

MANAGING ACROSS LEVELS OF GOVERNMENT

GERMANY

1. Institutions and authority**1.1 Structures***Description of levels*

The Federal Republic of Germany is a federal State. Its administrative apparatus has three levels: federal, *Land* (state), and local. The federal and *Land* administrative authorities are considered institutions of “direct” State administration; while the local authorities which, from a legal point of view, form independent bodies of self-government, are considered institutions of “indirect” State administration.

Germany is composed of 16 *Länder*. There are 13 territorial *Länder* and 3 “city-states” (Berlin, Bremen and Hamburg) which are both a *Land* and a local authority.

Local self-government falls into two levels: municipalities (*Gemeinden*) on the one hand, which may be organised as unitary municipalities (*Einheitsgemeinden*) or as a kind of association of municipalities (*Ämter, Verbandsgemeinden, Verwaltungsgemeinschaften*) and, on the other hand, the counties (*Kreise*) consisting of the municipalities within the county territory. Bigger towns may be non-county municipalities (*kreisfreie Städte*) -- i.e. independent of a county and thus combining the two levels of local self-government (see Table 1).

Federal and Länder government at sub-national levels

As the execution of laws is delegated from the federal government to the *Länder*, there is no need for federal representation at the *Land* level. For those areas in which laws are executed by the federal level, higher, intermediate and lower-level federal authorities have been established. All except the higher-level authorities have regional sub-structures.

Most *Länder* also have a three-level administrative organisation: higher, intermediate and lower level. Higher-level authorities fulfil administrative functions for the entire *Land* from one central location, are immediately subordinate to the *Land* ministries and do not have any administrative substructure. Intermediate-level authorities fulfil functions for an administrative district within the *Land* but do not exist in all *Länder*. Staff working for these administrations are civil servants and employees of the *Länder*. Lower-level authorities may be either *Land* authorities or local authorities acting on behalf of the *Land*.

Table 1. Size and number of sub-national governments

	<i>Länder</i>		
	area (km ²)	population	
Number	16 of which 3 (Berlin, Bremen, Hamburg) are "city states"		
Largest	70 000 (Bavaria)	17 700 000 (N. Rhine-Westphalia)	
Smallest	2 600 (Saarland)	1 100 000 (Saarland)	
"city state"	400 (Bremen)	700 000 (Bremen)	
	Number of local authorities		
	Old <i>Länder</i>	New <i>Länder</i>	TOTAL
County (<i>Kreise</i>)	237	92	329
Non-county municipalities (<i>Kreisfreie Städte</i>)	91	24	115
Municipalities (<i>Gemeinden</i>)	8 512	6 403	14 915

Source: Federal Ministry of the Interior.

Creation, elimination and restructuring

The existence of *Länder* and municipalities is guaranteed by the Constitution. This means that the German federal structure i.e. the existence of *Länder*, towns, municipalities and non-county municipalities is guaranteed, even if the existence of an individual *Land* or municipality is not.

New boundaries of federal territory are effected by federal statutes which require confirmation by referendum, as was the case recently in Berlin and Brandenburg. New local boundaries may be effected by *Land* statutes. The *Land* constitutions contain provisions on the procedures for and content of such statutes. The *Land* parliaments are responsible for such processes.

Between 1965 and 1977, local units at both county and municipal levels were subject to far-reaching administrative and territorial reforms. The individual *Länder* adopted different approaches. All reforms aimed at creating bigger and more capable local governments able to offer a wide range of modern services. In some *Länder*, smaller municipalities were merged to form bigger ones (*Einheitsgemeinden*, unitary municipalities), while in other *Länder* smaller municipalities remained independent, but were grouped together, to form associations of municipalities with a joint administration (*Ämter*, *Verbandsgemeinden*, *Verwaltungsgemeinschaften*). Thus, in the old *Länder*, only half of the approximately 8 500 remaining municipalities (compared with approximately 24 000 prior to the reform) has its own administration.

Territorial reform was also conducted at the level of the counties. A great number of smaller counties were merged, bringing down the number of counties and non-county municipalities from 425 and 137 (as at 1 January 1960) to 237 and 91 respectively.

In the new *Länder* overall territorial reform has not yet been conducted at the level of the municipalities. However, as a lot of smaller municipalities are not able to provide today's modern services, associations of municipalities were formed for many municipalities either as laid down by

statute or on a voluntary basis (*Ämter* in Brandenburg and Mecklenburg-Western Pomerania, *Verwaltungsgemeinschaften* in Saxony, Saxony-Anhalt and Thuringia).

