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# Direct Democracy in The Netherlands

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The Netherlands is one of the only four countries worldwide that have never held a nationwide referendum.

At the local level, some hundred referendums have been held since 1912, most of them plebiscites. In the 1990s, many municipal constitutions were amended to allow for citizen-initiated referendums. The first was held in 1995 in the City of Leiden. However, high participation and approval quorums made it very difficult to get successful results.

At the national level, one party (D66) has made I&R a priority: the issue became part of the "lilac" coalition agreement in 1994, triggered a government crisis in 1999, and led to the Temporary Referendum Law in 2002. Under the current government, a two-thirds majority in parliament is necessary to introduce a binding referendum. But the rightist populist government has announced its intention to abolish all citizen-initiated referendums.

Some country statistics are at the end of this paper\*.

## Types of Initiative and Referendum

The Netherlands is a centralist unitary state (93% of all taxes are raised at the national level). The provinces and especially the municipalities have considerable responsibilities and competences (provinces: environment, spatial planning, water, public utilities; municipalities: housing, health care, spatial planning, welfare, social and city renewal, traffic, police) but these are in the spirit of "co-rule" generally carried out within the framework of national rules. Some large municipalities (cities) have municipal governments with separate elected bodies.

The Kingdom of the Netherlands is composed of the Netherlands, the Dutch Antilles and Aruba (islands in the Caribbean).

## I. National Level

On January 1, 2002, the *Tijdelijke Referendumwet* (Temporary Referendum Law; TRW) entered into force and introduced a citizen-initiated "consultative corrective referendum" (non-binding rejective referendum) at the national, provincial and municipal levels. It was intended to exist until the introduction of a binding version in the Constitution, but the new rightist-populist government announced that it would break with the I&R policy of the last two "lilac" governments and abolish all citizen-initiated referendums.

At the national level, laws are subject to referendum, as are treaties which are, within the Kingdom, only valid in the Netherlands, including revisions of laws and treaties. Excluded are constitutional changes, laws on the monarchy, the royal house, the budget (but not taxes), laws which are valid in the entire Kingdom, and laws which only serve to implement international decisions.

After the monarch signs a law which has been adopted by the parliament, or a treaty has been accepted, the Home Secretary announces within a week -- in the state newspaper (*Staatscourant*) -- whether the law can be the subject of a referendum. If it can be, a three-week period starts in which citizens can make an "initial request" for a referendum by delivering 40,000 signatures. When the

Central Voting Bureau publicly announces that enough valid signatures have been delivered, a 6-week period begins in which citizens can make a "definitive request" by delivering 600,000 signatures.

Signatures must be entered on official forms by citizens in person at the municipal office of their municipality. (The mayor may indicate other places within his municipality.) During the definitive phase, citizens can also send their signatures on an official form by mail to their municipal office. The government may decide by executive measure that citizens can also give signatures electronically, but there is no sign that this will happen soon.

Signatures are counted and considered valid or invalid by the voting bureaus, of which each municipality has at least one. They send the results to the provincial voting bureaus, which total the numbers in their provinces and send them to the national central voting bureau (the Election Council), which checks and totals the numbers given by the local and provincial voting bureaus.

If the prime voting bureau announces that enough valid signatures have been delivered, a date for the referendum is chosen no earlier than 50 days and no later than four months after the bureau's announcement. If an election takes place within this period, the referendum is held on the same day as the election. It is possible to hold more than one referendum on the same day.

The TRW does not say who will draft the question, although the context suggests the government, or which rules should be applied. The Prime Minister is responsible for writing a summary of the law or treaty, which will be mailed by the mayor to the address of each voter no later than two weeks before the referendum. The text of the law or treaty is freely available at each municipal office four weeks before the referendum.

There is an approval quorum: the outcome is only valid when a majority votes against the law, and when this majority comprises at least 30% of the electorate.

Citizens can challenge before the administrative court (*Raad van State*) the decision on whether a law or decision can be the subject of a referendum and decisions of the prime voting bureau of a political unit about the initial request, the definitive request, and the outcome of the vote. Citizens cannot challenge decisions of lower voting bureaus or the decision on the date of the referendum.

