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WORKING GROUP

REGIONS WITH LEGISLATIVE POWER

Structures and responsibilities of European regions with legislative power

Analytical study

Revised version with regard to Switzerland

Secretariat document

The aim of this study is to provide information on the current status of regions with legislative power in Europe. To this end, a detailed analysis has been made of the position, legal foundations and political and administrative institutions of these regions within their respective state structure. Ten European countries which have regions with legislative power have been included in this analysis.

For each of the ten countries studied, an analysis has been made of the role and position of the intermediate political institutions in the arrangement and organisation of the public authorities. It should be pointed out, however, that the extent of the research has led to a number of documentary problems; certain elements, such as the tables showing the distribution of powers, should therefore be regarded purely as indicative sources of information.

The purpose of this memorandum is to highlight the degree of autonomy enjoyed by intermediate authorities, and by adopting a comparative approach, to establish the features which are common to all the "regions" of the different countries. Particular emphasis must be placed on the large variety of organisational structures in the countries under examination. There are federal states (Germany, Austria, Belgium, the Russian Federation, Switzerland), regionalised unitary states (Spain, Italy), partially regionalised states (United Kingdom), and non-regionalised states which have, for cultural, historical and geographical reasons, granted some of their regional authorities a large degree of autonomy (Finland, Portugal).

The aim of this exercise is to depict as fully as possible the role of the intermediate authorities in each country.

The research has focused primarily on the institutional organisation of the intermediate authorities and the assignment of powers and of corresponding financial resources. These aspects are of particular importance in assessing the autonomy of intermediate authorities.

This study is based on publications of the Council of Europe, Venice Commission Studies and information documents produced by the intermediate authorities themselves.

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Federal Republic of Germany

I. INSTITUTIONAL ORGANISATION

A. Organisational structure of the state

Article 20 of the German Basic Law (BL) of 23.05.1945 states that "the Federal Republic of Germany shall be a democratic and social federal state".

The federal structure of the country is further consolidated in the text of the Basic Law: paragraph 3 of Article 79, covering amendments to the Basic Law, proscribes any amendments aimed at modifying the federal structure of the state.

The Federal Republic of Germany is composed of the federal state and 16 federate states (the Länder). Through the upper chamber (the "*Bundesrat"* or Federal Council), the federate states contribute to the drawing up of federal policy.

The members of the *Bundesrat*, unlike those of the Senate in the United States of America, are representatives of the governments of the federate states. The governments of the Länder give precise instructions to their representatives, who have been assigned an imperative mandate.

B. Legal foundations for the existence of federate states

As mentioned above, the legal foundations for the existence of the Länder is to be found in the Basic Law. Article 30 states: "except as otherwise provided or permitted by this Basic Law, the exercise of governmental powers and the discharge of governmental functions shall be incumbent on the Länder." Accordingly, competence is ordinarily assigned to the federate states.

As in many other examples of federate states, the Länder existed before being recognised by the Basic Law. The Länder, in close co-operation with the victors of World War II, were instrumental in setting up the Federal Republic of Germany.

C. The political institutions of the federate states

In accordance with the federal principle, the Länder enjoy constitutional autonomy. This autonomy is limited only by Article 28 of the Basic Law, which states that "the constitutional order in the Länder shall conform to the principles of the republican, democratic and social state".

The institutions in each Land are by and large the same, with only a few variants.

1. An elected assembly

All the federate states have a parliament with a single chamber. In the majority of Länder, its title is "Landtag" (federal assembly). In the city states such as Berlin, Bremen and Hamburg, the assembly is called the "Senat".

Unlike the situation at federal level governed by the Basic Law, the majority of Länder have made provision for the Landtag to be dissolved on its own initiative. Most Länder have generally had recourse to coalition governments, mirroring institutional practice at federal level. As a result, there has been significant and sometimes complex political interference between the two tiers of authority. The duration of legislatures is generally four years, except for North-Rhine Westphalia and Saarland where it is five years. Proportional representation is the basis of all electoral systems; however, the specific means of application may vary from one Land to another.

The federate assemblies have legislative powers in those areas of competence assigned to the Länder by the Basic Law. Despite the general competence assigned to the Länder, set out in Article 30 of the Basic Law (see above), their legislative competence has in fact been drastically reduced. As German federalism has developed towards a strongly co-operative form of federalism, the Länder, and more particularly the federate assemblies, have forfeited the majority of their responsibilities.

2. An executive body

The Land executive comprises the Minister-President (Ministerpräsident) and the government. The Minister-President is appointed by the Landtag and generally heads the list of the party which has obtained the majority of votes.

The composition of the government depends on the majority obtained by the winning party in the elections. If it is an absolute majority, the government will be formed following internal negotiations within the winning party. If it is a qualified majority, the government will be formed in collaboration with the coalition party of its choice.

The Minister-President directs and co-ordinates government action. The government pursues Land policy and to this end has at its disposal the Land administration.

The Land executive, as a result of the trend in German federalism towards ever greater co-operation, has significantly benefited from the decentralisation of the decision-making centres (see below).

3. A judiciary

The Länder's constitutionally-assigned institutional competence includes the power to set up its own administration of justice. In this regard, Article 92 states that "judicial power shall be vested in the judges; it shall be exercised by the Federal Constitutional Court, the federal courts provided for in this Basic Law, and the courts of the Länder."

The role of the federal courts, via the supreme courts and the Federal Constitutional Court, is to ensure uniform application of the law throughout the federal territory.

The administration of justice in the Länder must comply with legislation in force.

The aforementioned federal courts notwithstanding, the Länder organise the courts of first instance and the appeal courts for all matters. In addition, they set up constitutional courts to protect their own constitutional order.

D. The administration of the federate states

The Länder have very extensive authority in administrative matters. The Land administration implements all federal-level and federate-level legislative measures. This is a result of the fact that there is no administrative structure specific to the Federation. The federal administration exists only with regard to the fields coming under the exclusive authority of the Federation, namely the conduct of foreign affairs, defence, postal services etc.

1. Recruitment, permanence of post

The federate states are free to recruit their own public servants. Their status varies from one Land to another but they enjoy the guarantees ordinarily assigned to federal-level civil servants. Recruitment is via professional competitive examinations.

2. Training

Basic training is provided by specialised institutions.

II. POWERS OF THE LÄNDER AND HOW THEY ARE EXERCISED

A. Powers of the Land

1. Internal powers

The Basic Law sets out criteria for the division of powers between the Federation and the Länder which take less account of specific areas of action than of governmental functions viz. legislative, "administrative", and judicial authority. The different powers of the federal state and the Länder will be analysed in the light of the above functions in order to highlight one of the most significant developments in German federalism, namely co-operative federalism.

Legislative power

The Länder's fundamental competence in "the exercise of governmental powers" set out in Article 30 of the Basic Law, has been limited by other articles of the constitution and reduced to a bare minimum by the practical application of the text.

Article 31 of the Basic Law sets out the principle whereby federal law has precedence over Land law (Bundesrecht bricht Landesrecht).

Furthermore, Chapter VII of the Basic Law, concerning the respective legislative powers of the two tiers of government, first of all defines the areas in which the Federation has an exclusive right to legislate (Article 71 BL). Article 73 BL sets out the areas in which the Federation has exclusive competence. These are the classical areas of state sovereignty, namely foreign affairs, defence, granting of nationality, currency etc.

Article 74 BL sets out the areas of concurrent legislation. The Länder have the right to legislate in such areas as long as the Federation has not already done so. The areas concerned are those of traditional legislative intervention: civil law, criminal law, the administration of justice, economic law, labour law etc.

A reading of the relevant article, combined in particular with Article 31 BL on the primacy of federal law, shows clearly that inherent in the concept of concurrent legislation was the potential for the Federation to appropriate the lion's share of legislative power.

Furthermore, the way the text has been applied in practice has confirmed this development. Although the Länder made an attempt to preserve a share of the concurrent legislation, their resistance was blocked by the Federation's argument that legislative action at federal level was essential to conserve the uniformity of living conditions throughout the federal territory. Backed up by the Federal Constitutional Court, which has virtually systematically upheld this argument, the Federation has gradually dispossessed the Länder of all competence in what was originally the field of concurrent legislation.

Nonetheless, the Länder retain exclusive competence in the fields of cultural policy, primary, secondary and higher education, the promotion of art and scientific research, and regulations on the press, radio and television.

The areas in the federate states' exclusive legislative sphere include maintaining public safety and order, building regulations, legislation on water and the law applicable to local authorities. The Länder also have extensive rights with regard to their external relations (see below).

It can therefore be seen that very high concentration of legislative functions falls to the Federation, while those of the federate assemblies have been proportionally reduced. This dispossession is one of the reasons for the reduced influence of the federate assemblies.

Administrative authority

The experience of the Third Reich and its pervasive, centralised administration was partly the reason for the decision to assign the main responsibilities in administrative matters to the Länder. With the exception of the administration of foreign affairs and defence, the federate administrations are responsible not only for implementing Land policy but also for putting federal policy into effect, although the Federation has power to issue implementing regulations for legislation.

The lack of balance observed in legislative affairs is therefore partially redressed by the Länder's competence in almost all administrative matters.

Judicial power

As stated above, the Länder are empowered to set up federate courts. Moreover, the majority of courts do, in fact, come under the jurisdiction of the Länder. The federal courts - the Federal Administrative Court, the Federal Finance Court, the Federal Labour Court and the Federal Social Court - merely play a review role.

Article 93 of the Basic Law provides the constitutional basis for the Federal Constitutional Court, sitting in Karlsruhe, responsible for interpreting the Basic Law, ruling on the compatibility of federal and Land legislation with the Constitution, conflicts of authority between the Länder and the Federation and constitutional appeals filed by private individuals.

With the exception of these courts and with due regard for the legislation in force, the Länder have control over the organisation of their courts and appointment of judges.

Co-operative federalism

Unlike the United States of America with an inter-state federalism in which the division of powers between the various tiers of authorities is very precisely defined, Germany has moved towards an intra-state federalism heavily characterised by co-operation. The separation of powers rapidly gave way to both horizontal and vertical corporation. This co-operation, initially informal, was constitutionalised by the reform of 12 May 1969.

The 1969 reform institutionalised co-operative federalism not only at the level of the division of powers in the strict sense, but also at fiscal level. The 1969 reform completely overhauled the system for allocating fiscal resources to the Federation and the Länder (see below).

As regards the division of powers, the introduction of Articles 91a and 91b into the Basic Law reflects the growing influence of the Federation in the fields of competence which had previously fallen exclusively to the Länder. A distinction has to be made between the fields for which co-operation is necessarily carried out and those fields for which co-operation remains optional. In other words, a distinction has to be made between Article 91a and Article 91b.

The areas for which co-operation occurs as a matter of course (Article 91a) are:

- building and extension of institutions of higher education including university clinics;
- improvement of regional economic structures;
- improvement of agricultural structure and coastal preservation.

In the field of education (Article 91b), co-operation is optional and is carried out in accordance with agreements between the Federation and the Länder.

Co-operative federalism can be either horizontal or vertical. It should be pointed out that this co-operation is carried out exclusively at the level of governments and both the federal and Land administrations. The legislative organs, particularly of the Länder, are totally excluded from this co-operation. This has led to the term "executive federalism" to describe the co-operation between the various components of the German state.

- *Horizontal co-operative federalism* had become institutionalised well before the 1969 reform, as evidenced by the setting up of the standing conference of Land ministers of culture, education and church affairs (Ständige Kultusministerkonferenz) in 1946, the conclusion of the Königsberg agreements on the financing of scientific research institutes in 1949, the setting up of the second German television channel (ZDF) and the establishment of the Academy of Administrative Science in Speyer.

- *Vertical co-operative federalism* emerged properly in 1969 and enables the Federation to intervene in areas which had previously come under the responsibility of the Länder (see above).

2. External powers

Competence to conclude agreements

Substantive competence
Article 32.3 of the German Basic Law provides: "in so far as the Länder have power to legislate, they may, with the consent of the federal government, conclude treaties with other countries." Interpretation of this provision has been somewhat controversial. It could be inferred from the wording either that the Federation had general competence with regard to the conclusion of treaties, or that there was a correlation between the Länder's treaty-making powers and their legislative powers. The controversy was settled in 1957 by the Lindau agreement, according to which if the Federation concluded a treaty which the Länder regarded as coming within their exclusive legislative sphere, their consent was required before the agreements could become binding under international law.