The reform to create sustainable and capable counties and non-county municipalities has now almost been concluded. Prior to the reform there were 189 counties (*Kreise*) and 26 non-county municipalities (*kreisfreie Städte*) in the new *Länder*, now there are only 92 and 24 respectively.

Control bodies

From a legal and political point of view, the *Länder* and municipalities perform their tasks within the framework laid down by statutes not requiring *Bundesrat* consent and by the Constitution independently and on their own responsibility.

From a constitutional point of view, the *Länder* generally execute federal statutes as matters of their own concern. The Federation merely exercises supervision to ensure that the *Länder* execute the statutes in accordance with applicable law. In the case of the specific federal statutes referred to in the Basic Law and which the *Länder* have to perform as agents of the Federation, federal supervision also covers the legality and appropriateness of execution.

Where local authorities perform their designated tasks, legal supervision is exercised by the *Land*; where they perform other (discretionary) tasks, the *Land*, within the framework set by statute, also exercises supervision regarding the legality and appropriateness of execution. The office of the head of the county government executes public supervisory functions vis-à-vis the municipalities and towns forming part of a county. In the eight *Länder* where there are intermediate-level public authorities (*Regierungsbezirke*) i.e. administrative units covering a number of counties and non-county municipalities, the chief executive (*Regierungspräsidenten*) supervises the counties and non-county municipalities. In the *Länder* which do not have such intermediate-level authorities, the supervision of the counties is incumbent on the Ministry of the Interior of the *Land* -- which, in all the *Länder*, are at the same time the supreme local supervisory bodies. The local authorities are subject to direct instructions where they execute Federal or *Land* statutes as agents of the Federation or the *Länder*.

Judicial controls over sub-national government: Local administrative courts and higher administrative courts (*Verwaltungsgerichtshof* or *Oberverwaltungsgericht*) check if the federal or *Land* authorities comply with federal or *Land* law. The higher administrative courts ensure, in particular, that the law is interpreted uniformly. There are also a federal Constitutional Court (see 1.2), social courts and fiscal courts. The Federal Court of Audit and the *Land* Courts of Audit are independent fiscal bodies and are responsible for monitoring budget and performance matters.

1.2 Powers

Nature of sub-national institutions

Legislative bodies: each *Land* has its own constitution, parliament and government. The members of the *Land* parliaments are elected directly by the electorate of the individual *Länder* under *Land*-specific electoral systems (e.g. election by proportional representation, electoral systems in which votes are cast for a candidate rather than a party, with reserve lists being kept to make up for proportions of votes cast which are not reflected in the distribution of seats, personalised election by proportional representation). Their term of office is four or five years, depending on the *Land*.

The Basic Law provides that citizens should also have a representative who is elected directly at the level of the counties and municipalities. The size of the municipal and county councils is laid down by *Land* law and depends on the number of inhabitants. Depending on the *Land* law, the representative bodies are elected for a term of four or five years. The powers of the municipal and county councils vary from one *Land* to another. They also depend on the position of the mayor in the local government. So as to prepare, deliberate and decide on matters within its remit, the representative body may set up committees of members of the local council which, in some cases, are necessary to comply with *Land* law.

Executive bodies: The general policy in each *Land* is determined by its head of government (*Ministerpräsident*) -- if this power is not reserved for the *Land* government as a body.

In accordance with the dual nature of the counties as both bodies of local self-government and of the *Land* administration at the local level, the *Landrat* is both the chief executive of the county and the chief executive of the *Land* in the county government. In the *Länder* of Lower Saxony and North-Rhine/Westphalia (where this will soon cease to be the case), local administrative structures have been modelled on the British ones and a separation is made between the *Landrat* as the exclusive representative of the *Land* and the *Kreisdirektor* as head of the administration. As the chief executive official of the *Land*, the *Landrat* or *Kreisdirektor* performs the obligatory public tasks and the supervisory tasks conferred on the counties. As the top public servant at the local level he or she is responsible for all routine administrative procedures, and the meetings of the county council and ensuring that the decisions are put into practice.

There is no nation-wide procedure for the selection or qualification of the *Landrat*. This is regulated in the provisions on the form of local government of the individual *Länder*. The *Landrat* can either be elected directly by the inhabitants, or from among the members of the county council, or, as an external applicant, be elected by the county council. In some *Länder*, the administration is also involved in the election process in various ways. The county council vote may be confirmed by the Ministry of the Interior, the supervisory body may be involved in a pre-selection, or the chief executive may be made a public official on a limited term appointment under the legal provisions of the *Land* concerned.

