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## Chapter 7

### The growing use of referenda in local politics: a comparison of France and Germany

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“If I say that the members of a society ought to be able to decide all important issues directly through such devices as a referendum, then I am implicitly saying (...) that it is feasible or practicable for a society to run its affairs in this way” (Weale, 1999, 8). Notwithstanding all the attempts of political theory<sup>1</sup> (Weale, 1999, 24-31) to define and classify the democratic regimes, it is important to add empirical facts to a normative approach, in order to be able to understand the characteristics of a democratic regime. That means that one should pay attention to the **instruments** that promote a democratic reality. We do not suppose that there would be a substantial entity called “democracy”, but rather that there are different procedures<sup>2</sup> (Rancière, 1995) which can combine together and transform the concept of democracy. The fact is that democracy is practiced at different scales which do not require the same political organisation. Some democratic tools might be easier to use at the local level. According to Sandrine Rui (Rui, 2004), the three key words for local democracy nowadays are the **information**, the **dialogue** and the **participation**. Local democratic systems can be opened through the instruments that promote each of those dimensions. We would like to focus on local referenda which lead to more uncertainty in local democratic systems as they strongly determine decisions.

The subject of referendum has become popular in the world, especially when we look at all the different Constitutions which authorise such a procedure. Since the sixties, referenda have been increasingly linked to the **empowerment** of citizens: different political thinkers have claimed a new participatory age. The local level has been given a political specificity and we can notice an inclusive evolution in Europe. France and Germany have been influenced in very different ways by this participatory Revolution. In France, whereas

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<sup>1</sup> Albert Weale built a typology of five different democratic regimes with two strong trends, a representative orientation and a participatory orientation: unmediated popular government, party-mediated popular government, representational government, accountable government and liberal constitutionalism. Representational government, according to John Stuart Mill’s theory, stresses popular participation in politics at local level, not as a rival to representative government but as a complement to it.

<sup>2</sup> According to the French philosopher Jacques Rancière, the Marxist dilemma between real democracy and formal democracy is over. The problem is to evaluate the different **forms** of democracy.

referenda have been presented as a way of expressing national Sovereignty (article 3 of the Constitution of 1958), their use in local politics has been strongly controlled, as if the authorities were trying to avoid them. Nevertheless, different laws have institutionalised the possibility of local consultations. If referenda were previously merely consultative, they were recognised as binding in the last **Decentralisation Act**<sup>3</sup>. In Germany, the situation was quite the contrary. Since the Reunification of West Germany and East Germany, there has been a progressive institutionalisation of local referenda in almost all the *Länder*, under different conditions. Local politics have changed because of the growing use of this instrument. However, referenda are not possible at the Federal level. How can we explain this “silent revolution” (Inglehart, 1977) at the local level in France and Germany? How has the emergence of this procedure affected local representative systems?

To address this question, we will first analyse in detail the origin and institutionalisation of this procedure in both countries. What have been the reactions of the political elites to the use of local referenda? Then, by evaluating the number of local referenda and the issues dealt with by them, we will try to understand how the local political system has changed. How do the referenda modify the **time-scale of local democracy**?

In France, the first local referenda were organised at the end of the nineteenth century without, however, their status being defined by the public authorities. Various bills were tabled by MPs to institutionalise such procedures, such as the bills of Mr Lanessan in 1883<sup>4</sup> (Viguié, 1996) and Mr Mackau in 1890<sup>5</sup>; all were rejected. The representative principle was the main criterion of the local government: the law of 5 April 1884, allowed the election of the local councils. The republican institutions had their foundations at the local level. Some local referenda<sup>6</sup> were held between 1880 and 1907, on topics such as the location of the market place, the construction of buildings for the army, the division of communes, the

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<sup>3</sup> Law n°2003-705 (1 August, 2003) stipulates new conditions for the use of local referenda.

<sup>4</sup> This proposal promoted the possibility of popular initiatives at the local level. 1/20 of voters can call for a referendum on any local government deliberations.

<sup>5</sup> *Official Journal, annex n°3853, 1889 and Official Journal, annex n°582, 1890*. The arguments against the creation of such procedures were mainly the fear of anarchy and the fear of a distinction between tax-payers and other citizens.

<sup>6</sup> For instance, we can quote the referenda of Cluny (1888), Bagnols (1888), Riom (1889), Suresnes (1895), Beauvais (1896), Meudon (1896), Dijon (1897), Fougères (1897), Pont-Audemer (1897). Around 30 local referenda were organised in those years, but it is hard to give an accurate estimate.

organisation of religious ceremonies and local taxes. Local authorities wanted to ascertain the opinion of the electors about financial questions. However, the government began to prevent such procedures, by cancelling them<sup>7</sup>. Then in 1905 and 1907<sup>8</sup>, the Council of State cancelled the local authorities' deliberations which planned a local referendum. Between 1907 and 1959, only one local referendum was held, because referenda were illegal. Finally, local referenda were authorised in 1971, but only for communes. According to Marion Paoletti (Paoletti, 1996), between 1971 and 1992, around 202 local referenda were organised. At the same time, the local referendum became a norm in political speeches.

Whereas in the seventies, various left-wing organisations promoted the idea of local democracy, the “referendum”, as an instrument of local democracy, was popular among the conservative and the socialist parties. In the 1990s, a series of laws took the principle of consultation into account. In fact, the word “local consultation” was preferred in order to avoid a contradiction between the referendum and the local representative governments<sup>9</sup>. A law enacted on 6 February 1992, authorised the consultation of “inhabitants” for a limited number of topics. The concept of popular initiative was introduced for the first time on 4 February 1995. One fifth of the electors can request that a local consultation is held. During the 1990s, the authorities promoted the use of other instruments that are not as complex as referenda. Town councils were created and the law of 27 February 2002 made them compulsory for cities having more than 80 000 inhabitants. The last step towards establishing local referenda was accomplished with the Decentralisation Act of 2003<sup>10</sup>. A referendum is decisive if 50% of the electors take part in it. Although the instrument is legally binding, it is practically impossible to organise a local referendum unless the topic is of particular importance for the local population.