In contrast, the Länder's freedom to conclude agreements is subject to no limitation as regards the other contracting party. The Länder can conclude conventions with other states, whether neighbouring or not, and with international organisations.

Technical competence
Despite a certain correlation between the Länder's substantive and technical competence as regards the conclusion of agreements, treaties negotiated, signed and ratified by the federate states have to be approved by the federal government.

The German Länder are particularly active at international level.

Länder participation in the conclusion of treaties by the federal state
The Länder must be consulted whenever a treaty affects their specific circumstances (Article 32.2 of the Basic Law).

Article 23 of the Basic Law, adopted at the time of the ratification of the Maastricht Treaty, requires the Federation to consult the Länder, through the Bundesrat, in cases where decisions of the European Union would impinge upon the competences of the federate states (Article 23.4 and 23.5 BL).

Incorporation and implementation of treaties
In Germany, responsibility for incorporating treaties into domestic law falls to the federal state.

However, implementation of treaties complies with the internal division of powers between the Federation and the federate states.

Participation in the activities of international or supranational organisations
Participation in the activities of international organisations
Germany authorises Länder participation in the activities of international organisations.

Participation in the activities of supranational organisations (European Union)
The Länder participate in the decision-making process of the European Union via the Federal Council (Bundesrat), comprising representatives of the governments of the federate states. The setting up of the Committee of Regions, and the existence of Länder permanent delegations to the Community institutions, reflects a more direct influence by the federate states on the decisions of the European Union. This influence short-circuits the national institutional structure.

B. Financial resources

1. Fiscal resources

The principle of separation in respect of revenue, attributing a number of taxes to each administrative tier, was established by Article 105 of the Basic Law. Generally, speaking, responsibility for indirect taxes was assigned to the Federation and for direct taxation to the Länder.

This arrangement meant that each tier of power concerned - federal or federate - was not only required to assume the financing of its appointed functions but also prohibited from financing tasks falling to the other level of power.

As these principles came to grief in practice, in particular because of a Federation grant policy that wrought increasingly flagrant interference in the spheres of competence of the Länder, there was a clear need for major financial reform. Added to which, legislative competence in the fiscal field, in theory concurrent according to the constitution, had been totally assimilated by the Federation which had cited the argument of uniform living conditions (see above). Consequently, it was the Federation which laid down fiscal legislation and how the revenue would be allocated.

The major fiscal reform of 1969 set out new rules concerning:

- arrangements for both vertical and horizontal financial equalisation (see below)
- possibilities for allocating Federal financial assistance to the Länder (see below)
- arrangements for the communitisation of the majority of taxes.

The following deals more specifically with this third element of Germany's "financial constitution".

As the principle of separation at both the financial level and the functional level had become blurred, it was necessary to bring the statutes into line with practice. In this connection, the constitutional reform instituted a means of devolving the more profitable taxes (communitisation). The taxes in question are income tax, corporation tax and turnover tax. Each authority is entitled to a proportion of these taxes according to a fixed scale, regularly revised, laid down by a federal law. The result is an overlapping of public finances among the various tiers of authorities. This communitisation has not reduced the proportion of public budgets derived from the Länder budget, but represents a significant loss of control by the Länder over their financial resources.

2. Non-fiscal resources

a. Grants

As the separation of federal and federate finances had been abandoned, it was now possible for the Federation to finance activities coming under the jurisdiction of the Länder. Article 104a.4 therefore provides a constitutional basis for the practice which had developed without reference to any legal provision.

b. Financial equalisation

Vertical financial equalisation is a result of the apportionment of community taxes between the Federation and the federate states. It is implemented by a federal law which requires the approval of the Federal Council. The federate states, therefore, have in practice only a small degree of control

over their fiscal resources. This "centralisation" of fiscal power is partially justified by the need to ensure uniform living conditions throughout the federal territory. A fiscal policy carried out independently by each federate state could increase already existing differentials between the various Länder.

Vertical equalisation is designed to enable all federate states to have at least 92% of the average national tax revenue.

Horizontal equalisation, the arrangements for which were made by the constitutional reform of 1955, was extended and clarified by the financial constitution of 1969. It works like a system of communicating vessels. The richer Länder must make financial transfers to the poorer ones. The objective of this rebalancing is to reach a figure of at least 95% of the average tax yield per inhabitant.

Even before reunification, this system led to bitter criticism by donor states such as Bavaria and Baden Württemberg. Reunification aggravated the problem, in view of the dire financial straits of the Länder in the former German Democratic Republic. Bavaria, moreover, lodged an appeal before the Federal Constitutional Court concerning the arrangements for horizontal equalisation. In a judgment in 1998, the Court ruled in favour of Bavaria. Accordingly, the equalisation system will have to be revised.

C. Supervision

1. By the Federation

The development of vertical co-operative federalism can be equated to a form of supervision of the Länder by the Federation. Co-operation confuses the division of powers and, in particular, reflects increasing Federation influence over its federate entities.

This co-operation, which could be considered tantamount to subtle supervision, originated however with the Länder. In view of the inherent centralising tendencies of the Basic Law, they preferred to develop co-operation with the federal institutions, with the aim of preserving their powers. Involvement in the decision-making process was preferable to outright federalisation of those tasks which the Länder would no longer be able to carry out.

2. By the federate institutions

<u>The federate executive</u>
In order to ensure that the distribution of powers between the Federation and the Länder is complied with, any federate executive can lodge an appeal before the Federal Constitutional Court.

<u>The federate assemblies</u>
All federate assemblies have the right to pass a motion of no-confidence in the Land government. This is the classic procedure of rational parliamentary practice and of the government's political accountability to the assembly from which it is drawn.

3. Judicial supervision

As a fully-fledged constitutional organ, the Federal Constitutional Court is competent to settle conflicts of authority between the Federation and the Länder.

The existence of constitutional courts at federate level also makes it possible to ensure that federate institutions abide by their own constitution.

Austria

I. INSTITUTIONAL ORGANISATION

A. Organisational structure of the state

The Austrian state is a federal state (Article 2 B-VG)[1]. It comprises 9 federate states (Länder or provinces) and 2,359 municipalities. The capital, Vienna, has the dual status of city and federate state. The nine federate states are Burgenland, Carinthia, Lower Austria, Upper Austria, Salzburg, Styria, Tyrol, Vorarlberg and Vienna.

B. Legal foundation for the existence of the provinces (Länder)

Article 2 of the Austrian Constitution states that Austria is a federal state composed of autonomous Länder.

Each Land has its own constitution. The federal constitution and the nine constitutions of the Länder have equal legal value. The principle of federalism can be altered only by referendum.

C. Political institutions of the Länder

1. An elected assembly

The deliberating assembly (the Landtag) is elected by direct universal suffrage and proportional representation, and exercises legislative power in the areas specified by the Federal Constitution. Article 15 B-BG contains a general competence clause providing that all matters not expressly assigned to the Federation are in the remit of the Länder.

The assembly is elected for five or six years, depending on the constitutional provisions adopted by the Land. The Landtag elects a presidium comprising a president and two or three vice-presidents. It also elects 3-12 representatives - depending on the population of the Land - to the Federal Council (Bundesrat).

2. An executive body

The Landtag elects the president of the executive (Landeshauptmann), two or three vice-presidents (Landeshauptmann-Stellvertreter) and the other members of the Land government (Landesräte). The president, vice presidents and the Landesräte do not necessarily have to be members of the assembly. Arrangements for appointing members of the government differ from one Land to another. Some adopt a system of governmental representation proportional to the size of the political party, others a system of freely formed governing coalition.

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[1] B-VG: Bundes-Verfassungsgesetz (Federal Constitutional Law), the Constitution, which defines the principle foundations of state organisation.

Moreover, numerous other federal laws have constitutional value (BVG: Bundesdverfassungsgesetze - constitutional laws). This is a result of the Austrian political tradition of large federal government coalitions. It is a means of ensuring that matters previously approved in a joint manner cannot be overturned except in a joint manner, with a two-thirds majority.

D. Administrative structure of the Länder

The Land government forms a collegial executive. There is no political supervision by the federal government of its activity.

It is serviced by an administration (Amt der Landesregierung) headed by the director-general of the administration of the Land government (Landesamtsdirektor).

The Land administrative departments are linked organisationally and hierarchically to the administration of the Land government.

The regional administration is therefore entirely subordinate to the regional government and has the same organisational and hierarchical relationship to it as the national administration to the federal government.

The only federal government intervention is in the appointment of the Landesamtsdirektor. Although it is the Land government itself which makes the appointment, the decision has to be approved by the federal government.

One particular feature of Austrian federalism is the system of "indirect federal administration" (executive federalism). Many federal ministries do not have their own administrations in the Länder. The executive power of the Federation is exercised in the Länder by the Landeshauptmann and the Land authorities subordinate to him (Article 102 B-VG). The Landeshauptmann receives instructions from the federal government and the different federal ministries only for matters of indirect federal administration.

1. Länder personnel

The Länder employ civil servants and contractual staff in accordance with the conditions laid down in their respective public service regulations.

2. Initial and further training.

The Länder have their own administrative colleges to train their staff. They co-operate with the Federation (national college of administration, diplomatic training school) and with the municipalities under various professional qualification programmes.

II. POWERS OF THE LÄNDER AND HOW THEY ARE EXERCISED

A. Powers

1. Internal powers

Article 15 of the federal constitution stipulates that the Länder have general competence. Any power which is not expressly assigned to the Federation is held by the Länder.

The Land government is also responsible for matters coming under indirect federal administration (Article 102 B-VG). For such matters, the instructions of the federal government must be complied with.

Function	Type of function			
	Exclusive	Shared art. 12, 14 & 14a B-VG	Mandatory	Optional
Education				
Secondary education		X	X	
Vocational and technical education		X	X	
Public health				
Hospitals		X	X	
Social welfare				
Family and youth support		X	X	
Rest homes		X	X	
Social Security		X	X	
Housing and urban planning				
Physical planning	X		X	
Culture, leisure and sports				
Theatres and concert halls	X			X
Museums and libraries	X			X
Parks and green areas	X			X
Traffic and transport				
Roads		X		
Transport		X		
Economic services				
Agriculture, forests, fisheries	X			
Electricity		X	X	
Economic development		X		X
Trade and industry		X		X

2. External powers

A distinction must be made here between the relationship which the Länder have with the Federation (a) and with the other Länder (b), and international powers in the strict sense (c).

a. Federation-Länder relations (Article 15a (1) B-VG)

The federate entities can conclude contracts with the Federation, within the limits of their respective field of action (Wirkungsbereich)[2]. Depending on the scope of the agreement, it may be concluded by the federal government or the competent federal minister. If it is also binding on the legislative organs, the agreement must be ratified. Agreements concluded between the Federation and the Länder are published in the Federal and Länder official gazettes.

b. relations between the federate states (Article 15a (2) B-VG)

The Länder can conclude agreements with each other only in their sphere of competence and must inform the federal government.

c. the Länder's international powers (Article 16 B-VG)

The federate states may conclude international treaties. The scope of this power is defined in Article 16 of the federal constitution. The following paragraphs deal with the Länder's competence in this matter, which is both substantive and technical (1), their participation in the process whereby the central state concludes a treaty (2), procedures for the implementation of treaties (3) and, finally, Länder participation in international or supranational organisations (4).

[2] The federal constitution makes a distinction between:
a. the respective sphere of action (Wirkungsbereich), covered in Article 15a (1) B-VG: agreements between the Länder and the Federation; and
b. the autonomous sphere of competence (Kompetenzbereich), covered by Article 15a (2) B-VG: agreements among the Länder.

The Länder's competence with regard to international treaties

A distinction should be made between substantive competence and technical competence, the competence to conclude treaties in certain domains and participation in negotiations and the implementation of conventions.

Substantive competence

Austria is one of the countries which grant substantive competence to their federate entities. Its legal foundation is the federal constitution (Article 16 (1), 10 and 3).

The central state has general substantive competence. The Länder, for their part, are able to conclude treaties within their own sphere of statutory responsibility and, together with the Federation, in their sphere of action (relating to matters coming under public or private law).

