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Systems of Government in Some Foreign Countries: Germany

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EXECUTIVE SUMMARY

1. In Germany, the Head of State is the Federal President, who is elected by the Federal Convention. The Federal President has a wide variety of functions which include representing the country, appointing and dismissing federal judges and senior federal civil servants, promulgating laws and declaring an emergency. In all these function, however, the President is merely implementing the will of the Government or Parliament and has no policy-making role

2. The Federal Chancellor is the Head of Government, who is nominated by the Federal President and elected without debate by the Bundestag (the Federal Parliament). The Chancellor has the power to appoint and dismiss Federal Ministers. The Cabinet consists of the Chancellor and Federal Ministers. Neither the Chancellor nor the Federal Ministers are required to be members of the legislature.

3. Germany has a bicameral legislature: the two houses are the Bundestag and Bundesrat. The Bundestag is the parliamentary assembly of freely elected representatives of the people. The Bundesrat is the institution through which the governments of the 16 states take part in federal legislative and administrative processes.

4. In relation to the executive-legislative relationship, the Chancellor is the only member of the Federal Government elected by the Bundestag, and he alone is accountable to it. This accountability is manifested in the provision of a constructive vote of confidence to bring down a Chancellor who loses the support of the Bundestag.

5. Bills can be introduced by the Federal Government, the Bundesrat or at least 5% of members of the Bundestag. Individual members of the Bundestag do not have the right to introduce legislation. The Federal Government has the power to block a financial bill to come into force if it carries financial implications.

6. The Bundestag uses a variety of means to monitor the executive, which include setting up permanent committees, appointment of investigative committees, debates, and raising of questions.

7. Political parties in Germany are regulated by the Constitution and the Law on Political Parties. The Law on Political Parties defines what financing is permissible for a political party. Political parties that obtain 0.5% of votes in Bundestag or European Parliament elections or 1.0% in state elections are eligible for reimbursement of election expenses.

SYSTEMS OF GOVERNMENT IN SOME FOREIGN COUNTRIES: GERMANY

PART 1 - INTRODUCTION

1. Background

1.1 In January 2000, the Panel on Constitutional Affairs requested the Research and Library Services (RLS) Division of the Legislative Council (LegCo) Secretariat to conduct a study on systems of government in some foreign countries.

1.2 This report forms part of the series of studies discussing systems of government. There are seven separate research reports (RP03/99-00 to RP09/99-00) on this subject.

2. Scope

2.1 The scope of the research, as agreed by the Panel, covers

- the election or appointment of the Executive;
- the election or appointment of the Legislature;
- the structural and operational, formal and informal inter-relationships between the Executive and the Legislature; and
- other features of political participation, e.g. referendum, constitutional assembly or constitutional convention, political parties, etc.

2.2 This research studies the systems of government of the United States of America (the United States), the United Kingdom, the French Republic (France), Federal Republic of Germany (Germany), Japan, New Zealand and the Republic of Singapore (Singapore). The United States is chosen because it is a typical form of presidential government. The United Kingdom is chosen because its Executive ministers are all members of the Legislature. France is chosen because its Executive ministers are not allowed to be members of the Legislature. Germany is chosen because it allows but does not require Executive ministers to be members of the Legislature. Japan, New Zealand and Singapore are chosen because their electoral laws have been reformed in recent years.

3. Methodology

3.1 Information for this report is obtained from the Internet, government reports and relevant academic materials.

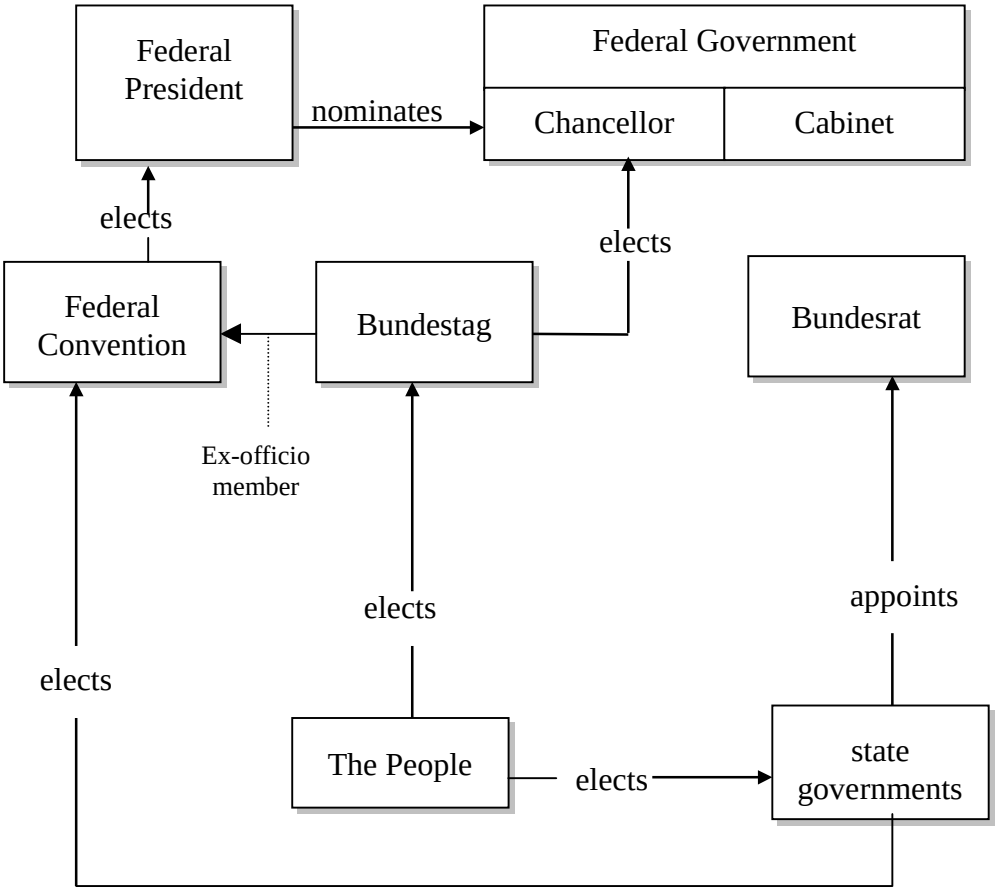
3.2 Unless specified otherwise, all reference to legal articles in this report refer to relevant articles in the Basic Law for the Federal Republic of Germany, as amended up to 16 July 1998.

