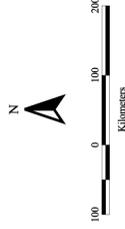


Germany

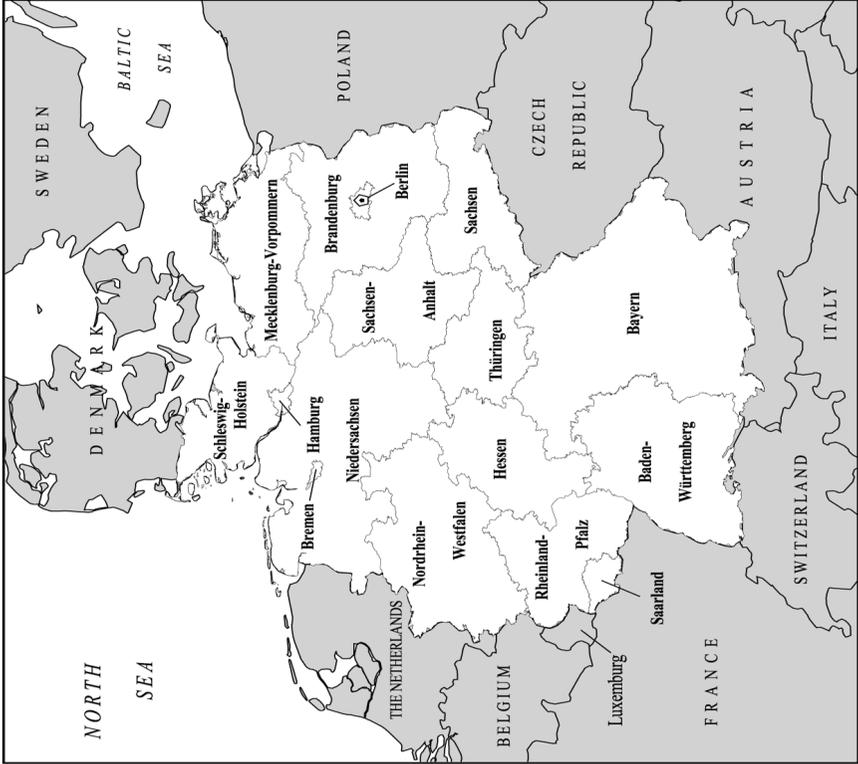
Capital: Berlin
Population: 82.5 Million
(September 2003)



Boundaries and place names are representative only and do not imply official endorsement.



Source: ESRI Ltd., CIA World Factbook;
Times Atlas of the World



The Federal Republic of Germany

RUDOLF HRBEK

Traditionally, foreign relations have been considered the prerogative of national executives. However, increasingly in federal countries, constituent units, in Germany the *Länder*, have become involved in foreign relations. This is even more the case for Germany because, due to Germany's position in central Europe, the majority of *Länder* have foreign countries as immediate neighbours and because Germany has strong international economic and cultural ties. As a result, *Länder* participate actively in some aspects of foreign relations, particularly in Germany-European Union (EU) relations. EU matters do not belong to the field of foreign relations in a strict sense because they involve the whole range of public policies. Competences in most of these fields are shared between the EU and its member states, among them Germany as a founding member. Given that some of these policy fields fall under the exclusive competence of the *Länder* or affect their interests, both the federation and the *Länder* are involved in EU governance domestically and in Brussels.

This chapter provides an overview of how the conduct of foreign relations, including Germany's relations with the EU, is organized and functions in the Federal Republic of Germany (FRG), examining the roles of both the federation and the *Länder*. Despite occasional disputes between them about (1) the threat to a consistent German foreign policy posed by *Länder* activities and ambitions and (2) the right of the *Länder* to engage in foreign relations, the two sides have found a workable balance in their day-to-day relations in this policy sector.

COUNTRY CHARACTERISTICS

With 82.5 million inhabitants, the FRG is the most populous European country. The proportion of inhabitants of non-German origin is 8.9%. By far, the biggest non-German ethnic group, at 1.9 million, is of Turkish origin;

approximately 40% of foreigners are from EU member states. Linguistically, Germany is homogeneous, and German is the only official language. There are small minorities with a distinct culture and language – the Frisians in the North-West, the Sorbs and Wends (of Slavic origin) in the Centre East; and the German-speaking Danes on the northern border with Denmark. But there are no separatist, not even ethnic nationalist, tendencies.

The level of social development is remarkably high. With a literacy rate of 99%, 85% of Germans have a secondary-school degree, 21% a university degree, and 2.1% a postgraduate degree. The gross domestic product (GDP) in 2005 amounted to US\$2.85 trillion, or US\$34,580 per capita. The unemployment rate in August 2007 was 8.8%.

Germany's economy shows features typical for developed western European societies. The primary sector has been shrinking steadily, from 22.1% in 1950 to 9.1% in 1970 and to only 2.5% in 2003; the services sector grew from 33.2% in 1950 to 41.5% in 1970 and to 66.4% in 2003; and the secondary sector fell from 49.4% at its peak in 1970 to only 31.1% in 2003. Germany lacks natural resources and is thus highly dependent on imports, especially of oil and gas.

Germany's economy is export-oriented. In 2005 exports stood at US\$998.6 billion and imports at US\$794.7 billion. One out of five jobs depends on exports. Membership in the EU, and especially in the Internal Market, is of particular importance, as two-thirds of German exports go to other EU countries. The EU's eastern enlargement in 2004 (with eight former Communist countries, plus Cyprus and Malta, joining) and 2007 (Bulgaria and Romania becoming members) has in this context been especially beneficial for Germany (and Austria). Another aspect of integration at the European and global levels for Germany's economy is direct investment. Major target countries for German capital are the EU member states and the United States; the bulk of foreign investment in Germany comes from EU member states, the United States, and Switzerland.

The FRG's constituent units are the *Länder*.¹ There are sixteen *Länder*, compared to eleven before reunification, among them three city-states, Berlin, Hamburg, and Bremen. The *Länder* differ in size, from 404 km² (Bremen) to 70,548 km² (Bavaria), and in population, from 0.66 million (Bremen) to 18 million (Nordrhein-Westfalen). Furthermore, the *Länder* differ in their economic strength and performance. In 2005, GDP ranged from US\$23,200 per capita in Mecklenburg-Vorpommern to US\$58,425 in Hamburg; the unemployment rate in early 2007 ranged from 5.6% (Baden-Württemberg) to 19.2% (Mecklenburg-Vorpommern). There are disparities in economic strength and prosperity, especially between the East (the five so-called *New Länder*) and West, but also between the North and South, with the most prosperous *Länder*, Baden-Württemberg, Bavaria, and Hessen, being situated in the South.

The FRG belongs to the group of middle powers. Due to its economic strength, however, Germany does belong to the major economic players. The country sees itself primarily as an integral part of the EU and not only in economic terms. Membership in the EU is the major feature of the country's international role, regionally in Europe (not only EU Europe) and globally.² The impact of globalization on Germany is very strong.³

GERMANY IN THE WORLD

Geographically, Germany is situated in central Europe. In terms of economic development, one group of neighbouring countries – Denmark, the Netherlands, Belgium, Luxembourg, France, Switzerland, and Austria – has a standard of living very similar to that of Germany. Except for Switzerland, all belong to the EU and its Internal Market, which features a high degree of economic integration and close cooperation in a large number of policy fields. In 2005 and 2006 there was an increase in immigration of Germans into Austria and Switzerland, countries that offered better labour opportunities.

