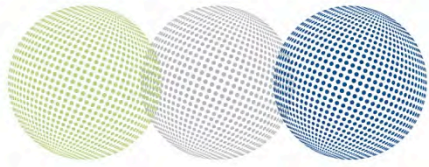


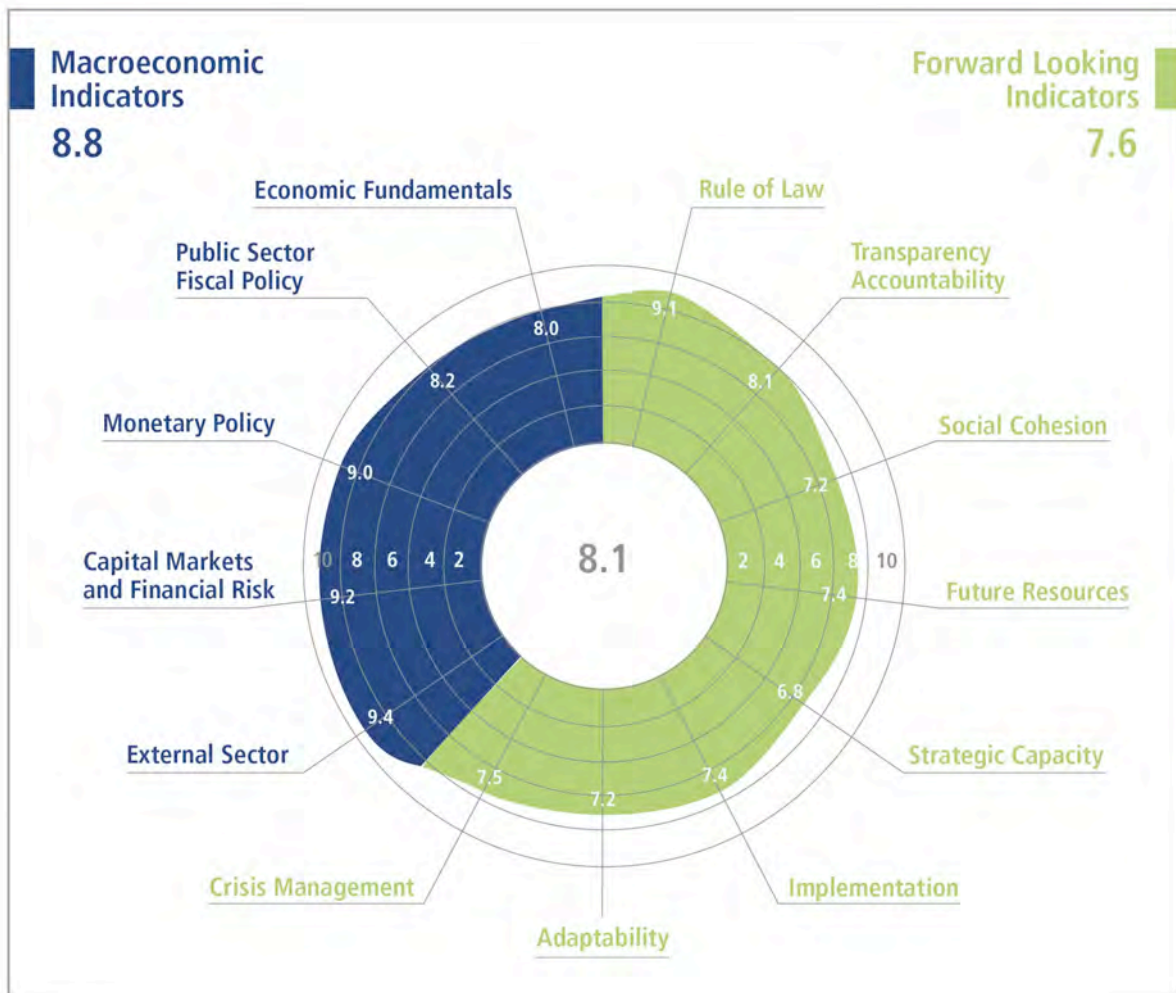
**Expert Report: Germany**



# INCRA

AN INTERNATIONAL NON-PROFIT  
CREDIT RATING AGENCY

**by Friedbert Rüb  
& Friedrich Heinemann**



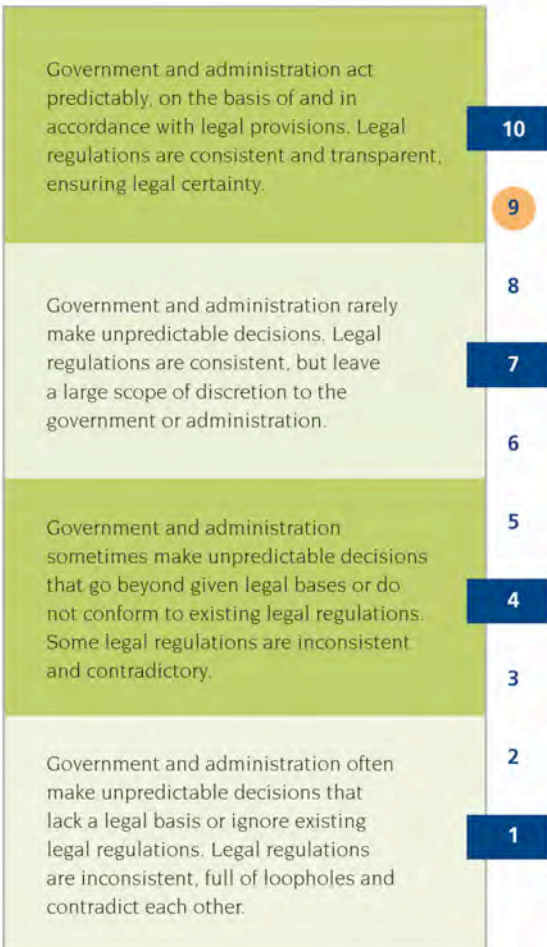
This rating radar illustrates the average scores of all experts who evaluated Germany in the INCRA rating process. The following report is an assessment of Germany by Friedbert Rüb and Friedrich Heinemann with their evaluation of the indicators as they relate to Germany’s willingness and ability to repay its debt, based on INCRA’s Forward Looking Indicators.

## I. Political, Economic and Social Stability

### I. Rule of Law

To what extent do government and administration act on the basis of and in accordance with legal provisions or culturally accepted norms to provide legal or practical certainty?

This question assesses the extent to which executive actions are predictable (i.e., can be expected to be guided by law).



Germany is a constitutional state. Art. 20 (3) of the Basic Law states that “the legislature shall be bound by the constitutional order, the executive and the judiciary by law and justice”. Although that can be subject to constraints (cf. Art. 10 (2)) where restrictions regarding privacy of correspondence, posts and telecommunications are made, if they serve to protect the free democratic basic order, in constitutional reality German authorities live up to this high standard. In comparative perspective, rule of law scores are generally very high in relevant indices whose primary focus is placed on formal constitutional criteria. Because Germany has a relatively modern constitution, it performs very well in that regard (Democracy Barometer Germany report 2011: 2). In general, all national institutions respect an individual’s freedom and protect civil rights and political liberties. The freedom of expression is protected in the constitution (Art. 5), though there are exceptions for sedition and Nazi propaganda such as Holocaust denial. Except in the case of opposing the democratic order, the right to assemble peacefully is guaranteed (Art. 8 of the Basic Law) and not infringed. The freedom to associate and to organize (Art. 9 of the Basic Law) as well as academic freedom is generally respected. Non-governmental organizations operate freely. Every person has the right to address requests and complaints to the “competent authorities and to the legislature” (Art. 17 of the Basic Law). In addition, the court system works independently and effectively protects individuals against encroachments of the executive and acts of the elected legislature. According to the Democracy Index of the Economist Intelligence Unit, Germany ranked 14 with a score of 8.34 out of ten (Democracy

Index 2011: 4). Civil rights as ‘negative’ rights of freedom are provided by the Basic Law and their modification is only possible by a legislative two-thirds majority. Indeed, some of the provisions concerning basic human rights are not alterable at all. For instance, it's impossible to amend the “eternity clause” (Art. 79 (3)) also known as the “Ewigkeitsklausel” provision in the German constitution, which protects human dignity (Art. 1) and constitutional principles and the right to resist (Art. 20). This provision ensures that fundamental human rights are out of reach of any majority of citizens or parliament. All civil rights mentioned are determined in the Basic Law. Art. 1 of the Basic Law ensures protection against torture, Art. 3 secures equal access and treatment by the law, Art. 2 (2) protects life against illegitimate arrest, Art. 14 (1) assures the right to property, Art. 16a establishes political asylum.

In substantive terms, German citizens and foreigners appreciate the predictability and impartiality of the German legal system, attribute high quality to German provisions regarding contract enforcement and property rights, and put trust in the police forces and the courts. In the Global Competitiveness Report 2011-2012, German authorities again achieved high scores, although – relying on the latest reports’ data – one has to acknowledge room for improvement because the numbers are only slightly above the mean of the peer group of innovation-driven economies (Global Competitiveness Report 2011-2012: 184f.).

In addition, Germany’s judicial branch holds an inarguably strong position in the assessment of whether the administration acts lawfully. The more independent courts are from political influence; the more powerful they are with respect to their

competences and resources; and the easier the access to the court is regulated, the more government and administration are bound to act on the basis of and in accordance with legal provisions to provide legal certainty in order to avoid permanent overruling, which would undermine their institutional legitimacy. Germany’s supreme courts stand out due to great institutional powers in combination with a high degree of independence from political exertion of influence (cf. Kneip 2009: 647p.). For instance, unlike in most other countries where public authorities as well as the legislation are bound to Federal Constitutional Court’s (FCC) verdicts, in Germany neither government nor parliament can overrule a decision, once made. The FCC’s final interpretation of the constitution serves as the warrantor for the high degree of legal certainty one can observe in Germany. But nevertheless there are some incidents that raise doubts about governments’ willingness to act in accordance with legal provisions all the time.

In particular, recent developments in the collaboration with other states in the war against terrorism raise some concerns about legal certainty. The UN Committee against Torture, for example, criticized Germany’s opaque involvement in extraordinary renditions, and also recommended that German authorities should eschew information provided by those intelligence services that are suspected to use torture or ill-treatment (cf. Amnesty Germany Report 2012).

Although legal certainty issues remain of pivotal national importance, recent developments show very drastically that challenges emerging in the European multi-level governance are not to be evaluated on the national level alone. On May 31, 2012, the

European Commission referred Germany to the European Court of Justice for not complying with EU Data Retention Directive, which makes it compulsory for telecommunication companies and providers to store telecommunication traffic and location data (Cf. EU Commission Press Release 31/05/2012 ). The respective law had been annulled by the German Federal Constitutional Court in March 2010 because the specific data storage provisions were seen as "an especially grave intrusion" (EDRi 10.03.2010) into citizens' privacy by the judges. Within the last two years Germany did not transpose the directive into national law in line with its constitution. This example shows the potential trade-offs in legal certainty that arise in the highly complex multi-level governance of the European Union.

In a nutshell, government and administration rarely make unpredictable decisions, but as the examples show there is a scope of discretion that administration tends to use.

#### Annotations:

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**To what extent do independent courts control whether government and administration act in conformity with the law?**

This question examines how well the courts can review actions taken and norms adopted by the executive branch. To provide effective control, courts need to pursue their own reasoning free from the influence of incumbent governments, powerful groups, or individuals. This requires a differentiated organization of the legal system, including legal education, jurisprudence, regulated appointment of the judiciary, rational proceedings, professionalism, channels of appeal, and court administration.



In Germany all government bodies are obliged to comply with the German Constitution – the Basic Law. Specialized courts review national actions. Germany’s Supreme Court stands out with great institutional powers in combination with a high degree of independence from political exertion of influence (cf. Kneip 2009: 647p.). According to the Global Competitiveness Report, Germany’s judicial branch acts independent from influences of members of government, citizens or companies. In the current report, Germany ranks 7th in the indicator for independent judiciary. When considering only countries with more than 20 million inhabitants, Germany is even top ranked (Global Competitiveness Report 2011-2012: 395). The remarkably high score of 6.3 – the difference from leader New Zealand (6.7) is only marginal – is an expression of the significance of the judicial branch in Germany. Judicial independence on all levels of jurisdiction is secured by the constitution. Articles 92 to 104 of the Basic Law deal with the position of the judiciary in Germany’s institutional setting. Judicial independence on all levels of jurisdiction is secured by Art. 97 Basic Law, which states that “[j]udges shall be independent and subject only to the law” (Art. 97, Par. 1) and assures that involuntary dismissal can only result from judicial decision (Art. 97, Par. 2). There are five supreme federal courts in Germany: the Federal Constitutional Court (FCC), the Federal Court of Justice as the highest court for civil and criminal jurisdiction, the Federal Administrative Court, the Federal Finance Court, the Federal Labor Court and the Federal Social Court. This division of tasks guarantees highly specialized independent courts with manageable workloads and thus fulfills the requirement of a differentiated organization. Professionalism is generally

secured by well-established procedures for legal education, although its scholastic backwardness and reluctance to agree upon Europe-wide education standards is sometimes subject to criticism (Zeit 2009). Germany's Federal Constitutional Court, which is not subject to supervision by any Ministry, has extensive powers. The FCC ensures that all institutions of the state obey the constitution and respect the fundamental rights. The court acts only on application, but can declare a law unconstitutional and has exercised this right several times. In case of conflicting opinions the decision made by the FCC is final; all other governmental and legislative institutions are bound to comply with its verdict. One can see that the work of the FCC has tremendous political implications. For instance, in July 2012, the FCC decided that the recently amended German electoral law violates the electoral principals of equal treatment and directness of the elections and called for immediate legislative action (FCC Press Release No. 58/2012, 25.07.2012).

