

Germany: Balancing *Bundestag* against *Bundesrat* and Governments against Legislatures

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The German federal system has for decades been perceived as a success story because it helped to integrate the diverse segments of post-war Germany and safeguarded Germany's multifaceted political, economic, and cultural structure. The federal system has also played an important part in successfully integrating the eastern part of Germany, the former German Democratic Republic. Since the 1990s, however, there has been a growing feeling of discontent among the general public as well as among political elites. The federal system is perceived as a source of political paralysis. **Public demands for reform in the political setup and in economic legislation end up in a quagmire of contradictory tactical moves by the political parties, which usually block each other effectively.**

The obstacle to any kind of reform is the difference in majorities between the *Bundestag*, the directly elected federal legislature, and the *Bundesrat*, which represents the *Länder* at the federal level. In the *Bundesrat*, the parties in opposition in the *Bundestag* have a majority – a situation not foreseen in 1948 when drafting the Constitution, but typical for the last three decades. This discrepancy of majorities does not create serious problems for ordinary legislation, since the governing majority in the federal Parliament can outvote the veto of the *Bundesrat* in cases of ordinary legislation. For some categories of legislation, however, the *Bundesrat* can block statutory law-making after the *Bundestag* has approved a law. These stand-offs derive from the mutual dependency between the federation and its member *Länder*.

One important area of joint governance is the financial structure of the federal system. The *Länder* have no real autonomy in financial matters, but depend on taxes shared with the federation and legislated by the federal parliament. As compensation for such dependency, the *Bundesrat* has a full veto in legislation on these taxes.

The other crucial area of joint governance is the field of administrative organization and procedure. Most federal statutes are implemented by *Land* administrations and the federal executive has only a few branches of direct administration. Because the federal government has a strong interest in influencing the patterns of implementation, the federal legislator can regulate issues of administrative organization and procedure. However, the price paid for this federal intrusion is again the full participation in law making in these cases by the *Bundesrat*, which can veto a law approved by majority vote in the directly elected *Bundestag*.

The use of this instrument has led to a significant growth of statutes depending on consent of the *Bundesrat*. Originally conceived as an exception, such legislative stand-offs have become a common phenomenon in legislative practice, making up more than 50 per cent of the statutes passed. Current debate on federal reform concentrates very much on this phenomenon, together with a revision of the distribution of legislative jurisdictions. The major political forces have set up a bicameral reform commission to prepare a proposal for federal reform. The efforts of that reform commission, however, have to-date ended in deadlock.

In order to solve the problem of “excessive” veto powers, the reform commission discussed whether the *Länder* should unilaterally modify the standards of administrative organization and procedure set in federal legislation. In exchange for this right, the *Länder* probably would be willing to give up the veto power concerning statutes regulating administrative organization and procedure. Federal ministries are strongly opposed to this idea, but it seems to contain the nucleus of a compromise.

The *Bundesrat* is an institution with no parallel in most of the other federal systems. It is a historical legacy from the first federal government constructed between 1867 and 1871 under the Kaiser by Chancellor Otto von Bismarck, and is composed of members of *Land* governments, who vote as a group for their own *Land*. It does not play a decisive role in drafting legislation, but is extremely important in giving states a voice in federal decision making. If the *Bundestag* and *Bundesrat* insist on different proposals, the task of drafting a compromise is shifted to a specific committee of mediation formed by members of both houses. This body, the so-called *Vermittlungsausschuss*, constitutes a kind of “black hole” for political transparency, since its negotiations are secret and the *Bundestag* and *Bundesrat* can only accept or reject its proposals as a whole. The entire system blurs political responsibility and forces political actors to enter routinely into more or less arbitrary package deals.

Whereas the federation and states are inseparably intertwined in the system of legislative governance, the structures of executive governance are more clearly separated. The administrations of the *Länder* manage most issues of routine administration, with only a few fields of direct administrative jurisdiction for the federal government. The balance has been shifting in recent years, however, due to the creation of new regulatory agencies of the federation in fields of telecommunications, postal services, energy services, and others. The *Länder* are now afraid that they might lose their decisive role in executive governance in the long run.

The development of European integration is an additional factor intensifying fears of a loss of autonomy. With the growth of European community law, more and more areas under *Land* control are regulated in Brussels. In the European decision-making processes, however, only the federal government represents the *Länder*. Several compromises entered into by the federal government to the detriment of the states have created a strong suspicion by the *Länder* towards European politics. In 1994, the *Länder* managed to introduce a new “European clause” into the federal constitution that was intended to safeguard their participation in European issues. However, the general impression now is that these safeguards do not really work and that the mechanisms of consultation and participation have no real impact. The bigger *Länder* have changed to a policy of direct lobbying in Brussels, building up *Land* representations to a significant size and expertise. For the small constituent states, however, this will not be an affordable strategy.