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Rockmann, Ulrike

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Elections in Berlin 2021: Selected background information and Preliminary Results

Univ.-Prof. Dr. Ulrike Rockmann
Institute for School Quality Berlin at the Free University Berlin¹
ulrike.rockmann@fu-berlin.de

The election year 2021 is something very special for Berlin. Never before have eligible voters had so many votes at once. A total of six choices had to be made by voters on the same election day, Sept. 26, 2021. Voters elected parties and candidates for the Bundestag (two votes), the Berlin House of Representatives (two votes), the District Assembly (one vote) and decided on a Berlin referendum “Expropriating Deutsche Wohnen and Co”².

The 2021 elections posed major challenges for the responsible bodies: The Bundestag and Berlin elections were based on different laws; till July 1st, 2021 it was unclear whether the referendum was to be held; and ultimately the Covid pandemic led to an increased organizational effort. A total of 13 million ballots of 115 different types³ were printed, more than ever before. 61 parties competed, and most of them had to be examined beforehand by the electoral bodies to verify that they meet all the requirements for participation. 4,200 candidates had to be checked for eligibility. Reasons for the high level of interest in participating as a party or candidate are subject of research—the reduction in the number of support signatures required for candidacy due to the Covid pandemic may also have had an influence.

3.77 million people have their main residence in Berlin. Due to different underlying legislation the number of eligible voters depends on the type of election: In 2021, 2.469 million voters were able to cast their vote for the Bundestag, 2.448 million for the Berlin House of Representatives as well as for the Berlin referendum, and 2.759 million voters for the 12 Berlin District Assemblies.

There were 2,257 polling stations (PS) available in the city on election day, with an average of 1,100 eligible voters assigned to each. In-person voting in these PS began at 8:00 AM and ended at 6:00 PM. In addition, there were 1,507 postal polling stations (PPS) only responsible for counting postal votes. All polling stations were staffed by a minimum of five and a maximum of nine persons who performed their service as volunteers. Guaranteed by law, the observation of both the election process and the counting of the votes was possible for everyone at any time in both types of polling stations.

1. Constituencies for Bundestag and Berlin House of Representatives elections

The way constituencies are determined and by whom is a subject of intense debate in some countries. Of central interest is the question of whether it is possible to exert political influence on the boundaries (“gerrymandering”) and to what extent the criteria for the boundaries of the constituencies are objective and verifiable. In Germany—as a federally organized state—one has to look at the respective hierarchical level at which the elections are held and its legislation to find answers.

Bundestag election constituencies: On the national level an independent Federal Constituency Commission (FCC) is appointed by the Federal President. It is responsible to monitor the population development in Germany and the consequences for constituency boundaries. The president of the Federal Statistical Office heads the commission representing the institution that produces the official

¹ Since 2005 Deputy Election Officer for the Land Berlin and responsible for European, German and Berlin elections and referendums. See: <https://www.berlin.de/wahlen/organisation/landeswahlleitung/artikel.749726.php> [accessed 4.9.2021]

² Due to the high prices for rental apartments in Berlin, an initiative is calling for the Senate to draft a law that includes criteria that could lead to the socialization of large housing stocks – more than 3,000 apartments (see arguments of the initiative and the Senate of Berlin –in German language only: <https://www.berlin.de/wahlen/abstimmungen/deutsche-wohnen-und-co-enteignen/allgemeine-informationen/artikel.1115174.php> [23.8.2021].

³ Taking into account the official election statistics, there are 403 different ballots: 115 ballots = Bundestag: 1 ballot paper for each of the 12 Bundestag constituencies; Berlin House of Representatives: 1 ballot paper for each of the 12 districts for the 2nd vote; 78 ballot papers for each constituency for the Berlin House of Representatives for the 1st vote; 1 ballot paper for each of the 12 districts for the district assemblies; 1 ballot paper for the Berlin petition for a referendum; plus 288 other ballots for the representative election statistics

population figures.⁴ The president of the Federal Statistical Office is the only member appointed for the duration of his principal office.

The permanent commission was already established by the Federal Election Act of 1956 with duties and rights approximately similar to those of the present commission (§3 Section 3 of the Federal Elections Act (BWG)⁵). The commission proposes necessary changes to the Ministry of Internal Affairs in its role as responsible ministry for federal elections. The ministry publishes the report and informs the Bundestag and, initiates the legislative process. The Bundestag decides on changes by federal law. The proposals are not binding. The Bundestag not always followed the proposals of the commission⁶.

Some general rules apply to the layout of constituencies to avoid political motivated changes: The boundaries of constituencies shall not exceed the boundaries of one of the federal states (BWG 2021, §3 Abs. 1, 1). Within the federal states a constituency shall form a connected/coherent area. The boundaries should respect administrative boundaries within the federal states—such as city and community borders. The constituencies should have roughly the same number of Germans—people having the German citizenship⁷—independent of their age.

The rules for the average number of Germans in constituencies and the need for border changes have changed since 1956. In 1956, a deviation of one-third from the average was permissible before a change was recommended. Today, the law recommends a change if there is a deviation of 15 % fewer or more Germans than the average. In contrast to the previous legislation, the law now also includes a mandatory amendment: If the deviation is more than 25 %, it is mandatory to amend the constituency boundaries.⁸ A general problem are the deadlines within which the commission must report—15 months after the start of the four-year legislative session, population figures as of December 31, 2017, were used for the 2021 election districting. By the time of the election 33 months later, population figures may have changed.

An election complaint to the Federal Constitutional Court is possible and the court would evaluate the law passed by the Bundestag against these criteria.⁹ In 2012, the court had to rule on an election complaint regarding a violation of the principle of electoral equality. It had to be decided whether all Germans have to be taken into account to define a constituency or just those eligible to vote. The court stated that the equality of voting rights would not be affected by the current procedures as long as the proportion of minors in the German population differed only insignificantly from region to region. The constituency commission checks this ever since. For the 2021 election, a constituency division based on the electorate would result in one change: Hesse would get one fewer constituency, Thuringia one more. This was not considered such a significant difference to change the calculation procedure.

⁴ The Federal Statistical Office is nowadays subject to the European Statistical Code of Practice, which commits it to substantive independence. Nevertheless, the Peer Review 2015 initiated by Eurostat recommends: "A transparent appointment procedure and clear selection criteria emphasising the professional qualifications of the President of the Federal Statistical Office of Germany, the heads of the Statistical Offices of the Länder and Other National Authorities producing European statistics should be established in law. (European statistics Code of Practice, indicator 1.8)". See: <https://ec.europa.eu/eurostat/documents/64157/4372828/2015-DE-Report/e9a771b3-7890-4996-a5c4-f818502e97c1>

⁵ The partitioning of constituencies was also fundamentally addressed in the election law for the first Bundestag after World War II in §20, which was proposed by the Parliamentary Council and adopted by the three military allies responsible for the American, British and French sectors.

⁶ See: Hahlen, J., in: Schreiber, W. (Hrsg.), Bundeswahlgesetz, Kommentar, 10. Aufl. 2017, § 3, Rn. 1, 10, S. 198

⁷ Persons may also hold other citizenships in addition to the German citizenship.

⁸ Amendment of the Federal Election law 2016: https://www.bundeswahlleiter.de/en/dam/jcr/4f671580-6009-4b22-945e-4a1da3f19521/btw17_beschr_wahlkreise_konsolidiert.pdf [accessed 28.8.2021]

⁹ Example: Election review complaint against the partitioning of electoral constituencies 2012; https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/DE/2012/01/cs20120131_2bvc000311.html [accessed 28.8.2021]

For the 2021 elections, Germany is divided into 299 constituencies¹⁰, with some boundary changes required compared to the 2017 elections. The average number of per constituency Germans is 244,500¹¹. Berlin has 12 constituencies with an average number of Germans of 249,495.