The paradox is that the authorities still have their fears about the introduction of such an instrument. Many politicians call for more participatory democracy, without specifying the local referenda. In March 2004, during the regional and cantonal elections campaign, we conducted a survey among the members and supporters of five political parties on the subject

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<sup>7</sup> On 23 March 1889, the Home Office asserted that the local referendum was **illegal** because it was contrary to the representative system. On 27 November 1892, the authorities cancelled a consultation in Paris about the Gas Company.

<sup>8</sup> See Council of State, 7 April 1905 for the commune of Aigre and Council of State, 17 November 1907 for the commune of Brugnens.

<sup>9</sup> The authorities see the referendum as a **public enquiry** which means a purely consultative instrument. The referendum should not become a **constraint** for local governments.

<sup>10</sup> The references for this series of laws are as follows. Law n°71-588 (16 July 1971), Law n° 92-125 (6 February 1992), Law n°95-115 (4 February 1995), Law n°2002-276 (27 February 2002), Law n°2003-705 (1 August 2003).

of local democracy. Our survey was carried out in Bordeaux, based on a panel of seventy-four interviewees (see Annex II)<sup>11</sup>. The perception of local democracy was clear: around 37% of them associated local democracy with the existence of **town councils**, 18% insisted on the quality of the relationship between local representatives and citizens whereas only 9% mentioned the possibilities of local **consultations** and referenda (see Annex III).

In Germany, the history of local autonomy dates back to 1808 (see Annex I), when Prussia granted the right to administer their own affairs to a small number of cities (*Selbstverwaltung*). That right was extended to other communes at the end of the nineteenth century. Nevertheless, local autonomy does not necessarily mean local democracy. It was the Weimar Constitution<sup>12</sup> which authorised the use of semi-direct democracy procedures (*“plebiszitäre Elemente”*) (plebiscite elements). Certain articles of that constitution (articles 73 and 76) introduced the rights of popular initiative and referenda. For instance, article 73 (§3) allowed popular initiatives (one tenth of the voters) for a bill proposal, provided that the popular initiative concerned a detailed proposal. The government then had to present the initiative to Parliament, which could adopt it directly, without submitting it to a popular vote. In any event, Parliament had to be consulted, contrary to the practice in some American states, where the concept of direct popular initiative has been introduced<sup>13</sup>. The Weimar Constitution clearly had a unitary orientation, as the *Länder* were not really recognised as states. It is particularly noteworthy that in some constitutions, the concepts of popular initiatives and referenda were introduced. For instance, in the Baden Constitution (article 6, §2), popular initiatives were authorised (subject to at least 5000 signatures). It is known that some communal referenda were organised, for example in Munich, when on 12 December 1920, a referendum was held after a popular initiative in order to call new local elections (Faure, 1926, 188).

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<sup>11</sup> This questionnaire is merely indicative. First, we obtained more answers from left-wing parties (The Green Party, Socialists and Communists) than from conservative parties (UDF, UMP). We obtained no answers from the extremist parties (LCR, FN). This questionnaire cannot be used to describe any national trend; it was conducted in the city of Bordeaux to test the political topics of the 2004 campaign and the understanding of recent laws on decentralisation and local democracy. The majority of the questionnaires were completed in our presence.

<sup>12</sup> In the Weimar Constitution, in 1919, the right of **local self-administration** was recognised in article 127 (*Recht der Selbstverwaltung*). Nevertheless, local government was considered as a representative unit, like in France.

<sup>13</sup> At that time, the States of Utah, Oregon, Montana, Oklahoma, Missouri, Arkansas, Colorado, Nebraska, Idaho, Arizona and California institutionalised the direct legislative initiative. In the State of Maine, 12 000 signatures were required to propose a bill and for the other States, the quorum was between 5 and 20%. In Washington, a bill could be adopted through a popular proposal.

In France, there is a specific debate on the distinction between plebiscite and referendum. Theoretically, a plebiscite is the approval of the politics of a person, whereas a referendum concerns a vote on a text. In practical terms, the distinction is blurred, because some referenda are close to plebiscites (Denquin, 1976). In our opinion, Louis Faure made a clearer definition by writing that “the plebiscite concerns a name and the Referendum a question, a “no”. If the referendum is a step towards a direct government, the plebiscite tries to establish the representative government” (Faure, 1926, 123). In fact, according to French political tradition, the national referenda share the characteristics of plebiscites. After the plebiscites of Napoleon I and Napoleon III, President De Gaulle reinvented those procedures at the national level, in order to avoid the hegemony of political parties over Parliament. The plebiscite is a reorganisation of powers inside the representative government.

There is a very interesting debate in Germany (Schiffers, 1999) as to whether the mechanisms of semi-direct democracy granted by the Weimar Constitution provoked the destruction of the political stability of the country in the way the Nazis and the far-left parties used them. On the one hand, Stefan Meinecke denounces the possible **political manipulation** of those mechanisms, while on the other hand, Otmar Jung (Jung, 1989)<sup>14</sup> considers that their presence did not help to destroy the Regime, because of their neutrality. The extremist parties changed the nature of these instruments. Reinhard Kreckel’s description of the Weimar experience as a “democracy without democrats” (Kreckel, 2000: 17) is particularly apposite.

The plebiscites used by the Nazis had nothing to do with direct democracy procedures<sup>15</sup>, as they were imposed without any political debate (Jung, 1999)<sup>16</sup>. That explains why, after the Second World War, a “*plebisphobie*” (Luthardt, 1994) was shared by almost all the political elites and affected the drafting of the Federal Constitution. The Federal Constitution of 1949<sup>17</sup> did not provide for referenda, except for modifications of the territory

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<sup>14</sup> For Jung, those mechanisms were merely a possible correction to balance the Parliamentary Regime whereas for Meinecke, those instruments had another political meaning.

<sup>15</sup> The *Länder* lost their prerogatives during the Nazi era. All local governments were replaced by governments which followed the will of the *Führer*.

<sup>16</sup> All these referenda had an international goal, because they had to justify the **annexing** of different territories. We found traces of an attempted plebiscite in Luxembourg which was occupied by the Nazis. On 10 October 1941, the “*Gauleiter*” decided to organise a population census in Luxembourg. They tried to transform this census into a plebiscite with questions on the nationality, language and ethnic belonging. The Luxembourg resistance prevented the population from participating in this census. The hidden plebiscite, which was intended to abolish the Luxembourg language, did not come materialise. See Esch-sur-Alzette, Archives of the Museum of Resistance, Luxembourg.

