



*“Grand Coalition” makes change possible*

# Germany on the brink of federal reform

BY HARTMUT KÜHNE

**Update:** On March 10, the Premiers of most of the 16 German *Länder* were ready to reform their country’s federal system. Speaking in the *Bundesrat*, Germany’s upper house, Berlin Mayor Klaus Wowereit of the Social Democratic Party spoke in favour of the reform, warning against “refighting old battles.” The Premiers of all the *Länder* ruled by the two coalition partners — Christian Democrats and Social Democrats — were in favour of the reform. While the reform is deemed likely to meet the necessary two-thirds majority of the *Bundesrat*, the chances are lower of it passing the *Bundestag*. If all members of the governing coalition in the *Bundestag* voted in favour, it would pass. On a free vote, the chances are considered much smaller. The reform proposal would give the *Länder* greater powers in exchange for their giving up their right to block federal legislation.

“It’s best not to watch how laws and sausages are made,” said Chancellor Otto von Bismarck. The founder of the German Empire knew whereof he spoke. For the “Iron Chancellor” not only understood both politics and economics, but also owned an estate in Pomerania where he presumably turned out sausages in quantity.

Today — just like their great-grandparents — Germans shy away from the sausage factory of politics. They really dislike politicians. Many politicians are even making speeches about a crisis in the German political system. Germans are expressing an “annoyance with politics.” They don’t understand their political system any more, and have no faith in it to solve everyday problems.

There are many reasons for this ennui. The economy is lagging, the country is in debt, and unemployment is growing. In short, the politicians are unable to solve the problems facing their constituents. But in Germany — unlike the rest of the West — there is a feeling that these problems may have something to do with the German federal system.

## Federal legislation often blocked

One quote says it all. The *Sachverständigenrat zur Begutachtung der Gesamtwirtschaftlichen Entwicklung*, a group of economics professors, wrote: “the practical structure of federalism creates a great or perhaps the greatest obstacle for the implementation of basic reforms.” The diagnosis is obvious. The federal government and the 16 *Länder* block

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each other’s actions and the entire political process moves agonizingly slowly. The most obvious example is the blockades that both houses of the federal legislature, the *Bundestag* and the *Bundesrat*, have erected against each other.

There are other problems, such as the slow-moving coordination between the federal government and the *Länder*. Former Education Minister Edelgard Bulmahn complained about the chaos created by putting conditions on everything: “The 16 *Länder* ministers, the federal education minister and the Science Council should not be the ones to debate how the roofs of university buildings are to be supported.”

This problem has been around for a long time, and it says something about how difficult it is to reform the German political process that only now is a solution being sought. At the end of 2003, a Commission for the Federal Political System – called “Kombo” by insiders – was created. The Kombo is composed of 16 governors of the *Länder*, plus the same number of members of the *Bundestag* in addition to federal ministers. Two political heavyweights led the negotiations, Edmund Stoiber, the governor of Bavaria and President of the Christian Social Union, and Franz Muntefering, leader of the Social Democratic Party in the *Bundestag*. But in the end it was all in vain. Sure, the Commission came very close to a compromise in December 2004, but in the area of education policy there were insurmountable obstacles between the centrists and the proponents of more rights for the *Länder*. And there was conflict among the political camps of the right and the left.

## Left and right unite

This all changed in November 2005, when Germany came under the rule of the so-called Grand Coalition under Chancellor Angela Merkel, a Christian Democrat. The Christian Democratic Union and Christian Social Union (who together form a large conservative party) plus the Social Democrats are partners in the government. The old antagonism between left and right is gone. And there is more. The new government badly needs a success story. On the uneven terrain of economics and social policy it is difficult for the heterogeneous coalition to unite. The situation is different when it comes to federalism. This issue is less contested by the two coalition partners and this is where the new government will show its ability to negotiate.



German Chancellor Angela Merkel and Vice-Chancellor Franz Muntefering.

The Christian Democrats and the Social Democrats came to an agreement last November to proceed resolutely with the reform of federalism. The Grand Coalition busied itself with this topic once again at the end of February. They want to transform the coalition agreement into a binding law. That transformation is expected to take place by this summer. By then the Basic Law (the German constitution) must also be amended. It will take somewhat more political power for this new government to succeed in this undertaking. And the Chancellor will need to pay strong attention to this project. Until now Angela Merkel has appeared timid about reforming federalism.



German Chancellor Angela Merkel and Bavarian government leader Edmund Stoiber.

