DEVOLUTION (FURTHER POWERS) COMMITTEE

AGENDA

22nd Meeting, 2015 (Session 4)
Thursday 17 September 2015

The Committee will meet at 9.00 am in the Mary Fairfax Somerville Room (CR2).

1. **Parliamentary oversight of inter-governmental relations - international examples:** The Committee will take evidence from—

   Professor Julie Simmons, University of Guelph;
   Professor Nathalie Behnke, University of Konstanz;
   Dr Sean Mueller, University of Berne;
   Professor Bart Maddens, University of Leuven.

2. **Reform of inter-governmental relations in the UK:** The Committee will take evidence from—

   Philip Rycroft, Second Permanent Secretary and Head of UK Governance Group, Cabinet Office;
   Ken Thomson, Director General for Strategy & External Affairs, Scottish Government.

3. **Work programme (in private):** The Committee will review its work programme.

   Stephen Imrie
   Clerk to the Devolution (Further Powers) Committee
   Room T3.40
   The Scottish Parliament
   Edinburgh
   Tel: 85206
   Email: devolutioncommittee@scottish.parliament.uk
The papers for this meeting are as follows—

**Agenda Item 1**

Written evidence submissions  

**Agenda Items 1 & 2**

PRIVATE PAPER  

Letter from the Deputy First Minister to the Finance Committee
Devolution (Further Powers) Committee

Written evidence submissions from today’s witnesses

Introduction

1. This paper contains written submissions of evidence from today’s witnesses, where provided, on the subject of inter-governmental relations (see Annex).

Action/recommendation

2. Members are invited to take these submissions into account during their questioning of the witnesses.

Clerking Team
September 2015
Professor Julie Simmons, University of Guelph

Taxation and Fiscal Transfers from the Federal Government to the Provinces in Canada

Canada is a federation with one central government (the federal government), ten provincial governments, thee territorial governments, and local governments. The ten provincial governments are the partners in the federation with the central government, and thus have constitutionally entrenched powers that the federal government cannot unilaterally change. The three thinly populated territories comprise the northern most part of the country and are subordinate to the federal government. Local governments are subordinate to provincial governments.

The Constitutional Division of Taxation and Social Policy Powers: Under provincial jurisdiction are most aspects of the welfare state (social assistance (welfare), health care, education). Contributory pensions are a field of joint provincial and federal responsibility, and employment insurance is exclusively federal. Both provincial and federal governments have the power to levy personal and corporate income taxes, general sales or consumption taxes, as well as payroll taxes (for example, for pensions or employment insurance or healthcare). Tax room between the two governments must be shared, through tax harmonization, to ensure that Canadians are not overwhelmed with tax.

Tax Structure and Harmonization: The federal government collects a general conception tax (Goods and Services Tax) and nine of ten provinces collect retail sales tax. Both levels of government also have other sources of tax revenue (eg. tobacco tax). As the welfare state developed, tax room shifted from the federal government to provinces, as the latter had jurisdictional responsibility for social and health policies. From 1950 to 2010, the federal government share of tax room declined from 65% to 40% (Brown 2012). Harmonization agreements between provinces and the federal government mean that the federal government collects all tax on behalf of all provinces except Quebec. The federal government also collects all corporate tax for all provinces except Quebec, Ontario, Alberta. Some provinces also have harmonization agreements for their sales taxes.

Fiscal Federalism and Horizontal Imbalance: There is a gap between federal revenues and provincial expenditure. Provincial governments require financial assistance from the federal government. This are also differences in the fiscal capacity of individual provinces because of the uneven distribution of natural resources (especially oil and gas) and manufacturing. Accordingly, through intergovernmental transfers, the federal government uses its greater fiscal capacity to reduce the horizontal imbalance (but not eliminate it), bringing “have not” provinces up to the average revenue generating capacity of the provinces. Equalization, as such payments are known, began in in 1957 and is recognized in the Constitution Act, 1982. Equalization is unconditional. Provinces may use these transfers as they see fit, including for welfare. However, the formula by which
Equalization is calculated has gone through much iteration, and, even though it is to help knit the provinces together, it is the source of intergovernmental conflict.

**Fiscal Federalism and Welfare Policy:** The federal government also makes payments to provinces, largely on a per-capita basis to reduce **vertical imbalance.** The federal government exercises its “spending power” – or it ability to make payments to people, institutions or governments, pertaining to policy areas that are enumerated in the constitution as exclusively provincial jurisdiction. This power is controversial because though the use of conditional grants, the federal government shaped a pan-Canadian welfare state. While many provincial governments (and certainly Quebec governments) challenge the legitimacy of the spending power, the Supreme Court has recognized its use as constitutional. Over time, the federal government’s use of this power has moved from grants that were conditional and involved sharing costs dollar for dollar with provinces to grants that are largely unconditional and take the form of block grants capped at specific dollar amounts. The overall percentage of provincial budgets that these grants represent has also declined over time, peaking in 1982 (Brown 2012). These factors contribute to scholars’ perceptions of Canada as among the most decentralized federations in the world. In 2004, 13% of provincial revenues were from federal transfers and just 27% of those were conditional (Watts 2008).

In the area of social assistance specifically, the historical pattern is one of conditional to largely unconditional, and from shared cost funds to block funding. The **Canada Social Transfer** is the federal payment earmarked for education and social assistance (welfare). Each provincial government is free to design its social assistance programs as it sees fit. The only condition on the Canada Social Transfer funds is that a province cannot restrict the eligibility of residents arriving from other provinces. The federal government has exclusive authority to determine the value of the Canada Social Transfer from year to year, and it is distributed on a per-capita basis. In contrast, from 1966-1995, the federal scheme for supporting provincial welfare programs was conditional and shared cost. Under the 1966 Canada Assistance Plan, for every dollar provinces committed to provincial social assistance, the federal government would match it. To receive the federal component, provinces had to implement a specific definition of need, apply this definition impartially to all applications, prohibit provincial residency requirements and have an appeal procedure in place. Even with three of these four conditions now removed, there has been considerable similarity in the welfare programs across provinces (Boychuk, 2006).

**Intergovernmental Institutions of Decision-Making and the role of Legislatures**

Historically the federal government has the exclusive authority to determine the value and nature of its transfers to the provinces. 1995 was turning point in provincial acceptance of this fact. In that year, the federal government sought to balance its budget by reducing by one third the entirety of its cash transfers to provinces for social assistance, education, and health care. Provincial protest of this unilateralism resulted in a 1999 agreement between the Prime Minsiter and the Premiers that there would be no **new** federal funding schemes for provinces introduced without the majority consent of the provincial governments.
Because of the finances described above, there is overlap in provincial and federal government involvement in most social policy areas. However, there are no constitutionally recognized forums for discussion such matters. All federations are to have some representation of the constituent units of the federation in the central institutions of government. Canada’s poor representation of the provinces in its central institutions gives great legitimacy to premiers to claim to be the best representatives of the interests of their constituents. The seats of the unelected Senate are distributed neither according to equal seats per province, nor by population. Further, the single member plurality electoral system has produced a multi-party system, where majority governments have a minority of support that is usually regionally concentrated. No national party has popularity in every region at any time.

As a result, Canada has a history of decision-making outside of legislatures in bilateral meetings involving the executive branches of the federal and provincial governments, not the legislative branches. Meetings between the Prime Minister and individual Premiers, or multilateral meetings of all Premiers with the Prime Minister are at the apex of intergovernmental decision-making. Such multilateral meetings are at the prerogative of the Prime Minister, and, have, since the end of attempts to formally amend the Constitutions (1993), become increasingly rare. The last was held in 2008. However, there are also a multitude of multilateral meetings of ministers from a specific sector (e.g., social services) and from every jurisdiction including the federal government. These sectoral meetings of 14 ministers usually take place annually, and the public servants supporting the ministers at these meetings are in more frequent contact, supporting the work of the ministers in sharing information across jurisdictions. All agreements reached at such meetings lack legal status, and therefore are not binding on any provincial parliament. However, there are always political consequences to unilaterally withdrawing commitment to such agreements, and each government must calculate whether it is in their interest. When elected in 2005 Prime Minister Stephen Harper’s government unilaterally cancelled bilateral agreements with each province for child care funding. The subsequent intergovernmental meeting of ministers of social services was particularly acrimonious, and the federal minister has not met with her provincial counterparts since 2006. Provincial and territorial social service ministers have also not met formally. Public servants continue to communicate and share information about their respective programs on an informal basis.

Works Cited


Professor Nathalie Behnke, University of Konstanz

NB. Professor Behnke has provided the Committee with two papers; see DFP/S4/15/22/1(a) and DFP/S4/15/22/1(a).
Overview over the Swiss political system

Switzerland is a federation consisting of 26 cantons, varying in size and wealth (Figure 1). Its political system was founded, in its modern form, in 1848 after a short civil war that had seen catholic-conservative forces lose against protestant-liberal ones. The resulting structure was a compromise that left many powers at regional level (self-rule) and granted the cantons a lot of influence over central decisions (shared rule), too.

With a total population size of 8.2 million inhabitants (in 2014), Switzerland ranks amongst the smaller European states. It is officially a tri-lingual country, with German (spoken by 63.5% of the resident population), French (22.5%) and Italian (8.1%) having the same status. The fourth language of Switzerland, Romansh (a variant of Latin), is spoken only by 0.5% but can be used in dealings with the national authorities; it is also one of three cantonal state languages in the canton of Grisons (together with German and Italian). Like in Belgium, language is tied to territory – in French-speaking Geneva, for example, there are no public schools in German. Language group proportions have thus remained stable for two centuries.

The political system of Switzerland combines representative with direct democracy. The Swiss parliament consists of two chambers, both with exactly the same powers (an Act of Parliament needs explicit approval of both chambers separately). The lower house (National Council) represents the Swiss population, the upper house (Council of States) the 26 cantons. However, the members of both houses are elected by the people in the cantons forming the constituencies (electoral system: mostly free-list PR for the National Council and majority rule for the Council of States). The 200 seats of the National Councils are distributed across cantons in proportion to their inhabitants, with six cantons electing just one National Councillor and Canton of Zurich electing 35. The 46 seats of the Council of States are distributed equally – each of the 20 full cantons gets to occupy 2 seats, each of the 6 half-cantons each (20 * 2 + 6 * 1 = 46). Both National Councillors and Councillors of State vote freely and individually, that is not by instruction. Elections take place every four years in October (next elections: October 2015). After each new election, the two chambers in common session elect the 7-member collegial government of Switzerland. Once elected, the government

1 The six half-cantons are historical constructs that resulted from a canton splitting along centre-periphery issues (Basel-City and Basel-Countryside in 1833), religious lines (Catholic Appenzell Inner-Rhodes and Protestant Appenzell Outer-Rhodes in 1597), or topography (Obwalden and Nidwalden, which have since the early Middle Ages formed two separate entities).
cannot be dismissed and remains in power for 4 years; nor does the government have the right to dissolve parliament and call early elections. The seven members of government have the same powers, each heading one ministry; representation of different language groups and cantons is ensured informally.

Accompanying this representative dimension of democracy are three main elements of direct popular involvement. 1) Since 1848, every total or partial modification of Switzerland’s written Constitution needs to muster a popular and cantonal majority (half-cantons county half, full cantons full). 2) Since 1874, every Act of Parliament is subject to an optional referendum: if within 100 days of the publication the Act 50’000 signatures of Swiss citizens having the right to vote are submitted, the Law is put to a nation-wide popular vote where it needs to gather a simple majority (no quorum as regards minimum participation) in order to enter into force. About 7% of all Acts of Parliament are challenged this way, with a success rate of challenges currently standing at 40%. 3) The final instrument of direct democracy is the popular initiative: Since 1891, 100’000 citizens may propose to partially modify the Constitution. If that number of signatures has been reached within 18 months after an initial check by the federal authorities, the proposal is put to a nation-wide vote. If there it gathers both a popular and a cantonal majority, it immediately becomes part of the Constitution and Parliament has to start working on implementing legislation. As a result of all this, a typical year sees between 12 and 20 national votes – on top of cantonal and local referenda and elections, where more or less the same democratic rights exist.

