

# The Parliamentary Government System of the Federal Republic of Germany

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## Content

1. Parliamentary system.....	2
2. Federal Parliament (Deutscher Bundestag) .....	3
2.1 Election.....	3
2.2 Legal status of the parliamentary representatives .....	3
2.2.1 Free mandate .....	3
2.2.2 Immunity and indemnity .....	3
2.2.3 Right of refusal to give evidence .....	4
2.3 Competencies of the Federal Parliament.....	4
2.4 Limited possibilities of Parliament dismissal.....	4
2.4.1 Vote of no-confidence .....	4
2.4.2 Vote of confidence .....	4
2.4.3 No right of self-liquidation .....	5
3. Bundesrat (second chamber) .....	6
3.1 Position and organisation of the Bundesrat.....	6
3.2 Competencies of the Bundesrat.....	6
3.2.1 Legislature .....	6
3.2.2 Administration.....	6
3.2.3 Jurisdiction.....	7
3.2.4 Constitutional rules governing public finances .....	7
4. Federal government.....	7
4.1 The term „government“ .....	7
4.2 Organisation and competencies of government.....	8
4.3 The Bundeskanzler (Federal Chancellor).....	8
4.4 The federal ministers.....	8
4.5 Working procedure in the Cabinet.....	9
4.6 Creation and period of office of the federal government.....	10
5. Bundespräsident (federal president) .....	11
5.1 Political standing of the federal president .....	11
5.2 Competencies of the federal president.....	11
5.3 Election and term of the Federal President .....	12

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# 1. Parliamentary system

In the parliamentary system, the government is in its existence and in its acting dependent on the Parliament. The German constitution does not use the term „parliamentary system“. But the special relation of dependence and confidence between the Bundestag (federal parliament) and the Bundesregierung (federal government) is carried out in the following rights of Parliament:

- (1) to **elect** the Chancellor
- (2) to dismiss the Chancellor by **vote of no-confidence (constructive mistrust)**
- (3) to **control** the government.

## (1) Election of the Chancellor

The Parliament elects the Chancellor (art. 63). He has the right to form the government personally by choosing the Ministers (art. 64). The chancellor decides upon the guidelines of politics within the federal government (art. 65).

## (2) Vote of no-confidence of the Parliament

Accordingly the Parliament during the election period has the right to decide upon the vote of no-confidence against the Chancellor by electing a succeeding Chancellor (art. 67). This limited parliamentary right of mistrust is supposed to strengthen the stability of the government. It is a wilful change in the present constitution (“Basic Law”, GG 1949) compared with the ruling in art. 54 Satz 2 of the constitution of Weimar (WRV 1919) which also contained the right of the Parliament to dismiss the Chancellor, but without electing a new one thus causing many shorter or longer periods without any government at all (**destructive mistrust**).

## (3) Vote of confidence after the motion of the Chancellor

The right of the Chancellor to cause the decomposition of the Parliament by means of the unsuccessful vote of confidence is also limited (art. 68). See in detail below in Part 2.4

There are the following parliamentary rights of controlling the government

- Right to **require the presence of any member of the Federal Government** (art. 43 Abs. 1),
- right, and - on the motion of one quarter of its members - the duty to establish a **committee of inquiry**, which shall take the requisite evidence at public hearings (art. 44),
- A **Parliamentary Commissioner for the Armed Forces** shall be appointed to safeguard basic rights and to assist the Bundestag in exercising parliamentary oversight over the Armed Forces. (art. 45 b),
- **Immunities** of the members of Parliament (art. 46),
- Right to decide on the **federal budget** (art. 110 Abs. 2).

All these rights are rights of the Parliament as a whole, but effectively they are in reality only performed by the **parliamentary opposition**. At least if a stable government majority is existing, control in that way does not necessarily mean the possibility of a substantive influence of the Parliament on the government, but it grants the possibility for:

- publication of grievances (critics),
- aggregation of neglected interests (publicity, propaganda)
- demonstration of an alternative political will (contrast).

## 2. Federal Parliament (Deutscher Bundestag)

### 2.1 Election

The Bundestag is often marked as the highest of the upper constitutional bodies, since it is the only federal institution elected by the people (see to the principle of basically equal rank of all constitutional bodies the German constitutional Supreme Court in: . The 598 members of parliament are elected in general, direct, free, equal, and secret election. The voting system is a proportional representation system combined with elements of a relative majority voting system (**personalised proportional representation system**). Each voter has two votes:

- By the first vote, he votes for a candidate.
- By the second vote, he votes for a party list.

The parties get the number of seats in parliament in accordance to the number of their second votes. Therefore, the number of seats of the party depends on the proportional representation system. The relative majority voting system will not change the number of seats of the parties, but decides upon the personal composition of the members of Parliament.

A party can only enter the Parliament, if it gets at least 5% of all votes (**barring clause**) or if it gets at least three direct mandates (§ 6 Abs. 6 BWahlG). The votes for parties getting less than that are not considered. This clause **hinders party fragmentation of the Parliament** and leads to strong party concentration and stability the Parliament. For a long time there were only three parties today there five parties in the Bundestag.

### 2.2 Legal status of the parliamentary representatives

#### 2.2.1 Free mandate

The members of Parliament, though being party members, have a “**free mandate**”. They are representatives of the whole people, not bound by orders or instructions, and responsible only to their conscience (Art. 38 Abs. 1, 2 GG). A possible tension between the free mandate and the loyalty to the party of the representative, to which the representative also may be obliged, can be resolved under two principles.

- The constitutional Supreme Court allows the linking of the representatives to the influence and rules of their parties, as long as they are necessary to secure the parliamentary work and behaviour and as long as the self determination of the representative is preserved (**fraction discipline is allowed** (BVerfGE 10, 4; 14; 38, 258, 277). The party can put sanctions upon the representative who is not loyal, for example by suspending him from the party, but the party cannot take his seat in Parliament away from him.
- No representative may be forced by his party towards a certain behaviour exercising his right to speak and to vote in Parliament (**fraction forcing is not allowed**).

#### 2.2.2 Immunity and indemnity

- At no time may a Member be subjected to court proceedings or disciplinary action or otherwise called to account outside the Parliament for a **vote cast or for any speech or debate in the Bundestag or in any of its committees (immunity, art. 46, 1 GG)**.
- A Member may not be called to account or arrested for a **punishable offence** without permission of the Bundestag, unless he is apprehended while

committing the offence or in the course of the following day (**indemnity**, art. 46, 2 GG).

### 2.2.3 Right of refusal to give evidence

Members may refuse to give evidence concerning persons who have confided information to them in their capacity as Members of the Bundestag, or to whom they have confided information in this capacity, as well as evidence concerning this information itself. To the extent that this right of refusal to give evidence applies, no seizure of documents shall be permissible (art. 47 GG).

## 2.3 Competencies of the Federal Parliament

The independence of Parliament is secured by numerous **autonomous competencies**. The Bundestag regulates its organisation and its procedure by its own right and has an **own parliamentary rule of procedure** (GO-BT, art. 40 GG). The GO-BT is an autonomous statute that is only obligatory for the members of Parliament. The Parliament decides upon gathering and time and place of settings. The Bundestag is elected for four years. Its term ends, when a new Bundestag convenes (art. 39 GG). The Bundestag shall convene no later than the thirtieth day after the elections. Therefore the Bundestag is an organ that is **permanently capable of acting**. That means:

- All legislative acts and proposals that are not decided upon in the former legislature period must be proposed again in the new parliament, if they are supposed to be continually performed and decided (**principle of substantive discontinuity**).
- The fact that the Parliament in every new legislature period gets a new number (1., 2. etc., today 18. Bundestag) means that each Parliament ends also in its personal compound with the end of the legislature period (**principle of personal discontinuity**).
- The **principle of organ identity** has the effect that all legal acting of the Parliament that have an effect to the outside (for example treaties, acting before the Supreme Court) stay valid as an acting of the constitutional organ.

