

Local and Urban Governance

Hellmut Wollmann

Local Government and Governance in Germany

Challenges, Responses and Perspectives

 Springer

Local and Urban Governance

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Hellmut Wollmann
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ISSN 2524-5449

ISSN 2524-5457 (electronic)

Local and Urban Governance

ISBN 978-3-031-68353-4

ISBN 978-3-031-68354-1 (eBook)

<https://doi.org/10.1007/978-3-031-68354-1>

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For Frauke

Preface

The book has been prepared and written at a time when Germany has been confronted with multiple political, economic, and ecological challenges which have heavily impacted on the local government level and its position and functions in the country's federal multi-level system. Against the backdrop of shifting international and national contexts and of manifold political and operational responses and activities of the local authorities and local level actors the book aims at giving an adequate account of the unfolding developments which resembles “shooting at a moving target”.

I am deeply committed to the many authors of the books, articles, research reports, data and personal communications on which I have copiously drawn in writing this book. Needless to emphasize that the errors and shortcomings of the book are solely mine.

These caveats voiced I wish and hope that the reader may gain useful information on and insights into Germany's local government system in times of multiple challenges.

Last but not least I wish to greatly thank *Carlos Nunes Silva* as the editor of the book series “Local and Urban Governance” as well as *Joseph Daniel*, *Doris Bleier* and *Corina van der Giessen* as the responsible editors at Springer Nature for their patience and advice.

Berlin, Germany
June 2024

Hellmut Wollmann

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About the Author

Hellmut Wollmann He was born in 1936. Between 1956 and 1965 he studied law and political science at the University of Heidelberg and (as a Fulbright student) at Wesleyan University, Connecticut, passed the first and second state law examinations and obtained his doctoral degree (Dr. jur.) in 1967. From 1968 to 1974 he was a research assistant to Carl Joachim Friedrich at the University of Heidelberg. In 1970–1971 he was a Kennedy Memorial Fellow at Harvard University. He was Professor of Public Administration at the Free University of Berlin (1974–1993) and at Humboldt University of Berlin (1993–2003). Besides since 1975 he has been cofounder, director and member of a (non-public) policy research and consultancy institute (Institut für Stadtforschung und Strukturpolitik Berlin). Among his multiple engagements in national and international professional associations, networks and conferences he was cofounder and chairman (1975–1994) of the Working Group for Urban Research in the German Association for Political Science, member and chairman (1980–1996) of the IPSA Research Committee on the Comparative Study of Local Politics and Government and cofounder and president (1998–1999) of the European Evaluation Society. He was guest professor and lectured at many universities abroad, among others in Moscow, Beijing, Tokyo, Paris, London, Florence and Gothenburg. His main fields of research and of numerous publications (in several languages) revolved around policy evaluation, applied policy research and comparative government and public administration with a focus on subnational levels. Among publications figure: *Social Sciences and Modern States* (co-edited with P. Wagner, C.H. Weiss, B. Wittrock, Cambridge University Press 1991; *Comparing Public Sector Reform in Britain and Germany* (co-edited with E. Schröter) Ashgate 2000; *Evaluation in Public Sector Reform* (ed.) Edward Elgar 2003; *Governing after Communism* (co-edited with V. Dimitrov and K. Goetz), Rowman & Littlefield 2006; *State and Local Government Reforms in France and Germany* (co-edited with V. Hoffmann-Martinot), VS Verlag 2006, *Local Government Reforms in Countries of Transition* (co-edited with F. Lazin, M. Evans and V. Hoffmann-Martinot), Rowman & Littlefield 2007; chapter *Europe* (co-authored with G. Marcou) in *UCLG* (ed.), *Decentralization and Local Democracy in the World, First Global Report* 2008; *The Provision of Public Services in Europe*

(co-edited with G. Marcou), Edward Elgar 2010; Public and Social Services in Europe. From Public/Municipal to Private Sector Provision (co-edited with I. Kopric and G. Marcou) Palgrave 2016, Evaluating Reforms of Local Social Services in Europe (co-edited with I. Kopric and G. Marcou) Palgrave 2016; Zukunft denken und verantworten, Herausforderungen für Politik, Wissenschaft und Gesellschaft im 21. Jahrhundert (co-edited with W. Roters and H. Gräf), 2nd ed., Springer VS 2023; Introduction to Comparative Public Administration (co-authored with S. Kuhlmann and R. Reiter), Edward Elgar 2nd ed. 2019, 3rd ed. 2024. (Further references at: <https://amor.cms.hu-berlin.de/~h0598bce/html/publikationen.html>)

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Chapter 1

Introduction



Abstract Historically Germany's local government level has played a major political, administrative and socio-economic role in the country's political system. Recently it has faced an all but unprecedented "accumulation" and "overlapping" of challenges and crises (such as climate change and energy crisis, massive influx of migrants and asylum seekers, repercussion of Russia's invasion of Ukraine). This book is meant to provide an overview and analysis of the long-term development and current state of local government in focusing on recent challenges and responses.

Keywords Structural and policy factors · Government and governance · Conceptual frame · Terminology · Sources

Germany's local government has in recent years experienced multiple challenges which have heavily impacted on the position and functions of the local authorities in the country's federal multi-level system. The purpose and ambition of this book is to offer a comprehensive and penetrating account and analysis of this development. The introductory chapter is meant to lay the analytical, conceptual and terminological ground thereof.

In order to give an adequate account and analysis of this development and current situation two perspectives and foci are pursued in this book.

In its first part Chaps. 2, 3, 4, 5, 6, 7, and 8 are meant to address and spell out key structures and dimensions of the local government level. They pertain to

- The position and functions of local government in the multi-level system (Chap. 2).
- Local political actors and processes (Chap. 3).
- Local administration (Chap. 4) and the digitization of administration (Chap. 5).
- Local personnel (Chap. 6).
- Local finances (Chap. 7).
- The provision of public and personal social services (Chap. 8).

These "structural" chapters are conceptually largely guided by a historical ("over time") perspective which lends itself to contextualize and identify developmental

stages and the shaping factors. Exemplary are the introduction of the direct election of the mayor and other direct-democratic procedures in 1990 (see Chap. 3), the New Public Management (NPM)-inspired administrative modernization wave after 1990 (see Chap. 4) and the market liberalization-driven privatization/“outsourcing” of the provision of public services and its “remunicipalization” (see Chap. 8). In sum the “structural” chapters are meant to give an overview and synopsis of the development and current state of local government in key dimensions.

In the second part of the book (Chaps. 9, 10, 11, 12, and 13) specific policy areas are singled out and highlighted which have been beset by severe challenges and crises and which therefore lend themselves to explore how the local authorities have politically and operationally responded. These “policy chapters” relate to

- Combatting long-term unemployment (Chap. 9).
- Attending the asylum seekers and refugees (Chap. 10).
- Promoting the “energy transition” (*Energiewende*) (Chap. 11).
- Reforms in the school sector (Chap. 12).
- Coping with the Covid-19 pandemic (Chap. 13).

These policy areas, triggered by “external” (international or even global) events (nuclear disaster, PISA findings, Russia’s invasion in Ukraine, Covid-19 pandemic etc.) the federal government has typically taken the political, legislative or financial lead while the local authorities have played a crucial role in initiating and carrying out the pertinent local level responses, measures and activities. The “case-study-type” approach of analysing these policy-areas is conducive to provide a penetrating account of the pertinent local level activities and of the involved local actor constellations.

By addressing several policy fields the analysis lends itself, in a *cross-policy comparison* manner, to observe whether and why the local level activities have been convergent or divergent in the policy fields concerned.

Among the themes pursued in this book in particular two guiding questions stand out.

First, (how and why) has the (vertical) position and functional profile of the local government level in the multi-level setting been affected by the advancing “Europeanization” of its legal and financial frame and by the (“centralizing”) legal and financial federal interventions and has, at the same time, the operational task load and functional as well as (“decentral”) political salience of the local authorities in the multi-level setting been correspondingly expanded?

Second, has the local level problem-solving potential been changed and complemented by governance-type actor constellations and procedures which include non-public and societal (“third sector”) actors and processes?

1.1 Conceptual Approach

In this book largely an *institutionalist* perspective and approach is pursued which focuses on the *polity* that is, the *institutional/organizational* structure and context in which policies are decided and implemented.¹ Hereby this “institutionalist” approach is conceptually oriented on “neo-institutionalism” in its several variants (see Wollmann 2016, pp. 7 et seq., Kuhlmann and Wollmann 2019, pp. 58 et seq.). The concept of *historical institutionalism* emphasizes the structural impact of institutional, political and cultural (“path-dependent”) traditions on institution building and institutional choice (see Pierson 2000). It also draws attention to “critical junctures” at which incisive changes occur in the institutional trajectory. The *actor-centred (or rational choice)* variant of institutionalism (see Scharpf 1997) emphasizes the influence which the decisions and interests, the political will and skill of the relevant political actors may exert on the course of institutional development. *Discursive institutionalism* emphasizes the impact of political, ideological etc. ideas and discourses shared and propagated by the relevant actors (see Schmidt 2008). In a similar vein *normative isomorphism* emphasizes the explanatory potential of ideas, discourses and concepts (see DiMaggio and Powell 1991). Such discourses are typically the product of advocacy coalitions (see Sabatier 1993) that are made up of academics, consultants and policymakers and often linked to influential international organizations (such as the World Bank, OECD). Finally “*external*” (*global, international as well as national*) events and crises may sway on decision-makers and prompt them to “translate” them into action and reality.

1.2 Terminology

Writing about German local government in English raises some linguistic and semantic problems. This first pertains to the term “local *government*”. While in UK’s political tradition and parlance no conceptual or semantic hindrance exists to apply the term “government” to the national as well as local levels, in the German constitutional and political discourse in line with its Continental European State tradition the term “government” (in German “*Regierung*”) is applied to the State (“*Staat*”) structure, that is, according to the prevalent constitutional doctrine, to the federal and *Länder* levels. So in the political and also legal parlance the term “(local) self-administration” (*kommunale Selbstverwaltung*) is traditionally used which connotes that the local government level is essentially an *administrative* one (see Wollmann 2008, 24–25). In France in a similar State tradition local self-government

¹On the distinction made in political science debate between policy, politics and policy, see Schubert (2004).

is called “*administration libre*”. In keeping the linguistic and semantic difference and caveat in mind throughout this book the (“Anglo-Saxon”) term “local *government*” and “local self-*government*” will be employed. Second, again following Anglo-Saxon parlance the text will mostly speak of “local authorities” without further institutional or locational differentiation (ibid., 24). Third, while in Germany’s institutional landscape and terminology the distinction is made between “*Stadt*” (for large- and middle-sized municipalities) and “*Gemeinde*” (smaller-sized municipalities, villages) in the following the generic term “municipality” will be used. Mention should finally be made that the German terms “*Kommune*” and “*kommunal*” are applied as generic labels to municipalities as well as to counties.

Moreover, in addressing the regional territorial units in Germany’s federal architecture throughout the text the German term *Land* (plural *Länder*) will be used as, like in other federal or quasi-federal countries, such as the (51) *States* in the USA, the (26) *Kantone/Cantons* in Switzerland, the (3) *Regionen/Régions* in Belgium, the (17) *comunidades autónomas* in Spain, the (16) *Länder* in Germany are, besides basically constituting the regional/“meso” level in the country’s multi-level federal system, marked by country-specific distinctive features which warrant employing the historically rooted, as it were “autochthonous” label *Land* (in plural) *Länder*.

1.3 Sources

As documented in the bibliographic references attached to each chapter, besides drawing heavily (and thankfully) on the publications and the research of as well as on the cooperation and communication with many scholars and colleagues, the book is largely based on the author’s own publications and work. *Stephan Höss*, *Paula Gnielinski* and *Svenja Pörstel* (thankfully) assisted in generating the tables and the figures in this book.

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Chapter 2

Position and Functions of Local Government in Germany's Federal Multi-level System



Abstract After giving a concise view of the distribution of competences and functions in Germany's federal multi-level system to which, since the creation of the European Union in 1993, a European level has been added. Chapter 2 focuses on and outlines the position and functions which the local government level has in the multi-level setting. Due to the traditional “dual task” model the local authorities carry out self-government tasks as well as tasks “delegated” to them by the *Länder* which makes them rank among the functionally strongest local government systems in Europe. In conclusion the chapter sketches the institutions and procedures through which the local government level sways the decision-making of the “upper” government levels.

Keywords Distribution of competences in the federal (and European) multi- level system · Position and functions of local government · “Dual task” model

2.1 European Level

The European Union which was created by the *Treaty of Maastricht* and took effect on November 1, 1993 has pursued its policies essentially through legal provisions and funding programmes. The former encompass the so-called Directives which all Member States are obliged to transpose into national legislation as well as the so-called Regulations which constitute “primary” EU law which becomes immediately applicable in all Member States and their subnational, including local levels. As the EU does not dispose of an administrative structure of its own in the sub-EU space it depends, for the implementation of its policies and legal provisions, on the national and subnational administrative levels of its Member States without having oversight over their administrative execution (see Hofmann 2021, 55). This pertains particularly to Germany where up to 80 per cent of the administrative tasks, including those deriving directly or indirectly from the EU, are carried out by the local authorities (see Rechlin 2004, 10; Schmidt-Eichstädt 1999, 303).

The *Lisbon Treaty* which came into effect on December 1, 2009 acknowledged for the first time the principle of regional and local self-government in the EU Member States (article 5, paragraph 3 of the Treaty and underlined in the attached article 9 of protocol No. 2 “on the application of the principles of subsidiarity”).

Another supra-nationally relevant provision is article 3 of the *European Charter of Local Self-Government* of 1985 stipulates that “local self-government denotes the right and ability of local authorities, within the limits of the law, to regulate and manage a significant share of public affairs”. After its ratification by the Federal Republic the Charter has become valid German “law of the land” (see Schefold 2012, 235).