Similarly, at the level of the municipalities, there is no nation-wide organisation of the executive bodies. Depending on the form of local government, executive functions rest with the local council, the mayor (*Bürgermeister*) or the chief executive (who is not the mayor).

In most *Länder*, the mayor is at the same time the head of the local council and chief executive. In twelve of the thirteen territorial *Länder*, which have an independent level of local government, the mayor is (or will be) elected directly by the electorate. (This is not the case with the three city states.) Only in Lower Saxony is the mayor not elected directly, and the separation between the mayor's function and that of the chief executive upheld, as in the British system of local government. So far, North-Rhine/Westphalia has also applied this practice at the level of the counties and municipalities. For a transitional period up to the local elections in 1999, the *Land* may also uphold this system or decide that the local council may elect a mayor. As of 1999, the North-Rhine/Westphalian electorate, too, will elect the mayor.

Type and degree of autonomy

The *Länder* have important law-making responsibilities, among which are local government law (which differs widely from *Land* to *Land*), the major part of police law, the administration of justice, and

legal regulations concerning cultural and educational affairs (e.g. primary and secondary education, and universities).

Through the *Bundesrat* (Higher Chamber) the *Länder* participate in the federal legislative process. It consists of members of the *Land* governments who are appointed and recalled by them. Each *Land* may appoint as many members as it has votes. The *Länder* have between three and six votes depending on their size. The *Bundesrat* may submit its own bills, and some 60 per cent of federal statutes require *Bundesrat* consent. The *Bundesrat* may veto statutes which do not require its consent. Such veto, however, may be rejected by the majority of *Bundestag* members.

The Federal Constitutional Court (*Bundesverfassungsgericht*) has ruled that by-laws are the typical legal form by which local authorities make regulations for implementing their self-government tasks. The right to issue by-laws is at the centre of local self-government. These by-laws may regulate local community matters in so far as statutes do not provide otherwise. Where local self-government bodies perform tasks delegated to them, by-laws may only be issued where statutes so provide. Important local by-laws include standing orders (*Hauptsatzung*), the budget by-laws, by-laws relating to building law (development plans, local building provisions), and by-laws regulating road laws and businesses owned by local government. By-laws are exclusively adopted by the representative body.

Fiscal matters are laid down in detail in the Basic Law. This applies to the distribution of the burden of expenditure on the Federation and the *Länder*; fiscal law-making power and the distribution of tax revenues (see also 2.2).

The *Land* constitutions must conform to the principles of democratic, federal and social government based on the rule of law as provided by the Basic Law. Otherwise, each *Land* is free to shape its constitution as it wishes. The administration of *Land* courts is also independent of federal authorities. Differences in the specific needs of the *Länder*, and in their historical background, result in differences in their organisational and administrative structures. Nonetheless there are similarities, especially among *Länder* of similar size.

The organisational, personnel, fiscal, planning and territorial or administrative sovereignty of the local self-government bodies presents one of the important pillars of local democracy and provides local authorities with considerable scope to regulate their own affairs.

1.3 **Responsibilities**

Distribution of responsibilities

The primary function of the federal government is to prepare political decisions and legislation, while administrative responsibilities are mainly devolved to the *Länder* which have general competences. Tasks are then undertaken for the most part at the local level or, to a lesser degree, by the *Länder*. Compared to some other federal systems the scope of tasks undertaken by the federal administration is rather limited. The few areas which, according to the Basic Law, *must* be undertaken by federal authorities are the foreign service, federal finance, the armed forces, the federal waterways and the Federal Border Guard. The *Länder* are deeply involved in matters of security, police, civil defence and education (in partnership with semi-public bodies and churches). Some responsibilities are also shared between the federal government and the *Länder* (see below).

Local authorities: The municipalities are responsible for social matters. They provide financial services such as social assistance and housing allowances (paid out by the local authorities but financed by the federal government) and material services such as the provision of day-care centres and publicly funded housing, and counselling for underprivileged persons. These material services are rendered by municipality-owned institutions or through grants paid to independent non profit organisations.

In the education sector, the municipalities provide and maintain school buildings both for young persons and adults. Cultural institutions such as libraries, museums, theatres, orchestras and music schools are provided depending on the number of inhabitants. Sports facilities may be made available to sports clubs, often by putting school sports facilities to a dual use. In the technical field, local authorities draft land use and local development plans, construct buildings and roads, and create and maintain parks. Where the supply of electricity, gas and water has not been contracted-out to private companies, it is undertaken by the municipalities. Municipalities or counties are responsible for waste and sewage disposal as sovereign tasks under *Land* provisions.

