

## The Unification Treaty between the FRG and the GDR (Berlin, 31 August 1990)

**Caption:** On 31 August 1990, in Berlin, Wolfgang Schäuble, Interior Minister of the Federal Republic of Germany (FRG), and Günther Krause, Junior Minister to Lothar de Maizière, Prime Minister of the German Democratic Republic (GDR), sign the Unification Treaty establishing a single federal democratic state.

**Source:** The Unification of Germany in 1990. Bonn: Press and Information Office of the Federal Government, 1991. 184 S.

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## Treaty of 31 August 1990 between the Federal Republic of Germany and the German Democratic Republic on the establishment of German unity (Unification Treaty)

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**On 31 August 1990 Wolfgang Schäuble, Federal Minister of the Interior, and GDR State Secretary Günther Krause signed the Unification Treaty in East Berlin. The Treaty entered into force upon the GDR's accession to the Federal Republic on 3 October 1990. This date was chosen by the GDR Volkskammer on 23 August 1990.**

The Federal Republic of Germany and the German Democratic Republic,

Resolved to achieve in free self-determination the unity of Germany in peace and freedom as an equal partner in the community of nations,

Mindful of the desire of the people in both parts of Germany to live together in peace and freedom in a democratic and social federal state governed by the rule of law,

In grateful respect to those who peacefully helped freedom prevail and who have unswervingly adhered to the task of establishing German unity and are achieving it,

Aware of the continuity of German history and bearing in mind the special responsibility arising from our past for a democratic development in Germany committed to respect for human rights and to peace,

Seeking through German unity to contribute to the unification of Europe and to the building of a peaceful European order in which borders no longer divide and which ensures that all European nations can live together in a spirit of mutual trust,

Aware that the inviolability of frontiers and of the territorial integrity and sovereignty of all states in Europe within their frontiers constitutes a fundamental condition for peace,

Have agreed to conclude a Treaty on the Establishment of German Unity, containing the following provisions:

## **CHAPTER I EFFECT OF ACCESSION**

### **ARTICLE 1 LÄNDER**

(1) Upon the accession of the German Democratic Republic to the Federal Republic of Germany in accordance with Article 23 of the Basic Law taking effect on 3 October 1990 the Länder of Brandenburg, Mecklenburg-Western Pomerania, Saxony, Saxony-Anhalt and Thuringia shall become Länder of the Federal Republic of Germany. <sup>1</sup> The establishment of these Länder and their boundaries shall be governed by the provisions of the Constitutional Act of 22 July 1990 on the Establishment of Länder in the German Democratic Republic (Länder Establishment Act) (Law Gazette I, No. 51, p. 955) in accordance with Annex II.

(2) The 23 boroughs of Berlin shall form Land Berlin.

### **ARTICLE 2 CAPITAL CITY, DAY OF GERMAN UNITY**

(1) The capital of Germany shall be Berlin. The seat of the parliament and government shall be decided after the establishment of German unity.

(2) 3 October shall be a public holiday known as the Day of German Unity.

## **CHAPTER II BASIC LAW**

### **ARTICLE 3 ENTRY INTO FORCE OF THE BASIC LAW**

Upon the accession taking effect, the Basic Law of the Federal Republic of Germany, as published in the Federal Law Gazette Part III, No. 100-1, and last amended by the Act of 21 December 1983 (Federal Law Gazette I, p. 1481), shall enter into force in the Länder of Brandenburg, Mecklenburg-Western Pomerania, Saxony, Saxony-Anhalt and Thuringia and in that part of Land Berlin where it has not been valid to date <sup>2</sup>, subject to the amendments arising from Article 4, unless otherwise provided in this Treaty.

### **ARTICLE 4 AMENDMENTS TO THE BASIC LAW RESULTING FROM ACCESSION**

The Basic Law of the Federal Republic of Germany shall be amended as follows:

1. The preamble shall read as follows:

"Conscious of their responsibility before God and men,

Animated by the resolve to serve world peace as an equal partner in a united Europe, the German people have adopted, by virtue of their constituent power, this Basic Law.

The Germans in the Länder of Baden-Württemberg, Bavaria, Berlin, Brandenburg, Bremen, Hamburg, Hesse, Lower Saxony, Mecklenburg-Western Pomerania, North-Rhine/Westphalia, Rhineland-Palatinate, Saarland, Saxony, Saxony-Anhalt, Schleswig-Holstein and Thuringia have achieved the unity and freedom of Germany in free self-determination. This Basic Law is thus valid for the entire German people."

2. Article 23 shall be repealed.

3. Article 51 (2) shall read as follows:

"(2) Each Land shall have at least three votes; Länder with more than two million inhabitants shall have four, Länder with more than six million inhabitants five, and Länder with more than seven million inhabitants six votes."<sup>3</sup>

4. The existing text of Article 135a<sup>4</sup> shall become paragraph 1. The following paragraph shall be inserted after paragraph 1:

"(2) Paragraph 1 above shall be applied mutatis mutandis to liabilities of the German Democratic Republic or its legal entities as well as to liabilities of the Federation or other corporate bodies and institutions under

public law which are connected with the transfer of properties of the German Democratic Republic to the Federation, Länder and communes (Gemeinden), and to liabilities arising from measures taken by the German Democratic Republic or its legal entities."

5. The following new Article 143 shall be inserted in the Basic Law:

"Article 143

(1) Law in the territory specified in Article 3 of the Unification Treaty may deviate from provisions of this Basic Law for a period not extending beyond 31 December 1992 in so far as and as long as no complete adjustment to the order of the Basic Law can be achieved as a consequence of the different conditions. Deviations must not violate Article 19 (2)<sup>5</sup> and must be compatible with the principles set out in Article 79 (3).<sup>6</sup>

(2) Deviations from sections II, VIII, VIIIa, IX, X and XI are permissible for a period not extending beyond 31 December 1995.

(3) Notwithstanding paragraphs 1 and 2 above, Article 41 of the Unification Treaty and the rules for its implementation shall remain valid in so far as they provide for the irreversibility of interferences with property in the territory specified in Article 3 of the said Treaty."

6. Article 146 shall read as follows:

"Article 146

This Basic Law, which is valid for the entire German people following the achievement of the unity and freedom of Germany, shall cease to be in force on the day on which a constitution adopted by a free decision of the German people comes into force."

## **ARTICLE 5**

### **FUTURE AMENDMENTS TO THE CONSTITUTION**

The Governments of the two Contracting Parties recommend to the legislative bodies of the united Germany<sup>7</sup> that within two years they should deal with the questions regarding amendments or additions to the Basic Law as raised in connection with German unification, in particular

- with regard to the relationship between the Federation and the Länder in accordance with the Joint Resolution of the Minister Presidents of 5 July 1990<sup>8</sup>,
- with regard to the possibility of restructuring the Berlin/Brandenburg area in derogation of the provisions of Article 29 of the Basic Law<sup>9</sup> by way of an agreement between the Länder concerned,
- with considerations on introducing state objectives into the Basic Law, and
- with the question of applying Article 146 of the Basic Law and of holding a referendum in this context.

## **ARTICLE 6**

### **EXCEPTION**

For the time being, Article 131 of the Basic Law shall not be applied in the territory specified in Article 3 of this Treaty.<sup>10</sup>

## **ARTICLE 7 FINANCIAL SYSTEM**

(1) The financial system of the Federal Republic of Germany shall be extended to the territory specified in Article 3 unless otherwise provided in this Treaty.

(2) Article 106 of the Basic Law shall apply to the apportionment of tax revenue among the Federation as well as the Länder and communes (associations of communes) in the territory specified in Article 3 of this Treaty with the proviso that

1. paragraph 3, fourth sentence, and paragraph 4 shall not apply up to 31 December 1994<sup>11</sup>;
2. up to 31 December 1996 the share of income tax revenue received by the communes in accordance with Article 106 (5) of the Basic Law shall be passed on from the Länder to the communes not on the basis of the amount of income tax paid by their inhabitants, but according to the number of inhabitants in the communes;
3. up to 31 December 1994, in derogation of Article 106 (7) of the Basic Law, an annual share of at least 20 per cent of the Land share of total revenue from joint taxes and of the total revenue from Land taxes as well as 40 per cent of the Land share from the German Unity Fund<sup>12</sup> according to paragraph 5, item 1, shall accrue to the communes (associations of communes).