The freedom of lower government levels is greatly restricted: according to the rules of the TRW, provinces and municipalities can hold only rejective referendums on decisions of the provincial and municipal councils. Municipalities and provinces can hold referendums with their own specific requirements only on topics which are not dealt with by the TRW (either explicitly allowed or excluded) and on decisions of governmental institutions other than the provincial and municipal councils.

Municipalities and provinces which had their own referendum bylaws on February 15, 2001, can keep them until the introduction of a binding rejective referendum in the constitution (planned for 2005). However, municipalities and provinces are entirely free to introduce (through a municipal or provincial bylaw) popular initiatives with self-made requirements, as well as government-initiated referendums (plebiscites). There is one exception: the Constitution prohibits binding referendums.

Municipalities and provinces can adopt bylaws which prohibit referendums about municipal and provincial taxes or the salaries of elected officials.

The TRW is valid until January 1, 2005, when, according to plan, a rejective referendum with the same requirements but with legally binding outcomes will have been adopted. However, the incoming rightist-populist government (July 2002) announced that it would break with the I&R policy of the last two "lilac" governments and dismantle all forms of citizen-initiated referendums. Since the TRW and the Constitutional amendment also provide I&R rights at the provincial and municipal levels, their abolition would also mean a blow to I&R at the local level, although it would increase the freedom of local governments to install their own I&R bylaws.

## II. Regional Level

The same rules exist as at the national level, with the following exceptions. Referendums can be held on decisions of the provincial parliaments if they form a "generally binding regulation"; on provincial decisions to take part in private organizations; on changes to the name of the province; and on arrangements in which several provinces, municipalities or water authorities take part. Referendums cannot be held on decisions which serve to execute international treaties or decisions of international organizations (or laws which have this purpose); on subjects outside the competence of the province; or on zoning plans.

The provincial parliament can decide by bylaw that no referendum can be held on provincial taxes or on the salaries and compensations of politicians and officials. The Provincial Council acts on the same issues on the provincial level as the Administration does at the national level.

The signature quorum is 0.33 per cent of the electorate for the "initial request" and 5 per cent of the electorate for the "definitive request." The prime voting bureau of the province is responsible for checking the number of signatures and votes, and for determining the outcome of the vote.

Only the province of North Holland has had, since 1995, its own referendum bylaw, which provides a citizen-initiated rejective referendum with many excluded topics and a participation quorum of 50% of the turnout of the last provincial election.

### III. Local Level

The same requirements exist as at the national level: the Council of Mayor and Aldermen act on issues where, at the national level, the Administration acts. The topics about which referendums can and cannot be held are the same as at the provincial level; furthermore, referendums can be held on readjustments of municipal borders when all municipalities involved agree on them. The municipal council can decide by bylaw that no referendums can be held on municipal taxes and salaries or on compensations of politicians and officials.

At the municipal level, the signature quorums of the "initial request" and "definitive request" are respectively:

- a) in municipalities with fewer than 20,001 voters, 1 per cent of the voters (minimum of 50 and maximum of 125) and 10 per cent of the voters (minimum of 200 and maximum of 1250);
- b) in municipalities with 20,001 to 40,000 voters, 0.7 per cent of the voters (maximum of 200) and 7 per cent of the voters (maximum of 2250);
- c) in municipalities with 40,001 to 100,000 voters, 0.5 per cent of the voters (maximum of 300) and 6 per cent of the voters (maximum of 5000);
- d) in municipalities with more than 100,000 voters, 0.33 per cent of the voters and 5 per cent of the voters.

The prime voting bureau of the municipality is responsible for checking the number of signatures and votes, and for determining the outcome of the vote.

Of 537 municipalities, at least 61 introduced their own referendum bylaws between 1990 and the beginning of 2001.

These remain valid for now, as stated above. Most allow a government-initiated and/or citizen-initiated "consultative" referendum: a non-binding rejective referendum on a government decision which is held before the government formally makes the decision. Currently, only two municipalities (Nijmegen and Oosterhout) allow the popular initiative.