2.2 Federal System

The Federal Republic of Germany is a two-tier federal state made up of the federal level (the Federation, Bund) and 16 regional units traditionally and constitutionally called Länder (as for the terminology see Chap. 1, for the geographical map see Fig. 2.1). Territorially the by far largest Land is Bavaria with an area of 70,500 square kilometres, followed by Lower Saxony (47,600 square kilometres) and Baden-Württemberg (35,800 square kilometres) in second and third place. The population size of the Länder ranges significantly between the Land of Northrhine-Westphalia (with some 18 million inhabitants), the Land of Bavaria (some 14 million), on the one side, and the Land of Mecklenburg-Western Pomerania (with 1.6 million) and Saarland (some 990,000), on the other (as of 2022, see Fig. 2.1). Three of the 16 Länder, to wit Berlin (3.7 million inhabitants), Hamburg (1.8 million) and Bremen (690,000) are so-called City States (Stadtstaaten) which combine the status and functions of a municipality with that of Land. Originally the “old” Federal Republic that was established in 1949 in the then Occupation Zones of the three Western (US, British and French) Allies comprised 11 Länder, including the three City States). The boundaries of the new (“West German”) Länder were, with the exception of Bavaria, largely drawn irrespective of the previous territorial map, all the more as the hitherto dominant Land of Prussia has been dismembered. Following the German Unification in 1990 the five (East German) Länder (Saxony, Brandenburg, Saxony-Anhalt, Thuringa and Mecklenburg-Western Pomerania) that had been established in the late 1940s in the Soviet Occupation Zone have integrated into the “new” Federal Republic (see Kuhlmann and Wollmann 2019, 94). While, after 1949, the “rhinish” City of Bonn was the federal capital of the “old” Federal Republic, following German Unification the City of Berlin has regained its capital status in the “new” Federal Republic. The country is geographically embedded almost entirely in and has “open borders” with European neighbour countries encompassing from North to South and West (see Fig. 2.1) Denmark, Poland, Czech Republic, Austria, Switzerland, France, Luxembourg, Belgium and Netherlands and has a coast line with the North Sea and the Baltic Sea in the North and with the Lake of Constance in the South.

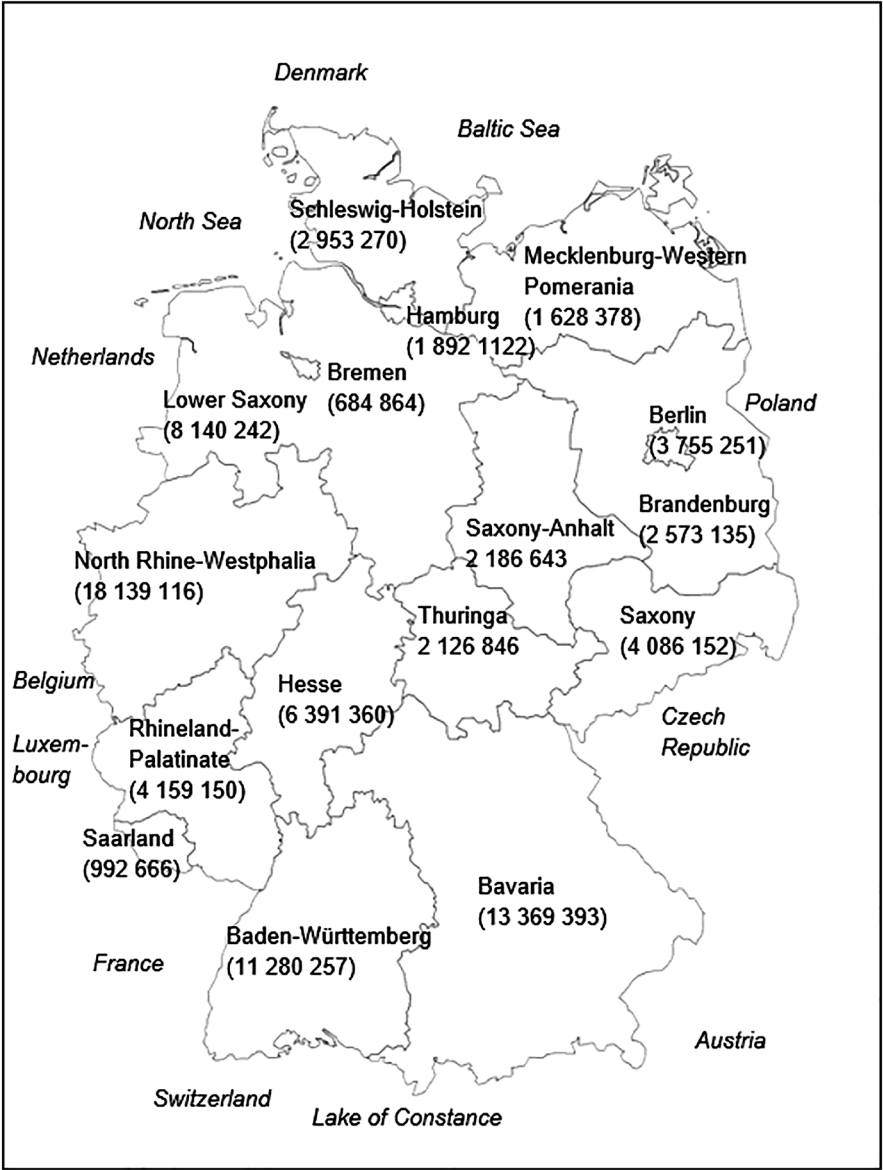


Fig. 2.1 Map of the 16 Länder of the Federal Republic. (Note: Of the 16 *Länder* most (11) are “territorial States/*Länder*” (“*Flächenländer*”) while three are “City States” (“*Stadtstaaten*”): Berlin, Hamburg and Bremen. The respective population size (in brackets) refers to 2022)

Germany's federal system as anchored in the Federal Constitution (*Grundgesetz*, *Basic Law*) that entered into force on May 26, 1949 is marked by two key features.

First, it is based on a vertical division of competences and functions according to which the federal government level is primarily responsible for policymaking and legislation, including, since the formation of the EU, transposing the EU directives into federal law, while the competence and task to administratively carry out legislation and public tasks essentially fall to the *Länder* (see Behnke and Kropp 2021, 38 seq.). This constitutional vertical distribution of legislative and administrative competences which was labelled a “composite model” (“*Verbundmodell*”) (see Kropp 2011, 15; Kuhlmann and Wollmann 2019, 92 et seq.) stands in contrast to the constitutional “separation model” (“*Trennmodell*”) in which, exemplary in the US federal system, legislation adopted by the central/federal or regional (State) government level is carried out by the respective level's own administration.

Second, another pivotal feature of Germany's federal system is the Federal Council (*Bundesrat*) through which, according to article 50 Basic Law, the *Länder* “participate ... in the legislation and administration of the Federation and of matters concerning the European Union” and which thus gives them access to and leverage on federal decision-making (see Behnke and Kropp 2021, 42 et seq.; Kuhlmann and Wollmann 2019, 89 et seq.). The seats and votes in the Federal Council are controlled by the *Länder* governments and not by the *Länder* parliaments, let alone by elected representatives. This again differs starkly from the US Senate model with two elected senators from each of the 51 States. The allotment of the 69 seats of the Federal Council ranges from six to three per *Land* depending on population size whereby the smaller *Länder* are disproportionately favoured.

The intergovernmental architecture and actor constellation have fostered the emergence of various forms and patterns of “cooperative federalism” and of “policy interwovenness” (*Politikverflechtung*) (Scharpf et al. 1997) that have become a key feature of Germany's federal system and of its peculiar type of decentralization.

2.3 Federal Level

2.3.1 Federal Policymaking and Legislation

In accordance with the vertical division of competences the “law of the land” predominantly consists of federal law as adopted by the Federal Parliament (*Bundestag*) and the Federal Council (*Bundesrat*). The application of the so-called “concurrent legislative competence” (article 72 Basic Law) which mandates federal legislation to ensure “equal living conditions” (*einheitliche Lebensverhältnisse*) throughout the country (see Kuhlmann and Wollmann 2019, 90) has entailed the expansion of country-wide “uniform” legislation and fostered what was critically called a “unitary federal state” (*unitarischer Bundesstaat*, Hesse 1962). The federalism reform of 2006 was meant to counterbalance the “centralizing” federal legislative and

policy “outreach” by strengthening the competences of the *Länder*. Subsequently, since the early 2010s, responding to a sequence and accumulation of international and national challenges and crises (climate change, influx of refugees, education backlog etc.) the federal government level has stepped up its policy, legislative and financial interventions signalling a (re-)centralizing trend in Germany’s multi-level system (see Wollmann 2023, 380 et seq.).

In conformity with the constitutional doctrine that the local government level constitutes an integral part of the *Länder* the federal constitution (Basic Law) of 1949 lays down merely key principles of local government while leaving it to the *Länder* to pass detailed regulations on their respective local government system. So article 28 Basic Law stipulates that “the constitutional order in the *Länder* must conform to the principles of a republican, democratic and social state governed by the rule of law within the meaning of this Basic Law. In each Land, county and municipality the people shall be represented by a body chosen in general, direct, free, equal and secret elections”. In addition the maxim of local self-government has been anchored in article 28 that “municipalities must be guaranteed the right to regulate all local affairs on their own responsibility within the limits prescribed by the laws. Within the limits of their functions designated by a law, associations of municipalities (i.e. the counties, H.W.) shall also have the right of self-government in accordance with the laws”. On the fiscal dimension of local self-government the federal constitution was originally remarkably mute. It was only through a constitutional amendment of article 28 in 1994 according to which “the guarantee of self-government shall extend to the bases of financial autonomy” (see also Chap. 7 in this book).

2.3.2 Federal Administration

Under the constitutional provision (article 30 Basic Law) that “except as otherwise provided or permitted by this Basic Law, the exercise of state powers and the discharge of state functions is a matter for the *Länder*” the administrative competence and function is essentially assigned to the *Länder* while the federal level (Federation) may set up administrative (field) offices of its own only in the constitutionally enumerated matters (such as customs, border control, defence).

Thus, the federal bureaucracy is basically made up of the federal government proper (Chancellor’s Office and the federal ministries) and of some (higher) federal offices and agencies (*Bundesoberbehörden*). While some of the latter have regulatory competences, most of them do not have direct administrative (executive) functions and lack field offices at the subnational levels (for details see Fleischer 2021, 66 et seq., see Fig. 2.2).

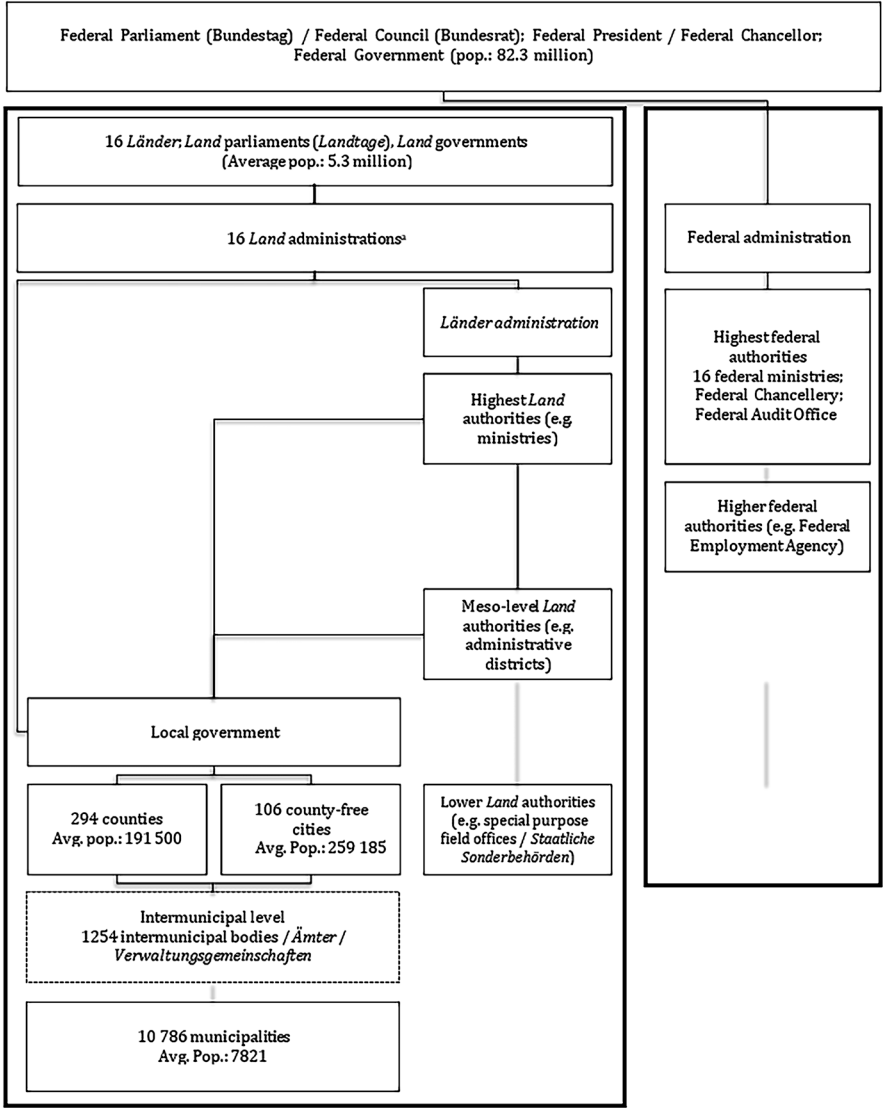


Fig. 2.2 Political and administrative structure of Germany's multi-level system. (Source: Author's adaptation of Kuhlmann and Wollmann 2019, p. 100, fig. 3.3. with references)

The most important exception is the *Federal Employment Agency* (*Bundesagentur für Arbeit*)¹ which has 10 regional directorates, 156 meso-level agencies as well as 600 local offices (*Arbeitsämter*) and 303 local job centres and with a total of some

¹Founded in 1952 originally termed *Bundesanstalt für Arbeit* (Federal Labour Office) it was renamed in 2004.

