



German parliament XXL – stalled electoral reform ahead of elections 2021

- With Germany's rather successful COVID-19 strategy and the recovery and stimulus packages broadly agreed, the question of Merkel's successor and the next German federal elections in autumn 2021 are gradually getting closer political attention again.
- Currently, though, parties are not only preparing for the election, but are also arguing about the electoral law. The reason for this: the present law allowed the Bundestag to grow from 598 mandates to the current record size of 709 mandates, with the 2021 election likely to result in an even bigger number of seats.
- Although the problem has long been known, the Bundestag just failed to pass a reform before the summer break and thus in time for the 2021 elections. However, political and public pressure to find a solution is high and will keep the issue on the political agenda.
- In principle, Bundestag seats are allocated via proportional representation. However, the finer details of the electoral law determine the allocation of power between parties. The CDU/CSU, in particular, benefits from the current electoral law. Reforms are therefore difficult. But an oversized parliament is expensive, risks to be less efficient and thus damages the reputation of and trust in the institution.
- The German Bundestag is elected on the basis of mixed-member proportional representation. It combines elements of majority vote and proportional representation. To do justice to both elements, the translation of votes into mandates is a complicated process. It allows that mandates can be allocated in excess of the norm size of the Bundestag. This makes forecast of the allocation of seats and thus coalition majorities after elections difficult.
- Since last week all German parties have presented their proposals for the reform. They include a reduction in the number of constituencies, a cap on the number of mandates and the handling of overhang mandates. However, a swift agreement seems not in sight likely seeing a new law in place only for the 2025 federal elections.

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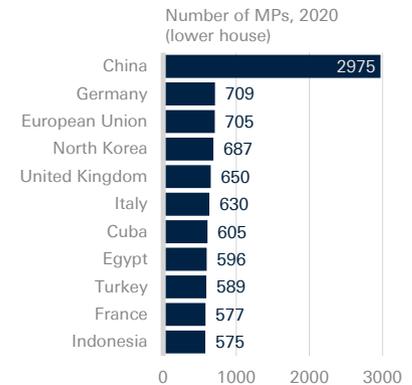
Bundestag elections 2021 under new rules?

Towards more normal politics. Fighting the pandemic German parties closed ranks, crisis measures have been implemented in broad agreement and fiscal stimulus packages passed with the support of all mainstream parties in the parliament. Party-internal disputes have largely been kept in check. This is about to change. With the focus shifting to the upcoming 2021 federal elections and in particular the CDU's leadership quest, which is de facto a pre-decision regarding the CDU/CSU chancellor candidate, political competition and posturing has returned. Armin Laschet as PM of North Rhine-Westphalia and his co-runner, Jens Spahn as federal health minister, had to prove themselves in (regional) crisis management. Friedrich Merz (without executive function) and Norbert Röttgen (MP) have become more visible again only lately. Predictions regarding the frontrunner for the party leadership vote at the convention in December are more difficult than ever. With respect to the candidacy for chancellorship, the Bavarian PM Markus Söder has increased his profile significantly during the crisis and fuelling media speculation that he will throw his hat into the ring, especially as his denials have become less categorical, recently.

The electoral law is an additional issue ahead of the Bundestag elections. There is another pressing and controversial issue regarding the next Bundestag elections, the change of the electoral law. This is because the current electoral law allows the number of MPs in the Bundestag to rise above the norm size of 598 mandates. The current Bundestag has 709 members, 111 more than envisaged, making it the largest democratic parliament in the world and only second to Chinese National People's Congress (though this international comparison looks somehow different regarding inhabitants per MP, see Figures 1 and 2). And it is feared that the Bundestag could become even bigger. In some scenarios the number of mandates rises to 800 and more. While parties agree that a reform is needed, they disagree on the way forward.

