

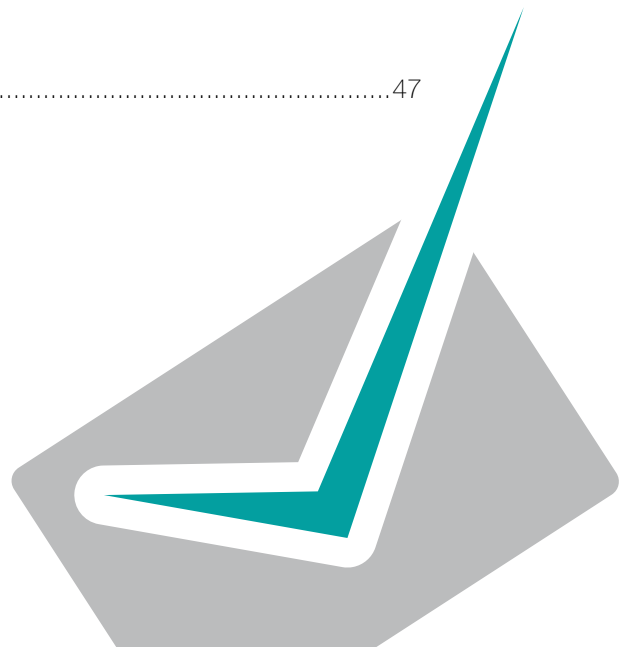


Policy paper requested by MEP Josep-Maria Terricabras Nogueras



SUMMARY

| | | |
|-----------|---|----|
| 1. | Introduction | 3 |
| 2. | Typologies of referendums | 6 |
| 3. | Question wording in independence referendums | 9 |
| 4. | Participation and approval thresholds in independence referendums ... | 19 |
| 5. | The franchise in independence referendums..... | 24 |
| 6. | Conclusions and open questions | 33 |
| 7. | Highlights | 37 |
| 8. | Tables | 39 |
| 9. | References | 47 |



1. Introduction

Referendums are back.¹ We can find them at the forefront of political agendas in many countries and they are in the limelight of media coverage worldwide. This is particularly true for Europe, where in recent months referendums have been held on key issues for the electorate, such as electoral reform, nuclear power, gay marriage and citizenship rights, to name just a few. Indeed, a certain trend can be perceived in today's politics in considering referendums as the best democratic tool to legitimize legal initiatives that are going to deeply affect the people of a country and their ordinary lives.

Referendums are subject to a number of criticisms, especially when they produce unexpected results. However, these criticisms are often more to do with the issues at stake than with the procedure

¹ This report was discussed in a workshop at the University of Girona on 24th March 2017. We are grateful to all the people who attended the seminar and particularly to professors Rainer Bauböck (European University Institute) and Alan Sandry (Swansea University) for their remarks and suggestions.

as such. In fact, referendums are a well-established mechanism of direct democracy to settle complex and divisive matters. They are useful tools for addressing controversial issues.

Referendums seem to be especially apt when it comes to constitutional issues. Indeed, most countries that currently form part of the European Union held a referendum or a consultation before taking the last step to join. So far, these ‘entrance-to-the-club referendums’ have been of a kind that has had a more transcendent impact on the construction of the European Union. However, two other kinds of constitutional referenda have recently come to the forefront of international attention and have proven to be equally important: first the ‘referendum to leave the EU’ exemplified by Brexit; and second, the secession referendums that took place in Scotland and Catalonia in 2014 — bearing in mind the fact that the vote that took place on 9th November in Catalonia was not properly speaking a referendum as such, but rather a consultation process. In this study, we are going to concentrate on the second kind, that is, secession referendums.

In the academic field, the debate on referendums usually takes place on a case-to-case basis, particularly when they are used to solve constitutional questions, making comparative approaches even more necessary. There are several aspects related to the quality of the democratic process previous to celebrating a referendum that deserve special attention: the conditions under which the vote will take place, the question wording, the choices available to the electorate, the definition of the electoral franchise and procedural issues related to campaign regulations. These are often sensitive aspects, especially when controversial issues such as secession are at stake. In this kind of referendum, the definition of the demos, the procedural requirements of the consultation and who is to arbitrate the process obviously take on special significance. Political theory and legal studies have paid particular attention to these issues, but no academic consensus has yet been reached let alone an international legal framework or advisory recommendations agreed upon.

This report aims to explore some of these controversial aspects of referendums from a comparative political perspective, taking some recommendations issued by various international bodies into account. More specifically, the issues we are going to deal with are the **referendum wording**, establishing **participation and approval thresholds** and **defining the electoral franchise**, three aspects that play a key role in the debate on how to strengthen the democratic quality of citizen participation by means of direct democracy mechanisms within the European Union.

2. Typologies of referendums

A first approach to referendums is how academics and international organizations define and classify them. A variety of typologies from an analytical perspective can help to better understand referendums as a tool of direct democracy. One of the oldest typologies was established by Scelle (1934), differentiating between plebiscites “de ratification”, which are held *a posteriori* to a previous decision or a governmental action, and plebiscites of ‘determination’ which are held *ex ante* and generate a governmental mandate or at least launch a political process. From this perspective, ratification referendums will conclude a process by accepting or rejecting a previous decision. Mueller (1996) distinguishes four kinds of referendums depending on which actor drives the initiative and the mandatory or discretionary character of the consultation. In this classification, some referendums are of a mandatory nature and are necessarily called by the government, normally to deal with relevant issues such as constitutional amendments. Among non-mandatory referendums there are those launched by the government and processes that are driven by a citizens’ initiative.

Among this last group, two additional types of consultation can further be distinguished, those that are held to veto a government decision and those that involve a proposal for the government to develop. Another approach is found in López & Requejo (2009), who differentiate between ‘institutional reform’ processes with different levels of relevance that can range from a constitutional amendment to secession and referendums related to implementing specific public policies. These authors also distinguish between the territorial level at which the referendum is held, be it state or sub-state, and who takes the initiative, be it a top-down (governmental actors) or bottom-up (non-governmental actors) driven process. From a normative perspective, Tierney (2009) argues a distinction between ‘constitutional’ and ‘ordinary’ or ‘legislative’ referendums. The first group can be further differentiated by their goals, which may be the creation of a new state, the drafting of a new constitution or substantial reform, the setting-up of complex autonomy arrangements or the transfer of sovereign powers to international institutions. Lastly, in different documents the Council for Democratic Elections, which is made up of different bodies belonging to the Council of Europe, differentiates between the actor driving the referendum - mandatory, public institutions or citizens - and its content, which can be constitutional, legislative or related to the approval of international treaties.