Poland and the Czech Republic, however, lag behind considerably. These disparities cause problems, especially in border regions; the provision of low-cost goods and services by the two countries is perceived as unfair competition. Disparities can, however, offer opportunities for division of labour and complementary economic structures that could benefit both sides. Furthermore, disparities attract investments by German firms in their eastern neighbours, which have lower wages combined with remarkably well-qualified workers. Lastly, disparities can lead to migration into German areas, intensifying problems in the German labour market with its relatively high unemployment in some parts of the country, as is particularly the case along the border with Poland. This explains the special provisions in the accession treaties of central and eastern European states, with the EU postponing the right of free movement of labour from these countries into Germany for a period of seven years.

The historic legacy of the two world wars and the Holocaust, as well as that of the banishment of ethnic Germans from former German territories at the end of the Second World War, have always been a disturbing factor in Germany's relations with its neighbours. These legacies seem to have been overcome vis-à-vis the neighbours in the West (including Denmark), primarily as a result of the western European integration process, beginning with the Coal and Steel Community in 1951–52, continuing with the establishment of the European Economic Community in 1957, and extending through the subsequent creation of the EU as the major framework for joint problem solving. They have not yet been overcome vis-à-vis Poland and the Czech Republic; they come to life periodically and generate tensions and conflicts or

are a disturbing factor for good neighbourly relations. As concerns Poland, there is an additional factor. In the former German South-West territories (Silesia) live some 173,000 people of German origin, with distinct cultural and linguistic traditions, who look toward the western neighbour expecting closer links that will strengthen their position inside Poland. Although this has nothing to do with separatist tendencies, Polish authorities in Warsaw observe such activities and attitudes in these (border) areas with irritation and distrust.

Linguistic similarities are favourable for communication and cooperation with Austria and the German-speaking Swiss cantons; the same applies to the German Community in Belgium, with approximately 70,000 inhabitants in the area around Eupen. The German language is still well known among some parts of the French population in Alsace and its capital, Strasbourg, and there is a relatively large number of people in Denmark and the Netherlands who have a good command of German, a language not too different from their own.

It is not only the Internal Market that is a major factor in the (economic) relations of Germany with her neighbours. Switzerland, although not a member of the EU, has the *de facto* status of an “associated” partner by virtue of a series of bilateral agreements in various policy fields. There is also the Monetary Union with the Euro as a common currency, which has the Benelux countries as well as France, Austria, and Germany as members, whereas Denmark, Poland, the Czech Republic, and Switzerland – also immediate neighbours – have stayed outside for various reasons. Also, the so-called Schengen Agreements, in connection with the more comprehensive project to establish an Area of Freedom, Security and Justice in the EU, have created a framework in which Germany, together with her neighbours, cooperates very intensely on domestic and judicial matters, including sensitive issues such as immigration, control of EU-external borders, and combating organized international crime and terrorism.

The *Länder* participate in a relatively large number of cross-border, interregional cooperation projects.⁴ Some of them are well developed and date back to the 1960s and 1970s, such as the Upper-Rhine-Valley cooperation project, which includes Swiss cantons, the German *Land* Baden-Württemberg, and French regions. A more recent example, initiated after the end of the Cold War in the 1990s, is the Baltic Sea Cooperation, whose members are German coastal *Länder* and bigger cities and subnational territorial entities of varying legal status in countries around the Baltic Sea, namely Sweden, Finland, the three Baltic states, and Poland.⁵ In the management of common resources such as rivers, especially the Rhine, and lakes (Lake of Constance),⁶ cooperation and coordination on matters such as ecological concerns are well developed. The EU has set up a special program, INTERREG, to encourage and support cross-border cooperation.⁷

With its strong, outward-looking, and export-oriented economy, globalization is especially important for Germany. German enterprises, although strong in particular sectors, are confronted with growing international competition, which has led them to intensify their activities and efforts worldwide. They are supported by the federal government through its “economic diplomacy.” When the chancellor or ministers pay state visits, they are accompanied by (sometimes large) delegations with chief executives as representatives of companies. This applies as well to the *Länder*, with their powers in the field of economic development. *Länder* premiers (or economic ministers) engage in marketing activities in the global market, as does the federal government. Even though the respective *Länder* activities are pursued by private-sector economic development agencies (*Wirtschaftsförderungsgesellschaften*), they enjoy the active support of the *Länder*.

THE CONSTITUTIONAL SETTING

To properly understand the character and features of Germany’s federal system, one has to bear in mind that the reestablishment of the German state after the Second World War was initiated from below. The Allied Powers in their respective occupational zones established *Länder* as territorial entities, each with its own constitution, directly elected parliament, an executive (“government”) accountable to this parliament, and its own court system. When the three Western Allies decided in summer 1948 to further stabilize the political situation by establishing a West German state on the territory of the three zones they administered, they called upon the German authorities in the already existing *Länder* to prepare a constitution and demanded that its provisions, among others, introduce a federal structure. The institution set up to draft the new constitution was not a directly elected constituent assembly but was composed of representatives of the *Land* parliaments, selected following party strength. Hence the founding fathers came from the *Länder*.

This helps to explain why the new constitution, or Basic Law as it came to be known, which entered into force in May 1949, stipulates as a general rule that “the exercise of state powers and the discharge of state functions is a matter for the *Länder*” but with an important additional provision: “except as otherwise provided or permitted by this Basic Law” (Article 30). What does this mean for the conduct of foreign relations?

The Constitution gives the federal government the predominant role in foreign relations, but the *Länder* are also given a role.⁸ The key clause on foreign relations is Article 32, composed of three paragraphs.⁹ Paragraph 1 states: “Relations with foreign states shall be conducted by the Federation.” But paragraph 2 adds: “Before the conclusion of a treaty affecting the special circumstances of a *Land*, that *Land* shall be consulted in a timely

fashion.” This means that, although the federation possesses the power to make treaties, it has to cooperate with the *Land* or *Länder* in such cases. The third paragraph reads: “Insofar as the *Länder* have power to legislate, they may conclude treaties with foreign states with the consent of the federal government.” Hence the treaty-making power is not monopolized by the federation. The Constitution extends this power to the *Länder*¹⁰ if these have power to legislate in the relevant policy field. This means that the *Länder* can pursue initiatives in the field of external relations, although they need the explicit consent of the federal government. This again requires mutual cooperation and coordination between the *Länder* and the federation. However, Article 32 lacks clarity. Its provisions do not answer the following two major questions that may arise in the practical conduct of foreign relations:

- Is the Federation authorized to conclude a treaty on matters under *Land* jurisdiction?
- Are the *Länder* obliged to implement treaties concluded by the federation in areas of their exclusive jurisdiction?

The federation and the *Länder* do not agree on the resolution of these issues. Both sides agreed to disagree in principle, but in 1957 they concluded a special agreement, the so-called Lindauer Abkommen, designed to give guidelines for cooperation in the day-to-day conduct of foreign affairs. The major function of this agreement was to be the avoidance of conflicts between the federal government and the *Länder*.¹¹ Therefore, the agreement stipulates that when treaties with foreign states are under preparation, the *Länder* should be given the earliest possible opportunity to raise their concerns and demands. The agreement provides for the establishment of a special institution composed of *Land* representatives, which functions as a communication partner with the Federal Foreign Office or other federal ministries involved in preparing international treaties. Both sides seem, on the basis of this special agreement, to have been able to come to terms with each other without conflicts. There had been an attempt in the context of considerations on amendments and reforms of the Basic Law in the mid-1970s to find a constitutional solution, but eventually both sides agreed on – and seemed to be satisfied with – the status quo, even though the legality of the procedure remains in question. These rules and procedures reflect the consensus-based interactions typical between the federation and the *Länder* in accordance with the constitutional principle of federal comity or loyalty (*Bundestreue*). This principle, developed and introduced by the Federal Constitutional Court, obliges the federation and the *Länder* to consider and respect the concerns of the other partner when conducting their affairs.¹² Observers as well as participants agree that this

principle has been honoured in the conduct of relations between the two orders of government; this applies to the field of foreign relations as well. In other words, both sides have demonstrated their willingness to conduct a fair and balanced relationship.

