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Public Administration: Responding to the COVID-19 Pandemic

*Mapping the EU member states' public administration responses to the COVID-19 pandemic
(for EU Enlargement and Neighbourhood countries)*

Federal Republic of GERMANY

4 April 2020

Federalism in Germany is more than just a system of federal states; it represents the country's decentral cultural and economic structure and is deeply rooted in tradition. Responsibility for internal security, schools, universities, culture, and municipal administration lies with the states. The administrative authorities of the states enforce not only their own laws, but also those of the federation. Through their representatives in the Bundesrat, the governments of the states are directly involved in the federation's legislation.

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FEDERAL REPUBLIC OF GERMANY

Centre of Government, policy co-ordination and decision-making process

1. How is the Government (Council of Ministers) functioning (organisation of virtual meetings, remote sessions etc.)?

The Federal Government is still sitting with personal presence. When Chancellor Merkel was in quarantine, she chaired the cabinet meetings over the phone, not by video-conference. The general principles of the rules of procedure of the Government still apply and ministers are generally present at the meetings, or send their deputies. Remote meetings are not foreseen¹.

2. How are the crisis management and external communications co-ordinated within the Government? What is the role of the CoG in this? Is there a central strategy/guidance?

Legal Basis:

*According to the **Basic Law**, crisis management in the event of a disaster or damage situation of national importance is primarily a matter for the federal states and municipalities. Therefore, the lockdown decision is taken at the state or even local level, and not at the federal one. The Federal Government has been meeting with state leaders to co-ordinate restrictions on movement. Bavaria, Hamburg, Hesse, Lower Saxony, Rhineland-Palatinate, and Saarland, went into partial lockdown around 21 March. The closing of non-essential economic activities came from an agreement between the federal state and federated states².*

In order for the Federal Government to react quickly and effectively to a global infection like Corona, it has been given additional competencies within the legal package adopted on 27 March 2020.

Organisation: Joint crisis team of the Ministries of Interior and Health

Since the appearance of the first corona virus cases in China, all federal departments concerned have held close and regular exchanges. After cases of corona infections occurred in Europe and Germany, this exchange was intensified and a joint crisis team between the Federal Ministry of the Interior, Building and Home (BMI) and the Federal Ministry of Health (BMG) was founded.

*In order to support the handling of specific danger or damage situations in the federal states, which are essentially subject to the technical co-ordination of an individual department, a separate crisis management structure is always available, the "**National Crisis Management Department Group**". It is led by the Federal Ministry of the Interior, offering a platform for departmental co-ordination on conceptual, organisational and procedural issues of crisis management. This committee co-ordinates the inter-ministerial co-operation, provides information and co-ordination on current specialist planning, jointly prepares basic documents (e.g. information document on crisis management from the Federal Government departments, overview of capabilities in crisis management) and event-related co-ordination. The **Inter-ministerial Co-ordination Group of the Federation and the Länder (IntMinKoGr)** is a joint co-ordination committee of the Federation and the Länder. It has an important complementary function for the existing system of crisis management in the Federal and State Governments in a few special, long-lasting, cross-border situations of danger or damage.*

¹ <https://www.bundesregierung.de/breg-de/themen/geschaeftsordnung-der-bundesregierung-459846>

² Draft *The Territorial Impact of COVID-19: Managing the Crisis Across Levels of Government*

Crisis management in the Länder:

On the basis of the Constitution, the federal states have formed their own structures within the framework of their legislative competence. The co-operation of the states, regional councils, districts, cities and municipalities in the event of an incident is guaranteed by a system of crisis teams now activated for the management of the Corona crisis. Inter-ministerial crisis teams are called upon to co-ordinate the ministries at the state level or the liaison officers of the ministries concerned are included in the lead crisis team.

Strategy:

The Federal Corona Crisis Strategy is based on the Federal government's "pandemic" risk analysis from 2012. This risk analysis was developed against the background of the statutory mandate of the Federal Government to carry out risk analyses in civil protection (section 18 (1) sentence 1 of the Federal Civil Protection and Disaster Relief Act (ZSKG)).