(3) Article 107<sup>13</sup> of the Basic Law shall be valid in the territory specified in Article 3 of this Treaty with the proviso that up to 31 December 1994 the provision of paragraph 1, fourth sentence, shall not be applied between the Länder which have until now constituted the Federal Republic of Germany and the Länder in the territory specified in Article 3 of this Treaty and that there shall be no all-German financial equalization between the Länder (Article 107 (2) of the Basic Law).

The Land share of turnover tax throughout Germany shall be divided up into an eastern component and a western component in such a way that the average share of turnover tax per inhabitant in the Länder of Brandenburg, Mecklenburg-Western Pomerania, Saxony, Saxony-Anhalt and Thuringia amounts in 1991 to 55 per cent in 1992 to 60 per cent in 1993 to 65 per cent in 1994 to 70 per cent of the average share of turnover tax per inhabitant in the Länder of Baden-Württemberg, Bavaria, Bremen, Hesse, Hamburg, Lower Saxony, North-Rhine/Westphalia, Rhineland-Palatinate, Saarland and Schleswig-Holstein. The share of Land Berlin shall be calculated in advance on the basis of the number of inhabitants. The provisions contained in this paragraph shall be reviewed for 1993 in the light of the conditions obtaining at the time.

(4) The territory specified in Article 3 of this Treaty shall be incorporated in the provisions of Articles 91 a, 91 b and 104 a (3) and (4) of the Basic Law<sup>13a</sup>, including the pertinent implementing provisions, in accordance with this Treaty with effect from 1 January 1991.

(5) Following the establishment of German unity the annual allocations from the German Unity Fund shall be distributed as follows:

1. 85 per cent as special assistance to the Länder of Brandenburg, Mecklenburg-Western Pomerania,

Saxony, Saxony-Anhalt and Thuringia as well as to Land Berlin to cover their general financial requirements and divided up among these Länder in proportion to their number of inhabitants, excluding the inhabitants of Berlin (West), and

2. 15 per cent to meet public requirements at a central level in the territory of the aforementioned Länder.

(6) In the event of a fundamental change in conditions, the Federation and the Länder shall jointly examine the possibilities of granting further assistance in order to ensure adequate financial equalization for the Länder in the territory specified in Article 3 of this Treaty.

### **CHAPTER III HARMONIZATION OF LAW**

#### **ARTICLE 8 EXTENSION OF FEDERAL LAW**

Upon the accession taking effect, federal law shall enter into force in the territory specified in Article 3 of this Treaty unless its area of application is restricted to certain Länder or parts of Länder of the Federal Republic of Germany and unless otherwise provided in this Treaty, notably Annex I.

#### **ARTICLE 9 CONTINUED VALIDITY OF LAW OF THE GERMAN DEMOCRATIC REPUBLIC**

(1) Law of the German Democratic Republic valid at the time of the signing of this Treaty which is Land law according to the distribution of competence under the Basic Law shall remain in force in so far as it is compatible with the Basic Law, notwithstanding Article 143, with the federal law put into force in the territory specified in Article 3 of this Treaty and with the directly applicable law of the European Communities, and unless otherwise provided in this Treaty. Law of the German Democratic Republic which is federal law according to the distribution of competence under the Basic Law and which refers to matters not regulated uniformly at the federal level shall continue to be valid as Land law under the conditions set out in the first sentence pending a settlement by the federal legislator.

(2) The law of the German Democratic Republic referred to in Annex II shall remain in force with the provisos set out there in so far as it is compatible with the Basic Law, taking this Treaty into consideration, and with the directly applicable law of the European Communities.

(3) Law of the German Democratic Republic enacted after the signing of this Treaty shall remain in force to the extent agreed between the Contracting Parties. Paragraph 2 above shall remain unaffected.

(4) Where law remaining in force according to paragraphs 2 and 3 above refers to matters within the exclusive legislative power of the Federation, it shall remain in force as federal law. Where it refers to matters within concurrent legislative powers or outlining legislation, it shall continue to apply as federal law if and to the extent that it relates to fields which are regulated by federal law in the remaining area of application of the Basic Law.

(5) The church tax legislation enacted by the German Democratic Republic in accordance with Annex II shall continue to apply as Land law in the Länder named in Article 1 (1) of this Treaty.

## **ARTICLE 10**

### **LAW OF THE EUROPEAN COMMUNITIES**

(1) Upon the accession taking effect, the Treaties on the European Communities together with their amendments and supplements as well as the international agreements, treaties and resolutions which have come into force in connection with those Treaties shall apply in the territory specified in Article 3 of this Treaty.

(2) Upon the accession taking effect, the legislative acts enacted on the basis of the Treaties on the European Communities shall apply in the territory specified in Article 3 of this Treaty unless the competent institutions of the European Communities enact exemptions. These exemptions are intended to take account of administrative requirements and help avoid economic difficulties.

(3) Legislative acts of the European Communities whose implementation or execution comes under the responsibility of the Länder shall be implemented or executed by the latter through provisions under Land law.

## **CHAPTER IV**

### **INTERNATIONAL TREATIES AND AGREEMENTS**

## **ARTICLE 11**

### **TREATIES OF THE FEDERAL REPUBLIC OF GERMANY**

The Contracting Parties proceed on the understanding that international treaties and agreements to which the Federal Republic of Germany is a contracting party, including treaties establishing membership of international organizations or institutions, shall retain their validity and that the rights and obligations arising therefrom, with the exception of the treaties named in Annex I, shall also relate to the territory specified in Article 3 of this Treaty. Where adjustments become necessary in individual cases, the all-German Government shall consult with the respective contracting parties.

## **ARTICLE 12**

### **TREATIES OF THE GERMAN DEMOCRATIC REPUBLIC**

(1) The Contracting Parties are agreed that, in connection with the establishment of German unity, international treaties of the German Democratic Republic shall be discussed with the contracting parties concerned with a view to regulating or confirming their continued application, adjustment or expiry, taking into account protection of confidence, the interests of the states concerned, the treaty obligations of the Federal Republic of Germany as well as the principles of a free, democratic basic order governed by the rule of law, and respecting the competence of the European Communities.

(2) The united Germany shall determine its position with regard to the adoption of international treaties of the German Democratic Republic following consultations with the respective contracting parties and with the European Communities where the latter's competence is affected.

(3) Should the united Germany intend to accede to international organizations or other multilateral treaties of which the German Democratic Republic but not the Federal Republic of Germany is a member,

agreement shall be reached with the respective contracting parties and with the European Communities where the latter's competence is affected.

## **CHAPTER V PUBLIC ADMINISTRATION AND THE ADMINISTRATION OF JUSTICE**

### **ARTICLE 13 FUTURE STATUS OF INSTITUTIONS**

(1) Administrative bodies and other institutions serving the purposes of public administration or the administration of justice in the territory specified in Article 3 of this Treaty shall pass under the authority of the government of the Land in which they are located. Institutions whose sphere of activities transcends the boundaries of a Land shall come under the joint responsibility of the Länder concerned. Where institutions consist of several branches each of which is in a position to carry out its activities independently, the branches shall come under the responsibility of the government of the respective Land in which they are located. The Land government shall be responsible for the transfer or winding-up. Section 22 of the Länder Establishment Act of 22 July 1990 shall remain unaffected.

(2) To the extent that before the accession took effect the institutions or branches mentioned in paragraph 1, first sentence, performed tasks that are incumbent upon the Federation according to the distribution of competence under the Basic Law, they shall be subject to the competent supreme federal authorities. The latter shall be responsible for the transfer or winding-up.

