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Electoral System Change in Europe since 1945

Electoral System Change in Europe since 1945: Germany

Authored by: Elwin Reimink

Compiled with the assistance of: Rebecca Teusch

With thanks to:

Section 1: Overview of German Electoral System Changes since 1945

This document covers the West German electoral system between 1949 and 1990, extended to Germany as a whole following unification in 1990. Throughout this period, Germany has had a mixed-member proportional (MMP) electoral system though several reforms of some significance for both proportionality and personalization have occurred during the period studied.

Section 2: Relevant Electoral System changes in Germany since 1949

Table 1. Summary of German Electoral Laws and Amendments since 1945

Law	Amendment	Date of enactment	Location	Relevant for the research
Special law regulating the German elections of 1949		15 June 1949		Yes
	First amendment of the 1949 law	5 August 1949		Yes (in combination with the law above)
	Second amendment of the 1949 law	15 June 1952		No
	Third amendment of the 1949 law	20 December 1952		No
	Fourth amendment of the 1949 law	8 January 1953		No
Special law regulating the German elections of 1953		8 July 1953		Yes
General electoral law		7 May 1956		Yes

First amendment of the 1956 law	23.12.1956	Yes (in combination with the law above)
Second amendment of the 1956 law	14.02.1964	Yes
Third amendment of the 1956 law	16.03.1965	No
Fourth amendment of the 1956 law	24.05.1968	No
Fifth amendment of the 1956 law	04.06.1969	No
Sixth amendment of the 1956 law	25.06.1969	No
Seventh amendment of the 1956 law	03.07.1972	No
Eighth amendment of the 1956 law	02.03.1974	No
Ninth amendment of the 1956 law	24.06.1975	No
Tenth amendment of the 1956 law	20.07.1979	No
11th amendment of the 1956 law	07.12.1982	No
12th amendment of	08.03.1985	Yes

	the 1956 law			
	13th amendment of the 1956 law	20.12.1988		No
	14th amendment of the 1956 law	08.06.1989		No
	15th amendment of the 1956 law	11.06.1990		Yes (in connection)
Special law regulating the first all-German elections		29.08.1990	BGBl. II S. 813 Nr. 31	Yes (in connection)
	16th amendment of the 1956 law	12.09.1990	BGBl. I S. 2002 (2017, 2027) Nr.48	No
Special law regulating the German unification		23.09.1990	BGBl. II S. 885 Nr. 35	No
	17th amendment of the 1956 law	08.10.1990	BGBl. I S. 2141 Nr. 52	Yes (in connection)
	Temporary amendment of the 1956 law	19.10.1990	BGBl. I S. 2218 Nr. 56	Yes (in connection, also implements the reform of 1994)
	18th amendment of the 1956 law	21.07.1993	BGBl. I S. 1217 Nr. 38	No
	19th	28.01.1994	BGBl. I	No

	amendment of the 1956 law		S. 142 (146) Nr. 5	
	20th amendment of the 1956 law	10.05.1994	BGBl. I S. 993 Nr. 29	No
Law regarding the publication of electoral results		28.09.1994	BGBl. I S. 2734 Nr. 67	No
	21st amendment of the 1956 law	15.11.1996	BGBl. I S. 1712 Nr. 58	Yes
	22nd amendment of the 1956 law	20.04.1998	BGBl. I S. 706 Nr. 22	No
Law regulating the maintenance of electoral districts		01.07.1998	BGBl. I S. 1698 Nr. 42	No
Law regarding the publication of electoral results		25.08.1998	BGBl. I S: 2430 Nr. 57	No
Law regarding the publication of electoral results		21.05.1999	BGBl. I S. 1023 Nr. 26	No
	23rd amendment of the 1956 law	27.04.2001	BGBl. I S. 698 Nr. 19	No

24th amendment of the 1956 law	27.04.2001	BGBl. I S. 701 Nr. 19		No
Law on introduction of the EMU	03.12.2001	BGBl. I S. 3306 (3008) Nr. 64		No
First amendment of the 1999 law on electoral results	17.01.2002	BGBl. I S. 412 Nr. 4		No
25th amendment of the 1956 law	27.04.2002	BGBl. I S. 1467 Nr. 28		No
Law on telecommunica tions	07.05.2002	BGBl. I S. 1529 Nr. 29		No
Law on the integration of aliens	20.06.2002	BGBl. I S. 1964 (1995) Nr. 38 Vom Bundesverfassu ngsgericht am 18. Dezember 2002 für nichtig erklärt BGBl. I 2003 S. 126 Nr. 4		No
Act on competences	25.11.2003	BGBl. I S. 2304		No