## 2.4 Limited possibilities of Parliament dismissal

### 2.4.1 Vote of no-confidence

The Chancellor principally needs the confidence of the Parliament. The conditions of the **vote of no-confidence** (constructive mistrust, „**hour of the Parliament**“, art. 67) contain the election of a successor, and are therefore so severe that the Chancellor for whom no successor is elected can stay in office, also he lost the confidence of Parliament. See in case of no-confidence vote (art. 63 Abs. 4 Satz 3 GG):

### 2.4.2 Vote of confidence

Therefore the Chancellor has the right to a **vote of confidence** of the Parliament („**hour of the Chancellor**“, art. 68); he can, whenever his vote for confidence does not get a majority in the Bundestag, propose the decomposition of the Bundestag to the federal president. The Bundestag can avoid the decomposition, if it manages to elect a new Chancellor.

#### Examples:

The vote of no-confidence and the vote of confidence were performed several times so far in the constitutional history of the Federal Republic of Germany.

1. There was a severe parliamentary discussion about the „Eastern Treaties“ concerning the reunification of Germany. On April 27, 1972 a vote of no-confidence against Social-Democratic Chancellor Willy Brandt (SPD) of the conservative Christian Democratic Union Party (CDU/CSU)-opposition who

wanted to avoid the ratification of the treaties was not successful. The treaties were decided by the Bundestag on May 17, 1972. But after some Parliament members changed their seats into other parties, insecure majorities originated, so that all parties in the Bundestag wanted new elections. Therefore, the Bundestag on September 22, 1972 with 248 : 233 votes opposed the vote of confidence. President Heinemann dissolved the 6. Bundestag and ordered new elections.

2. Because of difficulties with the coalition partner - the liberal FDP - about a decided labour aid programme, Chancellor Helmut Schmidt on February 5, 1982 suggested a vote of confidence that was accepted by the Bundestag with 269 : 224 votes. But only a little later on October 1, 1982 despite this success in voting. The coalition of SPD and FDP broke apart, when the Bundestag elected Chancellor Helmut Kohl by constructive no-confidence vote as the successor of Helmut Schmidt.
3. The coalition of CDU/CSU and FDP by purpose selected on December 17, 1982 the instrument of vote of confidence in order to cause preterm new elections. They hoped to win these elections what they later actually did. The vote of confidence of Chancellor Kohl was dismissed with 8:218 votes, because 248 Parliament members of the government coalition abstained from the ballot and by that voluntarily caused the voting defeat. President Carstens then dissolved the Bundestag and ordered new elections. The constitutional Supreme Court sentenced that this procedure was only because of the special circumstances of this case (insecure majorities) admissible. Principally the chosen procedure does according to the opinion of the Supreme Court not comprise with the spirit and purpose of the art. 68 GG. The Chancellor who has a secure majority in the Bundestag may not use the vote of confidence for the only purpose to get a negative answer and to cause by that the preterm decomposition of the Bundestag. The reason for an appeal of the Chancellor according to art. 68 GG must be a politically unstable situation between Bundestag and Chancellor. This is an unwritten definitional element of the article (BVerfGE 62, 1).
4. Chancellor Gerhard Schröder (SPD) combined on November 16, 2001 the vote of confidence with the voting in the Bundestag about the participation of the German army in the war in Afghanistan (see BVerfGE 117, 359). His appeal was accepted with 336 yes-votes (334 needed) and 326 no-votes. Eight parliament members of the Green Party who in reality opposed the participation in the war shared their voting into four yes- and for no-votes. They wanted to preserve the absolute majority of the members of the coalition government in Parliament that the red-green government needed for successful voting of confidence and for continuing the government. For the decision about the participation in the war (without a vote of confidence) the simple majority would have been sufficient.
5. Chancellor Gerhard Schröder again proposed a vote of confidence on July 1, 2005 after the defeat of the last red-green coalition on the level of the member states of the federal republic (in Nordrhein-Westfalen). He explained that a stable majority of the governing parties in the Bundestag would be no longer secure. From the 595 members of Parliament 151 voted yes and 169 voted no. There were 148 abstinent votes that partly came from the own members of the governing coalition parties. This result didn't grant the Chancellor majority of 301 yes-votes. President Köhler dissolved the Bundestag. There were new elections on September 18, 2005. Later Parliament members of the SPD and the Green Party made an appeal to the Supreme Court which was rejected. The Supreme Court stated that the Chancellor had acted within his competences, but also emphasised that a vote of confidence is only justified, if the federal government has lost its possibility to act in Parliament (BVerfGE 114, 121).

### 2.4.3 No right of self-liquidation

The Bundestag has by itself no right of **self-liquidation**. If the government coalition on the one side and the opposition on the other side try to make a deal of a „arranged“ self-liquidation according to art. 68 GG, there are limits set by the competence of the Bundespräsident (federal president). The constitutional Supreme Court decided that the federal president may only dissolve the parliament, if it is clear that the government has no more basis of trust in Parliament (BVerfGE 62, 1, 39).

#### Example:

Which possibilities have the constitutional bodies, if the federal government is in parliament permanently not able to fulfil legislature, because of lacking sufficient majority in the parliament?

**Solution:** There are three possibilities:

(1) The Bundestag can by **no-confidence vote** dismiss the Chancellor by electing a successor (art. 67 GG).

(2) The Bundeskanzler can apply for a vote of confidence in the Bundestag (Art. 68 GG). If a motion of the Federal Chancellor for a **vote of confidence** is not supported by the majority of the members of the Bundestag, the Federal President, upon the proposal of the Federal Chancellor, may dissolve the Bundestag within twenty-one days. The right of dissolution shall lapse as soon as the Bundestag elects

another Federal Chancellor by the vote of a majority of its Members.

(3) The federal president can declare a case of **legislative emergency** according to an application of the federal government and with the consent of the Bundesrat (art. 81 GG).

**Example:**

Which possibilities are there, if the federal government gains the majority in the Bundestag, but does not get the consent of the Bundesrat (= second chamber), so that decisions in legislature cannot be successful?

**Solution:**

The constitutional instruments are not valid in the case of different majorities in the two chambers Bundestag and Bundesrat, as long as the Federal Chancellor has the majority in the Bundestag. This situation is a consequence of the vertical division of powers. The federal government must try to get compromise decisions in the Conciliation Committee of Bundestag and Bundesrat. In certain cases (Einspruchsgesetze) decisions are also possible against the Bundesrat, since there the Bundestag can overrule the Bundesrat (art. 77 Abs. 4 GG).

### 3. Bundesrat (second chamber)

#### 3.1 Position and organisation of the Bundesrat

The Bundesrat is a federal constitutional organ on the central level by which the provincial states participate in the legislature and administration of the federal state and in issues of the European Union. The Bundesrat enforces the interests of the provincial states on the federal level. It is an instrument of **vertical division of powers**, because it is supposed to form a political counterbalance to the parliament and the federal government. The Bundesrat is part of a only **limited second chamber system**, since it has no equal rights like the Parliament in legislature and administration. It has only participatory rights (art. 50 GG). It consists of members of the governments of the regional states who are not elected for this purpose, but sent by their governments. Therefore, it is not an elected Senate like in the USA. But it is also an instrument of limiting power on the federal level, especially if the government and the Bundesrat have different majorities.

The Bundesrat is a **permanent organ** that is independent from the election period of the Parliament. The number of seats of each provincial state varies from 3 to 6 seats depending on the size of state. The members of the Bundesrat must follow the directives of their provincial governments (**imperative mandate**). The provincial state uses its right to vote always homogeneously (Art. 51 Abs. 3).