(3) Institutions under paragraphs 1 and 2 above shall also include such

1. cultural, educational, scientific and sports institutions,
2. radio and television establishments as come under the responsibility of public administrative bodies.

### **ARTICLE 14 JOINT INSTITUTIONS OF THE LÄNDER**

(1) Institutions or branches of institutions which, before the accession took effect, performed tasks that are incumbent upon the Länder according to the distribution of competence under the Basic Law shall continue to operate as joint institutions of the Länder pending a final settlement by the Länder named in Article 1(1) of this Treaty. This shall apply only to the extent that it is necessary for them to remain in place under this transitional arrangement so as to allow the Länder to carry out their responsibilities.

(2) The joint institutions of the Länder shall be under the authority of the Land plenipotentiaries pending the election of minister presidents in the Länder. Subsequently they shall be under the authority of the minister presidents. The latter may charge the responsible Land minister with their supervision.

### **ARTICLE 15 TRANSITIONAL ARRANGEMENTS FOR LAND ADMINISTRATION**

(1) The Land spokesmen in the Länder named in Article 1 (1) of this Treaty and the government plenipotentiaries in the districts shall continue to discharge their present responsibilities on behalf of the

Federal Government and subject to its instructions, from the date when the accession takes effect until the election of minister presidents. The Land spokesmen shall, as Land plenipotentiaries, be in charge of the administration of their respective Länder and have the right to give instructions to district administrative authorities and, in the case of delegated responsibilities, also to communes and rural districts. Where Land commissioners were appointed in the Länder named in Article 1 (1) of this Treaty before the accession took effect, they shall be vested with the responsibilities and powers of the Land spokesman as set out in the first and second sentences.

(2) The other Länder and the Federation shall render administrative assistance in setting up Land administrative authorities.

(3) At the request of the minister presidents of the Länder named in Article 1 (1) of this Treaty the other Länder and the Federation shall render administrative assistance in the execution of certain technical responsibilities for a period not extending beyond 30 June 1991. The minister president shall grant any agencies and individuals from the Länder and the Federation a right to give instructions to the extent that they render administrative assistance in the execution of technical responsibilities.

(4) The Federation shall make available the necessary budget resources to the extent that it renders administrative assistance in the execution of technical responsibilities. The resources employed shall be deducted from the share of the respective Land in the German Unity Fund allocations or from its share of import turnover tax.

## **ARTICLE 16**

### **TRANSITIONAL PROVISION PENDING THE CONSTITUTION OF A SINGLE LAND GOVERNMENT FOR BERLIN**

Until the constitution of a single Land government for Berlin its responsibilities shall be discharged by the Berlin Senat jointly with the Magistrat.

## **ARTICLE 17**

### **REHABILITATION**

The Contracting Parties reaffirm their intention to create without delay a legal foundation permitting the rehabilitation of all persons who have been victims of a politically motivated punitive measure or any court decision contrary to the rule of law or constitutional principles. The rehabilitation of these victims of the iniquitous SED regime shall be accompanied by appropriate arrangements for compensation.

## **ARTICLE 18**

### **CONTINUED VALIDITY OF COURT DECISIONS**

(1) Decisions handed down by the courts of the German Democratic Republic before the accession took effect shall retain their validity and may be executed in conformity with the law put into force according to Article 8 of this Treaty or remaining in force according to Article 9. This law shall be taken as the yardstick when checking the compatibility of decisions and their execution with the principles of the rule of law. Article 17 of this Treaty shall remain unaffected.

(2) Subject to Annex I, persons sentenced by criminal courts of the German Democratic Republic are granted by this Treaty a right of their own to seek the quashing of final decisions through the courts.

**ARTICLE 19****CONTINUED VALIDITY OF DECISIONS TAKEN BY PUBLIC ADMINISTRATIVE BODIES**

Administrative acts of the German Democratic Republic performed before the accession took effect shall remain valid. They may be revoked if they are incompatible with the principles of the rule of law or with the provisions of this Treaty. In all other respects the rules on the validity of administrative acts shall remain unaffected.

**ARTICLE 20****LEGAL STATUS OF PERSONS IN THE PUBLIC SERVICE**

(1) The agreed transitional arrangements set out in Annex I shall apply to the legal status of persons in the public service at the time of accession.

(2) The exercise of public responsibilities (state authority as defined in Article 33 (4) of the Basic Law) shall be entrusted as soon as possible to professional civil servants. Public service law shall be introduced in accordance with the agreed arrangements set out in Annex I. Article 92 of the Basic Law shall remain unaffected.

(3) Military personnel law shall be introduced in accordance with the agreed arrangements set out in Annex I.

**CHAPTER VI****PUBLIC ASSETS AND DEBTS****ARTICLE 21****ADMINISTRATIVE ASSETS**

(1) The assets of the German Democratic Republic which are used directly for specific administrative purposes (administrative assets) shall become federal assets unless their designated purpose as of 1 October 1989 was primarily to meet administrative responsibilities which, under the Basic Law, are to be exercised by Länder, communes (associations of communes) or other agencies of public administration. Where administrative assets were primarily used for the purposes of the former Ministry of State Security/ Office of National Security, they shall accrue to the Trust Agency unless they have already been given over to new social or public purposes since the above-mentioned date.

(2) Where administrative assets are not federal assets under paragraph 1 above, they shall accrue, upon the accession taking effect, to the agency of public administration which, under the Basic Law, is responsible for the relevant administrative purpose.

(3) Assets which have been made available free of charge by another corporate body under public law to the central government or to the Länder and communes (associations of communes) shall be returned free of charge to this corporate body or its legal successor; former Reich assets shall become federal assets.

(4) Where administrative assets become federal assets under paragraphs 1 to 3 above or by virtue of a federal law, they shall be used for public purposes in the territory specified in Article 3 of this Treaty. This

shall also apply to the use of proceeds from the sale of assets.

## **ARTICLE 22**

### **FINANCIAL ASSETS**

(1) Public assets of legal entities in the territory specified in Article 3 of this Treaty, including landed property and assets in agriculture and forestry, which do not directly serve specific administrative purposes (financial assets), with the exception of social insurance assets, shall, unless they have been handed over to the Trust Agency or will be handed over by law according to Section 1 (1), second and third sentences, of the Trusteeship Act, to communes, towns and cities or rural districts, come under federal trusteeship upon the accession taking effect. Where financial assets were primarily used for the purposes of the former Ministry of State Security/ National Security Office, they shall accrue to the Trust Agency unless they have already been given over to new social or public purposes since 1 October 1989. Financial assets shall be divided by federal law between the Federation and the Länder named in Article 1 of this Treaty in such a way that the Federation and the Länder named in Article 1 each receive one half of the total value of the assets. The communes (associations of communes) shall receive an appropriate share of the Länder portion. Assets accruing to the Federation under this provision shall be used for public purposes in the territory specified in Article 3 of this Treaty. The Länder share should in principle be distributed to the respective Länder in such a way that the relationship between the total values of the assets apportioned to the respective Länder corresponds to the relationship between the population sizes of these Länder on the date the accession takes effect, excluding the inhabitants of Berlin (West). Article 21 (3) of this Treaty shall be applied *mutatis mutandis*.

(2) Pending legislative arrangements the financial assets shall be administered by the authorities currently responsible unless the Federal Minister of Finance orders the assumption of administrative responsibilities by authorities responsible for the administration of assets at the federal level.

(3) On demand the federal, regional or local authorities referred to in paragraphs 1 and 2 above shall provide each other with information about, and grant each other access to, land registers, files and other materials containing information on assets whose assignment in law and in fact is unresolved or the subject of dispute between the said authorities.

(4) Paragraph 1 above shall not apply to publicly owned property used for residential purposes and coming under the legal responsibility of publicly owned housing enterprises. This shall also apply to publicly owned property which is already the subject of concrete plans for residential use. Upon the accession taking effect, these assets shall become the property of the local authorities, which shall also assume their respective shares of the debts. Taking into consideration social concerns, the local authorities shall step by step place their housing stock on the basis obtaining in a market economy. Privatization shall be speeded up in this context, among other things to encourage individual home ownership. As regards the publicly owned housing stock of state institutions, in so far as it does not come under Article 21 of this Treaty, paragraph 1 above shall remain unaffected.

