



Understanding German Federal Elections

[The next federal election will be held on 22 September. Two months before this election, we provide a guide to the mechanics of this process](#)

German federal election law has been changed numerous times, most recently in May 2013. The current mechanism is a mix of direct (first past the post) and proportional representation.

[The size of the German parliament \(the Bundestag\) is not fixed](#)

Although the Bundestag has a target number of 598 seats, the election mechanism virtually guarantees that the actual number of deputies can be substantially higher, particularly under the new election law.

[The complexity of the process arises from the combination of party and federal elements](#)

Election law in Germany attempts to reconcile a number of potentially contradictory elements: direct representation of local candidates, a strong role of political parties including proportional representation, and the federal structure of the republic. Variability of the number of seats in the Bundestag is used to reconcile these elements.

[The new law removes some distortions that currently favour CDU and CSU](#)

A particular feature of the German election system is the so-called overhang mandates. These arise when a party wins more direct mandates in a given Land than its share of proportional representation seats. Currently, all overhang mandates are held by CDU and CSU. The German constitutional court has criticised the distortions caused by these mandates and the new law largely eliminates their impact on the overall seat distribution. This will also affect election strategies.

[This report deals mostly with technical questions](#)

Our colleagues in DB Research published a comprehensive report on party policies on 4 January (Barbara Böttcher, Klaus Deutsch: 'Germany at the polls – The 2013 elections and the future of the euro').



German election law

Basic elements

Germany is a federal republic that has a long tradition of relatively stable political parties that in some cases have survived wars. As a result, German electoral law reflects these two elements to a degree that is unusual in other countries. At the same time, it should be noted that incumbent parties have the same interest as elsewhere in protecting the parliament from new entrants. Some elements of the election process therefore create systematic biases in favour of large parties.

The German parliament, the Bundestag, nominally has 598 seats, half of which (299) are direct mandates, i.e., filled by relative majority elections in 299 electoral districts. To stand for the Bundestag on a direct mandate is open to citizens regardless of party affiliation, and there are no quorum requirements to enter parliament for candidates who win a direct mandate. Each voter in Germany has two votes, the first of which is used for the allocation of the direct mandates, the second one is used for proportional representation. This second vote can go to a different party than that represented by the candidate receiving the first vote.

The second vote and the remaining 299 or more seats are used to achieve proportional representation whilst also preserving a federal element in the election. The way in which this is done has changed over time but the core mechanism to achieve this is the existence of so-called Lander lists, which are lists of candidates put forward parties in the various Lander. The overall composition of the Bundestag is constructed so as to achieve a distribution of seats that reflects the relative share of second votes received by each party.

Germany has a 5% quorum for parties to receive a seat allocation under the proportional representation system. Only parties that receive at least 5% of the valid votes, or those that achieved at least three direct mandates (see above) will receive seats under this system. This clause is fairly uncontroversial in Germany because the experience of the Weimar Republic suggested that it would be best to have a smaller number of large parties in parliament rather than risk constantly shifting alliances of splinter parties¹. Note that it is very hard for a small party to achieve three direct mandates, although this has happened in the past.

To find the final distribution of seats in the Bundestag, certain seats are first removed from the target 598 seats. These are those seats allocated to direct mandates that have gone to candidates not representing a party (independents, and candidates from parties that failed the 5% hurdle). The remaining seats are then allocated by population to each of the German Lander. Within this allocation per Land, the seats are then allocated by the relative share of second votes. In this allocation, parties that achieved a higher number of direct mandates in a Land than the number of seats allocated by proportional representation retain all direct mandates. The difference between the number of direct mandates and proportionally allocated seats, if positive, is known as 'overhang mandates'.

¹ The only (currently irrelevant) exception from the 5% rule is for parties that predominantly represent minorities.



In a last step, the size of parliament is increased to restore the relative number of seats to that given by the relative share of second votes but taking into account the overhang mandates of the previous step. In other words, if any party has overhang mandates, seats are added to the Bundestag to accommodate both those overhang mandates, and extra equalisation seats for the other parties to restore the proportional representation. If the new election law were applied to the 2009 results, there would be 671 deputies instead of the current 622.

Drawbacks

Pre-2013

There were two features of the previous electoral law that were highly distorting. The first was that overhang mandates were taken as a given and not compensated for by extra seats for other parties. Although only half the seats of the Bundestag are filled via direct representation, CDU and CSU were able to win more than their proportional share in direct seats and as a result currently hold all 24 overhang mandates. These overhang mandates violate the principle of equal weights for the second votes (the CDU holds one seat per 61,000 second votes received while the SPD holds one per 68,400). In its latest ruling on election laws, the German constitutional court therefore limited the maximum number of overhang mandates to 15 (2.5% of Bundestag seats). The second problem was negative vote weights which are now essentially eliminated.

Current

For outside observers (and arguably tax payers), the variable, and most likely larger, size of the Bundestag is a drawback because it makes it somewhat harder to predict the outcome of elections. That said, because the net result of the rather complex calculation above is that the relative share of seats in parliaments reflects the relative share of second votes more closely than in the past.

It should be noted that the number of overhang seats would probably be lower if there was no breakdown by Land in the allocation of seats. For instance, the CDU in 2009 had a total of 173 direct and 173 proportional mandates. On a federal level, therefore, there would not be any overhang mandate. However, because the CDU did very well in some Länder, it accumulated 21 such extra seats. The new system does not reduce the number of overhang seats, it simply compensates them with extra seats for other parties. Overhang mandates will remain a feature of the Bundestag as long as a few strong parties can win a large number of direct mandates while second votes are distributed over a larger number of parties, including some smaller ones.

The allocation on a per-Land basis can create a tighter constraint than the 5% quorum simply because some Länder have less than 20 seats. If votes were allocated directly on a federal level, this problem, which is essentially due to rounding, would be reduced.

