

FEDERAL REPUBLIC OF GERMANY

Experts

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I. GENERAL QUESTIONS

1. How is the federation formally called (regional, federal state, other...)?

The federation is formally called Bundesrepublik Deutschland

2. Since when has the power been decentralized in your federation? Was the decentralization established in its origins or in a later time?

Since the foundation of the federation in 1949 (Grundgesetz, 23rd May, 1949) the power has been decentralized.

3. Has decentralization been formally abandoned or practically inoperative in any historical phase?

Decentralization never has been abandoned or practically inoperative in the history of the Federal Republic of Germany.

4. Which are the deep reasons in the adoption of a politically decentralized system?

The general idea is, that decentralization provides for „checks and balances“. It grants political parties more opportunities to obtain the responsibility of government and to show alternative political concepts on a power level than the federation, it emphasizes regional identity and specialties.

5. Could you point out the main phases of the system and the main characteristics?

a) As the foundation of the federation the present federal system was constitutionally established, there cannot be distinguished between different historical phases of the federal system in the Federal Republic of Germany. b) The fundamental or main characteristics are: republic, democracy, federal state, social state based on the rule of law (with separation of powers, provision of legality, fundamental rights, prohibition of arbitrariness, legal certainty, principle of proportionality, effective legal protection) and environmental protection state.

6. How many territories or main territorial communities compose the federation? Do they all have the same nature (for instance, states) or do they have different nature and position (for example, states, federal capital, colonial lands, communities with a specific regime of autonomy)?

a) 16 states (Bundesländer or Länder) compose the federation (BadenWürttemberg, Bayern, Berlin, Brandenburg, Bremen, Hamburg, Hessen, Nordrhein-Westfalen, Mecklenburg-Vorpommern, Niedersachsen, Rheinland-Pfalz, Saarland, Sachsen, Sachsen-Anhalt, Schleswig-Holstein, Thüringen).

b) They all have the same status (being states). However, they have different positions as far as their influence on the legislation of the federation depends on their total number of votes in the Federal Council. The range varies from the city states (Stadtstaaten) with 3 votes to states like Nordrhein-Westfalen with 6 votes.

7. Do they have singular features (for historical, linguistic, geographical, political, legal or economical reasons)? Do these singular features have political or legal consequences? In other words, how have the differences between the main territorial communities been approached from the perspective of uniformity/diversity or asymmetry/symmetry?

The principle of federal equality demands, that no state has any privileges or special status in the federation. The „Four-power-status“ (Vier-Mächte-Status) of the former „West-Berlin“ does no longer exist. The different numbers of votes of the states in the Federal Council are only a tribute to the

different level of their population. Features of the states are therefore not to be found on the level of the cooperation in the federation, but - on the base of the power to have an own constitution - in the states themselves. On the base of a republican, democratic and social state of law (in the sense of the Federal Constitution) the states are free to form their community. For example, the feature of the city states Berlin, Bremen and Hamburg is, that a middle level of administration does not exist. Or: Some ethnic minorities in a few states are given particular political rights by the constitution of the state (for example: the minimum percentage of 5, concerning the election of the state parliament (Landtag) does not affect the party of the Danish minority in the state Schleswig-Holstein). Differences exist mainly in the fields of the legislative power of the states such as the organization of the administration, the law of the municipalities, the school law and police law.

II. CONSTITUTIONAL LAW

1. Do you have a written Federal Constitution? What is the procedure for its elaboration, ratification and amendment? To what extent can states participate in the process of elaboration, ratification, or constitutional amendment? Which have been the most important amendments or the main constitutional phases until now?

a) Yes;

b) The German constitution was drafted by a constitutional committee and approved by the western states of Germany in the year 1949. The eastern states (in the territory of the former GDR), which were reestablished in 1990, joined the federation in the same year. The contents of the Constitution can be amended by the Federal Parliament under collaboration of the Federal Council - apart from an untouchable nucleus (art. 79 111 GG). An amendment needs the approval of two thirds of the members of both houses (art. 79 111 GG).

c) The states can take part in the process of amendment of the constitution through the Federal Council, which has the right to initiate constitution amending legislation and has to consent a constitution amending draft with a majority of at least two thirds of its members.

d) The most important amendments of the constitution have been the initiation of a compulsory military service (as the constitutional base of the establishment of the Federal Armed forces - Bundeswehr) and a section on the state of emergency in 1968, the reforms of the (constitutional) financial system in 1969 (and 1955), a provision about the relationship to the European Union in 1992 and amendments in connection with the eastern German states joining the federation. Politically controversial was also the amendment of the right to seek for asylum (1993) and the inviolability of the dwelling (1998 - concerning bugging).

2. Do you have any complementary constitutional federal rules? If so, which are the most important? Are "constitutional conventions", namely, unwritten binding agreements or rules of conduct, recognized in your system? Could you mention the most important?

a) There are some complementary constitutional federal rules. Some articles of the constitution from 1919 (art. 136-139 and 141 of the Weimar constitution from 11th August 1919), mainly dealing with the matter freedom of religion and the relationship of the federation and the religious communities, are explicitly incorporated in the constitution from 1949. The constitution contains the principle that all old law, which does not violate the Federal Constitution, keeps its validity. On principle even treaties of the German Empire (Deutsches Reich) keep their validity till they are replaced by new ones.

The provisions of the Unification-treaty (Einigungsvertrag) between the federation and the eastern states, regarding the end of the GDR and the expansion of the German sovereign power on the territory of the former GDR, contain constitutional law in a material sense. Written constitutional law in a bare material sense is even the right to vote and the right to have Standing Orders of the Federal Parliament as well as the main principles of nationality.

b) Unwritten constitutional law are the principles of provision of legality, proportionality, legal security and the principle of loyalty to the federation - to enumerate the most important ones. The existence of (unwritten) constitutional customary law is only of theoretical interest in the Federation.

3. Are there any written state constitutions? What is the procedure for its elaboration, ratification and amendment? To what extent can the federation intervene in these procedures? Could any federal organism provisionally suspend some of their provisions? Are state constitutions bound by federal rules other than the Federal Constitution? If so, which are they?

a) Every state has a Written constitution.

b) The procedure of the amendment depends on what the state constitution regulates. Regularly there has to be a majority of two thirds of the members of the state parliament to amend the state constitution.

c) The federation is not involved in the process of the elaboration, ratification and amendment of the states constitutions. The federation can only intervene, if the state disobeys the basic principles of the Federal Constitution (art. 28 1 GG) or the constitution violates other federal law (art. 371 GG).

d) If a state does not fulfill its federal obligations the federation can (with the agreement of the Federal Council) use federal enforcement (Bundeszwang - measures taken in order to enforce the federal obligations owed by a state - art. 371 GG). A right of the Federation to suspend provisions of the states is not explicitly regulated, but it is supposed to be included for certain cases.