Berlin House of Representatives constituencies: Berlin has no constituency commission. The Berlin Election Law for the Berlin House of Representatives determines 78 constituencies.¹² For their distribution among the 12 districts, the responsible Berlin Senate Administration makes a proposal based on data from the Berlin Office of Statistics. The division is determined and published by Senate resolution. It is possible to apply for a verification at the Berlin Constitutional Court if someone is of the opinion that the result of the election was significantly influenced by the formation of the constituencies (Berlin VerfGHG, §40 (8))¹³.

The number of constituencies per district is calculated on the basis of the residents' register as of 44 months after the beginning of the five-year electoral period.¹⁴ For this purpose, the number of Germans (regardless of age) is determined for each district. In the next step, the weight of the population of the respective district in the total population is calculated. It forms the basis for allocating the number of constituencies to the districts. In contrast to the Federal Election Law, the permissible deviation from the average for the number of Germans in each electoral district is not mentioned in the order. The Berlin election regulations merely state that the ratio should be calculated (LWL Berlin 2021, §9).

In 2021, the number of constituencies per district was between five and nine. The shaping of the constituencies within the districts was carried out by the respective district administration. The administration decided about the constituency borders, published them, and informed the District Assembly¹⁵. The constituencies had an average of 38,400 Germans with a deviation of maximum -9.0 %.¹⁶ The layout of the constituencies, although not explicitly stipulated in the Berlin legislation, thus corresponds to the legislation for federal elections.

Constituencies in combined elections: For the Bundestag elections, Berlin has the same twelve constituencies as in 2017. Eight constituencies are identical to the district boundaries, for four constituencies this is not the case. Two districts do not have enough Germans, therefore parts of two bordering districts are added to the constituency (fig. 1).

Figure 1 shows the problems that arise when several elections are held on the same day. Districts A (Spandau) and C (Friedrichshain-Kreuzberg) do not have enough Germans to form a Bundestag constituency, so districts B (Charlottenburg-Wilmersdorf) and D (Pankow) have to give a portion of their potential voters to districts A and C. Nonetheless, the district boundaries are respected for the Berlin election. This situation can and has created organizational problems: For example, the distribution of ballots is done by the District Election Offices (DEO). The DEO in districts B and D have to process a part of a further Bundestag constituency within their district boundaries. This means that they have to handle two Bundestag ballots that differ in terms of the constituency direct candidate (1st vote).

¹⁰ An originally planned electoral law reform, which was to reduce the number of constituencies, did not materialize during the legislative period. (Constituencies 1956 = 253 – West-Germany without Berlin-West). Since 2002 Germany has 299 constituencies. See: <https://www.bundeswahlleiter.de/en/bundestagswahlen/2021/wahlkreiseinteilung.html> [accessed 30.8.2021]

¹¹ Data based on Official population statistics. See: Report of the Federal Constituency Commission: <https://dip21.bundestag.de/dip21/btd/19/075/1907500.pdf> [accessed 30.8.2021]

¹² See Berlin Election law WahlG BE § 9: <https://gesetze.berlin.de/bsbe/document/jlr-WahlGBErahmen> [accessed 18.8.2021]

¹³ <https://gesetze.berlin.de/bsbe/document/jlr-VerfGHGBEV1P40> [accessed 28.8.2021]

¹⁴ The data source in Berlin is different from that of the federal level. Following the amendment of the Population Statistics Act, population data at the district level are only available from the residents' register.

¹⁵ Some district administrations put the division of constituencies to a vote in district assemblies although it is not stipulated by law.

¹⁶ In average the constituencies had 31,800 eligible voters with a maximum deviation of -10.7 % (as of Dec. 31, 2019)

In the 2017 federal election, it unfortunately happened that one polling station in the A+ area received area B-constituency-ballots. Fortunately, this was detected early on election day. It was possible to determine the number of votes already casted with the wrong ballot. The final results for the candidates who ran for the first vote were further apart than the number of incorrect ballots. Therefore, it was not necessary to repeat the election.

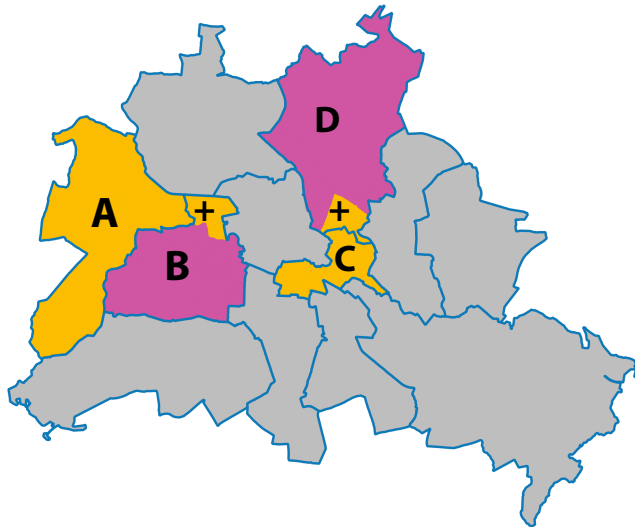


Figure 1: Constituencies Berlin for Bundestag and Berlin House of Representative elections

Blue Line = District border

Gray colored: Constituencies borders for Bundestag identical with the district boundaries

Yellow colored: Bundestag constituency larger than district (A, C) including "+"-area

Pink: Bundestag constituency smaller than district (B, D)

Shapefile: Geo-Service Official Statistics Berlin-Brandenburg 2021

2. Involved Election bodies¹⁷

The electoral bodies are defined in Section 8 of the Federal Election Act. The responsible persons at the three hierarchical levels are: The Federal Election Commissioner (=Returning Officer), the State Election Commissioner, and the Constituency Election Commissioner. Each level has an election committee, which is chaired by the respective responsible election commissioner.

Meetings are open to the public and must be announced. The committees are sworn to make their decision impartially. They work on a voluntary basis. Election commissioners and election committees are independent bodies. One may only be a member of one of the boards. Candidates and spokespersons who are involved in the election proposals are excluded from membership (Section 9 (3) BWG). The appointment of the election commissioners and the committee requires that the persons are eligible to vote for the Bundestag. At the federal level, the appointment is made by the responsible ministry for elections. In Berlin, the appointment of the commissioner and the deputy is made by the Berlin Senate for the Land and by the district administration for the constituencies (Berlin LWO¹⁸ 2006 Sec. 3, 4). Their appointment is made for an indefinite period.

The Berlin election committee is appointed by the Berlin election commissioner. It shall be composed of six eligible voters and two judges. The six persons shall be selected on the proposal of the parties last elected to the Berlin House of Representatives, taking into account the number of second votes obtained. The judges shall be proposed by the President of the Berlin-Brandenburg Higher Administrative Court. The committees decide on the parties and individual candidates to be accepted for the elections. They decide on the order of the parties and individual candidates on the ballot paper. After the election, they have to approve the election results.

The fourth level are the election officers and committees working on election day in the polling stations. They are appointed by the respective constituency. They work on a voluntary basis but receive an

¹⁷ <https://www.bundeswahlleiter.de/en/bundestagswahlen/2021/rechtsgrundlagen.html#17c9d4b0-f7fc-424a-b8d8-322758da5050> [accessed 29.8.2021]

¹⁸ Berlin LWO = Wahlordnung für die Wahlen zum Abgeordnetenhaus und zu den Bezirksverordnetenversammlungen (Landeswahlordnung-LWO); <https://gesetze.berlin.de/bsbe/document/jlr-WahlOBE2006pELS> [accessed 29.8.2021 in German]

expense allowance of up to 80 Euros, depending on the individual activity performed. For the joint election in Berlin in 2021, 35,000 volunteers were needed.

