



# **Intergovernmental Relations & Parliamentary Scrutiny**

A comparative overview

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# Introduction

The devolution settlement emerging from the Scotland Act 2012 and proposed in the current Scotland bill marks a significant step in Scotland's political journey. The new powers, especially in taxation and social security, represent a marked increase in the constitutional competence of the Scottish Parliament. But they will also increase the interdependence between devolved and reserved powers. In particular, new powers over income taxes will be shaped by policy decisions relating to reserved taxes, national insurance, tax allowances and the timing and proposals of the UK Government's budget. Likewise, decisions taken by UK ministers with responsibility for tax and social security could affect devolved social security or active labour market policy, while the system of 'passporting' entitlements from one benefit regime to another means Scottish policy decisions may also have knock-on effects for reserved social security benefits.

The parties to the Smith Commission recognised this increased complexity, calling for the urgent reform and scaling up of intergovernmental machinery, including a new Memorandum of Understanding, a stronger Joint Ministerial Committee, new bilateral forums to support cooperation between the Scottish and UK governments, and 'much stronger and more transparent parliamentary scrutiny'. The interim report of the Devolution (Further Powers) Committee concluded that the current system of intergovernmental relations is 'not fit for purpose' and that reforming the machinery of intergovernmental relations represented 'the most significant challenge to be addressed in implementing the Smith Commission recommendations'.

Intergovernmental relations are, by definition, relations between governments. This creates challenges for the capacity of parliaments to scrutinise the policy decisions, agreements, disputes and compromises made within intergovernmental forums, and to hold governments to account. The Devolution (Further Powers) Committee noted its intention to make recommendations on how to enhance parliamentary scrutiny of intergovernmental relations. This report is intended to support that work.

The report takes a comparative perspective. It sets out the structures of intergovernmental relations across six federal or multi-level political systems – Belgium, Canada, the United States, Germany, Spain and Switzerland. It also examines whether and how their parliaments can effectively scrutinise intergovernmental relations. Multi-level politics does not only take place within nation-states. Within the European Union, intergovernmental relations are also played out between member states and EU institutions. The Report thus also examines the role of national parliaments in scrutinising member-state/EU intergovernmental coordination.

The report concludes by applying these insights to the UK context, and makes preliminary recommendations for how parliamentary scrutiny of intergovernmental relations may be strengthened. We are very grateful to all those colleagues and officials who gave their time to provide guidance as we conducted the research and, in particular, special thanks to Dr Sean Mueller (Berne), Prof Bart Maddens (KU Leuven) and Prof César Colino (UNED) who provided helpful comments on earlier drafts of case studies on Switzerland, Belgium and Spain respectively.

# Executive Summary

## Intergovernmental Relations and Parliamentary Scrutiny

Intergovernmental relations (IGR) are essential to all political systems with multi-level government. Negotiating and managing policy and especially financial interdependence is a key feature of IGR. For European countries, the need to coordinate EU policy-making and implementation is also central. IGR can be *bilateral* or *multi-lateral*, involving two or more governments, *vertical*, between the central or federal level and one or more constituent units, or *horizontal*, between governments at the regional or sub-state level. In some countries, IGR are highly institutionalised, with a core bureaucracy and minister in each administration, numerous and often binding intergovernmental agreements, and scheduled, frequent meetings between senior ministers and officials (though informal day-to-day interactions are important to all cases).

IGR are dominated by Executives. Legislative oversight – the capacity and behaviour of parliamentarians to check, question, examine, debate, challenge, influence, change, support, criticise, censure or generally hold to account those in public office – is therefore challenging for all parliaments. This report focuses upon parliamentary scrutiny of IGR. Parliamentary scrutiny is shaped by:

- (i) the timing of, and access to, relevant information relating to intergovernmental cooperation and co-decision
- (ii) the tools and procedures available to the legislature to engage in scrutiny and influence outcomes; and
- (iii) the transparency and publicity associated with both the intergovernmental and scrutiny processes.

## Belgium

### *Intergovernmental Relations*

Belgium has a highly complex federal structure which allocates power to three regions and three linguistic communities (though the Flemish region and Flemish community merged their institutions), and a federal level which has institutionalised power-sharing. Despite exclusive competences and significant levels of self-rule for each of the federated entities, Belgium has a highly institutionalised system of intergovernmental relations, driven by the overlap between the competences assigned to each level, as well as the need for coordinated international and EU action. There are two main forums for intergovernmental relations in Belgium: the multilateral **Concertation Committee** consisting of the heads of the federal, regional, and community governments, and policy-focused, standing **Inter-ministerial Conferences** (there are currently 19 of these). IGR can generate information sharing, non-binding consultation, joint decrees and executive positions, and binding formal agreements.

### *Parliamentary Scrutiny*

Belgian IGR are relatively transparent. Records of the Concertation Committee as well as the agendas and approved minutes of the Inter-Ministerial Conferences are sent to all parliaments, and cooperation agreements are filed and published in the official gazette as well as made available electronically to MPs. Dedicated parliamentary committees are also charged with scrutinising intergovernmental cooperation. In Flanders, cooperation agreements and other

questions regarding intergovernmental relations are mainly dealt with in subject specific committees, as are international agreements. Draft decrees are first discussed and debated in committee before being sent to the plenary for voting. In Flanders, cooperative agreements must be logged with the parliament within seven days of signing. The consent of regional and community parliaments is also required for cooperative agreements where these: contain financial implications; create obligations for individuals; deal with matters governed by legislation rather than regulatory instruments; or do not contain a provision for amendment. Parliaments can only accept or reject cooperation agreements and cannot propose amendments, though more flexibility may be available when considering Joint Decrees.

## Canada

### *Intergovernmental Relations*

Canadian federalism is also characterised by a dual allocation of power between the federal government and the provinces, with both considered to be 'sovereign' within their fields of jurisdiction. The **First Ministers Conference** is the principal multilateral forum within which federal-provincial relations should take place. It brings together the Canadian Prime Minister and the provincial Premiers to discuss issues of the day - constitutional and financial affairs have dominated FMCs over recent decades. The FMC is ad hoc and initiated by the federal Prime Minister and, in light of the current PM's antipathy to the forum and his preference for bilateral negotiations (and sometimes unilateral action), it has not been convened since 2009. More regular ad hoc **federal-provincial-territorial meetings** take place between ministers and officials, focused around a particular policy sector. Provincial governments continue to meet within the **Council of the Federation**, without the involvement of the federal government. Within governments, IGR matters are overseen by dedicated offices and a minister for intergovernmental affairs, with Quebec and Alberta having the most institutionalised IGR bureaucracies. The outcome of intergovernmental negotiations are legally non-binding but can carry political weight.

### *Parliamentary Scrutiny*

Intergovernmental relations in Canada are heavily executive-dominated, and parliaments have a very limited role. Each provincial legislature has a dedicated **parliamentary committee** which includes within its remit scrutiny of IGR, and policy-specific committees may also play a role. Government departments charged with intergovernmental relations often submit an annual report to parliament. Legislatures can also mandate ministers to conclude agreements and act on behalf of the province. In Quebec, the intergovernmental affairs minister endorses every cross-border and intergovernmental agreement and maintains an accessible register of all agreements. The Quebec National Assembly illustrates how extending the role of parliament in IGR can serve to support the executive in the intergovernmental arena. As ministers embark upon intergovernmental negotiations, the National Assembly can support and reinforce their negotiating position by publishing unanimous resolutions which provide a more formal expression of Quebec's positions and are sometimes used to support the executive branch in dealing with the federal and other provincial governments.

## Germany

### *Intergovernmental Relations*

German federalism is characterised by a functional allocation of power, meaning that the majority of legislative powers rest with the federal level while the Länder are responsible for executing and implementing federal legislation. Intergovernmental coordination is thus essential



to ensure that laws are implemented. Joint decision-making is a constitutional requirement across many policy spheres, and governments collaborate willingly in many others. Cooperation between levels takes place through the participation of the Länder in the **Bundesrat** (the upper house). In addition, numerous intergovernmental coordination bodies meet regularly. These include **Federal-Länder commissions**, **Conferences of First Ministers** and **Conferences of Cabinet Secretaries**. These processes commonly lead to **resolutions** that provide guidance for legislative initiatives, government programmes or for implementing legislation. Some resolutions are legally-binding. In financial matters, an informal unanimity rule ensures that none of the Länder governments can be bound by, without having consented to, an intergovernmental agreement.

### *Parliamentary Scrutiny*

The federal parliament (which includes direct representation from the Länder governments in the Bundesrat) has several instruments at its disposal to hold the federal government accountable, including rights to information, questions to ministers, access to records and rights of access to officials. In Länder parliaments, the right to question the executive and to access information are the main oversight instruments. The degree of oversight of intergovernmental resolutions is regulated in the standing orders of Länder parliaments and executive-legislative agreements. The Länder governments are obliged to *inform* their Landtag about planned **interstate treaties** four weeks prior to the signing of such treaties. The Landtag has the opportunity to *deliver an opinion* within these four weeks (or request an extension) which the government takes into consideration. The role of the Landtag is strengthened in the case of EU legislation based on the subsidiarity principle and the Early Warning System. Here, Länder Parliaments have the opportunity to deliver an opinion, and where initiatives touch upon areas of exclusive Länder responsibilities, the Länder governments are more strongly obliged to consider these opinions. Länder parliaments have greater opportunities to exercise legislative oversight when agreements are legally binding (the majority are *not* legally binding and therefore remain under executive control). Länder parliaments can exercise their oversight function more effectively in relation to inter-state treaties, resolutions with consequences for Länder budgets and matters involving the Bundesrat. Here, the Länder governments are obliged to inform their respective Landtag about planned initiatives and to consider its opinions.

## **United States**

### *Intergovernmental Relations*

The political system of the United States is characterised by a separation of powers between the executive and legislative branches across all levels. IGR are weakly institutionalised and fragmented. Neither state governments nor legislatures have a direct role in, or privileged access to, the federal policy-making process, and often lobby the federal authorities alongside local authorities, trade unions, corporations and other bodies. Intergovernmental dynamics are characterised by both competition, with states acting as rivals and challengers to the federal government in some areas, and cooperation, with states implementing policies adopted (and funded) at the federal level, or cooperating in policy space where federal government inaction has created a policy vacuum (e.g. climate change mitigation). Following the demise of the **Advisory Council on Intergovernmental Relations** and the reduced visibility of the **White House Office of Intergovernmental Affairs**, there are no significant federal-state intergovernmental forums, but a variety of networks, conferences and associations facilitate interaction between state executives and state legislators.

### *Parliamentary Scrutiny*

States often enter into compacts, agreements and memorandums of understanding, but there is no official register of activities and only **inter-state compacts and agreements** which require legislation are scrutinized closely. Both federal and state legislatures have played a role in the scrutiny of intergovernmental relations. However, the Senate legislative sub-committee on intergovernmental relations was abolished in the 1990s and the House sub-committee was folded into the sub-committee on Technology, Information Policy, Intergovernmental Relations and Procurement Reform before being dissolved completely, limiting both interest and capacity for action. The US Congress maintains legislative oversight of horizontal inter-state compacts which (a) alter the balance of power between the state and federal government; (b) intrude on a power reserved to Congress. Inter-state compacts can be approved before or after they are signed. Within state legislatures, agreements between states and with the federal government are subject to scrutiny by policy-specific committees or by a general oversight committee, which may request evidence and call witnesses. State legislatures must also consent to inter-state compacts and may reject or accept them, but lack the ability to amend them.

## **Spain**

### *Intergovernmental Relations*

Spain is a regionally-devolved/quasi-federal system, with partially institutionalised inter-governmental relations. IGR are most active around issues which involve the transfer of resources from central government to the autonomous communities. **Bilateral commissions**, introduced to support the transfer of competences as part of the devolution process, were given legal standing in 1992 and now address general policy issues, with a formal role in mediating disputes. The **Conference of Presidents** brings together the prime minister and presidents of the autonomous communities to discuss and coordinate public policies and issues of the day, though it hasn't met since 2012. **Sectorial conferences**, which also have legal standing, are multilateral forums bringing together policy-focused ministers from central government and all 17 autonomous communities. There are now 38 sectorial conferences although they vary in their level of activities. These are more hierarchical than the bilateral commissions, with central government taking the lead role. A horizontal **Conference of Autonomous Community governments** provides a forum for cabinet members and vice presidents of the autonomous communities to: provide a check on whether draft Spanish legislation will encroach upon their competences; produce joint positions on issues on the agenda of the Spanish government and parliament; and identify areas for coordinated action. The outcome of intergovernmental relations often takes the form of **collaboration agreements**. These reached a peak in the period 2008 – 2010, when over 1000 were signed annually. Maintaining forums for intergovernmental cooperation is largely dependent on the nature of relations between the Spanish government and the autonomous communities as well as the dynamics of party competition, and some of these forums have fallen into disuse.

### *Parliamentary Scrutiny*

Scrutiny of IGR is aided by a relatively high level of transparency. The outcomes of the Conference of the Presidents are available online, and a **register of cooperation agreements** is published twice a year. The sectorial conferences are also well documented, with their regulations, calendars and outcomes publically available, while each sectorial conference contributes to an annual report published by the central government. Meetings of the working groups are also documented. However, the legislatures of the autonomous communities have only limited scrutiny capacity over IGR. In Catalonia, where IGR are coordinated centrally by the **Office of Institutional Relations and Promotion of Democratic Quality**, the Statute of

Autonomy stipulates that all intergovernmental MoUs and agreements be published. Within the Catalan parliament, intergovernmental relations falls within the remit of the **Institutional Affairs Committee** which also has responsibility for the Statute of Autonomy, administration, local government and religious affairs, amongst others. Parliamentary approval of conventions and agreements is required only in cases where the legislative powers of parliament are affected. If this is not the case, the Government is obliged to inform parliament of the convention or agreement within one month of its signature. The Spanish parliament has a right to be informed of - and can object to - collaboration agreements reached between autonomous communities, but agreements between the Spanish government and the autonomous communities are not subject to the same requirements.

## Switzerland

### *Intergovernmental Relations*

Although the Swiss cantons have very high levels of self-government, intergovernmental cooperation is commonplace, especially between the cantons. Swiss IGR are dominated by executives, and mainly conducted in high-level conferences and summits. There are two main conference forums - the **Conference of Cantonal Governments** (CCG) and the **Conferences of Cantonal Directors**. The CCG publishes an annual register of inter-cantonal agreements - in 2014, 49 treaties, concordats, framework agreements and conventions were in force - focused mainly on education, financing, culture, natural resources, transport, health and social care. There are 17 Conferences of Cantonal Directors, providing a forum for the directors or departmental heads of each canton responsible for a given policy area. The Conference of Cantonal Ministers of Finance is the most powerful.

### *Parliamentary Scrutiny*

An established legislative consultation procedure and the requirement that cantonal legislatures implement federal regulations facilitate transparency and provide a mechanism for cantonal legislatures to scrutinise federal legislation. However, IGR mainly takes place behind closed doors, making scrutiny of routine relations and negotiations difficult. Dedicated and permanent parliamentary committees have been formed in at least nine cantons to oversee cooperation, external relations, regional affairs, or cross-border matters. Inter-cantonal treaties must be ratified by each of the participating legislatures. In response to a lack of direct input into IGR by parliaments prior to ratification, and a need to coordinate on legislation in cross-border fields, several specific forums have emerged in recent years to facilitate inter-parliamentary cooperation on a state-wide and regional basis.

## Member-State Parliaments and the European Union

A special case of legislative oversight is the way in which parliaments of member-states within the European Union scrutinise directives or legislation decided upon in EU institutions. These scrutiny activities are directed toward the EU policy positions of member-state governments as well as the legislative initiatives of the European Commission, proposed changes to EU treaties and/or the accession of new member states. As such, they resemble the 'two-level game' of intergovernmental relations and parliamentary scrutiny within multi-level states.

The scrutiny of EU affairs by member state parliaments is, in general, more evident and better documented than in the aforementioned cases. This is aided by several factors. First, in contrast to many intergovernmental meetings within states, the dates and timing of meetings of the European Council are publicly known well in advance and follow a regular schedule. Access to information about planned and ongoing initiatives of the European Commission has also been

made easier in the wake of the Lisbon Treaty. All documents are now sent directly from the Commission to the parliaments of member states.

Every member-state parliament has established a **European Affairs Committee** (EAC) to help to inform and monitor EU decision-making and to sift through documents produced by EU institutions. The European Affairs Committee of the Danish Parliament has one of the most far-reaching remits in comparison to other member states' parliaments. It hears representations from the Danish government prior to meetings of the European Council and can mandate ministers' negotiating positions. This system was designed to avoid a situation in which the Danish government committed itself to a policy in Brussels which would not subsequently be ratified by the Danish parliament, a realistic risk given the tendency towards minority governments in Denmark. The Danish parliament therefore derives its strength partly from its internal regulations on scrutiny and the provision to ratify agreements, but also from the fact that governments often lack majority support in parliament.

The Lisbon Treaty strengthened the role of parliaments in other ways. The **Early Warning Mechanism** allows parliaments to submit a reasoned opinion, within a time period of 8 weeks, if they believe an initiative violates the subsidiarity principle. If reasoned opinions represent one third of all votes, the draft legislation must be reviewed (yellow card). The body initiating the draft can then maintain, amend or withdraw it, but it must justify its decision. Although this is specific to EU policy-making, it has parallels in processes of intergovernmental relations within states.

## Insights for the United Kingdom

Reflecting on the overview of IGR in federal and multi-level states, and the insights for the UK, two key observations emerge:

- In most multi-level and federal countries, intergovernmental relations are more formalised than in the UK, with more intergovernmental bodies and formal agreements, though the extent to which these forums and procedures are used varies over time
- In every country, intergovernmental relations are dominated by executives, with relatively limited opportunities for parliaments and parliamentarians to engage in legislative oversight of processes, negotiations and agreements.
- In spite of this general constraint, ***in almost every country examined here, the role of parliaments in scrutinising IGR is greater than the role the UK's parliaments currently enjoy in the scrutiny of UK IGR.***

### *Intergovernmental Relations*

IGR in the UK are mainly informal, underpinned by good communication, goodwill and mutual trust. The **Memorandum of Understanding**, the **Concordats** between the Scottish Government and Whitehall departments, and the **Devolution Guidance Notes** were intended to embody and nurture a co-operative working culture among civil servants on a day-to-day basis. The MoU provided for a **Joint Ministerial Committee (JMC)**, which brings together all of the devolved administrations with the UK government, meeting in plenary (Prime Ministers and First Ministers), Domestic and European formats. The JMC has a joint secretariat and in 2010 incorporated a Protocol for the Avoidance and Resolution of Disputes. New bilateral forums have emerged in recent years, including the **Joint Exchequer Committee** and the **Joint Ministerial**

**Group on Welfare**, but their status, terms of reference, and longevity are unclear. Intergovernmental agreements are legally non-binding, and usually take the form of memorandums of understanding or concordats.

The opportunities for developing multilateral IGR in the UK are shaped - and constrained - by the non-federal nature of the UK constitution, the continued adherence to the doctrine of parliamentary sovereignty, and the highly asymmetric nature of UK devolution, and especially the continued absence of a legislature for England. There may, however, be more scope for formalising some of the ad hoc bilateral arrangements which have developed recently, potentially drawing on the model of the Spanish bilateral commissions, particularly their non-hierarchical structure. UK IGR are also likely to be affected by party competition in the composition of governments, competing territorial interests and the likelihood that there may be a lack of willingness on the part of governments at both levels to use formal procedures for co-decision that may constrain their respective decision-making autonomy. However, the new Scottish devolution settlement is more interdependent than the Scotland Act 1998, and may necessitate closer communication, collaboration and compromise. This raises issues for democratic accountability, and suggests a need to consider whether and how the scrutiny of UK IGR – both multi-lateral and bilateral – can be enhanced.

### *Parliamentary Scrutiny*

There are no formal mechanisms for the parliamentary scrutiny of intergovernmental relations in the UK. The JMC produces an annual report, which includes the dates of each meeting of the committee and other intergovernmental forums, and their agenda items, but there is no summary of proceedings or outcomes. A general communiqué agreed by the participating governments is often produced following the JMCs and formal bilateral groups. There is currently no Scottish Parliament committee which includes within its remit a dedicated role in overseeing intergovernmental relations, although scrutiny has intensified as a result of the investigations into new devolution legislation.

In its efforts to enhance parliamentary scrutiny of IGR, we recommend that the Devolution (Further Powers) committee give consideration to the following:

#### **(i) *Timing and access to information:***

Parliaments can be made more aware, *in advance*, of when formal intergovernmental meetings are scheduled to take place, with a public record of proceedings where available, or a summary of proceedings, deposited with parliament upon conclusion of the meetings. It may also be appropriate for parliaments to receive a record of significant informal bilateral or multilateral meetings and working groups.