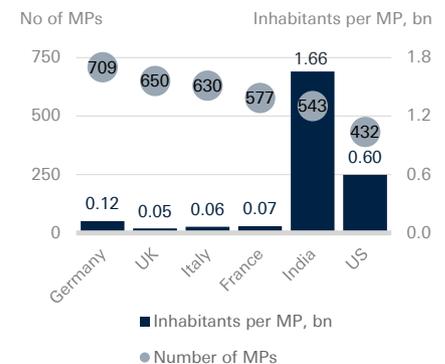
The electoral law determines the allocation of power between parties - reforms are hence controversial. The electoral law is a core element of every democracy. It defines how the votes are converted into mandates, i.e. which candidates and parties enter parliament. Accordingly, it determines the distribution of power within the parliament and, beyond that, the formation of possible governments. Electoral law reforms are thus generally a difficult matter. This is also due to the fact that parliaments and political parties themselves decide how they are elected. This also applies to Germany: while the constitution lays down general principles for elections ([Grundgesetz](#), article 38), it leaves it to the Bundestag to shape the electoral system. This creates difficulties at two levels. First, for an incumbent MP, the potential question is whether or not he or she will be able to re-enter the Bundestag under a new electoral law, be it with a direct mandate or through party lists. Second, for the political parties, it is primarily a question of future power distribution in the Bundestag.¹ Currently, the CDU/CSU particularly benefits from the system as its number of direct mandates exceeds its share in the overall vote (see Figures 3 and 4). A detailed explanation to the German electoral law can be found on page 6.

Figure 1: Bundestag is second largest parliament in the world



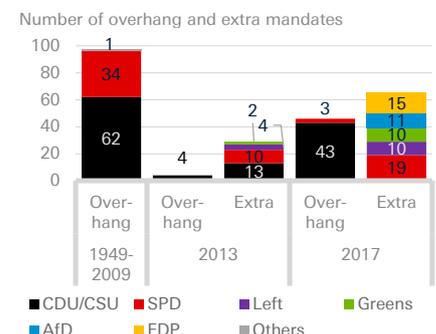
Note: Since the UK left the EU at the end of January 2020, the European Parliament has 705 mandates. Before, it had 751 mandates.
Source: Inter-Parliamentary Union, European Parliament

Figure 2: Germany rather average in the number of inhabitants per MP



Source: Inter-Parliamentary Union

Figure 3: Mainly CDU/CSU and SPD benefit from overhang mandates



Source: Bundeswahlleiter

1 Schönberger, Sophie (2019). Auf dem Weg zum Nationalen Volkskongress – warum die Geschichte der personalisierten Verhältniswahl auserzählt ist. Verfassungsblog.



Missed opportunity for a timely reform before the next elections. Last week, at the last possible moment before the summer break, the parties dealt intensively with the electoral law reform. Nevertheless they have failed to agree on a new electoral law in time. Anything else would have been a surprise. Although the need for reform has been acknowledged for years, there has been little progress until early this summer. During the corona crisis, the issue has slipped further down the priority list. In order to be applied to the 2021 federal elections, a new electoral law needed to be adapted before summer recess both for legal and organisational reasons. First, according to the [Venice Commission of the Council of Europe](#), the electoral law of EU members should not be amended one year before the election in order to safeguard the credibility of the election process. Second, as the election draws closer, the implementation of new electoral rules becomes increasingly difficult, as political parties are preparing their lists of candidates.

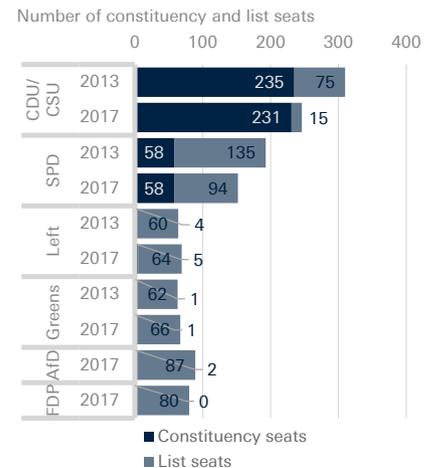
Now it is about damage control. As the economic fallout of the COVID-19 crisis is materialising, pushing up unemployment and requiring large fiscal recovery packages, parties might find it difficult to explain to voters why at the same time, an oversized Bundestag will not be avoided. They will have to explain, why they have not managed to reform the electoral law over two full legislative periods. The last two presidents of the Bundestag (one of them being the former FM Schäuble) have personally addressed the issue, but were unable to mediate a solution.