3. The Electorate and information about Election Day

Persons whose main residence is in Berlin have to register in the residents' register no later than 14 days after moving there. In addition to other administrative purposes, this registration is also used by the administration to compile the electoral roll. Therefore, with exception of the European elections for Europeans, no separate registration is required for participation in elections. Homeless people living in Berlin are not registered in the residents' register because they do not have a permanent address. If they want to vote, they have to register on the electoral roll in the district where they stayed overnight on the 35th day before elections.¹⁹

Eligible voters will receive a notification letter announcing the election day and assigning a polling station nearby their main residence.²⁰ It is possible to vote in this polling station in person on election day, before election day in the respective district election offices (DEO) or by postal voting (absentee voters). The right to vote for the Bundestag, Berlin House and the referendum is tied to German citizenship and the minimum age of 18 years on election day.

For **Berlin House of Representatives** elections, it is additionally required that the main residence has been in Berlin for at least three months before election day.²¹ The three months should ensure that voters have established a sense of attachment to the city and have been able to form an opinion about what is happening politically.

To vote in the **Bundestag** election, it is not necessary to currently live in Germany. All Germans abroad are also eligible to vote if they have lived in Germany for at least three months at the age of 14 and older no longer than 25 years ago.²² If they do not have a main residence in Germany anymore, then they must register on the electoral roll and make use of the absentee voting option. They will receive all needed materials from their last main residence in Germany. Like all other absentee voters, they have to ensure themselves that their ballots are back at the respective DEO by 6:00 pm on election day. Voting at the embassies is not provided, but the embassies support the return of the voting envelopes to Germany.

All those who are also entitled to vote for the Berlin House of Representatives are eligible to vote for the **District Assemblies**. Further, the contract on the "Functioning of the European Union" is relevant: The non-discrimination and citizenship part of the contract states that all citizens of an EU member state have the right to vote in European and municipal elections and stand as a candidate. Therefore, all EU citizens living in Berlin for more than three months are also eligible to vote a party in their district.²³ Furthermore,

¹⁹ In German language only: Berlin LWO, § 14 (3); <https://gesetze.berlin.de/bsbe/document/jlr-WahlGBErahmen> [28.8.2021]

²⁰ In German language only: Berlin LWO, § 15 (3); <https://gesetze.berlin.de/bsbe/document/jlr-WahlGBErahmen> [28.8.2021]. Not all letters reach the addressees. For European elections in 2019, about 23,000 letters were returned with the note that the addressee is unknown. For the current elections in 2021, the figure was 52,000. This suggests errors in the residents' register: many people do not know that they have to deregister when they give up their main residence in Germany and settle abroad. Another explanation may be that the mailboxes are not labeled correctly or that the postal carrier has not found the mailbox. After the election, the district administration uses the information to update the residents' register.

²¹ For prisoners, the place of residence is the prison (WahlG BE, §1 (3)). See: <https://gesetze.berlin.de/bsbe/document/jlr-WahlGBEV18P1> [accessed 25.8.2021]. The deprivation of the right to vote requires a court decision and is limited to a maximum of five years. Possible reasons include preparation for war, bribery of deputies, sabotage, disclosure of state secrets, etc. A conviction for these crimes does not automatically mean that the person in question will be deprived of the right to vote (see: <https://www.bundeswahlleiter.de/en/service/glossar/a/aberkennung-wahlrecht.html> [accessed 29.8.2021])

²² Article 116 of the Basic Law (GG), Sections 12, 13 of the Federal Elections Act (BWG): Another option is that a person is able to verify familiarity with the political conditions in the Federal Republic of Germany through own experience (not through consumption media abroad). The local election authority decides. See https://www.bundeswahlleiter.de/en/dam/jcr/4ff317c1-041f-4ba7-bbbf-1e5dc45097b3/bundeswahlgesetz_engl.pdf; https://www.bundeswahlleiter.de/en/dam/jcr/e146a529-fd3b-4131-9588-8242c283537a/bundeswahlordnung_engl.pdf [accessed 23.8.2021]

²³ Treaty on the Functioning of the European Union: Article 20 (2) b: „the right to vote and to stand as candidates in elections to the European Parliament and in municipal elections in their Member State of residence, under the same conditions as nationals of that State“ see: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12012E/TXT&from=DE> [accessed 24.8.2021]

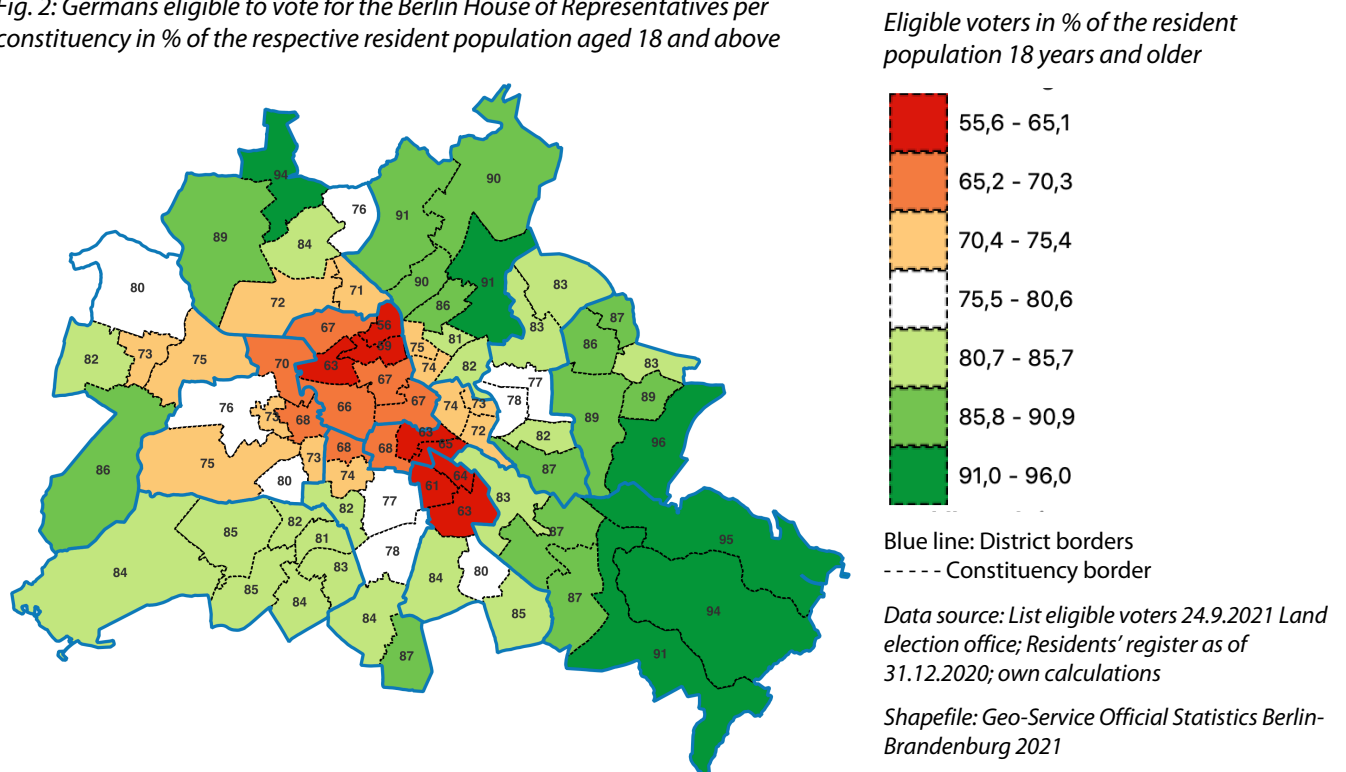
the Berlin government decided in 2005 that 16- and 17-year-olds are eligible to vote in the District Assemblies. They are not allowed to run for office because they are not yet of full age. The main argument was that lowering the voting age could increase interest in the community and politics as well as supporting greater participation in the future (see 9: representative election statistics).

Taking into account the different definitions of eligible voters for the elections in 2021, 2,447,600 voters are eligible to vote in all elections and the referendum; 21,319 voters may only vote for the Bundestag and 289,962 Berliners may only vote for the District Assemblies²⁴.