Requirements vary with each municipality, but most have a participation quorum?often lower than that specified in the Temporary Referendum Law?and most exclude topics on the budget, politicians' salaries, "vulnerable groups" (asylum seekers, prostitutes etc.), and "urgent decisions." Some cities

(e.g. Amsterdam, Amersfoort) also allow referendums at the city district level.

#### IV. Practical Guide

Additional rules are set in various executive documents. A *General Executive Measure (Tijdelijke Referendumbesluit*,

STB 2001 389) provides rules on many topics. A *Ministerial Arrangement (Tijdelijke Referendumregeling Modellen*, CW

2001/82245) sets, among other things, the form of a ballot question (the name of the law, followed by the options "for" and "against") and the form of signature-gathering petitions.

Several executive papers (*circulaires*) instruct municipal and provincial governments regarding the effects of the referendum process on their internal organization: CW 2001/82050 and 82554. There is *de facto* free signature-gathering for activists in the "definitive phase": they can obtain official forms from the municipal offices, copy them, ask citizens to sign, and send them in bulk back to the municipal offices. They cannot obtain forms from a provincial or national government.

There is no government support, financial or otherwise, for the citizen groups which request a referendum. The "referendum booklet," which is distributed to all households, consists solely of a formal summary of the law or decision.

However, at the local level there is a tradition that governments subsidize the initiating citizen committees.

On the website [www.referendumwet.nl](http://www.referendumwet.nl), the Home Office keeps lists of laws on which a referendum can be held and information on all referendum rules and requirements.

The full text of all I&R legislation, including all executive papers, can be downloaded (in Dutch only) from the Referendum Platform's website [www.referendumplatform.nl](http://www.referendumplatform.nl).

#### V. Trends

The Netherlands is one of only four countries worldwide that have never held a national referendum (cf. Butler & Ranney). Only at the municipal level have at least 101 rejective referendums been held from 1912 until December 2003.

Most of them were plebiscites.

Only in the 1990s were municipal bylaws adopted which gave rights to citizens to enforce (mostly rejective) referendums through a prescribed number of signatures; the first citizen-initiated referendum was held in 1995 in the city of Leiden. Of these 101 referendums, 51 were held on restructuring municipal borders, i.e. abolishing small municipalities.

Also popular were building plans (15 referendums), the reorganization of municipal government (11), and traffic and parking policy (6). Three referendums were held in the overseas territories on a change to their status within the Kingdom.

Because high participation quorums were often adopted, many important subjects were excluded, and the outcomes were not legally binding, many municipal referendums failed. This caused some cynicism among the political elite, which had falsely hoped that the widespread political malaise among the population would disappear once some referendums had been held.

The debate about direct democracy dates from the end of the 19th century, when the Social Democratic League (since 1882) and the Social Democratic Workers Party (since 1895) demanded the introduction of "direct citizen lawmaking."

Since 1903, the Parliament has held seven debates on introducing the referendum or initiative, and five commissions have been set up to investigate I&R.

These efforts were generally blocked by the Christian democratic parties, which were at the centre of every government coalition from 1917 to 1994. In 1994, however, a coalition without the Christian democrats was formed with the pro-referendum party D66, which was able to make the inclusion of a binding rejective referendum part of their coalition agreement. Because of the binding outcome, a constitutional change (which needs a two-thirds majority) was deemed necessary.

Mainly because of resistance by the right-wing liberal coalition party VVD, the proposal was not far-reaching; nevertheless, during the final vote in the Senate in May 1999, a majority including one VVD senator voted against it. D66 caused a government crisis by angrily leaving the coalition. They returned after a promise by the VVD leaders that they would present the constitutional change to Parliament again and would support a non-binding version of this proposal by ordinary law in the meantime. This became the Temporary Referendum Law.

Under the original plan, the constitutional change would be adopted by 2005. But the new rightist-populist government that was formed after the turbulent elections of May 2002, in which maverick politician Pim Fortuyn was murdered, announced their intention to break with the I&R policy of the last two "lilac" governments and abolish all citizen-initiated referendums: a move which caused some cynicism among commentators and the public because the new government pays lip service to "political renewal" and "giving the country back to the citizens." Instead of referendums, then, the government may only hold an occasional plebiscite.

