

FACT SHEET ON GERMANY

Information supplied by Sabine Lang, based on her paper for the Workshop on Legal Struggles and Political Mobilization around Gender Quotas in Europe, September 2014, Florence.

CONSTITUTION
Constitutional gender equality clause, including constitutional parity provisions.
<p>The German Basic Law as amended in 1994 states in Article 3 [Equality before the law]</p> <ol style="list-style-type: none">(1) All persons shall be equal before the law.(2) Men and women shall have equal rights. The state shall promote the actual implementation of equal rights for women and men and take steps to eliminate disadvantages that now exist.(3) No person shall be favoured or disfavoured because of sex, parentage, race, language, homeland and origin, faith, or religious or political opinions. No person shall be disfavoured because of disability.
Constitutional reform
<p>Historically, the German state of North Rhine-Westphalia adopted the first de facto quotas in its Affirmative Action Law for Public Administration in 1989. Other German States such as Berlin, Bremen, and Hamburg followed. The focus of public debate became what kind of quota regulations to establish. Initially, states put forward moderate decision quotas in case of equal qualification. Later, some states stipulated goal quotas to be reached within a set time on different levels of administrative jobs.</p>
Constitutional/Supreme Court case law on quotas
<p>The most influential decision for German quotas in public administration was handed down from the European Court of Justice in the 1995 “Kalanke” case (ECJ Case C-450/93, Kalanke v. Freie Hansestadt Bremen, 1995 E.C.R. 1-3069, 1-3072, [1996] 1 C.M.L.R. 175, 191 (1995)). The ECJ ruled that the strict equal opportunity law in the state of Bremen violated European law, because it provided for an automatic preference for women in case of equal qualification – an automatism that the Court saw as evidence for discrimination against men. The Court demanded that quota laws include hardship clauses and that each decision needed to be based on an evaluation of the specific circumstances of the individual applicant. In 1997, a second German case involving quotas in public administration came before the ECJ (Case C-409/95, Marschall v. Land Nordrhein-Westfalen, 1997 E.C.R. 1-6363, 1-6385-86, [1998] 1 C.M.L.R. 547, 565-66 (1997)). In the Marschall Case, the Court did not reject quota regulations within the North Rhine-Westphalian positive action plan, arguing that as long as the decision for preferring a woman is taken on a single case basis (“Einzelfallprüfung”) considering the merits of each individual candidate, quotas are legal. Since the positive action plan of North Rhine-Westphalia included such a single-case provision, the Court upheld lower court decisions and confirmed the view that “equal employment policies could be built on active preferential treatment of women”. The Marschall Case since has become the litmus test for positive action plans and quota regulations across Germany. Finally, in 2000, the ECJ upheld the legality of decision quotas, goal quotas as well as fixed quotas for training positions in the Hesse Statute (C-158/97 Georg Badeck and Others ECR [2000] I-01875). The Court argued that since the Statute did not give unconditional preferential treatment to women and utilized fixed quotas only for very limited purposes, it operated within European Law. The Court stipulated that the measure did not exclude men from employment. It merely improved the chances of female candidates to secure employment in the public sector.</p>

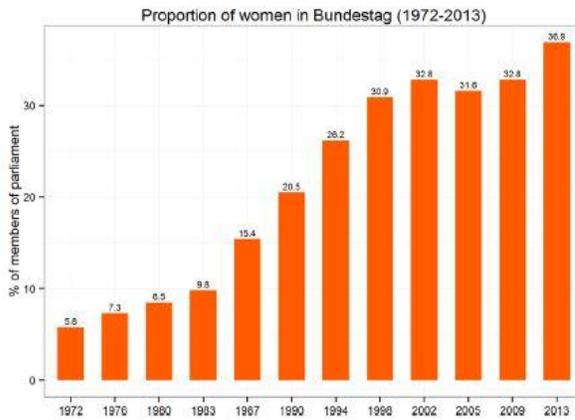
NUMBERS

Number of female MPs in both chambers

Yet despite consensus among the major parties that quotas are needed to break up traditional male party structures and a gendered selection bias, in the decade between 1998 and 2009, Germany could not cut through a roughly one third women glass ceiling for women in the Federal Parliament. It is only the recent election of 2013 that gave women's representation another push, increasing parliamentary representation in the Second Chamber by roughly 4% from 32.8% to 36.9%. In the First Chamber, the Deutsche Bundesrat, women made up 37.5% in 2014.

