15. Comparative conclusion

Anna Forgács, Henri Ibi and Daniel Moeckli

1. INTRODUCTION

The purpose of this concluding chapter is to provide a comparative analysis of the legal situation in the states covered in the previous chapters. Given the diversity of these states in terms of constitutional frameworks, political culture, experience with referendums, direct-democratic practice etc., it is not a straightforward task to draw conclusions from a comparison. The objective of this chapter is therefore rather modest: its aim is to simply draw out what we believe are some key commonalities and differences with regard to the direct-democratic instruments existing in the selected states (Section 2), the substantive and formal limits imposed on these instruments (Section 3) and the institutions and procedures used in these states for reviewing compliance with the limits (Section 4). The chapter concludes by highlighting the key insights gained from this conclusion (Section 5).

The trends seen in the country chapters are compared with the general trends seen in the 47 member states of the Council of Europe. In this regard, the conclusions build on the LIDD database, which is the result of an extensive data collection in the framework of the research project ‘Popular Sovereignty vs. the Rule of Law? Defining the Limits of Direct Democracy’ (LIDD).¹

Throughout the chapter, the law and practice at the national level are assessed against the international standards contained in the Venice Commission’s Guidelines on the Holding of Referendums (Guidelines).² The completed revision of the 2007 Code of Good Practice on Referendums (Code)³ provides a good opportunity for this assessment. Even though the revised Guidelines largely build on the Code and most of the changes are rather minor modifi-

¹ See the LIDD database at <lidd-project.org/data>, accessed 20 October 2020.

² European Commission for Democracy Through Law (Venice Commission) Revised Guidelines on the Holding of Referendums, Strasbourg, 8 October 2020, CDL-AD(2020)031.

³ European Commission for Democracy Through Law (Venice Commission) Code of Good Practice on Referendums, Study No. 371/2006, CDL-AD(2007)008rev-cor.

cations or clarifications of the former rules, these slight adjustments are also telling about the problem areas of European direct-democratic practice.

2. AVAILABLE DIRECT-DEMOCRATIC INSTRUMENTS

The seven types of direct-democratic instruments that, according to the typology used here, exist, are available quite widely in the 11 states analysed in this book – this was, after all, one of the reasons for selecting these states.

Considering only the national level, the most common instrument is the rejective citizens' initiative, which exists in nine out of the 11 states. However, it must be noted that only four states have a genuine rejective citizens' initiative, while in the other five states the proactive citizens' initiative may also serve as an instrument to reject or abrogate laws. The rejective citizens' initiative is followed by the law-initiated and the legislature-initiated referendum, which are both available in eight states. The two instruments that allow citizens to formulate a proposal, the proactive citizens' initiative and the agenda initiative, exist in seven states each, the executive-initiated referendum in six states. The rarest instrument is the subnational entity-initiated referendum, which only exists in the federally organised Switzerland, Liechtenstein and Italy where, generally speaking, it allows subnational entities (cantons, municipalities, regions) to use the same instruments as citizens.

Citizen-initiated referendums are thus more prevalent in the 11 states selected for this study than in the Council of Europe, consisting of 47 states, as a whole: only 21 of these 47 states know the proactive citizens' initiative, while the rejective one exists in merely eight states. However, this low number of rejective citizens' initiatives is mostly due to a difference in classification: the LIDD database, covering all Council of Europe states, counts only those countries as having the rejective citizens' initiative that have specific legal rules for this instrument but not those 11 countries where the same set of rules apply to both proactive and rejective instruments. The most common instrument throughout the Council of Europe is the legislature-initiated referendum (30 states), followed by the agenda initiative (28 states), the law-initiated referendum (27 states) and the executive-initiated referendum (20 states). The subnational entity-initiated referendum only exists in five Council of Europe states.⁴

Liechtenstein and Slovakia have six direct-democratic instruments, Croatia and Latvia five, Italy, Switzerland, Spain, Slovenia and Russia four, France and Hungary three. However, as, for instance, the cases of Switzerland and Russia

⁴ See <lidd-project.org/data>, accessed 20 October 2020.