<sup>17</sup> Bavaria did not ratify the Federal Constitution in 1949. The Constitution of the free *Land* of Bavaria dates back to 1946. In Bavaria, around 20 referenda were held on different topics and 33 popular initiatives were launched at State level. It is thanks to the referendum of 1995 on the introduction of popular initiatives and referenda at communal level that local democracy has really been implemented.

of the *Land*<sup>18</sup>. Article 28 (paragraph I) of the Constitution reaffirms the representative principle at the local level, by stating that the people must have elected councils (*Volksvertretungen*) in the *Länder*, the districts (*Kreise*) and the communes (*Gemeinden*). The only trace of direct democracy is mentioned in the third proposal of the same paragraph: in some communes, the town-meeting<sup>19</sup> (*Gemeindeversammlung*) can play the same role as an elected council. Notwithstanding this authorisation, semi-direct procedures are excluded at the communal level.

However, in 1956, the *Land* of Baden-Württemberg introduced the possibility of referenda at the local level. It is necessary to clarify the definition of “local referenda”: to which territorial entity does the word “local” refer to? Should the regional level be included in this definition, which means that the local system would be seen as a negative entity, that is to say the opposite to the Federal system or does it refer only to communal referenda? In fact, this question is purely theoretical as there is a strong link between the *Land* and communal levels<sup>20</sup>. In German, the words used for the communal participation are *Bürgerinitiative*, *Bürgerbegehren* and *Bürgerentscheid*: the aspects of popular initiatives, referenda and popular decisions are distinguished. When referring to the *Land* level, the words used are *Volksinitiative*, *Volksbegehren* and *Volksentscheid*. That means that the concept of “*Bürger*” is linked to the communal level whereas “people” refers both to the *Länder* and the *Bund*. This terminology specifies the local level. In France, the “local referendum” is somewhat vague, because it refers to all non-national administrative entities. The legislator is reluctant to introduce such tools because the notion of “local people” has no legal validity: the lack of precision shows that the legislation is hesitant about acknowledging local referenda.

It is through the legislation of the *Länder* that the communal landscape has been modified in Germany. In France, since the Decentralisation Act, the regions and departments can organise local referenda, but those possibilities are very rare<sup>21</sup>.

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<sup>18</sup> **Article 29** of the Federal Constitution allows the organisation of referenda for the modification of the territorial limits (*Neue Gliederung*). For instance, on 7 June 1970, a referendum was held to decide whether the country of Baden should remain in the *Land* of Württemberg. With a participation rate of 61%, 81% of the people rejected the proposed territorial modification.

<sup>19</sup> This local democracy model exists in some small municipalities, it covers the organisation of most of Swiss communes: in Switzerland, around 85% of communes have a system of **town-meetings** (*Bürgerversammlung*). In Spain, communes under 100 inhabitants have the same organisation (*Consejos abiertos*)

<sup>20</sup> In Germany, we can distinguish three main local levels, the *Land*, the *Kreis* and the Commune (*Gemeinde*), whereas in France, we count three local levels, the region, the department and the commune. The problem is that the political visibility of the region and the department is not that obvious even if the last laws of decentralisation allow these different levels to organise local referenda. There is a strong ambiguity in France between the administrative map and the political map.

<sup>21</sup> The example of Corsica is striking: the Government presented this referendum as a political test for the Decentralisation Act. The aim of the referendum was to reunify the two departments of Corsica in one regional

In Baden-Wurttemberg, a popular initiative is taken into account if 10% of the people of the Commune take part in it. In the case of a referendum, 30% of the population has to approve the referendum (Gabriel, 1999; Ritger, 1994)<sup>22</sup>. This is why we deal with the *quorum* of popular initiatives (that is to say the *input* into the political system) and the *quorum* of the referendum. Those different steps indicate the complexity of the procedure; in addition, there are strong time constraints on those possibilities. These procedures are all the more interesting as they oblige the political system to **react**. Therefore, the local authorities are more responsive and more accountable. Semi-direct procedures have nothing to do with immediate democracy (Rosanvallon, 2004, 66), insofar as time prevails: whereas immediate democracy is linked to the myth of the transparency of social will, direct democracy and semi-direct democracy procedures require a strong organisation. From 1956 to 1981, there were around 151 local referenda (Beilharz, 1981) which were not successful in Baden-Wurttemberg, because of the restrictions of the article 21 governing communal organisation in Baden-Wurttemberg.

The subject of direct democracy became more and more important in Germany as a result of reunification. The motto “*Wir sind ein Volk*” reflected not only the wish to be one country again, but also the popular sovereignty. The question of the representation of this popular sovereignty implies the invention of democratic tools, including referenda. The political culture of participation is not the same in the Eastern *Länder* (Lozac’h, 2001), there is a need to promote direct democracy instruments in order to express a new political situation. Just before the reunification, the association “*Mehr Demokratie*” (More Democracy) was founded by people who took part in the **social movements** of the sixties (Kohser-Spohn, 1996; Markovits, Gorski, 1993). In 1987, a bus, on which “Direct democracy” was written, went in East and West Germany to promote this topic. Between 1987 and 1992, the bus stopped in 400 cities. *Mehr Demokratie* is the association which supported the inclusion of local referenda in the legislation of *Länder* and in the communal charters.

In both countries, the participatory revolution transformed the referendum into a new **norm** of political participation in political speeches. The artist Joseph Beuys (Beuys, Bodenmann-Ritter 1997) developed the idea of self-creation, especially in art and politics. He influenced many members who contributed actively as members of *Mehr Demokratie* to

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territory. The referendum was held on 5 July 2003 and the population rejected the proposed administrative merger.

<sup>22</sup> In 1956, 50% of the population had to approve the referendum (*Die Zustimmungsquorum*). In 1976, the quorum has been reduced to 30%.



promoting the concepts of popular initiatives and referenda at all levels. In France, although various local actors influenced political parties, they were not members of **non-voters organisations**. Those local actors were mainly local representatives who linked the idea of local democracy to calls for decentralisation, in order to increase their power. Decentralisation is characterized by the fact that the *préfets* (administrative power) transfer some of their prerogatives to local representatives. In this way, we can conclude that in France there was no real social demand for the inclusion of semi-direct democracy procedures at local level.