96,400 employees which makes Germany's largest public employer (see also Chap. 9 in this book).

2.3.3 Federal Personnel

The federal personnel amounts to 282,700 employees (not counting 243,000 military personnel) which makes 5.4 per cent of the total of 5.2 million public sector employees (as of June 2022, see Chap. 6, Table 6.1). This compares to 50 per cent of the *Länder* personnel and 32.6 per cent of local government employees (*ibid.*). The share (5.4 per cent) of federal employees of the entire public sector workforce which is exceptionally small in comparison with other, including other federal countries (see Kuhlmann and Wollmann 2019, p. 129, table 3.5) indicates the unusually high degree of administrative decentralization in Germany's federal system (for details see Chap. 6 in this book).

2.4 Länder Level

2.4.1 Legislation

Among the legislative competences of the *Länder* the regulation of local government-related matters looms large. So, in accordance with article 28 Basic Law, in individual constitutions of the *Länder* the right to self-government of the local authorities has been addressed and guaranteed. Likewise it falls to the *Länder* to enact local government (municipal and county) codes (*Gemeinde-, Kreisordnungen*), to authorize the local authorities to levy local taxes and, among other crucial local matters, to determine the territorial format of the municipalities and counties (see Sect. 2.7).

2.4.2 Administration

In their administrative structure most *Länder* have a three-tier system consisting of the central level (*Land* government, ministries, *Land* prime minister's office, higher state authorities), a regional meso-level (administrative districts, (*Regierungsbezirke*) and lower level (mostly single purpose) state field offices (*Staatliche Sonderbehörden*). A few *Länder* do without the regional/meso-level (see Kuhlmann and Wollmann 2019, 94; Schrapper 2021, 108 et seq.).

For the execution of their administrative tasks, on the one hand, the *Länder* set up administrative units and personnel of their own. This applies in particular to the competences and responsibilities for "public order and security" and education (see

Schrappner 2021, 113). The employees of the *Länder* make up 50 per cent of total of public sector workforce with a predominant share employed in the police force and in the school/university sector (for details see Chap. 6, Tables 6.1 and 6.3, line 6, in this book).

On the other hand, in applying the “dualistic task” model of local government which is a peculiar feature of the Germany's administrative tradition, the *Länder* “delegate” the execution of large share of legal provisions and public functions to the local authorities, preferably to the (upper tier) counties (*Kreise*) and (single tier) county-free municipalities (*kreisangehörige Städte*) (see Kuhlmann and Wollmann 2019, 26, 95, for details below Sects. 2.3.2 and 2.3.3).

2.5 Local Level

The two-tier local government structure is composed (as of end 2022) of

- 10,492 (lower tier) county-affiliated (“belonging to a county”) municipalities (*kreisangehörige Gemeinden*) averaging some 5000 inhabitants.
- 106 (single tier) “county-free” municipalities (*kreisfreie Städte*) which, averaging some 250,000 inhabitants, stand territorially and operationally outside counties and combine municipal and county functions.
- 294 (upper tier) counties (*Kreise*) averaging some 190,000 inhabitants).
- 1,154 intermunicipal bodies (*Ämter*, *Verwaltungsgemeinschaften*) which, forming a separate institutional layer between the counties and the lower-tier (“belonging to a county”) municipalities, are meant to support the latter in carrying out their tasks (see Fig. 2.2).

2.5.1 Types of Local Authorities

At first along with some (anecdotal) “flashbacks” the types of local authorities shall briefly outlined.

2.5.1.1 Municipalities

In German parlance the larger municipalities are called “*Städte*” and the smaller ones “*Gemeinden*” while “*Kommunen*” is the generic term which relates to the municipalities as well as the counties (*Kreise*).

The municipalities are deeply rooted in the country's history which might be illustrated with some anecdotal rather than systematic and exhaustive remarks.

The local level map has historically been marked by a regionally dispersed distribution of large and small municipalities. Thus some 80 municipalities, including

smaller ones, date back to the fifteenth century when they were granted the status of Imperial towns (*Reichsstadt*) directly subordinated to the Emperor (*Kaiser*) of the Holy Roman Empire (“*Heiliges Römisches Reich*”) and enjoying some autonomy (as the contemporary saying had it: “town air makes you free”, *Stadtluft macht frei*) amidst the surrounding post-feudal territorial states. Still today the respective municipalities proudly bear the “Imperial Eagle” in their municipal coat of arms. Until the creation of the Bismarckian *Reich* in 1871 (and partly beyond), Germany was composed of some 60 states and statelets each of which, then ruled by semi-authoritarian kings or princes, had a capital and residential town with economic ambition and cultural life of its own. Exemplar was the town of Weimar which, as the capital of a small principality counting merely 6000 inhabitants in the late eighteenth century, blossomed and resonated as the cultural heart of the “German Classic” embodied by *Wolfgang von Goethe* and *Friedrich Schiller*. During the rampant industrialization and urbanization some regionally dispersed municipalities (such as the Ruhr cities in West Germany and Berlin and Leipzig in the East) have become municipal “growth engines” (see von Saldern 1999).

2.5.1.2 Counties

The counties (*Kreise*) date back to the early nineteenth century when they became the basic administrative structure in rural areas, for instance in Prussia after 1816 (see Norton 1994, 246). While initially representing the then still dominant landed gentry and directed by the gentry-selected head of county, originally (and still today) called “*Landrat*”, the counties were increasingly assigned the function of carrying out public/State tasks. In the further institutional development the counties and their *Landräte* evolved in a “double” and “mediating” role between the local level and the State with a continuing strong imprint of the latter. When after 1945 democratic local government was restored the counties have been recognized and constitutionally “upgraded” to become the upper level of a two-tier local self-government structure headed by the traditional county commissioner (*Landrat*).

2.5.1.3 County-Free Municipalities (*Kreisfreie Städte*)

The status of the county-free municipality (*kreisfreie Stadt*) which stands organizationally and territorially outside the counties was “invented” in Prussia in 1816. Other German States followed suit in the course of nineteenth century in typically assigning both municipal and county responsibilities to them which has become a path-dependent feature of the German-Austrian local government tradition.² When after 1945 the two-tier local government system was put in place the path-dependent

²In comparative perspective the “county-free municipalities” resemble the “unitary authorities” which have been introduced in the UK first in 2009 in “merging” upper-level counties and lower-level districts (see Wilson and Game 2006, 17).

structure of the “country-free municipality” standing organizationally and functionally outside the counties has been resumed and continued as a hub of local government operations.

2.5.2 “County-Affiliated” Municipalities

The other (predominantly smaller and small) municipalities that form the lower layer of the two-tier local government structure and make the great majority of the municipalities are grouped within a county and are termed “county-affiliated” (or “belonging to a county”, in German “*kreisangehörig*”) municipalities (see Ruge and Ritgen 2021, 127 et seq.).

2.5.3 Intermunicipal Bodies

Intermunicipal bodies (called *Ämter* or *Verwaltungsgemeinschaften*) have been introduced in most *Länder* on the heels of municipal territorial reforms carried out in the 1970s in West German *Länder* and after 1990 in East German *Länder* (see Sect. 2.9.1). As a new level of local level units inserted between the counties and the county-affiliated (“belonging to a county”, *kreisangehörig*) municipalities, they are meant to operationally support the latter. (In their organizational logic and intended function they are akin to France’s “*intercommunalité*”.)

2.5.4 Constitutional and Legal Position of Local Government in the Federal Multi-level System

The legal position of local government in Germany’s multi-level system has traditionally been marked by a peculiar ambivalence.

On the one hand, as Germany’s federal system is defined by the Federal Constitution (Basic Law) of 1949 to consist of two tiers, to wit, of the federal level, *Bund*, and the *Länder*. This constitutionally rules out ascribing a “federal” status to the local government level and instead renders it an integral part of the Land level. The ensuing “etatic” and “administrative” tinge of the local government level is mirrored in the still prevalent parlance of “local self-*administration*” (*kommunale Selbstverwaltung*) and echoes in the view that the local government level constitutes “indirect state administration” (see Schrapper 2021, 155). This matches with France’s state tradition and culture in which the term “*libre administration*” is used and starkly contrasts with the Anglo-Saxon tradition where no cognitive, conceptual or linguistic hindrance exists to speak of local *government*.

On the other hand there are some good reasons to argue that the local government level has a strong position in its own right in the federal system.

A significant step in this direction was already made in article 28 (2) Basic Law of 1949 in stipulating that the “municipalities must be guaranteed the right to regulate all local affairs on their own responsibility within the limits prescribed by the laws”. Thus the principle of “local self-government” has been anchored in the federal constitution (and similarly in the constitutions of the *Länder*) ensuring and corroborating the autonomous standing of local government in the federal system which not only applies to the municipalities but also to the counties (see Ruge and Ritgen 2021, 127). In a similar vein article 3 of the *European Charter of Local Self-Government* of 1985 laid down that “local self-government denotes the right and ability of local authorities, within the limits of the law, to regulate and manage a significant share of public affairs”. Through the ratification of the Charter by the Federal Republic this provision has become valid “law of the land” (see Schefold 2012, 235).

With regard to its financial standing the local government level has been significantly strengthened in 1994 by an amendment of article 28 Basic Law according to which “the guarantee of self-government shall extend to the bases of financial autonomy; these bases shall include the right of municipalities to a source of tax revenues based upon economic ability and the right to establish the rates at which these sources shall be taxed”.

Moreover the municipalities and counties have been constitutionally upgraded in article 28 (2) Basic Law which prescribes that “in each *Land*, county and municipality the people shall be represented by a body chosen in general, direct, free, equal and secret elections”. Thus with regard to their democratic legitimacy the councils of the municipalities and counties have been constitutionally put explicitly on par with the *Länder* parliaments.

Finally mention deserves to be made of article 93 paragraph (1) letter 3b Basic Law according to which “constitutional complaints” (*kommunale Verfassungsbeschwerde*) may be filed to the Federal Constitutional Court by municipalities and counties “on the ground that their right to self-government under Article 28 has been infringed by a law” (see Schefold 2012, p. 252).

In sum, whereas in the two-layer logic of the federal system and ensuing constitutional doctrine the local government level can, strictly speaking, not claim a “federal” status of its own several constitutional and legal provisions that flank and frame the local government level are apt to significantly raise and “upgrade” its constitutional standing.

2.6 Norm-Setting Competences of the Local Authorities

Through their elected local councils the local authorities have the right to adopt a range of local provisions which, while ranking below federal and Land legislation, have the quality of binding legal norms. So it lies with the municipal councils to set

the local tax rate on the trades tax (*Gewerbesteuer*) and real property tax (*Grundsteuer*) and to decide on some other “genuine” local taxes (such as entertainment tax, second home tax) (see Chap. 7 in this book). Furthermore, authorized by Land legislation they may pass local “bylaws” (*Satzungen*) through which charges (*Beiträge*) and fees (*Gebühren*) on the use of locally provided public services are fixed and which may legally oblige the local households and enterprises to connect with and to make use of locally offered public services, such as sewage, garbage collection etc. (*Anschluss-und Benutzungszwang*). Moreover, the local councils are, for instance, authorized by the federal building code (*Bundesbaugesetzbuch*) to adopt land-use plans (*Bebauungspläne*) with binding legal clauses regulating the construction of buildings and housing.

2.7 Types of Local Government Functions

The “dualistic task” model which is typical of Germany's local government tradition comprises “self-government” tasks and “delegated” ones transferred to them by the upper government level(s) (see Wollmann 2004a, 2016).

2.7.1 Self-Government Tasks

Regarding the “self-government responsibilities” the distinction is made between “voluntary” (*freiwillig*) and “mandatory” (*pflichtig*) ones (see Norton 1994; Ruge and Ritgen 2021, 129 et seq.; Bogumil and Jann 2020, 121 et seq.).

The former typically pertain to tasks that, making up the core of “genuine” self-government matters, follow from the “general competence clause” to “regulate all local matters on their own responsibility within the limits of the laws” (article 28, 2 Basic Law). With regard to the “voluntary” tasks it is essentially up to the local councils to decide whether, when and how they are performed.

“Voluntary” tasks are among others:

- Cultural institutions such as libraries, museums, theatres, communication centres, citizen centres.
- Recreational and sports facilities, such as swimming pools, gyms.
- Promotion of local associations.

“Mandatory” local government tasks are assigned to the local authorities by Land (or federal) legislation. While the local authorities are obliged to perform these tasks, they have discretion on how to do this.

Among the “mandatory” local government tasks are

- Land-use planning, urban planning.
- Social and youth assistance.

- Kindergartens.
- Public utilities, such as water supply, sewage, waste disposal (see Chap. 8 in this book).
- Schools (construction, equipment etc.) (see Chap. 12 in this book).
- Local streets.
- Accommodation and integration of asylum seekers (see Chap. 10 in this book).

The “voluntary” and “mandatory” tasks are carried out by the municipalities and by the counties if fulfilling the respective task goes beyond the operational capacity of the (small) county-affiliated (“belonging to a county”, *kreisangehörig*) municipalities or requires a “supra-local” (county-wide) approach (see Ruge and Ritgen 2021, 127). Moreover the small municipalities may be supported in performing their tasks by the “intermunicipal bodies” (*Ämter, Verwaltungsgemeinschaften*) which have been created for this purpose by the municipal territorial reforms as an additional institutional layer between the counties and the “belonging to county” municipalities (see below Sect. 2.6).