#### **(ii) *Legislative Tools and Procedures:***

**Committee on IGR:** Parliament may wish to consider whether to emulate the practice in most of the cases we examined of having a dedicated permanent committee which includes scrutiny of intergovernmental relations within its remit (often alongside constitutional and other institutional matters). This need not prohibit subject-focused committees from taking an interest in IGR where it relates to their policy concerns.

**Hearings/Evidence sessions:** The Scottish Parliament has already been receiving written and oral evidence on IGR from ministers, officials and others as part of several committee inquiries into aspects of the new devolution legislation. However, Parliament may wish to conduct hearings and gather evidence on a more regular basis, including hearings with ministers prior to

and/or following formal intergovernmental meetings or following significant intergovernmental agreements. Parliament may want to consider whether it is appropriate for some of these meetings to be held in private. A MoU between parliament and the Scottish Government may be an appropriate mechanism underpinning executive-legislative relations in this area.

**Consent:** In some countries, intergovernmental agreements are subject to the consent of parliaments. This is currently the case in the Scottish Parliament with respect to legislative consent motions, which are themselves the subject of intergovernmental coordination, but a consent procedure does not extend to other agreements or MoUs. Given the increased significance of intergovernmental agreements, most notably relating to fiscal autonomy, block grant adjustment and the fiscal framework, and the new interdependencies in taxation and social security, there may be a case for extending parliament's consenting powers.

**Inter-parliamentary cooperation:** In some of the countries we examined, cooperation across parliaments within the multi-level system was regarded as a means of enhancing the scrutiny of IGR. Recent committees elsewhere in the UK - for example, the Public Administration and Constitutional Affairs Committee and the House of Lords Committee on the Constitution – have raised similar concerns about the process, dynamics and scrutiny of UK IGR. The Devolution (Further Powers) committee may consider whether inter-parliamentary cooperation on an interim or ongoing basis may enable the committee to enhance its scrutiny objectives.

### ***(iii) Transparency and Public Engagement***

Some of the aforementioned recommendations would already go some way to enhancing the transparency of IGR. This would be further enhanced by a clearer commitment on the part of governments to report on the outcome of intergovernmental meetings. Currently, a single annual report provides very limited information about multilateral intergovernmental meetings. This could be extended and enhanced to provide more detail on the substance of discussion. A similar report could be produced by other bilateral forums such as the Joint Exchequer Committee. These should be formally presented to parliament and may then be the subject of debate within committee or the chamber, as appropriate. Any intergovernmental agreements should also be made available for parliamentary and public scrutiny.

Intergovernmental relations take place at multiple levels. From a Scottish perspective, this involves not only the Scottish and UK governments but also Scottish local governments, a range of public and semi-public bodies within and beyond Scotland, as well as the European Union institutions. Civil society organisations connect to these intergovernmental networks at all levels, and provide insight into the functionality, or dysfunctionality, of intergovernmental interdependencies and relationships. Periodic inquiries or hearings into some aspect of IGR could offer an opportunity for these organisations to engage in the scrutiny process, and offer a perspective to aid parliament's oversight of intergovernmental interaction.



# 1. Intergovernmental Relations in Multi-level States

## 1. Multi-level states

1.1 Multi-level states can take a variety of forms. These include federations, confederations, federacies, models of associated statehood, constitutionally decentralized unions, condominiums, leagues, joint functional authorities and less formal asymmetrical federal arrangements.<sup>1</sup> Whereas in unitary states, government is structured around a single source of political authority, in multi-level states, power and authority are shared across levels of government.

- In *federations*, sovereignty is divided between two (or more) governmental tiers such that neither tier is subordinate to the other.
- In *confederations*, the balance of sovereignty rests with the member states, with only limited powers and responsibilities lent to a common government.
- *Federacies and associated states* have very high levels of political autonomy, but enjoy limited influence within the larger system with which they are associated.
- In constitutionally *decentralized or regionalized systems*, ultimate authority rests with central government and parliament. Regional or devolved governments within such systems can exercise varying and sometimes considerable degrees of decision-making autonomy, but their powers are defined by, and derived from, central government or parliament.

1.2 All multi-level political systems provide a combination of self-rule and shared rule.

- **Self-rule** refers to the capacity of the constituent units within the political system to exercise decision-making autonomy (self-government) over policy, legislation and revenue-raising.
- **Shared rule** concerns the input and influence of those constituent units in decision-making at the centre. Shared rule can be exercised in a variety of ways and through a variety of institutions, including a second chamber of the federal legislature providing for the representation of territorial interests, regional veto powers in concurrent policy spheres, or cooperation and co-decision within the intergovernmental arena.

1.3 Multi-level states vary in their territorial organisation, distribution of power and identity. Some are **symmetrical**, distributing constitutional power evenly amongst the constituent units, or **asymmetrical**, with some regions enjoying more constitutional autonomy and influence than others. Some are **pluri-national states**, incorporating more than one nation within their boundaries. In others, multi-level government occurs within a single **nation-state**, where national identity is not contested. These and other variations affect the extent and implications of self-rule and shared rule. For example, designing systems which necessitate cooperation, coordination and co-decision may be more difficult in pluri-national states if there is a lack of

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<sup>1</sup> Watts, R L, 1998, 'Federalism, federal political systems and federations', *Annual Review of Political Science*, 1: 117-37.

solidarity and willingness to work together on the part of governments representing distinctive national communities.

1.4 The degree of self-rule and shared rule in a multi-level system is also influenced by the way in which power is allocated. A **dualist** allocation of power gives each level a high degree of self-rule, with exclusive jurisdiction and competences over policy-making, legislation and implementation, reducing the need for systematic coordination and co-decision. An **inter-locked** system, by contrast, provides for overlapping powers and responsibilities, necessitating more coordination and co-decision between governments, usually with more structural opportunities for regional governments or representatives to shape those national decisions which affect their powers and responsibilities.

## 2. Intergovernmental Relations

2.1 Intergovernmental relations (IGR) are 'the working connections that tie central governments to those constituent units that enjoy measures of independent and interdependent political power, governmental control and decision-making'<sup>2</sup>. IGR take place between governmental units of all types and levels, from the municipal to the supranational level. These interactions can be **bilateral** or **multi-lateral**, involving two or more governments. They can be **vertical**, between the central or federal level and one or more constituent units, or **horizontal**, between governments at the regional or sub-state level.

2.2 IGR involve not just the formal meetings between government ministers and senior officials, but can involve public officials of varying levels of seniority and importance in a complex web of day-to-day interactions and exchanges of views. There is also an important interpersonal dimension - 'the human element' – evident in the activities, attitudes and personalities of those individuals holding office, and their perceptions of other players' motivations, actions and attitudes.<sup>3</sup>

2.3 All multi-level systems, however designed, require IGR. In interlocked multi-level systems which, by design, designate powers and responsibilities as concurrent across jurisdictions, effective IGR are crucial. But even in dualist systems which assign a high degree of self-rule to each level of government, IGR are necessary. Policy decisions taken by one level of government can have 'spillover effects' for the other, and good communication helps to manage, prepare for or respond to these effects. Many policy problems - for example, economic growth; climate change; poverty; security – defy the constitutional division of powers and may require a cooperative approach between governments if they are to be addressed effectively.

2.4 In the European Union, the process of Europeanisation has further necessitated intergovernmental cooperation, both to influence EU policy-making and to ensure EU directives are implemented. The main policy-making forum within the EU, the European Council, remains a body of member-states, where each has to speak with one voice. But EU policy spheres span jurisdictions within multi-level states, and legislative spheres normally allocated to the regional units within multi-level states are often the most Europeanised. All federal states in the EU have developed specific intergovernmental processes to ensure regional governments have a say in EU policy-making. In the case of Belgium, ministers of the government of Regions or

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<sup>2</sup> Agranoff, R, 2004, 'Autonomy, devolution and intergovernmental relations', *Regional and Federal Studies*, vol. 14, no 1, p.26.

<sup>3</sup> Wright, D S, 1982, *Understanding Intergovernmental Relations*. Brooks/Cole, 2<sup>nd</sup> ed.



Communities can represent the state in Council meetings when areas over which they have jurisdiction are affected.

2.5 The allocation of tax revenues and agreement of fiscal rules also necessitate intergovernmental coordination. Regions within multi-level states vary in the extent to which they can raise their own revenue through taxation or borrowing, but most systems have a **vertical fiscal imbalance**, i.e. the spending responsibilities of regional governments outstrip their capacity to raise revenue, while central governments usually have revenue-raising capacity beyond their own expenditure needs. This requires a system of intergovernmental transfers from the central or federal level to the regional level, and an agreed set of arrangements for the coordination of public borrowing. Most multi-level systems also have a process of redistributing income and spending capacity between wealthier and poorer regions within the multi-level state, to address **horizontal fiscal imbalances** in the fiscal capacity and spending needs of the constituent units. Intergovernmental finance is often the most contested area of IGR.

2.6 Intergovernmental relations are shaped by the degree to which they are **institutionalised**.<sup>4</sup> Institutionalisation is weak where meetings are irregular, where they lack an intergovernmental infrastructure or procedural rules, when they are organised by subject-focused government departments, often among middle-ranking officials, and when they are characterised more by informal liaison rather than binding agreements. A more institutionalised system will have regular, scheduled meetings, and intergovernmental processes, relationships and agreements that are coordinated through centralised offices and secretariats within or between governments. The most institutionalised forms of IGR are conducted within formal high-level forums of ministers, serviced by senior officials, which produce legally-binding outcomes, often reached by majority decision-making rather than unanimity. Highly institutionalised IGR can pose challenges for democratic legitimacy, where binding agreements can be reached without the unanimous consent of all constituent units. In that case, the government of a constituent unit can be bound to an agreement without having consented to it while parliaments may be entirely shut out of the decision-making process.

2.7 Even in the most institutionalised systems, much IGR remain informal. A common metaphor is that of an iceberg, where the formal processes and structures are visible above the waterline, but the bulk of interactions are less visible below.<sup>5</sup> Within multi-level states, as between EU member states, much intergovernmental cooperation is informal, by email, telephone, mobile messenger services or the chance conversations and networking that takes place outside of the meeting room among politicians and officials. These meetings are widely recognised as being important to facilitate intergovernmental cooperation, but their lack of transparency also poses a challenge for democratic scrutiny.

2.8 The dynamics of IGR are also shaped by other factors which vary within and between multi-level states. For example:

- *Policy salience*: Some policy fields are more interdependent than others, and more likely to require intergovernmental cooperation because of their spillover effects, while high salience issues like finance and the constitution often dominate intergovernmental politics.

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<sup>4</sup> Bolleyer, N, 2009, *Intergovernmental Cooperation: Rational Choices in Federal Systems and Beyond*. Oxford University Press.

<sup>5</sup> Brown, D M, 2002, *Market Rules: Economic Union Reform and Intergovernmental Policy-Making in Australia and Canada*. McGill-Queen's University Press.

- *Party competition:* When the same party is in power across different levels of government, they may be more likely to share policy platforms, and informal communication within parties can act as a substitute for more formal intergovernmental interaction. Competing political parties leading government at different levels are more likely to have divergent policy platforms and more likely to use the intergovernmental arena as a forum for party competition.
- *Governmental composition and strength:* Majority governments will usually be in a stronger position than minority governments to set the agenda, both within their own legislative arena and in IGR. Where a party in government at one level is strong and weak at another, this can shape the power relationship between them, irrespective of the constitutional balance of power.

2.9 While cooperation tends to be in the interests of most governments, **intergovernmental disputes** are normal in multi-level democracies, where governments in different jurisdictions have their own democratic mandate and may have distinctive and competing policy priorities and territorial interests. The mechanisms for resolving disputes vary. Intergovernmental agreements with legal standing provide an aggrieved party with recourse to the courts if they feel the agreement has been breached. The courts tend to play a bigger role in jurisdictional disputes in countries where a constitutional or supreme court acts as guardian of the constitution, including the division of powers. In other systems, disputes are resolved through political dialogue, renegotiation or mediation, with procedures often written into intergovernmental agreements. Mediation committees may be composed of representatives of parliaments or governments at both levels.

## 2. Parliamentary Scrutiny

### 1. Parliaments in Multi-level States

1.1 In all democratic states, parliaments provide several key functions. They and their elected members act as agents linking citizens to the government, providing representation of the diversity of views among the electorate. They are the forum for deliberating, scrutinising and enacting legislation, and debating, influencing and scrutinising public policy. They provide democratic scrutiny and consent for the executive's budget and spending decisions. They provide a key legitimising function in holding government to account for their actions, decisions and policy implementation.

1.2 Parliaments at all levels vary in their size, composition and structure. Of the 189 countries in the Inter-Parliamentary Union in 2014, 59% were unicameral with only a single parliamentary chamber, while 41% are bicameral with two legislative chambers. In multi-level and federal states, bicameral parliaments at the central or federal level are the norm. Of the 25 countries listed as federal by the Forum of Federations, all but four are bicameral.<sup>6</sup> But only some second chambers are elected and only some are designed to explicitly represent the territorial entities, giving the constituent regional units voice and influence in the national parliament. For example:

- Germany's second chamber, the Bundesrat, provides a forum for delegates of the 16 German Länder to influence and co-determine federal legislation and EU policy-making when it affects Länder competences.
- By contrast, the Canadian Senate is a much weaker institution. Its members are formally appointed by the governor general on the advice of the prime minister, and can serve until age 75. Although seats in the Senate are allocated on a regional basis, the provinces are neither directly represented nor directly involved in the appointment process.

Among the constituent units of multi-level and federal states, unicameral parliaments are more common, although there are some examples of bicameral legislatures in federal states, including in the United States (all except Nebraska), Australia (all states except Queensland), eight of Argentina's 24 provinces and five of India's 25 states.

1.3 Parliaments vary in their capacity to influence government and hold it to account. The Parliamentary Powers Index (PPI) provides a snapshot of variations in influence over the executive, institutional autonomy, authority in specific areas, and capacity of national parliaments.<sup>7</sup> Within the PPI, the powers of a parliament scored higher if (among other things): it could impeach the president or prime minister without the involvement of other institutions; hearings with executive branch officials are regularly held and parliament can summon members of the executive and conduct independent investigations of executives or government agencies; and parliaments appoint the prime minister and/or approve individual ministers. Strong parliaments also had greater internal capacity, for example, with respect to administrative and policy specialist staff. Within the European Union, France and Ireland were found to have the weakest legislatures, while the strongest were found in Germany, Italy and Greece.

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<sup>6</sup> Of the four, only one, Venezuela, is a substantial country in terms of population. The others are small archipelagos and transitional democracies.

<sup>7</sup> Fish, M S and M Kroenig, 2009, *The Handbook of National Legislature: a Global Survey*, Cambridge University Press.

1.4 Legislative oversight is a core function of any parliament.<sup>8</sup> Legislative oversight refers to the capacity and behaviour of elected members - individually or collectively - to check, question, examine, debate, challenge, influence, change, support, criticise, censure or generally hold to account those in public office. Legislative oversight may be practiced through internal parliamentary procedures (committees, written/oral parliamentary questions, debates, amendments, legislation, consent for the budget, hearings, etc.) or external procedures (auditors, ombudsmen). Our focus in this report is on one particular aspect of legislative oversight – parliaments’ ability to exercise scrutiny over intergovernmental affairs. The capacity of parliaments to exercise scrutiny will depend upon broad institutional and structural factors - the number and constitutional power of the chambers; the electoral system and its tendency to produce majority or minority governments; the structure and internal discipline of political parties – as well as more particular factors – the opportunities for influence in the day-to-day operation of parliament; the experience, skills and expertise of parliamentarians; the capacity of parliamentary support staff; and the openness, strength and vulnerabilities of ministers.

## 2. Parliamentary Scrutiny in Multi-level Systems

2.1 In multi-level systems, the decisions and actions that parliaments are seeking to check, debate, scrutinise and influence are not only those of their corresponding executive. They also involve the decisions and actions of governments at different levels where these affect the finances, capacities, policies and competences of constituent units. This ‘two-level game’ of legislative oversight is apparent among regional and sub-state legislatures, as well as among the national parliaments of EU member-states.

2.2 Member-state parliaments in the EU have been aided in the process of parliamentary scrutiny by the formal rights afforded to them in the Lisbon Treaty. These include direct communication of European Commission documents, a greater role in Treaty revisions, and the establishment of an *Early Warning Mechanism* to enable parliaments, working collaboratively, to keep a check on subsidiarity (see p. 60). The renewed emphasis upon the role of national parliaments in the EU policy process was in part an attempt to reduce the perceived democratic deficit and a reflection of a drift towards intergovernmental decision-making – where institutional leadership was provided by member-states rather than Community institutions, it seemed appropriate to give a greater role to the national parliaments to whom they are accountable.<sup>9</sup>

2.3 One study<sup>10</sup> assessing national parliamentary participation in EU policy-making identified three dimensions influencing the effectiveness of parliament scrutiny. These are just as pertinent to the scrutiny of intergovernmental relations within multi-level states:

**(i) Timing and access to information:** the time of parliamentary involvement in the policy-making process is a crucial factor shaping its capacity for influence, and is linked to the provision of information. Parliaments are more likely to exert influence if they intervene before intergovernmental decisions are made, rather than afterwards. The time period available for preparing and submitting a parliamentary resolution also affects the degree of scrutiny that can be exercised by the parliamentary body. With respect to EU policy-making, the European Commission provides parliaments with all documentation, but governments vary in the extent to which they inform or engage with parliament when formulating their own EU policies. Within states, there is variation both in the extent to which information on

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<sup>8</sup> Friedberg, C. 2011, ‘From a top-down to a bottom-up approach to legislative oversight’, *Journal of Legislative Studies*, vol.17, no.4: 525-44.

<sup>9</sup> Rozenberg, O and C Hefftl, 2015, ‘Introduction’, in Hefftl, C, C Neuhold, O Rozenberg and J Smith, eds. 2015. *The Palgrave Handbook of National Parliaments and the European Union*, Palgrave Macmillan, p.11-13.

<sup>10</sup> *Ibid.*

intergovernmental processes, meetings, negotiations and agreements is provided *at all*. In some cases, information may only be provided when specifically requested, or in annual reports, which are often published long after decisions are made. In other cases, intergovernmental agreements can only be finalised after parliamentary deliberation and consent.

**(ii) *Internal management of parliamentary scrutiny*:** the effectiveness of parliamentary scrutiny of intergovernmental affairs is also shaped by the tools and procedures available to the legislature, including debates, oral questions and hearings, written opinions, resolutions and mandates, and substantial evidence-based enquiries and reports. With respect to EU affairs, all member-state parliaments – and many sub-state legislatures – have established specialist EU Affairs Committees, but their responsibilities and opportunities for influence vary. Within multi-level states, some sub-state nations and regions have established dedicated committees to oversee intergovernmental affairs. There is also variation on the extent to which parliaments at either level can bind their governments by altering, consenting to or rejecting a proposal, or simply holding them to account for the decisions and actions undertaken.

**(iii) *Transparency and publicity*:** Parliaments vary in the extent to which their internal scrutiny processes are transparent. While all plenary debates in parliament are public, committees may opt to hold some sessions in private. Public meetings, especially over high salience issues, can support democratic accountability and inform wider public debate. They can also support the parliament's role in holding government to account by placing additional pressure on ministers and officials to defend and justify their actions. Conversely, public meetings may also foster a more contentious environment which diminishes ministers' willingness to reach compromises or 'climb down' from a previously held view. Public meetings may also inhibit ministers and officials from speaking candidly about intergovernmental negotiations for fear of breaching confidentiality or revealing areas where they had to make concessions. Private meetings may thus be a useful mechanism for informing ministers and senior officials of parliament's view, as well as receiving information about inter-governmental negotiations.

### 3. Case Studies

In the following pages, we provide an overview of intergovernmental relations and parliamentary scrutiny in six multi-level states. These political systems vary in their size, composition and territorial structure. Some have been federal for centuries, others have made the transition to federalism more recently and one, Spain, is not yet formally federal though it has many federal features. In most of these states, constitutional power is distributed symmetrically, at least in a formal sense, though de facto asymmetries have emerged as a result of bilateral agreements between the federal or central government and constituent units, as well as resource disparities between the constituent units. The cases also vary with respect to nationhood. While Germany, Switzerland and the United States are nation-states, where the idea that the state represents one nation is not seriously contested, Canada, Spain and Belgium are all pluri-national states where competing conceptions of nationhood and the politics of self-government have shaped the dynamics of intergovernmental relations.