In Germany, *Mehr Demokratie* helped to institutionalise the local referenda. It began with the *Land* of Schleswig-Holstein, which introduced the possibility of local referenda and local popular initiatives. The Annex IV summarises this form of institutionalisation in the 1990s and shows the year direct democracy procedures were introduced and the minimal turnout required to organise referenda. Almost every *Land*, except Berlin, adopted communal referenda: the problem concerns the turnout that is to say the minimal participation rate required for the popular decision be registered. It explains why many *Länder* have changed the *quorum* on numerous occasions. The association *Mehr Demokratie* distinguishes between legislation which facilitates the use of referenda and legislation which prevents them: only the *Länder* of Hamburg and Bavaria (Dressel, 2003) really allow the development of referenda. The example of Bavaria is noteworthy, as referenda have balanced the political system at local level, dominated by the conservatives for many years.

Political parties (Klages, Paulus, 1996; Weixner, 2002) were divided concerning the use of those instruments. The FDP liberal party included the possibility of referenda in its program in 1969, then in its election program in 1980 and in the Liberal Manifesto of 1985. In 1958, the Social-Democrats (SPD) proposed a law on the organisation of a referendum about the development of nuclear weapons. During its political congress of 1986, the SPD decided to propose referenda at all levels<sup>23</sup>. Again, in December 1989, the SPD programme declared that referenda should be included at all levels. The Communists (PDS) and Ecologists (Bündnis 90 / Die Grünen)<sup>24</sup> are also in favour of the introduction of such procedures. However, the Conservative Parties (CDU, CSU) are against them, because they fear the emergence of new actors on the political scene. If we compare the reactions of the political

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<sup>23</sup> In the nineteenth century, the Socialists introduced the ideas of direct government. Under pressure from Rittinghausen, the Socialists raised the idea of direct legislation at the Congresses of Eisenach and Gotha.

<sup>24</sup> The Ecologists advocate direct participation at all levels in Europe. The programme for the last European elections of 2004 clearly referred to the enlargement of citizen participation. See "Für Bürgernähe und demokratische Beteiligung" in *Let's Green Europe, Europa-Wahlprogramm*, ([www.eurogreens.org](http://www.eurogreens.org), 2004), 67.

parties in both countries, the Ecologists<sup>25</sup> (Vialatte, 1996) are the first political movement fighting for the introduction of referenda and the promotion of participatory instruments (Budge, 1996). The French Socialists<sup>26</sup> seem somewhat more reserved about the use of local referenda than their German colleagues. The French Conservatives are less hesitant than their German colleagues, but in concrete terms the situation is totally different as local referenda are strictly controlled in France. If the possibilities were enlarged as in Germany, the French Conservatives would certainly adopt the same attitude. In Germany, the coalition between the Ecologists<sup>27</sup> and the Social-Democrats renewed interest in this subject whereas in France the attitudes differ when the members are local representatives, insofar as they do not accept the development of these practices<sup>28</sup> (Mabileau, 1994).

The origin and the institutionalisation of these practices highlight an open structure of representation. In fact, those instruments were not introduced to simplify public policies. It is because the choices are becoming increasingly complex that the citizens and the political system have to work together. The efficiency of referenda has to be measured by the relationship between practices and existing legislation.

If binding local referenda have blossomed in Germany, it is striking to notice that the **direct election** of the mayors and the **recall** procedure (Wollmann, 2002, 78-81) were added in some *Länder* to those procedures. Until recently, only the south *Länder* of Bavaria and Baden-Württemberg used local referenda. In the *Länder*, which were located in the American occupied zone, the influence of the American style of local government is striking. All the different kinds of local government date back to the partition of Germany into several occupied zones. For instance, in North Rhine Westphalia, after 1945, the local government was shaped according to the British model, with the presence of a local parliamentary system,

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<sup>25</sup> We carried out a study on the Communist Party's attitude to the use of local referenda, by interviewing several members in the suburb of Paris. Some Communist municipalities try to enlarge the participation of the citizens by organising local referenda. Local referenda are an opportunity for the Communist Party to compensate for its decline and gain some **visibility**.

<sup>26</sup> However, the French Socialist Party organised a referendum to ascertain the opinion of members on the European Constitution project, on 1 December 2004.

<sup>27</sup> The Ecologists used to describe themselves as an "anti-parties" party, because they worked according to the principle of "*Basisdemokratie*" (**grass-roots democracy**). The members have to be consulted regularly, to avoid a certain bureaucratisation of the movement. The Party organised many local consultations of the members as in 1984 in North Rhine Westphalia and in 1992 in the region Ile-de-France. An interesting research program would be to value those **referendum practices** inside the political parties (Budge, 1996).

<sup>28</sup> This is the discrepancy between the **myth of local democracy** which is ideologically accepted in France and **the reality of the local system**. In the 1970s, many administrative reports (Peyrefitte, Guichard, Aubert) stressed the importance of local referenda, but the implementation of local democracy was forgotten in the decentralisation laws of 1982.

in which the elected local council is the key. The separation between the legislative power and the executive power (there was a city manager, a *Stadtdirektor*) was all the more important as the executive power was appointed by the local council. Since the early 1990s, the “South German form of local government” has been adopted by all the *Länder*. The East German *Länder* also transplanted this model, in order to generalise the principle of election at the local level. It is to be noted that the direct election of the mayors cannot be reduced to a direct democratic procedure. A recall procedure has been also introduced in three *Länder*: for instance, in the *Land* of Brandenburg, some mayors have been removed from office thanks to the organisation of a referendum. According to Hellmut Wollmann, in 2000, we can conclude that “ten percent of full-time mayors lost their position as a result of successful local recall referenda” (Wollmann, 2002, 80).

To some extent, the introduction of this practice cannot be compared to the intensity of American recall procedures (Cronin, 1989; Stelzenmüller, 1994). In the USA, there are between **15000 and 19000 local referenda** each year. Many of them concern recall procedures. Between 1993 and 1998, in the *Land* of Brandenburg, **21** procedures were initiated and 12 of them have resulted in a referendum; 7 out of those 12 referenda resulted in the mayor being removed from office (Wollmann, 1999: 113-114; Premat, 2004, 147). In 1998, the Parliament of the *Land* of Brandenburg increased the minimal quorum from 20 into 25%, in order to avoid the multiplication of such procedures.

As a matter of fact, these practices indicate a strong change in local democracy: the representative system can be reversed at the local level in some *Länder*. Local elites have to be more accountable and cooperate with the citizens by opening the representative system.