III. CONTENTS OF THE FEDERAL CONSTITUTION.

1. expressly recognize federalism or political decentralization as a constitutional principle or value?

The Federal Constitution expressly recognizes federalism as a constitutional principle.

2. design a map of the territorial organization? In other words, does the Federal Constitution identify or enumerate the territories and/or the communities that conform the federation?

It designs a map of the territory organization as far as it is based on all the German states listed in the preamble and because the shape of the states can only be changed through a referendum observing a procedure regulated in the constitution (art. 29 GG).

3. enshrine the autonomy of the states? If so, in which way?

Yes. The federalism is expressly enshrined as far as it is not allowed to abolish the principle in any way (art. 79 111 GG).

4. recognize states or main territorial communities the capacity to federate among them? If so, can they establish links or celebrate conventions among them without the participation of the federation?

The Federal Constitution does not contain an explicit statement about the capacity of the states to federate among themselves. On principle the shape of the states can only be changed by a referendum procedure regulated in the Federal Constitution and not only by a state-treaty. One execution of a change without a referendum concerns a case of minor importance (art. 29 VII GG). Beyond that the states are theoretically free to have treaties between each other on matters on which they have the legislative and the administrative power. The Federation has no right to participate.

5. fully define the whole system of decentralization, or is this system thought to be developed to a great extent by future federal provisions? If so, which are they?

More or less the Federal Constitution defines the whole system of decentralization concerning, for example, the principle of federalism (art. 20 I GG) and execution of the law through the states (art. 30 GG), the constitutional frame of the states (art. 28 I GG), the change of the territory (art. 29 GG), the structure and function of the Federal Council (art. 50ff GG), the allocation of legislative rights (art. 70 ff. GG) and the enforcement of the law (art. 83ff. GG) as well as the financial system of the Federation (art. 104a-108 GG). It is not expected to be amended to a great extent in the near future.

6. allow the exercise of the right to self-determination or the separation of states or other territories?

The Federal Constitution allows the exercise of the right to self-determination of the states on the basis of their own constitutions in the described frame of a republican, democratic, social state of law. The importance of the right to self-determination mainly depends on the allocation of competences in the Federal Constitution. The separation of states is not explicitly regulated, but it is the common opinion, that the states are not allowed to separate.

IV. INSTITUTIONAL ISSUES

1. Do states participate in the election, appointment or cessation of the federation's chief? Is there any other relationship between this figure and states or main territorial communities? Which one?

The states send representatives to the Federal Assembly (art. 54 GG), which consists of these members and members of the Federal Parliament. The Federal Assembly elects the President of the Federal Republic of Germany (Bundespräsident). This is the only task of the Assembly. The states do not take part in the election of the federal chancellor (Bundeskanzler).

2. Is there any Senate or second legislative assembly that represents the states? If so, does it exercise its representative role effectively? Why? What functions does the Constitution attribute to this legislative assembly? How are states represented in this chamber? Do they have the same kind of representation on the basis of the number of votes or seats? Does any state have a special position in this chamber (for instance, exclusive initiative or veto prerogatives, etc.)? How representatives are organized in this second chamber, according to their territorial origin or to their political groups?

a)The Federal council (Bundesrat) represents the states.

b)Its position is strong, whenever a bill needs the approval of the council. Its position is weaker, if the council can only raise an objection, which can be rejected by the parliament (art. 77 GG). The actual political position of the council is particularly important, if the political majority of the council differs from the one in the parliament. Then - in the worst case - the votes in the council of the states, which are ruled by a state-government of the opposition-party(parties), can be abused for a party-policy of obstruction against the federation government and not to pursue the interests of the states.

c)The Federal Constitution attributes the following functions to the council: Above all the council is the instrument of the states to take part in the legislation of the federation (art. 50 GG). The council is also the instrument of the states to take part in the administration of the federation (art. 50 GG). For example, many regulations of the administration (subordinate legislation) need the approval of the federal Council. Eventually the Council takes part in affairs concerning the European Union (art. 23 GG).

d)The council consists of members of the governments of the states (art. 51 GG).

e)The states are represented in the chamber according to their number of population. The number of votes in the chamber differs from 3 to 6 votes (art. 5111 GG). Every state can send as many members as it has votes (art. 511111 GG).

f)No state has a special position in the chamber, like exclusive initiative or veto prerogatives.

g)As the representatives have to be members of the government, they are normally a member of the „ruling" party/parties, but may be in any or no party. They are bound by instructions. Their position is therefore not comparable to the one of a representative of the parliament.

3. Do states have legislative initiative over federal subject matters? Is their consent required for the enactment of certain federal acts? In other words, do they have a veto? If so, what kind of veto?

a)No state has an own legislative initiative over federal subject matters, but the Federal Council has (art. 76 GG).

b)Its consent is required for certain federal acts only. On principle the Federal Council can only raise an objection, which the Parliament can reject. A veto right only exists in the case that any provision of the constitution demands it, for example, if a provision refers to the organization of the state administration, which is competent to enforce federal law (art. 84 I GG).

c)The requirement of an approval is a real veto right. If the council refuses the approval this decision can not be overcome or rejected by the Parliament.

4. Is there any neutral judicial court (Constitutional Court, Supreme Court, etc.) that protects the allocation of powers between the federation and the states? Do states participate in the process of designation of its members? How do you assess the influence of this court upon the current system of political decentralization? Broadly speaking, could you tell whether its case law has been most favorable to the interests of the federation or the states? Are there any subject matters or historical phases in which this phenomenon occurred? Can ordinary lower courts interfere in conflicts of powers between the federation and the states?

a)The Federal Constitutional Court is a neutral judicial court which (also) protects the allocation of powers between the federation and the states.

b)The members of the court are elected half by the Parliament and half by the Federal Council.

c)d) and e)The influence of the court upon the current system of political decentralization is limited due to the extensive competences of the Federation. In the past the control of the federal competence in the field of concurrent legislative powers was nearly ineffectually, because the condition „need to regulate uniformly throughout the Federation" was supposed more or less not to be justiciable. Although the constitution has been reformed concerning this issue to strengthen the position of the states (art. 72 II GG new version), it is not to be expected, that the actual position of the states has become much more important.

f)Ordinary lower courts can not interfere in conflicts of powers between the federation and the states.

If to their opinion a federal act violates the constitutional allocation of the power of legislation the court can ask the Federal Constitutional court, whether the act is constitutional, when the decision of the case depends on the validity of the act.