PART 2 - SOME BASIC INFORMATION

4.1 Germany is a federal republic with a population of 8 204 million in 1998. It has a parliamentary system of government, a bicameral legislature (the Bundestag and Bundesrat)[1] and a judiciary, which includes a constitutional court (see Figure 1). The Head of State is the Federal President, who is separated from the Head of Government (the Federal Chancellor). The Federal Chancellor, who is elected by the Bundestag, leads a Cabinet consisting of Federal Ministers. Neither the Federal Chancellor nor the Federal Ministers are required to be members of the legislature.

4.2 Germany's current Constitution, the Basic law was promulgated by the West German Parliamentary Council on 23 May 1949. After the unification of West and East Germany in 1990, the Basic Law became the Constitution of the whole country.

Figure 1 - Political Institutions of the Federal Republic of Germany



[1] The Bundestag is usually referred as the Federal Parliament, while the Bundesrat as the Federal Council.

PART 3 - THE EXECUTIVE

5. Head of State

5.1 The Head of State of the Federal Republic of Germany is the Federal President (President).

Selection of Candidates

5.2 The President, who must be at least 40 years old, must not be a member of the Government or any legislative body and must not hold any other salaried office.

Election Method

5.3 The President is not directly elected. He or she is elected by the Federal Convention, a constitutional body which convenes for this purpose. It consists of members of the Bundestag and an equal number of members elected by state parliaments. A presidential election may run as many as three ballots; a majority is needed to elect a candidate on the first and second ballots, but a plurality suffices for election on the third ballot. The President is elected for a term of five years and he or she may be re-elected once only.

Removal

5.4 Article 61 (1) provides that "The Bundestag or the Bundesrat may impeach the Federal President before the Federal Constitutional Court for wilful violation of the Basic Law or any other federal law". A vote of one-fourth of either house of the legislature is sufficient to introduce a motion for impeachment. A two-third vote of either house of the legislature is required, however, for the matter to proceed to a trial. If the Federal Constitutional Court finds the President having wilfully violated the Basic Law or any other federal law, it may declare the office vacant.

Functions and Powers

5.5 The President, who is the ceremonial Head of State, has a wide variety of functions which include representing the country, appointing and dismissing federal judges and senior federal civil servants, promulgating laws and declaring an emergency. In all these functions, however, the President is merely implementing the will of the Government or Parliament and has no policy-making role.

5.6 The President has the power to conclude treaties with other states on behalf of the Federation, accredit and receive envoys and represents the country in its international relations, yet in doing so his function is a purely ceremonial one.

5.7 The President is conferred with the power to appoint and dismiss Federal Judges, federal senior civil servants and commissioned officers of the Armed Forces.

5.8 In legislative areas, the President is responsible for signing federal laws enacted in accordance with the Basic Law and for promulgating them in the Federal Law Gazette.

5.9 Orders and directives of the President require the counter-signature of the Federal Chancellor or a responsibility Minister, except for the appointment or dismissal of the Chancellor or the dissolution of the Bundstag (Article 58).

6. Federal Chancellor

6.1 The Chancellor is chairman of the Cabinet and Head of Government. According to Article 62, the Federal Government of Germany consists of the Federal Chancellor (Chancellor) and the Federal Ministers (Ministers), who together make up the Cabinet.

Selection of Candidates

6.2 The Chancellor is not required to be a member of the legislature.

6.3 Although the Chancellor is chosen after the election to the Bundestag, each party will nominate its Chancellor candidate, who is usually the leader of the party, before the election. In Germany, it is rare for one party to gain an absolute majority. Immediately after the election, political parties, through negotiations, come up with their preferred Chancellor candidate. The President then proposed the Chancellor candidate to the Bundestag.

Election Method

6.4 The Chancellor is nominated by the President and elected without debate by the Bundestag (Article 63).

6.5 Until now, all the candidates proposed by the President have been elected.

Removal

6.6 The Bundestag may express its lack of confidence in the Chancellor only by electing a successor with a majority vote (known as "constructive vote of confidence"). The President must then appoint the person elected (Article 67). A mere vote of no-confidence in the Chancellor cannot be moved in the Bundestag.