**Self-Rule**

The cantons are autonomous entities on the hand and designated implementing authorities for federal policies on the other. Most cantons further delegate the implementation of their own or of federal policies to their local governments, who additionally have their own powers (with a wide variation across cantons, however). Citizens don’t always make the distinction what kind of policy has been designed by whom – for them, if they need to get a building permission, a license to open a restaurant, social benefits, pay a parking ticket or – most importantly – pay their taxes, it is always with cantonal or local authorities that they have to deal. Although in practice many competencies have shifted to federal level in the last 170 years, in the image of people the cantons remain strongly autonomous. Cantonal insignia figure on number plates (car licensing is done by the cantonal authorities according to federal law), the cantons have their own police forces with each a different colour (criminal and civil law are national, however), each canton has its own national bank (monetary policy is full national, however). The cantons are most autonomous as regards language (they can define their own state language(s)), education (universities are cantonal institutions, too), culture, health care (cantonal hospitals), and policing (prisons and the court systems are cantonal, although the Federal Tribunal functions as the Court of last instance).

As regards financing, cantons can levy their own taxes. Most important for them here are the income, property, and corporate taxes. Most cantons are self-funded by more than 50%; some cantons, however, receive more money from outside sources than they are able to raise on their own. Figures 2 and 3 show data for the calendar year 2013. In total, 52% of cantonal income comes from own taxation, 8% from own fees, 12% are federal subsidies/reimbursements for specific projects, and 6% each from cantonal shares in federal taxes (redistributed on population basis) and fiscal equalisation money (redistributed based on objective needs; last reformed in 2004/2008).
The federal level, in turn, can also levy a direct tax on income and corporations but draws most of its revenue from indirect taxes: proceeds from the Value Added Tax (VAT) alone makes for 34% of all federal revenue (see also Figure 4 – other major indirect taxes: fuel tax 8%, tobacco tax 4% of total federal revenue).

Cantons spend most of their money on the following three sectors: education, social security, and health (Figures 5 and 6).

Shared Rule

The cantons contribute to federal decision-making in various ways. Their instruments can be divided into formal and informal, individual and collective, and initiating and vetoing categories, thus resulting in the eight possible combinations listed in Table 1.

Table 1: Categorisation of shared rule instruments in Switzerland

<table>
<thead>
<tr>
<th>Purpose</th>
<th>Formal</th>
<th>Informal</th>
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<tr>
<td></td>
<td>Individual</td>
<td>Collective</td>
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<tr>
<td></td>
<td>Inter-cantonal treaties</td>
<td>Territorial lobbying</td>
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<tr>
<td>Initiate</td>
<td>Cantonal initiative</td>
<td>Inter-cantonal associations</td>
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<tr>
<td>Veto</td>
<td>Non-execution of federal policies</td>
<td>Cantonal referendum</td>
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</table>

*Source: Own categorisation*

Formally, the cantons possess four main instruments to influence national policy making. First, the cantonal referendum as provided by the Federal Constitution means that at least eight cantons can demand a popular vote to be held; it is up to each canton to specify who within their political system (government, parliament, both) needs to call for such a referendum. The demand then has to be submitted to the federal government within 100 days of the publication of the respective Act of Parliament (as for the optional referendum; see above, p. 2). If that is reached, a nationwide popular vote is held and the Act is only adopted if a simple majority of voting Swiss citizens agree to it (simple popular majority; no quorum). Although powerful at first sight, since 1848 the cantonal referendum has only been used once; nevertheless, the one time it was used it resulted in a successful challenge by the regions against federal policy: in the popular vote of May 2004, the people rejected the proposed tax reform, so the 11 cantons that had called for the vote were victorious.

A second formal veto structure, this time exercised individually, concerns the implementation stage: individual cantons may deliberately refuse or be unable (for lack of funds, expertise or due to internal political struggles) to fully comply with federal policy requirements, and/or adjust their measures to attenuate the nationally desired effects. The federal authorities usually provide a lot of leeway to the cantons.
On the initiating side of formal shared rule, cantons can together create new macro-regional or indeed national standards in a binding, formal and collective way through inter-cantonal treaties. Although not creating “national” legislation in the strictest of senses, such regulations are still national in their effect if they encompass all the cantons. Also, since 2004 in certain policy areas the Confederation may declare the norms contained therein to apply in the whole of Switzerland, and encore cantonal membership.

The fourth and final formal instrument is the cantonal initiative: cantonal authorities (government and/or parliament, in some cantons even the cantonal electorate) can petition the Federal Parliament to change an existing law or draft a new one. If any one Chamber (or even the competent committee before) refuses, the initiative is dead.

Turning to the informal side of Table 1, cantons can first of all individually lobby the federal level through “their” Members of Parliament (all federal MPs are elected by the people but the cantons are the constituencies, see above), that is bring them to sponsor bills in their favour or act as the mouthpiece during important debates. In recent years, many cantonal governments also started to have permanent envoys (“para-ambassadors”) in the federal capital, Berne, and on the official list of “guests” (non-MPs with access to the lobby of parliament) many a cantonal representative can be found. Related to this, a canton may also threaten not to comply or announce it will help organise a referendum during the pre-parliamentary consultation phase if its demands are not taken into account – like other major interest groups, cantonal governments are heard even before a law enters the parliamentary stage to avoid a referendum challenge since at least 1947.

Collective but informal means are the double majority requirement and inter-cantonal conferences. The double majority requirement means that constitutional amendments need to muster a popular majority as well as a cantonal majority (see above, p. 2), but not the cantonal governments determine how a canton votes but its electorate. In practice, this has meant a veto for the small, rural, conservative cantons and their electorates, respectively. Finally, cantons can or at least try to pro-actively influence national decisions through inter-cantonal conferences, such as the Conference of Cantonal Governments (Konferenz der Kantonsregierungen, KdK) created in 1993. The KdK is thought to compensate for the loss of the territorial character of the Council of States (whose members mostly vote along partisan rather than territorial lines), on the one hand, but also to increase the political standing of the Swiss cantons in increasingly nationalised discourses. Not provided for in the Federal Constitution, inter-cantonal associations such as the KdK and related sectoral and regional conferences nevertheless aggregate cantonal interests and try to lobby the federal authorities in areas important for them. Unlike for inter-cantonal treaties, no public law base for the actions and inactions of conferences exists, and cantonal parliaments do not get to participate either.

Some reflections on Scotland

The Scottish case is obviously very different from the Swiss one. No Swiss canton has ever demanded to secede – one reason for this might be the small size of even the biggest Swiss canton, Zurich (1.4 million inhabitants). Other reasons often mentioned in historic debates as favouring national integration are Switzerland’s neighbours, all very big and (formerly or still) powerful nations that share one of Switzerland’s national languages: France to the West, Germany and Austria to the North and East, and Italy to the South. Fears are that a small Swiss canton, if it seceded, would
simply be absorbed by its much larger and more unitary neighbour. Historically, internal divisions have also been crosscutting – richer areas are divided linguistically, religiously, and topographically, so an alliance is unlikely. The final factor not giving any power to thoughts about secession is obviously the economic success of Switzerland; however, Switzerland became a federation in 1848, but has only started to be the target (and not the point of departure) for migration in the early 20th century, that is 60 years later. The economic take-off then occurred after World War II – as a neutral country and money deposit box, Switzerland got a huge head start over other European countries. Politically, it is thought that the careful balance of decentralised and centralised structures, because grown historically and adjusted continuously, contributes to a more efficient and legitimate functioning of the state.

Looking at Scotland from a Swiss perspective, then, the following question occurs: why not adjust – sector by sector – the division of powers in a way that is mutually beneficial for both Scotland and the UK, meaning that with increased regional competences (over matters that call for or justify regional differentiation) also the responsibility to auto-finance the exercise of these powers increases for the region (and becomes correspondingly lower for the centre, or England in that case)?

Annex: Figures 1 to 6

Figure 1: The 26 Swiss Cantons by population size and wealth, year 2013

Source: Federal Finance Administration and Swiss Office for Statistics

Note: the resource index is based on the sum of personal taxable income, personal wealth, and taxable corporate profits, divided by the number of inhabitants of a canton. To control for the different rules on deductions in the 26 cantons, the standards of the Federal Direct Tax Law are applied. The Swiss average is then set at 100.
Figure 2: Sources of cantonal revenue, all cantons, in billion CHF, year 2013

Source: Federal Finance Administration, 26 February 2015
Figure 3: Sources of cantonal revenue, by canton, in % of total, year 2013

Source: Federal Finance Administration, 26 February 2015
Figure 4: Federal revenue, in billion CHF, year 2013

Source: Federal Finance Administration, 26 February 2015

Figure 5: Areas of cantonal expenditure, all cantons, in billion CHF, year 2013

Source: Federal Finance Administration, 26 February 2015
Figure 6: Areas of cantonal expenditure, by canton, in % of total, year 2013

Source: Federal Finance Administration, 26 February 2015
In October 2011 seven political parties reached an agreement about a new reform of the Belgian political institutions. In this way, the political deadlock that had begun after the 2010 federal elections could finally be broken. Nevertheless, there is a broad consensus that the Belgian political system remains unstable and that a new reform of the state will be unavoidable in the more or less near future. But the political parties disagree fundamentally as to the nature of such a new reform. The current institutional framework of Belgium is often described as a hybrid *sui generis* model, containing both federal and confederal elements. While some parties argue that the Belgian system should be remoulded as a genuine federation, others want to transform Belgium into a full-fledged confederation. This paper contains a detailed analysis of the positions which the various Flemish parties take in this institutional debate. By way of introduction, I briefly discuss the distinction between federalism and confederalism, both from a constitutional and a political science perspective. This is followed by an equally brief description of the federal and confederal aspects of the Belgian political system, which can be skipped by readers already familiar with the Belgian institutions.

1. Federalism and confederalism

Whether the distinction between federalism and confederalism is useful has become a contentious issue, not only in Belgian politics but also in the scientific literature. According to some authors, the
classical typologies of political systems are becoming increasingly obsolete as institutional realities become ever more hybrid. Loughlin (2015: 12), for instance, argues that most current forms of territorial governance do not fit into the classical frameworks, amongst other reasons because the notion of the ‘state’ has evolved towards a more fluid concept. In a similar vein, Keating (2015 : 54) points out that in plurinational states, the locus of sovereignty is constantly being contested. As a result, a grey zone is created between the notions of federalism and confederalism. The European Union is often considered as the supreme example of such a hybrid federal/confederal construct.

Most constitutionalists, on the other hand, are inclined to maintain a clear boundary between a federation and a confederation, in the tradition of German constitutional law. From this point of view, while the various forms of federal or quasi-federal arrangements do indeed defy the rigid typologies and may be considered as forming a continuum, the step from federalism to confederalism is an institutional quantum leap. According to Velaers (2013; 2015 : 20-21) there is a broad consensus amongst constitutionalists on two essential and distinctive characteristics of confederalism: (1) the constituent parts of the confederation are sovereign states which are directly governed by the rules of international public law; (2) the KompetenzKompetenz (i.e. the power to allocate competences) belongs to the constituent parts who decide by treaty to jointly exercise a number of competences. He also gives three additional criteria: (1) the institutions of a confederation are not directly elected but composed of representatives of the member states; (2) the confederation cannot vote laws that are directly applicable to the citizens; (3) the member states of the confederation have a right to secede by terminating the confederation treaty. It is sometimes added that decision-making at the confederal level requires a consensus between all the constituent parts (Swenden, 2006: 13).

Even so, there are also constitutionalists who acknowledge the existence of a grey zone between a federation and a confederation. Sottiaux (2011, 2014) labels such an intermediate model as a ‘federal union’, which he defines as a state in which the sovereignty is shared between the union and the member states. The union remains the bearer of external sovereignty, i.e. it is a sovereign state from the perspective of international public law. But the power to allocate competences belongs to the member states, or is shared between the member states and the union, and is executed via a constitutional treaty.

Even though a polity may not qualify as a confederation or a federal union in the formal sense, the way it functions may have some confederal characteristics. Therefore, as argued by Poirier (2015 : 29), it can be useful to make a distinction between a confederation, as defined above, and confederalism, as a political process. The idea of confederalism as a form of political decision-making comes close to Lijphart’s (1975; 1977) traditional notion of consociationalism. Decision-making in a consociational democracy is determined by the principles of consensus and mutual veto. This implies that all the constituent parts of a divided society form a grand coalition with a veto right for each of them. Particularly in his early works, Lijphart compared consociationalism with decision-making in international politics (1975 : 131-138), thereby underlining the similarity to the concept of confederalism. It can be argued that the notion of federalism is much more in line with Horowitz’ (1985; 1991) integrative approach to accommodating conflicts in divided societies. This is so because genuine federalism normally involves an integrated federal polity with its own political dynamics crosscutting the inter-state conflicts. While from a consociationalist/confederalist
perspective each of the member-states should have the possibility to veto federal decision-making, this will not normally be the case in a genuine federal polity.