In France, the recall procedure is not mooted as a possibility in political speeches. French political tradition refuses the possibility of reversing electoral decisions. In fact, mayors control the mechanisms of local democracy, this is why some researchers have compared this system to a kind of “**municipal presidentialism**” (Sorbets, 1983). The sociology of local elites in France shows that the renewal of local representatives is very limited. The conquest of municipalities is the first visibility at the national level (Mabileau, Sorbets, 1989). Hence, a typology can be established in Europe between different types of local systems: the combination of local presidentialism and referenda does not have the same effects as the combination between local parliamentary systems and referenda<sup>29</sup>. In France, when local referenda are held, it is a test for the mayoral legitimacy.

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<sup>29</sup> The criteria of Lijphart could be applied at the local level (Lijphart, 1984).

The obvious conclusion is that in France, referenda are typically a mayoral tool (Paoletti, 1997). Between 1995 and 1998, only one referendum was organised as the result of a popular initiative<sup>30</sup>. The law of February 4<sup>th</sup> 1995 established the right of popular initiatives for the first time (one fifth of electors can request a local consultation on town and country planning matters). Between 1995 and July 2004, 2,45% of local consultations were held as a result of a popular initiative<sup>31</sup>. Popular initiatives are not possible at the national level<sup>32</sup>.

The recent wave of institutionalisation of local referenda in Germany helped those practices to develop. Annex V gives an idea of the number of local referenda in the *Länder* since their institutionalisation. In Germany, there is a difference between the citizen initiative (*Bürgerinitiative*), popular decisions (*Bürgerentscheid*) and referenda (*Bürgerbegehren*). Hence, we have three different possible outcomes for citizen initiatives: first, they can fail, secondly, they can be taken directly into account by the elected council and last, they can lead to a referendum. The popular decision can be taken either thanks to the referendum or by the council which agrees with the request of the initiative. The council may also decide to organise a referendum on a topic: if the population accepts it, then the decision is valid. Those possibilities explain the difference between referenda and popular decisions. In Switzerland, the distinction is made between initiatives, referenda and local votes. Popular initiatives can lead to popular decisions if the local council accepts them, or they can lead to the organisation of a local vote. Furthermore, in Switzerland, the referendum is a negative procedure: there is a deadline for the people to react against a municipal deliberation, in order to change the local decision. In France, the referendum is most of the time consultative<sup>33</sup>: it is organised in respect of a project and not after a municipal vote. The question of **local time-scales** is totally different in the three countries.

In Germany, 1260 local referenda out of 2472 were held in Bavaria between 1995 and 2002, which means that half of the German local referenda are located in this area. Some 578 popular decisions out of 1380 are taken in Bavaria. There are around 2152 communes in

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<sup>30</sup> The referendum was held on June 22 1997 in the district of Val d'Argent, in Alsace. The popular initiative required the construction of an infrastructure for tourism. 66,90% of the population took part in the referendum and 55,5% accepted the initiative (Data source: French Home Office).

<sup>31</sup> The other demands were rejected by the elected local council (Data source: French Home Office).

<sup>32</sup> A Communist deputy (André Gérin) tabled a bill on the introduction of "popular initiative referendum" at municipal, regional and national levels. The bill was rejected by the House of Representatives. See Bill n° 1726 (22 June 1999) on <http://www.assemblee-nat.fr/propositions/pion1726.asp>

Article 7 of the bill proposal is interesting because the procedure would be not only in the hands of the mayor at local level. According to the proposal, the **mayor** and a **college of citizens**, chosen by drawing lots, would have one month to examine the demand. This college of citizens is to be renewed every two years.

<sup>33</sup> The referendum is only **prospective**, it is close to a public enquiry. If we define the local referendum in the Swiss way, that is to say in reaction against a municipal vote, there would have been very few local referenda in France.

Bavaria, and the average frequency of local referenda would appear to be 210 a year<sup>34</sup>. As a matter of fact, around one tenth of the Bavarian communes hold a referendum each year. This frequency shows that the Bavaria case is growing closer to the referenda practices of some Swiss cantons<sup>35</sup>.

Local referenda in the five new *Länder* are not so frequent: if all such procedures between 1990 and 2002 are counted, there were only 229 referenda<sup>36</sup> (less than 20% of the total) and 221 popular decisions (16% of the total). It would be too early to conclude that the cultural shift is in process in those *Länder* insofar as the *Land* of Saxony is the sixth *Land* of the country in terms of referenda frequency. Annex V shows that the conditions are almost the same in Saxony as in Saarland. Saarland is the poorest *Land* in terms of referenda. Its poor score is not due to the structure of local government. In fact, the Rhine local government model can be found in Saarland (Volmerange, 2004)<sup>37</sup>, Rhineland-Palatinate and Schleswig-Holstein, with the presence of a burgomaster. Nevertheless, there were 267 referenda in those *Länder*, therefore the explanation based on the structure of local government is not particularly relevant. A comparison between annex V and annex VI indicates that the quorum influences the practice. Where the quorum is close to 30%, the number of consultations is very limited<sup>38</sup>. In Saxony-Anhalt, Baden-Wurttemberg and Saarland, the quorum prevents these practices from developing.

In a nutshell, if we consider the period of time, the practices are mainly located in Bavaria, North Rhine Westphalia, Hesse and Schleswig-Holstein<sup>39</sup>. The majority of the issues concerned planning questions. It is impossible to organise a referendum either on a financial question or on the communal administration, contrary to practices in Switzerland (Premat, 2004: 144-149; Trechsel, 2000).

In France, between 1995 and 2004, there were 180 local consultations<sup>40</sup>. Marion Paoletti counted 202 local referenda between 1971 and 1992, and there were 41 local consultations between 1992 and 1995 (Bellouber-Frier, 1996). Consequently, since the

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<sup>34</sup> This figure is only valid for this period of time. The frequency has certainly changed since 2002.

<sup>35</sup> There is a huge diversity of referenda practices in the 3000 communes of Switzerland. It also depends on the relation between the town-meeting and the use of local referenda, when the commune is administrated according to this principle.

<sup>36</sup> Seventy-five referenda led to a popular decision: in other words, **33%** of the local referenda resulted in popular decisions in those *Länder*.