6.7 Since 1949, there were two occasions on which Article 67 was invoked. One was in 1972, a constructive vote of confidence was raised, but it was short of an absolute majority. Another one was in 1982, a similar motion nominated Helmut Kohl as the replacement of Helmut Schmidt. The motion was carried this time, and Helmut Schmidt removed from office by the Bundestag. In general, German's Chancellors enjoy a certain security of tenure (see Table 1 for reasons why they left office).

Table 1 - Reasons Why Federal Chancellors have Left Office Since 1949

Name	Term of Office	Age at Assumption of Office	Reason
Konrad Adenauer	1949-1963	73	Retired, aged 85, but under pressure from party and coalition partner
Ludwig Erhard	1963-1966	66	Resigned under pressure from party and coalition partner
Kurt-Georg Kiesinger	1966-1969	62	After election, FDP allied with SPD
Willy Brandt	1969-1974	56	Resigned following Guillaume spy affair
Helmut Schmidt	1974-1982	56	Lost a constructive vote of confidence
Helmut Kohl	1982-1998	52	After election, CDU coalition was defeated.

Source : Robert Elgie, *Political Leadership in Liberal Democracies*, London: Macmillian Press Ltd., 1995, p.83 , updated by the author.

Remark : FDP: Free Democratic Party; SPD: Social Democratic Party; CDU: Christian Democratic Union

The Federal Chancellery

6.8 The Chancellor's work is supported by the Federal Chancellery, which is run by the head of the Federal Chancellery. The head of the Federal Chancellery is a Federal Minister who is assisted by a staff of about 500. The Federal Chancellery prepares the weekly Cabinet meeting and decisions to be taken by the Cabinet, monitors the implementation of Cabinet decisions and coordinates the replies to all parliamentary interpellations.

Functions and Powers

6.9 The German chancellorship is a powerful political institution. Article 65 defines the powers of the Chancellor and Ministers. The Chancellor determines and is responsible for the general policy guidelines. The Chancellor, not the Federal Government, is accountable to the Parliament. Only the Chancellor can propose a vote of confidence and request for the dissolution of the Bundestag (see paragraph 10.7).

6.10 The Chancellor has the power to name members of the Cabinet and can create or abolish Federal Ministerial Departments. The Chancellor also summons and holds Cabinet meetings.

7. The Cabinet

Appointment /Removal

7.1 Federal Ministers (Ministers) are Cabinet Ministers, they are appointed and dismissed by the President upon the proposal of the Chancellor. Ministers are not required to be members of the legislature. However, Ministers are usually members of the Bundestag. Certain Ministers are provided for in the Basic Law, such as the defence and finance Ministers.

7.2 In practice, the Chancellor's ministerial appointment power is rather limited. In German coalition politics, Chancellors usually have had to accept the ministerial nominations of their coalition partners.

7.3 German Cabinet Ministers have usually achieved their rank after an extensive and successful apprenticeship in Parliament, a political party, or a professional career.

7.4 The Bundestag can ask the Chancellor to dismiss a minister, but he may refuse.[2] When the Chancellor loses office, so does Ministers.

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[2] The Basic Law makes no provision for motions of no confidence in individual ministers.

Size of the Cabinet

7.5 Besides the Chancellor, all Ministers, together with the State and Parliamentary Secretaries[3] to the Chancellor's Office, and the Federal Press Office, belong to the Cabinet. The Chancellor determines the number of Ministers and their responsibilities. The size of the Cabinets has varied from 15 to 26 members (see Table 2). All Cabinets formed since 1949 have been based on coalitions of two or more political parties.

Table 2 - The Strength of the Chancellor's Party in the Governing Coalition, 1949-94

Period	Chancellor	Cabinet size	Chancellor's party (% of Ministers)	Other parties (% of Ministers)
1949-53	Adenauer (CDU)	15	36	64
1953-57		19	55	45
1957-61		19	88	12
1961-63		24	65	35
1963-65	Erhard (CDU)	26	59	41
1965-66		24	62	38
1966-69	Kiesinger (CDU)	23	42	58
1969-72	Brandt (SPD)	19	80	20
1972-74		21	71	29
1974-76	Schmidt (SPD)	20	73	27
1976-80		20	73	27
1980-82		21	75	25
1982-83	Kohl (CDU)	23	50	50
1983-87		25	53	47
1987-90		26	55	45
1990-94		23	60	40

Source : Robert Elgie, *Political Leadership in Liberal Democracies*, London: Macmillian Press Ltd., 1995, p.93.
Remark : CDU: Christian Democratic Union; SPD: Social Democratic Party

[3] The State Secretary, as a career civil servant, is responsible for the continuity of departmental administration. The Parliamentary Secretary, as a Member of Parliament, is concerned with relations and communications among Ministers and political party groups

Functions and Powers

7.6 Under the guidelines set by the Chancellor, each Minister conducts the affairs of his department independently and on his own responsibility. The Cabinet "decides on differences of opinion between Ministers" (Article 65).

7.7 The German Cabinet is not an institution where Government policy is openly discussed, debated and finally determined. Usually, the Cabinet approves, rather than makes, decisions. The Cabinet is more for coordination than for collective decision making. Most Government policies are hammered out in bilateral negotiations between individual Ministers and the Chancellor. A Cabinet Minister is aided by at least two State Secretaries: (1) a career civil servant responsible for the administration of the ministry, and (2) a Parliamentary State Secretary who assists in the political aspects of the Minister.