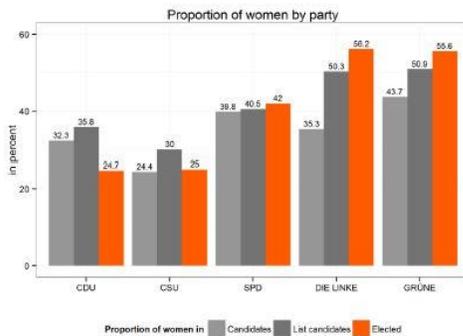
The following graphs are drawn from Giebler, Heike/Spittler, Marcus (2014) "Review of the Bundestagselection 2013: FDP Out – Women In?" in: Wissenschafts-Zentrum Berlin fuer Sozialforschung: Democracy Blog at democracy.blog.wzb.eu/author/gieblerspittler/ (access 7/13/14)

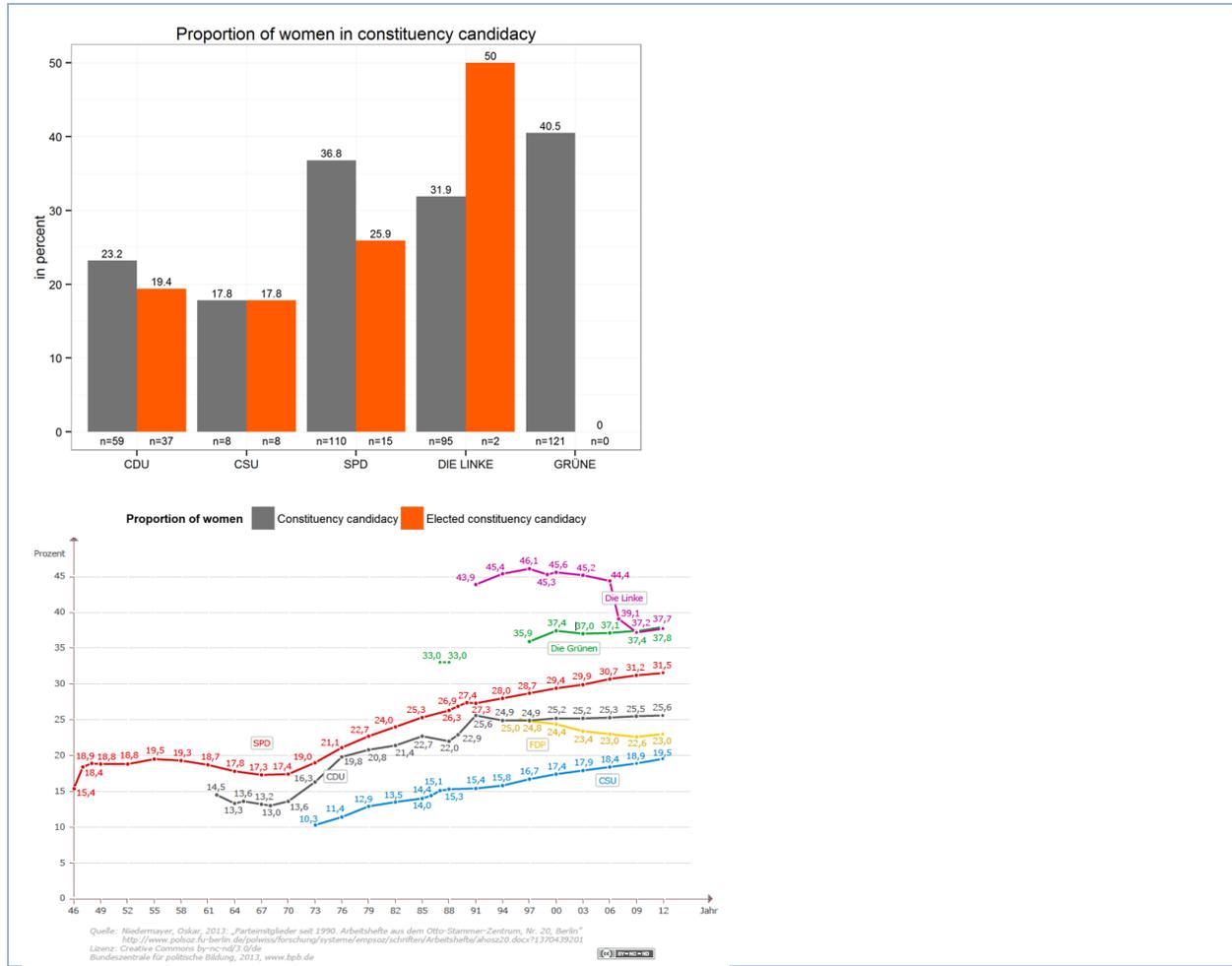
Figure 1 Proportion of women in German Parliament 1972 - 2013:



