

Axel Tschentscher

The Basic Law (Grundgesetz) 2016: The Constitution of the  
Federal Republic of Germany (May 23rd, 1949) – Introduction  
and Translation

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## Preface

This translation is part of the research project International Constitutional Law (ICL: [www.verfassungsvergleich.de](http://www.verfassungsvergleich.de)). All amendments up to and including the 60th Amendment of 23rd Dec 2014 have been translated and included into a consolidated edition. There have been no more amendments until today (6th July 2016). This is not an official government document. The full text of the most recent version is available as a free download on the Internet: [www.ssrn.com/no=1501131](http://www.ssrn.com/no=1501131).

Following the ICL translation standards, some terms are translated specifically to prepare the text for search engines, e.g., 'Länder' as 'States', 'Bundestag' as 'House of Representatives', 'Bundesrat' as 'Senate', 'Bundesbank' as 'Federal Bank'. This does in no way imply any similarity of those institutions with the respective U.S. institutions. German terms have been added in square brackets to clarify the matter and to distinguish references to single States [Länder] from the generic term 'state' (i.e., Federation and/or States). Generally, headings and explanations in square brackets are not part of the official text, but additions for the purpose of the present edition. The same is true of footnotes.

The translation uses abbreviated cross references for articles, paragraphs and sentences, writing "Article 10 II 2" instead of "Article 10, Paragraph 2, Sentence 2". While such cross references contain roman numbers for paragraphs, within the text of German statutes those same paragraphs are commonly numbered with ordinary digits in round brackets. Accordingly, you will have to look for the section of Article 10 that starts with "(2)" and then go to the second sentence. Literal translation has been used for the brief provisions of Basic Rights (Chapter I). The lengthy text of all other chapters, however, has been translated freely to make it more readable.

My gratitude for help with the text edition, translation, and commentary goes to prior and present research assistants at the Chair for Constitutional Law, Legal Philosophy, and Constitutional History.

East Hampton/U.S.A., July 2016, A. Tschentscher



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## Table of Amendments

| No. | From <sup>1</sup> | In Force <sup>2</sup>          | Public <sup>3</sup> | Action                  | Affected Article(s)  |
|-----|-------------------|--------------------------------|---------------------|-------------------------|--|
|     | 23.5.49           | 23.5.49 <sup>4</sup>           | I, 1                | adopted                 | Pmbl. to 146   |
| 1.  | 30.8.51           | 1.9.51                         | I, 739              | repealed <sup>5</sup>   | 143  |
| 2.  | 14.8.52           | 18.8.52                        | I, 445              | inserted                | 120a   |
| 3.  | 20.4.53           | 23.4.53                        | I, 130              | changed                 | 107 I  |
| 4.  | 26.3.54           | 5.5.55 <sup>6</sup><br>28.3.54 | I, 45               | changed<br>inserted     | 73 No. 1<br>79 I 2, 142a   |
| 5.  | 25.12.54          | 31.12.54                       | I, 517              | changed                 | 107 I  |
| 6.  | 23.12.55          | 1.4.55                         | I, 817              | changed                 | 106, 107   |
| 7.  | 19.3.56           | 22.3.56                        | I, 111              | changed<br><br>inserted | 1 III, 12, 49, 60 I, 96 III,<br>137 I<br>17a, 36 II, 45a, 45b, 59a,<br>65a, 87a, 87b, 96a, 143 |
| 8.  | 24.12.56          | 1.4.57<br>1.1.58               | I, 1077             | changed<br>changed      | 106<br>106 VI 4  |
| 9.  | 22.10.57          | 27.10.57                       | I, 1745             | inserted                | 135a   |
| 10. | 23.12.59          | 1.1.60                         | I, 813              | inserted                | 74 No. 11a, 87c  |
| 11. | 6.2.61            | 16.2.61                        | I, 65               | inserted                | 87d  |
| 12. | 6.3.61            | 12.3.61                        | I, 141              | repealed<br>changed     | 96 III<br>96a  |
| 13. | 16.6.65           | 27.6.65                        | I, 513              | changed<br>inserted     | 74 No. 10<br>74 No. 10a  |
| 14. | 30.7.65           | 5.8.65                         | I, 649              | changed                 | 120 I  |
| 15. | 8.6.67            | 14.6.67                        | I, 581              | inserted                | 109 II-IV  |
| 16. | 18.6.68           | 23.6.68                        | I, 657              | changed<br>repealed     | 92, 95, 96a, 99, 100 III<br>96   |

1 This is the date commonly used in citations; the table presents the continental date format: day.month.year. Since amendments to the Basic Law have different names and do not contain the amendment number, all citations should include this date.

2 Amendments are regularly in force the day after their publication.

3 Publication by abbreviated format: "I, 739" for "Promulgated in the Federal Law Gazette (*Bundesgesetzblatt*), Part I (*National Legislation*), volume by year of the first date column, starting at page 739".

4 May 23rd, 1949 at 24:00; cf. Article 145 II.

5 "Repealed" by declaration that the original Article 143 became obsolete according to its Paragraph VI.

6 In force at the same time as the treaties of Bonn and Paris ending the occupation regime for Germany (*Deutschlandvertrag*).

|     |          |          |         |          |  |
|-----|----------|----------|---------|----------|--|
|     |          |          |         | renumb.  | 96a  |
| 17. | 24.6.68  | 28.6.68  | I, 709  | inserted | 9 III 3, 12a, 19 IV 3, 20 IV, 35 II & III, 53a, 80a, 115a-115l |
|     |          |          |         | changed  | 10, 11 II, 12 I 2, 73 No. 1, 87a, 91                           |
|     |          |          |         | repealed | 12 II 2-4, 12 III, 59a, 65a II, 142a, 143                      |
| 18. | 15.11.68 | 20.11.68 | I, 1177 | changed  | 76 II 2, 77 II 1, 77 III                                       |
|     |          |          |         | inserted | 76 II 3  |
| 19. | 29.1.69  | 2.2.69   | I, 97   | inserted | 93 I No. 4a & 4b, 94 II 2                                      |
| 20. | 12.5.69  | 15.5.69  | I, 357  | changed  | 109 III, 110, 112, 113, 114, 115                               |
| 21. | 12.5.69  | 1.1.70   | I, 359  | inserted | 91a, 91b, 104a, 105 IIa  |
|     |          |          |         | changed  | 105 II, 106, 107, 108, 115c III, 115k III                      |
| 22. | 12.5.69  | 15.5.69  | I, 363  | changed  | 74 No. 13 & 22, 96 IV  |
|     |          |          |         | inserted | 74 No. 19a, 75 I No. 1a, 75 II & III                           |
| 23. | 17.7.69  | 23.7.69  | I, 817  | changed  | 76 III 1   |
| 24. | 28.7.69  | 1.8.69   | I, 985  | changed  | 120 I 2  |
| 25. | 19.8.69  | 23.8.69  | I, 1241 | changed  | 29   |
| 26. | 26.8.69  | 30.8.69  | I, 1357 | inserted | 96 V   |
| 27. | 31.7.70  | 6.8.70   | I, 1161 | changed  | 38 II, 91a I No. 1   |
| 28. | 18.3.71  | 21.3.71  | I, 206  | inserted | 74a  |
|     |          |          |         | changed  | 75 No. 1, 98 III 2   |
|     |          |          |         | repealed | 75 II & III  |
| 29. | 18.3.71  | 21.3.71  | I, 207  | changed  | 74 No. 20  |
| 30. | 12.4.72  | 15.4.72  | I, 593  | changed  | 74 No. 23  |
|     |          |          |         | inserted | 74 No. 24  |
| 31. | 28.7.72  | 3.8.72   | I, 1305 | changed  | 35 II, 73 No. 10, 87 I 2                                       |
|     |          |          |         | inserted | 74 No. 4a  |
| 32. | 15.7.75  | 19.7.75  | I, 1901 | inserted | 45c  |
| 33. | 23.8.76  | 28.8.76  | I, 2381 | changed  | 29   |
|     |          | 14.12.76 |         | changed  | 39 I & II  |
|     |          | 14.12.76 |         | repealed | 45, 45a I 2, 49  |
| 34. | 23.8.76  | 28.8.76  | I, 2383 | changed  | 74 No. 4a  |
| 35. | 21.12.83 | 1.1.84   | I, 1481 | changed  | 21 I 4   |

|     |          |                       |                      |                                 |   |
|-----|----------|-----------------------|----------------------|---------------------------------|---|
| 36. | 23.9.90  | 3.10.90 <sup>7</sup>  | II, 885 <sup>8</sup> | changed<br>repealed<br>inserted | Pmbl., 51 II, 146<br>23<br>135a II, 143   |
| 37. | 14.7.92  | 22.7.92               | I, 1254              | inserted                        | 87d I 2   |
| 38. | 21.12.92 | 25.12.92              | I, 2086              | inserted                        | 23, 24 I a, 28 I 3, 45,<br>52 III a, 88 Sent. 2   |
| 39. | 28.6.93  | 30.6.93               | I, 1002              | changed<br>repealed<br>inserted | 50, 115e II 2<br>16 II 2<br>16a   |
| 40. | 20.12.93 | 23.12.93              | I, 2089              | changed<br>changed              | 18 Sent. 1<br>73 No. 6, 74 No. 23,<br>80 II, 87 I 1   |
| 41. | 30.8.94  | 3.9.94                | I, 2245              | inserted                        | 73 No. 6a, 87e, 106a,<br>143a   |
| 42. | 27.10.94 | 15.11.94              | I, 3146              | changed<br>inserted             | 73 No. 7, 80 II, 87 I 1<br>87f, 143b  |
| 43. | 3.11.95  | 11.11.95              | I, 1492              | inserted                        | 3 II 2 & III 2, 20a, 28 II<br>3, 29 VIII, 74 I No. 25 &<br>26, 74 II, 75 I 1 No. 6 &<br>Sent. 2, 75 II & III, 77<br>IIa, 80 III & IV, 87 II 2,<br>93 I No. 2a, 118a, 125a |
| 44. | 20.10.97 | 25.10.97              | I, 2470              | changed<br>changed              | 29 VII 1, 72, 74 I No. 18<br>& 24, 75 I 1, 76 II & III<br>74 I No. 5 & 8  |
| 45. | 26.3.98  | 1.4.99                | I, 610               | repealed<br>changed             | 106 III & IV 1<br>28 II 3, 106 III 1, 106 VI<br>1-3 & 6   |
| 46. | 16.7.98  | 26.10.98 <sup>9</sup> | I, 1822              | inserted                        | 106 Va  |
| 47. | 29.11.00 | 2.12.00               | I, 1633              | renumb.<br>inserted             | 13 III<br>13 III-VI   |
|     |          |                       |                      | changed                         | 39 I 1 & 3  |
|     |          |                       |                      | inserted                        | 16 II 2   |

7 This is the date of the actual unification act and, therefore, the starting point for *material* validity of the new articles (cf. Pmbl.). However, the unification treaty and therefore the amendment was *formally* in force since 29.9.90.

8 This amendment was part of the unification treaty, therefore included in Part II of the Federal Law Gazette (Bundesgesetzblatt), i.e., among the international treaties.

9 The amendment, by special provision, came into force at the end of the day when the 14th German House of Representatives [Bundestag] convened for the first time, i.e., on 26th October 1998.

|     |          |                      |         |          |  |
|-----|----------|----------------------|---------|----------|--|
| 48. | 19.12.00 | 23.12.00             | I, 1755 | changed  | 12a IV 2   |
| 49. | 26.11.01 | 30.11.00             | I, 3219 | changed  | 108 I 3 & II 3   |
| 50. | 26.7.02  | 1.8.02               | I, 2862 | changed  | 20a  |
| 51. | 26.7.02  | 1.8.02               | I, 2863 | changed  | 96 V   |
| 52. | 28.8.06  | 1.9.06               | I, 2034 | inserted | 22 I, 72 III, 73 I No. 5a,<br>9a, 12-14, 73 II, 74 I No.<br>27-33, 93 II, 104a VI,<br>104b, 105 IIa 2, 109 V,<br>125b, 125c, 143c  |
|     |          |                      |         | changed  | 23 VI 1, 33 V, 52 IIIa, 72<br>II, 73 I No. 3 & 11, 74 I<br>No. 1, 3, 7, 11, 17, 18,<br>19, 20, 22, 24, 26, 74 II,<br>84 I, 85 I, 87c, 91a IV 1<br>& 2, 91b I-III, 98 III,<br>104a IV, 107 I 4, 125a<br>I-III |
|     |          |                      |         | renumb.  | 72 III, 74 I No. 10a, 91a<br>I No. 2 & 3, 91a IV, 93<br>II   |
|     |          |                      |         | repealed | 74 I No. 4a, 10, 11a,<br>74a, 75, 91a I No. 1, 91a<br>III & V, 104a III 3  |
| 53. | 8.10.08  | 1.1.10 <sup>10</sup> | I, 1926 | inserted | 23 Ia, 45 3  |
|     |          |                      |         | changed  | 93 I No. 2   |
| 54. | 19.3.09  | 26.3.09              | I, 606  | inserted | 106b   |
|     |          | 1.7.09               |         | changed  | 106 I No. 3  |
|     |          | 26.3.09              |         |          | 107 I 4, 108 I 1   |
|     |          | 1.7.09               |         | renumb.  | 106 II No. 4-6   |
|     |          | 1.7.09               |         | repealed | 106 II No. 3   |
| 55. | 17.7.09  | 23.7.09              | I, 1977 | inserted | 45d  |
| 56. | 29.7.09  | 1.8.09               | I, 2247 | changed  | 87d I  |
| 57. | 29.7.09  | 1.8.09               | I, 2248 | inserted | 91c, 91d, 104b I 2, 109<br>III, 109a, 143d   |
|     |          |                      |         | changed  | 109 II & V, 115 I & II   |
|     |          |                      |         | renumb.  | 109 III  |
|     |          |                      |         | repealed | 109 IV   |
| 58. | 21.7.10  | 27.7.10              | I, 944  | inserted | 91e  |
| 59. | 11.7.12  | 17.7.12              | I, 1478 | changed  | 93   |
| 60. | 23.12.14 | 1.1.15               | I, 2438 | changed  | 91b  |

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10 The amendment was tied to the Treaty of Lisbon, therefore entering into force together with that instrument.

## Introduction

The Basic Law [Grundgesetz], Germany's Constitution, remains a central point of reference in [International Constitutional Law](#). The instrument has been amended 60 times during the more than 60 years of its application, even surviving groundbreaking political changes like the reunification of West and East Germany. After two failed attempts at a democratic Constitution in Germany (1848, 1919), this third one turned out to be a success. Lessons learned from the period of [Nazi rule](#) led to a number of peculiarities much discussed in comparative studies: the figurehead presidency (cf. Art. 58 GG), the eternal guarantee of human dignity and democracy (Art. 79 III GG), the constructive vote of no confidence (Art. 67 GG), the (difficult) procedure for prohibiting political parties (Art. 21 II GG), and the complete lack of direct democratic elements on the federal level (cf. Art. 29 II GG). The principles for the professional civil service (Art. 33 V GG) and the rules regarding the relationship between state and church (Art. 140 GG) are reaching back to prior constitutional traditions. Other provisions are singular results of political controversies: the right to legitimate resistance (Art. 20 IV GG), the individual right to conscientious objection (Art. 4 III GG), and Parliament's indirect participation in the Government's European Union activity (Art. 23 GG). Due to the position and jurisdiction of the Federal Constitutional Court (Art. 93 GG), the supremacy of the constitution is an all-pervading element in German law: by acknowledging a general freedom of action [Allgemeine Handlungsfreiheit] (Art. 2 I GG), by the comprehensive individual complaint procedure (Art. 93 I Number 4a GG), by the duty of the Constitutional Court to deal with every complaint, and by the indirect control over institutional settings achieved through claims based on basic rights.

What is so special about the German Constitution and its success? The answer can be divided into four parts: the draft and adoption procedure (1), the transformations of sovereignty (2), constitutionalization of the legal system by the case law of the Federal Constitutional Court (3), and the reunification by inclusion of the five reestablished East German States plus East Berlin (4). Notwithstanding all indicators of success, there are also problems with the current state of the German Constitution (5).

## 1. Draft and Adoption

### a) Procedure

The Basic Law was drafted by 65 delegates from State Parliaments [Länder] assembled as 'Parliamentary Council' [Parlamentarischer Rat] in Bonn (Sep 1948 to May 1949). This drafting procedure had been initiated and closely watched by three of the four allied powers then governing the military occupation zones in Germany, namely: France, Britain, and the United States of America (Western Allies). The draft was then adopted as the new German Constitution by the majority of West German State Parliaments.

Initially, the Western Allies, against the protest of the Soviet Union, outlined the conditions for a West German State in the Frankfurt Documents during the second phase of the London Conference (April to June 1948). They presented these Documents to the eleven Prime Ministers of the West German States [Länder] (July 1948) thereby authorizing a Constitutional Convention. The Prime Ministers declared this to be a provisional measure [Provisorium] pending German unification [Koblenzer Beschlüsse]. They then sent their representatives to Herrenchiemsee, a picturesque island in Bavaria, in order to adopt a preliminary draft of the constitution (Aug 1948) [Herrenchiemseer Entwurf]. Many of the Basic Law's defining features were designed by the small group of bureaucrats and legal experts in Herrenchiemsee: the federal structure, the two-chamber parliament, the parliamentary rather than presidential form of government, the figurehead presidency, the eternal guarantees for human dignity and democracy, and the complete lack of direct democratic elements on the federal level.

The Parliamentary Council [Parlamentarischer Rat] consisting of 65 full members elected by the Western State Parliaments, plus 5 advisory members from West Berlin, started its deliberation in Bonn (Sep 1948), the small city later to become the capital of West Germany. Exactly four years after the end of World War II, the Council adopted the draft of the Basic Law (8 May 1949). The Western Allies – who had united their occupation government within a West German Trizone (April 1948) and were actively promoting its recovery within the Marshall plan (European Recovery Program, ERP) – immediately approved this draft (12 May 1949). The constitution did not provide for a public referendum on its adoption. The only requirement was the support by at least two thirds of the State Parliaments (Art. 144 I GG). Only in Bavaria did the draft not achieve this support. The Parliamentary Council therefore formally declared the Basic Law to



be adopted (Art. 145 I GG) and it entered into force on 24 May 1949.

#### b) No Constitutional Convention

According to this procedure, Germany did not have a Constitutional Convention publicly elected for the purpose of drafting a constitution. The result was not submitted to popular referendum before entering into force. Furthermore, the allied powers interfered with the drafting by establishing a number of preconditions in the Frankfurt Documents and influencing the deliberation by frequent interventions. Therefore, Germany's Constitution lacked the direct democratic legitimation normally expected for such a foundational document. The result set into force in 1949 cannot easily be understood as an expression of the German People's constitution making power (*pouvoir constituant*).

#### c) Only a "Basic Law"

The ominous title "Basic Law" expresses some of the preliminary and undecided atmosphere of the event. The document was not intended as a permanent constitution for Germany. On the contrary, the original Preamble of 1949 stressed that not all Germans were allowed to participate in this process of constitution making and, therefore, "[t]he entire German People remains obliged to fulfill the unity and freedom of Germany in free self-determination." A peace treaty, national union, and a real constitution adopted in all parts of Germany were supposedly still an option. At the beginning of the split between the Western and the Eastern Bloc, the upcoming 50 years of Germany's Cold War separation had not yet been foreseen. On the contrary. The German public did not want to legally entrench the *de facto* divide between East and West playing out in the middle of the country. The currency reform with the new 'Deutschmark' was already a burden for German unity. It was issued under the Western Allies' occupation (20 June 1948), but popularized by West German politicians who tied it to abolishing economic controls. In the East German sector occupied by the Soviet Union, the currency reform in the West was hastily countered by the 'Eastern Mark'. General sympathy during this time tended towards a unified Germany – an inspiration also expressed in the solidarity for Berlin during the Berlin blockade (June 1948 to May 1949).

#### d) Democratic Support

There can be no doubt, however, that the German people after 12 years of Nazi rule and the devastation of holocaust and war was most willing to return into the fold of Western democracies. The Basic Law is not a mere imposition of foreign powers. It draws on two revolutionary constitutions for inspiration: the Constitution of 1849 [Paulskirchenverfassung] and the Constitution of 1919 [Weimarer Reichsverfassung]. Working like legal templates, these earlier democratic Constitutions already met most of the criteria established by the Western Allies for the Basic Law – they acknowledged human rights, the rule of law, federalism, and democracy.

## 2. Transformations of Sovereignty

### a) Military Occupation

The original Constitution was still adopted under restrictions of national sovereignty by military occupation. Soon, however, Cold War politics resulted in the rearmament of Germany. This policy first led to the formal end of occupation in West Germany and to opening up the Constitution for a possible membership in the European Defense Community (4th Amendment, 26 March 1954). When the Community did not materialize due to French parliamentary opposition and West Germany acceded to NATO instead (9 May 1955), the Germany Treaty [Deutschlandvertrag] with the Western Allies reestablished most sovereignty rights and introduced the much opposed general conscription for male citizens aged 18 to 45 (7th Amendment, 19 March 1956).

### b) National Sovereignty

As an additional step requested by the Western Allies, the First Grand Coalition adopted the even more controversial Emergency and Defence Provisions [Notstandsverfassung] (17th Amendment, 24 June 1968) in order to overcome the remaining control rights of the Western Allies. This amendment introduced the option of emergency legislation and, among other basic rights restrictions, allowed for wire tapping by German authorities, formerly reserved to the Western Allies. While recourse to the courts is the guiding principle of the Basic Law (Art. 19 IV GG), wire tapping measures are only supervised by a special commission [G10-Kommission] in the House of Representatives [Bundestag] (Art. 10 II GG). As a

measure of compensation, a new fundamental right to legitimate resistance (Art. 20 IV GG) was included into the amendment.

### c) European Integration

Due to the original integration provision of the Basic Law (Art. 24 GG), there was never a doubt about West Germany's competence to become a member in international and supranational organizations. Full membership in the Council of Europe (1951) including the European Convention on Human Rights and its diverse protocols (1952-2002), the accession to NATO (1955), and the diverse steps of integration leading to the European Union (Coal and Steel Community 1952, Treaties of Rome 1957, Single European Act 1986, Maastricht Treaty 1992) are evidence of this capacity. The more controversial steps of this integration process were accompanied by amendments to the Basic Law and confirmed by decisions of the Federal Constitutional Court. The Maastricht Treaty, for example, led to a new provision on Parliament's indirect participation in European Union policy (Art. 23 GG, [38th Amendment](#), 21 Dec 1992; [BVerfGE 89, 155 – Maastricht](#), 12 Oct 1993). It was later extended by a paragraph for the Treaty of Lisbon (Art. 23 Ia GG, [53rd Amendment](#), 8 Oct 2008; [BVerfGE 123, 267 – Lisbon](#), 30 June 2009).

## 3. Constitutionalization

The Federal Constitutional Court [Bundesverfassungsgericht] submits all of German law to a detailed test of constitutionality. The remarkable scope and intensity of this control is called 'constitutionalization'. Under this label, the protection of fundamental rights is extended to all activities (a), even in civil law cases (b), against infringements not only by the state, but also by private parties (c), and it encompasses new rights not foreseen in the constitution (d).

### a) The Elfes Case

The court started the constitutionalization of German law with the constitutional complaint of *Wilhelm Elfes*, an opposition politician whose participation in a congress abroad was obstructed by the government's refusal to renew his passport ([BVerfGE 6, 32 – Elfes](#), 16 Jan 1957). The court had to decide whether the fundamental rights of the Basic Law extended beyond the explicit guarantees of the Constitution. In acknowledging a general freedom of action [Allgemeine Handlungsfreiheit] (Art. 2 I GG), the court designed

an all purpose protection under the new Constitution. It also allowed the petitioner to challenge legal restrictions due to formal as well as material errors.

#### b) The Lüth Case

In the case of *Erich Lüth*, a Hamburg politician who had publicly called for the boycott of a film by a director who was notorious as a Nazi film maker, the court had to decide about the impact of fundamental rights on the private law (BVerfGE 7, 198 – Lüth, 15 Jan 1958). While *Lüth* had lost the civil case regarding his call for boycott, the Constitutional Court now upheld his claim to free speech. The court generally extended the controlling power of basic rights to the domain of private law by requiring an interpretation of contractual obligations and other private interaction that is compatible with fundamental rights, e.g., with the right to free speech. Ever since 1958, not only cases of administrative courts or criminal courts, but also all civil cases can end up before the Constitutional Court.

#### c) The First Abortion Case

Within the setting of the first abortion case, the Constitutional Court had to decide whether fundamental rights also resulted in a duty to protect (BVerfGE 39, 1 – Abortion I, 25 Feb 1975). The court held that unborn children have the fundamental right to life and are not only to be protected against the state, but also against any life threatening behavior of others. Accordingly, the state has a duty to protect the unborn life against an abortion attempt by the mother and may, as a measure of last resort, even use criminal law to enforce this protection.

#### d) The Population Census Case

The dynamic of 'constitutionalization' is evident in the Constitutional Court's practice of acknowledging unwritten fundamental rights by combining older provisions of the Basic Law. The Right to Informational Autonomy [Informationelle Selbstbestimmung], for example, was created as a combination of Personal Autonomy (Art. 2 I GG) and Human Dignity (Art. 1 I GG) in the case about an extensive Federal Population Census (BVerfGE 65, 1 – Population Census, 15 Dec 1983). The court held that under the conditions of computerized data collection, each person had to have a *prima facie* right to decide what kind of personal data was available to others, particularly to state entities.