The division of powers is such that Länder may not conclude agreements whose provisions would contravene federal treaties. It follows that, if the federal state concludes a treaty in the sphere of action of a federate entity, the latter is deprived of its substantive competence in that sphere.

The Austrian constitution imposes no limits on the capacity of the federate entities to conclude treaties. The federate entities may conclude agreements with any state. In administrative matters, the Länder can, in pursuance of Article 16 (1) B-VG, conclude treaties with neighbouring countries or their federate entities in their autonomous sphere of action. Under Article 17, the division of powers established by the federal constitution is not applicable in areas where the Federation and the Länder take action as holders of private rights. This is why partnerships between the Austrian Länder and the regions of other countries are most frequently set up in the form of administrative agreements rather than international treaties.

Technical competence

Despite the fact that there is a general competence as regards contracting international obligations which shows a correlation between substantive competence and technical competence, the federate entities must nonetheless submit undertakings which bear exclusively on their own sphere of responsibility for the approval of the federal authorities.

Supervision by the federal state of the international activity of its constituent entities occurs at two stages in the drafting process:

- At the beginning of the process: before the negotiations are opened, the Landeshauptmann must inform the federal government;

- Before the conclusion of the treaty, the Landeshauptmann must seek the authorisation of the federal government. Authorisation is deemed to have been granted if, within eight weeks of the request for authorisation, no refusal has been expressly notified to the federate entity.

Participation of the federate entities in the conclusion of treaties by the federal state

The federate entities have a large part to play in the process of adopting an international convention. The Länder must be consulted if the projected treaty affects their interests or if its application requires implementing measures on their part (Article 10 (3) B-VG).

Austria's accession to the European Union led to a significant strengthening of Länder participation in the conclusion of international treaties and in determining Austrian positions within the Community organs.

Application of treaties

The federate states take implementation measures and ensure the application of treaties which they have signed and ratified in their sphere of responsibility (Article 16 (4) V-VG).

For treaties signed and ratified by the federal state, the implementation process complies with the division of powers, even though the federal states has competence in the matter of treaties is more extensive than its legislative authority.

Participation in the activities of international or supranational organisations

- Participation in the activities of international organisations

Austrian law authorises the federate entities to take part in the activities of international organisations.

- Participation in the activities of supranational organisations

In Austria, the Länder play a very large role. If an initiative by the organs of the European Union relate to a question in the remit of the federate states, the Federation is bound by the common position adopted by the Länder, except in the case of compelling foreign and European policy reasons (Article 23d (2) B-VG).

Before Austria's accession to the European Union, the Länder were already calling for increased participation rights on issues connected with European integration. These strengthened rights have now been granted, as a result of an amendment to the federal constitution (Article 23d B-VG) and two agreements concluded in pursuance of Article 15a.

B. The regions' financial resources

The constitutional finance law of 1948 demarcates the fiscal powers of the Federation and the Länder. It lays down the fundamental rules governing the financial status of local authorities and the financial relations between them.

1. Fiscal resources

There are several different types of taxes:

- Certain taxes accrue exclusively to the Federation, the Länder or the local authorities.
- Others are shared between the Federation, the Länder and the local authorities or only between the Federation and the Länder.

2. Non-fiscal resources

a. Grants

Regional bodies may be entitled to grants in addition to their fiscal resources.

b. Financial equalisation

The law on the allocation of tax revenue comprises certain provisions concerning financial equalisation.

C. Supervision

1. By central government

The Federation exercises a control of the legislative activity of the federate entities. The Länder laws must be approved by the federal government. The aim of this procedure is to verify compliance with the division of powers between the federate states (Articles 97 and 98 B-VG).

2. By the regional political authority

The regional legislative organ (Landtag) has a whole series of means for the supervision of the activity of the regional government and its head. The assembly can ask government members to reply to questions and to give justifications for their action.

It can also decide to set up a committee of inquiry.
There is also a procedure for dismissing the Landeshauptmann by adopting a vote of no confidence. This vote of no confidence can relate not only to the head of the executive of the federate states but also to the government as a body.

The Landtag cannot dismiss a minister individually. In contrast, a minister who no longer enjoys the confidence of his political group may be dismissed by the latter. Consequently, a minister may be dismissed individually only by the political group to which he or she belongs; this decision cannot be taken by the assembly as a political organ.

3. Judicial supervision

Judicial control is applied to the powers of the federate states by the Federal Constitutional Court (Verfassungsgerichtshof, Article 138 B-VG). The latter is required to decide, upon referral, whether legislation adopted by the Länder or the Federation does indeed come under their respective sphere of competence. If such is not the case, it has jurisdiction to declare the law in question unconstitutional. The members of the constitutional court are appointed by the federal president on a proposal from the federal government (six members and three substitutes), the National Council (Nationalrat) and the Federal Council (Bundesrat).

4. Financial supervision

Financial control is applied by the Federal Audit Court (Rechnungshof, Article 121 B-VG) and by the federate audit courts (Landesrechnungshöfe). The audit courts are subordinate to the legislative assemblies (National Council or Landtage, as appropriate).

Financial control by the Federal Audit Court relates, on the one hand, to the substantive and technical legality of the procedure for adopting the budget of the Länder and the municipalities of over 20,000 inhabitants, and also to the accounting practices of the companies coming under the direct or indirect authority of the federate states. Accordingly, the control by the Federal Audit Court extends to semi-public corporations combining private and public capital. It therefore exercises wide control over the economic activity of the federate states.
Control as to the propriety of budgetary and accounting operations of the public institutions within the federate states is exercised by the Land audit court. This body, answerable to the federate assembly alone, has all the public institutions in the Land, including the local authorities under its financial control which is thorough and effective. It should also be pointed out that the Landesrechnungshof is the chief organ of supervision at federate state level.
Lastly, within the administration there are internal audit procedures and other control mechanisms.

Belgium

I. INSTITUTIONAL ORGANISATION

A. Organisational structure of the state

The constitutional structure of the Kingdom of Belgium is that of a federal state comprising the Federal Government at the central level, the Communities and Regions at the sub-state level, and the communes and districts at the local government level.

There are three Communities: French-speaking, Flemish-speaking and German-speaking.

There are also three Regions: Flemish Region, Walloon Region and Brussels-Capital Region.

The existence of two types of authority at the sub-state level (Community and Region) points to some institutional complexity, a reflection of the difficulty encountered in reaching a compromise between the country's two majority language communities (French-speaking and Dutch-speaking).

B. Legal foundations for the existence of the regions

Articles 1 to 3 of the Belgian Constitution provide that Belgium is a federal state which is composed of Communities and Regions.

The main legislative texts concerning the Communities and Regions are the Special Institutional Reform Act of 08.08.1980 (amended by the Act of 16.07.1993), the Ordinary Institutional Reform Act of 09.08.1980, the Special Act of 122 January 1989 on the institutions of Brussels, the Institutional Reforms for the German-speaking Community Act of 31.12.1983, and the Special Act of 16.01.1989 on the financing of Communities and Regions.

The frequency of legislative adaptations demonstrates the fragility of the institutional structure and the difficulty in moderating breakaway tendencies in the Belgian state.

C. The administration of the regional authority

Where the Communities and Regions are concerned, administrative staff are appointed by the government of the entity in question.

The staff of the entities are divided into two categories:

- Staff subject to conditions of service, similar in many respects to the conditions of service of state civil servants;

- Contract staff, who may replace career staff members during absence or interruption of service, or may perform specific exceptional duties.

Consequently, the entities have a choice in the appointment of staff while being required to abide by the civil service regulations.

Although the Communities and Regions make their own staff appointments through their respective governments, staff are recruited via the permanent secretariat for recruitment of state personnel. This may be likened to indirect control over recruitment of the staff of the Regional and Community authorities.

D. Intermediate political institutions

A distinction should be drawn between the bodies of the Communities and the Regions.

1. Deliberative bodies

a. Deliberative bodies of the Communities

The deliberative body of the Flemish Community is the *Flemish Council* with 124 members, 118 of whom are elected in the Flemish Region and the other 6 by the Dutch language group of the Brussels-Capital Region.

The deliberative body of the French Community is the *French Community Council* with 94 members, including all members of the Walloon Regional Council.

The deliberative body of the German-speaking community is the *Council of the German-speaking Community* with 25 members.

b. Deliberative bodies of the Regions

The deliberative bodies of the three regions are, respectively, the Walloon Regional Council, the Flemish Regional Council and the Council of the Brussels-Capital Region.

2. Executive bodies

The Communities and Regions have their respective Community or Regional Government. The Governments are headed by a minister-president. The other ministers of Regions and Communities alike are elected by their respective Councils, but membership of a Council is not a condition of eligibility for the office of minister.

II. POWERS OF THE REGIONS AND HOW THEY ARE EXERCISED

A. Powers of the region

1. Internal powers

Functions	Competent entity		
	State	Community	Region
General administration			
Security and police	X		
Civil defence	X		
Justice	X		
Statistical agencies	X	X	X
Education			
Pre-school education	X	X	X
Primary education	X	X	X
Secondary education	X	X	X
Vocational and technical education	X	X	X
Higher education	X	X	X
Adult education	X	X	X
Public health			
Hospitals		X	
Health protection		X	
Social welfare			
Nurseries and child-care facilities		X	
Family and youth support		X	
Rest homes		X	
Social security	X	X	
Housing and urban planning			
Housing			X
Urban planning			X
Physical planning			X
Environment and sanitation			
Sewage treatment			X
Household refuse disposal			X
Environmental protection			X
Culture, leisure and sport			
Theatres and concert halls		X	
Museums and libraries		X	
Traffic and transport			
Road infrastructure			X
Transport			X
Economic services			
Agriculture, forestry, fisheries			X
Economic development			X
Trade and industry			X
Tourism		X	X

2. External powers

Competence to conclude agreements

Substantive competence
The Belgian Constitution, supplemented by the Special Institutional Reform Act of 08.08.1980, grants Regions and Communities a substantive power to conclude treaties. Belgium has taken far-reaching initiatives in conferring substantive powers in treaty matters on sub-state entities.

It is one of the few states to establish a total correspondence between the entities' legislative and treaty-making powers (Article 167 of the Constitution).

As a result, the entities can make treaties with other states in the areas under their exclusive authority. Nor does Belgium subject the entities' treaty-making power to any restriction on the choice of the other contracting party.

"Mixed" treaties, those that come within the ambit of the powers shared between the federal state and the federate entities, must be approved by the competent bodies of the federation and of the entities.

Technical competence
The correlation of treaty-making and legislative power recurs at the technical level; it rests with the entities to negotiate, sign and ratify the treaties coming within their exclusive sphere (Article 163.7 of the Constitution).

Two restrictions nevertheless apply:

- one concerns the duty of the entities to inform the Crown of their intention to enter into a treaty. The Council of Ministers may notify the entity of any possible objections to the conclusion of the treaty in question;

- another is the restriction of technical competence to the entities' exclusive sphere. In the area of shared responsibility, the entities and the state negotiate on an equal footing, but the agreement is signed by the King.

Participation in the conclusion of treaties by the federal state
In principle, the correlation that exists between the entities' legislative and treaty-making powers would preclude their participation in the conclusion of a treaty by the federal state. This assertion should nevertheless be qualified for two reasons. Firstly, there are " mixed treaties", and secondly the federal state is required to inform the entities of its foreign policy generally and, specifically, of any revision of the Community treaties.

Incorporation and implementation of treaties
Power to incorporate and implement a treaty in the entities' exclusive sphere of responsibility follows logically from the application of the principle of corresponding powers.

Participation in the activities of international or supranational organisations

Participation in the activities of international organisations
Participation by the entities in international organisations is indirect, being carried on through the agency of national delegations. An outline co-operation agreement, which was concluded in 1994 between the Belgian federal state, the Communities and the Regions and governs the representation of the Kingdom of Belgium in international organisations conducting activities relating to their shared responsibilities, makes arrangements for Belgium's representation in numerous international organisations.

The system applied is to ensure representation of each level of government in the Belgian delegation to the organisation in question.

Participation in activities of supranational organisations (European Union)
The above-mentioned 1994 co-operation agreement settles the question of Belgian representation in the European Union.

In any matter relating to an exclusive power of the federation or of the entities, the minister of the authority concerned represents the state.

In any matter relating to shared powers, representation is provided by a minister of the federal state, a Region or a Community as appropriate, accompanied by an advisor representing the other tier of government.