Another important criterion for the independence of courts is the appointment procedures of justices. While the federal judges are appointed by the responsible minister and the Committee for the Election of Judges, which consists of the respective subject ministers of the federal states (Länder) and an equal number of members of the Bundestag, justices at the Federal Constitutional Court are elected half by the Bundestag and half by the Bundesrat. The FCC consists of sixteen justices, who exercise their duties in two Senates (panels) with eight members each. Whereas the Bundesrat, in accordance with the provisions of the Constitution, elects justices directly and openly, the Bundestag delegates its decision to a committee, where the election takes

place indirectly, secretly and not transparently. The composition of the committee of twelve deputies represents the party strength in the chamber. Decisions in both houses require a two-thirds majority. To sum it up, in Germany justices are 1) elected by 2) several independent bodies. The election procedure is 3) representative, because the two involved bodies do not intermingle in the decisions of one another. The 4) required majority in each chamber is a qualified two third majority. By requiring a qualified majority, the political opposition has a secure influence over the selection of justices – regardless of temporary majorities. But attention should also be drawn to the non-transparent election procedure of one half of the justices. Furthermore a minor demerit is that media does not cover the election of justices properly.

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<http://www.bundesverfassungsgericht.de/en/organization/gb2011/A-I-4.html>

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BvF 3/11; 2 BvR 2670/11; 2 BvE 9/11  
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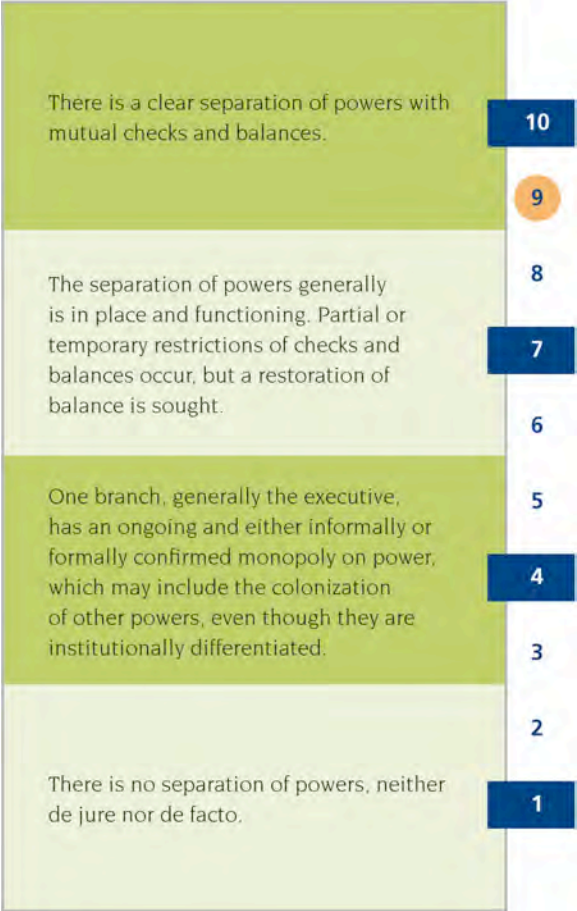
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**To what extent is there a working separation of powers (checks and balances)?**

This question refers to the basic configuration and operation of the separation of powers (institutional differentiation, division of labor according to functions and, most significantly, checks and balances).



In Germany, all government bodies are obliged to comply with the German Constitution – the Basic Law. The Democracy Index of the Economist Intelligence Unit 2011 evaluates Germany’s functioning of government with 8.21 (Democracy Index 2011: 4). This category includes, amongst others, indicators evaluating checks and balances, government accountability towards the electorate, civil service accountability towards government and independence from external influences (e.g. military, religious groups, foreign powers). These attributes indicate that in modern democracies, power is only perceived to be legitimate if it is not distributed to any actor, who is not vested with public authority by the respective constitution. Apart from that, power has to be divided both vertically and horizontally between the constitutionally legitimized institutions (cf. Lijphart 1992; 1999). Germany poses no exception to these general rules. On the contrary, with regard to the vertical dimension of the separation of power, Germany’s federal structure assures high levels of power dispersion between the federal government, the Länder and local authorities. But due to the direct participation of the states in federal decisions through the second chamber (Bundesrat), the effectiveness of policy outputs sometimes seems to be challenged and constrained by the resulting "Joint Decision Trap". In the bicameral system, Bundestag and Bundesrat share legislative powers. The particular institutional setting of German “concordance federalism” effectively requires unanimous decisions, which in turn systematically generate sub-optimal policy outcomes. Efforts to separate competencies more effectively and to cut the number of laws that the federal states can veto resulted in the Federal Reform Act in 2006. The federalism reform tackled



this issue by clarifying the relationship and division of competences. It contributed to the streamlining of legislation processes. For example, the "framework legislation" that previously had granted a high amount of legislative discretion by the Länder was abolished. The reform also relocated a number of previously concurrent competences either to the federal or to the Länder level and reduced the scope for political blockages by reducing the number of laws requiring the consent of the Bundesrat. After the reform had been enacted, the number of laws that required the consent of the Bundesrat dropped considerably, as did the need for mediation processes between Bundesrat and Bundestag. Germany's membership in the European Union adds another level and actor to the political system. Recent events very prominently have shown that jurisdictional disputes inevitably emerge in multilevel governance arrangements, but can still be processed by means of horizontal checks and balances. For example, a ruling of the German federal constitutional court in June 2012 confirmed an appeal of the political party Alliance '90/The Greens, claiming a violation of the Bundestag's right to be immediately notified of decisions and developments concerning the European Stability Mechanism. FCC's verdict contains recommendations to inform and integrate the German Bundestag more into the decision-making procedures dealing with European issues, even in times of crisis and needing rapid response. According to the FCC, this had not happened to a constitutionally satisfying extent (cf. FCC Press Release 19.06.2012). From a horizontal perspective, power is divided according to executive, legislative and judiciary functions. Germany does not maintain a strict separation but rather, as a

parliamentary system, a complex balance of power between the closely interconnected legislative and executive branches. Although government and parliamentary majority are intertwined, the opposition enjoys special protective rights. Parliamentary committees, for example, can hear the responsible minister and have the right to ask for governmental information. The head of government is elected by the majority of the Bundestag and the chancellor and his cabinet "are [furthermore] dependent on the confidence of the legislature" (Lijphart 1992: 2). There are two distinct mechanisms by which this basic principle is exerted. Art. 67 of the German constitution stipulates that a vote of no confidence and the resulting dismissal of the federal chancellor must be accompanied by the election of a successor. On the other hand, Art. 68 provides the chancellor with the option to ask for a vote of confidence. If the majority of the members of the Bundestag refuse to give consent, the federal president calls new elections unless the majority of the members of the Bundestag can agree on a new chancellor. A vote of no confidence according to Art. 67 has been carried out two times in the last 60 years and only the last one in 1982 brought about a change in government. One can see from the infrequency that collisions among the two branches have not been a serious problem in Germany, but there are certain developments which indicate a systematic shift in Germany's institutional power structure. Most prominently, the independence of the German central bank (German Bundesbank) has been an effective safeguard against responsive vote-seeking behavior by politicians that could have severe and long lasting economic ramifications. Because of the ongoing European economic integration the German Bundesbank is today part of the

Eurosystem, a two-tier system of central banks with the European Central Bank (ECB) at its top. Although ECB's independence and a clear objective of price stability are stated in Art. 127 of the Treaty on the Functioning of the European Union (TFEU), the European debt crisis has damaged confidence that these legal provisions are in line with reality. In May 2010, the ECB started to buy government bonds following days of obvious political pressure from EU governments. Similar steps were taken in summer 2012. While ECB representatives deny having been susceptible to political pressure, observers are skeptical.

#### Annotations:

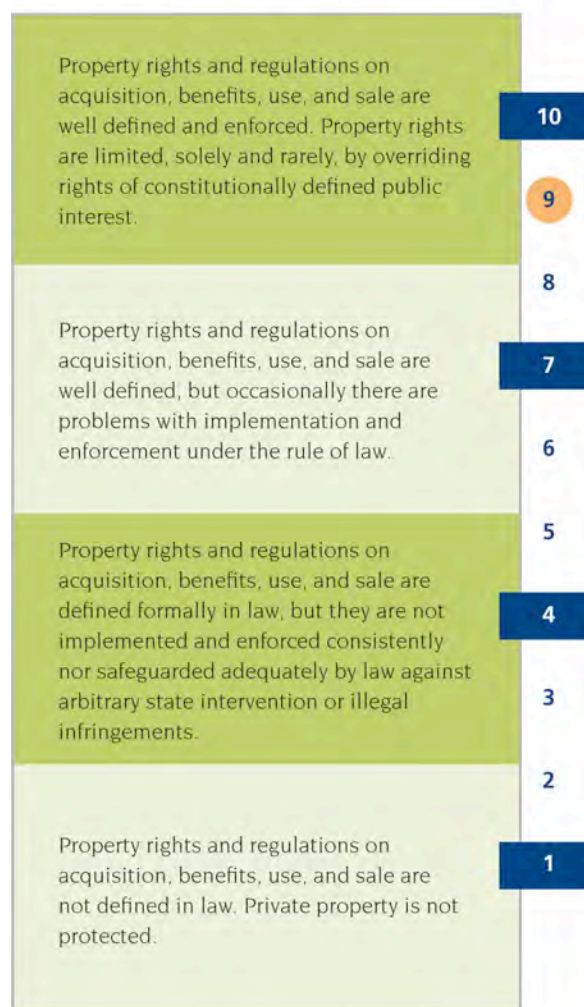
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**To what extent do government authorities ensure well-defined property rights and regulate the acquisition, benefits, use, and sale of property?**



Private property rights are respected, well defined and enforced in Germany. The government authorities regulate the acquisition, use and sale of property. The protection of intellectual property rights, research-intensive industries, and networking of companies and research facilities is above the OECD average (OECD 2012: 113).

Property rights are constitutionally protected. Art 14 of the Basic Law connects and limits the protection of these rights to the public good (Art. 14 (2) – “Property entails obligations”). This limitation serves as a gateway for expropriation (Art. 14 (3)), which “shall only be permissible for the public good” and requires appropriate monetary compensation by the expropriator. A recent case that referred, among other regulations, to these provisions was closed in March 2012, when the FCC, acting unanimously, decided that the owner of a publicly auctioned flat had been unconstitutionally prevented from bidding in the auction himself. According to the judgment, his right of maintaining his property in compliance with Art. 14 of the constitution had been violated.

With regard to the general protection of property rights, the Global Competitiveness Report 2011-2012 ranks Germany 18th with a relatively high score of 5.7 out of 7 (Global Competitiveness Report 2011-2012: 390). Although these figures fall 0.7 points short of putting Germany in the leading position, which is currently held by Luxemburg, international organizations acknowledge the overall good protection of property rights. A further aspect, which tends to strengthen property rights, is the efficiency of the legal framework in settling disputes. Although Germany’s performance profile belies its own expectations (Germany only ranks 19 and is 1.4 points behind the leading nation

Singapore), it still contributes positively to the enforcement of property rights (Global Competitiveness Report 2011-2012: 399). In particular, intellectual property rights are well protected (OECD 2012: 109). This is also reflected by the higher rank in the Global Competitiveness Report. Germany achieves rank 13, just 0.6 behind the leading nation Finland (Global Competitiveness Report 2011-2012: 391). However, the ongoing debate about ACTA (Anti-Counterfeit Trade Agreement) serves as a good illustration that property rights are not always beneficent to public welfare but can also hamper innovation and thus growth. After a public display of disagreement, culminating in massive demonstrations in several German cities on 11 February 2012, Germany's foreign office withdrew its plans to sign the agreement, citing privacy and human rights issues. Similar objections gained prominence when the European Parliament rejected ACTA with 478 to 39 votes on 4 July 2012. In 2011, as an answer to the financial crisis, the German government raised the legal guarantee on private savings from 50.000 to 100.000 Euro in line with the updated EU regulation. These changes have been confirmed by a revision draft for the law addressing the rights of investors and private savers to safety and compensation. It came into effect with the before mentioned changes on 1 January 2011.

#### Annotations:

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**2. Transparency / Accountability**

**Corruption prevention: To what extent are public officials prevented from abusing their position for private interests?**

This question addresses how the state and society prevent public servants and politicians from accepting bribes by applying mechanisms to guarantee the integrity of officeholders: auditing of state spending; regulation of party financing; citizen and media access to information; accountability of officeholders (asset declarations, conflict of interest rules, codes of conduct); transparent public procurement systems; effective prosecution of corruption.



In the assessment we largely rely on international data about the relative frequency of corruption and bribery in Germany in comparison to other countries. In addition we focus on the provisions regarding additional income of public officeholders and then briefly accompany this by the extent of corruption in the economic sector.

Although a series of corruption scandals came about over the period under review, Germany performs better than one expects based on the numerous unclocked malpractices and abuses that, however, mainly occurred in the private sector. Germany achieved a score of 8.0 out of ten in 2011 in the Transparency International Corruption Perceptions Index (CPI) (TI 2011). Based on 17 independent surveys, the CPI score indicates the perceived level of public-sector corruption in a country. In comparison with the beginning of the millennium, Germany is slightly improved. Another source of information is the Worldwide Governance Indicators of the World Bank. One of the measured criteria is “control of corruption”. According to Kaufmann et al. (2009) this sub criteria captures the “perceptions of the extent to which public power is exercised for private gain, including both petty and grand forms of corruption, as well as “capture” of the state by elites and private interests” (Kaufmann et al. 2009: 6). A comparison across the ten largest economies of the world reveals that Germany is doing quite well among its peers. With a score of 93.3, Germany is in the top category, outperforming countries like France, Japan or the United States, but still behind Scandinavian countries, Singapore and New Zealand (World Bank 2011). On the other hand, Germany has signed, yet not ratified, the United Nations Convention against Corruption (UNCAC), mainly because parliamentarians raise objections to the equal

treatment of civil servants and themselves, citing concerns regarding the diffuse definition of corruption and its potentially negative impact on the independence of the mandate (Welt Online 05.02.12). The unequal treatment of parliamentarians and public officials is striking. While the latter are prosecuted in the case of bribery, no identical rules apply to parliamentarians. The provisions for political bribery, which are laid down in paragraph 108e of the Criminal Code, are extremely limited.

