelines on referendums and popular initiatives at local level

Preliminary remarks

In many member states of the Council of Europe, and further to the traditional mechanisms of representative democracy, citizens are able to express their opinions or will through two instruments: referendum and/or popular initiative.

For the purposes of this recommendation, the following definitions are used: referendum is an instrument whereby a plan or decision of the local deliberative body is submitted to the judgment of the local community on an initiative either of the local deliberative body or the citizens themselves; a popular initiative is a right of proposal granted to citizens to bring about a decision by the local deliberative body, if need be.

There are two types of referendum: consultative referendum and decision-making referendum, which differ fundamentally in their procedures and effects.

I. General provisions applying to both referendums and popular initiatives

1. Legal basis

Referendums and/or popular initiatives may be institutionalised by legislation or other suitable means, or by local authorities making provisions for these instruments as part of self-government, so as to guarantee their proper use.

2. Subjects

Local referendums and popular initiatives should be organised by the local authorities only on questions which fall within their sphere of competence. Regulations, however, may enlarge the application of these instruments to other matters which affect essential local interests or exclude certain issues.

The competent authority should decide on the admissibility of the request for a referendum or popular initiative without delay. The admissibility criteria should be laid down in regulations.

3. Information

Local authorities have the responsibility for providing adequate information to the local community as regards the issues at stake and procedural matters.

4. *Voting conditions*

The ballot should be organised having regard to the rules governing voting arrangements for local elections, subject to any specific provisions applying (in particular, see paragraph II.1 below).

5. *Results of ballots*

Voters should reply yes or no or leave their ballot slip blank (exceptions to this provision may however be admitted for consultative referendums). The final count yielding a positive or negative result should be explicitly indicated and published in an appropriate manner, as laid down in the regulations.

6. *Funding*

Regulations may eventually set limits on the expenditure on information activities of the parties involved in campaigns for referendums and popular initiatives, in order to avoid excessive discrepancies between them.

7. *Provisions applying to requests for referendums and popular initiatives*

Detailed procedures for lodging requests and, if necessary, for appeals should be laid down in regulations.

Requests once accepted should be submitted to popular ballot within a reasonable time-limit (unless they are withdrawn in accordance with the relevant regulations).

II. Provisions applying to consultative referendums

1. *Voting eligibility*

All persons residing within the community concerned who are vested with full legal rights (including foreign nationals under arrangements to be set out in the specific regulations) should be entitled to vote in consultative referendums.

2. *Subjects*

In principle, any subject within the competence of the local authority concerned may be submitted to a consultative referendum. Regulations, however, may enlarge the application of this instrument to other matters which affect essential local interest, or exclude certain issues.

Consultative referendums may be held on a project at the planning stage or at any stage of development, if called by the local deliberative body.

A question submitted to a consultative referendum should take the form of a fully drafted proposal (single form) and may cover only one specific issue (single content). The wording must be sufficiently precise to avoid any ambiguity.

3. *Initiation*

A consultative referendum may be initiated either by decision of the local deliberative body or by residents through a request bearing a minimum number of signatures, the number to be laid down in the regulations.

4. *Status of results*

The result of a consultative referendum is not binding on the municipal authorities.

III. Provisions applying to decision-making referendums

1. *Voting eligibility*

As far as this is compatible with domestic legislation, all those entitled to vote in local elections in the local authority concerned should be eligible to vote in decision-making referendums.

2. *Subjects*

In principle, any decision or plan within the competence of the local deliberative body may be submitted to a decision-making referendum.

Regulations may however limit the use of this type of referendum to fundamental issues or choices (for example changes in municipal boundaries, land-use plans, local regulations of a general nature, participation in joint authorities) and/or exclude others (for example decisions of a personal kind, such as appointments and elections).

A question submitted to a decision-making referendum should take the form of a fully drafted proposal (single form) and may cover only one specific issue (single content). The wording must be sufficiently precise to avoid any ambiguity.

3. *Initiation*

A decision-making referendum is generally initiated on the basis of citizens' request bearing a minimum number of signatures, the number to be laid down by the appropriate regulations. However, the regulations may also provide for a referendum to be initiated by the local deliberative body.

4. *Status of results*

The result of a decision-making referendum, whether positive or negative, shall be binding on the local authority. In the case of a "No" vote, therefore, the decision rejected must be rescinded or the plan abandoned.

The result of a ballot is generally considered to be valid, regardless of the turn-out. However, regulations may lay down a minimum turn-out level for results to be considered as valid.

IV. Provisions applying to popular initiatives

1. *Voting eligibility*

Voting eligibility criteria should be defined in the relevant regulations having regard to the status of results (see IV.4 below).

2. *Subjects*

In principle, popular initiatives may cover any subject within the competence of the local authority. Regulations however, may enlarge the application of this instrument to other matters which affect essential local interests, whenever its results have only a consultative status, or exclude certain issues.

A popular initiative may take the form of a proposal conceived in general terms or a fully drafted project. It may concern only one subject.

3. *Initiation*

A popular initiative may be introduced by persons entitled to vote, by means of a request bearing a minimum number of signatures, the number to be laid down in the regulations.

4. *Status of results*

The legal value of the result of ballots concerning popular initiatives should be defined in the relevant regulations.

Regulations may lay down a minimum turn-out level for results to be considered as valid.