8. Political Civil Servants

8.1 Political civil servants are those who hold an office for the exercise of which they must be in agreement with the fundamental political aims of the Government. The office can be created or cancelled at any time without stating reasons. There is a relatively small number of political servants. Only about 400 of the 130 000 civil servants in the direct federal service are political civil servants. Political civil servants in the Federal administration are, for instance, State Secretaries and Under-Secretaries of State in the Ministries, senior civil servants in the Foreign Office and in the security services and the President of the Federal Criminal Police Office.

PART 3 - THE LEGISLATURE

9.1 Germany has a bicameral legislature: the two houses are the Bundestag and Bundesrat.

10. Bundestag

10.1 The Bundestag is the parliamentary assembly of freely elected representatives of the people.

Composition

10.2 The Bundestag consists of at least 656 members, half of whom are elected in the constituencies. The other half are elected by proportional representation from lists of candidates drawn up by the political parties in each federal state. The number of members is provided in the Federal Electoral Act.

10.3 In the current 14th election term (1998-2002), the Bundestag has 669 members. The number of members will be reduced to 598, to be effective in the 15th electoral term (2002-2006).

Election Method

10.4 The Bundestag is elected every four years, unless dissolved sooner. The Basic Law provides that elections must be direct, free, equal and secret, but details are left to be worked out by the Federal Election Act (Article 38). Each voter casts two votes--the first for a constituency candidate and the second for a party.

10.5 Half of the members of Bundestag are elected through voting a candidate for the relevant constituency, the candidate who wins the most votes to have been elected.

10.6 The party vote is very important because it is used to determine the number of seats a party will have in Bundestag. The seats won in the district constituency contests are deducted from this total, and the party's remaining seats are filled with candidates from the state party lists. If a party wins more district mandates than it would be entitled to under proportional representation, it retains these extra seats, and the size of Bundestag is increased. Since 1953, a party has had to win at least 5% of the vote casted or three district mandates to be represented proportionally. However, this 5% rule did not apply in the all-German election in 1990.

Dissolution

10.7 The Chancellor lacks the British Prime Minister's power to dissolve the Parliament. Moreover, the President may dissolve the Bunderstag under two conditions, which are clearly specified in the Basic law:

(1) if none of the candidates nominated for the office of Chancellor has secured an overall majority of the votes in the Bundestag after three ballots, the President can either appoint a candidate who obtained a relative majority or dissolve the Bundestag within seven days of the third ballot (Article 63 (4)).

(2) if a motion of the Chancellor for a vote of confidence does not obtain the support of the majority of the Bundestag, the President may, upon the proposal of the Chancellor, dissolve the Bundestag within 21 days (Article 68(1)).

10.8 Article 68(1) also stipulates that the right to dissolve lapses as soon as the Bundestag, with a majority of its members, elected another Chancellor. Since 1949, the Bundestag has been dissolved only twice before its term came to an end: in September 1972 and in January 1983. In both instances the Presidents used the second route for dissolution.

Functions and Powers

10.9 The Basic Law assigns to the Bundestag the primary functions of law-making, the election of the Chancellor, the control of the Federal Government, the election of half of the membership of the Federal Constitutional Court, and special responsibilities for supervision of the bureaucracy and military.

10.10 The legislative power of Bunderstag is provided in the Basic Law that "Bills shall be adopted by the Bundestag." (Article 77(1)).

10.11 In Germany, there is a division of legislative powers between the federal and state governments (Articles 70 to 75). Areas for exclusive federal legislation include foreign affairs and national citizenship. In some policy areas, framework laws are passed at the federal level, the main principles of which the state authorities must then incorporate into their legislation in similar policy areas. These include areas in principles of higher education, press and film industry, and land distribution. In some policy areas, the legislative powers of the federal and state levels are concurrent. The states may legislate in areas where the Federal Government has not already done so. They include areas such as civil and criminal law and sentencing, registration of births, deaths and marriages, and the law of association and assembly.

10.12 The Bundestag has the power to initiate and carry out the impeachment of the President (see paragraph 5.4). Also, the Bundestag may remove a Chancellor from his or her office by passing a constructive vote of confidence (see paragraph 6.4).

10.13 According to Article 94, the Federal Constitutional Court consists of federal judges and other members. Half of its members is elected by the Bundestag.

10.14 No proposed amendments to the Basic Law can be adopted without a two-third majority consent in both Bundestag and Bundesrat.

10.15 Article 45a empowers the Bundestag to involve itself in matters related to Foreign Affairs and Defense, by providing that it may appoint a Committee on Foreign Affairs and a Committee on Defence. The Committee on Defence has the powers of a committee of inquiry (see paragraph 14.4).

10.16 The Bundestag also plays an active role in the process of European integration. Article 23 (1) provides that the sovereign powers of the German Federation may be transferred by law with the consent of the Bundestag. The Bundestag must be given the opportunity to involve in matters concerning the European Union (EU) and is consulted when the Government participates in legislative activities of the EU.

10.17 Based on the provisions in relevant statutes, the Bundestag appoints its members or other individuals to a number of Government steering and supervisory bodies. For example, the Bundestag appoints three of its members to the Debt Committee of the Federal Debt Administration and nine of the 18 members of the Regulatory Council of the Federal Ministry of Posts and Telecommunications.