Another insightful indicator is provided by the World Justice Project Rule of Law Index, which shows the distribution of corrupt behavior amongst government officials. Its indicator "absence of corruption" measures the use of public office for private gain in four sectors: judicial, legislative, executive and police sector. In its 2011 edition Germany scores 0.83 points out of 1 and ranks 12th. However, the rather good position cannot conceal the fact that Germany is only average when it comes to fighting corruption.

Scandinavian, Benelux, but also Asian countries like Hong Kong SAR, Japan and Singapore perform better. Financial transparency of office holders is another centerpiece in corruption prevention. The provisions concerning the asset declaration of members of Parliament are loose and subject to critique. Already in June 2005, the German Bundestag amended the Political Parties Act and the Annex to the Rules of Procedure of the German Bundestag, the Code of Conduct for Members of the German Bundestag. Despite inarguable improvements, the practice of publication of members' assets still possesses significant shortcomings due to very lax information requirements.

An analysis of the data (www.nebeneinkuenfte-bundestag.de) shows that the release of three income levels

provides no clarity about the influence of contrarian financial interests of politicians in the political process. Furthermore, Transparency International demanded that, in order to increase transparency, comparability and uniformity, all regulations concerning the code of conduct of members of parliament should be integrated in a single comprehensive body of legislation, which is not the case in the current provisions. The most prominent show piece in abusing a public position for private interests took place on the top level of the German political system. Christian Wulff, who by the time was federal president, reluctantly resigned in February 2012 after two months of allegations of bribery and corrupt behavior. Although the degree of severity of any single allegation was mediocre at best, the sheer quantity of accusations unleashed a public outcry (Spiegel 17.02.2012).

Annotations:

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[http://www.transparency.org/policy\\_research/surveys\\_indices/cpi/2009/cpi\\_2009\\_table](http://www.transparency.org/policy_research/surveys_indices/cpi/2009/cpi_2009_table)  
[http://www.icgg.org/corruption.cpi\\_2007.html](http://www.icgg.org/corruption.cpi_2007.html)

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<http://www.bundestag.de/dokumente/textarchiv/2007/nebeneinkuenfte/index.html>

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### To what extent are the media independent from government?

This question asks to what extent the media are subject to government influence and the influence of actors associated with the government. The question focuses both on media regulation and government intervention. The rules and practice of supervision should guarantee sufficient independence for publicly owned media. Privately owned media should be subject to licensing and regulatory regimes that ensure independence from government.



The Basic Law guarantees the freedom of expression, press and broadcasting (Art. 5 (1)) and prohibits – with limitations set by mutual respect, personal dignity and protection of young people – censorship. Political pluralism and individual or organizational freedom of expression is thus in general guaranteed but constrained by laws restricting the far left and far right; exceptions especially concern sedition and Nazi propaganda such as Holocaust denial. The proclaimed high standard of independence from political interference holds true for the print media, which is largely self-regulated. The German Press Council was established to protect the freedom of the press. However, according to the Worldwide Press Freedom Index 2011-12, Germany finds itself – compared with the aforementioned high aims – at a disappointing 16th rank, along with Cyprus and Jamaica (World Press Freedom Index). The authors of the index, however, concede a slight qualitative improvement in comparison to the previous survey. The Wulff scandal revealed a rather misguided perception of leading German politicians about the essence and content of media independence. In January, Germany's biggest-selling yellow press newspaper Bild, made public that the federal president tried to stop reporting on him. When Wulff was minister-president of Lower Saxony, he had received a loan from a friend but had denied any business association to him when asked in Land Parliament. Journalists investigated the matter and found evidence of a business relation. After being asked for a statement for the coming newspaper article, Wulff indignantly called editor in chief Kai Diekmann and left a voicemail threatening to “break up” once and for all with the newspaper if the story were to be printed.



Bild published the story anyway and made public that Wulff had tried to prevent it. The furious call resulted in a debate and massive criticism regarding the attitude of leading politicians towards investigative journalism and ultimately resulted in the resignation of Wulff as federal president. Thus German print media can be regarded as independent from political influence.

In the realm of television, the Interstate Treaty on Broadcasting and Telemedia (Rundfunkstaatsvertrag) creates a general framework for public and private broadcast media operating countrywide. In the private broadcasting sector government influence is limited to the general provisions, regulations and guidelines to prevent discrimination or other abuse of broadcast media, as stated in the interstate treaty. There are one public and two private German channels specializing in the provision of information. Phoenix, N24 and n-tv combined have an only marginal share in the market of 3 percent (AGF 2011). While the relationship between public authorities and private media can be seen as unproblematic, one can observe dependencies between authorities and public media that are at least questionable.

An event in late 2009, following which even now juridical ramifications are still pending, raised considerable doubts whether German party-biased public authorities are still willing to guarantee the independence of public service channels. The dismissal of the ZDF chief editor Nikolaus Brender attracted extensive public attention and brought up the question whether German politicians should be allowed to decide about the success and failure of political journalists. In particular, Roland Koch (CDU), who at the time was minister-president of Hesse and also deputy chairman of the administrative board of the ZDF, militated against the extension of

Brender's contract. Among others, the German Journalists' Association of Hesse asked Koch to refrain from political interference in the appointment of the editor-in-chief of a public broadcaster. Several constitutional lawyers raised constitutional objections to the composition of the board itself.

The quarrel resulted in the dismissal of Brender and has a legal aftermath. Following Brender's dismissal, Kurt Beck (SPD), minister-president of Rhineland-Palatinate, stated on 25 March 2010 at the Minister-Presidents' Conference that the state of Rhineland-Palatinate will file a judicial review against the ZDF-interstate treaty (Spiegel Online: 25.03.2010). Beck, who is also chairman of the ZDF administrative board, substantiated his claim with concerns regarding the unconstitutional exploitation of governmental power and the disputable independence of publicly owned media. In a statement submitted to the Federal Constitutional Court the ZDF expressed its view that representatives of societal groups should be delegated in the supervisory board without prior political consent (cf. Mediendatenbank 2012). Until this day, the FCC has not come to a verdict, but experts state that the appeal has a fair chance of success, because the incident posed a clear violation to the freedom of broadcasting. In 2009, 35 constitutional law scholars condemned the "obvious attempt to strengthen the influence of party politics" (FAZ: 22.11.2009) on public broadcasting. With regard to the fair access to the media in the conduct of elections, Art. 5 of the Political Parties Act (Parteiengesetz PPA) stipulates that "where a public authority provides facilities or other public services for use by one party, equal treatment must be accorded to all parties". During the period of electoral

campaign this general criterion does apply to all parties that have submitted election proposals (Art. 5 (2)). The amount of services that parties are entitled to depends on their relative importance measured by the results obtained in the last general election (Art. 5 (3)). The so-called “principle of gradual equality” – in conjunction with the “Interstate Treaty on Broadcasting and Telemedia” (Rundfunkstaatsvertrag) – constitutes the basis of parties’ access to media. In Art. 25 of the Interstate Treaty plurality of opinion is ensured: “The editorial content of commercial broadcasting must express plurality of opinion. The important political, ideological and social forces and groups shall be given appropriate opportunity to express themselves [...] minority views shall be taken into account.”

Concerning airtime on television, the principle of ‘gradual equality’ is applied but the privilege granted to large parliamentary parties is not allowed to exceed twice the amount conceded to smaller parliamentary parties, which in turn receive no more than double the amount of airtime acknowledged to parties that are currently unrepresented in a parliament. While campaign spots in the public media networks are provided free of charge, the private media must not impose an airtime price crossing 35 percent of the market price for commercial advertising (Arbeitsgemeinschaft Landesmedienanstalten 2005: 11). Non-parliamentary parties in particular heavily rely on this as an essential tool of campaigning. In addition, private media traditionally match the schemes for the allocation of airtime of the main public broadcasters ARD and ZDF, thus giving airtime to non-parliamentary parties as well.

Annotations:

<http://www.alm.de/fileadmin/Download/Positionen/Rechtliche-Hinweise-Wahlsendezeiten-2005.pdf>  
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[http://www.alm.de/fileadmin/Englisch/9\\_R\\_AEStV\\_Englisch.pdf](http://www.alm.de/fileadmin/Englisch/9_R_AEStV_Englisch.pdf) (unofficial translation)

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<http://www.presserat.info/150.0.html>

[http://www.alm.de/fileadmin/Englisch/9\\_R\\_AEStV\\_Englisch.pdf](http://www.alm.de/fileadmin/Englisch/9_R_AEStV_Englisch.pdf)

<http://www.spiegel.de/kultur/gesellschaft/0,1518,663928,00.html> (27.11.2009)

<http://www.spiegel.de/kultur/gesellschaft/0,1518,664012,00.html> (28. November 2009)

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<http://www.kleinreport.ch/meld.phtml?id=55575>

<http://www.faz.net/s/Rub510A2EDA82CA4A8482E6C38BC79C4911/Doc~EF661F8EF700742C58F6D9535A24ECFEA~ATpl~Ecomm~Scontent.html> (22.11.2009)

[http://www.unternehmen.zdf.de/uploads/media/Geschaeftsordnung\\_ZDF-Fernsehrat\\_02.pdf](http://www.unternehmen.zdf.de/uploads/media/Geschaeftsordnung_ZDF-Fernsehrat_02.pdf)

[http://www.unternehmen.zdf.de/uploads/media/5.1.1.4.6\\_u\\_Geschaeftsordnung\\_des\\_Verwaltungsrates\\_03.pdf](http://www.unternehmen.zdf.de/uploads/media/5.1.1.4.6_u_Geschaeftsordnung_des_Verwaltungsrates_03.pdf)

<http://en.rsf.org/germany.html>

Reporters Without Borders (2012): World Press Freedom Index 2011-12. Internet source: <http://en.rsf.org/press-freedom-index-2011-2012,1043.html> (28.08.2012)

Mediendatenbank 2012  
<http://www.mediadb.eu/datenbanken/deutsche-mediakonzerne/zdf.html>

Frankfurter Allgemeine Zeitung 02.01.2012  
<http://m.faz.net/aktuell/feuilleton/debatten/wulffs-drohung-der-anruf-des-bundespraesidenten-11588714.html>

The Independent 17.02.2012  
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#### Verwaltungsrat

The administrative board is composed of 14 members, five representatives of the federal states, one federal representative and eight other members elected by the broadcasting council, who are neither elected to a legislative body, nor in a government. The body has administrative responsibilities but no right to intervene in editorial policies.

#### Fernsehrat

The broadcasting council is a monitoring body of the ZDF. It is supervising the program, approves by budget brought in by the administrative board and elects the channel's director. It perform these tasks in representation of the whole society. Therefore, the council itself is composed of representatives of relevant societal groups.

**To what extent does the government enable the participation of civil society in the political process?**

This question asks whether the political leadership involves civil society actors in agenda setting, policy formulation, deliberation, decision-making, policy implementation, and performance monitoring. Civil society actors include civic, economic, and professional interest associations, religious, charity and community-based organizations, intellectuals, scientists, and journalists.



Like the previous governments, ministries and parliamentary committees rely heavily on information provided by interest groups and take their proposals or demands into account. The impact of civil society actors depends on their power resources and organizational status. Since interests are sometimes mediated through institutionalized corporatist structures, employers associations and unions are privileged.

Effective societal participation depends not only upon balanced and impartial media coverage but also on performance monitoring by the public, which in turn requires transparency of government policymaking. According to Democracy Barometer's assessment, provisions facilitating the expansion of the public sphere could still be improved. Although the freedom of information act that was established in 2006 improved the transparency of German policymaking considerably, Germany still underperforms compared to the sample mean (Democracy Barometer: Germany report: 6). On the other hand, overall direct and indirect participation in the democratic processes are dwindling since the beginning of the new millennium. That development manifests itself in lower turnouts at the ballot box ,which translates into a more selective interest representation in terms of gender or age, and especially income and education. Besides this categorical biased disenchantment with politics, participation in terms of petition signing or active involvement in demonstrations fell as well (Democracy Barometer: Germany report: 5). Regarding policy formulation, interest groups play a key role providing in depth information upon which ministerial officials rely. The ministerial hearings are the main gateway of influence. In the decision-making

process, interest associations participate as well. In general, German interest organizations do have a considerable impact on policy formulation and on the agenda. Sometimes not every involved interest group is heard and the proposals of less prominent lobby groups (environmental, social interest and some religious groups) are not adequately considered. But the trend is towards a greater impact of citizen groups, social movements and grassroots lobbying, particularly on the local level. Particularly at the local level, citizens increasingly want to partake in substantive decisions. The conflict over Stuttgart's new underground railway station in 2010 marked a striking example of this. After more than 15 years of formal admission procedures, planning approval procedures and an approving decision by the Land Parliament of Baden Wuerttemberg, the reconstruction of Stuttgart's main station started in February 2010. However, it soon came to a halt, when the cutting of trees at the construction site escalated into rioting protests and ultimately resulted in a massive police operation. When police forces used water cannons to break up the demonstration, several protesters suffered serious injuries and it culminated in an out of court dispute resolution in October and November 2010. The arbitration process chaired by Heiner Geißler, a mutually respected former politician, was broadcast on the Internet and attracted a great deal of public attention. The arbitrator's resultant decision was a substantiated proposal on grounds of evidence-based considerations and favored the continuation of the construction with some additional building requirements, which proved to be costly concessions to the opponents of the project. To make up the balance, several aspects of the debate entered on the credit side of the

account: transparency of public politics was enhanced and deficits of decision-making processes were addressed publicly. Furthermore the out of court dispute resolution added an unprecedented procedure to the German political toolbox – giving spontaneously organized social movements and single-issue and community-based organizations an ex-post say in political decisions. Above all, the final referendum on 27 November 2011 resulted in a legitimacy surplus, approving the former decision made by the Land Parliament of Baden-Wuerttemberg. The time lost from the halted construction work, high costs in terms of time and monetary resources -- as well as image damage to the public administration, the state government, the Land Parliament and the police forces in particular -- had a negative effect.