5. Which legal mechanisms do the federation and the states have to protect their powers? Are they recognized only against legislative acts, or against regulations and administrative

decisions or omissions as well? Could you tell whether the safeguards and procedural position of the federation and the states are symmetrical? In other words, can the federation challenge state acts before a court? And vice-versa? Has the federation a veto against state legislative acts, regulations or decisions? And the states against the federation? Can a state bring a conflict of powers against another state before a court? In each state, which is the legitimate organism –legislative, executive, etc.- to bring judicial actions to protect state powers? Can local entities or municipalities bring judicial actions to protect their autonomy against federal or state acts or rules? Are there any other institutions or individuals legitimate to challenge federal or state legislative acts, regulations, rules or decisions on the basis of a conflict of powers?

a) A superior organ of the federation, like the Federal Council, the Federal Parliament or the federal government can appeal to the Federal Constitutional court, if their competences are violated by another organ, except the question of the validity of an act (art. 93 I Nr. 1 GG). The federal government, a state government or a third of the members of the Federal Parliament can appeal to the Federal Constitutional court, if they have a difference of opinions about the compatibility of federal law or state law with the constitution (art. 93 I Nr. 2 GG), especially if there is the question if law comes up to the conditions for a federal act based on concurrent legislative powers (art. 93 I 2a GG). Moreover the court decides as well a conflict about rights and obligations of the federation and the states, especially concerning the enforcement of federal law (art. 93 I Nr. 3 GG).

b) While the above described first judicial proceeding on principle deals with all possible acts and omissions of a superior organ of the Federation, the second and third described proceeding only deals with legislative acts.

c)-d) The Federation can challenge state acts before the Federal Constitutional court in the described proceeding. Vice versa the states can also challenge Federal acts before the court in the described proceeding. e-f) The federation has no veto against state legislative acts, regulations or decisions.

g) A state can bring a conflict of powers against another state before a court (art. 93 I Nr. 4 GG).

h) The legitimate power to bring judicial actions to protect the states power is the Federal Council (in the case of art. 93 I Nr. 1 GG) or the state government (art. 93 I Nr. 2-4 GG).

j) Local entities and municipalities can bring judicial actions to the Federal Constitutional Court to protect their autonomy against the state and the federation (art. 93 I Nr. 4b GG).

h) In a conflict between superior Federal Organs each of them may appeal to the Federal Constitutional Court (art. 93 I Nr. 1 GG), but as said before this proceeding does not deal with the validity of acts and only „decisions“ can be subject of the trial. Indirectly a conflict of powers may be subject of other proceedings: As said before a lower court can appeal to the Federal Constitutional court, if a Federal or a state act violates the Federal Constitution (art. 100 GG). If it violates the states constitution the court may appeal to the states Constitutional court. Also every individual, whose constitutional rights are violated by a legislative or administrative act, which violates the allocation of powers, can raise a constitutional complaint against the act (art. 93 I Nr. 4a GG).

6. Who is in charge of the official appointment of the main state authorities (the chief of the state, government, parliament or legislative assembly, judicial power of the state, etc.)? Does the federation intervene in the process of appointment?

a) The minister-president, being the chief of the state, is elected by the state parliament. The president of the state parliament declares, which person is elected. The minister-president appoints and dismisses the ministers of the government. The members of the state-parliaments are elected by the people of each state. The leader of the state elections declares, which persons have been elected (for example: § 36 Election Act of the state Saxony-Anhalt).

b)The Federation is not allowed to intervene in the process of appointment.

7. Does the judicial power follow the allocation of powers? In other words, are there federal and state courts with jurisdiction to solve federal and state cases respectively? Regarding state courts, is the appointment of judges, magistrates and administrative staff a state power? Do states enjoy legislative power to regulate these issues? Is there any body of self-government of the judicial power? If so, which is its composition? What functions does it have? Who is responsible for the provision of material resources to the administration of justice (federation or states)? Which are the criteria for the allocation of resources? Can federal courts review state court's decisions? In what circumstances?

a)-b)The judicial power does not follow the allocation of powers. Beside the Federal Constitutional Court, which has the task to be the guardian of the Federal Constitution, there are federal courts which are the highest instance in the stages of appeal. The power and second instances are state courts. Most of the states also have own Constitutional Courts to be the guardian of the state constitution.

c)The appointment of judges (etc.) for state courts is a state power.

d)This right is a compulsory result of the constitutional status of the states having all state powers, namely legislation, administration and jurisdiction. The Federal Constitution also regulates that the states have the power of legislation and administration as far as no other rules apply (art. 30, 70 1, 83 GG).

e)-f)-g)According to state law committees of judges have to be formed with representatives of the judges at every single court and for the whole state, which collaborate in social and other affairs with the court office (i.e. § 15 Judge Act of the state of Saxony-Anhalt). In addition presidential councils have to be formed for every jurisdiction (ordinary, administrative etc.), which collaborate in affairs of the official law of the judges (§ 29). The federal law also demands to form presiding committees of judges at every court, which are mainly concerned with the assignment of functions (§ 21 a Federal Court constitution-Act).

h)-i)Responsible for the provision of material resources to the administration of justice is the state for state courts and the Federation for the federal courts. The criteria for the allocation is the expected and actual need to fulfill its task.

j)Federal courts can review state courts decisions if they are competent for appeals against decisions of the state courts (appeal on questions of law and fact or appeal on questions of law only). In many cases there is no possibility to appeal to a Federal court. The conditions to appeal to the Federal courts are regulated in a complicated system of provisions, essentially based on the significance of the case and depending on the branch of jurisdiction.

8. Are there others mechanisms for state participation in federal institutions or functions? Do states participate or are represented in relatively autonomous federal organisms, regarding, for instance, citizen's rights or intervention in the economy (independent agencies with regulative, financial and arbitration powers, etc.)?

As far as legislation is concerned there are no other than the described forms of participation. The Federal Council only participates in certain cases of regulation. The states participate in the Federal administration to a certain extend in some cases (see answer VII nr. 2).

9. Can states freely convoke a referendum regarding political or legal measures? Are there any constraints? In other words, does the federation have any power over this field?

States must implement a referendum to confirm a state-treaty about a change of the territory (art. 29 VIII GG - being one of the cases of a change of territory). For affairs which are exclusively in the competence of the federation states may not provoke any referendum. All states can regulate the right to implement a referendum about a Federal affair if it affects any state competence.

10. Is there any pro-state provision concerning symbolic issues (flags, protocol, languages, etc.)?

The Federal Constitution contains no pro-state provision about symbolic issues. This is subject to the state constitutions.

V. THE ALLOCATION OF POWERS

1. Is the system of allocation of powers mainly enshrined in the Federal Constitution? Is it secured by the Federal Constitution?

a)The system of allocation of powers is not enshrined in the Federal Constitution, but as the federal principle is enshrined, it is not allowed to deprive the states of substantial legislative power (art. 79 111 GG).

b)It is secured as far as an amendment of the allocation needs the approval of two thirds of the Federal Council (art. 79 111 GG).

2. Which is the basic design of the system (a list of federal powers, a list of state powers, a double list, other solutions)?

The basic design is a list of federal powers of three categories: Exclusive federal legislative power, concurrent federal legislative power and federal skeleton legislation.