This broad perspective on the different aspects of referendums provides a better understanding of processes related to self-determination, including secession, which affect the institutional distribution of power by altering the existing organization either by an internal (self-government) or external (secession) exercise of self-determination. The geography of this institutional impact may vary, even when they are of a sub-state character, for instance practically simultaneous consultation processes can be held, as in the case of the referendums in the former Soviet Republics, leading to the collapse of the state. Self-determination referendums can be held under a constitutional framework that makes provision for this eventuality by means of a constitutional clause or a legal provision as long as the right to self-determination is compatible

and implicitly accepted given the political organization of the state, as is the case with certain federal, confederal or multinational states. These referendums can also be held in contexts where there are no legal provisions or even when they are explicitly against the constitutional framework. Less variety is found if we consider the referendums that are initiated top-down, given that the leading actor is the government or the assembly of representatives. Lastly, while most self-determination referendums deal with the creation of a new state, some of them involve alternative self-government arrangements or complex post-referendum scenarios that are also worth taking into consideration.

3. Question wording in independence referendums

An oft-neglected aspect of referendums, the content of the question put to the vote has at least two dimensions worth considering. First, the question reflects the peculiar history and context of each case: We can find varying emphasis on certain aspects related to secession, such as reference to past independence or to the characteristics that will define the new state. Second, the wording of the question should fulfil some criteria that enables the electorate to take an informed, clear decision. This raises the question of whether the question is clear and neutral enough to prevent a certain bias when citizens form their opinion of the issue at stake in the referendum.

Since the dissolution of the union between Norway and Sweden in 1905, a century of self-determination referendums provides us with the opportunity to explore these different aspects, bearing in mind that not all cases of secession have used the mechanism of decision, as in the cases of Czechoslovakia (1993) and Kosovo (2008). We will focus in particular on some illustrative cases that have taken place since the Quebec referendum of 1980.

The two referendums held in Quebec in 1980 and 1995 are a usual reference within the context of advanced democracies. The first referendum in 1980 included a long explanatory statement reflecting the steps taken by the Quebec government to define the proposal being put forward for electoral consideration. The proposal consisted of a new agreement that would be negotiated with the rest of Canada should it be approved, the content of which would then also be approved by the electorate in a second referendum. Thus, the question was not aimed at producing a clear result but rather a mandate to the government.

The Government of Quebec has made public its proposal to negotiate a new agreement with the rest of Canada, based on the equality of nations; this agreement would enable Quebec to acquire the exclusive power to make its laws, levy its taxes and establish relations abroad — in other words, sovereignty — and at the same time to maintain with Canada an economic association including a common currency; any change in political status resulting from these negotiations will only be implemented with popular approval through another referendum; on these terms, do you give the Government of Quebec the mandate to negotiate the proposed agreement between Quebec and Canada?

While a two-round validation could reinforce the final decision of the electorate, this sort of scheme raises some concerns: First, the positive vote would not produce a clear and final decision; second, it involves a third actor who it is assumed will accept the terms and negotiate the decision; and lastly, the content of the question can be interpreted and combined in different ways. In fact, the 1980 referendum was mainly interpreted as a proposal for partnership while improving the self-government of the province. In 1995, the second referendum added some clarity to the proposal subject to electoral vote, even though the question was open to different interpretations, given that the Quebec government would declare

the sovereignty of the province after having offered the rest of Canada a new agreement:

Do you agree that Quebec should become sovereign after having made a formal offer to Canada for a new economic and political partnership within the scope of the bill respecting the future of Quebec and of the agreement signed on June 12, 1995?

In 1998, the Supreme Court of Canada answered three questions about the referendum which were submitted by Stéphan Dion, the then Minister for Intergovernmental Affairs². Regarding the wording of the question, the Court concluded that it should be defined under the criteria of clarity so that the electorate could express a clear mandate for secession. However, the Court did not detail how such a question should be written.

The two referendums held in Quebec illustrate some of the difficulties that arise when the interpretation of the alternatives at stake is too open. Even when a question offers a binary choice, if it generates undefined scenarios then the interpretation of the outcome may become a matter of controversy. To improve exhaustivity, some referendums have included more than two options or more than one question. The various referendums held in Puerto Rico are not only a good example of this alternative, but also of its inherent limitations. The consultation held in 1998 about the status of the island gave five alternatives: Commonwealth, Free-Association, Statehood (as a fully-fledged state of the US), Independence and None of the Above. Two options (Statehood and None of the above) gained 97% of the vote, raising a number of questions about adding irrelevant options, in this case either because they did not reflect a social demand or because they were difficult for the electorate to interpret.

2 Reference Re Secession of Quebec [1998] 2 SCR 217

Moreover, the interpretation of the results in multiple choice referendums can be controversial depending on how they reflect the preferences of the electorate. Let us consider a referendum with three self-government options: no self-government, self-government or independence. Then, let us assume that the electorate favouring self-government prefer independence rather than no self-government at all as a second option. If the vote were split between these alternatives in such a way that the no self-government option gained a majority over the other two (as in 35%-32%-33%), then the electorate's least preferred option may actually end up winning. Thus, certain combinations in the results could produce a decision that is against the majority will of the electorate. In other cases, voters are asked to answer two conditional questions, such as in the referendum on Scottish devolution of 1997, which included a first statement on devolution and a second one related to the transfer of taxing powers should the first vote be affirmative. A similar case was the non-binding referendum in Catalonia in 2014, where the first question asked the voters if they wanted Catalonia to become a 'State' and a follow-up question asked if they preferred this State to be 'independent'. Beyond the indeterminacy of the choices available to the electorate, a fragmented vote in these sorts of referendums can also raise interpretation problems. The Puerto Rico referendum of 2012 is a case in point. The island once again held a referendum on its constitutional status, where the electorate again faced two connected questions. The first asked whether the electorate favoured a change in the *status quo* of the country and the second offered three options; Statehood (as a member of the US), Independence or a Sovereign Free Associated State to the US. Voters could choose an option in the second question regardless of what they voted for in the first one, which raised not only several concerns about the interpretation of the results, but also about the absence of sufficient alternatives for the significant proportion of the electorate who opted to leave the second question blank. The same potential situation is found in the Catalan non-binding consultation of 2014. The two connected questions could have become controversial even if a

clear majority of the electorate had opted for independence in the second question, as it was always to be expected that general support for an undetermined 'statehood' would be greater since it was the question that voters had to address first. The Croatian independence referendum of 1991 offers an interesting variation. The electorate had two alternative institutional arrangements, one of independence that included the possibility of participating in a kind of renewed federation with other republics and one of staying within Yugoslavia but with a new status. The distinctive feature of the Croatian referendum is that these alternatives were asked separately in two different questions. The referendum results were clear with a wide majority of voters favouring independence over staying within the remaining Yugoslavia. However, this structure could have led to a controversial interpretation of the results should the vote have been fragmented. The situation could have been even more controversial given that the alternatives submitted to the electorate also actually incorporated three different scenarios, two of them involving the potential response of a third actor -the remaining Yugoslavian state led by Serbia:

Do you approve that as an independent and sovereign state, the Republic of Croatia, which guarantees cultural autonomy and civil rights to the Serbs and other nationalities in Croatia, can unite with other republics (as has been proposed by the Republics of Croatia and of Slovenia for the solution of the state crisis of the SFRY)?