2.7.1.1 Legal Supervision (*Rechtsaufsicht*)

In performing (“voluntary” as well as “mandatory”) self-government tasks the local authorities are subject to the legal supervision (*Rechtsaufsicht*) by the (Land) authorities as to whether their conduct conforms with the pertinent legal provisions. If the supervising Land authority assumes a legal infringement it disposes of a ladder of reactions that range from objecting and directing the local authority to a legally appropriate action to, in extremis, the supervising Land authority making itself a substitutive decision (see Schefold 2012, 250). In any case and stage the local authority concerned has the right to challenge the reprimand and intervention “from above” by filing a law suit to the administrative court or even a constitutional complaint to the *Land*’s constitutional court.

2.7.2 Delegated Tasks

The “delegation” (transfer) of public functions by the upper government level(s) to the local authorities is part and parcel of Germany’s administrative tradition which historically dates back to the early nineteenth century (see Kuhlmann and Wollmann 2019, 95).

In the regulation and practice of the “delegation” (transfer) of tasks by the *Länder* a somewhat complicated distinction between the “monistic” and the “dualistic” modality comes into play (see Schefold 2012, 238; Kuhlmann and Wollmann 2019, 95; Ruge and Ritgen 2021, 130). In the “monistic” variant the “delegated” task becomes the local authority’s, as it were, own task, while the Land authority retains the right to issue instructions regarding the modality of task fulfilment. Contrarily in

the “dualistic” mode the transferred tasks essentially retain their quality of being tasks of the *Land* so that in carrying them out the local authorities are somewhat integrated into the *Land* administration and are subject to the instructions by the *Land* authorities (see Ruge and Ritgen 2021, 131). Importantly both in the “monistic” and “dualistic” variant the elected local councils have, in principle, no influence on nor scrutiny over the conduct of the “delegated” tasks by the local administration and the mayor or county commissioner (*Landrat*).

“Delegated” matters typically include (see Bogumil and Jann 2020, 121):

- Public order (*Ordnungsverwaltung*) matters, such as issuance of passport, car registering, driving licence.
- Issuance of building permits, building inspection etc.
- Environmental inspection.
- Public health (sanitary and hygiene inspection of schools, nurseries, restaurants, food inspection etc.) (see Chap. 13 in this book).

In the practice of the *Länder* public tasks have been “delegated” primarily to county-free municipalities (*kreisangehörige Städte*) and counties (*Kreise*).

Hereby the mayors of the municipalities and county commissioners (*Landräte*) of the counties are put in charge of carrying out the delegated tasks. In most *Länder* the administrative offices of the counties (*Landratsämter*) under the direction of the county commissioner (*Landrat*) have been tasked with acting in a “double function” so that, besides implementing the county’s self-government matters, they also serve as “lower State administrative offices” (*untere staatliche Verwaltungsbehörde*) of Land administration.

In recent years most *Länder* have, under the label “functional reforms” (*Funktionalreformen*), stepped up administrative reforms that, premised on the “delegation” mode, typically aimed at “simplifying” and “streamlining” their organizational architecture on the regional and local levels. The Land of Baden-Württemberg was exemplary of this wave of functional reforms as in 2005 a total of 450 meso and local level single-purpose field offices of Land administration were dissolved and their functions (and personnel) were largely transferred to 35 counties and nine county-free municipalities (see Kuhlmann and Wollmann 2019, 172).

2.7.2.1 Administrative Supervision (*Fachaufsicht*)

The execution of “delegated” tasks falls under the “administrative supervision” (*Fachaufsicht*) by the Land authority which pertains to reviewing the expediency and appropriateness of the decision or operation in question. The classical tool of administrative supervision is the instruction. So if the supervising authority deems the execution of the delegated task by the local authority to be inappropriate and unwarranted it may object to it, demand it being reconsidered or even substitute it

by its own decision.³ In carrying out “delegated” tasks the municipal mayor or the county commissioner (*Landrat*) act under the “top-down” oversight and direction by the Land authority. At the same time, however, being directly elected, they dispose of a democratic legitimacy and of some ensuing political “clout” that enables them to eschew of top-down supervision and to turn it into what has been called “mutual trust review” (“*Vertrauensaufsicht*”) (see Wegrich 2006).

The different modalities and shades in which the supervision “from above” by the *Land* authorities takes place reveal the ambiguous position in which local government and its actors find themselves in oscillating between being rooted in local self-government and being drawn into Land administration. So, on the one hand, in some aspects, particularly insofar as the county commissioner (*Landrat*) and county administration come close to act as local agent or local agency of *Land* administration one might well speak of *administrative deconcentration* or even of “statelising” (*verstaatlichen*) local administration. On the other, since the delegation mode has expanded the task portfolio and operational weight of the local government level and has been accompanied by a general political and functional upgrading of the local government level, not least because of the enhanced political leadership role and “muscle” of the directly elected mayor and *Landrat* one may plausibly speak of a *political decentralization* of State/*Land* functions or even of their “communalization/municipalization” (“*Kommunalisierung*”) (see Kuhlmann and Wollmann 2019, 179).

2.7.3 *Broad Scope of Local Government Functions*

Based on the traditional “dual function” model which comprises “self- government” as well as “delegated” tasks Germany’s local authorities rank among the functionally strongest local government systems in Europe (see Wollmann 2008, p. 294). Indicatively up to 80 per cent of the (federal and Land as well as EU-derived) legal provisions are implemented by the local authorities (see Schmidt-Eichstaed 1999, p. 330; Rechlin 2004, p. 10). Moreover, up to two thirds of all public (infrastructural) investments are carried out by them (see Ruge and Ritgen 2021, 129f.).

2.7.4 *Size and Composition of Local Government Personnel*

With regard to the size and composition of local government personnel see Chap. 6 in this book, in particularly Chap. 6, Table 6.3 where the number and percentage of local government employees are broken down by task areas.

³<https://de.wikipedia.org/wiki/Fachaufsicht>

2.7.5 *Local Autonomy and Discretion*

Although the decision-making and action space within which the local authorities operate is framed and defined by manifold (federal, Land and also EU) legal and financial provisions and restrictions as well as by various forms of “top-down” oversight the local authorities dispose of a significant degree of local autonomy and discretion. For identifying and “measuring” the scope of the local autonomy in international comparative research a “Local Autonomy Index” (LAI) has been construed which is based on 11 indicators and covers 39 European countries (see Ladner et al. 2016; Kuhlmann and Wollmann 2019, 28 et seq.). Among the indicators figure the “policy scope” (the range of local government tasks), the effective political discretion (the extent to which local government has real decisional influence over these functions) and fiscal autonomy (the extent to which local government can independently levy local taxes). According to this index Germany's local authorities rank fifth behind Switzerland, Sweden, Finland and Ireland in the group of 39 European countries. This suggests a comparatively high degree of local autonomy notwithstanding the dense net of legal provisions and financial restrictions under which the local authorities operate.

2.8 Local Level Territorial Reforms

2.8.1 *Municipal Level*

The territorial structure of the municipalities has undergone major reforms which came in two waves, in the (West German) *Länder* during the 1960s and 1970s and in the East German *Länder* following German Unification (see Wollmann 2004b, 2010; Kuhlmann and Wollmann 2019, 199 et seq.; Kuhlmann and Bogumil 2021, 279 et seq., Table 16.3).

In the West German *Länder* municipal territorial reforms were carried out between 1967 and 1978. They were politically intended to redraw and “upscale” the predominantly small-size municipal map (made up of 24,000 municipalities half of which counting less than 500 inhabitants) and to thus render the local authorities capable to cope with their enhanced role in the expanded welfare state. The number of municipalities was reduced country-wide from 24,282 to 8482 that is by 65 per cent (see Laux 1999, 175).

Two different reform strategies were pursued by the *Länder*.

On the one hand, a couple of (typically highly urbanized) *Länder* embarked upon large-scale amalgamations by creating territorially and demographically enlarged municipalities (“unitary”/“integrated” municipalities, *Einheitsgemeinden*). Exemplary of this strategy was the Land of Northrhine-Westphalia (with 16 million inhabitants Germany's demographically the by far largest *Land*). While the affected municipalities were given the opportunity to be “listened to” (in preceding public or

parliamentary hearings) it was seen lying in the competence of the respective *Land* parliament to impose a territorial reform, in the last resort, coercively by way of binding legislation. In comparative perspective this strategy of large-scale amalgamation (“upscaling”, Baldersheim and Rose 2000) falls in line with the “North European” territorial reform model epitomised by the UK where in 1974 a territorial local level reform was put into effect which resulted in local authorities with the unparalleled average size of 140,000 inhabitants (see Norton 1994, 40; Marcou and Wollmann 2009, 133 et seq.).

On the other hand, in most (West German) *Länder* “softer” municipal territorial reform strategies were chosen hinging on two components. First, the small-size (county-affiliated, “belonging to a county”) municipalities underwent more moderate or even no amalgamation. Second, a new layer of intermunicipal bodies, under varying labels (*Ämter*, *Verwaltungsgemeinschaften* etc.), has been installed between the county and the municipal levels. Either “voluntarily” or by legislative fiat the majority of the municipalities were grouped in such intermunicipal bodies which are meant to support their “member” municipalities in the fulfilment of their tasks. Typically these intermunicipal bodies are directed by boards that are appointed by the councils of the “member” municipalities. They have some personnel of their own and are financed by their “member” municipalities (see Norton 1994, 253). Because of its “hybrid” pattern of settling with minor (or no) amalgamation and of relying on intermunicipal bodies (akin to France’s “*intercommuneaulité*”) this reform strategy can be seen conformant with the “South European model” (see Kuhlmann and Wollmann 2019, 199 et seq.).

After 1990, following German Unification, the five new East German *Länder* “inherited” from the GDR State an extremely small-sized municipal structure of some 7500 municipalities averaging some 2200 inhabitants, half of them with less than 500 people. Nonetheless, most of them, with the exception of the Land of Saxony, decided in the first round of reforms immediately on the heels of German Unification to do without amalgamation primarily out of the political motive not to impair the unfolding of the just regained local democracy. At the same time, following the example of the West German *Länder* intermunicipal bodies (*Ämter*, *Verwaltungsgemeinschaften*) were introduced to support their “member” municipalities (see Wollmann 2010, 254; Kuhlmann and Wollmann 2019, 203; Kuhlmann and Bogumil 2021, 282). Subsequently since the mid- 2000s a new round of “reforms of the reform” got under way which aimed at increasing the number and coverage of territorially upscaled “integrated/unitary” (*Einheitsgemeinden*) by way of amalgamations and of correspondingly reducing and “streamlining” the intermunicipal bodies.

2.8.2 County-Free Municipalities (*Kreisfreie Städte*)

In the wake of the local level territorial reforms carried out in the West German *Länder* between the late 1960s and the mid-1970s the number of county-free municipalities has been significantly reduced in total, by 34 per cent, from 139 to 91, by integrating them in the adjacent counties. The reform was targeted at institutionally “simplifying” the local government structure and at strengthening the counties by integrating the county-free municipalities (see Laux 1999, 175).

In the East German *Länder*, in the course of the second round of territorial county reforms set off since the mid-2000s, the future status of the county-free municipalities has become a bone of contention as well. In the view of the ongoing and intensifying “depopulation” of rural areas the reforms aimed at administratively strengthening the (territorially enlarged) counties by incorporating hitherto county-free municipalities.

2.8.3 Counties

Territorial county reforms have come in two waves, at first in West-German *Länder* and, after Unification, in East Germany (for an overview see Kuhlmann & Bogumil 2021, 279 et seq., table 16.2, on East German *Länder* see Wollmann 2010).

In the West-German *Länder* county territorial reforms have been carried out during the late 1960s and mid-1970s largely parallel to the ongoing municipal territorial upscaling. The reformist aim was to enhance the administrative capacity of the county government level to cope with an upcoming expansion of tasks. The number of counties was reduced, by 45 per cent, from 425 to 237 averaging some 250,000 inhabitants (see Norton 1994, 251; Laux 1999, 175).

After 1990 the newly established East German *Länder* were faced with “inheriting” the small-sized territorial county format averaging 60,000 inhabitants to which, under the Communist regime, the counties had been reduced in order to make them more amenable to act as the local operational units of centralist administration (see Wollmann 2010, 250). So all East German *Länder* immediately embarked upon sweeping territorial county reforms which took effect by 1994. The total number of counties has been more than halved from 189 to 86 with an average size of some 180,000 inhabitants (see *ibid.*, 261, table 2) which however still fell short of the average of 250,000 in their West German counterparts. Subsequently in some *Länder* the political discussion about tackling another round of county reforms has gained momentum. This development was significantly fuelled by the perception that, due to the “rural exodus” particularly of younger people, rural areas have increasingly become demographically and economically depleted and that the counties needed to be territorially redrawn to better react to these challenges.

2.8.4 *Special Purpose Associations (Zweckverbände)*

Finally mention should be made of the special purpose associations (*Zweckverbände*). With a long institutional history that goes back to the nineteenth century they have been set up by municipalities as intermunicipal arrangements meant to carry out specific tasks or services, e.g. through the joint operation of facilities for water supply (water works), public transport, schools etc. They are legal entities under public law. The relevant decisions are made by an association assembly which consists of delegates chosen by the councils of their “member” municipalities and are headed by a director elected by the association assembly. They are set up by the municipalities in addition to existing formal intergovernmental bodies (*Ämter, Verwaltungsgemeinschaften*).

2.9 The Involvement of the Local Government Level in Decision-Making on the Upper Government Levels

2.9.1 *Local Government Level Coordination and “Lobbyist” Institutions*

In order to represent and “advocate” their interests in the upper level decision-making and in the general public debate as well as to promote the coordination and exchange among each other the local authorities have formed associations which, since their post-war re-establishment in the 1950s, are grouped and “trifurcated” in representing large municipalities, smaller municipalities and counties respectively (see Jaedicke and Wollmann 1999).