#### Annotations:

<http://www.lobbycontrol.de/blog/index.php/schwerpunkte/lobbyisten-in-ministerien/>  
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### 3. Social Cohesion

#### To what extent is exclusion and decoupling from society effectively prevented?

Reducing the various risks of social exclusion is a fundamental precondition for social cohesion and stability. The country assessment should focus on the following key questions: 1) To what extent is poverty effectively prevented? 2) To what extent are there enabling conditions for equal opportunity in society? In addition to poverty, please also take into account additional dimensions of exclusion like the experience of marginalization and the desire to be appreciated when evaluating socioeconomic disparities.

Reference Indicators: Poverty rates | Gini Coefficient



Germany has a mature and highly developed welfare state, which guarantees a subsistence level to all citizens. The German social security system is historically biased towards the insurance model, which even extends into social services, like care for the frail and elderly. It strongly reflects personal circumstances, such as the size of a family or the cost of housing. However, the past decade was marked by a general trend to enhance and to some extent replace suspension of earnings benefits with need-oriented minimum levels of income. In 2003, for example, a basic subsistence income for the elderly was established (§ 41pp Twelfth Book of the Social Code).

Furthermore, the amalgamation of unemployment assistance and social security benefit on 1 January 2005 into a basic jobseekers' assistance scheme added a need-oriented income component to the insurance-based system but also ensured a basic level of social protection. For single parents with low qualifications, this minimum income reaches levels that may exceed their actual potential for earnings. Labor market experts strongly criticize these labor disincentives. But in general, following the changes in the system, more and more people received social benefits, although they were employed. The proportion of Aufstocker, or people topping up Hartz IV benefits with a job income, has increased considerably in the past years. While in 2007 a total of 25 percent of all social benefit recipients, some 1.28 million persons, were dependent on a mixed income, in 2011 the figures rose to 30 percent or 1.36 million. Of those Aufstocker, 19 percent were employed part time, 26 percent full time, and 55 percent were in marginal employment, i.e., had jobs with a salary cap of €400. But, despite various programs, the proportion of

working poor has increased by 2.2 percentage points (cf. O-Ton Arbeitsmarkt).

In addition to that, public awareness of income inequality is on the rise and backed by OECD data. Five income inequality measures used by the OECD showed an increase in income inequality from mid-1980s to late 2000s. For example, between 1985 and 2008, the income inequality rate measured by the Gini coefficient rose from 0.25 to 0.3, which is still slightly beneath the OECD average (OECD: 2011a: 24). Today "the top 10 percent hold more than half of total net worth" (OECD 2011b: 2). The public perception of growing injustices could endanger social cohesion and stability in the future and has already fuelled debates on the introduction of a general minimum wage and unconditional basic income, which had been triggered due to rising poverty rates. In 2005, the German poverty rate rose to 11.0 percent, for the first time surpassing the OECD average. Although in late 2000s, only 8.9 percent of the adult population were living in poverty (OECD: 2011b chart) the issue of how to prevent poverty and fight the emergence of a new class of working poor had gained prominence on the political agenda. During the last parliamentary term, seven debate sessions dealt with the issue of minimum wages. The last took place in January 2012, when the opposition proposed the introduction of a national minimum wage. The motion was voted down by the coalition majority (Bundestag Mindestlohn 2012). But one also has to acknowledge arguments that regard the current subsistence level as sufficient. It meets basic needs, because minimum income recipients are entitled to goods and services such as health insurance and education free of charge.

#### Annotations:

Bundestagsdebatte Mindestlohn Januar 2012  
[http://www.bundestag.de/dokumente/textarchiv/2012/37468688\\_kw03\\_de\\_mindestlohn/index.html](http://www.bundestag.de/dokumente/textarchiv/2012/37468688_kw03_de_mindestlohn/index.html) (Access: 12/27/08)

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<http://www.oecd.org/els/socialpoliciesanddata/41525346.pdf> (Access: 12/27/08)

OECD: Society at a Glance: OECD Social Indicators 2011b  
<http://www.oecd.org/social/socialpoliciesanddata/societyataglance2011-oecd-social-indicators.htm#publications>

- Chart EQ2.1: Poverty has been rising  
<http://www.oecd.org/statistics/> -> Poverty rate (Access: 12/27/08)

OECD: Doing Better for Children, 2009  
<http://www.oecd.org/social/familiesandchildren/43590066.pdf> (Access: 12/27/08)



### How strong is the citizens' approval of political institutions and procedures?

Please base your assessment on public opinion survey data, addressing the following factors:

- approval of the political system
- approval of performance (measured by how the political institutions function in practice or the satisfaction with the working of the institutions)
- approval of political institutions (often measured by the level of trust in institutions such as government, the legal system and police, state bureaucracy, political parties, and the military)



A vast majority of the citizenry accept democratic institutions. However, as the OECD's Society at a Glance survey revealed, only 53 percent generally have trust in national institutions, which is 3 percentage points below OECD average (OECD 2011: Indicator CO2.1). This disillusioning figure requires a differentiated assessment. According to a survey YouGov on behalf of the weekly newspaper Die Zeit, German citizens have a particularly high level of trust in the Federal Constitutional Court (cf. Die Zeit 09.07.2012, YouGov 10.07.2012). 41 percent of the interviewed persons designate positive trust values, 14 percent even spoke of "very high trust". The police also receive positive trust values. The federal president, as a national symbol of integration and integrity, usually enjoys high approval ratings, although the former Federal President Christian Wulff had to resign over favors he allegedly received in his time as minister-president of Lower Saxony. With the newly elected Federal President Joachim Gauck, the public trust in the office was soon restored (Die Zeit 09.07.2012). On the other hand, trust values in the German Bundestag and the federal government appear to be very low. Only 14 percent of the respondents displayed a positive view towards the two democratic core institutions. But when it comes to specific, performance-oriented levels of satisfaction, other surveys report fairly good scores. Since May 2011 a majority of citizens have been satisfied with the working of the government and the opposition. In the last survey conducted by Forschungsgruppe Wahlen on 24 August 2012, 56 percent of the sampled population approved of the work of the federal government (cf. Forschungsgruppe Wahlen 2012).

Respondents also positively acknowledged the work of the opposition, especially Social Democrats and the Greens.

In comparison, respondents assigned negative scores to the leftist party “Die Linke”, which considers itself market skeptical and sometimes demonstrates a sometimes displays a disregard for democracy . In fact, the wide range of heterogeneous statements made by the party elite as well as the incoherent appearance of the party on different federal levels seems to be the main source of the negative assessment. While performing a strategy of fundamental opposition on the federal level, the party is represented in 13 federal states’ parliaments, where it cooperates and constructively contributes in the legislative process on a regular basis. In addition, in one federal state (Brandenburg) the party partners in a SPD-led coalition government. Although Die Linke is monitored by the federal and several state departments the party does not defy democratic order but rather shows a reluctance to accept its interlacement with free market economy.

#### Annotations:

OECD: Corruption Index, in: Society at a Glance, 2011  
-> Indicator CO2.1  
<http://www.oecd.org/social/socialpoliciesanddata/societyataglance2011-oecd-social-indicators.htm#publications>

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<http://www.zeit.de/politik/deutschland/2012-07/umfrage-institutionen-karlsruhe>

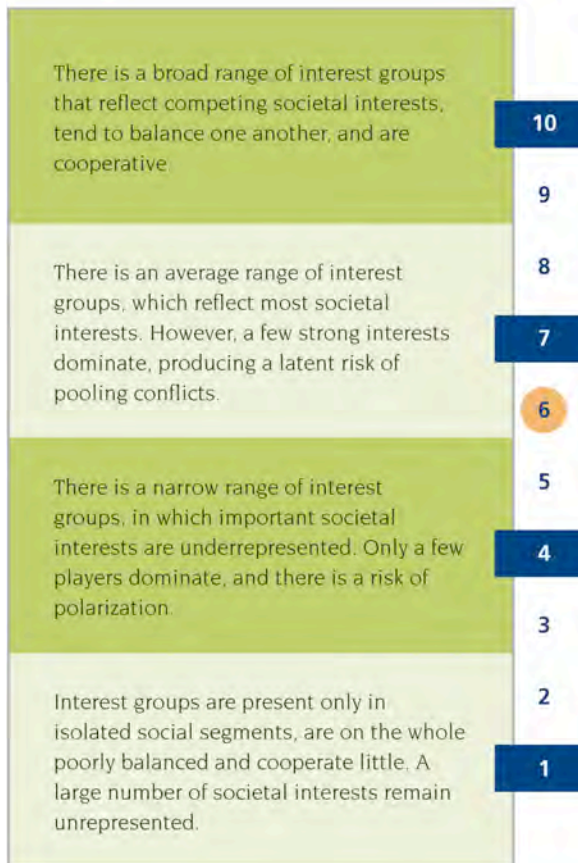
YouGov 10.07.2012  
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Forschungsgruppe Wahlen 2012  
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g

**To what extent is there a network of cooperative associations to mediate between society and the political system?**

This question addresses the representation of societal interests in the political system. In evaluating the systemic nature and the quality of representative patterns, please consider:

- the spectrum of interest groups, ranging from social movements and community organizations to unions and professional associations
- the capacity to incorporate all (competing) societal interests and to avoid the dominance of a few strong interests
- the degree of cooperation between different interest groups



As stated before (cf. Indicator Society participation), intermediary organizations such as interest groups and NGOs play a pivotal role on several levels in the policy cycle. But the impact of civil society actors depends on their power resources and organizational status. Since interests are sometimes mediated through institutionalized corporatist structures, employers' associations and unions are privileged. Despite Germany's long-standing tradition of tripartite agreements between unions, employers' organizations and the government, they are political tools of diminishing importance. Umbrella organizations across the board are no longer able to commit their members to macroeconomic agreements. This may be due to technological change and the transition to a service economy, which has differentiated and thus complicated interest aggregation within organizations of both employees and employers (Molina/Rhodes 2002: 305). The last attempt at concerted action was the "Alliance for Jobs" in the 1990s. It revived macro-political corporatist strategies in the labor market but, despite high hopes, it collapsed and was not renewed. Thus the degree of cooperation between different interest groups seems to recede at least on the macro level.

Economic interests also have an influential say in German politics because of their still existing mobilizing capabilities and financial resources, which are pivotal elements for parties' success at the ballot box. Another important aspect is the interpenetration of party members and association staff. "Natural alliances" between trade unions and Social Democrats on the one hand and Christian Democrats and employers' associations on the other hand do exist but became softer in the past decades when ideological cleavages

crumbled. Today, political priorities seem to be of greater importance than traditional affiliations when it comes to the formation of alliances between interest organizations and parties. Interest representation and responsiveness of every German government is high, no matter which coalition is in charge. Regarding policy formulation, interest groups play a key role providing in-depth information on which ministerial officials rely. The ministerial hearings are the main gateway of influence. Sometimes lobbyists work in ministries (cf. annotation 1), which is seen as a major problem. "The borders separating legitimate representation of interests from shady politics are fluid today" (Heinze 2009: 5). According to the most recent Global Competitiveness Report, those strong personal ties and monetary dependencies are sometimes seen as a threat to the functioning of the system and to a fair representation of interests. Germany is ranked 19 with a rather low score of 4.3 when considering the favoritism to well-connected firms and individuals in decisions of government officials. That is 1.5 points behind the leading country, Sweden (Global Competitiveness Report 2011-2012: 396). In the decision-making process, interest associations participate as well. Rule 70, Par. 1 of the Rules of Procedure of the German Bundestag states that "[f]or the purpose of obtaining information on a subject under debate, a committee may hold public hearings of experts, representatives of interest groups and other persons who can furnish information". This right is used extensively. Sometimes not every involved interest group is heard and the proposals of the most powerful interest groups (employers' associations and unions) weigh in general heavier than the advocacies of less powerful lobby groups (environmental, social interest

and some religious groups). But the trend – as the conflict over Stuttgart's main station has shown – is towards a greater impact of citizen groups, social movements and grassroots lobbying particular on the local level (cf. Civil Society participation).

In sum, major economic interest groups very well integrated in the policymaking process. This high level of integration – next to the mentioned disadvantages – brings about associations that are aware of the complexities of policymaking and the positions of their respective adversaries. In general, the important groups' and associations' proposals are thus reasonable.

Annotations:

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Heinze, Rolf G. (2009): Lobbyism and the State: The Change of Political Consulting in Germany. In: ZBP 2009/2, p. 5-25.  
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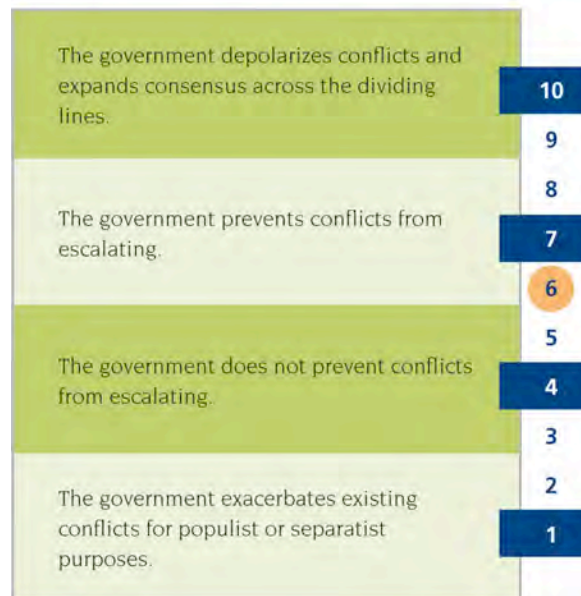
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Molina, Oscar; Rhodes, Martin (2002): *Corporatism*. In: *Annu. Rev. Polit. Sci* 5 (1), 305–331.

**To what extent is the government able to moderate domestic economic, political, and social conflicts?**

Please assess the extent to which the government is able to depolarize structural conflicts, to prevent society from falling apart, and establish as broad a consensus as possible across the dividing lines.