Are you in favour that the Republic of Croatia remains in Yugoslavia as a federal state (such as the Republic of Serbia and the Socialist Republic of Montenegro, so as to solve the state crisis of the SFRY)?

A last example worth mentioning is the new referendum in Puerto Rico, scheduled for June 2017. Given the indecisiveness of previous results, the new referendum is designed as a two-round vote. To date (February 2017) the final question has not

yet been issued, but the first vote will deal with the proposal for Puerto Rico to request admission to the United States as a state. If rejected, a second vote will offer a choice between seeking a status of free-association to the US and becoming an independent state. Beyond the complexities of interpreting the content of each of the alternatives, these cases of multiple-choice and/or multiple-question referendums warn against the potential deadlock of a fragmented result, especially if the choices are not mutually exclusive or if they cannot be interpreted straightforwardly.

If we move to binary referendums clearly focused on secession, the crumbling of the Soviet Union gave way to a wave of independence processes, many of which were accompanied by secession referendums. Despite the varying contexts, the questions posed were not only clearer than those discussed in the previous examples, but they also provided interesting insights into the context where the referendums were held. For instance, the Slovenian referendum of 1990 asked voters a straight question that clearly referred to the existing status of the country as a Republic, but it also added a strong emphasis on becoming both independent and sovereign:

Should the Republic of Slovenia become an independent and sovereign state?

By 1991, steps had already been taken towards independence in the Baltic States by means of parliamentary statements. Their formal status as Republics within the Soviet Union - which formally recognized their right to self-determination - is well reflected in the different questions put to the vote in each case. Moreover, their recent independent past prior to the soviet invasion of 1940 was used as a legitimating factor that made the case for independence not as secession but as a recovery of their past sovereignty. Thus, the referendum questions were adapted to

their specific contexts, a post-soviet scenario which was not in any case formally opposed to the constitutional situation of the countries. The three Baltic republics, however, emphasized these common traits differently in their referendums. In Estonia, the question made explicit mention of the past independence of the country. Accordingly, the 'restoration' of independence was the key element put to voters. If approved, Estonia would recover its 'national independence and sovereignty' as a Republic:

Do you want the restoration of the national independence and sovereignty of the Republic of Estonia?

In the case of Latvia, which has a large Russian minority, the emphasis was placed on the democratic character of the state rather than on a national recovery, which could have become a divisive issue during the independence process. In fact, one of the political issues that the state would face after independence would be the question of the Russian minority.

Do you support the democratic and independent statehood of the Republic of Latvia?

In Lithuania, the referendum was held after the parliament had passed a law restoring independence. Thus, the question asked whether the country should have an independent, democratic government rather than asking about independence itself:

Should the Lithuanian State have an independent, democratic government?

A similar example of a referendum that focused on the approval of a previous declaration of independence is that of Ukraine, which also provides a good example of a short, clear question:

Do you support the Act of Declaration of Independence of Ukraine?

It is worth mentioning that at the same time the Soviet Union was attempting to preserve the unity of the country also by means of a general referendum, but one that was not recognized by many federal republics. It was held in March 1991 and the idea underpinning the question wording was to renew the federal covenant whereby all the republics would enjoy the same level of sovereignty and the rights of individuals belonging to any nationality -including Russians living outside Russia- would be preserved:

Do you consider necessary the preservation of the Union of Soviet Socialist Republics as a renewed federation of equal sovereign republics in which the rights and freedom of an individual of any nationality will be fully guaranteed?

More recently, two interesting referendums were held in the European context after a bilateral agreement rather than after unilateral action: Montenegro and Scotland. In the former, the constitution of Serbia and Montenegro approved in 2003 included a secession clause in its Article 60³ that foresaw the right to withdraw from the Union by means of a referendum three years after the Constitution came into force. Given that in this case

3 Serbia and Montenegro Constitution, in English http://www.worldstatesmen.org/SerbMont_Const_2003.pdf

the Constitution guaranteed Serbia the role of successor state, the question that the voters in Montenegro were asked mentioned the fact that the new independent state would have its own international personality:

Do you want the Republic of Montenegro to be an independent state with a full international and legal personality?

The Scottish case is a second example of an agreed referendum where part of the debate focused on the wording of the question. The Scottish government was at first reluctant to let the Electoral Commission have a determinant voice in defining the question but part of the agreement with the British government was that the Commission should take on this role⁴. The Scottish Government made a first proposal for the referendum question, which was later analysed and amended by the Commission. The first question read as follows:

Do you agree that Scotland should be an independent country?

The most remarkable element of the role played by the Electoral Commission was that it based its decision on various qualitative and quantitative studies that analysed how the electorate responded to alternative formulations of the question. The Commission's report found some variations that could sway the voter one way or the other. In fact, the main argument of the Electoral Commission to support their decision to change the wording of the question was

⁴ Agreement between the United Kingdom Government and the Scottish Government on a referendum on independence for Scotland. Edinburgh, 15 October 2012. <http://www.gov.scot/About/Government/concordats/Referendum-on-independence>

that the first part of the phrase (“Do you agree”) could bias the response of the electorate. However, the Electoral Commission did not find any reason to recommend changing the reference to Scotland as an ‘independent country’ to an alternative such as an ‘independent state’. In the end, the Commission opted for a short, straight question in accordance with the evidence gathered during the research process:

Should Scotland be an independent country?

The Commission followed some guidelines that are summarized in their final report on the Scottish Referendum⁵. According to the Commission, to be able to assess the quality of the question it must be intelligible and neutral and it must help voters to take an informed decision. Similar recommendations are found in the Venice Commission report on Referendums in Europe (An Analysis of the Legal Rules in European States) where the quality of the question is assessed by being ‘clear and non-leading’ (p.14)⁶. It is worth noting that even though empirical research has found little effect on the outcome of the vote (Qvortrup: 141), both evidence and normative reasons recommend that a referendum question should satisfy to the full two broad requirements: clarity and neutrality.