2. Belgium: a hybrid institutional model

In article 3 of the Constitution, Belgium is defined as “a federal state composed of regions and communities”. As indicated by this article, it is a peculiarity of the Belgian federal system that two different kinds of ‘member-states’ are distinguished. The country is divided both into three economic regions (Flanders, Wallonia and Brussels) and three cultural communities (the Flemish, the French and the German-speaking Community), the Flemish and the French communities overlapping each other in the Brussels region. This complex institutional structure is a compromise between the Flemish view that Belgium is essentially a bicultural country, consisting of a Dutch- and a French-speaking part, and the Francophone view that Belgium consists of three socio-economic regions, including Brussels as a distinct and equivalent entity (Swenden and Jans, 2009).

Both the regions and the communities have full legislative powers. The powers of the regions are linked to a specific territory and include amongst others economic affairs, environment, housing and area development planning. The powers of the communities mainly include culture, education, the use of languages and the so-called ‘personalised’ matters (for instance health care and family policy). Both the regions and the communities have their own institutions at the legislative and executive level. The sub-entities also participate in the decision-making at the federal level via the second chamber or Senate. As of 2014, this Senate is composed almost exclusively of representatives of the regions and communities: 50 of the 60 Senators are appointed by and from the sub-state assemblies. The powers of the Senate are largely limited to institutional matters.

From a formal point of view, Belgium undoubtedly is a federation and not a confederation. But at the same time, some institutional features of the Belgian polity can be considered as confederal, in the sense that they impose a confederalist or consociational form of decision-making. Article 99 of the Constitution stipulates that the federal government contains as many French-speaking as Dutch-speaking ministers, with the possible exception of the prime minister. This implies that there is parity between the Flemish and the French-speaking community at the level of the federal executive, and both language groups have a veto right at the executive level. According to the Francophone constitutionalist Francis Delpérée (2000: 419) this also implies that the federal government has to have a majority in both the Dutch-speaking and the French-speaking language groups of the federal chamber. However, this was not the case during the past two legislatures. From 2011 to 2014 the federal government did not have a majority in the Dutch language group, and the current government does not have a majority in the French language group.

This confederal model of mutual vetos also extends to the legislative. The major institutional laws (the so-called special laws) have to be voted with a two-thirds majority and a majority in both language groups. Each of the language groups in the federal assembly can veto an ordinary law with a majority of three-fourths. This is called the ‘alarm bell procedure’. If it is applied, the legislative procedure is suspended and the federal executive (where the two language groups are equally represented) has to formulate an advice. In addition, the various sub-entities can invoke a conflict of interest against a law, again with a majority of three-fourths. In that case, the legislative procedure is suspended, and a complex and time-consuming process of deliberation starts. The case of the
BHV-law (involving the splitting up of the bilingual electoral district of Brussels-Halle-Vilvoorde constituency) has illustrated that this procedure effectively allows the Francophone language group to block legislation. This law was voted with a Flemish majority in the committee for internal affairs at the Chamber on 7 November 2007. But the Francophone parties have started a series of conflicts of interest in their various sub-state assemblies, as a result of which the parliamentary procedure was almost indefinitely delayed. In the end, the Flemish politicians had to abandon their attempt to vote the law unilaterally (Sinardet, 2010).

These confederal devices were designed to protect the Francophone minority at the federal level. In the Brussels region, similar devices were installed to protect the Dutch-speaking minority. For instance, the executive of the Brussels region has to have a majority in both language groups, and the legislative procedure in the Brussels Parliament can also be suspended via an alarm bell procedure. This parallelism between the protection of the Francophone minority at the federal level and the protection of the Dutch-speaking minority in Brussels is sometimes considered as a cornerstone of the Belgian institutional compromise.

The aforementioned confederal characteristics derive from the constitution. But the most important reason why some consider Belgium as a confederalist system, is not related to the formal institutional framework. Belgium does not have national or federal political parties. Between 1968 and 1978 the three traditional parties (Christian Democrats, Liberals and Socialists) split up into separate unilingual parties. As a result, Belgium has two different party systems. The Flemish voters vote for Flemish parties, the Francophone voters for Francophone parties. It is only in the constituency of Brussels (formerly Brussels-Halle-Vilvoorde) that they have a choice between the two. In a normal federal system, state-wide or federal parties constitute by far the most important element of linkage between the state-wide and the regional party systems (Swenden and Maddens, 2009: 253). State-wide parties are a crucial factor of integration within the federation, as they have to constantly balance and aggregate the interests of the regional party branches with the interests of the federal party. Conversely, the lack of such integrating federal parties is a factor of disintegration, as the regional parties only have to take into account the interests of the region.

While political scientists tend to assume that institutional decentralization leads to intra-party decentralization (Chhibber and Kollman, 2004), this was clearly not the case in Belgium. The split of the political parties largely preceded the major institutional reforms. At the time of the first important step towards a federal structure, in 1980, the state-wide parties had already ceased to exist. Also, the structural reforms within the parties have prefigured the later institutional reforms of the state (Verleden, 2009).

One of the consequences of this bifurcation of the party system is that the distinction between regional and federal elections has become blurred. Federal elections are de facto regional elections, as they are fought between regional parties. Until 1999, the regional and federal elections were held concurrently, which facilitated the formation of similar coalitions at the federal and regional level. In 2004 and 2009, the regional elections were held separately, resulting in regional coalitions which were not congruent with the federal coalition. Both this incongruence and the quick succession of regional and federal elections were considered as a factor of political instability. Hence the recent decision to synchronize both elections by prolonging the legislature of the federal
elections to five years. From 2014 onwards, there will be a concurrent federal and regional elections every five years (absent an early dissolution of the federal chamber).

In recent years, the two party systems have tended to grow apart, in the sense that the electoral swings are increasingly diverging (Deschouwer, 2012 : 136). For instance, in the 2007 federal election, the liberals triumphed in the Francophone part of the country, while they suffered a defeat in Flanders. This also leads to diverging dynamics of coalition forming. In 2007, for the first time, an asymmetric federal coalition had to be formed, with different parties in the two language groups: the Francophone socialist formed part of the government, the Flemish socialists formed part of the opposition. In 2011 a grand coalition had to be formed in order to realize a major institutional reform.

The sixth and most recent reform of the state, which was implemented in 2012 and 2013, did not fundamentally alter the above described institutional structure. As demanded by the Flemish politicians, a lot of competences were devolved to the regions and the communities, amounting to about 17 billion euro of government expenses. The competences with regard to health care and labour policy were partly transferred. More importantly, for the first time, a part of the social security was devolved, namely the child allowances. This competence, which clearly involves a ‘personalized’ matter, was transferred to the three communities, with the exception of Brussels. In Brussels this competence was transferred to the Joint Community Commission (which is mainly responsible for bilingual personalized matters). This implies that, unlike the personalized matters that were transferred in the past, there will be a single child allowance system for all inhabitants of Brussels.

The institutional reform also involved an increase of the fiscal autonomy of the regions amounting to about 11 billion euro. The direct election of the Senate was abolished. As already mentioned, the Senate now functions as a federal Second Chamber, largely composed of members from the sub-state parliaments, and with limited competences.

3. The positions of the Flemish parties with regard to a new reform of the state

In the past, reforms of the state often gave rise to a certain enthusiasm about the Belgian institutional ingenuity. Belgium was often portrayed as a model for other countries coping with cultural and ethnic divisiveness. This is less the case today. One has the impression that nobody is really satisfied with the way the Belgian political system is currently functioning. The more Belgian-minded citizens regret that the federal level is ‘robbed’ of so many competences. They specifically resent that by splitting-up the child allowance system, a breach is made in the federal social security system, which is considered as the cornerstone of Belgian unity. The pro-Belgian citizens fear that this will further weaken the federal institutions and strengthen the centrifugal and confederal dynamics in the system. But the regionalists are not happy either, particularly in Flanders. They argue that the competences were transferred in a very fragmented way, as a result of which the regions will still lack the necessary levers to wage an efficient economic and social policy tailored to the preferences of the citizens. Furthermore, the Flemish regionalists regret that the position of Brussels is considerably strengthened, because this region will also become competent for some personalized matters.
Constitutionalists generally acknowledge that the system has become even more complex due to the sixth reform and wonder whether this will be tenable. They expect that in the years to come, the Constitutional Court will be overwhelmed with cases and will have to bring some order into the chaotic allocation of competences (Verrijdt, 2014; Pas, 2014). Other constitutionalists point at a democratic deficit at the federal level: while the federal competences remain substantial, the integrated Belgian polity needed to legitimize federal policy making has ceased to exist. Hence, either this Belgian polity should be recreated, or the federal level should be further dismantled (Sottiaux, 2011, 2014).

For all these reasons, most politicians and political analysts believe that the current system will remain unstable, and that a new reform of the state will be unavoidable in the more or less near future. In what follows I will discuss the positions of the Flemish parties with regard to these further institutional reforms. But first of all, it has to be emphasised that, in the run-up to the 2014 election, most parties agreed that the country needed an institutional break: the next government should focus on the economic issue and the implementation of the previous reform of the state. Even the Flemish-nationalist N-VA, which had elaborated a detailed blueprint for confederalism in January 2014, realized that it would be side-lined by the other parties if it insisted on a new institutional reform. Therefore, this party also prioritized the economic issue during the campaign. It was only the far right and separatist Vlaams Belang which kept hammering away at the institutional issue.

As a result of this widespread fatigue with institutional matters and the near-consensus that a new reform of the state would have to wait until, at least, 2019, most of the parties did not present elaborate institutional proposals to the voters. They only gave some hints as to the desired institutional development of the country. The exceptions are Vlaams Belang and NVA, which did formulate specific proposals. In what follows, I will first briefly summarize the positions of the various Flemish parties. Next I will focus on three major institutional issues found in the manifestoes: the federal constituency, the transformation of Belgium into a union of four member-states and confederalism.

The Christian-democrats of CD&V defend in their manifesto the notion of ‘positive confederalism’. According to CD&V, this implies that the member-states constitute the ‘centre of gravity’ of the political system and the member-states may devolve competences to the “federal/confederal” or the European level. According to CD&V, this has been largely realized through the sixth reform of the state, as the budget of the Flemish government has become larger than the federal budget (not taking into account social security expenses). According to CD&V, the new Senate is the appropriate forum for discussions about a new reform of the state. To this end, CD&V proposes that the Senate would establish a ‘knowledge centre for the reform of the state’, which could bring together the existing scientific and political expertise in the field. CD&V also argues that the sixth reform of the state requires a new cooperation agreement between the member-states and the federal government, which should strengthen the role of the member-states at the EU-level and in the field of foreign trade. Finally, CD&V is in favour of strengthening the ties between the Flemish region and the Dutch-speaking community in the Brussels region (CD&V, 2014).

While the liberals of Open VLD used to be proponents of a form of confederalism, they abandoned this concept in the run-up to the election. In the very brief section of its manifesto devoted to the institutional issue, the party now puts forward the notion of ‘cooperative federalism’. Open VLD is in
favour of strengthening the cooperative devices in the institutional framework. More in particular, it wants to transform the Concertation Committee (which has to deal with conflicts of interest between the member-states) into a body which can effectively take political decisions. But the manifesto does not specify the details of such a reform. The most specific proposal in the liberal manifesto concerns the introduction of a federal constituency. Open VLD proposes that “some” members of the federal Chamber are elected in such a constituency (Open VLD, 2014).

In their manifesto, the socialists of SP.A defend the idea of a Belgian union with four member-states. Because the member-states have become so powerful due to the sixth reform of the state, Belgium can no longer be considered as a normal federal state, according to the socialists. At the same time, it is more than a loose confederation of sovereign states bound by a treaty. Instead, Belgium is a hybrid structure which should evolve towards a union of four member-states. This implies that Brussels should be seen as a full-fledged member-state of the union. The SP.A points out that the sixth reform of the state has strengthened the role of Brussels, as this region has now also obtained some community competences. This reform was therefore in line with the tendency towards a stronger Brussels sense of identity.

According to the SP.A, these new state structures should be evaluated “within a few years”. This evaluation may lead to a further devolution of competences, but also to a transfer of competences to the federal level. However, social security and health care are crucial competences of the union, as they guarantee the solidarity between all Belgians (SP.A, 2014).

The manifesto of the ecologist party Groen does not contain a broad vision on the Belgian institutional framework, but is limited to a few isolated proposals. First, a part of the members of the federal Chamber should be elected in a federal constituency. Second, the party is in favour of a closer cooperation between the regions with regard to the broader metropolitan area around Brussels (Groen, 2014).