B. Financial resources

1. Fiscal resources

Under Article 170 paragraph 2 of the Constitution, the Communities and Regions hold autonomous power to levy taxes. The situation of the Regions should be distinguished from that of the Communities.

The Communities
Owing to the difficulties raised by the exercise of powers by the Flemish and French Communities in the Brussels-Capital Region, the Communities have never availed themselves of their fiscal prerogative.

All Community tax resources are derived from taxes collected at federal level and partially reimbursed to them, viz personal income tax and VAT.

The Regions
The Regions do make use of their power to levy taxes. Some taxes collected by the Regions are levied in respect of their specific functions, such as “ecotaxes” and taxes on waste.

The Regions also collect a road tax on motor vehicles, a tax on office premises, and a tax on non-gratuitous conveyances of real property.

In addition, there are areas where neither the state nor the Communities have any authority to levy taxes, ie taxation on water and waste.

Despite more extensive control over regional tax resources, it should be noted that the regional authority max not fix the rate of taxation for five of the eight taxes which it collects, and this significantly limits its freedom of action.

On the other hand, the Regions may levy taxes on non-gratuitous conveyances of real property and, since 1993, on radio and television licence fees.

2. Non-fiscal resources

a. Grants

All local authorities are eligible for grants. Grants are made on the principle that they may not cover the entire expenditure of the recipient authority.

b. Equalisation

The Special Act of 16.01.1989 established a national solidarity arrangement benefiting the regions whose average personal income tax yield is below the national average.

This equalisation raises major political problems, moreover. The Flemish-speaking regions, being in a more favourable economic situation, increasingly contest the principle of equalisation on the ground that it is applied to their sole disadvantage.

C. Supervision

1. By central government

Central government control over the intermediate authorities’ action usually takes the form of general regulations or outline legislation, particularly in the areas of taxation, general rules relating to the civil service, hygiene and environmental standards, labour law, etc.

In certain areas, especially public works, transport and physical planning, the central government authorities exercise control through verification of expediency.

2. By the regional political authority

The elected regional authority's supervision takes the conventional form of questions to the executive, setting up commissions of enquiry, and the possibility of censuring the executive and forcing its resignation.

3. Judicial supervision

Two institutions participate in judicial supervision of the powers apportioned among the various tiers of government: the Council of State and the Court of Arbitration.

The Council of State is the country's supreme administrative court. It assists in preventing conflicts of authority between entities by issuing an opinion on proposed legislation. Its action is thus precautionary.

Judicial review of apportionment of powers is conducted (retrospectively) by the Court of Arbitration. The Court of Arbitration adjudicates by delivering judgment on petitions for annulment of acts or by issuing a preliminary ruling where a law, decree or order is alleged to infringe the rules governing the apportionment of powers. The Court of Arbitration is thus concerned with the settlement of conflicts of authority which have already arisen, whereas the Council of State exercises preventive control.

4. Financial supervision

Financial supervision is performed by the Court of Audit, a constitutional institution which audits the expenditure and revenue of the federal state, the Communities, the Regions, the provinces, and many public utilities.

It performs an administrative and a judicial function. The administrative function is to supervise execution of the budgets of public authorities. Its action is mainly limited to commitment operations, and its verification of expenditure commitments is normally carried out prior to clearance.

The judicial function of the Court of Audit is to verify the management performed by public accountants and to establish their responsibility in the event of a deficit.

Spain

I. INSTITUTIONAL ORGANISATION

A. Organisational structure of the state

Spain is a constitutional monarchy. Like Italy, it is not strictly speaking a federal state but a highly regionalised one.
The main territorial subdivisions of the state are:
17 Autonomous Communities
50 provinces
8 082 municipalities.

There are two main classes of Autonomous Communities:
- Autonomous Communities with extended powers;
- Autonomous Communities with initially limited powers.

The 17 Autonomous Communities are:

- A.C. of Andalusia
- A.C. of Aragon
- A.C. of the Balearic Islands
- A.C. of Cantabria
- A.C. of Castile and Leon
- A.C. of Extremadura
- A.C. of Madrid
- A.C. of Navarra
- A.C. of the Basque Country
- A.C. of Asturias
- A.C. of the Canary Islands
- A.C. of Castile-La Mancha
- A.C. of Catalonia
- A.C. of Galicia
- A.C. Murcia Region
- A.C. of La Rioja
- A.C. of Valencia

B. Legal foundations for the existence of the Autonomous Communities

The Spanish Constitution of 1978, Articles 2, 137, 138, 139 and 143-158, settles the form and the organisation of the regional authorities known as Autonomous Communities.

Numerous laws have been enacted to transpose the constitutional provisions.

The decentralising effect of the Constitution has been very significant, placing Spain in a virtually federal scheme of government.

C. Intermediate political institutions

The Autonomous Communities, supplanting the territorial state administration, have received substantial transfers of powers.

Each Autonomous Community has an elected assembly (1) and an executive body, the Governing Council (2).

1. An elected assembly

The deliberative body of an Autonomous Community is known as the Parliament or Assembly. The size of its membership varies according to the region's population.

Members are elected every four years by direct universal suffrage under the proportional representation system.

The assembly provides political representation for the population of the Autonomous Community, holds legislative and budgetary power, and exercises control over the action of the Governing Council.

2. An executive body

The regional executive consists of a Governing Council and a president with the title of President of the Autonomous Community.

The president is elected by the parliament from among its members, freely appoints and dismisses the members of the Governing Council, directs and co-ordinates its activities, and represents the Community at the highest level.

The Governing Council holds executive and administrative functions.

D. The administration of the region

For implementing the Autonomous Community's policy, the Governing Council has an administration. Each councillor heads a department of the autonomous administration. The administration's staff are recruited by the Autonomous Community and paid from its budget.

The autonomous administration is staffed by two main categories of personnel:

- *Civil servants* drawn from the establishment accompanying the transfer of powers by the state to the Autonomous Communities or appointed directly by them.

- *Ordinary employees* engaged by the Autonomous Communities.

It rests with the state to lay down the conditions of service of civil servants. The Autonomous Communities may nonetheless adopt rules in the matter in so far as these preserve the categories laid down in the basic state regulations (chiefly the law of 02.08.1984).

II. POWERS OF THE REGION AND HOW THEY ARE EXERCISED

A. Powers of the region

1. Internal powers

Functions	State	Autonomous Community
General administration		
International relations	X	
Defence and armed forces	X	
Administration of justice	X	
Monetary policy	X	
Social security	X	
Public health	X	X
Hospitals		X
Health protection		X
Social welfare		X
Housing and urban planning		X
Housing		X
Urban planning		X
Environment and sanitation	X	X
Environmental protection		X
Culture, leisure and sport		
Theatres and concert halls		X
Museums and libraries		X
Parks and green areas		X
Transport and communication		
Regional road infrastructure		X
Transport		X
Marinas		X
Recreational aerodromes		X
Economic services		
Water		X
Agriculture, forestry, fisheries		X
Electricity		X
Economic advancement		X
Trade and industry		X
Tourism		X

2. External powers

Competence to conclude agreements

Article 149 of the Constitution worded "The State shall have sole competence in the following matters", in the third paragraph, includes international relations in the central government's remit. By extension, both substantive and technical competence to conclude agreements rests with the central authorities.

The treaty-making power of the Autonomous Communities is reduced to the bare minimum, being confined to treaties on linguistic and cultural co-operation.

The statute of the A.C. of Aragon is unique in stipulating that "The Community of Aragon may request the Regional Governor's authorisation to sign a treaty which is in the interests of the A.C.". Exercise of this right is subject to the governor's consent.

The treaty-making power of the Autonomous Communities is plainly minimal.

Participation by provinces in the conclusion of treaties by the state

The right of the Autonomous Communities in this respect simply amounts to the central government authorities' duty to inform them when negotiating a treaty whose provisions come within their sphere of responsibility.

Incorporation and implementation of treaties
Incorporation of treaties is a strictly central government power.

Implementation rests with the Autonomous Communities wherever the treaty includes provisions relating to their specific responsibilities.

Participation in the activities of international or supranational organisations
Autonomous Communities have the right to participate in activities of international organisations as long as their action does not prejudice the Spanish state's sole right of representation.

B. Financial resources

1. Fiscal resources

a. Exclusive taxes

The state has ceded to the Autonomous Communities the levying of certain taxes which they administer independently, subject to state regulations. The Autonomous Community has the possibility of adding surcharges.

The ceded taxes are:
- Net estate duties
- Estate transfer tax
- Inheritance and donation tax
- Value added tax
- Gaming tax.

b. Taxes levied as surcharges on state taxes and dues

Autonomous Communities may add surcharges to state taxes and dues such as income tax, applying rates as they choose. The sole restriction is that the surcharge must not distort the nature or structure of the basic taxes.

c. Possibility of introducing new taxes

Autonomous Communities may introduce new taxes provided that they do not apply to products, services or transactions already taxed by the state.

2. Non-fiscal resources

a. Grants

The state makes two classes of grants to the Autonomous Communities:

- Capital expenditure subsidies
  - Inter-territorial Co-operation Fund
  - Investment agreements;

- Specific grants
  - Programme contracts
  - Transfers relating to public health

b. Financial equalisation

No financial equalisation in the strict sense operates between the Communities, although sharing in state revenue, which allows for the prosperity of the Autonomous Community, partially performs this function.

There is a plan to set up a resource-levelling fund which will guarantee a minimum of basic services.

C. Supervision

1. By central government

The system introduced by the 1978 Constitution does not include what could be called supervisory control over the activities of the Autonomous Communities. However, there are controls intended to guard against their exceeding the limits of their powers.

The provision establishing a general function of control over the activity of Autonomous Communities is section 3 of the law on the autonomy procedure.

The central government is required to ensure that the Autonomous Communities observe applicable state rules, and may issue formal notice to comply.
In this respect, the government may:

- review the legality of acts of the Autonomous Communities by asking them to provide whatever information it considers relevant. Where the Autonomous Community has acted against the general interest, the Government may take measures to rectify such situations (Article 155 of the Constitution);
- challenge before the Constitutional Court provisions adopted by the bodies of an Autonomous Community (Article 161.2 of the Constitution). In this case, the government only has the initiative in actuating the review;
- exercise control over powers delegated to Autonomous Communities after informing the Council of State (Article 150.2 of the Constitution).

2. By the regional political authority

The Governing Council and the president are politically answerable to the assembly which controls the government's action. The Assembly may even pass a motion of no confidence to demand the resignation of the president and the other members of the Council.

3. Judicial supervision

Review of constitutionality must be distinguished from review of legality.

Review of constitutionality
Article 153 of the Constitution provides for a series of controls applied by the Constitutional Court to the activity of Autonomous Communities. The Court is competent in particular to:

- settle conflicts of authority
- determine the outcome of appeals on grounds of unconstitutionality
- rule on appeals against resolutions and decisions of Autonomous Communities.

Review of legality
Ordinary courts may also examine the legality of administrative acts when petitioned by state government authorities and by individuals.

4. Financial supervision

Economic control in respect of accounting is applied to the Autonomous Communities by the State Audit Office (Article 153 of the Constitution).

Once the general accounts have been approved by the Autonomous Community and the administrative controls have been applied, the accounts are verified by the State Audit Office which may delegate certain of its functions to the Regional Audit Office where one exists.

Russian Federation

I. INSTITUTIONAL ORGANISATION

A. Organisational structure of the state

In 1990 Russia was the first state of the USSR to declare its sovereignty, even before the break-up of the Union. The Russian Federation itself was founded in 1992 by the adoption of the Federal Treaty, which takes the form of a collection of bilateral treaties between the central state and the constituent entities (subjects).

However, it was with the adoption of the draft constitution at referendum on 12 December 1993 that Russia settled the institutional question and paved the way for Russian federalism. Article 1 states: "The Russian Federation is a democratic federative rule-of-law state with a republican form of government".

The Russian Federation is composed of the central state and 89 subjects. The term "subjects" refers to all sub-state entities whatever their status and title.

The 89 subjects are as follows:
- 21 Republics
- 49 regions (oblasts)
- 6 territories (krays)
- 10 autonomous districts (autonomous okrugs)
- 1 Jewish autonomous region.