<sup>37</sup> In Saarland, the direct election of the burgomaster dates back to 11 May 1994, in Rhineland-Palatinate to 5 October 1993 and in Schleswig-Holstein to 22 December 1995.

<sup>38</sup> In Baden-Wurttemberg, some political parties and associations are endeavouring to have this quorum lowered.

<sup>39</sup> 1844 referenda out of 2472 (75% of the German referenda) and 805 popular decisions out of 1084 (75% of the German popular decisions) took place in those *Länder*. We did not collect data on the number of local referenda in the *Land* of Hamburg.

<sup>40</sup> Data source: Home Office (July, 2004).

institutionalisation of local referenda in France, there have been 423 local referenda<sup>41</sup>. If we add the local referenda held at the end of the nineteenth century, that produces a total between 460 and 470 referenda. A figure of 423 local referenda in 33 years of codification establish an average frequency of 12,8 local referenda a year. In fact, given the number of communes (36000)<sup>42</sup> (Paoletti, 1999), the level is very low. Nevertheless, a comparison of the number of local referenda and the number of communes can be misleading. It is not the frequency of local referenda which explains the extension of local democracy. A quantitative approach and a qualitative approach are necessary to understand the way referenda are organised at the local level. Annex VI describes the relationship between the size of the commune and the referenda (1995 and 2004). 99 local referenda out of 180 (55%) were organised in small communes. Considering the large number of small communes (33915), the proportion is not high at all. As a matter of fact, it is not appropriate to deal with an increase of “rural referenda”. When the communes are not that big<sup>43</sup>, people know each other and the organisation of a referendum can cause social conflicts<sup>44</sup>. In addition to this, the list established by the French Home office does not include several local referenda which were illegal and therefore not known to the prefectures<sup>45</sup>. An examination of those local referenda which are not recorded by official statistics<sup>46</sup> indicates that some “local” topics are not known outside the commune, because they are experienced as internal affairs. Sometimes, the mayor knows that an administrative tribunal will cancel the procedure because the topic of the referendum is the competency of the State. This is why the mayor does not want the prefecture to know about it.<sup>47</sup>

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<sup>41</sup> In the French case, there is no distinction between referenda and local consultations.

<sup>42</sup> Just over 1% of communes have had a local referendum (Paoletti, 1999).

<sup>43</sup> There is obviously in France a high number of small communes. The criterion which distinguishes rural communes from urban ones is very hard to define. For many years, official statistics considered the rural communes as communes with fewer than 2000 inhabitants (Mendras, 1988).

<sup>44</sup> In some small communes, proximity dramatises the way local politics are conducted. For instance, in February 1993, in the Department of Vienne, the mayor of Chatain (360 inhabitants) committed suicide as a result of the consequences of a local referendum. The referendum was about the acceptance of radioactive waste. The mayor agreed with the installation of a laboratory which would have processed the radioactive waste. He won the referendum (60% for, 40% against in January 1993), but pressure from the local environmentalist association and threatening letters affected him. The close-knit relations in some villages can lead to a lot of pressures. In this regard, please refer to the work of Uli Windisch who analyzed such local relations in a small village of Switzerland (Windisch, 1992; Barth, 1993).

<sup>45</sup> Our own research suggests that between **5 and 10%** of the local referenda are ignored by official statistics.

<sup>46</sup> In addition, some departments did not answer to the Home Office enquiry. We have tried to complete those data by calling the prefectures of the missing departments.

<sup>47</sup> We interviewed the mayors who organised these referenda, as well as the prefectures. Considering that the newspapers and certainly the sub-prefectures are aware of some local referenda, the prefectures choose not to interfere if the referendum is not important. For instance, some topics are very **symbolic**. In February 2003, a local association proposed to the mayor of Les Mages (1500 inhabitants, department of Gard in the South-East of France) to organise a local consultation on the Iraqi war (96% were against the war, but only 20% of the people took part in that initiative).

If we locate those referenda, most of them were organised in Provence<sup>48</sup> (See annex VIII) insofar as 35 local referenda were held in that region. In other words, the average frequency of local referenda between 1995 and 2004 was 4 per year for 963 communes in Provence. This was certainly due to reasons of territorial reorganisation, but we have too few tools to make serious conclusions about that hypothesis.

Urbanisation trends suggest that in the future, some local referenda will be organised for the mergers of communes<sup>49</sup>. For instance, in the region of Nord-Pas-de-Calais, which is an urban region<sup>50</sup> (the density is much higher than the average density of population in France), 12 referenda out of 15 were organised on the merger of communes with the city of Lille<sup>51</sup>. There are a slightly more referenda in the regions where the urbanisation rate is high, but the practice of local referendum is increasing too slowly in France to make a serious correlation between the urbanisation rate and the use of referenda. Furthermore, some communes have begun to develop a culture of local referenda as they have organised several consultations such as Mons-en-Baroeul (4 referenda since the end of the seventies) (Jeantet, 1991, 150)<sup>52</sup>, Entremont (3 referenda since 1991), Couilly-Pont aux Dames (3 referenda between 1996 and 1999).

On the whole, the turnout was higher than 50% in 61% of cases and in 48%<sup>53</sup> of cases, the population approved the projects. We can explain this slow trend by a discrepancy between decentralisation and local democracy. As the laws of 1982 stressed on decentralisation, the question of local democracy has been delayed. The authorities do not want to make too obvious a connection between **local democracy** and **decentralisation**<sup>54</sup>, this is why the last Decentralisation Act recognized the possibility of local referenda while restricting their use.

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<sup>48</sup> Nevertheless, a few local referenda were held at the same time in this area, with regard to a merger of communes.

<sup>49</sup> In 1995, there were more than 36 000 communes in France whereas in the former European Union there were 79 000 European communes. The necessity to merge communes is at stake in the future. See the review *Pouvoirs* n°95, 2000.

<sup>50</sup> The Department of Nord is urban whereas the Department of Pas-de-Calais is more rural.

<sup>51</sup> Many of these communes have more than 20000 inhabitants, namely Marc en Baroeul (37 679), La Madeleine (22 696), Lambersart (28 369), Verlinghem (2 399), Hem (19 814), Croix (20 832), Mouvaux (13 341), Ennetières-en-Weppes (1 141), Hallennes-lez-Haubourdin (3 828), Wasquehal (18 716), Roncq (12 794) and Lannoy (1 727).