5 The Referendum on Independence for Scotland: Advice of the Electoral Commission on Proposed Referendum, 30 January 2013. http://www.electoralcommission.org.uk/__data/assets/pdf_file/0007/153691/Referendum-on-independence-for-Scotland-our-advice-on-referendum-question.pdf

6 CDL-AD(2005)034-e Referendums in Europe — An analysis of the legal rules in European States - Report adopted by the Council for Democratic Elections at its 14th meeting (Venice, 20 October 2005) and the Venice Commission at its 64th plenary session (Venice, 21-22 October 2005). [http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2005\)034-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2005)034-e)

4. Participation and approval thresholds in independence referendums

Quorum requirements in a referendum refer to the introduction of turnout or approval thresholds. A participation quorum requires that a minimum number of voters participate in the referendum, while an approval quorum requires that more than a simple majority favour the proposal submitted to decision. At the international level, there is no well-established doctrine of general use, but some precedents and international recommendations frame the terms of the debate about whether the introduction of participation and approval thresholds strengthen the democratic quality of the process or, on the contrary, if they in fact have a negative impact on the principles they are supposed to maximize.

In Western contexts, such as Quebec and Scotland, thresholds are the exception rather than the norm. The first Scottish devolution referendum held in 1979 introduced an amendment when the law was brought before the Westminster parliament that required the affirmative vote of 40% of the total census. However, the two Quebec referendums in 1980 and 1995, the second Scottish devolution referendum in 1997 and the independence referendum

of 2014 did not introduce any requirement beyond a majority of votes.

The Supreme Court of Canada, when giving its opinion about the possible secession of Quebec, declared a general need for a 'clear majority' supporting independence in its resolution⁷, but it did not define a specific threshold, arguing that this was a political rather than a legal matter. This gave rise to controversy between the Canadian and the Quebec governments. After the Court's reference, in 2000 the Canadian parliament passed a law known as the Clarity Act, which imposed a restrictive procedure regarding the hypothetical secession of Quebec, but it did not define a specific quorum on participation or approval. It also attributed the Canadian Parliament the capacity to determine what a clear majority meant⁸. In response, the Quebec parliament passed its own law, Bill 99⁹, which established a 50% plus one majority of valid votes as a rule for future referendums.

In the case of Scotland, the work of the Electoral Commission did not cover quorum requirements and neither the British nor the Scottish governments questioned the idea that a simple majority would suffice to accept the referendum results and there was no talk of turnout thresholds either.

While it is not a general rule, there are some examples of quorum requirements in non-consolidated democracies, such as the case of Latvia with a quorum participation of fifty per cent of eligible voters. These requirements are sometimes introduced as much as a matter of political bargaining as a normative concern over the

7 Reference re Secession of Quebec, [1998] 2 SCR 217, 1998 CanLII 793 (SCC) <http://www.canlii.org/en/ca/scc/doc/1998/1998canlii793/1998canlii793.html>

8 Clarity Act (Bill C-20). <http://laws-lois.justice.gc.ca/eng/acts/C-31.8/FullText.html>

9 Bill 99 (2000, chapter 46) An Act respecting the exercise of the fundamental rights and prerogatives of the Québec people and the Québec State <http://www2.publicationsduquebec.gouv.qc.ca/dynamicSearch/telecharge.php?type=5&file=2000C46A.PDF>

decision process, as was the case in the Slovenian referendum, where the first democratically elected government and the opposition agreed that a majority of all eligible voters should support independence. In other contexts of transition to democracy, such as Montenegro or weak states such as Southern Sudan, quorum requirements have also been introduced. The Montenegro case in fact sparked important political debate surrounding the controversial contradictions of the recommendations for this referendum and the general guidelines from the so-called Venice Commission, a body related to the Council of Europe that is committed to democratic quality in electoral processes and related matters. The Commission issued a first report on the Montenegro referendum in 2005¹⁰ and a second report, entitled Code of Good Practices in Referendums, was published a year later. Even though it addressed referendums in general and not only those on secession, the conclusions questioned some important aspects of the first Montenegro report.

The report on the referendum in Montenegro mentions that there is no mandatory international standard regarding the level of participation. Given this context, the report assessed whether the existing legal framework in the former Yugoslav Republic met with international democratic standards. The report refers to Article 37 of the 2001 Montenegrin Law on referendums, which as a general rule defined a participation quorum of a majority of eligible voters casting their votes for a referendum to be approved and if this participation threshold is met by the turnout, then the referendum will be approved by a simple majority of voters. In the Commission's opinion, Montenegro's legal framework met with international standards of democratic quality. In fact, the report mentions a previous study on referendum regulations in Europe where only 12 out of the 33 countries analysed included

10 Opinion no. 343/2005 On the compatibility of the existing legislation in Montenegro concerning the organisation of referendums with applicable international standards. Adopted by the Venice Commission at its 65th Plenary Session, (Venice, 16-17 December 2005).

participation quorums to validate referendums, with only seven of them setting the level at half of the electorate (Bulgaria, Croatia, Italy, Malta, Russia, Lithuania and the former Yugoslavian Republic of Macedonia)¹¹. The study also reports that an even smaller number of states have approval thresholds, which usually concern various aspects confined to constitutional amendments or sovereignty matters: Hungary, Armenia, Albania, Denmark, Croatia, Lithuania and Latvia. These last three states have the most restrictive approval quorums at above 50% of the total electorate on constitutional matters and other sensitive aspects such as the possible association with other states. For the other cases, participation quorums range from 25% to 40% of eligible voters.

These examples illustrate how an approval threshold can be set regarding either the total electorate or to the total vote. When it comes to a reinforced majority of voters, few cases are found. In its final conclusions, the Venice Commission recognized this fact when it evaluated Montenegro's legal framework:

In light of the Commission's knowledge of the practice in many countries, and in the absence of any compelling evidence of international requirements to the contrary, the Commission concludes that the requirement in the present Referendum Law (namely, that the result of a referendum may be decided by a simple majority of those voting in the referendum, provided that at least 50% of the electorate have voted) is not inconsistent with international standards (p.10).

The Commission did, however, recommend an agreement between the Montenegrin and Serbian governments, even though the

11 Venice Commission. Referendums in Europe - An Analysis of the Legal Rules in European States. Strasbourg, 2 November 2005. Study No. 287/2004. CDL-AD(2005)034

former should have had a greater say in the final arrangements. It is worth noting that the final requirement of an approval threshold of 55% of votes in the referendum was an initiative of the EU's foreign policy chief, Javier Solana, and that the government of Montenegro did not accept this quorum¹². In the referendum, secession was supported by 55.4% of the voters, while turnout was 86.5% of the total electorate. Thus, while the results were uncontroversial under the EU requirement, this referendum did raise several concerns about the desirability of introducing quorums in consultations of this kind.