#### 4. Reunification

As a unique event the Unification Treaty between West and East Germany provided for the five Eastern States [Länder] to join the West by extending the Basic Law to their territory (36th Amendment, 23 Sep 1990). Rather than adopting a new constitution as suggested by the original text of the Basic Law (old Preamble, former Art. 146 GG), the State adhesion procedure [Beitritt] (former Art. 23 GG) was used and that preliminary provision then abolished. The former East Germany (German Democratic Republic) simply ceased to exist on the Day of German Unity, i.e., the new national holiday (3 Oct 1990), by handing over its territories to West Germany. The achievement of unity was formally included into the new Preamble in order to mark the resulting territory as the permanent limitation of Germany along the Oder-Neisse line – an important condition in the Two Plus Four Agreement [Zwei-plus-Vier-Vertrag] about the "Final Settlement with Respect to Germany" by abolishing the last vestiges of occupation (12 Sep 1990).

#### 5. Problems

Recent reforms of the Constitution (52nd Amendment, 28 Aug 2006; 57th Amendment, 29 July 2009) did not achieve a breakthrough in the patchwork character of power sharing between Federation and States. The convoluted system of competencies suffers from institutional complication by the limited power of the Senate [Bundesrat] to veto legislation. A true bicameral parliament would have embedded in procedure what now leads to perpetual political power struggle regarding substantive competencies.

The system of basic rights has been so strongly entrenched by the jurisdiction of the Constitutional Court that it has by now gained *de facto* immunity against significant constitutional amendments. Minor changes have still been possible, e.g., the reform of the right to asylum (Art. 16a GG) as well as the confirmation of benign discrimination practices (Art. 3 GG). But systemic change of the rather opaque system of restrictions (Art. 19, Art. 5 II, Art. 8 II GG etc.) will probably never be achieved without a complete revision of the constitution. The question of a complete revision [Totalrevision] is itself at issue under the unspecific procedural rules of the Basic Law (Art. 146 GG).

East Hampton/U.S.A., July 2016, A. Tschentscher



## Preamble<sup>11</sup>

Conscious of their responsibility before God and men, moved by the purpose to serve world peace as an equal part in a unified Europe, the German People have adopted, by virtue of their constituent power, this Constitution. <sup>[2]</sup>The Germans in the States [Länder] of Baden-Wurttemberg, Bavaria, Berlin, Brandenburg, Bremen, Hamburg, Hesse, Lower Saxony, Mecklenburg-Western Pomerania, North Rhine-Westphalia, Rhineland-Palatinate, Saarland, Saxony, Saxony-Anhalt, Schleswig-Holstein and Thuringia have achieved the unity and freedom of Germany in free self-determination. <sup>[3]</sup>This Constitution is thus valid for the entire German People.

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11 New version by 36th Amendment (23.9.90), i.e., the unification amendment. The original text of 1949 avoided the term "Constitution" and stressed the temporary character of this "Basic Law"; it read (differing parts in italics):

"Conscious of their responsibility before God and men, moved by the purpose to *preserve its national and state unity and* serve world peace as an equal part in a unified Europe, the German People in the States [Länder] of *Baden, Bavaria, Bremen, Hamburg, Hesse, Lower Saxony, North Rhine-Westphalia, Rhineland-Palatinate, Schleswig-Holstein, Wurttemberg-Baden and Wurttemberg-Hohenzollern, to establish a temporary state order,* by virtue of their constituent power, have adopted this Basic Law of the Federal Republic of Germany. *The German People have also acted for those Germans who were not allowed to participate. The entire German People remains obliged to fulfill the unity and freedom of Germany in free self-determination.*"

# Chapter I

## Basic Rights

### *Article 1 [Human Dignity]*

(1) Human dignity is inviolable. <sup>[2]</sup>To respect and protect it is the duty of all state authority.

(2) The German People therefore acknowledge inviolable and inalienable human rights as the basis of every human community, of peace, and of justice in the world.

(3) The following basic rights are binding on legislature, executive<sup>12</sup>, and judiciary as directly valid law.

### *Article 2 [Liberty]*

(1) Everyone has the right to free development of his personality insofar as he does not violate the rights of others or offend against the constitutional order or morality.

(2) Everyone has the right to life and to physical integrity. <sup>[2]</sup>The freedom of the person is inviolable. <sup>[3]</sup>Intrusion on these rights may only be made pursuant to a statute.

### *Article 3 [Equality]*

(1) All humans are equal before the law.

(2) Men and women are equal. <sup>[2]</sup>The state supports the effective realization of equality of women and men and works towards abolishing present disadvantages.<sup>13</sup>

(3) No one may be disadvantaged or favored because of his sex, parentage, race, language, homeland and origin, his faith, or his religious or political opinions. <sup>[2]</sup>No one may be disadvantaged because of his handicap.<sup>14</sup>

### *Article 4 [Faith, Religion, Conscience, Creed]*

(1) Freedom of creed, of conscience, and freedom to profess a religious or non-religious faith are inviolable.

(2) The undisturbed practice of religion is guaranteed.

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12 Term "executive" replaced "administration" by 7th Amendment (19.3.56).

13 Sentence 2 inserted by 42nd Amendment (27.10.94).

14 Sentence 2 inserted by 42nd Amendment (27.10.94).



(3) No one may be compelled against his conscience to render war service involving the use of arms. <sup>[2]</sup>Details are regulated by a federal statute.

*Article 5 [Expression]*

(1) Everyone has the right to freely express and disseminate his opinion in speech, writing, and pictures and to freely inform himself from generally accessible sources. <sup>[2]</sup>Freedom of the press and freedom of reporting by means of broadcasts and films are guaranteed. <sup>[3]</sup>There may be no censorship.

(2) These rights are subject to limitations in the provisions of general statutes, in statutory provisions for the protection of the youth, and in the right to personal honor.

(3) Art and science, research and teaching are free. <sup>[2]</sup>The freedom of teaching does not release from allegiance to the constitution.

*Article 6 [Marriage, Family, Children Out of Wedlock]*

(1) Marriage and family are under the special protection of the state.

(2) Care and upbringing of children are the natural right of the parents and primarily their duty. <sup>[2]</sup>The state supervises the exercise of the same.

(3) Against the will of the persons entitled to their upbringing, children may only be separated from the family, pursuant to a statute, where those so entitled failed or where, for other reasons, the children are endangered to become seriously neglected.

(4) Every mother is entitled to protection by and care of the community.

(5) Children out of wedlock, by legislation, have to be provided with the same conditions for their physical and mental development and for their place in society as are legitimate children.

*Article 7 [Education]*

(1) The entire schooling system stands under the supervision of the state.

(2) Persons entitled to the upbringing of a child have the right to decide whether the child has to attend religion classes.

(3) Religion classes form part of the ordinary curriculum in state schools, except for secular schools. <sup>[2]</sup>Without prejudice to the state's right of supervision, religious instruction is given in accordance

with the tenets of the religious communities. <sup>[3]</sup>No teacher may be obliged against his will to give religious instruction.

(4) The right to establish private schools is guaranteed. <sup>[2]</sup>Private schools, as a substitute for state schools, require the approval of the state and are subject to the statutes of the States [Länder]. <sup>[3]</sup>Such approval has to be given where private schools are not inferior to the state schools in their educational aims, their facilities, and the professional training of their teaching staff, and where segregation of pupils according to the means of their parents is not encouraged. <sup>[4]</sup>Approval has to be withheld where the economic and legal position of the teaching staff is not sufficiently assured.

(5) A private elementary school has to be permitted only where the education authority finds that it serves a special pedagogic interest, or where, on the application of persons entitled to upbringing of children, it is to be established as an interdenominational school or as a school based on a particular religious or non-religious faith and only if a state elementary school of this type does not exist in the commune.

(6) Preliminary schools remain abolished.

*Article 8 [Assembly]*

(1) All Germans have the right, without prior notification or permission, to assemble peaceably and unarmed.

(2) With regard to open-air assemblies, this right may be restricted by or pursuant to a statute.

*Article 9 [Association]*

(1) All Germans have the right to form clubs and societies.

(2) Associations, the purposes or activities of which conflict with criminal statutes or which are directed against the constitutional order or the concept of international understanding, are prohibited.

(3) The right to form associations to safeguard and improve working and economic conditions is guaranteed to everyone and for all professions. <sup>[2]</sup>Agreements which restrict or seek to impair this right are null and void, measures directed to this end are illegal. <sup>[3]</sup>Measures taken pursuant to Articles 12a, 35 II & III, 87a IV, or 91 may not be directed against industrial conflicts engaged in by associations to safeguard and improve working and economic conditions in the sense of the first sentence of this paragraph.<sup>15</sup>

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15 Sentence 3 inserted by 17th Amendment (24.6.68).

*Article 10 [Letters, Mail, Telecommunication]*

(1) The privacy of letters as well as the secrecy of post and telecommunication are inviolable.

(2) Restrictions may only be ordered pursuant to a statute.<sup>16</sup>  
<sup>[2]</sup>Where a restriction serves to protect the free democratic basic order or the existence or security of the Federation or a State [Land], the statute may stipulate that the person affected is not be informed and that recourse to the courts is replaced by a review of the case by bodies and auxiliary bodies appointed by Parliament.<sup>17</sup>

*Article 11 [Movement]*

(1) All Germans enjoy freedom of movement throughout the federal territory.

(2) This right may be restricted only by or pursuant to<sup>18</sup> a statute and only in cases in which an adequate basis for personal existence is lacking and special burdens would result therefrom for the community, or in which such restriction is necessary to avert an imminent danger to the existence or the free democratic basic order of the Federation or a State [Land],<sup>19</sup> to combat the danger of epidemics, to deal with natural disasters or particularly grave accidents,<sup>20</sup> to protect young people from neglect, or to prevent crime.

*Article 12 [Work, Forced Labor]<sup>21</sup>*

(1) All Germans have the right to freely choose their occupation, their place of work, and their place of study or training. <sup>[2]</sup>The practice of an occupation can be regulated by or pursuant to<sup>22</sup> a statute.

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16 Sentence 1 was part of Paragraph I until 17th Amendment (24.6.68).

17 Sentence 2 inserted by 17th Amendment (24.6.68).

18 Words "or pursuant to" inserted by 17th Amendment (24.6.68).

19 Half-sentence "to avert an imminent danger to the existence or the free democratic basic order of the Federation or a State [Land]" inserted by 17th Amendment (24.6.68).

20 Half-sentence "to deal with natural disasters or particularly grave accidents" inserted by 17th Amendment (24.6.68).

21 Temporary insertions have been effected by 7th Amendment (19.3.56) which later have been moved to Article 12a.

22 Words "or pursuant to" inserted by 17th Amendment (24.6.68).

(2) No person may be forced to perform work of a particular kind except within the framework of a traditional compulsory community service that applies generally and equally to all.

(3) Forced labor may be imposed only on persons deprived of their liberty by court sentence.

*Article 12a [Military and Other Service]<sup>23</sup>*

(1) Males who have attained the age of eighteen years can be required to serve in the Armed Forces, in the Federal Border Guard, or in a civil defense organization.

(2) A person who refuses, on grounds of conscience, to render war service involving the use of arms can be required to render a substitute service. <sup>[2]</sup>The duration of such substitute service may not exceed the duration of military service. <sup>[3]</sup>Details are regulated by a statute which may not interfere with the freedom to take a decision based on conscience and which must also provide for the possibility of a substitute service not connected with units of the Armed Forces or of the Federal Border Guard.

(3) Persons liable to military service who are not required to render service pursuant to Paragraph I or II can, during a state of defense, be assigned by or pursuant to a statute to an employment involving civilian services for defense purposes, including the protection of the civilian population; assignments to employments subject to public law are only admissible for the purpose of discharging police functions or such other functions of public administration as can only be discharged by persons employed under public law. <sup>[2]</sup>Employments according to the first sentence of this paragraph can also be established with the Armed Forces, in the area of their supply services, or with public administrative authorities; assignments to employment connected with supply services for the civilian population are only admissible to provide for their vital provisions or to guarantee their safety.

(4) Where, during a state of defense, civilian service requirements in the civilian health system or in the stationary military hospital organization cannot be met on a voluntary basis, women between eighteen and fifty-five years of age can be assigned to such services by or pursuant to a statute. <sup>[2]</sup>They may in no case be obliged to<sup>24</sup> render service involving the use of arms.

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23 Article 12a inserted by 17th Amendment (24.6.68).

24 Words "be obliged to" inserted by 48th Amendment (19.12.00).

(5) Prior to the existence of a state of defense, assignments under Paragraph III may only be made where the requirements of Article 80a I are satisfied. <sup>[2]</sup>To prepare services mentioned in Paragraph III for which special knowledge or skills are required, persons can be obliged by or pursuant to a statute to attend training courses. <sup>[3]</sup>Insofar, the first sentence of this paragraph does not apply.

(6) Where, during a state of defense, staffing requirements for the purposes referred to in Paragraph III 1 cannot be met on a voluntary basis, the freedom of Germans to quit the pursuit of his occupation or quit his place of work may be restricted by or pursuant to a statute in order to meet these requirements. <sup>[2]</sup> Paragraph V 1 equally applies prior to the existence of a state of defense.

*Article 13 [Home]*<sup>25</sup>

(1) The home is inviolable.

(2) Searches may be ordered only by a judge or, in the event of danger resulting from any delay, by other organs legally specified, and they may be carried out only in the form prescribed by law.

(3) If specific facts lead to the assumption that someone has committed a very grave crime, technical means of eavesdropping in homes where that person probably stays may be ordered by court if the investigation by other means would be unproportionally obstructed or without chance of success. <sup>[2]</sup>The measure has to be limited. <sup>[3]</sup>The order is issued by a court of three justices. <sup>[4]</sup>In the event of danger resulting from any delay, the order can be issued by a single judge.

(4) To avoid urgent danger to public safety, particularly general or mortal danger, technical means of eavesdropping in homes may only be used on the order of a judge. <sup>[2]</sup>In the event of danger resulting from any delay, those actions may be ordered by other authorities empowered by law; the subsequent decision of a judge has to be arranged for without delay.

(5) In the case of technical means being exclusively ordered for the protection of investigators during their activity in homes, the measure can be ordered by those authorities empowered by law. <sup>[2]</sup>Evidence from such investigation may be used for other purposes only to conduct criminal prosecution or avoid danger and only if the legality of the measure has been stated by court order; in the

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<sup>25</sup> Paragraphs III to VI inserted by 45th Amendment (26.3.98).

event of danger resulting from any delay, a subsequent court order has to be arranged for without delay.

(6) The Government provides yearly reports to the House of Representatives [Bundestag] about those measures conducted according to Paragraph III as well as according to Paragraph IV and, as far as court orders are necessary, Paragraph V in the domain of federal authority. <sup>[2]</sup>A committee elected by the House of Representatives [Bundestag] conducts parliamentary control on the basis of this report. <sup>[3]</sup>The States [Länder] provide for equivalent control.

(7) Intrusions and restrictions may otherwise only be made to avert a general danger or a mortal danger to individuals, or, pursuant to a statute, to prevent present danger to public safety and order, particularly to relieve a housing shortage, to combat the danger of epidemics, or to protect endangered juveniles.<sup>26</sup>

*Article 14 [Property, Inheritance, Expropriation]*

(1) Property and the right of inheritance are guaranteed. <sup>[2]</sup>Their content and limits are determined by statute.

(2) Property imposes duties. <sup>[2]</sup>Its use should also serve the public weal.

(3) Expropriation is only permissible for the public good. <sup>[2]</sup>It may be imposed only by or pursuant to a statute regulating the nature and extent of compensation. <sup>[3]</sup>Such compensation has to be determined by establishing an equitable balance between the public interest and the interests of those affected. <sup>[4]</sup>Regarding disputes about the amount of compensation, recourse to the courts of ordinary jurisdiction is available.

*Article 15 [Socialization]*

Land, natural resources, and means of production can, for the purpose of socialization, be transferred to public ownership or other forms of collective enterprise by a statute regulating the nature and extent of compensation. <sup>[2]</sup>Regarding such compensation, Article 14 III 3 & 4 also applies.

*Article 16 [Citizenship, Extradition]*

(1) German citizenship may not be taken away. <sup>[2]</sup>The loss of citizenship may only be imposed pursuant to a statute and against

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<sup>26</sup> Paragraph VII was Paragraph III until 45th Amendment (26.3.98).

the will of the person affected only where such person does not become stateless as a result thereof.

(2) No German may be extradited to a foreign country. <sup>[2]</sup>The law can provide otherwise for extraditions to a member state of the European Union or to an international court of justice as long as the rule of law is upheld.<sup>27</sup>

*Article 16a [Asylum]*<sup>28</sup>

(1) Persons persecuted on political grounds enjoy the right of asylum.<sup>29</sup>

(2) The right of Paragraph I cannot claim who enters from a European Communities country or from another country where the application of the Convention on the Legal Status of Refugees and the Convention to Protect Human Rights and Civil Liberties is ensured. <sup>[2]</sup>Countries outside of the European Communities for which the prerequisites of the first sentence hold true are determined by a statute requiring the consent of the Senate [Bundesrat]. <sup>[3]</sup>In the cases of the first sentence, measures to end a stay can be effectuated independent of recourse to the course sought against these measures.

(3) By statute requiring the consent of the Senate [Bundesrat], countries can be determined in which on the basis of law, law application, or general political conditions it seems to be guaranteed that neither persecution on political grounds nor inhuman or derogatory punishment and treatment takes place. <sup>[2]</sup>A foreigner from such a state is presumed to not being persecuted unless he asserts facts supporting that, contrary to this presumption, he is politically persecuted.

(4) The effectuation of measures to end a stay will, in the cases of Paragraph III and in other cases where the claim to stay is obviously unfounded or is regarded as obviously unfounded, only be suspended by court order if serious doubts arise concerning the legality of the measure; the scope of scrutiny can be limited and delayed assertions ignored. <sup>[2]</sup>Details are regulated by a statute.

(5) Paragraphs I to IV are not contrary to public law contracts of European Communities member states among each other and with

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27 Sentence 2 changed by 39th Amendment (28.6.93), 47th Amendment (29.11.00).

28 Article 16a inserted by 39th Amendment (28.6.93).

29 Paragraph I was Article 16 II 2 until 39th Amendment (28.6.93).

other countries which, honoring the obligations arising from the Convention on the Legal Status of Refugees and the Convention to Protect Human Rights and Civil Liberties the application of which has to be ensured in the contracting countries, regulate responsibilities to examine claims of asylum including mutual acknowledgement of asylum decisions.

*Article 17 [Petition]*

Everyone has the right, individually or jointly with others, to address written requests or complaints to the competent agencies and to parliaments.

*Article 17a [Defense and Substitute Service]<sup>30</sup>*

(1) Statutes concerning military service and substitute service can, by provisions applying to members of the Armed Forces and of the substitute services during their period of military or substitute service, restrict the basic right to freely express and disseminate opinions in speech, writing, and pictures (first half sentence of Article 5 I), the basic right of assembly (Article 8), and the right of petition (Article 17) insofar as this right permits the submission of requests or complaints jointly with others.

(2) Statutes serving defense purposes including the protection of the civilian population can provide for the restriction of the basic rights of freedom of movement (Article 11) and inviolability of the home (Article 13).

*Article 18 [Forfeiture of Basic Rights]*

Whoever abuses freedom of expression of opinion, in particular freedom of the press (Article 5 I), freedom of teaching (Article 5 III), freedom of assembly (Article 8), freedom of association (Article 9), privacy of letters and secrecy of post and telecommunication (Article 10), property (Article 14), or the right to asylum (Article 16a)<sup>31</sup> in order to combat the free democratic basic order forfeits these basic rights. [2]Such forfeiture and the extent thereof is determined by the Federal Constitutional Court.

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30 Article 17a inserted by 7th Amendment (19.3.56).

31 Reference "Article 16a" replaced the former reference to "Article 16 II" since 39th Amendment (28.6.93).



*Article 19 [Restriction of Basic Rights]*

(1) Insofar as a basic right may, under this Constitution, be restricted by or pursuant to a statute, such statute must apply generally and not solely to an individual case. <sup>[2]</sup>Furthermore, such statute must name the basic right, indicating the relevant Article.

(2) In no case may the essence of a basic right be infringed.

(3) Basic rights also apply to domestic corporations to the extent that the nature of such rights permits.

(4) Should any person's rights be violated by public authority, recourse to the court is open to him. <sup>[2]</sup>Insofar as no other jurisdiction has been established, recourse is available to the courts of ordinary jurisdiction. <sup>[3]</sup>Article 10 II 2 is not affected by the provisions of this paragraph.<sup>32</sup>

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32 Sentence 3 inserted by 17th Amendment (24.6.68).

## Chapter II

### Federation and States

#### *Article 20 [Basic Principles of State, Resistance]*

(1) The Federal Republic of Germany is a democratic and social federal state.

(2) All state authority emanates from the people. <sup>[2]</sup>It is being exercised by the people through elections and voting and by specific organs of the legislature, the executive power, and the judiciary.

(3) Legislation is subject to the constitutional order; the executive and the judiciary are bound by law and justice.

(4) All Germans have the right to resist any person seeking to abolish this constitutional order, should no other remedy be possible.<sup>33</sup>

#### *Article 20a [Protection of Natural Resources]<sup>34</sup>*

The state, also in its responsibility for future generations, protects the natural foundations of life and the animals<sup>35</sup> in the framework of the constitutional order, by legislation and, according to law and justice, by executive and judiciary.

#### *Article 21 [Political Parties]*

(1) The political parties participate in the forming of the political will of the people. <sup>[2]</sup>They may be freely established. <sup>[3]</sup>Their internal organization must conform to democratic principles. <sup>[4]</sup>They have to publicly account for the sources and use of their funds and for their assets.<sup>36</sup>

(2) Parties which, by reason of their aims or the behavior of their adherents, seek to impair or abolish the free democratic basic order or to endanger the existence of the Federal Republic of Germany are unconstitutional. <sup>[2]</sup>The Federal Constitutional Court decides on the question of unconstitutionality.

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33 Paragraph IV inserted by [17th Amendment](#) (24.6.68).

34 Article 20a inserted by [42nd Amendment](#) (27.10.94).

35 Words "and the animals" inserted by [50th Amendment](#) (26.7.2002).

36 Words "and use" as well as "and for their assets" inserted by [35th Amendment](#) (21.12.83).

(3) Details are regulated by federal statutes.

*Article 22 [Capital, Federal Flag]*

(1) The capital of the Federal Republic of Germany is Berlin. <sup>[2]</sup>The representation of the whole state in the capital is a task of the federation. <sup>[3]</sup>Details are regulated by federal statute.<sup>37</sup>

(2) The federal flag is black, red, and gold.<sup>38</sup>

*Article 23 [European Union]<sup>39</sup>*

(1) To realize a unified Europe, Germany participates in the development of the European Union which is bound to democratic, rule of law, social, and federal principles as well as the principle of subsidiarity and provides a protection of fundamental rights essentially equivalent to that of this Constitution. <sup>[2]</sup>The federation can, for this purpose and with the consent of the Senate [Bundesrat], delegate sovereign powers. <sup>[3]</sup>Article 79 II & III is applicable for the foundation of the European Union as well as for changes in its contractual bases and comparable regulations by which the content of this Constitution is changed or amended or by which such changes or amendments are authorized.

(1a) The House of Representatives [Bundestag] and the Senate [Bundesrat] have the right to challenge violations of the principle of subsidiarity by legislative acts of the European Union before the Court of the European Union. <sup>[2]</sup>The House of Representatives [Bundestag] is duty bound to do so upon the motion of one quarter of its members. <sup>[3]</sup>By statute requiring the consent of the Senate [Bundesrat], regarding the exercise of rights of the House of Representatives [Bundestag] and the Senate [Bundesrat] under the contractual bases of the European Union, exceptions may be authorized to Article 42 II 1 and Article 52 III 1.<sup>40</sup>

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37 Paragraph I inserted by [52nd Amendment](#) (28.8.06).

38 Paragraph II was Paragraph I until [52nd Amendment](#) (28.8.06).

39 New version inserted by [38th Amendment](#) (21.12.92). Original version had already been repealed by [36th Amendment](#) (23.9.90), i.e., the unification amendment. The original version read: "This Basic Law will initially be in force in the States [Länder] Baden, Bavaria, Bremen, Greater-Berlin, Hamburg, Hesse, Lower Saxony, North Rhine-Westphalia, Rhineland-Palatinate, Schleswig-Holstein, Württemberg-Baden and Württemberg-Hohenzollern. For other parts of Germany, it is set into force after their association."

40 Paragraph Ia inserted by [53rd Amendment](#) (8.10.08).

(2) The House of Representatives [Bundestag] and the States [Länder], by their representation in the Senate [Bundesrat], participate in matters of the European Union. <sup>[2]</sup>The Government has to thoroughly inform House of Representatives [Bundestag] and Senate [Bundesrat] at the earliest possible time.

(3) The Government allows for statements of the House of Representatives [Bundestag] before it takes part in drafting European Union laws. <sup>[2]</sup>The Government considers statements of the House of Representatives [Bundestag] during deliberations. <sup>[3]</sup>Detail are regulated by federal statute.

(4) The Senate [Bundesrat] has to be included in the deliberations of the House of Representatives [Bundestag] insofar as it would have to participate in a domestic measure or insofar as the States [Länder] would be accountable domestically.

(5) Insofar as, in the area of exclusive legislative competence of the Federation, the interests of the States [Länder] are affected or insofar as, in all other cases, the Federation has legislative competence, the Government considers the statement of the Senate [Bundesrat]. <sup>[2]</sup>If legislative competencies of the States [Länder], the installation of their agencies, or their procedures are centrally affected, the opinion of the Senate [Bundesrat] has to be considered as decisive for the Federation's deliberation; the responsibility of the Federation for the whole state has to be maintained in the process. <sup>[3]</sup>The consent of the Government is necessary in matters possibly resulting in higher expenses or lower revenues for the Federation.

(6) Where exclusive legislative competencies of the States [Länder] are centrally affected in the areas of school education, culture, or broadcasting,<sup>41</sup> the exercise of the Federal Republic of Germany's rights as member state of the European Union is delegated to a representative of the States [Länder] assigned by the Senate [Bundesrat]. <sup>[2]</sup>These rights are exercised with participation of and in coordination with the Government; the responsibility of the Federation for the whole state has to be maintained in the process.

