Explanatory Memorandum

Citizens’ initiative bill for the Autonomous Province of Trento

“Citizens’ initiative bill. Regulations on public participation, citizens’ initiative, referendums and popular initiative and amendments to the provincial electoral law.”

Today we assist to two seemingly contradictory phenomena taking place in the realm of democracy. First, the ever-increasing level of abstention at elections, peaked in the elections for the valley communities (*comunità di valle*) when less than 50% of the voters turned out to cast their vote. Second, the ever-greater number of citizen committees created to deal with various issues of general and particular interest.

Therefore, on the one hand the involvement in the typical institution of representative democracy is constantly decreasing; on the other, there is a remarkable interest in participating directly on decisions concerning questions of political relevance. An interest actualised in the creation of committees or advocacy groups aiming to produce an impact on specific matters, which are often successful in influencing political choices by preventing or facilitating the implementation of certain outcomes. As a result, participation in committees or advocacy groups tends to be perceived as a more effective way to affect political decisions than taking part to elections. What this risks leading to is a situation in which small groups of citizens, even if representing only a minority, may achieve disproportionate influence on the political process.

A solution to this problem consists in introducing greater popular participation in political choices through the institutions of direct democracy. Incidentally, such institutions function extremely well in the countries that adopt them. The closest example is Switzerland, where direct democracy is a well-known feature of the political decision-making process. Also thanks to these institutions, since a long time the public debt – pensions included – has been put under control. If necessary, major works are realised, as in the case of Lötschberg and Gottardo rail tunnels. Finally, also decisions that may be perceived as unpopular are made, as recently occurred for the introduction of a 20%-limit to second homes, or the rejection of the proposal for allowing six weeks of vacation to everyone.
Also by virtue of the efficacy of a political system including direct democracy, today Switzerland is among the European countries the one with the least economic and social problems. In the last years this model has been taken as example in some German lander and Alto Adige, where the citizens are seeking to put it into effect. In fact, direct participation has been a good practice in our valleys for centuries and is therefore part of our tradition.

This bill proposes to regulate in a more organic and complete manner the institutions of direct democracy that are already present in the provincial system, integrating them with some institutions that increase citizens’ capacity to intervene in the decision-making process. The norms included in the bill are meant to allow for the greatest transparency in consultation and decision-making processes, and to ensure the possibility of a direct vote on those issues the citizens consider of major relevance.

What particularly stands out is the removal of any kind of quorum in referendums and popular initiatives, as it is already the case in Switzerland, France, Ireland, United Kingdom, Oregon, California and so on. The quorum distorts the participatory process. By removing it, everyone holding an opinion on a given issue is guaranteed participation to the vote, as it is ensured that this vote, whether for or against the question subjected to referendum, will actually count.

Even where a low quorum requirement or other methods to set a minimum limit to participation are in place, it is the very existence of such a limit to provide with a disincentive to participation. Instead, The absence of quorum encourages participation by making everyone aware that each single vote, whether for or against the proposal, will count towards the final result. This is also confirmed by analyses carried out in countries where different types of quorum are in place.

It is also emphasised that when writing the rules concerning the institutions introduced by this law, the guiding criteria has been ensuring for the initiatives to have definite consequences. Moreover, where not specifically established by higher-level rules, citizens have been provided with possibility to intervene in all the fields of competence of the elected representatives, being them councillors or members of the provincial Government.

The main intention, besides regulating the specific institutions of direct democracy, has been increasing participation in all levels of public life, particularly by extending the opportunity to residents of more than 16 years of
age. At the same time, actions have been planned to ensure the dissemination and promotion of the new regulations, and the transparency and advertisement of the related initiatives, also in the online form.

**Analysis of the Institutions**

**Petition**

Today the petition is regulated by the Council’s rules of procedure. Here it is established that every petition be included in an online portal following the example of English and German e-petitions. Moreover, binding time limits to the handling of petitions have been introduced. The portal allows for sharing citizens’ proposals among citizens and with the provincial bodies.