There are no extreme ethnic, regional or religious cleavages within the German society. The political elite tries to depolarize cleavage-based conflicts. However, the still fairly high poverty rates and the newly emerging group of working poor (cf. indicator Social Inclusion), suggests that social inclusion should be addressed through reforms of the labor market and the education system (cf. indicator Education). Furthermore, a lack of inclusion and integration of immigrants is seen as an important source of potential conflict. Germany's reality is not in line with its citizenship law. Although today 15.746 million people (19.3 percent of the population) have an immigration background, German nationality and citizenship is grounded in *ius sanguinis*, attributing citizenship not by birthplace but by descent. Although challenges in the field of integration are subject to ongoing public debates, populist and outright hostile political positions towards immigrants have so far gained no significant voter support as is observed in other Western European countries. In 2010, the debate dominated the political agenda for some time. It arose from the book "Deutschland schafft sich ab" ("Germany Is Doing Away With Itself") written by Thilo Sarazin, a Social Democrat and former finance senator of Berlin, in which he denounced Muslims' unwillingness to adapt to German society and culture. While politicians of all parties quickly rejected the arguments he made in the book, Sarazin struck a nerve in the public resulting in a fierce and heated debate. Despite these shortcomings, Germany is again gaining attractiveness as an immigration destination. In 2011, Germany had positive net migration of 279,207 (cf. destatis net migration) after having negative values in the

years 2008 and 2009. The naturalization rate, on the other hand, remains at a low level. In 2011, just 106,900 people acquired German citizenship, which equals a naturalization rate of only 1.44 percent of total immigrants (cf. destatis naturalization). But this positive trend is not to be attributed to step up efforts by the government, but rather the relative weakness of those economies that are currently hit hardest by the public debt crisis. Overall, an explicit and consistent integration policy in Germany is still in the early stages; over the past ten years there have been several changes in integration policy with only limited effects.

Although all German governments in recent years have paid attention to existing cleavages there are limits to the government's role as a moderator. In social policy or integration debates, government parties and representatives are not perceived to be impartial. Furthermore, the relatively low level of politicians' perceived trustworthiness impairs their ability to act as a neutral instance in societal conflicts.

Annotations:

Zeit 19.04.2012

<http://www.sueddeutsche.de/politik/deutsche-islamkonferenz-friedrich-verurteilt-aktivitaeten-radikal-islamischer-salafisten-1.1336516>

Spiegel 2010

<http://www.spiegel.de/international/germany/the-man-who-divided-germany-why-sarrazin-s-integration-demagoguery-has-many-followers-a-715876-druck.html>

#### 4. Future Resources

##### To what extent does education policy deliver high-quality, efficient, and equitable education and training?

This question assesses the extent to which a government's education policy facilitates high-quality learning that contributes to personal development, sustainable economic growth, and social cohesion. Your response should focus on the following, irrespective of the education system's organization: the contribution of education policy towards providing a skilled labor force, the graduate output of upper secondary and tertiary education, and (equitable) access to education. While the latter pertains to issues of fairness and distributive justice, it also has implications for a country's international competitiveness as unequal education implies a waste of human potential.

Reference Indicators: PISA results | education spending | attainment levels



Education<sup>1</sup> is one of the top political controversies in Germany. It came as a shock to the country when the OECD's Program for International Student Assessment (PISA) evaluations described the present educational system in the strongest of terms and revealed tremendous need for reform. Although the subsequent surveys showed that much had been achieved, education policies remain one of the most delicate political issues. Education is regarded the most important transmission belt of social advancement, since equal opportunities in life today seem inseparably linked to education prospects. In that vein, the OECD constantly repeats its criticism that access to education in Germany is stratified and educational attainment is particularly dependent on the social background of children. Today Germany ranks 17 in the Global Competitiveness Report, trailing 1.0 points behind Switzerland, which achieves 5.9 in the overall assessment of educational system's quality (Global Competitiveness Report 2011-2012: 444).

In comparison to other nations, German education structures seem segregated, stratified, federalized, segmented and socially highly selective. Some of the criticism is certainly justified. In particular, the educational opportunities for immigrants and children from low-income families are lower and they are less likely to attend secondary school. Some experts, for example, highlight the contribution of Germany's secondary school system to the intergenerational reproduction of poverty (Edelstein 2006: 120pp.). But some other systemic features could yield considerable benefits, if their

<sup>1</sup> This chapter is strongly based on the Germany Report on Responsible Markets Economy by Heinemann/Rüb (forthcoming).

strengths were to be applied properly. Recent years have seen a lot of schooling experiments, primarily because the federal states are responsible for education policies. But whereas competitive federalism could enable states to experiment with practices from a variety of approaches, Germany often falls short in utilizing its structural potential. Besides these ambiguous structural features that hamper a generalizing verdict, a second caveat seems in order. Education experts come to very heterogeneous conclusions when dealing with different periods within the lifelong learning process (cf. OECD 2011: 26p) and periods in accordance with education levels on the basis of the revised International Standard Classification of Education (ISCED 1997).

In contrast to other countries, the proportion of individuals with tertiary education (ISCED 5) has remained constant for decades. While on average in the OECD, the proportion of 25-34 year-olds with tertiary education is 15.64 percentage points higher than among the age cohort of 55-64, the proportions in Germany are generally on a low level and differ only by 0.38 percentage points (25.66 among the 25-34 year-olds in comparison to 25.28 among 55-64 year-olds) (OECD 2011: 30; cf. statlink on this page).

Germany has a segmented educational system. Vocational education (ISCED 3 and 4) “reduces the need for initial on-the-job training”, tends to increase the individual productivity that is initially to be expected (OECD 2011: 122) and provides students with occupation-specific skills. In general, Germany’s education system is strong in its vocational training with good job and income prospects of skilled workers. Defining education achievement primarily on the criterion of university degrees (as the OECD does) might not pay justice to the merits of

the German dual education system. Regarding the relation between the level of education and the likelihood of participation in the labor market, usually higher levels of education provide individuals with the skills needed in modern service-oriented economies. This propensity certainly applies to the German case as well. However, there is an increasing consensus that the real problems are created in early childhood (ISCED 0) and that priority must be given to a better support of language skills and other basic competences already in the first years of life. Today, Germany invests on average more in pre-primary education than in primary education (cf. OECD 2011: 210) but the results of these investments are yet to be evaluated.

#### Annotations

#### Assessment made for Responsible Markets Economies

Global Competitiveness Report 2011-2012  
OECD (Hg.) (2011): Education at a Glance 2011: OECD Indicators: OECD Publishing.  
[http://www.oecd.org/document/20/0,3746,de\\_34968570\\_39907066\\_39648148\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/document/20/0,3746,de_34968570_39907066_39648148_1_1_1_1,00.html)

Edelstein, Wolfgang (2006): Bildung und Armut. Der Beitrag des Bildungssystems zur Vererbung und zur Bekämpfung von Armut. In: Zeitschrift für Soziologie der Erziehung und Sozialisation 26 (2), S. 120–134.



**To what extent does research and innovation policy support technological innovations that foster the creation and introduction of new products and services?**

This question comprises subsidies and incentives for research institutions conducting basic and applied research, as well as subsidies and incentives for establishing start-up companies that transfer scientific output into products and enhanced productivity. Bureaucratic impediments to research and innovation should also be taken into account.

*Reference Indicators: R&D spending | Science and Technology Degrees | Patents | R&D Personnel*



Germany’s performance in education R&D policy is mixed. Due to comparatively high production costs, the German government hopes to gain competitive advantages by placing emphasis on innovation. Germany ranks 9 in the indicator number of utility patents (i.e., patents for invention) (Global Competitiveness Report 2011-2012: 520). According to the report, Germany’s capacity for innovation is among the highest in the world. In the field of technological development, product and process innovation, the country ranks third - only 0.1 behind Japan (5.8 points) (Global Competitiveness Report 2011-2012: 514). As a result, Germany starts to spend more on research and development and its spending is now above the European average. In fact, Germany has a leading position in Europe with regard to the number of patent applications. In recent years, medium-sized businesses have contributed noticeably to this development, but the state of cluster development leaves room for improvement (Global Competitiveness Report 2011-2012: 506). While companies spend a lot on R&D, the university-industry collaboration could be improved. Due to a mediocre quality of scientific research institutions, Germany is on the verge of leaving the top group. Here, Germany achieves a score of 5.6, which is 0.7 points behind top seated Israel (cf. Competitiveness Report 2011-2012: 515; 517). In order to remedy the situation, the government continues its “excellence initiative” for tertiary education. The federal government and the Länder agreed to resume the “Joint Initiative for Research and Innovation” and want to increase the budget by 5 percent every year (2011-2015). In 2010, the government increased the budget of the Ministry of Education and Research by 660 million Euros (in total 10.6

billion). The goal is to foster the implementation of research results in products. In addition, the Ministry of Economics and Technologies spent 2.5 billion Euros on technological research. To boost the business innovation budget, the ministry established a program for small and medium-sized enterprises (SME) in 2008. All in all, the government plans to increase spending on research and innovation to 3 percent of GDP until 2015.

Even though Germany thus mobilizes substantive resources there is a debate whether the instruments chosen are appropriate. Many other industrial countries foster R&D activities of their companies through general tax incentives. By contrast, Germany fosters R&D by government expenditure which involves the difficult assessment which type of R&D activities is promising. Therefore, the German approach faces the criticism that politicians and bureaucrats decide over R&D allocation and bear a responsibility which they hardly can fulfill. Moreover the positive externalities of R&D do not receive enough consideration up until now. With this background the German government had announced general tax incentives for R&D for small and medium enterprises in 2009 but not stuck to that announcement.

Annotations:

Global Competitiveness Report 2011-2012

**How successful is a government in reducing unemployment and in increasing employment?**

This question addresses a government's strategies to reconcile the following objectives: unemployment reduction and job security, and balancing supply and demand on the labor market by providing sufficient mobility of the labor force according to the needs of potential employers in order to increase the level of employment. To assess labor market and employment policy comprehensively, special emphasis should be placed on the positive or detrimental effects resulting from labor market regulation (e.g., dismissal protection, minimum wages, collective agreements) and from the modus operandi of unemployment insurance).



The main problems of the German labor market stemmed from a high degree of structural and long-term unemployment and strict employment protection legislation. In 2008, Germany ranked 9th among 30 OECD countries in terms of the overall strictness of employment protection legislation. While this situation has improved considerably, the German labor market is still characterized by a high level of employment protection. Today, “Germany’s labor market remains rigid (125th for labor market flexibility), where a lack of flexibility in wage determination and the high cost of firing present a hindrance to job creation” (Global Competitiveness Report 2011-2012: 24). However, in the years prior and during the economic crisis, employment rates have risen continuously and unemployment, after a modest incline in 2008 and a brief period of stagnation in 2009, has been in decline ever since.

There are several explanations for this so-called German job miracle. Demographic change and the general increase in competitiveness of the German economy play important roles. Apart from that, German reform policies have contributed to the success. The amalgamation of unemployment assistance and social security benefit on 1 January 2005 into a basic jobseekers’ assistance scheme ensured a basic support level of social protection with special provisions for women and persons under the age of 25 (cf. Second Book of the Social Code). The reform greatly tightened job seekers’ responsibilities. Unemployed people now have fewer possibilities to reject a job offer without risking benefit sanctions. Arguments that a job offer implies a social decline, that it pays a wage below collective wage agreement or that the wage is below the subsistence level are no longer accepted as a reason to reject an offer.

Furthermore, today there is a comprehensive toolbox of active labor market programs including: the financing of qualifying measures, financial support for self-employment or re-integration into the labor market, workfare programs and employment subsidies for the hiring of long-term unemployed. The Third Book of the Social Code defines the rules and principles underlying active job creation measures. Traditional instruments of active labor market policy such as job creation and training and qualification measures are now seen as combinable instruments. Tailored to individual needs, they are intended to bring long-term unemployed, in particular, back into the labor market. Besides the already mentioned measures, vocational education; basic skills and preparatory training; re-training programs and counseling measures are additional means to achieve this goal. Other active labor market programs are integration premiums, which subsidize wages for a period of time, and start-up financing (cf. Federal Employment Agency Monthly Report (2012): 32-36). All these labor market instruments are continuously being evaluated. Allocation of program resources is guided by a prior examination of the potential participants in order to concentrate scarce resources on the more promising cases. However, unemployed persons which take part in this measures are not counted in the respective unemployment statistics thus lowering the rate of the unemployed. In addition, the January 2009 law for the reorientation of labor market policy instruments (Gesetz zur Neuausrichtung der arbeitsmarktpolitischen Instrumente) marked a further step towards a higher flexibility of labor market instruments. The liberalization of short-term contracts and the use of temporary employment schemes

(Leiharbeit) are milestones in this regard. Secondly, employed workers can claim benefit support if their market income is below the subsistence levels. The withdrawal of benefits is dampened through special provisions for low income earners, which reduce disincentives for this group. Although the "Hartz" reforms are now broadly recognized as a crucial factor for Germany's new economic rise, several challenges within the new system remain unsolved until this day. The fragile balance between rights and responsibilities of job seekers remains a widely discussed issue. Following the change to the new system, more and more people received social benefits, although they were employed. Employers were given incentives and the legal means to pass wage costs partly onto the employment agencies. The unprecedented expansion of atypical employment contracts - such as temporary, part-time and agency work - may have been an advantage in terms of industrial flexibility. But less-regulated contracting opportunities stimulate employers' incentives to increase the share of those contracts amongst their employees - with potentially severe consequences for the social welfare system in particular and social justice in general. The recent developments, in combination with increased public awareness, fueled debates on the introduction of a general minimum wage and unconditional basic income. The deep economic crisis of the year 2009 proved to be another positive example, since employers' associations and trade unions cooperated smoothly to keep employment losses to a minimum.

Annotations:

Global Competitiveness Report 2011-2012  
Molina, Oscar; Rhodes, Martin (2002):  
Corporatism. In: Annu. Rev. Polit. Sci 5 (1),  
305-331.