A year later, the Code for Good Practices on Referendums analysed the positive and negative outcomes of introducing turnout and approval quorums, and the final recommendation was that it was better to avoid introducing a threshold. As for its 'experience in the area of referendums', the Commission discouraged introducing participation quorums since they would equate abstention with a negative vote thus favouring positions contrary to a referendum by potentially acting as an incentive for demobilization, refusal to participate in the campaign and other forms of boycott. Moreover, the Commission did not recommend introducing a threshold for approval as this would make the referendum results non-conclusive, creating a situation that would be difficult to manage in cases of a majority for approval that did not reach the minimum threshold established and generating further perverse incentives among actors who are against the issue at stake. From the guidelines of the Commission's report, it could be argued that it is better to manage a tight result than to reject a favourable outcome because of not managing to reach a pre-determined threshold that would anyway always have some element of arbitrariness.

12 <https://www.theguardian.com/world/2006/feb/27/eu.balkans>

5. The franchise in independence referendums

A fundamental difference between any other kind of referendum and a secession referendum is that the latter calls into question the very definition of the demos. Therefore, it raises the issue of who should vote: who should be entitled to decide about creating a new state? In other words, by what means can we determine who is entitled to take this decision? Can this question be answered in accordance with the democratic spirit? Is there a subject who is entitled to decide who should vote in a secession referendum? In contrast with other kinds of referendums, secession referendums are intrinsically problematic because of this somewhat paradoxical issue.

Everyone in the state or just those in the region?

There is a wide consensus that only citizens forming part of a political community where there is a significant pro-independence movement should be entitled to vote. However, there are also important exceptions. For example, in Spain the

central government and the vast majority of political parties with representation in the Spanish Parliament are against any kind of secession referendum. In this sense, they are strictly following the doctrine of the Spanish Constitutional Court, according to which the Spanish Constitution neither allows nor tolerates any secession referendum in any part of the Spanish territory. However, along with this doctrine some political parties have at times argued that if a secession referendum was to be held on the issue of the possible secession of Catalonia, then all citizens of the Spanish state and not only Catalan ones should take part. The reason given is that this question affects national sovereignty and according to the Spanish Constitution national sovereignty resides with the entire population of the Spanish state. This position might sound reasonable to some: if the secession of a territory affects everyone then everyone should be entitled to have a say on the issue. This line of thought, however, has counterintuitive democratic consequences.

For example, imagine that a secession referendum takes place and every citizen is entitled to vote on the petition of independence of a territorial minority within the state. Each and every citizen of the secessionist region may be in favour of seceding and each and every citizen of other regions might be against secession. Thus, despite the unanimous will of the minority, they would not be entitled to secede. We can also envisage the opposite situation: the vast majority in the region is against secession while the clear majority of the rest of the country favours the secession of the non-secessionist region.

Certainly, these possibilities are just theoretical games and counterfactual possibilities. Indeed, no one has ever thought that this kind of franchise proposal could help to address a secessionist petition in democratic terms. This hypothetical situation simply gives an idea of the inconsistencies that arise when there is no recognition of the distinctiveness of a sub-state demos and its democratic will in the face of a secessionist petition. Indeed,

denying the recognition of the sub-state demos amounts to denying the very possibility of a real referendum on independence.¹³

Demos, ethnos, putative citizens

Beyond this first debate, the question of the franchise in a referendum on independence has to do predominantly with the distinction between three types of collectives: the current electorate of the sub-state region (demos), the stateless national community that seeks self-determination (ethnos) and the potential citizens of the potential new state (putative citizens). It is just a possibility that these three groups overlap; that is to say, that all members who identify themselves as members of the stateless nation constitute the current sub-state demos and, at the same time, are identical to the group of potential future citizens of the new republic. In most cases that will not be the case.

Several examples can be examined to observe the different definitions of the franchise in independence referendums and to evaluate their theoretical and practical implications. Rather unsurprisingly, practical and contextual issues bear more weight in the final legal definition of the franchise than theoretical debates.

Quebec, Scotland, Catalonia

For our purposes, we are going to compare the cases of three stateless nations that have called for independence referendums, namely Quebec, Scotland and Catalonia.¹⁴

13 The parallel with Brexit would also be clarifying: whereas the European Union might expel a member state, it makes no sense that all Europeans decide if the Brits want to exit.

14 On 9 November 2014 a participatory process took place in Catalonia through which citizens could give their opinion on the political future of Catalonia. The ballot papers posed two questions: “Do you want Catalonia to become a State?” and “Do you want this State to be independent?” The second question could only be

In the case of Quebec, the franchise in the referendums in 1980 and 1995 was the same as other ordinary referendums that had previously taken place: three federal referendums initiated by the Canadian Parliament and two organized by the Quebec Parliament. In all of them the franchise included Canadian citizens over 18 years with a legal address in Quebec during the six months prior to the referendum (according to the Civil Code of Quebec, his main address) as declared by the individual.

Moreover, the Quebec Electoral Act provides multiple options for absentee voters. In the 1995 referendum, voters outside Quebec could register to vote if their legal address was in Quebec and they could show that they had temporally left Quebec after being domiciled there for 12 months. They could vote for up to two years after their departure. This two-year limit did not apply to an elector and their spouse if they were working for the governments of Quebec and Canada or if they were employees of an international organization of which Canada and Quebec were contributors and members.¹⁵

In the case of Scotland, unlike Quebec, there was a significant change in the franchise with respect to regional elections: the age

answered by those who had answered Yes to the first one. Strictly speaking it was not a referendum, since according to Spanish law referendums can only be carried out with the permission of the Spanish government and the Spanish government had not authorized such a voting. This is why the Catalan government tried to turn the voting into a consultation process, which is a participatory consultation led only by volunteers and no public institutions. However, a recent ruling by the Catalan High Court of Justice determined that the 9N voting was not properly speaking a consultation process either, but an attempt by the Catalan government to carry out a hidden secession referendum and has consequently condemned the former president of the Catalan Government, Artur Mas, for disobedience.