Communication on national level:

*On 18 March 2020, Chancellor Merkel gave a **speech on National TV** about the Corona crisis, explaining the measures taken and urging citizens to follow them. This was a widely noticed approach, as usually in Germany, the Chancellor only speaks on TV at New Year.*

*Comprehensive information, updated daily, is available on the website of the **Federal Government**³, the **Federal Ministry of Health**⁴, and other responsible institutions such as:*

*The **Robert Koch Institute (RKI)**, which is the Government's central scientific institution in the field of biomedicine. The Robert Koch Institute is continuously monitoring the situation, evaluating all available information, estimating the risk for the population in Germany and providing health professionals with recommendations. The President of the RKI currently gives **daily press conferences**.*

*Information on the novel coronavirus and hygiene for the general public is available on the website of the **Federal Centre for Health Education**. Additionally, lots of authorities and health insurances have set up hotlines.*

*The **Federal Office of Civil Protection and Disaster Assistance (BBK)**, established on 1 May 2004 within the remit of the Federal Ministry of the Interior, is Germany's central organisational element working to ensure the safety of the population, combining and providing all relevant tasks and information in a single place.*

3. Any arrangements (rules, working procedures) which aim to streamline and accelerate the Government decision-making process (as regards deadlines, public consultations, transparency, impact analysis)?

Rules and working procedures continue to be applied as usual. Existing emergency and urgency rules are activated and applied.

³ <https://www.bundesregierung.de/breg-de>

⁴ <https://www.bundesregierung.de/breg-de>

Public service and human resource management

1. What arrangements regarding teleworking? What is the share of civil servants teleworking? What is the share of civil servants still coming to the office?

Existing regulations have been adapted. People can still work in offices but are encouraged to work from home.

The problem was that not all ministries/administrations have had teleworking arrangement in place so far. This has led to the need for rapid adaptation in some cases. Example from one of the states:

Three types of arrangements:

- **Office presence**, mainly senior management and indispensable services such as IT and mail
- **Teleworking**, when professional laptop and access to intranet is available
- **Working at home**, when no professional devices and/or access to intranet is available. However, being reachable via phone or (private) e-mail is indispensable. These people need to check in with their superiors at least once a day.

In most administrations, a tracking system for presence is in place. As this is not available any more for teleworking staff, presence at the home workplace has to be reported by each staff member and recorded by the superior on a daily basis.

No official data is available about the share of civil servants teleworking. Estimations suggest that it is around $\frac{3}{4}$ of staff. Some heads of administrations have organised “turn around” presence, where teleworking staff come to the office once a week. Senior management presence is almost always assured.

2. What other flexible working arrangement (part-time work, distribution of working hours over 7 days...)?

All existing work arrangements stay in place. In the German public administration, there are many people working part-time (mainly women).

Administrations usually apply rules for “long-term work time accounts”, on which staff can collect overtime work and then take overtime for free days.

3. If civil servants cannot telework, how are they paid?

All civil servants continue to get paid 100%, even those that cannot telework.

4. Are civil servants being sent on mandatory annual leave? If not, is use of annual leave recommended? Any other special arrangement on absence management?

So far, there is no regulation/practice concerning mandatory annual leave. In some of the Länder, it is now being discussed whether people should have to take overtime hours first. No decision yet.

5. Any new, special regulations for working overtime (removing limitations to overtime work e.g. for medical staff)?

In the current situation, arrangements for overtime work in the general administration has been restricted and can be claimed and counted for by individual staff only when evidence shows that it was institutionally necessary.

The institutional necessity is recognised of course for medical staff. (tbc)

6. Arrangement for paying for extra workload (health care)?

Existing arrangements prevail for the moment. In the civil service and public administration overtime does not get paid. It can, in some cases, be collected on long-term work time accounts and be claimed for free days.

7. What measures have been introduced to create fiscal space to fund health care, economic measures etc. against COVID-19 (salary cuts, freeze of recruitment, promotions...)?

No salary cuts, nor freeze of promotions or recruitments have been decided for the moment. However, some negotiations for new tariff contracts with trade unions have been suspended, e.g. in the public transport sector.

Accountability

1. How did you keep the national parliament operational? Any simplification of parliamentary procedures?

The two federal houses of Parliament and the states' parliaments continue to be operational, sittings continue to mainly function with physical presence, while social distancing rules are maintained by using the full plenary venues, including visitor places, during the sessions. In some of the states (e.g. Baden Wuerttemberg) the parliamentary committees have turned to video-conference sessions.

A package of six laws, the "Corona package" was adopted in what is called an "urgent legislative procedure" on the federal level. It included also two health policy related laws.