## **ARTICLE 23**

### **DEBT ARRANGEMENTS**

(1) Upon the accession taking effect, the total debts of the central budget of the German Democratic Republic which have accumulated up to this date shall be taken over by a federal Special Fund without legal capacity, which shall meet the obligations arising from debt servicing. The Special Fund shall be

empowered to raise loans:

1. to pay off debts of the Special Fund,
2. to cover due interest and loan procurement costs,
3. to purchase debt titles of the Special Fund for the purposes of market cultivation.

(2) The Federal Minister of Finance shall administer the Special Fund. The Special Fund may, in his name, conduct legal transactions, sue and be sued. The general legal domicile of the Special Fund shall be at the seat of the Federal Government. The Federation shall act as guarantor for the liabilities of the Special Fund.

(3) From the day the accession takes effect until 31 December 1993 the Federation and the Trust Agency shall each repay one half of the interest payments made by the Special Fund.

Repayment shall be made by the first of the month following the month in which the Special Fund has made the payments referred to in the first sentence.

(4) With effect from 1 January 1994 the Federation and the Länder named in Article 1 of this Treaty as well as the Trust Agency shall take over the total debts which have accumulated in the Special Fund up to 31 December 1993 in accordance with Article 27 (3) of the Treaty of 18 May 1990 between the Federal Republic of Germany and the German Democratic Republic Establishing a Monetary, Economic and Social Union. The distribution of the debts shall be settled in detail by a separate law in accordance with Article 34 of the Act of 25 July 1990 concerning the Treaty of 18 May 1990 (Federal Law Gazette 1990 11, p. 518). The portions of the total amount for the Länder named in Article 1 of this Treaty to be taken over by each of the Länder named in Article 1 shall be calculated in relation to their number of inhabitants on the date the accession takes effect, excluding the inhabitants of Berlin (West).

(5) The Special Fund shall be abolished at the end of 1993.

(6) Upon the accession taking effect, the Federal Republic of Germany shall take over the sureties, guarantees and warranties assumed by the German Democratic Republic and debited to its state budget prior to unification. The Länder named in Article 1 (1) of this Treaty and Land Berlin for that part in which the Basic Law has not been in force to date shall assume jointly and severally a counter-surety to the amount of 50 per cent of the total debt transferred in the form of sureties, guarantees and warranties to the Federal Republic of Germany. The losses shall be divided among the Länder in proportion to their number of inhabitants on the date the accession takes effect, excluding the inhabitants of Berlin (West).

(7) The German Democratic Republic's share of the Staatsbank Berlin may be transferred to the Länder named in Article 1 of this Treaty. The rights arising from the German Democratic Republic's share of the Staatsbank Berlin shall accrue to the Federation pending the transfer of the share according to the first sentence or a transfer according to the third sentence. The Contracting Parties shall, notwithstanding an examination from the viewpoint of antitrust legislation, provide for the possibility of transferring the Staatsbank Berlin wholly or partially to a credit institution under public law in the Federal Republic of Germany or to other legal entities. In the event that not all assets and liabilities are covered by a transfer, the remaining part of the Staatsbank Berlin shall be wound up. The Federation shall assume the liabilities resulting from the German Democratic Republic acting as guarantor for the Staatsbank Berlin. This shall not apply to liabilities arising after the transfer of the share according to the first sentence or a transfer according

to the third sentence. The fifth sentence shall apply mutatis mutandis to new liabilities created by the Staatsbank Berlin during winding-up. If claims are made on the Federation in its capacity as guarantor, the burden shall be incorporated upon the accession taking effect into the total debt of the central budget of the German Democratic Republic and be taken over by the Special Fund under paragraph 1 above, which has no legal capacity.

#### **ARTICLE 24**

#### **SETTLEMENT OF CLAIMS AND LIABILITIES VIS-A-VIS FOREIGN COUNTRIES AND THE FEDERAL REPUBLIC OF GERMANY**

(1) In so far as they arise from the monopoly on foreign trade and foreign currency or from the performance of other state tasks of the German Democratic Republic vis-à-vis foreign countries and the Federal Republic of Germany up to 1 July 1990, the settlement of the claims and liabilities remaining when the accession takes effect shall take place under instructions from, and under the supervision of, the Federal Minister of Finance. Debt rescheduling agreements contracted by the Government of the Federal Republic of Germany after the accession takes effect shall also incorporate the claims mentioned in the first sentence. The claims concerned shall be held in trust by the Federal Minister of Finance or transferred to the Federation to the extent that the claims are adjusted.

(2) The Special Fund as defined in Article 23 (1) of this Treaty shall, up to 30 November 1993, assume payment of the necessary administrative expenditure, the interest costs arising from the difference between interest payments and interest revenue and the other losses incurred by the institutions charged with the settlement of claims and liabilities during the settlement period in so far as the institutions are unable to balance them out of their own resources. After 30 November 1993 the Federation and the Trust Agency shall each assume one half of the expenditure and costs referred to in the first sentence and of the loss compensation. Further details shall be determined by federal law.

(3) Claims and liabilities arising from membership of the German Democratic Republic or its institutions in the Council for Mutual Economic Assistance may be the subject of separate arrangements by the Federal Republic of Germany. These arrangements may also refer to claims and liabilities which will arise or have arisen after 30 June 1990.

#### **ARTICLE 25**

#### **ASSETS HELD IN TRUST**

The Privatization and Reorganization of Publicly Owned Assets Act (Trusteeship Act) of 17 June 1990 (Law Gazette 1, No. 33, p. 300) shall continue to apply after the accession takes effect with the following proviso:

(1) The Trust Agency shall continue to be charged, in accordance with the provisions of the Trusteeship Act, with restructuring and privatizing the former publicly owned enterprises to bring them into line with the requirements of a competitive economy. It shall become a direct institution of the Federation vested with legal capacity and subject to public law. Technical and legal supervision shall be the responsibility of the Federal Minister of Finance, who shall exercise technical supervision in agreement with the Federal Minister of Economics and the respective federal minister. Stakes held by the Trust Agency shall be indirect stakes of the Federation. Amendments to the Charter shall require the agreement of the Federal Government.

(2) The number of members of the Administrative Board of the Trust Agency shall be raised from 16 to 20,

and for the first Administrative Board to 23. Instead of the two representatives elected from the members of the Volkskammer, the Länder named in Article 1 of this Treaty shall each receive one seat on the Administrative Board of the Trust Agency. Notwithstanding Section 4 (2) of the Trusteeship Act, the chairman and the remaining members of the Administrative Board shall be appointed by the Federal Government.

(3) The Contracting Parties reaffirm that the publicly owned assets shall be used exclusively for the purpose of activities in the territory specified in Article 3 of this Treaty, regardless of budgetary responsibilities. Revenue of the Trust Agency shall accordingly be used in line with Article 26 (4) and Article 27 (3) of the Treaty of 18 May 1990. As part of the structural adjustment of the agricultural sector, revenue of the Trust Agency may also be used in individual cases for debt relief to agricultural enterprises. First of all, their own assets shall be used. Debts attributed to branches of enterprises which are to be hived off shall be disregarded. Assistance with debt relief may also be granted with the proviso that enterprises pay back the funds granted in whole or in part, depending on their economic capabilities.

(4) The power to raise loans granted to the Trust Agency by Article 27 (1) of the Treaty of 18 May 1990 shall be increased from a maximum total of 17 billion Deutsche Mark to a maximum total of 25 billion Deutsche Mark.

The aforementioned loans should, as a rule, be repaid by 31 December 1995. The Federal Minister of Finance may permit an extension of the loan periods and, in the event of a fundamental change in conditions, give permission for the loan ceilings to be exceeded.