**Table 1: Case Studies Overview**

|  | <b>Belgium</b>   | <b>Canada</b>                            | <b>Germany</b>                       | <b>United States</b>  | <b>Spain</b>   | <b>Switzerland</b>                               |
|--|--|--|--------------------------------------|---|--|--|
| <i>No. of constituent units</i>          | 3 Regions and 3 Communities  | 10 Provinces and 3 Territories           | 16 Länder                            | 50 States, a Federal District and 5 major Territories               | 17 Comunidades Autónomas                                       | 26 Cantons                                       |
| <i>Constitutional structure/ origins</i> | Federation since 1993 <sup>a</sup>                                 | Federation since 1867                    | Federation since 1949 <sup>b</sup>   | Federation since 1787   | 1978 constitution recognised regional autonomy                 | Federation since 1848                            |
| <i>Symmetry?</i>                         | Symmetrical  | Partial asymmetry                        | Symmetrical                          | Symmetry for states   | Partial asymmetry  | Symmetrical                                      |
| <i>Parliament</i>                        | Bicameral federal; unicameral regions/ communities                 | Bicameral federal; unicameral provincial | Bicameral federal; unicameral länder | Bicameral federal; bicameral state <sup>c</sup>                     | Bicameral central parliament; unicameral comunidades autónomas | Bicameral federal; unicameral cantons            |
| <i>Electoral System</i>                  | Regionalised party lists   | FPTP                                     | Mixed member proportional            | FPTP  | Party list   | Regionalised party list with preferential voting |
| <i>Party structure</i>                   | Regionalised by linguistic community, but integrated across levels | Separate federal and provincial parties  | Integrated                           | Partially integrated, with strongly autonomous state-level caucuses | Partially integrated, with strong regional parties             | Integrated                                       |

Notes:

(a) Federalisation was a process in Belgium, with consecutive rounds of constitutional reform beginning in 1970.

(b) Germany had a longer history of confederalism and federalism before the wars. The German Basic Law was founded in 1949, establishing, in one of three 'eternity' clauses, Germany as a federal state. Reunification extended the boundaries of the state, but did not fundamentally alter the constitution.

(c) except Nebraska

All states included here are democracies with parliaments which vary in their capacity to scrutinise and influence executive actions and intergovernmental interactions. Of the six states, all have bicameral parliaments at the central or federal level, though the second chambers vary in their constitutional power, democratic legitimacy and territorial representation. The legislatures in Canada and the US are elected using the plurality system (first past the post) and tend to produce single party majority governments. The remainder either have mixed member proportional systems or proportional party list systems, making coalition government the norm. In Switzerland and Belgium, power-sharing federal governments are an essential feature. In most cases, political parties are key players in the legislatures, but their role in facilitating intergovernmental relations and territorial integration varies according to the internal organisation of the parties as well as the extent to which parties are successful only or mainly in one part of the state, or carry their success across the state's internal borders.

The final case included in the report is the European Union. The EU has a unique constitutional structure. It conforms more closely to a confederal system than a federal one. The EU is the archetypal system of multi-level governance, involving government and non-governmental actors from local, regional, and national levels of government, and a supranational bureaucracy. Our focus here is on the member-state/EU intergovernmental relationship and, in particular, the capacity for oversight of that relationship among national parliaments of member states.

# 4. Belgium

- Complex federal structure which allocates power to three regions and three linguistic communities, with institutionalised power-sharing at the federal level
- Six constitutional state reforms since 1970, increasingly strengthening the power of regions and communities and driven by regionalised party system
- Highly institutionalised and executive-dominated IGR, including representation in EU
- Modest institutionalisation of procedures for parliamentary scrutiny of cooperation agreements and intergovernmental decrees

## 1. Territorial and Political Structure

1.1 The Belgian federal state consists of overlapping federated entities:

- the federal level;
- three regions (Flanders, Wallonia, and the Brussels Capital Region);
- three communities (the Flemish community, the French community, and the German-speaking community); and
- four language areas (the Dutch, French, German and bilingual Brussels-Capital language areas).

The latter designate official-language status within geographical boundaries but otherwise have no offices or powers. The regions and communities have distinctive constitutional competences and are elected separately. However, the Flemish community and the Flemish region united to form a single parliament, government and bureaucracy for Flanders. These institutions remain separate in Wallonia. At the federal level, the political system has a power-sharing arrangement which ensures the two primary language communities are represented in government and have mutual veto power over special laws and institutional matters.

1.2 Belgium transitioned from a unitary state to a federation over the course of several rounds of state reform, beginning in 1970. The fourth round of state reform in 1993 saw the creation of the Belgian federation. Subsequent rounds of state reform have transferred further powers to the regions and communities. The most recent sixth state reform transferred competences worth around €17bn from the federal level to the regions (economic and employment matters) and communities (family policy).

1.3 The Belgian state is bicameral at the federal level. Following the sixth state reform, Belgium's senate is no longer directly elected. It now consists of 50 representatives elected by the regional and community parliaments and ten senators elected by their peers. The Senate has limited power, but is fully competent to issue binding decisions on a narrow range of special laws and institutional matters. It has also become a forum in which conflicts of interest may be aired.

1.4 Political parties in Belgium are regionalised – there are no *Belgian* parties. The separation of political parties along linguistic lines preceded and has arguably driven the process of federalisation. No one party and no one linguistic community can govern alone – power-sharing governments must be formed which span the linguistic divide. Ideologically similar parties function in both Flanders and Wallonia, but there is no link between them. To illustrate, the



Flemish Christian-democrats are currently part of the federal government coalition, but the Francophone Christian-democrats are in opposition.

1.5 Belgium is a pluri-national state and the process of federalisation has also been driven Flemish nationalism. This has been expressed within various political parties over the years, but is mainly manifest today in the *Nieuw-Vlaamse Alliantie* (N-VA), a centre-right party founded in 2001 and committed to a gradual transition towards independence for Flanders within the European Union. The N-VA has emerged to become the most popular party in Flanders, and currently leads the coalition government of Flanders (with the Christian Democrats and the Liberals), as well as participating in the federal coalition government.

1.6 Belgium federalism conforms to a dual model (except over three levels!). Each of the federated entities has exclusive competences and there is no hierarchy between them. The communities are primarily formed on the basis of language and their competences reflect jurisdictions that deal mainly with cultural and personal issues. Regional competences are more territorial. The federal level retains residual power – it is competent for all matters not expressly assigned to the regions or communities.

#### *Constitutional distribution of powers*

|                  |   |
|------------------|---|
| <b>Federal</b>   | Defence, federal policing, foreign affairs, EU representation and decision-making; home affairs, judicial system, income policy, nuclear energy, postal services, public finances and debt, preventative public health, state-owned companies, social security (unemployment, pensions, health insurance)<br><br>Also responsible for the obligations of Belgium and its institutions towards the EU and NATO |
| <b>Regional</b>  | Economic affairs, employment policy, energy, transport, environment, foreign trade, housing, public works, town and country planning, agriculture, fisheries, nature conservation, provincial and communal management, water policy, sport.   |
| <b>Community</b> | Health services, education, culture, families, integration of immigrants, language policy, social welfare, child benefits/allowances, youth policy.   |

1.7 Belgian regions and communities also have extensive powers externally. The communities and regions operate under the principle of *in foro interno, in foro externo*: for every exclusive competence on the internal level, the federated entity also enjoys competence on the international level, so long as its positions do not contravene federal positions. However, international bodies often only recognise one voice from Belgium which necessitates a high degree of intergovernmental coordination.

## **2. Structure and Dynamics of Intergovernmental Relations**

2.1 In spite of exclusive competences and significant levels of self-rule, Belgium has a highly institutionalised system of intergovernmental relations. Agreements are forged between units of government because cooperation is necessary to move forward, not because there is a strong will for cooperation. The need for cooperation is driven by the overlap between the competences assigned to each level, as well as the need for coordinated international action. A 2000 study<sup>11</sup> found that 70% of all cooperation agreements in the fields of the environment and the economy

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<sup>11</sup> Jans, Maarten Theo, and Herbert Tombeur (2000). 'Living Apart Together: The Belgian Intergovernmental Cooperation in the Domains of Environment and Economy', in Dietmar Braun (ed.), *Public Policy and Federalism*. Aldershot: Ashgate, 142–76.

were concluded because concerted action was required for participation in international institutions.

2.2 A limited degree of cooperation was built into the system with the 1980 round of state reform which set out the terms and conditions of collaborative mechanisms. As Belgian federalism developed further, there was a deliberate attempt to explicitly set out forums and mechanisms for collaboration. Borrowing from German constitutional tradition, IGR are described as *cooperation* in the Belgian context. The 2001 state reform (the fifth state reform) introduced new compulsory cooperative measures.

2.3 Parties play an important role in intergovernmental relations. Until 1999, coalitions were typically congruent (with parties in government at the regional and community level also represented in the federal coalition). As a result, cooperation agreements could be negotiated by the governing parties and through party channels, rather than requiring a specific forum for negotiation, much like in Scottish-UK intergovernmental relations for the first eight years of devolution. Incongruence in the political composition of governments increased the level of conflict in the system.

2.4 Cooperation is largely motivated by the need to coordinate Belgian policies and positions vis-à-vis international bodies and particularly the European Union. Although regions and communities have treaty-making powers, they are often not recognised as signatories and have to engage in international relations through the medium of the Belgian state.

**Table 2: Key Vertical and horizontal bodies of intergovernmental relations**

| Body                          | Type of IGR   | Regularity of meetings                           | Purpose  | Publication of Agenda                             | Publication of resolutions                        |
|-------------------------------|---|--|--|---|---|
| Concertation Committee        | Multilateral  | Monthly, but emergency meetings possible         | Deliberation on multi-level issues, can issue non-legally binding but politically relevant decisions<br><br>Forum for negotiation should 'conflict of interest' procedure be activated | Available to members of government and parliament | Available to members of government and parliament |
| Inter-ministerial Conferences | Multilateral (only conference on education is horizontal) | Annually or biannually, depending on policy area | Focused on resolving jurisdictional disputes and cooperation agreements  | Available to members of government and parliament | Available to members of government and parliament |

2.5 Intergovernmental relations can take place within and across multiple levels – vertically, between the federal government and the regions, or the federal government and the communities; horizontally between regions, or between communities; or between a region and a community, or all three levels. This dynamic is further complicated by the asymmetry of the federal structure, following the merger of the Flemish region and community.

2.6 There are two main forums for intergovernmental relations in Belgium: the Concertation Committee and the inter-ministerial conferences.

- The **Concertation Committee** is a multilateral forum consisting of the heads of the federal, regional, and community governments. It is organised on the principle of double parity, with an equal number of Francophones and Flemings and an equal number of regional and community representatives. It acts as a general body for deliberation on

issues which require collaboration between different levels of government, and is charged with finalising significant partnerships, discussing financial arrangements, and deliberating on draft legislation where cooperation is required.

The Concertation Committee holds monthly, scheduled meetings (the last Wednesday of every month), and can also meet on an ad hoc basis in response to a request from the Prime Minister or a Minister-President of the federated entities. These meetings are not public, but generate media interest prior to the event. Recent meetings have included discussions of terrorism and extremism, European Union matters, and coordination on finance within Belgium.

The Concertation Committee is also a mechanism of last resort when mediation and negotiation at lower levels fail. A '**conflict of interest**' can be raised by the federal or regional governments and progress will stop on legislation for 60 days while heads of government attempt to negotiate a compromise<sup>12</sup>. If the Committee fails to find a solution, the status quo will remain in place. Although the decisions of the Committee, taken on the basis of consensus, are not legally binding, they are politically relevant. The Committee also has responsibility for overseeing inter-ministerial conferences and cataloguing cooperation agreements. *Documents produced by the Committee are archived and made available to parliaments.*

- **Inter-ministerial conferences** were introduced in 1989 and have expanded in scope and use in recent years. There are now 19 such conferences covering a variety of policy areas including institutional reforms, welfare and family policy, and finance and budgetary issues. IMCs are convened for resolving jurisdictional conflicts and coordinating policies where necessary. They are usually composed of ministers of the federal and sub-state governments responsible for the policy area in question. The Conferences have no real decision-making power but provide a forum for the preparation of cooperation agreements and consultation. They are underpinned by a variety of working groups including senior policy officials and political advisers. These often technical working groups are the main forums for preparing cooperation agreements, with inter-ministerial conferences used to sign-off on agreements already reached in principle.

2.7 A variety of mechanisms for intergovernmental relations exist. These can range from informal (processes for information sharing and non-binding consultation) to concertation which often precedes formal cooperative agreements.

2.8 Formal **cooperation agreements** ensure coordinated legislative and executive action. These agreements enable the regions, communities and federal authorities to cooperate in the common management of services and institutions or the joint exercise of competences. They are often used to create a shared institution and focus largely on public services, provisions for disabled persons, education, labour and environmental policy. Some cooperation agreements are purely executive, whereas others require legislation, with greater scope for parliamentary input. Cooperation agreements can be understood as intra-Belgian treaties and inter-governmental relations in Belgium has been likened to international diplomacy. These agreements are also used for external matters and are required for Belgium as a whole to take a position within an international or supranational body on a policy falling within the competences of the regions and the communities. Cooperation agreements do not have procedures for amendments, a new agreement must be signed.

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<sup>12</sup> Gossens, M. and M Elst (2015), 'The Flemish Parliament: Its Role in A Bipolar Federal System'. In Lecours, A., Rocher, F. and Laforest, G. *Parliaments in autonomous nations*, Brussels: Peter Lang.

2.9 In 2014, **joint decrees** were introduced as a more flexible alternative to cooperation agreements. Although still in their infancy and yet to be used, these are designed to allow communities and regions to issue joint positions on the development and management of common services and institutions. Whereas cooperation agreements are negotiated between executives, joint decrees can be introduced by governments and parliaments. These decrees can be implemented by each government separately or in the form of a joint executive order. Before being issued, parliaments will convene inter-parliamentary committees (like in Switzerland) to discuss the proposed agreements.

#### Interministerial Conferences: Belgium

- |  |   |
|--|---|
| • Agricultural policy                                | • Institutional reforms                               |
| • Civil service and modernisation of public services | • Integration and urban policy                        |
| • Domestic policy                                    | • Labour market, social policy and social integration |
| • Economy, small and medium enterprise, and energy   | • Mobility, infrastructure, and telecommunications    |
| • Environment  | • Public health                                       |
| • Finance and budget                                 | • Safety, security and justice                        |
| • Foreign policy                                     | • Scientific and cultural policy                      |
| • Foreign trade                                      | • Sustainable development                             |
| • Houses of justice                                  | • Well-being, sports, and family                      |

### 3. Parliamentary Scrutiny of IGR

3.1 On the surface, Belgian intergovernmental relations are highly formalised, rooted both in the system's general tendency towards the need to resolve conflict but also the relative newness of the federation. Mechanisms for IGR are built into the system from the top down rather than demand driven and parliamentary scrutiny was also included in the institutional design.

3.2 The proceedings of Belgium's established forums for intergovernmental relations are available to members of parliament, fitting with a general tendency towards information transparency in Belgium. Records of the Concertation Committee as well as the agendas and approved minutes of the Inter-Ministerial Conferences are sent to all parliaments, either directly via email or made accessible via an electronic database. Cooperation agreements are filed and published in the official gazette as well as made available electronically to MPs.

3.3 Dedicated parliamentary committees are also charged with scrutinising intergovernmental cooperation. In the Flemish Parliament, this takes the form of the **Committee on Rules of Procedure and Cooperation**, whilst in the Walloon regional parliament, the **Committee on Cooperation with the Federation, Wallonia-Brussels and the French Communitarian Commission** focuses exclusively on intergovernmental relations. At the Francophone Community level - the *Fédération Wallonie Brussels* – IGR falls under the remit of a broad committee which includes international relations and the European Union. Parliamentary scrutiny can take place outside of the designated committee, whether in plenary or in other subject specific committees. In Flanders, cooperation agreements and other questions regarding intergovernmental relations are rarely raised in the Committee on Rules of Procedure and Cooperation, but are dealt with in subject specific committees, as are international agreements. Draft decrees are first discussed and debated in committee before being sent to the plenary for voting.

3.4 In Flanders, cooperation agreements signed by the executive must be logged with the parliament within seven days of signing, although there is no obligation to publish agreements. Regional and community parliaments are also required to consent to cooperation agreements which meet any of the following criteria:

- Contain financial implications
- Create obligations for individuals
- Deal with matters governed by legislation rather than regulatory instruments
- Do not contain a provision for amendments

However, parliaments can only accept or reject cooperation agreements, they cannot propose amendments.

3.5 Parliament should have more extensive implementation and oversight roles in the recently introduced joint decrees and orders which allow for the development and management of common services and institutions. Joint decrees must be adopted by the inter-parliamentary committee before being adopted by the Community or Regional parliaments. Parliaments will also have amendment rights over joint decrees.

3.6 The publication of records of the Concertation Committee and the procedures for logging cooperation agreements with parliaments also help to make IGR more transparent, and so may aid parliamentary scrutiny and debate. However, the opportunities for oversight by regional and community parliaments remain limited, particularly given the importance of political parties and party leadership in governing and government formation. Negotiations carried out by party actors may be inaccessible by parliaments seeking to engage in scrutiny.

#### 4. Sub-state parliaments in European Union activities

4.1 Given the nature of EU policy making in Belgium, organised on the principle of *in foro interno, in foro externo*, coordination between the different levels of government is intense when it comes to European affairs. European policy is coordinated by the **Interministerial Council on Foreign Affairs**, which was formed in 1993. The configuration of the council depends on the specific policy area under discussion. Consultations are held about the position Belgium will take prior to each European Council meeting. If no agreement is made, the issue will be raised before the Concertation Committee. If the Committee fails to reach a compromise, Belgium will be forced to abstain, though abstention is rare in practice.

4.2 The 1994 cooperation agreement sets out the mode by which representation in the Council of Ministers is accorded. Representation depends on the location of the competence and can include:

- a) exclusive federal representation;
- b) federal representative accompanied by an assessor from the federated entities (rotating);
- c) federated entities accompanied by a federal assessor;
- d) exclusive representation of the federated entities;
- e) a single federated entity; or
- f) federal representation with assistance from the entities.

4.3 In order to allow for recognition of the regional and community parliaments, Belgium identifies the federal parliament as well as the regional and community parliaments as chambers of the national parliament. As a result, ***all treaties must be ratified by all parliaments***. If one refuses to approve the treaty, the Belgian state cannot ratify it.

4.4 Whilst largely executive driven, some provisions are in place to facilitate access to information and evaluation by the parliaments of the federated entities. The federal government is obliged to forward any useful information it receives from European institutions, which are made available electronically. In line with the Early Warning Mechanism of the Lisbon Treaty, the Commission will send documents directly to the Belgian parliament, and internal services have been established to coordinate the distribution of European documents to other parliaments.

4.5 In Flanders, Flemish representatives in the European Parliament are also invited to participate in committee meetings at the parliamentary level, providing insight into developments at the EU level. Monthly notes on EU issues are distributed to MPs and the Flemish government reports biannually on the status of European issues relevant to Flanders. Representatives of the Permanent Representative to the EU and relevant ministers can also be called upon to participate in committee proceedings.

# 5. Canada

- A dualist system of federalism, with high levels of self-rule and little incentive for co-ordination and co-decision
- Intergovernmental relations dominated by Executives, with little opportunity for parliamentary oversight.
- Centralised bureaucracies within federal and provincial governments, each with dedicated ministers for intergovernmental affairs
- Weakly institutionalised intergovernmental relations, with a trend towards informal bilateral relations

## 1. Territorial and Political Structure

1.1 The Canadian federation consists of the federal level, ten provinces which derive their powers directly from the constitution and three territories which are treated as special autonomous regions, with powers devolved from federal law. Although the federation was created in 1867 by an Act of the UK parliament (the British North America Act), the four original provinces – New Brunswick, Nova Scotia, Ontario and Quebec – were joined over time by the remaining six, the youngest of which, Newfoundland, joined in 1949. The current boundaries of the territories date back to 1999, when the North-West Territories was partitioned to create a new devolved territory, Nunavut.

1.2 Canada combines federalism with a Westminster model of parliamentary sovereignty. The federal legislature is bicameral, with the House of Commons by far the superior chamber. The Canadian Senate is composed of 105 appointed representatives who can retain their seats until age 75. Seats are allocated on a regional (not provincial) basis, but there is no direct territorial representation of the provincial governments. All provincial legislatures are unicameral.

