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**"Institutional mechanisms for the office responsible for Intergovernmental
Relations:
An Overview"**

by

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In May 1949, that is more than fifty years ago, the Basic Law, or the Constitution of the Federal Republic of Germany, was adopted. Compared with earlier German Constitutions, it contains fundamental innovations such as fully ensured fundamental rights, the principle of the rule of law enshrined in the Constitution with the explicit commitment of all state authority to the Constitution and to law and justice, the guarantee for everybody to refer matters to the jurisdiction of the Constitutional Court as well as, but not least, the basic decision for a federal structure of the state.

The fathers of the Basic Law were convinced that a federal structure of the state – in accordance with the German constitutional tradition since 1948 – would be better for the political development, economic organisation, social security and the cultural development of the new state than a centralist structure. This fundamental structural decision for a federally organized state was considered so important that it was declared an unchangeable basic decision, not even changeable by amendments of the Constitution. Federalism is widely accepted in Germany. In opinion polls, some 70% of respondents characterized themselves as “federalists“ and just 10% as “centralists“ [figures of 1988, more recent ones are not available]. The arguments for federalism are manifold: Firstly, the federal system counteracts a concentration of power. In the federal state, the horizontal division of powers by separating the state authority into executive, legislative and judiciary, is supplemented by a vertical division of powers in central state and constituent states. Both are limited in their powers and must take concerted action. Federalism strengthens democracy. Citizens have a greater variety of options to participate in political life and to look after their interests. Citizens have multiple voting rights, at federal, Land and finally at local level. Elections at Land level influence federal policies and vice versa.

In federalism, the constituent states are often in a better position to tackle regional problems, such as in regional planning or minorities policy.

Perhaps it is of interest in this context that the minorities living in Germany such as the

Danes, Sorbs and Frisians, are predominantly supported by the Länder. This is one reason why we scarcely have any problems in this area. Another reason is that regional parties that recruit their supporters in individual federal states only, find ways for their own development there. Regional parties are active, amongst others, in Bavaria, Schleswig-Holstein and in the new federal states created after the reunification of Germany. Federalism promotes competition between the parties. It integrates the opposition and forces the political parties to constantly fight for voters, which is necessary due to frequent elections in the Federation, the 16 constituent states and the municipalities. In many cases the opposition in the Federation is the party that is in power and responsible in some federal states and must make its contribution to federal policies via the chamber of the Länder, the Bundesrat.

The state as a federal entity enhances the political management potential, as the need for people with political leadership qualities is greater than in a centralist state, and because the Land parliaments can be places of democratic practice and viable parliamentary processes. Federal Chancellor Schröder was Minister President of Lower-Saxony in former times; the former Federal Chancellor Kohl was Minister President in Rhineland-Palatinate.

I do not want to conceal that federalism has its disadvantages, too, which must be weighed up against the advantages described.

Political decision-making processes are burdensome and sometimes seen as bureaucratic. Fast decisions are possible in federalism to a limited extent only. We in Germany suffer particular disadvantages in this respect which can be seen in the field of the implementation of EU Directives adopted in Brussels. Whereas centralist states can implement these Directives rapidly, we in Germany often need more time. Advantages and disadvantages must be weighed up against each other. I believe, however, that at least in my country federalism has proven a viable structure because it makes an essential contribution to the stability and balance of our political system and ensures, by and large, that decisions are taken at the appropriate level, that is at the Federation, the Land or at the local level. On principle, there is therefore no alternative to federalism in Germany.

Ladies and gentlemen

Let me now give you a short overview of the constitutional reality in Germany. Under constitutional law, the Federal Republic of Germany is a federal state with 16 Länder forming its constituent states. Both the constituent states and Germany as the entire state have their own original sovereign authority. The constituent states are no provinces or departments but states with their own Land constitution, parliaments and administrative structures.

The exercise of sovereign power is split between the Federation and the Länder by the Basic Law. In this process, the Basic Law assumes that the Länder are generally competent. In the fields of legislation, administration and jurisdiction, the Federation has its own competencies only, if the Basic Law explicitly assigns such competencies to it, or if an unwritten competence can be derived by way of interpreting the Constitution. In constitutional reality, the Länder dominate the field of administration. They do not only

execute their own Land laws, but also the vast majority of federal legislation. There is a direct administrative competence of the Federation in very few sector-specific fields, such as the Foreign Office, the Federal Army administration, the Federal Border Police, or specialised central federal authorities such as the Federal Criminal Police Office or the Federal Office for the Protection of the Constitution.

The field of legislation is actually dominated by the Federation in accordance with the matters specifically assigned to it under the Basic Law. In my view, this is justified: Whereas there is a clear trend towards decentralisation of competencies for decision-making in the administrative area, a trend towards law harmonisation is registered in the field of law-making both in the national and supranational area, because many situations in life cannot be regulated properly by legislation in the local or regional field alone. The most important legislative competencies, that have remained with the Länder in practice, concern cultural questions and issues of administrative activity. In detail, these are the fields of school and university education law, law of broadcasting, building regulations law and general police and regulatory law.

Even if the legislative competencies predominantly lie with the Federation, and the Länder have limited powers to adopt their own Land laws, the latter can exert a strong influence on federal legislation via the Bundesrat. The Federation's legislative process provides that the Bundesrat must be heard with regard to all federal laws to be adopted by the Bundestag. Via the Bundesrat, the Länder are also entitled to introduce bills for federal laws and to influence the content of federal laws by means of their rights of objection and consent. So as to enable solutions in cases of conflict, the Basic Law provides for mediation proceedings between the Bundestag and the Bundesrat in the so-called Mediation Committee.

The federal structures of the Federal Republic of Germany are not only characterized by a division of powers between the Federation and the Länder, but also by the constitutional provisions governing state finance. The Federation and the Länder can only act independently and efficiently in political terms, if they have sufficient finance. Under the constitutional provisions of the Basic Law governing state finance, the Federation and the Länder bear their own respective costs incurred by the performance of their functions. Since the Länder basically have to execute federal legislation as their own affairs, alongside their Land-specific laws, they also have to bear the costs associated with these functions. By the division of the competence for tax legislation between the Federation and the Länder, by the Bundesrat's rights of participation in tax legislation and by the standards set for the distribution of tax earnings, the Basic Law guarantees that neither the Federation nor the Länder may be ignored when finances are distributed. With these principles we have found well-balanced solutions that have proven viable for more than fifty years now.