The Dutch public supports I&R: 80% are in favor of "deciding directly on important issues, the so-called referendum"; 15% are against it, and 5% are undecided (SCP poll, 1998). A poll taken by NIPO in October 1995 found, however, that only 49% were in favor of the government proposal for a rejective referendum (10% were against and 40% undecided).

We know of only one poll on the difference between the referendum and the initiative, conducted among the Amsterdam population in 1992: if they had to choose between the rejective referendum and the initiative, 60% preferred the initiative, 20% the referendum, and 20% were undecided.

Most Dutch politicians are against I&R. The most "moderate" poll, a 1994 poll of the University of Leiden among local politicians, showed 36% in favor and 52% against the rejective referendum.

The debate centers very much on the rejective referendum; lately, however, interest in the initiative has grown. Currently, the parties which are in favor of the referendum?PvdA, D66, GroenLinks, and SP (the VVD, CDA, Christen-Unie & SGP are all opposed)?also moderately favor the initiative. Since the TRW leaves this area unregulated, a beginning could be made with the introduction of popular initiatives at the municipal and provincial levels. This would require the support of political parties.

At the same time, experience with the referendum can be gained through the TRW. Because of criticism of the high quorums, parliament will evaluate the practical effects of the TRW in 2004. Advocates of I&R hope this evaluation will lead to more democratic provisions in the constitutional amendment.

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## Constitutional Requirements for Legislation

### Chapter 8 (Revision of the Constitution):

#### Article 137:

(1) An Act of Parliament shall be passed stating that an amendment to the Constitution shall be considered in the form proposed.

(2) The Second Chamber may divide a Bill presented for this purpose into a number of separate Bills,

either upon a proposal presented by or on behalf of the King or otherwise.

(3) The two Chambers of the Parliament shall be dissolved after the Act referred to in the first paragraph has been published.

(4) The newly elected Chambers shall consider the Bill, and it shall be passed only if at least two thirds of the votes cast are in favor.

(5) The Second Chamber may divide a Bill for the amendment of the Constitution into a number of separate Bills, either upon a proposal presented by or on behalf of the King or otherwise, if at least two thirds of the votes cast are in favor.

#### Article 138:

(1) Before Bills to amend the Constitution which have been given a second reading have been ratified by the King, provisions may be introduced by Act of Parliament whereby: (a) the proposals adopted and the unchanged provisions of the Constitution are adjusted to each other as required; (b) the division into chapters, sections, and articles and the headings and numbering thereof are modified.

(2) A Bill containing provisions as referred to under Paragraph (1)(a) shall be passed by the two Chambers only if at least two thirds of the votes cast are in favor.

Article 139: Amendments to the Constitution passed by the Parliament and ratified by the King shall enter into force immediately after they have been published.

Article 140: Existing Acts of Parliament and other regulations and decrees which are in conflict with an amendment to the Constitution shall remain in force until provisions are made in accordance with the Constitution.

Article 141: The text of the revised Constitution shall be published by Royal Decree in which the chapters, sections and articles may be renumbered and references to them altered accordingly.

Article 142: The Constitution may be brought into line with the Charter for the Kingdom of the Netherlands by Act of Parliament. Articles 139, 140 and 141 shall apply by analogy.

#### \*THE NETHERLANDS

- Population: 16,000,000
- Area: 41,526 km<sup>2</sup>
- Capital: Amsterdam
- Official languages: Dutch, Friesian (regional)
- Religion: Roman Catholic (36%), Protestant (26%)
- Political System: Parliamentary monarchy (since 1848), with the overseas territories of Dutch Antilles and Aruba.
- Constitution: February 17, 1983 (without referendum)
- Membership: EU, NATO
- GNP/Capita: \$227,190
- Human Development Rank: 5
- I&R practice: No practice at national level, six regional referendums in the Antilles (1994—2000), 100 local referendums since 1912.

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