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THE COVID-19 CRISIS AND GERMAN FEDERALISM<sup>1</sup>

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## I. MAIN CHARACTERISTICS OF GERMANY'S FEDERAL SYSTEM

Centralization, administrative federalism (i.e., a functional allocation of power), and close intergovernmental coordination are the main characteristics of Germany's federal system. The distribution of power is clearly in favor of the federal government. A high degree of centralization leaves the *Länder* with education, culture, the police, and local authorities as their only exclusive powers (Kaiser & Vogel, 2019). Most other policy areas are either under federal jurisdiction or shared powers. However, centralization has occurred mainly in the legislative sphere (Kaiser & Vogel, 2019). Since powers are distributed along functional lines, the constituent units implement federal legislation by adopting executive orders and decrees. The federal government has a small civil service and relies on the *Länder* to implement its decisions. Germany is a textbook example of administrative federalism (Hueglin & Fenna, 2015). As a consequence, governments coordinate frequently and closely – via formal institutions and informal arrangements. The *Länder* participate in federal decision-making via the *Bundesrat*, which consists of members of the *Länder* governments. In addition, intergovernmental councils (called ministerial conferences) exist in a range of policy areas (Hegele & Behnke, 2013, 2017). The federal government is a member of some conferences, but others involve only the *Länder*.

The COVID-19 pandemic confirmed the administrative federalism and coordinated character of the German system. The management of the crisis was surprisingly decentralized, however. Most measures were decided upon – and not just implemented – by the *Länder*. The crisis thus highlighted their importance as decision-makers and public service providers. What is more, the *Länder* not only accepted their responsibility but asserted their powers *vis-à-vis* the federal government.

## II. RESPONSIBILITIES FOR EMERGENCY MANAGEMENT AND HEALTH CARE DELIVERY

The distribution of powers in the event of a public health crisis are clearly geared towards the *Länder* – which is rather unusual in German federalism – but they also induce coordination.

Although health is a shared jurisdiction, the *Länder* are responsible for planning hospital capacity (Wassener, 2002). Responsibilities for emergency management during a

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public health crisis are defined in the Infectious Disease Act (*Infektionsschutzgesetz*, IfSG) of 2001. The IfSG is a federal law but, given the functional distribution of powers, the *Länder* are in charge of implementing it. More specifically, the IfSG authorizes the *Länder* to impose a range of containment measures in the event of a pandemic (or epidemic). The *Länder* decide, however, if and when they want to introduce which of these measures. Public Health Offices (*örtliche Gesundheitsämter*), which operate under *Land* jurisdiction, implement these decisions. The IfSG thus provides the *Länder* with significant discretion beyond that typical of administrative federalism. The IfSG assigns the federal government the role of the coordinator, but does not allow the federal government to impose containment measures itself.

The IfSG authorizes the federal government to procure medical equipment and medication, however. The federal government also maintains its jurisdiction over international borders and travel. A fast-tracked reform in March 2020 gave the federal government (temporarily) even more powers in this area.<sup>2</sup>

### III. MANAGEMENT OF THE CRISIS

In line with the decentralized approach mandated by the IfSG, the *Länder* decided on the bulk of measures to contain the virus. Each *Land* adopted its own decrees to ban events and gatherings; close schools, restaurants, bars, non-essential shops, and other premises; require facemasks in certain places and buildings; and impose quarantine on travelers. Mecklenburg-Vorpommern and Schleswig-Holstein closed their domestic borders to tourists. Once the peak of infections was reached in the first wave, the *Länder* relaxed most measures – and tightened them again when signs of a second wave emerged. They also decided to return to classroom teaching at primary and secondary schools, and to delay the beginning of the new semester at universities.

There were only a few areas in which the federal government exercised decision-making authority. These were mainly the closure and reopening of international borders and the procurement of protection personal equipment (PPE) and ventilators. It also introduced several economic stimulus measures, such as financial assistance to small and medium enterprises – and to the *Länder*. Some of these stimulus measures were implemented by the *Länder*, given the functional distribution of powers.