11. Bundesrat

11.1 The Bundesrat is the institution through which the governments of the 16 states take part in federal legislative and administrative processes.

Composition

11.2 The Bundesrat is composed of members appointed by the state governments. It elects a president every year and makes decision by a majority vote. The members' votes, which must be cast in blocs, are based on the population of each state. Each state has a minimum of three votes and a maximum of six votes.

11.3 The Bundesrat membership usually comprises state's prime ministers, their federal affairs ministers, finance ministers, and other appointed members. Other state's cabinet ministers usually become deputy members of the Bundesrat, and they enjoy equal rights when sitting in for the permanent members.

11.4 Membership in the Bundesrat does not enjoy parliamentary immunity or indemnity. Simultaneous membership in the Bundesrat and Bundestag is not allowed.

Appointment Method

11.5 Members of the Bundesrat are appointed and recalled by their respective state governments.

Dissolution

11.6 The Bundesrat has no legislative terms; it sits permanently.

Functions and Powers

11.7 In the legislative area, more than half of all federal bills require the formal approval of the Bundesrat. This applies especially to bills that concern vital interests of the states, for instance their financial affairs or their administrative powers.[4] In other cases, the Bundesrat only has a right of objection, but this can be overruled by the Bundestag (for detailed discussion on legislative process, see paragraphs 12.1 to 12.6).

11.8 The Bundesrat has the power to initiate the impeachment of the President (see paragraph 5.4).

11.9 Half of the members the Federal Constitutional Court is elected by the Bundesrat. The Bundesrat can institute proceedings on questions regarding constitutionality and present its standpoint on proceedings before the Federal Constitutional Court.

11.10 No proposed amendments to the Basic Law can be adopted without the two-third majority consent in both Bundestag and Bundesrat.

11.11 The Bundesrat elects its president, who exercises the powers of the Federal President in the event of the latter's indisposition.

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[4] see Appendix I

11.12 The Bundesrat also actively involves itself in the process of the European integration by submitting position statements on specific EC proposals to the Cabinet for consideration.

12. Legislative Procedure

12.1 The legislative process in Germany is relatively complex. Bills may be introduced by the Federal Government or members of either house of the legislature. Before a Government bill is formally introduced, it passes through numerous phases of revision and consultation involving civil servants and Ministers at the federal and state levels, affected interest groups and the Chancellor's Office.

12.2 The Bundestag generally deals with bills in three readings. The bill is given a First Reading and then referred to a committee. At the Second Reading, it will be considered in detail, together with the committee proposals. A final vote on the bill will be at the Third Reading.

12.3 When a bill is passed by the Bundestag, it is referred to the Bundesrat. Bills affecting vital interests of the states are required to obtain the consent of the Bundesrat (see Appendix 1). Other bills become laws unless the Bundesrat raises an objection. The Bundestag is required to consider the bill again. If the Bundesrat votes against the bill with a simple majority or two-third majority of its members, the Bundestag needs to overrule the vote by a simple majority or two-third majority respectively.

12.4 Decisions of the Bundestag and the Bundesrat need a simple majority, provided a quorum is present. There are some cases (in particular constitutional amendment) which require a two-third majority.

12.5 In case of a dispute, the Bundesrat (for laws requiring the agreement of the Bundesrat and the Bundestag) can apply to the Mediation Committee. This Committee consists of 16 members of the Bundestag and 16 members of the Bundesrat. It attempts to find a compromise proposal for submission to both houses.

12.6 The President issues and promulgates federal statutes. The President has the right and duty to review the formal constitutionality of the law. If the President decides that a law is materially unconstitutional or that the legislative process has been unconstitutional, he or she has to veto it. Between 1949 and 1990, only six of 4 389 federal laws were vetoed.

PART 4 - EXECUTIVE- LEGISLATIVE RELATIONSHIP

13. Ministerial Responsibility

13.1 Article 65 provides for the basis of ministerial responsibility in Germany, which stipulates that:

> "The Federal Chancellor shall determine and be responsible for general policy guidelines. Within the limits set by these guidelines each Federal Minister shall run his department independently and on his own responsibility. The Federal Government shall settle differences of opinion between Federal Ministers. The Federal Chancellor shall preside over the conduct of Federal Government business in accordance with rules of procedure adopted by it and approved by the Federal President."

13.2 This article explains why the German system of Government is often referred to as a "Chancellor democracy". The Chancellor is the only member of the Government elected by Parliament, and he alone is accountable to it. This accountability is manifested in the provision of a constructive vote of confidence to bring down a Chancellor who loses the support of Parliament.

13.3 The second sentence of Article 65 sets out the "Minister Principle". Under the guidelines of policy laid down by the Chancellor, Federal Ministers conduct and are responsible for the business of their own department. The Chancellor is not allowed to intervene the day to day operation of the departments.

13.4 The notion of collective responsibility is not well developed in Germany. In a formal sense, Federal Ministers are only accountable to the Chancellor. On numerous occasions, they have disagreed publicly with their colleagues. Decisions by individual Ministers do not compel others to resign if they disagree.

13.5 The third sentence of Article 65 lays down the "Cabinet Principle", stating that the Federal Government [Cabinet] decides on differences of opinion between Ministers. Although German Ministers are nearly always members of Parliament, channels for the Cabinet to be accountable to Parliament are limited.