(7) Details of Paragraphs IV to VI are regulated by a statute requiring the consent of the Senate [Bundesrat].

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41 Words "in the areas of school education, culture, or broadcasting" inserted by [52nd Amendment](#) (28.8.06).

*Article 24 [Collective Security System]*

(1) The Federation may by legislation transfer sovereign powers to intergovernmental institutions.

(1a) Insofar as the States [Länder] are responsible for the exercise of state rights and the discharge of state duties, they can, with consent of the Government, delegate sovereign powers to institutions for neighborhood at state borders.<sup>42</sup>

(2) For the maintenance of peace, the Federation may join a system of mutual collective security; in doing so it will consent to such limitations upon its rights of sovereignty as will bring about and secure a peaceful and lasting order in Europe and among the nations of the world.

(3) For the settlement of disputes between States [Länder], the Federation will accede to agreements concerning international arbitration of a general, comprehensive, and obligatory nature.

*Article 25 [Public International Law]*

The general rules of public international law constitute an integral part of federal law. <sup>[2]</sup>They take precedence over statutes and directly create rights and duties for the inhabitants of the federal territory.

*Article 26 [Ban on War]*

(1) Acts with the potential to and undertaken with intent to disturb the peaceful relations between nations, especially to prepare war or aggression, are unconstitutional. <sup>[2]</sup>They have to be made a criminal offense.

(2) Weapons designed for warfare may not be manufactured, transported, or marketed except with the permission of the Government. <sup>[2]</sup>Details are regulated by a federal statute.

*Article 27 [Merchant Fleet]*

All German merchant vessels form one merchant fleet.

*Article 28 [Self-Government]*

(1) The constitutional order in the States [Länder] must conform to the principles of the republican, democratic, and social state under the rule of law, within the meaning of this Constitution. <sup>[2]</sup>In each of the States [Länder], counties, and communes, the people has to be

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<sup>42</sup> Paragraph 1a inserted by 38th Amendment (21.12.92).

represented by a body chosen in general, direct, free, equal, and secret elections. <sup>[3]</sup> During elections in counties and communes, persons who possess the citizenship of a European Community country are eligible to vote and being elected according to the laws of the European Community.<sup>43</sup> <sup>[4]</sup> In communes, the communal assembly can take the place of an elected body.

(2) The communes must be guaranteed the right to regulate, on their own responsibility, all the affairs of the local community within the limits set by statute. <sup>[2]</sup> Within the framework of their statutory functions, the associations of communes have such right to self-government as may be provided by statute. <sup>[3]</sup> The right to self-government also encompasses the foundations of financial accountability; part of this foundation is the communes' right to raise their tax shares according to local economic performance.<sup>44</sup>

(3) The Federation ensures that the constitutional order of the States [Länder] conforms to the basic rights and to the provisions of Paragraphs I & II.

*Article 29 [States Boundaries]*<sup>45</sup>

(1) A new delimitation of federal territory may be made to ensure that the States [Länder] by their size and capacity are able effectively to fulfill their functions. <sup>[2]</sup> Due regard has to be given to regional, historical, and cultural ties, economic expediency, and the requirements of regional policy and planning.

(2) Measures for a new delimitation of federal territory are effected by federal statutes requiring confirmation by referendum. <sup>[2]</sup> The States [Länder] thus affected have to be consulted.

(3) A referendum is held in the States [Länder] from whose territories or partial territories a new State [Land] or a State with redefined boundaries is to be formed (affected States). <sup>[2]</sup> The referendum is held on the question whether the affected States [Länder] are to remain within their existing boundaries or whether the new State [Land] or State with redefined boundaries should be formed. <sup>[3]</sup> The referendum is deemed to be in favor of the formation of a new State [Land] or of a State [Land] with redefined boundaries where approval is given to the change by a majority in the future territory of such State [Land] and by a majority in all the

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43 Sentence 3 inserted by 38th Amendment (21.12.92).

44 Sentence 3 changed by 42nd Amendment (27.10.94), 44th Amendment (20.10.97).

45 Article 29 changed by 25th Amendment (19.8.69), 33rd Amendment (23.8.76), 42nd Amendment (27.10.94).

territories or partial territories of an affected State [Land] whose assignment to a State [Land] is to be changed in the same sense. <sup>[4]</sup> The referendum is deemed not to be in favor where in the territory of one of the affected States [Länder] a majority reject the change; such rejection is, however, of no consequence where in one part of the territory whose assignment to the affected State [Land] is to be changed a majority of two-thirds approve of the change, unless in the entire territory of the affected State [Land] a majority of two-thirds reject the change.

(4) Where in a clearly definable area of interconnected population and economic settlement, the parts of which lie in several States [Länder] and which has a population of at least one million, one tenth of those of its population entitled to vote in House of Representatives [Bundestag] elections petition by popular initiative for the assignment of that area to one State [Land], provision is made within two years in a federal statute determining whether the delimitation of the affected States [Länder] is changed pursuant to Paragraph II or determining that a plebiscite is held in the affected States [Länder].

(5) The plebiscite establishes whether approval is given to a change of States [Länder] delimitation to be proposed in the statute. <sup>[2]</sup> The statute may put forward different proposals, not exceeding two in number, for the plebiscite. <sup>[3]</sup> Where approval is given by a majority to a proposed change of States [Länder] delimitation, provision is made within two years in a federal statute determining whether the delimitation of the States [Länder] concerned is changed pursuant to Paragraph II. <sup>[4]</sup> Where approval is given, in accordance with Paragraph III 3 & 4, to a proposal put forward for the plebiscite, a federal statute providing for the formation of the proposed State [Land] is enacted within two years of the plebiscite and no longer requires confirmation by referendum.

(6) A majority in a referendum or in a plebiscite consists of a majority of the votes cast, provided that they amount to at least one quarter of the population entitled to vote in House of Representatives [Bundestag] elections. <sup>[2]</sup> Other detailed provisions concerning referendums, popular petitions, and plebiscites is made in a federal statute; such statute may also provide that popular petitions may not be repeated within a period of five years.

(7) Other changes concerning the territory of the States [Länder] may be effected by state agreements between the States [Länder] concerned or by a federal statute with the approval of the Senate [Bundesrat] where the territory which is to be the subject of a new

delimitation does not have more than 50,000 inhabitants. <sup>[2]</sup>Detailed provision are made in a federal statute requiring the approval of the Senate [Bundesrat] and the majority of the members of the House of Representatives [Bundestag]. <sup>[3]</sup>It makes provision for the affected communes and districts to be consulted.

(8) The States [Länder] can change the delimitation of their territory or parts thereof deviating from the provisions in Paragraphs II to VII by state contract. <sup>[2]</sup>Affected communes and counties have to be consulted. <sup>[3]</sup>The state contract needs to be confirmed by public referendum in each participating State [Land]. <sup>[4]</sup>If a state contract affects only parts of the territory of a State [Land], the public referendum can be limited to these parts; Sentence 5 Half-Sentence 2 is not applicable. <sup>[5]</sup>The public referendum requires a majority of votes cast if such majority contains at least one fourth of the votes of all persons eligible for elections of the House of Representatives [Bundestag]; details are regulated by a federal statute. <sup>[6]</sup>The state contract requires the consent of the House of Representatives [Bundestag].

*Article 30 [Governmental Powers]*

Except as otherwise provided or permitted by this Constitution, the exercise of governmental powers and the discharge of governmental functions is incumbent on the States [Länder].

*Article 31 [Precedence of Federal Law]*

Federal law takes precedence over State [Land] law.

*Article 32 [Foreign Relations]*

(1) Relations with foreign countries are a responsibility of the Federation.

(2) Before the conclusion of a treaty affecting the special circumstances of a State [Land], that State [Land] has to be consulted in time.

(3) Insofar as the States [Länder] have power to legislate, they may, with the consent of the Government conclude treaties with foreign countries.

*Article 33 [Equality of Status and Office]*

(1) Every German has in every State [Land] the same political rights and duties.

(2) Every German is equally eligible for any public office according to his aptitude, qualifications, and professional achievements.



(3) Enjoyment of civil and political rights, eligibility for public office, and rights acquired in the public service are independent of religious denomination. <sup>[2]</sup>No one may suffer any disadvantage by reason of his adherence or non-adherence to a denomination or to a philosophical persuasion.

(4) The exercise of state authority as a permanent function is, as a rule, entrusted to members of the public service whose status, service and loyalty are governed by public law.

(5) The law of the public service is regulated and developed<sup>46</sup> with due regard to the traditional principles of the professional civil service.

*Article 34 [Liability of Officers and State]*

Where any person, in the exercise of a public office entrusted to him, violates his official obligations to a third party, liability rests in principle on the state or the public body which employs him. <sup>[2]</sup>In the event of willful intent or gross negligence, the right of recourse against the holder of a public office is reserved. <sup>[3]</sup>In respect of the claim for compensation or the right of recourse, the jurisdiction of the ordinary courts may not be excluded.

*Article 35 [Legal, Administrative, Emergency Assistance]*

(1) All federal and State [Land] authorities render each other legal and administrative assistance.

(2) In order to maintain or to restore public security or order, a State [Land] may, in cases of particular importance, call upon forces and facilities of the Federal Border Guard to assist its police where without this assistance the police could not, or only with considerable difficulty, fulfill a task.<sup>47</sup> <sup>[2]</sup>In order to deal with a natural disaster or an especially grave accident, a State [Land] may request the assistance of the police forces of other States [Länder] or of forces and facilities of other administrative authorities or of the Federal Border Guard or the Armed Forces.<sup>48</sup>

(3) Where the natural disaster or the accident endangers a region larger than a State [Land], the Government may, insofar as this is necessary to effectively deal with such danger, instruct the State [Land] governments to place their police forces at the disposal of

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<sup>46</sup> Words "and developed" inserted by [52nd Amendment](#) (28.8.06).

<sup>47</sup> Sentence 1 inserted by [31st Amendment](#) (28.7.72).

<sup>48</sup> Paragraph II inserted by [17th Amendment](#) (24.6.68).

other States [Länder], and may use units of the Federal Border Guard or the Armed Forces to support the police forces. <sup>[2]</sup>Measures taken by the Government pursuant to the first sentence of this paragraph have to be revoked at any time at the demand of the Senate [Bundesrat], and otherwise immediately upon removal of the danger.<sup>49</sup>

*Article 36 [Federal Civil Servants]*

(1) Civil servants employed in the highest federal authorities are drawn from all States [Länder] in appropriate proportion. <sup>[2]</sup>Persons employed in other federal authorities should, as a rule, be drawn from the State [Land] in which they serve.

(2) Military laws also have to take into account the division of the Federation into States [Länder] and the regional ties of their populations.<sup>50</sup>

*Article 37 [Federal Coercion]*

(1) Where a State [Land] fails to comply with its obligations of a federal character imposed by this Constitution or another federal statute, the Government may, with the consent of the Senate [Bundesrat], take the necessary measures to enforce such compliance by the State [Land] by way of federal coercion.

(2) For the purpose of exercising federal coercion, the Government or its commissioner has the right to give binding instructions to all States [Länder] and their authorities.

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49 Paragraph III inserted by 17th Amendment (24.6.68).

50 Paragraph II inserted by 7th Amendment (19.3.56).

## Chapter III

### House of Representatives

#### *Article 38 [Elections]*

(1) The deputies to the German House of Representatives [Bundestag] are elected in general, direct, free, equal, and secret elections. <sup>[2]</sup>They are representatives of the whole people, not bound by orders and instructions, and subject only to their conscience.

(2) Anyone who has attained the age of eighteen years is entitled to vote; anyone who has attained majority is eligible for election.<sup>51</sup>

(3) Details are regulated by a federal statute.

#### *Article 39 [Sessions, Legislative Term]*

(1) The House of Representatives [Bundestag] is elected, except for the following provisions,<sup>52</sup> for a four year term. <sup>[2]</sup>Its legislative term ends with the assembly of a new House of Representatives [Bundestag].<sup>53</sup> <sup>[3]</sup>New elections are held forty-six<sup>54</sup> months at the earliest, and forty-eight<sup>55</sup> months at the latest after the beginning of the legislative term. <sup>56</sup> <sup>[4]</sup>In the case of dissolution of the House of Representatives [Bundestag], the new election is held within sixty days.<sup>57</sup>

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51 Paragraph II changed by [27th Amendment](#) (31.7.70). The original read: "Anyone who has attained the age of twenty-one years is entitled to vote; anyone who has attained the age of twenty-five years is eligible for election."

52 Words "except for the following provisions" inserted by [46th Amendment](#) (16.7.98).

53 Words "with the assembly of a new House of Representatives [Bundestag]" inserted by [33rd Amendment](#) (23.8.76); the former text read: "four years after the first session or by dissolution".

54 Time was "forty-five" until [46th Amendment](#) (16.7.98).

55 Time was "forty-seven" until [46th Amendment](#) (16.7.98).

56 Sentence 3 changed by [33rd Amendment](#) (23.8.76); the former text read: "New elections are held in the last quarter of the legislative term, in the case of dissolution after sixty days at the latest."

57 Sentence 4 inserted by [33rd Amendment](#) (23.8.76).

(2) The House of Representatives [Bundestag] assembles, at the latest, on the thirtieth day after the election.<sup>58</sup>

(3) The House of Representatives [Bundestag] determines the termination and resumption of its meetings. <sup>[2]</sup>The President of the House of Representatives [Bundestag] may convene it at an earlier date. <sup>[3]</sup>He does so where one third of its members or the President or the Chancellor so demand.

*Article 40 [President, Rules of Procedure]*

(1) The House of Representatives [Bundestag] elects its President, vice presidents, and secretaries. <sup>[2]</sup>It draws up its rules of procedure.

(2) The President exercises proprietary and police powers in the House of Representatives [Bundestag] building. <sup>[2]</sup>No search or seizure may take place on the premises of the House of Representatives [Bundestag] without his permission.

*Article 41 [Scrutiny of Elections]*

(1) The scrutiny of elections is the responsibility of the House of Representatives [Bundestag]. <sup>[2]</sup>It also decides whether a deputy has lost his seat in the House of Representatives [Bundestag].

(2) Complaints against such decisions of the House of Representatives [Bundestag] may be lodged with the Federal Constitutional Court.

(3) Details are regulated by a federal statute.

*Article 42 [Proceedings, Voting]*

(1) The debates of the House of Representatives [Bundestag] are public. <sup>[2]</sup>Upon a motion of one tenth of its members, or upon a motion of the Government, the public may be excluded by a two-thirds majority. <sup>[3]</sup>The decision on the motion is taken at a meeting not open to the public.

(2) Decisions of the House of Representatives [Bundestag] require a majority of the votes cast unless this Constitution provides otherwise. <sup>[2]</sup>The rules of procedure may provide for exceptions in respect of elections to be conducted by the House of Representatives [Bundestag].

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<sup>58</sup> By 33rd Amendment (23.8.76) the following addition was omitted: "but not before the end of the legislative term of the last House of Representatives [Bundestag]."

(3) True and accurate reports on the public meetings of the House of Representatives [Bundestag] and of its committees does not give rise to any liability.

*Article 43 [Presence of Government and Senate]*

(1) The House of Representatives [Bundestag] and its committees may demand the presence of any member of the Government.

(2) The members of the Senate [Bundesrat] and of the Government as well as persons commissioned by them have access to all meetings of the House of Representatives [Bundestag] and its committees. <sup>[2]</sup>They are heard at any time.

*Article 44 [Committees of Investigation]*

(1) The House of Representatives [Bundestag] has the right, and upon the motion of one quarter of its members the duty, to set up a committee of investigation, which takes the requisite evidence at public hearings. <sup>[2]</sup>The public may be excluded.

(2) The rules of criminal procedure equally apply to the taking of evidence. <sup>[2]</sup>The privacy of letters and the secrecy of post and telecommunication remain unaffected.

(3) Courts and administrative authorities are bound to render legal and administrative assistance.

(4) The decisions of committees of investigation is not subject to judicial consideration. <sup>[2]</sup>The courts are free to evaluate and judge the facts on which the investigation is based.

*Article 45 [Committee on the European Union]<sup>59</sup>*

The House of Representatives [Bundestag] establishes a committee for European Union matters. <sup>[2]</sup>It can empower the committee to exercise the rights of the House of Representatives [Bundestag] under Article 23 in its contact with the Government. <sup>[3]</sup>It can also

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59 Article 45 inserted by **38th Amendment** (21.12.92). The original version had been repealed by **33rd Amendment** (23.8.76); it read:

*"Article 45 [Permanent Committee]*

(1) The House of Representatives [Bundestag] establishes a permanent committee to exercise the rights of the House of Representatives [Bundestag] towards the Federal Government during the time between legislative terms. The permanent committee also has the rights of an investigative committee.

(2) More extensive authorities, particularly the right to legislation, the election of the Federal Chancellor and the impeachment of the Federal President, do not belong to the permanent committee."

empower the committee to exercise the rights of the House of Representatives [Bundestag] under the contractual bases of the European Union.<sup>60</sup>

*Article 45a [Committees on Foreign Affairs and Defense]*<sup>61</sup>

(1) The House of Representatives [Bundestag] appoints a Committee on Foreign Affairs and Committee on Defense.<sup>62</sup>

(2) The Committee on Defense also has the rights of a committee of investigation. <sup>[2]</sup>Upon the motion of one quarter of its members it has the duty to make a specific matter the subject of investigation.

(3) Article 44 I does not apply to defense matters.

*Article 45b [Defense Commissioner]*<sup>63</sup>

A Defense Commissioner of the House of Representatives [Bundestag] is appointed to safeguard the basic rights and to assist the House of Representatives [Bundestag] in exercising parliamentary control. <sup>[2]</sup>Details are regulated by a federal statute.

*Article 45c [Petitions Committee]*<sup>64</sup>

(1) The House of Representatives [Bundestag] appoints a Petitions Committee to deal with requests and complaints addressed to the House of Representatives [Bundestag] pursuant to Article 17.

(2) The powers of the Committee to consider complaints is regulated by a federal statute.

*Article 45d Parliamentary Control Body*<sup>65</sup>

(1) The House of Representatives [Bundestag] appoints a Body to control the intelligence services of the Federation.

(2) Details are regulated by a federal statute.

60 Sentence 3 inserted by [53rd Amendment](#) (8.10.08).

61 Article 45a inserted by [7th Amendment](#) (19.3.56).

62 Former Sentence 2 ("Both committees are also active between elections.") repealed by [33rd Amendment](#) (23.8.76).

63 Article 45b inserted by [7th Amendment](#) (19.3.56).

64 Article 45c inserted by [32nd Amendment](#) (15.7.75).

65 Article 45d inserted by [55th Amendment](#) (17.7.09); contrary to the style of the Constitution, this title has been chosen officially.

*Article 46 [Indemnity and Immunity]*

(1) A deputy may not at any time be subjected to court proceedings or disciplinary action or otherwise called to account outside the House of Representatives [Bundestag] for a vote cast or a statement made by him in the House of Representatives [Bundestag] or in any of its committees. <sup>[2]</sup>This does not apply to defamatory insults.

(2) A deputy may not be called to account or arrested for a punishable offense except by permission of the House of Representatives [Bundestag], unless he is apprehended during commission of the offense or in the course of the following day.

(3) The permission of the House of Representatives [Bundestag] also is necessary for any other restriction of the personal liberty of a deputy or for the initiation of proceedings against a deputy under Article 18.

(4) Any criminal proceedings or any proceedings under Article 18 against a deputy, any detention or any other restriction of his personal liberty is suspended at the demand of the House of Representatives [Bundestag].

*Article 47 [Right to Refuse Evidence]*

Deputies may refuse to give evidence concerning persons who have confided facts to them in their capacity as deputies, or to whom they have confided facts in such capacity, as well as evidence concerning these facts themselves. <sup>[2]</sup>To the extent that this right of refusal to give evidence exists, no seizure of documents is permissible.

*Article 48 [Entitlements]*

(1) Any candidate for election to the House of Representatives [Bundestag] is entitled to the leave necessary for his election campaign.

(2) No one may be prevented from accepting and exercising the office of deputy. <sup>[2]</sup>He may not be given notice of dismissal nor dismissed from employment on this ground.

(3) Deputies are entitled to adequate remuneration ensuring their independence. <sup>[2]</sup>They are entitled to the free use of all state-owned means of transport. <sup>[3]</sup>Details are regulated by a federal statute.

*Article 49 [repealed]*<sup>66</sup>

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<sup>66</sup> Article 49 changed by [7th Amendment](#) (19.3.56), repealed by [33rd Amendment](#) (23.8.76); the original text read:  
*"Article 49 [Entitlements Between Legislative Terms]*  
For members of the presidium and the permanent committee as well as for their deputies, Articles 46, 47 and 48 II & III also apply for the time between legislative terms."



## Chapter IV

### Senate

#### *Article 50 [Functions]*

The States [Länder] participate through the Senate [Bundesrat] in the legislation and administration of the Federation and in European Union matters.<sup>67</sup>

#### *Article 51 [Composition]*

(1) The Senate [Bundesrat] consists of members of the State [Land] governments which appoint and recall them. <sup>[2]</sup>Other members of such governments may act as substitutes.

(2) Each State [Land] has at least three votes; States [Länder] with more than two million inhabitants have four, States [Länder] with more than six million inhabitants five, and States [Länder] with more than seven million inhabitants six votes.<sup>68</sup>

(3) Each State [Land] may delegate as many members as it has votes. <sup>[2]</sup>The votes of each State [Land] may be cast only as a block vote and only by members present or their substitutes.

#### *Article 52 [President, Rules of Procedure]*

(1) The Senate [Bundesrat] elects its President for one year.

(2) The President convenes the Senate [Bundesrat]. <sup>[2]</sup>He convenes the Senate [Bundesrat] where delegates from at least two States [Länder] or the Government so demand.

(3) The Senate [Bundesrat] takes its decisions with at least the majority of its votes. <sup>[2]</sup>It draws up its rules of procedure. <sup>[3]</sup>Its meetings are public. <sup>[4]</sup>The public may be excluded.

(3a) For European Union matters, the Senate [Bundesrat] can establish a European Chamber whose decisions are considered decisions of the Senate [Bundesrat]; the number of State [Land] votes cast in unison are determined according to Article 51 II.<sup>69</sup>

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67 Words "and in European Union matters" inserted by 38th Amendment (21.12.92).

68 Words "and States [Länder] with more than seven million inhabitants six votes" inserted by 36th Amendment (23.9.90), i.e., the unification amendment.

69 Paragraph IIIa inserted by 38th Amendment (21.12.92), reference changed by 52nd Amendment (28.8.06).

(4) Other members of or persons commissioned by State [Land] governments may serve on the committees of the Senate [Bundesrat].

*Article 53 [Presence of Government]*

The members of the Government have the right, and on demand the duty, to attend the meetings of the Senate [Bundesrat] and of its committees. <sup>[2]</sup>They have the right to be heard at any time. <sup>[3]</sup>The Senate [Bundesrat] is being kept informed by the Government as regards the conduct of affairs.

## Chapter IVa

### Joint Committee

*Article 53a [Composition, Rules of Procedure]<sup>70</sup>*

(1) Two thirds of the members of the Joint Committee are deputies of the House of Representatives [Bundestag] and one third are members of the Senate [Bundesrat]. <sup>[2]</sup>The House of Representatives [Bundestag] delegates its deputies in proportion to the relative strength of its parliamentary groups; deputies may not be members of the Government. <sup>[3]</sup>Each State [Land] is represented by a Senate [Bundesrat] member of its choice; these members are not bound by instructions. <sup>[4]</sup>The establishment of the Joint Committee and its procedures are regulated by rules of procedure to be adopted by the House of Representatives [Bundestag] and requiring the consent of the Senate [Bundesrat].

(2) The Government informs the Joint Committee about its plans in respect of a state of defense. <sup>[2]</sup>The rights of the House of Representatives [Bundestag] and its committees under Article 43 I remain unaffected by the provision of this paragraph.

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<sup>70</sup> Chapter IVa and Article 53a inserted by 17th Amendment (24.6.68).

## Chapter V

### Federal President

#### *Article 54 [Election]*

(1) The President is elected, without debate, by the Federal Convention. <sup>[2]</sup>Every German who is entitled to vote in House of Representatives [Bundestag] elections and has attained the age of forty years is eligible for election.

(2) The term of office of the President is five years. <sup>[2]</sup>Reelection for a consecutive term is permitted only once.

(3) The Federal Convention consists of the members of the House of Representatives [Bundestag] and an equal number of members elected by the parliaments of the States [Länder] according to the principles of proportional representation.

(4) The Federal Convention meets no later than thirty days before the expiration of the term of office of the President or, in the case of premature termination, not later than thirty days after that date. <sup>[2]</sup>It is convened by the President of the House of Representatives [Bundestag].

(5) After the expiration of a legislative term, the period specified in Paragraph IV 1 begins with the first meeting of the House of Representatives [Bundestag].

(6) The person receiving the votes of the majority of the members of the Federal Convention is elected. <sup>[2]</sup>Where such majority is not obtained by any candidate in two ballots, the candidate who receives the largest number of votes in the next ballot is elected.

(7) Details are regulated by a federal statute.

#### *Article 55 [Incompatibilities]*

(1) The President may not be a member of the government nor of a legislative body of the Federation or of a State [Land].

(2) The President may not hold any other salaried office, nor engage in an occupation, nor belong to the management or the board of directors of an enterprise carried on for profit.

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

On assuming his office, the President takes the following oath before the assembled members of the House of Representatives [Bundestag] and the Senate [Bundesrat]:

"I swear that I will dedicate my efforts to the wellbeing of the German people, enhance their benefits, avert harm from them, uphold and defend the Constitution and the statutes of the Federation, fulfill my duties conscientiously, and do justice to all. So help me God."

<sup>[2]</sup>The oath may also be taken without religious affirmation.

*Article 57 [Representation]*

Where the President is prevented from acting, or where his office falls prematurely vacant, his powers are exercised by the President of the Senate [Bundesrat].