15 To vote outside Quebec, an elector had to file a petition which included the date of their departure from Quebec, the date of return and a declaration of their willingness to come back to Quebec.

of participation was reduced from 18 to 16 years¹⁶. The following groups of people were entitled to vote in the referendum: 1) British citizens residing in Scotland; 2) Commonwealth citizens residing in Scotland; 3) citizens of the Republic of Ireland and other EU countries residing in Scotland; 4) members of the House of Lords residing in Scotland; 5) Her Majesty's Government personnel serving in the UK or overseas, including the Armed Forces, who were registered to vote in Scotland; 6) Crown personnel serving outside the UK, who were registered to vote in Scotland.

Therefore, for example, a British citizen born in Scotland but living in England could not vote, even if he had been resident in Scotland for most of his life. On the other hand, people recently resident in Scotland (who met the above requirements) could vote, following a similar logic to that used to set the franchise in local elections of many countries.

From a theoretical point of view, this kind of franchise opens up some interesting questions. For example, from a sociological point of view, it is quite likely that an individual born in Scotland who feels first and foremost Scottish and has lived in Scotland for most of his life would quickly apply for a Scottish passport of the new Scotland state. He might even be entitled to take part in the constitutional referendum to decide upon its Carta Magna. However, he will not have had the chance to participate in the secession referendum. This possibility casts some doubts on the reasonableness of the franchise criterion followed in the Scottish referendum.

In the Catalan case, the participation process did not have an official electorate. The vote was called by the Catalan government for people who were at least 16 years old on 9th November 2014 and who met one of the following criteria: 1) Spanish citizens

16 In the 2016 regional election, the franchise for Scottish Parliament elections was expanded to include 16 and 17-year old people. https://en.wikipedia.org/wiki/Scottish_Parliament_election,_2016

whose national identity card stated that they were resident in Catalonia; 2) Spanish citizens who lived outside Spain and were registered as ‘Catalans abroad’ or ‘Spaniards abroad’ and were linked to a Catalan municipality; 3) all non-Spanish citizens who could prove they were resident in Catalonia. Catalan people who were resident in other Spanish regions and Spanish citizens who lived in Catalonia but were not residents could not vote.

In this case the franchise was more similar to local elections than to regional ones, since the Catalan authorities wanted to distinguish this popular consultation from an ordinary referendum, which they were not permitted to organize. Instead of using the ordinary electoral register, a specific register of participants was created for the consultation. Registration became effective moments before the voting began with participants signing a numbered list on which their name and DNI (National Identity Card number) or NIE number (Identity Card number for Foreigners) appeared. So people not entitled to vote in the regional elections (not even in the local ones) could vote on the issue of independence of the region.

These tensions lead us again to address the questions already posed about the relationship between demos, ethnos and future citizens. Who should vote in a secession referendum? Should all those considered to be nationals, no matter if they are residents or not, irrespective of whether they are even citizens of the actual state (ethnos)? Should all enfranchised citizens in the regional elections, even if they do not think of themselves as members of the nation under question (demos)? Should all inhabitants of the region who would become citizens of the new republic (even if they are not entitled to vote in current regional elections)?¹⁷

17 Another way to present the different categories of people to vote in an independence referendum is as following: 1) Citizens of the predecessor state habitually resident in the putative successor state (including persons temporarily absent). 2) Non-citizens habitually resident in the putative successor state. 3) Citizens of the predecessor state formerly resident in the putative successor state or having other ‘appropriate legal connection’ with the successor state. 4) All the other citizens

These questions can be linked to different normative theories of secession and their proposed criteria to assess the justice of secession. Some contributions of specific debates on the issue, such as that of the political scientist Rainer Bauböck (2014), are worth mentioning. This author has argued that one thing is to be a potential citizen of a new state and quite another to be a potential voter in a secession referendum. In other words, if no conquest and forced displacement has taken place then one should distinguish between those who are entitled to vote and those who will be entitled to become citizens of the new state. Failing to draw this distinction amounts to anticipating events taking independence (and citizenship policies as well) for granted.

From this perspective, the same people should vote in a secession referendum as in the current regional Parliamentary elections, those who are responsible for a future change in their political status. In computer terms -in Bauböck's terms- this would be an *upgrading*: an upgrade or renewal of the institutional design that is currently in operation and that must be established by its current users. Naturally, this does not mean that this change only affects them. A new political status would bring about numerous changes for many people, both inside and outside the region. However, it does not make sense that all Britons or Spaniards or Canadians should vote in this kind of referendums because the outcome (no matter what its nature) is going to affect them, for this would de facto mean that Scots, Catalans and Quebeckers have no right to decide upon their collective future at all. Or to put it another way, it would mean that no secession referendum makes any sense. Similarly, neither should residents who could become new citizens of an independent state (and, therefore, would also be affected by the decision) have their right to vote

of the predecessor state. It is widely agreed that category 1 form the 'core' of the electorate in an independence referendum. Likewise, category 4 should be excluded, for it would effectively grant the majority of the predecessor state veto power over secession. Categories 2 and 3 focus the attention in the debates on the franchise in an independence referendum (Ziegler, 2014).

recognised in this referendum. This is especially clear in the case of a consultation that includes different questions on the political future of the region, with not all of them implying independence, as in the case of the Catalan consultation. In this case, it seems even clearer that the question involves an evolution of the present institutional design, which should be decided by those who usually make decisions in this institutional framework.

On the other hand, the concept of self-determination based on an ethnic definition of the nation is now widely contested. The question is then whether a non-ethnic definition of the nation is better captured by the local elections census or by the regional elections census. If one takes this route it seems that some clarifications need to be made, such as why residents of specific countries (like EU or Commonwealth countries) should be prioritized over residents from others or how integrated in the polity is enough for the resident to address such a fundamental issue as independence, which undoubtedly greatly transcends strictly local level subjects.

With respect to the matter of the relationship between *ethnos* and *demos*, there has never been a census of ‘internal citizenship’ in Spain as there was for example in Yugoslavia. In the Yugoslavian federation, so-called ‘internal citizenship’ went officially hand in hand with Yugoslavian citizenship, which was not awarded territorially but by bloodline (Vidmar, 2014). This meant that a citizen could be Yugoslavian and Slovenian no matter where they lived. In the 1990 independence referendum, Slovenia enfranchised both its ‘internal citizens and all permanent residents of Slovenia’.

If we now focus our attention on putative citizens, the reasons why they should not be entitled to vote are of a different kind. First, it seems illegitimate to pre-empt the outcome of such a decision by enfranchising putative citizens who do not have a right to vote in regional elections and who will not obtain the future right to vote in the case of a ‘No’ outcome (Bauböck, 2014)

either. Similarly, it seems questionable to pre-empt the migration and residence policies that the Parliament of the future republic will enforce. Finally, if non-citizens were entitled to vote because they could become citizens of the new state this could be seen as an illegitimate strategy for buying votes with a clear bias for the independence movement.