			Nr. 56	
	First amendment of the law on the integration of aliens	30.07.2004	BGBl. I S. 1950 (2006) Nr. 41	No
	26th amendment of the electoral law	11.03.2005	BGBl. I S. 674 Nr. 16	No
	Temporal amendment of the electoral law (only valid for the elections of 2005)	21.07.2005	BGBl. I S. 2179 N. 45 - Geltung nur für die Bundestagswahl am 18.September 2005	No
Act on competences		19.02.2006	BGBl. I S. 334, 335 Nr. 8	No
	Amendment on the act on competences	31.10.2006	BGBl. I S. 2407 Nr. 50	No
	28th amendment of the electoral law	17.03.2008	BGBl. I S. 316 Nr. 9	No
	29th amendment of the electoral law	17.03.2008	BGBl. I S. 394 Nr. 10	Yes

Ruling of the German Supreme Court concerning the German electoral law		14.07.2008	BGBl. I S. 1286 Nr. 29	Yes (implies an injunction that demands a change in the electoral system)
	30th amendment of the electoral law	29.09.2009	BGBl. I S. 3220 Nr. 66	No

Section 3: Details of previous electoral systems and electoral system changes.

3.1 The 1949 Electoral System

This law introduced (West) Germany's first MMP electoral system. The creation of this specific system can be traced back to several trends. First, the experiences with the Weimar republic had, to some extent, discredited a disproportional system; at the very least, there was a consensus that a new system should be more 'personalized' than the 'un-personal' Weimar system, thereby safeguarding some stability by building up trustee-like relations between electors and legislators (Scarrow, 2001). The choice, then, was between the 'British' SMP system and a more proportional system in which the single-member districts would receive a more modest role. In the end, the Social-Democrats seemed to have become 'kingmakers' in this issue, succeeding in getting nearly all their most favoured principles enacted. The preference of the SDP is explained by Bawn (1993) to be not only related to an inherent social-democratic preference for 'fairness', but also by a certain fear to end up in a two-party system which would produce an almost continuous majority for a bourgeois political block.

Assembly size. At least 400 seats (article 8.2). 240 of these seats are allocated through one-seat districts, while the remaining 160 seats are distributed via a compensatory mechanism on the level of the eleven German states. Additional seats might be generated through Uberhangmandate (see *Allocation of seats in the upper tier*).

Districts and district magnitude. Within the lower tier, all districts are one-seat plurality districts. Within the upper tier, there are 11 districts with varying district sizes (the average size is somewhat over 36 seats).

Nature of votes that can be cast. Each voter has one vote, for a particular candidate, who might be linked to a certain party. In each district, different candidates compete.

Party threshold. Parties only compete for seats in the upper tier if they have at least five percent of the votes in a certain state (*Länd*), or if a party has obtained at least one seat at the

lower tier. In some states, this threshold is naturally heightened by a relative low number of seats to be distributed (e.g. Bremen with 4 seats, Württemberg-Hohenzollern with 10 seats, Baden with 11 seats and Hamburg with 13 seats).

Allocation of seats to parties at the lower tier. In 240 one-seat districts, seats are allocated through simple plurality voting (i.e. the candidate with more votes than any other candidate obtains the seat).

Allocation of seats to parties at the upper tier. In the 11 Länder, all votes for candidates standing for parties which have filed a list on this level are assembled (other votes are discarded). The total number of votes is, via D'Hondt, distributed over the total number of seats to be filled by this particular state (this includes the seats in the lower tier, but excludes those seats in the lower tier which are obtained by candidates not connected to an upper-tier party list). If a party is entitled to more seats than it has already obtained through the lower tier districts, the remaining seats are filled through the order of the closed list. If a party is entitled to fewer seats than it obtained through the lower tier districts, it is entitled to keep the additional seats (Uberhangmandate), thus possibly creating additional disproportionality. As stated earlier, only parties with at least five percent of the vote, or one direct mandate, are entitled to receiving (additional) seats through the upper tier.

Allocation of seats to candidates. In the lower tier, the candidate with the highest number of votes obtains the seat. In the upper tier, seats are distributed to parties through closed lists (thus, candidates are elected in the order of the list).