An interesting result of the new electoral law is that the first votes are now much less meaningful than in the past. Overhang mandates no longer increase the majority of the party that has them. Instead, the weight of the direct mandates is reduced because their number is fixed while overhang mandates lead to more seats being added to the Bundestag. This reduces the first vote to a chance to express a personal preference for the local candidate put forward in their electoral district, provided this candidate has a chance of winning the seat. The second vote can be used with the same weight to put a candidate of the same party into parliament, but that person may be chosen by the Land



association of the party and may therefore have less connection to the electoral district.

The main power of the first vote, however, is that it can be used to bypass the 5% quorum and general party focus of the German electoral system. Should an exceptionally popular individual be able to win a direct seat against the representatives of larger parties, this candidate can enter parliament without quorum requirements. Indeed, a small party with very strong local appeal can enter the Bundestag as a party, and in extremis even win faction status (5% of seats) on the back of three direct mandates.



Electoral strategy implications

CDU and SPD

The changes in electoral law, and especially the compensation for overhang mandates, mean that the direct mandates of large parties (CDU, SPD) mostly affect the total number of seats in the Bundestag. If a large party wins more direct mandates than proportional seats in a given land, the resulting overhang mandates will be compensated for by extra seats for the other parties. They therefore do not lead to a larger majority in the Bundestag (aside from rounding effects). Instead, these direct mandates will block candidate nominations from the Land list.

In the 2009 election, the CDU filled its allocation of proportional seats completely with direct mandates in 8 out of the 15 Lander where it was competing. For the SPD, this situation was only present in Bremen and Brandenburg, elsewhere candidates from the Land lists were used to fill the allocation of proportional seats. However, the probability of entering the Bundestag on a list mandate is, by construction, higher in those countries where the party is less popular and wins less direct seats.

Failure to nominate candidates from the Land lists removes an important incentive for politicians from large parties to engage in a regional and federal politics. Candidates need to hope to use federal office as a draw for voters or focus on local issues. Looking at the current cabinet, it is striking that only two ministers from the CDU do not have direct mandates (Ursula von der Leyen has a list mandate and Johanna Wanka does not have a Bundestag mandate). This would suggest that at least some voters use their first vote already with the federal parliament in mind, rather than with a view to local issues. Note that polls have shown that around half the German voters do not fully understand the meaning of their first and second votes.

Vote sharing

The changes in election law potentially create a higher number of list mandates, increasing the focus on vote sharing strategies.

In the previous election law, CDU and SPD could, in Lander where they were likely to win a large number of direct mandates, encourage voters to give their second vote to a smaller potential coalition partner (FDP and Greens, respectively). The loss of second vote would not affect the number of Bundestag seats from that Land, while the gain of votes would help to get list candidates from the desired partner into the Bundestag. Comparing the 2009 pre-election polls to the actual outcome suggests that the FDP in particular benefited from CDU voters who gave their second vote to the FDP in order to prevent a repeat of the grand coalition in place at the time.

The new election law changes the relative importance of first and second votes in favour of the latter. It is therefore likely that the CDU in particular will be less inclined to encourage vote sharing.

CSU

The CSU won every available direct mandate in Bavaria in 2009. It will also have to contest Land elections a week before the federal election. From this



point of view, the main concern of the CSU will be voter turnout at the federal election to obtain a strong showing for the CDU/CSU caucus in the Bundestag.

Greens and FDP

On current polls, both Greens and FDP can only enter government as junior partners in a coalition government. Under the new election law, the chances of receiving the second votes of voters who give their first vote to the preferred larger coalition partner (SPD and CSU/CDU, respectively) have diminished (see previous section). This in turn discourages campaigning too much on a shared message. The junior parties therefore need to stress their own unique character and impress on voters the advantages of having more ministers from their party in a future cabinet.

Die Linke

Die Linke is highly unlikely to be invited to join a coalition government and will therefore campaign with the aim of being a strong opposition party. However, it should be noted that this party has 16 direct mandates (all in the former East) compared to only one for the Greens and none for the FDP. In this sense, Die Linke does compete as a locally strong party in parts of Germany. In those areas, it is a rival for the SPD on local issues.

Others

Parties such as Die Piraten or the anti-euro Alternative für Deutschland (AfD) do not have an obvious coalition partner and also do not have a realistic chance of winning direct mandates. Their election strategies are necessarily focused on voters who are willing to commit their second votes to a likely opposition party. While the Piraten have become embroiled in internal problems, the AfD might be able to attract voters on this basis. One important aspect of a Bundestag entry of the AfD is that as a caucus in the Bundestag, the AfD could use a new legal avenue to launch constitutional court cases against the euro rescue operations. Instead of attempting to win constitutional complaints ('Verfassungsbeschwerden'), a Bundestag caucus can launch institutional complaints ('Organstreit'). Constitutional complaints can be brought by any citizen but have been relatively unsuccessful when brought against the euro. Institutional complaints require standing but provide a larger scope for at least creating delays in the legislative process. Even in opposition, the AfD would therefore have substantial influence.



Current polls

Opinion polls show some variability in their allocation to the individual parties but seen in a block structure, there is a fairly consistent share of 46% for CDU/CSU+FDP, and 38-39% for SPD+Greens. Depending on the result for other parties, CDU/CSU+FDP could on this basis be unable to form a majority in the Bundestag. It is also possible, although increasingly unlikely, that the FDP fails to clear the 5% hurdle on the federal level. There is therefore a substantial probability that CDU/CSU and SPD will again form a grand coalition. A higher share of votes going to parties that fail to clear the 5% hurdle would be conducive to an CDU/CSU+FDP government provided the FDP enters the Bundestag.



Appendix 1

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