B. Legal foundations for the existence of the subjects

The legal foundations for the existence of the regions are contained in Chapter III of the Constitution ("The Russian Federation") Articles 71-73 of the Constitution define the terms of division of power.

Despite the declaration of principle that all subjects of the Federation are equal (Article 5.1 of the Constitution), the text draws distinctions between subjects.

The two main categories of subjects are:

- Republics, possessing virtually all the prerogatives of sovereignty (see below), having the right to adopt a constitution and determine the legal status applying to them (Articles 5.2 and 66 of the Constitution), and being entitled to choose their official languages and national emblems(Article 68.2 of the Constitution);

- Regions (oblasts) and other subjects, which are regarded as administrative units of a unitary state and adopt statutes instead of a constitution.

C. Intermediate political institutions

The subjects have a constitutional right to set up their political organs in accordance with the principles of the constitutional system (Article 77 of the Constitution).

The situation of the republics and the other subjects of the Federation should be distinguished in this respect. The former are empowered to adopt a constitution proper and hold extended powers in certain fields, whereas the other subjects merely adopt statutes and have limited powers. This is why Russian federalism is referred to as "asymmetrical federalism".

There is evidently a certain institutional replication of federal structures at the level of the subjects. In general, the constitutions of the republics, derived from revisions of older instruments, institute parliamentary rule. Recent constitutions establish forms of government strongly imprinted with presidentialism.

The other subjects' political systems also vary between regimes of presidential and parliamentary type, with the presidential type predominating.

1. An elected assembly

The republics
In place of the Supreme Soviet, the constitutions of the republics have instituted elected assemblies whose names may vary: a people's assembly, national assembly or state council (Duma). These assemblies exercise their power in the exclusive sphere of the subjects and in that of joint Federation-subject responsibilities (see below).

The assemblies exercise legislative and budgetary power. Where presidential systems apply, the functions and supervisory mechanisms of the elected bodies are considerably limited by presidential prerogatives.

The other subjects of the Federation
The authority vested in the subjects enables them to adopt the rules of their political organisation. In the same way as the constitutions of republics, the statutes adopted by the other subjects institute assemblies elected by universal suffrage. The regional assemblies enact the regional laws and approve the budget.

2. An executive body

The head of the executive is usually elected by universal suffrage and may have different titles according to the subject; president in a republic, governor in a region, and City Mayor for Moscow.

The republics
The executive has a dual leadership in most cases, on the one hand a head of the executive with the title of president, elected by direct universal suffrage, and on the other hand a government whose members are appointed by the president.

The difference ascertained between recent constitutions and those converted from earlier instruments can be re-emphasised here. It is in fact observed that constitutions of recent making incline towards presidential government, in which case the president holds wide powers. The president may appoint the members of the government and numerous senior officials, holds dual office as head of state and head of government in some cases, and also has power to dissolve the assembly.

Other republics have opted to discard the office of President of the Republic (Dagestan and Karelia in particular).

The other subjects of the Federation
The options taken by the other subjects of the Federation likewise alternate between parliamentary and presidential rule. In the latter case, the distribution of powers is usually made to the detriment of the legislative body.

The governors determine the organisation and structure of both the regional government and the regional administration and hold extensive powers of appointment in this context. They also wield the power to dissolve the regional assembly, and may veto a regional legislative enactment. The veto can be set aside only by a special 2/3 majority vote.

3. A judicial system

In this respect, the republics should be distinguished from the other subjects of the Federation.

The republics
The constitutions of the federate entities set up supreme courts or constitutional courts for the protection of their constitutional order that perform democratic functions such as safeguarding separation of powers and human rights and preserving regional powers from federal encroachment.

The other subjects of the Federation
The oblasts and krays do not institute judicial authorities for the purpose of safeguarding their institutional order.

D. The administration of the subjects

At present there is no federal legislation on recruitment of the government staff of subjects of the Russian Federation. Each subject freely determines the conditions of recruitment. The most widely used system is recruitment on the basis of qualifications.

II. POWERS OF THE SUBJECTS AND HOW THEY ARE EXERCISED

A. Powers of the subjects

1. Internal powers

Two types of instrument define the powers of the subjects of the Federation: the 1993 Constitution and the bilateral treaties negotiated by the subjects. The legal basis for their negotiation is laid down in Article 78 of the Federal Constitution.

This bilateral negotiation on distribution of powers is also characteristic of Russian federalism and heightens its asymmetrical quality. The extent of the subjects' powers depends on their effectiveness in the negotiations with the central state. Furthermore, many treaties contain provisions which are at variance with the Federal Constitution, and this detracts from the hierarchy of norms and legal certainty.

Emphasis should therefore be placed on the fact that norms, even of constitutional origin, are applied differently in the territory of each subject.

a. Constitutional provisions

The Constitution (Articles 5 and 65) divides power between the Russian Federation and the 89 subjects. The constitutional scheme of organisation entails a fairly conventional system for dividing powers between federal and federated entities. Articles 71 to 73 of the Constitution are the provisions that actually apportion powers and responsibilities between the Federation and the subjects.

Article 71 determines the areas where the Federation holds exclusive powers: adoption and amendment of the Constitution, regulation and protection of human and civil rights and freedoms, the federal budget, and policy on monetary and budgetary matters, space exploration, nuclear power and defence.

Article 72 defines the areas where the Federation and the subjects hold joint powers: guaranteeing that the constitutions of the subjects conform to the Constitution of the Russian Federation; protection of human and civil rights and freedoms; educational, cultural and environment issues; establishment of general principles of taxation, etc.

Article 73 provides that, outside the compass of the Russian Federation's exclusive powers and those which it exercises jointly with the subjects, the latter possess all attributes of state sovereignty.

b. Treaties on apportionment of powers

The first such treaty was signed in 1994 between the central state and Tatarstan. Treaties were initially signed between the federal state and the republics, then from 1996 onwards with the other subjects of the Federation. Despite the apparent lapse of a central state policy that differentiated between subjects of the Federation, the rights and privileges granted to the subjects vary according to their status as republics, regions or territories.

The privileges granted to republics are generally as follows:
- Right to engage in international relations
- Right to dispose of natural resources
- Capacity to have a budget in their own right
- Right to levy their own taxes
- Right to found a central bank
- Right to engage in international economic relations.

The right to exercise true sovereignty was granted only to Tatarstan and Bashkorostan, while the other republics were only accorded nominal statehood.

The rights generally granted to the other territories are:
- Right to have a separate budget
- Right to levy their own taxes
- Right to engage in international relations
- Right to engage in international economic relations.

Function	Exlusive power of the Federation	Power of the subject	
		Exclusive	Shared
General administration			
Security and police			X
Fire fighting			X
Civil defence			X
Justice	X		
Civil status			X
Statistical agencies	X		
Education			
Pre-school education			X
Primary education			X
Secondary education			X
Vocational and technical education			X
Higher education			X
Adult education			X
Public health			
Hospitals			X
Health protection			X
Social welfare			
Family and youth support			X
Rest homes			X
Social security			X
Housing and urban planning			
Housing			X
Urban planning			X
Physical planning			X
Environment and sanitation			
Environmental protection			X
Culture, leisure and sport			
Theatres and concert halls			X
Museums and libraries			X
Sport and recreation			X
Traffic and transport			
Road infrastructure	X		X
Airports			X
Economic services			
Agriculture, forestry fisheries			X
Economic advancement			X
Electricity			X
Tourism			X
Other functions			
National defence	X		
Development assistance	X		

The above table is compiled on the basis of Articles 71 and 72 of the Constitution. It does not take account of the differences between the various subjects, or of the treaties on apportionment of powers drawn up between them and the Federal Government under Article 73 of the Constitution. However, it does highlight the fact that the bulk of the Federation's powers lie in the sphere of what are called classic sovereign powers, ie administration of justice, defence, etc.

2. External powers

The subjects of the Federation have authority to conclude bilateral economic and trade agreements with foreign governments. They are not empowered to establish diplomatic or political relations with foreign countries.

Competence to conclude agreements

The principle of Article 71 (j), that international policy rests with the Russian Federation, is qualified by Article 72 (n) which places "the co-ordination of the international and foreign economic relations of the components of the Russian Federation, and the implementation of the Russian Federation's international treaties" in the ambit of the shared powers of the Federation and the subjects.

Despite this ambiguity, competence for international affairs seems to be vested in the Federation according to the letter of the Constitution.

However, this scheme of distribution may be altered by treaties apportioning powers between the Federation and the subjects. Legally, these treaties, like all other normative acts of the subjects moreover, are required to conform to the 1993 Constitution. In this regard also, great dissimilarity between the subjects is noted. Of the 45 subjects which had already concluded such a treaty in 1998, or were in the process of negotiating one, some ten had assumed powers in respect of international relations. This concerns 6 republics and 4 regions. The Republics of Tatarstan and Bashkorostan have negotiated the greatest autonomy in this area.

Treaty-making power thus depends of the privileges which a given subject has been able to negotiate.

Participation of the subjects in the conclusion of treaties by the federal state

In legal terms, there are no specific provisions relating to the participation of the subjects in the Federation's international activity. The instruments negotiated by the federal executive must nevertheless be ratified by the Federation Council and the Duma. An instrument negotiated by the Federation which is contrary to the interests of the subjects is unlikely to be adopted. The authorities responsible for negotiation will therefore necessarily open consultations prior to any signature of a treaty. The stronger the position of the subjects, the more they will influence such negotiation.

Incorporation and implementation of treaties

Power to incorporate international treaties is one of the powers exercised jointly by the Federation and the subjects, and so the latter participate in the process depending whether or not they have competence in respect of the matters covered by the treaty. They directly apply in their territory any international instruments negotiated in their sphere of competence.

Participation in the activities of international organisations

Subjects having negotiated international responsibilities in their agreements with the Federation have permanent delegations abroad, and even in international organisations. An outline law enacted on 19.11.1997 to co-ordinate the international relations of the subjects brings harmonisation to this area by authorising all subjects to establish permanent delegations abroad.

This law apparently reflects the Federation's intention to regulate the international activity of the subjects, in that it contributes to the dissolution of the territorial structure of the state.

It can nonetheless be seen that in some cases the scope of the subjects' international activity far exceeds what is authorised by the constitutional provisions.

B. Financial resources

Financial resources vary considerably between subjects, in a ratio as high as 1:17. The overall breakdown of the Federation's tax revenue is 51% for the federal state and 49% for the subjects. The federal state allocates from 10% to 14% of its funds to expenditure channelled towards the subjects.

1. Fiscal resources

A statute dating from 1991, the law on the taxation system, established a division of fiscal powers between the Federal Government and the local and regional authorities. It specified 17 federal taxes, 4 regional taxes and 23 local taxes. Under this system, the subjects of the Federation were not entitled to introduce new taxes.

The 1993 Constitution made changes in this respect, establishing the Federal Government's authority to lay down general principles of taxation law and empowering the subjects to enact laws containing more detailed provisions. A presidential decree of 1993 subsequently granted them the right to introduce new taxes. This right was withdrawn by another presidential decree in 1996.

The adoption of the first part of the Tax Code of 31.08.1998, which took effect on 01.01.1999, clarifies the system where apportionment of fiscal powers is concerned. Note, however, that the provisions in question will not become effective until the second part of the Code has been adopted, and so the 1991 law remains applicable.

The new Tax Code institutes 16 federal taxes and levies (Article 13), principally:
- VAT
- Excise on various products
- Personal and corporate income tax
- Capital gains tax
- Customs duties.

Article 14 lists 7 regional taxes and levies. The subjects have extensive control over the yield of these taxes, being able to determine their rate, assessment and methods and dates of collection. On the other hand, the new Code prohibits any creation of new taxes.

The seven regional taxes and levies are:
- Individual sales tax
- Corporate sales tax
- Tax on corporate assets
- Tax on transport companies
- Gaming tax
- Road tax
- Licence fees.

The current situation nevertheless reveals that the general provisions are seldom enforced because many subjects have acquired special privileges through bilateral negotiation. In 1998, 45 of the subjects had negotiated treaties on distribution of powers and others were negotiating.

Tax matters are evidently affected by the same inconsistency as already mentioned, between the legal system that ostensibly stipulates federal power in this area and the reality of bilateral negotiations and power struggles between the Federation and the subjects.