1.3 Constitutional competences are divided according to a 'dualist' model, with exclusive competences assigned to the provinces and the federal parliament, and few areas of concurrent competence. The constitution gave residual power to federal parliament, which can legislate for 'peace, order and good government', but the provinces have very high levels of autonomy, including general powers over property, private law and local affairs (given wide interpretation by the courts over the years since the BNA Act), and are fiercely protective of their sovereignty.

1.4 As in all multi-level systems, interdependence has developed over time, especially in the context of the growth of the post-war welfare state and federal spending. The controversial 'federal spending power' has enabled successive federal governments to intervene in areas of provincial jurisdiction, develop their own social programmes or negotiate fiscal transfers to the provinces, often with conditions attached to how the money is spent so as to develop *national* Canada-wide programmes. In the 1960s, during the period known as the Quiet Revolution, Quebec successfully negotiated opt-outs from a raft of social programmes, including a new public pensions scheme, receiving compensation in the form of greater 'tax room' to enable the provincial government to raise its own revenues for its own version of these schemes. The transfer of tax points in this way has been a key feature of fiscal federalism in Canada, and proved influential to the Calman Commission when devising its proposals for Scottish fiscal autonomy.



1.5 Both the federal government and the provinces have tax-raising powers, including over income taxes, sales taxes, and corporate taxes. Intergovernmental **Tax Collection Agreements (TCAs)** permit the federal government to collect taxes on behalf of most provinces, then remitting to each province its share. The rates are set by the provinces. TCAs entailed some policy constraints on provinces and, though flexibilities have expanded over time, there remains a uniform tax base and a federal definition of taxable income. Quebec is the exception. It has its own tax collection agency, *Revenu Québec*, and more policy flexibility largely as a result.

1.6 Financial agreements between the provinces and the federal level are negotiated, through bilateral executive relations, for a four to five year period. Inequalities between provincial revenue-raising capacities are partially addressed by a federal **Equalization programme**, which provides unconditional fiscal transfers to poorer provinces to ensure they have sufficient revenues to provide broadly comparable public services. There remains a **vertical fiscal imbalance** - with the federal government raising more money than it needs for its spending responsibilities, while the provinces have insufficient revenue-raising capacity to meet their responsibilities. This is only partially offset by federal fiscal transfers. The **Canada Health Transfer (CHT)** and the **Canada Social Transfer (CST)** support provincial programmes in health care, post-secondary education, social assistance and social services, early childhood development and child care (with some conditions attached, though these have diminished over time). The Territorial Formula Financing (TFF), like Equalization, is an unconditional transfer and supports public service provision in the northern territories, in recognition of their higher cost of providing public services.

#### *Constitutional distribution of powers*

|                   |  |
|-------------------|--|
| <b>Federal</b>    | Defence, foreign affairs, international trade, banking and currency, public debt, naturalization, citizenship and border security, federal taxation and tax collection, fisheries, interprovincial transportation, shipping, airlines and railways, interstate trade, criminal law, employment insurance, postal system and communications, the census and statistics, and Aboriginal lands and rights<br><br>All powers not allocated to the provinces, including general power to 'make laws for the peace, order and good government of Canada', except for 'subjects assigned exclusively to the legislatures of the provinces'. |
| <b>Provincial</b> | Healthcare, hospitals, natural resources, including energy (excluding nuclear), crown lands, direct taxation for provincial purposes, employment, finance, cooperatives and saving banks, international representation, intra-provincial transportation and business, prisons, the courts and the administration of justice, property and civil rights, education, local government, local works, licencing (including for alcohol), pensions*, social security (excluding employment insurance), social services and charitable institutions.   |
| <b>Concurrent</b> | Agriculture, immigration, pensions, marriage   |

\* all provinces, except Quebec, negotiated participation in the Canada Pension Plan in the 1960s

1.7 Canadian political parties are organised separately at the federal and provincial level, often with little or no organisational links or policy preferences between parties within the same ideological family. So, the Progressive Conservatives of Ontario are wholly separate from the federal Conservatives. The *Parti libéral du Québec* is wholly separate from the Liberal Party of Canada. Only the New Democratic Party (NDP) has an integrated organisational structure and membership across federal and provincial politics, except in Quebec where it no longer competes in provincial elections. The Canadian party system therefore lacks the integrative function of the Swiss and Belgian party politics and contributes to a competitive dynamic in federal and provincial intergovernmental relations. Even at the federal level, Canadian party



politics have become more regionalised, such that a party is likely to be elected in Ottawa nowadays with very little support in one or more provinces. This has consequences for intergovernmental relations.

1.8 Canada is also a pluri-national state, although recognising its multi-national character has at times created tensions. The majority in the province of Quebec regards Quebec as a nation within Canada, and thus many view Canada as a bi-national federation. For many outside of Quebec, it is a province like the others. The challenge of accommodating Quebec within the federation in the face of a periodically confident nationalist movement and party has dominated intergovernmental relations. Canada's pluri-national character also extends to the aboriginal 'First Nations', many of whom live on reserves. Canada is officially bilingual, though for most of the country, English is the dominant language. Almost 80% of Quebecers are Francophones as is around a third of the population of New Brunswick.

## 2. Structure and Dynamics of Intergovernmental Relations

2.1 Despite an attempt to allocate separate spheres of jurisdiction for the federal and provincial parliaments, many areas overlap. This has led to coordination, including in education, environment and climate change, healthcare, employment and labour market policy, taxation and equalisation, and the constitution.

2.2 There are several key forums within which multilateral IGR take place:

- **First Ministers' Conferences** are convened on an ad hoc basis by the federal prime minister. The meetings were held nearly annually from the 1960s onward. There are no rules or regulations, and little transparency. Meetings, when they take place, are held behind closed doors with a statement issued to the press upon the conclusion of the conference. From the 1970s to the 1990s, FMCs were dominated by constitutional politics, first in the efforts to secure the patriation of the constitution (achieved in 1982, but without the consent of Quebec), and then in the successive failed attempts to reintegrate Quebec within the Canadian constitutional fold. From the mid-1990s, against a backdrop of deficit reduction, FMCs were dominated by negotiations and grievances over money. Outcomes emerging from FMCs are legally non-binding but can carry political weight, usually to encourage federal government action. Conversely, the lack of statutory underpinning makes intergovernmental agreements vulnerable to unilateral action, as was evident when the federal government scrapped federal-provincial child care agreements without negotiation (see box). The current Prime Minister, Stephen Harper, has been reluctant to engage in high-level, multilateral IGR, and the last meeting of the First Ministers' Conference was held in 2009.

### ***Bilateral agreements on child care***

Child care is an exclusive provincial matter but the federal government can input through fiscal transfers and its spending power. In the late 1990s, negotiations between the federal, provincial and territorial governments led to the development of a National Children's Agenda, and in 2005, the (Liberal) federal government and nine provinces (excluding Quebec, which already had an established child care programme) signed agreements-in-principle which would see federal fiscal transfers of \$C5bn over five years to help provinces develop early childhood learning and child care according to national QUAD principles (quality, universality, accessible and developmental). However, in 2006, the new (Conservative) government unilaterally revoked these agreements with one year's notice, replacing them with a new taxable allowance for families with children under the age of six (bypassing the provinces altogether), and much smaller transfers and tax allowances to support new child care spaces. Although the move was met with objections from civil society and the provincial premiers, the non-statutory nature of Canadian IGR left the provincial governments with little room for manoeuvre.

- At the horizontal level, the **Annual Premiers' Conference** provided an informal forum for provincial premiers to meet. The organisation grew in importance since the 1970s and 1980s and, in 2003 upon the initiative of the then PQ-led Quebec government, it was transformed and formalised as the **Council of the Federation**, with the aim of promoting cooperation between provinces and territories, improving relations between governments, and assuming a leadership role in key policy areas. This is an exclusively provincial and territorial body although in 2009, the Prime Minister was invited (but declined) to attend a special meeting on the economy. The Council meets twice yearly in private and issues joint statements on its position, as well as more in-depth reports and action plans. Its work is supported by a steering committee of senior officials responsible for intergovernmental affairs from each of the provinces and territories. At its most recent meeting, it published letters to the heads of federal parties in advance of the autumn 2015 federal elections, setting out the key areas of concern for provincial and territorial leaders - jobs and the economy, funding for health policy, aboriginal issues and climate change.
- An extensive range of **sectoral conferences** also take place between ministers and officials responsible for specific policy areas, but on an *ad hoc* basis. Additional premiers' conferences are also convened on a regional basis. Sectoral conferences include the Council of Ministers of Education Canada and the Forum of Labour Market Ministers. They vary in purpose, scope and frequency, and are not governed by specific procedures. These have increasingly taken the form of inter-provincial meetings, although federal ministers may also be invited to attend. Some permanent administrative structures have been established to support inter-provincial cooperation and implement joint projects.

**Table 3: Key Vertical and horizontal bodies of intergovernmental relations**

| Body   | Type of IGR                         | Regularity of meetings   | Purpose  | Publication of Agenda | Publication of resolutions       |
|--|-------------------------------------|--|--|-----------------------|----------------------------------|
| First Ministers' Conference                                    | Multilateral & vertical             | Ad hoc, have not been convened since 2009                                      | Negotiation and discussion between provincial and federal executives               | No                    | Press release following meeting  |
| Council of the Federation                                      | Multilateral & horizontal           | Twice a year, with subject-focused working groups cooperating on ongoing basis | Negotiation and discussion between provincial executives, often focused on funding | No                    | Joint statements on positions    |
| Regional premiers conferences                                  | Multilateral & Horizontal           | Ad hoc, coordinated by Canadian Intergovernmental Conferences Secretariat      | Discussion of common issues or challenges  | No                    | Press release or online coverage |
| Voluntary conferences between federal and provincial ministers | Multilateral, vertical & horizontal | Ad hoc, level of institutionalisation varies                                   | Forum for discussion   | No                    | Press release or joint statement |

2.3 Intergovernmental relations in Canada are only institutionalised with respect to their bureaucratic organisation:

- At the federal level, IGR are managed by the **Minister of Intergovernmental Affairs** and the Federal-Provincial-Territorial Relations secretariat at the **Privy Council Office**.
- Provincial governments have developed offices for provincial intergovernmental affairs, led by a provincial minister – often a senior ministerial post in the larger provinces. These offices play a role in information gathering and distribution, research, and provide advice and guidance to ministers entering negotiations.
- In Quebec, intergovernmental affairs are coordinated by the **Secrétariat aux affaires intergouvernementales canadiennes** (SAIC). SAIC represents the government of Quebec in Canada, authorises *all* intergovernmental agreements signed by any public body in Quebec, and serves as a repository for agreements.
- The **Canadian Intergovernmental Conference Secretariat** – which is jointly staffed by officials from the federal and provincial governments – provides administrative support for bilateral and multilateral conferences. The CICS hosts about 90 meetings per year.

2.4 In other respects, Canadian IGR are weakly institutionalised: scheduling of inter-ministerial conferences is ad hoc rather than routine; intergovernmental agreements are politically binding rather than legally binding; and with the exception of the Council of the Federation, intergovernmental conferences lack a clear set of rules and regulations.

2.5 Recent trends have seen an **increase in bilateral negotiations and agreements** between the federal government and individual provincial governments. Bilateral negotiations provide flexibility in both the process and content of agreements, while respecting the equality of treatment of the provinces. Bilateral agreements successfully negotiated in one province may be used as a framework for other provinces, and signed agreements may be amended to include favourable provisions negotiated by the federal government and other provincial governments. The transfer of powers to provinces over labour market policy was gradually achieved on a bilateral basis. Similarly, every province has negotiated a bilateral agreement over the responsibilities in the (concurrent) area of immigration, with Quebec gaining more influence on selection criteria in order to protect and promote the French language in the province.

### 3. Parliamentary Scrutiny of IGR

3.1 Outcomes of Canadian intergovernmental relations take the form of policy commitments, bilateral agreements and non-binding statements of intent. These agreements are not legally enforceable and any disputes are to be resolved by ministries rather than the courts. The opportunities for parliament to scrutinise and influence intergovernmental relations, either before meetings take place and agreements are reached, or afterwards, are very limited.

3.2 Agreements on constitutional reforms form an exception and provide a greater role for provincial legislative assemblies. Manitoba's Premier made the agreement to patriate the constitution in 1982 conditional upon the province's legislative assembly approving the deal. Since 1982, a new constitutional amending formula makes most amendments subject to the agreement of identical resolutions both houses of the federal parliament and two thirds or more of the provincial legislative assemblies representing at least 50 percent of the national population. Constitutional change affecting only one province requires only the consent of the federal parliament and the affected provincial parliament, following a bilateral intergovernmental negotiation.

3.3 Each provincial assembly has a dedicated parliamentary committee with a remit which includes intergovernmental relations, but the strength and engagement of these committees

varies between provinces. Policy-specific committees may also play a role. The nature of intergovernmental relations in Canada, with a preference for formal executive summits and informal meetings of ministers and senior officials presents a challenge to legislatures wishing to engage in parliamentary scrutiny.

3.4 Government departments charged with intergovernmental relations may also be required to file an annual report with the provincial assemblies but this can range from a simple statement of expenditure to a more developed analysis of activities over the course of the year. Legislatures have a slightly larger role to play in the negotiation of intergovernmental agreements at the outset, authorizing ministers to conclude agreements and act on behalf of the executive. However, there is no formal requirement to inform the legislative assemblies on the process of negotiation and conclusion of such agreements.

3.5 The summitry associated with the larger First Ministers' and Premiers' conferences increases media attention which can contribute towards transparency, but only to a limited extent. The outcomes of these meetings are often a brief press statement, and more information beyond that is difficult to access. Summits will often be covered by the media while they are being held, with interviews among the various parties providing some insight into the dynamics. There is, however, no requirement to report to parliament, either in advance of or after these meetings. The recent trend towards informal meetings and bilateral negotiations diminishes media attention, with a detrimental impact on transparency.

3.6 Although still very limited, the institutional capacity for oversight in the **Quebec National Assembly** is slightly more developed than in neighbouring provinces.<sup>13</sup> Within the parliament, intergovernmental relations fall under the competence of the **Commission des Institutions**, a parliamentary committee which also has remit over international relations, justice, public security, the constitution and relationships with First Nations. An annual report by the minister heading the Secretariat of Canadian Intergovernmental Affairs (SAIC) must be tabled but specific intergovernmental accords are not subject to individual scrutiny, and IGR are not prominent among the committee's deliberations. However, the SAIC minister is responsible for serving as a depository of Canadian intergovernmental agreements (in the form of a searchable registry on the government's website) and can be subject to interpellation by parliament.

3.7 The Quebec National Assembly also illustrates how extending the role of parliament in IGR can serve to support the executive in the intergovernmental arena. As executives embark upon intergovernmental negotiations, the National Assembly can support and reinforce their negotiating position by publishing **unanimous resolutions** which provide a more formal expression of Québec's positions and are used to support the executive branch in dealings with the federal and provincial governments. In January 2009, the Quebec government came to a First Ministers meeting on the economy with a unanimous motion voted by the Quebec National Assembly the day before, bolstering its negotiating hand.<sup>14</sup>

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<sup>13</sup> Rocher, F. and Gilbert, M-C (2015) 'The Parliament of Quebec: The Quest for Self-Government, Autonomy and Self-Determination', In Lecours, A., Rocher, F. and Laforest, G. *Parliaments in autonomous nations*, Brussels: Peter Lang.

<sup>14</sup> Adam, M-A, J Bergeron and M Bonnard, 2015, 'Intergovernmental Relations in Canada: competing Visions and Diverse Dynamics', in Poirier, J, C Saunders and J Kinnaid *Intergovernmental Relations in Federal Systems* (OUP Canada).

# 6. Germany

- Federal state with 16 Länder of varying sizes and economic strength
- Symmetric distribution of functional powers across Länder, enjoying high self-rule and high shared rule
- 'Interlocked' and interdependent model of power allocation necessitates federal-Länder coordination, managed mainly through the Bundesrat, Germany's upper house
- Modest legislative oversight of IGR, especially over legally binding inter-state treaties, budget matters and EU matters, but IGR heavily dominated by executives

## 1. Territorial and Political Structure

1.1 The two chambers of parliament reflect the federal organisation, with the lower house, the Bundestag, representing the people and the upper house, the Bundesrat, representing the regions (the Länder). The members of the Bundesrat are appointed by the governments of the Länder thereby ensuring that Länder interests are represented directly at the federal level and the Länder executives (not the Länder parliaments) participate in processes of federal legislation.

1.2 Population size forms the basis for the number of votes each Land controls in the Bundesrat, but smaller Länder are over-represented and larger ones are slightly under-represented. The 16 Länder differ regarding the number of inhabitants from about 650,000 in Bremen to over 17 million in North Rhine-Westphalia. Each Land gets a minimum of three votes; Länder with more than two million inhabitants get four votes, Länder with more than six million inhabitants receive five and those with more than seven million inhabitants hold six votes. Each Land has to deliver a uniform vote.

1.3 German federalism is characterised by a **functional allocation of power**, meaning that the majority of legislative power rests with the federal level while the Länder are responsible for executing and implementing federal legislation – also called 'administrative federalism'. The German Basic Law only lists federal responsibilities – exclusive, concurrent, and joint tasks, the latter requiring the consent of the Länder. In fields subject to concurrent legislation, the Länder have the right to adopt legislation only when the federal parliament has not made use of its legislative powers in that field. Residual powers lie with the Länder, meaning they have powers over all areas and competences not explicitly listed as federal responsibilities. All Länder enjoy the same level of power.

1.4 Länder traded their decision-making autonomy for influence over decisions taken at the federal level. This trend was especially visible in the area of fiscal powers. Länder gave away tax autonomy and tax-levying powers in exchange for a system of joint taxation and a fixed share of the most important taxes so as to provide a more reliable source of income and reduce tax competition between the Länder.

1.5 The party system in Germany is highly integrated, with no significant regional parties. The Christian Social Union (the Bavarian christian democratic party) is separate from, but allied to, the German Christian Democrats. As a nation-state, Germany is not challenged by autonomy claims or challenges to nationhood, though the persistent differences between the eastern and western Länder periodically threaten to bring a territorial dimension to political debate and party competition.

### Constitutional division of powers

|  |   |
|--|---|
| <b>Exclusive responsibilities (federal)</b>      | Foreign Affairs; national defence and security; protection against international terrorism; gun/explosives laws; cooperation between Bund and Länder concerning criminal police work; citizenship, Immigration and naturalisation; passport and system of registration; external trade; air traffic, railway and communications; civil service law, copyright regulation, federal criminal police office; provisions for veterans; nuclear energy                     |
| <b>Concurrent responsibilities</b>               | Criminal law, civil law and law of assembly and association; prison system; road traffic; laws relating to the residence and establishment of foreign nationals; business law, consumer protection; benefits granted to members of the public service   |
| <b>Joint tasks</b>                               | Improvement of regional economy; improvement of agricultural structure and coastal protection; promotion and funding of science, research and large equipment; optional cooperation for measuring performance of education (dependent on further agreements)  |
| <b>Länder responsibilities (residual powers)</b> | Main areas are: Education and culture (including broadcast, arts and language policy), religious matters (e.g. religious instruction in public schools), internal security and policing; justice and detention, elections to the Länder parliament and to local councils; foreign affairs insofar as the Länder are responsible for legislation; conservation, land consolidation, spatial planning, and water supply; sport and Leisure; higher education regulation |

## 2. Structure and Dynamics of Intergovernmental Relations

2.1 Due to the functional allocation of power and the existence of joint tasks, vertical intergovernmental relations are highly institutionalised. Several constitutional principles establish authority relationships of *shared rule* leading to greater vertical coordination and joint decision-making between the federal and Länder governments:

- *Joint tasks* require joint decision making in the areas of regional economic structure, agriculture and coastal protection, whereas governments can agree to further coordination in the fields of higher education, research or university infrastructure (esp. buildings).
- In *financial matters*, joint decision making exists due to the compulsory consent of the Bundesrat. The consent of the Bundesrat is required whenever federal legislation executed by the Länder creates financial duties or similar payments in kind for the Länder.
- Changes to *joint taxes* and *fiscal equalisation* require the consent of the Bund and Länder, with decisions taken according to an informally established unanimity rule.

2.2 Vertical coordination for federal legislation takes place through the participation of the Länder in the Bundesrat. In addition, numerous intergovernmental coordination bodies exist, such as **Federal-Länder commissions**, **Federal-Länder committees**, and **Conferences of First Ministers** and **Conferences of Cabinet Secretaries**. Commissions and committees are established for coordinating overlapping areas of responsibilities or specific tasks of mutual interest (e.g. the commission for media convergence dealing with issues of digitalisation and internet regulation, or the commission for information technology in the judiciary). They can be permanent bodies, like the commission for education planning and research that operated from 1970-2007, when it was re-organised as Joint Conference for Science. Or, they can be time-

limited and task-orientated, like the Federal-Länder Commission on the Modernisation of the Federal Order (2003-2004).