*Article 58 [Countersignature]*

Orders and directions of the President require, for their validity, the countersignature of the Chancellor or the appropriate Minister. <sup>[2]</sup>This does not apply to the appointment and dismissal of the Chancellor, the dissolution of the House of Representatives [Bundestag] under Article 63 and a request made under Article 69 III.

*Article 59 [Representation in International Relations]*

(1) The President represents the Federation in its international relations. <sup>[2]</sup>He concludes treaties with foreign countries on behalf of the Federation. <sup>[3]</sup>He accredits and receive envoys.

(2) Treaties which regulate the political relations of the Federation or relate to matters of federal legislation requires the consent or participation, in the form of a federal statute, of the bodies competent in any specific case for such federal legislation. <sup>[2]</sup>As regards administrative agreements, the provisions concerning the federal administration are applicable.

*Article 59a [repealed]*<sup>71</sup>*Article 60 [Appointments, Pardon]*

- (1) The President appoints and dismisses the federal judges, the federal civil servants, the officers and noncommissioned officers,<sup>72</sup> except as may otherwise be provided for by statute.
- (2) He exercises the right of pardon in individual cases on behalf of the Federation.
- (3) He may delegate these powers to other authorities.
- (4) Article 46 II to IV also apply to the President.

*Article 61 [Impeachment]*

- (1) The House of Representatives [Bundestag] or the Senate [Bundesrat] may impeach the President before the Federal Constitutional Court for willful violation of this Constitution or any other federal statute. <sup>[2]</sup>The motion of impeachment is filed by at least one quarter of the members of the House of Representatives [Bundestag] or one quarter of the votes of the Senate [Bundesrat]. <sup>[3]</sup>A decision to impeach requires a majority of two thirds of the members of the House of Representatives [Bundestag] or of two thirds of the votes of the Senate [Bundesrat]. <sup>[4]</sup>The impeachment is pleaded by a person commissioned by the impeaching body.
- (2) Where the Federal Constitutional Court finds the President guilty of a willful violation of this Constitution or of another federal statute, it may declare him to have forfeited his office. <sup>[2]</sup>After impeachment, it may issue an interim order preventing the President from exercising his functions.

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71 Article 59a inserted by 7th Amendment (19.3.56) and repealed by 17th Amendment (24.6.68). The original text read:

*"Article 59a [Declaration of the State of Defense, Conclusion of Peace]*

(1) The declaration of the State of Defense is due to the House of Representatives [Bundestag]. The decision will be proclaimed by the President.

(2) In the case of insurmountable obstacles against a meeting of the House of Representatives [Bundestag], the President may, in the event of danger, make the declaration with the countersignature of the Chancellor. The President should hear the Presidents of the House of Representatives [Bundestag] and the Senate [Bundesrat] beforehand.

(3) Regarding the State of Defense, the President may express opinions in public international law only after the declaration.

(4) Conclusion of peace is determined by federal statute."

72 Words "the officers and noncommissioned officers" inserted by 7th Amendment (19.3.56).

## Chapter VI

### Federal Government

#### *Article 62 [Composition]*

The Government consists of the Chancellor and the Ministers.

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

(1) The Chancellor is elected, without debate, by the House of Representatives [Bundestag] upon the proposal of the President.

(2) The person obtaining the votes of the majority of the members of the House of Representatives [Bundestag] is elected. <sup>[2]</sup> The person elected is appointed by the President.

(3) Where the person proposed is not elected, the House of Representatives [Bundestag] may elect within fourteen days of the ballot a Chancellor by more than one half of its members.

(4) Where no candidate has been elected within this period, a new ballot takes place without delay in which the person obtaining the largest number of votes is elected. <sup>[2]</sup> Where the person elected has obtained the votes of the majority of the members of the House of Representatives [Bundestag], the President appoints him within seven days of the election. <sup>[3]</sup> Where the person elected did not obtain such a majority, the President, within seven days, either appoints him or dissolves the House of Representatives [Bundestag].

#### *Article 64 [Appointment of Ministers]*

(1) The Ministers are appointed and dismissed by the President upon the proposal of the Chancellor.

(2) The Chancellor and the Ministers, on assuming office, take before the House of Representatives [Bundestag] the oath provided for in Article 56.

#### *Article 65 [Governmental Powers]*

The Chancellor determines and is responsible for the general policy guidelines. <sup>[2]</sup> Within the limits set by these guidelines, each Minister conducts the affairs of his department independently and on his own responsibility. <sup>[3]</sup> The Government decides on differences of opinion between Ministers. <sup>[4]</sup> The Chancellor conducts the affairs of the Government in accordance with rules of procedure adopted by it and approved by the President.

*Article 65a [Command Over Armed Forces]*<sup>73</sup>

Power of command in respect of the Armed Forces is be vested in the Minister of Defense.

*Article 66 [Incompatibilities]*

The Chancellor and the Ministers may not hold any other salaried office, nor engage in an occupation, nor belong to the management or, without the consent of the House of Representatives [Bundestag], to the board of directors of an enterprise carried on for profit.

*Article 67 [Lack of Confidence]*

(1) The House of Representatives [Bundestag] can express its lack of confidence in the Chancellor only by electing a successor with the majority of its members and by requesting the President to dismiss the Chancellor. <sup>[2]</sup>The President complies with the request and appoints the person elected.

(2) Forty-eight hours must elapse between the motion and the election.

*Article 68 [Dissolution of Parliament]*

(1) Where a motion of the Chancellor for a vote of confidence is not carried by the majority of the members of the House of Representatives [Bundestag], the President may, upon the proposal of the Chancellor, dissolve the House of Representatives [Bundestag] within twenty-one days. <sup>[2]</sup>The right of dissolution lapses as soon as the House of Representatives [Bundestag] elects another Chancellor with the majority of its members.

(2) Forty-eight hours must elapse between the motion and the vote thereon.

*Article 69 [Members of Government]*

(1) The Chancellor appoints a Minister as his deputy.

(2) The tenure of office of the Chancellor or a Minister end in any event on the assembly of a new House of Representatives [Bundestag]; the tenure of office of a Minister also end on any other termination of the Chancellor's tenure of office.

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<sup>73</sup> Article 65a inserted by **7th Amendment** (19.3.56). Paragraph II ("With the declaration of the State of Defense, the power of command belongs to the Chancellor.") repealed by **17th Amendment** (24.6.68).



(3) At the request of the President, the Chancellor - or at the request of the Chancellor or of the President, a Minister - is bound to continue managing the affairs of his office until the appointment of a successor.

## Chapter VII

### Federal Legislative Powers

#### *Article 70 [General Principle]*

(1) The States [Länder] have the right to legislate insofar as this Constitution does not confer legislative power on the Federation.

(2) The division of competence between the Federation and the States [Länder] are determined by the provisions of this Constitution concerning exclusive and concurrent legislative powers.

#### *Article 71 [Exclusive Legislative Power]*

In matters within the exclusive legislative power of the Federation, the States [Länder] have power to legislate only where and to the extent that they are given such explicit authorization by a federal statute.

#### *Article 72 [Concurrent Legislative Power]*

(1) In the field of concurrent legislative power, the States [Länder] have power to legislate as long as and to the extent that the Federation does not exercise its right to legislate by statute.<sup>74</sup>

(2) In the areas of Article 74 I No. 4, 7, 11, 13, 15, 19a, 20, 22, 25 and 26, the Federation has legislation<sup>75</sup> if and insofar as the establishment of equal living conditions in the federal territory or

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74 Words "does not exercise its right to legislate by statute" changed from "does not use its right to legislate" by [42nd Amendment](#) (27.10.94).

75 Words "In the areas of Article 74 I No. 4, 7, 11, 13, 15, 19a, 20, 22, 25 and 26, the Federation has legislation" changed from "The Federation has the right to legislate in this area" by [52nd Amendment](#) (28.8.06).

the preservation of legal and economic unity necessitates, in the interest of the state at large, a federal regulation.<sup>76</sup>

(3) If the Federation has used its legislative competence, the States [Länder] may adopt differing rules by statute regarding:

1. hunting (without the right to hunting licenses);
2. natural protection and land cultivation (without the general principles of natural protection, the law of species protection or of protecting the nature of the sea);
3. distribution of land;
4. zoning arrangements;
5. protection of water (without regulation about substances or installations);
6. university admission and university degrees.

[2] Federal statutes regarding these matters come into force, at the earliest, six months after their promulgation as long as the Senate [Bundesrat] does not decide otherwise. [3] Regarding the matters of sentence 1, the latest statute takes precedence within the concurrence of federal and state law.<sup>77</sup>

(4) A federal statute can stipulate that a federal regulation for which the conditions of Paragraph II no longer hold true is replaced by law of the States [Länder].<sup>78</sup>

#### *Article 73 [Exclusive Legislation]*

(1) The Federation has exclusive power to legislate in the following matters:

1. foreign affairs and defense, including the protection of the civilian population;<sup>79</sup>

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76 Paragraph II changed by 42nd Amendment (27.10.94); the former text read:

"(2) The Federation has legislation insofar as a need for federal legislation arises because

1. a substance matter cannot be effectively regulated by legislation of the respective states or
2. regulating a substance matter by state law might infringe on the interests of other states or the whole or
3. the preservation of legal and economic unity, particularly the preservation of equal living conditions beyond the territory of a state, makes this necessary."

77 Paragraph III inserted by 52nd Amendment (28.8.06).

78 Paragraph IV inserted by 42nd Amendment (27.10.94). Paragraph IV was Paragraph III until 52nd Amendment (28.8.06).

79 Words "including the protection of the civilian population" inserted by 4th Amendment (26.3.54), changed by 17th Amendment (24.6.68).

2. citizenship in the Federation;
3. freedom of movement, passport, registration and individual document matters,<sup>80</sup> immigration, emigration and extradition;
4. currency, money and coinage, weights and measures, as well as the determination of standards of time;
5. the unity of the customs and trading area, treaties on commerce and on navigation, the freedom of movement of goods, and the exchange of goods and payments with foreign countries, including customs and other frontier protection;
- 5a. the protection of German cultural items against being moved abroad,<sup>81</sup>
6. air transport;<sup>82</sup>
- 6a. the traffic of railroads owned completely or mainly by the Federation (railroads of the Federation), the construction, maintenance, and operation of railway tracks and railroads of the Federation as well as the charging for the use of these railways,<sup>83</sup>
7. postal affairs and telecommunication,<sup>84</sup>
8. the legal status of persons employed by the Federation and by federal corporate bodies under public law;
9. industrial property rights, copyrights and publishing law;
- 9a. fight against dangers of international terrorism by the Federal Criminal Police [Bundeskriminalpolizei] in cases where the danger is transcending State [Länder] boundaries, where the competence of a State Police Agency is not established, or where the supreme State Agency asks for a discharge;<sup>85</sup>
10. cooperation between the Federation and the States [Länder] concerning
  - a) criminal police,
  - b) protection of the free democratic basic order, of the existence and the security of the Federation or of a State [Land] (protection of the constitution) and
  - c) protection against activities in the federal territory which, through the use of force or actions in preparation for the

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80 Words "registration and individual document matters" inserted by [52nd Amendment](#) (28.8.06).

81 Number 5a inserted by [52nd Amendment](#) (28.8.06).

82 Words "federal railroads and" erased by [40th Amendment](#) (20.12.93).

83 Number 6a inserted by [40th Amendment](#) (20.12.93).

84 Words "postal affairs and telecommunication" changed from "postal and telephone affairs" by [41st Amendment](#) (30.8.94).

85 Number 9a inserted by [52nd Amendment](#) (28.8.06).

use of force, endanger the foreign interests of the Federal Republic of Germany,

as well as the establishment of a Federal Criminal Police Office and the international control of crime;<sup>86</sup>

11. statistics for federal purposes;
12. laws on weapons and explosives;<sup>87</sup>
13. care for people handicapped by war, widowed or orphaned by war, and help for former prisoners of war;<sup>88</sup>
14. production and use of nuclear power for peaceful means, construction and operation of plants furthering these goals, protection against dangers resulting from exposition of nuclear energy or ionizing rays, and disposition of radioactive substances.<sup>89</sup>

(2) The consent of the Senate [Bundesrat] is necessary for statutes according to Paragraph I No. 9a.<sup>90</sup>

*Article 74 [Concurrent Legislation]*

(1) Concurrent legislative powers cover the following matters:

1. civil law, criminal law,<sup>91</sup> the organization and procedure of courts (excluding the law governing pre-trial confinement),<sup>92</sup> the legal profession, notaries and legal advice;
2. registration of births, deaths and marriages;
3. the law of association;<sup>93</sup>
4. the law relating to residence and settlement of aliens;
- 4a. [repealed]<sup>94</sup>

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86 List extended by [31st Amendment](#) (28.7.72). The original text of Number 10 read: "the cooperation between the Federation and the States [Länder] concerning criminal police and the protection of the constitution, the establishment of a Federal Criminal Police Office as well as international control of crimes".

87 Number 12 added by [52nd Amendment](#) (28.8.06).

88 Number 13 added by [52nd Amendment](#) (28.8.06).

89 Number 14 added by [52nd Amendment](#) (28.8.06).

90 Paragraph II added by [52nd Amendment](#) (28.8.06).

91 Words "criminal law" changed from "criminal law and execution of sentences" by [52nd Amendment](#) (28.8.06).

92 Words "(excluding the law governing pre-trial confinement)" inserted by [52nd Amendment](#) (28.8.06).

93 Word "association" changed from "association and assembly" by [52nd Amendment](#) (28.8.06).

94 Number 4a ("the law relating to weapons and explosives") repealed by [52nd Amendment](#) (28.8.06).

5. [repealed]<sup>95</sup>
6. refugee and expellee matters;
7. public welfare (excluding the law on asylums);<sup>96</sup>
8. [repealed]<sup>97</sup>
9. war damage and reparations;
10. war graves of soldiers, graves of other victims of war and of victims of despotism;<sup>98</sup>
11. the law relating to economic matters (mining, industry, supply of power, crafts, trades, commerce, banking, stock exchanges and private insurance) excluding the law on shop opening hours, restaurants, gaming parlors, human shows, exhibitions, expositions, and markets;<sup>99</sup>
- 11a. [repealed]<sup>100</sup>
12. Labor law, including the legal organization of enterprises, protection of workers, employment exchanges and agencies, as well as social insurance, including unemployment insurance;
13. the regulation of educational and training grants and the promotion of scientific research;<sup>101</sup>
14. the law regarding expropriation, to the extent that matters enumerated in Articles 73 and 74 are concerned;
15. transfer of land, natural resources and means of production to public ownership or other forms of collective enterprise for the public benefit;

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95 Number 5 ("protection of German cultural goods against export") repealed by [42nd Amendment](#) (27.10.94).

96 Words "(excluding the law on asylums)" inserted by [52nd Amendment](#) (28.8.06).

97 Number 8 ("citizenship of the states") repealed by [42nd Amendment](#) (27.10.94).

98 Inserted as Number 10a by [13th Amendment](#) (16.6.65) and changed to Number 10 by [52nd Amendment](#) (28.8.06). The former text of Number 10 read: "benefits to persons disabled by war and to dependents of those killed in the war as well as assistance to former prisoners of war".

99 Words "excluding the law on shop opening hours, restaurants, gaming parlors, human shows, exhibitions, expositions, and markets" inserted by [52nd Amendment](#) (28.8.06).

100 Number 11a inserted by [10th Amendment](#) (23.12.59) and repealed by [52nd Amendment](#) (28.8.06). The original text read: "the production and utilization of nuclear energy for peaceful purposes, the construction and operation of installations serving such purposes, protection against hazards arising from the release of nuclear energy or from ionizing radiation, and the disposal of radioactive substances".

101 Words "the regulation of educational and training grants and" inserted by [22nd Amendment](#) (12.5.69).

16. prevention of the abuse of economic power;
17. promotion of agricultural production and forestry (excluding the law on land consolidation),<sup>102</sup> securing the supply of food, the importation and exportation of agricultural and forestry products, deep sea and coastal fishing, and preservation of the coasts;
18. property sales according to town planning, land law (excluding the law of charges for development)<sup>103</sup> and aid for rent, relief regarding old debts, aid for construction of apartments, miners' apartment construction law and miners' settlement law;<sup>104</sup>
19. measures against human or animal diseases that are communicable or otherwise endanger public health, admission to the medical profession and to other medical occupations or practices as well as the law on pharmacy, drugs, medical products, health products, narcotics and poisons;<sup>105</sup>
- 19a. the economic viability of hospitals and the regulation of hospitalization fees;<sup>106</sup>
20. the law on food including animals for slaughter, the law on products of indulgence, articles of daily use, fodder as well as the protection of the sale of agricultural and forest seeds and seedlings, and the protection of plants against diseases and pests as well as the protection of animals;<sup>107</sup>

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102 Words "(excluding the law on land consolidation)" inserted by [52nd Amendment](#) (28.8.06).

103 Words "(excluding the law of charges for development)" inserted by [42nd Amendment](#) (27.10.94).

104 Number 18 changed by [52nd Amendment](#) (28.8.06); the former text read: "real estate transactions, land law (excluding the law of charges for development) and matters concerning agricultural leases, as well as housing, settlement and homestead matters".

105 Words "as well as the law on pharmacy, drugs, medical products, health products, narcotics and poisons" changed from "as well as trade in medicines, curatives, narcotics and poisons" by [52nd Amendment](#) (28.8.06).

106 Number 19a inserted by [22nd Amendment](#) (12.5.69).

107 Words "as well as the protection of animals" inserted by [29th Amendment](#) (18.3.71). Number 20 changed by [52nd Amendment](#) (28.8.06); the former text read: "protection regarding the marketing of food, drink and tobacco, of necessities of life, fodder, agricultural and forest seeds and seedlings, and protection of plants against diseases and pests, as well as the protection of animals".

21. ocean and coastal shipping, as well as sea marks, inland navigation, meteorological services, sea routes, and inland waterways used for general traffic;
  22. road traffic, motor transport, construction and maintenance of long distance highways, as well as the collection of charges or fees<sup>108</sup> for the use of public highways by vehicles and the allocation of revenue therefrom;<sup>109</sup>
  23. railroads which are not railroads of the Federation, except mountain railroads;<sup>110</sup>
  24. garbage collection, protection against air pollution and noise (excluding protection against voluntary noise);<sup>111</sup>
  25. state liability;<sup>112</sup>
  26. medically enhanced production of human life,<sup>113</sup> research on manipulations of genes, and regulations for transplantation of organs, tissues and cells;<sup>114</sup>
  27. rights and duties regarding the status of civil servants in the States [Länder], communes and other public law bodies as well as judges in the States [Länder] excluding their career, remuneration and pensions;
  28. hunting;
  29. conservation of nature and landscape;
  30. distribution of real estate;
  31. land use planning;
  32. water supply;
  33. academic admission and academic degrees.<sup>115</sup>
- (2) The consent of the Senate [Bundesrat] is necessary for statutes according to Paragraph I No. 25 and 27.<sup>116</sup>

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108 Words "or fees" inserted by [52nd Amendment](#) (28.8.06).

109 Words "as well as the collection of charges for the use of public highways by vehicles and the allocation of revenue therefrom" inserted by [22nd Amendment](#) (12.5.69).

110 Number 23 changed by [30th Amendment](#) (12.4.72), [40th Amendment](#) (20.12.93).

111 New Number 24 inserted by [30th Amendment](#) (12.4.72), changed by [42nd Amendment](#) (27.10.94). Words "(excluding protection against voluntary noise)" inserted by [52nd Amendment](#) (28.8.06).

112 Number 25 inserted by [42nd Amendment](#) (27.10.94).

113 Words "medically enhanced production of human life" changed from "artificial insemination of humans" by [52nd Amendment](#) (28.8.06).

114 Number 26 inserted by [42nd Amendment](#) (27.10.94). Words "tissues and cells" changed from "and living matter" by [52nd Amendment](#) (28.8.06).

115 Numbers 27 to 33 inserted by [52nd Amendment](#) (28.8.06).

116 Paragraph II inserted by [42nd Amendment](#) (27.10.94).



Article 74a [repealed]<sup>117</sup>

Article 75 [repealed]<sup>118</sup>

Article 76 [Bills]

(1) Bills are introduced in the House of Representatives [Bundestag] by the Government or by members of the House of Representatives [Bundestag] or by the Senate [Bundesrat].

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117 Article 74a inserted by 28th Amendment (18.3.71) and repealed by 52nd Amendment (28.8.06). The original text read:

*"Article 74a [Further Concurrent Legislation]*

(1) Concurrent legislative power further extend to the remuneration and pensions of members of the public service whose service and loyalty are governed by public law, insofar as the Federation does not have exclusive power to legislate pursuant to Article 73 No. 8.

(2) Federal statutes enacted pursuant to Paragraph I require the consent of the Senate [Bundesrat].

(3) Federal statutes enacted pursuant to Article 73 No. 8 likewise require the consent of the Senate [Bundesrat], insofar as for the structure and assessment of remuneration and pensions, including the rating of posts, provision is made for criteria or minimum or maximum rates other than those provided for in federal statutes enacted pursuant to Paragraph I.

(4) Paragraphs I and II also apply to the remuneration and pensions of judges in the States [Länder]. Paragraph III also applies to statutes enacted pursuant to Article 98 I."

118 Article 75 repealed by 52nd Amendment (28.8.06); the original text read:

*"Article 75 [Framework Legislation]*

(1) Subject to the conditions laid down in Article 72, the Federation has the right to enact framework legislation for the legislation of the States [Länder] concerning:

1. the legal status of persons in the public service of the States [Länder], communes or other corporate bodies under public law, insofar as Article 74a does not provide otherwise;

1a. the general principles governing higher education;

2. the general legal status of the press;

3. hunting, nature conservation and landscape management;

4. Land distribution, regional planning and the management of water resources;

5. matters relating to the registration of residence or domicile and to identity cards;

6. protection against transfer of items of German culture to foreign countries.

Article 72 III also applies.

(2) Framework legislation may contain detailed or directly applicable provisions only in exceptional cases.

(3) If the Federation adopts framework legislation, the States [Länder] are bound to adopt the necessary State [Land] statutes within an adequate time frame stipulated by the legislation."

(2) Bills of the Government first have to be submitted to the Senate [Bundesrat].<sup>[2]</sup> The Senate [Bundesrat] is entitled to state its position on such bills within six weeks.<sup>119</sup> <sup>[3]</sup> If, for important reasons and particularly with regard to the volume of the bill, the Senate [Bundesrat] asks for deferral, the period is nine weeks.<sup>120</sup> <sup>[4]</sup> A bill which, on submission to the Senate [Bundesrat], is exceptionally specified by the Government to be particularly urgent may be submitted by the latter to the House of Representatives [Bundestag] three weeks later, or, if the Senate [Bundesrat] asked for deferral according to Sentence 3, six weeks later,<sup>121</sup> even though the Government may not yet have received the statement of the Senate's [Bundesrat] position; upon receipt, such statement has to be transmitted to the House of Representatives [Bundestag] by the Government without delay. <sup>[5]</sup> The time limit for statements to bills changing this Constitution or delegating sovereign powers according to Article 23 or 24 is nine weeks; Sentence 4 is not applied.<sup>122</sup>

(3) Bills of the Senate [Bundesrat] have to be submitted to the House of Representatives [Bundestag] by the Government within six weeks.<sup>123</sup> <sup>[2]</sup> In doing so, the Government should state<sup>124</sup> its own view. <sup>[3]</sup> If, for important reasons and particularly with regard to the volume of the bill, the Government asks for deferral, the period is nine weeks. <sup>[4]</sup> The time limit for a bill which is exceptionally specified by the Senate [Bundesrat] to be particularly urgent is three weeks or, if the Government asked for deferral according to Sentence 3, six weeks. <sup>[5]</sup> The time limit for statements to bills changing this Constitution or delegating sovereign powers according to Article 23 or 24 is nine weeks; Sentence 4 is not applied. <sup>[6]</sup> The House of Representatives [Bundestag] has to debate about bills within adequate time and reach a decision.<sup>125</sup>

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119 Words "six weeks" changed from "three weeks" by 18th Amendment (15.11.68).

120 Sentence 3 inserted by 42nd Amendment (27.10.94).

121 Words "or, if the Senate [Bundesrat] asked for deferral according to Sentence 3, six weeks later" inserted by 42nd Amendment (27.10.94).

122 Sentence 5 inserted by 42nd Amendment (27.10.94).

123 Words "within six weeks" inserted by 23rd Amendment (17.7.69).

124 Words "should state" replaced the former "has to state" since 42nd Amendment (27.10.94).

125 Sentences 3 to 6 inserted by 42nd Amendment (27.10.94).

*Article 77 [Legislative Procedure]*

(1) Federal statutes are enacted by the House of Representatives [Bundestag]. <sup>[2]</sup> Upon their adoption they have to be transmitted, without delay, to the Senate [Bundesrat] by the President of the House of Representatives [Bundestag].

(2) The Senate [Bundesrat] may, within three weeks<sup>126</sup> of the receipt of the adopted bill, demand that a committee for joint consideration of bills, composed of members of the House of Representatives [Bundestag] and members of the Senate [Bundesrat], be convened. <sup>[2]</sup> The composition and the procedure of this committee is regulated by rules of procedure to be adopted by the House of Representatives [Bundestag] and requiring the consent of the Senate [Bundesrat]. <sup>[3]</sup> The members of the Senate [Bundesrat] on this committee are not bound by instructions. <sup>[4]</sup> Where the consent of the Senate [Bundesrat] is required for a bill to become a statute, the House of Representatives [Bundestag] and the Government may also demand that the committee be convened. <sup>[5]</sup> Should the committee propose any amendment to the adopted bill, the House of Representatives [Bundestag] again votes on the bill.

