

Fact Sheet Direct Democratic Procedures at federal Level

Three possible instruments of direct democracy

In all 16 federal states there is direct democracy at both municipal and state level. Here, for more than 70 years, experience with direct democracy has been collected. If one also draws upon experiences from other countries (Switzerland/Italy/Ireland), then three direct-democratic instruments have proven their worth, to supplement parliamentary decisions:

- Three-stage popular legislation: A referendum is brought under way by the citizens themselves via signature collection. The three stages are: citizens initiative (application for admission of a popular initiative) - popular initiative - referendum.
- Optional referendum: This corrective popular initiative is directed against a law passed by parliament. If the defined number of signatures is reached, a referendum will decide whether the law should enter into force or not.
- Compulsory referenda are referenda which are binding and automatically take place for topics addressed in the Constitution such as constitutional changes or the transfer of sovereign rights. This is always preceded by a corresponding parliamentary decision.

It is largely undisputed that the following instruments require change to the Basic Law. The following proposals are to be distinguished from plebiscites, where the government or parliament decides whether there is a vote or questioning on a specific topic (Brexit). These varieties are too susceptible to abuse and therefore to be rejected.

1. Three-stage citizen legislation

The core of citizen legislation is that citizens themselves can draw up a draft law and bring it to a referendum. It is the central direct-democratic instrument in all federal states. Already the possibility of a referendum can have a policy-changing effect. In the federal states, most successful citizens initiatives are concluded through negotiations.

1. Stage of the procedure - citizen initiative

- a) The citizens prepare a draft law and collect signatures for it. Proposal: 100,000 signatures, free on the street and online.
- b) After submission, the Federal Government and the Bundestag examine the draft law for compatibility with the Basic Law, EU law and international agreements. In case of doubts as to compatibility, citizen initiatives are submitted to the Federal Constitutional Court (preventive control of norms).
- c) If the proposal is admissible, it will be discussed in the Bundestag (or Bundesrat, if applicable). This period shall be as long as possible as there should be room for compromise and for a possible public participation procedure. The initiative is given the right to be heard in the relevant committees.

2. Stage of the procedure - popular initiative

- a) If no agreement can be reached, the initiative may request a popular initiative. Within a period of time a certain number of signatures is to be collected. Proposal: 1 million for simple and 1.5 million for constitutional changes within nine months.
- b) After submitting the signatures, the Bundestag (or Bundesrat if applicable) has the opportunity to adopt the draft law of the popular initiative.

3. Stage of the procedure - Referendum

- a) If the popular initiative is not adopted, a referendum must be held. Mehr Demokratie recommendation: quorums are not to be expected, as they tend to inhibit participation. Bürgerrat recommendation: There shall

be an appropriate quorum for referenda. Laws requiring approval additionally need a majority in the federal states.

- b) The Bundestag may decide on a counter-proposal and alternatively put it to the vote. For the treatment in the Bundestag, the time limits should be as generous as possible in order to allow for public participation procedures for the drafting of the counter-proposal.

2. Optional Referendum

- With the optional referendum, citizens can, within a short period of time, demand a referendum on laws passed by the Bundestag. For this purpose, a certain number of signatures must be collected. Proposal: 500,000 signatures within 100 days. Within this period the laws do not come into force.
- The Bundestag can declare laws to be urgent by a qualified majority and thus make them unavailable to the optional referendum process.
- The power of the optional referendum lies not only in its control effect, but above all in its preventive effect. It provides for greater care in legislation, more contemplation of the opposition's and civil society's arguments to avoid referendums.

3. Mandatory Referendum

- Mandatory referendums are obligatory for certain decisions defined in the Basic Law. The federal states of Bavaria, Hessen and partly Berlin have the so-called mandatory constitutional referendum. Changes to the state constitution must, after state-parliament approval, receive a majority in the referendum. A quorum is not valid there. The basic idea is, that certain decisions are of particular scope and importance and thus legitimizing a referendum (without collection of signatures). This can also be assumed for changes to the Basic Law.
- The same could apply to the transfer of national sovereign rights to intergovernmental organisations as for example the EU (as in Denmark). Transfers of competence to intergovernmental levels are difficult to undo. They therefore require special legitimation. The Treaty of Lisbon Treaty, for example, should have been subject to a referendum.