Consequently, on the central (federal) level three local government umbrella organizations (so-called *kommunale Spitzenverbände*) have been founded:

- The Association of German Cities (*Deutscher Städtetag*) comprises some 3400 member municipalities, including the three City-States (Berlin, Hamburg and Bremen), all (16) Länder capital cities, all (107) country-free municipalities (*kreisfreie Städte*) and a significant number of (county-affiliated, *kreisangehörig*) ones.
- The Association of German Municipalities and Communes (*Deutscher Städte- und Gemeindebund*) representing other (as a rule middle-sized and smaller rural) county-affiliated municipalities (*kreisangehörige Gemeinden*).
- And the German Association of Counties (*Deutscher Landkreistag*) representing the 294 counties (*Kreise*).

In line with the country’s federal structure corresponding regional associations exist on the *Länder* level as well.

Each of the local government associations on the federal as well as on the *Länder* level has set up a (professionally staffed) head office (*Geschäftsstelle*). This applies

particularly to the German Association of Municipalities which, as the organizationally and financially by far strongest, disposes of a head office with 35 senior specialists and 130 professional staff.

Externally, the purpose of the associations is to represent and “lobby” for the interests of their members in the political arena and in political and parliamentary decision-making. Through regular publications, periodicals, information letters, press releases and other (now increasingly digital) outlets they significantly weigh in on and influence the political and medial discourse and debates.

At the same time, the associations essentially pursue the communication and exchange among their members. Annual meetings, special issue conferences etc. the formation of permanent or adhoc special workings groups serve to promote and exchange of expertise and experience among their members and beyond.

Again the German Association of Municipalities stands out with some 20 permanent expert committees (*Fachausschüsse*).

Besides, the municipalities and counties are involved in financing and sponsoring various politically and topically pertinent institutions. An outstanding example is the Communal Joint Office for Administrative Management (*Kommunale Gemeinschaftsstelle für Verwaltungsmanagement*) which, founded in 1949, has since played a key role in counselling the local authorities in organizational matters. Since the 1990s, under the influential and vocal leadership of *Gerhard Banner*, it has been pivotal in elaborating and advocating the New Public Management-inspired “New Steering Model” (*Neues Steuerungsmodell*) which has conceptually driven and shaped the modernization of administration (see Chap. 4, Sect. 4.1).

Another important pertinent player is the German Institute of Urban Research (*Deutsches Institut für Urbanistik*, “*Difu*”). Founded in 1949 and largely carried and financed by member local authorities, inter alia, by the City State of Berlin, the “*Difu*” acts as an independent institution (with some 200 researchers) that focuses on conducting research on local government-relevant issues and on providing basic data, recommendations and counsel for local administration and local politics, including training courses for local personnel.

2.9.2 Involvement of Local Government Associations in Upper Level Decision-Making

2.9.2.1 Federal Level

As Germany's federal system is constitutionally made up of two layers, to wit, the federal and the *Länder* levels the local government level has so far been constitutionally and politically barred from becoming a full-fledged actor and partner in the federal legislative process. However, there have been moves to give the local authorities, particularly through their associations, some albeit limited access to federal decision-making.

So, responding to the insistent demands of the local government associations, the Federal Government decided in 1976 to adopt provisions in the Joint Standing Order of the Federal Ministries (nota bene still not by way of formal legislation) that the local government associations shall have “the opportunity to comment” (*Gelegenheit zur Stellungnahme*) legislative proposals insofar as they “touch essential concerns of the local authorities”. In the intra-ministerial drafting process the drafts shall be transmitted “at an early stage” to local government associations for a “comment” (*Stellungnahme*). In case the final legislative draft to be presented to Federal Parliament deviates distinctly from the “comment” of a local government association concerned the federal government shall “explain the deviation from that comment” (see Rechlin 2004).

Similarly, introduced in 1976, the Standing Order of the Federal Parliament (§ 60) prescribes that during the legislative process the local government associations shall have the opportunity to “make a comment” on the drafts. “This applies particularly to drafts of legislative provisions that need to be entirely or partially executed by the local authorities, pertain directly to their public finances or their administrative organization”. In 2012, upon repeated demands by the local government associations, this provision has been tightened by replacing the “shall have” (the opportunity to “comment”) with a “must have” formulation.

Whereas the local government associations have so far made scanty use of inserting “comments” in the intra-ministerial legislative process (see Rechlin 2004, 28, 62), they have done so extensively in the parliamentary legislative proceedings. Tapping the “on the site” experience local practitioners and drawing on the expertise of the professional staffs in their head offices the local government associations often have succeeded to weigh in on the legislative process and to “make a difference”.

Moreover, as in the parliamentary practice of the Federal Parliament increasingly public parliamentary hearings are held on important legislative projects the representatives of the local government associations have regularly been invited and have used this (politically and medially often widely resonating) opportunity to voice and advocate the local government views and interests.

In this context it is worth noting that in the proceedings of major federal system reform commissions (such as in 2006 and 2009) jointly appointed by the Federal Parliament and the Federal Council (*Bundesrat*) representatives of three local government umbrella associations have, albeit not as full-fledged commission members, been given the status of “permanent guests with the right to speak and to make proposals but without the right to vote. As the local government associations used to send their “big guns” and vocal “opinion leaders” to represent them in the Commissions they succeeded to make their arguments and demands widely noticed and resonate in the political, public and medial discussions. However, as for the proceeding of the Federal Council (*Bundesrat*) which, representing the *Länder* (that is the *Länder* governments), plays a key role in federal legislation and policymaking, the *Länder* have so far adamantly rejected the requests and demands of the local government associations to be given the “opportunity to comment” (*Gelegenheit zur Stellungnahme*) on matters “of essential concern for the local authorities”. Tellingly

the *Länder* argue and claim that the interests of the local government level and of the local authorities are adequately and sufficiently represented and taken care of by the *Länder* (see Rechlin 2004, 30).

2.9.2.2 *Länder* Level

On the *Länder* level a debate has occasionally flared up about strengthening the local government influence by setting up a “Communal Chamber” (*Kommunkammer*) as kind of “second chamber”, made up of representatives of the local government level, flanking the elected Land parliament (see Holtkamp 2001). Yet so far such bodies have not been created with the exception of the Communal Council (*Kommunaler Rat*) in the Land of Rheinland-Pfalz. Proposed and urged by the regional local government association it was installed in 1995. It comprises 28 members who are local councillors and mayors and are dispatched to the “Communal Council” by the local authorities on the basis of the recent municipal election results. The Communal Council is tasked with advising and making recommendations to the Land Parliament and the Land Government.

As for legislation, most *Länder* the parliaments have adopted Standing Orders which, similar to the aforementioned practice of the federal Parliament, provide the local government associations the “opportunity to comment” on legislative drafts in the course of the parliamentary process. In the Land of Baden-Württemberg and of Bavaria this “opportunity to comment” has been laid down in formal Land legislation.

2.9.2.3 European Level European Committee of Regions (CoR)

In 1994 the “European Committee of the Regions” (CoR) was established which, as “a consultative body of representatives of regional and local authorities” flanking the European Parliament, has the mandate to bring the regional and local level interests and voices of the Member States to bear in the EU policymaking arena. Of the total of 329 seats in the Committee 24 have been, according to the population size-dependent allocation formula, allotted to Germany (see Thränhardt 1999, 361 et seq.). In claiming to solely represent the regional as well as local interests in the supranational arena the *Länder* initially insisted on occupying all 24 seats allotted to Germany. It took a conspicuous intervention by the then German Chancellor Kohl the *Länder* agreed to let the local government associations have three of the CoR 24 seats (see Jaedicke and Wollmann 1999, 320). To put this disproportionality of the distribution of seats into comparative perspective it is worth pointing out that for instance in case of Denmark which is a unitary state with seven regions and 98 municipalities, three of the country's CoR nine seats are allotted to the regions and six (sic!) to the municipalities.

Brussels Offices

Besides and in addition to each holding a seat in the European Committee of Regions (CoR) all *Länder* have individually established a Brussels office, some, as the Land of Bavaria, in a downright embassy-type style (with 35 staffers).⁴ Even individual Land parliaments, such as that of Bavaria, have set up an office of their own to be better connected with EU level policymaking.

Moreover the local government associations have been keen to establish their own representation in Brussels in order to represent and advocate their interests on the EU level—besides the scarce three seats representation they have been allotted in the CoR. Originally in 1993 the three local government umbrella organizations (the German Association of Cities, the German Association of Municipalities and Communes and the German Association of Counties) put up a *Joint Europe Office* in Brussels (see Jaedicke and Wollmann 1999, 320; Thränhard 1999). In 2002 the three organizations decided to have their separate Brussels offices in order to bring their respective specific interests more effectively to bear on the EU level. On the top of it in some *Länder* regional associations and formations of local authorities chose to set up a Brussels office of their own, such as in the Land of Bavaria (the “Europe Office of the Bavarian Communes”⁵), in Baden-Württemberg and Saxony and in the metropolitan region of Frankfurt/Main which underscores the mounting interest of the local authorities, not least with the eyes on EU funding, to obtain direct access to relevant information and contacts.

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⁴ https://de.wikipedia.org/wiki/Vertretung_des_Freistaates_Bayern_bei_der_Europ%C3%A4ischen_Union

⁵ <https://www.google.com/search?client=firefox-b-d&q=Europab%C3%BCro+der+bayerischen+Kommunen>

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Chapter 3

Local Political Actors and Arena



Abstract In this chapter lays out that the traditional format of a (“quasi-parliamentary”) local political system based on elected local councils and council-elected mayors has been profoundly reshaped since 1990 by the introduction of all *Länder* of direct democracy-characteristic procedures: the direct election of the mayor and county commissioner (*Landrat*), their possible direct-democratic recall and binding local referendums. Consequently in the triad of local council, local executive and local citizenry the position of the elected local executive has been significantly bolstered moving it towards a local “quasi-presidential” system.

Moreover the chapter deals with council elections and the development and role of political parties and other local political groups on the local level arena.

Keywords Direct election of the mayor/Landrat · Binding local referendums · Local elections · Local political parties

3.1 Traditional Prevalence of the Elected Council/ Council-Elected Local Executive Form of Local Government

Dating back to the early nineteenth century the introduction of local government in the German States was premised on the “dualistic” scheme of (then plutocratically distorted and biased) elected local council and the council-elected local executive, the latter formed either as collegial body (*Magistrat*) as in the pace-setting Prussian Municipal Charter of 1808 or as monocratic mayor modelled on the *maire* in France’s post-revolutionary legislation of 1790 (see von Saldern 1999, 23 et seq.).

After 1945 following the reconstruction of democratic constitutional government in (West) Germany, the newly established *Länder* enacted municipal and county constitutions (*Gemeinde-/Kreisordnungen*) which largely drew on the various traditional patterns in the respective regions (see Norton 1994, 278 et seq.; Knemeyer 1999; Wollmann 2000: 47f.).

Hereby two conspicuous deviations from the traditional elected council/council-elected mayor scheme stood out.

First, in the South German *Länder* of Bayern and Baden-Württemberg, then situated in the American Occupational Zone, in 1952 respectively, in 1956 an institutional innovation made its entry into German local government as, inspired by the US example, the direct election of the (chief executive) mayor was introduced as a kind of local “quasi-presidential” system. Second, in the Land of Northrhine-Westphalia, under the influence of the British Occupational Force, a municipal constitution was put in place which, drawing on the UK (local) “government by committee” model, assigned a comprehensive competence to the elected council and ascribed to the (council-elected) mayor the limited function of chairing the council while creating the new position of a council-appointed chief executive (city managers, *Stadtdirektor*). Thus the (conflict-fraught) form of “double-headed local leadership” (“*Doppelspitze*”) emerged (see Schefold 2012, 241).

During the following 40 years the local government schemes individually laid down by the *Länder* proved remarkably stable (see Wollmann 2005, for a comparative perspective see Wollmann 2009).

3.2 Rise of the Directly Elected Executive Mayor/Elected Council Model

Since the early 1990s in a rapid sequence of legislation the *Länder* proceeded to adopt a largely congruent local government scheme revolving around the “directly elected (strong) executive mayor”.

This rupture was propelled essentially for two reasons. First, the critical assessment gained traction in the political debate that the existing local government schemes were deemed inept: the elected council/council-elected mayor form was criticized for the inherent institutional weakness of the council-appointed mayor and the elected council/council-elected mayor plus city manager form for its built-in frictions of “double-headed leadership”.

Against this backdrop in particular the “directly elected strong executive mayor” scheme installed in 1956 in the Land of Baden-Württemberg served as an acclaimed role model (see Banner 1982). Second, the political demands for enhancing the direct democratic and participatory citizen rights promoted the direct election of the local chief executive as well as the latter’s recall by local referendum.

While, thus, the direct election of the mayor (as well as of the county commissioner/Landrat) was swiftly and congruently adopted by all *Länder*¹ the legal regulations individually enacted by them differ in some relevant features.

¹ Contrarily the three City States (*Stadtstaaten*), Berlin, Hamburg and Bremen have retained the council/parliament-elected collegial executive (magistrate) model. In Berlin the mayor heading the Magistrat bears the somewhat pompous title of “Governing Mayor” (*Regierender Bürgermeister*)

3.2.1 *Political Role of the Directly Elected Executive Mayors*

In most (10 of 13) *Länder* the directly elected mayor has gained further standing and influence in the political arena by being assigned, in addition to his prime executive function, the right to chair and set the agenda of the full council and the committee meetings, the right to vote and to speak at any time etc. (see Bogumil and Holtkamp 2006, 62, chart 8). The influence which the local chief executives thus exercise in and on the local councils and their activities is at odds with the principle of separation of powers and signals their predominant local power position which comes close to a, as it were, local “supra-presidential” format.

By contrast, some (3 of 13) *Länder* have adopted municipal charters which, with the explicit political intention to contain the preponderance of the mayor, provide for the self-standing position of the council chair to be elected from among and by the council members.