On the other hand, people with national ties who are permanent non-residents may become citizens in the future republic, but their preferences seem to play a secondary role to those of the people who are living in the territory. As Vidmar (2014: 29) claims, 'at the end of the day, it should be, in principle, for the people who live in a certain territory to determine the destiny of that territory. Would it really be legitimate that the future of Scotland be decided by a Scottish-born person, who feels very Scottish otherwise, but has lived in London or Sydney for 40 years? Should Scotland become independent, good reasons may exist to indeed give this person an option to claim Scottish citizenship. At the same time, good reasons exist why this person should not vote in the referendum (...) An independence referendum is an eminently territorial question, so its rules of enfranchisement should also be, in principle, territorial.'

6. Conclusions and open questions

The elements discussed in the previous sections raise several issues that determine the quality of a referendum understood as a democratic process. Referendums are a useful mechanism to decide on a variety of questions, including controversial and divisive ones. Referendums conducted in a fair way are not conflictive as such: At most they reflect existing divisions of a given society and offer a democratic channel to manage them.

Clarity and completeness. From the comparative analysis and the works of different institutional and international specialized bodies, a referendum question must pursue clarity and neutrality. Voters must face a straight question for their vote to express a clear mandate. When dealing with secession the question must reflect this clearly even though the final wording will eventually reflect the specific context and the political language of the country. The evidence also suggests that despite some cases trying to offer more than a binary choice to the electorate, this is often detrimental to

clarity as it involves a commitment from a third actor who is not always willing to negotiate or to accept the terms of the debate. Nonetheless, this aspect raises a relevant question for discussion: Is there a gap between a clear and neutral question put forward to the electorate and the question including all the relevant and viable alternatives that best reflect voters' preferences?

The unexpected consequences of drawing thresholds. If there is a wide majority supporting any given preference our intuition may suggest that approval and turnout quorums would reinforce the legitimacy of a decision made by referendum. However, a more nuanced analysis of incentives for actors opposing a referendum and post-referendum scenarios would recommend not putting excessive emphasis on these elements. Are there any arguments for introducing specific thresholds, then? Is the case for introducing a turnout threshold stronger than for an approval one? Are the concerns about introducing thresholds better preserved by other mechanisms of public policy and international law, such as the protection of fundamental and minority rights or the mandatory compliance of international standards¹⁸?

The quality of a referendum can have implications in a post-secession scenario. Some of the objections to secession found in the academic literature deal with situations where fundamental

18 See for example: the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations (G.A. resolution 2625 (XXV)) where we are reminded that 'Nothing in the foregoing paragraphs shall be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the principle of equal rights and self-determination of peoples as described above and thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or colour'.

rights can be affected in the new state and particularly those of potentially disadvantaged or minority groups. These elements are also present in the process leading up to the referendum: the definition of the demos (population entitled to vote), accession to nationality, a clear question for voters to make an informed opinion about, referendum rules and so on. Therefore, the outcome of a secession referendum must also be analysed in terms of whether the new state will preserve the social and political rights of its population, including those entitled to vote - a population that having participated in the referendum may not automatically accede to citizenship - and those potentially having citizenship rights but who were not eligible voters in the referendum. Within the framework of the European Union this distinction can take particular forms; first, residents in the new state that are not eligible for new citizenship but remain as citizens of the remaining state; second, citizens from other EU countries who, was the new state to remain within the European framework, would have specific rights; and third, citizens from non-EU countries with legal status as residents.

New minorities within new states. Minority rights within the European Union among member states offer some insight into these aspects. A case in point is the status of Russian minorities in Latvia and, to a lesser extent, in Estonia. For instance, a third of the Latvian population belongs to the Russian minority. In the secession referendum, voting rights included citizens who had an internal soviet passport and were registered in the country. After independence and the dissolution of the USSR, more than a quarter of the population lost their USSR passports and were not eligible for citizenship as they were not descendants of Latvians citizens under the 1919 Law of Citizenship. While this population group had voting rights in the independence referendum, special legislation had to be brought in at a later date to create a transitional status for them prior to their being able to obtain Latvian citizenship. As of 2015, approximately

10% of the Latvian population still have this status, even though the Russian state also interfered in the process by providing new passports for these groups on the condition that they renounce dual citizenship.¹⁹

19 See for example: Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations (G.A. resolution 2625 (XXV)) where we are reminded that 'Nothing in the foregoing paragraphs shall be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the principle of equal rights and self-determination of peoples as described above and thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or colour'.

7. Highlights

Wording:

- Citizens must answer a clear, neutral question that results in an unambiguous mandate

Thresholds:

- Despite a reinforced majority being apparently positive to produce a more legitimate result, the perverse incentives can in fact outweigh the potential benefits.
- The argument for a participation threshold is stronger than for an approval threshold.

Electoral franchise:

- A fundamental difference between any kind of referendum and a secession referendum is that the latter

calls into question the very definition of the demos and therefore it raises the issue of who should vote.

- A secession referendum should not be extended to every citizen living in the State.
- Three different types of collectives must be considered: the current electorate of the sub-state region (demos), the stateless national community which seeks self-determination (ethnos) and the potential citizens of the potential new state (putative citizens).
- It is especially relevant to distinguish between the potential citizens of a new state and the potential voters in a secession referendum. The former depends on the naturalization policies of the potential new state and the latter on the agreement between the central government and the secessionist region, if this is the case. If such an agreement has not been reached the franchise should reflect clear democratic criteria.

8. Tables

Table 1. Question wording

| | |
|-------------|--|
| Quebec 1980 | <i>The Government of Quebec has made public its proposal to negotiate a new agreement with the rest of Canada, based on the equality of nations; this agreement would enable Quebec to acquire the exclusive power to make its laws, levy its taxes and establish relations abroad — in other words, sovereignty — and at the same time to maintain with Canada an economic association including a common currency; any change in political status resulting from these negotiations will only be implemented with popular approval through another referendum; on these terms, do you give the Government of Quebec the mandate to negotiate the proposed agreement between Quebec and Canada?</i> |
| Quebec 1995 | <i>Do you agree that Quebec should become sovereign after having made a formal offer to Canada for a new economic and political partnership within the scope of the bill respecting the future of Quebec and of the agreement signed on June 12, 1995?</i> |

Croatia 1991

Do you approve that as independent and sovereign state, the Republic of Croatia, which guarantees cultural autonomy and civil rights to the Serbs and other nationalities in Croatia, can unite with other republics (as has been proposed by the Republics of Croatia and of Slovenia for the solution of the state crisis of the SFRY)?

