

Wahlssystem (Electoral System)


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1. Question

Does your country apply a mixed electoral system when holding elections for MP's – type of system, zoning, voting outside the country, fixing and allocating of mandates?

The following explications are **literal extracts** from the paper “The Parliamentary System of Government of the Federal Republic of Germany, German Bundestag, Research Services, WD 3: Constitutional Law and Public Administration, April 2015” (2.) and from the English part of the website of the Federal Returning officer <https://www.bundeswahlleiter.de/en/index.html> (3. to 5.).

2. Type of system

*“Parliamentary elections, as an expression of the democratic principle (Article 20 (1), first sentence, of the Basic Law) and the sovereignty of the people (Article 20 (2), first sentence, of the Basic Law), are the fundamental act of democracy performed by the people of the Federal Republic of Germany. The political representation of the people in parliaments depends to a crucial extent on the design of the electoral system. The choice of electoral system is therefore of fundamental significance. Unlike in the case of the Weimar Constitution, which required proportional representation in Article 22 (1), first sentence, the authors of the Basic Law consciously refrained from prescribing a specific electoral system. They left the details of the Bundestag elections to be regulated by a simple federal law (Article 38 (3) of the Basic Law). The relevant regulations are enshrined in the Federal Electoral Act. The federal legislature decided on a **combination of first-past-the-post and proportional representation**, known as the “**Additional Member**” system. Half of the 598 Members of the Bundestag are elected directly from Germany’s **299 constituencies**, the other half on the parties’ Land lists. Each voter therefore has two votes in the Bundestag elections: the first vote determines which candidates are sent to Parliament from the constituencies. The second vote is cast for a party list. In line with the first-past-the-post principle, the candidate who receives the most votes in each constituency is elected. The remaining seats are allocated, in accordance with the principle of proportional representation, to the parties’ Land lists in line with the proportion of second votes the parties have received in Germany as a whole. Only parties which have received at least five per cent of the second votes or won at least three constituency seats are considered in this context. The Bundestag currently has more than 598 Members, however. The total of 630 parliamentarians in the 18th electoral period is the result of what are known as ‘**overhang mandates**’, together with a **subsequent procedure** designed to compensate other parties for these **extra seats** and thereby ensure that parliament’s composition reflects the electorate’s wishes as closely as possible.”¹*

1 The Parliamentary System of Government of the Federal Republic of Germany, German Bundestag, Research Services, WD 3: Constitutional Law and Public Administration, Paper, April 2015, p. 5”.

3. Zoning

“Constituencies

The territory of the Federal Republic of Germany is currently subdivided into a total of 299 constituencies for Bundestag elections. The legislator drew upon the figures of the German population as at 30 September 2011 to delimit the constituencies for the Election to the 18th German Bundestag. Using the Sainte-Laguë/Schepers calculation method, constituencies were distributed among the Länder in the 2013 Bundestag Election ... The average number of German people per constituency was around 250,000 on 30 September 2011... Pursuant to Section 3 of the Federal Elections Act, the population of a constituency should not deviate from the average population of all constituencies by more than 15 per cent in either direction; where the deviation is greater than 25 per cent, the boundaries shall be redrawn...

Legal basis

Section 3 of the Federal Elections Act (BWG)².³

4. Voting outside the country

“Germans living abroad

Germans living abroad, also called Germans expatriate, are Germans entitled to vote who live outside the Federal Republic of Germany and do not have a registered place of residence in the Federal Republic of Germany.

The voting right of Germans living abroad dates back to German Reich legislation relating to public service personnel: public servants and workers in public enterprises who lived abroad were also entitled to vote provided that their place of residence was close to the frontier of the German Reich.

This provision was initially carried over into the Federal Elections Acts of 1949 and 1953 and thereafter extended, in the Federal Elections Act of 1956, by a voting right for family members living in the same household. At the same time the requirement was deleted that the place of residence be close to the frontier.

By amendment of the Federal Elections Act in 1985, the provision was extended considerably through the introduction of the "model of combination". On the one hand, a voting right was introduced for an unlimited period of time for all Germans living in the respective member states of the Council of Europe, provided that they had had a place of residence in the former territory of the Federal Republic after 23 May 1949 or had otherwise had their habitual abode there for an uninterrupted period of at least 3 months ("Council-of-Europe solution").

2 English version:
https://www.bundeswahlleiter.de/en/bundestagswahlen/downloads/rechtsgrundlagen/bundeswahlgesetz_engl.pdf.

3 <https://www.bundeswahlleiter.de/en/glossar/texte/Wahlkreise.html>.

On the other hand, a voting right was established under the same condition for all Germans living in other territories outside the Federal Republic of Germany, provided that their relocation had not taken place more than 10 years earlier ("time-limit solution"). In 1998 the time limit was extended to a period of 25 years.

