

Fact sheet: Combination of sortition-based procedures and direct democracy at the federal level

Citizens' assemblies and referendums can be linked at several points. In a three-stage process of agenda-setting initiative, citizens' initiative, and referendum. This can happen before the agenda-setting initiative, before the popular petition, after the popular petition or even after the referendum - each with different effects. The two tools can complement each other and compensate for respective disadvantages. Referendums can gain in quality and approvability through prior deliberation, and they can also counteract simplification and polarization. Citizens' assemblies can gain in effectiveness through referendums so frustration and loss of significance can be prevented. The options for combination presented refer to the federal level and to the bill drafted by Mehr Demokratie for the introduction of nation-wide referendums¹ and are intended to bring new, creative linkages into the discussion.

1. Appropriate forms of direct democracy

At the federal level, the following three forms of direct democracy are particularly useful:

- a) In the case of three-stage popular legislation, a referendum is initiated by the citizens themselves by means of signature collection. The three stages are: agenda-setting initiative (100,000 signatures) – citizens' initiative (1 million signatures) - referendum.
- b) A corrective referendum (optional referendum) is directed against a law passed by parliament.. With 500,000 signatures, a referendum can be requested on whether or not the law should enter into force.
- c) Compulsory referendums are mandatory referendums held when competences are transferred to the EU and when the constitution is to be amended. Amendments to the constitution passed by the Bundestag must be confirmed by referendum. If the Bundestag transfers competences to the EU level, the people must also give their consent.

2 Appropriate sortition-based procedures

2.1 Citizens' assemblies

Sortition-based citizens' assemblies aim to involve citizens in the creative and planning processes. Citizens' assemblies serve to prepare the ground for decisions. However, the decision remains with the Bundestag.

- In citizens' assemblies, participants are randomly selected from the population register. That way they represent a cross-section of the population - for example, according to age, gender, place of residence, level of education, and migration background.
- The around 160 drawn participants meet several times to discuss the political topic and related issues. The meetings can take place online, offline or mixed.
- The participants are informed by experts. They then deliberate in small, well-moderated groups about solutions. In the course of the citizens' assembly, participants jointly develop and vote on policy recommendations.

¹<https://www.mehr-demokratie.de/gesetzentwurf/>

- The format, number of citizens drawn, frequency, and duration of deliberations depend on the scope and complexity of the issue.
- An independent coordination body for citizen participation, based within the Bundestag, is responsible for, designs and monitors the process of the citizens' assembly.
- Its implementation is based on current, recognized quality criteria for good participation practice.
- A citizens' assembly is financed from the federal budget.

2.2 Citizens' initiative review

The well-tested procedure from the US state of Oregon could in principle be integrated before referendums. Citizens selected by sortition prepare a statement on the upcoming referendum. In Oregon, numerous popular initiatives were put to the vote each year. Surveys showed that many voters did not understand exactly what they were voting on. Since 2011, this citizen participation has been required by law, which develops an opinion before the referendum:

- 20 to 24 citizens selected by lot - who are representative of the state according to certain criteria - spend four days dealing with the contents of the referendum.
- They then define their position on a DIN A4 page: The Citizen Review Statement.²
- Content of the statement: The most important pros and cons are listed. What is the impact of the proposed measure? How many participants are in favor or against, and for which reasons?
- The statement is inserted in the voting brochure distributed to each household before the vote.

The proven procedure would have to be transferred to German conditions and adapted respectively.

3. Possible combinations of agenda-setting initiative, citizens' initiative and referendum

3.1 Before agenda-setting initiative and citizens' initiative

Citizens' assemblies from below as an independent instrument:

- To request a citizens' assembly on a definable topic, 200,000 signatures are collected and submitted to the Presidium of the German Bundestag.
- The content for the citizens' assembly lies within the competences of the German Bundestag.
- The exact question of the initiative behind the citizens' assembly can be adapted in agreement with the initiators. As guiding principles, the practical feasibility of a citizens' assembly and the resulting recommendations should be ensured.
- The Bundestag implements the citizens' assembly process within twelve months via the independent coordination office for citizen participation.
- The recommendations of the citizens' assembly are referred by the Presidium of the German Bundestag to the relevant expert committees and a lead committee is appointed.
- The relevant federal ministries may also address the recommendations and feed their feedback into the parliamentary process.
- The lead committee prepares a draft resolution for the Bundestag.
- Elected representatives of the citizens' assembly have the right to be heard in the specialized committees (if necessary, together with the representatives of the initiative of the citizens' assembly).
- Within twelve months of the submission of the citizens' assembly's recommendations, the Bundestag communicates the result of the parliamentary treatment and provides reasons for this.