#### 3.2 Competencies of the Bundesrat

##### 3.2.1 Legislature

The Bundesrat participates in legislature by the following rights:

- Law initiative (art. 76 Abs. 1),
- decision about legislative proposals of the government (Art. 76 Abs. 2)
- decision about the legislature acts of the Parliament; the Bundesrat - depending on the matter - either has a right to object, which can be overruled by Parliament, or a right to veto, which cannot be overruled (Art. 77, 78 GG).

##### 3.2.2 Administration

The Bundesrat as an important influence on the establishment of authorities and on the administration procedure.

- Where the provincial states execute federal laws in their own right, they provide for the establishment of the requisite authorities and regulate their administrative

procedures. If federal laws provide otherwise, the provincial states may enact deviating regulations. In exceptional cases, owing to a special need for uniform federal legislation, the Federation may regulate the administrative procedure with no possibility of separate provincial state legislation. Such laws require the consent of the Bundesrat. Federal laws may not entrust municipalities and associations of municipalities with any tasks (art. 84, 1 GG).

- The Federal Government, with the consent of the Bundesrat, may issue general administrative rules (art. 84, 2 GG).
- The Federal Government exercises oversight to ensure that the provincial states execute federal laws in accordance with the law. For this purpose the Federal Government may send commissioners to the highest provincial authorities and, with their consent or, where such consent is refused, with the consent of the Bundesrat, also to subordinate authorities (art. 84, 3 GG).

### 3.2.3 Jurisdiction

The Bundesrat participates in the election of the judges of the federal constitutional Supreme Court (Art. 94) and as possible participant in court procedures (art. 21 Abs. 2, art. 61 Abs. 1, art. 93 Abs. 1 Nr. 1).

### 3.2.4 Constitutional rules governing public finances

In public finance law the provincial states have strong rights, because in quite some cases the consent of the Bundesrat is required for legislature:

- For federal laws that oblige the provincial states to provide money grants, benefits in kind or comparable services to third persons and which are executed by the provincial states in their own right shall, if the expenditure resulting therefrom shall be borne by the provincial states (art. 104a Abs. 4 GG),
- For federal laws that oblige the regional states to provide money grants, benefits in kind or comparable services to third persons and which are executed by the regional states in their own right (art. 104a Abs. 5 GG),
- Where the Länder act on federal commission, the Federation shall finance the resulting expenditures (art. 104a Abs. 2 GG).
- The consent of the Bundesrat is required for federal financial assistance for particularly important investments by the provincial states and municipalities that are regulated by a federal law (art. 104b Abs. 2)
- and for federal laws relating to taxes the revenue from which accrues wholly or in part to the provincial states or to municipalities a. 105 Abs. 3).

## 4. Federal government

### 4.1 The term „government“

The term government is used in a wider and in a narrower sense.

- a) **Government in a wider sense** is the **leadership of the state as a whole** that leads to an integrating, coordinating and controlling manner of political decision-making. To that purpose all other state bodies besides the federal government are obliged, that is especially the Bundestag, but also the Bundesrat, the constitutional Supreme Court and the federal president. Government in a wider sense can be fulfilled in different

forms of

- legislature (by laws, statutes)
- directives (by administrative instructions to lower authorities)
- and by other means of state government and planning.

In the parliamentary system of the Federal Republic of Germany government in this way means the joint efforts to govern by the Bundesregierung (federal government) and the Bundestag (parliament, see .

**b)** Normally the term „government“ is used in a narrower **functional/institutional sense**:

- **Functionally** „government“ is the **head of the executive** making the political decisions and sets the framework for the administration which is bound to laws and government decisions.
- **Institutionally** government is the **stand-alone upper state body** that in the parliamentary system needs the confidence of the Parliament, but is not dependent on directives and consists as a **cabinet of the Federal Chancellor and the Ministers**.

## 4.2 Organisation and competencies of government

The constitution uses the term „government“ in an **institutional-organisatoric sense** in its VI. Section „Die Bundesregierung“. The rights and duties of the Bundesregierung are not only put down in art. 62 to 69, but also in many other constitution articles (.

The federal government is a **collegiate organ** consisting of the **Bundeskanzler (Federal Chancellor)** and the **Ministers** (art. 62).

## 4.3 The Bundeskanzler (Federal Chancellor)

The **Bundeskanzler** (Federal Chancellor) has - despite the fact that he has in the voting of the Cabinet only one vote like all other members of government - an outstanding position.

- He is the **only person being elected by the Bundestag** (art. 63); therefore he is also **the only person being responsible for the government actions to the Parliament** (Art. 67, 68, 69 Abs. 2).
- The Federal Chancellor is alone responsible for the personal constitution of the federal government (art. 64) and for the **guidelines of politics** (art. 65).
- In the case of defence, he takes the **power over the army** (art. 115 b).
- The rule of procedure of the government gives extensive competences to the Federal Chancellor, for example
  - the **control of the obedience to his political guidelines**,
  - the **manifestation of the portfolios of the ministers**
  - and the **right to the final decisive ballot in the Cabinet**.

## 4.4 The federal ministers

Besides the Federal Chancellor **the federal ministers** are members of the Cabinet. They have a **double function**

- as members of the government
- and as leaders of their portfolios.

The existence of some ministries is constitutionally guaranteed (art. 65 a):

- Defence Minister, art. 96 Abs. 2



- Justice Minister, art. 112, 114
- Finanze Minister
- The number and kind of portfolios of the other ministries are decided by the Federal Chancellor.

#### 4.5 Working procedure in the Cabinet

The interior order and the working procedure of the federal government are ruled by the chancellor principle, the portfolio principle and the cabinet principle (art. 65).

- The **chancellor principle** is the basis of the eminent position of the Federal Chancellor within the federal government. This principle is primarily formed by the **competence to set political guidelines** (art. 65 sentence 1) and by the **right to conduct the proceedings of the Federal Government** in accordance with the rules of procedure adopted by the Government and approved by the Federal President (art. 65 sentence 4).
- The **portfolio principle** gives the autonomous and responsible leadership of the ministry to the concerned federal minister, but only within the guidelines of the Federal Chancellor (Art. 65 sentence 2). The federal minister is protected against influence of other federal ministers into his portfolio, as long as the constitution does not subordinate his competences under the Cabinet decisions and as long as the Federal Chancellor does not use his competence to set political guidelines. The own „responsibility“ of the federal ministers stands, although only the Chancellor is responsible to the Parliament (art. 67, 68), not only in relation to the Chancellor, but also in relation to the Parliament, because for example the Parliament and its committees may require the presence of any member of the Federal Government (art. 43 Abs. 1).
- According to the **cabinet- or cooperative principle** a certain degree of decisions should be made by majority vote of the members of the federal government (art. 65 Sentence 3).
- **Cooperative decision of the federal government** has to be taken in the cases defined by the constitution, for example
  - **dissent between federal ministers** (art. 65 Satz 3), **legislative initiatives** (art. 76) and **outlines of directives** (art. 80),
  - setting of **general administration directives** and **exercise of administration supervision and control** (Art. 84 Abs. 2 to 5, 85 Abs. 2 to 4, 86 ff., 108 Abs. 2 and 7; different from Art. 108 Abs. 3, there the finance minister takes the place of the government)
  - in the **federal budget procedure** (art. 110, 113, 114)
  - in case of **state emergency** (Art. 53 a Abs. 2, 87a Abs. 4, 91 Abs. 2, 115 a Abs. 1, 115 f.).

#### Exercise:

The federal Minister for Economic Development and the majority of the Cabinet are in favour of the rise of foreign aid up to 0.7 % of the GDP. But the Federal Chancellor and the federal Finance Minister oppose financial commitments for rising expenditure in foreign aid. Could the federal Minister for Economic Development appeal to the Central Constitutional Supreme Court? Could the federal minister be dismissed because of the controversy as a consequence of the proposal of the Federal Chancellor?