Initiation of Legislation

13.6 Bills can be introduced by the Federal Government, the Bundesrat, or at least 5% of members of the Bundestag (representing one parliamentary group). Individual members of the Bundestag do not have the right to introduce legislation.

13.7 If the bill is introduced by the Bundesrat or the Government, the other two bodies must first be given an opportunity to comment on the bill. Bills initiated by the Government are submitted first to the Bundesrat. Bills initiated by the Bundesrat go first to the Government, which sends them to the Bundestag. Bills initiated by at least 5% of the members of the Bundestag are introduced in the Bundestag first. The numbers of bills introduced in the 12th (1990-94) and 13th (1994-98) electoral terms of the Bundestag are shown in Table 3.

Table 3 - Number of Bills Introduced in the 12th and 13th Electoral Terms of the Bundstag

	12th electoral term (1990-94)	**13th electoral term (1994-98)**
Bills introduced	774	923
- by the Federal Government	402 (52%)	443 (48%)
- by the Bundestag	294 (38%)	329 (36%)
- by the Bundesrat	78 (10%)	151 (16%)
Bills adopted	463 (60%)	565 (72%)

Source : see appendix III.
Remark : ( ) percentage of Bills introduced.

13.8 From 1949 to 1990, a majority of bills (about 60 %) was introduced by the Government. The share of Governmental proposals has decreased to 52 % in the 12th Bundestag and 48 % in the 13th Bundestag. The Government was not less active, but instead, the Government chose to use their parliamentary groups to initiate bills. Many of these parliamentary initiatives actually originated from the executive. Between 1990 and 1994, 97 out of the 99 successful non-government laws enacted by the Bundestag were sponsored by one or more of the Government parties.

13.9 In case of a bill envisaging significant public expenditure (so-called finance bills), the Budget Committee of Bundestag is asked to investigate whether the bill is compatible with the financial condition during the First Reading. The Budget Committee's report is submitted directly to the plenary for the Second Reading. Unless the Budget Committee proposes a recommendation to cover such expenditure, the bill could not be adopted.

13.10 Examination of finance bills by the Budget Committee is for the purpose to avoid the Federal Government from exercising its power under Article 113. Under this Article, the Federal Government has the power to block a finance bill to come into force if it carries financial implications. It may also request the Bundestag to reconsider any bills it deems financially unjustifiable (see Appendix II). The Federal Government has in fact never exercised this power. In practice, ways to contain for new expenditure or to make up for losses in revenue are discussed during the Budget Committee's deliberations on the bill in question.

14. Monitoring of the Executive

14.1 Like parliaments in other countries, the Bundestag uses a variety of methods to monitor the Federal Government. They include appointment of investigative committees, debates, and raising of questions. Statistics on the Bundestag's work in the 12th and 13th electoral terms are given in Appendix III.

Permanent Committee

14.2 The Bundestag's major instruments of executive oversight are its Permanent Committees, which are set up for the entire electoral term. The Bundestag committees are much more powerful than their counterparts in Britain or France. Most of these 20 or so committees parallel Government Ministries. Under Article 43 (1), all committees of the Bundestag are entitled to compel the attendance of Ministers.

14.3 Some Permanent Committees are charged with special functions[5], one of which is the Petitions Committee. Article 17 states that every person has the right to address petitions to the Bundestag. The Petitions Committee has the power not only to summon a member of the Government to attend its meetings, but also to demand information from the Government and its subordinate authorities.

Committee of Inquiry

14.4 With the support of one quarter of its members, the Bundestag has the power to set up committees of inquiry to investigate specific issue. Committees of inquiry have the power to summon witnesses and demand information from the Government. Between 1949 and 1990, 21 of the 27 investigative committees were initiated by the opposition.

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[5] Including the Budget Committee, the Defence Committee and the Foreign Affairs Committee.

Debates

14.5 Debates may vary in form and duration. They include (1) major debates on Government policy statements and budgets; (2) brief debates on specialized issues; and (3) debates on matters of current interest.

Interpellations and Questions

14.6 Major interpellations are usually concerned with matters of general political importance, which may be raised by a parliamentary group or at least 34 members. Each member of the Bundestag is allowed to raise two oral questions to the Government for each week in sittings and up to four written questions in a month. Since 1988, there has been an arrangement whereby members of the Bundastag can raise questions concerning the deliberations of the Federal Government immediately after its weekly Cabinet meetings. The number of interpellations and questions raised in last two electoral terms can be found in appendix III.

The Parliamentary Commissioner for the Armed Forces

14.7 According to Article 45b, the Parliamentary Commissioner for the Armed Forces assists the Bundestag in its exercise of parliamentary oversight. He or she is elected by the Bundestag for a five-year term. The Commissioner is assisted by a small staff and acts on behalf of the Bundestag or its Defense Committee as an investigator, with the right to initiate inquiries on his or her own authority and to receive complaints directly from members of the armed forces who feel that their legal rights have been violated.

15. Scrutiny of Public Expenditure

15.1 The Bundestag makes annual appropriations to fund the operations of the Federal Government. The sole right to introduce the appropriation bill rests with the Federal Government. By early summer of each year, individual Government departments submit their estimates to the Ministry of Finance, which is in charge of organising inter-departmental negotiations and ensuring that the departmental estimates remain within the limits of the Government's medium-term finance plan. Disputes between departments and the Ministry are usually settled before the budget plan reaches the Cabinet, where remaining differences are settled and a final, collective decision is made by the Government.