3. Is there any constitutional provision concerning residual powers, namely, "new" subject matters, not allocated either to the federation or to the states by constitutional law? If so, where are allocated the residual powers (federal or state level)? Is it actually effective? Are there any rules or principles that presume that the power is vested in a certain level of governance?

a)-b)A principle provision regulates that the states have the power of legislation, if nothing else is explicitly said in the constitution (art. 70 1 GG). c)It is not actually effective, because the allocation leaves only a small and less important number of competences to the states and - more than that - several unwritten competences of the Federation are recognized.

d)No, the allocation only distinguishes Federation and states (art. 70-75 GG).

4. Is there any rule that gives preference to federal law in case of conflict with state law? If so, has it been actually applied?

Yes (art. 31 GG). It has been applied in several cases (BVerfGE 1, 264, 281; BVerfGE 96, 345, 364 and others).

5. Are there other general rules? Which are they?

Apart from the principle of state legislative power (art. 70 1 GG), the most important general rules are the above described condition for concurrent federal legislative power (art. 72 111 GG) and the conditions for skeleton legislation, which refer to the conditions of skeleton legislation and add that detailed provisions and directly applicable provisions should be an exception (art. 75 1, 11 GG).

6. Does the Constitution allow making more flexible the allocation of powers by mechanisms other than constitutional amendment? In other words, can the federation, by itself, transfer or delegate powers to states? Through which mechanisms? What role did all those mechanisms play on the evolution of the federation? How have the decisions regarding the material, economic and human resources to be transferred as a consequence of a transfer or delegation of powers been taken?

a)-c)A delegation of powers to the states is not regulated. Concerning exclusive federal legislation the Federation may not delegate its power. Concerning concurrent legislative power the Federation can renounce to legislate and in this way let the states legislate. Enacting skeleton legislation the Federation can confine itself to absolute necessary provisions. Beyond that Federal acts may authorize the state government to regulate (in the sense of an ordinance) (art. 80 I GG).

d)While the renouncement and the self-confinement is of less importance, the mechanism of regulation through provisions (ordinance) is an important instrument, but the federal law mainly authorizes federal offices. As a tendency to uniform is immanent to the constitution, efforts have been made to strengthen the position of the states (art. 72 II, 75 GG new version).

e)As all main or essential decisions have to be taken by law, the regulations may only fill out the legal frame. The law also has to determine the contents, purpose and range of the authorization (art. 80 II GG). The regulation has to observe all provisions of a higher rank.

7. Has any subject matter been fully attributed to just one of the territorial levels of governance –federal or state-?

There are several subject matters which have been fully attributed to just one of the levels - regarding to legislation and administration power. The matters of exclusive federal legislation power are listed in the Constitution (art. 73 GG). The matters of exclusive federal administration are also listed in the constitution (art. 87, 87a, 87b, 87d I, 87e GG).

8. Is the technique of "shared" powers recognized (both federation and states have legislative powers, although federal law takes precedence over state law in case of conflict)?

Yes.

9. Are there any subject matters in which legislative power is exclusively attributed to the federation, while executive power is attributed to the states? If so, is the regulative power regarded as legislative or executive power? Can federal legislation determine state administrative organization and practice?

a)Yes. For example, the passport system is a matter of exclusive federal legislation (art. 73 I Nr. 3 GG), but the federal law is - according to the principle - enforced by the states (and their local authorities) (art. 30, 83 GG).

b)The regulative power is an exclusive executive power. It is a power of the administration on the base of a legal authorization. In particular cases some regulations need the approval of the Federal Parliament (or/and the Federal Council).

c)On principle federal legislation can not determine state administrative organization and practice. One exception are such federal provisions which have the approval of the Federal Council (art. 84 I GG). The federal government can also regulate general administrative provisions with the approval of the Federal Council (art. 84 II GG). Another exception is the enforcement of federal law by the states according to instructions of the federation in certain cases like the state-administration of the federal streets (art. 85, 90 II GG) or the collecting of federal taxes (if the money belongs totally or in parts to

the federation) by state authorities (art. 85, 108 III GG). Such law also needs the approval of the Federal Council (art. 85 I GG). Even general administrative provisions need that approval (art. 85 II GG).

10. Are there any subject matters in which the federation can establish principles or basis for the state legislation? If so, has the federation made an extensive use of this power? Is there any mechanism to correct that situation?

As said before, there is the skeleton legislation. It contains six subjects (listed in art. 75 I GG). The federation has made an extensive use of this power. The mechanism to correct that situation are the above described restrictions (a special justification for a federal wide legislation and - on principle - no detailed and directly applicable law - art. 75 I, II GG).

11. Does the federation have an own administrative organization on the state territory? How strong is that administration? In which fields does it act? Can the state administration exercise any federal power delegated by the federation? If so, are state administrative bodies hierarchically dependent of the federal administration? What mechanisms of review are reserved to the federation to secure that states correctly enforce federal law?

a)b)c)Yes. Beyond the level of the government with its ministries the federal administration is confined to a relatively small number of subjects of federal administration with an own organization of administration. Subjects of federal administration are Foreign Affairs, federal fiscal authorities, federal water ways, federal armed forces, administration of aviation and railway, the central bank of Germany and further ones of minor importance.

d)The state administration exercises only its own state power. Also if they enforce Federal law, they act on their own account, but in every case there is federal supervision. On principle the supervision only controls the legality of the states acts. In the above (nr. 9) described exception detailed instructions are also allowed (art. 85 GG). This is the only case in which state administrative bodies are hierarchically dependent on the federal administration.

e)The mechanism of review is mainly the instruction. The federation and the states can appeal to the Federal Constitutional court if there is a conflict about the lawfulness of the instruction (art. 93 I Nr. 3 GG).

12. What are the general limits of state powers?

The state power is limited by the law of the European Union, the fundamental rights of the Federal Constitution (art. 1 III GG), every other Federal Constitutional rule of law (art. 20 III GG), especially the described general frame for the order in the state (art. 28 II GG), and the state constitution.

13. In your opinion, what are the most important federal powers?

The most important federal powers are economic law (art. 74 Nr. 11 GG) and labor law (art. 74 Nr. 12). Apart from that one might add civil and penalty law, and juridical proceeding law (art. 74 I Nr. 1 GG) as well as land (ground) law (art. 74 Nr. 18 GG).

14. In your opinion, what are the most important state powers?

The most important state powers are school law (with the law regarding higher education), police law and the law of the municipalities as well as the building regulations (Bauordnungsrecht - without the planning law). Substantial space for own state accents in the legislation (with less importance) can also for example be found in the law relating to water and the nature protection law.

15. Have any of these federal or state powers been extensively interpreted?

As said before, there is a tendency to a federal uniforming of the law and the danger of an creeping erosion of the states' competences. The Federation is inclined to interpret its competences extensively.