**Prytanies**

This institution is an effective way to discuss and decide on specific and timely matters as well as on issues requiring documents or complex evaluations. For instance, in Canada it has been successfully employed to elaborate the new electoral law, subsequently subjected to referendum. The prytanies shall constitute a citizen committee, with adequate female representation, which is elected by sortition among those requesting it. They are issued by the Province, the Municipalities with at least 20,000 residents or by 2,500 citizens.

**Consultations**

The institution of consultation is here intended to establish the principle that prior to make any important decision all the persons concerned must be consulted (this principle is also included in the Swiss constitution), that any evaluation and document integrated or produced during this process must be made public, and that notice must be given of any element of the proposals or any observation emerging during the consultations that are incorporated in the final decision.

Even though today consultations are taking place, often only those with sufficient power are able to make their positions known or to obtain secret hearings, whether unwilling to disclose their lobbying action.
Moreover, in view of referendums or popular initiative without quorum it is advisable for the decision-making bodies to have transparent consultations. Without a public debate and facing decisions that are not consistent with the demands of the majority of population, it is likely that the resulting act be subjected to a referendum.

**Public Debate**

The public debate is a form of consultation that is held for works of major relevance upon a specific demand from the public bodies concerned or from other interested bodies, citizens included. In this bill essential rules concerning the conduct and the formulation of the conclusions are set out, with the purpose of involving the citizens and, most importantly, to ensure them accurate information.

**Citizens’ Initiative Bill**

The regulation governing the citizens’ initiative bill follows the regulations currently in force, with three main differences. First, the commission for the participation shall evaluate the admissibility. Second, a public hearing shall always take place, in order to present the bill and to provide the initiative with the maximum degree of institutional publicity. Third, it shall be possible to hold a ‘popular initiative’ in order to submit the bill to a binding popular vote, whether its contents have been distorted by the Council.

**Referendum**

For the purpose of referendums and popular initiative, the key elements of the proposals are the following:

- the absence of quorum
- the possibility of online signature collection (already provided by the European citizens’ initiative) and the simplification
- the regulation of mail and electronic voting
- the transparency on the sources of any funding received by organising committee for the collection of signatures and the referendum campaign
- the information and advertising of the content of referendum question through the distribution of information booklets, as it occurs in Switzerland
the possibility to vote with multiple choice

The advisory referendum does not lead to legislative decisions and may also be promoted by the citizens via the collection of at least 5,000 signatures. Every resident of more than 16 years of age may vote.

The popular initiative (as it is explained in section ‘definitions’ in the bill, the ‘popular initiative’ is the equivalent of the Italian institution of the ‘referendum propositivo’, that is, a referendum that is proposed and voted by the citizens), as it is the case in any system adopting it, allows for voting a bill that, if approved, will enter into force. As it is provided for in Switzerland, the Council or the Government may present a counter-proposal. Interestingly, in Switzerland it is often the counter-proposal to be approved. Usually, the counter-proposal incorporates in part the demands of the organisers. In this way the initiative provides with the opportunity to improve the contents of the proposal by making them more consistent to the popular will.

The confirmative referendum is one of the pillars of this law. It provides the citizens with the opportunity to confirm, or not, the entry into force of laws, regulations and provincial administrative acts. Presenting a valid request within 7 days from the publication of the relevant act, the organisers have 90 days to collect the 8,000 signatures that are required to hold a confirmative referendum.

**Amendments to the electoral law**

For the purpose of the electoral law, these regulations introduce the opportunity for citizens to propose motions of no confidence against the President of the Provincial Government or against the councillors. These regulations also establish limits of mandate.

The motion of no confidence is reminiscent of more binding procedures for recalling elected representatives that are already in place in other systems. For instance, in the US this procedure is applicable to every elected representative as well as, in some States, to public officials, whilst in Switzerland and Germany this is applicable to some collegial bodies. This instrument allows for citizens to exercise control over the executive not only at elections but also during the whole mandate, thus encouraging its appropriate conduct throughout the whole period.

It is also introduced a limit of mandate concerning members of the Council, councillors and president. This establishes that citizens who held public offices
for more than 9 years shall not be re-eligible. The rationale for introducing this limit is simply to avoid that politics become a profession. Finally, it is introduced a sanction for anyone who fails to publicly disclose his or her financial position: otherwise, setting out obligations without defining relevant sanctions will be of little effect.