Opportunity for participation: One question that is being debated, and not only in Germany, is whether all foreigners who have their main residence in Germany for a certain period of time or forever can participate sufficiently in society, including active or passive participation in elections.

For the Berlin House of Representatives, 78 % of Berlin’s population aged 18 and older are eligible to vote—4 percentage points less than in 2017 and 8 percentage points less than in 2011, due to the increasing number of foreigners residing in Berlin. As can be seen in figure 2, the percentage varies from constituency to constituency. Especially in centrally located constituencies, voter eligibility is low because many people with only foreign citizenship reside there.

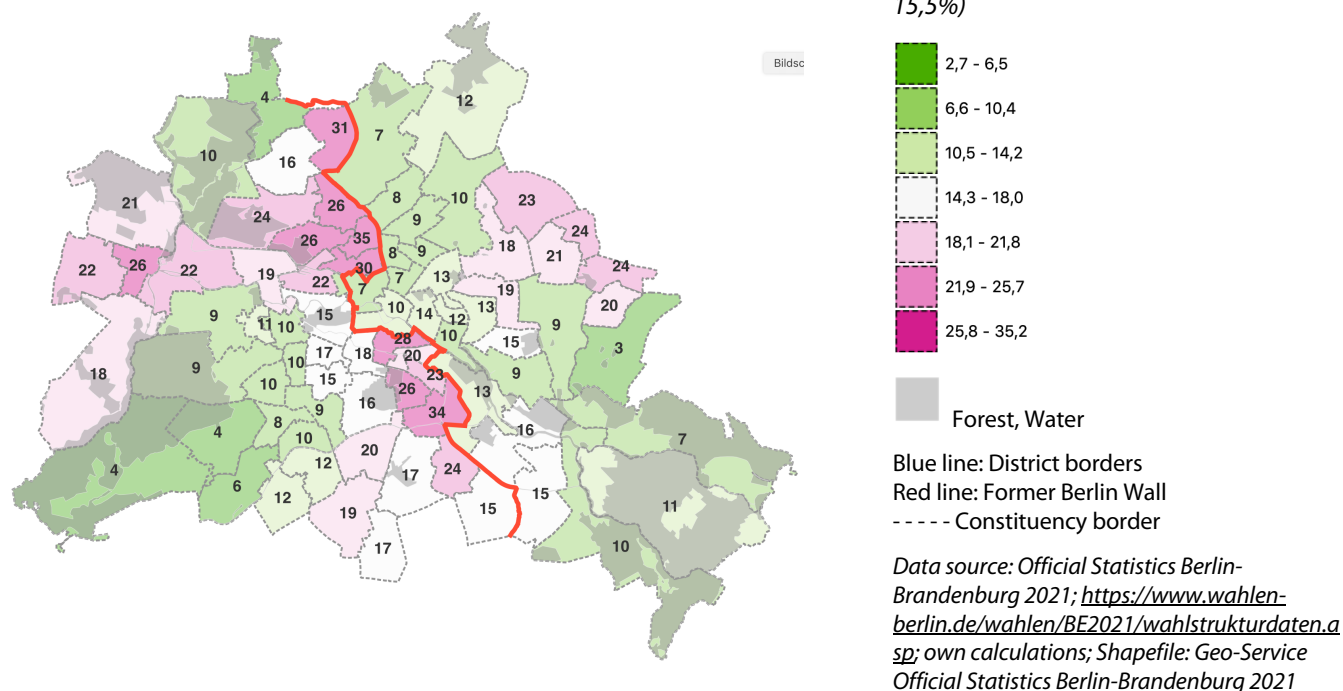
Fig. 2: Germans eligible to vote for the Berlin House of Representatives per constituency in % of the respective resident population aged 18 and above



To better frame the situation, it is necessary to look at the city’s past. Before unification, the Berlin Wall separated the city in the middle (see fig. 3, red line) and Berlin-West residential areas near the Berlin Wall were not expensive. Foreigners with little money and income came to Berlin-West to work or study, and many of them stayed. After unification, the center became more attractive for living—houses were renovated, more foreigners came to the capital and bought the now quite expensive apartments. Thus, the residents not eligible to vote are made up of three very different social groups: those who have lived in Berlin for a very long time but have not naturalized or taken (additionally) the German citizenship, students from abroad who stay only for a short time, and newcomers from abroad with good jobs and incomes. Heterogeneity is also evident when looking at the percentages of people living on social welfare (fig. 3).

²⁴ Preliminary figures as of 26.9.2021

Fig. 3: Population 65 years old and younger depending on social welfare in % of the respective population per constituency as of 31.12.2020



4. Postal voting, voting on Election Day

There are three ways to vote in Germany: voting at a polling station on election day, voting at a district election office before election day (early voting in-person), and postal voting (early voting). On election day, mobile ballot boxes for voting at home are not available for citizens who are unable to visit a polling station²⁵. In such cases, people have to use the option of postal voting before election day.

Ballots must be marked in person. Voting by proxy is not permitted in Germany. To vote at a polling station or in a DEO, the voter must bring an official ID with a photograph (Berlin LWO BE 2006 §15 (5)). Currently, all voting is done using paper ballots.

Voting on E-Day: For many people, voting at their assigned polling station (PS) on election day is considered the gold standard. Polling stations are mainly located in schools or other public buildings. Each polling station should have about 2,500 eligible voters. For 2021, the number has been reduced to about 1,100 due to the Covid pandemic and the fact that six elections are held on one day. At the polling station, a check is made to see if the person is on the printed electoral roll for that polling station and has not already voted by postal ballot. If everything is in order, the person is checked off the electoral roll and can drop the ballots received and filled in in the PS into the ballot box.

There is no technical assistance in the PS available, such as a machine that reads the ballot to visually impaired people. People that need help can either bring an assistant or ask the PS staff or another person available in the PS for help. For the visually impaired, their umbrella organization provides a template with raised tactile numbers and braille that allows the ballot to be filled in without assistance.²⁶ This template has to be brought to the PS by the person themselves.

²⁵ The German Federal Election Order stipulates for mobile teams for special election districts: The local authority shall determine the election time for the special election district in consultation with the governing body of the facility within the general election time based on actual need. If necessary, the respective district election authority may establish a polling station in correctional institutions, socio-therapeutic institutions, prisons, nursing homes and convents (see: §61-64).

²⁶ <https://www.dbsv.org/dbsv-in-english.html>; https://www.dbsv.org/files/blindheit-sehbehinderung/alltag/behoerden-e-government/wahlen/csm_Wahlschablone-hoch_3bd6e20c0d.jpg [accessed 28.8.2021]

Postal voting: The other two options are formally called „postal ballot“ and „postal voting“: Voters can either have all required documents mailed by post service to their main or another address, or they can vote before election day at one of the respective DEO. In recent decades, about 93% of the requested postal ballots were used and returned on time to the DEO—no later than 6:00 PM on election day.

For postal voting, voters not only receive the required envelopes and ballot papers, but also a polling card, which they must sign. The polling card is used to affirm under oath that the voter has filled in the ballot papers himself/herself. The polling card is marked with a unique number, which can also be found on the red return envelope. The voter must mark the ballots in secret, place them in the blue ballot envelope, seal the blue envelope, sign the affidavit, place the blue envelope and polling card in the red envelope, and seal the red envelope. Using the two envelopes and sealing the blue envelope will ensure that your vote cannot be traced during the count.

When voting at a DEO, the red envelope is dropped by the voter in the available ballot box. It will stay there until election day noon when the polling stations responsible for counting the postal votes begin their duty. The procedure for postal voting at home is identical. The red envelope is then dropped in a regular mailbox on the street and delivered to the election office free of charge. There are no special election drop-off-boxes on the streets available—if a voter does not trust the postal service, they can drop off the red envelope themselves at the DEO. Once postal vote is casted, there is no option to get it back to change the vote.