2.3 In contrast to issue-focused commissions, conferences of first ministers and cabinet secretaries cover entire policy fields and are permanent bodies, such as the **Conference of Finance Secretaries** or the **Conference of Justice Secretaries**. The most common outcome is a set of **resolutions** that provide **guidance** for legislative initiatives, government programmes or for policy implementation. Resolutions with binding character can be agreed upon but may require the additional consent of the heads of the governments. With regard to financial matters, an informal unanimity rule ensures that no Länder government can be bound to an agreement without having given its consent. In return, Länder parliaments have little opportunity to influence the deal once an agreement has been reached.

2.4 A system of horizontal relations and coordination mechanisms exist between the Länder for areas within in their jurisdiction. The main coordination bodies are the First Ministers Conference (*Ministerpräsidentenkonferenz*) and the Conferences of Cabinet Secretaries, such as the Conference of Cabinet Secretaries for Culture established in 1948 as a permanent body in order to coordinate policies of education, higher education and research. Länder cabinet secretaries of finance, justice or internal affairs also meet regularly in order to agree on resolutions and coordinate their interests. Prior to the conferences, Länder cabinet secretaries of the same party affiliation come together in order to prepare their positions. Overall, horizontal coordination leads to greater uniformity of legislation even in those areas where each Land could legislate independently.

2.5 Each of the current 19 sectoral Länder-Conference meets between two and four times per year and decides upon 30-40 resolutions. These resolutions are usually non-binding and require either an executive order or a Land legislation to come into effect. In case of further Land legislation, parliaments are involved through the ordinary legislation process. Länder can also agree **interstate treaties** establishing binding regulations, compulsory negotiation systems and unanimity rule amongst the Länder.

2.6 Vertical and horizontal bodies of intergovernmental relations are sometimes **interlinked**. The Conference of Justice Secretaries, e.g., established the Federal-Länder commission for data-processing in the judiciary in 1969 and receives reports from their meetings. Linkages also exist across departments, e.g. results of commissions are reported to and coordinated with finance ministers as soon as they have consequences for the budget. Stronger cross-departmental coordination takes place in the Joint Conference of Science in which education/culture secretaries as well as secretaries of finance are permanent members. In several of the conferences of the Länder secretaries, the Federal government has a voting right, e.g. in the conference of secretaries of the environment or of the secretaries of agriculture.

2.7 Two dynamics are especially important for the machinery of IGR in Germany:

- First is the potential dominance of **party politics** in the Bundesrat and the executive control over coordination bodies. At the federal level, the representation of Länder interests is in practice intertwined with political factors and the respective majorities in the two chambers of parliament. If federal legislation requires the consent of the Bundesrat and opposition parties hold the majority in the second chamber, party politics cuts across territorial issues. Opposition parties in the Bundesrat can use their veto power to affect changes to the bill, even though initiatives from the government are rarely blocked entirely. The specific composition of the Bundesrat reflecting the colours of Länder governments, the different electoral cycles in the Länder and the fact that, often in the middle of the electoral cycle for the Bundestag, majorities in the Bundesrat change in



favour of the opposition parties, effectively creates informal grand coalitions across the two chambers.

- Secondly, due to the structure of **administrative federalism**, legislative and executive powers are more clearly separated. Federal legislation is implemented by the Länder executives (either under Länder discretion or federal supervision) while Länder parliaments hold few exclusive legislative powers. Consequently, major parts of intergovernmental relations are established in order to coordinate or harmonise the implementation of federal legislation and do not touch upon the powers of Länder parliaments.

**Table 4: Key Vertical and horizontal bodies of intergovernmental relations**

| Body                                  | Type of IGR  | Regularity of meetings  | Purpose  | Publication of Agenda   | Publication of resolutions   |
|---------------------------------------|--|---|--|---|--|
| Joint Conference for Science          | Vertical, Multilateral<br>Cross-Sectoral Education and Finance<br><br>Special legal status | Twice per year<br><br>Double chair of federal and Länder reps, elected for two years, each for one year                         | Agree resolutions with special majority of 29 votes, unanimity for some issues.<br><br>Resolutions have binding character if all first ministers consent                                     | Circulation to members prior to meeting   | Yes, online on permanent website   |
| Federal-Länder Commissions            | Vertical, Multilateral<br><br>but federal minister of justice only with advisory status    | Twice per year<br><br>Chair elected, rotation between Länder every 3 years  | Co-operative working groups, with resolutions that may be binding, but only with special majority or unanimity rule  | Circulation to members prior to meetings  | Long-term commissions with permanent website<br><br>Protocol of meetings circulated to members   |
| Sectoral Conferences Länder Ministers | Horizontal, Multilateral<br><br>Voluntary, but established practice                        | Three to four times per year as conference of secretaries<br><br>Presidents often elected annually, rotating between the Länder | Resolutions may require special majority. On Education and Culture: unanimity if budgets, mobility or uniformity of education are affected<br><br>Interstate treaties with binding character | Permanent commissions, committees, working groups<br><br>Links to federal-Länder commissions on specific issues | No coherent regulation<br><br>Several conferences with websites at Land ministry holding the chair<br><br>Others without published information |

### 3. Parliamentary Scrutiny of IGR

3.1 Depending on the nature of resolutions stemming from intergovernmental meetings, Länder parliaments may get involved to different degrees. The kind of involvement is regulated in the standing orders of Länder parliaments and executive-legislative agreements.

- The Länder government is obliged to inform the Landtag about **planned interstate treaties** four weeks prior to the signing of treaties. The Landtag has the opportunity to **deliver an opinion** within these four weeks (or request an extension) which the government takes into consideration.



- If planned administrative agreements, matters of the Bundesrat, or interstate or regional cooperation are of greater relevance to the Land, the government is also requested to inform the Landtag in advance and take its opinion into consideration. It is however left to the discretion of the government to determine whether an initiative is of greater overall relevance.

3.2 Länder parliaments have greater opportunities to exercise effective scrutiny when agreements are legally binding. However, the majority of resolutions are *not* legally binding and therefore remain under executive control. The main areas where Länder parliaments exercise their oversight function are inter-state treaties, resolutions with consequences for the Länder budget and matters involving the Bundesrat. Here, the Länder governments are obliged to inform their respective Landtag about planned initiatives and consider its opinions. The extent of these considerations remain at the discretion of the government, with the exception of EU legislation in areas of Länder responsibilities where there exists a stronger obligation to take opinions of Länder parliaments into account.

3.3 Problems of public access to information persist especially for those bodies that have not established a permanent website or do not publish resolutions stemming from intergovernmental meetings. As there is no general regulation for providing information, transparency issues arise especially in those cases where reports are only published long after agreements have been reached. Individual parliamentary groups may rely on internal party communication as alternative for gaining access to information. However, this alternative route works better for parties in government and vertical coordination, it does not in itself strengthen the opportunities of Länder parliaments to scrutinise their respective governments.

#### ***Scrutiny of interstate treaties between Länder***

Governments inform their respective parliaments four weeks in advance of the signing of a treaty. Parliaments can then submit an opinion that is non-binding. These opinions are used not only to point out controversial arguments, and the positions of all parties, but also to **strengthen** the Länder government in intergovernmental conferences.

One prime area for the use of inter-state treaties is the regulation of public and private broadcasting. The Interstate Broadcasting Agreement (the '*Rundfunkstaatsvertrag*') regulates the licensing of private broadcasting for all Länder, with the latest reform being signed in 2011.

# 7. United States

- Executive federalism with separation of power at each level
- Competences shared between federal level and 50 states
- Competition between federal, state, and metropolitan level over competences and funding
- Weakly institutionalised IGR, but strong legislative control over executive behaviour in the intergovernmental arena

## 1. Territorial and Political Structure

1.1 The US is the world's oldest federation. It consists of the federal level, and two regional tiers of government - the 50 states and the counties which fall within state jurisdiction – as well as the unincorporated organized territories of Guam, Puerto Rico, the United Mariana Islands, the Virgin Islands and the District of Columbia (the capital region).

1.2 Both levels have bicameral legislatures (Nebraska excepted). At the federal level, the House of Representatives has 435 directly elected members, allocated to states by population and the Senate serves as a territorial second chamber, with two members from each state directly elected for six year terms. They have individual mandates; they are not delegates of the state legislatures. Each state has a directly elected governor, an array of directly elected officials, all accountable to the legislative assembly and subject to voter recall in most states.

1.3 Although the constitutionally defined competences of the federal level are quite limited, the federal government has extended its influence through funding mechanisms, particularly 'grants in aid' and the use of the principle of federal pre-emption, which invalidates state law if it is perceived to violate federal laws.

### *Constitutional distribution of powers*

|                   |   |
|-------------------|---|
| <b>Federal</b>    | Citizenship, currency, defence, immigration, international trade, interstate commerce, naturalisation, postal services, and taxation          |
| <b>State</b>      | Civil and criminal law, education, elections, health, hospitals, local government, regional development, social welfare, state-level taxation |
| <b>Concurrent</b> | Borrowing powers, court systems, eminent domain, general welfare spending, infrastructure, tax collection                                     |

1.4 The United States is an executive federal system with power-sharing built into the arrangement. American federalism is characterised as marble-cake federalism, with strong federal, state, and local actors (particularly mayors) and intermingling of powers, resources and programmes across levels. Each level is also characterised by a separation of powers between the executive and the legislature. The legislative branch is responsible for creating legislation and appropriating funds necessary for government operations. The executive is responsible for implementing and administering the public policy enacted and funded by the legislature. Legislatures are solely responsible for the introduction, amendment and approvals of bills and the role of the governor in the legislative process is limited to signing it into law, they have the ability to approve or reject but not amend it. Neither the President nor the Governors are elected from the federal or state legislature nor directly accountable to them, though they can be subject to impeachment.

1.5 The party system is bipolar, with two main parties dominating the political arena. However, parties have a weak integrative function, with weak party discipline across levels of government. State party organisations send delegates to select a presidential candidate (with states receiving votes proportional to their population) but the national party has a limited role to play in candidate selection at the state level or in state policies.

## 2 Structure and Dynamics of Intergovernmental Relations

2.1 Unlike in Switzerland or Belgium where intergovernmental relations are highly institutionalised, IGR in the United States developed as an ad hoc process in response to changing developments. The 16<sup>th</sup> amendment, which gave the federal government the ability to tax income, and the 1930s New Deal cemented the federal government's role and capacity to act in new policy areas. This expanded in the post-war period and the 1960s and 1970s was considered the heyday of intergovernmental relations. This period saw the expansion of the grant-in-aid function, which expanded the federal government's role in policy making.

2.2 As a result of the large number of constituent units, the system of IGR is highly fragmented, with executives and legislatures playing a role, supplemented by federal officials and the mayors of major US cities. Although constitutionally privileged, state governments and legislatures do not have a direct role in the federal policy-making process. They must join local authorities, trade unions, corporations and other bodies in lobbying federal authorities and Congress.

2.3 Intergovernmental dynamics are characterised by both competition, with states acting as rivals and challengers to the federal government in some areas, and cooperation, with states implementing policies adopted (and funded) at the federal level. There are indications that overall interest in intergovernmental relations has diminished in recent years, with the demise of the Advisory Council on Intergovernmental Relations and the reduced visibility of the White House Office of Intergovernmental Affairs.

2.4 Institutions exist to facilitate intergovernmental cooperation between US states, which is largely in the form of information exchange and professional services.

- The **National Governor's Association** and the **Council of State Governments** facilitate interaction between state executives, whilst legislators convene in the **National Conference of State Legislatures**. The judiciary levels also engage in cooperation, in the form of the National Association of Attorney Generals. Each of these bodies meets regularly and engages in lobbying, as well as professional development and training functions. Although they develop collective positions, they are not able to act on behalf of state governments. They are also challenged with internal divisions over the direction of policy. There are also executive associations organised along party lines which seem to focus more directly on concrete policy proposals.
- The **intergovernmental lobby** also includes the National Association of Counties, the National League of Cities, and the US Conference of Mayors.
- The now defunct **Advisory Commission on Inter-governmental Relations** brought together members of Congress, governors, state legislatures, mayors, and representatives of the federal government to discuss and advise on intergovernmental relations.

2.7 States wishing to cooperate on substantive policies are more likely to engage in bilateral or multilateral relations with neighbouring states through the executives, rather than through an official forum or conference. This can lead to:

- **Interstate compacts**, negotiated by state executives. These can be formal and legally binding. Compacts are used in a variety of policy areas, including coordinating action on justice and policing, removing barriers to inter-state trade, adopting common standards for education and professional credentials, dealing with issues of taxation, and managing natural resources. They may also result in the formation of shared institutions.
- **Compact commissions** provide a forum for addressing ongoing issues, the functional equivalent to inter-governmental agreements used in other countries. Compact commissions are often formed to manage the use of natural resources, particularly water and energy resources.
- **Memorandums of Understanding** are less formal than the preceding mechanisms as they are only valid whilst the signing officials are in office. MOUs are typically understood as a means of bypassing state and federal legislatures as they do not require approval.
- **Uniform laws** may be drafted and adopted by some or all states. These laws can also serve as a means of preventing intrusion by the federal government by pre-empting federal legislation or by encouraging the adoption of nationwide standards.

#### Intergovernmental Activity on Climate Change

In the absence of federal legislation on climate change or the regulation of greenhouse gases by federal environmental agencies, individual states developed interstate compacts on specific aspects of environmental policy. These include the Regional Greenhouse Gas Initiative (RGGI), the Western Climate Initiative and the Midwestern Greenhouse Gas Reduction Accord.

The RGGI was concluded through an MOU for a market-based emissions trading scheme. It is non-binding and includes draft legislation that can be adopted in signatory states. Each operates as a voluntary body to avoid falling afoul of constitutional rules (the Compact Clause) which stipulate that compacts must be approved by Congress. Using their international treaty-making powers, states have also become signatories to international agreements on emissions.

2.8 Relationships between the state and federal levels often take the form of bilateral negotiations and can result in grants-in-aid and cooperative agreements. They are managed by the individual federal agencies working in coordination with state executives, administrators, or public agencies. Often states have an office for state-federal relations attached to the governor's office which serves an information gathering function.

- **Grants-in-aid** take the form of categorical grants assigned for narrowly defined purposes, often supplemented by matching funds from the partner government. Block grants can also be issued.
- **Cooperative agreements** are 'legal instruments that establish a relationship between a federal agency and a state or local government, tribal government, or other recipient'.<sup>15</sup> They typically involve the transfer of funds allowing state or local governments to carry out public policy, and imply a higher level of federal involvement in administration and assessment of policies.

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<sup>15</sup> Federal Grant and Cooperative Agreement Act (1977)

2.9 Like in Canada, both the state executives and the federal government have demonstrated a preference for bilateral relations in state-federal cooperative agreements. Large and influential states prefer to go it alone in lobbying and negotiations, and federal actors often prefer to work with a single state. However, once agreed upon, cooperative agreements can be extended to include other states or used as a framework for others to engage in future bilateral agreement. When forging agreements, the federal government adopts a carrot and stick approach, offering financial inducements and penalties to encourage compliance with federal legislation.

### 3. Parliamentary scrutiny of IGR

3.1 A myriad of compacts, agreements, and grants exist between states, between states and the federal government and with local authorities. However, there is no official register of activities and only inter-state compacts and agreements which require legislation to be put into motion involve the legislature.

3.2 Both federal and state legislatures have traditions of oversight generally, and have played a role in the scrutiny of intergovernmental relations. However, the federal legislature lacks the institutional capacity to engage in the degree of oversight it once did. The Senate legislative sub-committee on intergovernmental relations was abolished in the 1990s and the House sub-committee was folded into the sub-committee on Technology, Information Policy, Intergovernmental Relations and Procurement Reform before being dissolved completely, limiting both interest and capacity for action.

#### Healthcare legislation and interstate compacts

State governors and legislators have proposed an 'interstate health compact' as an alternative to participation in federally-funded healthcare programmes. This compact would replace funding for federal programmes (Medicare and Medicaid) with a block grant. The proposal would essentially shield states from federal law.

Proponents in the state legislatures propose expansion of the compact to states opposed to federal healthcare reform. They would then seek congressional approval under the compact clause, as it would involve an expansion in state powers.

26 state legislatures have considered the proposal and 9 have passed it. While unlikely to secure approval from Congress and possibly subject to legal challenge, it is an interesting example of the mobilisation of state legislatures in response to federal policy.

3.3 Federal and state level oversight of intergovernmental agreements varies on the type of agreement formed and the level of agreement. At the federal level, the US Congress has legislative oversight of horizontal inter-state compacts which (a) alter the balance of power between the state and federal government; (b) intrude on a power reserved to congress. Inter-state compacts can be approved before or after they are signed.

3.4 In the 1970s and 1980s, in light of an expanding role of the federal government, many states developed advisory commissions on intergovernmental relations which were tasked with evaluating federal, state, and local relationships, cataloguing agreements, and serving as a forum for discussion and collaboration. These commissions focus

their efforts on providing information to state legislative committees and assessing the impact of intergovernmental agreements, providing valuable information for legislatures seeking to oversee IGR. Most of these have fallen into disuse, although ten states have retained them.

3.5 Within state legislatures, agreements between states and with the federal government are subject to scrutiny by policy-specific committees or to a general oversight committee. These committees may request evidence and call witnesses. State legislatures must also consent to

inter-state compacts and may reject or accept them but, as in many other countries, lack the ability to amend them.

3.6 At the state level, legislatures generally possess strong control capacities, much more so than Canadian provincial assemblies. Battles between the state executive and the legislature over the transfer and use of federal funds are frequent. This competitive dynamic is enhanced by the bipolar nature of American party politics, particularly when one party controls the legislature while another holds executive office. Currently, six states have a Democratic governor and a Republican-dominated legislature, while four states have the reverse. There are also eight states with split legislatures. States have recently rejected aspects of the Affordable Care Act, foregoing federal funds in favour of restrictions to healthcare programmes. Although this varies from state to state, state legislatures typically think of themselves as defenders of the sovereignty of the individual states. In contrast, governors are often more willing to work with the federal government to secure federal funding, but this is changing to reflect the highly partisan dynamics of American politics.

3.7 While not a formal mechanism of oversight, US state legislatures may also exert influence by rejecting the product of intergovernmental negotiations. Federal proposals must be implemented by state legislatures and the legislature retains the right to refuse to do so, in a form of 'uncooperative federalism'.

# 8. Spain

- A regionally-devolved/quasi-federal system of 17 autonomous communities, including three historic nationalities, plus 2 autonomous cities
- Extensive bilateral and multilateral intergovernmental forums and agreements
- Recurring tensions on conceptions of nationhood and constitutional reform, with dominant role for Spanish Constitutional Court in mediating disputes between levels of government

## 1. Territorial and Political Structure

1.1 The issue of whether Spain should be classed as a federal state is contentious. Spain has several characteristics associated with federations and the 17 autonomous communities have high levels of self-rule. However, sovereignty is not legally divided, the centre arguably remains constitutionally superior, and the participation of the *Comunidades* in central decision-making structures is more limited than in many federations.

1.2 The Spanish legislature is bicameral, composed of the Congress of Deputies and the Senate. The Congress of Deputies is the more powerful and is directly elected via party lists. 58 of the 266 members of the Senate are appointed by the assemblies of the autonomous communities according to their population share – the remainder are directly elected. The Senate is organised by political groups rather than on a territorial basis and has been ineffective as a forum for territorial representation.

1.3 The Spanish constitution set out the exclusive legislative and executive competences of the state and those areas where powers could be shared, concurrent or devolved. Within this framework, the powers devolved to each autonomous community are set out in individual statutes of autonomy, agreed following negotiation, bilateral agreement and approval by the Spanish parliament and Constitutional Court. Spain's multi-level system evolved asymmetrically. The historical nationalities (Catalonia, the Basque Country, Galicia) and Andalusia were 'fast-tracked' to autonomy in the early period of democratisation, but the other designated regions have gradually acquired similar powers in the intervening period.