Source: Giebler/Spittler 2014

Figure 2 Proportion of Women in German Parliament 2013, by party





Number of women in boards of biggest publicly listed companies

According to a study by the German Institute for Economic Research (DIW), in 2012 women held only 4% of CEO positions and 13% of corporate board seats in the top 200 German companies (DIW/Holst and Schimeta 2013). The ‘Women on Board’ Index calculated 18.93% women on the boards of the top 120 companies in 2014 (www.fidar.de/wob-index)

POLITICAL and PARTY QUOTAS

Existence of voluntary party quotas and other schemes

Starting with the entry of the Green Party into the Federal Parliament in 1986 and their decision to institute a 50% quota, most political parties established some form of quota in their party statutes – the exception being the Liberals (FDP). Whereas the Green Party zipped their seats, the Social Democratic Party SPD decided on a 33% quota in 1988 and a 40% quota in 1996. The Christian Democrats (CDU) established a voluntary ‘quorum’ of 33% of party list and party office seats for women

The major problem with German party quotas is compliance. In the 2013 Federal Elections none of the parties did fulfil their quota in terms of nominations for direct or constituency candidates.

Generally, parties with ‘zipper systems’ in candidate selection (SPD, Linke, Greens) do better than parties with mere quorum guidelines (CDU, and, most recently, the CSU).

The issue of compliance and sanctions is currently a rising topic among German feminist politicians and gender advocates. The Social Democratic Women’s Organization is demanding that lack of compliance be sanctioned

with the withdrawal of party funds. Others argue that candidate seats should remain open until a woman is being selected in cases of underrepresentation.

Parallel to the mobilization for party quotas in the mid-1980s, feminist insiders in public administrations pushed together with women's movements activists and center-left female Social Democrats and Greens to support positive action plans with quotas for women in sub-national (Länder) public administrations. The first comprehensive women's equality law was created in North-Rhine Westfalia in 1989, and it combined a decision quota with a goal quota of 50% for women employees. The left-leaning city states of Berlin, Bremen and Hamburg followed in 1990 and 1991, also with combined decision and goal quota regulations, stipulating that in cases of equal qualification and professional achievements, women should be hired up to a 50% participation on the entry level and according to the percentage of women in the next lower ranks on higher level promotions, thus being an early iteration of the cascade quota model. Particularly noteworthy for the time is paragraph 9.2 of the Hamburg Law of 1991. It defined qualification not merely as job related performance, but asked public employers to consider experiences from family work as part of their employment decision.

The revision of Art. 3 of the German Basic Law in 1994 included a provision that required the state to take positive action against underrepresentation of women, also resulted in the First Federal Equality Law for the Federal Public Administration and the Court System (FFG Women Equality Law). The FFG included provisions for equal representation of women on all boards where the federal state is involved (Article 11 FFG: Federal Board Recruitment Law). In 2001, the FFG was amended into a Federal Equality Law BGleIG (BMFSFJ 2011: 9). Article 8 of this BGleIG includes a provision that in professional areas where women are underrepresented and in case of equal qualification, women have to be selected unless there is evidence of reasons that would advantage the male candidate.