As regards the principle of tax-raising, it works as follows: the subjects look after the collection of taxes at regional level and remit the proceeds to the Federal Government, which bears the responsibility of making a partial refund in the form of subsidies and revenue transfers.

This system fosters tendencies towards budgetary independence of the subjects. It is noted here that the proportion of revenue transfer from the subjects to the Federation decreased from 60% in 1992 to 35% in 1994 and that the Federal budgetary component in the budgets of the subjects was down from 61% in 1992 to 45% in 1997.

2. Non-fiscal resources

a. Grants

Subjects of the Federation can receive specific grants or transfers.

b. Financial equalisation

In 1994 a fund for financial support to the regions, financed by a share of the aggregate federal tax yield (14% in 1998) was set up for the benefit of regions with comparatively low per capita tax receipts and significant budgetary needs.

However, an overwhelming majority of subjects (some 80) are observed to be in receipt of these transfers, which impairs their effectiveness.

C. Supervision

1. By central government

The President of the Federation has the constitutional power to repeal decrees adopted by a government of a subject in the area of powers that are jointly exercised. Article 85 (2) of the Constitution stipulates: "Pending a resolution of the matter by the appropriate court, the President of the Russian Federation is entitled to suspend the operation of enactments by organs of executive power of subjects of the Russian Federation if these enactments contravene the Constitution of the Russian Federation and federal laws or the Russian Federation's international commitments or violate human and civil rights and freedoms."

2. By the regional political authority

The legislative assembly of a subject can decide to withdraw its trust in the executive and the head of the executive with a vote of no confidence carried by an increased majority (usually two-thirds).

3. Judicial supervision

The legislative assembly may lodge a complaint with the Federal Constitutional Court if the federal bodies encroach on the powers of the subjects.

4. Financial supervision

This is carried out by the Federal Audit Board in respect of the execution of the federal budget, and by the finance departments of the federate entities in respect of the execution of their own budgets.

Finland

I. INSTITUTIONAL ORGANISATION

A. Organisational structure of the state

Finland is a unitary state. Public affairs are run mainly by the central government and the municipalities.

There is not yet any intermediate elected body between the state and the municipalities, in spite of the development of functional regionalisation (see below).

The Åland islands are an exception, however; since 1921 they have had a self-governing status very different from that of the other regions.

This difference must be borne in mind when examining the present situation of the regions in Finland in detail; a distinction must be made between the situation in the Åland island province and that in the "ordinary-statute" regions.

B. Legal foundations for the existence of the regions

Åland province

In 1809 Sweden had to hand over the land of Finland and the Åland islands to Russia. Finland's independence in 1917 rekindled the debate about the status of the archipelago, whose population have the culture and language of Sweden.

A decision of the League of Nations in 1921 placed the islands under Finnish sovereignty. Finland promised to protect the islanders' cultural and linguistic rights by passing laws giving the province certain self-governing powers.

The principle of self-government for Åland was also embodied in the revised Finnish Constitution of 18.02.1994, which stipulates that "The province of Åland is autonomous". Article 52 (a) establishes the principle of self-government, leaving it to other texts to make the necessary arrangements for putting it into effect.

The other regions

As stated earlier, there is as yet no intermediate elected authority in Finland. There is, however, a regionalisation trend fuelled in part by the state and in part by groups of municipalities, what one might call a bottom-up and a top-down trend.

The bottom-up trend is manifest in the development of intermunicipal co-operation on a regional scale, in the form of intermunicipal unions with their own assemblies, not elected by the population but appointed by councillors from the member municipalities.

Powers have been transferred to these intermunicipal bodies from both the member municipalities and the state.

This devolution of powers by the state is the top-down aspect of the regionalisation trend. The Finnish regional development Act passed in March 1994 transferred responsibility for regional planning to the regions and instructed them to co-ordinate central government action at the regional level. At the same time, the Finnish local self-government Act of 17 March 1995 proposed various technical approaches to intermunicipal co-operation, one of which - the union of municipalities - would effectively serve as a springboard for regional development. The Act gave real impetus to intermunicipal co-operation.

C. The political institutions of the regions

The Åland islands

1. An elected assembly

The elected assembly of the Åland islands is the “Lagting”, composed of 30 members elected by universal suffrage for a 4-year term. Only residents who are citizens of the region may vote.

2. An executive body

The executive council, or “landskapsstyrelsen”, the government of the Åland islands, takes and executes decisions within its autonomous powers. It has between 5 and 7 members and its leader is called the “Lantrad”.

The council is elected by Parliament following negotiations between the political groups.

3. A judiciary

The administration and organisation of justice are the responsibility of the Finnish state.

The ordinary statute regions

There are 19 intermunicipal unions on a regional scale. They have their own institutions.

1. A deliberative body

Although it is not elected by the people, the regional council has final decision-making power within its sphere of competence. Councillors from member municipalities elect the members of the regional council for a 4-year term.

2. An executive body

The executive and administrative body at regional level is the regional executive committee, elected by the regional council.

D. The administration of the regional authority

The Åland islands
The Åland islands have their own administrative authorities which execute the decisions taken by the institutions within their fields of competence.

The other regions
The other regions have no administrative bodies to implement their decisions. Decisions adopted by regional councils are implemented by the member municipal councils or by the state authorities, as appropriate.

II. THE POWERS OF THE REGION AND HOW THEY ARE EXERCISED

A. Powers of the regions

1. Internal powers

The Åland islands

The islands enjoy a large degree of autonomy. Within their own areas of responsibilities the island authorities can enact legislation just like a sovereign state. The Parliament freely adopts its budget and has full control over its spending. The main powers of the region are summarised in the following table.

Function	Areas of competence	
	Åland	Central govt.
General administration		
Justice		X
Taxation		X
Police	X	
Education	X	
Public health	X	
Social welfare	X	
Environment and sanitation	X	
Culture, leisure and sport	X	
Economic development	X	
Traffic and transport		
Roads	X	
Telecommunications	X	

The other regions

The March 1994 regional development Act made the regions responsible for regional planning and development. They draw up regional development programmes and propose infrastructure improvements.

In addition to their statutory tasks the regions can exercise a wide range of voluntary powers, depending on the particular needs of each region. These powers include:

- promoting economic activities and tourism
- developing and co-ordinating regional cultural activities
- improving regional public services.

2. External powers

♦ The Åland islands

Competence to conclude agreements

Only the state has the power to conclude treaties. Åland province has therefore no such substantive or technical competence.

Participation by the province in the conclusion of treaties by the federal state

The Åland islands do not play any direct role in the conclusion of treaties by the state, but may have a say in negotiations where the proposed treaty affects the islands' powers. The Lagting must be consulted on any treaty which is likely to affect matters within its own sphere of competence.

Incorporation and implementation of treaties

The regional assembly's endorsement is required for a treaty to be applicable in the archipelago. This is a prerequisite for incorporation into domestic law where the treaty affects the province's own areas of competence.

Participation in the activities of international or supranational organisations

The province takes part as a regional authority in the activities of various international organisations, including the Nordic Council, and has the status of regional representative in various organisations.

♦ The other regions

The other regions have no powers of this nature other than that of being represented vis-à-vis certain international organisations.

B. Financial resources

♦ The Åland islands

Fiscal powers are a prerogative of the central government, which lays down the rules and collects taxes in the island province.

The island province thus has no fiscal powers at all. Instead, the state allocates to it 0.45% of the national budget. The region is therefore financed by a vertical equalisation system.

♦ The other regions

The other regions have no fiscal powers. They are financed by the municipalities for work done in the intermunicipal co-operation context, or by the state when required to take responsibility for implementing government policy at the regional level.

C. Supervision

♦ The Åland islands

Supervision here consists mainly in the examination of the laws passed by the Lagting, which must be approved by the President of the Finnish Republic, who has the power to veto them:

- if the regional assembly has overstepped its legislative powers,
- if the law is a threat to the country's internal or external security.

♦ The ordinary statute regions

The powers of the other regions, devolved by the state or assigned to them by groups of municipalities, are subject to top-down and bottom-up supervision. The authority delegating the power concerned verifies that the region does not overstep its authority.

Italy

I. INSTITUTIONAL ORGANISATION

A. Organisational structure of the state

Italy is a regionalised unitary state. Article 5 of the Constitution contains an apparent contradiction: on the one hand it states that "the Republic is one and indivisible", and on the other that "it shall apply the fullest measure of administrative decentralisation in services dependent on the State and adjust the principles and methods of its legislation to the requirements of autonomy and decentralisation". The Italian Constitution thus sees the state as a community comprising the traditional, unitary state and the regions as its constituent entities.

Its territorial organisation comprises three levels of power: the municipalities (8,104), the provinces (108) and the regions (20).

There are two distinct categories of region:

- regions with special status as a result of their geographical, historical or linguistic characteristics: Valle d'Aosta, Trentino Alto Adige, Friuli Venezia Giulia, Sardinia and Sicily.
- Regions with ordinary status.

B. Legal foundations for the existence of the regions

The sections of the Constitution concerning local and regional democracy are Article 5 and Title V (Articles 114 to 133).

In addition there are the constitutional laws of the regions with special status: laws Nos. 2, 3, 4 and 5 of 26.02.1948, respectively for Sicily, Sardinia, Valle d'Aosta and Trentino Alto Adige, and constitutional law No. 1 of 31.01.1963 for Friuli Venezia Giulia.

These special statutes have been amended by subsequent constitutional laws.

This use of the Constitution and of constitutional laws to underpin the status of the regions is a sign of strong determination to give the regionalisation process a solid foundation. Giving regional self-government a constitutional foundation is a means of guaranteeing its effectiveness and its permanence.

However, awareness of the incompatibility of the unitary framework of the state with such strong regional autonomy has rekindled the federalist debate in Italy. At a cabinet meeting in March 1999 the government adopted a plan to federalise the country, which has been presented to parliament.

C. Intermediate political institutions

Each region has its own institutions: a deliberative body, the regional council (1), and a government, the *giunta regionale* (2).

1. An elected assembly

The regional council is elected by direct universal suffrage from among competing lists of candidates, under the proportional representation system, each region forming a single constituency.

It may comprise from 30 to 80 members, depending on the size of the region, and its task is to pass regional laws and adopt the regional budget.

2. An executive body

The executive is the regional government, or *giunta regionale*, comprising a president and a number of members that varies with the size of the region.

It is elected by the regional council by an absolute majority of the votes cast. If no absolute majority emerges from the first ballot a second vote is held and victory goes to the candidate who obtains most votes.

3. A judiciary

The regions have no power to set up their own judicial system. The administration and application of justice is the prerogative of the Italian state.

D. The administration of the regional authority

The Italian regions have their own administrative authorities to implement the measures they adopt. Administrative staff are recruited by competitive examination.

II. REGIONAL POWERS AND HOW THEY ARE EXERCISED

A. Powers of the region

1. Internal powers

Article 117 of the Constitution settles the principles on which legislative powers are apportioned between the state and the regions. As its wording is very general, this Article required transposition measures, for example:

- the enabling Act (No. 382) of 22.07.1975, on the regional legal system and civil service organisation;
- Legislative Decree No. 616 of 24.07.1977.

It should be noted here that there is a major difference between the legislative powers of the ordinary regions and those of the regions with special status.

- ***Ordinary regions*** must observe "the basic principles enshrined in state laws" and "respect the interests of the nation and those of the other regions". This means that legislative action by these regions requires either a framework law or the observance of national laws; their powers are therefore concurrent and delegated. The body responsible for guaranteeing compliance with the basic principles of state law and the interests of the nation is the Constitutional Court, which may declare a regional law unconstitutional.

- ***Special-status regions*** have broader legislative powers which are not subject to the basic principles of state law, ie these regions have primary, rather than delegated and concurrent, legislative power. Furthermore, these powers are not restricted to the fields listed in Article 117 of the Constitution. In Sicily, for example, the regional authority's legislative power by virtue of the region's status extends to industry and commerce and the regional laws exclude Italian state laws in these fields.

There is considerable asymmetry, therefore, in the regional organisation of the Italian state, as the Constitution distinguishes between ordinary regions and special-status regions.

The following table illustrates this asymmetry.