1.4 Asymmetries remain pronounced only in relation to fiscal powers, with the Basque Autonomous Community and Navarra enjoying full fiscal autonomy. The Basque Economic Agreement, a legal agreement which was itself the product of intergovernmental negotiation, is based on the historic 19<sup>th</sup> century **Foral rights** of the three Basque provinces (Álava, Gipuzkoa and Biscay) to collect taxes. The 1981 Agreement stipulated that the tax contribution of the Basque Country to the Spanish State would consist in a 'global quota' to cover the costs incurred by the State for Basque citizens, either for services directly provided to them or for other services (e.g. armed forces, diplomatic services) that directly benefit them, alongside the Basque country's contribution to the Inter-territorial Compensation Fund.

1.5 Spain is a plurinational state, at least from the perspective of Catalonia and the Basque country. The Constitution recognises the autonomy of the 'nationalities and regions', but it is also explicitly based upon 'the indissoluble unity of the Spanish nation' and 'the common and indivisible homeland of all Spaniards'. This constitutional provision has created a barrier to the aspirations of Catalan and Basque nationalists seeking independent statehood.



### *Constitutional distribution of powers*

|                                       |  |
|---------------------------------------|--|
| <b>Central competence<sup>a</sup></b> | Citizenship and nationality; asylum and immigration; defence; international relations, including EU relations; administration of justice; commercial, criminal and penitentiary legislation; foreign trade; Treasury, inland revenue, economic planning and state debt; employment law; social security; key ports and airports, air traffic, and transport between autonomous communities; merchant navy and shipping; communications; key public works; basic legislation on health; energy; environmental protection; civil legislation; public safety; cultural and artistic heritage; education standards; professional and academic qualifications; technical and scientific research. |
| <b>Autonomous Community</b>           | <p>Areas set out within individual statutes of autonomy, usually including: agriculture and forestry; cultural and regional language policy; economic development; health; inland fisheries; organisation of regional government; public order; regional public works; regional transport; social assistance; tourism; urban planning and housing; and water management.</p> <p>Autonomous communities also exercise powers within areas in which the state provides 'general framework' or a general legislative, planning or coordinating role.</p>  |

Note: (a) Some policy areas are exclusive to the central state, and others are shared or exercised concurrently with the autonomous communities. In fields like public health, education and environmental protection, the Spanish authorities set national frameworks within which region-specific policies and programmes can be developed by the autonomous communities.

1.6 Spanish political parties are integrated throughout most of Spain, with state-wide parties like the Spanish Socialist Party (PSOE) and the *Partido Popular* closely aligned with their regional branches. Spain also has a lot of regional parties. Of the 16 parties currently represented in the Spanish Congress of Deputies, 11 are based in only one autonomous community. The Spanish party system is currently being challenged by the rise of *Podemos* and *Ciudadanos*, while new regionally-based populist parties have also challenged established regional and nationalist parties.

## **2. Structure and Dynamics of Intergovernmental Relations**

2.1 Few provisions were made for intergovernmental relations in the original Spanish Constitution. As a result, they developed in an ad hoc manner in the wake of the transfers of power to the autonomous communities. Intergovernmental relations are most active around issues which involve the transfer of resources from the central government to the autonomous communities, often linked to the distribution of EU monies.

2.2 Political parties play a key role in intergovernmental relations. High levels of party competition have, at times, inhibited cooperation. Autonomous parties from Catalonia and the Basque country have also periodically been able to use their position as holding the balance of power in the Congress to exert constitutional and policy concessions from the Spanish government, in close cooperation with their sub-state governments.

2.3 The development of horizontal mechanisms of intergovernmental relations have traditionally lagged behind vertical bilateral and multilateral mechanisms, with sub-state governments



focused more on defending their own interests vis-a-vis the centre rather than coordinating with other autonomous communities (except in cooperation to promote regional languages). Institutional rules may hinder horizontal activity, as collaboration agreements must be communicated to the Spanish Parliament and cooperation agreements must be authorised by the Senate.

2.4 New Statutes of Autonomy have devoted attention to vertical, horizontal and international cooperation, with primary emphasis on bilateral relations with the central government and an emphasis on cooperation in EU policy-making. The 2006 Statute of Autonomy for Catalonia provides explicitly for the regulation of IGR, including:

- a commitment for the Generalitat and the State to provide 'mutual assistance' to each other and to collaborate when necessary so as to effectively exercise their respective powers and defend their respective interests (Art 174).
- a commitment to participate in multilateral IGR, while underlining that the Generalitat is not bound by decisions taken within the framework of voluntary collaboration mechanisms with the State and with other autonomous communities where it has not manifested its agreement.

2.5 Maintaining forums for intergovernmental cooperation is largely dependent on the nature of relations between the Spanish government and the autonomous communities as well as the dynamics of party competition. Several of these forums have fallen into disuse because of lack of interest or changes of parties in power.

- **Bilateral cooperation commissions** are the earliest form of Spanish intergovernmental relations. They were introduced in 1983 to support the transfer of competences from the central government to the autonomous communities. BCCs were given legal standing in 1992 and defined as cooperative bodies designed to address general issues, though many have played only a limited role here. Commissions bring together members of the central and community governments and are headed by the **Minister of Territorial Policy**. Each team has equal representation and the right to ask for a meeting to be convened. Agreements are published in the Official State Gazette or the Gazette of the autonomous community. The status and role of the commissions was enhanced in 2000, when the Organic Law of the Constitutional Court noted that they should be used as a forum to resolve disputes between the centre and the communities before these issues are referred to the Spanish Constitutional Court. The new statutes of autonomy negotiated in the early 2000s for Catalonia, Andalusia, Aragon, Castilla y León and Extremadura cemented these commissions as permanent bodies, although meetings can be rather ad hoc. Several autonomous communities also created additional bilateral commissions for the management of economic and fiscal issues.

#### **Generalitat-State Bilateral Commission**

The reform of the bilateral commission as proposed in the 2006 revision of the Catalan Statute of Autonomy was controversial, and was challenged in the Spanish Constitutional Court on the grounds that it was a move towards a Confederal state model. An intergovernmental agreement in 2007 established the Commission as a permanent body, charged with allowing for the participation of the Catalan government in the exercise of state powers as they concern Catalan autonomy, and allowing for information exchange and collaboration in areas of common interest.

The Bilateral Commission has an equal number of representatives from the Catalan and Spanish governments and a rotating presidency. Agreements are adopted by consensus. It has sub-committees on regulatory monitoring, preventing conflicts of competences between the administrations, partnership and cooperation, European and foreign affairs, infrastructure, and immigration. It met eight times between 2007 and 2011, but has not met since in the face of deteriorating Spanish-Catalan relations.

- **The Conference of Presidents** is similar to the Canadian First Ministers Conference in that it includes the prime minister and presidents of the autonomous communities. It was created in 2004 and designed to provide a forum for discussing and coordinating public policies and matters of national importance. It is described by the state as the highest form for cooperation between the state and the autonomous communities. Like the Canadian FMC, it has declined in importance and fallen into disuse over fears that meetings would be politicised. It had just five sittings in seven years and has not been convened since 2012. Results were limited, with some agreements on health funding and the production of a map of investment in science and technology.

**Table 5: Key vertical and horizontal bodies of intergovernmental relations**

| Body   | Type of IGR               | Regularity of meetings                                 | Capacities   | Publication of Agenda              | Publication of resolutions                                    |
|--|---------------------------|--|--|------------------------------------|---|
| Bilateral cooperation commissions<br><i>Catalonia, Andalusia, Aragon and Castilla y León</i> | Vertical                  | Dependent on autonomous community                      | Forum for policy coordination and dispute resolution   | No                                 | Annual report<br><br>Agreements published in Official Gazette |
| Conference of the Presidents   | Multilateral              | Irregularly, has not convened since 2012               | Forum for discussion of public policies  | n.a.                               | Press release with outcomes published online                  |
| Sectorial conferences  | Multilateral              | Most meet annually with several meeting more regularly | Discussion and agreements on implementation of state legislation, joint coordination and funding<br><br>Accords and cooperation agreements are voluntary and non-binding | Calendar of meetings available     | Outcomes published in joint statement                         |
| Conference of Autonomous Community Governments   | Horizontal, with most ACs | Regularly between 2008-2011                            | Commitments for coordination and information exchange  | Retrospective calendar of meetings | Agreements published online                                   |

- **Sectorial conferences** are perhaps the most significant intergovernmental forums, in the absence of an over-arching intergovernmental forum in which the federal and AC governments engage. They bring together ministers and senior officials from the central level and 17 regional ministries. Sectorial conferences were introduced in 1981 but given legal standing in 1992. There are now 38 sectorial conferences although they vary in their level of activities. ***In 2014, 27 conferences met at least once a year with five meeting at least quarterly.*** The central government convenes the conferences and has the leading role in setting the agenda, with inputs from the ACs. Although the importance of sectorial conferences has increased in recent years, they are perceived by many within the autonomous communities as a political initiative of the centre. The goals of sectorial conferences include: forging agreements on the implementation of national legislation that affect regional powers; approval, follow up and evaluation of joint plans and programmes; funding joint projects and facilitating information exchange. Sectorial conferences have weak decision-making powers – decisions are voluntary and non-binding. Voting differs

according to the type of sectorial conference. Outcomes of sectorial conferences include accords (acuerdos) and cooperation agreements (convenios de colaboración). Some agreements are officially published.

- The **Conference for European Union affaires (CARUE)** oversees coordination on EU matters. Participation of the autonomous communities at the Council of the European Union is allowed in the meetings of ministers for: Employment, Social Policy, Health and Consumer Affairs; Agriculture and Fisheries; Environment, Education, Youth and Culture; and Competitiveness and Consumer issues. CARUE is responsible for regulating the participation of the autonomous communities, and provides for direct representation of the ACs in the Spanish delegations and working groups.
- The **Conference of Autonomous Community governments** was first convened in 2008 as a forum for cooperation and consultation among six autonomous communities, and was expanded and institutionalised in 2010 to include nearly all of Spain's autonomous communities. The 2010 agreement set out its institutions (a president, a permanent secretariat and a rotating seat) and its objectives. It was defined as a voluntary body, designed as a forum for dialogue and fostering intergovernmental collaboration among the autonomous communities, and encouraging cooperation between AC governments and the Spanish government. It met ten times between 2008 and 2011 and published 4 collaboration agreements and protocols (including violence prevention, training for body artists, and tourism) which were sent to the Senate for their records. It also made several joint declarations (non-binding statements on the importance of the ACs). The last meeting recorded on the website was in Santander in 2011.
- The Spanish Senate created a **General Committee of the Autonomous Communities** in 1994 to give the Senate a more territorial orientation. The Committee consists of 52 senators drawn from those nominated by regional parliaments. Premiers and ministers are invited to join senators in hearings and debates and regional ministers can request a meeting of the committee. Although the Committee lacks decision-making powers, it provided another forum for discussion and participation of regional governments at the centre. However, the Committee is highly influenced by partisan dynamics and has fallen into disuse since 2011.

2.6 The outcome of intergovernmental relations often takes the form of **collaboration agreements**. These agreements reached their peak in the period 2008 – 2010, with over 1000 signed annually. The number fell in 2012 and by 2014, 610 conventions and agreements had been concluded. Agreements are signed most frequently in the field of social policy, infrastructure and the environment. They often follow a common model for all Autonomous Communities but are signed on a bilateral basis rather than having multiple comunidades as signatories. Agreements which are signed by all or most of the autonomous communities are considered widespread subscription agreements, and provide a framework for the development of a general Spanish-wide policy.

### 3. Parliamentary Scrutiny of IGR

3.1 In comparison with other cases, a wide array of information on intergovernmental relations is available, both to members of parliament and the general public. This information is published by the central state and by the autonomous communities. Although the forums themselves have fallen into disuse, the outcomes of the Conference of the Presidents are available online. A register of cooperation agreements is also published twice a year. The sectorial conferences are

also well documented, with their regulations, calendars, and outcomes publically available. Each sectorial conference contributes to an annual report published by the central government. The report includes the details of meetings, the level of activity and main developments generally and within each conference. Meetings of the working groups are also documented.

3.2 The availability of information aids transparency, but the legislatures of the autonomous communities play a very limited role in scrutinising intergovernmental relations. However, there are some indications of efforts to institutionalise relationships within and between levels of government. Taking Catalonia as an example, we can identify attempts to formalise intergovernmental relations and increase the information available to the parliament and the public.

### **Parliamentary Scrutiny of IGR in Catalonia**

Intergovernmental activities are coordinated in Catalonia by the **Office of Institutional Relations and Promotion of Democratic Quality**. This department is tasked with facilitating the promotion of partnerships between Catalonia, the Spanish Government and other regions, and is charged with supporting the work of the government in the Bilateral Commission and other joint bodies. It also has a monitoring role with respect to agreements signed between Catalonia and the central Ministry of Defence.

The Catalan Statute of Autonomy stipulates that conventions signed by the Catalan Government and the central government are to be published in the official gazette. Conventions signed with other autonomous communities must also be published. In compliance with this, the department publishes a searchable database of all agreements and MoUs signed by the Catalan government, including with institutions, the central state, other autonomous communities and local areas, and international partners. They are also published in the official gazette.

Within the Catalan Parliament, intergovernmental relations falls within the remit of the **Institutional Affairs Committee** which also has responsibility for the Statute of Autonomy, administration, local government, religious affairs, and sport (amongst other competences). Officials within the ministry are also charged with coordinating relations between the parliament and the government.

Approval of conventions and agreements by parliament is required only in cases where the legislative powers of parliament are affected. If this is not the case, the Government is obliged to inform parliament of the convention or agreement within one month of its signature.

3.3 At the central level, the Spanish legislature has oversight over horizontal agreements between the autonomous communities. Any collaboration agreements reached between autonomous communities themselves must be communicated to the Spanish Parliament. If the Cortes Generales raises no objections, the agreement will come into force sixty days after notification. The Cortes Generales may challenge the classification of agreements as collaborative, and instead may require prior approval of cooperation agreements. Agreements between the Spanish government and the autonomous communities are not subject to these reporting requirements.

# 9. Switzerland

- Strong regional self-rule within a federalist system oriented around power sharing
- Transfers of power to the centre require constitutional amendment and popular vote
- Mechanisms for intergovernmental relations are horizontal, with two main bodies facilitating inter-cantonal cooperation
- Weak parliamentary system and weak scrutiny of IGR at the negotiation phase, but with parliamentary ratification intergovernmental agreements
- Growing inter-parliamentary cooperation to support legislative oversight of IGR

## 1. Territorial and Political Structure

1.1 Although formally a confederation, Switzerland has developed as a cooperative federalist system, with a strong emphasis on power-sharing and co-decision procedures. The Swiss Confederation consists of 26 cantons, 20 of which are full cantons and 6 half cantons. Switzerland is organised on the basis of the principle of non-centrality, which enables considerable freedom of action for the cantons, and their recognition as independent political entities. The Swiss Cantons have independent standing and can also delegate powers to their communes. The centre can only assume the tasks assigned to it by the constitution.

1.2 The Swiss federal executive consists of seven members, a college, elected by the two chambers. They reach agreements by consensus or majority voting. The lower house, the National Council, has 200 directly elected representatives. The Swiss Council of States, or upper house, has an equal representation for the 20 full cantons (2 seats per cantons), and 6 half cantons, with one seat each. Both chambers have equal powers and Acts of Parliament require approval of both chambers separately.

1.3 At the cantonal level, cantonal executives are directly elected, as are the members of the cantonal parliaments. Relations between the legislative and executive are generally considered consensual. The cantons themselves are quite decentralised, with a high degree of autonomy for localities and opportunities for public initiatives in the form of referendums. Executives are typically made up of all of the main parties, or all potential veto players. In comparison to the government and administration, the powers of cantonal parliaments are limited, but variation between cantons exist.

1.4 Direct democracy is built into the system, with the requirement that any modification of the Constitution must be put to a popular vote and secure a popular and cantonal majority, the ability of 50,000 citizens or 8 cantons to subject Acts of Parliament to a referendum and the use of popular initiatives to modify the constitution.

1.5 The Swiss Cantons have extensive autonomy over a broad range of domestic policy spheres and revenue-raising across a range of taxes. Article 3 of the 1999 Constitution guarantees cantonal sovereignty in all areas which are not allocated explicitly to the federal level in the constitution. Citizenship is shared and cantons have some input on foreign policy, though the federal level has paramountcy in the latter and can ignore cantonal preferences. The cantons can enter into international agreements, after informing the federal government, and engage in external relations in the areas in which they are competent. Cantons must be consulted before Switzerland enters into an international agreement which touches upon the competences of the cantons.

1.6 Unlike in the United States and Canada, which can employ federal funding to extend their reach, the federal government and parliament in Switzerland is more restricted. The transfer of powers from the cantons to the centre would require a constitutional amendment and a referendum, although cantonal executives have raised concerns about centralising tendencies at the federal level.

*Constitutional distribution of powers*

|                               |  |
|-------------------------------|--|
| <b>Federal</b>                | Civil and penal law, defence, disability insurance, the economy, foreign policy, national heritage, national infrastructure, national institutions for the care of elderly and disabled persons, national roads and motorways, pensions, social security, telecommunication, VAT and other forms of indirect taxation                          |
| <b>Cantonal</b>               | Cantonal and regional heritage, culture, education (including sports, secondary education scholarship, and education for the disabled), environment, foreign policy, health, higher education, income, land use regulations, language, local government, personal welfare, property, corporate taxes, policing, regional transport and traffic |
| <b>Joint federal-cantonal</b> | Air travel, aspects of social aid, citizenship, coordination on insurance, flood protection, foreign policy, hunting, fishing, forestry, main roads and major infrastructure projects, regional public transport, vocational training  |
| <b>Inter-cantonal</b>         | Institutions for the disabled, penitentiaries, universities and professional high schools, specialised medical care, urban public transport, sewage and waste management (small cantons)   |

1.7 Competences were disentangled as part of the 2004 constitutional reforms. As a result of this process, previously concurrent competences were assigned to the federal or cantonal level, but new mechanisms for collaboration were introduced to ensure continued cooperation, both between in joint federal-cantonal domains and inter-cantonal domains.

1.8 Party politics in Switzerland provides an important linking mechanism for policy-making. All main political actors, or those which may act as veto players, are included in governing coalitions. As a result, a genuine government-opposition dynamic often seen in other countries is absent in Switzerland. Intergovernmental relations take place behind closed doors in part to facilitate consensus.

## **2. Structure and Dynamics of Intergovernmental Relations**

2.1 In the last two decades, cooperation has increased between the cantons, taking the form of information exchange, shared provisions for public services, and policy cooperation. Inter-cantonal and intergovernmental coordination often takes place in the domains of public safety and security, finance and the economy, planning and resource management, energy and transport.

2.2 Cooperation is understood as useful, particularly when it occurs between small neighbouring cantons. Cantons can establish the 'optimal size of area necessary for the performance of



government tasks' and collaborate in the domains of public safety, health, and tertiary education and training<sup>16</sup>.

2.3 Swiss IGR are dominated by executives, and mainly conducted in high-level conferences and summits. There are two main conference forums - the (political) Conference of Cantonal Governments and the sectorial Conferences of Cantonal Directors.

**Table 6: Key Vertical and horizontal bodies of intergovernmental relations**

| Body                               | Type of IGR                                     | Regularity of meetings                         | Capacities  | Publication of Agenda                     | Publication of resolutions |
|------------------------------------|---|--|---|---|----------------------------|
| Conference of Cantonal Governments | Horizontal (but federal observer in attendance) | Quarterly plenary with frequent working groups | Adoption of common cantonal positions on federal reform, financing, external and European politics, immigration<br><br>Forum for negotiation of inter-cantonal treaties | Dates and topics but not specific agendas | Yes                        |
| Conferences of Cantonal Directors  | Horizontal                                      | At least annually                              | Non-binding positions, guidelines, benchmarks, and inter-cantonal treaties  | Multi-year work programmes published      | Yes                        |

2.4 The **Conference of Cantonal Governments** (CCG) emerged in 1993 in response to dissatisfaction with the representation of cantonal interests on the federal level and a desire on the part of cantons to have an input into negotiations held with the European Union<sup>17</sup>. The conference convenes quarterly, and its mission promotes engagement and information sharing on the areas of the development of the federation, the division of competences, participation in federal decision making processes, implementation of federal policy, and foreign and integration policy. Items for the agenda can be submitted by the board, any cantonal government or the Conferences of Cantonal Ministers.

- Each canton has one seat in the conference and the process of appointment of delegates is determined by each canton individually. Each representative has one vote, and delegates are mandated by their governments which gives the proceedings a higher political profile. The federal council is invited to participate and it may also request that the CCG discuss and take positions on items of interest. However, the federal level does not have a vote.
- The CCG issues position statements on policies agreed upon by cantonal participants. When a decision is taken with support from 18 or more cantons, an opinion is issued. However, each canton may issue its own opinion.