The far-right and Flemish-nationalist Vlaams Belang is in favour of outright independence for Flanders. First, the Flemish Parliament should proclaim the sovereignty of Flanders. This should lead to negotiations with Wallonia about the separation, in conformity with the international principles concerning secession. At the same time, Flanders has to convene a constituent assembly. The party hopes that Brussels will agree to become an integral part of Flanders and remain its capital. If that would be the case, Flanders should guarantee that Brussels will retain its bilingual status (Vlaams Belang, 2014).

The centre-right Flemish-nationalist N-VA is also in favour of independence, at least according to its statutes. But this is a long-term goal for the party. In the short run, the N-VA wants to turn Belgium into a full-fledged confederation. During the 2010 election, the N-VA had already campaigned on a program of confederalism. But this program was in many respects ambiguous, particularly with regard to the position of the Brussels region in this confederal structure. The party, which had now become the largest party in Belgium (with 17.4% of the national vote and 27.8% in Flanders), was increasingly criticized for being so ambivalent about this confederal reform. This obliged the N-VA to develop a more coherent and detailed institutional program in view of the 2014 federal and regional elections (N-VA, 2014). This has turned out to be by far the most detailed blueprint for a confederal
Belgium that has ever been elaborated. Below, in the section on confederalism, I will sketch the main outlines of this blueprint and discuss its most important features.

4. A federal constituency?

As seen above, both Open VLD and Groen propose that a part of the members of the federal Chamber are elected in a federal i.e. nationwide constituency. This is an idea that was originally launched by a number of academics from the Pavia-group, an institutional think-tank (Deschouwer and Van Parijs, 2009; Sinardet 2012a; Sinardet a.o., 2012).

At present, the 150 Belgian MPs are elected in 11 provincial constituencies. The Pavia-group proposes to elect 15 of these MPs in a federal constituency. This would imply that voters have two votes: one for a list in the provincial constituency and one for a list in the federal constituency. In line with Donald Horowitz’ integrative approach to accommodating ethnic conflicts (Horowitz, 1985; 1991), the proponents hope that such a federal constituency will add a centripetal dynamic to the system. They argue that this electoral device will act as an incentive for politicians to adopt a more moderate profile. Candidates with a more accommodative ‘pan-ethnic’ Belgian stance, who defend the interests of the federation as a whole, would have an electoral advance, being able to draw votes on both sides of the language border. On the other hand, candidates who only defend the interests of their own language community and hence appeal to only one language group would be electorally disadvantaged. In this way, the federal constituency would function as an incentive for moderation and cross-ethnic outreaching. The federal constituency would also create an incentive for the parties to collaborate more closely with their sister-party across the language border. The best way to maximize the number of federal seats for one ideological family would be to present a single federal list. This would also be the only way to avoid that parties belonging to the same ideological family have to compete for these federal seats against each other.

According to the Pavia-group, it is essential to apply language quota to the election of the 15 MPs in the federal constituency. The number of Dutch-speaking and French-speaking MPs will be fixed, to respectively 9 and 6. It is feared that, without fixed language quota, many voters might be reluctant to vote for a candidate from the other language group, as this would reduce the number of MPs from their own language group.

However, it can also be argued that this distinction between Dutch-speaking and French speaking federal MPs is at odds with the integrative logic of the proposal, which aims precisely at making the linguistic cleavage less salient and creating an institutional incentive for an electoral competition which would cross-cut this cleavage (Maddens, 2009). But the Pavia-group wants to keep the consociational elements of the present system, such as the clear division between the two language groups in parliament, intact. The group only proposes to add an integrative element to an inherently consociational system. This requires that the nationally elected MP’s have also to be divided into a Dutch- and a French-speaking group. The only alternative would be to resort to the awkward solution of creating a third category of linguistic ‘asexual’ MPs. In any case, what the Pavia-group proposes is clearly at odds with the institutional coherence insisted on by Horowitz (2000).

During the negotiations about the sixth reform of the state, various parties defended the idea of a federal constituency. Apparently, it was particularly CD&V which was against the idea. Eventually, it
was agreed that a special parliamentary committee would be installed to discuss the proposal. This committee organised hearings with political scientists and constitutionalists, but did not formulate conclusions. The proceedings of the discussion in the special committee (Hellings, Bacquelaine and Gennez, 2014) confirm that Groen! and Open VLD are the only two Flemish parties who defend the proposal without reserve. SP.A was more critical, though also favourably inclined towards the proposal. N-VA and Vlaams Belang were, unsurprisingly, staunchly against. Interestingly, the MP’s of CD&V did not intervene in the discussion.

5. A Belgian union with four member-states?

As has undoubtedly become clear above, the complexity of the Belgian institutional model is largely due to the distinction between two kinds of member states, i.e. regions and communities. Hence, abandoning this distinction is often considered as a logical step towards simplifying the model. This would imply that Brussels and the German-speaking Community become full-fledged member-states, with equal powers as Flanders and Wallonia. Thus the Brussels ‘region’ would obtain all the competences in the field of culture, education and personalized matters, while the German-speaking ‘community’ would become fully competent for territory-bound matters. This is the ‘four member-state model’ in its purest form (Brassine and Destatte, 2007).

The dynamics of the subsequent reforms of the state have gradually pushed the system in the direction of this four member-state model. On the one hand, as explained above, the sixth reform of the state involved a transfer of certain ‘community’-competences to the Brussels region. On the other hand, in the Walloon region there is an on-going process of transferring territory-bound competences to the German-speaking community. Most recently, an agreement was reached between the Walloon and the German-speaking government to transfer almost all competences with regard to employment policy to the German-speaking Community. In this way both Brussels and the German-speaking Community can increasingly be considered as ‘region-communities’. Nevertheless, this development should not be overstated with regard to Brussels, as the sixth reform of the state did not actually scale back the existing competences of the Flemish and the French Community in Brussels (Lievens, 2014).

SP.A is currently the only Flemish party which explicitly endorses the four member-state model. This idea was originally launched by the former socialist minister and constitutionalist Johan Vande Lanotte (2011). But Vande Lanotte does not defend the pure model. In order to maintain the linkage between the Flemish region and the Dutch-speaking minority in Brussels, Flanders should remain competent for cultural, educational and personalized matters in Brussels, except those which are related to social security and therefore involve fundamental social rights. It is in line with this reasoning that the sixth reform of the state transferred the child allowances to the Brussels region and not to the two communities in Brussels. Hence, it can be argued that Vande Lanotte’s model does not fundamentally differ from the present one. If the Flemish member-state retains competences in the Brussels region, then the Walloon member-state will probably demand the same. Both member-states will need an institutional vehicle to exercise these competences, guaranteeing
the involvement of respectively the Dutch- and French-speaking citizens in Brussels. In this way, the communities will get back in by the back-door, and we are back to square one.

In any case, the stand of SP.A in favour of a four member-state model is highly significant, as Flemish politicians have traditionally been reluctant to move in this direction. As explained above, they have always taken the view that the communities are the fundamental building blocks of the Belgian institutions. A four member-state model, with Brussels as a full-fledged member-state, is more in line with the Francophone view. The Flemish have always feared to be permanently minorized in an institutional setting with three regions, as this would pit Flanders against both Wallonia and Brussels. This could even be exacerbated if the German speaking member-state (whose political parties mostly form part of the Francophone parties) would take sides with Wallonia and Brussels. On the other hand, as will be discussed below, it is clear that such a simple three or four member-state constellation would facilitate the further devolution of social security competences and the creation of a genuine confederation.

6. A full-fledged confederation?

As seen above, both CD&V and N-VA are in favour of confederalism. But the two parties define this notion quite differently. According to CD&V ‘positive confederalism’ implies that (1) the member-states constitute the ‘centre of gravity’ of the system (in the sense that their budgets are larger than that of the confederation) and (2) the member-states decide whether or not to devolve competences to the confederation or the EU. CD&V claims that Belgium has become such a confederation after the sixth reform of the state. While this may be true with regard to the first criterion (not taking into account social security), it is certainly not the case with regard to the second. This is so because it is still the federal level which possesses the Kompetenz-Kompetenz, as the competences are allocated on the basis of the federal constitution and through federal special laws.

It does not come as a surprise that the confederal model proposed by the Flemish-nationalist N-VA comes much closer to the formal ideal type of a confederation. The N-VA proposes to transform the Belgian Constitution into a constitutional treaty between Flanders and Wallonia. In the present (quasi-)federal system, the regions and communities have only the competences that are explicitly devolved, while the federal state retains the residuary powers. In the N-VA model, this is reversed: the confederal powers are limited to the competences that are transferred in the constitutional treaty, while the member states retain the subsidiary powers.

The legislative powers for these confederal competences lie with the confederal parliament. This parliament is indirectly elected by the parliaments of the member states on a parity basis: 25 confederal MPs are appointed by and from the Flemish MPs and 25 by and from the Walloon MPs. In the same vein, the confederal executive is composed of six ministers. Two are appointed by the Flemish Parliament and two appointed by the Walloon Parliament. One of these four is the chairman. The remaining two ministers have a double mandate and are also a member of respectively the Flemish and the Walloon government.

The Belgian confederation will retain a single head of state, which will be the monarch. But this king or queen will only play a ceremonial role. In analogy to the EU-institutions, the cooperation between the member-states will be organized in two additional bodies. The Flemish and the
Walloon prime minister together form the Belgian Council, which is comparable to the European Council. The Belgian Council of Ministers consists of all the ministers competent in a certain policy area. In other words, its composition varies according to policy area, just as is the case with the EU Council of Ministers. The competences of these two councils include the negotiation of the cooperation agreements between the member states, the settling of conflicts of interest and the preparation of the joint position of the confederation in the EU and other international bodies. Adopting a joint position in the EU is necessary because the Belgian confederation will remain a single member state of the EU in the N-VA blueprint.

But the crucial question is obviously what the position of Brussels in this confederal structure will be. To start with, the N-VA does not consider Brussels as a separate component of the confederation. It is not a party in the constituent treaty. With regard to the competences of the Brussels region, the N-VA harks back to the aforementioned distinction between the territory-bound and the personalized matters, which forms the basis of the present federal structure. The capital-region of Brussels will obtain full autonomy for all the territory-bound competences. This implies that the powers of the present Brussels region will be considerably increased, as Brussels will become competent for all the territory-bound competences that are not transferred to the confederation. For instance, the Brussels region will become competent for corporate taxes and short-term unemployment.

But the personalized matters are quite a different story. In the present federal structure, the two communities are competent for most of these personalized matters in the Brussels region. This implies that the inhabitants of Brussels have to choose between the institutions governed by the Flemish community and those governed by the Francophone community. For instance, they can send their children to a Flemish school or to a Francophone school. Or they can choose to send one child to a Francophone school, and the other to a Flemish one. The N-VA extends this model of choosing between the two communities to all non-territory-bound competences. This implies that the inhabitants of Brussels will also have to choose between the Flemish and Walloon social security system, and the Flemish and Walloon income tax system. This will become an all-in choice, in the sense that it will not be possible to opt for, for instance, the Francophone health security system and paying income tax to the Flemish authorities. In this way, a relationship is created between financing and obtaining government services. Nevertheless, all the inhabitants of Brussels, irrespective of their choice, would still be allowed to make use of the services of either member state. For instance, the Francophones could still go a Flemish hospital. This would in principle also apply to schools, although the Flemish schools would give precedence to children of parents opting for Flanders. Finally, depending on their choice for either Flanders or Wallonia, the inhabitants of Brussels belong the electorate for the Flemish Parliament or the electorate of the Walloon Parliament. Both parliaments have to ensure that respectively the Flemish and the Walloon Brusselsers are proportionally represented.

The Brussels-region also has a separate parliament, consisting of 55 Francophone MPs and 15 Flemish MPs, elected by respectively the inhabitants opting for the Walloon member-state and the inhabitants opting for the Flemish member-state. The Brussels executive consists of three Francophone and three Flemish ministers, appointed by respectively the Francophone and Flemish MPs.
The position of Brussels within the confederal framework remains somewhat ambiguous. With regard to the non-territory bound competences, the confederation has a clear cut dual structure, with two components. But with regard to the territory bound competences, it consists of three equal components. In other words, it is a confederation with 2,5 member states. As already mentioned, Brussels is not a separate party in the constitutional treaty, and is thus not considered as a sovereign entity. Although this is not spelled out in the proposal, this would imply that Flanders and Wallonia stipulate in the constitutional treaty that the powers with regard to the territory-bound competences in the region of Brussels are transferred to the Brussels authorities (and can, by implication, also be taken back via an adaptation of the treaty).

In order to make this status of Brussels as a ‘half member state’ fit in the overall institutional design, the N-VA has to resort to some half-hearted solutions. Brussels is not as such represented in the confederal executive. The prime-minister of the Brussels-region can join the Belgian Council, if “this is required by the topic under discussion”. Similarly, “when the occasion arises”, the council of ministers may also include a minister from the Brussels government.