### Which cure for what ails German federalism?

What's it all about, exactly? What ails the German federal system and what medicine does the government want to prescribe for the patient? Or rather, what surgery is necessary? Let's look at the symptoms first:

First is the antagonism between the *Bundestag* and the *Bundesrat*. The *Bundesrat* is the strongest federal upper house in the world that is named by its subnational units. In it there are no members elected specifically for the chamber by their own constituent units, as is the case in the US Senate. Instead, in the *Bundesrat*, it's the governments of the *Länder* that have a certain number of votes. It is not individuals who are members of the *Bundesrat*, it is governments. That is also the case in the council of the European Union. There, the most populous member state in the EU, Germany, has more votes than, for example, Malta or Luxemburg. In the *Bundesrat*, Bavaria has six votes, and each of the smallest *Länder*, such as Hamburg or Bremen, has three.

And that's not the only peculiarity. The *Bundesrat* has considerable power — something else that differentiates it constitutionally from the second chamber in other federal countries. The *Bundesrat* holds veto power over 60 per cent of all federal laws. That veto covers almost all tax laws. In short, governors of the *Länder* can block the federal government when it comes to money matters or when it concerns their own governments. That means that nothing moves unless the *Bundestag* and the *Bundesrat* agree.

### The *Länder* versus Berlin

This creates another problem. Majorities of different parties or different coalitions usually rule in both houses of the legislature. It has been 57 years since the Basic Law came into operation. For 37 of those years, the opposition party in the *Bundestag* had a majority in the *Bundesrat*. That hinders the federal government's ability to make decisions. The government certainly has a majority in the *Bundestag* — otherwise it would not have come to power. But the government can't get past the *Bundesrat*. Political scientist Franz Walter of Göttingen attributes this to what he calls the "politics of the veto". The powers held by the *Bundesrat* make speedy governance — and speedy reactions — impossible. Compromises are required. Citizens no longer know who is responsible for what.

There is another symptom: over the years, the *Länder* have been progressively drained of their powers. Not in the *Bundesrat*, obviously. But to exercise power in the second chamber, the *Länder* governments must co-operate at the federal level.

Another question is how much power do the *Länder* have at their own level. The answer is they do not have that much. They pass regulations governing universities and schools, and even administer the police. But there the power of the *Länder* stops. They can't levy any taxes of their own. They can't decide how much their civil servants will earn and they have no authority over civil or criminal law. And to make matters worse, Berlin intervenes even in the core areas of the *Länder*, such as in education. The federal government promotes, for example, the building of schools in which children will also be cared for in the afternoons. Such schools used to be scarce in Germany. And Berlin gives money to universities that excel. The federal government does not have jurisdiction over either of these fields, but the *Länder* accept this interference as long as they get a cheque from the federal government for each project in which the federal authorities are interfering. There is an old German saying: "Money never stinks." The result is that the poorer *Länder* are financially dependent on the federal government. Saarland, Bremen and the Land of Berlin could not survive without transfers from the federal government. They have more or less slipped into the status of administrative provinces.

### More powers for the *Länder*?

That is exactly what will change if everything goes according to the plan of the Grand Coalition. It wants to strengthen the rights of the *Länder*. They will be able to pay their own civil servants in the future — an expenditure that makes up about 40 per cent of their budgets. Also, the federal government will more or less withdraw from the field of education.

What will the *Länder* give up in return? They will renounce a large amount of their veto rights on legislation in the *Bundesrat*. Experts hope that only 35 to 40 per cent of federal laws will be able to be stopped by the *Länder* governments. But the new rules are so vague that it is unclear whether the *Bundesrat* will give up as much power as many hope it will. However, the comprehensive reform of the federal system in Germany has begun. This could have the effect of getting things moving again in Germany. For that alone, the Grand Coalition would have been worthwhile.

Now, after both big parties have united in the Grand Coalition, the lobbyists are issuing their demands. The civil servants are preparing to defend themselves against the reality that in the future, Berlin will no longer decide how much they will earn. Rich *Länder* will be able to avoid this battle. As a result, teachers are warning that soon there will be a great gap between a school in Hamburg and a school in Munich. This could prove problematic as many Germans want the same standard of living everywhere in the country, as it is stated in one phrase of the constitution. Instead of competition among the *Länder* many want uniform regulations that apply everywhere. But only a federal country offers to its citizens the luxury of allowing for even small decisions to be made at the grassroots level. That fact does not appear to be clear to many Germans — and for that reason German federalism will certainly remain a work in progress. (9)