Between the parties, the tone has become sharper as they blame each other for the absence of the reform. The opposition parties FDP, Left and Greens have gone on the offensive when they pushed for a draft bill before summer break. The government coalition parties CDU/CSU and SPD came under pressure to justify why they are still unable to present a viable solution. Last week the CDU/CSU showed that it is working on the topic and agreed on a common position for the first time. Meanwhile, the SPD is optimistic that a solution can still be found in autumn (FAZ, July 1, 2020).

Exceeding the norm size of the Bundestag is not only a blemish, but entails **tangible and intangible consequences:**

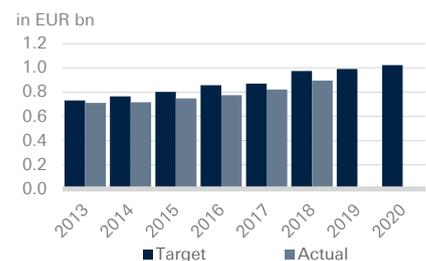
- **It is costly:** The draft budget 2020 for the Bundestag provides for costs of over EUR 1 billion. This is a historic record, resulting from a steady increase in costs over the last few years. Comparing 2014 and 2018 – the first full financial years of the 18th and 19th Bundestag – the total cost of the Bundestag have grown by 25%. This is above the increase in the federal budget over the same period (+18%). According to the Federal Audit Office, the additional costs can be attributed mainly to the larger parliament. The association of German taxpayers estimates that the Bundestag, with 709 members, leads to additional costs of EUR 78 million per year as compared to the norm size of 598 MPs. (see Figures 5 and 6)
- **It is space-consuming:** The issue of a large parliament is not solved with more chairs in the plenary hall alone. It also requires more office space for the MPs, their staff and for administrations. At present, the MPs and their staff occupy about 2,000 offices and a total of about 6,000 people are working in the Reichstag. The building complex is thus reaching its limits. To create additional space, the Bundestag administration is planning to set up a container village (RND, May 5, 2020).
- **It complicates parliamentary work:** More members mean that more MPs get to participate with speeches, inquiries and initiatives. There are also more MPs sitting on the various committees. Above a certain size, this can

Figure 4: CDU/CSU wins most constituency seats



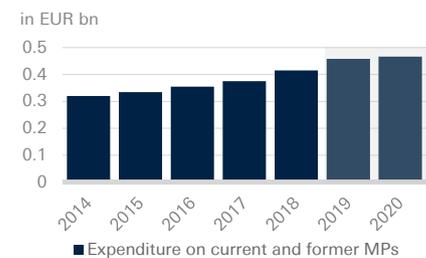
Source: German Bundestag

Figure 5: Total expenditure on Bundestag 2013-2020



Source: Bundesrechnungshof (2019). Draft budget 2020 for the Bundestag

Figure 6: Expenditure on current and former MPs, 2014-2020



Note: 2014-2018 actual expenditure, 2019-2020 targeted expenditure
Source: Bundesrechnungshof (2019). Draft budget 2020 for the Bundestag



makes parliamentary work increasingly cumbersome. Two decades ago, the size for a well-functioning parliament was set by the Bundestag at 598 MPs.

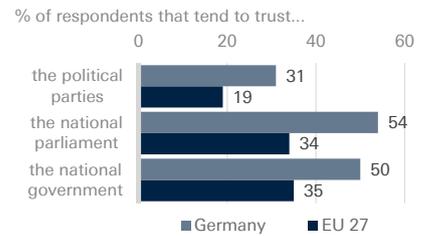
- **It damages credibility:** Oversizing in several successive legislatures, and the inability of parliament to reform itself, damages the credibility of the institution. This plays right into the hands of populists. From their point of view, the large Bundestag and the reluctance to reform the electoral law could be seen as an indication of large parts of the political establishment trying to preserve its own benefits (Die Zeit, June 21, 2020).