Table 2: Allocation of seats at district level in 1949

Electoral district	Provincial constituency	District magnitude
240 one-seat districts	Baden	11 seats
	Bayern (Bavaria)	78 seats
	Bremen	4 seats
	Hamburg	13 seats
	Hessen	36 seats
	Niedersachsen (Lower Saxony)	58 seats
	Nordrhein-Westfalen	109 seats
	Rheinland-Pfalz	25 seats
	Schleswig-Holstein	23 seats
	Württemberg-Baden	33 seats
	Württemberg-Hohenzollern	10 seats
TOTAL		400 seats

3.2 The 1953 Electoral Reform

This reform increased the total number of seats while reducing the number of upper-tier districts from 11 to 9. But it also gave voters two votes rather than one, there being now separate votes for SMD candidates and regional lists. In addition, the 5 per cent threshold for

obtaining list seats was transferred from the regional to the national level. This reform (and the eventual adoption of a likewise electoral act in 1956) is attributed by Scarrow (2001) to the influence of the small free-business FDP party, which tried to bow the rules in its favour. The FDP, the 'largest of the small parties', tried to place itself as the sole pivotal party in the middle, by installing a federal threshold which prevented their somewhat smaller and more regionally based competitors (like the Bavarian Party and the Lower Saxony-based German Party) from entering parliament. Moreover, Bawn (1993) shows how the single ticket (used in 1949) potentially advantaged the Christian-democrats of CDU/CSU, thus giving the other parties an incentive to aim for a two-ticket system. In particularly the FDP would become a particular beneficiary of split-ticket voters who would donate their second vote to the liberals (e.g. Schoen, 1999).

Assembly size. Increased to at least 484 seats (plus 22 non-voting members from West-Berlin, which was technically occupied by the United States, the United Kingdom and France).

Districts and district magnitude. The number of lower-tier districts was slightly increased (to 242); the number of upper-tier district was decreased (from 11 to 9), while the average district magnitude of the upper-tier districts grew to almost 54.

Nature of votes that can be cast. Each voter has two votes: one for the candidate within the district (*Wahlkreis*) in which the voter resides (the *Erststimme*), and one for a closed list on the state level (the *Zweitstimme*). The voter is free to combine any candidate with any party.

Party threshold. To be eligible for obtaining seats through the procedure in the upper-tier districts, parties have to have obtained at least one lower-tier seat (no matter whether this lower-tier district is situated within the specific upper-tier district or not), or have obtained at least five percent of the *Zweitstimmen* on the federal level (as opposed to a same threshold that was applied at the state level, in 1949).

Allocation of seats to parties at the upper tier. No change, except that the *Zweitstimmen* count as votes, instead of the unitary vote in 1949. *Zweitstimmen* that were combined with an *Erststimme* on a candidate that is not connected with an upper-tier party list, are discarded.

No other change.

Table 3: Allocation of seats at district [and provincial] level in [year]

Electoral district	Provincial constituency	District magnitude
242 one-seat districts	Baden-Württemberg	67 seats
	Bayern (Bavaria)	91 seats
	Bremen	6 seats
	Hamburg	17 seats
	Hessen	44 seats
	Niedersachsen (Lower Saxony)	66 seats
	Nordrhein-Westfalen	138 seats
	Rheinland-Pfalz	31 seats
	Schleswig-Holstein	24 seats
TOTAL		484 seats

3.3 The 1956 Electoral Reform.

In 1956, a permanent electoral law (both those of 1949 and 1953 were provisional acts) was finally installed. The main change here was the introduction of linkage between a party's regional lists across the Länder, which in effect led to nationwide allocation of list seats. Again, the effect of the small FDP was visible, since this change ensured that it was not possible anymore for the FDP to 'lose' votes in smaller states.

Assembly size.   Increased to at least 494 seats. This includes ten extra seats created for Saarland, which merged with the BRD in 1956.

Districts and district magnitude.   The lower-tier districts remain uniformly at a district magnitude of 1, but their number is increased to 247.

Party threshold.   The minimum of seats to be obtained in the lower-tier to compete for seats in the upper tier is raised from one to three. The five-percent-rule remains in place.

Allocation of seats to parties at the upper tier.   While lists were still filed at the state level, all the 494 seats would be distributed through LM-D'Hondt at the national level. Each list which fulfilled the threshold criteria would compete in this distribution. However, parties were granted the opportunity to connect lists in different Länder (since this could only benefit parties, parties would generally indeed connect their lists). Within each set of connected lists, seats would then be detruded to the different state-level lists through LM-D'Hondt.

No other change.

