



Germany: Cooperation with the *Länder*

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From Hamburg to Bavaria, from the Saarland to Saxony, Germany's constituent units, its 16 *Länder*, have significant powers increased by the federal reform of 2006. In the German federal system, the *Länder* have the characteristics of states, each with its own constitutional order which has to conform to basic principles laid down in the German Constitution of 1949 (the "Basic Law"). The Constitution grants certain exclusive powers to the *Länder*, and other exclusive powers to the federal government, with a broad field of concurrent powers shared by both orders of government. The Constitution stipulates as a general rule that "the exercise of state powers and the discharge of state functions is a matter for the *Länder*", "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. The key clause about foreign relations in the Constitution is Article 32: "Relations with foreign states shall be conducted by the federal government." But the *Länder* are also given a role: "before the conclusion of a treaty affecting the special circumstances of a Land, that Land shall be consulted in timely fashion."

This means that although the federal government possesses the power to make treaties, it has to take into account any substantial concerns of an individual *Land* through consultation. Furthermore, this article provides that the *Länder* “may conclude treaties with foreign states with the consent of the federal government”, if the *Länder* have the power to legislate in the specific policy fields that the treaties address. These constitutional provisions imply a spirit of mutual cooperation and coordination between the *Länder* and the federal government.

In 1957, the federation and the *Länder* even signed an accord – the so-called “Lindauer Agreement” – on how to cooperate in foreign relations in practical terms. The agreement was followed by additional institutional and procedural provisions. Experiences from the past decades show that these provisions have, in general, worked well and that both sides have managed successfully to use their respective powers and cooperate properly.

A large part of such activities by the *Länder* falls into the category of cross-border relations. Because of Germany’s location in central Europe, with neighbouring countries on all borders, the number and intensity of cross-border relations have grown considerably. A well established example is cooperation along the Upper Rhine River among Germany, France and Switzerland. More recently cross-border activities and agreements have emerged vis-à-vis Central and Eastern European countries and their respective regions. This type of *Länder* activity has been functioning well and has not created conflicts or problems with the federal government.

But foreign relations are not just the negotiation of legally binding treaties and the *Länder* are active in other capacities. And it is particularly this category of foreign – or external – relations in which the *Länder* appear as actors. For example, politicians from the government or the legislature of a *Land* sometimes meet with political representatives of foreign states. Public statements are sometimes made on such occasions on issues about which the respective *Land* representatives and the federal government do not agree. A *Land* may also establish public information offices abroad. Such *Länder* activities fall into a “grey area” between foreign policy and political statements by a *Land* government. These activities have resulted in criticism by the federal government, which has sometimes called such activities “auxiliary foreign policy,” – something it regards as beyond what the *Länder* are allowed and authorized to do. The response of the *Länder* has always been that their “external” activities are connected and overlap with typical and genuine *Länder* tasks and are part of the *Länder*’s constitutional powers.

Seen from the federal government’s point of view, such autonomous activities of individual *Länder* are a threat to a consistent foreign policy and the ability of Germany to perform on the world stage. Hearing a plurality of German voices may confuse representatives of other countries, and

public statements on an international issue by a *Land* or a group of *Länder* may be harmful to Germany's interests as seen and formulated by the federal government. Berlin complains that it does not receive full information from the *Länder*. In response, the *Länder* insist on their right to engage in foreign relations and they claim that their activities would not interfere with the federal government's domain. They do not see the necessity to agree on a formal "code of conduct" for the relations between *Länder* and federal government in this area.

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For certain issues, the management of communication and the practice of transparency will continue to be a challenge to both sides.

A special case in point is the role that the federal government and the *Länder* play in European Union (EU) matters. Although EU policy is not foreign policy in the traditional sense, it is not a "domestic" issue either. It is a field which has grown considerably and rapidly during the past fifteen years and in which both the federal government and the *Länder* are involved. A new article (Article 23 Basic Law) was

adopted in 1992, in connection with the entering into force of the Maastricht Treaty. This amendment has given the *Länder* formal rights of participation in dealing with EU matters at the domestic and EU levels. The exercise of this right requires prior coordination between the *Länder* and the federal governments, but they disagree on how this affects efficiency in pursuing German interests. The *Länder* have set up and developed autonomous EU activities through their official representations in Brussels and by direct lobbying. They have acquired the role of very active co-players in the Brussels arena.

In the debate on reform in German federalism, which intensified with the establishment of a special commission in late 2003, the federal government made an attempt to cut some of the *Länder* rights in dealing with EU matters. The *Länder*, however, successfully insisted on maintaining their role: the reform package which was passed with the necessary two-thirds-majorities in both *Bundestag* (the German lower house) and *Bundesrat* (the German upper house) in the summer of 2006 did not reduce the strength of the *Länder* in this area.

In conclusion, the federal government and the *Länder* are both involved in foreign relations and have on the whole successfully managed to cooperate and to coordinate efforts. This approach is in line with the general feature of German federalism as falling into the category of "co-operative" federalism. This does, however, not exclude problems or even tensions between both sides in a number of individual cases. To find the proper balance will remain a challenge for both parties.