Table 15.1 Available direct-democratic instruments

	Low-initiated referendum	Legislature-initiated referendum	Executive-initiated referendum	Subnational entity-initiated referendum	Proactive citizens' initiative	Rejective citizens' initiative	Agenda initiative
Switzerland	X			X	X	X	
Liechtenstein	X	X		X	X	X	X
France	X	X	X				
Italy		X		X		X	X
Spain	X	X	X				X
Slovenia		X	X			X	X
Croatia	X	X	X		X	(X)	
Hungary			X		X	(X)	
Slovakia	X	X	X		X	(X)	X
Latvia	X	X			X	(X)	X
Russia	X				X	(X)	X

show, simply comparing the numbers of available instruments is not a particularly meaningful exercise: there are four direct-democratic instruments in both of these states. Yet whereas in Switzerland these instruments shape the politics of the country to a very considerable degree, direct democracy is – at least at the federal level – of very little practical relevance in Russian life.

An important distinction, not least with regard to the legal limits, is that between states that know the citizen-initiated referendum and those that do not. Interestingly, with the exception of Slovenia, all ‘new’ democracies considered here have the proactive citizens’ initiative, whereas of the ‘old’ democracies only two states (Switzerland and Liechtenstein) do. Again, this reflects the more comprehensive results of the LIDD database: only four Western European states have this instrument, compared with 17 Eastern European states.⁵ While in Italy and Slovenia the proactive citizens’ initiative does not exist, at least the rejective one does. France and Spain do not know the citizen-initiated referendum at all.

3. LEGAL LIMITS

3.1 Substantive Limits

Almost all states considered in this study impose substantive limits on (some of) their direct-democratic instruments, meaning that they exclude certain subject matters from the scope of these instruments and, therewith, from decision-making by the people. (Only Croatia does not know a substantive limit falling into one of the categories defined here, although popular initiatives must be in accordance with the Constitution.) This is already in itself a notable finding, considering that there are, as a general rule, no subject matters that would be excluded from decision-making *by parliaments*.

The substantive limits may be grouped into four major categories. These categories of limits are meant to fulfil different objectives by excluding certain matters from being subject to a popular vote. As Table 15.2 shows, the most prevalent category is the one concerning core functions of the state, which precludes issues concerning state finances (for example the budget, taxes), national security (for example the military, the police), emergency powers (for example state of emergency, declaration of war) and international legal obligations (for example conclusion of international treaties) from direct-democratic

⁵ Western Europe: Liechtenstein, Portugal, San Marino, Switzerland. Eastern Europe: Albania, Armenia, Azerbaijan, Bulgaria, Croatia, Georgia, Hungary, Latvia, Lithuania, Moldova, Montenegro, North Macedonia, Poland, Russia, Serbia, Slovakia, Ukraine.

Table 15.2 Substantive limits

	<i>Core functions of the state</i>	<i>Protection of the individual</i>	<i>Fundamental elements of the state</i>	<i>State organisation</i>
<i>Switzerland</i>	X			
<i>Liechtenstein</i>	X	X		
<i>France</i>			X	
<i>Italy</i>	X	X		
<i>Spain*</i>	X	X	X	X
<i>Slovenia</i>	X	X		
<i>Croatia</i>				
<i>Hungary</i>	X	X	X	X
<i>Slovakia</i>	X	X		X
<i>Latvia</i>	X	X	X	
<i>Russia</i>	X	X	X	X

Note: * Substantive limits with regard to the agenda initiative.

decision-making. This type of limit is meant to assure the state's core functions, such as its financial stability. Nine out of the 11 states have such a limit. The second most represented category incorporates substantive limits aimed at assuring the protection of individuals. Eight out of the 11 states prohibit initiatives or referendums related to fundamental rights, minority rights, pardon and amnesty and naturalisation. Five states preclude the fundamental elements of the state, such as its structure, its territorial integrity and the official language, from decision-making by the people. The least represented category is the one that includes limits that are intended to preserve the organisation of the state, such as the respective competences of the legislature, the executive and the judiciary or rules on elections. Only four countries explicitly impose this type of substantive limit.