Municipalities may choose from a variety of organisation patterns to fulfil these tasks. Services may be provided, for example, by the administration itself, by local-government owned enterprises, by enterprises which are owned by the municipalities but are organised under private law, or by private businesses commissioned to do so. Municipalities may also form joint authorities (*Zweckverbände*) to fulfil given tasks.

Mandatory, optional and shared responsibilities

The exclusive tasks of the *Länder* include the adoption and execution of *Land* law, and the execution of federal law, in so far as responsibility does not rest with federal authorities. The concept of co-operative federalism, promoted by Basic Law amendments in 1967-69, provides for tasks to be undertaken jointly by the Federal government and the *Länder*. Joint activities deal with matters such as regional economic structural policy and universities. Typically, responsibilities shared across all levels of government are found in the health and transport (roads) sectors.

To describe the responsibilities of the municipalities and counties in detail, one would have to address them *Land* by *Land*. Generally, a distinction is made between tasks which the municipalities and counties fulfil within their own remit and delegated tasks. The former include voluntary tasks as well as tasks which the local self-government bodies are under an obligation to fulfil.

Obligatory tasks of local authorities include building and maintaining primary and secondary schools, nurseries, cemeteries, fire brigades, water supply and sewerage systems. Voluntary tasks include the maintenance of libraries, children's homes and young people's clubs, homes for the elderly, sports facilities and parks, promotion of local businesses, cultural institutions, hospitals, swimming pools, and housing.

The counties tend to perform such tasks when they exceed the financial, administrative or technical capacity of the municipalities in the county. In order to fulfil their planning responsibilities, counties are increasingly united in regional associations.

The municipalities and counties perform numerous delegated and mandatory tasks as directed by the federal and *Land* levels or as their agents. These tasks, and the extent to which they are bound by instructions when executing them, vary. However, as opposed to self-government matters, local governments are not only subject to supervision as to the legality of these tasks but are also given detailed

instructions on how to execute them. Delegated and mandatory tasks include the registration of births, marriages and deaths, matters relating to passports, responsibilities as the lower building law authority, looking after refugees, trade inspection, preparing elections to the *Bundestag* and the *Landtage* (*Länder* parliaments), health care, food inspection, roads, water supply and sewerage systems.

2. Management functions

2.1 Policy-making and co-ordination

Coherence, consultation and conflict resolution

The principle of *Länder* sovereignty implies that the Federal Parliament cannot object to laws passed by a *Land* parliament (if the constitutionality of a law is under question, only the federal and *Land* constitutional courts can decide).

About three-quarters of all federal statutes are addressed directly to the *Länder* and local governments and must be implemented by them. In this task they act independently and on their own responsibility. Only a few administrative tasks, which are in principle listed in the Basic Law, are carried out by the *Länder* as agents of the Federation.

Formal and informal mechanisms

The co-ordinating bodies for joint activities between the Federation and the *Länder* are planning committees in which representatives of both levels participate.

For the co-ordination of policies between the governmental tiers, high-level councils are set up. The most important one is the Financial Planning Council, which makes non-binding recommendations on the co-ordination of the budgets and financial plans of the federal government, the *Länder* and municipalities. It is chaired by the Federal Minister of Finance and consists of the *Länder* Ministers of Finance, the Federal Minister of Economics, and representatives of the municipalities and the German Federal Bank. It is assisted by a number of high-level experts. Another important committee, made up of representatives from federal and *Land* authorities and municipalities, is the Economic Policy Council chaired by the Federal Minister of Economics. Although such councils do not have any official decision-making power, their recommendations carry much weight in departmental policies. Consultative and advisory bodies assist at all levels of administration.

2.2 Financial management

Sources of revenue

Some 72 per cent of *Land* revenues are made up of *Land* taxes, such as capital tax, inheritance tax, and so-called joint taxes (i.e. taxes the revenue of which is shared by the Federation and the *Länder*, and sometimes also by the municipalities), such as turnover tax, corporation tax and income tax. The *Land* taxes account for approximately 13.5 per cent of *Land* revenue, income and corporation tax for approximately 53 per cent and turnover tax for some 27 per cent. Transfers account for another considerable share of *Land* revenues.