Table 4: Allocation of seats at district [and provincial] level in 1956

Electoral district	Provincial constituency	District magnitude
247 one-seat districts	District at-large	494 seats
TOTAL		494 seats

3.4 The 1964 Electoral Reform

This reform introduced a small change in the total number of seats.

Assembly size.   Increased to at least 496 seats.

Districts and district magnitude.   The lower-tier districts remain uniformly at a district magnitude of 1, but their number is increased to 248.

Nature of votes that can be cast. [Short description].

Party threshold. [Short description].

No other change.

Table 5: Allocation of seats at district [and provincial] level in 1964

Electoral district	Provincial constituency	District magnitude
248 one-seat districts	District at-large	496 seats
TOTAL		496 seats

3.5 The 1985 Electoral Reform

This reform changed the formula for the allocation of list seats from d'Hondt to LR–Hare. Again, Scarrow (2001) points to the FDP as the main drive behind this reform (LR-Hare is slightly more beneficiary to smaller parties than LM-d'Hondt).

Allocation of seats to parties at the upper tier. In the 10 Länder, all votes for candidates standing for parties which have filed a list on this level are assembled (other votes are discarded). The total number of votes are, via LR-Hare, distributed over the total number of seats to be filled by this particular state (this includes the seats in the lower tier, but excludes those seats in the lower tier which are obtained by candidates, not connected to an upper-tier party list). If a party is entitled to more seats than it has already obtained through the lower tier districts, the remaining seats are filled through the order of the closed list. If a party is entitled to less seats than it obtained through the lower tier districts, it is entitled to keep the additional seats (Uberhangmandate), thus possibly creating additional disproportionality. Only parties with at least five percent of the vote, or three direct mandates, are entitled to receiving (additional) seats through the upper tier. The change is in the electoral formula; D'Hondt is replaced with LR-Hare. This enhances proportionality, and reduces the chance that small upper-tier districts will effectively heighten the electoral threshold.

No other change.

Table 6: Allocation of seats at district [and provincial] level in [year]

Electoral district	Provincial constituency	District magnitude
248 one-seat districts	District at-large	496 seats
TOTAL		496 seats

3.6 The 1990 Electoral Reform

The size of the German Bundestag increased substantially as a result of unification with the East. In addition, the thresholds for winning list seats were adjusted as a form of transitional electoral regime in order to integrate West end East.

Assembly size. Extended from 496 seats to 656 seats.

Districts and district magnitude. The lower-tier districts remain uniformly at a district magnitude of 1, but their number is increased to 328.

Party threshold. The system remained essentially the same, but the five-percent threshold was changed somewhat. To qualify for seats, had to surpass five percent threshold in either the five new *Bundesländer*, including the part of Berlin that was situated in the former German Democratic Republic, or in the ten existing *Bundesländer*, including former West Berlin.

No other change.

Table 7: Allocation of seats at district level in 1990

Electoral district	Provincial constituency	District magnitude
328 one-seat districts	District at-large	656 seats
TOTAL		656 seats

3.7 The 1994 Electoral Reform

Thresholds for winning list seats were restored to those that had existed before 1990.

Party threshold. The system was reset to the system of before 1990: only parties with at least three district seats or five percent of the votes (both nation-wide) are qualified to compete for upper-tier seats.

Districts and district magnitude. The lower-tier districts remain uniformly at a district magnitude of 1, but their number is decreased to 299.

No other change.

Table 8: Allocation of seats at district level in 1990

Electoral district	Provincial constituency	District magnitude
328 one-seat districts	District at-large	656 seats
TOTAL		656 seats

3.8 The 1996 Electoral Reform (implemented in 2002)

In 1996, the assembly size was reduced to at least 598 (299 + 299) seats. This reform was first implemented at the 2002 elections.

Assembly size. The assembly size is reduced from 656 seats to 598 seats.

No other change.

Table 8: Allocation of seats at district level in 1990

Electoral district	Provincial constituency	District magnitude
299 one-seat districts	District at-large	598 seats
TOTAL		598 seats

3.9 The 2008 Electoral Reform

The formula used for allocating list seats was again changed, this time from LR–Hare to Sainte-Lagüe.

Allocation of seats in the upper tier. The LR-Hare system of assigning seats within the Länder was replaced by unmodified Saint-Laguë. All other provisions remained in place.

No other change.

Table 8: Allocation of seats at district level in 1990

Electoral district	Provincial constituency	District magnitude
299 one-seat districts	District at-large	598 seats
TOTAL		598 seats

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Project funding provisions