There are important differences with regard to substantive limits between the different types of direct-democratic instruments. Substantive limits are typically imposed on citizen-initiated referendums (and agenda initiatives), but less so on institution-initiated referendums and hardly ever on law-initiated referendums. For example, Spain, Latvia and Russia impose substantive limits only on citizens' and agenda initiatives, but not on law-initiated or institution-initiated referendums. In contrast, Switzerland and Hungary do not make a distinction and impose the same substantive limits on the various types of direct-democratic instruments. Federal states such as Italy and Liechtenstein – which allow for subnational entity-initiated referendums – typically impose on them the same substantive limits as on citizen-initiated referendums. This

general trend is also reflected when looking at the Council of Europe member states. As Figure 15.1 shows, 85 per cent of those states that know the proactive citizens' initiative impose at least one substantive limit on this instrument. In contrast, only 29 per cent of the law-initiated referendums include a substantive limit. It may appear surprising that substantive limits can be found for 80 per cent of the subnational entity-initiated referendums. However, this instrument only exists in Switzerland, Liechtenstein, Italy, San Marino and Bulgaria, so this number is not particularly telling. Substantive limits also apply to 75 per cent of the rejective citizens' initiatives and to 60 per cent of the agenda initiatives.

Figure 15.1 Percentage of direct-democratic instruments with a substantive limit

The new Guidelines of the Venice Commission kept the previous formulation of substantive limits, stating that ‘texts submitted to a referendum must comply with all superior law (principle of the hierarchy of norms). They must not be contrary to international law, to the Council of Europe’s statutory principles (democracy, human rights and the rule of law).’⁶ However, there is a new reference to compliance with the Council of Europe membership conditions,⁷

⁶ Guidelines III.1.

⁷ Guidelines III.1.

which further strengthens the commitment to the rule of law and the protection of human rights and fundamental freedoms.⁸

As far as compliance of the 11 states examined in this study with the Guidelines is concerned, it must be noted that in some of these states it is possible to submit a text to a referendum that does not comply with (certain) higher-ranking norms or human rights. In France and Slovakia, for example, a referendum can be held on proposals that violate the constitution or international law (and in Croatia on proposals that violate international law), despite the Venice Commission's specific recommendation not to submit texts to a referendum that do not comply with superior law.⁹ Switzerland, Italy, France and Croatia do not preclude initiatives or popular votes on proposals that are contrary to human rights, despite the Venice Commission's recommendation to do so.¹⁰ On the other hand, a large majority of the states covered here (eight out of 11) preclude referendums on certain subject matters (such as finances, national security, emergency powers, fundamental elements of the state etc.), even though the Venice Commission does not recommend doing so.¹¹

3.2 Formal Limits

In all states examined, certain formal limits, that is, requirements regarding the formulation of the initiative proposal or the referendum question, exist for direct-democratic instruments. This hardly comes as a surprise given that these limits are typically understood to follow from the freedom to vote, that is, citizens' freedom to form an opinion and to give genuine expression to their will. Thus, their objective is to ensure that the will of the people is formed in a way that conforms to the rule of law, central elements of which are the requirements of foreseeability and transparency.

The most common formal limit is the requirement that the referendum question (or the initiative proposal) must be clear and precise. Requirements that the referendum question (or the initiative proposal) must only address one subject matter (unity of substance requirement) or may not mix different normative levels or different direct-democratic instruments (unity of form requirement) are sometimes explicitly included in the relevant legal provisions, sometimes they are read into the clarity requirement. Other states establish further, often very specific requirements as to how referendum questions must be formulated.

⁸ See Art. 3 Statute of the Council of Europe.

⁹ Guidelines III.1.

¹⁰ Guidelines III.1.

¹¹ However, the Venice Commission does acknowledge that states may add further limitations. See Guidelines III.1.