[http://doku.iab.de/aktuell/2012/tarifbindungsentwicklung\\_1996-2011.pdf](http://doku.iab.de/aktuell/2012/tarifbindungsentwicklung_1996-2011.pdf)

[http://www.gesetze-im-internet.de/bundesrecht/sgb\\_3/gesamt.pdf](http://www.gesetze-im-internet.de/bundesrecht/sgb_3/gesamt.pdf)

<http://statistik.arbeitsagentur.de/Statischer-Content/Arbeitsmarktberichte/Monatsbericht-Arbeits-Ausbildungsmarkt-Deutschland/Monatsberichte/Generische-Publikationen/Monatsbericht-201206.pdf>

**To what extent are social security schemes based on principles of fiscal sustainability?**

This question seeks to assess the extent to which social security schemes (e.g. pension systems, health care insurance, unemployment insurance etc.) are fiscally sustainable. This question is essential for assessing a government's room to maneuver in paying its current financial obligations without shifting the cost to future generations.



Germany has a mature and highly developed welfare state that guarantees a subsistence level to all citizens.

Germany's welfare system is insurance-based with most of the traditional benefits aiming at income maintenance (e.g., pensions, unemployment, sickness pay and invalidity pensions). In the past years, basic support schemes such as "Hartz IV" (unemployment benefits) and a needs-oriented basic pension have been introduced, supplementing and to some extent replacing the principle of income maintenance with minimum needs-based provisions. These provisions have the advantage that individuals with insufficient contribution records are now guaranteed a subsistence level income. More importantly, all reform measures are intended to balance revenue and spending in the light of far-reaching demographic changes now and in the years to come, but they are still insufficient to reduce social contribution rates significantly. The combination of income tax rates and social security contributions leaves even intermediate earners with marginal rates far above OECD averages, which implies substantial disincentives. According to OECD data, an average worker has to pay 39.9 percent of his gross wage earnings – exceeding the OECD average by 15.1 percentage points. Income taxation marks 19 percent, while social security contributions for employees amount to 20.9 percent of the average gross wage earnings – exceeding the OECD average by 4.2 and 10.9 percentage points respectively.

Fiscal sustainability of pension, health and long-term care insurance is endangered by the demographic development and the ageing of the population. However, reform policies in the last decade have paid heavy attention to this problem. The sustainability of the pension system has been significantly

improved through a combination of a higher pension age and cuts of future pensions. Even more important, pensions are constantly being adjusted to a less favorable age structure so that automatic stabilizers are an integral part of the system by now. The sustainability of the unemployment insurance has been improved by structural reforms, resulting in increasing employment and a reduction of long-run unemployment. Sustainability remains an issue with respect to statutory health and long-term care insurance. Currently, these branches of the German social security benefit from strong employment growth – but long-run cost dynamics remain an unresolved issue.

#### Annotations:

(<http://www.tagesschau.de/inland/rentenstreit102.html>) This rent will reportedly be bound to a certain amount of working years and thus not be a general minimum pension. (<http://www.augsburger-allgemeine.de/politik/Von-der-Leyen-will-Rente-durch-Steuern-aufbessern-id16625761.html>)

Such a proposal has been made by Alliance 90/The Greens in 2011, who wanted to introduce a guarantee rent granting a minimum pension level for every pensionist. (<http://dipbt.bundestag.de/dip21/btd/17/052/1705207.pdf>)

OECD, Taxing Wages, Country Note for Germany,  
[www.oecd.org/document/32/0,3746,en\\_33873108\\_33873402\\_47425312\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/document/32/0,3746,en_33873108_33873402_47425312_1_1_1_1,00.html)  
)

[http://www.oecd.org/document/60/0,3746,en\\_2649\\_37427\\_1942460\\_1\\_1\\_1\\_37427,00.html#D\\_TaxesConsumption](http://www.oecd.org/document/60/0,3746,en_2649_37427_1942460_1_1_1_37427,00.html#D_TaxesConsumption)  
Income tax and social security contributions

[http://www.oecd-ilibrary.org/taxation/income-tax-and-social-security-contributions-2008\\_20758510-table1](http://www.oecd-ilibrary.org/taxation/income-tax-and-social-security-contributions-2008_20758510-table1)

<http://www.o-ton-arbeitsmarkt.de/grafikendiagramme/zahlder-erwerbstatigen-hartz-iv-bezieher-nimmt-zu>

<http://statistik.arbeitsagentur.de/Navigation/Startseite/Startseite-Nav.html>

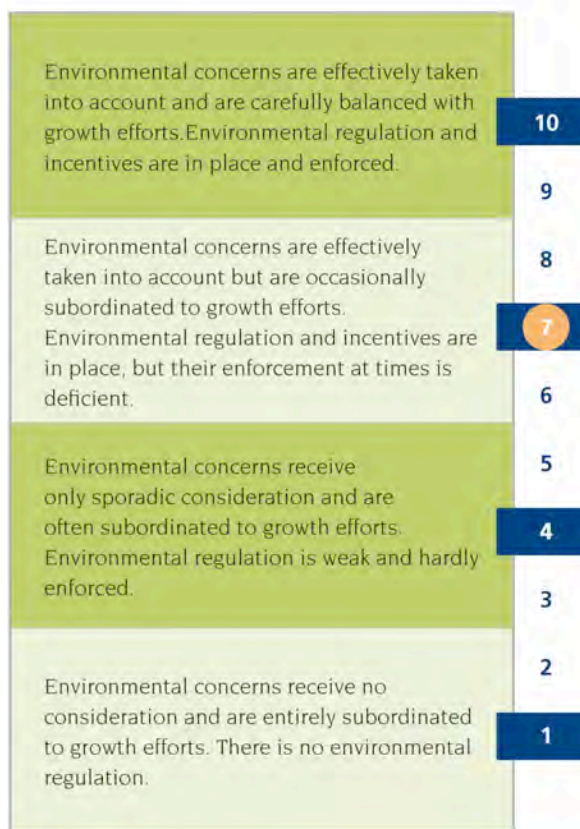
Second Book of the Social Code:  
[http://www.gesetze-im-internet.de/bundesrecht/sgb\\_2/gesamt.pdf](http://www.gesetze-im-internet.de/bundesrecht/sgb_2/gesamt.pdf)

Guaranteed Minimum Social Security  
[http://www.gesetze-im-internet.de/sgb\\_12/BJNR302300003.html](http://www.gesetze-im-internet.de/sgb_12/BJNR302300003.html)

**To what extent are environmental concerns effectively taken into account in both macro- and microeconomic terms?**

This question seeks to assess the extent to which externalization of costs or inadequate time horizons are avoided or restrained by environmental regulation. In macroeconomic terms, please determine whether tax and energy policies take ecological goals and measures into account (e.g. promotion of renewable energies, CO<sup>2</sup> reduction goals). In microeconomic terms, please establish whether the government sets incentives for environmentally sound consumption and investments to households and companies. Please take into account that a deeply engrained awareness of the environment or nature in society may serve as a functional equivalent.

*Reference Indicators: CO<sup>2</sup> emissions | Environmental Performance Index*



In recent years, there has been a change from traditional regulation policies to new environmental policies, such as eco taxes, tradable permits and environmental agreements. German environmental policy is embedded in and influenced by the European framework but, without doubt, Germany has established itself as a pioneer and impulse generator on the field of renewable energy, offshore-wind farms, cogeneration, and the energy-efficient redevelopment of buildings and the infrastructure. In the latest Environmental Performance Index Germany is considered to be a strong performer, achieving a score of 66.91. This equals rank 11 in the survey trailing behind the top group of strongest performers only by a margin of 1.91 points, but almost ten points behind the leading country Switzerland (cf. Environmental Performance Index 2012). The Fukushima meltdown in 2011, the largest nuclear disaster since the Chernobyl disaster of 1986, resulted in a highly disputed change in environmental policies. In May 2011, German Chancellor Angela Merkel, completely reversing her previous policy, announced nuclear phase-out by the end of 2022. Although the decision was welcomed by the public, certain questions remain unanswered. Long-term radioactive waste storage remains a challenge to public authorities, and the costs from the consequent changeover in the energy mix, the financing of the much needed grid expansion and additional renewable energy subsidies will result in ballooning energy costs for consumers in the medium run. In addition to that, it is highly plausible that the phase-out will result in a higher share of fossil fuels to the energy mix, threatening the CO<sub>2</sub> emission goals of the country. This will add negatively to the already mixed picture regarding negative externalities. Even



though environmental concerns were among the top issues of Germany's policy agenda over the past years, the applied instruments do not sufficiently activate detection mechanisms of the market. The extremely expensive subsidies for renewable energy represent a good example. Here, the central regulation is the Renewable Energy Act (Erneuerbare Energien Gesetz, EEG), which guarantees suppliers of renewable energy fixed prices over a long-term investment horizon. The EEG, in addition to its distorting effects on the price mechanism, is highly discriminatory between different types of renewables. In particular, EEG heavily promotes and subsidizes photovoltaic electricity production, which in comparison to other renewable sources is extremely expensive. This subsidy regime constitutes a massive inefficiency since it does not provide desirable incentives for an open competition between approaches and techniques for cutting back carbon emissions efficiently. An important market instrument is, however, applied to industrial carbon emissions where a European trading system for emission permits is in place and working. Its introduction – with all its complex problems – has been without doubt a fundamental step towards a market-oriented internalization strategy. A further market-consistent instrument is the energy tax, which is an indirect tax on the consumption of fossil and renewable fuels. However, the government faces a multitude of powerful pressure groups, such as the automobile and energy industry, that try to influence the government's environmental policies. But also new pressure groups have emerged representing the interests of, for instance, solar energy industries, which benefit from the massive subsidies in regenerative energies.

In spite of all these debates on instruments and strategies there is no doubt that environmental objectives have a very high priority across parties and a large majority of voters in Germany.

Annotations:

Environmental Performance Index 2012  
<http://epi.yale.edu/epi2012/rankings>  
sueddeutsche.de 27.08.2012

<http://www.sueddeutsche.de/wirtschaft/kosten-der-energiewende-stromkonzerne-erwarten-massive-preis-steigerungen-1.1450857>

## II. Steering Capability and Reform Capacities

### 5. Strategic Capacity

**Prioritization: To what extent does the government set and maintain strategic priorities?**

This question seeks to assess:

- the political capability to take on a longer-term perspective going beyond immediate concerns of electoral competition, to maintain strategic priorities over periods of crisis and stalemate
- the strategic capacity of the government to prioritize and organize its policy measures (gaining and organizing expertise, evidence-based policy-making, regulatory impact assessment, strategic planning units)

Make sure to identify reform drivers and defenders of the status quo, as political determination and institutional capacity may vary among different departments and ministries. Please also comment on how setting and maintaining strategic priorities might be constrained by government composition and by actors outside the government (e. g. powerful economic interests, lobbies, foreign governments, foreign donors).



The previous Grand Coalition government (2005-2009) in its last years did not display any attempt at strategic planning. On the contrary, strategic planning of the parties in government was mainly concerned with how to position best for the upcoming elections. The current government, consisting of Christian Democratic parties (CDU/CSU) and Liberals (FDP) was mainly concerned with crisis management during its first years in office. Thus, it's hard to find a longer-term perspective going beyond immediate crisis management or concerns of electoral competition. The nuclear phase-out in the wake of the Fukushima disaster in March 2011 serves as an example for the latter. It meant an about-turn in the government's nuclear policy because it revoked the prolongation of the operating times of nuclear power plants, which had been enacted at the beginning of the legislative term.

The expansion of subsidies of reduced hour schemes ("Kurzarbeit") can be seen as the continuation of German governments' long term strategy of preventing unemployment as the major policy goal. It has also been an element with major stabilizing effects through its positive impact on employment stability and consumer confidence. Annual unemployment rate in 2011 was 7.1 percent, which was even 0.7 percentage points lower than in 2008 (cf. Bundesagentur für Arbeit 2012: 58).

With regard to the structural prerequisites of strategic prioritization, the current liberal-conservative government did not introduce any important organizational devices for strategic planning. Concerning the Chancellors Office (PMO), the new head has again the status of a minister without portfolio to strengthen his position vis-à-vis the minister-presidents of the Länder and the heads of the respective ministries. The head

of the planning department does not strategically plan the tasks and timing of the government policies but is more concerned with the standing of Chancellor Merkel in public opinion.

Although the Federal Chancellery is equipped with up to 500 employees, the organizational structure of the German government is not very well equipped for strategic planning; instead, all main decisions are made by the heads of the respective political parties. In addition, ministerial autonomy contributes to the fragmentation of the governmental process and hinders a coherent policy orientation. Cabinet meetings are not able to compensate for that fragmentation because of the declining relevance of cabinet meetings, given the previous compromises between the coalition partners and the minister-presidents of the Länder.

Conversely, ad hoc commissions are convened for particularly complicated policies or major reforms and add scholarly advice and expertise to the strategic planning efforts of the government. The German Council of Economic Experts and the German Council of Environmental Advice give yearly reports or opinions on current policy problems. In addition, most ministries have external advisory bodies and in addition finance more or less scientific studies. Not all of the advisors are academic and independent and some give only legal advice. Their actual influence on policymaking is difficult to evaluate but there are no examples of highly influential independent academic advisors. Nonetheless, government and the ministries listen to the advisors. Examples concern the precise definition of active labor market policies. Here the academic in-depth evaluation of different instruments had a real impact, with ineffective instruments being

erased. That led to a major policy shift in 2003. Other examples relate to the design of tax reforms such as the business tax reform 2008.

Furthermore, in 2000, the revised rules of procedures of the federal ministries came into effect, which demand the realization of an impact assessment for every draft law (GFA). Thus, the regulatory impact assessment is institutionally anchored in Germany. The GFA aims at restraining the amount of state regulation to a necessary degree, involving alternative regulation possibilities and improving the quality of regulations. The GFA analyses the intended effects and the unintended side effects of the draft law as well as of the alternatives.

The Federal Ministry of the Interior has developed guidelines for the application of the impact assessment. The evaluation of the actual effects and therefore a retrospective GFA of existing laws and regulations is part of the assessment. There is a separate program for environmental impact assessment. Furthermore, there is the requirement that the budgetary and bureaucratic consequences of a draft law are assessed.