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<sup>16</sup> Dafflon, Bernard (2004) Working Paper: Federal-Cantonal Equalisation in Switzerland: An Overview of the Present System and Reform in Progress

<sup>17</sup> At the time, Switzerland had submitted an application for membership in the European Union. However, a referendum in 1992 on membership in the European Economic Area halted this process. Today, Switzerland is a member of the European Free Trade Association, and is signatory to ten bilateral treaties which allows Switzerland to access the free market. Switzerland also participates in Schengen/Dublin.

- The conference is supported by a board (with between 9 and 11 members and a permanent secretariat).
- The CCG publishes an annual register of **inter-cantonal agreements**, signed under Article 48 of the Swiss Constitution. In 2014, 49 treaties, concordats, framework agreements and conventions were in force, ranging from bilateral treaties, such as the treaty concluded between the cantons of Basel-Stadt and Basel-Land on a children's hospital, to inter-cantonal agreements signed by all cantons. The agreements focus mainly on education, financing, culture, natural resources, transport, health and social care. Numerous treaties and concordats are also signed outside of this framework.

### IGR and the reform of financial arrangements

Intergovernmental relations played a role in the protracted process of reform which culminated in the 2004 *Reform of Competence Allocation and of Fiscal Equalisation (NFA)*. The process began in 1992. The reform was designed to strengthen cantonal autonomy, redistribute resources between and across levels, and disentangle policies and financing. It also sought to encourage collaboration between cantons in the provision of public services.

The negotiations were driven by desire for consensus as the federal government was reluctant to subject individual provisions to a popular vote and issues which were considered too contentious were dropped from the programme. Both the Conference of Cantonal Directors (particularly the directors of finance) and the Conference of Cantonal Governments engaged directly in the process and the Cantons were effective in advancing their interest over the course of the negotiations. As it involved modifications to the federal constitution, the agreement had to be endorsed by a majority of individuals and cantons. The agreement finally came into force in 2008.

2.5 There are 17 **Conferences of Cantonal Directors**. Some of these have a long history – the educational conference dates back to 1897 – and they can be very influential. Conferences exist in a variety of policy domains, including justice and policing, finance, forestry, health, and transport. They are made up of the directors or departmental heads of each canton responsible for a given policy area. The Conference of Cantonal Ministers of Finance is the most powerful.

- Each conference has a different schedule and internal organisation but in general, they have at least one plenary session per year and additional meetings of the executive committees. Special plenary sessions can be convened as necessary and individual cantons can contribute to the agenda of the meeting. Each conference has an executive committee which coordinates activities and technical working groups also organise under each conference.
- The CCDs are responsible for joint-decision making and inter-cantonal harmonization, and act even in fields which rest with the federal level. Federal representatives are often invited to these forums as observers, but they have no say in the proceedings. Outcomes of CCD negotiations

### Asserting influence: The Conference of Cantonal Ministers of Finance

The powerful Conference of Cantonal Ministers of Finance rebelled against proposals made by the federal government in 2003 to introduce a fiscal package which would see federal and cantonal resources reduced. The policy was understood by the rebelling cantons as an instance of creeping centralisation.

They employed a never-before-used constitutional provision which allows eight cantons to subject a federal provision to a popular vote. 66% of voters rejected the measure at the 2004 referendum.



include: guidelines, benchmarks, model laws, and inter-cantonal treaties (concordats). The CCDs may take a collective position or issue recommendations or positions on federal legislation, but these agreements are voluntary and non-binding. Working together, Cantonal executives can create regional or national standards through ***inter-cantonal treaties***.

2.6 Six regional Conferences of Governments also convene to allow for coordination on general regional or cross-border issues.

### 3. Parliamentary Scrutiny

3.1 Switzerland employs a preliminary legislative procedure, '*Vernehmlassungsverfahren*'. It is intended for use in the domains of finance, the economy, the environment, social and cultural matters, and other areas deemed of great political significance. However, because of the option to challenge legislation via referendum, it is in practice applied to all areas of policy. The federal level uses this to avoid a challenge in the form of a referendum on legislation. According to this procedure, cantons, political parties, municipal, urban, and regional organisations, as well as economic and other concerned bodies, must be consulted in the drafting phase of federal legislation. The public and cantonal parliaments can also participate. While the federal government can choose to ignore feedback from participants, the nature of the party system as well as emphasis on consensus means that viewpoints from primary actors are often incorporated. A 2010 report by the Council of Europe noted that only larger cantons had the institutional capacity to participate effectively.

3.2 The consultation procedure and the requirement that cantonal legislatures implement federal regulations facilitate transparency and provide a mechanism for scrutiny of federal legislation. However, inter-cantonal cooperation and bilateral relationships between the cantons and the federal government are less transparent. Although there is a high degree of intergovernmental cooperation, it takes place behind closed doors. As a result, it is difficult to subject the activities of the intergovernmental actors to effective parliamentary scrutiny. This challenge is augmented by the weakness of cantonal parliaments, with low levels of professionalization and the part-time role of parliamentarians in many cantons.

3.2 Inter-cantonal treaties must be ratified by each of the participating legislatures and sometimes even be endorsed by popular vote. In many cases, however, parliamentary input at the negotiation stage is limited. Despite this, individual parliaments working in coordination on a regional basis have made efforts to increase their knowledge of and influence over intergovernmental relations.

3.3 Dedicated and permanent parliamentary committees have been formed in at least nine cantons to oversee cooperation, external relations, regional affairs, or cross-border matters. All also have the ability to form special or ad hoc commissions and often do so to oversee the implementation of federal or cantonal laws.

#### **Parliamentary scrutiny and inter-cantonal agreements: Berne**

In the parliament of Berne, the 'High Committee' is charged with examining both international and inter-cantonal treaties. It also engages with the cantonal government on intergovernmental and external policy issues, objectives, measures and decisions. New regulations, which came into force in 2014, require the executive to inform the High Committee of any ongoing activities in the field of external or inter-cantonal relations. The committee can then decide which projects it wishes to be informed of or consulted upon. It does not, however, have the right of initiative, which rests with the executive. The executive is required to inform the committee that inter-cantonal discussions are taking place and then consult the relevant committee when entering and concluding negotiations. Committees can submit proposals and recommendations to feed into the negotiations, but the executive is not obliged to follow their recommendations.

3.4 In response to a lack of direct input into IGR by parliaments, and a need to coordinate on legislation in cross-border fields, recent years have seen closer cooperation between cantonal parliaments, and the emergence of specific forums to facilitate inter-parliamentary cooperation on a state-wide and regional basis. These include:

- **Convention on the participation of parliaments (CoParl):** CoParl facilitates coordination between the parliaments of the six French-speaking cantons. The convention created a coordinating body, the **Inter-parliamentary Bureau for Coordination (BIC)** to oversee the development, ratification, implementation and modification of both inter-cantonal and international agreements. The BIC consists of a permanent secretariat and one member and one alternate from each canton. It is charged with ensuring the exchange of information related to inter-cantonal and international issues relevant to cantonal parliaments. It also serves as an intermediary between the Conference of Cantonal Governments for Western Switzerland and the regional specialist conferences. Representatives gather three times per year and take decisions on the basis of consensus, with abstentions possible.
- The convention sets out a procedure for inter-cantonal agreements, involving ad hoc inter-parliamentary committees set up for the purposes of scrutiny once an agreement is signed. These committees, which consist of seven members from each signatory canton, after a period of scrutiny, submit their report to the cantonal governments, offering a position on the agreement and any amendments. Governments can then take on board or ignore the proposals but must inform the committee of their decisions. Once signed, the agreement returns to cantonal parliaments for their approval. According to one insider, these committees have had a real impact on policy, with governments often accepting amendments offered by committees and providing better explanations of their motivations<sup>18</sup>
- **Commissions de Gestions interparlementaire (CGI):** CGIs are also formed in response to increasing inter-cantonal cooperation in the fields of health, education, and infrastructure which requires both coordination and financial contributions by the cantons. Committees are formed to oversee joint projects, e.g. in relation to universities, hospitals, ports and training institutions.
- The **Inter-parliamentary Conference for North West Switzerland** began in the 1960s with just two cantons but has since extended to include five cantons. Each year, the conference convenes on a topic of interest. Past topics have included health policy, traffic, energy, young people, and infrastructure improvements. It is a forum for information exchange and discussion rather than decision-making.
- The **Conference of Intercantonal Legislatures (CLI)** was formed in 2011 and brings together eleven cantons. It serves as a forum for discussion of prospective inter-cantonal agreements and a forum for information exchange, as well as an attempt to reassert the influence of parliament in the process of intergovernmental relations. Participation in the CLI is voluntary.

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<sup>18</sup> Cantone, Fabienne Freymond (2011) Collaboration intercantonale : du défaut de participation au défi de participation, L'exemple de la Suisse romande, 26 mai 2011.

# 10. Parliamentary Scrutiny over EU Affairs

- Predominant decision-making role for intergovernmental European Council, with increasing co-decision role for European Parliament
- Intergovernmental relations involves Member States negotiating with each other, within council and with the European Commission
- Treaty of Lisbon strengthened parliamentary scrutiny of EU-member state relations and emphasised the subsidiarity principle in the vertical distribution of power

One special case of parliamentary scrutiny is the way in which parliaments of member states within the European Union engage in EU policy-making processes and scrutinise directives or legislation decided upon by EU institutions. In these cases, parliaments of units within member-states are one step further removed from the level at which decisions are taken and their role in scrutiny activities is largely determined by the regulations set by member states, providing for a weaker or stronger regional role in the multi-level decision-making process.

## 1. Distribution of power, EU Institutions and Intergovernmental Dynamics

1.1 The European Union is a unique political system. Neither federal nor traditionally confederal, it is founded upon treaties signed by each of the member states and formally ratified within member-state institutions and, in some cases, by additional referenda. The competences of the EU, the roles and responsibilities of its institutions, and the criteria, process and obligations associated with membership are set out in the EU Treaties, with the most recent, the Lisbon Treaty, coming into force in December 2009.

1.2 The main European institutions are the **European Commission**, the **Council of the European Union** and the **European Parliament**. The European Commission (the executive arm composed of one commissioner per member state) proposes new EU legislation, implements decisions of the European Parliament and the Council of the EU, draws up an annual budget for approval by Parliament, sets spending priorities together with EP and Council, and supervises how money is spent, under the scrutiny of the **Court of Auditors**.

1.3 The European Parliament adopts EU legislation together with the Council of the EU based on proposals from the Commission. The European parliament also decides on international agreements and enlargement, provides democratic scrutiny of all EU institutions, approves (or rejects) the Commission as a whole, including electing the Commission president. In contrast to national parliaments, the European parliament does not possess the right to initiate legislation.

1.4 The Council of the EU is the main executive body and intergovernmental forum composed of ministers of member states governments. The Council negotiates and adopts legislative acts – mostly together with the European parliament under the ordinary legislative procedure – and it also serves to coordinate policies of member states in areas such as economic policy, education, culture or employment. Together with the parliament, it adopts the EU's budget and approves the long-term Multiannual Financial Framework. The Council meets regularly in formal but also informal meetings and is supported by a large number of permanent and ad-hoc working groups, known as preparatory bodies.

*Division of powers based on Treaty of the EU*

|  |  |
|--|--|
| <b>Exclusive competences of the EU</b>   | Customs union; competition rules for the internal market; monetary policy for those members participating in the Eurozone; conservation of the marine biological resources under the Common Fisheries Policy; common commercial policy; conclusion of international treaties where they relate to EU matters   |
| <b>Shared competences</b>  | Internal market; social policy (limited to aspects defined in the TFEU); economic, social and territorial cohesion; agriculture and fisheries; environment; consumer protection; transport; trans-European networks; energy; aspects of freedom, security and justice; public health matters (limited to aspects defined in the TFEU); research, technological development and space; development cooperation and humanitarian aid |
| <b>Competence to support, coordinate or supplement actions of the member states</b>            | Protection and improvement of human health; industry; culture; tourism; education, vocational training, youth and sport; civil protection; administrative cooperation  |
| <b>Competence to provide arrangements within which EU member states must coordinate policy</b> | Economic policy; some employment and social policies   |

1.5 The two main ways of decision-making at EU level are the consultation and the ordinary legislative procedure:

- Under the **consultation procedure**, the Commission and the Council are the main actors, with the Council adopting a proposal submitted by the Commission either with unanimity or with qualified majority depending on the policy area. The European parliament has only a consultative role and can offer a non-binding opinion. Though it may gain some leverage due to its power to delay the process,<sup>19</sup> in practice, the Council has frequently ignored the opinion of the EP and the consultation procedure remains an intergovernmental method of decision-making. Main areas for this procedure are EU citizenship, citizens' rights and freedoms, visa, asylum, immigration, revision of treaties, competition rules, tax arrangements and economic policy.
- Under the **ordinary legislative procedure** (also referred to as the co-decision procedure) the position of the Commission is weakened as either the Council or the European parliament can amend its proposals. Positions of the parliament on Commission proposals are passed on to the Council and if the Council agrees with the wording, the act is adopted; if not, the Council passes its opinion back to parliament. The consent of the European parliament is required for an act to be adopted. This procedure is used for areas where the EU has exclusive or shared competences.

1.6 With the Lisbon Treaty, the use of qualified majority voting in the Council has been extended significantly and a system of double majorities has been introduced, depending on the number of states and the population represented. Although unanimity is still sought, it remains possible that member states may be bound by decisions to which their governments have not agreed.

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<sup>19</sup> Kardasheva, R. 2009, 'The power to delay: the European Parliament's influence in the consultation procedure', *Journal of Common Market Studies* vol. 47 no 2, pp. 385–409.

## 2. Parliamentary Oversight and Scrutiny

2.1 Scrutiny activities by member state parliaments are directed at legislative initiatives of the European Commission, the EU policy of the governments of the respective member states, as well as changes to EU treaties or the accession of new member states. While EU regulations determine time periods for scrutiny and the publication of information, opportunities for parliaments to engage in effective scrutiny of their government's participation in EU relations are largely determined by executive-legislative relations within member states. In contrast to many intergovernmental meetings within states, dates and timing of meetings of the European Council are publicly known. Hurdles to gain access to information may still exist, especially with regard to the position of governments on initiatives from the Commission.

2.2 With the introduction of the **Early Warning System**, the Lisbon Treaty recognised the role of parliaments in safeguarding the subsidiarity principle. How parliaments get involved, and at what stage in the decision-making process, is dependent on domestic regulations. Every member-state parliament has a **European Affairs Committee** (EAC) to monitor EU decision-making and sift through documents produced by EU institutions. Differences exist as to whether the EAC is the main body involved in scrutiny activities, as is the case in Denmark, or whether specialised committees scrutinise initiatives in their respective fields, as is the case in Germany. The use of specialised committees allows parliaments to draw on policy expertise when preparing a resolution or opinion while reducing the opportunity for building up expertise on EU affairs within a specific EU committee.

2.3 Access to information about planned and ongoing initiatives of the European Commission has also been made easier. Since the Lisbon Treaty, documents are sent directly from the Commission to the parliaments of member states. The sheer volume of documents produced and forwarded makes it difficult for parliaments to select issues that are most relevant for safeguarding the subsidiarity principle and for holding their respective governments to account. Governments and parliaments of member states have established different ways to deal with the amount of information. For example:

- The German government circulates comprehensive evaluations of the financial, economic, social and ecological impact of all proposed legislation. The German Bundestag has also established a representation in Brussels that pre-monitors and pre-selects information prior to forwarding documents to the respective parliamentary committees. It also sends a 'Report from Brussels' before each plenary session of the European Parliament to all members of

### ***Early Warning Mechanism***

The Early Warning Mechanism allows the parliaments of member states to submit a reasoned opinion, within 8 weeks, if they regard an EU initiative as violating the subsidiarity principle. Each member state parliament has two votes. If reasoned opinions represent one third of all votes, the draft legislation must be reviewed (yellow card). The body initiating the draft can afterwards maintain, amend or withdraw it but must justify its decision.

Parliaments of units within member-states can be consulted during that process and become involved at an early stage of EU decision-making. However, their involvement is left to the discretion of the member-state parliaments and an even tighter schedule applies in order to meet the overall deadline of 8 weeks.

the Bundestag. The German parliament therefore receives information on EU activities independently from the government.<sup>20</sup>

- The Austrian executive provides greater support for federal and Länder parliaments. Federal ministries are obliged to provide a subsidiarity analysis alongside the documents produced by EU institutions.<sup>21</sup>

2.4 The effectiveness of parliamentary scrutiny is also dependent upon whether and when governments share information and their position in response to EU initiatives. In case of the German parliaments, the German Constitutional Court stipulated that parliaments be involved prior to decision-making. The German government is obliged to inform the Bundestag about planned EU initiatives and its positions on each issue. The Court has also ruled that written reports shall be standard and cannot be replaced by oral statements. The early involvement of parliaments allows all parties to voice their arguments and concerns and has been especially used by opposition parties.

2.5 Parliamentary involvement also differs depending on whether the submitted resolution or opinion is binding or non-binding for the government. A binding opinion, or mandate, can be used to support the government's position, especially by the majority parties in parliament. In the German case, the resolutions of the Bundestag are non-binding. However, if the government takes a different position later in the process, one quarter of the members of parliament can request the government to elaborate and justify the reasons for the deviation from the resolution in the plenary (publicly).<sup>22</sup> The European Affairs Committee of the Danish Parliament has one of the most far-reaching remits in comparison to other member states' parliaments as it operates a mandating system.<sup>23</sup> It was designed to avoid a situation in which the Danish government committed itself to a policy in Brussels which would not be passed in the Danish parliament, a realistic risk given the tendency towards minority governments in Denmark. Parliament therefore derives its strength partly from the regulations on scrutiny, but also from the fact that governments may lack majority support in parliament.

#### **Denmark's Mandating System**

- EAC examines the items on the agenda of Council meetings
- Representatives of the Danish government present orally the government's position to EAC prior to Council meetings
- Items of major significance require a mandate from the EAC. If position receives majority vote in EAC, the government can negotiate on this basis.
- Ex post: Ministers report back to EAC after Council meeting
- Danish Government seeks around 75 mandates per year from the EAC (data from 2012).

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<sup>20</sup> Höing, O. 2015, 'With a Little Help of the Constitutional Court: The Bundestag on Its Way to an Active Policy Shaper', in Hefftl, C, C Neuhold, O Rozenberg and J Smith, eds. 2015. *The Palgrave Handbook of National Parliaments and the European Union*, Palgrave Macmillan, p. 191-208, 199.

<sup>21</sup> Vara Arribas, G. / Hoegenauer, A.-L. 2015, 'Legislative Regions after Lisbon: A New Role for Regional Assemblies?', in Hefftl, C, C Neuhold, O Rozenberg and J Smith, eds. 2015. *The Palgrave Handbook of National Parliaments and the European Union*, Palgrave Macmillan, p. 133-149.

<sup>22</sup> EUZBBG 2013, Gesetz über die Zusammenarbeit von Bundesregierung und Deutschem Bundestag in Angelegenheiten der Europäischen Union.

<sup>23</sup> Buskjær Christensen 2015. The Danish Folketing and EU Affairs: Is the Danish Model of Parliamentary Scrutiny still Best Practice?, in Hefftl, C, C Neuhold, O Rozenberg and J Smith, eds. 2015. *The Palgrave Handbook of National Parliaments and the European Union*, Palgrave Macmillan, p. 275-289.