15.2 The Ministry of Finance has to ensure that revenue and expenditure are balanced or, if necessary, additional expenditure is covered by borrowing. Under Article 110(1), budget revenue and expenditure must be balanced.

15.3 The appropriations bill must be sent to the Bundestag and the Bundesrat at the same time (Article 110(3)). After First Reading in the plenary, the bill is referred to the Budget Committee, which receives reports and recommendations from the permanent committees that oversees each ministry.

15.4 The Budget Committee, which is the most powerful committee in the Bundestag, is by tradition chaired by a senior opposition member. Despite the considerable experience and expertise of members, the Government majority in the Committee is relatively cohesive; thus the Committee has little scope to make major changes.

15.5 In the Second and Third Readings of the appropriations bill, the recommendations of the Budget Committee are usually accepted. The debates at Second and Third Readings have the character of a clash between Government and opposition over broad policy matters rather than details of the budget.

PART 5 - SOME FEATURES OF POLITICAL PARTICIPATION

16. Political Parties

16.1 Article 21 of the Basic Law explicitly recognises political parties by providing that:

> "(1) Parties contribute towards the formation of the political will of the people. They may be freely established. Their internal order must correspond to democratic principles. They must render public account regarding the origin and use of their means as well as their property.
>
> (2) Parties which, according to their goals, or according to the conduct of their adherents, aim at prejudicing or setting aside the free democratic basic order or endangering the stability of the Federal Republic of Germany, are unconstitutional. The Federal Constitutional Court decides on the question of unconstitutionality.
>
> (3) The details are to be regulated by federal statutes."

16.2 The Federal Constitutional Court banned the Socialist Reich Party in 1952 and the Communist Party in 1956. There were two recent cases in which extreme right-wing parties were held by the Federal Constitutional Court not to be parties at all, because amongst other things, of the small scale of their activities and the number of their members.

16.3 Under Article 21(3), the Bundestag passed the Law on Political Parties (LPP) in 1967. The LPP is divided into seven sections. Section I covers the constitutional status and functions of the parties; Section II, their internal organization; Section III, nomination of candidates for election; Section IV, election expenses; Section V, conditions for party accounts; Section VI, legal provisions for the imposition of a ban on parties that are unconstitutional, and Section VII, provisions for tax relief on donations to parties and party membership fees.

<u>Registration</u>

16.4 Under the LPP, political parties are defined as "associations of citizens who set out to influence either permanently or for a long period of time the formation of public opinion at federal or land [state] level and to participate in the representation of the people in the Bundestag or the regional parliaments". A party must have a written charter and a written programme. Its executive committee must be elected at least once every two years and must be made up of at least three members. Candidates for election to Parliament must be chosen by secret ballot.

Party Finance[6]

16.5 The LPP defines what financing is permissible for a political party. Parties are allowed to raise money and accept donations from individuals and corporations. Individuals may claim tax deductions for donations up to a total of 6,000 DM (HK$25,380)[7] for individuals and 12,000 DM (HK$50,760) for married couples; donations of more than 6,000 DM are permissible but not tax-deductible. Corporate bodies may not claim a tax deduction of their political donations.

16.6 Under the LPP, parties may not accept donations from abroad unless the donor is a German citizen or a company with majority German ownership. Foreigners may donate at most 1,000 DM (HK$4,230) to a German Party.

16.7 Parties are required to present an annual public statement of their accounts to the President of the Bundestag. All donations over 20,000DM (HK$84,600) must be recorded with donors' names and addresses.

Public Funding Support

16.8 Political parties that obtain 0.5% of votes in Bundestag or European Parliament elections or 1.0% in state elections are eligible for reimbursement of election expenses. A party is paid 1.30 DM (HK$5.5) per vote (so as to give support to the smaller parties) for the first five million votes, and 1.00 DM (HK$4.2) for each vote above that figure. Each party is also entitled to 0.50 DM (HK$2.2) for each mark it received from membership fees and/or contributions up to 6,000 DM (HK$25,380) from individuals, with a ceiling of 245 million DM (HK$1,036 million) per annum. Table 4 shows the amount of public funding for major parties in 1998.

Table 4 - Public Funding for Major Parties in 1998

Political Party	Amount Received	
	(millions DM)	(millions HK)
Social Democratic Party of Germany	96.8	409.5
Greens	18.2	77.0
Christian Democratic Union of Germany	73.8	312.2
Christian Social Union	17.6	74.4
Free Democratic Party	13.2	55.8
Party of Democratic Party	13.4	56.7

Source: "Party and Campaign Finance in Germany: An Overview"

6 "Party and Campaign Finance in Germany: An Overview" at http://www.germany-info.org/f_index.html

7 In 1999, the average exchange was 1DM=HK$4.23.

17. Recent Major Electoral Reform

17.1 Before the unification, the electoral system in West Germany had been very stable. There was no major change to the electoral law. Electoral law amendment made in 1953 only produced an electoral system with few changes.

17.2 There had been discussions during the unification process as to whether a unified Germany should adopt the electoral system of West Germany. Finally, the electoral system of West Germany continued to be used. In the 1990 election, there was a temporary change to the 5 % threshold rule. The threshold rule was applied separately in the western part and the merged eastern part.