#### Solution:

A dispute between organs of state according to art. 93 Abs. 1 Nr. 1 GG could be started about the interpretation of art. 65 GG. This article defines the rights of the members of the federal government. The appeal would only be justified, if the Minister for Economic Development would have been hurt in his rights

and duties given to him by the constitution. According to the constitution there are three principles for the procedure and decisions of the federal government:

- The **chancellor principle** is the basis for the outstanding position of the Chancellor in the Cabinet. He has the only competence to set political guidelines (art. 65 sentence 1 GG). These guidelines overrule decisions of the Cabinet and also decisions of each federal minister.
- The **portfolio principle** gives the right and the duty to the Minister to lead his portfolio within the guidelines of the Chancellor (art. 65 sentence 2 GG). „Responsibility" is here meant not in any relation to the Parliament, but only in relation to the Chancellor who carries the parliamentary responsibility (art. 67, 68 GG).
- According to the **cabinet principle** there should be a certain degree of decisions be made by cooperative and majority vote of the government (art. 65 sentences 3 and 4 GG).
- But the Federal Chancellor is constitutionally (certainly not always politically) able at any time, to turn decisions of the Cabinet into a matter of his **competence to set guidelines**. By that the Chancellor can set a framework for cabinet decisions and for decisions of the single minister.
- Besides the right of setting guidelines the federal Chancellor also has the right to decide upon the personal composition of the Cabinet. The dismissal of the Minister can happen at any time without notice and compensation and without any given reasons by the suggestion of the Chancellor and by the formal dismissal done by the federal president (art. 64 Abs. 1 GG).

**Result:** The constitutional Supreme Court will decide that the appeal of the Minister for Economic Development is admissible, but unsubstantiated.

#### 4.6 Creation and period of office of the federal government

The constitution puts the creation of the government - differing from art. 53 WRV - not into the area of responsibility of the federal president, but in the first place into the **responsibility of the Parliament and the Chancellor**.

- Normally the **federal president suggests a Chancellor candidate** to the Parliament who has been named by the majority party or by the coalition parties.
- The Chancellor is elected by the Bundestag in the first round by a majority of its members (absolute majority, art. 63 Abs. 1 bis 3).
- Only if two rounds of voting have failed, the relative majority is sufficient in the third round of voting.

In the case of **relative majority**, the federal president has either **choice**:

- He can appoint the Chancellor who has been elected with relative majority in the third round of voting,
- or he can according to his judgement dissolve the Bundestag (art. 63 Abs. 4 sentence 3).

If **absolute majority** elected the candidate Chancellor, the president must appoint him. According to the appointment of the Ministers, the federal president also has no alternative and must follow the suggestions of the Chancellor.

The Bundestag has no **legal influence on the forming of the government** and the selection of the ministers by the elected Chancellor. A vote of no-confidence against ministers does not exist. The Bundestag has fulfilled its function by the election of the Chancellor; the forming of the Cabinet is only a matter of the Chancellor himself. In political reality though, the composition of the government is normally predesigned by coalition agreements between the majority parliamentary parties. The members of the government are with only a few exceptions also members of the Parliament. So governments are usually „parliamentary governments“.

## 5. Bundespräsident (federal president)

### 5.1 Political standing of the federal president

The existence of a „**head of state**“ is **not self-evident in the parliamentary system**, but is mainly caused by **history of Germany**.

In Germany after the resignation of the Kaiser Wilhelm II. after the First World War the office of the “Reichspräsident” was created in 1919. It was still strongly orientated on former royal thinking and was with his extensively used amount of power one of the causes of the destruction of the Weimar Republic. In the “Third Reich” of Germany, after the Reichspräsident Hindenburg had handed over the power to Hitler, the president’s use of power turned into an absolute dictatorship which caused the Second World War.

The new constitution of 1949 after the Second World War does not withdraw a leading representative of the state besides the government - as for example the constitutions of the member states of the federal republic of Germany do - but grants in comparison to former times a **relatively weak position** to the Bundespräsident as a head of state.

### 5.2 Competencies of the federal president

The Bundespräsident is **not the leader of government** (like the president in the presidential system). Therefore, he does not belong to any one of the three powers (legislature, executive, and jurisdiction). Nevertheless, he is also **not a neutral power** apart from the political-parliamentary consensus. Such an opinion would base on desire for a harmony hostile to democratic dispute (pouvoir neutre) and would in an illegitimate manner mix up requirements to the person and to the institution of the federal president.

- Relating to the **person** the constitution requires that an elected president **retreats from former state offices and also from profession and business** (art. 55). An active exercise of party politics by the president would not be compatible with the office of the president. Therefore all elected presidents also put down their activities in the political parties, although the constitution does not contain a regulation for that.
- Relating to the **institution** the constitution grants for the Bundespräsident in relation to the other constitutional bodies an **own area of responsibility** which he fulfils with his own discretionary power. However, the **constitution gives the other institutional bodies the precedence in the case of conflicts**. The Bundespräsident has only in certain conflicts alternatively a range of political decision and of acting that is narrowly limited by the constitution (**reserve funktion**; see Art. 63 Abs. 4, Art. 68, 81). In times when the political system functions normally, the president is limited to the representative and integrative functions of the formal head of state.

Another obligation of the president follows out of the competence of the **representation of the federal republic in international law** (art. 59). It contains mainly the announcement of the political will of Bundestag and Bundesregierung to foreign countries.

The responsibility of the **representation of the state inside the federal republic** contains the right and the duty to stand for the unity of the state (Art. 56) and the participation by certain functions in the legislature and the executive.

In this respect, the Bundespräsident principally needs the formal **counter signature** by the Chancellor only responsible to Parliament or by the responsible minister (Art. 58). This concerns all measures, decisions or speeches of the president that are legally or politically

relevant.

Besides the representation of the state the president has some tasks as an attesting notary (**function of certification**), for example

- the only formal right to appoint and dismiss the members of government (art. 53 Abs. 2 and 4, 64, 67 Abs. 1),
- the only formal right to appoint the judges of the Supreme Court, the officials and judges of the federal state and the soldiers (art. 60)
- Laws enacted in accordance with the provisions of this Basic Law are, after countersignature by the government, be certified by the Federal President and promulgated in the Federal Law Gazette. (Art. 82).

For the question, if the Bundespräsident has a right to examine the validation of laws, there is no uniform standard answer.

- The president is according to the unanimous opinion in judiciary and literature authorised and obliged to examine the **formal validness of laws** (for example if the legislator is authorised or if the legislative procedure was correct). He may not certify laws that violate formal constitutional rules.
- If there is also a right of the president to look after the **substantive constitutional validness of laws** (for example, compatibility with the human rights or with the basic state values), is in theory und judiciary not quite clear (Schmidt/Bleibtreu/KleinMangoldt/KleinHesseSternvonMünchRamsauerStein).
- There is a general consent that the president may not apart from the constitutional examination prove the objective correctness or political opportunity of legal acts.

### 5.3 Election and term of the Federal President

The Federal Convention without debate elects the Federal President. Any German who is entitled to vote in Bundestag elections and has attained the age of forty may be elected (art. 54 Abs. 1). The term of office of the Federal President shall be five years (art. 54 Abs. 2). Re-election for a consecutive term shall be permitted only once.

The Federal Convention consist of the Members of the Bundestag and an equal number of members elected by the parliaments of the Länder on the basis of proportional representation. The Federal Convention meets not later than thirty days before the term of office of the Federal President expires or, in the case of premature termination, not later than thirty days after that date. It shall be convened by the President of the Bundestag. The person receiving the votes of a majority of the members of the Federal Convention shall be elected. If after two ballots no candidate has obtained such a majority, the person who receives the largest number of votes on the next ballot shall be elected (art. 54 Abs. 6).