Ordering postal voting can be done using the QR code printed on the announcement letter, which pre-fills the Internet form with the necessary data. Besides, an e-mail or a letter can also be used. It is not necessary to identify yourself. If the material is not ordered to the main address of a voter but, for example, to an address abroad, the DEO will send a letter to the main address of the ordering person to inform about the order to prevent abuse. If the election material is found to have been ordered by an unauthorized person, the DEO will invalidate the polling card number and the effected person is still able to vote. In case the red envelope with the invalid number returns, it will be separated from the other postal votes on election day before counting.

If a person has ordered postal ballots and subsequently decides to go to a polling station in the assigned constituency on election day, he or she must bring the polling card with him or her to verify that he or she has not yet voted.

Remarks on the legality of postal voting: In Germany, postal voting is viewed with suspicion by some people, with the argument that the ballots are not forgery-proof, there is no control over the voting process at home (e. g., who is filling in the ballot) and whether the secrecy of the vote is kept. Others see a risk that returned postal ballots could be stolen or damaged at the election offices, where they are kept until election day. The debate also revolves around what proportion of postal votes is still tolerable in the light of the German constitution and where the limit to „too much“ lies.

The Federal Constitutional Court has had to rule several times on the legitimacy of the postal voting and has stated that postal voting restricts the electoral principles of freedom, secrecy, and publicity.²⁷ Nevertheless, they see the current law as constitutional, since the general goal is that the entire electorate should have the opportunity to participate. However, the court pointed out that a significant expansion of postal voting could conflict with the constitution. A pure postal voting due to the Covid pandemic was ruled out. Time will show how the debate and the constitutional evaluation will proceed, as the share of postal voting continues to increase (fig. 4). The highest number (631,774) and the highest share (33.4%) in Berlin was in the 2017 Bundestag election, with one-third of all votes cast.

So far, no major problems have been experienced in 2021 with postal voting. Special delivery services are booked for DEO days before the election to ensure that, as far as possible, all postal voting documents are back by 6 PM on election day. In 2021, postal voting documents were requested 988,201 times. This corresponds to 35.8 % of all eligible voters. Due to the pandemic, this is not considered a benchmark for the future.

²⁷ <https://www.bundestag.de/resource/blob/696598/af83c510189ab492c0506172f3863ca8/WD-3-074-20-pdf-data.pdf> [accessed 28.8.2021]

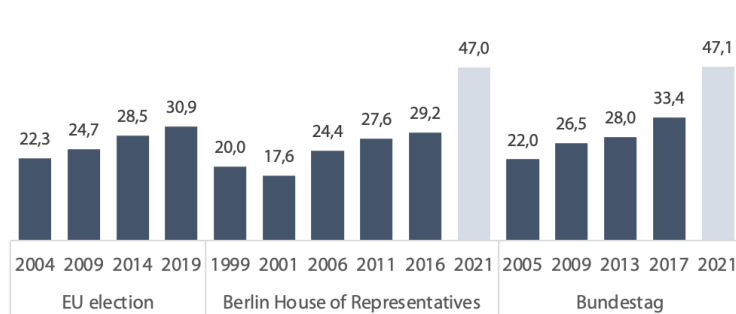


Fig. 4: Percentage of all votes cast by postal voting in Berlin in % of all votes in the respective election

Data source: <https://www.wahlen-berlin.de/wahlen/BE2021/wahlstrukturdaten.asp>; own calculations /; <https://www.wahlen-berlin.de/wahlen/Be2021/AFSPRAES/bvv/index.html>; 2021 preliminary results

Nevertheless, mistakes are happening when so many people are involved in the organization and so many with different combinations of postal ballots. The key question to be answered in these cases is whether or not it can be shown that the mistakes have an impact on the outcome in terms of the candidates who won or the number of seats the parties achieved.

5. IT-Support

The organization of elections needs IT support. In Germany, the support applies to the preparation and to the calculation of the results. There is no IT used in the PS. Voting machines are not prohibited (Federal Election Act, § 35), but they are no longer used.

As in other countries, Germany has also tried to use voting computers. Between 1999 and 2005, voting computers were used in the 1999 European elections and in the 2002 and 2005 Bundestag elections. In 2009, the Federal Constitutional Court declared the devices used unconstitutional. One reason was that the devices were seen as a black box for voters, who could not understand what happened to their votes and how the results were made up. The court argued that “the rule of law prescribes that all essential steps of an election are subject to the possibility of public scrutiny unless other constitutional interests justify an exception”.²⁸ Since there were no indications that the results of the respective election were manipulated, the election was not repeated.

In Berlin, IT is used in the election preparation phase and for calculating the results. In the preparation phase, the extraction of the electorate from the residents’ register is processed in a special IT election module by the responsible administration—the Berlin State Office for Civil and Regulatory Affairs.²⁹ All changes in the electorate—such as moving house, change of address, of names, death, commissioning of postal voting, etc.—between the time of the mailing of the election notification letter and election day must be managed within the system by the respective DEO. The preparation phase ends with printing the electoral roll for each PS on the Friday before election day. The risk of irretrievably destroying the system is covered: In the worst case, the work has to be done manually.

On election day, the IT responsibility lies in the hands of the Berlin Office for Official Statistics. The software in place is used by the DEOs to enter the results from the PS delivered by phone. The software checks the mathematical correctness and plausibility of the input based on the recalculated results of former elections. Great deviations impede the entry into the election data base. In these cases, the DEO advises the PS to recount (see 6). When 10% of the votes have been counted, the results are published continuously on the Internet without being projected. At the end of the process, the so-called election book with the preliminary results is printed.³⁰

²⁸ Press release: https://www.bundesverfassungsgericht.de/SharedDocs/Pressemitteilungen/EN/2009/bvg09-019.html;jsessionid=3DE4B0BB0768BAFB9B9E4281561BE5D0.2_cid377 [accessed 28.8.2021]

²⁹ <https://www.berlin.de/labo/> [accessed 30.8.2021]

³⁰ Example: https://www.berlin.de/wahlen/wahlen/berliner-wahlen-2016/ergebnisse/bericht_der_landeswahlleiterin_zu_den_berliner_wahlen_2016.pdf [accessed 30.8.2021]

6. The Counting

In elections in which more than one vote is cast, an order of vote counting is specified: In 2021, the 2nd Bundestag vote—the vote for a party—has to be counted first, then the 1st Bundestag vote—the vote for a person, then the 2nd vote for the Berlin House of Representatives, then the 1st vote for the Berlin House of Representatives, and finally the Berlin referendum. It is not allowed for PS staff to split up to count the different elections in parallel. A counting test by the Berlin Election Office has shown that it takes at least six hours to count 700 votes cast. The counting must be done by the same team that ran the PS during the day.

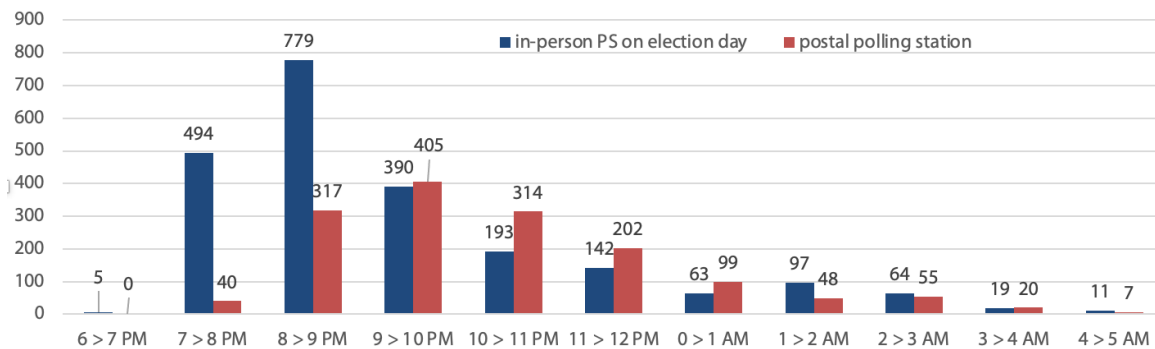
All counting will be done manually on election day and will start at 6 PM at the earliest. At polling places, it begins after polls close at 6 PM or at the time all voters waiting to cast their ballots at 6 PM have voted. The count is open to the public. PS staff may not interrupt the count for an extended period of time.³¹ In case this is necessary, it has to be publicly announced at what time counting is continued.