(5) The Trust Agency shall be empowered, in agreement with the Federal Minister of Finance, to assume sureties, guarantees and other warranties.

(6) In accordance with Article 10 (6) of the Treaty of 18 May 1990 possibilities shall be provided for savers at a later date to be granted a vested right to a share in publicly owned assets for the amount reduced following conversion at a rate of two to one.

(7) The interest and capital payments on loans raised before 30 June 1990 shall be suspended until the adoption of the opening balance in Deutsche Mark. The interest payments due shall be repaid to the Deutsche Kreditbank AG and the other banks by the Trust Agency.

## **ARTICLE 26**

### **SPECIAL FUND OF THE DEUTSCHE REICHSBAHN**

(1) Upon the accession taking effect, the property and all other property rights of the German Democratic Republic and the Reich property in Berlin (West) belonging to the special fund of the Deutsche Reichsbahn within the meaning of Article 26 (2) of the Treaty of 18 May 1990 shall become the property of the Federal Republic of Germany as the special fund of the Deutsche Reichsbahn. This further includes all property rights acquired since 8 May 1945 with resources from the special fund of the Deutsche Reichsbahn as well as those which were attached to its operation or that of its predecessor administrations, regardless of which legal entity they were acquired for, unless they were subsequently given over to another purpose with the consent of the Deutsche Reichsbahn. Property rights claimed by the Deutsche Reichsbahn up to 31 January 1991 pursuant to Section 1 (4) of the Decree of 11 July 1990 on the Registration of Claims with Regard to Property Rights (Law Gazette 1, No. 44, p. 718) shall not be regarded as property given over to another purpose with the consent of the Deutsche Reichsbahn.

(2) Associated liabilities and claims shall be transferred simultaneously with the property rights to the special fund of the Deutsche Reichsbahn.

(3) The Chairman of the Board of the Deutsche Bundesbahn and the Chairman of the Board of the Deutsche Reichsbahn shall be responsible for coordinating the two special funds. In carrying out this responsibility they shall work towards the objective of technically and organizationally merging the two railways.

## **ARTICLE 27**

### **SPECIAL FUND OF THE DEUTSCHE POST**

(1) The property and all other property rights belonging to the special fund of the Deutsche Post shall become the property of the Federal Republic of Germany. They shall be combined with the special fund of the Deutsche Bundespost. Associated liabilities and claims shall be transferred simultaneously with the property rights to the special fund of the Deutsche Bundespost. Property serving sovereign and political purposes, together with associated liabilities and claims, shall not become part of the special fund of the Deutsche Bundespost.

The special fund of the Deutsche Post shall also include all property rights which, as of 8 May 1945, belonged to the special fund of the Deutsche Reichspost or, after 8 May 1945, were either acquired with resources from the former special fund of the Deutsche Reichspost or attached to the operation of the Deutsche Post, regardless of which legal entity they were acquired for, unless they were subsequently given over to another purpose with the consent of the Deutsche Post. Property rights claimed by the Deutsche Post up to 31 January 1991 pursuant to Section 1 (4) of the Decree of 11 July 1990 on the Registration of Claims with Regard to Property Rights shall not be regarded as property given over to another purpose with the consent of the Deutsche Post.

(2) After consulting the enterprises of the Deutsche Bundespost the Federal Minister of Posts and Telecommunications shall finally determine the division of the special fund of the Deutsche Post among the partial special funds of the three enterprises. After consulting the three enterprises of the Deutsche Bundespost, the Federal Minister of Posts and Telecommunications shall, within a transitional period of three years, determine which items of property serve sovereign and political purposes. He shall take them over without compensation.

## **ARTICLE 28**

### **ECONOMIC ASSISTANCE**

(1) Upon the accession taking effect, the territory specified in Article 3 of this Treaty shall be incorporated into the arrangements of the Federation existing in the territory of the Federal Republic for economic assistance, taking into consideration the competence of the European Communities. The specific requirements of structural adjustment shall be taken into account during a transitional period. This will make a major contribution to the speediest possible development of a balanced economic structure with particular regard for small and medium-sized businesses.

(2) The relevant ministries shall prepare concrete programmes to speed up economic growth and structural adjustment in the territory specified in Article 3 of this Treaty. The programmes shall cover the following fields:

- measures of regional economic assistance accompanied by a special programme for the benefit of the territory specified in Article 3 of this Treaty; preferential arrangements shall be ensured for this territory;
- measures to improve the general economic conditions in the communes, with particular emphasis being given to infrastructure geared to the needs of the economy;
- measures to foster the rapid development of small and medium-sized businesses;
- measures to promote the modernization and restructuring of the economy, relying on restructuring schemes drawn up by industry of its own accord (e.g. rehabilitation programmes, including ones for exports to COMECON countries);
- debt relief for enterprises following the examination of each case individually.

## **ARTICLE 29**

### **FOREIGN TRADE RELATIONS**

(1) The established foreign trade relations of the German Democratic Republic, in particular the existing contractual obligations vis-à-vis the countries of the Council for Mutual Economic Assistance, shall enjoy protection of confidence. They shall be developed further and expanded, taking into consideration the interests of all parties concerned and having regard for the principles of a market economy as well as the competence of the European Communities. The all-German Government shall ensure that appropriate organizational arrangements are made for these foreign trade relations within the framework of departmental responsibility.

(2) The Federal Government, or the all-German Government, shall hold consultations with the competent institutions of the European Communities on which exemptions are required for a transitional period in the field of foreign trade, having regard to paragraph 1 above.

## **CHAPTER VII**

### **LABOUR, SOCIAL WELFARE, FAMILY, WOMEN, PUBLIC HEALTH AND ENVIRONMENTAL PROTECTION**

## **ARTICLE 30**

### **LABOUR AND SOCIAL WELFARE**

(1) It shall be the task of the all-German legislator

1. to recodify in a uniform manner and as soon as possible the law on employment contracts and the provisions on working hours under public law, including the admissibility of work on Sundays and public holidays, and the specific industrial safety regulations for women;

2. to bring public law on industrial safety into line with present-day requirements in accordance with the law of the European Communities and the concurrent part of the industrial safety law of the German Democratic Republic.

(2) Employed persons in the territory specified in Article 3 of this Treaty shall be entitled, upon reaching the

age of 57, to receive early retirement payments for a period of three years, but not beyond the earliest possible date on which they become entitled to receive a retirement pension under the statutory pension scheme. The early retirement payment shall amount to 65 per cent of the last average net earnings; for employed persons whose entitlement arises on or before 1 April 1991 early retirement payments shall be raised by an increment of five percentage points for the first 312 days. The early retirement payments shall be made by the Federal Institute for Employment along similar lines to unemployment pay, notably the provisions of Section 105c of the Employment Promotion Act. The Federal Institute for Employment may reject an application if it is established that there is a clear lack of manpower in the region to carry out the occupational duties so far discharged by the applicant. The early retirement payments shall be refunded by the Federation in so far as they reach beyond the period of entitlement to unemployment pay. The provisions on early retirement payments shall be applied to new claims up to 31 December 1991. The period of validity may be prolonged by one year.

In the period from this Treaty taking effect up to 31 December 1990, women shall be entitled, on reaching the age of 55, to receive early retirement payments for a period not exceeding five years.

(3) The social welfare supplement to pension, accident and unemployment payments introduced in the territory specified in Article 3 of this Treaty in conjunction with the Treaty of 18 May 1990 shall be limited to new cases up to 31 December 1991. The payments shall be made for a period not extending beyond 30 June 1995.

(4) The transfer of tasks incumbent upon the social insurance scheme to separate agencies shall take place in such a way as to ensure that payments are made and financed and sufficient staff is available to perform the said tasks. The distribution of assets and liabilities among the separate agencies shall be definitively settled by law.

(5) The details regarding the introduction of Part VI of the Social Code (pension insurance) and the provisions of Part III of the Reich Insurance Code (accident insurance) shall be settled in a federal Act.