It is particularly the N-VA proposal of introducing a ‘Brussels choice’ which has met with fierce criticism, both from the Brusselers themselves, and from most politicians outside Brussels. Obligating the inhabitants of Brussels to make a choice between Flanders and Wallonia has been compared with introducing a system of apartheid. Strengthening the distinction between the two communities in Brussels is also considered to be at odds with the multicultural mix in the capital. The N-VA is also criticized for running counter to the growing tendency amongst the inhabitants of Brussels to identify with Brussels in the first place, instead of the Flemish and Francophone communities.

The N-VA has defended its proposal by pointing out that the choice which the inhabitants of Brussels have to make is merely an administrative matter which hardly bears upon the identity of the citizens. The party also argues that its proposals with regard to Brussels are perfectly in line with the distinction between communities and regions, which forms the basis of the state structure since 1970. It also has to be pointed out that, in the past, the other Flemish parties have made similar proposals with regard to Brussels. In 1999 the Flemish Parliament voted five resolutions concerning a further reform of the state. These resolutions envisaged a federal structure with two member states (Flanders and Francophone Belgium) and two entities with a more subordinate status (Brussels and the German-speaking Community). They also envisaged a complete transfer to the two member-states of the competences regarding child allowances, health insurance and income tax. In Brussels, the inhabitants would also have to make a choice between the two member-states.

The N-VA blueprint is more detailed than the five resolutions and also more radical in many respects. For instance, the N-VA would also devolve the competences for pensions and unemployment benefits to the member states. Also, the five resolutions remained within a federal logic. Nevertheless, the N-VA proposals are in line with the basic institutional ideas underpinning the five resolutions. It can even be argued that the five resolutions were more radical in some respects. They also proposed a form of co-governance (by the two member states) for the territory-bound competences in Brussels which are of national interest (Witte and Van Velthoven, 201: 182). In the N-VA proposals, on the other hand, Brussels remains fully competent for these territory-bound competences, as explained above.
Even though the N-VA-proposal is far-reaching in many respects, the institutional model which the party has in mind still falls short of a confederation *sensu stricto*. This is so because the external sovereign statehood would still belong to the confederation and not to the two member states. While this is not explicitly spelled out in the proposal, it can be deduced from the fact that Belgium would remain a single member-state of the EU. Hence, the N-VAbu blueprint is closer to the model of a federal union, as defined by Sottiaux (2011; 2014): the federation remains the bearer of external sovereignty, while the internal sovereignty, i.e. the *Kompetenz-Kompetenz*, belongs to the constituent parts. Thus, it can be concluded that neither of the two Flemish parties which defend a ‘confederal’ model (CD&V and N-VA) have a genuine confederation in mind.

7. Concluding remarks

The results of the 2014 federal and regional elections in Flanders were ambiguous. The NVA won, but mainly at the expense of the far-right Vlaams Belang. At the same time, the three incumbent government parties (CD&V, Open VLD and SP.A) obtained a slight majority in Flanders. Therefore, it was in theory possible to form a tripartite government at both the federal and all the regional levels. As the N-VA did not have any political leverage to impose a new reform of the state, it had to abandon all institutional claims during the government formation negotiations. These led to an unexpected result. At the federal level, a centre-right government was formed with three Flemish parties (N-VA, CD&V and Open VLD) and only one Francophone party (the liberals of MR). This Francophone party only represents 25.5% of the Francophone voters. In Flanders, the coalition at the regional level mirrors the federal coalition. But in Wallonia a centre-left coalition was formed, with socialists (PS) and Christian-democrats (CdH). Thus, for the first time in the history of Belgian federalism, a regional government was formed which does not contain any party that is also part of the federal government and which can function as a bridge between the two levels.

This outcome was initially considered as highly risky by political analysts. The complexity of the Belgian institutional framework requires a close cooperation between the various levels. For the implementation of the sixth reform of the state, no less than 26 cooperation agreements have to be concluded between the regional and the federal authorities. Also, the centre-left Walloon regional government has the power to interfere in federal decision making via the procedure of an executive conflict of interest. But the initial threats by some PS politicians to use these powers were not carried out. While the federal and the Walloon government have clashed over some issues, most notably the implementation of the new finance law, these conflicts have not (yet) escalated or led to an institutional deadlock. The Francophone socialists probably fear that such an escalation would benefit the Flemish nationalists and lead to a break-up of the federation.

In any case, it can be argued that these recent political developments have given a more federal turn to the Belgian political system. Just as in a normal federation, a federal majority has been formed on the basis of the cross-cutting left/right-cleavage, without taking into account the balance of power and the coalitions in the member states. The fact that the Francophone component of the federal government only represents a small minority of the Francophone electorate is clearly at odds with the logic of the consociational/confederalist model. To a certain extent, this was already the case in the previous legislature, as the federal government did not have a majority in Flanders. But the difference was much smaller: the Flemish component of the federal government represented
45.5% of the Flemish electorate. Also, this former federal executive could be considered as a kind of emergency-government, formed after a political crisis of no less than 541 days.

What will happen when the present institutional stand-still ends in 2019? The N-VA appears to hope that the left-wing majority in Wallonia will become so fed up with being ruled by a right-wing predominantly Flemish majority that it will eventually demand a confederalist reform of the state. But such a scenario is unlikely in the short run. It would take a spectacular U-turn of the Francophone socialists to accept the confederal model of the N-VA and the splitting-up of social security. As already pointed out above, the Francophone socialists try to avoid what they consider as a trap set up by the N-VA. Nevertheless, such a development cannot be ruled out in the long run.

In the same way as the subsequent Thatcher-governments have radicalised the left-wing Scottish voters and fuelled the drive for Scottish independence, a continuous dominance of right-wing Flemish parties at the federal level may sharpen the Walloon appetite for more autonomy. But it is far from certain that the present highly exceptional coalition will be able to continue after the 2019 or 2024 elections.

In the meantime, it also remains to be seen how the N-VA will evolve. It is unusual for a regionalist anti-system party to participate in a national government. It is even more unusual that such a party obtains the ministerial portfolios that are most associated with the central state (treasury, defence, interior affairs). This might draw the N-VA into the political system and gradually transform it into a centre-right mainstream party with, at most, moderate institutional demands.

But even if the N-VA continues pushing for a radical institutional reform and consolidates its strong electoral position, it is doubtful whether its confederal blueprint will ever become reality. While there used to be a consensus amongst the Flemish politicians that the two large cultural communities are the fundamental building-blocks of the institutional architecture, this is no longer the case. As shown above, the Flemish socialists now explicitly endorse a four member state-model. They argue that Brussels should be considered as a full-fledged constituent part due to the increasing sense of Brussels identity. The latter development can be considered as a game-changer in the institutional dynamics. Reforms which oblige the inhabitants of Brussels to make a choice between the Flemish or the Francophone communities are increasingly considered as illegitimate, also amongst Flemish politicians. As a result, the sixth reform of the state has transferred the competences with regard to child allowances to the Brussels region and not to the two communities in Brussels. This is an important precedent for future institutional reforms. Because these reforms are highly path dependent, it is to be expected that any further devolution of personalized competences will follow this precedent.

Put differently, a four member-state model would greatly facilitate the splitting-up of social security and the transformation of Belgium into a loose confederation or federal union. Therefore, the N-VA might well face a difficult dilemma in the future: either it accepts the four member-state model, or it abandons its confederalist dreams.
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Honorable Committee members,
please find on the following pages evidence on the German system of horizontal and vertical intergovernmental relations (IGR) as well as on the system of fiscal equalization and the means of parliamentary scrutiny.

The evidence is structured as follows:

1. Structures and operations of vertical IGR
   a) Self-rule and shared rule in the German competence distribution
   b) Institutions and mechanisms of IGR
   c) Opportunities of the Länder to influence policy-making

2. Fiscal Equalization Scheme
   a) Distribution of competences
   b) System of tax allocation
   c) Equalization mechanisms
   d) Reform debates

3. Parliamentary scrutiny
1. Structures and operations of vertical IGR

a) Self-rule and shared rule in the German competence distribution

- **German Länder have a mix of shared rule and self-rule**

  The competence distribution between the German Länder and the federal level follows generally a scheme of functional distribution of powers. A functional distribution of powers means that the federal level has the primary competence for legislation while the Länder level has the primary competence for the execution and implementation of laws. This functional division of powers crosscuts policy fields and stands in stark contrast to dual federal systems such as Switzerland and the United States. There, competences are assigned to levels of government according to policies instead of functions.

  While in practice, the federal level holds the overwhelming majority of legislative competences, according to the text of the constitution, this is not so obvious. According to Art. 70, para 1 Basic Law, the Länder hold the residual legislative competence, while the federal level has the right to legislate only in matters which are assigned explicitly to it. In practice, however, the list of exclusive legislative competences of the federal level (Art. 73 Basic Law) is rather long. The Länder retain the right to legislate only in minor matters. The two most important fields of Länder legislative competences are culture/education and police (see figure 1 below).

  In all matters of exclusive competence, the Länder legislate autonomously, exercising their right to **self-rule**. Even in those matters, however, they tend to coordinate their agendas and actions horizontally with the other Länder and to some extent even vertically with the federal level. The reasons for this voluntary interest in coordination are as follows:

  - avoiding/containing externalities of uncoordinated action;
  - exchanging data and information, e.g. for crime prevention or consumer protection;
  - sharing experiences and best practice/benchmarking/yardstick competition and learning;
  - securing a certain level of harmonization in order to facilitate cross-Länder mobility (e.g. in terms of educational achievements);
  - furthermore, some tasks simply need broad coordination, as e.g. currently the stream of refugees coming to Germany.
In matters of shared rule, the Länder have the right to co-decide in federal legislation via the Bundesrat, the second parliamentary chamber representing the Länder. The Bundesrat members are recruited, however, not from Länder parliaments, but from Länder governments. It is thus a Länder chamber, but represents executive rather than legislative interests. In this property, the Bundesrat is fundamentally different from Senates around the world, but structurally very similar to the Council of ministers of the European Union. Constitutionally, every law that is passed by the Bundestag as the first parliamentary chamber also needs to be passed by the Bundesrat. We distinguish, however, laws that need the active approval of the Bundesrat (i.e. an absolute majority of votes) from laws that can be vetoed in the Bundesrat if an absolute majority of votes is against a law (Art. 52, para 3 and Art. 77, para 2a-4 Basic Law). In particular the
approval laws constitute a very strong voice of the Länder in federal legislation. A law requires the approval of the Bundesrat if it changes the constitution (Art. 79 para 2 Basic Law), if it results in financial consequences for the Länder (Art. 105 para 3 and Art. 104a para 4 Basic Law) or if it interferes in the organizational and administrative autonomy of the Länder by making specific provisions for the implementation of the law (Art. 84 para 1 Basic Law). All in all, those conditions result in a proportion of roughly 40 % of all laws that need Bundesrat approval.

Although the proportion of approval laws could be reduced since the first German federalism reform in 2006 from about 50 % to about 40 %, a strong inclination among the German Länder is perceptible to trade rights of self-rule against rights of shared rule, i.e. to trade autonomy against co-decision. This is certainly due to the cultural heritage of German federalism, which had always a strong tendency towards unity and uniformity. The equivalence of living conditions is one major constitutional principle guiding the distribution of legislative competences (Art. 72 para 2 Basic Law) as well as the distribution of taxes (Art. 106 para 3 Basic Law, see section 2 below). There is, however, another reason why the German Länder do not evaluate self-rule very highly and advocate shared rule instead: the Länder differ rather widely in their fiscal capacity and economic strength (as well as in size, population and many other socio-economic criteria). While the rich Länder (in particular Bavaria, Bade-Württemberg and Hesse) have the fiscal means to shape their own policies according to party political preferences or regional needs, most of the Länder are strongly dependent on co-financing by the federal level and would not be able to breathe life into additional policy-competences under self-rule. Rather, they prefer to secure for themselves a voice in the federal legislation process which enables them to make financial commitments of the federal level part of the legislative debate when drafting new policies.

b) Institutions and Mechanisms of Intergovernmental Relations

- German Länder dispose of a multiplicity of institutions and mechanisms of intergovernmental relations, the most important of which are the Bundesrat and the Länder representations in Berlin for matters of shared rule and the (prime) ministerial conferences for matters of self-rule.