With the Federal Equality Law, the number of women in leadership positions of the Federal Administration has slowly increased to now 30%. Yet if one breaks down the category of 'leadership position' and focuses on the most prestigious and influential offices, the picture changes: In 2009, only 3% of Deputy State Secretaries in Federal Ministries were women and only 14% of Administrative Directors (Abteilungsleiter) were female (ibid BMFSFJ 2011: 32)

Existence of soft measures in politics

On the federal level, neither the Federal Equal Opportunities Law of 2001 nor the General Equal Treatment Act (also called antidiscrimination law) of 2006 had quota provisions. Only with the Federal Equality Act (Bundesgleichstellungsgesetz) of 2009 did Germany establish decision quotas for women in federal public administration. The 2009 law also stipulates contract compliance of firms that have contracts with the German state, in effect providing for the first time substantial inroads into the business sector on the federal level.

Existence of hard legislated electoral quotas

NONE

Existence of Public board quotas

The federal law to increase women's representation on federal boards and on boards with federal participation (BGremBG) shows an equally slow traction. The Law stipulates that the federal level has to actively take action to ensure equal representation of men and women on public boards (paragraph 1 BGremBG) The law calls for a dual nomination of one woman and one men to every open board slot. The deciding level then has to take into account underrepresentation of one sex (paragraph 5 BGremBG). In 2009, 24.5% of the 5673 public board positions that the federal level is involved in were occupied by women. If one would discount the 56.9% female representation on the boards of the Federal Ministry for Family and women this figure would easily fall below 20% (BMFSFJ 2011: 130). Thus, we see a similar lack of enforcement capacity of a legal framework that lacks effective sanctions.

CORPORATE BOARD QUOTAS

Existence of soft Corporate Board quotas/measures

Even though the issue of women's underrepresentation on Corporate Boards had been part of the German public debate since the early 2000s, the Social Democratic Chancellor Schroeder as well as Conservative Party Chancellor Merkel had been resisting any stark measures. Both governments appealed to German business to voluntarily advance women on Corporate and Executive Boards. In 2010, the German telecommunications company Deutsche Telekom was the first listed corporation in Germany to voluntarily introduce a binding 30% quota by 2015 – but its initiative remained a singular endeavour.

Existence of hard Corporate Board quotas

When in November 2012 the EU Commission proposed a 40% quota for the underrepresented sex in non-executive board member positions by 2020 (EU Commission 2012), Chancellor Merkel ordered the Berlin representation in Brussels in blunt language to “immediately – and on diplomatic levels – promote the German position” and ensure the “rejection of the proposed guidelines”. Whereas the European Parliament voted for the initiative, the Merkel government was able to stop the Directive in the Council.

In a strong showing of trans-party alliance, on September 21, 2012, the Upper Chamber Bundesrat, with the support of two female conservative Länder Governors, proposed a federal law that would require 20% women on corporate boards by 2018 and 40% by 2023. The Bundesrat initiative included substantial fines for noncompliance such as tax increases as well as public disclosure. Social Democratic Länder Hamburg and Brandenburg initiated the law, but it passed the First Chamber (Bundesrat) with the votes of Grand Coalitions led by Conservatives of Saarland and Saxony-Anhalt before being rejected by a liberal-conservative majority in the Second Chamber in April 2013.

A compromise was reached in spring 2013 that entailed writing mandatory quotas for business into the party program of the Conservative Party for the 2013 election and a quota of 40% to take effect in 2020. When the NYT commented that “in a rare political setback for the world's most powerful woman, Chancellor Angela Merkel on Thursday found herself forced to give in to a rebellious bloc in her own party” (NYT 22 4/18/2013), it was left aside to what degree the combined force of the Länder initiative and strong EU support had provided the seeds for this success. Even if the Merkel government could fend off mandatory quotas before the election in 2013, it was forced to give in to their own women's lobby and establish quotas by 2020 in case of business inertia.

With the establishment of a Grand Coalition government in the fall of 2013, the topic of CBQ gained additional traction. Social Democrats pushed for a hard CBQ with sanctions. Such a quota was adopted by the German Parliament in March 2015 and will go into effect in 2016. As of 2016, companies registered on the German stock exchange will be required to have at least 30% women on their corporate and public boards. In case of non-compliance, an ‘empty chair’ policy is being required until a given seat is being filled with the underrepresented gender. Additionally, about 3500 large businesses will have to submit plans for elevating more women into top corporate positions.