18. Constitutional Amendments Related to Political Reform

18.1 Article 79 requires that a statute whose purpose is to amend the Basic Law must be approved by at least two-third of the members of the Bundestag and Bundesrat. The Basic Law prohibits amendment concerning the seperation of the Federation into states, depriving the participation of the states in law making, or undermining the principles laid down in Article 1 (protection of human dignity) and Article 20 (Political and social structure, defence of the constitutional order) of the Basic Law.

18.2 The Basic Law has been amended frequently. As of July 1998, there were 46 amendments. The German unification and European integration have been the two major events that led to a series of amendments to the Basic Law in recent years.

Case of German Unification

18.3 This report chooses the case of German unification and briefly describes the process of constitutional changes in connection with the unification. Of course, the constitutional issues involved in the unification process were multifaceted, many of which exceeded the boundary of political reform. This report only uses this example to illustrate how a significant change to the Basic Law has been achieved.

18.4 In the beginning of unification, some opinions expressed a preference that the unification should take place in accordance with Article 146 of the Basic Law, which would have allowed for a new constitution for the entire German nation, requiring approval by a referendum.

18.5 The Government and opposition differed on whether and how much the existing constitution should be changed. The governing coalition (Christian Democrats and Free Democrats) supported only a "constitutional committee" to revise the Basic Law .

18.6 The Social Democrats and the Greens, however, preferred a "constitutional council," which would develop the Basic Law into a permanent constitution for the newly unified country.

18.7 After extensive bargaining, a "Joint Constitutional Commission" composed of 64 members (32 each from the Bundestag and the Bundesrat) was established. The Commission held 25 meetings, considered 75 proposed changes of the Basic Law, and received over 800 000 petitions from concerned groups and individual citizens.

18.8 Many proposals put forward by the opposition were blocked in the Commission. The Commission did agree on the need to strengthen the federal dimension of the constitution. The Commission also agreed on two amendments to Article 3 on gender equality and the handicapped, an amendment to Article 20 declaring the State's commitment to environmental protection, one amendment on local self-government, and several alterations in the legislative powers of the states and the national Government. Many of these amendments were adopted by the Bundestag and the Bundesrat in 1994.

19. Referendum

19.1 The Basic Law does not have any provisions for referendum at the national level, but according to Articles 29 and 118 of the Basic Law, territorial changes of area as between states are subject to regional referendum. No referendum has been held in Germany after the end of World War II.

Appendix I

Bills that Require Bundesrat Approval

The provisions of the Basic Law indicate the types of bills that require Bundesrat approval. They can be classified in three types:

- Bills that would change the constitution. They require Bundesrat approval based on a two-thirds majority.

- Bills affecting state finances. This includes above all bills involving taxes, in the collection of which state or local authorities have a part, e.g. income tax, value-added tax and motor-vehicle tax.

- Bills that affect the administrative sovereignty of the states. This is a particularly important group, since if a bill contains only one provision that in any way affects states' rights, the entire bill requires Bundesrat approval. This applies, for example, when federal law prescribes certain jurisdictional arrangements, forms, time limits, administrative fees or types of mail delivery. Due to individual provisions of this kind, entire bills may require approval which, in general, do not affect state interests. International treaties or defence matters are examples.

Source: Larry Fischer, *The German Bundesrat*, Bonn: Public Relations Office, the Bundesrat, 1991.

Appendix II

Article 113 of the Basic Law of the Federal Republic of Germany

Article 113 (Expenditure increases, revenue cuts)

(1) Bills which increase the budget expenditure proposed by the Federal Government or involve or will give rise to new expenditure shall require the consent of the Federal Government. This shall also apply to bills which involve or will give rise to cuts in revenue. The Federal Government may require the Bundestag to postpone the vote on such bills. In this case the Federal Government shall state its position within six weeks.

(2) Within four weeks after the Bundestag has adopted the bill the Federal Government may ask for another vote.

(3) where the bill has become law pursuant to Article 78 the Federal Government may withhold its consent only within six weeks and only after having initiated the procedure provided for in the third and fourth sentences of paragraph (1) or in paragraph (2) of the present Article. Upon the expiry of this period such consent shall be deemed to have been given.

Appendix III

Statistics on the Bundestag' Work in the 12th and 13th Electoral Terms

	12th electoral term 1990-94	13th electoral term 1994-98
Plenary sittings	243	248
Number of pages of minutes of plenary proceedings	21,752	23,176
Permanent committees	25	22
Committee meetings	2,680	2,479
Committee of inquiry	3	3
Meetings of committees of inquiry	287	195
Study commissions	4	5
Meetings of study commissions	273	243
Bills introduced	774	923
- by the Federal Government	402	443
- by the Bundestag	294	329
- by the Bundesrat	78	151
Bills adopted	463	565
Consecutively numbered Bundestag printed papers	8,588	11,972
Petitions (without mass submissions)	81,000	76,100
Major interpellations	98	156
Minor interpellations	1,346	2,071
Oral questions (Question Time)	4,241	3,537
Written questions	16,501	14,906
Debates on matters of topical interest	103	103
Government policy statements	35	46
Sessions of questions addressed to the Federal Government following the weekly cabinet meeting	44	41

Source: Schick Zeh, *The German Bundestag--Functions and Procedures,* NDV Neue Darmstädter Verlagnstalt, Rheinbreitbach, 1999.

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