The reform proposals and their effects

Various reform proposals have been put forward – none of them has yet found a majority. The political parties have tackled the task of electoral reform with varying degree of engagement and have all put forward reform proposals. They have some common ground as they all uphold the current electoral system of mixed-member proportional representation. But, beyond this general approach, irreconcilable positions prevail so far. Particularly controversial is the handling of overhang mandates. It is also disputed how far a reduction in the number of constituencies should go. In adapting the system with the aim of limiting the size of the Bundestag, the parties are working with different set screws (Spiegel, July 2, 2020):

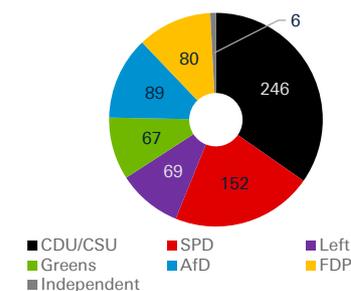
- Today, a joint draft bill of the **FDP, Left Party and Greens** is the most concrete reform proposal. The proposal wants to cut the number of constituencies, and thus constituency seats, from 299 today to 250. At the same time, the number of mandates to be filled via lists is to be increased to 380. The proposing parties expect the new norm size of the Bundestag to be 630 mandates. The aim is to limit the chance of overhang mandates by reducing the number of constituency seats in relation to list mandates. Experts agree that this gets to the root of the problem. Moreover, the reduction in the number of constituencies is perceived as a fair amendment in the sense that it affects all parties equally. However, it would not guarantee a maximum size of the Bundestag.
- Until last week, the **CDU/CSU** had no common position on the issue. It now agreed on the following proposal: Reduction of the number of constituencies to 280 and non-compensation of up to seven overhang mandates. From the perspective of the CDU/CSU this is a compromise offered to the other parties. Before, the CSU strongly opposed reducing the number of constituencies. Bundestag President Wolfgang Schäuble (CDU) has so far proposed not to compensate for up to 15 overhang mandates (FAZ, July 1, 2020). The non-compensation of overhang mandates is intended to prevent the emergence of extra mandates. The other parties clearly object to this. In their view, it violates the basic character of proportional representation. They also doubt whether the proposal is in conformity with the constitution. For it would be one-sided to the advantage of the CDU/CSU as the strongest party.
- The **SPD** proposes to limit the number of seats in the Bundestag to a maximum of 690. Above this maximum size, no more overhang mandates would be attributed, whereby candidates with the weakest results would have to give up their mandate (latter is coinciding with the AfD proposal). The SPD considers its proposal to be more of an interim solution for the election 2021 (Die Zeit, January 24, 2020). The proposal is highly controversial among other parties. Some see this as a mere change in the rules on how to win a mandate. All parties are expected to be similarly affected. Especially the CDU/CSU reject this proposal. In their view, the

Figure 7: Trust in parties and institutions



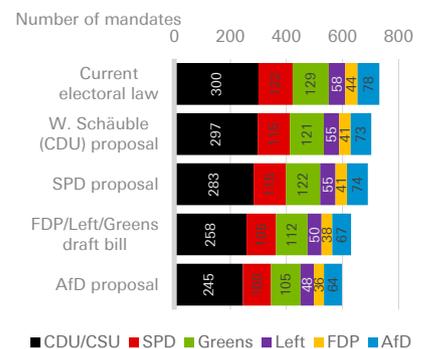
Source : Eurobarometer 2019

Figure 8: Current composition of the Bundestag



Source : Deutscher Bundestag

Figure 9: Proposed reforms lead to different sizes of the Bundestag



Note: Estimates based on election polls in May 2020. No estimates on the effects of the current CDU/CSU proposal are available yet. Source : Election.de

