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Downsizing the German Bundestag

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Summary

Abstract	4
1. Introduction	5
2. The size of the Bundestag and the electoral system	6
3. The allocation of seats in practice	9
4. Reforming the electoral system for the Bundestag: A trilemma	13
5. Downsizing proposals and their consequences	15
6. Conclusion	18
Bibliography	19
About Luiss School of Government	22
Submission Guidelines	23
SoG Working Papers	24

Abstract

After the last election in 2017 the German Bundestag reached the record size of 709 parliamentarians. The quasi-automatic increase of the number of MPs at every election is the product of rulings by the Federal Constitutional Court, inter-party bargaining and a changing party system. After describing the rules and their implementation, this paper analyses reforming the electoral system to downsize the Bundestag as a “trilemma” between the three conflicting priorities of 1) proportional representation of parties, 2) a close relationship between MPs and constituents, and 3) proportional representation of regions. The paper shows that no reform proposal has so far been able to ensure a smaller parliament, gather sufficient support and solve the trilemma. An upper limit for the number of parliamentarians seems to be the only option for downsizing the Bundestag on which the current governing parties might be able to agree in time before the 2021 election.

1. Introduction*

In 2017 the German Bundestag reached the size of 709 MPs – with 705 members even the post-Brexit European Parliament is smaller. German MPs are elected through a mixed-member proportional system, whose original design dates back to the 1950s. The current electoral law is the outcome of both inter-party bargaining and judgements from the Federal Constitutional Court, but the increased size of the German Bundestag is also the result of a change in voting patterns and a transformation of the party system.

The discussions about downsizing the German Bundestag have reached stalemate and the next federal election, scheduled for 2021, is likely to be held under the current rules. The city of Berlin is already preparing permissions to set up temporary container offices in order to be able to accommodate an even higher than the current number of MPs. While the public backlash against an ever bigger and more expensive parliament was still relatively weak in 2017, the German Bundestag would consist of over 800 MPs, if the result of the next election reflected the opinion polls of early 2020. On top of all this, it is very difficult to imagine how 100 additional seats can be added to the plenary hall in the Reichstag building.

This paper examines the development of the size of the Bundestag and revisits the German electoral system as well as the seat allocation mechanism. Any reform of the electoral system faces, as the paper argues, a trilemma between three competing priorities: the proportional representation of parties, a close relationship between MPs and their constituents, and the proportional representation of regions. The most prominent recently tabled proposals for reducing the number of MPs try to respond to these competing priorities, but neither of them has been able to gather widespread support. Unlike in many other countries, German MPs must only agree on changing the electoral law and it is *not* necessary to pass a constitutional amendment. Despite the urgency to agree on a reform that would actually only bring very minor modifications to the existing mixed-member proportional system, the case of Germany shows how difficult downsizing a legislature can be.

* An earlier version of this paper was presented at the conference “Downsizing Legislatures. Experiences, Proposals and Effects”, organised by LUISS School of Government, CESP-Center for Parliamentary Studies and the Jean Monnet chair on “Understanding European Representative Democracy” in Rome on 24 January 2020. I want to thank Professor Nicola Lupo, the LUISS School of Government, and the Center for Parliamentary Studies for kindly hosting me on that occasion and all the participants at the conference for their insightful comments on my presentation.

2. The size of the Bundestag and the electoral system

Germany's electoral system for the Bundestag has emerged from a series of reforms and is "more the product of elite bargaining than of popular pressure for or against specific electoral systems" (Scarrow 2003: 57). The mixed-member proportional system used for electing the MPs at the federal level even turned out to be a model for countries around the world (see Zittel 2018). The increase in the number of MPs in 2017 was triggered by the higher number of parties that entered parliament (seven parties in 2017 compared to five in 2013) and an asymmetric distribution of votes which, as explained below, led to a high number of additional seats.

2.1 An ever-increasing number of MPs?

Over time, the size of the German Bundestag has grown. While 410 MPs were elected at the first federal election in 1949, the number of parliamentarians rose to 509 in 1953, to 519 in 1957 and subsequently remained stable. In order to accommodate MPs from East Germany after reunification, the regular size of the German Bundestag was increased to 656 in 1990. A first downsizing took effect in 2002 when the number of constituencies was reduced by about 10% (from 328 to 299). The number of MPs reached 614 in 2005, 622 in 2009, 631 in 2013 and the record of 709 MPs after the 2017 election (see also Zeh 2018). This is the result of the current electoral rules in combination with changing voting behaviour and increasing fragmentation of the German party system. With respect to this built-in dynamic of the number of MPs, Germany is an extraordinary case.