As opposed to the general provisions on foreign relations – an area much broader than foreign policy, understood as “high politics” – that affect a large number of policy fields and therefore give the *Länder* a role, defence is a matter for the federation exclusively.

The *Länder* have the duty to participate actively in governing the federation in large part because the *Land* governments constitute the membership of the upper house, the *Bundesrat*. Article 50 of the Basic Law reads: “The *Länder* shall participate through the *Bundesrat* in the legislation and administration of the Federation and in matters concerning the European Union.” Article 51, paragraph 2, states: “Each *Land* shall have at least three votes; *Länder* with more than two million inhabitants shall have four, *Länder* with more than six million inhabitants five, and *Länder* with more than seven million inhabitants six votes.” Article 51, paragraph 3, stipulates that “the votes of each *Land* may be cast only as a unit.” This provision causes problems when there are coalition governments in which one partner is part of the federal (coalition) government and the other coalition partner is the opposition party in the federal arena. Coalition agreements usually observe the following rule in such a case: at the demand of one partner, the *Land* will abstain in the *Bundesrat*; this has the effect of a negative vote. According to Article 50 of the Basic Law, international treaties dealing with political relations between Germany and foreign states require the explicit assent of the *Bundesrat*, which is thus involved in exercising the treaty-making power of the federation. Whereas in most *Bundesrat* committees the *Land* governments are represented by civil servants, the committees responsible for foreign policy and defence normally meet at the ministerial level, sometimes at the level of the heads of *Land* governments. As opposed to other committees, the latter two meet only occasionally; “high politics” issues remain more or less the exclusive domain of the federal government.

In addition to the conduct of foreign relations as traditionally understood, EU matters often become part of the political agenda. Although EU policy is not “foreign policy” in the traditional sense, it is also not “domestic” policy. It involves both the federation and the *Länder* and thus requires provisions that take into account their respective rights and regulate their cooperation.¹³ It was only after the ratification of the Treaty of Maastricht in 1992 that very detailed provisions in this regard were included in the Basic Law (Article 23). There is a *Bundesrat* committee on EU matters that meets frequently because of its heavy workload, given the large amount of EU legislation requiring implementation by the member states. This means

in practice the *Land* governments because it is the *Länder* that are responsible for implementing federal legislation.

The new regulations – Article 23 of the Basic Law (called the “Europe Article”), supplemented by the Law on the Cooperation of Federation and *Länder* in Affairs of the European Union (hereafter Law on Cooperation) and by a special agreement between the federal and *Land* governments – strengthen the position of the *Länder* in dealing with EU matters. The new regulations provide the following:

- The duty of the federal government to maintain existing practice is confirmed: “The Federal government shall keep the *Bundestag* and the *Bundesrat* informed, comprehensively and at the earliest possible time” (Article 23, para. 2).
- Detailed and complex provisions oblige the federal government to observe *Bundesrat* opinions on EU matters. The general rule is that the federal government allows sufficient time for the *Bundesrat* to present its views on matters that touch on the interests of the *Länder*. “Sufficient time” means enough time for the *Bundesrat*’s view to be adequately considered in EU-level negotiations. If the proposed EU measure is in an area of federal competence, the federal government is required merely “to take into account” the *Bundesrat*’s view. By contrast, *Bundesrat* views must be “decisively” taken into account if the EU measure falls within *Land* competence. The federal-*Land* agreement stipulates that in case of disagreement, the two sides should continue in their efforts to reach a compromise. If that fails, and the *Bundesrat* confirms its view by a two-thirds majority vote, the federal government must comply with the *Bundesrat*’s view.
- There are provisions that allow *Land* representatives direct participation in negotiations of the EU Council of Ministers and its committees. To this end, the *Bundesrat* nominates *Land* representatives who then, on a case-by-case basis, are part of the German delegation in EU negotiations. While such cooperation in and of itself is noncontroversial, transferring the lead role in negotiations to *Land* representatives can become a very sensitive and controversial question because the new provisions of 1992 ruled that this would occur whenever the matter under consideration “centrally affects exclusive legislative competences of the *Länder*.” In practice, however, the federation and the *Länder* always come to an agreement on how to proceed in individual cases.

Last but not least, an agreement between the federation and the *Länder* authorizes *Länder* to set up their own representative offices in Brussels with the official label “representation” (*Vertretung*). In this context, one should mention that although this is not part of the domestic constitutional

setting, the *Länder* are also represented at the EU level in an institutionalized way in the Committee of the Regions, established by the Treaty of Maastricht. This institution, whose functions are only advisory, is designed to give representatives from regional or local entities formal access to EU decision making.

The implementation of all these provisions and arrangements requires coordination between the *Länder* and the federal government. The two sides did not agree on the efficiency of these arrangements in the pursuit of German interests. In the debate on reforming German federalism, which intensified with the establishment of a special commission in late 2003, the federal government made efforts to reduce some of the rights of the *Länder* to deal with EU matters. The *Länder*, however, insisted on maintaining their status and role.¹⁴ The reform package, which was passed with the necessary two-thirds majorities in both the *Bundestag* and the *Bundesrat* in summer 2006, did not reduce the role of the *Länder* in this area but replaced the very vague provision with a clarification specifying that such delegation of functions (to have the lead role in negotiations in the EU Council) to *Länder* representatives is to be restricted to three policy fields: education, culture, and broadcasting. The *Länder* have argued that their constitutional status requires that when EU matters centrally affect their exclusive legislative competences, they must be given the role of representing Germany in the respective EU body.

Another provision (Article 24, 1a) was introduced in connection with the new Article 23 of the Basic Law. It reads: "In so far as the *Länder* are competent to exercise state powers and to perform state functions, they may, with the consent of the federal government, transfer sovereign powers to transfrontier institutions in neighbouring regions." This provision, introduced into the Basic Law in 1992, has never been used.

The constitutional setting described in this section sets the legal framework for the relations between the federation and the *Länder* in the conduct of foreign relations. These provisions, however, represent only a formal and, in many respects, not clearly enough defined framework. It is, therefore, necessary to look at the interaction between the federation and the *Länder* in foreign relations as it takes place in practice.

INTERGOVERNMENTAL RELATIONS

The working relations between the two orders of government in the field of foreign relations, including EU matters, have become intense and routinized. The following analysis deals with and distinguishes between intergovernmental relations in both dimensions – foreign relations in the traditional sense and EU matters – because there is a basic difference. In foreign relations, especially with respect to treaty making, intergovernmental

relations are, on the whole, noncontentious; the two sides have established cooperative relations. In contrast with the noncontroversial fields of defence and foreign policy (i.e., those involving non-EU matters), EU matters have become the battlefield, with the federal government and the *Länder* as adversaries; here intergovernmental relations are conflictual.

As concerns foreign policy, the Lindauer Abkommen, mentioned earlier, serves as the formal basis and framework of these interactions whenever an international treaty is to be concluded by the federation. In accordance with the terms of the agreement, the *Länder* have established a permanent body of *Land* representatives – senior civil servants – to communicate with the Federal Foreign Office or other federal ministries, depending on the policy area in question, and there has always been an intense exchange of views when treaties have been negotiated. One aspect of these communication relations is the exchange of information; the other is de facto participation of the *Länder* in conducting foreign relations. There is general agreement that intensive participation by the *Länder* in the preparatory phase of treaty making has been essential for the effective implementation and execution of obligations imposed by international treaties because, as mentioned earlier, the *Länder* are primarily responsible for implementation.