# 11. Comparative Insights for the UK

Reflecting on the overview of IGR in federal and multi-level states, and its insights for the UK, two key observations emerge:

- ***In most multi-level and federal countries, intergovernmental relations are more formalised than in the UK***, with more intergovernmental bodies and formal agreements, though the extent to which these forums and procedures are used varies over time
- ***In every country, intergovernmental relations are dominated by executives***, with relatively limited opportunities for parliaments and parliamentarians to engage in legislative oversight or processes, negotiations and agreements
- In spite of this general constraint, ***in almost every country examined here, the role of parliaments in scrutinising IGR is greater than the role the UK's parliaments currently enjoy in scrutinising UK IGR.***

## 1. Territorial and Political Structure of the UK

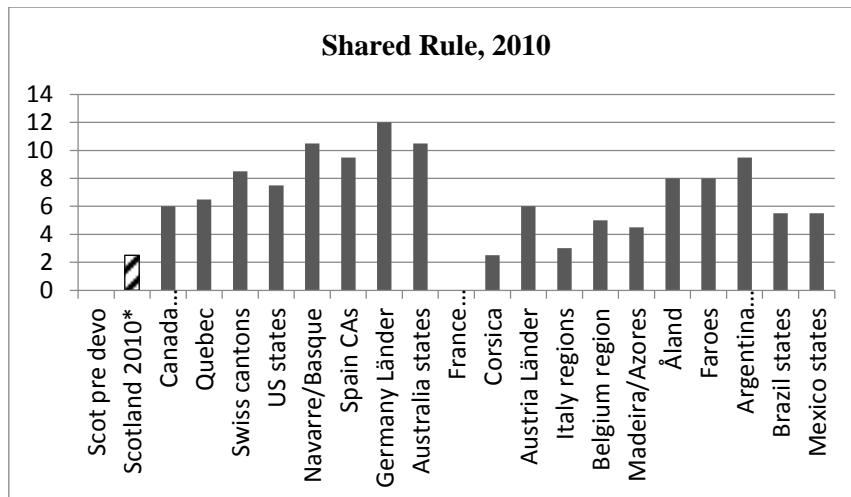
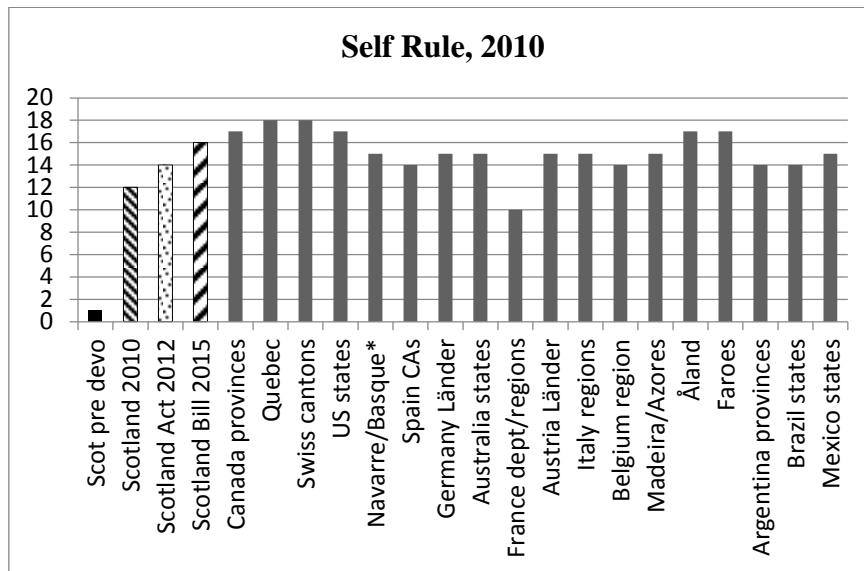
1.1 The UK's territorial structure is somewhat distinctive from those discussed here. The UK is not a federation; there is no division of sovereignty between jurisdictional levels. Powers are devolved from Westminster legislation without compromising Westminster parliamentary sovereignty, although the Sewel convention provides some protection to the legislative competence of the devolved legislatures. The UK also has an unusually high degree of asymmetry in its territorial structure. The continued absence of devolution in England inhibits the scope of intergovernmental coordination and joint working.

1.2. Like Canada, Spain and Belgium, the UK is a pluri-national state. It is, however, unusual in the extent to which its pluri-national character is recognised and accepted, symbolically and institutionally. Competing conceptions of national identity do not generally affect inter-governmental relations, except where they generate competing perspectives on appropriate degrees of self-rule and shared rule.

1.3. Although the UK is not a federation, it has some federal features, at least with respect to the non-English territories. The charts below draw upon an index of regional authority, using standardised measures to assess the level of self-rule and shared rule in Scotland in comparison to other multi-level and federal states (see appendix).<sup>24</sup> The first chart indicates that the Scottish Parliament has a reasonably high degree of self-rule when set alongside the constituent units of other federal or regionalized states. This will increase further following full implementation of the Scotland Act 2012 and the powers proposed in the Scotland Bill 2015, approaching the levels of autonomy seen in the established federal states discussed in this report.

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<sup>24</sup> Hooghe, L., G Marks, A H Schakel, S Chapman Osterkatz, S Niedzwiecki and S Shair-Rosenfield (2015) *A Postfunctional Theory of Governance. Volume I: Measuring Regional Authority*, Oxford: Oxford University Press.



1.4 As the second chart reveals, the UK appears notably less federal in view of the relative weakness of shared rule, giving the Scottish Government less formal opportunities for influence than is often exercised by its counterparts in other multi-level and federal countries. Shared rule concerns the input and influence of the constituent units over decision-making at the centre. In the UK:

- There is no territory-specific input into UK legislation; the Sewel convention has evolved to become more a means of protecting self-government in areas of devolved competence than a way to exert influence over Westminster policy that affects the devolved territories.
- There is neither a territorial nor a representative element to the upper house.
- Representation in the House of Commons is on the basis of individual constituencies and is non-territorial beyond these constituency boundaries. The procedural and institutional mechanisms intended to give voice to territorial interests, most notably in the territorial select committees and the territorial ministries of state, are weakened by the requirement



that they broadly reflect the political complexion and balance of power within the UK parliament and government.<sup>25</sup>

- 'English votes for English laws' (EVEL), which depending on the form it eventually takes should provide English members of parliament with a veto over legislation deemed to apply to England only, will demarcate all MPs as from territorially distinctive nations of the UK while simultaneously restricting the voting rights of those elected outside of England, including on issues which would have financial and other policy implications for devolved matters.
- This disparity between self-rule and shared rule in part reflects the model of devolution introduced in 1999, which conformed most closely to a dual allocation of power, with a clear distinction between powers reserved to the Westminster parliament, powers devolved to the Scottish parliament (which, by virtue of the reserved powers model, was all those powers not explicitly reserved in the Scotland Act 1998), and very few areas of concurrent jurisdiction, reducing the structural incentives for intergovernmental cooperation. As the devolution settlement enters its next stage, it will involve more overlapping competences, interdependencies and shared policy space, creating a greater need for intergovernmental relations.

## 2 Structure and Dynamics of Intergovernmental Relations

2.1 Intergovernmental relations featured little in the preparations for devolution, but developing 'working connections' between officials and ministers was always going to be necessary to manage the boundary between reserved and devolved competences. By design, IGR in the UK are mainly informal, underpinned by good communication, goodwill and mutual trust. The **Memorandum of Understanding**, the **Concordats** between the Scottish Government and Whitehall departments, and the **Devolution Guidance Notes** were intended to embody and nurture a co-operative working culture among civil servants on a day-to-day basis.

2.2 The MoU provided for the **Joint Ministerial Committee (JMC)** to bring together all of the devolved administrations with the UK government. A supplementary agreement set out in more detail how the JMC was to operate. In the event, the JMC met only a few times in plenary and functional formats before becoming largely redundant in 2002, with the exception of the **JMC (Europe)** where there was a clear and continuing need to bring the devolved governments together with the UK government before European Council meetings. The Joint Ministerial Committee was only resurrected after the emergence of party political incongruence in the composition of governments north and south of the border after 2007. It now meets annually in plenary format and when required (usually annually) in its domestic format, while meetings of the JMC (Europe) continue to conform to the timetable of European Council meetings. It has a **joint secretariat** involving officials from the UK and devolved governments, and in 2010 developed a **Protocol for the Avoidance and Resolution of Disputes**. Opportunities for influence remain constrained by the hierarchical position of the UK government, the more frequent lack of common cause among the devolved governments, and the limited opportunities for one administration acting alone to use this process to advance its own interests.

2.3 The JMC remains the tip of the iceberg of intergovernmental relations. Most intergovernmental exchange continues to take place below the radar, between officials of

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<sup>25</sup> In practice, this requirement has been modified in the select committees. To take the example of the Scottish Affairs Committee - of its 11 members, the SNP have 4, the Conservatives have 4 and the Labour Party have 3, leaving the balance of power tilted firmly towards the opposition. Prior to the election, the coalition parties had 5 members, the official opposition had 5 members and the SNP had one, though the member in question boycotted the committee.

varying ranks working in similar or overlapping policy spheres on a (vertical and horizontal) bilateral basis. New bilateral forums have emerged in recent years, including the **Joint Exchequer Committee** and the **Joint Ministerial Group on Welfare**, but their status, terms of reference, and longevity are unclear.

2.4 The opportunities for developing multilateral IGR in the UK are shaped - and constrained - by the non-federal nature of the UK constitution, the continued adherence to the doctrine of parliamentary sovereignty, and the highly asymmetric nature of UK devolution, and especially the continued absence of a legislature for England. ***There may, however, be more scope for formalising some of the ad hoc bilateral arrangements which have developed recently, potentially drawing on the model of the Spanish bilateral commissions, particularly their non-hierarchical structure.*** UK IGR are also shaped by party differences in the composition of governments, competing territorial interests and the likelihood that there may be a lack of willingness on the part of governments at both levels to use formal procedures for co-decision that may constrain their respective decision-making autonomy.

2.5 Intergovernmental agreements are **non-binding**, and usually take the form of memorandums of understanding or concordats. The Scottish Government lists 43 such agreements on its website, including bilateral and multilateral agreements, ranging from agreements on the general conduct of relations between the Scottish Government and particular Whitehall departments to specific policy agreements, such as *Delivering our Armed Forces Healthcare Needs*.<sup>26</sup> This is *not* a complete list of intergovernmental agreements or MoUs.

2.6 The formal machinery of IGR has been deemed not fit for purpose by every parliamentary committee and independent enquiry that has examined it in recent years, with all calling for greater regularity and transparency, and more formalisation to manage inter-relationships between governments led by different parties. The emerging Scottish devolution settlement also merits a revision of IGR. It promises a system of devolution which will be more interdependent than the Scotland Act 1998, and may necessitate closer communication, collaboration and compromise. This raises issues for democratic accountability, and suggests a need to consider whether and how the scrutiny of UK IGR – both multi-lateral and bilateral – can be enhanced.

### 3. Parliamentary Scrutiny of IGR

3.1 There are no formal mechanisms for the parliamentary scrutiny of intergovernmental relations in the UK. The original MoU and supplementary agreements were debated within the Scottish Parliament in October 1999, including a debate on an amendment tabled by the SNP regarding the terms of reference as well as a vote to formally endorse the agreement. The agreement was not referred to, or scrutinised by, a parliamentary committee and subsequent revisions to the MoU appear not to have been the subject of discussion or debate within parliament.

3.2 The JMC produces an annual report, which includes the dates of each meeting of the committee in its various formats, as well as the dates of meetings of other forums such as finance quadrilaterals. The report includes agenda items and a note of whether there were any formal disputes (that is, disputes invoking the aforementioned protocol), but it does not provide a summary of proceedings or outcomes. A general communiqué agreed by the participating governments is often produced following the JMCs. New bilateral forums have usually also released jointly agreed communiqués, while the minutes of the Joint Exchequer Committee were

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<sup>26</sup> <http://www.gov.scot/About/Government/concordats>

presented to the Scottish Parliament Finance Committee by the Scottish Finance Secretary during its enquiry into the financial implications of the Scotland Act 2012.

3.3 There is currently no Scottish Parliament committee which includes within its remit a dedicated role in overseeing intergovernmental relations, although scrutiny has intensified as a result of the investigations into new devolution legislation. The **House of Commons Public Administration and Constitutional Affairs Committee** incorporates a degree of scrutiny of IGR within its new remit. The **House of Lords Constitution Committee** is concerned with the machinery of IGR as part of its broad remit of examining constitutional issues. It has conducted two major inquiries into UK IGR, in both cases raising concerns about the reliance on informality and lack of transparency.

#### **4. Recommendations for Enhancing Parliamentary Scrutiny of IGR**

4.1 Drawing on the key dimensions of parliamentary scrutiny identified in chapter 2 above, the Report makes the following recommendations for consideration:

##### ***(i) Timing and access to information:***

Parliaments can be made more aware of when formal intergovernmental meetings are scheduled to take place, with a public record of proceedings, where available, deposited with parliament upon conclusion of the meetings. A record of significant informal meetings and working groups may also be reported to parliament.

##### ***(ii) Legislative Tools and Procedures:***

- *Committee on IGR:* Parliament may wish to consider whether to emulate the practice in most of the cases we examined of having a dedicated permanent committee which includes scrutiny of intergovernmental relations within its remit (often alongside constitutional and other institutional matters). This need not prohibit subject-focused committees from taking an interest in IGR where it relates to their policy concerns.
- *Hearings/Evidence sessions:* Parliament has already been receiving written and oral evidence on IGR from ministers, officials and others as part of its inquiry into the new devolution legislation. However, it may wish to do so on a more regular basis, prior to and/or following formal intergovernmental meetings or following significant intergovernmental agreements. Parliament may want to consider whether it is appropriate for some of these meetings to be held in private. A MoU between parliament and the Scottish Government may be an appropriate mechanism underpinning executive-legislative relations in this area.
- *Consent:* In some countries, intergovernmental agreements are subject to the consent of parliaments. This is currently the case in the Scottish Parliament with respect to legislative consent motions, which are themselves the subject of intergovernmental coordination, but a consent procedure does not extend to other agreements or MoUs. Given the increased significance of intergovernmental agreements, most notably relating to fiscal autonomy, block grant adjustment and the fiscal framework, and the new interdependencies in taxation and social security, there may be a case for extending parliament's consenting powers to intergovernmental agreements in these spheres.
- *Inter-parliamentary cooperation:* In some of the countries we examined, cooperation across parliaments within the multi-level system was regarded as a means of enhancing the scrutiny of IGR. Recent committees elsewhere in the UK - for example, the Public Administration and Constitutional Affairs Committee and the House of Lords Committee

on the Constitution – have raised similar concerns about the process, dynamics and scrutiny of UK IGR. The Devolution (Further Powers) committee may consider whether inter-parliamentary cooperation on an interim or ongoing basis may enable the committee to enhance its scrutiny objectives.

### ***(iii) Transparency and Public Engagement***

Some of the aforementioned recommendations would already go some way to enhancing the transparency of IGR. This would be further enhanced by a clearer commitment on the part of governments to report on the outcome of intergovernmental meetings. Currently, a single annual report provides very limited information about multilateral intergovernmental meetings. This could be extended and enhanced to provide more detail on the substance of discussion. A similar report could be produced by other bilateral forums such as the Joint Exchequer Committee. These should be formally presented to parliament and may then be the subject of debate within committee or the chamber, as appropriate. Any intergovernmental agreements should also be made available for parliamentary and public scrutiny.

Intergovernmental relations take place at multiple levels. From a Scottish perspective, this involves not only the Scottish and UK governments but also Scottish local governments, a range of public and semi-public bodies within and beyond Scotland, as well as the European Union institutions. Civil society organisations connect to these intergovernmental networks at all levels, and provide insight into the functionality, or dysfunctionality, of intergovernmental interdependencies and relationships. Periodic inquiries or hearings into some aspect of IGR could offer an opportunity for these organisations to engage in the scrutiny process, and offer a perspective to aid parliament's oversight of intergovernmental interaction.

# Appendix

## Regional Authority Index Coding Scheme<sup>27</sup>

| SELF RULE                     |              |  |
|-------------------------------|--------------|--|
| <i>Dimension of Self Rule</i> | <i>Score</i> | <i>Detailed Measurement</i>  |
| Institutional depth           | 0-3          | <p>The extent to which a regional government is autonomous rather than deconcentrated:</p> <p>0: no functioning general-purpose administration at regional level<br/>           1: deconcentrated, general-purpose, administration<br/>           2: non-deconcentrated, general-purpose, administration subject to central government veto<br/>           3: non-deconcentrated, general-purpose, administration *not* subject to central government veto.</p>  |
| Policy Scope                  | 0-4          | <p>The range of policies for which a regional government is responsible:</p> <p>0: very weak authoritative competence in a), b), c), d) whereby a) economic policy; b) cultural-educational policy; c) welfare policy; d) one of the following: residual powers, police, own institutional set-up, local government<br/>           1: authoritative competencies in one of a), b), c) or d)<br/>           2: authoritative competencies in at least two of a), b), c), or d)<br/>           3: authoritative competencies in d) and at least two of a), b), or c)<br/>           4: criteria for 3 plus authority over immigration or citizenship.</p>  |
| Fiscal autonomy               | 0-4          | <p>The extent to which a regional government can independently tax its population:</p> <p>0: central government sets base and rate of all regional taxes<br/>           1: regional government sets the rate of minor taxes<br/>           2: regional government sets base and rate of minor taxes<br/>           3: regional government sets the rate of at least one major tax: personal income, corporate, value added, or sales tax<br/>           4: regional government sets base and rate of at least one major tax.</p>   |
| Borrowing autonomy            | 0-3          | <p>The extent to which a regional government can borrow:</p> <p>0: the regional government does not borrow (e.g. centrally imposed rules prohibit borrowing)<br/>           1: the regional government may borrow under prior authorization (<i>ex ante</i>) by the central government and with one or more of the following centrally imposed restrictions:<br/>               a) golden rule (e.g. no borrowing to cover current account deficits)<br/>               b) no foreign borrowing or borrowing from the central bank<br/>               c) no borrowing above a ceiling<br/>               d) borrowing is limited to specific purposes<br/>           2: the regional government may borrow without prior authorization (<i>ex post</i>) and under one or more of a), b), c), d), e)<br/>           3: the regional government may borrow without centrally imposed restrictions.</p> |
| Representation                | 0-4          | The extent to which a region has an independent legislature and executive.   |

<sup>27</sup> Hooghe, L, G Marks, A H Schakel, S Chapman Osterkat, S Niedzwiecki and S Shair-Rosenfield (2015) *A Postfunctionalist Theory of Governance. Volume I: Measuring Regional Authority*, Oxford: Oxford University Press. Codebook and data available at: [http://www.unc.edu/~gwmars/data\\_ra.php](http://www.unc.edu/~gwmars/data_ra.php)

| SHARED RULE                                    |              |  |
|--|--------------|--|
| <i>Dimension of Shared Rule</i>                | <i>Score</i> | <i>Detailed Measurement</i>  |
| Law-making                                     | 0-2          | <p>0: a region or regional tier is <i>*not*</i> the unit of representation in a national legislature</p> <p>0.5: a region or regional tier is the unit of representation in a national legislature</p> <p>0: a regional government or regional tier does <i>*not*</i> designate representatives in a national legislature</p> <p>0.5: a region or regional tier designates representatives in a national legislature</p> <p>0: regions do <i>*not*</i> have majority representation in a national legislature based on regional representation</p> <p>0.5: regions have majority representation in a national legislature based on regional representation</p> <p>0: the legislature based on regional representation does <i>*not*</i> have extensive legislative authority</p> <p>0.5: the legislature based on regional representation has extensive legislative authority</p> <p>0: the regional government or its regional representatives in a national legislature are <i>*not*</i> consulted on national legislation affecting the region</p> <p>0.5: the regional government or its regional representatives in a national legislature are consulted on national legislation affecting the region</p> <p>0: the regional government or its regional representatives in a national legislature do <i>*not*</i> have veto power over national legislation affecting the region</p> <p>0.5: the regional government or regional representatives in a national legislature have veto power over national legislation affecting the region</p> |
| Inter-governmental co-determination            | 0-2          | The extent to which a regional government co-determines national policy in multi-lateral or bilateral intergovernmental meetings.  |
| Fiscal co-determination                        | 0-2          | The extent to which regional representatives co-determine the distribution of national tax revenues in multi-lateral or bilateral intergovernmental meetings.  |
| Borrowing co-determination                     | 0-3          | The extent to which a regional government co-determines subnational and national borrowing constraints in multi-lateral or bilateral intergovernmental meetings  |
| Co-determination of constitutional change (i)  | 0-4          | <p>0: the central government or national electorate can unilaterally reform the constitution</p> <p>1: a legislature based on regional representation can propose or postpone constitutional reform, raise the decision hurdle in the other chamber, require a second vote in the other chamber, or require a popular referendum</p> <p>2: regional governments or their representatives in a national legislature propose or postpone constitutional reform, raise the decision hurdle in the other chamber, require a second vote in the other chamber, or require a popular referendum</p> <p>3: a legislature based on regional representation can veto constitutional change; or constitutional change requires a referendum based on the principle of equal regional representation</p> <p>4: regional governments or their representatives in a legislature can veto constitutional change.</p>   |
| Co-determination of constitutional change (ii) | 0-4          | <p>0: the central government or national electorate can unilaterally reform the region's constitutional relation with the centre</p> <p>1: a regional referendum can propose or postpone reform of the region's constitutional relation with the centre</p> <p>2: the regional government can propose or postpone reform of the region's constitutional provisions or require a popular referendum</p> <p>3: a regional referendum can veto a reform of a region's constitutional relation with the centre</p> <p>4: the regional government can veto a reform of the region's constitutional relation with the centre</p>   |



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