For persons whose pension under the statutory pension scheme begins in the period from 1 January 1992 to 30 June 1995

1. a pension shall be payable which is in principle at least as high as the amount they would have received on 30 June 1990 in the territory specified in Article 3 of this Treaty according to the pension law valid until that time, without regard for payments from supplementary or special pension schemes,

2. a pension shall also be paid where, on 30 June 1990, a pension entitlement would have existed in the territory specified in Article 3 of this Treaty under the pension law valid until that time.

In all other respects, the introduction should have the goal of ensuring that as wages and salaries in the territory specified in Article 3 of this Treaty are brought into line with those in the other Länder, so are pensions.

(6) In developing further the ordinance on occupational diseases it shall be examined to what extent the arrangements which have applied until now in the territory specified in Article 3 of this Treaty can be taken into account.

## ARTICLE 31

## **FAMILY AND WOMEN**

- (1) It shall be the task of the all-German legislator to develop further the legislation on equal rights for men and women.
- (2) In view of different legal and institutional starting positions with regard to the employment of mothers and fathers, it shall be the task of the all-German legislator to shape the legal situation in such a way as to allow a reconciliation of family and occupational life.
- (3) In order to ensure that day care centres for children continue to operate in the territory specified in Article 3 of this Treaty, the Federation shall contribute to the costs of these centres for a transitional period up to 30 June 1991.
- (4) It shall be the task of the all-German legislator to introduce regulations no later than 31 December 1992 which ensure better protection of unborn life and provide a better solution in conformity with the Constitution of conflict situations faced by pregnant women - notably through legally guaranteed entitlements for women, first and foremost to advice and public support - than is the case in either part of Germany at present. In order to achieve these objectives, a network of advice centres run by various agencies and offering blanket coverage shall be set up without delay with financial assistance from the Federation in the territory specified in Article 3 of this Treaty. The advice centres shall be provided with sufficient staff and funds to allow them to cope with the task of advising pregnant women and offering them necessary assistance, including beyond the time of confinement. In the event that no regulations are introduced within the period stated in the first sentence, the substantive law shall continue to apply in the territory specified in Article 3 of this Treaty.

## **ARTICLE 32 VOLUNTARY ORGANIZATIONS**

Voluntary welfare and youth welfare organizations play an indispensable part through their institutions and services in fashioning the socially oriented state described in the Basic Law. The establishment and expansion of voluntary welfare and youth welfare organizations shall be promoted in the territory specified in Article 3 of this Treaty in line with the distribution of competence under the Basic Law.

## **ARTICLE 33 PUBLIC HEALTH**

- (1) It shall be the task of the legislators to create the conditions for effecting a rapid and lasting improvement in in-patient care in the territory specified in Article 3 of this Treaty and for bringing it into line with the situation in the remainder of the federal territory.
- (2) In order to avoid deficits arising from expenditure on prescribed drugs by the health insurance scheme in the territory specified in Article 3 of this Treaty, the all-German legislator shall introduce temporary regulations providing for a reduction in producers' prices within the meaning of the Ordinance on the Price of Drugs corresponding to the gap between the income subject to insurance contributions in the territory specified in Article 3 of this Treaty and that in the present federal territory.

## **ARTICLE 34 PROTECTION OF THE ENVIRONMENT**

(1) On the basis of the German environmental union established under Article 16 of the Treaty of 18 May 1990 in conjunction with the Skeleton Environment Act of the German Democratic Republic of 29 June 1990 (Law Gazette 1, No. 42, p. 649), it shall be the task of the legislators to protect the natural basis of man's existence, with due regard for prevention, the polluter-pays principle, and cooperation, and to promote uniform ecological conditions of a high standard at least equivalent to that reached in the Federal Republic of Germany.

(2) With a view to attaining the objective defined in paragraph 1 above, ecological rehabilitation and development programmes shall be drawn up for the territory specified in Article 3 of this Treaty, in line with the distribution of competence under the Basic Law. Measures to ward off dangers to public health shall be accorded priority.

## **CHAPTER VIII CULTURE, EDUCATION AND SCIENCE, SPORT**

### **ARTICLE 35 CULTURE**

(1) In the years of division, culture and the arts - despite different paths of development taken by the two states in Germany - formed one of the foundations for the continuing unity of the German nation. They have an indispensable contribution to make in their own right as the Germans cement their unity in a single state on the road to European unification. The position and prestige of a united Germany in the world depend not only on its political weight and its economic strength, but also on its role in the cultural domain. The overriding objective of external cultural policy shall be cultural exchange based on partnership and cooperation.

(2) The cultural substance in the territory specified in Article 3 of this Treaty shall not suffer any damage.

(3) Measures shall be taken to provide for the performance of cultural tasks, including their financing, with the protection and promotion of culture and the arts being the responsibility of the new Länder and local authorities in line with the distribution of competence under the Basic Law.

(4) The cultural institutions which have been under central management to date shall come under the responsibility of the Länder or local authorities in whose territory they are located. In exceptional cases, the possibility of the Federation making a contribution to financing shall not be ruled out, particularly in Land Berlin.

(5) The parts of the former Prussian state collections which were separated as a result of post-war events (including State Museums, State Libraries, Secret State Archives, Ibero-American Institute, State Musicology Institute) shall be joined together again in Berlin. The Prussian Cultural Heritage Foundation shall assume responsibility for the time being. Future arrangements shall likewise involve an agency that is responsible for the former Prussian state collections in their entirety and is based in Berlin.

(6) The Cultural Fund shall be continued up to 31 December 1994 on a transitional basis in the territory specified in Article 3 of this Treaty to promote culture, the arts and artists. The possibility of the Federation making a contribution to financing in line with the distribution of competence under the Basic Law shall not

be ruled out. Discussions on a successor institution shall be held in the framework of the talks on the accession of the Länder named in Article 1 (1) of this Treaty to the Cultural Foundation of the Länder.

(7) In order to offset the effects of the division of Germany the Federation may help to finance, on a transitional basis, individual cultural programmes and institutions in the territory specified in Article 3 of this Treaty to enhance the cultural infrastructure.

## **ARTICLE 36 BROADCASTING**

(1) The Rundfunk der DDR and the Deutscher Fernsehfunk shall be continued as an autonomous joint institution having legal capacity by the Länder named in Article 1 of this Treaty and by Land Berlin in respect of that part where the Basic Law has not been valid to date for a period not extending beyond 31 December 1991 in so far as they perform tasks coming under the responsibility of the Länder. The institution shall have the task of providing the population in the territory specified in Article 3 of this Treaty with a radio and television service in accordance with the general principles governing broadcasting establishments coming under public law. The studio equipment which has belonged to the Deutsche Post to date shall be made over to the institution together with the immovable property serving production and administrative purposes for radio and television. Article 21 of this Treaty shall be applied *mutatis mutandis*.

(2) The executive bodies of the institution shall be

1. the Broadcasting Commissioner,
2. the Advisory Council on Broadcasting.

(3) The Broadcasting Commissioner shall be elected by the Volkskammer on the proposal of the Prime Minister of the German Democratic Republic. Should the Volkskammer fail to elect a Broadcasting Commissioner, he shall be elected by the Land spokesmen of the Länder named in Article 1 (1) of this Treaty and by the First Mayor of Berlin by a majority vote. The Broadcasting Commissioner shall be in charge of the institution and represent it in and out of court. He shall be responsible for fulfilling the mission of the institution within the limits of the available resources and shall, without delay, draw up a budget for 1991 in which revenue and expenditure are balanced.

(4) The Advisory Council on Broadcasting shall comprise 18 acknowledged public figures as representatives of socially relevant groups. The parliaments of the Länder named in Article 1 (1) of this Treaty and the Berlin Municipal Assembly shall each elect three members. The Advisory Council on Broadcasting shall have a consultative voice on all questions of programming and a right to participation in major personnel, economic and budget decisions. The Advisory Council on Broadcasting may recall the Broadcasting Commissioner by a majority vote of two thirds of its members. It may elect a new Broadcasting Commissioner by a majority vote of two thirds of its members.