To illustrate the process : on Monday, 23 March, Federal Minister of Health, Jens Spahn, presented two bills to support healthcare and nursing in dealing with the corona epidemic and to improve the Federal Government's responsiveness to epidemics. On the same day, the Federal Cabinet passed the so-called COVID-19 Hospital Relief Act and the "Act to Protect the Population in an Epidemic Situation of National Importance". The Bundestag's Health Committee dealt with the two bills on Tuesday, and the Bundestag passed them in one go on Wednesday. The federal states had no objection and allowed both laws to be passed in the Federal Council - including the civil protection law, which requires approval because it interferes massively with country competencies. The package was announced in the Federal Law Gazette on 27 March 2020 and largely came into force one day later.

Legal basis for urgent procedures:

The Basic Law does not provide for a special urgent procedure to accelerate the legislative process. Options for accelerating the legislative process can be found above all in the rules of procedure of the German Bundestag. According to Section 80 (2) GO-BT, it is not necessary to transfer the bill to a committee. This requires an application from a parliamentary group or from five out of a hundred of the members of the German Bundestag and a resolution with a two-thirds majority of the members present. If such a decision is taken, the second consultation is immediately initiated. If no changes are made in this, the third consultation can be held and the final vote using the procedural steps outlined above. With these possibilities under the rules of procedure, it is possible to carry out all three consultations including the final vote in one day.

According to Article 77, Paragraph 1, Sentence 2 of the Basic Law, the passed law must be forwarded to the Federal Council by the President of the Bundestag immediately. It is conceivable that the latter will deal with the same or the next day and take a corresponding decision. Following the decision of the Federal Council pursuant to Article 82 GG, after countersignature of the Federal Chancellor and the other members of the Federal Government involved, the copy needs signing by the Federal President and promulgation in the Federal Law Gazette.

For the “Corona package”, this process took four days and was in line with constitutional and legal requirements.

2. How about the Ombudsman (e.g. overseeing the situation in prisons)

Public sector ombudsmen in Germany exist in only four of the sixteen Laender. There is a “Committee on Petitions” at the federal level as part of the Bundestag, as well as Committees on Petitions in each of the sixteen regions in the parliaments.⁵

In Baden Wuerttemberg, for example, the Ombudsman's Office, like many other government agencies, is currently receiving more and more enquiries about the coronavirus crisis. In many cases, enquiries are about financial aid for companies and the self-employed. They also concern the measures against the spread of the corona virus, such as the distance orders and assembly prohibitions.⁶

Ombudsman offices continue working but online.

3. Does administrative justice work? Have deadlines changed?

From the website of the **Higher Administrative Court of North Rhine–Westphalia** (similar information can be found on websites of other administrative courts):⁷

The higher administrative court and the seven administrative courts in North Rhine-Westphalia restrict their operations for reasons of health protection for the time being. In order to reduce the risk of infection, the public judicial system will only be maintained in accordance with yesterday's decree by the North Rhine-Westphalian Ministry of Justice only to the extent that is absolutely necessary. The public traffic and access to the court buildings are reduced to what is absolutely necessary.

Until further notice, public court appointments will only be carried out if they are necessary and do not tolerate postponement. The judges decide whether this is the case by exercising judicial independence. Insofar as meetings take place exceptionally, the visit is permitted in view of the principle of publicity. Persons who have symptoms of corona disease, who have had contact with corona-infected persons within the last 14 days or who have been in a corona risk area within the last 14 days can be refused entry.

Applications and other concerns should be made in writing. In urgent cases, the legal applications remain open as far as possible after prior notification by telephone. "Despite the difficult circumstances, we are doing everything we can to continue to provide effective, timely legal protection," explains the President of the Higher Administrative Court, Dr. Ricarda Brandts. "The advance adoption of electronic court records makes it easier to work from home. In the case of urgent matters and for many appeals to the higher administrative court, procedural law provides for the written procedure anyway. There are also procedural options for main matters without having to make a hearing."

Slightly different information is published on the website of the **Federal Administrative Court**⁸:

The Federal Administrative Court will restrict its activities from 18 March 2020 to 19 April 2020, for reasons of health protection, after the coronavirus infection has been confirmed by several employees. No oral negotiations take place during this period, with the exception of matters that cannot be postponed. Appointments for the hearings already scheduled during this period have been cancelled. The office building is closed to the public. This emergency operation takes place to prevent the virus from spreading further. Regardless of this, applications, lawsuits and pleadings can be

⁵ <https://www.ombudsman.europa.eu/en/european-network-of-ombudsmen/members/all-members>

⁶ <https://www.buergerbeauftragte-bw.de/>

⁷ <https://www.vg-duesseldorf.nrw.de/behoerde/presse/pressemitteilungen/2020/2013/index.php>

⁸ <https://www.bverwg.de/pm/2020/16>

submitted in the usual way. Processing is ensured. The court's press office can only be reached by e-mail during the period mentioned. Delayed processing of press enquiries can be expected.

