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CENTRE FOR EASTERN STUDIES 25.03.2020 www.osw.waw.pl

Germany: Governing during the pandemic

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In order to reduce the spread of the COVID-19 pandemic, on 22 March Chancellor Angela Merkel and the prime ministers of the federal provinces agreed to tighten the guidelines on restricting joint movement in public places to a maximum of two persons (excluding families). Stricter restrictions have been in force since 20 March in Bavaria and Saarland, and also in Saxony as of 23 March. All educational institutions and many shops in Germany have also been closed for over a week. As of 16 March controls and restrictions on movement have been increased at most of Germany's borders. After a debate, on 25 March the Bundestag adopted an amendment to the budget and an aid package for the German economy.

In Germany the main burden of crisis management and civil protection during the epidemic lies with the federal provinces (*Länder*). They are responsible for responding to states of emergency in both the executive and legislative spheres. The ability to declare a state of emergency is regulated separately for each *Bundesland* in the provincial laws. On 16 March Bavaria was first to formally declare a state of natural disaster on the basis of its 1996 provincial law on protection against natural disasters (*Katastrophenschutzgesetz*). For the first time these regulations were applied to the whole of the province, and not (as in the past) only to parts of it (districts).

Commentary

- After an initially passive approach to the crisis, in recent days Chancellor Merkel has gone on the offensive in managing the crisis. In a televised speech on 19 March, she identified the fight against the pandemic as "the most important challenge Germany has had to face since the end of the Second World War." She used the speech to explain the need for far-reaching restrictions on the functioning of society, and to prepare German residents for possible further restrictions. The fact that Merkel used this form of address for the first time (rare in Germany, apart from New Year's messages) also signifies an attempt to avoid accusations, like those formulated during the migration crisis, that the public were not being sufficiently informed about the government's activities. Chancellor Merkel is the face of these activities, which at present 75% of Germans view favourably, but on 22 March she had to enter home quarantine after coming into contact with a person infected with the coronavirus.
- The COVID-19 pandemic has forced both the Bundestag and the provincial parliaments to change how they operate. During one of its regular sittings on 25 March, the Bundestag

changed its regulations governing quorum during votes, from half of all deputies to a quarter of those present in the plenary hall. The changes will take effect from the next sitting and apply until the end of September, and can be revoked by the Bundestag at any time. The provincial parliaments are taking similar steps; the Bavarian Landtag is one of several which have adapted its rules for deliberation to the current crisis. The parties represented have agreed to reduce the numbers in attendance to one-fifth of their parliamentary representation (while maintaining their current proportions). At the same time, the principle of 'pairing' will apply; if a member of the ruling party cannot participate in a vote, one opposition parliamentarian will form a pair with them and also refrain from participating. The need for changes to the Basic Law (*Grundgesetz*) and the introduction of an additional article regulating the work of the parliament in case of emergencies other than a 'state of defence' are also being considered. At present, Article 53a of the Constitution regulates the formation of a 'joint committee' composed of representatives of the Bundestag (two-thirds of its members, in proportion to each party's forces) and the Bundesrat (one representative from each province). Such a solution is provided for only in the event of a 'state of defence'. However, the proposed amendments would only be introduced after a debate is held under normal conditions, and after the current situation related to the pandemic is resolved.

- The *Länder* have introduced restrictions on social contacts (principally closing schools, a ban on organising mass events, and limiting movement in public space) at varying speeds; this has intensified the debate about whether the federal centre's competences in the field of crisis management should be expanded at the expense of the provinces. The need for a more centralised federal system in Germany has been under consideration for a long time, but so far such discussions have mainly concerned the education system and proposals to increase the federation's powers in matters of internal security. However, any far-reaching changes will most likely encounter resistance from the provinces. On 23 March, the government adopted a draft amendment to the law on the prevention and control of infectious diseases (*Infektionsschutzgesetz*), whose basic aim is to increase the powers of the federation (in this case, the federal minister of health) at the expense of the provinces. If the law is passed by the Bundestag and the Bundesrat, the health minister's powers will include the right to prohibit international passenger transport (rail, air, road and sea), and to requisition medical personnel and centralise the distribution of protective measures (masks, etc.) and medicines. The amendment does not provide for any changes in how the federal states would implement restrictions on social interactions, closing schools or banning public events; these matters would remain within the competence of the *Länder*.
- The crisis caused by the pandemic has reinforced public support for Germany's Christian Democratic parties. The CDU and CSU are recording their highest polling numbers in a year (c. 32%). Meanwhile, the CDU has postponed the process of choosing a new party leader (the elections were originally to have been held on 25 April). The rivalry between the main candidates – Armin Laschet, the Prime Minister of North Rhine-Westphalia (NRW) and Friedrich Merz (Merz led the CDU Bundestag grouping in 2000–2002) – has also been downplayed, partially because Merz himself is suffering from COVID-19. Markus Söder has also strengthened his position within the Christian Democrats; as

Prime Minister of Bavaria, he has set the trend for the measures adopted by Germany's other provinces (including school closures), and has some of the best popularity ratings for any politician in the country. At the same time a rivalry has broken out between Söder and Laschet, who will fight for the Christian Democrats' nomination for the chancellorship in next year's elections. The prime ministers of North Rhine-Westphalia and Bavaria (the two most important *Länder* in the country, and the ones most seriously affected by the pandemic) have accused each other of failing to respond appropriately to the crisis. Laschet's skill at crisis management has also been undermined by some local CDU activists in NRW (they have accused him of being too slow to take radical decisions on reducing social contacts); this has weakened his chances of taking over the CDU.

- As a result of the extraordinary situation caused by the COVID-19 pandemic, disputes within the CDU/CSU-SPD grand coalition have subsided. The probability that the current government will reach the end of its term is definitely rising. Executive power has consolidated around the Chancellor, which has pushed away speculation about a possible change of head of government before next year's elections. Among the SPD's politicians, the Finance Minister and Vice-Chancellor Olaf Scholz is becoming more important, even though he lost the battle to lead the party in December. Since the beginning of the pandemic crisis Scholz has been one of the most active ministers; thanks to the emergency programmes he prepared with the Finance Ministry, and the push to move away from a balanced budget (which the SPD had long demanded), Scholz is wielding a greater influence on the SPD's policy direction than he had so far been able to. If the economic crisis worsens, economic and social matters will become one of the main topics in the Bundestag elections scheduled for autumn 2021.
- As the restriction of social contacts continues over the next few weeks, the debate over the proportionality and constitutionality of these measures will intensify. Some lawyers have emphasised the legal system's lack of preparation for the new and extraordinary situation, and have called for caution regarding any changes, as their effects will be felt even after the pandemic. Also, some in the ruling SPD have called for a time limit on the measures applied so far (including the party's leader Norbert Walter-Borjans).