The Bundesrat, as explained in the preceding section, is the primary institution of shared rule and thus the most important body of vertical IGR. The Bundesrat goes in session roughly once every three weeks, then having an agenda of 50 to 100 issues. Those sessions need obviously intense preparation. Therefore, the three weeks between two Bundesrat sessions follow a fixed coordination procedure. Week 1 is the 'committee week', where the Bundesrat committees meet and discuss those topics of relevance for their policy field and take preliminary votes in the committees. Week 2 is the 'coordination week', where inter-departmental coordination in the individual Länder starts, leading to a Cabinet vote in each Land on every topic at the end of the week. Week 3 is the 'Bundesrat week' where final fine-tuning of positions, coalition-building
and vote count before the session take place in Berlin. As can be seen, in the preparation of Bundesrat sessions, horizontal and vertical coordination are equally important. Coordination efforts are channeled through three institutions:

i. the State Chancelleries as the core executives of the Länder;
ii. the Land representations in Berlin and
iii. party-specific coordination circles, the so-called 'A- and B-rounds'.

ad i.
The State Chancelleries are the centers of government at Länder level. They have the rank of a ministry, their political head is the prime minister and their administrative head typically a minister or secretary of state. The organizational structure of State chancelleries incorporates 'mirror units' maintaining contact to all sectoral ministries; furthermore, one unit is tasked exclusively with coordination between the federal and the Länder level. This unit works closely with the Land representation in Berlin and channels information from the cabinet to the Berlin representation and vice versa.

ad ii.
The Land representations in Berlin seem to be an exclusive German phenomenon which long predates the foundation of the Federal Republic in 1949. Even during the 'German Reich' in the second half of the 19th century, the non-Prussian German Länder had sent their representatives to Berlin as an ear and spokesperson and lobbyist for the Länder at the imperial court. Today, every Land (except Berlin) has a representation in Berlin, while size and endowment with personnel and financial resources vary widely according to the size and financial capacity of the respective Land. The representations fulfill nearly the same function as they did in historic times. Headed by a minister or secretary of state who is formally part of the State Chancellery, the civil servants working there are sent from their home departments in the Land as policy experts. They participate in the respective Bundestag committee sessions and also in Bundestag factions' working groups; they go to the respective Bundesrat committee meetings and provide their expertise as a basis for Cabinet decisions in their home Land. That is, they form a 'brotherhood of experts' with politicians and civil servants in the same policy field from all Länder as well as from the federal level, meeting repeatedly in Berlin and discussing reiteratively the same topics, thus forming their own positions, learning to know the positions of others, fathoming possible points of convergence and pre-forming possible coalitions for the Bundesrat vote. They channel information from Berlin to their Land and positions from their Land to the Berlin meetings; they can contribute to setting relevant issues on the agenda and adapt their Land's position or convince others to move more closely towards their own standpoint. In this activity, it is hard to distinguish whether the relations are targeted to horizontal or to vertical coordination, as mostly both are achieved in the same processes.

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1 A more detailed analysis of the pre-Bundesrat coordination can be found in Behnke (2015), a research paper of mine which I attach to the evidence.
2 In the past 20 years, the Länder have also established representations in Brussels. They have, however, a completely different function. They have no right to participate in legislative decision-making at European level. But they channel information, do lobbying work and networking across regions and states in the EU.
The working of the Land representation is furthermore supported by party-specific coordination circles. Due to the fact that to date all coalitions in Germany involved at least one of the two major people's parties – the Christian Democrats (CDU and – in Bavaria CSU) and the Social Democrats (SPD) – the party circles of those two major parties contribute a great deal to making horizontal and vertical coordination in IGR work. Where the Social Democrats are part of the coalition, their representatives participate in so-called 'A-rounds', and where the Christian Democrats are part of the coalition, their representatives participate in so-called 'B-rounds'. Those rounds include regular telephone conferences (as a rule once a week) as well as personal meetings in Berlin during the 'Bundesrat week'. This way, all 17 governments in Germany are linked in two overlapping coordination circles and gain a lot of information on positions and interest coalitions of the other governments. Those informal circles function also across party lines. For instance, in Thüringen, where in 2014 for the first time a prime minister of the socialist party 'Die Linke' had been elected (Bodo Ramelow) and the government is formed by a coalition between the left party, the Social Democrats and the green party, many civil servants in the State Chancellery are – due to the preceding CDU government – still CDU members. Thus they continue to participate in the B-rounds, which is of great help for the prime minister who would otherwise lack important information. Furthermore, the coalition partner participates in the A-rounds. This way, even a new government outside the traditional party formation can quickly be included in the established coordination circles.\(^3\).

The prime ministerial and departmental ministerial conferences complement the IGR channeled through the Bundesrat sessions.\(^4\) To date, 18 ministerial conferences and one prime ministerial conference exist in Germany.\(^5\) The prime ministerial conference deals primarily with matters requiring cross-sectoral coordination as well as matters of elevated political significance. The sectoral ministerial conferences, in contrast, deal with rather technical matters requiring the expert knowledge of Senior Civil Servants in the Länder ministries. Their denominations correspond roughly with the titles of federal

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3 The green party is meanwhile coalition partner in 9 of the 16 Länder governments and has one prime minister in Bade-Wurttemberg. Thus a third party round – called the 'G-round' has started to come to live during the past few years. However, the green coalition partner is still often included informally in the A-rounds of the Social Democrats.

4 The following paragraph is taken from Behnke, Nathalie & Hegele, Yvonne (2015) "Brokers, moderators or protectors against federal encroachment? The role of 'Landesministerkonferenzen' in Germany". Paper prepared for the IPSA joint conference "Rethinking territoriality – Between Independence and Interdependence" Edinburgh, 17 September, 2015. The working paper is also attached to this evidence.

5 Unfortunately, the Bundesrat rather recently ceased to provide a platform for accessing the different ministerial conferences' websites. By now, nearly every conference hosts its own web domain. Currently, the best overview is provided indeed by Wikipedia (https://de.wikipedia.org/wiki/Fachministerkonferenzen_der_deutschen_L%C3%A4nder, last access 09 September 2015). There, links are also provided to the websites of individual ministerial conferences. Due to the relative informality of the ministerial conferences and the rotating presidencies, the availability of information varies significantly not only across conferences but also across the years. The conference of finance ministers, for example, has no website, and it is close to impossible to find any information about its work.
and Länder ministries, so that every ministry is represented in at least one ministerial conference. The conferences meet between one and four times a year.\(^6\) Political decisions are taken by the plenum of ministers, but the leading echelons of the ministerial bureaucracy play an important role, too, in preparing and monitoring the conferences. The secretaries of state even hold their own ‘pre-conferences’ in order to clear the agenda as far as possible. The presidency typically rotates among the Länder in a one- or two-year cycle. Some conferences have a permanent secretariat,\(^7\) in others the secretariat rotates with the presidency. This working mode represents the principle of equality among the Länder, but results in a low degree of continuity. Decisions in the plenum are typically taken by unanimity rule, even though since 2004 the prime ministerial conference and some sectoral conferences introduced qualified majority voting (13 of 16). Every Land has one vote, and indeed unanimity is often reached. If this is not the case, either no resolution is taken, or the dissenting Länder formulate a dissenting opinion which is attached to the documentation of the resolution. The resolutions have no legally binding character, but are rather forms of political self-bind of the governments that they will stick to decisions jointly taken at conferences. The agendas of ministerial conferences cover a large array of topics across all types of legislative competencies, ranging from issues concerning the Länder to issues involving the federal or even the European level. Some topics are quasi permanent, being updated recurrently from one conference to the next. Most topics are dealt with in between the conferences by specialized working groups, which mushroom in waves over time and appear in no official account.

One further aspect of IGR is set by the constitutionally enshrined ‘joint tasks’ (Art. 91a-e Basic Law). Joint tasks were created from the insight that a number of public goods and services that were to be delivered at Länder level were too costly and generated too many externalities to leave them to the Länder alone. In order to fulfill those joint tasks, typically joint planning and steering committees are created involving the Länder and the federal levels alike. The financing of those tasks is regulated in the constitution. Those joint tasks and the respective planning and steering committees are:

- Improvement of regional economic structures (joint steering committee of the ministers of economy and the federal minister of finance) (Art. 91a Basic Law);
- Improvement of agrarian structure and coastal preservation (planning committee of the federal minister of agriculture, the federal minister of finance and one minister of the respective department in each Land) (Art. 91a Basic Law);
- Education programmes and promotion of research (joint conference of science)\(^8\) (Art. 91b Basic Law);

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\(^7\) Four conferences – economy, traffic, interior and finance – currently have their secretariat located in the Bund desrat. See http://www.bundesrat.de/DE/homepage/homepage-node.html, last access 09 September 2015.

\(^8\) http://www.gwk-bonn.de/, last access 13 September 2015.
• Information technology systems (Planning Council for Informational Technology)\(^9\) (Art. 91c Basic Law);
• Comparison of Performance (of public administrations) (there is no central coordination committee) (Art. 91d Basic Law);
• Cooperation in respect of basic support for persons seeking employment (over 400 joint working groups at municipal level steered by the Federal Employment Agency) (Art. 91e Basic Law).

In all those matters, intense cooperation between the Länder and the federal level exist and are channeled in specialized coordination bodies which are based in corresponding legislative acts publish on a regular basis work reports in their field of expertise.

Lastly, two more articles of the Basic Law ought to be mentioned which, although strictly seen they are part of the fiscal constitution (see section 2 below), create intense instances of entanglement and coordination between the levels. Art. 104a, clause 3 Basic Law provides for the possibility of joint financing of specific cash benefits. To date, this concerns three aspects of social support:
• the Federal Education and Trainings Assistance Act;
• the Housing Allowance Act; and
• the Parents' Money and Parental Leave Act.

In all those instances, the federal level pays between 50 and 100% of the expenses. Those laws are all debated in the Bundesrat under active involvement of the Länder, thus securing a share of financial burdens which can be carried by all.

Finally, the possibility for federal financial assistance for investments as provided for by Art. 104b Basic Law should be mentioned. According to this article, the federal level has the possibility to grant financial assistance for investments of the Länder if they are deemed to be of national interest.

c) Opportunities of the Länder to influence policy-making

• The Länder have different channels of influence on the stages of the policy-cycle under self-rule than under shared rule

This subsection is intended to regard the opportunities of the Länder to pursue their interest in IGR from a procedural point of view, thus complementing the institutional perspective of the preceding subsection. The Länder can try to make their interests heard at different stages of the policy cycle, i.e. during agenda-setting, during decision-making and during implementation. The chances of the Länder to influence different phases of the policy-cycle depend on whether they deal with matters of self-rule or of shared rule.

i. Influence on agenda-setting

In matters of self-rule, the Länder have the right to set their own policy agenda. Coordination in the agenda-setting phase might thus be used to discuss new ideas and concepts and to find a shared line of agreement horizontally among the Länder. Under

\(^9\) http://www.it-planungs rat.de/DE/Home/home_node.html, last access 13 September 2015.
shared rule, agenda-setting mainly takes place at the federal level, limiting the involvement of the Länder to their Bundesrat vote. The ministerial conferences, however, can do an important job in bringing topics to the federal agenda and in preparing a certain line of argument for the Länder to follow in Bundesrat decisions.

ii. Influence on decision-making
In matters of self-rule, there is no formal need to reach a consensual decision, as every Land parliament legislates on its own. If, agreements are found during ministerial conferences, those decisions are not binding legally but politically and can thus contribute to voluntary harmonization of policies. The federal level is involved in such agreements, too, even if simply for the sake of keeping up mutual information. In matters of shared rule, the influence of the Länder is rather strong due to their right on co-decision via the Bundesrat (see subsection b above).

iii. Influence on implementation
In matters of self-rule, again the Länder governments are formally autonomous. In practice, however, there is a strong quest for harmonization and coordination of implementation across the territory, in particular in cases of divergent Länder legislation. Even in matters of shared rule, there may be need for further harmonization of implementation beyond the wording of the law. This is generally in the mutual interest and provides no basis for intense conflict of interest. Matters of harmonization are typically achieved in (prime) ministerial conferences.

In all stages of the policy cycle, it is in the genuine interest of the Länder to secure mutual information and to agree on common lines of action in order to prevent the federal level from exploiting their disaccord for encroaching in Länder competences. The risk is perhaps smaller than in explicitly dual federal systems such as the US or Switzerland due to the traditionally cooperative character of federal decision-making. Chances for the federal level to extend its competences, are, however, pre-formed in the text and practice of the constitution. It can use an extensive interpretation of concurrent legislation or use administrative regulations, joint tasks or financial assistance laws to deeply interfere into Länder policy-making. In particular, the options of the federal level to monitor Länder policy-making by offering generous co-financing is a well-established tradition known as the politics of the 'golden rein'. Owing to the divergence of interests among the Länder due to financial, economic, cultural and geographic disparities the federal level's strategy of 'divide et impera' is facilitated.