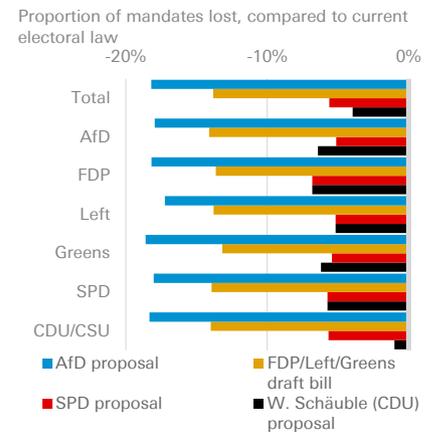


non-allocation of overhang mandates above size limit is unconstitutional. In addition, the rule could lead to a situation where not all constituencies have an elected representative. Therefore, if such a solution came about, it is quite possible that the German Constitutional Court (GCC) will have to deal with the issue.

- The **AfD** suggests that in the event of overhang mandates, the directly elected candidates with the worst results must forego the mandate. Thus, the norm size of 598 mandates would be met and there would not be any overhang or extra mandates (RND, May 5, 2020).

Effects of the proposed reforms. What the different reform proposal could mean is shown in Figures 9 and 10. Compared to the current electoral law, the proposals of the FDP/Left/Greens, SPD and AfD would lead to a reduction in the size of the Bundestag, but they would preserve the balance of power between the parties. In the case of the CDU/CSU proposal, however, the balance of power would shift slightly in their favour. Thus, apart from CDU/CSU, all parties show a strong will to maintain proportional representation as a decisive element for the distribution of power in the Bundestag. It can therefore be expected that the reform of the electoral law will not significantly change the balance of power in Germany. However, the vote-to-mandate-allocation process is likely to remain complicated. This will continue to make it difficult to predict election results.

Figure 10: Except for Schäuble proposal, all parties are nearly equally affected



Note: Estimates based on election polls in May 2020. No estimates on the effects of the current CDU/CSU proposal are available yet. Source: Election.de, Deutsche Bank

What is next for the electoral law reform?

Although parties are showing their willingness to find a solution for the 2021 elections, this is unlikely to be achieved. After the parties were unable to agree on a reform of the electoral law before the summer break, it remains unclear how this reform will proceed. Above all, the question is whether there is still time for a reform that will take effect as early as the 2021 elections. Especially the coalition parties emphasize their willingness to find a solution before the next elections. The SPD is optimistic that this can still be achieved in autumn. However, the coalition parties do not explain how this could be achieved. There is to date no proposal that the coalition parties - and in the best case also the opposition parties - agree to. Such a proposal would have to be developed during the summer as well as discussed and adopted in the Bundestag immediately after the summer recess in order to be ready for the 2021 elections. This can only be successful if the parties sincerely address the issue over the summer and the resulting reform proposal is then brought through parliament in an expedited procedure.

In the eyes of the opposition parties it is too late to find a solution for the 2021 elections. The FDP, the Left Party and the Greens have tried to get their bill voted in the Bundestag at the last minute before the summer break, without success. They can be expected to try to bring the bill again to the vote in autumn. One way to force a vote in September would be to submit an emergency motion to the GCC (Spiegel, July 3, 2020). Given the political parties' current commitment to find a solution, there is still a slight chance that a reform will be adopted in autumn. However, it would interfere with the election campaigns and the nomination of candidates that have already begun, should it apply to the next elections. This would create uncertainty. Therefore, from today's point of view it is rather unlikely that there will be a reform that takes effect before the 2021 elections. The chances are higher that the parties will agree on a proposal that will be applied to the federal elections in 2025.

Electoral law reform will remain a hot topic. Even if an agreement on a new



electoral law for the 2021 elections seems unlikely from today's perspective, one thing is certain: With the dispute before the summer break, the topic has moved into the public's eye. The issue will therefore be on the political agenda in autumn. The parties are now under pressure to find a solution that is constitutional and fair to all. It remains a difficult task and the Bundestag is called upon to find a solution that strengthens the institution and the citizens' trust in democracy.