In comparison with other European countries, the lower chamber of Germany is quite big, and the number of inhabitants represented by one MP is also among the highest in Europe (see Ehrhard and Rozenberg 2018; Zeh 2018). Among the ten EU countries with the highest number of inhabitants per MP in the lower chamber, Germany is currently only overtaken by Spain where one MP represents roughly 133.000 citizens (see Table 1). However, France is contemplating a constitutional revision to decrease the size of its lower chamber by 25% (Rozenberg 2020). In Italy, a constitutional referendum to reduce the number of MPs (from 630 to 400 in the Chamber of Deputies and from 315 to 200 in the Senate) had already been called for 29 March 2020 but was postponed because of COVID-19.

Table 1: Lower chambers of European countries in comparison

Country	Population (Number of inhabitants)	Number of MPs	Number of inhabitants per MP
Czech Republic	10.625.695	200	53.128
Romania	19.473.936	329	59.191
Belgium	11.422.068	150	76.147
Poland	37.978.548	460	82.562
Italy	60.431.283	630	95.923
United Kingdom	66.488.991	650	102.291
Netherlands	17.231.017	150	114.873
France	66.987.244	577	116.096
Germany	82.927.922	709	116.965
Spain	46.723.749	350	133.496

Source: Own calculations, based on the IPU Parline database on national parliaments.

2.2. The electoral rules for the German Bundestag

Currently, 50% of the regular number of 598 MPs are elected directly in 299 single-member constituencies, the other half is elected via closed party lists. At the federal election, each voter has two votes: the *first vote* determines which candidates are sent to the Bundestag directly from the constituencies; the *second vote* is cast for a party list.

Parties only participate in the proportional distribution of seats if they gained at least 5% of the votes nationally or at least three constituencies. Individuals who have won their constituency by simple majority can always take up their seat. As the next step, the number of seats for each party is determined on the basis of the share of *second votes* at the national level. This step is repeated for each region. Seats are allocated to each party in line with the proportion of second votes that it received. Candidates on the parties' regional lists are, however, only taken into consideration after all candidates who won constituencies are deducted from the number of allocated seats for the respective party. To sum up, the *first vote* thus in general only determines *who* fills the seat for a party, it does not determine this party's share of the seats.

But two important specificities have a major impact on the allocation of seats and lead to the creation of additional seats beyond the regular number of 598 MPs. On the one hand, so-called overhang seats (“Überhangmandate”) occur if a party wins more seats or constituencies in one region¹ than the number that would actually correspond to its share of *second votes* in that region and can therefore send more MPs to the Bundestag. This follows the principle that every MP who is elected in a constituency takes up a seat. On the other hand, all other parties are compensated for any overhang seats: In order to ensure that the composition of the Bundestag is fully proportionally representative, so-called balance seats (“Ausgleichsmandate”) are created. The latter mechanism was introduced due to judgements by the Federal Constitutional Court.

From 1949 to 1990, a total of (only) 17 overhang seats was created in 11 federal elections. The number of such additional seats rose to 6 in 1990 and 16 in 1994. In 1997, the Federal Constitutional Court ruled that overhang seats were constitutional. There were 13 overhang seats in 1998, 5 in 2002, 16 in 2005 and 24 in 2009. Overhang seats increased and significantly stabilized government majorities in the Bundestag in 1994, 1998 and 2002 (see Saalfeld 2005: 215).

In 2008, the Federal Constitutional Court to a certain extent revised its previous ruling from 1997 and decided that the effect known as “negative vote weight” was unconstitutional because parties obtaining overhang mandates would have risked losing mandates in the same or in another region if they had obtained a higher share of *second votes* in the election (Bundesverfassungsgericht 3 July 2008). The court referred to the 2005 election where the SPD could have claimed one more seat in the Bundestag, if roughly 19,500 fewer (!) *second votes* had been cast for this party.