Table 15.3 *Formal limits*

	<i>Clarity</i>	<i>Unity of substance</i>	<i>Unity of form</i>	<i>Further formal limits</i>
<i>Switzerland</i>	X	X	X	
<i>Liechtenstein</i>		X	X	X
<i>France</i>	X			X
<i>Italy</i>	X	X		X
<i>Spain</i>				X
<i>Slovenia</i>	X			X
<i>Croatia</i>	X			
<i>Hungary</i>	X			
<i>Slovakia</i>	X	X		
<i>Latvia</i>				X
<i>Russia</i>	X			

As Table 15.3 shows, eight out of the 11 states expressly provide for the clarity of the referendum question (or the initiative proposal) requirement. Latvia and Spain do not apply the clarity requirement to any instrument of direct democracy; they only require that the proposal to be submitted to a referendum must be a drafted legal text. In Liechtenstein the referendum request or initiative proposal must comply with the unity of substance and unity of form requirements, but there is no explicit clarity requirement. The unity of substance requirement is known in four out of the 11 states, the unity of form requirement only in Switzerland and Liechtenstein. Six of the states examined expressly provide that the referendum question or initiative proposal must be submitted as a draft legal text. In Italy and Slovenia, there are additional formal requirements as to how proposals for agenda initiatives must be formulated.

In the case of formal limits, differences between different types of instruments, in particular between citizens' and agenda initiatives on the one hand and law- and institution-initiated referendums on the other, are less pronounced than in the case of substantive limits: the clarity requirement generally applies to all types of instruments. The more specific unity of substance and unity of form requirements, in contrast, are typically only established for citizens' and agenda initiatives. Liechtenstein and Italy, where the unity of substance requirement also applies to referendums initiated by subnational entities, are the exception in this regard.

Similar trends can be observed with regard to the diffusion of formal limits in the remaining member states of the Council of Europe. Almost all the member states know certain formal limits with regard to the formulation of referendum questions and initiative proposals: 35 out of the 40 member

states that provide for at least one direct-democratic instrument at the national level impose formal limits. Malta, Sweden, Turkey, Ukraine and the United Kingdom are the only states that do not establish any formal limits. The most common formal limit across Europe is the clarity requirement, which exists in 23 out of the 47 Council of Europe member states, followed by the unity of substance requirement, which is known in 12 states, and the unity of form requirement, which can only be found in Switzerland, Liechtenstein and Lithuania.¹²

The Venice Commission's Guidelines on the Holding of Referendums state that any question put to a referendum 'must be clear and comprehensible; it must not be misleading; it must be unbiased, not suggesting an answer; voters must be informed of the effects of the referendum; voters must be able to answer the questions asked solely by yes, no or a blank vote'.¹³ Furthermore, they make it clear that referendum questions must respect both the unity of form and the unity of content requirements.¹⁴ Even though the list of formal limits recommended for referendums has not been expanded in the revision process, a larger emphasis is laid on these limits in the new text. A new subchapter deals with voting modalities,¹⁵ describing possible question wording options that ensure citizens' freedom to express their opinion through the vote. The clarity requirement of the Guidelines has also been extended and the need for an impartial review of the clarity of the referendum question is emphasised.

As is apparent from what has been explained above, most Council of Europe member states, including the 11 states examined here, generally comply with the standards established by the Venice Commission. The great majority of the 11 states covered, namely eight of them, provide for the clarity requirement. Six states know specific requirements as to how referendum questions or initiative proposals must be formulated. In contrast, less than half of the states explicitly provide for the unity of substance requirement.

4. INSTITUTIONS AND PROCEDURES FOR REVIEWING COMPLIANCE WITH LIMITS

The legal limits imposed on direct-democratic instruments will only be effective if there is an institutional and procedural system for reviewing compliance with these limits. Yet none of the 11 states examined here has a specific institutional and procedural framework for reviewing compliance of law-initiated

¹² See <lidd-project.org/data>, accessed 20 October 2020.

¹³ Guidelines I.3.1.c.

¹⁴ Guidelines III.2.