16. Does the Constitution provide the transfer of sovereign powers to regional or international organizations? Does it address this issue in the domestic legal system, taking into account the decentralized structure of the federation? Does it give the states the right to ratify international treaties or agreements? If so, in which conditions? How is the international responsibility of the federation addressed?

The Federal Constitution provides the transfer of sovereign power to bi- or multilateral organizations (art. 24 I GG). The transfer to the European union is subject of a particular provision (art. 23 GG). The provisions are not placed in the section about the legal system but in the section about the federation and the states. The decentralized structure is taken into account in the provision about the European Union (art. 23 II, IV, V GG). Whereas the provision referring to the EC contains a detailed system, the general provision only refers to the transfer of sovereign power of the states to neighborhood organizations (art. 24 Ia GG). On principle the relationship to foreign countries as well as the right to have treaties with them is a right of the federation. The federation only must give a hearing to the state, if the treaty affects the particular conditions of that state (art. 32 I, II GG). The states may have treaties with foreign countries on subjects they have the right of legislation for (art. 32 III GG). If the state has the right to ratify international treaties, the state is internationally responsible for the ratification. The state acts as a state with sovereign power.

VI. LOCAL AND MUNICIPAL GOVERNMENT

1. Does the Federal Constitution recognize local or municipal autonomy? And the state Constitutions? If so, which term is it used to refer this autonomy? What substantially follows from this constitutional recognition?

a)The Federal Constitution recognizes municipal autonomy (kommunale Selbstverwaltungsautonomie - art. 28 II GG). It also recognizes the autonomy of associations of local communities, but only as far as the law grants this right (art. 28 II GG).

b)The terms used are own responsibility and self-government ("in eigener Verantwortung", "Selbstverantwortung" - art. 28 II GG).

c)This recognition is a principle of state organization, a guaranty of the self-government as an institution and an own right of the municipal community.

2. Are the local representatives democratically elected by the people of the municipality or local entity? If not, which is the method for the election?

The local representatives of the municipal communities and the counties are democratically elected by the people of the municipality or the county (art. 28 12 GG). The representatives of other local communities are normally not elected, but sent to the community or elected by the municipal or other local governments.

3. Are local entities under federal or state control? If so, are these controls limited to issues of legality or do they also cover issues of opportunity? Can municipalities or other local entities challenge federal or state law or other decisions, on the grounds that they violate their autonomy? Before which bodies or courts?

a)Local entities are under the states` control, as they are part of the states.

b)The control is limited to issues of legality as far as a matter of self-government is concerned (on the base of the municipalities constitutional right). Beyond this the control covers even issues of opportunity.

c)Yes, they can challenge federal as well as state law and other federal and state decisions on the ground that they violate their autonomy.

d)They can appeal to the Federal Constitutional Court (art. 93 I nr. 4b GG) as well as to the state constitutional court (for example: art. 75 nr. 7 constitution of Saxony-Anhalt).

4. Is the design of the local government (kind of local entities, organization, powers, human resources, etc.) under federal or state power? What local subject matters or functions are allocated to the federation and the states? Can the federation establish direct bilateral relationships with municipalities or other local entities? Can the federation intervene upon their activities by exercising federal powers concerning a particular sector or through its spending power?

a)The design of the local government is under state power.

b)The allocation is a complicated system of federal and state powers. Local subject matters are mainly regulated by the municipalities (and other local communities). But: In the case of an encroachment in the fundamental rights of the citizens the municipalities also need an authorization by federal or state law. The federation as well as the states have the power to confine the constitutional right of self-government by enacting federal or state administrative law. This law may be enforced by the local communities. For example, building planning law is a Federal law (enforced by the local communities), whereas the building code (Landesbauordnung - referring to warding off a danger) is mainly enforced by the local entities, counties and cities which do not belong to a county.

c)The federation can only establish direct bilateral relationships with municipalities or other local communities, if both have the competence. The municipality can maintain such a relationship, for example, a contract with the Federation about matters of its autonomy. For example, the Federation may have a contract with a municipality about the use of their territory for military purpose.

d)On principle, the federation can not intervene. The supervision of the local communities is a task of the state. Only under the condition that the law no longer prevails in a state and the state can no longer guarantee the enforcement of law, the Federation may execute the Constitution and the Federal law in a local community (art. 28 III GG).

5. Are there "city-states" in your system? According to which provision? Is their regime equivalent to the states' one? Apart from these city-states, are there any municipalities with a particular autonomous regime? Which ones? Which is the basis for the recognition of this regime?

a)-b)There are three city states according to the preamble of the Federal Constitution.

c)Their regime is essentially equivalent to the states' one. There are only some particularities which are in constitutional respect of less importance. d)Apart from the city-states there are no other municipalities with a comparable particular autonomous regime. The above named municipal communities and counties as well as other associations of local governments have the right of self-government, but have no representatives in the Federal Council. Several entities of municipality (in the widest sense of municipal community) also do not participate directly in the legislation, like the local chambers of handicrafts or the universities.

6. Can states create "intermediate" local entities between municipalities and states? Are there any intermediate local entities in your system? Do they exist only in some states or in the whole territory of the federation? Are states free to establish their territorial limits? What powers do they have? To what extent are they dependent on the states? What is the system for the election or appointment of the chiefs of their governmental bodies? Can the federation intervene in the organization, powers or financing of these intermediate local entities? How? For which purposes?

a)b)States on principle are not allowed to create intermediate local entities between municipalities and themselves concerning matters of municipal self-government. Such an encroachment of the right of self-government could hardly be justified. In other fields of administration states may force municipalities to lend their organs for the enforcement of state law. This structure only exists in some states. For example, the district-president is in some states a county office as well as a state office, who therefore can act for both entities depending on the administrative subject.

b)There are several forms of intermediate local entities like counties and other municipal associations. Every state apart from the city states has regulated forms of local entities beside the basic form of the municipal community (city or village with the right of self-government).

c)States are free to establish their territorial limits.

d)The power they have depend on the law, which is the legal base for their power (art. 28 11 2 GG). For example, in some states the district-president may in some states have the power to act on behalf of the state in affairs of hunting and fishing.

e)With regard to the matters of state competence they are totally dependent on the states, but the state may not interfere in matters of self-government (except the supervision on issues of legality).

f)The county president is elected by the people of the county. g)The Federation can not interfere in the organization etc.