2. Fiscal Equalization Scheme

a) Distribution of competences

- The Länder have the majority of tasks and need the financial endowment to adequately perform them

Regulations of the fiscal constitution are found in Section X (Art. 104a to 115) of the German Basic Law. Regulations there follow in their structure the logic of the competence distribution in other parts of the Basic Law, i.e. basically the distribution between legislative and executive competencies. The federal level has the exclusive right to legislate on customs and fiscal monopolies (Art. 105 Basic Law). In all taxes of
which it gets at least a share, it has the right to concurrent legislation of which it makes ample use. The Länder and their municipalities have the right to legislate on minor local excise taxes (see figure 2 below).

The Länder (and as administrative parts of the Länder also the municipalities) have, however, major competences in performing public tasks, either in their own responsibility (Art. 83 Basic Law) or mandated by the federal level (Art. 84 Basic Law). This distribution of executive tasks is in line with the principle of subsidiarity which stipulates that tasks ought to be performed at the lowest possible level of government in order to secure responsiveness to the citizens and appropriate recognition of local needs and preferences. The second important principle guiding the distribution of tasks and finances is the principle of connectivity. It stipulates that that level of government which performs tasks ought also to pay for them. In the German case, where the overwhelming majority of tasks are performed by the Länder (and municipal) level, the principle of connectivity means that as a consequence, the Länder (and their municipalities) also have to pay for those tasks. From this follows the general aim of the fiscal equalization scheme: to endow (all) the Länder with the necessary fiscal resources to enable them to perform their tasks in an adequate and comparable manner across the territory of the Federal Republic of Germany.

Figure 2: Separate taxes according to levels of government

Source: Figure: Federal Ministry of Finances, own translation
b) System of tax allocation

- **Germany has a mixed system of joint and separate taxes balancing the principles of autonomy and solidarity**

Just as in legislation, where the German system realizes a mix of self-rule and shared rule competences, in taxation it realizes a mix of separate and joint taxes. The separate taxes are listed in figure 2 above. For the Länder, revenues of their 'own' taxes are about 10% of all their revenues, with large differences among the Länder – in Bavaria, own taxes generate about 12% of its total revenues, in Saxonia only 7%. Separate taxes of the federal level generate 39% of its total revenues. The joint taxes are mainly the most productive taxes in the sense of generating the highest revenues – the VAT and Income Tax, producing about 30% of all revenues each (in 2014, VAT revenues amounted to 203 milliard Euros and Income Tax to 213 milliard Euros). Besides that, smaller taxes such as the Capital Returns Tax and the Corporation Tax are also joint taxes. Together, the joint taxes generate 70% of all taxes collected.

The revenues of joint taxes are split between levels of government according to fixed proportions except for the VAT, which is split according to a fixed procedure (both the proportions and the procedure are laid down in the Fiscal Equalization Act) so that the proportion of VAT that each level gets can be calculated only ex post. In 2014, the Länder received 44.5% of the VAT, the municipalities 2% and the federal level 53.5%.

Source: Federal ministry of finance (website), own translation
c) Equalization mechanisms

- Disparities in fiscal capacity among the Länder are equalized in a series of subsequent steps involving tax distribution and horizontal and vertical redistribution payments.

The primary tax allocation results, however, in a rather uneven distribution of fiscal means among the Länder. In realization of the overall aim of the fiscal equalization scheme to endow every Land with the financial means necessary to enable it to fulfill its tasks, taxes are distributed and redistributed in four subsequent steps.  

1. In the first step (vertical tax allocation), separate taxes are allocated to each level. Joint taxes are split between levels according to the respective formulas.

2. In the second step, the taxes that were accorded to the Land level as a whole are distributed horizontally among the 16 Länder. Most taxes are allocated (more or less precisely) to the Land in which they were generated. The only major exception is the VAT. The horizontal distribution of the VAT is already a kind of redistribution, as one proportion is distributed according to fiscal capacity, and the rest according to the number of inhabitants of a Land.

3. In the third step (horizontal equalization payments), based on the fiscal capacity of each Land after this primary distribution of taxes, those Länder which have a fiscal capacity above average pay equalization payments those Länder which have a fiscal capacity below average.

4. In a final step (vertical fiscal equalization payments) those Länder which have still a fiscal capacity far below the average receive further equalization payments by the federal level.

In the course of those distribution and redistribution payments, the relative fiscal capacity gap among the Länder is narrowed from an initial distance of 53.3% of the average (Thuringia) to 147.6% of the average (Hamburg) to 98.5% of the average (Mecklenburg-Vorpommern) to 105.7% of the average (Bavaria) (the distance between Thuringia and Hamburg has been narrowed to 98.6 to 99.5% of the average, respectively).  

Obviously, this system, while attaining an impressive level of fiscal equalization, is also the source of intense conflict. In particular the rich Länder (currently only four of the 16 Länder pay equalization payments, while 12 receive payments) complain that the system is hostile to economic achievements because it curbs any incentive to generate more tax income (as plausible as this argument may seem at first glance, it could not be proven empirically so far, because effectively too many factors influence the process of tax generation). Another point of criticism of the existing system aims at its focus on fiscal capacity as the sole rationale for equalization payments, while neglecting (almost completely) regionally diverse needs owing for example to a diverse demographic and socio-economic structure of the population. Where few tax payers live, either because of high unemployment rates or because the larger proportion of the population is older than 65, a Land finds a disadvantageous proportion between

10 A detailed description of those four steps of the fiscal equalization scheme can be found in the attached brochure of the federal department of finance.

11 Numbers of 2013, source federal ministry of finance.
income and expenses which is, however, largely beyond its political influence. Similarly, density of population makes a difference for the level of necessary expenses. Such structural factors which create systematic differences in necessary expenses across the territory are not taken systematically into account in the existing fiscal equalization scheme.

d) Reform debates – advantages and disadvantages of increased tax autonomy of the Länder

- Currently, the biggest debate since 1967 on reforming the fiscal equalization scheme is going on as the current Fiscal Equalization Act (dating from 2003) is subject to sunset legislation and ceases to be in power by 01 January 2020.

It is impossible to summarize the entire debate around the reform of the current fiscal equalization scheme. One recurrent point in the debate is, however, the claim for more tax autonomy of the Länder. In particular, a potentially successful proposal envisages to grant the Länder tax varying powers on the Income Tax – a right of which Scotland has disposed for quite some time, without ever making use of it – at least to my knowledge. Now, what are the basic arguments in favor of and against that proposal in the German debate?

The most powerful argument in favor of increased tax autonomy is the constitutionally strong position of the German Länder which is insufficiently mirrored in the fiscal constitution. Furthermore, increased tax autonomy means increased opportunities for the Länder to generate more tax income. One example underpinning this argument is the introduction of a tax varying power for the Länder for the Real Estate Transfer Tax. Eight years after its liberation in 2006 from a uniform tax rate of 3.5% to granting the Länder a range above or below this rate, 14 Länder have increased the rate to 4.5 up to 6.5% (Schleswig-Holstein), two Länder have maintained the initial rate of 3.5% (Bavaria and Saxonia) and no Land went below the former rate. Overall income of the Real Estate Transfer Tax could be increased considerably, and the most feared effect of a liberalization of tax rates – a race to the bottom leading to lower overall tax income – did not manifest itself empirically. As positive as this example may seem, however, it should not be transferred directly on the Income Tax, as the Income Tax has a far more mobile tax base than the Real Estate Transfer Tax. A mobile tax, however, is far more susceptible to race to the bottom dynamics than a rather immobile tax.

Generally, when discussing tax varying powers for the Länder, three aspects should be taken into account: First, tax varying powers ought to be restricted to a corridor with a limited range above and below the original tax rate, thereby hedging potential race to the bottom dynamics. The positive effect of such a corridor can also be seen from the example of the German municipal business tax, where the multiplier was set in 2004 to a minimum of 200 points in order to limit race to the bottom dynamics, and since then the rates have considerably stabilized across the country. Second, immobile taxes are far better suited than mobile taxes because then the tax subjects are less susceptible to migration in reaction to different rates across borders. And third, varying tax rates
need to be standardized when calculating the fiscal capacity of the Länder based on their tax income as a precondition for paying or receiving equalization payments. If varying tax rates were not standardized, those Länder requesting higher taxes from their citizens would be punished in the horizontal fiscal equalization system. Indeed, those taxes that are currently subject to tax varying powers in the German system – the business tax as a municipal tax and the Real Estate Transfer Tax as a Länder tax – enter the calculus of the Länder’s fiscal capacity with a standardized ratio.

Another (and bigger) problem related to tax varying powers – irrespective of the kind of tax – lies in the above mentioned socio-economic disparities between the Länder. Those Länder that are most in need of increased tax income have the smallest possibilities of generating it. For, the smaller the tax base, the higher the tax rate needs to be increased to generate more income. Rather, strong Länder have the possibility to lower the rates and become even more attractive in a locational competition with neighboured Länder (e.g. Sachsen-Anhalt and Sachsen permanently lose citizens who move to Bavaria). As a consequence, only the rich Länder could really profit from more tax autonomy, and the disparities in fiscal capacity would increase further. Due to this reasoning, an increased tax rate autonomy as a source to generate tax income could rather be an additional means after fiscal capacity has been equalized among the Länder.

Personally, I don’t see the great advantage of tax autonomy, even in terms of theory of federalism – that is it is a federal value that sub-state units have fiscal autonomy, because it enhances their democratic accountability. Rather I see that a system of shared taxes with fixed proportions for each level functions pretty well (we can see that the municipal level in the 1970ies traded autonomous tax rate rights against a fixed shared of the income tax simply because it provided the communes with a far more calculable base of income). In my opinion, this is what contributes to real autonomy of a federal level – that the income is calculable and reliable and does not depend on unilateral decisions of the federal level – as is the case with the Barnett formula currently existent in the UK.

3. Parliamentary Scrutiny

Parliamentary scrutiny of actions of the Länder governments in IGR does not seem to be a primary concern of Länder parliaments. Rather, they leave IGR largely to the executives. This may in part be due to the logic of a parliamentary system, where the government coalition governs with the support and general confidence of the parliamentary majority. It may be, however, in part also due to a misperception on the part of the Länder parliaments. They do not even use the rights they have because they feel that those technical administrative matters are not of interest to them. This is, however, an error, as due to the typical division of labour in German federalism, the Länder have the primary responsibility for implementation; thus Länder parliaments should take an interest in technical matters of implementation to exploit the leeway they have there.

Within the framework of parliamentary systems, Länder parliaments dispose of the classic instruments of parliamentary scrutiny in parliamentary systems – partisan
control of government by the parliamentary majority on the one hand and typical control instruments such as questioning hours, hearings and investigative committees used by the opposition on the other. In one field, Länder parliaments have a strong say, and that is European policy making. There, the reformulation of Art. 23 Basic Law during the constitutional reform of 1994 granted the Länder, and in particular the Länder parliaments, a strong say in federal negotiations at European level. To my knowledge, however, the Länder parliaments do not dispose of comparable rights in those matters that are still subject to traditional intergovernmental negotiations within the German federal state. As advisable as that might seem from a democratic point of view, the fact needs to be taken into account that currently negotiations involve 17 players, which is often complicated enough. If Länder parliaments had the possibility to develop their own positions and to bind their governments to parliamentary mandates, intergovernmental relations would mutate into a two-level game and become highly more complex than they are now already. In that case efficiency of political decision-making must be balanced against parliamentary ex ante control.

I sincerely do hope that my explanations on the institutions and working of intergovernmental relations in Germany could help to clarify the ideas and opinions of the honorable members of the Committee. I am glad to answer any further questions that might have remained unclear to the best of my knowledge.

Best regards,

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The
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The Federal Republic of Germany is a federal state comprising the Federation and 16 federal states, the so-called Länder. In the structure of the German state, the Länder represent an independent level of government endowed with its own rights and obligations. According to the constitutional rules on public finance, the municipalities are deemed to be part of the Länder. In order for the Länder, as independent constituent states, to fulfil the tasks allotted to them under the Constitution (which is called the Grundgesetz or Basic Law in Germany), they need adequate financial resources. The Länder must also have free and independent control over these resources. Aligning the revenue of the Länder is intended to create and maintain equal living conditions for the entire population in all of Germany.