A new procedure for allocating seats was subsequently also deemed unconstitutional by the Federal Constitutional Court in 2012 (Bundesverfassungsgericht 25 July 2012). The revised electoral law that afterwards entered into force before the 2013 federal election now compensates all overhang seats through balance seats, although according to that latest judgement up to 15 overhang seats would be permissible. Balance seats can also emerge solely to ensure fully proportional representation.

¹ The term refers to the seats of MPs who were elected in constituencies beyond the number of seats which the party was actually allocated on the basis of its share of the *second votes*.

3. The allocation of seats in practice

The effects of the electoral law provisions on the allocation of seats have been clearly visible in the federal elections of 2013 and 2017. They will also shape the size of the Bundestag at the next election and, according to estimates from early 2020, they could create the biggest Bundestag ever.

3.1 Federal election of 22 September 2013

In the 2013 election, a total of 4 overhang seats were created (all of them for the CDU) and 29 balance seats emerged (see Table 2). With a vote share of 4.7% and 4.8% respectively, FDP and AfD failed to pass the threshold and did not send any MPs to the Bundestag. If they had entered parliament, there would have been a higher number of overhang seats and balance seats because based on their proportions of *second votes* the other four parties would have obtained fewer mandates.

The 2013 election also shows the high complexity of ensuring full proportionality. Despite four overhang seats for the CDU, not this party, but its sister party CSU initially was the most-overrepresented party in the Bundestag: Its share of the *second votes* among the parties entering parliament was 8.8%, but the 56 seats allocated to the CSU corresponded to 9.3% of the seats. As a consequence, all other parties (including the CDU) received balance seats for the overrepresentation of the CSU. Interestingly, they do not receive balance seats for the four overhang mandates of the CDU, because the even CDU was still under-represented: Its share of the *second votes* among the parties entering parliament was 40.5%, but the 242 seats initially allocated to the CDU (the four overhang seats included!) only corresponded to 40.2% of the seats (see Behnke 2014: 22). Thus, the CDU received 13 balance seats in addition to 4 overhang seats. A total of 16 balance seats went to SPD, Left Party and Green Party (see Table 2).

Table 2: Seat allocation after the federal election of 22 September 2013

Political Group	Number of seats	Overhang seats	Balance seats
Christian Democratic Union and Christian Social Union (CDU/CSU)	311	4	13
Social Democratic Party (SPD)	193	-	10
Alternative for Germany (AfD)	0	-	-
Free Democratic Party (FDP)	0	-	-
Left Party (Die Linke)	64	-	4
Green Party (Die Grünen)	63	-	2
Total	631	4	29

Source: Bundeswahlleiter.de

3.2 Federal election of 24 September 2017

In the 2017 election CDU and CSU received 246 seats. 43 seats of them were overhang seats. Considering a total of 46 overhang seats, all but three of them went to CDU and CSU. The provision of balance seats compensated the other parties in order to ensure that representation was still fully proportional (taking into account the 5% threshold). Other parties therefore received 65 balance seats. This meant that 65 candidates on these parties' closed lists entered the Bundestag, too.

These two mechanisms led to an "oversize" Bundestag which consists of 709 MPs since the September 2017 election. The regular size would be 598, but 46 overhang seats and 65 balance seats came on top (see Table 3).

Table 3: Seat allocation after the federal election of 24 September 2017

Political Group	Number of seats	Overhang seats	Balance seats
Christian Democratic Union and Christian Social Union (CDU/CSU)	246	43	-
Social Democratic Party (SPD)	153	3	19
Alternative for Germany (AfD)	94	-	11
Free Democratic Party (FDP)	80	-	15
Left Party (Die Linke)	69	-	10
Green Party (Die Grünen)	67	-	10
Total	709	46	65

Source: *Bundeswahlleiter.de*

3.3 Predicted seat allocation based on current opinion polls

In late 2019 and early 2020, a Bundestag composed of more than 800 MPs seemed to be possible or even likely after the next election (see Pukelsheim 2019). However, the recent shifts in public opinion because of the COVID-19 crisis mean that if there was an election tomorrow, the next Bundestag would have 739 MPs (see Table 4) and be only slightly bigger than the current one.²

² The website www.mandatsrechner.de by Christian Brugger allows to calculate the size of the Bundestag on the basis of current public opinion surveys (last accessed on 16 May 2020).