By amendment of Section 12 (2) of the Federal Elections Act in 2008, a uniform provision applicable to all Germans living outside the Federal Republic of Germany was created in accordance with the "Council-of-Europe solution". Pursuant to that provision, which was first applied in the 2009 Bundestag Election, all Germans living outside the Federal Republic of Germany had the right to vote if they had had a place of residence in the present territory of the Federal Republic, that means either in the "old" or the "new" Länder, after 23 May 1949 or otherwise had had their habitual abode there for an uninterrupted period of at least 3 months, provided that the other conditions laid down in electoral legislation were met.

The above-mentioned time limit of 3 months did not apply to returnees.

By decision of 4 July 2012 (file references: 2 BvC 1/11 and 2 BvC 2/11), the Federal Constitutional Court ruled that Section 12 (2), first sentence, of the Federal Elections Act was incompatible with the principle that elections should be general, which results from Article 38 (1) of the Basic Law, and declared it invalid.

The reform of the right to vote to be exercised by Germans living abroad became effective on 3 May 2013 (21 st Act amending the Federal Elections Act of 27 April 2013, Federal Law Gazette I p. 962). Provided the other conditions are fulfilled (their having reached the age of 18 years on election day and their not having been disqualified from voting in accordance with Section 13 of the Federal Elections Act), Germans as defined in Article 116 paragraph (1) of the Basic Law who are resident outside the Federal Republic of Germany on the day of election are also eligible to vote provided that,

- 1. after reaching the age of fourteen years (that means from their 14th birthday), they were either resident in the Federal Republic of Germany for an uninterrupted period of at least three months and this stay dates back not more than 25 years or,*
- 2. for other reasons, they have become familiar, personally and directly, with the political situation in the Federal Republic of Germany and are affected by it.*

Legal bases

Section 12 of the Federal Elections Act (BWG).⁴

4 https://www.bundeswahlleiter.de/en/glossar/texte/Deutsche_im_Ausland.html.

Procedure for voting of Germans expatriate:*“Voters’ register*

The local authority of the municipality shall maintain voters’ registers for Bundestag and European elections which are based on the residents’ register. Therefore, when the voters’ register is compiled, only such persons may be taken into account as have registered with the residents’ registration office....Also, persons entitled to vote who are not registered in the residents’ register (e.g. Germans abroad, homeless persons) shall be entered in the voters’ register provided they have applied to be entered in the voters’ register no later than the 21st day before the election.

Legal bases

Bundestag election: Section 17 of the Federal Elections Act (BWG), Sections 14 to 24 of the Federal Electoral Regulations (BWO)⁵.⁶

5. Fixing and allocating of mandates*“Distribution of seats*

A new procedure for allocating the seats in the German Bundestag, which means converting votes into seats, came into force on 9 May 2013. Section 6 of the Federal Elections Act was modified by the 22nd Ordinance amending the Federal Elections Act of 3 May 2013 (Federal Law Gazette I p. 1082).

The electoral system combines proportional representation with a candidate-centred election. Candidates are elected in the constituencies (first vote) in accordance with the principles of majority voting, and Land lists of parties by proportional representation (second vote). The Sainte-Laguë/Schepers procedure is used for the purpose in a two-stage calculation process with each stage comprising two calculation steps. A parliament (Bundestag) is thus composed by distributing the seats in accordance with the number of second votes cast.

Stage 1:

In the first step, the number of seats falling to a Land is determined on the basis of its German population. In the second step, the seats going to a Land are distributed among the parties on the basis of the number of second votes cast for a party. Here the following condition has to be met: the number of seats determined for a Land in the first step has to be adhered to population. Here the following condition has to be met: there is a total of 598 seats to be distributed.

5 English version:
https://www.bundeswahlleiter.de/en/bundestagswahlen/downloads/rechtsgrundlagen/bundeswahlordnung_engl.pdf.

6 <https://www.bundeswahlleiter.de/en/glossar/texte/Waehlerverzeichnis.html>.

At the end of stage one, the maximum number of seats going to a party is calculated from its Länder seats and constituency seats. That is the party's guaranteed minimum number of seats at federal level, including overhang mandates.

Stage 2:

First the number of seats is determined which a party is entitled to at federal level by the second votes it has won. Here, the condition is that the minimum number of seats determined in stage 1 will be reached. Then the seats are allocated to the Land lists of the parties with the condition that at least the constituency seats of a party will be guaranteed.

The conditions to be met in the calculation steps may, but do not necessarily have to lead to an increase of the Bundestag's total size through balance seats.

Legal basis

Section 6 of the Federal Elections Act (BWG).”