Polling stations that process only postal ballots begin their work in the afternoon of election day. The first step is to open the red envelopes and check that the affidavit is signed and that the polling card number has not been invalidated by the DEO. The validity of the signature is not checked³², nor is it checked whether the polling card number has been assigned. It is only possible to compare the number of polling cards issued with the number of returned polling cards plus the number of polling cards used in the polling station. If everything is okay, the blue envelope is thrown unopened in the sealed ballot box. The ballot box will be then opened earliest at 6 PM.

After each election, the votes are counted, decisions on invalid votes are made, and the minutes are completed and signed. The PS officer calls the DEO and transmits the results, which are immediately entered into the IT system and checked for plausibility (Fig. 5). In 2021, the small PS results arrived at 6:40 PM, and the last ones arrived at 04:30 AM. Then the results are announced in the PS. When all ballots for all elections have been counted, the PS Officer hands over the protocols and ballots to the DEO, as specified in the election regulations. Unlike other countries, the protocols are not posted on the outside door of the polling place, but they can be accessed later via the Internet.

If the PS cannot provide a plausible count result despite several attempts during the night, the ballots are taken to the DEO and are counted there. If a recount is required after the announcement of the preliminary result, the (re)count shall be publicly announced and the result publicly determined there. The same applies if the DEO finds errors in the protocols, for example, that the numbers in the protocol do not match. In principle, recounts are only permitted if specific errors become apparent. A close result as such is not a reason for a recount. When all counts and recounts are completed, the respective election committees announce the final results according to their hierarchical responsibility.

Fig. 5: End of count Bundestag election 1st and 2nd vote by polling station type 2021



Source: <https://www.wahlen-berlin.de/wahlen/BU2021/AFSPRAES/downloads.html> [29.9.2021]

³¹ See: <https://gesetze.berlin.de/bsbe/document/jlr-WahIOBE2006V9P81>; § 57 [accessed 8.9.2021]

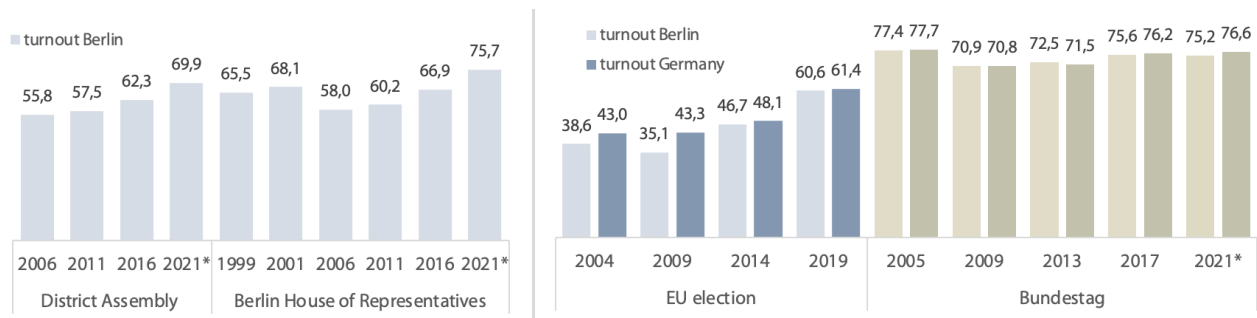
³² A check of the signature was done for example in California by digital processing. There the signature is on the backside of the return envelope (elections 2016).

7. The Turnout

As in many other countries, in Germany and also in Berlin the right to vote is not always exercised. In Bundestag and EU elections, Berlin's voter turnout is not that different from the German average (fig. 6). If only Berlin elections are held on election day, turnout is usually lower than for Bundestag elections. The figures also show that the European elections failed to attract much interest in the past, and even now do not reach the level of Berlin elections.

Further, the turnout is also influenced by other events. For example, the early Berlin House elections in 2001, following the dissolution of the government, saw the highest voter turnout for single elections so far. Simultaneous referendums also have an impact on voter turnout.

Fig. 6: Turnout in different elections for Berlin and Germany 2004 till 2021

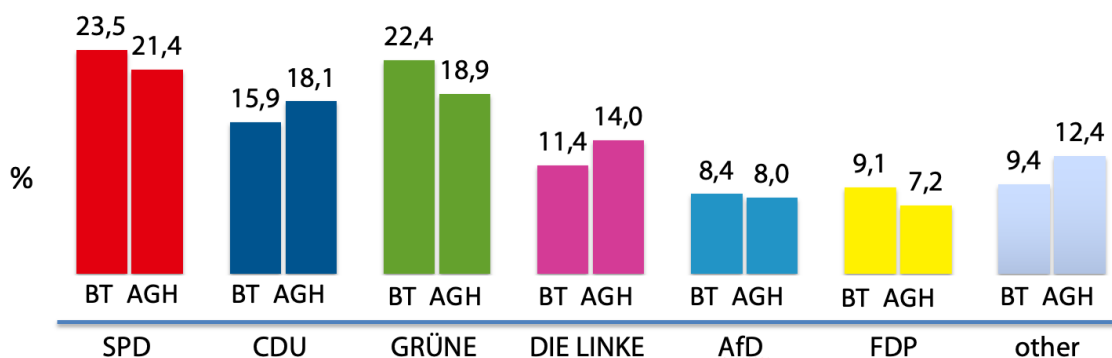


Source: for Germany: <https://www.bundeswahlleiter.de>; for Berlin: <https://www.berlin.de/wahlen/wahlen/>; Data source: <https://www.wahlen-berlin.de/wahlen/BE2021/wahlstrukturdaten.asp>; <https://www.wahlen-berlin.de/wahlen/Be2021/AFSPRAES/bvv/index.html>, own calculations /; *preliminary results

8. Some preliminary results

After 30 years, this was the first combined election in which voters had to decide on the Bundestag and the Berlin House of Representatives. Therefore, it is reasonable to see if the decisions differ. Figure 7 shows that voters' choices differ per election. It is noticeable that locally the small parties (others) receive more support and were elected by around 230,000 voters.

Fig. 7: Comparison party results 2nd vote Bundestag and Berlin House elections 2021 (BT = Bundestag; AGH = Berlin House of Representatives in %)*