4. Any public debates in respect of principles of good administration (legality, proportionality, predictability) of protective measures?

Many public debates are ongoing about the relationship between individual rights and the drastic measures of the Government. So far, the majority of political parties stand behind the measures taken by the Government.

However, there are also urgent applications open at the administrative courts claiming that the measures taken are illegal. For example, there is an urgent request at the high administrative court of Baden-Württemberg against the Corona decree of the State Government in which a Christian protestant plaintiff claims that the closure of churches violates his constitutional right of freedom of religion. A fitness studio fights against the measure requiring the closing of its activities with the argument that there is no legal basis for such a decision. While it is recognised that all government activities always need a legal basis, so far the political and legal estimation is that the measures are in line with the constitutional principle of proportionality.

However, there is recognition within political parties that the Corona crisis should not be used to undermine democracy and constitutional rights. The rule of law is discussed extensively when deciding about the measures. Every single measure that restrains individual rights needs to be justified, limited in time and reversible.

The German NHRI (German Institute for Human Rights) has issued a press release calling on the Federal and State Governments to align measures to combat the corona pandemic with human rights. It also calls on politicians to consider relevant information from civil society organisations and expresses an urgent need for action at the European level.

<https://www.institut-fuer-menschenrechte.de/publikationen/show/corona-krise-menschenrechte-muessen-das-politische-handeln-leiten/>

Service delivery

1. Which services are being delivered (all, some, only the essential)?

Almost all services continue to function, but in limited ways and without people-to-people contacts. Advisory services are realised exclusively over the phone. Written procedures are realised by mail or online.

All new services in line with the Government's decision to support the economy and specific groups of the population are available online.

2. Are there any modifications done to the obligations of:

- i. the administrations towards citizens/businesses (e.g. freezing of deadlines)?

Administrations continue to work essentially within the existing legal deadlines.

- ii. citizens/businesses towards public administration (reporting, payments of taxes, contributions, fees...)?

Yes, there are many measures taken to help citizens and businesses with the economic results of the health crisis. It is impossible to list them all, here are some examples: :

Unemployment agencies' deadlines, e.g. reporting deadlines of unemployed, are suspended.

Tax measures⁹ are, for example:

- Three months general postponement of payments of Personal Income Tax (PTI) based on tax returns (Please notice that the vast majority of the tax is a withholding tax of employees and this part of PTI is not affected. In fact, the date for submitting tax returns and payment is unchanged. However, all sanctions according to the tax code are pardoned for 3 months).
- Unlimited individual postponement of payments of PTI based on evidence provided by tax person and approved by tax authority.
- Some obligations related to the reporting of additional tax information in case of VAT are also suspended for two months or even longer provided a direct link to an effect of COVID-19 and other measures concerning self-employed persons.

Sectorial, regional measures, or measures other than fiscal (e.g. labour)¹⁰

- In the domain of international trade, the Federal Government provides deferred-interest loans to companies that lose contracts in China or Italy because of the coronavirus. The program is supposed to start on 1 April 2020.
- In the labour market domain, there is a targeted employment support programme called Antivirus. The objective of the programme is to compensate the employers for the wage costs during periods of obstacles of employees to work or operational obstacles related to the spread of COVID-19 and the quarantine ordered and other measures.
- In the domain of agriculture, the Federal Government has taken measures to minimise the impact of COVID-19 to crop and animal production.

3. Has the crisis initiated any simplifications or enhanced the use of alternative tools:

- i. *in the internal procedures of the Government (e.g. acceptance of formal approvals over e-mail)?*

The crisis for example leads to more frequent (daily) emergency meetings of Ministers with heads of administrations in the sectors they are responsible for to decide on necessary measures, such as necessary changes in existing regulations to adapt them to the crisis. Those meetings usually take place as phone conferences.

Instead of paper versions, it is now accepted that internal consultations can take place over e-mail. Signatures normally required on paper for internal consultation procedures can be announced by e-mail but have to be added later, once printing of the document is possible. Many staff still come to the offices once a week to organise these print outs and issue necessary signatures.

- ii. *in the administrative procedures with citizens and businesses (e.g. replacement of handwritten signature with scanned copies or simple exchange of mails)?*

Many requests for state aid or other state support (support for students, unemployment, housing, etc.) have been simplified. The simplification however translates in most cases

⁹ MEASURES BY EUPAN MEMBER STATES DURING COVID-19 EPIDEMIC

¹⁰ EUPAN

into the simplification of necessary evidence or documents that need to be provided, deadlines extended for the applicant.