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Appendix: Parts from:  
**Basic Law for the Federal Republic of Germany**

in the revised version published in the Federal Law Gazette Part III, classification number 100-1, as last amended by the Act of 11 July 2012 (Federal Law Gazette I p. 1478).

The Parliamentary Council, meeting in public session at Bonn am Rhein on 23 May 1949, confirmed that the Basic Law for the Federal Republic of Germany, which was adopted by the Parliamentary Council on 8 May 1949, was ratified in the week of 16 to 22 May 1949 by the parliaments of more than two thirds of the participating German Länder.

### **III. The Bundestag**

#### **Article 38 [Elections]**

- (1) Members of the German Bundestag shall be elected in general, direct, free, equal and secret elections. They shall be representatives of the whole people, not bound by orders or instructions, and responsible only to their conscience.
- (2) Any person who has attained the age of eighteen shall be entitled to vote; any person who has attained the age of majority may be elected.
- (3) Details shall be regulated by a federal law.

#### **Article 39 [Electoral term – Convening]**

- (1) Save the following provisions, the Bundestag shall be elected for four years. Its term shall end when a new Bundestag convenes. New elections shall be held no sooner than forty-six months and no later than forty-eight months after the electoral term begins. If the Bundestag is dissolved, new elections shall be held within sixty days.
- (2) The Bundestag shall convene no later than the thirtieth day after the elections.
- (3) The Bundestag shall determine when its sessions shall be adjourned and resumed. The President of the Bundestag may convene it at an earlier date. He shall be obliged to do so if one third of the Members, the Federal President or the Federal Chancellor so demand.

#### **Article 40 [Presidency – Rules of procedure]**

- (1) The Bundestag shall elect its President, Vice-Presidents and secretaries. It shall adopt rules of procedure.
- (2) The President shall exercise proprietary and police powers in the Bundestag building. No search or seizure may take place on the premises of the Bundestag without his permission.

#### **Article 41 [Scrutiny of elections]**

- (1) Scrutiny of elections shall be the responsibility of the Bundestag. It shall also decide whether a Member has lost his seat.
- (2) Complaints against such decisions of the Bundestag may be lodged with the Federal Constitutional Court.
- (3) Details shall be regulated by a federal law.

#### **Article 42 [Public sittings – Majority decisions]**

- (1) Sittings of the Bundestag shall be public. On the motion of one tenth of its Members, or on the motion of the Federal Government, the public may be excluded by a two-thirds majority. The motion shall be voted upon at a sitting not open to the public.
- (2) Decisions of the Bundestag shall require a majority of the votes cast unless this Basic Law otherwise provides. The rules of procedure may permit exceptions with respect to elections to be conducted by the Bundestag.
- (3) Truthful reports of public sittings of the Bundestag and of its committees shall not give rise to any liability.

#### **Article 43 [Right to require presence, right of access and right to be heard]**

- (1) The Bundestag and its committees may require the presence of any member of the Federal Government.
- (2) The members of the Bundesrat and of the Federal Government as well as their representatives may attend all sittings of the Bundestag and meetings of its committees. They shall have the right to be heard at any time.

#### **Article 44 [Committees of inquiry]**

- (1) The Bundestag shall have the right, and on the motion of one quarter of its Members the duty, to establish a committee of inquiry, which shall take the requisite evidence at public hearings. The public may be excluded.
- (2) The rules of criminal procedure shall apply mutatis mutandis to the taking of evidence. The privacy of correspondence, posts and telecommunications shall not be affected.

- (3) Courts and administrative authorities shall be required to provide legal and administrative assistance.
- (4) The decisions of committees of inquiry shall not be subject to judicial review. The courts shall be free to evaluate and rule upon the facts that were the subject of the investigation.

#### **Article 45 [Committee on the European Union]**

The Bundestag shall appoint a Committee on the Affairs of the European Union. It may authorise the committee to exercise the rights of the Bundestag under Article 23 vis-à-vis the Federal Government. It may also empower it to exercise the rights granted to the Bundestag under the contractual foundations of the European Union.

#### **Article 45a [Committees on Foreign Affairs and Defence]**

- (1) The Bundestag shall appoint a Committee on Foreign Affairs and a Defence Committee.
- (2) The Defence Committee shall also have the powers of a committee of inquiry. On the motion of one quarter of its members it shall have the duty to make a specific matter the subject of inquiry.
- (3) Paragraph (1) of Article 44 shall not apply to defence matters.

#### **Article 45b [Parliamentary Commissioner for the Armed Forces]**

A Parliamentary Commissioner for the Armed Forces shall be appointed to safeguard basic rights and to assist the Bundestag in exercising parliamentary oversight over the Armed Forces. Details shall be regulated by a federal law.

#### **Article 45c [Petitions Committee]**

- (1) The Bundestag shall appoint a Petitions Committee to deal with requests and complaints addressed to the Bundestag pursuant to Article 17.
- (2) The powers of the Committee to consider complaints shall be regulated by a federal law.

#### **Article 45d [Parliamentary Control Panel]**

- (1) The Bundestag shall appoint a panel to scrutinise the intelligence activities of the Federation.
- (2) Details shall be regulated by a federal law.

#### **Article 46 [Immunities of Members]**

- (1) At no time may a Member be subjected to court proceedings or disciplinary action or otherwise called to account outside the Bundestag for a vote cast or for any speech or debate in the Bundestag or in any of its committees. This provision shall not apply to defamatory insults.
- (2) A Member may not be called to account or arrested for a punishable offence without permission of the Bundestag, unless he is apprehended while committing the offence or in the course of the following day.
- (3) The permission of the Bundestag shall also be required for any other restriction of a Member's freedom of the person or for the initiation of proceedings against a Member under Article 18.
- (4) Any criminal proceedings or any proceedings under Article 18 against a Member and any detention or other restriction of the freedom of his person shall be suspended at the demand of the Bundestag.

#### **Article 47 [Right of refusal to give evidence]**

Members may refuse to give evidence concerning persons who have confided information to them in their capacity as Members of the Bundestag, or to whom they have confided information in this capacity, as well as evidence concerning this information itself. To the extent that this right of refusal to give evidence applies, no seizure of documents shall be permissible.

#### **Article 48 [Candidature – Protection of membership – Remuneration]**

- (1) Every candidate for election to the Bundestag shall be entitled to the leave necessary for his election campaign.
- (2) No one may be prevented from accepting or exercising the office of Member of the Bundestag. No one may be given notice of dismissal or discharged from employment on this ground.
- (3) Members shall be entitled to remuneration adequate to ensure their independence. They shall be entitled to the free use of all publicly owned means of transport. Details shall be regulated by a federal law.

## **IV. The Bundesrat**

#### **Article 50 [Functions]**

The Länder shall participate through the Bundesrat in the legislation and administration of the Federation and in matters concerning the European Union.

#### **Article 51 [Composition – Weighted voting]**

- (1) The Bundesrat shall consist of members of the Land governments, which appoint and recall them. Other members of those governments may serve as alternates.
- (2) Each Land shall have at least three votes; Länder with more than two million inhabitants shall have four, Länder with more than six million inhabitants five, and Länder with more than seven million inhabitants six votes.
- (3) Each Land may appoint as many members as it has votes. The votes of each Land may be cast only as a unit and only by Members present or their alternates.

#### **Article 52 [President – Decisions – Rules of procedure]**

- (1) The Bundesrat shall elect its President for one year.
- (2) The President shall convene the Bundesrat. He shall be obliged to do so if the delegates of at least two Länder or the Federal Government so demand.
- (3) Decisions of the Bundesrat shall require at least a majority of its votes. It shall adopt rules of procedure. Its meetings shall be open to the public. The public may be excluded.
- (3a) For matters concerning the European Union the Bundesrat may establish a Chamber for European Affairs, whose decisions shall be considered decisions of the Bundesrat; the number of votes to be uniformly cast by the Länder shall be determined by paragraph (2) of Article 51.
- (4) Other members or representatives of Land governments may serve on committees of the Bundesrat.