¹⁵ Guidelines III.5.

referendums with the limits set out above, while the institutional and procedural checks that are imposed on executive- and legislature-initiated referendums are typically underdeveloped. If they do exist, they are usually a simplified version of the admissibility procedures prescribed for citizen-initiated instruments. The most elaborate institutional and procedural checks exist for citizens' and agenda initiatives. In the few states where referendums can be initiated by subnational entities, the same procedures apply to these special institution-initiated referendums as to citizen-initiated ones. Similar trends are visible in the other Council of Europe member states: only four member states prescribe a review procedure for law-initiated referendums, while for legislature- and executive-initiated referendums only around half of the states require such a procedure (15 out of the 30 states that have the legislature-initiated referendum and 11 out of the 20 states that have the executive-initiated referendum). In contrast, with regard to the other types of direct-democratic instruments, the vast majority of states that know these instruments have established institutional and procedural frameworks for reviewing them: 21 out of 28 for the agenda initiative, 19 out of 21 for the proactive citizens' initiative, seven out of eight for the rejective citizens' initiative and five out of five for referendums initiated by subnational entities.¹⁶

As a general trend, states use the same institutional and procedural framework for the different types of instrument. The only exception is the rejective citizens' initiative: if the state has a separate set of legal rules from those applicable to the proactive citizens' initiative, usually the admissibility procedure also differs (this is the case in Switzerland and Liechtenstein). In contrast, the institutional and procedural framework for agenda initiatives rarely follows the rules of the authorisation procedures for referendums. In most states, agenda initiatives are incorporated into the legislative process. As a consequence, the admissibility of agenda initiatives is decided by parliament in six out of the seven states that have this instrument. The only exception is Russia, where not a state institution, but an authorised non-profit organisation reviews agenda initiatives. The LIDD research also confirms that agenda initiatives are interwoven with parliamentary procedures: 15 out of the 28 member states of the Council of Europe that have the agenda initiative leave its review to the legislature.¹⁷

The institutional and procedural settings for reviewing compliance with the legal limits greatly vary from state to state. In some cases, it is a governmental body that decides on the admissibility of a referendum request or an initiative proposal, in others the president, the parliament, an electoral commission, a

¹⁶ See <lidd-project.org/data>, accessed 20 October 2020.

¹⁷ See <lidd-project.org/data>, accessed 20 October 2020.

(regular) court or the constitutional court. Most states do not make a distinction between formal and substantive admissibility procedures, so that the same institution decides about compliance with both the formal and substantive limits. The only exceptions are Liechtenstein and Switzerland, where the formal limits are checked by executive actors, while the substantive assessment of proactive citizens' initiatives is left to the legislature.

As Table 15.4 shows, the most prevalent solution for reviewing the limits on referendums and initiative proposals is to entrust the parliament with this task: five out of 11 states leave at least the substantive admissibility procedure up to the legislature. Three states entrust the authorisation procedure to electoral commissions, another three states to the constitutional court. In Russia both these institutions take part in the authorisation procedure, with the Central Election Commission checking the formal and substantive limits and the Constitutional Court reviewing the constitutionality of the initiative. In France the Constitutional Council is only entrusted to review the 'shared referendum initiative'. Finally, two states allow the president to review the compliance with the limits, in another two states governmental bodies are entrusted to check the compliance with the formal limits. If one compares these results with the institutional frameworks used by the other Council of Europe members, a similar distribution can be seen in the case of the proactive citizens' initiative. Out of the 21 states that know this instrument, nine authorise parliament to review the legal limits, seven the constitutional court, another seven the electoral commission, two the president and another two the government. Parliamentary and constitutional court decision-making is the most prevalent solution for authorising executive-initiated referendums (four states each) and referendums initiated by subnational entities (two states each). Legislature-initiated referendums are mostly reviewed by parliament (seven states), while the review of rejective citizens' initiatives is most often entrusted to constitutional courts (four states).¹⁸

Judicial procedures for reviewing compliance with legal limits are seemingly underrepresented in the 11 states. However, the judiciary – be it regular courts or constitutional courts – gains more importance in the remedy procedures. Most of the 11 states provide for a judicial remedy against decisions of the first instance.

In all states where first-instance decisions are taken by a governmental body or an electoral commission, these can be reviewed by general courts. They can review the formal limits imposed on referendums in Switzerland and Liechtenstein. In Hungary, Latvia and Russia the formal and substantive limits are reviewed together, so that the electoral commissions at first instance and

¹⁸ See <lidd-project.org/data>, accessed 20 October 2020.