Germany’s constitution guarantees that the Federation and Länder receive appropriate levels of funding. The procedural regulations in this regard can be divided into four phases:

1. First, the entire tax revenue is distributed to the two levels of government – namely the Federation and all the Länder – and the municipalities receive a supplementary grant of revenue (vertical distribution).
2. Next, the total Länder portion of tax revenue is assigned among the various Länder (horizontal distribution).
3. In a third stage, there is equalisation between poor Länder and rich Länder (financial equalisation among the Länder).
4. In addition, poor Länder also receive funds from the Federation (supplementary federal grants).

The details of the individual stages are regulated by ordinary law.

Stage 1: Vertical distribution of tax revenue

The Constitution jointly allocates several particularly important taxes to the Federation, Länder and, to a degree, the municipalities. According to the Constitution, either the Federation, the Länder or the municipalities are entitled to the remaining types of tax in full.

Income tax, corporation tax and VAT are divided between the Federation and the Länder as a whole. The municipalities are entitled to a share of the income tax and VAT. These taxes are therefore referred to as joint taxes. The Federation receives 42.5 % of the income tax, 50 % of the corporation tax and 2014 around 53 % of VAT. The revenue accruing to the Länder is
42.5% of the income tax, 50% of the corporation tax and 2014 around 45% of VAT. 15% of the income tax and, in 2014, around 2% of VAT go to the municipalities.

Of all the types of tax, income tax and VAT generate by far the most revenue.

The Federation receives all of the revenue from the federal taxes. The majority of the excise duties (such as energy duty and tobacco duty) as well as the insurance tax are federal taxes. The Länder are entitled to receive all of the revenue from Länder taxes. These include the inheritance tax, most types of transactions taxes (in particular, the real property transfer tax) as well as some other types of taxes that generate small amounts of revenue. The municipalities receive the revenue from the trade tax, the real property tax as well as the local excise taxes. The Federation and the Länder receive a share of the trade tax receipts through an apportionment.

**Stage 2: Horizontal distribution of tax revenue**

At the second stage, the tax revenue belonging to the Länder as a whole is distributed among the individual Länder. Apart from VAT, the individual Länder are entitled, in principle, to the tax revenue which is collected by the revenue authorities on their territory (principle of local revenue).

In the case of income tax and corporation tax, the principle of local revenue is corrected by special regulations, or what is referred to as allotment. With regard to income tax, this means that in the end every Land receives approximately the tax revenues that are collected for the income of its inhabitants inside or outside of its territory. Companies pay corporation tax centrally. In line with the principle of allotment, this tax is distributed to all states in which a company maintains a place of business.

VAT is not distributed according to the principle of local revenue. Up to 25% of the Länder share of VAT goes as a supplementary portion to the Länder. They are meant for those Länder, whose receipts from the income tax, the corporation tax and the Land taxes per capita are lower than the per capita average of all the Länder. This partially closes the gap between the tax revenue of the fiscally weak Länder and the Länder average. The exact amount of the VAT supplementary portions depends on the amount by which the per capita tax revenue of a Land falls below the average per capita tax receipts for all Länder. A linear-progressive topping-up schedule is used to calculate the exact amount of the VAT supplementary portions. The remainder of the Länder share of VAT, at least 75%, is distributed according to the number of inhabitants among all Länder. The distribution of VAT thus already has an equalising effect.
Stage 3: Financial equalisation among the Länder

In the system of financial equalisation among the Länder, poor Länder receive adjustment payments which are funded by the wealthy states. In the interest of the fiscal autonomy and sovereignty of the Länder, the differences in receipts among the Länder are only partially reduced by the financial equalisation.

The starting point for the financial equalisation among the Länder is the financial capacity per inhabitant of the various Länder. The financial capacity of a Land is the sum of its receipts and (64 %) of the sum of receipts of its municipalities.

The local authority revenues are taken into account when assessing financial capacity because the Länder are responsible for providing their municipalities with appropriate and adequate financial resources. Länder with financially strong municipalities are required to spend less of their own finances on the financial resources of their municipalities than Länder with financially weak municipalities.

In principle, all types of Länder and municipality revenue are taken into account when determining the financial capacity, but in fact, basically the tax revenue is regarded as relevant for the equalisation scheme: The Länder share of joint taxes, the tax revenues of the Länder and partially the tax revenues of municipalities are taken into consideration for the financial equalisation among the Länder.

In principle, the system of financial equalisation among the Länder assumes that the financial requirement per inhabitant is the same in all the Länder. This assumption is not appropriate in the case of the Länder of Berlin, Bremen and Hamburg, which are city-states. The city-states are simultaneously both municipalities and Länder in their own right. They have a much higher financial requirement per inhabitant than the normal Länder. Therefore, for the purposes of the equalisation system, their populations are notionally increased by 35 %. The three sparsely populated Länder of Brandenburg, Mecklenburg-Western Pomerania and Saxony-Anhalt also have a slightly higher financial requirement per inhabitant. Their populations are therefore slightly notionally increased for the purposes of the financial equalisation.

The exact size of the adjustment payments to a poor, fiscally weak Land, depends on the amount by which its financial capacity per (fictitious) inhabitant falls below the average financial capacity per inhabitant. A linear-progressive topping-up schedule is used to calculate by how much the difference from the average is partially topped-up.
Similarly, the size of the adjustment amounts which a rich, fiscally strong Land has to pay depends on the amount by which its per capita financial capacity exceeds the average fiscal capacity per inhabitant. The difference from the average is skimmed-off partially. A linear-progressive skimming-off schedule is used, which is symmetrical to the topping-up schedule. To ensure the sum of the adjustment amounts correspond with the sum of the adjustment payments, the adjustment amounts are either increased or decreased by a corresponding percentage.

The regulations are designed to ensure that the order of the Länder, in terms of financial capacity per inhabitant, does not change as a result of the financial equalisation among the Länder.

The system of financial equalisation among the Länder further reduces the differences in the levels of their financial resources. Take the example of a fiscally weak Land with a financial capacity per capita that is 70 % or 90 % of the average before financial equalisation. Once the financial equalisation system has been applied, this increases to 91 % or 96 % of the average. On the other hand, a fiscally strong Land with 110 % or 120 % of the average financial capacity per inhabitant before equalisation, has between 104 % and 106½ % per cent afterwards (see also Table 1).

**Stage 4: Supplementary federal grants**

Supplementary federal grants are grants which the federal government makes to poor Länder to complement financial equalisation among the Länder. These grants are uncommitted funds and serve to meet general financial requirements. There are two different kinds: general supplementary federal grants and supplementary federal grants for special needs.

General supplementary federal grants further reduce the gap between the average financial capacity per (fictitious) inhabitant and that of poor Länder which still remains after financial equalisation among the Länder. General supplementary federal grants go to Länder whose financial capacity per inhabitant, after financial equalisation among the Länder, is less than 99.5 % of average financial capacity per inhabitant. The shortfall is made up proportionally by 77.5 %.

This means that a financially weak Land, whose financial capacity per inhabitant stands at 70 % or 90 % of the average before financial equalisation among the Länder, has 97½ % or 98½ % of the average per capita financial capacity once the equalisation and general supplementary federal grants have been applied (see also Table 1). The difference from the average for the Länder is therefore considerably and clearly reduced overall.
Table 1: Equalisation of the differences in financial capacity by applying the system of financial equalisation among the Länder and the general supplementary federal grants

<table>
<thead>
<tr>
<th>Financial capacity per inhabitant before financial equalisation among the Länder as a % of the average financial capacity per inhabitant</th>
<th>Financial capacity per inhabitant after financial equalisation among the Länder as a % of the average financial capacity per inhabitant</th>
<th>Financial capacity per inhabitant after financial equalisation among the Länder and the general supplementary federal grants as a % of the average financial capacity per inhabitant</th>
</tr>
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<tbody>
<tr>
<td>70</td>
<td>91</td>
<td>97½</td>
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<tr>
<td>80</td>
<td>93½</td>
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<td>110</td>
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<tr>
<td>120</td>
<td>106½</td>
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<tr>
<td>130</td>
<td>109</td>
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</tr>
</tbody>
</table>

Supplementary federal grants for special needs serve to compensate individual poor Länder for special burdens they have to bear.

The special burdens merely provide the basis and reasons for granting supplementary federal grants for special needs. The funds are not legally tied to a specific purpose. The Länder receiving such federal grants for special needs bear sole responsibility for their use. The exact amount of supplementary federal grants for special needs is listed in the Law on Financial Equalisation (Finanzausgleichsgesetz) and is thus not related to the financial capacity of the receiving Länder.

Until 2019, the eastern German Länder and Berlin receive in accordance with the Solidarpakt II (Solidarity Pact II) special-need supplementary federal grants amounting to around € 105 billion. The grants are meant to build up the infrastructure, which is still comparatively underdeveloped as a result of the partitioning of Germany, and to compensate for the disproportionately weak financial capacity of municipalities. The funds will gradually be phased out by 2019 and in 2014 amount to a total of € 5.8 billion. They are therefore extremely important to the Länder that receive them.

In addition, the eastern German Länder receive special-need supplementary federal grants, in 2014 worth a total € 777 million, to compensate for the special burdens placed on them by structural unemployment and the resulting disproportionately high burdens caused by the combination of the former unemployment assistance (Arbeitslosenhilfe) and social assistance (Sozialhilfe).

1 Numbers for the rich states (financial capacity > 100%) neglect the (above mentioned) factor ensuring the correspondence of the adjustment payments with the adjustment amounts.
Furthermore, small, poor Länder receive special-need supplementary grants, amounting to around € 517 million annually, to make up for their above-average administrative costs. Smaller Länder have higher administrative costs per inhabitant than larger Länder. This is because the fixed costs of administration in smaller Länder have to be divided between a smaller number of inhabitants. A review is held every five years to establish whether the preconditions for awarding these supplementary federal grants for special needs still exist.
Devolution (Further Powers) Committee

Letter from the Deputy First Minister – Joint Exchequer Committee

Introduction

1. This paper contains a copy of a letter from the Deputy First Minister to the Finance Committee on the subject of the recent meeting of the Joint Exchequer Committee (see Annex).

Action/recommendation

2. Members are invited to take this letter into account during their questioning of the witnesses.

Clerking Team
September 2015
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and Cabinet Secretary for Finance, Constitution and Economy
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Convener
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10 September 2015

When I appeared before the Finance Committee last week I undertook to update you and provide you with the Communiqué which issued following the Joint Exchequer Committee meeting held on 4 September as quickly as possible.

The Chief Secretary and I discussed a number of issues including fiscal principles, options for block grant adjustments, administration and implementation costs of transferring the new powers proposed by the Smith Commission report, VAT assignment and capital borrowing. We hope to meet again later this month to continue the negotiations.

A joint communiqué was issued by both the Scottish Government and HM Treasury following the meeting and a copy is attached to this letter.

I am also copying this letter to Bruce Crawford MSP, Convener of the Devolution (Further Powers) Committee.
JOINT EXCHEQUER COMMITTEE – 4 SEPTEMBER 2015

The Joint Exchequer Committee met in Edinburgh today, chaired by John Swinney MSP, Deputy First Minister and Cabinet Secretary for Finance, Constitution and Economy. The UK Government was represented by the Chief Secretary to the Treasury, Rt Hon Greg Hands MP.

This was the second meeting of the JEC since the publication of the Smith Commission Report. Ministers continued their detailed discussions on the substantive elements of the fiscal framework that will underpin the financial provisions of the Scotland Bill.

Following a joint assessment against the Smith Commission Report principles, Ministers considered a range of options for adjusting the Scottish Government’s block grant in the future in relation to the new tax and spending powers being devolved. This included discussion of the balance of risks, economic responsibility and how the mechanisms can operate transparently and mechanically without frequent negotiation. Ministers also considered the administration costs associated with implementing and operating the Smith Commission Report.

Ministers also considered various methodologies for assigning VAT receipts to the Scottish Government’s budget noting the interdependency with the associated block grant adjustment. Overall economic principles for fiscal rules and capital borrowing options were also discussed, including how Scottish Government borrowing would sit within the context of the overall UK fiscal framework.

Finally Ministers considered fiscal scrutiny and the current roles of the Scottish Fiscal Commission and the Office for Budget Responsibility in relation to devolved public finances. Ministers discussed the Scottish Government’s recent consultation on legislative proposals for the Scottish Fiscal Commission and noted that a Bill would be introduced to the Scottish Parliament shortly which would place the Commission on a statutory footing. Ministers agreed to return to this issue at a future discussion on the fiscal framework to ensure that future fiscal scrutiny arrangements reflect the detail of the agreed fiscal framework.

The next meeting of the JEC will take place later in September, in London, chaired by the Chief Secretary to the Treasury. Ministers continue to aim to reach final agreement this autumn.

Scottish and UK Governments
September 2015