Both sides have managed to come to terms with each other in all practical cases involving *Länder* and federation treaty making because, thus far, there have been no winners or losers. Both sides have disagreed since the outset on the proper interpretation of Article 32, but both sides have viewed the Lindauer Abkommen as equivalent to a memorandum of understanding on cooperation in practice, leaving basic constitutional questions open and unresolved. Interestingly, during attempts at constitutional reform, neither side has pushed for a reformulation of the provisions in Article 32 so that procedures can be regulated legally. This is a further indicator that the status quo of a cooperative relationship has become recognized by both sides as acceptable and functional.

Organization and management of the interaction between federation and *Länder* at the national level are primarily the concern of the Federal Foreign Office. When sectoral fields are at stake, the respective federal ministry is involved, but the Federal Foreign Office always has a coordinating role. In cases of high politics or when issues of national concern appear on the agenda, coordinating functions are performed by the Office of the Chancellor.

The organization of interaction within and among *Länder* is primarily the responsibility of the offices of premiers (*Staatskanzleien* or *Staatsministerien*). Each *Land*, furthermore, has an official representation in Berlin. This office deals primarily with federal issues and EU matters; its mandate and function are to bring to bear the respective *Land's* interests and points of view. If sectoral policies appear on the agenda, the respective *Land*

ministry will become involved in interactions with representatives of the federal government. Smaller and weaker *Länder*, with less administrative capacity, are less active than larger and stronger *Länder* in this respect. An essential feature of German federalism has always been horizontal cooperation and coordination among the *Länder*. There are regular meetings of the heads of governments (*Ministerpräsidenten-Konferenzen*), and there are regular meetings of *Land* ministers responsible for particular policy fields, including EU affairs (*Europaminister-Konferenz*). Issues of foreign relations and EU matters regularly appear on the agendas of these meetings.

The whole network of institutions set up for the day-to-day functioning of “cooperative federalism” serves as a framework for the participation of the *Länder* in foreign relations. Hundreds of committees to foster communication and cooperation between the federation and the *Länder* have been established primarily at the civil-servant level to deal with individual projects and specific questions and issues because many of them have foreign relations dimensions. The interaction takes place not only at the bureaucratic day-to-day level but also at the highest political – that is, the ministerial – level and, if necessary, between the chancellor on the one hand and the premiers of the *Länder* on the other. Because *Land* premiers are also party leaders and representatives, party political considerations can play a role. This is particularly the case if the *Land* politician belongs to a party that is in opposition in the federal arena.

These interactions involve not only individual *Land* but also groups of *Länder*, depending on the nature of the policy field and the different ways *Länder* are affected. The political weight of the *Länder* may be another factor; larger and stronger *Länder* are usually more interested and engaged in foreign relations. As discussed earlier, party political considerations can also play a role.

There are repeated examples demonstrating that the federal government is eager to have *Länder* take an active role on particular issues or in special contexts such as the participation of *Land* ministers in the federal republic’s delegation to the Organization for Security and Cooperation in Europe (OSCE), the delegation of Germany to the International Monetary Fund (IMF), and the inclusion of *Länder* in the language-promotion framework of the United Nations Educational, Scientific and Cultural Organization (UNESCO). In these cases, the federal government calls upon the *Bundesrat* to nominate a representative of the *Länder*. Furthermore, *Länder* play an active role in the bilateral relations between Germany and France in the field of culture. The German representative in this field has, from the very beginning, always been a *Land* premier. These examples demonstrate that *Länder* are becoming involved more intensively, especially in fields under their exclusive jurisdiction or where implementation is their responsibility. All these cases of intense cooperation also demonstrate a division of labour. The federal

government has always dominated, but the coordination with the *Länder*, either with all, a group, or an individual *Land*, has functioned well and is thus in line with the general pattern of “cooperative federalism.”

On EU matters, intergovernmental relations are different. The two sides disagree not only on the extent of *Land* participation, seen as a constitutional issue, but also on how the practical involvement of the *Länder* has affected the promotion of German interests and concerns in the EU context. However, the two sides have managed to come to terms with each other, and the conflict has concentrated largely on how to define the formal rules (in Article 23 of the Basic Law plus complementary provisions) for their behaviour and cooperation. In the context of attempts (from 2003 to 2006) to reform German federalism, the federal government tried to weaken substantially the role of the *Länder* through a reform of Article 23; however, the *Länder* insisted on maintaining or even strengthening their role. The solution found in the reform package of summer 2006 can be seen as a clarification, leaving the *Länder's* role untouched.

As earlier discussed, one institutionalized framework for this participation of the *Länder* is the *Bundesrat*. First, the committee for EU matters actively represents and promotes special concerns and interests of the *Länder* in European Union issues as a whole vis-à-vis the federal government. Second, most other committees in charge of particular policy fields have become involved in EU matters because the bulk of EU legislation needs to be transformed into domestic legislation. Furthermore, the federal government is obliged to fully inform the *Länder*, in a timely fashion, on all EU issues and to take into account *Bundesrat* opinions in EU Council negotiations in Brussels. These opinions – which amount to approximately 150 per year – are prepared in the respective *Bundesrat* committees, and the *Bundesrat* plenary decides finally (and formally). There are cases where a *Bundesrat* opinion may be very welcome for the federal government because, in the Council negotiations, it can refer to the pressure exerted at the domestic level, which the government cannot ignore, especially if a piece of European legislation subsequently needs the support of the *Bundesrat* (its majority) and of the *Länder* in the implementation phase.

The participation of the *Länder* in European Union matters has, however, again and again given rise to complaints and criticism from both sides. Article 23 of the Basic Law sets the constitutional basis and framework, but the federation and the *Länder* do not agree on the effects of *Länder* participation in this field. The federal government has very sharply criticized the role of the *Länder* and the provisions in Article 23. Its major argument has been that the involvement and participation of the *Länder* in decision making on EU matters on the basis of the provisions in Article 23 would have, and in fact has had, negative effects on pursuing interests and concerns of the federal republic for the following reasons:

- The internal coordination between the federal government and the *Länder*, but among the *Länder* as well, has been cumbersome and time-consuming.
- Agreements on the position to be followed in EU Council meetings arrived at in these coordination processes have prevented the federal government from successful bargaining in the Council because bargaining requires flexibility and the ability to react immediately in the course of negotiation processes, especially if package-deal solutions have to be found.
- The *Länder* are unable to influence issues at an early stage, a precondition for successful participation.
- The *Länder*, furthermore, are not capable of engaging successfully in attempts to bring about coalitions and alliances among member states, which have become more important since the number of qualified majority decisions in the EU has grown.¹⁵
- There are, as a consequence of the *Länder* presence in Brussels, too many German voices. This has proven to be counterproductive.
- In the implementation of European legislation in Germany, the *Länder* are responsible for frequent delays.
- In this context, the *Länder* must be made co-responsible when EU authorities impose a fine on Germany in cases of noncompliance with the obligation to implement EU decisions properly and in a timely fashion.
- Similarly, the *Länder* must be made co-responsible when Germany violates the fiscal criteria set forth in the Monetary Union's Stability and Growth Pact, particularly the provision that deficits not exceed 3% of GDP.

To deal with these issues, the federal government has demanded the following changes in the discussions on the reform of German federalism. German representation in the EU has to be the sole responsibility of the federal government. This means that only members of the federal government should be authorized to negotiate in EU bodies. Coordination with the *Länder* should take place and be managed domestically in advance. Procedural provisions in Article 23 of the Basic Law should, therefore, be altered. Implementation of European legislation should be the sole responsibility of the federation.