The Basic Law provides that the municipalities must get a share of federal tax revenues. A share of the revenue from income tax accrues directly to the municipalities. They also receive a percentage of

the *Land* share of the tax revenues shared by the Federation and the *Länder* (income, corporation and turnover taxes). The municipalities are also entitled to revenues from the so-called taxes on objects, i.e. the land tax and the trade tax as well as from the local excise taxes and taxes on certain non-essential spendings (e.g. beverage tax, dog tax, entertainment tax, hunting and fishing taxes). The municipalities may vary these levels of taxation, and thus they have an instrument for attracting businesses. Tax revenues total approximately 38 per cent of all local revenues, the major tax receipts for local authorities being from the income tax and the trade tax.

Another source of independent local revenue is the fees and contributions for services provided by the local authorities to their citizens, although they only account for about 15 per cent of local revenues. The collection of such fees and contributions is governed by acts on local taxes issued by the *Länder*. The local authorities are free to assess the level of fees for tasks within their own remit. The levels of fees, however, must not exceed the costs. As costs are rising, there is an ongoing public discussion as to how to bring them down and whether tasks should be performed by private companies or contracted out.

Grants from *Länder* account for approximately 28 per cent of local revenues and thus present the second largest source of income. Most allocations are made within the framework of financial equalisation carried out in each *Land* and based on the code for allocation of revenue or on financial requirements. There is a complicated procedure for calculating the amount to be given to each municipality, based on its size and financial capacity, i.e. taking into consideration its local tax revenues. Where a municipality fulfils central functions such as maintaining schools, cultural and sports facilities, this increases its financial requirements. The financial equalisation at the local level is designed, above all, to equalise the financial capacities of the municipalities and thus to create equal standards of living. However, it is also aimed at enforcing political objectives at the *Land* level. In addition to the allocations under the financial equalisation process, the municipalities also receive allocations tied to specific purposes such as investments or running specific local institutions. The Federation also pays its part by allocating to the *Länder* funds for, e.g. promoting social housing, urban development projects and improving local transport. Thus, local allocations contain some elements of central control. On the other hand it would not be compatible with the right to local self-government if the Federation promoted local projects too purposefully, thus undermining the local scope of action.

The local authorities have other revenues, composing almost 20 per cent of the total, mainly in the form of income from rents, leases, gains transfers of local enterprises, royalties and property sales.

County revenues come mainly from the contributions paid by the municipalities belonging to it, from allocations made by the Federation and the *Länder* and, to a small extent, from fees.

All the figures mentioned above refer only to the situation in the old (West) German local authorities. Since 1995, the new (East) German local authorities have been fully tied into the federal fiscal and financial equalisation system, so that the structure of revenues will, over time, become similar across the country.

Table 2. Revenues of sub-national governments (1985, 1990, 1995)

(millions of DM and percentages)

	1985		1990		1995	
	<i>Länder</i>	Municipalities	<i>Länder</i>	Municipalities	<i>Länder</i>	Municipalities
Net revenue	218 240.3	144 620.9	266 769.5	181 524.9	417 130.6	224 121.1
<i>of which (percentages):</i>						
Taxes ⁽¹⁾	72.1	39.0	73.8	38.1	71.5	35.0
Federal government "United Germany" funds	14.5	--	14.6	--	15.5	--
General grants from <i>Länder</i>	--	13.4	--	12.9	--	12.8
Investment (capital) grants from <i>Länder</i>	--	6.2	--	6.0	--	4.5
Fees	--	12.2	--	13.1	--	14.8

1. The figures for municipalities include tax-like revenues.

Source: Federal Ministry of Finance.

Table 3. Expenditure of sub-national governments (1985, 1990, 1995)

(millions of DM and percentages)

	1985		1990		1995	
	<i>Länder</i>	Municipalities	<i>Länder</i>	Municipalities	<i>Länder</i>	Municipalities
Net expenditure	235 138.4	143 553.4	286 110.8	185 287.7	463 884.0	236 236.3
<i>of which (percentages):</i>						
Personnel	40.7	16.7	39.7	26.7	37.2	42.6
Interest repayments	7.9	3.3	7.7	4.3	6.8	6.8
Investments	16.6	14.6	15.8	24.6	16.8	32.6
Transfers to municipalities	17.9	--	18.8	--	21.8	--
Current expenditure for goods and services	--	11.6	--	18.4	--	28.6

Source: Federal Ministry of Finance.

Balance between discretion and control

The Federation and *Länder* manage their own budgets independently from each other but are bound by the Basic Law to take into account the requirements for general economic balance. They should also take account of recommendations of the Financial Planning Council (see 2.1).