#### **Article 53 [Attendance of members of the Federal Government]**

The members of the Federal Government shall have the right, and on demand the duty, to participate in meetings of the Bundesrat and of its committees. They shall have the right to be heard at any time. The Bundesrat shall be kept informed by the Federal Government with regard to the conduct of its affairs.

## **V. The Federal President**

#### **Article 54 [Election – Term of office]**

- (1) The Federal President shall be elected by the Federal Convention without debate. Any German who is entitled to vote in Bundestag elections and has attained the age of forty may be elected.
- (2) The term of office of the Federal President shall be five years. Re-election for a consecutive term shall be permitted only once.
- (3) The Federal Convention shall consist of the Members of the Bundestag and an equal number of members elected by the parliaments of the Länder on the basis of proportional representation.
- (4) The Federal Convention shall meet not later than thirty days before the term of office of the Federal President expires or, in the case of premature termination, not later than thirty days after that date. It shall be convened by the President of the Bundestag.
- (5) After the expiration of an electoral term, the period specified in the first sentence of paragraph (4) of this Article shall begin when the Bundestag first convenes.
- (6) The person receiving the votes of a majority of the members of the Federal Convention shall be elected. If after two ballots no candidate has obtained such a majority, the person who receives the largest number of votes on the next ballot shall be elected.
- (7) Details shall be regulated by a federal law.

#### **Article 55 [Incompatibilities]**

- (1) The Federal President may not be a member of the government or of a legislative body of the Federation or of a Land.
- (2) The Federal President may not hold any other salaried office, or engage in any trade or profession, or belong to the management or supervisory board of any enterprise conducted for profit.

#### **Article 56 [Oath of office]**

On assuming his office, the Federal President shall take the following oath before the assembled Members of the Bundestag and the Bundesrat:

“I swear that I will dedicate my efforts to the well-being of the German people, promote their welfare, protect them from harm, uphold and defend the Basic Law and the laws of the Federation, perform my duties conscientiously, and do justice to all. So help me God.”

The oath may also be taken without religious affirmation.

#### **Article 57 [Substitution]**

If the Federal President is unable to perform his duties, or if his office falls prematurely vacant, the President of the Bundesrat shall exercise his powers.

#### **Article 58 [Countersignature]**

Orders and directions of the Federal President shall require for their validity the countersignature of the Federal Chancellor or of the competent Federal Minister. This provision shall not apply to the appointment or dismissal of the Federal Chancellor, the dissolution of the Bundestag under Article 63, or a request made under paragraph (3) of Article 69.

#### **Article 59 [Representation of the Federation for the purposes of international law]**

(1) The Federal President shall represent the Federation for the purposes of international law. He shall conclude treaties with foreign states on behalf of the Federation. He shall accredit and receive envoys.

(2) Treaties that regulate the political relations of the Federation or relate to subjects of federal legislation shall require the consent or participation, in the form of a federal law, of the bodies responsible in such a case for the enactment of federal law. In the case of executive agreements the provisions concerning the federal administration shall apply *mutatis mutandis*.

#### **Article 59a [repealed]**

#### **Article 60 [Appointment of civil servants – Pardon – Immunity]**

(1) The Federal President shall appoint and dismiss federal judges, federal civil servants, and commissioned and non-commissioned officers of the Armed Forces, except as may otherwise be provided by a law.

(2) He shall exercise the power to pardon individual offenders on behalf of the Federation.

(3) He may delegate these powers to other authorities.

(4) Paragraphs (2) to (4) of Article 46 shall apply to the Federal President *mutatis mutandis*.

#### **Article 61 [Impeachment before the Federal Constitutional Court]**

(1) The Bundestag or the Bundesrat may impeach the Federal President before the Federal Constitutional Court for wilful violation of this Basic Law or of any other federal law. The motion of impeachment must be supported by at least one quarter of the Members of the Bundestag or one quarter of the votes of the Bundesrat. The decision to impeach shall require a majority of two thirds of the Members of the Bundestag or of two thirds of the votes of the Bundesrat. The case for impeachment shall be presented before the Federal Constitutional Court by a person commissioned by the impeaching body.

(2) If the Federal Constitutional Court finds the Federal President guilty of a wilful violation of this Basic Law or of any other federal law, it may declare that he has forfeited his office. After the Federal President has been impeached, the Court may issue an interim order preventing him from exercising his functions.

## **VI. The Federal Government**

#### **Article 62 [Composition]**

The Federal Government shall consist of the Federal Chancellor and the Federal Ministers.

#### **Article 63 [Election of the Federal Chancellor]**

(1) The Federal Chancellor shall be elected by the Bundestag without debate on the proposal of the Federal President.

(2) The person who receives the votes of a majority of the Members of the Bundestag shall be elected. The person elected shall be appointed by the Federal President.

(3) If the person proposed by the Federal President is not elected, the Bundestag may elect a Federal Chancellor within fourteen days after the ballot by the votes of more than one half of its Members.

(4) If no Federal Chancellor is elected within this period, a new election shall take place without delay, in which the person who receives the largest number of votes shall be elected. If the person elected receives the votes of a majority of the Members of the Bundestag, the Federal President must appoint him within seven days after the election. If the person elected does not receive such a majority, then within seven days the Federal President shall either appoint him or dissolve the Bundestag.

#### **Article 64 [Appointment and dismissal of Federal Ministers – Oath of office]**

(1) Federal Ministers shall be appointed and dismissed by the Federal President upon the proposal of the Federal Chancellor.

(2) On taking office the Federal Chancellor and the Federal Ministers shall take the oath provided for in Article 56 before the Bundestag.



**Article 65 [Power to determine policy guidelines – Department and collegiate responsibility]**

The Federal Chancellor shall determine and be responsible for the general guidelines of policy. Within these limits each Federal Minister shall conduct the affairs of his department independently and on his own responsibility. The Federal Government shall resolve differences of opinion between Federal Ministers. The Federal Chancellor shall conduct the proceedings of the Federal Government in accordance with rules of procedure adopted by the Government and approved by the Federal President.

**Article 65a [Command of the Armed Forces]**

- (1) Command of the Armed Forces shall be vested in the Federal Minister of Defence.
- (2) [repealed]

**Article 66 [Incompatibilities]**

Neither the Federal Chancellor nor a Federal Minister may hold any other salaried office, or engage in any trade or profession, or belong to the management or, without the consent of the Bundestag, to the supervisory board of an enterprise conducted for profit.

**Article 67 [Vote of no confidence]**

- (1) The Bundestag may express its lack of confidence in the Federal Chancellor only by electing a successor by the vote of a majority of its Members and requesting the Federal President to dismiss the Federal Chancellor. The Federal President must comply with the request and appoint the person elected.
- (2) Forty-eight hours shall elapse between the motion and the election.

**Article 68 [Vote of confidence]**

- (1) If a motion of the Federal Chancellor for a vote of confidence is not supported by the majority of the Members of the Bundestag, the Federal President, upon the proposal of the Federal Chancellor, may dissolve the Bundestag within twenty-one days. The right of dissolution shall lapse as soon as the Bundestag elects another Federal Chancellor by the vote of a majority of its Members.
- (2) Forty-eight hours shall elapse between the motion and the vote.

**Article 69 [Deputy Federal Chancellor – Term of office]**

- (1) The Federal Chancellor shall appoint a Federal Minister as his deputy.
- (2) The tenure of office of the Federal Chancellor or of a Federal Minister shall end in any event when a new Bundestag convenes; the tenure of office of a Federal Minister shall also end on any other occasion on which the Federal Chancellor ceases to hold office.
- (3) At the request of the Federal President the Federal Chancellor, or at the request of the Federal Chancellor or of the Federal President a Federal Minister, shall be obliged to continue to manage the affairs of his office until a successor is appointed.