Even though the CBQ law is being hailed as a step in the right direction, it has its limits: It only applies to about 120 large firms in Germany that are publicly traded and fall under co-determination rules.

The main opposition to the CBQ Law came from the Liberal Party as well as from some of the Heads of German Industry, such as from car makers Mercedes and VW and pharmaceutical giant Fresenius.

QUOTAS IN OTHER DOMAINS

Legislated or voluntary measures in other domains as executive, judiciary, universities, sports federations, trade union, professions, political party structure, etc.

Mostly soft quotas within affirmative action plans were introduced for state-financed institutions and facilities, and here in particular for the advancement of women professors in the university system. The German Science Foundation has issued guidelines that women should be awarded equal shares of grants. Programs that advance women professors have been put in place in several Laender of federalized Germany and have also been pushed by way of several state programs. In recent years, women journalists have founded the initiative 'ProQuote', and women medical doctors the initiative 'ProQuote: Medizin' to demand equal representation on the top posts of either profession.

CONTAGION and CONNECTIONS

Contagion between different domains within the country

There has been a clear contagion effect in several directions:

- from left to right parties
- from EU-level debates on CBQ to national level legislation
- from subnational initiatives in the federal system to national policies, and here in particular in the area of subnational equality legislation.

Connections with other countries/ international dynamics

The developing EU initiative in the early 2010s was decisive in creating momentum for quotas in the German corporate sector.

COUNTRY SPECIFICS

Best practice

Arguably, German Unification and the traditionally stronger involvement of East German Women in political affairs contributed to a stronger presence of women in politics in the 1990s.

The German case thus illustrates quota diffusion based on (1) feminist commitment, (2) competitive voter orientation of parties; (3) sub-national policy experimentation as well as (4) transnational pressures from the EU.

Failures

The main failure in the German case is the discrepancy between binding and/or voluntary stipulations and actual practices.

A culture of minimalist compliance has pervaded the public sector and parties. Male institutions and organizations tend to exhibit more passive resistance than vocal opposition, thus making it difficult for feminists to engage effectively with non-compliance. A lack of sanctions in case of non-compliance as well as intricate strategies to circumvent quota decisions add to a sense among German Feminist activists that quotas are one, but by no means the only strategy for gender equality in public life. As comparative research has established that quotas work best if adequate and compulsory mechanisms for compliance as well as stringent means for sanctioning non-compliance are in place (Davidson-Schmich 2006: 212; also Dahlerup 2006), the challenge for feminist party activists is clearly how to organize compliance better.

Recent legal expertise on the practices of implementing quota regulations commissioned by North-Rhine Westphalia (Papier/Heidebach 2014) stipulates that public offices have adapted to the current policies by simply not letting cases of equal qualification even materialize. In the day-to-day practices of public administration hiring, the criteria for jobs and advancement are being micro-adjusted to a degree that cases of equal

qualification between a male and a female applicant are systematically avoided. The Papier Expertise suggests that alternative ways of women's advancement be considered and in particular the legal language concerning sanctions for non-compliance needs to be tightened.

Empirically difficult to verify are allegations by gender advocates that the case-based approach to decision quotas has produced spurs of creativity among male bureaucrats in leadership position to draft job descriptions geared towards male candidates they want to advance. Sanctions are either too vague or not strictly enforced and thus do not foster stronger compliance. The lack of sanctions as well as intricate strategies to circumvent quota decisions add to a sense among German feminist activists that quotas are one, but by no means the only strategy for gender equality in public life.

A new Eurosceptic party called "Alternative for Germany" which – with 4.7% - barely missed the 5% threshold for representation in the Federal Parliament elections of 2013, runs among other topics on an anti-quota agenda.

This sign of a young AfD member reads: "I am not a feminist because I want to achieve my goals through effort and not through a quota." The party used this slogan in a recent campaign for the European elections and got 7.1% of the German votes.