<sup>52</sup> Mons-en-Baroeul organised four referenda in 1977, 1980, 1987 and 1998 on budget problems though it was not legal.

<sup>53</sup> Data Source: direction générale des collectivités locales, French Home Office.

<sup>54</sup> There is a juridical distinction between **deconcentration** and **decentralisation** (Larangé, 2000).

“Deconcentration means that the services of the Central State are decentralised in order to be more efficient. When the authorities refer to local democracy, they mean the power of local representatives.

The increase of local referenda in both countries is beyond all doubt. The question is their intensity: whereas the recent wave of institutionalisation in Germany helped the development of local referenda, the evolution is much slower in France. Referenda are not included as much in the local political systems: the opening of those systems is in process, it implies a change in the status of local representatives. In Germany, the fact that the demand comes more from the population allows the political system to translate those needs. In France, the input is clearly controlled by the local authorities and especially mayors who improve their legitimacy by organising these procedures. Notwithstanding such resistance, it is relevant to declare that those trends will accelerate. Local Politics is becoming complex (Zolo, 1992) because of the emergence of these new procedures that lead to the emergence of new social actors emerge and change the nature of local time-scale. Indeed, the fact that some citizens are more active and take part in defining public policies (Papadopoulos, 2002) extends the duration of the public policies which exceed the time of the local authority's mandate. It is hard to solve the dilemma between participation and the efficiency of public policies.



## Annex I: a comparison of the history of local referenda in France and Germany

Some key dates	France	Germany
1880-1907	First local referenda in France (between 30 and 40) until the Conseil d'Etat cancelled some procedures. Strong hostility of the French Parliament	Local autonomy
1919-1933		The Republic of Weimar introduced some direct democracy procedures as corrective mechanisms. Local referenda and local popular initiative existed
1930-1945		Nazis plebiscites. Trauma which explained a post-war " <i>plebisphobie</i> "
1945-1960	-1946: the Constitution of the Fourth Republic was approved by referendum. -1958: the Constitution of the Fifth Republic introduced referenda at national level (from 1958 to 1969, 8 national referenda)	-Some <i>Länder</i> adopted referenda at State level (Bavaria and Baden-Wurttemberg) after the war -1955: introduction of the possibility of communal referenda in the legislation of Baden-Wurttemberg
1970-1989	-The law of 16 July 1971: local referendum is compulsory in case of the merger of communes. First acknowledgment of local referenda -The <b>decentralisation</b> laws of 1982 (I)	

1990-2004	<p>-Series of laws which defined as well as restrained the use of local referenda</p> <p>-6 February 1992: the possibility of <b>local consultations</b> is introduced with some conditions: weak opening of local governments</p> <p>-4 February 1995: Popular initiative is possible under certain conditions. Local referenda are merely consultative</p> <p>-27 February 2002: "Democracy and neighbourhood"</p> <p>-1 August 2003: Decentralisation Act (II)</p>	<p>-1990: the Reunification of Germany: many <i>Länder</i> adopted the <b>local referenda</b> in their communal charts</p> <p>-Fight of <i>Mehr Demokratie</i> association to extend this tool: a lot of local referenda have been held since the 1990s</p>
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## Annex II: Enquiry on local democracy in the city of Bordeaux

1) Male    Female

2) Age

    Between 15 and 25 years old

    Between 26 and 40 years old

    Between 41 and 60 years old

    More than 60 years old

3) What is your job?

4) To which political party do you feel close?

5) Your position inside the party

    Supporter

    Member

    Militant

    Elect

    Other

6) How do you see the devolution process?

7) Which word would you use to describe « local democracy »?

8) The Constitutional Law of 28 March 2003 stated the decisive value of the local referendum. Do you think that this instrument would be efficient to enlarge citizens' commitment?

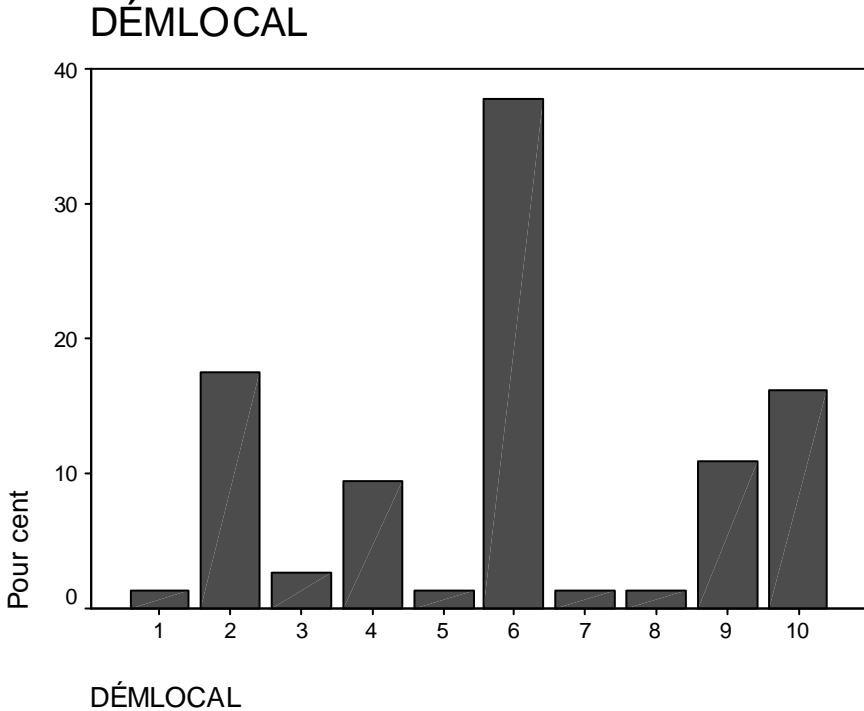
- Not efficient at all
- Not so efficient
- Sometimes efficient
- Efficient

9) Was the topic of citizens' commitment important in the campaign of regional and cantonal elections of 2004?

- Not important at all
- Not so relevant
- Secondary
- Important

Source: own research

**Annex III: the perceptions of local democracy in Bordeaux**



## Heading

DÉMLOCAL= answers to the definition of local democracy

The numbers 1 to 10 correspond to the answers that the members proposed.