(2a) Insofar as a statute requires the consent of the Senate [Bundesrat], the Senate [Bundesrat], if no demand according to Paragraph II 1 was issued or if the committee for joint consideration has concluded its procedures without suggesting changes, has to debate about its consent within adequate time and reach a decision.<sup>127</sup>

(3) Insofar as the consent of the Senate [Bundesrat] is not required for a bill to become a statute, the Senate [Bundesrat] may, when the proceedings under Paragraph II are completed, enter an objection within two weeks against a bill adopted by the House of Representatives [Bundestag]. <sup>[2]</sup> The period for entering an objection begins, in the case of the last sentence of Paragraph II, on the receipt of the bill as readopted by the House of Representatives [Bundestag], and in all other cases on the receipt of a communication from the chairman of the committee provided for

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126 Three weeks instead of "two weeks" since 18th Amendment (15.11.68).

127 Paragraph IIa inserted by 42nd Amendment (27.10.94).

in Paragraph II to the effect that the committee's proceedings have been concluded.<sup>128</sup>

(4) Where the objection was adopted with the majority of the votes of the Senate [Bundesrat], it can be rejected by a decision of the majority of the members of the House of Representatives [Bundestag].<sup>129</sup> Where the Senate [Bundesrat] adopted the objection with a majority of at least two thirds of its votes, its rejection by the House of Representatives [Bundestag] requires a majority of two thirds, including at least the majority of the members of the House of Representatives [Bundestag].

*Article 78 [Adopting Bills]*

A bill adopted by the House of Representatives [Bundestag] becomes a statute where the Senate [Bundesrat] consents to it, or fails to make a demand pursuant to Article 77 II, or fails to enter an objection within the period stipulated in Article 77 III, or withdraws such objection, or where the objection is overridden by the House of Representatives [Bundestag].

*Article 79 [Amendment of the Constitution]*

(1) This Constitution can be amended only by statutes which expressly amend or supplement the text thereof.<sup>129</sup> In respect of international treaties, the subject of which is a peace settlement, the preparation of a peace settlement or the phasing out of an occupation regime, or which are intended to serve the defense of the Federal Republic, it is sufficient, for the purpose of clarifying that the provisions of this Constitution do not preclude the conclusion and entry into force of such treaties, to effect a supplementation of the text of this Constitution confined to such clarification.<sup>129</sup>

(2) Any such statute requires the consent of two thirds of the members of the House of Representatives [Bundestag] and two thirds of the votes of the Senate [Bundesrat].

(3) Amendments of this Constitution affecting the division of the Federation into States [Länder], the participation on principle of the States [Länder] in legislation, or the basic principles laid down in Articles 1 and 20 are inadmissible.

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<sup>128</sup> Provision "in all other cases ..." changed by 18th Amendment (15.11.68); the old text read: "in all other cases with the conclusion of proceedings by the committee provided for in Paragraph II."

<sup>129</sup> Sentence 2 inserted by 4th Amendment (26.3.54).

*Article 80 [Government Ordinances]*

(1) The Government, a Minister or the State [Land] governments may be authorized by statute to issue ordinances. <sup>[2]</sup>The content, purpose, and scope of the authorization so conferred must be laid down in the statute concerned. <sup>[3]</sup>This legal basis has to be stated in the ordinance. <sup>[4]</sup>Where a statute provides that such authorization may be delegated, such delegation requires another ordinance.

(2) The consent of the Senate [Bundesrat] is required, unless otherwise provided by federal legislation, for ordinances of the Government or a Minister concerning basic rules or charges for the use of facilities of postal affairs and telecommunication, concerning the basic rules for charges and use of facilities of railroads of the Federation, or concerning the construction and operation of railroads, as well as for ordinances issued pursuant to federal statutes that require the consent of the Senate [Bundesrat] or that are executed by the States [Länder] as agents of the Federation or as matters of their own concern.<sup>130</sup>

(3) The Senate [Bundesrat] can submit such bills for ordinances to the Government that require its consent.<sup>131</sup>

(4) Insofar as, by or on the basis of federal statutes, Governments of the States [Länder] are empowered to adopt ordinances, the States [Länder] are also allowed to regulate the matter by statute.<sup>132</sup>

*Article 80a [State of Defense]*<sup>133</sup>

(1) Where this Constitution or a federal statute on defense, including the protection of the civilian population, stipulates that legal provisions may only be applied in accordance with this Article, their application is, except in a state of defense, admissible only after the House of Representatives [Bundestag] has determined that a state of tension exists or where it has specifically approved such application. <sup>[2]</sup>In respect of the cases mentioned in Article 12a V 1 & VI 2, such determination of a state of tension and such specific approval requires a two-thirds majority of the votes cast.

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130 Paragraph II changed by 40th Amendment (20.12.93), 41st Amendment (30.8.94).

131 Paragraph III inserted by 42nd Amendment (27.10.94).

132 Paragraph IV inserted by 42nd Amendment (27.10.94).

133 Article 80a inserted by 17th Amendment (24.6.68).

(2) Any measures taken by virtue of legal provisions enacted under Paragraph I have to be revoked whenever the House of Representatives [Bundestag] so demands.

(3) In derogation of Paragraph I, the application of such legal provisions is also admissible by virtue of and in accordance with a decision taken with the consent of the Government by an international body within the framework of a treaty of alliance. <sup>[2]</sup> Any measures taken pursuant to this paragraph have to be revoked whenever the House of Representatives [Bundestag] so demands with the majority of its members.

*Article 81 [State of Emergency]*

(1) Should, in the circumstances of Article 68, the House of Representatives [Bundestag] not be dissolved, the President may, at the request of the Government and with the consent of the Senate [Bundesrat], declare a state of legislative emergency with respect to a bill, where the House of Representatives [Bundestag] rejects the bill although the Government has declared it to be urgent. <sup>[2]</sup> The same applies where a bill has been rejected although the Chancellor had combined with it the motion under Article 68.

(2) Where, after a state of legislative emergency has been declared, the House of Representatives [Bundestag] again rejects the bill or adopts it in a version stated to be unacceptable to the Government, the bill is deemed to have become a statute to the extent that the Senate [Bundesrat] consents to it. <sup>[2]</sup> The same applies where the bill is not passed by the House of Representatives [Bundestag] within four weeks of its reintroduction.

(3) During the term of office of a Chancellor, any other bill rejected by the House of Representatives [Bundestag] may become a statute in accordance with Paragraphs I and II within a period of six months after the first declaration of a state of legislative emergency. <sup>[2]</sup> After the expiration of this period, a further declaration of a state of legislative emergency is inadmissible during the term of office of the same Chancellor.

(4) This Constitution may not be amended nor repealed nor suspended in whole or in part by a statute enacted pursuant to Paragraph II.

*Article 82 [Promulgation, Validity]*

(1) Statutes enacted in accordance with the provisions of this Constitution are, after countersignature, signed by the President and promulgated in the Federal Law Gazette. <sup>[2]</sup> Ordinances are

signed by the agency which issues them and, unless otherwise provided by statute, are promulgated in the Federal Law Gazette.

(2) Every statute or every ordinance should specify its effective date. <sup>12]</sup>In the absence of such a provision, it takes effect on the fourteenth day after the end of the day on which the Federal Law Gazette containing it was published.

## Chapter VIII

### Execution of Statutes and Federal Administration

#### *Article 83 [General Principle]*

The States [Länder] execute federal statutes as matters of their own concern insofar as this Constitution does not otherwise provide or permit.

#### *Article 84 [State Execution With Federal Supervision]*

(1) Where the States [Länder] execute federal statutes as matters of their own concern, they provide for the establishment of authorities and the regulation of administrative procedures.<sup>134</sup> <sup>[2]</sup>If federal statutes provide something else, the States [Länder] may adopt divergent regulation. <sup>[3]</sup>If a State [Land] has adopted divergent regulation according to Sentence 2, federal regulation adopted later regarding the establishment of authorities and the regulation of administrative procedures will enter into force no earlier than six months after promulgation, provided nothing else is prescribed with approval by the Senate [Bundesrat]. <sup>[4]</sup>Article 72 III 3 is applicable. <sup>[5]</sup>In exceptional cases, the Federation may, because of particular need for federal uniformity, adopt regulation without the States' [Länder] power to deviate. <sup>[6]</sup>These statutes require approval by the Senate [Bundesrat]. <sup>[7]</sup>Federal statutes may not delegate powers to communes or associations of communes.<sup>135</sup>

(2) The Government may, with the consent of the Senate [Bundesrat], issue general administrative rules.

(3) The Government exercises supervision to ensure that the States [Länder] execute the federal statutes in accordance with applicable law. <sup>[2]</sup>For this purpose the Government may send commissioners to the highest State [Land] authorities and, with their consent or, where such consent is refused, with the consent of the Senate [Bundesrat], also to subordinate authorities.

(4) Should any shortcomings which the Government has found to exist in the execution of federal statutes in the States [Länder] not be corrected, the Senate [Bundesrat] decides, at the request of the Government or the State [Land] concerned, whether such State

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<sup>134</sup> Sentence 1 reduced by [52nd Amendment](#) (28.8.06); the former text read: "insofar as federal statutes consented to by the Senate [Bundesrat] do not otherwise provide."

<sup>135</sup> Sentences 2 to 7 inserted by [52nd Amendment](#) (28.8.06).



[Land] has violated the law. <sup>[2]</sup>The decision of the Senate [Bundesrat] may be challenged in the Federal Constitutional Court.

(5) With a view to the execution of federal statutes, the Government may be authorized by a federal statute requiring the consent of the Senate [Bundesrat] to issue individual instructions for particular cases. <sup>[2]</sup>They are addressed to the highest State [Land] authorities unless the Government considers the matter urgent.

*Article 85 [State Execution as Federal Agency]*

(1) Where the States [Länder] execute federal statutes as agents of the Federation, the establishment of the requisite authorities remains the concern of the States [Länder], except insofar as federal statutes consented to by the Senate [Bundesrat] otherwise provide.

<sup>[2]</sup>Federal statutes may not delegate powers to communes or associations of communes.<sup>136</sup>

(2) The Government may, with the consent of the Senate [Bundesrat], issue general administrative rules. <sup>[2]</sup>It may regulate the uniform training of civil servants and other salaried public employees. <sup>[3]</sup>The heads of authorities at the intermediate level are appointed with its agreement.

(3) The State [Land] authorities are subject to the instructions of the competent highest federal authorities. <sup>[2]</sup>Such instructions are addressed to the highest State [Land] authorities unless the Government considers the matter urgent. <sup>[3]</sup>Execution of the instructions is ensured by the highest State [Land] authorities.

(4) Federal supervision covers the lawfulness and appropriateness of execution. <sup>[2]</sup>The Government may, for this purpose, require the submission of reports and documents and send commissioners to all authorities.

*Article 86 [Direct Federal Administration]*

Where the Federation executes statutes by means of direct federal administration or by federal corporate bodies or institutions under public law, the Government issues, insofar as the statute concerned contains no special provision, pertinent general administrative rules. <sup>[2]</sup>The Government provides for the establishment of the requisite authorities insofar as the statute concerned does not otherwise provide.

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136 Sentence 2 inserted by [52nd Amendment](#) (28.8.06).

*Article 87 [Matters for Direct Federal Administration]*

(1) The foreign service, the federal finance administration and, in accordance with the provisions of Article 89, the administration of federal waterways and of shipping is conducted as matters of direct federal administration with their own administrative substructures.<sup>137</sup> [2] Federal legislation may be enacted to establish Federal Border Guard authorities and central offices for police information and communications, for the criminal police and for the compilation of data for the purposes of protection of the constitution and of protection against activities on federal territory which, through the use of force or acts preparatory to the use of force, endanger the foreign interests of the Federal Republic of Germany.<sup>138</sup>

(2) Social insurance institutions whose sphere of competence extends beyond the territory of one State [Land] are administered as direct federal corporate bodies under public law. [2] Social insurance institutions whose sphere of competence extends beyond the territory of one State [Land], but not beyond that of more than three States [Länder], are administered, differing from the first sentence, as direct State [Land] corporate bodies under public law if the supervising State [Land] is determined by the States [Länder] involved.<sup>139</sup>

(3) In addition, independent federal higher authorities as well as new federal corporate bodies and institutions under public law may be established by federal legislation for matters on which the Federation has the power to legislate. [2] Where new functions arise for the Federation in matters on which it has the power to legislate, federal authorities at the intermediate and lower levels may be established, in case of urgent need, with the consent of the Senate [Bundesrat] and of the majority of the members of the House of Representatives [Bundestag].

*Article 87a [Establishment of Armed Forces]<sup>140</sup>*

(1) The Federation establishes Armed Forces for defense purposes.

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137 Words "Federal Railways" erased by 40th Amendment (20.12.93). Words "Federal Postal Service" erased by 41st Amendment (30.8.94).

138 Last part of sentence 2 "for the criminal police ... Germany" changed from "for the compilation of data for the purposes of protection of the constitution and for the criminal police" by 31st Amendment (28.7.72).

139 Sentence 2 inserted by 42nd Amendment (27.10.94).

140 Article 87a inserted by 7th Amendment (19.3.56), changed by 17th Amendment (24.6.68).

[2] Their numerical strength and general organizational structure must be shown in the budget.

(2) Apart from defense, the Armed Forces may only be used insofar as explicitly permitted by this Constitution.

(3) While a state of defense or a state of tension exists, the Armed Forces have the power to protect civilian property and discharge functions of traffic control insofar as this is necessary for the performance of their defense mission. [2] Moreover, the Armed Forces may, when a state of defense or a state of tension exists, be entrusted with the protection of civilian property also in support of police measures; in this event the Armed Forces cooperate with the competent authorities.

(4) In order to avert any imminent danger to the existence or to the free democratic basic order of the Federation or a State [Land], the Government may, should conditions as envisaged in Article 91 II obtain and the police forces and the Federal Border Guard be inadequate, use the Armed Forces to support the police and the Federal Border Guard in the protection of civilian property and in combatting organized and militarily armed insurgents. [2] Any such use of the Armed Forces has to stop whenever the House of Representatives [Bundestag] or the Senate [Bundesrat] so demands.

*Article 87b [Administration of Armed Forces]<sup>141</sup>*

(1) The Federal Armed Forces Administration is conducted as a direct federal administration with its own administrative substructure. [2] Its function are to administer personnel matters and directly to meet the material requirements of the Armed Forces. [3] Tasks connected with benefits to disabled persons or with construction work are not assigned to the Federal Armed Forces Administration except by federal legislation requiring the consent of the Senate [Bundesrat]. [4] Such consent is also required for any statutes to the extent that they empower the Federal Armed Forces Administration to interfere with rights of third parties; this does not apply, however, in the case of statutes concerning personnel matters.

(2) Moreover, federal statutes concerning defense, including recruitment for military service and protection of the civilian population, may, with the consent of the Senate [Bundesrat], provide that they are executed, wholly or in part, either by means of direct federal administration having its own administrative

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141 Article 87b inserted by 7th Amendment (19.3.56).

substructure or by the States [Länder] acting as agents of the Federation. <sup>[2]</sup>Where such statutes are executed by the States [Länder] acting as agents of the Federation, they may, with the consent of the Senate [Bundesrat], provide that the powers vested in the Government or appropriate highest federal authorities by virtue of Article 85 are transferred wholly or in part to higher federal authorities; in such an event it may be enacted that these authorities do not require the consent of the Senate [Bundesrat] in issuing general administrative rules as referred to in Article 85 II 1.

*Article 87c [Nuclear Energy]<sup>142</sup>*

Statutes enacted under Article 73 I No. 14 may, with the consent of the Senate [Bundesrat], provide that they are executed by the States [Länder] acting as agents of the Federation.

*Article 87d [Aviation]<sup>143</sup>*

- (1) Aviation administration is conducted as federal administration. <sup>[2]</sup>Tasks of air-traffic control can also be conducted by foreign air-traffic control organizations accredited under the law of the European Community. <sup>[3]</sup>Details are regulated by a federal statute.
- (2) Through federal legislation requiring the consent of the Senate [Bundesrat], functions of aviation administration may be transferred to the States [Länder] acting as agents of the Federation.

*Article 87e [Railroads]<sup>144</sup>*

- (1) The administration for traffic of railroads of the Federation is conducted as a direct federal administration. <sup>[2]</sup>By federal statute, tasks of the administration for traffic of railroads can be delegated to the States [Länder] as their own tasks.
- (2) The Federation undertakes the tasks to administer traffic of railroads of the Federation as are assigned to it by federal statute.
- (3) Railroads of the Federation are managed in the form of private law businesses. <sup>[2]</sup>They are owned by the Federation as far as the activities of the business encompass construction, maintenance, or operation of railways. <sup>[3]</sup>The sale of shares of the Federation in the businesses mentioned in the second sentence is regulated on the

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142 Article 87c inserted by 10th Amendment (23.12.59).

143 Article 87d inserted by 11th Amendment (6.2.61); last revision by 56th Amendment (29.7.09).

144 Article 87e inserted by 40th Amendment (20.12.93).

basis of a statute; the Federation retains a majority of shares in those businesses. <sup>[4]</sup>Details are regulated by federal statute.

(4) The Federation guarantees that the public weal, particularly the interest in traffic, in the development and preservation of the railway network of railways of the Federation as far as it is used for local railway transport of persons is considered. <sup>[2]</sup>Details are regulated by federal statute.

(5) Statutes based on Paragraphs I to IV need the consent of the Senate [Bundesrat]. <sup>[2]</sup>Furthermore, the consent of the Senate [Bundesrat] is necessary for statutes that dissolve, merge, or split railroads of the Federation, convey railways of railroads of the Federation to third parties as well as discontinue railways of railroads of the Federation, or affect the local railway transport of persons.

*Article 87f [Mail, Telecommunication]*<sup>145</sup>

(1) Regulated by a federal statute requiring the consent of the Senate [Bundesrat], the Federation guarantees a comprehensive and adequate coverage with mail services and telecommunication.

(2) Services in the sense of Paragraph I are organized as private law activities by those businesses originating in the special property Deutsche Bundespost. <sup>[2]</sup>Sovereign tasks in the area of mail and telecommunication are organized as direct federal administration.

(3) Notwithstanding Paragraph II 2, the Federation, in the public law form of a direct federal agency, discharges certain duties regarding businesses originating in the special property Deutsche Bundespost, as are assigned to it by federal statutes.

*Article 88 [Federal Bank]*

The Federation establishes a note-issuing and currency bank as the Federal Bank [Bundesbank]. <sup>[2]</sup>Its tasks and powers can, in the context of the European Union, be transferred to the European Central Bank which is independent and primarily bound by the purpose of securing stability of prices.<sup>146</sup>

*Article 89 [Federal Waterways]*

(1) The Federation is the owner of the former Reich waterways.

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145 Article 87f inserted by **41st Amendment** (30.8.94).

146 Sentence 2 inserted by **38th Amendment** (21.12.92).

(2) The Federation administers the federal waterways through its own authorities. <sup>[2]</sup>It exercises those governmental functions relating to inland shipping which extend beyond the territory of one State [Land], and those governmental functions relating to maritime shipping which are conferred on it by statute. <sup>[3]</sup>Upon request, the Federation may transfer the administration of federal waterways, insofar as they lie within the territory of one State [Land], to that State [Land] as its agent. <sup>[4]</sup>Where a waterway touches the territories of several States [Länder], the Federation may delegate one State [Land] to be its agent where so requested by the States [Länder] concerned.

(3) In the administration, development, and new construction of waterways, the needs of land improvement and of water economy are safeguarded in agreement with the States [Länder].

*Article 90 [Federal Highways]*

(1) The Federation is the owner of the former Reich streets and Reich highways.

(2) The States [Länder], or such self-governing corporate bodies as are competent under State law, administer as agents of the Federation the federal streets and other federal highways used for long-distance traffic.

(3) At the request of a State [Land], the Federation may place federal streets and other federal highways used for long distance traffic under direct federal administration insofar as they lie within the territory of that State [Land].

*Article 91 [Internal Emergency]*

(1) In order to avert any imminent danger to the existence or to the free democratic basic order of the Federation or a State [Land], a State may request the services of the police forces of other States [Länder], or of the forces and facilities of other administrative authorities and of the Federal Border Guard.<sup>147</sup>

(2) If the State [Land] where such danger is imminent is not itself willing or able to combat the danger, the Government may place the police in that State [Land] and the police forces of other States [Länder] under its own instructions and use units of the Federal

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<sup>147</sup> Words "or of the forces and facilities of other administrative authorities and of the Federal Border Guard" inserted by 17th Amendment (24.6.68).

Border Guard.<sup>148</sup> [2] The order for this has to be revoked after the removal of the danger or else at any time at the demand of the Senate [Bundesrat]. [3] Where the danger extends to a region larger than a State [Land], the Government may, insofar as is necessary for effectively combatting such danger, issue instructions to the State [Land] governments; the first and second sentences of this paragraph are not affected by this provision.<sup>149</sup>

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148 Words "and use units of the Federal Border Guard" inserted by 17th Amendment (24.6.68).

149 Sentence 3 inserted by 17th Amendment (24.6.68).

## Chapter VIIIa

### Joint Tasks

*Article 91a [Participation of the Federation]<sup>150</sup>*

(1) The Federation participates, in the following sectors, in the discharge of responsibilities of the States [Länder], provided that such responsibilities are important to society as a whole and that federal participation is necessary for the improvement of living conditions (joint tasks):

1. improvement of regional economic structures,<sup>151</sup>
2. improvement of the agrarian structure and of coast preservation.<sup>152</sup>

(2) Joint tasks as well as details of coordination are defined in detail by a federal statute requiring the consent of the Senate [Bundesrat].<sup>153</sup>

(3) In cases to which Paragraph I No. 1 applies, the Federation pays for one half of the expenditure in each State [Land]. <sup>[2]</sup>In cases to which Paragraph I No. 2 applies, the Federation pays for at least one half of the expenditure, and such proportion is the same for all the States [Länder]. <sup>[3]</sup>Details are regulated by statute. <sup>[4]</sup>Provision of funds are subject to appropriation in the budgets of the Federation and the States [Länder].<sup>154</sup>

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150 Section VIIIa and Article 91a inserted by [21st Amendment](#) (12.5.69). Paragraph V of Article 91a repealed by [52nd Amendment](#) (28.8.06); the original text read:

"(5) The Government and the Senate [Bundesrat] are informed about the execution of joint tasks, should they so demand."

151 Number 1 was Number 2 until [52nd Amendment](#) (28.8.06); the former text of Number 1 read: "extension and construction of institutions of higher education, including university clinics".

152 Number 2 was Number 3 until [52nd Amendment](#) (28.8.06).

153 Words "as well as details of coordination" inserted and Sentence 2 ("Such legislation should include general principles governing the discharge of joint tasks.") repealed by [52nd Amendment](#) (28.8.06).

154 Paragraph III was Paragraph IV until [52nd Amendment](#) (28.8.06); the former text of Paragraph III read:

"(3) Such legislation provides for the procedure and the institutions required for joint overall planning. The inclusion of a project in the overall planning requires the consent of the State [Land] in which it is to be carried out."



*Article 91b [Educational Planning and Funding of Research]<sup>155</sup>*

(1) The Federation and the States [Länder] may, pursuant to agreements, cooperate in Science, Research, and Education in cases of supra-regional importance. <sup>[2]</sup> Agreements that focus on universities require the approval by all States [Länder]. <sup>[3]</sup> This does not apply to agreements about research facilities including large scale equipment.

(2) The Federation and the States [Länder] may, pursuant to agreements, cooperate in order to internationally compare the performance of the educational system and to participate in reports and recommendations in that respect.

(3) The allocation of costs is determined by the agreement.

*Article 91c [Systems of Information Technology]<sup>156</sup>*

(1) Federation and States [Länder] may cooperate in the planning, installation, and operation of systems of information technology needed for their tasks.

(2) Federation and States [Länder] may by agreement establish standards and security requirements necessary for the communication between their systems of information technology. <sup>[2]</sup> Agreements about the basis of cooperation according to sentence 1 may for tasks of specific substance and extent provide that detailed regulation is adopted on the consent of a qualified majority of Federation and States [Länder] as specified in the convention. <sup>[3]</sup> They require the consent of the House of Representatives [Bundestag] and of the Houses of Representatives of participating States [Länder]; the right to cancellation of these agreements cannot

155 Article 91b inserted by **21st Amendment** (12.5.69) with the text:

*"Article 91b [Cooperation of Federation and States]*

The Federation and the States [Länder] may, pursuant to agreements, cooperate in educational planning and in the promotion of institutions and projects of scientific research of supra-regional importance. The apportionment of costs is regulated in the relevant agreements."

The **52nd Amendment** (28.8.06) added Paragraphs 2 and 3 and changed Paragraph I to:

*"Article 91b [Funding of Research, Performance of the Educational System]*

The Federation and the States [Länder] may, pursuant to agreements, cooperate in cases of supra-regional importance to promote:

1. institutions and projects of scientific research outside of universities;
2. projects of science and research at universities;
3. research facilities at universities including large scale equipment. Agreements according to Sentence 1 No. 2 require the approval by all States [Länder]."

The **60th Amendment** (23.12.14) changed the text of Paragraph I.

156 Article 91c inserted by **57th Amendment** (29.7.09).

be excluded. <sup>[4]</sup>The agreement also determines the allocation of costs.

(3) Furthermore, the States [Länder] may agree on the joint operation of systems of information technology as well as the establishment of specific installations.

(4) For the connection of information technology networks of the Federation and the States [Länder], the Federation establishes a connection network. <sup>[2]</sup>Details regarding the installation and operation of the connection network are regulated by a federal statute requiring the consent of the Senate [Bundesrat].

*Article 91d [Comparative Surveys]<sup>157</sup>*

Federation and States [Länder] may, to establish and improve the performance of their administrations, conduct comparative surveys and publish the results.

*Article 91e [Job Centers]<sup>158</sup>*

(1) In the execution of federal law regarding the basic benefits for the unemployed, Federation and States [Länder] or those communes or associations of communes competent according to state law are, in principle, cooperating by shared institutions.

(2) The Federation can allow for a limited number of communes or association of communes, on their request and with the consent of the supreme State Agency, to exclusively fulfill the tasks according to Paragraph (1). Necessary expenses including administrative costs are borne by the Federation insofar as the tasks in executing federal law according to Paragraph (1) are the duty of the Federation.