Table 15.4 Institutions reviewing compliance with legal limits

	Governmental body	President	Parliament	Electoral commission	Regular Court	Constitutional court
Switzerland	F		S			
Liechtenstein	F		S			
France		X				X
Italy						X
Spain*			X			
Slovenia			X			
Croatia			X			
Hungary				X		
Slovakia		X				
Latvia				X		
Russia				X		X

Notes: * With regard to the agenda initiative.
F = formal admissibility procedure; S = substantive admissibility procedure.

Table 15.5 *Remedy procedures*

	Governmental body	President	Parliament	Electoral Commission	Regular Court	Constitutional Court
Switzerland					F	
Liechtenstein					F	S
France*						(X)
Italy						
Spain**						X
Slovenia						X
Croatia						(X)
Hungary					X	
Slovakia						(X)
Latvia					X	
Russia					X	

Notes: * With regard to institution-initiated referendums.
** With regard to the agenda initiative.
F = formal admissibility procedure; S = substantive admissibility procedure.

the regular courts in the remedy procedure decide about all aspects of the referendum question. In contrast, parliamentary and presidential decisions cannot always be appealed. If they can, they are reviewed by constitutional courts and almost exclusively with regard to the substantive limits (this is the case in Liechtenstein, Spain and Slovenia). Similar trends can be detected across the Council of Europe as a whole. In the case of the proactive citizens' initiative, for instance, eight out of nine governmental or electoral commission decisions can be appealed before regular courts, four out of nine parliamentary decisions and one out of two presidential decisions before constitutional courts, with the rest being final decisions without appeal.¹⁹

Even though Table 15.5 shows that a remedy before the constitutional court is available in more than half of the 11 countries and an appeal to regular courts in five states, the country chapters showed that the practice is more complex. In France, the Constitutional Council has narrowed its own authority to review presidential decisions, while in Croatia and Slovakia the procedures of the constitutional courts are not proper remedies, because only the first-instance decision-makers (the parliament and the president, respectively) can initiate the constitutional court review. Meanwhile, Switzerland does not provide a judicial remedy at all against the parliamentary decision at the national level. Compared with the other member states of the Council of Europe, this is not uncommon: less than half of the Council of Europe member states allow judicial remedies against parliamentary decisions related to proactive citizens' initiatives (four out of nine), agenda initiatives (six out of 15), executive-initiated referendums (one out of four) and legislature-initiated referendums (three out of seven).²⁰

The Venice Commission's Guidelines contain only basic recommendations regarding the institutional and procedural framework for reviewing direct-democratic instruments. The revised Guidelines make it clear that an impartial body must review the validity of all kinds of referendums and not just citizen-initiated instruments. The Guidelines require that the central commission or another impartial authority should have the power to 'check the validity of any proposed referendum question and approve its final wording', which includes reviewing the substantive and formal limits and correcting obscure, misleading or suggestive questions.²¹ In addition, the Guidelines require an effective system of appeal to be in place.²² They state that even though a final appeal to a court of law is the preferred option in most Council of Europe

¹⁹ See <lidd-project.org/data>, accessed 20 October 2020.

²⁰ See <lidd-project.org/data>, accessed 20 October 2020.

²¹ Guidelines II.4.1.

²² Guidelines II.4.3.

member states, this requirement may also be fulfilled by another body that is ‘impartial and independent, endowed with the necessary powers of cognition and decision to afford an effective remedy, established by law and bound to apply the law, with limited discretion’.²³ As for the procedural aspects, the Guidelines state that all voters must have the right to appeal and that the applicant’s right to a hearing involving both parties must be protected.²⁴

Only three out of the 11 states examined here (Hungary, Latvia and Russia) involve impartial electoral commissions into the review of direct-democratic instruments. The requirement for impartiality may also be fulfilled by the governmental bodies in Liechtenstein and Switzerland that are in charge of the formal admissibility procedure. The number of states that allow a final appeal to a judicial organ is much higher. In addition to the three states with electoral commission decision-making, Liechtenstein, Slovenia and Spain also allow a final appeal to a court with regard to both questions of procedural and substantive validity. Italy should also be mentioned as a state fulfilling this basic requirement: even though the judicial review of the legal limits is not an appeal procedure, the final instance deciding on both formal and substantive admissibility is a court. Nevertheless, even these states do not all fulfil the other requirements of the Guidelines: only Italy, Slovenia and Russia provide hearing rights to the participants of procedures related to referendums, while in Latvia the participants of procedures related to agenda initiatives have such rights. Appeal rights are available to all voters only in Russia, Hungary and Liechtenstein. Thus, Russia is the only country that – at least on paper – follows all the recommendations of the Venice Commission, even though this is not reflected in its referendum practice.