Among the *Länder* the tenure of the directly elected mayors differs between 5 and 8 years. While following from the understanding that the mayoral position is a genuinely political one no formal professional qualifications are required for becoming and being a mayor in the local political reality a mayoral “job description” has evolved that amounts to expecting “professional” skills apt to master the multiple tasks confronting an executive mayor. As there are no limits on how often a sitting mayor may seek re-election the mayoral position has turned into a life-long career perspective. So it has become a frequent mayoral career pattern and “ladder” to start with being employed in public, preferably local administration, possibly in a senior administrative position, to then become mayor in a small town and to finally succeed in being elected mayor in a larger or big city. Again the Land of Baden-Württemberg is exemplary where this “professionalization” process has unfolded since the 1960s.

During the 1950s and 1960s local mayors were quite often also deputies in a Land parliament or even in the Federal Parliament. However such “accumulation of mandates”² has been increasingly curbed. In 1977, the Federal Parliamentary Members Act of 1977 ruled out full-time local mayors simultaneously sitting in the Federal Parliament. In 2008 similar legislation was adopted in the Land of Baden-Württemberg with regard to the Land parliament. In other *Länder* such “accumulation of mandates” has so far not been legally ruled out hardly occurs because of the time-consuming work load of mayors.

The mayoral position has been aspired by “upward mobile” local politicians as a springboard for pursuing a career on the Land or even federal (and more recently the EU) levels.³ This is exemplified by mayors particularly of big cities heading upward

²This corresponds with time-honoured (recently abolished) practice of *cumul de mandats* in France (see Kuhlmann and Wollmann 2019, 77–78)

³Historically the most conspicuous example is Konrad Adenauer who was the council-elected “Rhinish” mayor in the City of Cologne between 1917 until he was ousted under the Nazi regime in 1933. When returning to the political life after 1945, he played a key role in founding the

to occupy a leading position in a Land or federal government. This holds true for the top position holders in the City States as well.⁴

3.2.2 *The Executive/Administrative Function of the Mayor*

As the mayor is the chief executive (“CEO”) of the local authority the direction and management of the municipal administration are at the core of his operational responsibilities and activities. Hereby he is flanked and assisted, depending on the size of the municipality, by council-appointed deputy mayors (*Beigeordnete*) who act under his direction.

His portfolio comprises, first, the implementation of the decisions passed by the local council within the wide range of (voluntary and obligatory) self- government tasks (see Chap. 2, Sect. 2.3). With regard to the latter the mayor basically acts under the guidance and scrutiny by the local council as the supreme local decision-making body in local government matters.

Second, the mayor is in charge of carrying out the tasks which, under the traditional “dual task” model, are “delegated” by the State/Land to the local authorities (see Chap. 2, Sect. 2.3.2). While in conducting these “delegated” tasks the mayor is subject to the comprehensive administrative supervision (*Fachaufsicht*) and possibly direction and instruction by the Land authorities the local council has, in principle, no influence nor say on the mayor’s conduct of “delegated” business which additionally enhances his “clout” in the local political and administrative arena.

3.2.3 *Local Level Checks and Balances*

First, political parties have become important players both inside and outside the local councils in local level policymaking. This holds true particularly in *Länder* in which the local political game and culture has been shaped by political party competition and by a majority/minority and government/opposition divide that has, in the comparative political science debate, been called “competitive democracy” (*Konkurrenzdemokratie*, see Holtkamp 2008). A case in point is the Land of Northrhine-Westphalia. But it also applies to *Länder* with a more consensus-oriented political style and culture which has been identified as “consociational democracy” (*Konsensdemokratie*, *ibid.*). An example is the Land of Baden-Württemberg where small municipalities numerically prevail and where locally

Christian Democratic Party and became Federal Chancellor of the Federal Republic between 1949 and 1963.

⁴For example Willy Brandt was the mayor (*Regierender Bürgermeister*) of the City State of Berlin (between 1956 and 1966) before he became Federal Foreign Minister and Vice-Chancellor (between 1966 and 1969) and Federal Chancellor (between 1969 and 1983).

based independent parties and groupings, so-called “town-hall parties” (*Rathausparteien*), play an important part.

Second, the direct election mode is likely to have a moderating and disciplining effect by warning the aspiring mayoral candidate and even more so the sitting mayor who seeks re-election to be cautious and aware of the possibly looming “verdict” by the local electorate.

Third, the recall procedure by which a sitting mayor can be removed from office by local referendum and hangs, as a kind of political “Sword of Damocles”, over the local political arena has a checks and balance effect.

3.3 Recall Procedures: Regulation and Practice

The direct democratic recall procedures which since the early 1990s have been legislatively introduced in all *Länder* along with the direct election of the mayor unroll in an initiation and in decision phase.

As for the initiation only a minority (3 of 11) of the *Länder*, among them interestingly the East German Länder of Brandenburg and Saxony) chose to “arm” the local electorate with the (direct democratic) right to initiate a recall procedure and to submit it to the subsequent referendum. In these three *Länder* the initiation quorum (that is, the minimum percentage of the local electorate required to set off the recall procedure) ranges between 25 per cent and 33.3 per cent while the referendum quorum (that is the minimum percentage of the local electorate required for the approval) lies between 25 per cent and 50 per cent (see Wollmann 2000; Vetter 2006, 260).

By contrast, in most (8 of 11) *Länder* the right to initiate the recall procedure has, in a remarkable curtailment of the direct democratic principle, not been accorded the local citizens but instead construed as a kind of “vote of non- confidence” of the elected council to be subsequently submitted to the direct democratic referendum. In these eight *Länder* the recall initiation requires a council majority between half and three quarters, while the referendum quorum lies between 25 per cent and 30 per cent of the electorate.

In the early 1990s the local political practice in the Land of Brandenburg conspicuously stood out as between 1993 and 1998 when the initiation quorum was only 10 per cent about one tenth of the sitting (full-time) mayors were effectively “recalled” (see Wollmann 2000). The number of recall referendums largely abated after in 1998 the initiation quorum was legislatively raised to 25 per cent. Yet, widely noticed in City of Potsdam (the Land of Brandenburg’s capital with some 160,000 inhabitant) in May 1998 the mayor was removed from office by a citizen-initiated recall referendum.

Similarly, council-initiated recall procedures have repeatedly resulted in the recall of the sitting full-time mayor.⁵

3.4 Municipal Councils and Councillors

Although in the constitutional law doctrine and parlance the local councils are not recognized as local “parliaments” since the 1970s the local government constitutions of the *Länder* have increasingly acknowledged the “parliament- like” quality of the local councils by ascribing “parliament-typical” rights and instruments to them, such as the formation of political party groups in the local councils, minority rights of the opposition, scrutinizing rights such as “question hour”, freedom of information and access to files and the like (for details see Wollmann 1999b, 57 et seq.). Likewise terms like “municipal parliament” (“*Stadtparlament*”) have become currently used in the political and medial discussion.

In 11 of 13 *Länder* the tenure of the municipal councillors is 5 years. They traditionally exercise their mandate on a “voluntary” (*ehrenamtlich*) and part- time basis while, as a rule, pursuing gainful employment (often teachers, lawyers, business people like). They are non-salaried, but are entitled to some expense allowances and attendance fees. While, in line with the separation of power principle, they are not allowed to hold an administrative position in a local, Land or federal authority they may have other electoral mandates. In fact, a significant number of municipal councillors also have a seat in the county council and even in the Land, Federal or European Parliament. Often a municipal council seat has served as the springboard for an upper level political career and has, once such political career leap occurred, been retained in order to keep a local foothold and base in their constituency.

3.5 Binding Local Referendums

Following the reconstruction of democratic government in (West) Germany, the federal constitution (Basic Law) of 1949 gave prime importance to the principles of representative democracy while refraining from direct democratic procedures on the federal level. This reluctance probably stemmed from the historical recollection of the demagogic and pernicious use that Hitler’s radical right movement had made of referendums in the late stage of the Weimar Republic (see Wollmann 1999a, 38). At the same time, however, it was laid down in the Basic Law (article 28, 1) that “in municipalities a local assembly may take the place of an elected body” thus giving

⁵For instance, in the Land of Hesse between 1993 and 2000 seven council initiative recall procedures were started. In the subsequent referendums the removal of the mayor was approved in five cases, see <http://www.juramagazin.de/24350>

a constitutional opening to “town meeting”-type local level direct democratic institutions on the local level.

While the newly established *Länder* of Baden-Württemberg and Bavaria, typically both located in the then US-American Occupational Zone, stood out in legislatively providing for binding local referendums along with the introduction of directly elected mayors it was only in the early 1990s that, in lockstep with the direct election of the mayor and recall procedures, binding local referendums have been put in place in all *Länder*.

According to the legislative regulation in the *Länder* the conduct of local referendums follows a similar two-step scheme (for details see Wollmann 1999a, 40 et seq.; Vetter 2006, 259 et seq., table 4; Rehmet et al. 2020, 11, table 1). A referendum may be triggered by a “citizen initiative” (*Bürgerbegehren*) or by a local “council initiative” (*Ratsbegehren*). The former requires the signatures of a minimum percentage of the local electorate (initiation quorum) varying among the *Länder* from 5 per cent to 10 per cent, while the latter is set off by a council decision adopted with a simple or a two thirds majority. The subject matters which can be taken up in a “citizen initiative” are defined and restricted by (varying) *Länder* provisions which commonly exclude budgetary, personnel and organizational matters. Moreover in most *Länder* the “citizen initiative” is required to include a “proposal how to cover the resultant costs” (*Kostendeckungsvorschlag*).

In an interim step it is up to the council to check whether the “citizen initiative” fulfils the procedural requirements which often dooms their end (for instance because of allegedly insufficient “cost proposals”). In the final stage a referendum needs to be approved not only by a majority of the cast votes but has to surpass a certain percentage of the electorate (so-called approval quorum)—ranging in the *Länder* between 10 per cent and 30 per cent; this causes many a referendum to founder despite of receiving the majority of votes.

As a result since the 1990s until the end of 2019 in total 8099 local referendums have been initiated of which 83.2 per cent were “citizen initiatives” and 16.8 per cent “council initiatives”. About half of the initiatives led to holding referendums of which about 50 per cent were approved with the required majorities (for these and the following data see Rehmet et al. 2020, passim and tables). Over the years the referendums have revolved around a broad gamut of local issues, such as schools and kindergartens facilities, transport and traffic project, public utilities (“privatization, remunicipalization”, see Kuhlmann and Wollmann 2019, 241 et seq.) and recently increasingly environmental-related matters. Yet, compared to the total number of some 11,000 municipalities the number of referendums, initiated or approved, appears relatively small (see Vetter 2006, 264, table 6). In fact in the overwhelming majority of the municipalities there has not been a single referendum ever since. Typically the frequency of referendums has been clustering in the three City States (Berlin, Hamburg and Bremen) as well as major cities, particularly in the Land of Bavaria topped by the its capital City of Munich.⁶ So particularly in

⁶For a list and ranking of cities that are “front-runners” in referendums, in particular the City of München with 33 referendums in the course of 26 years, see Rehmet et al. 2020, 17.

major and big cities a “direct democratic culture” (Rhehmet et al. 2020, 16) has observably caught roots whereas in the vast majority of municipalities it still appears a remote option.

In sum, while the introduction of the binding local referendums marks a significant direct democratic innovation and inroad into the traditional predominance of local representative democracy putting German *Länder* ahead of most other European countries it still falls far behind Switzerland where since long binding local referendums have been initiated and approved with a frequency of up to ten and more annually in individual municipalities.

3.6 Municipal Elections

3.6.1 Election System

The legislation on local level elections lies with the *Länder*. In the early 1950, the local election laws of the *Länder* laid down 5 per cent thresholds for political groups and parties to gain seats in local councils (see Wollmann 2016).

Following a series of rulings handed down by *Land* constitutional courts which declared such thresholds for local elections unconstitutional the *Länder* proceeded to abolish the 5 per cent hurdle. In accordance with the Treaty of Maastricht of 1992 which stipulated the right of EU citizens to vote in local elections held in EU member States an amendment of the Basic Law was adopted on December 21, 1992 allowing not-German-citizens from EU member countries to exercise voting rights in local elections (in contrast to *Land*-level and national elections).

In the electoral systems of the *Länder* the proportional scheme prevails based on “lists” (composed by the political parties or other “independent”, *freie*, groups) and allotting the council seats according to the (proportional) electoral strength the political party or group has attained.

Meanwhile this (undifferentiated) “proportionate system” has been “personalized” by way of an “open list” system in all *Länder* with the exception of the Land of Nordrhein-Westfalen which has stuck to the “closed” list system.

The “personalized” component may be brought to bear in two ways.

First, the voter may “cumulate” (*kumulieren*) a number of votes on one candidate (on the electoral “list”). He/she can thus change the place the respective candidate has been assigned by the party or group on the pre-fixed “list” and may thus, *in extremis*, move the candidate from the bottom to the top of the “list”. The *Länder* differ considerably in the details of “cumulation”. In some (6 out of 14) *Länder* the individual voter may “cumulate” three votes on a candidate while in others (5 out of 14) the number of votes each voter may “cumulate” on a single candidate depends on the number of councillors to be elected. Second, the voter may shift and “jump” (“*panaschieren*”) between the party (group) lists by striking out candidate(s) on one list and instead vote for candidate(s) on another list. The “personality” component

in the electoral system is likely (and intended by its advocates) to weaken the influence of the political parties on the nomination and final election of candidates (for details see Kersting 2002: 147).

The South German *Länder* Baden-Württemberg and Bayern were first, in the 1950s, to introduce electoral systems with strong “personality” components through *kumulieren* and *panaschieren*. In these two *Länder* about 80 per cent of the “lists” “are reported to be changed this way.

By contrast, the mayoral elections are decided by the majority voting system. If in the first electoral round none of the candidates achieves an absolute majority of the votes a second (“run-off”) round takes place between the two candidates who did best in the first round. The second round is decided by the simple majority of the votes.