(3) Details are regulated by a federal statute requiring the consent of the Senate [Bundesrat].

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157 Article 91d inserted by [57th Amendment](#) (29.7.09).

158 Article 91e inserted by [58th Amendment](#) (21.7.10).

# Chapter IX

## Judiciary

### *Article 92 [Court Organization]*

Judicial power is vested in the judges; it is exercised by the Federal Constitutional Court,<sup>159</sup> by the federal courts provided for in this Constitution, and by the courts of the States [Länder].

### *Article 93 [Federal Constitutional Court]*

(1) The Federal Constitutional Court decides:

1. on the interpretation of this Constitution in the event of disputes concerning the extent of the rights and duties of a highest federal body or of other parties concerned who have been vested with rights of their own by this Constitution or by rules of procedure of a highest federal body;
2. in case of differences of opinion or doubts on the formal and material compatibility of federal law or State [Land] law with this Constitution, or on the compatibility of State [Land] law with other federal law, at the request of the Government, of a State [Land] government, or of one fourth<sup>160</sup> of the House of Representatives [Bundestag] members;
- 2a. in case of differences of opinion on the compatibility of federal law with Article 72 II, at the request of the Senate [Bundesrat], of a State [Land] government, or of a State [Land] parliament;<sup>161</sup>
3. in case of differences of opinion on the rights and duties of the Federation and the States [Länder], particularly in the execution of federal law by the States [Länder] and in the exercise of federal supervision;
4. on other disputes involving public law, between the Federation and the States [Länder], between different States [Länder] or within a State [Land], unless recourse to another court exists;
- 4a. on complaints of unconstitutionality, being filed by any person claiming that one of his basic rights or one of his rights under

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159 Words "by the Highest Federal Court" erased by [16th Amendment](#) (18.6.68).

160 Words "one fourth" changed from "one third" by [53rd Amendment](#) (8.10.08).

161 Number 2a inserted by [42nd Amendment](#) (27.10.94).

Article 20 IV or under Article 33, 38, 101, 103 or 104 has been violated by public authority,<sup>162</sup>

- 4b. on complaints of unconstitutionality filed by communes or associations of communes on the ground that their right to self-government under Article 28 has been violated by a statute other than a State [Land] statute open to complaint to the respective State [Land] constitutional court;<sup>163</sup>
- 4c. on complaints by associations against their nonadmission as a political party to the election for the House of Representatives [Bundestag];<sup>164</sup>
5. in the other cases provided for in this Constitution.

(2) The Federal Constitutional Court also decides, at the request of the Senate [Bundesrat], a State [Land] Government or State [Land] Parliament, whether in the case of Article 72 IV the necessity of federal regulation according to Article 72 II no longer prevails or federal law could no longer be adopted in the cases of Article 125a II 1. <sup>[2]</sup>The declaration that the necessity no longer prevails or that federal law no longer could be adopted replaces a federal statute based on Article 72 IV or Article 125a II 2. <sup>[3]</sup>The request according to Sentence 1 is only admissible once a bill based on Article 72 IV or 125 a II 2 has been denied in the German House of Representatives [Bundestag] or not been deliberated and decided within one year or if such a bill has been denied in the Senate [Bundesrat].<sup>165</sup>

(3) The Federal Constitutional Court also acts in such other cases as are assigned to it by federal legislation.<sup>166</sup>

#### *Article 94 [Composition of Constitutional Court]*

(1) The Federal Constitutional Court consists of federal judges and other members. <sup>[2]</sup>Half of the members of the Federal Constitutional Court are elected by the House of Representatives [Bundestag] and half by the Senate [Bundesrat]. <sup>[3]</sup>They may not be members of the House of Representatives [Bundestag], the Senate [Bundesrat], the Government, nor of any of the corresponding bodies of a State [Land].

(2) The constitution and procedure of the Federal Constitutional Court are regulated by a federal statute which specifies in what cases its decisions have the force of law. <sup>[2]</sup>Such statute may require

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162 Number 4a inserted by 19th Amendment (29.1.69).

163 Number 4b inserted by 19th Amendment (29.1.69).

164 Number 4c inserted by 59th Amendment (11.7.12).

165 Paragraph II inserted by 52nd Amendment (28.8.06).

166 Paragraph III was Paragraph II until 52nd Amendment (28.8.06).

that all other legal remedies must have been exhausted before a complaint of unconstitutionality can be entered, and may make provision for a special procedure as to admissibility.<sup>167</sup>

*Article 95 [Highest Courts of Justice, Joint Panel]*<sup>168</sup>

(1) For the purposes of ordinary, administrative, fiscal, labor, and social jurisdiction, the Federation establishes as highest courts of justice the Federal Court of Justice, the Federal Administrative Court, the Federal Finance Court, the Federal Labor Court, and the Federal Social Court.

(2) The judges of each of these courts are selected jointly by the competent Minister and a committee for the selection of judges consisting of the competent State [Land] ministers and an equal number of members elected by the House of Representatives [Bundestag].

(3) In order to preserve uniformity of decisions, a Joint Panel of the courts specified in Paragraph I is set up. <sup>[2]</sup>Details are regulated by a federal statute.

*Article 96 [Other Federal Courts]*<sup>169</sup>

(1) The Federation may establish a federal court for matters concerning industrial property rights.

(2) The Federation may establish military criminal courts for the Armed Forces as federal courts. <sup>[2]</sup>They may only exercise criminal jurisdiction while a state of defense exists, and otherwise only over members of the Armed Forces serving abroad or on board warships. <sup>[3]</sup>Details are regulated by a federal statute. <sup>[4]</sup>These courts are within the competence of the Minister of Justice. <sup>[5]</sup>Their full time judges are persons qualified to hold judicial office.

(3) The highest court of justice for appeals from the courts mentioned in Paragraphs I and II is the Federal Court of Justice.

(4) The Federation may establish federal courts for disciplinary proceedings against, and for proceedings in pursuance of complaints by, persons in the federal public service.<sup>170</sup>

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167 Sentence 2 inserted by 19th Amendment (29.1.69).

168 Old Article 95 replaced by 16th Amendment (18.6.68).

169 Old Article 96 changed by 7th Amendment (19.3.56), 12th Amendment (9.3.61) and replaced by the former Article 96a by 16th Amendment (18.6.68).

170 Paragraph IV changed by 22nd Amendment (12.5.69).

(5) With respect to criminal proceedings for the following crimes, a federal statute requiring the consent of the Senate [Bundesrat] may provide that State [Land] courts exercise federal jurisdiction over:<sup>171</sup>

1. genocide;
2. crimes against humanity under international public law;
3. war crimes;
4. other acts with the potential to and undertaken with intent to disturb the peaceful relations between nations (Article 26 I);
5. protection of the state.

*Article 96a [repealed]*<sup>172</sup>

*Article 97 [Independence of Judges]*

- (1) The judges are independent and subject only to the law.
- (2) Judges appointed permanently on a full time basis in established positions cannot, against their will, be dismissed or permanently or temporarily suspended from office or given a different posting or retired before the expiration of their term of office except by virtue of a judicial decision and only on the grounds and in the form provided for by statute. <sup>[2]</sup>Legislation may set age limits for the retirement of judges appointed for life. <sup>[3]</sup>In the event of changes in the structure of courts or in their districts, judges may be transferred to another court or removed from office, provided they retain their full salary.

*Article 98 [Legal Status of Judges]*

- (1) The legal status of the federal judges is regulated by a special federal statute.
- (2) Where a federal judge, in his official capacity or unofficially, infringes the principles of this Constitution or the constitutional order of a State [Land], the Federal Constitutional Court may decide by a two-thirds majority, upon the request of the House of

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171 Paragraph V changed by [51st Amendment](#) (26.7.03). The prior text of this Paragraph, inserted by [26th Amendment](#) (26.8.69), only captured No. 4 & 5 of the list: "With respect to criminal proceedings under Article 26 I or involving the protection of the State, a federal statute requiring the consent of the Senate may provide that State courts exercise federal jurisdiction."

172 Article 96a inserted by [7th Amendment](#) (19.3.56), changed by [12th Amendment](#) (9.3.61), changed and renumbered as Article 96 by [16th Amendment](#) (18.6.68).

Representatives [Bundestag], that the judge be given a different office or retired. <sup>[2]</sup>In a case of intentional infringement, his dismissal may be ordered.

(3) The legal status of the judges in the States [Länder] is regulated by special State [Land] statutes, insofar as Article 74 I No. 27 does not provide otherwise.<sup>173</sup>

(4) The States [Länder] may provide that the State [Land] minister of Justice together with a committee for the selection of judges decides on the appointment of judges in the States [Länder].

(5) The States [Länder] may, in respect of State [Land] judges, enact provisions corresponding to those of Paragraph II. <sup>[2]</sup>Existing State [Land] constitutional law remains unaffected. <sup>[3]</sup>The decision in a case of impeachment of a judge rests with the Federal Constitutional Court.

*Article 99 [Disputes Concerning State Law]*

The decision on constitutional disputes within a State [Land] may be assigned by State [Land] legislation to the Federal Constitutional Court, and the decision at last instance in matters involving the application of State [Land] law to the highest courts of justice referred to in Article 95 I.<sup>174</sup>

*Article 100 [Constitutionality of Laws]*

(1) Where a court considers that a statute on whose validity the court's decision depends is unconstitutional, the proceedings have to be stayed, and a decision has to be obtained from the State [Land] court with jurisdiction over constitutional disputes where the constitution of a State [Land] is held to be violated, or from the Federal Constitutional Court where this Constitution is held to be violated. <sup>[2]</sup>This also applies where this Constitution is held to be violated by State [Land] law or where a State [Land] statute is held to be incompatible with a federal statute.

(2) Where, in the course of litigation, doubt exists whether a rule of public international law is an integral part of federal law and

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173 Paragraph III changed by [52nd Amendment](#) (28.8.06); the former text read:

"(3) The legal status of the judges in the States [Länder] is regulated by special State [Land] statutes. The Federation may enact outline provisions, insofar as Article 74a IV does not provide otherwise."

174 Words "highest courts of justice referred to in Article 95 I" replaced "highest federal courts" since [16th Amendment](#) (18.6.68).

whether such rule directly creates rights and duties for the individual (Article 25), the court obtains a decision from the Federal Constitutional Court.

(3) Where the constitutional court of a State [Land], in interpreting this Constitution, intends to deviate from a decision of the Federal Constitutional Court or of the constitutional court of another State [Land], it obtains a decision from the Federal Constitutional Court.<sup>175</sup>

*Article 101 [Ban on Extraordinary Courts]*

(1) Extraordinary courts are inadmissible. <sup>[2]</sup>No one may be removed from the jurisdiction of his lawful judge.

(2) Courts for special fields of law may be established only by Legislation.

*Article 102 [Abolishment of Capital Punishment]*

Capital punishment is abolished.

*Article 103 [Due Process]*

(1) In the courts, everyone is entitled to a hearing in accordance with the law.

(2) An act can be punished only where it constituted a criminal offense under the law before the act was committed.

(3) No one may be punished for the same act more than once under general criminal legislation.

*Article 104 [Legal Guarantees to Protect Liberty]*

(1) The liberty of the individual may be restricted only by virtue of a formal statute and only in compliance with the forms prescribed therein. <sup>[2]</sup>Detained persons may not be subjected to mental or to physical ill treatment.

(2) Only judges may decide on the admissibility or continuation of any deprivation of liberty. <sup>[2]</sup>Where such deprivation is not based on the order of a judge, a judicial decision has to be obtained without delay. <sup>[3]</sup>The police may hold no one on their own authority in their own custody longer than the end of the day after the day of apprehension. <sup>[4]</sup>Details are regulated by legislation.

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<sup>175</sup> Last Half-sentence repealed by **16th Amendment** (18.6.68); the old text read: "if in interpreting other federal law a court wants to divert from a decision of the Highest Federal Court or another higher federal court, the court has to obtain the decision of the Highest Federal Court."



(3) Any person provisionally detained on suspicion of having committed an offense has to be brought, not later than the day following the day of apprehension, before a judge who has to inform him of the reasons for the detention, examine him, and give him an opportunity to raise objections. [2]The judge, without delay, has to either issue a warrant of arrest setting forth the reasons therefor or order his release from detention.

(4) A relative or a person enjoying the confidence of the person detained has to be notified without delay of any judicial decision imposing or ordering the continuation of his deprivation of liberty.

# Chapter X

## Finance

### *Article 104a [Apportionment of Expenditure]*<sup>176</sup>

(1) The Federation and the States [Länder] separately meet the expenditure resulting from the discharge of their respective tasks insofar as this Constitution does not provide otherwise.

(2) Where the States [Länder] act as agents of the Federation, the Federation meets the resulting expenditure.

(3) Federal statutes to be executed by the States [Länder] and granting money payments may make provision for such payments to be met wholly or in part by the Federation. <sup>[2]</sup>Where any such statute provides that the Federation meets one half of the expenditure or more, it is implemented by the States [Länder] as agents of the Federation.<sup>177</sup>

(4) Federal statutes establishing duties of the States [Länder] to contribute money, benefits in kind, or similar services towards third parties and executed as matters of their own concern or according to Paragraph III 2 as agents of the Federation require the consent of the Senate [Bundesrat] if resulting expenses are to be met by the States [Länder].<sup>178</sup>

(5) The Federation and the States [Länder] meet the administrative expenditure incurred by their respective authorities and are responsible to each other for ensuring proper administration. <sup>[2]</sup>Details are regulated by a federal statute requiring the consent of the Senate [Bundesrat].

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176 Article 104a inserted by [21st Amendment](#) (12.5.69).

177 Sentence 3 ("Where any such statute provides that the States [Länder] meet one quarter of the expenditure or more, it requires the consent of the Senate [Bundesrat].") repealed by [52nd Amendment](#) (28.8.06).

178 Paragraph IV changed by [52nd Amendment](#) (28.8.06); the former text read:

"(4) The Federation may grant the States [Länder] financial assistance for particularly important investments by the States [Länder] or communes or associations of communes, provided that such investments are necessary to avert a disturbance of the overall economic equilibrium or to equalize differences of economic capacities within the federal territory or to promote economic growth. Details, especially concerning the kinds of investments to be promoted, are regulated by a federal statute requiring the consent of the Senate [Bundesrat] or by administrative arrangements under the federal budget law."

(6) Federation and States [Länder] carry the burden resulting from supranational and international responsibilities of Germany according to the national division of competencies and responsibilities. <sup>[2]</sup>In cases of financial adjustments by the European Union affecting more than one State [Land], Federation and States [Länder] carry the burden at the ratio of 15 to 85. <sup>[3]</sup>The States at large provide 35% of the total burden in solidarity according to an allocation key; the States [Länder] which have caused the obligation carry 50% of the total burden according to their share in the funds received. <sup>[4]</sup>Details are regulated by a federal statute requiring the consent of the Senate [Bundesrat].<sup>179</sup>

*Article 104b [Financial Support for Investments]*<sup>180</sup>

(1) The Federation may, as far as this Constitution grants federal legislative power, provide the States [Länder] with financial support for particularly important investments by the States [Länder] or Communes (associations of communes), if such support is necessary

1. for the defense against a disturbance of the overall economic equilibrium, or
2. to equalize differences of economic performance throughout the federal territory, or
3. for the advancement of economic growth.

<sup>[2]</sup>In deviation from sentence 1, the Federation may, in the case of natural catastrophes or exceptional emergencies outside of state control and with serious negative impact on public finances, grant financial support even without legislative power.<sup>181</sup>

(2) Details, in particular the kinds of investments to be supported, are regulated by a federal statute requiring the consent of the Senate [Bundesrat] or by administrative agreement on the basis of the federal statute about the budget. <sup>[2]</sup>The funds are provided with a time limit and are subject to periodic examination regarding their utilization. <sup>[3]</sup>Financial support has to be designed with decreasing yearly payments during its duration.

(3) On their request, House of Representatives [Bundestag], Government, and Senate [Bundesrat] have to receive a report about the implementation of the measures and about the improvements achieved.

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179 Paragraph VI inserted by [52nd Amendment](#) (28.8.06).

180 Article 104b inserted by [52nd Amendment](#) (28.8.06).

181 Sentence 2 inserted by [57th Amendment](#) (29.7.09).

*Article 105 [Legislative Powers]<sup>182</sup>*

(1) The Federation has exclusive power to legislate on customs duties and fiscal monopolies.

(2) The Federation has concurrent power to legislate on all other taxes the revenue from which accrues to it wholly or in part or where the conditions provided for in Article 72 II apply.<sup>183</sup>

(2a) The States [Länder] have power to legislate on local excise taxes as long and insofar as they are not identical with taxes imposed by federal legislation. <sup>[2]</sup>They have the power to set the rate for the tax on real estate sales.<sup>184</sup>

(3) Federal laws relating to taxes the receipts from which accrue wholly or in part to the States [Länder] or communes or associations of communes require the consent of the Senate [Bundesrat].

*Article 106 [Apportionment of Revenue]<sup>185</sup>*

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

1. customs duties;
2. excise taxes insofar as they do not accrue to the States [Länder] pursuant to Paragraph II, or jointly to the Federation and the States [Länder] in accordance with Paragraph III, or to the communes in accordance with Paragraph VI;
3. road freight tax, motor vehicle tax and other traffic taxes related to motorized vehicles;<sup>186</sup>

182 Article 105 changed by [21st Amendment](#) (12.5.69).

183 Paragraph II changed by [21st Amendment](#) (12.5.69); the former text read:

"(2) The Federation has concurrent legislative power regarding

1. the excise and conveyance tax, excluding taxes with limited local effect, in particular real estate transfer tax, increment value tax, and fire marshal's fee,

2. taxes on income, wealth, inheritance, and gifts,

3. object taxes, excluding local rates, if the Federation completely or partially uses the taxes for federal expenses or under the conditions of Article 72 II."

184 Paragraph IIa inserted by [21st Amendment](#) (12.5.69); Sentence 2 inserted by [52nd Amendment](#) (28.8.06).

185 Article 106 changed by [6th Amendment](#) (23.12.55), [8th Amendment](#) (24.12.56), [21st Amendment](#) (12.5.69), [43rd Amendment](#) (3.11.95), [44th Amendment](#) (20.10.97).

186 Clause "motor vehicle tax and..." inserted by [54th Amendment](#) (19.3.09).

4. capital transaction taxes, the insurance tax, and the bill of exchange tax;
  5. nonrecurrent levies on property, and contributions imposed for the purpose of implementing the equalization of burdens legislation;
  6. income and corporation surtaxes;
  7. charges imposed within the framework of the European Communities.
- (2) Revenue from the following taxes belong to the States [Länder]:<sup>187</sup>
1. wealth tax;
  2. inheritance tax;
  3. such taxes on transactions as do not accrue to the Federation pursuant to Paragraph I or jointly to the Federation and the States [Länder] pursuant to Paragraph III;
  4. beer tax;
  5. gaming casinos levy.
- (3) Revenues from income taxes, corporation taxes, and turnover taxes belong jointly to the Federation and the States [Länder] (joint taxes) to the extent that the revenue from the income tax and turnover tax is not allocated to the communes pursuant to Paragraphs V and Va respectively. <sup>[2]</sup>The Federation and the States [Länder] equally share the revenues from income taxes and corporation taxes. <sup>[3]</sup>The respective shares of the Federation and the States [Länder] in the revenue from the turnover tax are determined by a federal statute requiring the consent of the Senate [Bundesrat]. <sup>[4]</sup>Such determination is based on the following principles:
1. The Federation and the States [Länder] have an equal claim to coverage from current revenues of their respective necessary expenditures. <sup>[2]</sup>The extent of such expenditures is determined giving due consideration to financial planning for several years ahead.
  2. The coverage requirements of the Federation and of the States [Länder] are coordinated in such a way that a fair balance is struck, any overburdening of taxpayers precluded, and uniformity of living conditions in the federal territory ensured.
- <sup>[5]</sup>In addition, for the apportionment of the value added tax to Federation and States [Länder] it will be taken into account that

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<sup>187</sup> Former No. 3 (motor vehicle tax) repealed and rest renumbered by [54th Amendment](#) (19.3.09).

after 1 Jan. 1996 the States' [Länder] income tax revenues will be reduced due to child benefits. <sup>[6]</sup>Details are regulated by the federal statute according to Sentence 3.<sup>188</sup>

(4) The respective shares of the Federation and the States [Länder] to the revenue from the turnover tax are newly apportioned whenever the relation of revenues to expenditures in the Federation develops substantially differently from that of the States [Länder]; this does not apply to reduced tax revenues which are included into the calculation of the apportionment of value added tax according to Paragraph III 5.<sup>189</sup> <sup>[2]</sup>Where federal legislation imposes additional expenditures on or withdraws revenue from the States [Länder], the additional burden may be compensated for by allocation of federal grants under a federal statute requiring the consent of the Senate [Bundesrat], provided such additional burden is limited to a short period of time. <sup>[3]</sup>Such statute lays down the principles for calculating such grants and distributing them among the States [Länder].

(5) A share of the revenue from the income tax belongs to the communes, to be passed on by the States [Länder] to their communes on the basis of income taxes paid by the inhabitants of the latter. <sup>[2]</sup>Details are regulated by a federal statute requiring the consent of the Senate [Bundesrat]. <sup>[3]</sup>Such statute may provide that communes assess the rate which is applicable to this communal share.

(5a) From 1 Jan 1998, a share of the revenue from the turnover tax belongs to the communes. <sup>[2]</sup>This share is to be passed on by the States [Länder] to their communes on the basis of an index about locality and economic power. <sup>[3]</sup>Details are regulated by a federal statute requiring the consent of the Senate [Bundesrat].<sup>190</sup>

(6) Revenue from taxes on real estate and on local industry and trade belongs to the communes; revenue from local excise taxes belongs to the communes or, as may be provided for by State [Land] legislation, to associations of communes. <sup>[2]</sup>Communes are authorized to assess, within the framework of the relevant statutes, the rates at which the taxes on real estate and on local industry and trade are levied locally. <sup>[3]</sup>Where there are no communes in a State [Land], revenue from taxes on real estate and on local industry and trade as well as from local excise taxes belongs to the State [Land]. <sup>[4]</sup>The Federation and the States [Länder] may participate, by virtue

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188 Sentences 5 and 6 inserted by [43rd Amendment](#) (3.11.95).

189 Half-sentence inserted by [43rd Amendment](#) (3.11.95).

190 Paragraph Va inserted by [44th Amendment](#) (20.10.97).

of an apportionment, in the revenue from the tax on local industry and trade. <sup>[5]</sup>Details regarding such apportionment are regulated by a federal statute requiring the consent of the Senate [Bundesrat]. <sup>[6]</sup>In accordance with State [Land] legislation, taxes on real estate and on local industry and trade as well as the communes' share of revenue from the income tax may be taken as a basis for calculating the amount of apportionment.

(7) An overall percentage, to be determined by State [Land] legislation, of the State [Land] share of total revenue from joint taxes belongs to the communes or associations of communes. <sup>[2]</sup>In all other respects State [Land] legislation determines whether and to what extent revenue from State [Land] taxes belong to communes or associations of communes.

(8) Where in individual States [Länder] or communes or associations of communes the Federation causes special facilities to be provided which directly result in an increase of expenditure or a loss of revenue (special burden) to these States [Länder] or communes or associations of communes, the Federation grants the necessary compensation where and insofar as such States [Länder] or communes or associations of communes cannot reasonably be expected to bear such special burden. <sup>[2]</sup>In granting such compensation, due account is being taken of third party indemnities and financial benefits accruing to the States [Länder] or communes or associations of communes concerned as a result of provision for such facilities.

(9) For the purpose of this Article, revenues and expenditures of communes or associations of communes are deemed to be State [Land] revenues and expenditures.

*Article 106a [State Share for Public Local Transport]<sup>191</sup>*

Starting 1 Jan. 1996, the States [Länder] can claim a sum out of federal tax revenues for the public local transport of persons. <sup>[2]</sup>Details are regulated by a federal statute requiring the consent of the Senate [Bundesrat]. <sup>[3]</sup>The sum mentioned in the first sentence is not included in the calculation of financial strength according to Article 107 II.

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<sup>191</sup> Article 106a inserted by 40th Amendment (20.12.93).

*Article 106b [Compensation for Transfer of Motor Vehicle Tax]<sup>192</sup>*

Starting 1 July 2009, the States [Länder] can claim a sum out of federal tax revenues for the transfer of the motor vehicle tax to the Federation. <sup>[2]</sup>Details are regulated by a federal statute requiring the consent of the Senate [Bundesrat].

*Article 107 [Financial Equalization]<sup>193</sup>*

(1) Revenue from State [Land] taxes and the State [Land] share of revenue from income and corporation taxes belongs to the individual States [Länder] to the extent that such taxes are collected by revenue authorities within their respective territories (local revenue). <sup>[2]</sup>A federal statute requiring the consent of the Senate [Bundesrat] may provide in detail for the delimitation as well as the manner and scope of allotment of local revenue from corporation and wage taxes. <sup>[3]</sup>Such statute may also provide for the delimitation and allotment of local revenue from other taxes. <sup>[4]</sup>The State [Land] share of revenue from the turnover tax belongs to the individual States [Länder] on a per capita basis; a federal statute requiring the consent of the Senate [Bundesrat] may provide for supplementary shares not exceeding one quarter of a State [Land] share to be granted to States [Länder] whose per capita revenue from State [Land] taxes, from the income and corporation taxes and according to Article 106b<sup>194</sup> is below the average of all the States [Länder] combined; in the case of real estate transfer tax, the difference in revenue has to be taken into account.<sup>195</sup>

(2) It has to be ensured by statute, that a reasonable equalization between financially strong and financially weak States [Länder] is achieved; due consideration being given to financial capacity and financial requirements of communes or associations of communes. <sup>[2]</sup>Such statute has to specify the conditions governing equalization claims of States [Länder] entitled to equalization payments and equalization liabilities of States [Länder] owing equalization payments as well as the criteria for determining the amounts of equalization payments. <sup>[3]</sup>Such statute may also provide for grants to be made by the Federation from federal funds to financially

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192 Article 106b inserted by [54th Amendment](#) (19.3.09).