The Basic Law provides that the *Länder* must pay for the tasks which they exercise for themselves. Where they act as agents of the Federation, the Federation covers the costs. Within the framework of co-operative federalism, the Federal government funds investments made by the *Länder* or the local authorities. But by doing so, the Federation can exert considerable influence on *Länder* and

municipality policy. In the case of joint tasks, the Federation and the *Länder* share the financial burden equally.

The Basic Law provides that a reasonable amount of equalisation must take place between financially strong and financially weak *Länder*, taking into consideration the financial capacities and financial requirements of the municipalities or associations of municipalities. This is ensured by the distribution of tax revenues and by a system of supplementary allocations.

The *Länder* are responsible for ensuring that their municipalities are adequately funded. To equalise the different financial capacities of their municipalities, the *Länder* have adopted legal provisions on local financial equalisation. Also, the municipalities may transfer tasks which exceed their financial capacities, to supra-local units such as the counties.

A major factor in negotiations between the Federation and *Länder* on fiscal equalisation is that the negotiating partners are unequal. On one side is the Federation and on the other, the 16 *Länder* a majority of which must agree the solution. It is therefore usually easier for the *Länder* to get their way.

Issues concerning fiscal equalisation and levels of responsibility often count a great deal in policy appraisal, but they are of much less importance to most citizens who consider that essential public services should be carried out by “the government”, irrespective of its levels. If urgent action is required, the first demand is that it be taken by the government, which is interpreted in the first instance by German citizens as the “Federal government”. Consequently the central government and in particular the Federal Minister of Finance is held to account in many fields for which it is not responsible under the public finance system. This was the case in 1980 for example when a programme to combat AIDS had to be drawn up as quickly as possible. Although this was a task for the *Länder*, since the Federation’s jurisdiction for health care is limited to legislation, it financed amenities and measures on a comprehensive basis for a transitional period.

2.3 *Performance management*

Mechanisms

Germany has traditionally been governed predominantly by the “rule of law”, which means that control does not primarily focus on performance. The Basic Law excludes any federal control over the form or content of the *Länder* budgets, the preparation and implementation of which are entirely the responsibility of the *Länder*. The *Land* parliaments use the *Land* Courts of Audit (which have quasi-judicial independence) for supervision and control.

The *Land* Courts of Audit are mandated by the *Land* parliaments through committees to which they are accountable. They may themselves submit specific or general measures for examination. They are not bound by instructions from the *Länder* Ministries of Finance, nor by the administering sectoral departments.

In the municipalities, the budget serves as the reference base for the inspection authority in each municipality. The municipalities have internal auditing and, in some *Länder*, an independent organisation which controls the municipal budgets.

Quality standards

In Germany standards are set to respond to specific objectives, such as:

- environmental protection (e.g. air traffic noise control);
- social policy (e.g. identifying need for social help);
- traffic circulation (e.g. safety standards); and
- landuse planning (e.g. constructions standards).

Most such standards are established by the *Länder*, and resource allocation to municipalities is often tied to the observance of certain standards. When there is too much regulation, compliance with standards can incur excessive administrative costs, and the monitoring of standards also brings additional administrative burdens. During periods of budgetary constraint there is a tendency to suppress standards - and political objectives become more important (for example the right to a place in a kindergarten).

One of the main concerns behind the territorial reforms that took place between 1965 and 1977 at the local level was to enable the work of civil servants to become more professional so that bigger local authorities should mean better quality outputs for local services. Achieving an “optimum” size of community as a result of territorial reforms has also reduced administrative costs and has, in particular, simplified the monitoring function of the municipal inspection authorities. Nevertheless it remains difficult to draw conclusions on the impact of the restructuring of municipalities in economic terms.

Some efforts have also been made to implement quality standards in the municipalities. This development, which has occurred since the 1960s (rather early compared to many other European countries), is now part of general policy on quality improvement. It includes debureaucratisation efforts, citizen-oriented measures (e.g. citizens’ offices), personnel development, and the introduction of internal contract management.

2.4 Human resource management

Statutory distinctions: The duties of the public service are discharged by civil servants (*Beamte*), employees (*Angestellte*), and workers (*Arbeiter*) at all levels of administration. The status of a *Beamter* is governed by public law; while *Angestellte* and *Arbeiter* are employed with private law contracts. The existence of a uniform public service across the country constitutes an important centralising element.