In response to the federal government's criticisms, the *Länder* put forward fundamental arguments related to the very character of Germany's federal system. The *Länder*, given their constitutional status, are constituent parts of the federal republic. As such, they have the right to participate in federal legislation. If *Land*-related functions are to be transferred to the EU, the *Länder* must participate accordingly. The *Bundesrat* has the status of a federal body; as such, it represents the interest not of a single *Land* but of the *Länder* as a whole. The federal government does not have a monopoly

in defining Germany's interests; the *Länder* are entitled to define these interests from their perspective also. Both sides, the federal government and the *Länder*, are obliged to adhere to the principle of federal comity (*Bundestreue*) – that is, to properly take into account the interests and concerns of the other side. Given that EU affairs no longer belong to the area of “foreign policy,” the federal government cannot claim preferential status or dominance. The *Länder* have insisted that their participation on the basis of Article 23 has never led to disadvantages for Germany. Deficiencies in the coordination processes can be attributed to unsatisfactory communication between the federal government on the one hand and the *Länder* or the *Bundesrat* on the other, primarily caused by poor (or even nonexistent) coordination between the various departments of the federal government.

Given this state of affairs, the *Länder*, during the debate on reforming German federalism in 2003–04, put forward two reform options ranging from the demand for sole responsibility in all areas in their legislative domain, as is the case in Belgium, to the more moderate option, sometimes referred to as the “status quo plus,” in which Article 23 would be maintained but its wording made more precise. Such modifications would have to be made in the Law on Cooperation and in the complementary agreement between the federal and *Land* governments.

It quickly became clear that only the second option could be the basis for an agreement. Toward this end, the *Länder* argued in favour of maintaining Article 23 and strengthening their position especially in areas of their exclusive competence. They also indicated that some of the points under discussion could be dealt with at a level below that of constitutional law, namely in the Law on Cooperation and its attendant agreement. Finally, they suggested improvements in the conduct of day-to-day European business. Such measures were to include, among others, an upgrading of the *Länder* representations in Brussels so that the heads of these offices should as early as possible become involved in cooperation and coordination processes between the federal government and the *Länder*. It was also suggested that some representatives of the *Länder* participate in COREPER¹⁶ and that *Länder* representatives should be included in the Permanent Representation of the Federal Republic in Brussels, the mission of Germany to the EU. Further proposals and demands of the *Länder* were related to the participation of *Länder* in intergovernmental conferences and/or in future constitutional conventions. Such participation has already been shown to work well.

The key issue concerning *Land* participation in EU matters has to do with the special bargaining and negotiation context of EU Council meetings. These negotiations have a give-and-take pattern during which a new situation requiring an immediate and flexible response may arise, which in

most cases can and will not be identical with the position agreed to in the preparatory coordination efforts between the federal government and the *Länder*. The federal government, therefore, demanded that the *Länder* appoint a representative authorized to give the opinion of the *Länder* as a whole, whereas otherwise the federal government representative would act without being able to take into account the position of the *Länder*. Because the position of such a representative, in the view of the majority of the *Länder*, would be rather precarious, they were not willing to accept such a procedure. The solution, finally arrived at in the first stage of the reform of German federalism in summer 2006, was that the right of the *Länder* to represent Germany in Council meetings is, in the future, to be restricted to the three areas that belong to the exclusive competences of the *Länder*: education, culture, and broadcasting. In all other cases, Germany will be represented solely by a member of the federal government, and coordination with the *Länder* will have to occur in advance. The new formula provides greater clarity; however, it will not prevent all conflicts between the federal government and the *Länder*.

The 2006 reform package also included an agreement on federation-*Land* cost sharing. The agreement contained:

- a new paragraph (6) in Article 104a of the Basic Law dealing with internal cost sharing between the federation and the *Länder* in cases of violations of international or European commitments. (The federation has to bear 15% of the burden, and the *Länder* 85%; the latter's share is to be divided so that 35% is borne by all and the remainder by the *Länder* responsible for the costs.)
- a new paragraph (5) in Article 109 of the Basic Law relating to the obligation for fiscal and budgetary discipline in the framework of the EU's Monetary Union. The new clause declares the federation and the *Länder* to be jointly responsible for adhering to these convergence criteria. In case of sanctions from the European Union, 65% of the burden is the federation's, and the *Länder* are responsible for the remaining 35%, with (as in the previous case) all the *Länder* jointly contributing 35% of their burden and 65% being paid by the *Länder* responsible for violating the European rule.

It will be interesting to see how the new rules work and whether both sides will really recognize them as an improvement, making the relationship between the federation and the *Länder* in EU matters less conflictual. The need for cooperation and mutual respect, in accordance with the principle of *Bundestreue*, will continue to require that both sides draw on their experience in dealing with each other.

LÄNDER AS ACTORS IN FOREIGN RELATIONS
AND EU POLITICS

The *Länder* do not conduct foreign policy in its traditional sense, but they are actors in external relations and, as a consequence of European integration, in EU politics. The senior representative of each *Land* is its premier. That ambassadors to the Federal Republic of Germany pay inaugural visits to all *Land* premiers is an indication of both the *Länder's* constitutional status and their status as actors in foreign relations. There are no foreign ministries in the *Länder*. External relations are managed in the central offices of premiers. These have only a very small budget for foreign activities; the bulk of financial resources spent by the *Länder* for their international activities are included in other budgets, such as those for cultural activities and economic promotion. There is no grand design for the foreign relations activities of the *Länder*; rather, they are conducted on an ad hoc basis in response to particular situations and in relation to particular interests. A broad spectrum of such activities can be identified.¹⁷

The first of these are treaties that individual *Länder* have concluded with foreign states in accordance with Article 32, paragraph 3, of the Basic Law. As earlier discussed, such treaties require the explicit approval of the federal government, which has the right, taking into account the political interests of Germany as defined by the federal government, to approve or disapprove. Such a case has not arisen. This is not surprising given the fields in which these treaties have been concluded. A compilation of these treaties¹⁸ covering 1949 to 1993 identifies the following fields: cooperation in general; administrative cooperation in border areas; police cooperation; hunting and fishing; water, waterworks, and dikes; traffic, road construction, and maintenance of bridges and roads; environmental protection and conservation of nature; science, education, and culture; and health. Because treaties in these fields deal with very practical problems and tasks, and because they have not negatively affected national political interests, the federal government's approval was obtained easily.

The number of such treaties is (at first glance) surprisingly low: 144 treaties from 1949 to 2004. The author of the compilation identifies the following four major reasons for the low number of treaties concluded by *Länder*:¹⁹

- The *Länder* lack many legislative powers because the federation has monopolized resort to concurrent powers.
- Most western European regions, as potential treaty partners, are not authorized to conclude international treaties. Belgian regions and communities, with their vast legislative powers, have become more visible and active in this respect.

- Since EU legislation has expanded, covering an ever-broader field of policies, there is little functional need to have additional treaties.
- As concerns practical issues in border areas, municipalities have become very active; hence no *Land* treaties are required.

In addition, the author tries to explain the obviously low interest of the *Länder* in concluding international treaties. He argues that *Land* governments no longer perceive international treaties as a means to represent the *Länder*. The situation with respect to the EU is of course different.

A comparative look at the *Länder* shows that only 5 (out of 16) have been relatively active, concluding 119 of the total of 144 treaties: Rheinland-Pfalz (with 44) and Baden-Wuerttemberg (30) lead this group, followed by Saarland (18), Nordrhein-Westfalen (15), and Bavaria (12). This picture – at first sight, unexpected and astonishing – can be explained by referring to specific administrative traditions and experiences that differ among the *Länder* for various reasons. Furthermore, to get the approval of the federal government is seen as time-consuming and complicated. The *Länder*, therefore, prefer to find an understanding or to bring about an agreement below the treaty level with foreign states or constituent units, including regions.