Table 4: Seat allocation based on voting intention as of 15 May 2020

Political Group	Number of seats
Christian Democratic Union and Christian Social Union (CDU/CSU)	299
Social Democratic Party (SPD)	118
Alternative for Germany (AfD)	79
Free Democratic Party (FDP)	39
Left Party (Die Linke)	63
Green Party (Die Grünen)	141
Total	739

Source: Mandatsrechner.de, Forschungsgruppe Wahlen opinion poll of 15 May 2020. The calculation takes into account overhang seats and balance seats but does not list them separately.

4. Reforming the electoral system for the Bundestag: A trilemma

For decades, proposals for electoral reform were unable to find cross-party majorities and there was a “strong support for the status quo” (Saalfeld 2005: 224). In 2008 and 2012, however, the Federal Constitutional Court issued two verdicts against certain provisions of the electoral law, specifically against the mechanism for the allocation of seats (see section 2.2, above).

The changing voting behaviour in Germany turned overhang seats into something that could more easily tip the balance in favour or against a parliamentary majority for a governing coalition. Party system change has further increased the problem. A quasi-automaticity from the double trend of shrinking large parties and greater fragmentation leads to a higher overall number of MPs. There is no upper limit for the size of the Bundestag, because the electoral rules do not set a legal limit and the 5% threshold only creates a hypothetical mathematical limit. Public opinion is unfavourable towards a Bundestag with 700 or more MPs. This was just superseded by other factors such as the entry of the AfD into the Bundestag and the long negotiations on forming a new government in 2017.

After the last election, Wolfgang Schäuble, the Speaker of the Bundestag, therefore established an informal cross-party working group to make a proposal for changing the electoral law in order to downsize the Bundestag. But unsuccessful in finding a compromise, the working group broke up in April 2019 (see Jacob 2019).

There are four main avenues for reforming the electoral system for the Bundestag: 1) to reduce the number of constituencies, 2) to stop compensating a certain number of overhang seats with balance seats, 3) to introduce a maximum number of total MPs, and 4) to change the regular 50:50 ratio between MPs elected in constituencies and MPs elected via the party lists. Each of these avenues would have a downsizing effect.

The first avenue is to **reduce the number of constituencies**. Back in 2002, the number of constituencies was already cut by about 10% from 328 to 299. Any reduction of the number of single-member constituencies, of course, means redrawing constituency boundaries across the country.

A second avenue is to **stop compensating the first 15 overhang seats** through balance seats (the number of 15 seats comes from the 2012 judgement of the Federal Constitutional Court that allows for this number of seats to remain uncompensated). Currently all overhang mandates are compensated, but legally it is possible to exempt 15 overhang seats.

The third out of four possible avenues to reduce the number of MPs is to **introduce a maximum number of total MPs** – currently there is none. This would cap the total number of MPs at a certain level and no additional list candidates would enter that Bundestag once it has reached a pre-fixed number total of MPs. Alternatively the worst-performing constituency winners would not be allowed to take up their seat.

Finally, the fourth avenue is to ***change the regular 50:50 ratio between 299 MPs elected in single-member constituencies and 299 MPs elected via closed regional party lists***. In practice, balance seats and overhang seats already change the 50:50 ratio: 299 MPs (42%) were elected in constituencies while 410 MPs (58%) reached the Bundestag via their place on the respective regional party list in 2017.

This paper now proposes to look at the situation as a trilemma which is currently solved via an ever-increasing number of MPs in the Bundestag.³ A trilemma is composed of three competing priorities: Two competing priorities can be met at the expense of the third priority.

In the case of the size of the Bundestag the three competing priorities are, firstly, to ensure/maintain ***proportional representation of parties***; secondly, to ensure/maintain a ***close relationship between MPs and constituents***; and, thirdly, to ensure/maintain ***proportional representation of regions***.

4.1 Proportional representation of parties

The composition of the German Bundestag shall be fully proportional to the result of the election (in terms of the share of second votes of all parties that have reached at least 5% nationally or won at least three constituencies). According to this priority, all overhang seats shall therefore be fully compensated through balance seats.

4.2. Close relationship between MPs and constituents

The second priority is that the relationship between MPs, primarily that of the MPs elected directly in single-member districts, and their constituents shall ***not*** become less close through a reduction of the overall number of constituents that would increase the average number of citizens in a constituency and as well as its territorial size.

4.3 Proportional representation of regions

The third priority states that regions (16 Länder) shall be represented fully proportionally in the Bundestag with the regular number of seats for each region being exactly twice the number of constituencies. Any overhang seats and balance seats shall be calculated at the regional level and not at the national level.