(5) The institution shall be financed mainly by revenue raised through licence fees paid by radio and television users resident in the territory specified in Article 3 of this Treaty. To that extent it shall be the recipient of radio and television licence fees. For the rest, it shall cover its expenditure by advertising revenue and other revenue.

(6) Within the period laid down in paragraph 1 above the institution shall be dissolved in accordance with

the federal structure of broadcasting through a joint treaty between the Länder named in Article 1 of this Treaty or converted to agencies under public law of one or more Länder. Should a treaty under the first sentence fail to materialize by 31 December 1991, the institution shall be deemed to have been dissolved on that date. The assets and liabilities existing on that date shall be shared out among the Länder named in Article 1 of this Treaty. The amount of the shares to be transferred shall be calculated in proportion to the licence fee revenues as of 30 June 1991 in the territory specified in Article 3 of this Treaty. This shall not affect the obligation of the Länder to continue to provide a broadcasting service in the territory specified in Article 3 of this Treaty.

(7) Upon the entry into force of the treaty under paragraph 6 above, but no later than 31 December 1991, paragraphs 1 to 6 above shall cease to have effect.

## **ARTICLE 37**

### **EDUCATION**

(1) School, vocational or higher education certificates or degrees obtained or officially recognized in the German Democratic Republic shall continue to be valid in the territory specified in Article 3 of this Treaty. Examinations passed and certificates obtained in the territory specified in Article 3 or in the other Länder of the Federal Republic of Germany, including Berlin (West), shall be considered equal and shall convey the same rights if they are of equal value. Their equivalence shall be established by the respective competent agency on application. Legal provisions of the Federation and the European Communities regarding the equivalence of examinations and certificates, and special provisions set out in this Treaty shall have priority. In all cases this shall not affect the right to use academic professional titles and degrees obtained or officially recognized or conferred.

(2) The usual recognition procedure operated by the Conference of Ministers of Education and Cultural Affairs shall apply to teaching diploma examinations. The said Conference shall make appropriate transitional arrangements.

(3) Examination certificates issued under the trained occupation scheme and the skilled workers' training scheme as well as final examinations and apprentices' final examinations in recognized trained occupations shall be considered equal.

(4) The regulations necessary for the reorganization of the school system in the territory specified in Article 3 of this Treaty shall be adopted by the Länder named in Article 1. The necessary regulations for the recognition of examinations under educational law shall be agreed by the Conference of Ministers of Education and Cultural Affairs. In both cases they shall be based on the Hamburg Agreement and the other relevant agreements reached by the said Conference.

(5) Undergraduates who move to another institution of higher education before completing their studies shall have their study and examination record up to that point recognized according to the principles laid down in Section 7 of the General Regulations on Degree Examination Procedures (ABD) or within the terms of the rules governing admission to state examinations.

(6) The entitlements to study at an institution of higher education confirmed on leaving certificates issued by engineering and technical schools of the German Democratic Republic shall be valid in accordance with the resolution of 10 May 1990 of the Conference of Ministers of Education and Cultural Affairs and its Annex B. Further principles and procedures for the recognition of technical school and higher education certificates

for the purpose of school and college studies based on them shall be developed within the framework of the Conference of Ministers of Education and Cultural Affairs.

### **ARTICLE 38 SCIENCE AND RESEARCH**

(1) In the united Germany science and research shall continue to constitute important foundations of the state and society. The need to renew science and research in the territory specified in Article 3 of this Treaty while preserving efficient institutions shall be taken into account by an expert report on publicly maintained institutions prepared by the Science Council and to be completed by 31 December 1991, with individual results to be implemented step by step before that date.

The following provisions are intended to make possible the preparation of this report and ensure the incorporation of science and research in the territory specified in Article 3 of this Treaty into the joint research structure of the Federal Republic of Germany.

(2) Upon the accession taking effect, the Academy of Sciences of the German Democratic Republic shall be separated as a learned society from the research institutes and other institutions. The decision as to how the learned society of the Academy of Sciences of the German Democratic Republic is to be continued shall be taken under Land law. For the time being the research institutes and other institutions shall continue to exist up to 31 December 1991 as institutions of the Länder in the territory specified in Article 3 of this Treaty in so far as they have not been previously dissolved or transformed. Transitional arrangements shall be made for the financing of these institutes and institutions up to 31 December 1991; the requisite funds shall be provided in 1991 by the Federation and the Länder named in Article 1 of this Treaty.

(3) The employment contracts of the staff employed at the research institutes and other institutions of the Academy of Sciences of the German Democratic Republic shall continue to exist up to 31 December 1991 as limited employment contracts with the Länder to which these institutes and institutions are transferred. The right to cancel these employment contracts with or without notice under the conditions listed in Annex I to this Treaty shall remain unaffected.

(4) Paragraphs 1 to 3 above shall apply *mutatis mutandis* to the Academy of Architecture and the Academy of Agricultural Sciences of the German Democratic Republic and to the scientific institutions subordinate to the Ministry of Food, Agriculture and Forestry.

(5) The Federal Government shall begin negotiations with the Länder with a view to adapting or renewing the Federation-Länder agreements under Article 91 b of the Basic Law in such a way that educational planning and the promotion of institutions and projects of scientific research of supraregional importance are extended to the territory specified in Article 3 of this Treaty.

(6) The Federal Government shall seek to ensure that the proven methods and programmes of research promotion in the Federal Republic of Germany are applied as soon as possible to the entire federal territory and that the scientists and scientific institutions in the territory specified in Article 3 of this Treaty are given access to current research promotion schemes. Furthermore, certain schemes for promoting research and development which have expired in the territory of the Federal Republic of Germany shall be reopened for the territory specified in Article 3 of this Treaty; this shall not include fiscal measures.

(7) Upon the accession of the German Democratic Republic taking effect, the Research Council of the

German Democratic Republic shall be dissolved.

## **ARTICLE 39**

### **SPORT**

(1) The sporting structures which are in a process of transformation in the territory specified in Article 3 of this Treaty shall be placed on a self-governing basis. The public authorities shall give moral and material support to sport in line with the distribution of competence under the Basic Law.

(2) To the extent that it has proved successful, top-level sport and its development shall continue to receive support in the territory specified in Article 3 of this Treaty. Support shall be given within the framework of the rules and principles existing in the Federal Republic of Germany and in line with the public-sector budgets in the territory specified in Article 3 of this Treaty. Within this framework, the Physical Training and Sport Research Institute (FKS) in Leipzig, the doping control laboratory recognized by the International Olympic Committee (IOC) in Kreischa (near Dresden) and the Sports Equipment Research and Development Centre (FES) in Berlin (East) shall - each in an appropriate legal form and to the extent necessary - be continued as institutions in the united Germany or attached to existing institutions.

(3) The Federation shall support sport for the disabled for a transitional period until 31 December 1992.

## **CHAPTER IX**

### **TRANSITIONAL AND FINAL PROVISIONS**

## **ARTICLE 40**

### **TREATIES AND AGREEMENTS**

(1) The obligations under the Treaty of 18 May 1990 between the Federal Republic of Germany and the German Democratic Republic establishing a Monetary, Economic and Social Union shall continue to be valid unless otherwise provided in this Treaty and unless they become irrelevant in the process of establishing German unity.

(2) Where rights and duties arising from other treaties and agreements between the Federal Republic of Germany or its Länder and the German Democratic Republic have not become irrelevant in the process of establishing German unity, they shall be assumed, adjusted or settled by the competent national entities.

## **ARTICLE 41**

### **SETTLEMENT OF PROPERTY ISSUES**

(1) The Joint Declaration of 15 June 1990 on the Settlement of Open Property Issues (Annex III) issued by the Government of the Federal Republic of Germany and the Government of the German Democratic Republic shall form an integral part of this Treaty.