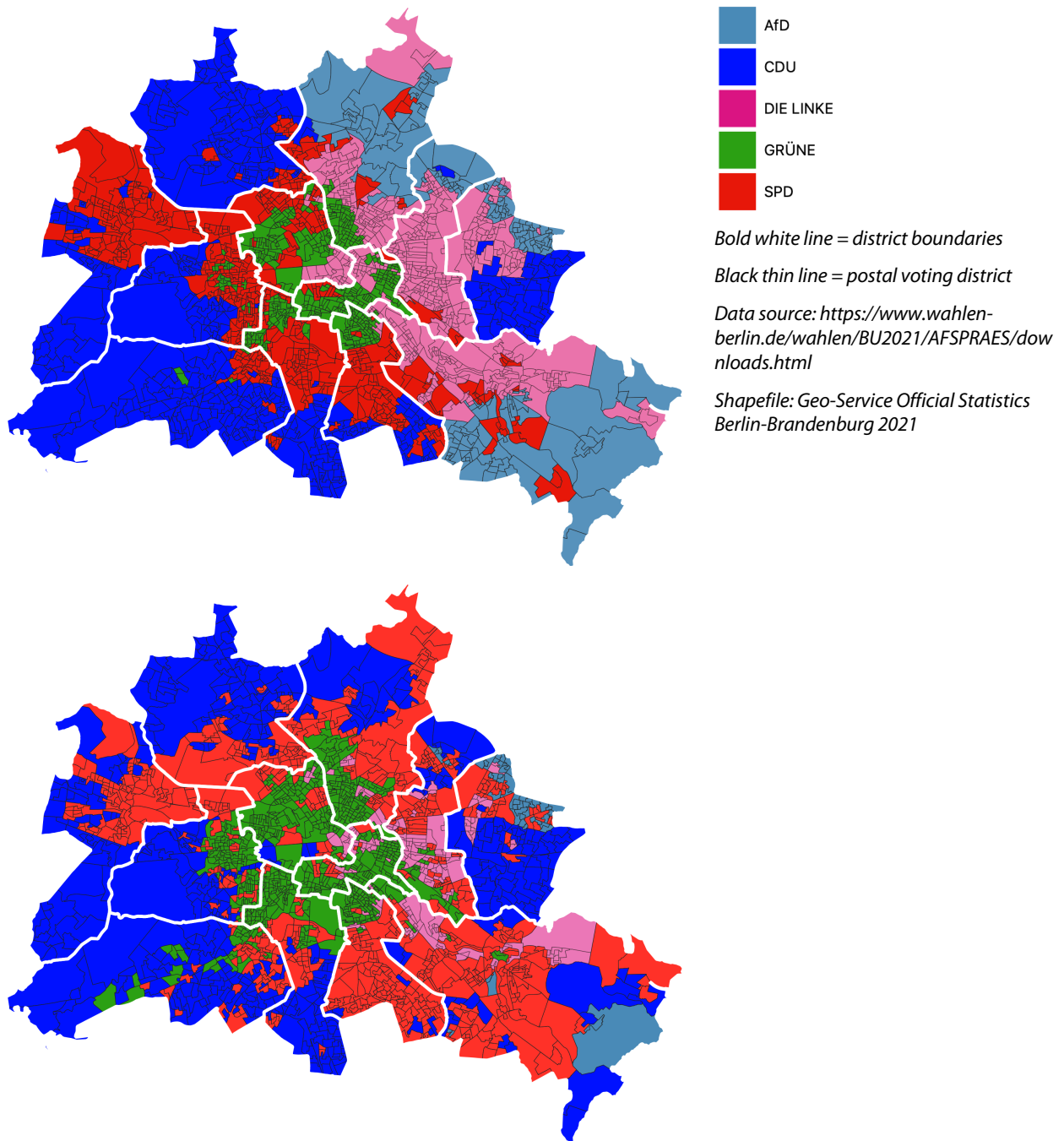
Source: <https://www.wahlen-berlin.de/wahlen/BU2021/AFSPRAES/index.html>; <https://www.wahlen-berlin.de/wahlen/BE2021/AFSPRAES/index.html>; own calculations /; *preliminary results

In order to analyze the election results in the light of previous elections, they must be recalculated³³ on the basis of the polling station and constituency boundaries valid in 2021. Postal PS and in-person PS are organized hierarchically in a 1:n system: a postal voting district has one postal PS and n in-person polling stations. For the analysis, this means that the lowest level of regional disaggregation is the postal voting

³³ The re-calculation is done by the State Official Statistics Office.

district in order to obtain a complete picture of voter behavior in this area. Figure 8 illustrates the regional changes.

Fig. 8: (top) Strongest party 2nd vote by postal voting districts 2016 final results; (bottom) 2021 preliminary results



9. Representative Election Statistics

In Germany, representative election statistics for the Bundestag and Berlin elections are conducted by the Office for Official Statistics. For this purpose, a 5% sample of polling stations and postal ballot polling stations is selected. The ballots in these PS contain further information about the age group of the voter, the gender of the voter (male or diverse/female). After the final election results are published, the ballots are analyzed by the statistical office.

Election turnout is seen as a simple indicator of acceptance of the political system. In principle, children and young people should be introduced to the functioning of representative democracy at an early age. In Germany, institutional responsibility lies in the hands of the schools. Furthermore, the federal and state

centers for civic education³⁴ have programs specifically for young people in addition to their education in schools. These centers are also responsible for the Wahl-O-Mat (Election-O-Mat), which was first available in 2002³⁵: all the election programs of the parties running for office are used to generate around 40 questions for the user. These are to be answered with "I agree / I am neutral / I disagree." The evaluation of the answers then shows the degree of agreement with the respective parties.

The first age group comprises first-time voters aged 18 to 20. Figure 9 illustrates that their turnout is always below average in their first election and that the rate even goes down further in the next election. This is true for each election year. Also, for the Bundestag election, the turnout rate for the second-time voters is less than for the first time but the effect is not so large.

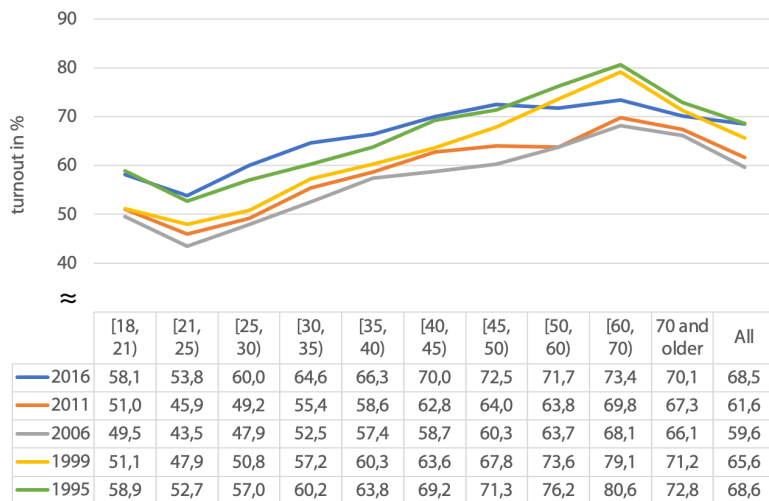


Fig. 9: Turnout by age group and year for Berlin House elections in % of all voters in the respective elections

Data source: Statistical Office Berlin-Brandenburg, https://www.statistischebibliothek.de/mir/receive/BBSerie_mods_00001142; own calculations [accessed 30.8.2021]

The ballot papers for the Bundestag election and the election to the Berlin House of Representatives differ: on the ballot paper for the Bundestag election, voters cast both their first and second votes. In the Berlin election, on the other hand, there are separate ballots for these two votes. Thus, it is possible only for the Bundestag election to analyze whether voters vote for a candidate of a different party with their first vote than the party they give their second vote to (vote splitting).

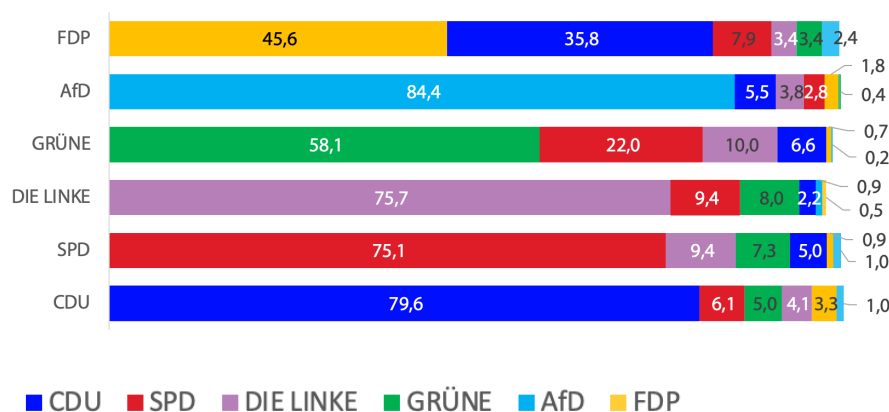


Fig. 10: Analysis of the combination of the 1st and 2nd vote Bundestag election 2017 in Berlin

Reading example: Voters that have chosen to vote for the Green Party (GRÜNE) with the 2nd vote, select with the 1st vote in 58,1% also a candidate of the Green party, to 22% a candidate of the Social Democratic Party (SPD) etc.