²Example: Changes in tax regulation law in Oregon, referendum in 2016 (Measure 97): <https://healthydemocracy.org/wp-content/uploads/2016OR-M97-Statement-1.pdf>

If a direct democratic process is desired on these results, the process begins typically with the popular initiative and the collection of an additional 100,000 signatures. Thus, sortition-based participation procedures and direct democracy are separated with their respective different procedural logic.

3.2 Between agenda-setting initiative and citizens' initiative

According to the bill drafted by Mehr Demokratie, the first stage, the agenda-setting initiative, has so far been regulated in this way: Citizens draft a bill or a political proposal. In doing so, they can only consider what lies within the jurisdiction of the Bundestag. For a popular initiative, 100,000 signatures must be collected. There is no collection deadline. After the popular initiative has been submitted, the Presidium of the Bundestag decides within a month whether the initiative has been approved. The proposal is then debated in the Bundestag within six months. The initiative is granted the right to speak. The Bundestag and the federal government can refer the initiative's proposal to the Constitutional Court if there are doubts as to whether it complies with the constitution (judicial review). If the Bundestag rejects the popular initiative's proposal, a petition for a referendum can be filed within 18 months.

Citizens' assemblies after the agenda-setting initiative:

- After the approval of the agenda-setting initiative has been decided, the Bundestag can decide that a sortition-based citizens' assembly on the subject of the initiative will take place. The then necessary extension of the deadline of a maximum of nine months, within which the citizens' assembly must take place, can only take place in agreement with the initiative.
- However, if the agenda-setting initiative is signed by 300,000 people, the initiators can demand a citizens' assembly to be held within twelve months. Since the legal effect - i.e., the implementation and financing of a citizens' assembly - is higher, the respectively higher signature quorum is justified.
- The initiators can adopt the results of the citizens' assembly in full or only in part, or they can retain their original proposal.
- A parliamentary referral then takes place within six months. The Bundestag can adopt the initiators' updated or unchanged proposal. In this process, compromises can also be reached by mutual agreement.
- The regulations on the control of standards remain unchanged.
- If no adoption or compromise takes place, the initiators have the right to apply for a citizens' initiative with their revised or original demand.

3.3 Between citizens' initiative and referendum

Lot-based procedures could also be established after a citizens' initiative. After a successful initiative, the Bundestag can decide to adopt the proposal of the initiative. If no adoption takes place, a referendum is held. Sortition-based procedures can help in preparation:

- a) After a successful citizens' initiative, the Bundestag and the Bundesrat have the option to put an alternative proposal to a vote in parallel with the proposal of the citizens' initiative. This increases the element of choice for those voting. The Bundestag may convene a sortition-based citizens' assembly to develop recommendations for an alternative proposal.
- b) A sortition-based panel, following Oregon's model as described in 2.2, shall prepare a statement on the upcoming referendum for the ballot pamphlet.

4. Combination options for optional referendums (popular objection)

With the optional referendum, citizens can demand a referendum on laws passed by the Bundestag within 100 days. If the necessary 500,000 signatures are collected, a referendum is held.

- a) Although the law to be voted on has been passed by the parliament, it can still put a second draft to the vote (which, for example, takes up criticism from civil society). This alternative draft can be prepared by a citizens' assembly.
- b) In the voting booklet a statement could be included again, as described in point 2.2.
- c) In addition, after a bill has been stopped by an optional referendum, how to proceed with the topic is discussed by a lot-based citizens' assembly.

5. Options for combining mandatory referendums

In Ireland, there is good experience with the parliament setting up sortition-based citizens' assemblies on specific issues (www.citizensassembly.ie). The recommendations made are received by parliament, discussed in the usual parliamentary procedure and, if necessary, adopted. In the case of amendments to the Irish constitution, there is also a mandatory referendum (e.g., Marriage for All 2015 - Abortion Law 2018). This provision has been enshrined in the Irish constitution since 1937.

This could be transferred to the federal level: The Bundestag mandates a sortition-based body to review a proposal for a constitutional amendment drafted by the Bundestag by a citizens' assembly and propose amendments if necessary. The Bundestag can adopt this. A referendum is then automatically held on the amendment to the constitution.