7. How are local powers determined? Can local governments provide services or perform federal or state powers? If so, which legal mechanisms coordinate their collaboration (delegation, assignment, etc.)? In which subject matters can this form of collaboration exist? Are local governments obliged to cooperate? Do they have a right to receive financial funds from the federation or the state that asks for the collaboration?

a-b)Municipal power is determined by European law, federal law, state law and their own law. On principle their competence is universal, so they can perform every public task referring to their own municipal affairs, if this does not violate any federal or state provision. Under this condition they can even perform federal or state power, as long as it is an own municipal affair. c)The collaboration of municipalities is regulated by state law. There are several forms of collaboration. Subjects of collaboration can not only be (on the base of a contract) single tasks (like a joint water supply) but even intensive forms of cooperation with a joint administration.

d)In many states local governments can be forced to collaborate, if there is a necessity to collaborate and the governments do not collaborate deliberately. e)They have no right to receive financial funds from the state only because the state urges them to collaborate, but most state constitutions contain a provision, which puts an obligation to the state to care for the financing of the new municipal tasks (for example art. 87 III constitution Saxony-Anhalt).

8. Do local governments have normative or regulatory power? Which other general powers do they have? What powers are lacking?

a) Municipal governments and the governments of the counties have normative and regulatory power according to the law. On principle, other associations of local governments only have normative power if the local governments transfer their normative power to them. Only municipalities receive normative power directly from the constitution (art. 2811 GG).

b) Other general powers the municipalities have are (on principle) territorial, financial, tax, staff and budget sovereignty. The associations of local governments have no universal competence but only competences granted by particular provisions or by a transfer of competences.

c) Above all they are lacking the financial sovereignty in the sense of financial independence from the state and the federation, because the municipality is dependent on financial transfers of the federation and the state. Its own financial sources are not sufficient. Other local communities have only power according to the law (with a rank under the constitution).

VII. INTERGOVERNMENTAL RELATIONS

1. Does a principle of collaboration or constitutional loyalty among the different political and administrative authorities exist in your federation? If so, where is recognized (constitutional law, convention)? Which is its content and what consequences follow from this principle? To what extent is there a hierarchy among the different administrations?

Yes: The unwritten constitutional principle of loyalty to the federation, in other words the obligation to mutual consideration for each other in the federal order. Above all the principle limits the competences of the entities. It has also an impact on the proceedings like hearing the entity affected by the measures of another entity or recognizing the principle of equality. All entities must observe the principle. So far there is no hierarchy.

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2. Does the Federal Constitution establish a system of intergovernmental relations between the federation and the states? If so, through which mechanisms? Are these mechanisms established in other constitutional or legislative provisions? To what extent are institutional practices or conventions important on this matter? Generally, which is the importance of intergovernmental relations for the dynamics of the system? To what extent do they allow to make more flexible the formal allocation of powers?

The "system" of intergovernmental relations between the federation and the states is the collaboration of the Federal Council in the federal legislation and administration and affairs of the EC. Apart from that there is no formal system of intergovernmental relations in affairs of legislation. The government of the Federation may negotiate informally with the states to influence their vote in the Federal Council.

On principle there is a prohibition of mixed administration (mixed federal and state administration). Exceptions are the joint tasks (art. 91a GG: building of universities, improvement of the regional economic structures and the agricultural structures and protection of the coasts; art. 91b: planning concerning education and research; art. 104a GG: federal financial aids for the states and local associations of governments and art. 108 IV GG: joint financial authorities). One more specialty is the joint committee of the Federal Parliament and the Federal Council which acts as an emergency parliament in the case the republic is attacked by foreign forces (art. 53a GG).

3. Are there organisms to coordinate the horizontal collaboration among states? Does the federation participate in these organisms? Is an authorization required for their creation? How the states are represented? Are they important for the system?

- a) There are no constitutional organisms to coordinate the horizontal collaboration between states, but the states found forms of collaboration for example, the permanent conference of the ministers of education.
- b) Representatives of the federation may join the coordinating meetings of the states, if the states wish that.
- c) No authorization is required for their creation as long as the collaboration lies within the competence of the state and does not violate any provision of the federal or the states' constitution.
- d) The states can be represented by their minister-president, a minister or a permanent undersecretary. This depends on the subject and its importance.

4. Which role do local governments play in the system of intergovernmental relations? In which organisms of collaboration do they participate?

The local governments do not play any important role in the system of intergovernmental relations. They are not represented in the Federal Council, have no veto rights against federal or state bills affecting them and they are confined to appeal to the Federal or state constitutional court, if their right of self-government is violated by a provision and they can try to influence the federal and state legislation politically by means of their associations. The associations of the local governments are only given a hearing in the case of bills affecting their administrative competences.

5. Do different governments or administrations usually participate in organisms or entities with legal entity (public or private: consortiums, associations, foundations, private societies, etc.)? Is this joint collaboration usual for developing public works, managing services, or financing of activities? Which legal regime is applicable?

The states do not participate in legal entities beside the above described (nr. 3). Nevertheless, the importance of informal intergovernmental collaboration for the dynamics of the system is estimated to be high, especially because many decisions of the Federal Council as well as bills to uniform the legislation of the states are politically prepared in negotiations between the states. The cooperation between the states has to observe the constitution and does not allow any change of the constitutional system of the collaboration of the states in federal legislation and administration. The municipal and, other communities usually participate in legal entities in form of the associations to have influence on the policy of the federation and the states. No special legal regime is applicable. Above all the actors must observe the limits of their competences.

VIII. TAXATION

1. What is the level of state autonomy regarding incomes? Can they establish taxes? If so, are there any constraints? In other words, can they make use of the same kind of taxes (official prices, rates, extra charges, etc.) that the federation establishes? Can they use both direct and indirect taxation? Can they establish taxes over subject matters already charged by the federation?

- a) The power of tax legislation is distributed between Federation and states in the Federal constitution (art. 105 GG). The federation has the exclusive right of tax legislation for customs duties and financial monopolies as well as the right of concurrent legislation for every other tax. The states have only the power of tax legislation concerning the local excise taxes and expenditure taxes (art. 106 IIa GG).
- b)-c) States can not make use of the same kind of taxes that the federation establishes. State taxes are not allowed to be similar to any (lawful) Federal tax (art. 105 II GG).

d)As the allocation of the power of tax legislation deals with direct as well with indirect taxes the Federation and the states can - observing this constitutional order - use direct as well as indirect taxation.

e)States may not impose a tax on subject matters already charged by the federation, if the federal tax is lawful.

2. Can states ask for credit or issue public debt within the state or federation without the authorization of the federation? Can they do this abroad? If the federation has the power to authorize these operations, which are the legal basis that regulate this?

States can ask for credit without the authorization of the federation. On principle they can also issue public debt without the authorization of the federation. On principle they can do this abroad. Nevertheless, the states must observe the principles on budgeting of the federal Constitution as well as the restrictions of their own budgetary law.