1= “local life”

2= “**relation local representatives / citizens**”

3= “the power of the local representatives should be limited”

4= “**local consultations**”

5= “information”

6= “**town councils**”

7= “more power to the mayor”

8= “initiatives from associations”

9= “there is no local democracy”

10= “no answer”

Source: own research (survey made on a panel of seventy-four people from five different political parties in Bordeaux, results analyzed with SPSS software)

## Annex IV: Referenda at communal level in Germany (quorums and deadlines)

<b>Date of the introduction of direct democracy procedures</b>	<b>Popular initiative: quorum of signatures</b>	<b>Deadline for obtaining signatures</b>	<b>The minimal quorum required for the referendum be decisive</b>
Baden-Württemberg (1956)	5-10%	4 weeks	30%
Bavaria (1995)	3-10%	No delay	10-20%
Brandenburg (1993)	10%	6 weeks	25%
The city of Bremen (1994)	10%	3 months	50% of participation required
Bremerhaven (1996)	10%	6 weeks	30%
Hamburg (1998)	2-3%	-	No quorum
Hesse (1993)	10%	6 weeks	25%
Mecklenburg West-Vorpomerania (1994)	2,5-10%	6 weeks	25%
Low Saxony (1996)	5-10%	3 months	25%
North Rhine Westphalia (1994)	3-10%	6 weeks	20%
Rhineland-Palatinate (1994)	6-15%	2 months	30%
Saarland (1997)	5-15%	2 months	30%
Saxony (1993)	5-15%	2 months	25%
Saxony-Anhalt (1993)	6-15%	6 weeks	30%
Schleswig-Holstein (1990)	10%	4 weeks	20%
Thuringia (1993)	13-17%	1 month	20-25%

From: “*Mehr Demokratie*” and SCHILLER, Theo, *Direkte Demokratie: Forschung und Perspektiven* (Wiesbaden, 2002

### Annex V: Local referenda and popular decisions in Germany

<i>Land</i>	Local referenda				Popular decisions			
	Period	Number N	Frequency (number of local referenda a year for X communes) N (1/X)	Not valid (the procedure is not correct)	Referenda which have become popular decisions	Number N	Frequency (number of popular decisions a year for X- communes) N (1/X)	Popular decision taken after referendum
Bavaria	1995- 2001	1260	210 (1/10)	160 (13%)	578 (46%)	578	96,3 (1/21)	578 (100%)
Baden- Württemberg	1956- 2002	283	6,2 (1/179)	130 (46%)	140 (50%)	292	6,4 (1/174)	140 (48%)
North Rhine Westphalia	1994- 2002	232	29 (1/14)	89 (38%)	74 (32%)	74	9,3 (1/43)	74 (100%)
Schleswig- Holstein	1990- 2002	202	16,8 (1/67)	88 (44%)	86 (43%)	100	8,3 (1/136)	86 (88%)
Hesse	1993- 2002	150	16,7 (1/67)	32 (21%)	67 (45%)	67	7,4 (1/58)	67 (100%)
Saxony	1993- 2002	130	14,4 (1/54)	41 (32%)	65 (50%)	121	13,4 (1/58)	65 (54%)
Rhineland- Palatinate	1994- 1999	61	12,2 (1/189)	19 (31%)	23 (38%)	23	4,6 (1/501)	23 (100%)
Lower Saxony	1996- 2002	51	8,5 (1/121)	22 (43%)	22 (43%)	24	4 (1/258)	22 (92%)
Brandenburg	1993- 2001	36	4,5 (1/331)	19 (53%)	6 (17%)	28	3,5 (1/425)	6 (21%)
Mecklenburg West- Vorpomerania	1993- 2002	30	3,3 (1/324)	22 (73%)	6 (20%)	25	2,8 (1/463)	6 (24%)
Thuringia	1993- 1999	29	4,8 (1/219)	10 (35%)	15 (52%)	15	2,5 (1/421)	15 (100%)
Saarland	1997- 2002	4	0,8 (1/52)	3 (75%)	-	0	0 (0/52)	0
Saxony- Anhalt	1990- 2002	4	0,3 (0/1295)	2 (50%)	2 (50%)	33	2,8 (1/463)	2 (6%)
<b>Total</b>	1956- 2002	2472	327,5	637 (26%)	1084 (44%)	1380	13,2 (1/329)	1084 (79%)

Data Source: WALTER-ROGG, Mélanie, “*Direkte Demokratie in der Bundesrepublik Deutschland und im internationalen Vergleich*” in GABRIEL, Oscar, *Politische Partizipation*, [www.politikon.org/inhalt](http://www.politikon.org/inhalt) and data from the University of Marburg

## Annex VI: relationship between size and local referenda practices in France (1995-2004)

Size of the commune	Number of communes	Number of referenda
less than 3500 inhabitants	33915	99
Between 3500 and 5000	801	14
Between 5000 and 10000	975	17
Between 10000 and 20000	426	29
Between 20000 and 50000	300	16
More than 50000	112	5

Data Source: French Home Office

## Annex VII: topics of French local referenda (1995-2004)

Main topics	Proportion of referenda
Urban planning	37,8%
Public equipment	20,55%
Communal life	28,8%
Illegal consultations on State projects	12,77%
Total	100%

Data Source: French Home Office

## Annex VIII: The number of local referenda in some French areas

Region	Population (1999 census)	Surface (1999 census) (km <sup>2</sup> )	Density (Inhabitants per km <sup>2</sup> )	Number of communes (1999 census)	Number of local referenda between 1995 and 2004 <sup>55</sup>
Ile-de-France	10 952 011	12 072	910	1 281	25 <sup>56</sup>
Rhône-Alpes	5 571 885	43 698	128	2 879	16
Provence	4 534 000	31 804	145	963	35
Nord-Pas-de-Calais	3 996 588	12 313	322	1 546	15
Midi-Pyrénées	2 522 696	6 299	53	3 009	11
Languedoc	2 114 955	33 570	63	1 542	10
Alsace	1 624 372	8 294	195	896	4
Bourgogne	1 463 240	31 593	46,3	2 039	14
Total for eight regions	32 779 747	-	-	14 155	115
Total France	60 000 000	550 000	109	36 800	180

Data Source: own research

<sup>55</sup> We use the data given by the French Home Office

<sup>56</sup> The Home Office did not take into account the referenda which occurred in some districts of Paris (the nineteenth and the twentieth districts).

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