³ Please note that a reversal of the electoral trends, a roll-back of party system change and decreasing political fragmentation in Germany would reduce (!) the overall number of MPs in the next Bundestag.

5. Downsizing proposals and their consequences

The debate about how to lower the number of MPs in the next Bundestag has been ongoing since 2017. Three major proposals to downsize the Bundestag have been put forward and gathered significant attention. In May 2019, Wolfgang Schäuble (CDU), the Speaker of the German Bundestag, made his ideas public (Deutscher Bundestag 17 May 2019). Deputy Speaker Thomas Oppermann (SPD) articulated his views a few months later (ZEIT ONLINE 21 September 2019). The three mainstream opposition groups (FDP, Left Party, Greens), finally, tabled their joint proposal in November 2019 (Deutscher Bundestag 6 November 2019). Each of these three proposals is presented in turn and a brief comparative assessment is made afterwards.

5.1 Overview of major downsizing proposals

5.1.1 Schäuble proposal

Wolfgang Schäuble proposed a reduction of the number of constituencies by 10% (270 instead of 299 single-member districts) and a modification of the 50:50 ratio according to which one half of the 598 regular MPs is elected directly in 299 constituencies and the other half via parties' regional lists. Importantly, his proposal also foresees not to compensate other parties for the first 15 overhang seats.

5.1.2 Oppermann proposal

Thomas Oppermann also proposed to reduce the number of constituencies and to modify the 50:50 ratio. The reduction would take place two steps: The initial cut would reduce the number of constituencies by 20 (to 279), another 20 constituencies would disappear for the following election (final number of constituencies: 259). The other elements of the electoral law remain unchanged.

5.1.3 Proposal by the opposition parties FDP, Greens and Left party

Just like the two previous proposals, the three opposition parties also proposed to reduce of number of constituencies and modify the provision that half of the 598 MPs are elected directly in 299

constituencies, the other half on the parties’ regional lists. Importantly, the calculation of balance seats happens at the national level and not for each region.

5.2. Comparison and assessment of the downsizing proposals

All three proposals do the following: They reduce the number of constituencies and they modify the provision that MPs are elected half and half. In terms of the trilemma, the three proposals make the relationship between citizens and constituency MPs less close. As a consequence they reduce the probability of overhang seats and balance seats and would have a downsizing effect on any future Bundestag (see Table 5).

Table 5: Comparison of the three proposals

	W. Schäuble (Speaker, CDU)	T. Oppermann (Deputy Speaker, SPD)	Opposition: FDP/ Left Party/ Greens
Number of seats	598+x	598+x	630+x
Number of constituencies	270	279 later 259	250
Overhang and balance seats	Yes, but less likely and no compensation for the first 15 overhang seats	Yes, but less likely	Yes, but a lot less likely

Source: Own elaboration.

Under the *Schäuble proposal*, the relationship between citizens and constituency MPs would be slightly less close, both overhang seats and balance seats would be less likely. Parties would no longer be fully proportionally represented according to their share of second votes at the federal level. The number of balance seats would be significantly lower (first 15 overhang seats not compensated). While the proposal would doubtlessly reduce the number of MPs, it would distort the currently achieved full proportional representation of parties.

Schäuble’s proposal actually favours CDU and CSU. These two parties win practically all constituencies (231 out of 299 in 2017) and therefore excessively benefit from overhang seats. If the first 15 overhang seats were not compensated, this would be a deviation from strictly following the principle of proportional representation and *de facto* means 15 extra seats for CDU and CSU. Such a provision,

although covered by the 2012 judgement of the Federal Constitutional Court, could theoretically tip the balance at the next election and help a CDU/CSU-led coalition to command a parliamentary majority.

In his role as speaker, Schäuble has thus not been fully impartial. But it would already be a major step for CDU/CSU to concede to a reduction in the number of constituencies, because these two parties win most constituencies and their MPs are very reluctant to accept lowering the number of constituencies.⁴

Under the *Oppermann proposal*, full proportional representation of parties would still be achieved. The two-step reduction of the number of constituencies is more far-reaching than in the Schäuble proposal and would ultimately cut them by 13%. The relationship between citizens and constituency MPs would be even less close; and due to the new rules governing the electoral law both overhang seats and balance seats would become less likely.