193 Article 107 changed by [3rd Amendment](#) (20.4.53), [5th Amendment](#) (25.12.54), replaced by [6th Amendment](#) (23.12.55), changed by [21st Amendment](#) (12.5.69) and by [52nd Amendment](#) (28.8.06).

194 Reference to Article 106b inserted by [54th Amendment](#) (19.3.09).

195 Half-sentence inserted by [52nd Amendment](#) (28.8.06).



weak States [Länder] in order to complement the coverage of their general financial requirements (supplementary grants).

*Article 108 [Revenue Administration]<sup>196</sup>*

(1) Customs duties, fiscal monopolies, excise taxes subject to federal legislation, including the import turnover tax, motor vehicle tax and other traffic taxes related to motorized vehicles<sup>197</sup> as well as charges imposed within the framework of the European Communities are administered by federal revenue authorities. <sup>[2]</sup> The organization of these authorities is regulated by federal statute. <sup>[3]</sup> Where authorities at the intermediate level are established, their heads are appointed in consultation with the respective State [Land] governments.<sup>198</sup>

(2) All other taxes are administered by State [Land] revenue authorities. <sup>[2]</sup> The organization of these authorities and the uniform training of their civil servants may be regulated by a federal statute requiring the consent of the Senate [Bundesrat]. <sup>[3]</sup> Where authorities at the intermediate level are established, their heads are appointed in agreement with the Government.<sup>199</sup>

(3) To the extent that taxes accruing wholly or in part to the Federation are administered by State [Land] revenue authorities, those authorities act as agents of the Federation. <sup>[2]</sup> Article 85 III & IV applies with the Minister of Finance being substituted for the Government.

(4) Regarding the administration of taxes, a federal statute requiring the consent of the Senate [Bundesrat] may provide for collaboration between federal and state revenue authorities as well as, for taxes according to Paragraph I, for their administration by state revenue authorities, and, in the case of other taxes, for their administration by federal revenue authorities, if and insofar as the implementation of revenue statutes is substantially improved or facilitated. <sup>[2]</sup> Regarding taxes the revenue from which belongs exclusively to communes (associations of communes), the administration may completely or in part be transferred by the States [Länder] from the appropriate state revenue authorities to communes (associations of communes).

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196 Article 108 changed by [21st Amendment](#) (12.5.69).

197 Clause "motor vehicle tax and..." inserted by [54th Amendment](#) (19.3.09).

198 Sentence 3 changed by [49th Amendment](#) (26.11.01).

199 Sentence 3 changed by [49th Amendment](#) (26.11.01).

(5) The procedure to be applied by federal revenue authorities is laid down by federal legislation. <sup>[2]</sup>The procedure to be applied by State revenue authorities or, as envisaged in Paragraph IV 2, by communes or associations of communes may be laid down by a federal statute requiring the consent of the Senate [Bundesrat].

(6) The jurisdiction of revenue courts is uniformly regulated by federal legislation.

(7) The Government may issue appropriate general administrative rules which, to the extent that administration is entrusted to State revenue authorities or communes or associations of communes, require the consent of the Senate [Bundesrat].

*Article 109 [Budget Management]*

(1) The Federation and the States [Länder] are autonomous and independent of each other in their budget management.

(2) The Federation and the States [Länder] give due regard in their budget management to the requirements of overall economic equilibrium.

(3) The budgets of Federation and States [Länder] principally have to be balanced without revenue from credits. <sup>[2]</sup>Federation and States [Länder] may adopt rules to symmetrically balance in boom and bust periods the effects of economic cycles deviating from normality as well as exceptions for natural catastrophes or exceptional emergencies outside of state control and with serious negative impact on public finances. <sup>[3]</sup>Equivalent amortization rules have to be adopted for exceptions. <sup>[4]</sup>Details are regulated for the budget of the Federation according to Article 115, provided that sentence 1 is complied with if revenues from credits do not exceed 0.35 percent in relation to the nominal gross domestic product. <sup>[5]</sup>Details are regulated for the budget of the States [Länder] within

their constitutional competencies, provided that sentence 1 is only complied with if no revenues from credits are admitted.<sup>200</sup>

(4) Through federal legislation requiring the consent of the Senate [Bundesrat] principles applicable to both the Federation and the States [Länder] may be established governing budgetary law,<sup>201</sup> responsiveness of budget management to economic trends, and financial planning to cover several years ahead.

(5) Sanctions by the European Community with regard to provisions in Article 104 of the Treaty establishing the European Community about the observance of fiscal discipline are borne by the Federation and the States [Länder] in the ratio 65 to 35.<sup>202</sup>

*Article 109a [Stability Council]*<sup>203</sup>

To prevent budget emergencies, a federal statute requiring the consent of the Senate [Bundesrat] provides for

1. continuous control of the budget management of Federation and States [Länder] by a common body (stability council),

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200 Paragraph 3 inserted by [57th Amendment](#) (29.7.09) also repealing the former paragraph 4 that read: "With a view to averting disturbances of the overall economic equilibrium, federal legislation requiring the consent of the Senate [Bundesrat] may be enacted providing for: 1. maximum amounts, terms and timing of loans to be raised by territorial entities or special purpose associations, and 2. an obligation on the part of the Federation and the States [Länder] to maintain interest free deposits at the Federal Bank [Bundesbank] (reserves for counterbalancing economic trends). Authorizations to issue the relevant ordinances may be conferred on the Government only. Such ordinances require the consent of the Senate [Bundesrat]. They have to be repealed insofar as the House of Representatives [Bundestag] so demands; details are regulated by federal legislation."

201 Words "governing budgetary law" inserted by [20th Amendment](#) (12.5.69).

202 Paragraph V changed by [57th Amendment](#) (29.7.09), replacing the former version inserted by [52nd Amendment](#) (28.8.06): "Obligations of the Federal Republic of Germany due to legal acts by the European Community on the basis of Article 104 of the Treaty About the Foundation of the European Community [Treaty of Rome] regarding the compliance with fiscal discipline are the joint responsibility of Federation and States [Länder]. Sanctions by the European Community are borne by Federation and States [Länder] at the ratio of 65 to 35. The States at large provide 35% of the total burden in solidarity according to their population figure; 65% of the States' [Länder] obligation are borne according to their share in causation. Details are regulated by a federal statute requiring the consent of the Senate [Bundesrat]."

203 Article 109a inserted by [57th Amendment](#) (29.7.09).

2. preconditions and procedure for the declaration of an imminent budget emergency,
3. principles for the establishment and implementation of restructuring programs to prevent budget emergencies.

[2]The decisions of the stability council and the documentation of its deliberation have to be published.

*Article 110 [Budget Law]<sup>204</sup>*

(1) All revenues and expenditures of the Federation are included in the budget; in respect of federal enterprises and special assets, only allocations thereto or remittances therefrom need be included.

[2]The budget has to be balanced as regards revenue and expenditure.

(2) The budget is laid down in a statute covering one year or several fiscal years separately before the beginning of the first of those fiscal years. [2]Provision may be made for parts of the budget to apply to periods of different duration, but divided into fiscal years.

(3) Bills within the meaning of Paragraph II 1 as well as bills to amend the budget statute and the budget are submitted simultaneously to the Senate [Bundesrat] and to the House of Representatives [Bundestag]; the Senate [Bundesrat] is entitled to state its position on such bills within six weeks or, in the case of amending bills, within three weeks.

(4) The budget statute may contain only such provisions as apply to revenues and expenditures of the Federation and to the period for which the budget statute is being enacted. [2]The budget statute may stipulate that these provisions cease to apply only upon the promulgation of the next budget statute or, in the event of an authorization pursuant to Article 115, at a later date.

*Article 111 [Interim Budget]*

(1) Where, by the end of a fiscal year, the budget for the following year has not been laid down by statute, the Government may, until such statute comes into force, make all payments which are necessary:

- (a) to maintain statutory institutions and to carry out measures authorized by statute;
- (b) to meet the Federation's legal obligations;

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204 Article 110 changed by 20th Amendment (12.5.69).

(c) to continue building projects, procurements, and other services, or to continue to grant subsidies for these purposes, provided that amounts have already been appropriated in the budget of a previous year.

(2) To the extent that revenues provided by specific legislation and derived from taxes or duties or any other sources, or the working capital reserves, do not cover the expenditures referred to in Paragraph I, the Government may borrow the funds necessary for the conduct of current operations up to a maximum of one quarter of the total amount of the previous budget.

*Article 112 [Excessive Expenditures]<sup>205</sup>*

Expenditures in excess of budgetary appropriations and extra budgetary expenditures require the consent of the Minister of Finance. <sup>[2]</sup>Such consent may be given only in the case of an unforeseen and compelling necessity. <sup>[3]</sup>Details may be regulated by federal legislation.

*Article 113 [Changing of Expenditures/Revenues]<sup>206</sup>*

(1) Statutes increasing the budget expenditures proposed by the Government or involving or likely in future to cause new expenditures requires the consent of the Government. <sup>[2]</sup>This also applies to statutes involving or likely in future to cause decreases in revenue. <sup>[3]</sup>The Government may demand that the House of Representatives [Bundestag] postpone its vote on such bills. <sup>[4]</sup>In this case the Government states its position to the House of Representatives [Bundestag] within six weeks.

(2) Within four weeks after the House of Representatives [Bundestag] has adopted such a bill, the Government may demand that it votes on that bill again.

(3) Where the bill has become a statute pursuant to Article 78, the Government may withhold its consent only within six weeks and only after having initiated the procedure provided for Paragraph I 3 & 4 or in Paragraph II. <sup>[2]</sup>Upon the expiry of this period such consent is deemed to have been given.

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205 Article 112 changed by 20th Amendment (12.5.69).

206 Article 113 changed by 20th Amendment (12.5.69).

*Article 114 [Audit]*<sup>207</sup>

(1) The Minister of Finance on behalf of the Government has to submit annually to the House of Representatives [Bundestag] and to the Senate [Bundesrat] for their approval an account, covering the preceding fiscal year, of all revenues and expenditures as well as of property and debt.

(2) The Federal Audit Office, the members of which enjoy judicial independence, audits the account and examines the management of the budget and the conduct of business as to economy and correctness. <sup>[2]</sup>The Federal Audit Office submits an annual report directly to the Government as well as to the House of Representatives [Bundestag] and to the Senate [Bundesrat]. <sup>[3]</sup>In all other respects the powers of the Federal Audit Office are regulated by federal legislation.

*Article 115 [State Credit]*<sup>208</sup>

(1) The borrowing of funds and the assumption of pledges, guarantees or other commitments, as a result of which expenditure may be incurred in future fiscal years, requires federal legislative authorization indicating, or permitting computation of, the maximum amounts involved.

(2) Revenue and expenditure are principally to be balanced without revenues from credits. <sup>[2]</sup>This principle is satisfied if revenues from credits do not exceed 0.35 percent in relation to the nominal gross domestic product. <sup>[3]</sup>Furthermore, in the case of economic cycles deviating from normality, effects on the budget have to be factored in by symmetrically balancing boom and bust periods. <sup>[4]</sup>Deviations of actual borrowing from the credit limit outlined by sentences 1 to 3 are to be registered on a control account; debits exceeding the threshold of 1.5 percent in relation to the nominal gross domestic product have to be reduced with the economic cycle. <sup>[5]</sup>Details, particularly the balancing of revenue and expenditure by financial transactions and the procedure for the calculation of the yearly limit of net borrowing in consideration of the economic cycle on the basis of an economic cycle equalization procedure as well as the control and readjustment of effective borrowing against the credit limit, are regulated by a federal statute. <sup>[6]</sup>In the case of natural catastrophes or exceptional emergencies outside of state control and with serious negative impact on public finances, these credit

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<sup>207</sup> Article 114 changed by [20th Amendment](#) (12.5.69).

<sup>208</sup> Article 115 changed by [20th Amendment](#) (12.5.69) and [57th Amendment](#) (29.7.09).

limits may be exceeded by a decision of the majority of the members of the House of Representatives [Bundestag]. <sup>[7]</sup> The decision has to be combined with an amortization plan. <sup>[8]</sup> The readjustment of borrowing according to sentence 6 has to be carried out within an adequate space of time.<sup>209</sup>

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<sup>209</sup> New version of paragraph 2 inserted by [57th Amendment](#) (29.7.09).

## Chapter Xa

### State of Defense

*Article 115a [State of Defense]<sup>210</sup>*

(1) The determination that federal territory is being attacked by armed force or that such an attack is directly imminent (state of defense) are made by the House of Representatives [Bundestag] with the consent of the Senate [Bundesrat]. <sup>[2]</sup>Such determination are made at the request of the Government and require a two-thirds majority of the votes cast, which include at least the majority of the members of the House of Representatives [Bundestag].

(2) Where the situation imperatively calls for immediate action and where insurmountable obstacles prevent the timely assembly of the House of Representatives [Bundestag], or where there is no quorum in the House of Representatives [Bundestag], the Joint Committee makes this determination with a two-thirds majority of the votes cast, which includes at least the majority of its members.

(3) The determination is promulgated in the Federal Law Gazette by the President pursuant to Article 82. <sup>[2]</sup>Where this cannot be done in time, the promulgation is effected in another manner; subsequently, it has to be printed in the Federal Law Gazette as soon as circumstances permit.

(4) Where the federal territory is being attacked by armed force and where the competent bodies of the Federation are not in a position at once to make the determination provided for in Paragraph I 1, such determination is deemed to have been made and promulgated at the time the attack began. <sup>[2]</sup>The President announces such time as soon as circumstances permit.

(5) Where the determination of the existence of a state of defense has been promulgated and where the federal territory is being attacked by armed force, the President may, with the consent of the House of Representatives [Bundestag], issue declarations under international law regarding the existence of such state of defense. <sup>[2]</sup>Where the conditions mentioned in Paragraph II apply, the Joint Committee acts in substitution for the House of Representatives [Bundestag].

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210 Chapter Xa and Article 115a inserted by 17th Amendment (24.6.68).



*Article 115b [Command of the Chancellor]*<sup>211</sup>

Upon the promulgation of a state of defense, the power of command over the Armed Forces passes to the Chancellor.

*Article 115c [Extension of Legislative Powers]*<sup>212</sup>

(1) The Federation has the right to legislate concurrently in respect of a state of defense even on matters within the legislative powers of the States [Länder]. <sup>[2]</sup>Such statutes require the consent of the Senate [Bundesrat].

(2) Federal legislation to be applicable upon the occurrence of a state of defense to the extent required by conditions obtaining while such state of defense exists may make:

1. preliminary provision for compensation to be made in the event of property being taken, in derogation of Article 14 III 2;
2. provision for a time limit other than that referred to in Article 104 II 3 & III 1 in respect of deprivations of liberty, but not exceeding four days at the most, in a case where no judge has been able to act within the time limit applying in normal times.

(3) Federal legislation to be applicable upon the occurrence of a state of defense to the extent required for averting an existing or directly imminent attack may, subject to the consent of the Senate [Bundesrat], regulate the administration and the financial system of the Federation and the States [Länder] in derogation of Sections VIII, VIIIa and X, provided that the viability of the States [Länder], communes and associations of communes is safeguarded, particularly in financial matters.<sup>213</sup>

(4) Federal statutes enacted pursuant to Paragraph I or Subparagraph 1 of Paragraph II may, for the purpose of preparing for their enforcement, be applied even prior to the occurrence of a state of defense.

*Article 115d [Legislative Process for Urgent Bills]*<sup>214</sup>

(1) While a state of defense exists, the provisions of Paragraphs II and III apply in respect of federal legislation, in derogation of the provisions of Articles 76 II, 77 I 2 & II to IV, 78, and 82 I.

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211 Article 115b inserted by [17th Amendment](#) (24.6.68).

212 Article 115c inserted by [17th Amendment](#) (24.6.68).

213 Paragraph III changed by [21st Amendment](#) (12.5.69).

214 Article 115d inserted by [17th Amendment](#) (24.6.68).

(2) Bills submitted as urgent by the Government are forwarded to the Senate [Bundesrat] at the same time as they are submitted to the House of Representatives [Bundestag]. <sup>[2]</sup>The House of Representatives [Bundestag] and the Senate [Bundesrat] debate such bills together without delay. <sup>[3]</sup>Insofar as the consent of the Senate [Bundesrat] is necessary, the majority of its votes is required for any such bill to become a statute. <sup>[4]</sup>Details are regulated by rules of procedure adopted by the House of Representatives [Bundestag] and requiring the consent of the Senate [Bundesrat].

(3) Article 115a III 2 also applies in respect of the promulgation of such statutes.

*Article 115e [Powers of Joint Committee]<sup>215</sup>*

(1) Where, in a state of defense, the Joint Committee determines with a two-thirds majority of the votes cast, which includes at least the majority of its members, that insurmountable obstacles prevent the timely assembly of the House of Representatives [Bundestag] or that there is no quorum in the House of Representatives [Bundestag], the Joint Committee has the status of both the House of Representatives [Bundestag] and the Senate [Bundesrat] and exercises their rights as one body.

(2) The Joint Committee may not enact any statute to amend this Constitution or to deprive it of effect or application either in whole or in part. <sup>[2]</sup>The Joint Committee is not authorized to enact statutes pursuant to Articles 23 I 2, 24 I, or 29.<sup>216</sup>

*Article 115f [Powers of Government]<sup>217</sup>*

(1) In a state of defense, the Government may, to the extent necessitated by circumstances:

1. use the Federal Border Guard throughout the federal territory;
2. issue instructions not only to federal administrative authorities but also to State [Land] governments and, where it deems the matter urgent, to State [Land] authorities, and may delegate this power to members of State [Land] governments to be designated by it.

(2) The House of Representatives [Bundestag], the Senate [Bundesrat] and the Joint Committee is informed without delay of the measures taken in accordance with Paragraph I.

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215 Article 115e inserted by 17th Amendment (24.6.68).

216 Paragraph II changed by 38th Amendment (21.12.92).

217 Article 115f inserted by 17th Amendment (24.6.68).

*Article 115g [Functions of Federal Constitutional Court]<sup>218</sup>*

The constitutional status and the performance of the constitutional functions of the Federal Constitutional Court and its judges may not be impaired. <sup>[2]</sup>The Federal Constitutional Court Act may not be amended by a statute enacted by the Joint Committee except insofar as such amendment is required, also in the opinion of the Federal Constitutional Court, to maintain the capability of the Court to function. <sup>[3]</sup>Pending the enactment of such a statute, the Federal Constitutional Court may take such measures as are necessary to maintain the capability of the Court to carry out its work. <sup>[4]</sup>Any decisions by the Federal Constitutional Court in pursuance of the second and third sentence of this Article requires a two-thirds majority of the judges present.

*Article 115h [Constitutional Institutions]<sup>219</sup>*

(1) Any legislative terms of the House of Representatives [Bundestag] or of State [Land] parliaments due to end while a state of defense exists end six months after the termination of such state of defense. <sup>[2]</sup>A term of office of the President due to expire while a state of defense exists, and the exercise of his functions by the President of the Senate [Bundesrat] in case of the premature vacancy of the President's office, ends nine months after the termination of such state of defense. <sup>[3]</sup>The term of office of a member of the Federal Constitutional Court due to expire while a state of defense exists ends six months after the termination of such state of defense.

(2) Should the necessity arise for the Joint Committee to elect a new Chancellor, the Committee does so with the majority of its members; the President proposes a candidate to the Joint Committee. <sup>[2]</sup>The Joint Committee can express its lack of confidence in the Chancellor only by electing a successor with a two-thirds majority of its members.

(3) The dissolution of the House of Representatives [Bundestag] is impossible during a state of defense.

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218 Article 115g inserted by 17th Amendment (24.6.68).

219 Article 115h inserted by 17th Amendment (24.6.68).

*Article 115i [State Governments]*<sup>220</sup>

(1) Where the competent federal bodies are incapable of taking the measures necessary to avert the danger, and where the situation imperatively calls for immediate independent action in individual parts of the federal territory, the State [Land] governments or the authorities or commissioners designated by them are authorized to take, within their respective spheres of competence, the measures provided for in Article 115f I.

(2) Any measures taken in accordance with Paragraph I of the present Article may be revoked at any time by the Government, or, in relation to State [Land] authorities and subordinate federal authorities, by State [Land] minister presidents.

*Article 115k [Extraordinary Legal Provisions]*<sup>221</sup>

(1) Statutes enacted in accordance with Articles 115c, 115e, and 115g, as well as ordinances issued by virtue of such statutes, for the duration of their applicability suspend law which is inconsistent with such statutes or ordinances. <sup>[2]</sup>This provision does not apply to earlier legislation enacted by virtue of Articles 115c, 115e or 115g.

(2) Statutes adopted by the Joint Committee, as well as ordinances issued by virtue of such statutes, cease to have effect not later than six months after the termination of a state of defense.

(3) Statutes containing provisions that diverge from Articles 91a, 91b, 104a, 106 and 107 applies no longer than the end of the second fiscal year following upon the termination of a state of defense. <sup>[2]</sup>After such termination they may, with the consent of the Senate [Bundesrat], be amended by federal legislation so as to return to the provisions made in Sections VIIIa and X.<sup>222</sup>

*Article 115l [Repeal of Extraordinary Measures]*<sup>223</sup>

(1) The House of Representatives [Bundestag], with the consent of the Senate [Bundesrat], may at any time repeal statutes enacted by the Joint Committee. <sup>[2]</sup>The Senate [Bundesrat] may demand that the House of Representatives [Bundestag] make a decision on such matter. <sup>[3]</sup>Any measures taken by the Joint Committee or the Government to avert a danger has to be revoked where the House

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220 Article 115i inserted by 17th Amendment (24.6.68).

221 Article 115k inserted by 17th Amendment (24.6.68).

222 Paragraph III changed by 21st Amendment (12.5.69).

223 Article 115l inserted by 17th Amendment (24.6.68).

of Representatives [Bundestag] and the Senate [Bundesrat] so decide.

(2) The House of Representatives [Bundestag], with the consent of the Senate [Bundesrat], may at any time declare a state of defense terminated by a decision to be promulgated by the President. <sup>[2]</sup>The Senate [Bundesrat] may demand that the House of Representatives [Bundestag] make a decision on such matter. <sup>[3]</sup>The state of defense has to be declared terminated without delay where the prerequisites for its declaration no longer exist.

(3) The conclusion of peace is subject to federal statute.

## Chapter XI

### Transitional and Concluding Provisions

#### *Article 116 [Definition of "a German"]*

(1) Unless otherwise provided by statute, a German within the meaning of this Constitution is a person who possesses German citizenship or who has been admitted to the territory of the German Reich within the frontiers of 31 December 1937 as a refugee or expellee of German ethnic origin or as the spouse or descendant of such a person.

(2) Former German citizens who, between 30 January 1933 and 8 May 1945, were deprived of their citizenship on political, racial or religious grounds, and their descendants, are re-granted German citizenship on application. [2] They are considered as not having been deprived of their German citizenship where they have established their residence in Germany after 8 May 1945 and have not expressed a contrary intention.

#### *Article 117 [Articles 3 II, 11]*

(1) Law which is inconsistent with Article 3 II remain in force until adapted to that provision of this Constitution, but not beyond 31 March, 1953.

(2) Statutes which restrict the right of freedom of movement in view of the present housing shortage remain in force until repealed by federal legislation.

#### *Article 118 [Baden, Wurttemberg]*

A new demarcation of the territory comprising the States [Länder] of Baden, Wurttemberg-Baden and Wurttemberg-Hohenzollern may be effected, in derogation of the provisions of Article 29, by agreement between the States [Länder] concerned. [2] Where no agreement is reached, the reorganization is effected by federal legislation which provides for a plebiscite.

#### *Article 118a [Berlin, Brandenburg]<sup>224</sup>*

The new delimitation of boundaries between Berlin and Brandenburg can, differing from the provisions of Article 29, be

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224 Article 118a inserted by 42nd Amendment (27.10.94).

constituted by agreement between both States [Länder] under participation of their electorate.

*Article 119 [Refugees, Expellees]*

In matters relating to refugees and expellees, in particular as regards their distribution among the States [Länder], the Government may, with the consent of the Senate [Bundesrat], issue ordinances having statutory effect, pending the settlement of the matter by federal legislation. <sup>[2]</sup>The Government may in this matter be authorized to issue individual instructions for particular cases. <sup>[3]</sup> Except where there is danger resulting in any delay in taking action, such instructions are addressed to the highest State [Land] authorities.

*Article 120 [Occupation Expenditure]*

(1) The Federation meets the expenditure for occupation costs and the other internal and external burdens caused by the war, as regulated in detail by federal legislation. <sup>[2]</sup> To the extent that these costs and other burdens have been regulated by federal legislation on or before 1 Oct. 1969, the Federation and the States [Länder] meet such expenditure between them in accordance with such federal legislation. <sup>[3]</sup> Insofar as expenditures for such of these costs and burdens as neither have been nor will be regulated by federal legislation have been met on or before 1 October 1965 by States [Länder], communes, associations of communes or other entities performing functions of the States [Länder] or the communes, the Federation is not obliged to meet expenditure of that nature even where it arises after that date. <sup>[4]</sup> The Federation pays the subsidies towards the burdens of social insurance institutions, including unemployment insurance and public assistance to the unemployed. <sup>[5]</sup> The distribution between the Federation and the States [Länder] of costs and other burdens caused by the war, as regulated in this paragraph, does not affect any statutory regulation of claims for indemnification in respect of the consequences of the war.<sup>225</sup>

(2) Revenues pass to the Federation at the same time as the latter assumes responsibility for the expenditure referred to in this Article.

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<sup>225</sup> Paragraph I changed by 14th Amendment (30.7.65), 24th Amendment (28.7.69).