Background: How Germany's complex voting system drives the over-size of the Bundestag

A large Bundestag that could become even bigger. The last national elections in 2017 produced a Bundestag with 709 members. It is the largest Bundestag in the history of the Federal Republic of Germany and it is significantly larger than the norm size of 598 members provided for in the electoral law. Yet it is precisely this electoral law that is responsible for this large Bundestag. Moreover it is likely, that the Bundestag will become even larger after future elections. According to estimates based on current survey results, the Bundestag could have between 731 and 772 seats after the elections 2021.² Simulation demonstrates that the Bundestag can grow to over 800 seats depending on the election results.³ To understand the apparently volatile size of the Bundestag, one must take a closer look at German electoral law.

Germany's mixed electoral system. The German Bundestag is elected on the basis of mixed-member proportional (MMP) representation ('personalisierte Verhältniswahl'). This system combines majority vote and proportional representation. The elections are held in 299 single-seat constituencies. Each voter can cast two votes: With a first vote, the voter votes for a candidate. The candidate with the most votes in a constituency wins the constituency seat ('Direktmandat'), i.e. gets directly elected in the Bundestag. This is therefore a candidate related majority election. At the same time it is ensured that all parts of the country are represented in the Bundestag. The second vote is an expression of proportional representation. The voter chooses a political party. Political parties receive as many mandates in the Bundestag as they are entitled to according to their share of secondary votes. The number of mandates won by a party is first filled up with the constituency seats won by this party. All additional seats won are allocated among candidates on the lists of the party in the different states. The compilation of candidate lists is therefore an important element of power for the parties, with which they contribute to the representative composition of the Bundestag.

The MMP representation has been practiced since the foundation of the Federal Republic 1949. At that time, decision-makers did not want a purely proportional representation because it was feared that it would fragment the party system and cause political instability. However, small parties opposed a first-past-the-post (FPTP) electoral system as it is extremely difficult for them to win a majority vote. The compromise was that a part of the MPs will be directly elected in single-seated constituencies in a FPTP vote, whereas the proportion of the parties' mandates will be determined by means of proportional representation. Since this fundamental definition of the electoral system, only minor changes have been made to it (see

Figure 11: Number of seats in the Bundestag 1949-2017



Source: Bundeswahlleiter

2 Mandatsrechner.de. Estimates based on the following surveys: Kantar (July 4, 2020), Forsa (July 4, 2020), Infratest Dimap (July 2, 2020).
3 Weinmann, Philipp (2013). Führt das Wahlrecht zur „Aufblähung“ des Bundestages? Simulationsrechnungen auf Basis des neuen Bundeswahlgesetzes. Zeitschrift für Parlamentsfragen 4/2013, pp. 719-741.



Figure 12). Experts agree that the German electoral system has proven itself as it respects political minorities and prevents the fragmentation of the party system.⁴ However, the same mechanism in its present form leads to oversize.

The issue of overhang mandates. A controversial point of the electoral system are the so-called 'overhang mandates'. These occur when a party wins more direct mandates than the number of mandates it is entitled to according to the share of second votes. Overhang mandates can lead to a shift in the balance between first and second votes. In the event of a close election result, the first votes and not the second votes can thus decide on the distribution of power. Until reunification, there were hardly any overhang mandates. Since then, they have increased in number as the party system has become more diverse and the large parties have lost votes. In the 2017 elections, a total of 46 overhang mandates resulted. With one exception, only CDU/CSU and SPD have won overhang mandates so far (see Figure 3).

The issues of negative voting weights and extra mandates. In connection with the overhang mandates (and the allocation of votes in the various states), there is also the issue of negative voting weights. This refers to cases, where, paradoxically, the voter "harms" a party by giving it both his/her first and second vote. In 2008, the German Constitutional Court (GCC) declared this negative voting weight to be unconstitutional. After an unsuccessful reform attempt, which was again found unconstitutional by the GCC, the Bundestag agreed on an amended electoral law in 2013. It introduced extra mandates ('Ausgleichsmandate') to compensate for overhang mandates. This means that if a party wins overhang mandates, the other parties are awarded as many extra mandates until the distribution of seats in the Bundestag corresponds to the proportion of second votes. First comments⁵ on the new law agreed that it solves both the problem of negative voting weights and overhang mandates. At the same time, they warned that the new electoral law could lead to a large Bundestag far above the norm size.