Despite the weaknesses in strategic planning capacity, the last German governments have clearly set long-run priorities and initiated the respective legislation. Over the last decade, German governments have paid heavy attention to long-term problems like structural unemployment, demographic change and public debt sustainability. As a consequence they have been able to realize significant reforms, such as Hartz reforms, new constitutional debt brake and pension reform with built-in demographic adjustment factors. These are important examples where German governments clearly work towards long-run societal objectives even if this is not

popular or even punished by voters, as in the Hartz reform and higher pension age.

Annotations:

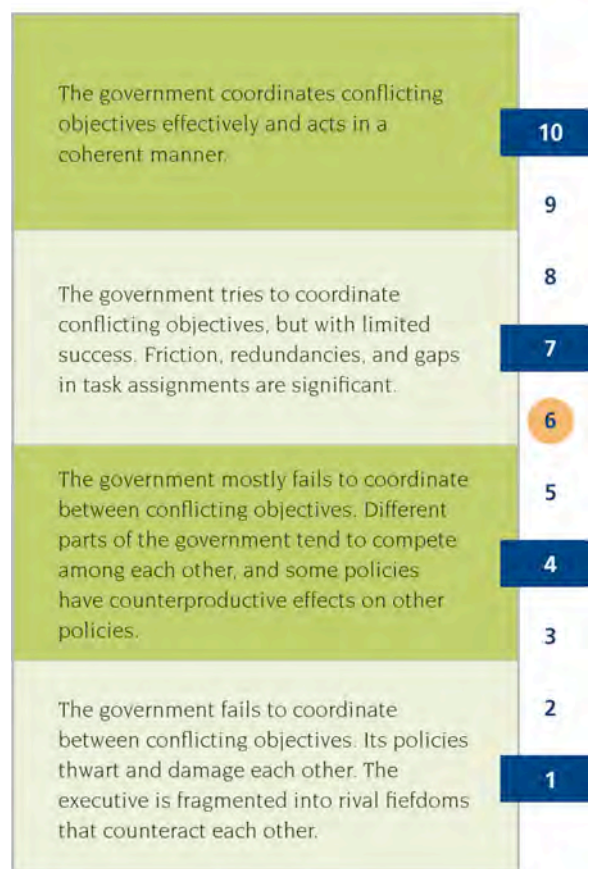
Bundesagentur für Arbeit 2012:  
<http://statistik.arbeitsagentur.de/Statischer-Content/Arbeitsmarktberichte/Monatsbericht-Arbeits-Ausbildungsmarkt-Deutschland/Monatsberichte/Generische-Publikationen/Monatsbericht-201208.pdf>

**Policy coordination: To what extent can the government coordinate conflicting objectives into a coherent policy?**

As many policies have conflicting objectives, reflect competing political interests and affect other policies, the government has to ensure that its overall policy is coherent. Successful coordination should:

- assure that trade-offs between policy goals are well balanced
- introduce horizontal forms of coordination to mediate between different departments of the state administration
- ascribe responsibilities in a transparent manner to avoid the negligence of tasks, redundancies, or friction between different government branches.

Various coordination styles (hierarchical-bureaucratic, informal-network, personalist, centralized, decentralized etc.) are possible and may be functionally equivalent. What matters is their impact on policy coherence.



In principle, line ministers are responsible for policies in their jurisdiction. Therefore, they have at least some leeway to pursue their own or their party's interest, potentially hampering effective policy coordination. This leeway is quite substantial, relative to other countries, because the coalition partners of the last two governments mostly abstained from sending watchdogs in the form of state secretaries to ministries led by the other partner. Nonetheless, the individual minister's room to maneuver is circumvented by the cabinet principle and the chancellor principle.

According to the cabinet principle, all important decisions have to be taken by the whole cabinet. Furthermore, the chancellor formally has the right to determine the guidelines of government policy and can propose ministers for appointment and dismissal to the federal president. Although most bills are only rubberstamped by cabinet without much discussion -- although chancellors hardly ever have enough power to determine policy guidelines in coalition governments and although a chancellor who sacks a minister from his coalition partner risks the breakdown of his coalition -- these regulations at least prevent extreme cases of individual ministers pursuing their or their parties' own interests.

In comparison to the other ministers the federal minister of finance has a relatively strong position. In particular with support of the chancellor he is able to reject requests of other ministries and therefore also has a control function in the government. In addition, there are a number of informal mechanisms to coordinate government policy. The last two governments had worked out lengthy coalition agreements. Thus, the coalition partners have not only agreed on compromises on the most important policy

issues but they have also agreed on procedures for dealing with conflicts should they arise during the legislative period.

Important mechanisms in this regard are the coalition committee that comprises the most important actors of the coalition parties and was quite effective in hammering out policy compromises under the Grand Coalition and the rule that governing parties will not vote against one another in important polls in the Bundestag. These mechanisms help ensure that ministers generally implement government programs.

According to the constitution, the ministers govern their division on their own responsibility. That is why the monitoring of line ministries is not very pronounced.

However, ministries are bound to the general guidelines constituted by the chancellor. In topics of general political interest the cabinet decides together. In case of dissent between the ministers the chancellor has the power to intermedicate. The Internal Rules of Procedure stipulate that the line ministers have to inform the chancellor about all important issues. The chancellery, however, in many cases lacks the expertise to monitor the line ministries' policy proposals effectively.

**Stakeholder Involvement: To what extent does the government consult with major economic and social interest groups to support its policy?**

This question assesses how successfully the government consults with economic and social actors in preparing its policy. Successful consultation is conceived here as an exchange of views and information that increases the quality of government policies and induces economic and social actors to support them.



In general, German interest organizations do have a considerable impact on policy formulation and on the agenda. Over a period of several decades, tripartite agreements between unions, employers' organizations and the government proved to be a formidable political means to increase societal support of governmental policies. The rather strict institutional setting facilitated high degrees of trust among the involved actors. In the wake of a growing number of alternative interests and a growing number of stakeholders, tripartite agreements to some degree lost their appeal, because interests of less powerful lobby groups (environmental, social interest and some religious groups) were not adequately considered. Today, German governments, ministries and parliamentary committees heavily rely on information provided by various interest groups and take their proposals or demands into account. Regarding policy formulation, interest groups play a key role providing in-depth information to ministerial officials. In the aftermath of the nuclear disaster in Fukushima, the German government decided to reassess the risk of nuclear plants and the opportunities of an environmental energy transition. In addition to the already working commission for assessing reactor security, an ethics commission for a safe energy supply was installed. The commission's objective was to assess the above-mentioned topics in a wider societal, economic, technical and, particularly, ethical context and was composed of several representatives of various stakeholders. Other examples of a multi-stakeholder incorporation for analysis and advice purposes can be found in the sustainable land management (LEGATO) funded by the Federal Ministry of Education and Research (Bundesministerium für Bildung und

Forschung, (BMBF). In 2010, an expert advisory commission, on behalf of BMBF, prepared reform propositions to remedy major inefficiencies in banking supervision. In order to increase the quality of government policies the commission was composed of several representatives of various stakeholders.

Annotations:

Legato

<http://modul-a.nachhaltiges-landmanagement.de/de/projekte/legato/projektstruktur/tp1-multi-stakeholder-analyse-und-beratung/>

<http://www.legato-project.net/news.php?n=4>

Bundesregierung: Task and members of the new ethics commission, 2011

<http://www.bundesregierung.de/Content/DE/Artikel/2011/04/2011-04-04-ethik-kommission.html?nn=437032>

Ethics Commission: Germany's energy transition: A collective project for the future, 2011

[http://www.bundesregierung.de/Content/DE/\\_Anlagen/2011/05/2011-05-30-abschlussbericht-ethikkommission\\_en.pdf?\\_\\_blob=publicationFile&v=2](http://www.bundesregierung.de/Content/DE/_Anlagen/2011/05/2011-05-30-abschlussbericht-ethikkommission_en.pdf?__blob=publicationFile&v=2)



**Political Communication: To what extent does the government actively and coherently communicate and justify the rationale for and goals of its policies to the public?**

A coherent communication policy is an important aspect of strategic governance, and ultimately in winning public acceptance for governmental policies. This question assesses governments' public communication efforts, and the extent to which policy-makers are able to coherently describe and justify goals and programs to the public.



In a formal sense, the federal government's press and information office is the focal point where information from all the ministries comes together. However, this does not guarantee a coherent communication policy, which is a difficult task for any coalition government. The constant tendency of coalition partners to sharpen their own profile versus the other government party explains a sometimes very dissonant communication policy. Government decisions are regularly explained to the public as compromises that do not perfectly satisfy either side in the coalition.

The current coalition government has displayed a rather incoherent communication type on a wide variety of issues. At the start of the legislative term, CDU/CSU and FDP have been unable to present their program in a coherent way. Instead, the governing parties have quarreled with one another in public on a large number of issues. Regarding the current Greek debt crisis, cabinet discipline was maintained in the early stages of the crisis. The cabinet members unanimously spoke of the pivotal importance to secure Greece's place in the European Monetary and Economic Union. In the wake of poor poll ratings for the Liberal Democrats, this position was severely undermined from within the cabinet. Philipp Rösler, the federal minister of economics and liberal party leader, defected from the official wording when he declared that in his view "an exit by Greece from the Eurozone lost its horror a long time ago" (The Telegraph 22.07.2012), thereby publicly opposing his own government's rescue plans. In the aftermath of the statement, the governing parties publicly disputed the governmental course, displaying an incredible amount of disunity in a matter of national and even supranational importance.

Annotations:

The Telegraph 22.07.2012

<http://www.telegraph.co.uk/finance/financialcrisis/9419288/German-minister-horror-of-Greek-euro-exit-has-faded.html>

[http://www.bfdi.bund.de/SharedDocs/Publikationen/Taetigkeitsberichte/TB\\_IFG/3TB10\\_11.pdf?\\_\\_blob=publicationFile](http://www.bfdi.bund.de/SharedDocs/Publikationen/Taetigkeitsberichte/TB_IFG/3TB10_11.pdf?__blob=publicationFile)

## 6. Implementation and Efficiency

### To what extent can the government achieve its own policy objectives?

This question seeks to evaluate a government's implementation performance against the performance benchmarks set by the government for its own work. The assessment should therefore focus on the major policy priorities identified by a government and examine whether declared objectives could be realized.



The Christian-liberal government's time in office has overshadowed by the financial crisis, disagreement within the coalition about the overarching strategy and little room to maneuver. Structurally, it makes a difference whether a German government also commands a majority in the Bundesrat, which was the case for the Grand Coalition until spring 2009 and for the new government until July 2010. Because the governments of the Länder are directly participating in central decisions in conjunction with a strong veto position of the judiciary and the growing importance of the European level, it leaves minimal room for the central government to maneuver and serve as obstacles to the unchallenged implementation of policy objectives. However, a comparison between the pledges agreed upon in the coalition agreement and the achievements realized until today reveals serious shortcomings, such as in the 2009 coalition agreement. A major tax reform failed to materialize, but a quickly recovering economy and buoyant tax revenues in 2011 led in 2012 to a call for tax cuts and tax simplification. With regard to the short-term reactions on the financial crisis, the government brought in a highly disputed third stimulus package. The law to accelerate economic growth ("Wachstumsbeschleunigungsgesetz") was adopted in December 2009 and included tax cuts and child-related income tax relief. The second important achievement of the new government has been the law to stabilize the financial situation of the social insurance system (Gesetze zur Stabilisierung der Finanzlage der Sozialversicherungssysteme) adopted in March 2010, which brought tax financed liquidity assistance for the Federal Employment Service and the national Health Fund as well as income tax relief for old age

provision. Besides these necessary short-term adjustments, the government was in discord on several topics. The publicly perceived rivalry between the coalition partners was particularly manifest in the first half of the legislative period.

With regard to long-term policies, the current government has failed to deliver on several agreements. The Coalition Agreement promised further investment in education by “deposit[ing] € 150 in a “future account” for every newborn child and award[ing] a bonus for deposits until the child reaches the age of majority” (Coalition Agreement 2009: p. 83).

This project has been delayed (Welt Online 2010) and eventually stopped (Financial Times Deutschland 2012). According to Annette Schavan, minister of education, this was due to difficulties securing financing and projected difficulties in implementation.

Another highly disputed policy that dominated government’s reform agenda was the introduction of a childcare supplement. “In order to extend access to additional public facilities and services, from 2013 we want to introduce a childcare supplement of €150, possibly in the form of a voucher, as a federal grant for children under three” (Coalition Agreement 2009: 96). The childcare supplement was hotly debated and criticized in and out of the Bundestag on grounds of giving wrong incentives and as a hindrance for integration. In 2013, one to three year-old children will receive €100, in 2014 the amount will rise to €150 (CDU et al). The political opposition claimed that other means were more appropriate to reconcile family and work/care policies. Daycare supply is in persistent need of further investment (SPD; Bundestag; Debate June 28). This is very dramatically shown by the still inadequate provision of childcare places. Coming into effect in 2013, even a social right to a

childcare place for one-year olds was instituted. But up until now, the provision of daycare remains 130,000 places short of the projected demand (cf. Spiegel 01.08.2012).