*Article 120a [Equalization of Burdens]<sup>226</sup>*

(1) Statutes serving to implement the equalization of burdens may, with the consent of the Senate [Bundesrat], stipulate that they are executed, as regards equalization benefits, partly by the Federation and partly by the States [Länder] acting as agents of the Federation, and that the relevant powers vested in the Government and the competent highest federal authorities by virtue of Article 85 are wholly or partly delegated to the Federal Equalization Office. [2]In exercising these powers, the Federal Equalization Office does not require the consent of the Senate [Bundesrat]; with the exception of urgent cases, its instructions has to be given to the highest State [Land] authorities (State Equalization Offices).

(2) The provisions of Article 87 III 2 are not affected hereby.

*Article 121 [Definition of "Majority"]*

Within the meaning of this Constitution, a majority of the members of the House of Representatives [Bundestag] and a majority of the members of the Federal Convention are the majority of the respective statutory number of their members.

*Article 122 [Transfer of Legislative Powers]*

(1) From the date of the assembly of the House of Representatives [Bundestag], statutes are enacted exclusively by the legislative bodies recognized in this Constitution.

(2) Legislative bodies as well as those bodies participating in legislation in an advisory capacity, whose competence ends by virtue of Paragraph I, are dissolved with effect from that date.

*Article 123 [Validity of Old Law and Treaties]*

(1) Law in force before the first assembly of the House of Representatives [Bundestag] remains in force insofar as it does not conflict with this Constitution.

(2) Subject to all rights and objections of the interested parties, the treaties concluded by the German Reich concerning matters which, under this Constitution, are within the legislative competence of the States [Länder], remain in force, provided they are and continue to be valid in accordance with general principles of law, until new treaties are concluded by the agencies competent under this Constitution, or until they are in any other way terminated pursuant to their provisions.

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226 Article 120a inserted by 2nd Amendment (14.8.52).



*Article 124 [Sphere of Exclusive Legislative Power]*

Law affecting matters subject to the exclusive legislative power of the Federation becomes federal law in the area in which it applies.

*Article 125 [“Inherited” Federal Law]*

Law affecting matters subject to the concurrent legislative power of the Federation becomes federal law in the area in which it applies:

1. insofar as it applies uniformly within one or more zones of occupation;
2. insofar as it is law by which former Reich law has been amended after 8 May 1945.

*Article 125a [Old Federal Law as State Law]<sup>227</sup>*

(1) Law adopted as federal law which, because of changes in Article 74 I, insertion of Articles 84 I 7, 85 I 2 or 105 IIa 2 or because of the repeal of Articles 74a, 75 or 98 III 2, could no longer be adopted as federal law continues to be federal law. <sup>[2]</sup>It can be replaced by State [Land] law.<sup>228</sup>

(2) Law adopted on the basis of Article 72 II in the version valid until 15 Nov. 1994, but no longer admissible as federal statute because of the change in Article 72 II,<sup>229</sup> continues to be federal law. <sup>[2]</sup>Federal statutes can stipulate its replaceability by State [Land] law.<sup>230</sup>

(3) Law adopted as State [Land] law, but no longer adoptable as State [Land] law due to Article 73, continues to be valid as State [Land] law. <sup>[2]</sup>It may be replaced by federal law.<sup>231</sup>

*Article 125b [Framework Legislation, Deviation]<sup>232</sup>*

(1) Law adopted on the basis of Article 75 in the form valid until 1st September 2006 and still adoptable as federal law thereafter continues to be valid as federal law. <sup>[2]</sup>In this respect, the States' [Länder] powers and responsibilities to legislate continue to exist.

227 Article 125a inserted by [42nd Amendment](#) (27.10.94).

228 List of Articles changed by [52nd Amendment](#) (28.8.06).

229 Words "but no longer admissible as federal statute because of the change in Article 72 II" inserted by [52nd Amendment](#) (28.8.06).

230 Sentence 3 ("This provision also applies for federal law adopted on the basis of Article 75 II which could longer be adopted.") repealed by [52nd Amendment](#) (28.8.06).

231 Paragraph III inserted by [52nd Amendment](#) (28.8.06).

232 Article 125b inserted by [52nd Amendment](#) (28.8.06).

<sup>[3]</sup>Regarding the subjects mentioned in Article 72 III 1, the States [Länder] may adopt divergent rules, however, regarding the subjects of Article 72 III 1 Numbers 2, 5, and 6 only if and insofar as the Federation, after 1st September 2006, has used its legislative power, in the case of Numbers 2 and 5 on 1st January 2010 at the latest, in the case of Number 6 on 1st August 2008 at the latest.

(2) The States [Länder] may adopt rules diverging from federal statutes adopted on the basis of Article 84 I in the form valid until 1st September 2006, however, regarding administrative procedures only until 31st December 2008 and only if the administrative procedures in the respective federal statute have been changed after 1st September 2006.

*Article 125c [Law Regarding Joint Tasks]<sup>233</sup>*

(1) Law adopted on the basis of Article 91a II in conjunction with Paragraph I Number 1 in the form valid until 1st September 2006 continue to be valid until 31st December 2006.

(2) Rules regarding financial assistance to communes and for rent-controlled apartments adopted on the basis of Article 104a IV in the form valid until 1st September 2006 continue to be valid until 31st December 2006. <sup>[2]</sup>Special programs regarding financial assistance for traffic in communes based on § 6 I of the Statute About Communal Traffic Financing as well as other rules adopted on the basis of Article 104a IV in the form valid until 1st September 2006 continue to be valid until 31st December 2019, provided no earlier expiration date has been or will be set.

*Article 126 [Applicability of Law as Federal Law]*

Differences of opinion regarding the applicability of law as federal law are settled by the Federal Constitutional Court.

*Article 127 [Bi-zonal Economic Administration]*

Within one year of the promulgation of this Constitution the Government may, with the consent of the governments of the States [Länder] concerned, extend to the States [Länder] of Baden, Greater Berlin, Rhineland-Palatinate and Württemberg-Hohenzollern any legislation of the Bi-zonal Economic Administration, insofar as it continues to be in force as federal law under Article 124 or 125.

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233 Article 125c inserted by [52nd Amendment](#) (28.8.06).

*Article 128 [Continuance of Powers to Give Instructions]*

Insofar as law continuing in force provides for powers to give instructions within the meaning of Article 84 V, these powers remain in existence until otherwise provided by statute.

*Article 129 [Applicability of Authorizations]*

(1) Insofar as legal provisions which continue in force as federal law contain authorizations to issue ordinances or to issue general administrative rules or to perform administrative acts, such authorizations pass to the agencies henceforth competent in the matter. <sup>[2]</sup>In cases of doubt, the Government decides in agreement with the Senate [Bundesrat]; such decisions are published.

(2) Insofar as legal provisions which continue in force as State [Land] law contain such authorizations, they are exercised by the agencies competent under State [Land] law.

(3) Insofar as legal provisions within the meaning of Paragraphs I and II authorize their amendment or supplementation or the issue of legal instead of statutory provisions, such authorizations are deemed to have expired.

(4) The provisions of Paragraphs I and II also apply where legal provisions refer to regulations no longer valid or to institutions no longer in existence.

*Article 130 [Control Over Existing Institutions]*

(1) Administrative agencies and other institutions which serve the public administration or the administration of justice and are not based on State [Land] law or treaties between States [Länder], as well as the Administrative Union of South West German Railroads and the Administrative Council for the Postal Services and Telecommunications of the French Zone of Occupation, are placed under the control of the Government. <sup>[2]</sup>The Government provides, with the consent of the Senate [Bundesrat], for their transfer, dissolution, or liquidation.

(2) The highest disciplinary superior of the personnel of these administrative bodies and institutions is the appropriate Minister.

(3) Corporate bodies and institutions under public law not directly subordinate to a State [Land] nor based on treaties between States [Länder] are under the supervision of the competent highest federal authority.

*Article 131 [Former Public Service Personnel]*

Federal legislation is passed to regulate the legal position of persons, including refugees and expellees, who, on 8 May, 1945, were employed in the public service, have left the service for reasons other than those arising from civil service regulations or collective agreement rules, and have not until now been reinstated or are employed in a position not corresponding to their former one. <sup>[2]</sup>The same rule is applicable to persons, including refugees and expellees, who, on 8 May, 1945, were entitled to a pension and who no longer receive any such pension or any commensurate pension for reasons other than those arising from civil service regulations or collective agreement rules. <sup>[3]</sup>Until the pertinent federal statute comes into force, no legal claims can be made, unless otherwise provided by State [Land] legislation.

*Article 132 Public Service Rights]*

(1) Civil servants and judges who, when this Constitution comes into force are appointed for life, may, within six months after the first assembly of the House of Representatives [Bundestag], be retired or temporarily retired or be given a different office with lower remuneration where they lack the personal or professional aptitude for their present office. <sup>[2]</sup>This provision also applies to salaried public employees, other than civil servants or judges, whose service cannot be terminated by notice. <sup>[3]</sup>Where, however, such service can be terminated by notice, periods of notice in excess of the periods fixed by collective agreement rules may be cancelled within the six months referred to above.

(2) The preceding provision does not apply to members of the public service who are not affected by the provisions regarding the "Liberation from National Socialism and Militarism" or who are recognized victims of National Socialism, except on important grounds relating to themselves as individuals.

(3) Those affected may have recourse to the courts in accordance with Article 19 IV.

(4) Details are specified by an ordinance of the Government requiring the consent of the Senate [Bundesrat].

*Article 133 [Bi-zonal Economic Administration]*

The Federation succeeds to the rights and obligations of the Bi-zonal Economic Administration.

*Article 134 [Reich Property]*

(1) Reich property on principle becomes federal property.

(2) Insofar as such property was originally intended to be used predominantly for administrative tasks which, under this Constitution, are not administrative tasks of the Federation, it is transferred without compensation to the agencies now charged with such tasks, and to the States [Länder] insofar as it is being used at present, and not merely temporarily, for administrative tasks which under this Constitution are now within the administrative competence of the States [Länder]. <sup>[2]</sup>The Federation may also transfer other property to the States [Länder].

(3) Property which was placed at the disposal of the Reich by States [Länder] or communes or associations of communes without compensation again becomes the property of such States [Länder] or communes or associations of communes, insofar as it is not required by the Federation for its own administrative tasks.

(4) Details are regulated by a federal statute requiring the consent of the Senate [Bundesrat].

*Article 135 [Property of Old States]*

(1) Where after 8 May 1945 and before the coming into force of this Constitution an area has passed from one State [Land] to another, the State [Land] to which the area now belongs is entitled to the property located therein of the State [Land] to which it belonged.

(2) Property of States [Länder] or corporate bodies or institutions under public law which no longer exist passes, insofar as it was originally intended to be used predominantly for administrative tasks or is being used at present, and not merely temporarily, predominantly for administrative tasks, to the State [Land] or the corporate body or institution under public law which now discharges these tasks.

(3) Real estate of States [Länder] which no longer exist, including accessories, passes to the State [Land] within which it is located, insofar as it is not included among property within the meaning of Paragraph I.

(4) Where an overriding interest of the Federation or the particular interest of an area so requires, a settlement other than in Paragraphs I to III may be effected by federal legislation.

(5) In all other respects, the succession in title and the settlement of the property, insofar as it has not been effected before 1 January 1952 by agreement between the States [Länder] or corporate bodies

or institutions under public law concerned, is regulated by federal legislation requiring the consent of the Senate [Bundesrat].

(6) Interests of the former State of Prussia in enterprises under private law passes to the Federation. <sup>121</sup>A federal statute, which may also diverge from this provision, regulates the details.

(7) Insofar as property which on the coming into force of this Constitution would devolve upon a State [Land] or a corporate body or institution under public law pursuant to Paragraphs I to III has been disposed of through or by virtue of a State [Land] law or in any other manner by the party thus entitled, the transfer of the property is deemed to have taken place before such disposition.

*Article 135a [Old Liabilities]*

(1) The legislation reserved to the Federation in Article 134 IV and in Article 135 V may also stipulate that the following liabilities are not discharged, or not to their full extent:

1. Liabilities of the Reich or liabilities of the former State of Prussia or liabilities of such corporate bodies and institutions under public law as no longer exist;
2. such liabilities of the Federation or corporate bodies and institutions under public law as are connected with the transfer of properties pursuant to Articles 89, 90, 134 or 135, and such liabilities of these entities as arise from measures taken by the entities mentioned under No. 1;
3. such liabilities of States [Länder] or communes or associations of communes as have arisen from measures taken by these legal entities before 1 August 1945 within the framework of administrative functions incumbent upon or delegated by the Reich to comply with regulations of occupying powers or to put an end to a state of emergency due to the war.<sup>234</sup>

(2) Paragraph I above also applies to liabilities of the German Democratic Republic or its legal entities as well as to liabilities of the Federation or other corporate bodies and institutions under public law which are connected with the transfer of properties of the German Democratic Republic to the Federation, States [Länder] and communes, and to liabilities arising from measures taken by the German Democratic Republic or its legal entities.<sup>235</sup>

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<sup>234</sup> Paragraph I inserted by 9th Amendment (22.10.57).

<sup>235</sup> Paragraph II inserted by 36th Amendment (23.9.90).

*Article 136 [First Assembly of Senate]*

(1) The Senate [Bundesrat] assembles for the first time on the day of the first assembly of the House of Representatives [Bundestag].

(2) Until the election of the first President, his powers are exercised by the President of the Senate [Bundesrat]. <sup>[2]</sup>He does not have the right to dissolve the House of Representatives [Bundestag].

*Article 137 [Eligibility of Civil Servants]*

(1) The right of civil servants, of other salaried public employees, of professional soldiers, of temporary volunteer soldiers<sup>236</sup> or of judges to stand for election in the Federation, in the States [Länder] or in the communes may be restricted by legislation.

(2) The electoral statute to be adopted by the Parliamentary Council applies to the election of the first House of Representatives [Bundestag], of the first Federal Convention and of the first President of the Federal Republic.

(3) The function of the Federal Constitutional Court pursuant to Article 41 II, pending its establishment, is exercised by the German High Court for the Combined Economic Area, which decides in accordance with its rules of procedure.

*Article 138 [Southern German Notaries]*

Changes in notarial institutions as presently existing in the States [Länder] of Baden, Bavaria, Wurttemberg-Baden and Wurttemberg-Hohenzollern require the consent of the governments of these States [Länder].

*Article 139 [Denazification Laws]*

The legislation enacted for the "Liberation of the German People from National Socialism and Militarism" is not affected by the provisions of this Constitution.

*Article 140 [Law of Religious Bodies]*

The provisions of Articles 136, 137, 138, 139 and 141 of the German Constitution of 11 August 1919 are integral parts of this Constitution.

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<sup>236</sup> Words "of professional soldiers, of temporary volunteer soldiers" inserted by 7th Amendment (19.3.56).

*Article 136 WRV [Civil and Political Rights]*

- (1) Civil and political rights and duties are neither dependent on nor restricted by the exercise of the freedom of religion.
- (2) Enjoyment of civil and political rights and eligibility for public office are independent of religious denomination.
- (3) No one is bound to disclose his religious convictions. <sup>[2]</sup>The authorities have no right to inquire into a person's membership of a religious body except to the extent that rights or duties depend thereon or that a statistical survey ordered by law makes it necessary.
- (4) No one may be compelled to perform any religious act or ceremony or to participate in religious exercises or to use a religious form of oath.

*Article 137 WRV [State Church]*

- (1) There is no state church.
- (2) Freedom of association to form religious bodies is guaranteed. <sup>[2]</sup>The union of religious bodies within the territory of the Reich is not subject to any restrictions.
- (3) Every religious body regulates and administers its affairs autonomously within the limits of the law valid for all. <sup>[2]</sup>It confers its offices without the Participation of the state or the civil community.
- (4) Religious bodies acquire legal capacity according to the general provisions of civil law.
- (5) Religious bodies remain corporate bodies under public law insofar as they have been such heretofore. <sup>[2]</sup>The other religious bodies are granted like rights upon application, where their constitution and the number of their members offers an assurance of their permanency. <sup>[3]</sup>Where several such religious bodies under public law unite in one organization, such organization is a corporate body under public law.
- (6) Religious bodies that are corporate bodies under public law are entitled to levy taxes in accordance with State [Land] law on the basis of the civil taxation lists.
- (7) Associations whose purpose is the common cultivation of a philosophical persuasion have the same status as religious bodies.
- (8) Such further regulation as may be required for the implementation of these provisions is a matter for State [Land] legislation.



*Article 138 WRV [Church Property]*

(1) State [Land] contributions to religious bodies, based on law or contract or special legal title, are redeemed by means of State [Land] legislation. <sup>[2]</sup>The principles for such redemption are established by the Reich.

(2) The right to own property and other rights of religious bodies or associations in respect of their institutions, foundations, and other assets destined for purposes of worship, education or charity are guaranteed.

*Article 139 WRV [Sunday and Holidays]*

Sunday and the public holidays recognized by the state remain legally protected as days of rest from work and of spiritual edification.

*Article 141 WRV [Religious Services]*

To the extent that there exists a need for religious services and spiritual care in the army, in hospitals, prisons, or other public institutions, the religious bodies is permitted to perform religious acts; in this context there is no compulsion of any kind.

*Article 141 [“Bremen Clause”]*

Article 7 III 1 does not be applied in any State [Land] in which different provisions of State [Land] law were in force on 1 Jan. 1949.

*Article 142 [Basic Rights in State Constitutions]*

Notwithstanding the provision of Article 31, such provisions of State [Land] constitutions also remain in force as guarantee basic rights in conformity with Articles 1 to 18 of this Constitution.

*Article 142a [repealed]*<sup>237</sup>*Article 143 [Limitation of Deviations]*<sup>238</sup>

(1) Law in the territory specified in Article 3 of the Unification Treaty may deviate from provisions of this Constitution for a period not extending beyond 31 December 1992 in so far as and as long as no complete adjustment to the order of the Constitution can be achieved as a consequence of the different conditions. <sup>[2]</sup> Deviations must not violate Article 19 II and must be compatible with the principles set out in Article 79 III.

(2) Deviations from sections II, VIII, VIIIa, IX, X and XI are permissible for a period not extending beyond 31 December 1995.

(3) Notwithstanding Paragraphs I & II above, Article 41 of the Unification Treaty and the rules for its implementation remain valid in so far as they provide for the irreversibility of intrusion on property in the territory specified in Article 3 of the said Treaty.

*Article 143a [Railroad Administration]*<sup>239</sup>

(1) The Federation has exclusive legislation in all matters arising from the transformation of railroads of the Federation from direct federal administration to businesses. <sup>[2]</sup>Article 87e V is applicable. <sup>[3]</sup>Officials of railroads of the Federation can, by statute preserving their legal position and the responsibility of their former employer, be assigned to work at railroads of the Federation organized under private law.

(2) Statutes according to Paragraph II are administered by the Federation.

(3) The discharge of all duties in the area of local railway transport of persons by former railroads of the Federation is a responsibility of the Federation until 31 Dec. 1995. <sup>[2]</sup>This provision also applies to tasks of railway traffic administration. <sup>[3]</sup>Details are regulated by federal legislation requiring the consent of the Senate [Bundesrat].

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<sup>237</sup> Article 142a inserted by [4th Amendment](#) (26.3.54); repealed by [17th Amendment](#) (24.6.68).

<sup>238</sup> New version of Article 143 inserted by [7th Amendment](#) (19.3.56), repealed by [17th Amendment](#) (24.6.68), inserted by [36th Amendment](#) (23.9.90), i.e., the unification amendment. Article 143 originally provided for punishment in the case of criminal offenses against the constitutional order. According to its Paragraph VI, that version of the article became obsolete by including the provisions into the criminal code; cf. [1st Amendment](#) (30.8.51).

<sup>239</sup> Article 143a inserted by [40th Amendment](#) (20.12.93).

*Article 143b [Deutsche Bundespost]<sup>240</sup>*

(1) The special property Deutsche Bundespost will be transformed into private law businesses according to a federal statute. <sup>[2]</sup>The Federation has exclusive legislation over all related matters.

(2) Exclusive rights of the Federation prior to the transformation can be delegated preliminarily to businesses originating in the Deutsche Bundespost Postdienst and Deutsche Bundespost Telekom. <sup>[2]</sup>The Federation may sell the majority of shares in the business originating in the Deutsche Bundespost Postdienst no earlier than five years after enacting the statute. <sup>[3]</sup>For this measure, a federal statute with consent of the Senate [Bundesrat] is required.

(3) Federal officers of the Deutsche Bundespost are being employed by the businesses preserving their legal position and the responsibility of their former employer. <sup>[2]</sup>These businesses exercise the rights of the former employer. <sup>[3]</sup>Details are regulated by a federal statute.

*Article 143c [Compensation for the Abolishment of Joint Tasks and Financial Support]<sup>241</sup>*

(1) Between 1st January 2007 and 31st December 2019, the States [Länder] may claim yearly contributions from the federal budget for the abolishment of joint tasks regarding extension and construction of universities including university hospitals and educational planning as well as for the abolishment of financial support to improve traffic conditions within communes and rent-controlled apartments. <sup>[2]</sup>Until 31st December 2013, these contributions will be calculated on the basis of average federal support during the reference period of 2000 to 2008.

(2) Until 31st December 2013, the contributions according to Paragraph I are distributed among the States [Länder]:

1. as yearly fixed amounts according to the average share of each State [Land] during the period 2000 to 2003;
2. according to the purpose of the task in the case of former mixed financing.

(3) Federation and States, until the end of 2013, reappraise the sufficiency and necessity of the funds assigned to the States [Länder] according to Paragraph I for fulfilling the responsibilities of the States [Länder]. <sup>[2]</sup>Starting 1st January 2014, the limitation to

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<sup>240</sup> Article 143b inserted by [41st Amendment](#) (30.8.94).

<sup>241</sup> Article 143c inserted by [52nd Amendment](#) (28.8.06).

the purpose as established by Paragraph II Number 2 for the funds provided according to Paragraph I is abolished; the share of investment within the total of funds remains fixed. <sup>[3]</sup>Agreements in the Solidarity Pact II remain unaffected.

(4) Details are regulated by a federal statute requiring the consent of the Senate [Bundesrat].

*Article 143d [Consolidation Support]*<sup>242</sup>

(1) Articles 109 and 115 in the version valid until 31 July 2009 are applicable for the last time on the 2010 budget. <sup>[2]</sup>Articles 109 and 115 in the version in force on 1 Aug. 2009 are applicable for the first time on the 2011 budget; provided that credit authorizations existing on 31 Dec. 2010 for separate assets remain untouched. <sup>[3]</sup>The States [Länder] may, for the period 1 Jan. 2011 to 31 Dec. 2019, following applicable rules of State [Land] regulation, deviate from the provisions of Article 109 III. <sup>[4]</sup>The budgets of the States [Länder] have to be planned in a way that the budget 2020 satisfies the requirements of Article 109 III 5. <sup>[5]</sup>The Federation may, for the period 1 Jan. 2011 to 31 Dec. 2015 deviate from the provision of Article 115 II 2. <sup>[6]</sup>The reduction of existing deficits should commence with the budget 2011. <sup>[7]</sup>The yearly budgets have to be planned in a way that the budget 2016 satisfies the requirement of Article 115 II 2; details are regulated by a federal statute.

(2) To help observing the provisions of Article 109 III after 1 Jan. 2020, the States [Länder] of Berlin, Bremen, Saarland, Saxony-Anhalt, and Schleswig-Holstein for the period 2011 to 2019 may receive consolidation support out of the federal budget to the total extent of 800 million Euro per year. <sup>[2]</sup>The shares are 300 million Euro for Bremen, 260 million Euro for Saarland, and 80 million Euro each for Berlin, Saxony-Anhalt, and Schleswig-Holstein. <sup>[3]</sup>The support is extended on the basis of an administrative agreement according to a federal statute requiring the consent of the Senate [Bundesrat]. <sup>[4]</sup>Receipt of the support requires a complete reduction of financial deficits until the end of 2010. <sup>[5]</sup>The details, particularly regarding the yearly steps of reduction in financial deficits, the supervision of the reduction of financial deficits by the stability council as well as the sanctions in case of non-compliance with the steps of reduction, are regulated by federal statute requiring the consent of the Senate [Bundesrat] and by administrative agreement. <sup>[6]</sup>The simultaneous receipt of

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<sup>242</sup> Article 143d inserted by [57th Amendment](#) (29.7.09).

consolidation support and reorganization support in case of extreme budget emergency is excluded.

(3) The financial burden resulting from consolidation support is carried by Federation and States [Länder] to one half each, the latter financing it from their share of the value added tax. <sup>[2]</sup>Details are regulated by federal statute requiring the consent of the Senate [Bundesrat].

*Article 144 [Ratification of the Constitution]*

(1) This Constitution requires ratification by the parliaments of two thirds of the German States [Länder] in which it is for the time being to apply.

(2) Insofar as the applications of this Constitution is subject to restrictions in any State [Land] listed in Article 23 or in any part thereof, such State [Land] or part thereof has the right to send representatives to the House of Representatives [Bundestag] in accordance with Article 38 and to the Senate [Bundesrat] in accordance with Article 50.

*Article 145 [Promulgation of the Constitution]*

(1) The Parliamentary Council confirms in public session, with the participation of the deputies of Greater Berlin, the fact of ratification of this Constitution and signs and promulgates it.

(2) This Constitution comes into force at the end of the day of promulgation.

(3) It is published in the Federal Law Gazette.

*Article 146 [Validity of the Constitution]*

This Constitution, which is valid for the entire German people following the achievement of the unity and freedom of Germany,<sup>243</sup> ceases to be in force on the day on which a constitution adopted by a free decision of the German people comes into force.

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243 Half-sentence "which is valid for the entire German people following the achievement of the unity and freedom of Germany" inserted by 36th Amendment (23.9.90), i.e., the unification amendment.

## Literature

This short list for further reading and reference is by no means comprehensive. It simply names a number of commentaries, handbooks, textbooks, and collections that might be used as a starting point for more detailed reading about the Basic Law.

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