3. To what extent are state incomes important in contrast to the transfers that the states receive from the federation? How are these transfers regulated?

a)The states` income (in the sense of own tax sources) is unimportant in comparison to its their important share of federal taxes they receive. The tax yield of a federal tax ("federal" tax in the sense of a tax based on federal legislative power) may belong only to the states or only to the federation. It may also belong to both sides. The term "transfer from the federation" does not describe the German tax system correctly, because most of the federal taxes are collected and administrated by state authorities (art. 108 II GG - if the tax yield belongs to the state, they are often called state-taxes [Landessteuem], although they are a matter of federal legislation). Only some are collected by federal authorities (art. 108 I GG).

b)The organization of the states ` financial authorities and the proceeding of them can be regulated by federal law with the approval of the Federal Council (art. 108 11 2 GG). The transfer of the yield of the single taxes, especially the shares of the state and the federation is regulated by law, if it is not regulated in the constitution (for example art. 106 III GG).

4. Do states participate in federal taxes? If so, in which taxes and to what extent do they participate? When states participate in federal taxes, do they have any kind of normative power (for instance, power to fix deductions, exemptions, discounts, etc.)?

a)States participate in federal taxes as described above.

b)-c)They participate in the income tax, the value-added tax and the corporation income tax (art. 106 1111 GG). They participate in the income tax and the corporation income tax to the half of the tax yield (art. 1061112 GG). Their participation in the value-added tax has to be determined by law (art. 106111 3 GG). This law needs the approval of the Federal Council. There are some more constitutional provisions which demand the approval of the Federal Council for tax legislation concerning the above listed taxes (art. 106 IV 2, 106 V GG).

5. Do states receive direct transfers or funds from the federation? What criteria are used to determine the amount of these transfers? Do states participate in the determination of the amount of transfers? If so, through which mechanisms?

States do receive direct transfers from the Federation (art. 107 11 3 GG). The constitution only demands that the state receiving the transfer is financially weak. The details are regulated by law, which the constitution refers to. The law needs the approval of the Federal Council. Although this direct transfer from the Federation to a state is, according to the system of the constitution, an

particular exception, actually it has a respectable importance and can be misused to cause Federation-friendly policy of the promoted state.

6. Can the federation intervene in what the transferred funds will be allocated to? If so, in which subject matters? To what extent? Generically or specifically? Can the federation determine their management or procedure? In general, how has the federal spending power determined state powers? What is its percentage with regard to state incomes? How does this system work regarding other federal and state transfers to local governments?

a)-e)The federation can not intervene in what the transferred funds will be allocated to. It may only make an attempt to intervene politically. Its within the power of the states to decide, for what they spend the money they receive.

f)-g)The term "federal spending power" does not describe the constitutional relationship between federation and states concerning taxes correctly. As said before the Federal Constitution distributes the tax yield among the federation and the states. Federal law may only - with the approval of the Federal Council - determine the tax rate. As far as the constitution allows a change of the tax-shares of the states (value added tax according to art. 106 1113 GG) the federal law also needs the approval of the Federal Council.

g) The percentage is about 50 per cent or less. In the year 1995 the incomes of the western states were in total 224,12 thousand million Deutsche Mark. The tax-share of this amount was 79,33 thousand million Deutsche Mark. h)The municipal finance system is complex. The municipalities receive funds from the federation and the states and have different own financial sources of funds. The municipalities receive federal compensations, if the federation urges them to establish particular facilities, which cause additional costs (art. 106 VIII GG). The municipalities receive their constitutional or legal share of certain taxes from the state financial authorities, for example their share of the income tax (art. 105 V GG) and of the value added tax (art. 106 Va GG). The states can pass a share of the state taxes to the municipalities according to state law (art. 106 VII 2 GG). According to the constitution the municipalities receive the tax yield of the land tax and the trade tax. According to state law they levy these duties by themselves (art. 106 VI GG). Eventually, all states delegated their right to regulate the excise taxes and expenditure taxes to the municipalities.

This only describes the main tax aspects of the system of financial sources, which covers a more complex system with other financial sources.

7. What follows from the principle of "tax solidarity" among states? In other words, what kind of economic contributions do the states make to the federation? How does this system work, on the basis of which criteria?

Tax solidarity demands, that the financially strong states support the financially weak ones. The constitution only deals with principles of the financial equalization (art. 10711 GG). Therefore, the different financial power of the states has to be compensated adequately. The details are regulated by a special law. At the moment some financially strong states (like Bayern, Baden-Württemberg and Hessen) have to pay a certain amount, while financially weak states like Berlin or Saarland receive funds.

8. Can the federation unilaterally compensate the debts that states owe to the federation (for example, reducing federal transfers)? If so, in which fields do this power exist? Do states have any safeguards (right of audience, judicial actions, etc.)?

There is no state liability to pay funds to the federation regulated in the Federal Constitution. State debts owed to the federation are therefore not assigned. There is also no possibility to reduce federal

transfers because of state debts, because direct transfers from the federation to financially weak states are an exception and more or less voluntarily granted.

9. Who is in charge of the management, liquidation and collection of taxes? Can local governments collect taxes on behalf or by order of the federation or the state where they are located? To what extent and in which fields is this method used? To what extent is it relevant?

a) In charge of this matter are the federal authorities in the case of customary taxes, financial monopolies, federally regulated excise taxes and duties concerning the EC. In all other cases the state financial authorities are in charge of that.

b) The state authorities collect all taxes on behalf of the state they belong to and not on behalf of the federation.

10. What is the percentage of public spending in which each level of government –federal, state and local- incurs? How would these percentages change excluding the spending on defense, education, health, pensions and administration of justice? How many civil servants or administrative officials have each level of territorial government? Which are the figures excluding the above-mentioned fields?

a)-b) In 2001 the share of the total public spending of the gross domestic product was 48,3 %. The total sum of public spending was in the year 2001: 971,258 thousand million Euro. The shares are (in thousand million Euro - single figures not to be added because they are cleared up with the mutual payments): federal spending 265,655, federal special fund 18,429 thousand million, federal EC-shares 19,689, social insurances 446,876, states 255,488, municipalities and counties 14,7909. Not listed are the special purpose associations on the local level. (Source: federal statistical office).

c)-d) The number of persons employed in the civil service is in thousands (30 June 2001, source: German association of civil servants):
public administration

	Civil Servants (and judges)	Soldiers	Employees	Workers	Total
Federation	131,1	184,6	99,5	78,6	493,8
States	1238,1	-	811,7	129,0	2178,9
Local communities	177,4	-	937,6	386,1	1537,1
Railway facility	62,1	-	1,2	3,1	66,4
Mediate public Administration	57,4	-	433,2	54,5	545,1
Total	1666,1	184,6	2319,1	651,4	4821,1

11. To what extent are the relationships between levels of governance regarding the tax system satisfactory? Which elements are more satisfactory? Which elements are less satisfactory? At present, is there any trend that should be noticed?

The relationships between the levels of governance regarding the tax system are a matter of permanent conflict. The municipalities (and other local communities) demand more funds from the states and the federation - and the states demand more funds from the federation. The conflicts intensify because of the financial emergency of nearly every public budget. One of the basic problem is - according to the opinion of the states -, the federation is always inclined to charge the states with new public tasks

without giving them any or enough financial compensation. The local communities complain of a similar situation between them and the federation as well as between them and the state.