Annotations:

Coalitions reportedly stops “future account” for kids, Welt Online, 2010

<http://www.ftd.de/politik/deutschland/:zukunfts-konto-bildung-schavan-beerdigt-sparkonto-fuer-bildung/60156582.html> (Access: 12/04/09)

Schavan buries “Future account” for education, Financial Times Deutschland, 2012

<http://www.ftd.de/politik/deutschland/:zukunfts-konto-bildung-schavan-beerdigt-sparkonto-fuer-bildung/60156582.html> (Access: 12/04/09)

CDU, CSU and FPD 2012: Law proposal for the implementation of a childcare supplement (German),

<http://dipbt.bundestag.de/dip21/btd/17/099/1709917.pdf> (Access: 12/04/09)

ZEIT: Bargaining for the „cooker award“), 07/25/05

<http://www.zeit.de/online/2007/22/Kita-Betreuungsgeld> (Access: 12/04/09)

Bundestag: Expert hearing on childcare supplement - planned for 12/14/09 (German), 2012

[http://www.bundestag.de/dokumente/textarchiv/2012/39797395\\_kw37\\_pa\\_familie/index.html](http://www.bundestag.de/dokumente/textarchiv/2012/39797395_kw37_pa_familie/index.html) (Access: 12/04/09)

SPD: Extending kindergarden supply instead of childcare supplement (german)

<http://dipbt.bundestag.de/dip21/btd/17/095/1709572.pdf> (Access: 12/04/09)

Debate in the Bundestag, 28th June 2012

(german)

[http://www.bundestag.de/dokumente/textarchiv/2012/39631030\\_kw26\\_de\\_betreuungsgeld/index.html](http://www.bundestag.de/dokumente/textarchiv/2012/39631030_kw26_de_betreuungsgeld/index.html) (Access: 12/04/09)

Coalition Agreement 2009:

Growth. Education. Unity. The coalition agreement between the CDU, CSU and FDP.

<http://www.cdu.de/en/doc/091215-koalitionsvertrag-2009-2013-englisch.pdf>

**To what extent does the government make efficient use of available human, financial, and organizational resources?**

In assessing the government’s resource efficiency, please focus on the executive, including the administration and the cabinet.

*Reference Indicators: Personnel expenses relative to the services offered by the state | low number of politically motivated dismissals and new appointments of public servants | competitive recruiting procedures protected against political influence | transparent budget planning and implementation | low deviation of actual budget expenditures from the associated planned expenditures | effective and independent auditing | public administration that enables effective management under criteria of professional rationality | procedures and institutions to reform and modernize public administration.*



In general, the administration acts efficiently and uses assets most carefully. As mentioned above, German administration is highly differentiated and vertically structured. Regarding the wastefulness of government spending, Germany is only ranked 40 with a score of 3.7 in the latest Global Competitiveness Report. Although this seems to be a very poor result, trailing 2.4 points behind leading nation Singapore, it is still above the sample mean of 3.3. Moreover, in comparison to its peers, Germany is doing fairly well. It achieves a better score than the United Kingdom (3.4, rank 53), France (3.4, rank 56) and the United States (3.2 , rank 66) (Global Competitiveness Report 2011-2012: 397). Regarding administrative personnel, approximately 13 percent of the total workforce is employed in the areas of public administration, defense and social security. In comparison with the public expenditure (43 percent) this is a rather low public employment quota. Jurisdictions at all federal layers have cut back the number of civil servants over recent years and have increased significantly efficiency related measures like the number of tax declarations per staff in the tax administration. The public administration has also progressed in using modern IT tools (e-government) to improve the quality and efficiency of public services. For instance, citizens can submit their tax declarations online.

The efficiency of public spending is critically supervised by the state and federal courts of audit. These regularly come up with long lists of inefficiencies and questionable uses of money. But this also points to the fact that there are indeed independent watchdogs that put wasteful bureaucrats under pressure. In addition, recent years have seen clear progress in applying modern statistical evaluation tools to the large and expensive

labor market programs. Bad evaluations clearly tend to lead to a phase-out of the respective programs, which also indicates an increasing efficiency of spending. Recruitment procedures are for the most part competitive, transparent and fair, but sometimes, even on the highest administrative levels, objective criteria are overruled by subjective party affiliations.

Annotations:

<http://www.spiegel.de/politik/deutschland/entwicklungsministerium-niebels-personalpolitik-empuert-die-cdu-a-808563.html>

Statistisches Bundesamt Pressemitteilung  
Nr. 288 vom 23.08.2012  
[https://www.destatis.de/DE/PresseService/Presse/Pressemitteilungen/2012/08/PD12\\_288\\_813.html](https://www.destatis.de/DE/PresseService/Presse/Pressemitteilungen/2012/08/PD12_288_813.html)

## 7. Adaptability

### Policy Learning: How innovative and flexible is the government?

Innovation in policy-making often comes from learning. This learning goes beyond changes in policy outputs to include changes in the basic beliefs in guiding policy formulation. Learning opportunities are provided by:

- learning from past experience (effective internal monitoring and evaluation)
- observation and knowledge exchange (good practices, international cooperation)
- consultancy (academic experts and practitioners)

Flexibility refers to a government's ability to adapt to and take advantage of development opportunities inherent to a given political situation. Flexibility and learning allow governments to replace failed policies with innovative ones. If possible, provide empirical evidence on whether policy learning happens coincidentally or if there are institutionalized mechanisms that facilitate innovation and flexibility in policy-making.



As in other countries, the influence of EU origin regulations is significant and the German legal system is strongly influenced by EU law, but the federal government does not have a central policy lead for the management of EU affairs.

Regarding monitoring as a prerequisite for effective policy learning, the picture is inconsistent, too. Within the government, according to the constitution the ministers govern their division on their own responsibility. However, they are bound to the general guidelines constituted by the chancellor.

The activities of executive agencies are not only subject to legal supervision but also to functional supervision. Functional supervision implies the review of decisions taken by the agency but also the imposition of administrative instructions. This holds for the federal as well as for the regional level.

Despite this control mechanism the ministries have not always made use of this possibility. The Audit Office has revealed deficiencies in the implementation of functional supervision by the line ministries. Federal structures with their various layers of governments and different institutional actors pose specific problems in terms of policy learning and adaptability to international and supranational developments. The federalism reform of 2006 contributed to the streamlining of the processes.

For example in the field of education policies, the shift of responsibility towards the Länder level led to a growing number of schooling experiments. Competitive federalism in this regard enables states to experiment with practices from a variety of approaches, counting on diffusion and imitation processes of best practices. Unfortunately, Germany often falls short in utilizing its structural potential. The fact that the federal states have



the competence for education often results in uncoordinated and unstructured “push and pull” policies, meandering between competitive and centralizing tendencies without recognizing federalism as a means of promoting best solutions.

As mentioned above, in order to address challenges posed by the financial crisis and other structural challenges, a constitutional debt limit was introduced as part of the federalism reform of 2009. Faced with significant complaints from the business sector regarding red tape, the federal government launched a major program to reduce administrative burdens. The creation of a Better Regulation unit in the federal chancellery, together with the establishment of an independent advisory body, the National Regulatory Control Council (NRCC) has lately been of growing importance in matters of better regulation and can be seen as an example of policy learning. However, the measures are not clearly linked to broader economic policies and there is no joined up perspective to avoid fragmentation of the different programs on different levels. With respect to large spending programs, such as active labor market policies, Germany has turned to an evidence based evaluation using independent expertise. The evaluations’ results feed back into policy decision and optimizations of the instruments.

Furthermore, the government heavily relies on independent research and expert advice in preparing legislation. For example, the Tax Simplification Act 2011

(Steuervereinfachungsgesetz) was prepared by a comprehensive study of compliance costs associated with the German tax system. Several of the suggestions made by the independent experts appeared in the act. Such examples demonstrate that learning

processes are consciously integrated into government decisions.

In general, policy learning that leads to institutional reforms to improve the management capacities of the government is extremely rare in Germany.

**Institutional Learning: To what extent does the government improve its strategic capacity by changing the institutional arrangements of governing?**

Strategic capacity is the capacity to take and implement political decisions that take into account the externalities and interdependencies of policies, are based on scientific knowledge, promote the common goods and represent a long-term orientation. Institutional arrangements include the rules of procedure and the work formats defined there, in particular the cabinet, the office of the head of government, the center of government, the portfolio of ministries, the advisory staffs of ministers, and the head of government as well as the management of relations with parliament, governing parties, ministerial administration, and public communication.



In general, institutional reforms to improve the management capacities of the government are extremely rare in Germany. As in other countries, strategic capacities and reform efforts are heavily influenced by the path dependencies resulting from constitutional and public governance structures and traditions. This system of silo ministries, an inward looking administration and a weak center poses significant problems for speeding up and responding to new challenges of governing. Not least, Germany's federal system, which gives the Länder a crucial role in respect to its own areas of competence and the transposition and implementation of federal legislation, causes a complex environment with many institutional veto players across different levels. Thus, strategic capacity is low owing to institutional and organizational inertia. One exception is the federalism reform from 2006 (Föderalismusreform I), which clarified the relationship and division of competences. It contributed to the streamlining of the processes by, inter alia, abolishing the framework legislation, i.e. a federal legislation with a wide legislative discretion by the Länder, leading to dozens of different acts linked to the implementation of one directive. It also relocated a number of previously concurrent competences either to the federal or to the Länder level and reduced the scope for political blockages by reducing the number of laws requiring the consent of the Bundesrat. Between September 2006 and February 2009, just 39 percent of laws required the consent of the Bundesrat, compared to 53 percent before the reform. The number of cases in which the mediation committee between the Bundestag and the Bundesrat had to take action went down from 11.8 percent between 1998 and 2002 and

22.9 percent between 2002 and 2005 to 3.3 percent between 2005 and 2009.

To address challenges posed by the financial crisis and other structural problems, a constitutional debt limit has been introduced (Schuldenbremse) as part of the federalism reform of 2009 (Föderalismusreform II) which restricts the cyclically adjusted budget deficit of the federal government to a maximum of 0.35 percent of GDP and requires balanced cyclically adjusted budgets for the Länder. As result of a transitional rule, the reform will become binding for the central government in 2016 and for the Länder in 2020. Its aims are clear prior commitments to a fiscal consolidation, greater transparency and clarity, and consistency with the European Stability and Growth Pact.

Annotations:

OECD: Better Regulation in Europe: Germany, 2010

Annual Report of the German National Regulatory Control Council, 2009

### **III. Track record of past crisis management (if applicable)**

*Is there evidence from historical events that the country and its society have already mastered economic and political shocks in the past?*

Germany, after World War II, has mastered various severe crises from which two are outstanding. First, after the defeat in World War II, Germany recovered very quickly and was able to rebuild its economic structures and eventually launched an “economic miracle” in the fifties and sixties of the last century. Much more important for an experience in crisis management was the German Unification after the breakdown of communism and the subsequent downfall of the Berlin wall. In an extremely short window of opportunity, the German government had to restructure the entire fiscal, economic, social and political system of the former GDR and to organize a huge reallocation of resources from the western to the eastern parts of Germany. The management of the Unification process was mainly organized by the government, senior Ministry officials and high civil servants. In addition, the entire process was negotiated and/or supported by the social partners and the main political parties. However, the rationale of decision-making of the government was mainly political and not based on rational and/or efficient premises.

*Does the political system facilitate crisis remediation in a timely manner?*

The political system does not facilitate crisis remediation in a timely manner. The main reason for this is the federal structure of the German political system and the built-in veto-points and institutional constraints. As a consequence, decision-making is not only a highly complex concern but also highly time consuming. Decision-making in a complex multi-level system requires complicated bargaining processes in which veto players either have to be argued into a consensus or compensated by financial side payments. Unfortunately, the latter is often the case. However, the experience with the financial and debt crises 2008-2012 has demonstrated that decisions can be taken swiftly and with large majorities if the objective need to act is high. The political system is obviously based on the consensus that a particular party or federal interest must step back if there are exceptional challenges.

*Is the signaling process between decision makers (government, central bank, employers, employee representatives) so well established that confusion about (and resistance to) the expected outcome of decisions by one decision maker on the others can be avoided or at least minimized?*

Crisis management is mainly a problem of mediating various interests and/or a power play between the actors involved. Saying this, it is clear that communication and deliberation are likewise part of any political adaptations to crises. To be more concrete, the signaling processes are not well established and, in addition, the messages and proposed solutions are not clear, but ambiguous. The reason is simply that the interests of all political and other interested players are better fostered in being unclear and ambivalent because one will have more options when it comes down to concrete adaptation measures.

*Are there constitutionally anchored and politically accepted procedures for sequencing and timing countermeasures in a crisis?*

There are no constitutionally anchored and politically accepted procedures for sequencing and timing of countermeasures. On the contrary, ad hoc adaptations have to be produced within the normal political procedures of politics, which are laid down in the constitution and worked out through political practices. In addition, the constitutional court repeatedly ruled that the government is not allowed to ignore or inadequately inform parliament or parliamentary committees in trying to accelerate the adaptation processes.

*Are precautionary measures (e.g., deposit insurances, foreclosure procedures) in place that can protect the most vulnerable groups against the full effect of a crisis?*

Are precautionary measures (e.g., deposit insurance, foreclosure procedures) in place that can protect the most vulnerable groups against the full effect of a crisis?

There are only rare precautionary measures to protect the most vulnerable groups against the full effects of the crises.

However, German banks have deposit insurance schemes in place that exceed the minimum EU requirements by far. Thus, savers are heavily protected. Workers do not only directly benefit from a generous 12 month-income protection but also indirectly from subsidies for temporary part-time working schemes (Kurzarbeit), which proved to be highly efficient in the recent crisis. Which groups are most vulnerable is quite unclear and they will change from crisis to crisis; therefore an assessment is very difficult .

*Are automatic stabilizers in fiscal policies sufficiently strong to contain surges of massive unemployment?*

Automatic stabilizers or ‘automatic government’ are rare in political life. The reason is simple: politics is not willing to bind itself to decisions on adaptation or crises measures. There are some automatic stabilizers that may be of interest: pension adjustments are made on the basis of a complex mathematical formula, which automatically takes into account a high variety of economic and demographic indicators and subsequently adjusts the pensions on a yearly basis. However, the basic idea could or should be a blueprint for other automatic stabilizers, which then should be able to adjust a variety of important policy fields in a situation of crisis.

In addition, Germany’s fiscal and welfare system implies some other substantial automatic stabilizers: Incomes of unemployed are stabilized and jobs are protected through the part-time work subsidies. Furthermore, the new constitutional debt brake does not impair the working of automatic stabilizers. The deficit caps for the federal and the state level refer to structural deficits. Thus, actual deficits are allowed to fluctuate around zero over the course of the business cycle.