The *Opposition proposal* would also mean a less close relationship between citizens and the MP of their constituency. Overhang seats and balance seats would be less probable. In addition, regions would no longer fully proportionally represented according to their share of the population. This, in turn, would also lead to a lower probability of overhang seats and balance seats. In terms of reducing the number of constituencies (to 250), the joint proposal by FDP, Greens and Left party is certainly the most radical proposal. At the same time, it increases the regular number of MPs (to 630) and therefore significantly alters the 50:50 ratio between the two logics. In summary, these ingredients make overhang seats and balance seats a lot less likely.

The opposition proposal was debated in the Bundestag in November 2019 and the topic was the subject of another plenary debate in early 2020 (Deutscher Bundestag 29 January 2020). There were reports that the SPD seemed to think about collaborating with the opposition in order to reform the electoral system, but if the SPD did not seek a common position with its CDU/CSU coalition partner, this would constitute a serious blow to the Grand Coalition.

⁴ 185 out of 200 CDU MPs in the current Bundestag and all CSU MPs were directly elected in a constituency.

6. Conclusion

The six-party Bundestag of today has grown out of its three-party beginnings in the 1960s. The changes in the party system in conjunction with the 2008 and 2012 judgements of the Federal Constitutional Court have led to the existence of an “oversize” Bundestag with 709 MPs since 2017. Now time is running out to agree on a downsizing reform that would cut the number of constituencies for the next regular election in September 2021, because parties can hold their assemblies to elect the constituency candidates from June 2020 onwards.

In early 2020, the chances for a compromise were increasing but have not materialised (yet). The experience from other countries shows that agreeing an electoral reform can take some time.

The COVID-19 crisis has had a double-impact: On the one hand, it was not possible to agree on a reform by Easter. But on the other hand, at least as of May 2020, the urgency of the problem (the risk of a Bundestag with more than 800 MPs after the next election) has slightly decreased, because the expected size of the Bundestag is highly sensitive to shifts in voting preferences: If parties that win (most) constituencies also receive a relatively high number of *second votes*, then there is automatically a lower number of overhang seats (and balance seats). This happened when the voting intention for CDU/CSU rose to 40%.

There are certain elements that could facilitate an electoral reform of the Bundestag: The entry-into-force of any (major) reform could be delayed to the 2025 election and, furthermore, as proposed by Thomas Oppermann, the number of constituencies could be reduced in two steps.

For 2021, however, only one out of the previously presented four avenues still appears to be open: To limit the overall number of MPs. The opposition in the Bundestag does not support such a move, but can be outvoted, and it is far from certain whether the Federal Constitutional Court would validate a new electoral law with such a provision. Nevertheless, the governing parties seem to be willing to go into that direction.

One thing is therefore certain: The need to downsize the Bundestag and the need to simplify the electoral law, which has become overly complicated and almost incomprehensible for the ordinary citizen, will remain on Germany’s political agenda for the time being.

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Details of the author's institutional affiliation, full postal and email addresses and other contact information must be included on a separate cover sheet. Any acknowledgements should be included on the cover sheet as should a note of the exact length of the article. A short biography of up to 75 words should also be submitted.

All diagrams, charts and graphs should be referred to as figures and consecutively numbered. Tables should be kept to a minimum and contain only essential data. Each figure and table must be given an Arabic numeral, followed by a heading, and be referred to in the text. Tables should be placed at the end of the file and prepared using tabs. Any diagrams or maps should be supplied separately in uncompressed .TIF or .JPEG formats in individual files. These should be prepared in black and white. Tints should be avoided, use open patterns instead. If maps and diagrams cannot be prepared electronically, they should be presented on good quality white paper. If mathematics are included, 1/2 is preferred.

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The Luiss School of Government aims to produce cutting-edge work in a wide range of fields and disciplines through publications, seminars, workshops, conferences that enhance intellectual discourse and debate. Research is carried out using comparative approaches to explore different areas, many of them with a specifically European perspective. The aim of this research activities is to find solutions to complex, real-world problems using an interdisciplinary approach. LUISS School of Government encourages its academic and student community to reach their full potential in research and professional development, enhancing career development with clear performance standards and high-quality. Through this strong focus on high research quality, LUISS School of Government aims to understanding and influencing the external research and policy agenda.

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