12. Can the federation establish the maximum or specified levels of state indebtedness or budgetary deficit? Can the federation establish the maximum wage of public officials (federal, state, local, etc.)?

a)The Federal Constitution does not explicitly authorize the federation to establish the maximum or a specified level of state indebtedness or budgetary deficit only contains a provision about the maximum indebtedness of the federation. The federation could regulate such a limit for the states with the approval of the Federal Council (art. 109 111 GG).

b)The federation can establish the maximum wage of the civil servants with the approval of the Federal Council (federal competence according to art. 74a GG). The wages of other public officials can be a matter of individual contracts, but are negotiated with the trade unions for the whole federation.

13. Are there coordination mechanisms among the different levels of governance? If so, are there institutions with a political nature (for instance, an assembly of territorial representation –Senate-, governmental institutions -councils of prime ministers-, etc.)? Are there mechanisms of technical coordination? (i.e., deductions in quotes of subcentral taxes in central taxes, etc.).

As far as the Federation, the state or the local community tax shares can be changed (by law), this is a matter of negotiation in the Federal Parliament and the Federal Council concerning federal taxes. There are no other institutions regulated by law, which are allowed to negotiate the change of tax shares. The local communities are not represented in any legislative institution.

IX. LANGUAGES

1. Does the Federal Constitution recognize more than one official language in the whole federal territory? If so, which are they? At the federal level, are they officially used on equal basis in the whole territory of the federation by the different authorities? Are they equally used in private? Why? Does the federal Constitution or law establish linguistic citizens' rights or duties?

The Federal Constitution does not contain any recognition of more than one official language.

2. Beyond recognizing or not more than one official language, does the Federal Constitution recognize the existence of other languages and the need of protecting them as well? Could you tell, approximately, the quantitative importance of these diverse linguistic communities?

The Federal Constitution prohibits discrimination of people because of their language (art. 3 11 GG).

3. Do state constitutions recognize official languages different from those recognized by the Federal Constitution? If not, are they allowed to do it? Are federal and state official languages on an equal footing? Can states establish linguistic duties to citizens and companies different from those established by the federation? Can states exclusively or mainly use an official language different from the one established by the federation as official?

The state constitution of Schleswig-Holstein puts an obligation to the state to protect and feature the Danish and another minority ("Friesische Volksgruppe") (art. 5). Law allows them to cultivate their language and to have schools in their own language. The party of the Danish minority is privileged in that way that it is not restricted by the five per cent law to obtain seats in the states` parliament. The

minority of the "Sorben" in Saxonia has also the constitutional right to cultivate their language and to have schools in their own language as well as other rights (art. 6 Saxonian constitution). In the areas of the settlement of this minority can be shown (beside the flag of the state) particular flags referring to the origin of the minority (art. 2 IV).

d) Although this item is not explicitly regulated by the Federal Constitution it is common sense that the federation is based on a common language.

4. Broadly speaking, which is the linguistic system regarding education?

German. Exceptions of little importance are the above described minority schools. In some big cities there are also classes at primary schools with a majority of pupils speaking another foreign language, especially Turkish (Berlin, Frankfurt am Main). Although the official language is German, the pupils may speak other languages as mother tongue.

5. To what extent are legislation and administrative practice adapted to the multilingual reality of the federation? To what extent are they the origin of conflicts between the different levels of governance or among the population? Are the different languages an important identity symbol of the state?

As there are no different official languages in Germany but only some minority schools in the states of Sachsen and Schleswig-Holstein teaching also another language, it can be said that school education in other languages than German plays no important role in Germany.

X. GLOBAL ASSESSMENT AND ADDITIONAL COMMENTS

1. At present, how is the level of political decentralization generally assessed? What is your assessment?

The situation is characterized by a relatively strong position of the federation. The main reason is that the most important legislation is federal legislation and only some matters of minor importance are left to be regulated by the states (apart from the competence concerning school law and police law). For several years this „superiority" of the federation is weakened due to an majority of the opposition party(ies) in the Federal Council, so the Federal Council often blocked (and blocks) up bills which need(ed) its approval. The reasons for blocking a bill were and are often interests of party policy and not only actual state interests.

2. What are the main historical claims by states? To what extent are they satisfied?

The main historical claim by states is a raise of their share of funds. They even demanded to change the constitutional allocation of funds to improve the financial situation of their local communities. Neither the states nor the local communities are satisfied with their share of public incomes concerning taxes.

3. What are the risks and main opportunities for the development and consolidation of the system of political decentralization?

The main risk of the present system is, that - although the Federal Constitution determines a Federal System with substantial legislative powers of the states - actually the states suffer from a creeping loss of legislative powers and some day the states could be reduced to legal entities, which nearly exclusively enforce federal law without any substantial own power of legislation and substantial possibilities for their own shaping of policy and decisions. This may get worse in consequence of the European uniforming of national legislation and the financial emergency of the states. This risk is likely to come true. Regarding to the level of the unification of the EC and the extra costs of a federal

system some day the development might provoke the question, if a new Federal Constitution without a federal system according to the article 146 GG can and should be created. At the moment this seems to be less likely.

4. What are the main trends of development? Which is the likelihood of them coming true?

The described trend to uniform national law continues. The reasons for this development is, apart from the described strong position of the federation, even the harmonization of the national legislation by European legislation. A further weakening of the states` position is to be expected.

5. Generally, would you say that the system is becoming more centralized, decentralized or that it is in a relative equilibrium?

According to the assessment given before, the system is becoming more centralized. Even the new restrictions to federal skeleton law are not supposed to stop this trend.

6. Would you like to add any additional comment about the political decentralization of the federation that was not mentioned in the Questionnaire? Would you like to make any suggestion about the structure or the contents of it?

All main topics were subject to the questions.

7. Would you mind listing particularly remarkable literature -on the basis its prestige, depth, clarity, approach-, which allows to achieve a better knowledge of your federal system?

Highly respected books on Federal constitutional law are for example: Isensee, Josef / Kirchhof, Paul (Editors): Handbuch des Staatsrechts der Bundesrepublik Deutschland, Volume I, Grundlagen von Staat und Verfassung, 2nd. edition, Heidelberg 1995, Volume IV. Finanzverfassung - Bundesstaatliche Ordnung, Heidelberg 1990.

Vogel/Waldhoff (Editors); Grundlagen des Finanzverfassungsrechts, Heidelberg 1999.

Respected actual commentaries on the Federal Constitution are for example Sachs (editor), Grundgesetz, 2nd. edition, 1999;

Schmidt-Bleibtreu/Klein, Kommentar zum Grundgesetz, 9th. edition, Neuwied/Kritel 1999.