Function	**Ordinary region**		**Special-status region**	
	Exclusive power	Concurrent power	Exclusive power	Concurrent power
General administration				
Organisation of regional services		**X**	**X**	
Markets and fairs		**X**	**X**	
Delimitation of municipal districts		**X**	**X**	
Urban and rural police		**X**	**X**	
Education				
Vocational training		**X**	**X**	
Housing and urban planning				
Urban planning		**X**	**X**	
Environment and sanitation				
Environment		**X**	**X**	
Nature conservation		**X**	**X**	
Culture, leisure and sport				
Local museums and libraries		**X**	**X**	
Regional cultural heritage		**X**	**X**	
Traffic and transport				
Regional public transport		**X**	**X**	
Regional roads and civil engineering		**X**	**X**	
Inland waterways and ports		**X**	**X**	
Economic services				
Tourism and catering		**X**	**X**	
Fishing and hunting		**X**	**X**	
Agriculture		**X**	**X**	
Craft trades		**X**	**X**	

2. External powers

Competence to conclude agreements

The substantive and, by extension, technical competence of the Italian regions to conclude treaties is ruled out by the Constitution.

Participation of the regions in the conclusion of treaties by the federal state

In principle the regions are not to be consulted when the state concludes international treaties.

The only exceptions to this principle are the special-status regions of Friuli Venezia Giulia and Sardinia. The former region is consulted, while the latter actually takes part in the treaty process.

Incorporation and implementation of treaties

As the regions have no power to conclude treaties, it follows that they have no power to incorporate them into domestic law and enforce them.

Participation in activities of international or supranational organisations

- The regions of Italy have no power to participate in the activities of international organisations.
- Supranational organisations (the European Union)

A conference between the state and the regions convenes twice a year in Italy to co-ordinate the country's European policy taking into account the interests of the regions in their various fields of competence.

The conference also appoints the representatives of the regions to Italy's Permanent Representation to the European Communities.

B. Financial resources

1. Fiscal resources

The regions collect certain taxes under their own arrangements and for their own purposes, to cover the cost of implementing their policies:

- motor vehicle tax
- tax on state concessions
- tax on regional concessions
- tax on economic activities (industrial, commercial, services)
- surtax on personal income tax collected by the state.

2. Non-fiscal resources

a. Subsidies

Two types of subsidy may be awarded to the regions:

- Ordinary subsidies drawn from a common fund for operating expenses. Ordinary subsidies drawn from a development fund for investment expenditure.
- Special subsidies.

b. Financial equalisation

Financial equalisation is based on objective criteria that include the region's costs, the length of the road network and the size of the population, particularly the school population. It is a vertical financial equalisation system.

c. Other sources of income

Both local and regional authorities may take out loans to finance their investments, as well as using any earnings from their own property.

C. Supervision

1. By central government

Supervision of regional legislation
The constitutionality of all regional legislation is verified by the state commissioner for the region (Article 127 of the Constitution).

A regional law becomes effective once the commissioner has approved it, which he or she must do within 30 days.

If the government considers that a law oversteps the region's powers it may send it back to the regional council for reconsideration. If the regional council again passes the law without amendment, the government may refer the matter to the Constitutional Court, which has the power to cancel it.

Although the state may have influence in the content of regional legislation, it may not make arbitrary changes. The final decision concerning compatibility with the Constitution lies with the Constitutional Court.

Supervision of administrative acts
A state supervisory commission verifies the legality of administrative acts. It is made up of judges, civil servants and experts and chaired by the state commissioner for the region.

Regional administrative decisions become effective if they are not cancelled by the commission within 30 days.

Unlike legislation, the legality of administrative acts is verified by an organ of the state, for although judges sit on the supervisory commission it cannot be considered an independent court.

Supervision of regional bodies

The regional council may be dissolved in the following exceptional cases:

- if it adopts unconstitutional measures or seriously violates the law
- for reasons of national security
- if the council is unable to perform its functions.

2. By the regional political authority

The regional council has extensive supervisory powers over the *giunta regionale*, comparable to the supervisory powers of the assembly in a traditional parliamentary system, including questions to ministers, committees of inquiry and the possibility of adopting a motion of no confidence in the regional government and forcing its resignation.

3. Judicial supervision

The Constitutional Court verifies the constitutionality of legislation.

4. Financial supervision

Regional budgets are supervised by the state: following adoption through the legislative channel they are subject to verification by the state commissioner.

Portugal

I. INSTITUTIONAL ORGANISATION

A. Organisational structure of the state

Portugal is a unitary state. Although the 1976 Constitution made provision for intermediate authorities to be set up, the 1998 revision proposing the creation of regional authorities did not meet with popular approval. In the referendum on the regionalisation bill a large majority (64%) of the voters voted against the proposal.

As a result, regionalisation is no longer on the agenda for the time being.

The unitary state does boast two autonomous regions, however: the Azores and Madeira, two archipelagos which have their own organisation and powers.

B. Legal foundations for the existence of the regions

Section VII of the Portuguese Constitution (Articles 227-236) contains exhaustive provisions governing the status of the autonomous regions of the Azores and Madeira.

C. The regional political institutions

Article 283 describes the organs of government of the autonomous regions.

1. An elected assembly

The regional legislative assembly is elected by direct universal suffrage, by secret ballot, according to the proportional representation system.

2. The regional government

The president of the regional government is appointed by the Minister of the Republic, who represents the Portuguese Republic in each autonomous region and is responsible for supervising the administrative tasks performed by the state in the region.

The Minister of the Republic appoints and dismisses the members of the government at the proposal of the regional president. The government is also politically answerable to the regional legislative assembly.

3. The judicial system

The autonomous intermediate authorities have no power to organise their own judicial system. Responsibility for administering justice lies with the Portuguese state.

D. The administration of the autonomous regions

The autonomous regions are free to recruit the members of their administration provided that they comply with the general provisions governing the local and regional civil service.

II. THE POWERS OF THE REGION AND HOW THEY ARE EXERCISED

A. Powers of the regions

1. Internal powers

The autonomous regions enjoy extensive powers. They may legislate on matters of specific interest to them, in compliance with the constitution and the general laws of the Republic. This gives them a large degree of freedom in areas of responsibility generally devolved to regional authorities, namely education, public health, social welfare, urban planning, environment and culture.

Beyond these traditional spheres of competence, the autonomous regions have a direct say in certain areas generally reserved for the state, namely tax policy, criminal law and international relations.

Function	***State***	***Autonomous regions***
General administration		
Defence	**X**	
Justice	**X**	
International relations	**X**	**X**
Monetary policy	**X**	**X**
Fiscal law	**X**	**X**
Criminal law	**X**	**X**
Education		**X**
Public health		**X**
Social welfare		**X**
Housing and urban planning		**X**
Environment and sanitation		**X**
Culture, leisure and sport		**X**

2. External powers

Competence to conclude agreements
The autonomous regions have no substantive or procedural powers to conclude treaties.

Participation by the regions in the conclusion of treaties by the state
Article 229 para. 1.s of the Constitution stipulates that the autonomous regions have the power to participate in negotiations for international treaties and agreements of direct concern to them and to share in any resulting benefits.

Incorporation and implementation of treaties
The autonomous regions have no powers to implement international agreements or treaties.

Participation in the activities of international organisations
The autonomous regions have the right to co-operate with foreign regional bodies and participate in activities of international organisations aiming to develop interregional co-operation (Article 229 para. 1.t).

The only condition is that the activities concerned be in accordance with guidelines laid down by the state organs responsible for foreign policy.

B. Financial resources

1. Fiscal resources

The autonomous communities enjoy extensive fiscal powers, including not only participation in the definition of fiscal policy but also the right to introduce taxes and to adapt the tax system to their own specific needs.

The regions are free to adopt their budgets and thus have considerable control over their resources and spending.

2. Non-fiscal resources

As specific grants from the state to the regions are prohibited, except in particular cases prescribed by law, the main non-fiscal income of the autonomous regions comes from the financial equalisation fund (FEF). Equalisation based on objective criteria (population, number of municipalities, area) aims at achieving a balanced distribution of public funds.

C. Supervision

1. By central government

State supervision is mainly the responsibility of the Minister of the Republic, who must sign and oversee the publication of the legislative decrees submitted by the regional legislative assembly.

The Minister of the Republic may veto a legislative decree and exercise the right to refer the text back to the regional assembly for reconsideration.

The effect of this veto is merely suspensive. If the regional assembly confirms the text, the Minister of the Republic must then sign it within 8 days, or refer it to the Constitutional Court.

The organs of government of the autonomous regions may also be dissolved by decision of the President of the Republic if they have acted in breach of the Constitution.

2. By the regional political authority

The regional government is politically accountable to the regional legislative assembly, which may table a motion of no confidence, question ministers or set up committees of inquiry.

3. Judicial supervision

This is mainly a matter for the Constitutional Court. At the initiative of the autonomous regions or the Minister of the Republic, acting on instructions from the government, it rules on the constitutionality of the legislation passed by the regional assemblies.

United Kingdom

I. INSTITUTIONAL ORGANISATION

A. Organisational structure of the state

The United Kingdom is a unitary state. Local authorities are statutory bodies created by acts of parliament, as are the recently created intermediate bodies in Scotland, Wales and Northern Ireland to which the United Kingdom Parliament has devolved certain legislative powers.

No intermediate authority of this kind has been created in England, where the local authority structure remains unchanged. There is consequently an asymmetry in the decentralisation process in the United Kingdom, as England has no intermediate authority with legislative powers.

B. Legal foundations for the existence of the intermediate authorities

The 1998 Scotland Act and Government of Wales Act regulate the status and functioning of the new authorities established between the state and the local authorities, with legislative powers devolved from the parliament in Westminster.

The 1998 Northern Ireland Act contains similar provisions concerning devolved government in Northern Ireland.

C. Intermediate authorities

The three acts mentioned above provide for structures specific to each territory. The organisation of the three intermediate authorities must therefore be examined separately.

1. An elected assembly

The Scottish Parliament
The new system of government introduced by the Scotland Act comprises a Scottish Parliament with 129 members - 73 elected from constituencies on a first past the post basis and 56 elected on a proportional basis from political party lists.

The National Assembly for Wales
The assembly has 60 members, 40 elected from constituencies on a one-round first past the post basis and 20 elected on a proportional basis from political party lists.

The Northern Ireland Assembly
The Northern Ireland Assembly is composed of 108 members elected by proportional representation.

2. An executive body

Scotland
In Scotland the First Minister, the head of the executive body, is the leader of the party that wins the elections. The First Minister and the ministers are members of the Scottish Parliament, which appoints them.

Wales
The executive body in Wales is the Cabinet, composed of 7 secretaries and headed by a First Secretary.

Northern Ireland
The executive in Northern Ireland is a government composed of 10 ministers, a First Minister and a Deputy First Minister.

3. The judicial system

The new intermediate structures have no power to organise their own judicial systems.

D. The administration of the intermediate authorities

In Scotland and Wales, decentralised authority staff are recruited on the same terms and conditions as staff of the unified Home Civil Service. The Scottish and Welsh intermediate authorities thus have no civil service of their own. Their staff, including heads of staff, are ordinary civil servants.

The situation is different in Northern Ireland, which has its own civil service statute governing the recruitment and working conditions of all civil servants there.

II. POWERS OF THE INTERMEDIATE AUTHORITIES AND HOW THEY ARE EXERCISED

A. Powers of the intermediate authorities

1. Internal powers

The powers devolved to the three authorities set up in 1998 vary somewhat from one authority to another, as shown in the following table.

The main difference lies in the types of power devolved to the intermediate authorities. Scotland and Northern Ireland have autonomous legislative powers, while Wales has delegated legislative powers which it can use only in the context of a framework law passed by the parliament in Westminster. The asymmetry found at the national level is also found at intermediate authority level, where devolution has followed different patterns for the three authorities.

Function	**United Kingdom**	**Scotland** Autonomous legislative power	**Wales** Delegated legislative power	**Northern Ireland** Autonomous legislative power
General administration				
Foreign affairs	**X**			
National defence	**X**			
Taxes	**X**			
Monetary policy	**X**			
Education		**X**	**X**	**X**
Public health		**X**	**X**	**X**
Social welfare		**X**	**X**	**X**
Housing and urban planning		**X**	**X**	**X**
Environment		**X**	**X**	**X**
Culture, leisure and sport		**X**	**X**	**X**
Agriculture and fisheries		**X**	**X**	**X**
Economic development		**X**	**X**	**X**
Physical planning		**X**	**X**	**X**
Transport		**X**	**X**	**X**
Industry and commerce			**X**	
Local administration		**X**	**X**	**X**

2. External powers

Foreign affairs are the exclusive preserve of the United Kingdom government. The intermediate authorities have no powers in this field.