(2) In accordance with separate legislative arrangements there shall be no return of property rights to real estate or buildings if the real estate or building concerned is required for urgent investment purposes to be specified in detail, particularly if it is to be used for the establishment of an industrial enterprise and the implementation of this investment decision deserves support from a general economic viewpoint above all if it creates or safeguards jobs. The investor shall submit a plan showing the major features of his project and

shall undertake to carry out the plan on this basis. The legislation shall also contain arrangements for compensation to the former owner.

(3) The Federal Republic of Germany shall not otherwise enact any legislation contradicting the Joint Declaration referred to in paragraph 1 above.

## **ARTICLE 42**

### **DELEGATION OF PARLIAMENTARY REPRESENTATIVES**

(1) Before the accession of the German Democratic Republic takes effect, the Volkskammer shall, on the basis of its composition, elect 144 Members of Parliament to be delegated to the 11th German Bundestag together with a sufficient number of reserve members. Relevant proposals shall be made by the parties and groups represented in the Volkskammer.

(2) The persons elected shall become members of the 11th German Bundestag by virtue of a statement of acceptance delivered to the President of the Volkskammer, but not until the accession takes effect. The President of the Volkskammer shall without delay communicate the result of the election, together with the statement of acceptance, to the President of the German Bundestag.

(3) The eligibility for election to, and loss of membership of, the 11th German Bundestag shall otherwise be subject to the provisions of the Federal Election Act as promulgated on 1 September 1975 (Federal Law Gazette 1, p. 2325) and last amended by the Act of 29 August 1990 (Federal Law Gazette 11, p. 813).

In the event of cessation of membership, the member concerned shall be replaced by the next person on the reserve list. He must belong to the same party as, at the time of his election, the member whose membership has ceased. The reserve member to take his seat in the German Bundestag shall, before the accession takes effect, be determined by the President of the Volkskammer, and thereafter by the President of the German Bundestag.

## **ARTICLE 43**

### **TRANSITIONAL RULE FOR THE BUNDESRAT PENDING THE FORMATION OF LÄNDER GOVERNMENTS**

From the formation of the Länder named in Article 1 (1) of this Treaty until the election of minister presidents, the Land plenipotentiaries may take part in the meetings of the Bundesrat in a consultative capacity.

## **ARTICLE 44**

### **PRESERVATION OF RIGHTS**

Rights arising from this Treaty in favour of the German Democratic Republic or the Länder named in Article 1 of this Treaty may be asserted by each of these Länder after the accession has taken effect.

## **ARTICLE 45**

### **ENTRY INTO FORCE OF THE TREATY**

(1) This Treaty, including the attached Protocol and Annexes I to III, shall enter into force on the day on which the Governments of the Federal Republic of Germany and the German Democratic Republic have

informed each other that the internal requirements for such entry into force have been fulfilled.

(2) The Treaty shall remain valid as federal law after the accession has taken effect.

Done at Berlin on 31 August 1990 in duplicate in the German language.

For the Federal Republic of Germany Wolfgang Schäuble

For the German Democratic Republic Günther Krause

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## **PROTOCOL**

At the signing of the Treaty between the Federal Republic of Germany and the German Democratic Republic on the Establishment of Germany Unity the following explanations were made in respect of this Treaty:

### **I. RE ARTICLES AND ANNEXES OF THE TREATY**

#### 1. Re Article 1:

(1) The boundaries of Land Berlin shall be those defined by the Establishment of a New Municipality of Berlin Act of 27 April 1920 (Prussian Law Gazette 1920, p. 123) with the proviso

- that the note in the protocol concerning Article 1 of the Agreement of 31 March 1988 between the Senat and the Government of the German Democratic Republic on the Inclusion of Further Enclaves and Other Small Territories in the Agreement of 20 December 1971 on the Settlement of Questions of Enclaves by the Exchange of Territories shall be extended to all boroughs and shall continue to apply between the Länder of Berlin and Brandenburg;

- that all territories in which an election to the House of Representatives or to the Municipal Assembly of Berlin took place after 7 October 1949 are constituent parts of the boroughs of Berlin.

(2) The Länder of Berlin and Brandenburg shall review the course of the boundary arising from paragraph 1 above and produce a documentary record of it within one year.

#### 2. Re Article 2 (1):

The Contracting Parties agree that decisions under the second sentence shall be the prerogative of the legislative bodies of the Federation after the election of the first all-German Bundestag and after the establishment of full rights of participation for the Länder named in Article 1 (1) of this Treaty.

#### 3. Re Article 2 (2):

The Contracting Parties agree that the character of 3 October 1990 as a public holiday does not rule out

actions which have already been decided irreversibly when the Treaty enters into force.

4. Re Article 4, item 5:

Article 143 (1) and (2) has only temporary significance; it is therefore not binding on future legislation.

5. Re Article 9 (5):

The two Contracting Parties take note of the statement by Land Berlin that the church tax legislation valid in Berlin (West) shall, with effect from 1 January 1991, be extended to that part of Berlin in which it has not been valid to date.

6. Re Article 13:

Institutions or their branches which, up to the accession taking effect, have performed tasks that in future are no longer to be carried out by the public administration shall be wound up as follows:

(1) Where a substantive link exists with public tasks, the institutions or their branches shall be wound up by the body which is responsible for these public tasks (Federation, Land, Länder jointly).

(2) In all other cases the institutions or their branches shall be wound up by the Federation.

In cases of doubt the Land concerned or the Federation may have recourse to an agency established by the Federation and the Länder.

7. Re Article 13 (2):

Where Institutions are wholly or partially transferred to the Federation, suitable existing staff shall be taken on to an appropriate extent as necessary for the performance of tasks.

8. Re Article 15:

The administrative assistance of the Federation and the Länder for the organization of Land administration and the performance of certain technical tasks shall be coordinated in a clearing agency to be established by the Federation and the Länder.

9. Re Article 16:

The two Contracting Parties take note of the announcement by Land Berlin that the First Mayor will, on 3 October 1990, be appointed a member of the Bundesrat and that the members of the Magistrat, like other members of the Land Government of Berlin, will be entitled to deputize for the appointed members of the Bundesrat.

10. Re Article 17:

This provision shall also apply to persons who, due to committal to a psychiatric institution contrary to the rule of law, became victims within the meaning of Article 17.

11. Re Article 20 (2):

The introduction of professional civil service law in accordance with the agreed arrangements set out in Annex I shall take place in line with the principles governing the staffing of permanently required posts of the Federal Republic of Germany.

12. Re Article 21 (1), first sentence:

The Länder shall be informed about the continued use of immovable property employed for military purposes. The Länder concerned shall be consulted before immovable property which has been used to date for military purposes and becomes federal property is given over to another use.

13. Re Article 22 (4):

Publicly owned land used for housing purposes by the housing cooperatives shall also be covered by paragraph 4 and shall ultimately be made over to the housing cooperatives, with its present purpose being maintained.

14. Re Article 35:

The Federal Republic of Germany and the German Democratic Republic declare in connection with Article 35 of the Treaty:

1. There shall be freedom of commitment to the distinctive Sorbian way of life and to Sorbian culture.
2. The maintenance and further development of Sorbian culture and traditions shall be guaranteed.
3. The Sorbian people and their organizations shall be free to cultivate and preserve the Sorbian language in public life.
4. The distribution of competence between the Federation and the Länder as set out in the Basic Law shall remain unaffected.

15. Re Article 38:

Agreements concluded by the Academy of Sciences, the Academy of Architecture and the Academy of Agricultural Sciences of the German Democratic Republic with organizations in other states or with international agencies shall be reviewed in accordance with the principles laid down in Article 12 of the Treaty.

16. Re Article 40:

The Federal Government shall settle cases in which it has agreed to assume the costs of medical care for Germans from the territory specified in Article 3 of the Treaty.

(...)

## II. STATEMENT FOR THE RECORD

The two Contracting Parties are agreed that the provisions of the Treaty are adopted without prejudice to the rights and responsibilities of the Four Powers in respect of Berlin and Germany as a whole still existing at the time of signing and to the still outstanding results of the talks on the external aspects of the establishment of German unity.