3.6.2 Voter Turnout

Well onto the 1990s, the *voter turnout* in local council elections was quite high between 60 per cent and 70 per cent (see Schulenburg 1999: 25). In the meantime it has significantly decreased and fell, for instance, in Land of Brandenburg in the 2014 election to a historical low of 46.2 per cent before rising again to 58.6 per cent in 2019.

As for the mayoral elections the voter turnout differs considerably depending on whether the mayoral election is held “synchronically”, that is, at the same time as the council election, or “non-synchronically”, that is on a separate date. Based on research data on voter turnout in 70 big cities with more than 100,000 inhabitants (see Konrad Adenauer Stiftung 2012: 8–26) in the “synchronically” held mayoral elections the voter turnout was around 50 per cent while it was noticeably lower in “non-synchronised” mayoral elections—in some cases down to 30 per cent, in an extreme case even to 23 per cent. So, in sum, the initial expectation that the direct election of mayors would elicit and lift the voter turnout has apparently not materialized.

3.7 Political Parties and Groups in the Local Arena

Since the late 1950s the (national) political parties that were hitherto organized and operated on the federal and the *Länder* levels have entered the local political arenas, primarily in the big and larger cities, while in small and rural municipalities locally organized parties and “independent local lists” (see Göhlert et al. 2008) continued to prevail.

The “independent local lists” have continued to have strongholds in rural areas in particular in South German *Länder* (Bavaria, Baden-Württemberg) and East German *Länder* (Thuringia, Mecklenburg-Western Pomerania) with a large

percentage of municipalities with less than 5000 inhabitants. In picking up, for instance in the East German Land of Thuringia and in the West German Land some 56 per cent of the votes the “independent lists” by far outpaced the traditional parties (Göhlert et al. 2008, 132, table 1). Notwithstanding the political importance which the “independent groups” (“*freie Wählergemeinschaften*”) and “local parties” (*Rathaus Parteien*, “city hall parties”) have in particular small municipalities and rural areas, the traditional (nationally and regionally organized) political parties continue to dominate in the local political agendas and beyond. This applies especially to the larger and big cities where the election campaigns and results often evoke national attention and repercussion.

The political rise of The GREENS as a new political party is an intriguing case in point. They started out as local environmentalist activists, gained seats at first in local elections, moved on to Land parliaments, became coalition partners in the formation of Land governments and finally made it to the federal level.

Moreover the right-wing political party “Alternative for Germany” (*Alternative für Deutschland*, AfD) illustrates the formation and rise of a new party and its possibly dramatic impact on the political party landscape. Founded in 2013 the AfD advocates and propagates nationalist, xenophobic and anti-migrant positions. In the meantime it has gained electoral support on the local as well on the Länder and federal levels.⁷ In local elections the AfD has meanwhile conquered local council seats with up to 10 per cent of votes and beyond. In December 2023 for the first time an AfD-affiliated local politician has become directly elected mayor in the municipality of Pirna (with 40,000 inhabitants).⁸

3.8 Counties

3.8.1 *The “Double Function” of the County and of the “Landrat”*

As mentioned in Chap. 2, Sect. 2.5 in this book the county has—with some variance among the *Länder*—a peculiar double function. On the one side the counties form the upper level of the two-tier local government system and they possess—similar to the municipalities—the “right of self-government” as stipulated in article 28, part 2 Basic Law. On the other side in most *Länder* they come close to forming a “lower state (i.e. Land) authority”, *untere staatliche Verwaltungsbehörde*) in charge of carrying out administrative tasks assigned to them.

Accordingly the county commissioner (*Landrat*) who directs the county administration (traditionally labelled “*Landratsamt*”, “office of the *Landrat*”), wears, as it were, two hats (see Ruge and Ritgen 2021, 137). On the one hand, he carries out

⁷https://de.wikipedia.org/wiki/Alternative_f%C3%BCr_Deutschland

⁸<https://www.sueddeutsche.de/politik/afd-ob-wahl-pirna-tim-lochner-1.6321243>

“self-government matters” as decided by the elected county council and thus under the latter’s guidance and scrutiny. On the other, he is in charge of administering “delegated” tasks under the direction and supervision of the *Land* authorities which in the regulation of some *Länder* brings the commissioner of county close to acting as a local agent of the Land.

3.8.2 *Direct Election of the Landrat*

Historically the position of the *Landrat* dates back to the early nineteenth century when the *Landrat* as head of a level of state administration was appointed by the State. Along with the constitutional upgrading of the county as the upper tier of the local self-government structure effected under the federal constitution (Basic Law) of 1949 the *Landrat* came to be elected by the county council with the exception of some *Länder* where he continued to be, in the traditional way, appointed by the Land until the early 1970s. Since early 1990s, in parallel with direct election of the mayors, the direct election of the *Landräte* was introduced in all *Länder* as well (see Henneke and Rittgen 2010).

Again parallel to the regulation of the mayors, in 8 of 11 *Länder* recall procedures for the *Landräte* have been put in place since the early 1990s, in three of them possibly set off by citizen-initiatives. However, with the exception of a few (failed) council-initiatives, such recalls have so far not occurred.

3.8.3 *County Council*

The county councils are composed of the (elected) county councillors. In 7 of 11 *Länder* the (directly elected) *Landrat* is seated in and chairs the council which significantly enhances his standing and influence in the council and in the entire political county arena.

In 12 (of 13) *Länder* the electoral term of the county councils is 5 years. Akin to municipal councillors the county councillors serve “voluntarily” (*ehrenamtlich*), that is non-paid and part-time while engaged in full-time gainful employment. Whereas they, too, are not allowed to hold an administrative position in local (or Land) government, they may, in an “accumulation of functions”, be simultaneously seated in an upper level parliament which, similar to municipal councillors, often proves a springboard for a further political career.

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Chapter 4

Local Administration



Abstract In this chapter deals with the organizational development which local administration has gone through. Historically the municipal “core” administration has been “path-dependently” marked by a legal rule-guided hierarchical administrative structure. Since the early 1990s the New Public Management (NPM)-inspired “New Steering Model” (NSM) has been introduced to rectify the traditional (“Weberian”) administrative structure by adopting managerialist concepts and maxims such as output-based performance management, outsourcing. Subsequently in combining traditional and NSM-derived elements local authorities have moved towards a “Neo-Weberian” administrative scheme.

Keywords New public management · New steering model · “Neo-Weberian” administrative model

4.1 Take-Off in the Late Nineteenth Century

In the course of the rampant urbanization and industrialization which Germany experienced in the second half of the nineteenth century the rapidly growing municipalities were marked by the build-up and expansion of formal hierarchical (“Weberian”) administrative structures and by professional salaried staffs replacing the previous practice of having local tasks conducted “informally” by laymen (“leisure”, *ehrenamtlich*) fellow citizens (see von Saldern 1999, 26). This development showed particularly in technical matters (such as planning, construction, infrastructure) where, for instance, in the case of the mushrooming Ruhr-municipality of Essen the construction-related personnel rose from 3 in 1869 to 92 in 1910 (*ibid.*). This scheme of “Weberian” hierarchically organized and professionally staffed administration has “path-dependently” shaped the further development of the local administration.

4.2 Development After 1945

After 1945, following the defeat of Nazi Germany and the country's occupation by the Allied Forces, the local level administration was the only administrative structure that institutionally and operationally survived while the central (*Reich*) government structure entirely perished and the *Länder* were in territorial and organizational disarray as well (see Wollmann 2017, 50).

In coping with the unprecedented challenges posed by the vast destruction of infrastructure and housing and by the mass socio-economic and human misery exacerbated by millions of refugees from Eastern provinces the local authorities acted and operated essentially in their traditional organizational and personnel setting. So public/local administration continued to be characterized by the *hierarchical* and *legal rule-bound* scheme of the (“Weberian”) bureaucracy.

An early administrative reform debate sprang up under the catchword “simplification of administration” (*Verwaltungsvereinfachung*) aiming at making public administration organizationally “simpler” and less “bureaucratic”, but it hardly bore fruit. In this context in 1949 the *KGSt* (the acronym for “Joint Local Agency for the Simplification of Administration”)¹ was founded as an independent consultancy agency which, sponsored and financed by the local authorities, was designed to counsel and assist them in organizational matters. In elaborating and publishing thematic recommendations the *KGSt* has over the years become an influential voice and change agent. From the beginning until the 1980s it was a vocal advocate of the traditional (“Weberian”) scheme of public administration.

4.3 Administrative Reform Wave During the 1960s and Early 1970s Under the Auspices of the “Advanced Welfare State”

In the late 1960s, heralded by the formation of the reformist social democratic-liberal federal government under Chancellor *Willy Brandt*, (West) Germany entered a policy phase which, in promoting a proactive and interventionist “advanced welfare state” concept, was directed at broadening the scope of economic, social and ecological policies and at correspondingly enhancing the administrative and operative capacity of the public sector to carry out the expanded scope of public tasks (see Wollmann 2003a). Drawing on the Planning Programming Budgeting Systems (PPBS) discourse which originated in the USA in the 1960s the build-up of governmental and administrative planning, information and evaluation capacities became key topics in the reform debate in Germany as well. Moreover, the calls for enhanced

¹ Kommunale Gemeinschaftsstelle für Verwaltungsvereinfachung. In the 1980s it was renamed as Kommunale Gemeinschaftsstelle für Verwaltungsmanagement (Joint Local Agency for Administrative Management).

democratic rights and “citizen participation” which were amplified by the “student rebellion” of the late 1960s propelled the political and administrative reform discourse.

As in Germany’s federal multi-level system the lion’s share of public tasks and policy programmes are implemented by the local authorities the expansion of federal policies and programmes was bound to greatly affect and remould the organizational and personnel structure of local administration. This applied particularly to newly expanded policy fields, such as urban renewal, housing, environmental protection, public transport etc. In line with the PPBS-related reform maxims the build-up of urban planning and information capacities was pushed, while by the same token “citizen participation” became a driver in the planning process. Besides along with the “rationalistic” planning discourse and movement evaluation made its entry into Germany’s politico-administrative world (see Wollmann 2003b).

Aiming at strengthening the administrative and planning capacity of the local authorities to cope with their expanded task portfolio the *Länder* proceeded, between the late 1960s and the mid-1970s, to drastically redraw and rescale the territorial structure of the municipalities and counties (see Chap. 2, Sect. 2.8 in this book). In total number of municipalities was drastically reduced from 24,000 to some 8400 and that of the counties from 425 to 237 (see Wollmann 2004; Kuhlmann and Wollmann 2019, 198 et seq.).

In sum, between the late 1960s and the mid-1970s, Germany’s local government system has experienced a historically unparalleled functional, organizational and territorial shake-up which posed to the local authorities the double challenge of coping with largely expanded tasks and of adapting to and operating in an entirely remoulded territorial structure. Yet, notwithstanding these changes and ruptures the traditional organizationally hierarchical and legal-rule based (“Weberian”) administrative model remained (path-dependently) persistent.

4.4 Administrative Reform Wave Since the Early 1990s

While since the late 1970s the international debate about public sector modernization was increasingly dominated by the New Public Management (NPM) concepts (see Hood 1991), in Germany the pertinent discussion stayed remarkably aloof from this international trend.

A main reason for this plausibly was that in Germany’s professional and academic discussion the performance of the country’s public administration was perceived and assessed as, also in international comparison, relatively high particularly with regard to legality, professionalism and reliability for which the traditional (Weberian) administrative model and the underlying rule of law (*Rechtsstaat*) commitment were esteemed essential (see Wollmann 1996a, b).

Furthermore, in the country’s administrative tradition an easy access of private sector-derived managerialist concepts to public sector modernization was hindered by the conceptual and legal tradition to tightly distinguish between the public and

the private sphere. This stands in stark contrast to Anglo-Saxon countries where, due to their “stateless” political culture (see Dyson 1980; Johnson 2000, 29 et seq.), the borderline between public and private is more blurred which renders private business-derived concepts more accessible and easily acceptable in the administrative modernization discourse and practice.

4.4.1 *The Rise of the “New Steering Model” (NSM)*

In the early 1990s, however, Germany’s administrative modernization discourse and practice abruptly caught up with the international NPM-guided debate and practice.

First, since the beginning of the early 1990s the budget squeeze on all government levels dramatically increased as complying with the Maastricht criteria demanded strict budgetary austerity while at the same time the public expenditures skyrocketed in the wake of the German Unification. Against this backdrop NPM was turned to as a promising strategy and panacea for coping with the budgetary woes.

Second, the hitherto prevalent self-confident and somewhat self-laudatory view of the performance of Germany’s public/municipal administration was shattered by the results of an international competition which, initiated and funded by *Bertelsmann Foundation* in 1992, was designed to identify the most innovative cases of administrative modernization among major cities world-wide. As the cities of Phoenix (Arizona, the USA) and Christchurch (New Zealand), both engaged NPM-guided measures, came out as top performers, while the German candidate municipalities still holding on to the traditional administrative track ended at the bottom). These findings were perceived in the German professional and academic debate as an alarm bell and a blow to the hitherto cherished trust in the merits of the traditional (Weberian) administrative model.

In preparing and bringing about the downright paradigmatic shift in the administrative reform debate the *KGSt* and its then director *Gerhard Banner* played a pivotal role (see Kuhlmann and Wollmann 2019, 284; Proeller and Siegel 2021, 394 et seq.). After the *KGSt* had, since its beginning in the late 1940s, persistently and forcefully advocated the traditional (“Weberian”) model in 1991 it performed an abrupt conceptual turn-around. In drawing on the internationally dominant New Public Management (NPM) maxims and concepts the *KGSt*, with Banner’s hand-writing, elaborated and came out with an NPM variant of its own labelled “New Steering Model” (*Neues Steuerungsmodell, NSM*) (see Banner 1991).

In its “managerialist” gist the NSM message essentially aims at improving the internal operative performance and capacity of public/municipal administration. In a distinct difference from the (“*Thatcherist*”) neo-liberal NPM concept which is directed at attaining a “lean state” and at accordingly trimming the allegedly overblown welfare state the NSM advocacy left the existing welfare state task profile of the public sector basically unquestioned.