Bundestag as largest democratic parliament in the world. With currently 709 members, the German Bundestag is the largest democratic parliamentary chamber in the world. And it ranks as the second largest parliament after the Chinese National People's Congress. This may not be surprising, if one relates the size of parliament to the size of the population. Germany is one of the most populous countries in the world. In relation to the population, the Bundestag is smaller than the parliaments of other large European states. In Germany there is one MP per 120,000 inhabitants, while in the United Kingdom, France and Italy there are about 50,000-70,000 inhabitants per MP. However, there are also examples of more populous states with significantly smaller parliaments, such as the United States or India. In a global comparison, however, Germany is one of the countries with an above-average number of inhabitants per MP. In other words, in view of the German population, the Bundestag, even with 709 members, is not large in international comparison. (see Figures 1 and 2)

Is there an optimal size for parliaments? It is not sufficient to judge the size of a parliament on the basis of population size alone. Indeed, the size of the population and the size of parliament are often related because a parliament ideally reflects the

Figure 12: Chronicle of the election rules for the Bundestag

Year	Key events in the election of the Bundestag
1949	1 st election of the Bundestag with MMP > Single-seat constituencies > 1 vote per voter: allocation of constituency seat with FPTP, proportional representation for the remaining seats > Restrictive clause for a party to enter the Bundestag: 5% of votes in a Bundesland or min. 1 constituency seat
1953	2 votes per voter, i.e. introduction of the first vote; restrictive clause increased to 5% of votes nationwide
1956	> Restrictive clause: increased to min. 3 constituency seats > Introduction of a multi-stage allocation procedure
1990	One time exception of 5% restrictive clause adopted on west and east German states separately
1998	GCC decision: Parties are no longer allowed fill a vacant constituency seat with a candidate from the list
2002	Reduction in the number of constituencies from 328 to 299
2008	GCC decision: 'negative weight of votes' resulting from the multi-stage allocation procedure is unconstitutional
2011	CDU/CSU and FDP coalition amends election law, i.e. adjustment of the allocation of the second vote among Länder
2012	GCC declares the amendment as unconstitutional as it does not resolve the problem of the 'negative weights of vote'. In addition, the GCC states that unbalanced overhang mandates are only admissible to a certain extent (about 15 mandates)
2013	Bundestag decides the compensation of overhang mandates with extra mandates

Source: Schmidt (2016), *wahlrecht.de*

4 Schmidt, Manfred G. (2016). Das politische System Deutschlands. Verlag C.H. Beck.

5 Behnke, Joachim (2013). Das neue Wahlgesetz ist sicherlich nicht das letzte. Stellungnahme für Innenausschuss des Bundestags. 17(4)640. Sacksofsky, Ute (2013). Stellungnahme zur öffentlichen Anhörung des Innenausschusses des Deutschen Bundestages am Montag, dem 14. Januar 2013 zu drei Gesetzentwürfen zur Änderung des Bundeswahlgesetzes. 17(4)625.



variety of interests and geographic areas in the country. However, the size of parliament must also be assessed from the point of view of its functioning. Its size should be based on the number of tasks and its own working methods. In 'working parliaments' such as the Bundestag, this is largely determined by the number of committees, in which a large part of the legislative work is carried out. In order to make this work efficient, the committees should - based on the findings on ideal working group sizes from the business literature - have neither too many nor too few members. Following this approach, the optimal size of parliament could easily be calculated. But taken together, there is no clear formula for an optimal size of parliament. It remains a balancing act between representation and functioning.⁶

⁶ Hirter, Hans (2004). Die Grösse eines Parlaments aus politologischer Sicht. *Parlament, Parlement, Parlamento* 1/04, pp. 4-5.



Appendix 1

Important Disclosures

*Other information available upon request

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