In this second dimension of autonomous *Land* activities fall joint declarations, memoranda, protocols, and the like, which are not binding legally and, therefore, do not require formal approval by the federal government. They are signed by the *Land* premier or by a *Land* minister and a representative either of the foreign state or of the region in a foreign state. They deal with a whole range of policy fields, such as cross-border and inter-regional cooperation; promotion of economic development, trade, and tourism; cooperation in education, research, and culture; and even development aid. Some recent examples include a joint declaration of the governments of Bavaria and Quebec (May 2003), a memorandum between the Hamburg Ministry of Education and its counterpart in China (September 2002), a cooperation agreement between Rheinland-Pfalz and the Republic of Rwanda (May 2002), and a joint declaration on cooperation in research and culture of Sachsen-Anhalt and Israel (October 1997). All these correspond to the general foreign policy outlook and orientation of the federal government.

Such written agreements may have political substance, even if formulated only in rather general terms, such as a joint declaration on cooperation between Bavaria and the Republic of Serbia (March 2001) and a similar document between Saxony and the Czech Republic (December 1992). Again, these have been in line with the foreign policy orientation of the federal government either in mentioning that good and close relations should be strengthened and extended to all areas of common interest or in simply emphasizing good neighbourly relations.

Other activities that also fall within the second dimension are public or publicized political statements of *Land* politicians, primarily premiers whose party is at the time not a government party in the federal arena. Their actions form part of an opposition strategy, and they are designed to make publicly known those positions that the respective opposition party or politician wants to use in the competition among parties domestically. This, however, means that the respective actor is primarily to be perceived as an (opposition) party representative and not so much as a *Land* representative; he or she uses the office only for such purposes.

Examples include meetings (and accompanying statements) of Christian Democratic premiers with the then Christian Democrat Austrian chancellor, Wolfgang Schuessel, who had been “sanctioned” by the Social Democrat-led federal government (and governments of other EU member states) for having formed a coalition with the populist Freiheitliche Partei Österreichs (FPÖ), led by Jörg Haider,²⁰ and criticism by Christian Democrat premiers of Chancellor Gerhard Schroeder’s EU enlargement policy concerning Turkey. These are, however, exceptions, and they fall primarily in the field not of intergovernmental relations but of party competition.

The normal pattern of such activities involves public speeches by members of *Land* governments, especially premiers, when abroad. They travel to foreign countries, sometimes with relatively large delegations that include representatives of enterprises and other private organizations located in their *Land*. On such occasions, *Land* politicians sometimes make statements related to foreign policy issues. During the preparations for such “state visits,” *Land* officials contact their federal counterparts; during the visit, the German ambassador accompanies the representative of the *Land*, and upon the delegation’s return, there is always an official report to the Federal Foreign Office. Only in very rare cases has the federal government perceived public statements by *Land* representatives to be challenges to the diplomatic representation of Germany in a foreign country.

However, *Land* representatives are politicians, not experienced diplomats, and if a political statement of a *Land* representative does not comport with the position adopted by the federal government, or if a statement is made before the German government’s “official” view has been expressed, such an activity may have an impact on German foreign policy. A precommitment by a *Land* or a group of *Länder* or by a plurality of German voices abroad may be confusing and negatively affect a uniform representation of German interests in foreign countries. One cannot argue that such public statements are illegal, but the federal government would prefer a code of conduct between the federal government and the *Länder* as a means to avoid conflicts of this nature. The latter do not see a need for such a formalized agreement. They claim that they carefully observe the principle of *Bundestreue* and that their representatives have the democratic

mandate for political activities of this kind. A statement made by the premier of a large *Land* in a smaller foreign country – for example, in the Balkans – might be perceived as an authoritative German voice. Autonomous *Land* activities in foreign relations, therefore, can generate problems from time to time. As in the past, this would be an exception to the well-respected rule that *Land* politicians abroad should be in agreement with the foreign policy of the federal government.

Autonomous activities of the *Länder* play a much greater role in the context of EU politics and decision making. The provisions in Article 23 of the Basic Law, discussed above, stipulate the rules and procedures for *Land* participation in dealing with EU matters. But there are, beyond this framework, autonomous *Land* activities. In the mid-1980s all *Länder* began to establish representations to the European Union in Brussels.²¹ Initially, they were called information offices, but they have since been formally upgraded to official representations. Their functions are diverse. They collect and pass on information about all aspects of EU affairs; they promote the economic interests of their *Land* and assist firms or other organizations in the development of projects in which EU institutions play a role; they perform representational functions; and they are an important forum for discussion and thus are essential parts of networking activities of the *Länder*. These activities can be considered lobbying. Over the years, the *Land* representations have been recognized as influential actors in the larger Brussels arena. Given that they represent the diversity of the German federal state in many respects, the choir of all *Land* voices does not always sound harmonious. When it comes to the special interests of individual *Länder*, they behave like competitors. The federal government, especially the Permanent Representation at the EU, is not always very happy with this variety of voices, but, pragmatically, it recognizes their presence and activities in Brussels as an established fact.

A further aspect of such networking is the membership of *Länder* in European-wide associations of constituent units such as the Assembly of the European Regions (AER)²² and the more ambitious group Regions with Legislative Powers (REGLEG), which affiliates constituent units that have their own legislative powers within different EU member states. In addition to German *Länder*, the members include Austrian *Länder*, Belgian regions, Spanish autonomous communities, and Scotland.²³ The Committee of the Regions, established by the Treaty of Maastricht, offers institutionalized access to the decision-making system of the EU. This relatively new institution, however, has only advisory functions; therefore, it plays only a marginal role in autonomous *Land* activities within the EU system.²⁴

Furthermore, *Länder*, represented by ministers and civil servants, actively participate in a large number of cross-border cooperation schemes. The federal government is not involved in such activities, and the *Länder* enjoy

considerable latitude to set up and further develop such links and forms of cooperation, already referred to above. There are a large number of these regional cooperation schemes, and they are organized both bilaterally and multilaterally. Civil-society organizations participate as well. Interregional cooperation has developed and intensified because the number of issues of common concern to the participating partners has grown considerably. Policy sectors addressed in such contexts include regional planning, infrastructure development, tourism, cultural relations, education (including language training), environmental protection, and other issues of practical concern. Because this cooperation is seen as fruitful, *Länder* have continued to take initiatives to establish, strengthen, and further develop such links. Responsibility for cooperation projects lies with the respective ministry, and such projects are but one aspect of a *Land's* policy in this field. Multiple-field coordination is done in the *Land* premier's office, where one division with only a few civil servants is responsible for all the *Land's* external relations, of which cross-border and interregional cooperation is only one element. Such autonomous *Land* activities are seen as unproblematic as far as relations with the federation are concerned, and there are many instances of *Land* activities supporting the federal government's political initiatives. Thus *Länder* have organized and carried out training programs for civil servants in the new EU member states in central and eastern Europe (e.g., Baden-Württemberg in Hungary).

In addition to cross-border regional cooperation, there are bi- and multilateral cooperative relations between *Länder* and regions in countries with which Germany does not share a common border. One such cooperation scheme is the Four Motors network that affiliates Baden-Württemberg in Germany, Catalonia in Spain, Lombardy in Italy, and Rhône-Alpes in France.²⁵ Such schemes normally focus on particular policy areas. The Four Motors network focuses on high technology and postsecondary education. It is noteworthy that the Canadian province of Ontario has entered into a partnership with this network. These functionally focused activities do not involve foreign relations in the traditional sense; therefore, they do not create problems for relations between the *Länder* and the federation. In this context, one should note that there are a number of activities that have only symbolic value.