Are you in favour that the Republic of Croatia remains in Yugoslavia as federal state (such as the Republic of Serbia and the Socialist Republic of Montenegro so as to solve the state crisis of the SFRY?)

Slovenia 1990

Should the Republic of Slovenia become an independent and sovereign state?

Lithuania 1991

Should the Lithuanian State have an independent, democratic government?

Estonia 1991

Do you want the restoration of the national independence and sovereignty of the Republic of Estonia?

Latvia 1991

Do you support the democratic and independent statehood of the Republic of Latvia?

FYR Macedonia
1991

Are you in favour of the establishment of an independent and sovereign republic of Macedonia, and its right to join a future union of sovereign states of Yugoslavia?

Ukraine 1991

Do you support the Act of Declaration of Independence of Ukraine?

Bosnia and
Herzegovina 1992

*Are you in favour of an independent and sovereign
Bosnia Herzegovina, a republic of equal citizens and
people of Bosnia - Muslims, Serbs, Croats and people
belonging to other nations - which live therein?*

Timor Leste 1999

*Do you accept the proposed special autonomy for East
Timor within the unitary state of the Republic of
Indonesia or do you reject the proposed special autonomy,
leading to East Timor's separation from Indonesia?*

Montenegro 2006

*Do you want the Republic of Montenegro to be an independent
state with a full international and legal personality?*

South Sudan 2011

Two options without question. The two choices
consisted of images representing unity or separation

Scotland 2014

Should Scotland be an independent country?

Catalonia 2014

*Do you want Catalonia to become a State? and If you
do, do you want this State to be independent?*

Table 2. Thresholds

| | Turnout threshold | Approval Threshold | Turnout | Result |
|-----------------------------|-------------------|--------------------|---------|-------------------|
| Quebec 1980 | None | Majority of votes | 85,40% | Yes 40,44% |
| | | | | No 59,56% |
| Quebec 1995 | None | Majority of votes | 93,52% | Yes 49,42% |
| | | | | No 50,58% |
| Slovenia 1990 | None | 50% of census | 93,31% | Yes 94,69% |
| | | | | No 4,24% |
| Croatia 1991 | 50% | Majority of votes | 83,56% | Yes 93,24% |
| | | | | No 4,15% |
| Lithuania 1991 | None | Majority of votes | 84,52% | Yes 93,24% |
| | | | | No 6,76% |
| Estonia 1991 | 50% | Majority of votes | 82,86% | Yes 78,41% |
| | | | | No 21,59% |
| Latvia 1991 | 50% | Majority of votes | 87,56% | Yes 74,90% |
| | | | | No 25,10% |
| FYR of Macedonia 1991 | 50% | Majority of votes | 75,74% | Yes 96,46% |
| | | | | No 3,54% |
| Ukraine 1991 | 50% | Majority of votes | 84,14% | Yes 92,26% |
| | | | | No 7,74% |
| Bosnia and Herzegovina 1992 | 50% | Majority of votes | 63,73% | Yes 99,7% |
| | | | | No 0,19% |

| | Turnout threshold | Approval Threshold | Turnout | Result |
|---------------------|-------------------|--------------------|---------|-------------------|
| Timor Leste 1999 | None | Majority of votes | 98,60% | Yes 21,50% |
| | | | | No* 78,50% |
| Montenegro 2006 | 50% | 55% of votes | 86,49% | Yes 55,49% |
| | | | | No 44,51% |
| South Sudan 2011 | 60% | Majority of votes | 97,58% | Yes 98,83% |
| | | | | No 1,17% |
| Scotland 2014 | None | Majority of votes | 84,59% | Yes 44,70% |
| | | | | No 55,30% |

*In Timor Leste, support for independence was the 'no' option.

Table 3. Franchise

| | Changes with respect to prior elections/ referendums | Age | Franchise | List of residents abroad |
|----------------|--|-----|---|--------------------------|
| Quebec 1980 | No | 18 | Canadian citizens residing in Quebec | No |
| Quebec 1995 | No | 18 | Canadian citizens residing in Quebec | Yes |
| Slovenia 1990 | | | Slovenian citizens (internal citizenship provided in the ID cards) | |
| Lithuania 1991 | Yes | 18 | Nationals of Lithuania: those persons who had the nationality of Lithuania before the Soviet occupation of 1940 and their descendants. The USSR nationals legally resident in Lithuania who renounced their Soviet nationality during the period of two years since the Law on Nationality (1989). The Soviet military and special services personnel were not considered as legally resident of Lithuania. | No |
| Estonia 1991 | No | | Individuals with a permanent Soviet residence card in Estonia | |
| Latvia 1991 | | 18 | Individuals with a permanent Soviet residence card in Latvia | |

| | Changes with respect to prior elections/ referendums | Age | Franchise | List of residents abroad |
|-----------------------------|--|-----|--|--------------------------|
| Macedonia 1991 | No | 18 | Macedonian citizens (internal citizenship provided in the ID cards) residing in Macedonia or abroad ¹⁹ | No |
| Ukraine 1991 | | 18 | Residents in Ukraine. The Electorate also included Soviet soldiers stationed in Ukraine | |
| Bosnia and Hercegovina 1992 | | 18 | Yugoslavian citizens who had established their permanent residency in Bosnia-Herzegovina | Yes |
| East Timor 1999 | | 17 | Individuals born in East Timor, individuals not born in East Timor but with a parent born in East Timor, individuals whose spouse was born in East Timor or whose parent-in-law was born in East Timor | Yes |
| Montenegro 2006 | No | 18 | Individuals with a minimal 24 months permanent residency in Montenegro and Serb-Montenegrin nationality. | |

¹⁹ Citizens abroad could vote in their last place of residence in Macedonia, or in a consular office of the Socialist Federal Republic of Yugoslavia. Citizens doing military service in another x-YU republic could vote in the military barracks.

| | Changes with respect to prior elections/ referendums | Age | Franchise | List of residents abroad |
|------------------|--|-----|---|--------------------------|
| South Sudan 2011 | | 18 | Permanent residents in South Sudan or individuals whose parents or grandparents were permanent residents since 1956 | No |
| Scotland 2014 | Yes | 16 | Residents in Scotland and with British nationality or with EU or Commonwealth nationality | Yes |
| Catalonia 2014 | Yes | 16 | Residents in Catalonia and with Spanish nationality, EU nationality, or European Economic Area or Swiss nationality | Yes |

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Coordinator: Joan Vergés-Gifra
Cover design: Documenta Universitaria

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(University of Girona)
Documenta Universitaria®

Legal Deposit: GI-841-2017

Girona, May 2017
Printed in Catalonia