Public financial management

1. Are COVID-19 response measures being introduced within the framework of or with reference to existing fiscal rules (budget deficit or public debt ratio limits etc.)

In order to finance the planned aid packages for companies, hospitals and employees, the Federal Government is making an additional EUR 122.5 billion available with a supplementary budget. At the same time, it expects to reduce taxes by around EUR 33.5 billion this year. To finance this burden, the law authorises the Federal Government to take out loans totalling EUR 156 billion.

The adopted supplementary budget of EUR 156 billion (4.9% of GDP) includes:

(i) spending on healthcare equipment, hospital capacity and R&D (vaccine),

(ii) expanded access to short-term work ("Kurzarbeit") subsidy to preserve jobs and workers' incomes, expanded childcare benefits for low-income parents and easier access to basic income support for the self-employed,

(iii) EUR 50 billion in grants to small business owners and self-employed persons severely affected by the COVID-19 outbreak in addition to interest-free tax deferrals until year-end.

At the same time, through the newly created economic stabilisation fund (WSF) and the public development bank KfW, the Government is expanding the volume and access to public loan guarantees for firms of different sizes, with an allocation of at least EUR 825 billion (25% of GDP).

In addition to the Federal Government's fiscal package, many state governments (Länder) have announced their own measures to support their economies, amounting to EUR 48 billion in direct support and EUR 63 billion in state level loan guarantees.¹¹

The adopted measures mean exceeding the constitutionally required debt brake. According to the Basic Law, this is only permissible in the event of an emergency - which the Bundestag decided on 25 March 2020 with the required majority of its members.

2. Are the cost of these measures being published?

Yes, with the documents of the supplementary budget, so for example for the federal level:

https://www.bundesfinanzministerium.de/Content/DE/Downloads/Abt_2/2020-03-23-Tabellen-Nachtragshaushalt2020.pdf?__blob=publicationFile&v=6

3. Have budget users been asked to identify cost-saving measures to partially offset the cost of the response measures?

The supplementary budget is financed by additional borrowing. Budget users have so far not been asked to suggest cost-saving measures.

4. Are internal controls continuing to operate smoothly (electronic signatures)?

Ministries generally do not yet fully function in paperless mode, but they have adapted to the situation by issuing specific organisational acts for the administrations in their sector.

Here is the example for regulating signatures:

¹¹ <https://www.imf.org/en/Topics/imf-and-covid19/Policy-Responses-to-COVID-19#G> as of 2 April 2020

Internally necessary signatures required to show internal consultations have taken place, can be issued by e-mail. E-mails then have to be printed for the files (this can be done at a later stage when possible). The files have to mention in which way signatures were issued (name, signature per e-mail, etc.). In cases, where normally an original of a decision with a signature has to be issued and printed, this can now be done by indicating that it was issued in the above-mentioned way.

If a printout is currently not possible it can be substituted by a PDF file.

Each administration is required to organise the process in the described way.

5. Does each budget user or at least ministry have a risk management strategy that envisaged emergency measures in response to a sudden crisis? How is staff and customer safety balanced against the need to deliver required services?

Situation in the states:

There are general risk management strategies in place but for the current situation ministries have issued "Ministry Pandemic Plans", based on state wide "Pandemic Plans". Those were issued in the beginning of March by the state governments already before the crisis got the status of a "Pandemic," to be prepared for this event. Their objective is to prepare the necessary information and guidelines for staff of the ministries and to insure that essential public services can continue to be provided. Second level administrations establish their own pandemic plans.

The plans decide, e.g. that the following preparatory measures needed to be issued, such as:

- establishment of a Task force for handling the situation, usually headed by the state secretary and relevant heads of departments (personal, general administration, etc.), with a medical officer as external advisor.*
- definition of the "core functions"*
- definition of the necessary personnel to hold up core functions, including a representation plan*
- establishment of an urgency call plan for staff*
- establishment of communication plans*
- provision of medical information*
- decision on venue of work and working time*

The plans foresee the following implementation measures in case a pandemic is declared, such as:

- activation of the task force*
- depending on the availability of staff (especially for the event of many staff being on sick leave): reduction of the activities to the core functions*
- cancellation of all events and gatherings*
- restriction of access to the ministry building*
- information and advice, especially through IT networks of all staff.*