In the *Länder* and local authorities, the status of civil servants is regulated pursuant to federal framework provisions; and in the Federation their status is regulated by federal statute. The pay and benefits in all levels of the administration are regulated by federal statute. Representatives of all levels of government participate in determining the pay of civil servants, and the opinion of the civil servants themselves is taken into account. The legal status, pay and additional old-age pensions for employees and workers in the public service are mainly based on collective agreements concluded between the trade unions and the public employers of the Federation, *Länder* and municipalities. For the most senior positions, where conditions go beyond those covered by the collective agreement, “individual” contracts may be concluded with terms above the rates laid down in the collective agreement.

The Federal Ministry of the Interior plays a central role. It is responsible mainly for “exclusive” legislation on the status of persons employed by federal authorities and by federal corporations under public law. It also provides basic legal guidelines on the status of persons employed by the *Länder*, municipalities and other corporations under public law. Collective bargaining on wages and other benefits

(e.g. holidays) takes place between the Federal Ministry of the Interior, together with representatives of the *Länder* and municipalities on behalf of the federal employer, and the trade unions for the public service employees and workers. Wages of the civil servants are voted by the *Bundestag* and follow generally the wage agreements for the public employees. The Federal Ministry of the Interior is also responsible for adjusting the pay of civil servants. The number of staff at the federal and sub-national levels is presented in Table 4. It shows that over 40 per cent of current public service employment in Germany is at the *Land* level and a further 30 per cent is in the municipalities.

Table 4. Public service employment in Germany (1991, 1992, 1993)⁽¹⁾

(30 June, head count, full-time and part-time)

	1991	1992	1993
Direct public service	6 412 600	6 305 000	6 114 700
<i>of which:</i>			
Federation ^{(2),(3)}	652 000	624 700	602 900
Länder ⁽³⁾	2 572 000	2 531 300	2 511 100
Municipalities	1 995 900	2 015 200	1 883 800
Inter-municipal associations	55 500	58 300	62 400
German Railways	473 800	433 900	417 700
German Post and Telecommunications	663 500	641 500	636 800
Indirect public service	325 100	352 200	387 800
TOTAL	6 737 800	6 657 200	6 502 500

1. Sum of the former Federal Republic, new *Länder* and East Berlin.

2. Including military conscripts (257 300 in 1991, 245 800 in 1992 and 230 900 in 1993).

3. Including police.

Source: Federal Statistical Office.

Mobility is possible under specific circumstances within the German public service in the form of temporary secondment to another public authority (*Abordnung*); temporary or permanent internal transfer (*Unsetzung*); or permanent transfer to another public authority (*Versetzung*). A Bill on public service law reform is currently in the legislative process and aims to further increase the mobility of civil servants by extending the period of secondment to five years and extending possibilities of transfers.

3. Trends in redistributing authority across levels of government

3.1 Evolving tendencies

After the collapse of the highly centralised Nationalist Socialist State, local self-government was re-instituted as the first step to promote a democratic federal political culture. The decentralised political process is reflected in the constitutional provisions of the *Länder* which were created then and later (1949) in the Basic Law of the Federal Republic of Germany.

The 1969 constitutional reform partly altered the legal base of the relations between the levels of government. The newly introduced joint tasks (*Gemeinschaftsaufgaben*), which include joint planning, decision-making and financing, are geared to achieving national objectives, settling conflicts among the regions, reducing economic imbalances between regions, and rationalising the use of resources. The

Länder, however, have retained extensive rights to participate in drafting federal policies. The towns, municipalities and counties, which are grouped together in local authority associations, also have considerable possibilities for influencing federal policies. Co-ordination and consensus were the staple rule of inter-governmental relations. The same applies to the relations between the *Länder* and the municipalities. Joint decision-making harboured some problems, however, as it was difficult to determine clear priorities when making joint plans; the *Länder* and municipalities protected their remits against federal interference; and joint decision processes in the co-operative federalism supported the dominant role of the executive power vis-à-vis the elected political decision bodies. Furthermore, co-operation among the administrative levels turned into barter trade hardly conceivable from outside.

There have been two main trends over the last decades:

- Local government reforms: The local territorial restructuring was aimed at increasing the administrative capability of the local levels so as to improve land use planning and local self-government.
- Improving citizen participation: Apart from territorial reforms, some *Länder* carried out far-reaching reforms of the provisions on the nature of local government. These aimed not only at promoting local self-government and increasing the administrative capability of the local levels, but also at strengthening the influence of citizens and giving them more scope for participation. This has been achieved by introducing the direct election of the mayor or the chief executive official in almost all *Länder*. Additionally, the instruments of the referendum (*Bürgerentscheid*) and provisions for the electorate to request a referendum (*Bürgerbegehren*) have been introduced. These steps have enabled the electorate to influence decisions (between local elections) on individual matters falling within the sphere of local government.