## X. Finance

**Article 104a [Apportionment of expenditures – Financial system – Liability]**

- (1) The Federation and the Länder shall separately finance the expenditures resulting from the discharge of their respective responsibilities insofar as this Basic Law does not otherwise provide.
- (2) Where the Länder act on federal commission, the Federation shall finance the resulting expenditures.
- (3) Federal laws providing for money grants to be administered by the Länder may provide that the Federation shall pay for such grants wholly or in part. If any such law provides that the Federation shall finance one half or more of the expenditure, it shall be executed by the Länder on federal commission.
- (4) Federal laws that oblige the Länder to provide money grants, benefits in kind or comparable services to third persons and which are executed by the Länder in their own right or according to the second sentence of paragraph (3) on commission of the Federation shall require the consent of the Bundesrat if the expenditure resulting therefrom shall be borne by the Länder.
- (5) The Federation and the Länder shall finance the administrative expenditures incurred by their respective authorities and shall be responsible to one another for ensuring proper administration. Details shall be regulated by a federal law requiring the consent of the Bundesrat.
- (6) In accord with the internal allocation of competencies and responsibilities, the Federation and the Länder shall bear the costs entailed by a violation of obligations incumbent on Germany under supranational or international law. In cases of financial corrections by the European Union with effect transcending one specific Land, the Federation and the Länder shall bear such costs at a ratio of 15 to 85. In such cases, the Länder as a whole shall be responsible in solidarity for 35 per cent of the total

burden according to a general formula; 50 per cent of the total burden shall be borne by those Länder which have caused the encumbrance, adjusted to the size of the amount of the financial means received. Details shall be regulated by a federal law requiring the consent of the Bundesrat.

#### **Article 104b [Financial assistance for investments]**

(1) To the extent that this Basic Law confers on it the power to legislate, the Federation may grant the Länder financial assistance for particularly important investments by the Länder and municipalities (associations of municipalities) which are necessary to:

1. avert a disturbance of the overall economic equilibrium;
2. equalise differing economic capacities within the federal territory; or
3. promote economic growth.

In deviating from the first sentence, the Federation may grant financial assistance even outside its field of legislative powers in cases of natural disasters or exceptional emergency situations beyond governmental control and substantially harmful to the state's financial capacity.

(2) Details, especially with respect to the kinds of investments to be promoted, shall be regulated by a federal law requiring the consent of the Bundesrat or by an executive agreement based on the federal budget law. The duration of the grants shall be limited and the grants must be reviewed at regular intervals with respect to the manner in which they are used. The financial assistance must be designed with descending annual contributions.

(3) Upon request, the Bundestag, the Federal Government as well as the Bundesrat shall be informed about the implementation of such measures and the improvements reached.

#### **Article 105 [Distribution of powers regarding tax laws]**

(1) The Federation shall have exclusive power to legislate with respect to customs duties and fiscal monopolies.

(2) The Federation shall have concurrent power to legislate with respect to all other taxes the revenue from which accrues to it wholly or in part or as to which the conditions provided for in paragraph (2) of Article 72 apply.

(2a) The Länder shall have power to legislate with regard to local taxes on consumption and expenditures so long and insofar as such taxes are not substantially similar to taxes regulated by federal law. They are empowered to determine the rate of the tax on acquisition of real estate.

(3) Federal laws relating to taxes the revenue from which accrues wholly or in part to the Länder or to municipalities shall require the consent of the Bundesrat.

#### **Article 106 [Apportionment of tax revenue and yield of fiscal monopolies]**

(1) The yield of fiscal monopolies and the revenue from the following taxes shall accrue to the Federation:

1. customs duties;
2. taxes on consumption insofar as they do not accrue to the Länder pursuant to paragraph (2), or jointly to the Federation and the Länder in accordance with paragraph (3), or to municipalities in accordance with paragraph (6) of this Article;
3. the road freight tax, motor vehicle tax, and other taxes on transactions related to motorised vehicles;
4. the taxes on capital transactions, insurance and bills of exchange;
5. non-recurring levies on property and equalisation of burdens levies;
6. income and corporation surtaxes;
7. levies imposed within the framework of the European Communities.

(2) Revenue from the following taxes shall accrue to the Länder:

1. the property tax;
2. the inheritance tax;
3. the motor vehicle tax;
4. such taxes on transactions as do not accrue to the Federation pursuant to paragraph (1) or jointly to the Federation and the Länder pursuant to paragraph (3) of this Article;
5. the beer tax;
6. the tax on gambling establishments.

(3) Revenue from income taxes, corporation taxes and turnover taxes shall accrue jointly to the Federation and the Länder (joint taxes) to the extent that the revenue from the income tax and the turnover tax is not allocated to municipalities pursuant to paragraphs (5) and (5a) of this Article. The Federation and the Länder shall share equally the revenues from income taxes and corporation taxes. The respective shares of the Federation and the Länder in the revenue from the turnover tax shall be determined by a federal law requiring the consent of the Bundesrat. Such determination shall be based on the following principles:

1. The Federation and the Länder shall have an equal claim against current revenues to cover their necessary expenditures. The extent of such expenditures shall be determined with due regard to multi-year financial planning.

2. The financial requirements of the Federation and of the Länder shall be coordinated in such a way as to establish a fair balance, avoid excessive burdens on taxpayers, and ensure uniformity of living standards throughout the federal territory.

In determining the respective shares of the Federation and the Länder in the revenue from the turnover tax, reductions in revenue incurred by the Länder from 1 January 1996 because of the provisions made with respect to children in the income tax law shall also be taken into account. Details shall be regulated by the federal law enacted pursuant to the third sentence of this paragraph.

(4) The respective shares of the Federation and the Länder in the revenue from the turnover tax shall be apportioned anew whenever the ratio of revenues to expenditures of the Federation becomes substantially different from that of the Länder; reductions in revenue that are taken into account in determining the respective shares of revenue from the turnover tax under the fifth sentence of paragraph (3) of this Article shall not be considered in this regard. If a federal law imposes additional expenditures on or withdraws revenue from the Länder, the additional burden may be compensated for by federal grants pursuant to a federal law requiring the consent of the Bundesrat, provided the additional burden is limited to a short period of time. This law shall establish the principles for calculating such grants and distributing them among the Länder.

(5) A share of the revenue from the income tax shall accrue to the municipalities, to be passed on by the Länder to their municipalities on the basis of the income taxes paid by their inhabitants. Details shall be regulated by a federal law requiring the consent of the Bundesrat. This law may provide that municipalities may establish supplementary or reduced rates with respect to their share of the tax.

(5a) From and after 1 January 1998, a share of the revenue from the turnover tax shall accrue to the municipalities. It shall be passed on by the Länder to their municipalities on the basis of a formula reflecting geographical and economic factors. Details shall be regulated by a federal law requiring the consent of the Bundesrat.

(6) Revenue from taxes on real property and trades shall accrue to the municipalities; revenue from local taxes on consumption and expenditures shall accrue to the municipalities or, as may be provided for by Land legislation, to associations of municipalities. Municipalities shall be authorised to establish the rates at which taxes on real property and trades are levied, within the framework of the laws. If there are no municipalities in a Land, revenue from taxes on real property and trades as well as from local taxes on consumption and expenditures shall accrue to the Land. The Federation and the Länder may participate, by virtue of an apportionment, in the revenue from the tax on trades. Details regarding such apportionment shall be regulated by a federal law requiring the consent of the Bundesrat. In accordance with Land legislation, taxes on real property and trades as well as the municipalities' share of revenue from the income tax and the turnover tax may be taken as a basis for calculating the amount of apportionment.