Data source: Statistical Office Berlin-Brandenburg, https://www.statistischebibliothek.de/mir/receive/BBSerie_mods_00000650, own calculations [accessed 30.8.2021]

³⁴ <https://www.bpb.de/die-bpb/138852/federal-agency-for-civic-education> [accessed 2.9.2021]

³⁵ <https://www.bpb.de/politik/wahlen/wahl-o-mat/bundestagswahl-2021/>; https://www.wahl-o-mat.de/bundestagswahl2021/app/main_app.html [accessed 2.9.2021]

It happens again and again that voters cast invalid ballots. In the Berlin House elections 2016 in average 1.6% of all voters casted an invalid ballot for their 2nd vote. In the age groups 25 to 70 years old the rate is under average. For the voters 70+ it is with 2.1% over average. Figure 11 shows the heterogeneous regional situation with some overlap with the poorer residential areas in Berlin (fig. 3). Since no data are available at this highly regionalized level for further sociodemographic analysis, the analysis must remain at this illustrative aggregate level.

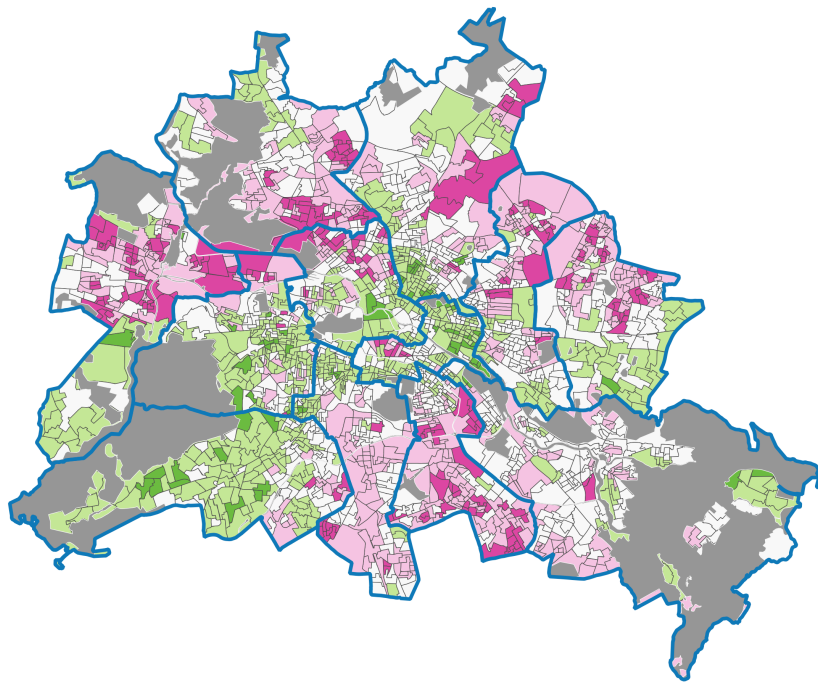
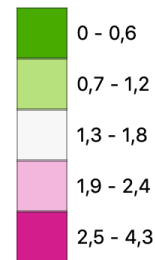


Fig. 11: Invalid ballots casted in the postal ballot districts of the Berlin House election 2016 in % of all voters in the respective area



Blue line: District borders

Data source: Statistical Office Berlin-Brandenburg, <https://www.wahlen-berlin.de/wahlen/BE2021/wahlstrukturdaten.asp>; own calculations [accessed 30.8.2021]

Shapefile: Geo-service Official Statistics Berlin-Brandenburg 2021

For some of the regions with high rates of invalid ballots, it is known from other scientific work (Rockmann 2019³⁶) that education level is low. When analyzing the ballots, two groups of reasons for invalidity were identified: The ballot was not marked / the entire ballot was crossed out (57.8%). The latter is sometimes accompanied by statements such as "I don't want them all," indicating intentional invalidation. The second reason is that more than one choice was made (33.7%), possibly due to uncertainty about what to do³⁷.

³⁶ Rockmann, U., Leerhoff, H., & Butler, J. (2019). Evidence based indicators for local educational monitoring. In ISI World Statistics Congress Proceedings (pp. 1-6) <https://nbn-resolving.org/urn:nbn:de:0168-ssoar-64209-5>; Rockmann, U., & Leerhoff, H. (2018). Educational access and transitions of children aged 0 to 18 years in the district of Berlin-Mitte - 1st project report: A characterization of the district and initial findings. <https://nbn-resolving.org/urn:nbn:de:0168-ssoar-58677-6> (in German language only)

³⁷ Since 2020, a brochure in simple language is available for the elections. The brochure is aimed in particular at people with cognitive impairments. In 2021, it explains on 48 pages the Bundestag elections, the elections to the House of Representatives and the BVV elections, as well as the referendum in Berlin on September 26, 2021 - richly illustrated and in easy-to-understand language. The Berlin Action Alliance for People with Disabilities - "The Blue Camel" publishes the publication with the cooperation of the State Election Commissioner and the Berlin State Center for Political Education. See: <https://www.berlin.de/wahlen/pressemitteilungen/2021/pressemitteilung.1116431.php>; on Federal level see – in German language only: <https://www.bundeswahlleiter.de/info/leichte-sprache.html> [1.9.2021]

10. Outlook

The way elections are conducted in Germany, and thus also in Berlin, has proven robust over decades and enjoys a great degree of trust. But times are changing, risks are increasing in organizational implementation, and trust is easy to lose. Moreover, elections consume a lot of human resources, especially in the preparation phase. Enough reasons to think about some changes in implementation and some more IT support without risking too much vulnerability.

- One project³⁸ is already underway that will provide some relief in terms of human resources: For a petition for a referendum, for some parties and single candidates it is necessary to collect signatures of support. To be successful with a petition, 7 % of eligible voters must give their support³⁹. Currently, signatures, including residential addresses, are collected on a paper form, with a maximum of five signatures per form. The initiators of the referendum submit the forms to Berlin's election administration, and the districts must then verify that all signers were eligible. The check requires a manual query of the data in the residents' register. This procedure must be carried out within a certain time frame and is very staff-intensive. The aim of the project is therefore also to offer a way to support signatures via the Internet.
- Also processing the postal ballots costs many human resources. Furthermore, the storage of all the postal ballots till election day is not without risk of a physical damage. Therefore, it is an option to introduce some more technical equipment and centralize the postal voting procedure for all districts in Berlin. Postal processing that reads the polling card numbers from the envelopes, stamps the envelopes with the current date, and sorts them by precinct/election district, would save a great amount of work time, and further secure the postal voting process. In this way, it is possible to check all voting card numbers to see if they have been issued and are therefore valid. In addition, the counting process—at least in the postal polling stations—can be accelerated and improved in terms of quality by using scanning machines.

These and other measures do not call into question the independence of the constituencies.

³⁸ Project Digitization Direct Democracy (Berlin Budget https://www.berlin.de/sen/finanzen/haushalt/downloads/haushaltsplan-2020-21/band04_2020_2021_epl-05.pdf; Item of the budget 81240, Fkt. 043; page 30)

³⁹ 7% of eligible voters: about 170,000 persons; Law on Citizens' Initiatives, Petitions for Referendums and Referendums (Gesetz über Volksinitiative, Volksbegehren und Volksentscheid: Abstimmungsgesetz - AbstG); <https://gesetze.berlin.de/bsbe/document/jlr-VAbstGBErahmen> [accessed 6.9.2021]