There is another field in which the *Länder* are international actors. Most *Land* governments engage in marketing activities worldwide, thus paying tribute to the emergence and existence of a global market. It is primarily the larger and economically stronger *Länder* that are very active in this respect. When premiers pay state visits to other continents and countries, their delegations are composed of representatives of the larger export-oriented enterprises. Such state visits, therefore, partly have the character of promotional tours. Furthermore, *Länder* that can afford such measures

have set up or supported the establishment of offices and independent agencies abroad (sometimes called “German House,” as in Singapore and Cairo) designed to help primarily small and medium-sized enterprises to establish themselves abroad. Such activities do not generate conflicts with the federal government.

Land parliaments have been trying to play a role in external relations, too. Delegations of *Land* parliamentarians visit parliaments – national and/or regional assemblies – in other countries, and they have tried to build up a network of regional parliamentary assemblies with the goal of strengthening their role and visibility.²⁶ The results, however, have been very modest because, clearly, the administrative and executive branches of government have an advantage over legislatures in the conduct of foreign relations.

Autonomous *Land* activities in the field of external relations need to comply with provisions of the legal setting, be it German constitutional law or EU treaty law. When, for example, in the 1950s a *Land* government tried to launch a referendum against nuclear armament of German troops, the Federal Constitutional Court – called upon by the federal government – ruled this initiative to be illegal because it interfered with the exclusive foreign policy responsibilities assigned to the federation. The same applies, logically, to similar local or municipal initiatives. To take a different field, economic sanctions against a foreign country can be enacted neither by a *Land* – let alone a municipal government – nor even by the federal government because trade policy, with its various instruments, has long since been an EC/EU responsibility. In its efforts to promote a *Land's* economic development, the *Land* government has to observe the very rigid competition-policy regime of the EU, which does not allow direct subsidies in any form.

To deal here with what can be called “municipal diplomacy” would go far beyond this chapter’s scope and would require an explanation of the status and role of local government – on the basis of the constitutional principle of local self-administration (Article 28 of the Basic Law) – in the framework of Germany’s federal system. This is a very complex issue, as are activities of municipalities in the broad field of external relations. Within the realm of their competences, they can conclude agreements with public authorities in foreign countries (primarily in areas close to borders) in order to pursue specific functional goals (such as in the fields of traffic, environment, education, and culture). Thus they have acquired the role of actors in external relations.

There exist thousands of municipal-twinning agreements, which have a political function as well, and it is primarily in this field that municipalities appear in the international arena. As concerns the European Union, which affects local politics in many respects, municipalities have become active in lobbying in Brussels via their own representations (either of a larger city or of associations of local entities), similar to the ones of the *Länder*.

CONCLUSION

Both the federation and the *Länder* play a role in the conduct of foreign relations. The Constitution gives the federal government the predominant role; this has been recognized by the *Länder*, and political practice confirms this pattern. But the *Länder*, possessing exclusive jurisdiction in a number of policy fields and the right to participate in the legislation and administration of the federation through their membership in the *Bundesrat*, as well as in matters concerning the EU, are entitled and authorized to play a role as well. The term “the open federal state” (*Der offene Bundesstaat*)²⁷ tries to draw attention to factors, trends, and developments that affect the character of the federal system, especially in the fields of foreign policy and external relations. Article 32 of the Basic Law, complemented by provisions of the Lindauer Abkommen, impart a spirit of mutual cooperation and coordination in relations between the two orders of government. The experience of the past decades shows that these provisions have, in general, worked well and that both sides have managed successfully to use their respective powers and to cooperate effectively.

But foreign relations do not involve just the negotiation of legally binding treaties. *Länder* are active in other capacities, too. There are fields of foreign relations in which the *Länder* (i.e., the heads of *Land* governments) participate as political actors. Whenever *Land* politicians perform as (political) players in these fields, they are to be perceived as party representatives competing with the federal government, which is composed of rival parties. It is in this dimension of foreign relations that the federation and the *Länder* occasionally – and only when party politics is the dominant factor – clash, the federal government arguing that *Land* activities, especially autonomous activities, are a threat to a consistent foreign policy and Germany’s capacity to perform successfully on the international stage. In response, the *Länder* insist on their right to engage in foreign relations. This exchange of arguments shows that it will remain a challenge for both sides to find a proper balance in day-to-day relations between the two orders of government. Both are, however, committed to the constitutional principle of federal comity, and observers conclude that this principle has never been in real danger.

A special case is the role that the federal government and the *Länder* play in EU matters. The *Land* role has expanded considerably to encompass most policy fields during the past twenty years. *Länder* have acquired the role of very influential, efficient, and highly recognized (institutional) actors in the Brussels arena and at the domestic level as well when EU issues appear on the policy agenda. The exercise of their rights of participation requires prior coordination between both orders of government, although they occasionally disagree on how such coordination should function and

on how it affects efficiency in the pursuit of German interests. The 2006 constitutional reforms had as their goal the clarification of the respective responsibilities of both sides. One cannot expect, however, that the new procedures will rule out disagreements at all times. It will remain a challenge for the two orders of government to find a proper balance within the pattern of cooperative federalism characterizing intergovernmental relations in Germany.

NOTES

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- 1 Hans-Georg Wehling, ed., *Die deutschen Länder: Geschichte, Politik, Wirtschaft* (Opladen: Leske & Budrich, 2000).
- 2 Rudolf Hrbek and Wolfgang Wessels, eds., *EG-Mitgliedschaft: Ein vitales Interesse der Bundesrepublik Deutschland?* (Bonn: Europa Union Verlag, 1984); Wolfgang Wessels and Udo Diedrichs, eds., *Die neue Europäische Union: Im vitalen Interesse Deutschlands? Studie zu Kosten und Nutzen der Europäischen Union für die Bundesrepublik Deutschland* (Berlin: Europäische Bewegung Deutschland, Europa-Union Deutschland, 2006).
- 3 Rudolf Hrbek, "The Effects of Global and Continental Integration on Cooperation and Competition in German Federalism," in Harvey Lazar, Hamish Telford, and Ronald L. Watts, eds., *The Impact of Global and Regional Integration on Federal Systems: A Comparative Analysis*, 329–71 (Montreal and Kingston: McGill-Queen's University Press, 2003).
- 4 Bernd Groß and Peter Schmitt-Egner, *Europas kooperierende Regionen: Rahmenbedingungen und Praxis transnationaler Zusammenarbeit deutscher Grenzregionen in Europa* (Baden-Baden: Nomos, 1994), gives an overview of such projects. The authors analyzed fourteen such cooperation projects with 214 territorial units and private-law organizations as participants.
- 5 Thomas Pfannkuch, "Ostseekooperation: Ein Phänomen, das seinesgleichen in Europa sucht," in Europäisches Zentrum für Föderalismus-Forschung Tübingen, ed., *Jahrbuch des Föderalismus 2001: Föderalismus, Subsidiarität und Regionen in Europa*, 379–91 (Baden-Baden: Nomos, 2001).
- 6 Roland Scherer and Klaus Dieter Schnell, "Die Stärke schwacher Netzwerke – Entwicklung und aktuelle Situation der grenzübergreifenden Zusammenarbeit in der REGIO Bodensee," in Europäisches Zentrum für Föderalismus-Forschung Tübingen, ed., *Jahrbuch des Föderalismus 2002: Föderalismus, Subsidiarität und Regionen in Europa*, 502–18 (Baden-Baden: Nomos, 2002).