(7) An overall percentage of the Land share of total revenue from joint taxes, to be determined by Land legislation, shall accrue to the municipalities or associations of municipalities. In all other respects Land legislation shall determine whether and to what extent revenue from Land taxes shall accrue to municipalities (associations of municipalities).

(8) If in individual Länder or municipalities (associations of municipalities) the Federation requires special facilities to be established that directly result in an increase of expenditure or in reductions in revenue (special burden) to these Länder or municipalities (associations of municipalities), the Federation shall grant the necessary compensation if and insofar as the Länder or municipalities (associations of municipalities) cannot reasonably be expected to bear the burden. In granting such compensation, due account shall be taken of indemnities paid by third parties and financial benefits accruing to these Länder or municipalities (associations of municipalities) as a result of the establishment of such facilities.

(9) For the purpose of this Article, revenues and expenditures of municipalities (associations of municipalities) shall also be deemed to be revenues and expenditures of the Länder.

#### **Article 106a [Federal grants for local mass transit]**

Beginning 1 January 1996 the Länder shall be entitled to an allocation of federal tax revenues for purposes of local mass transit. Details shall be regulated by a federal law requiring the consent of the Bundesrat. Allocations made pursuant to the first sentence of this Article shall not be taken into account in determining the financial capacity of a Land under paragraph (2) of Article 107.

#### **Article 106b [Länder share of motor vehicle tax]**

As of 1 July 2009, following the transfer of the motor vehicle tax to the Federation, the Länder shall be entitled to a sum from the tax revenue of the Federation. Details shall be regulated by a federal law requiring the consent of the Bundesrat.

#### **Article 107 [Distribution of tax revenue – Financial equalisation among the Länder – Supplementary grants]**

(1) Revenue from Land taxes and the Land share of revenue from income and corporation taxes shall accrue to the individual Länder to the extent that such taxes are collected by finance authorities within their respective territories (local revenue). Details regarding the delimitation as well as the manner and scope of allotment of local revenue from corporation and wage taxes shall be regulated by a federal law requiring the consent of the Bundesrat. This law may also provide for the delimitation and allotment of local revenue from other taxes. The Land share of revenue from the turnover tax shall accrue to the individual Länder on a per capita basis; a federal law requiring the consent of the Bundesrat may provide for the grant of supplementary shares not exceeding one quarter of a Land share to Länder whose per capita income from Land taxes, from income and corporation taxes and from taxes under Article 106b ranks below the average of all the Länder combined; with respect to the tax on the acquisition of real estate, the capacity to generate revenue shall be considered.

(2) Such law shall ensure a reasonable equalisation of the disparate financial capacities of the Länder, with due regard for the financial capacities and needs of municipalities (associations of municipalities). It shall specify the conditions governing the claims of Länder entitled to equalisation payments and the liabilities of Länder required to make them as well as the criteria for determining the amounts of such payments. It may also provide for grants to be made by the Federation to financially weak Länder from its own funds to assist them in meeting their general financial needs (supplementary grants).

#### **Article 108 [Financial administration of the Federation and the Länder – Financial courts]**

(1) Customs duties, fiscal monopolies, taxes on consumption regulated by a federal law, including the turnover tax on imports, the motor vehicle tax and other transaction taxes related to motorised vehicles as from 1 July 2009, and charges imposed within the framework of the European Communities shall be administered by federal finance authorities. The organisation of these authorities shall be regulated by a federal law. Inasmuch as intermediate authorities have been established, their heads shall be appointed in consultation with the Land governments.

(2) All other taxes shall be administered by the financial authorities of the Länder. The organisation of these authorities and the uniform training of their civil servants may be regulated by a federal law requiring the consent of the Bundesrat. Inasmuch as intermediate authorities have been established, their heads shall be appointed in agreement with the Federal Government.

(3) To the extent that taxes accruing wholly or in part to the Federation are administered by revenue authorities of the Länder, those authorities shall act on federal commission. Paragraphs (3) and (4) of Article 85 shall apply, provided that the Federal Minister of Finance shall take the place of the Federal Government.

(4) Where and to the extent that execution of the tax laws will be substantially facilitated or improved thereby, a federal law requiring the consent of the Bundesrat may provide for collaboration between federal and Land revenue authorities in matters of tax administration, for the administration of taxes enumerated in paragraph (1) of this Article by revenue authorities of the Länder, or for the administration of other taxes by federal revenue authorities. The functions of Land revenue authorities in the administration of taxes whose revenue accrues exclusively to municipalities (associations of municipalities) may be delegated by the Länder to municipalities (associations of municipalities) wholly or in part.

(5) The procedures to be followed by federal revenue authorities shall be prescribed by a federal law. The procedures to be followed by Land revenue authorities or, as provided by the second sentence of paragraph (4) of this Article, by municipalities (associations of municipalities) may be prescribed by a federal law requiring the consent of the Bundesrat.

(6) Financial jurisdiction shall be uniformly regulated by a federal law.

(7) The Federal Government may issue general administrative rules which, to the extent that administration is entrusted to Land revenue authorities or to municipalities

#### **Article 109 [Budget management in the Federation and the Länder]**

(1) The Federation and the Länder shall be autonomous and independent of one another in the management of their respective budgets.

(2) The Federation and the Länder shall perform jointly the obligations of the Federal Republic of Germany resulting from legal acts of the European Community for the maintenance of budgetary

discipline pursuant to Article 104 of the Treaty Establishing the European Community and shall, within this framework, give due regard to the requirements of overall economic equilibrium.

(3) The budgets of the Federation and the Länder shall in principle be balanced without revenue from credits. The Federation and Länder may introduce rules intended to take into account, symmetrically in times of upswing and downswing, the effects of market developments that deviate from normal conditions, as well as exceptions for natural disasters or unusual emergency situations beyond governmental control and substantially harmful to the state's financial capacity. For such exceptional regimes, a corresponding amortisation plan must be adopted. Details for the budget of the Federation shall be governed by Article 115 with the proviso that the first sentence shall be deemed to be satisfied if revenue from credits does not exceed 0.35 percent in relation to the nominal gross domestic product. The Länder themselves shall regulate details for the budgets within the framework of their constitutional powers, the proviso being that the first sentence shall only be deemed to be satisfied if no revenue from credits is admitted.

(4) A federal law requiring the consent of the Bundesrat may establish principles applicable to both the Federation and the Länder governing budgetary law, the responsiveness of budgetary management to economic trends, and long-term financial planning.

(5) Sanctions imposed by the European Community on the basis of the provisions of Article 104 of the Treaty Establishing the European Community in the interest of maintaining budgetary discipline, shall be borne by the Federation and the Länder at a ratio of 65 to 35 percent. In solidarity, the Länder as a whole shall bear 35 percent of the charges incumbent on the Länder according to the number of their inhabitants; 65 percent of the charges incumbent on the Länder shall be borne by the Länder according to their degree of causation. Details shall be regulated by a federal law which shall require the consent of the Bundesrat.

#### **Article 110 [Federal budget]**

(1) All revenues and expenditures of the Federation shall be included in the budget; in the case of federal enterprises and special trusts, only payments to or remittances from them need be included. The budget shall be balanced with respect to revenues and expenditures.

(2) The budget for one or more fiscal years shall be set forth in a law enacted before the beginning of the first year and making separate provision for each year. The law may provide that various parts of the budget apply to different periods of time, divided by fiscal years.

(3) Bills to comply with the first sentence of paragraph (2) of this Article as well as bills to amend the Budget Law or the budget itself shall be submitted simultaneously to the Bundesrat and to the Bundestag; the Bundesrat shall be entitled to comment on such bills within six weeks or, in the case of amending bills, within three weeks.

(4) The Budget Law may contain only such provisions as relate to federal revenues and expenditures and to the period for which it is enacted. The Budget Law may specify that its provisions shall expire only upon promulgation of the next Budget Law or, in the event of an authorisation pursuant to Article 115, at a later date.