Most of crisis measures – restrictions and procurement alike – were coordinated. The only unilateral decisions, without prior consultation, concerned the closure of schools – with Saarland being the first *Land* to end classroom teaching on 13 March 2020 and the others following very quickly – and some details regarding its resumption. There is also no evidence that the federal government's decision to reopen borders to EU/Schengen members and the United Kingdom was discussed with the *Länder*. Mecklenburg-Vorpommern and Schleswig-Holstein decided to close their domestic borders on their own. None of these decisions led to intergovernmental conflict.

Some tensions occurred in the easing phase, when several *Länder* announced their intention to lift measures rather sooner than later while the federal government preferred a more prudent approach. More recently, during the second wave and two weeks into the second lockdown, the federal government wanted to tighten the measures further, which many *Länder* opposed. In both situations, the federal government had to concede. In terms of federal relations, these tensions reflect the assertive role

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of the *Länder* during the COVID-19 pandemic, but again, they did not lead to actual intergovernmental conflict. After the first lockdown, the chancellor and the premiers agreed that the *Länder* would simply ease several measures on their own, which led to more diversity. During the second lockdown, the tensions meant that decisions were postponed. However, they did not prevent further coordination.

To coordinate the management of the crisis, the chancellor and the premiers used an existing format – the Conference of Premiers (*Ministerpräsidentenkonferenz*, MPK). During the first lockdown, weekly meetings were arranged, followed by joint press conferences at which the first ministers announced joint resolutions and agreements. Coordination of the reopening of restaurants and bars also occurred via the Conference of Ministers of the Economy (*Wirtschaftsministerkonferenz*, WMK). The Conference of Ministers of Education (*Kultusministerkonferenz*, KMK) discussed protective measures at schools, school leaving exams, and semester times.

The *Bundesrat*, the federal institution for which Germany is famous, played a minor role. Most decisions were executive decisions and were made by the *Länder*. Via the *Bundesrat*, the *Länder* gave their consent to the reform of the IfSG in March 2020 and to fiscal stimulus measures. While the side-lining of parliaments during the crisis was an issue with regard to parliamentary scrutiny, the minor role of the *Bundesrat* has not been a problem for federal relations given that there was very little decision-making by the federal government (apart from the economic stimulus measures), and coordination occurred via the ministerial conferences.

#### IV. LESSONS FOR THE FUTURE AND REFORMS

In summary, the management of the COVID-19 pandemic combined decentralized decision-making with intergovernmental coordination. Administrative federalism, which meant that the *Länder* had to implement the IfSG, provided them with a rather unusual degree of discretion.

This approach seems to be a good recipe for successful crisis management. It reaps the benefits of federalism (i.e., decisions closer to the citizens, consideration of local circumstances in a pandemic affecting regions differently) while avoiding adverse effects of decentralization such as contradiction, inefficiency, competition, and conflict. Decentralized and coordinated decision-making achieves a national approach and pools resources while at the same time allowing measures to be tailored to local circumstances. Indeed, the “patchwork of measures”, which some media argued would compromise the management of the crisis, was never a problem. Differences were minor – and beneficial, as federalism scholars were quick to point out (Behnke, 2020; Kropp, 2020).

Nevertheless, centralization seems to be on the table. Even some *Länder*, such as Bavaria,<sup>3</sup> suggested giving the federal government more powers so as to enable central government leadership.<sup>4</sup> While the role of the *Länder* during the pandemic was unusual, these suggestions confirm another element of German federalism – i.e., the tendency to rely on the federal government.

3. <https://www.br.de/nachrichten/bayern/mehr-corona-macht-fuer-den-bund-kritik-an-soeder-vorstoess,SdrSkryY> [access: 18.11.20]

4. See also: <https://www.tagesschau.de/inland/bund-laender-corona-101.html> [access: 17.11.20]

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