3.2 *The current debate*

The Federal government presently considers the reform of public administration as a central political task. In this context, specific importance is attached to the reform of public service law. In October 1995, the Federal government presented a bill designed to orientate public service law as a whole more to the principles of merit and performance, and to make its application more flexible and transparent.

In the framework of the public service law reform, public employers will be given more opportunity to be performance-oriented, flexible and geared to the specific requirements of circumstances. For instance, it is intended to facilitate secondments and transfers -- (including to other career structures and posts) -- in order to make best possible use of the personnel resources of the public service by increased mobility of the staff -- both with regard to expertise and place of employment -- but against a background of staff reduction and reallocation.

Furthermore, it is planned to assign senior management posts for an initial period of two years. Only if the candidate proves him or herself on that post, will he/she be assigned on a long-term basis. And before any other promotion, civil servants will have to prove their qualification for a higher-rated post in a probation period with the new functions.

The idea of the merit principle is, in particular, strengthened by the introduction of new performance-oriented elements in the pay system. These are accompanied by stronger differentiation in

the practice of efficiency rating by preventing assessors from giving too many candidates top marks (for example by fixing general quota for specific marks).

In July 1995 the "Lean State Advisory Council" was created by the Federal Cabinet as an institution independent of the administration and constituted by the Federal Minister of the Interior in September 1995 with 17 members representing all levels of government, industry, the trade unions and academia. Its secretariat is located in the Federal Ministry of the Interior. Within a year of its constitution, a number of recommendations had been made and some were already being implemented. A conference in early 1997 will mark the end of its work. Matters to be addressed in the final report will include ways of easing the burden on the judicial system, reducing the number of legal standards, improving personnel management and possible privatisations.

There has been more discussion recently about reforms in public administration. In the area of local government, it has been above all the Joint Local Government Agency for the Simplification of Administrative Procedures (*Kommunale Gemeinschaftsstelle für Verwaltungsvereinfachung*) which has made reform proposals. These refer especially to organisational change and the budget process. The latter envisaged that the implementation of the budget would be made more flexible and that responsibility for the budget would be decentralised, i.e. responsibilities will be delegated to largely independent divisions. The political management of the local authority would restrict itself to giving guidelines or to setting an objective to be achieved by means of the funds earmarked for it. Business-type elements are to be increased, requiring some amendments to the local budget law. As a first step, such amendments should be tested in a geographically limited area. The objective is to step up the capability of the local authorities, taking into account the principle of cost-effectiveness and to enable them to become service centres closer to the citizens.

3.3 *Driving forces*

Financial problems: Since the mid 1970s, the consequences of tighter public resources and the rising number of political and administrative deadlocks have come under increasing criticism. Over-regulation and bureaucratisation have been the key words used in the debate. The critics have also called for consolidation measures and for the deregulation and privatisation of public institutions and for turning back to self-help.

Economic and social forces: In the 1950s and 1960s, the gradual emergence of the welfare State started to reduce the importance and autonomy of local authorities. The increasing detail of legal provisions and the financial consequences arising from them restricted the room for manoeuvre and the financial scope of local authorities. The Federation managed to influence decentralised politics only by granting financial incentives to the lower levels.

The post-war boom ended with the recession of 1966/67. In its wake, problems which had previously been obscured by continuous economic growth became apparent. Macro-economic management, the harmonisation of social conflicts, the equalisation of horizontal/vertical and social/regional disparities, ecological dilemmas -- all required increased governmental intervention and changes in the relationships between federal, *Länder* and local government (cf. the 1969 constitutional reforms).

Over the last decades, the changes in the Federal Republic's economic and socio-cultural structure have confronted both central and local institutions with the need for significant modifications in their routine tasks. Economic structural change is a national task, even if there are calls for the use of

decentralised means. There is a discussion going on about the future of federalism in the unified Germany. Questions have arisen about reducing the number of *Länder*, improving administrative action by simplifying law and administration and by making organisational work processes in the administration more efficient, critically evaluating tasks and contracting-out some of them. As a result of the new socio-economic and cultural context, the political importance of local government, particularly in the metropolitan areas has grown: decentralisation, the “re-discovery” of local self-government and the call for a “grass roots revival of politics” are all being discussed.