The intermediate authorities can nevertheless bring pressure to bear by lobbying the central government. They may also join international associations of similar territorial authorities.

B. Financial resources

1. Fiscal resources

This was the strictest aspect of devolution. No fiscal powers were transferred to Wales or Northern Ireland.

The Scotland Act transferred some very limited powers to the intermediate authority, authorising the Scottish Parliament only to vary the income tax rate by up to plus or minus 3%.

2. Subsidies

The activities of the intermediate authorities are financed by state subsidies.

C. Supervision

As the intermediate authorities have certain legislative powers, a means of settling disputes where powers conflict is needed. This is done mainly by judicial means.

1. Judicial supervision

Any court comprising at least three judges can try cases concerning conflicts of power. The highest court for devolution issues is the Judicial Committee of the Privy Council.

It should be noted that the Crown, through the Principal Crown Prosecutor, is represented in all proceedings concerning conflicts of power.

Switzerland

I. INSTITUTIONAL ORGANISATION

A. Organisational structure of the state

Switzerland is a federal state composed of 26 sovereign cantons as federate entities. The history of the confederation goes back to 1291, when the six cantons which then existed joined together. The present Constitution, which came into effect on 1 January 2000, governs relations between the Swiss Confederation and the cantons, ie between the tasks the Constitution assigns to the Confederation (Article 42) and those it assigns to the cantons (Article 43).

B. Legal foundations for the existence of the cantons

Like Austrian or German federalism, Swiss federalism is based on aggregation - the members of the federation existed before the federal structure, so it was the Confederation, not the cantons, that was founded on the Constitution. The Constitution is the legal act that gave birth to the Confederation, not the cantons. This is why Article 3 of the Constitution states that the cantons "exercise all rights which are not transferred to the Confederation".

The constitutional foundation and order of the cantons are guaranteed and protected under Article 52 of the Constitution. Article 53 guarantees their boundaries.

C. The political institutions of the cantons

Article 3 of the Constitution enshrines the principle of the sovereignty of the cantons in these terms: "The Cantons are sovereign insofar as their sovereignty is not limited by the Federal Constitution; they exercise all rights which are not transferred to the Confederation". The Confederation must respect their autonomy (Article 46 paras. 2 and 3 and Article 47). Their powers and responsibilities are uniformly regulated by the Confederation (Article 42).

The cantons do not enjoy absolute sovereignty, therefore, in the sense of supreme control and decision-making power over their territories, but sovereignty seen in a federalist perspective. This is one of the reasons why a double majority is required in the event of popular initiatives and referendums to revise the Constitution (Articles 138 to 140).

Article 46, on the "implementation of federal law", states that the cantons "shall implement federal law in conformity with the Constitution" (para. 1) and that "the Confederation shall leave the cantons as large a field of action as possible" (para. 2). Their sovereignty includes the power to organise themselves politically, which means the power to pass constitutional laws.

It also includes the power to set up political bodies. The cantons have elected assemblies, called Grand Councils, and executive bodies, called State Councils.

Other political rights they enjoy include:
- a consultative role (Article 147);
- the right to call referendums (Article 141);
- the right to take initiatives (Article 160, line 1).

1. At federal level

The Federal Council

The cantons compose one of the chambers of the federal parliament - the Council of States (Article 150). But they also bring their weight to bear indirectly on the Federal Council (the executive body), for although individual cantons are not represented, its membership reflects a certain regionalism.

2. At canton level

The Grand Council
These cantonal assemblies have between 52 and 200 members, elected for a four-year term, generally by proportional representation. They are the highest authorities of the cantons and usually hold two ordinary sessions. Their main task is to pass laws and decrees of a general nature and to adopt the cantons' budgets.

The State Council
Like the federal executive, the cantonal executive is a collegiate body. The number of members varies between 5 and 9 from one canton to another. They are elected for four years, generally by a majority vote, and they vote without instructions. In other words, their mandate is representative, not imperative (Article 161). In the cantons of Schaffhausen and Solothurn they may be dismissed by the people at the call of 8,000 citizens.

The Council of State, as a body, exercises regulatory power, prepares the budget, is responsible for official relations with the federal authorities and presents draft laws to the Grand Council. Individual councillors act as heads of ministerial departments.

3. The judicial system

On the legal level the essential unity of the state has been guaranteed for over a century by the central government, and while the creation of a federal court as the supreme authority of judicial interpretation is an important factor in terms of that unity, the "established local interpretations" can also be significant. Furthermore the Constitution has maintained the cantons' control over the organisation of the judiciary, judicial procedure and the administration of justice (Articles 122 and 123). This explains why the organisation of the judiciary differs from one canton to another.

All the cantons have criminal courts of first instance and most of them have civil courts. District courts also exist in most cantons.

There is also a large number of special courts. Many cantons have set up juvenile, commercial and administrative courts.

To ensure that the law is applied uniformly throughout the land, the Constitution provides for a federal court, which is generally the court of last instance in civil matters, in disputes between cantons or between the cantons and the federation and also in cases of violation of cantonal or international treaties.

In the criminal law field the federal court has jurisdiction over "federal cases" (high treason, offences against the law of nations).

In administrative matters the federal court has two public law sections that hear administrative appeals against cantonal decisions and certain positions adopted by the cantons.

D. The administration of the cantons

The cantons organise the recruitment of their staff. Cantonal civil servants enjoy constitutional and legal guarantees of tenure unless they are guilty of grave misconduct. They are under an obligation of discretion, however, which is all the stricter the higher the post they occupy.

Each canton has a body which supervises the financial management of the executive and the civil service, in keeping with Article 46. The implementation of federal law, while remaining in conformity with the Constitution, must preserve and foster the particularities of the cantons by guaranteeing them sufficient financial resources.

II. THE POWERS OF THE CANTONS AND HOW THEY ARE EXERCISED

A formal division of tasks and powers between the cantons and the Confederation is made in Articles 42 and 43. Any treaty concluded by the Confederation in the areas of competence of the cantons must be incorporated into domestic law and implemented by the cantons.

A. Powers of the cantons

The Constitution does not list the powers of the cantons. All those responsibilities which are not transferred to the Confederation rest with the cantons. No distinction is made as to powers and responsibilities between the different cantons, with the exception that the demi-cantons send only one representative to the Upper Chamber and have only half a vote when a majority vote of the cantons is required (Article 142, para. 4).

1. Table showing the breakdown of powers under the Swiss Federal Constitution, Articles 54 to 125

Those powers not mentioned in the table are the exclusive prerogative of the cantons. Those in the legislative column not marked by an asterisk are areas in which the cantons also have a hand in application. Those powers restricted to the Confederation alone are marked with an asterisk.

Powers	***Constitutional attribution***	
	Legislation	**Application**
Foreign relations (Art. 54)		X*
Military and alternative service (Art. 59)		X*
Legislation, organisation, instruction and equipment of the army (Art. 60)		X*
Civil defence (Art. 61)	X*	
Vocational education and universities (Art. 63)	X	
Statistics (Art. 65)		X
Protection of the environment (Art. 74)	X	
Forests (77)	X	
Fishing and hunting (79)	X	
Protection of animals (Art. 80)	X	
Public works (Art. 81)		X
Road traffic (Art. 82)	X	
Alpine transit (Art. 84)	X	
Transport (Art. 87)	X*	
Footpaths and hiking trails (Art. 88)	X	
Nuclear energy (Art. 90)	X*	
Transportation of energy (Art. 91)	X	
Postal and telecommunication services (Art. 92)		X*
Radio and television (Art. 93)	X*	
Private economic activity (95)	X*	
Fair trading policy (Art. 96)	X	
Banking and insurance (Art. 98)	X	
Monetary policy (Art. 99)		X*
Alcohol (Art. 105)	X*	
Gambling (Art. 106)	X*	
Weapons and military material (Art. 107)	X	
Rented accommodation (Art. 109)	X	
Social security for the elderly, survivors and people with disabilities (Art. 111)	X	
Old age, disability and survivors' insurance (Art. 112)	X	
Employee pension plans (Art. 113)	X	
Unemployment insurance (Art. 114)	X	
Health and accident insurance (Art. 117)	X	
Medical assistance to procreation and gene technology in the human field (Art. 119)	X	
Gene technology in the non-human field (Art. 120)	X	
Article 121 (immigration, emigration, residence)	X*	
Civil and criminal law (Art. 122 and 123)	X*	
Weights and measures (Art. 125)	X*	

While the cantons enjoy a large degree of autonomy in a number of fields, the Confederation has ultimate control over these activities, by laying down general provisions to the effect that they must not contravene federal law, for example (Article 48 para. 3, Article 49 para. 1, Article 51 para. 2, Article 56 para. 2).

2. External powers

Competence to conclude agreements

Substantive powers (Articles 54 to 125)
The power to conclude international treaties is, technically, one of the main roles of the Confederation. Here again, however, the consultation procedures stress the systematic presence of the cantons, especially where their interests are affected. The Swiss Constitution confers certain international powers on the cantons. As in Austria, the federal authority has the general substantive power to conclude treaties (Articles 54 to 56), while the cantons are free to conclude agreements within their own spheres of competence.

Technical competence
The cantons are denied technical competence in this field. The Federal Council negotiates, signs and ratifies all treaties. Representatives from the cantons participate in the negotiations alongside the representatives of the state.

The international activities of the cantons are extensive, mainly in the field of technical treaties in border cantons, on such matters as double taxation, teaching and health.

Participation by the cantons in the conclusion of treaties by the federal state
In addition to consultation, the Swiss Constitution provides for the cantons to have a say in foreign policy decisions which affect their powers or their essential interests. This participation is effective thanks to the Constitution and the law which provides a legal basis for it. Some cantonal acts, such as treaties between cantons (Article 48, para. 3) or with foreign countries require the approval of the Confederation, to ensure that federal law is respected (Article 49, para. 2). If necessary the Confederation may object to treaties concluded by the cantons (Article 186, para. 3).

Incorporation and implementation of treaties
As in Austria, the federal state has more extensive treaty-making than legislative powers. The power to incorporate treaties into domestic law and implement them, on the other hand, follows the same pattern as the internal distribution of powers between the Confederation and the cantons. Treaties signed by the Confederation in the spheres of competence of the cantons are implemented by the cantons.

Participation in the activities of international organisations
In principle the cantons may not participate in the activities of international organisations. In practice they are at least consulted.

B. Financial resources

Proceeds from taxes have been shared between the Confederation and the cantons on an empirical, *ad hoc* basis.

1. Fiscal resources

By far the largest share of fiscal resources comes from direct taxes, which are the responsibility of the cantons (Article 129): income tax, wealth tax, capital tax, property tax and capital gains tax. They are levied by the cantons provided that the same taxes are not already levied by the Confederation (Article 134).

2. Non-fiscal resources

Thirty-four percent of non-fiscal resources are the product of redistribution or compensation measures, 5% come from the federal budget and an even smaller percentage from commercial activities, licences and prerogatives.

a. Subsidies

The cantons receive 30% of the gross yield of the direct tax levied by the Confederation (Article 128, para. 3) and 10% of the anticipated net yield.

b. Financial equalisation

Article 135 of the Constitution lays down the principles of vertical financial equalisation in favour of the poorer cantons. A law passed in 1959 established a periodical classification that has since been updated. In addition to the assets subject to taxation, the scale takes into account cantonal revenue, tax levels and a "mountain factor".

Under this classification there are 6 strong cantons, 13 intermediate ones and 7 weaker ones.

C. Supervision

1. By central government

Supervision by central government generally takes the form of federal laws regulating the powers of the cantons.

2. By the regional political authority

The Grand Council has extensive control over the activity of the State Council, through the usual parliamentary procedures of questions, motions and resolutions.

3. Judicial supervision

In addition to supervising the uniform application of federal law in the cantons, the Federal Court also ensures that the proper judicial procedures are followed in the cantons and verifies the legality of their acts.

4. Financial supervision

Financial supervision takes the form of federal supervision of the use to which the cantons put federal resources.