- 7 Wolfgang Petzold, "Kooperation ohne Grenzen: Die EU-Gemeinschaftsinitiative INTERREG III," in Europäisches Zentrum für Föderalismus-Forschung Tübingen, ed., *Jahrbuch des Föderalismus 2003: Föderalismus, Subsidiarität und Regionen in Europa*, 407–19 (Baden-Baden: Nomos, 2003).
- 8 Gernot Biehler, *Auswärtige Gewalt: Auswirkungen auswärtiger Interessen im innerstaatlichen Recht* (Tübingen: Mohr, 2005); Kai Hailbronner, Rüdiger Wolfrum, Luzius Wildhuber, and Theo Öhlinger, "Kontrolle der auswärtigen Gewalt," in *Veröffentlichungen der Vereinigung der Deutschen Staatsrechtslehrer*, vol. 56, 7–158 (Berlin: Walter de Gruyter, 1997); Hans-Jürgen Papier, "Abschluss völkerrechtlicher Verträge und Föderalismus: Lindauer Abkommen," in Wolfgang Knippel, ed., *Verfassungsgerichtsbarkeit im Land Brandenburg: Festgabe zum 10-jährigen Bestehen des Verfassungsgerichts des Landes Brandenburg*, 91–101 (Baden-Baden: Nomos, 2003).
- 9 Hans D. Jarras, "Art. 32," in Hans D. Jarras and Bodo Pieroth, eds, *Grundgesetz für die Bundesrepublik Deutschland: Kommentar*, 8th ed., 582–8 (München: Beck, 2006); Bernhard Kempen, "Art. 32," in Hermann von Mangoldt, Friedrich Klein, and Christian Starck, eds, *Kommentar zum Grundgesetz*, 5th ed., vol. 2, 735–78 (München: Vahlen, 2005).
- 10 Matthias Niedobitek, "Rechtliche Probleme für die Außenbeziehungen von Regionen, dargestellt am deutschen Beispiel," in Rudolf Hrbek, ed., *Außenbeziehungen von Regionen in Europa und der Welt: External Relations of Regions in Europe and the World*, 17–31 (Baden-Baden: Nomos, 2003).
- 11 Bardo Fassbender, *Der offene Bundesstaat: Studien zur auswaertigen Gewalt und zur Voelkerrechts-Subjektivitaet bundesstaatlicher Teilstaaten in Europa* (Tuebingen: Mohr, 2007), deals comprehensively with this agreement as well.
- 12 Hans-Jochen Vogel, "Die bundesstaatliche Ordnung des Grundgesetzes," in Ernst Benda, Werner Maihofer, and Hans-Jochen Vogel, eds, *Handbuch des Verfassungsrechts der Bundesrepublik Deutschland*, 805–62 (Berlin and New York: Walter de Gruyter, 1984), esp. 824–7; Hartmut Bauer, *Die Bundestreue: Zugleich ein Beitrag zur Dogmatik des Bundesstaatsrechts und zur Rechtsverhältnislehre* (Tübingen: Mohr, 1992).
- 13 Rudolf Hrbek, "The Effects of EU Integration on German Federalism," in Charlie Jeffery, ed., *Recasting German Federalism: The Legacies of Unification*, 217–33 (London and New York: Pinter, 1999).
- 14 Rudolf Hrbek, "Der deutsche Bundesstaat in der EU: Die Mitwirkung der deutschen Länder in EU-Angelegenheiten als Gegenstand der Föderalismus-Reform," in Charlotte Gaitanides, Stefan Kadelbach, and Gil Carlos Rodriguez Iglesias, eds, *Europa und seine Verfassung: Festschrift für Manfred Zuleeg*, 256–73 (Baden-Baden: Nomos, 2005).
- 15 The EU Council, composed of member-state representatives, takes unanimous decisions only in a small number of cases of particular saliency for the member states (such as social and welfare policies and tax matters). In the majority of cases, which have increased in number as a result of treaty reforms since the mid-1980s, the Council decides by qualified majority. In this procedure, the votes of the member states are weighted based on demographic and economic considerations (e.g.,

- Germany and France have 29 votes each, Belgium and Portugal 12 each, and Malta 3). The total number of votes is 321, and the threshold for qualified majority voting is 232 (72.3%) and a majority of the twenty-five member states.
- 16 This is the Committee of Permanent Representatives of the member states, which is entrusted to deal with all EU matters and either prepare decisions to be taken in formal EU Council meetings (always at ministerial level) or decide on behalf of the Council.
 - 17 Karl Greiβing, "Die Außenbeziehungen der deutschen Länder: Das Beispiel Baden-Württemberg," in Rudolf Hrbek, ed., *Außenbeziehungen von Regionen in Europa und der Welt: External Relations of Regions in Europe and the World*, 53–68 (Baden-Baden: Nomos, 2003); Hans-Mayer, "Die Beziehungen Bayerns zu Ländern und Staaten Mittel-, Ost- und Südosteuropas," in Europäisches Zentrum für Föderalismus-Forschung Tübingen, ed., *Jahrbuch des Föderalismus 2005: Föderalismus, Subsidiarität und Regionen in Europa*, 587–96 (Baden-Baden: Nomos, 2005).
 - 18 Ulrich Beyerlin and Yves Lejeune, *Sammlung der internationalen Vereinbarungen der Länder der Bundesrepublik Deutschland* (Berlin: Springer, 1994). Fassbender, *Der offene Bundesstaat*, updates (through 2004) the compilation of such treaties concluded by the *Länder*.
 - 19 Fassbender, *Der offene Bundesstaat*.
 - 20 See the chapter on Austria in this volume.
 - 21 Martin Große Hüttmann and Michèle Knodt, "Diplomatie mit Lokalkolorit: Die Vertretungen der deutschen Länder in Brüssel und ihre Aufgaben im EU-Entscheidungsprozess," in Europäisches Zentrum für Föderalismus-Forschung Tübingen, ed., *Jahrbuch des Föderalismus 2006: Föderalismus, Subsidiarität und Regionen in Europa*, 595–605 (Baden-Baden: Nomos, 2006).
 - 22 See note 4.
 - 23 Andreas Kiefer, "Informelle effektive interregionale Regierungszusammenarbeit: REGLEG – Die Konferenz der Präsidenten von Regionen mit Gesetzgebungsbefugnissen und ihre Beiträge zur Europäischen Verfassungsdiskussion 2000–2003," in Europäisches Zentrum für Föderalismus-Forschung Tübingen, ed., *Jahrbuch des Föderalismus 2004: Föderalismus, Subsidiarität und Regionen in Europa*, 398–412 (Baden-Baden: Nomos, 2004).
 - 24 Thomas Wiedmann, "Der Ausschuss der Regionen nach dem Vertrag von Amsterdam," *Europarecht* 1 (1999): 49–86; Annegret Eppler, "Der Ausschuss der Regionen im Jahr 2004 – Zukünftiger Mittelpunkt eines 'Netzwerks' zwischen EU-Institutionen und Regionen?" in Europäisches Zentrum für Föderalismus-Forschung Tübingen, ed., *Jahrbuch des Föderalismus 2005: Föderalismus, Subsidiarität und Regionen in Europa*, 620–31 (Baden-Baden: Nomos, 2005).
 - 25 Petra Zimmermann-Steinhart, "Interregionale Kooperationen am Beispiel der Initiative 'Vier Motoren für Europa,'" in Rudolf Hrbek, ed., *Außenbeziehungen von Regionen in Europa und der Welt: External Relations of Regions in Europe and the World*, 69–82 (Baden-Baden: Nomos, 2003).

- 26 Peter Straub and Rudolf Hrbek, eds, *Die europapolitische Rolle der Landes- und Regionalparlamente in der EU* (Baden-Baden: Nomos, 1998); Andreas Kiefer, "Gesetzgebende Regionalparlamente und ihr europäischer Verband: Die CALRE," in Europäisches Zentrum für Föderalismus-Forschung Tübingen, ed., *Jahrbuch des Föderalismus 2006: Föderalismus, Subsidiarität und Regionen in Europa*, 606–29 (Baden-Baden: Nomos, 2006).
- 27 Fassbender, *Der offene Bundesstaat*.