In contrast, in the remaining four states (Switzerland, France, Croatia and Slovakia) the impartiality of the first-instance decision-maker is debatable. Moreover, these states do not even provide for an effective system of appeal as required by the Guidelines. In Switzerland and Croatia, the parliament reviews the substantive limits on referendums, while in France and Slovakia the president decides. In Switzerland – at least at the national level – the decision on the substantive validity of proactive citizens’ initiatives cannot be reviewed by a court at all, while in France judicial review is only ensured for the ‘shared referendum initiative’. In Croatia and Slovakia, involvement of judicial organs depends on the discretionary decision of the political bodies that review the formal and substantive limits (or in the case of Croatia on their own initiative), which means that the judicial appeal is completely out of the hands of the initiators or the general public. Out of these four states, only Switzerland offers

²³ Guidelines II.4.3.a.

²⁴ Guidelines II.4.3.f. and h.

hearing rights to the initiators in the formal admissibility procedure, but not in the parliamentary procedure relating to substantive admissibility.

5. CONCLUSION

Not surprisingly, there are considerable differences between the 11 states covered in this book with regard to the types of direct-democratic instruments they have, the legal limits they impose on them and the institutional and procedural systems they establish to review compliance with these limits. Nevertheless, in all of these states a variety of means to initiate a referendum or formulate an initiative proposal exist. All 11 states provide for at least three direct-democratic instruments at the national level, some of them for up to six.

Even more strikingly, all of the states examined in this study impose both substantive and formal limits on these instruments. Some of these limits, such as compliance with higher-ranking norms or the requirement of clarity, exist in virtually all of the 11 states and thus may constitute something like core European standards. This is reflected by the fact that they are among the key recommendations of the Venice Commission's Guidelines on the Holding of Referendums. However, most states even go beyond the explicitly recommended limits and impose more substantive or formal limits.

The variance is greater when it comes to the institutional and procedural systems that are used to review compliance with substantive and formal limits. While some states entrust this review to political bodies such as parliament or the president, others use (quasi-)judicial bodies such as electoral commissions or courts. States with fewer limits seem to tend to opt for the former approach, states with more limits for the latter. However, even in this regard an interesting commonality can be observed: most states allow for the involvement of courts at the very least at a later stage, by providing for a judicial remedy against decisions of the first instance. Generally speaking, however, the guidelines established by the Venice Commission are adhered to less strictly with regard to the design of institutional and procedural systems than with regard to the definition of legal limits.

Stricter adherence to the Venice Commission Guidelines, which are designed to ensure protection of the rule of law and fundamental rights, would be unlikely to directly affect the use of direct-democratic instruments in practice. The country reports showed that even though there may be a correlation between the number of limits and the frequency in use of direct-democratic instruments, it is by far not the only determining factor. In some states with few limits, such as Switzerland and Liechtenstein, direct-democratic instruments are employed very often. In other states, like Croatia or Slovakia, where the legal hurdles are also rather low, use of direct-democratic instruments is rare. In Hungary, the state with the highest number of limits, only a small propor-

tion of referendum requests reaches the polls. In Spain, in contrast, the large number of limits does not prevent the agenda initiative from being employed.

Similarly, the establishment of an impartial review procedure and effective remedies does not seem to directly affect the use of direct-democratic instruments. The availability of judicial remedies has apparently not led to a reduction of the number of initiatives in Liechtenstein or Spain, while the lack of judicial remedies has not increased the number of referendums in France, Croatia or Slovakia. The country chapters showed that how often direct-democratic instruments available in a given state are used depends on a large number of interconnected factors in addition to the legal limits and the institutional and procedural frameworks for reviewing compliance with them, ranging from the number of required signatures and time limits to constitutional traditions and general civic participation.