Revolving, insofar in lockstep with NPM, around the concept of introducing private sector managerialist principles to the organization and functioning of public/local administration the NSM is designed to rectify the hitherto prevalent (Weberian) model in crucial dimensions (see Kuhlmann and Wollmann 2019, 284; Bogumil and Jann 2021, 306 et seq.; Proeller and Siegel 2021, 394 et seq.).

First, the traditional internal “top-down” hierarchy of administration is to be replaced by intra-organizational (vertical) decentralization and decentralized resource management and operational responsibility (*dezentrales Ressourcenmanagement*). Second, the traditional legalist guidance and economic myopia of public administration with its inherent input-orientation is to be corrected and adjusted by output-based performance management instruments such as cost-achievement accounting (*Kosten-Leistungs-Rechnung*), target agreements (*Zielvereinbarungen*) and controlling. A key tool for accomplishing output-based performance management is seen in defining the pertinent public as “measurable” outputs which in the German debate, reflecting the underlying managerial understanding, have been labelled “products” (*Produkte*) (see Kuhlmann et al., 2008, 854).

With regard to the internal administrative modernization management tools have become widely used which, such as goal agreements (*Zielvereinbarungen*), are meant to effectuate steering and controlling in the intra-administrative context as well as in the relation between local administration and elected local council.

Besides, the one-stop-shop type “citizen offices” (*Bürgerämter*) which had established already in the 1980s in a growing number of municipalities (Bogumil et al. 2019) received an additional push from NSM since a key NSM credo coincides with and proved complementary to the client/user orientation on which the “citizen offices” concept of the 1980s was premised.

Moreover in advocating a “new municipal financial management” (see Proeller and Siegel 2021, 402 et seq.) NSM has significantly reshaped the budgetary process and practice. The traditional budget has been recast on two important scores. While previously the budget was “input”-oriented by specifying the amount of money to be spent, the reformed budget is “output”-related in spelling out, in indicator-based measurable terms, the targeted results. Moreover, the distinction that is traditionally made between policymaking and administration (with the former setting detailed goals and the latter carrying them out) was modified by mandating policymaking to set and define merely the general goals while the administration is given a wider scope and discretion in specifying and concretize them. The indicator-based mode of output budgeting and the follow-up “controlling” reports are meant to ensure and enhance the transparency of the budgetary process and in particular the follow-up control and scrutiny by the elected local councils and, last but not least, by the general public.

In a later stage of the NSM-led modernization drive local level budgeting experienced another important impulse and twist by replacing or at least complementing the traditional fiscal accounting with private sector-type (commercial) double-entry accounting (in German called “*Doppik*”). Since early 2003 the *Länder* have proceeded to legally oblige the local authorities to apply *Doppik* budgeting which as a “top-down” legislative intervention noticeably deviates from the rule of leaving it to

the local authorities to autonomously decide their organizational matters (see Bogumil and Jann 2021, 320 et seq.).

4.4.2 “Enterprise Municipality” (*Konzern Stadt*)

While NSM was in its managerialist gist directed at remoulding the core administration by vertically decentralizing and “dehierarchizing” its internal (“Weberian”) structure a complementary approach aimed at also horizontally decentralizing and flexibilizing it. For this a leitmotif and guidance was seen in the concept of an “Enterprise Municipality” (*Konzern Stadt*) which, borrowing from the private business sector, conceives local government as being made up of a company headquarter and company subsidiaries/holdings (*Beteiligungen*). In this concept the latter are, within accorded autonomy and flexibility, individually in charge of fulfilling the “corporate” tasks, whereas the former is responsible for central decision-making and for monitoring and “steering” the subsidiaries/holdings. Tellingly on their website the municipalities concerned have moved to introduce and call themselves “enterprise municipality N.N.”

Depending on the size and specific practice of the local authority the number of “hived off” units and companies (“holdings”) can be up to 50 and more.

Functionally the “enterprise” formation may comprise, besides “ancillary” operative functions (such as bookkeeping, digital management, real estate management and the like), the plethora of cultural and recreational facilities (local museum, musical schools etc.) as well as existing public utilities (*Stadtwerke*). As for the extent to which the “enterprise municipality”-inspired organizational dynamics has already played out it is estimated that by now up to half of the total local government workforce are employed by “hived-off” local units and companies and that almost half of the local authorities’ investment capital is held by them alike (see Grossi and Reichard 2016, 302). Moreover in some 40 per cent of the local companies private investors have acquired minority stakes in turning them into “mixed” (“hybrid”) companies and in operating “public-private partnerships (PPPs) (see *ibid.*).

In order to cope with the “centrifugal” tendencies inherent in the “satellitization” of operative agents and holdings the local authorities have set up administrative units (called “holding management”, *Beteiligungsmanagement*) within their administration (in the finance department, the mayor’s office etc.) designed to monitor and steer the multiple actors networks. Moreover the municipalities have begun, often since the early 2000s, to publish annual “holding reports” (*Beteiligungsberichte*) in which detailed accounts of all municipal “holdings” are given, including balance sheets with assets and liabilities of each of them. However, the centrifugal and single purpose-driven dynamics innate in the fragmentation and “satellitization” of local actors and holdings have posed serious obstacles and challenges to the local authorities (see Kuhlmann et al. 2008, 260; Grossi and Reichard 2016, 307).

4.4.3 Towards a “Neo-Weberian” Administrative Model

After the NSM-inspired administrative reform impulse spread in the early 1990s among the local authorities “like a wild fire” (Reichard 1994) it has subsequently tapered off. In the meantime a growing number of local authorities have gone to undo (“build back”) NSM-inspired changes by resuming traditional organizational principles such as the “unity of administration” (*Einheit der Verwaltung*) and a corresponding “horizontal (re-)concentration” of administrative functions to rectify the supposedly overdone institutional outsourcing and fragmentation.

In sum the balance sheet of the NSM-driven modernization of local administration is somewhat ambivalent (for detailed and balanced accounts see Bogumil and Jann 2021, 314 et seq.; Proeller and Siegel 2021, 396 et seq., see particularly Kuhlmann et al. 2008) on the findings of an evaluation study on the first 10 years of NSM-inspired local administrative modernization. On the one hand, the institutional and operational capacity as well as the citizen and customer orientation of local administration has been significantly recast and improved; on the other hand, it has been convincingly argued and concluded that “a comprehensive ‘paradigmatic’ shift from Weberian bureaucracy to a managerial NSM administration has not occurred” (Kuhlmann et al. 2008, 260; Bogumil and Jann 2021, 317).

In an overall assessment public administration appears to have moved towards a mix of NSM-derived and traditional (“Weberian”) elements (see Kuhlmann et al. 2008, 860; Bogumil and Jann 2021, 316) which has been interpreted by some as the emergence of a “neo-Weberian” type of public administration (see Bouckaert 2023; Pollitt and Bouckaert 2017, 221).

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Chapter 5

Digitization of Public and Local Administration



Abstract In responding to the growing public concern that with regard to the digitization of its public administration Germany is falling alarmingly behind other European countries the federal government in 2017 initiated legislation (Digital Access Act, OZG) and set the ambitious goal to promote and achieve the comprehensive digitization of public administration on all government levels within 5 years, that is, by the end of 2022. Although noticeable advances in the digitization of public administration have since been made at the same time serious hurdles and delays have occurred. Among the latter looms large the difficulty innate in the federal multi-level system to bring to bear the coordinated implementation of a common digital strategy and scheme. Moreover the local authorities have been hampered in digitizing their administration by financial scarcity and the shortage of IT-skilled personnel.

Keywords Digitization of local administration · Hurdles of implementing the OZG (*Onlinezugangsgesetz*)

5.1 The Rise of the Digitization Issue on the Political Agenda

Since the early 2010s digitization has gained increasing attention in the political discussion which was further ignited by the growing awareness that Germany was falling behind other European countries in the digitization of its politico-administrative system and thus putting its international competitiveness at risk (see Kersting and Graubner 2023, 231 et seq.; Mergel 2021, 331 et seq.). In March 2010, the Federal Parliament appointed an Inquiry Commission entitled “Internet and digital society” whose report was politically and medially perceived as sounding alarm. The country’s digital backlog was additionally laid bare by the *Digital Economy and Society Index (DESI)* which the European Commission started to publish in 2015 and according to which Germany ranked, in the indicator “digital public services”, just 18th among 28 EU countries with a score of 0.39 that is distinctly below the EU average score of 0.45 (see European Commission 2015).

5.2 The Digital Access Act (Onlinezugangsgesetz, OZG) of 2017

Against this backdrop the federal (Christian democratic/Social democratic “grand” coalition) government under Chancellor Angela Merkel took the initiative in 2017 to politically push the digitization of the country’s public sector. As the digitization of public administration is an organizational matter on which, in the existing constitutional order, the *Länder* as well as the local authorities decide in their own organizational competence an amendment of the Basic Law was needed to put a federal policy initiative and intervention on constitutionally incontestable ground. Accordingly an amendment of the Basic Law (article 91c) was adopted which, entering into effect on August 1, 2009, introduced a new called joint task (*Gemeinschaftsaufgabe*) (see Schallbruch and Städler 2009). It stipulates that “the Federation and the *Länder* may cooperate in planning, constructing and operating information technology systems needed to discharge their responsibilities”. On this constitutional basis the (federal) Digital Access Act (*Onlinezugangsgesetz*, OZG) was passed on August 14, 2017 which authorizes linking and interconnecting the digitization-related activities and portals of the federal, *Länder* and local governments (see Kersting and Glaubner 2023, 243).

At the same time, amidst a mounting political awareness and discussion that, as suggested by the OECD’s PISA data, Germany’s education sector performs poorly in comparison to most other European countries, the federal “grand coalition” government under Chancellor Merkel, almost in parallel to adoption of the Digital Access Act (OZG), launched a “Digital Pact” that, going into force on July 20, 2017, was targeted at digitizing the country’s school system (see Chap. 11, Sect. 11.3.2).

5.3 EU Single Digital Gateway Regulation of 2018

Signalling the urgency which the digitization of the public sector had gained also on the European agenda the EU passed the Single Digital Gateway Regulation (EU 2018/1724) which, entering into effect on October 2, 2018, stipulates the creation of a single (EU-wide) digital portal (“gateway”) termed “Your Europe”. It is designed to provide citizens (and businesses) in all EU member countries with “EU and national information on the rights of citizens and businesses as well as access to assistance services” which is to be made available in the official EU languages, that is, in English, French and German. The EU’s portal “Your Europe” shall be connected with the respective national digital portals of other EU member countries. Its proclaimed goal and deadline was that, by the end of 2023, “it will offer access to

21 online procedures in all EU countries, with procedures such as registering of cars or claiming a pension being fully digitalised and eliminating the need for paper-work". Since, unlike EU Directives that need to be transposed in national law, EU regulations constitute "primary EU law" that is directly applicable and binding throughout the EU, the Single Digital Gateway Regulation, by virtue of its legal quality of being Regulation, entitles citizens and businesses in all EU member countries directly to have, by 2023, digital access to (certain) public services (see NRCC 2020, 30; NKR 2021, 14). The implementation of the regulation by and in the EU member states will be reviewed in December 2022 and the operation and functioning of the Single Digital Gateway is to be reviewed and reported in every two years from 2022 onward.

5.4 Goal and Strategy of the Digital Access Act (OZG) of 2017

The "Online Access Act" of 2017 obliges the Federal Government and the *Länder* to offer their administrative services electronically through administrative portals by the end of 2022. For this purpose two tasks stand out.

First, the federal, *Länder* and local government levels are obliged to digitize their services, to offer them digitally through individual administrative portals and to combine the latter in a single (national) portal (*Portalverbund*) by the end of 2022. The wide scope of services the digitization of which has been mandated by the OZG has been grouped in 575 area-type "service bundles". About one third lie in the responsibility of the federal government, while about two thirds fall to the *Länder* and local authorities. Hereby the 180 "service bundles" which pertain to the local authorities comprise frequently used services, such as passport matters, civil registry matters, residents' registration, driving licence, car registration, housing allowance and the like.

Second, IT infrastructure shall be created that allows every user (citizen and business) to attain the administrative services on the Internet in a broad scale of digital access and use.

In view of the comprehensive range of services to be digitalized, of the multiple digital "portals" to be connected and of the tight time frame of 5 years set for the implementation the Digital Access Act (OZG) was, at the time of its introduction and outset, hailed as "the largest collaboration effort of German government over the last 20 years" (Hammerschmid 2020) and "a reform in scale and scope that no other country has yet set out to approach" (Mergel 2021, 332).

5.5 The Implementation of OZG

5.5.1 “One for All” Strategy

Confronted with the momentous task posed by the OZG to digitize some 6000 public services grouped in 575 “service bundles” (*Aufgabenbündel*) until the end of 2022 the federal government and the *Länder* conceived and pursued a “one for all” strategy. It is based on the concept of dividing the envisaged plethora of public services into 14 “thematic areas”¹ and of assigning each of them to one or a “tandem” of the *Länder* with the mandate to carry out pilot projects and “trial runs” in the respective service field in cooperation with local authorities. The experience with such pilot projects and the results of positively “tested” solutions were expected, as the gist of the “one for all” strategy, to be subsequently adopted by other local authorities in the “pilot” *Land* and others country-wide.

Dividing the “pilot” projects among them the *Länder* they typically chose frequently requested public service types such as driving licence, housing allowance, child benefits, student loans etc. For instance the issuance of driving licences was picked by the *Länder* of Hesse and of Baden-Württemberg and the payment of housing allowances by the Land of Schleswig Holstein and the City-State of Berlin.

5.5.2 Factors Complicating and Stalling Implementation Obstacles in the Federal Multi-level Setting

In its gist and rationale the OZG strategy has been marked by an inherent tension and contradiction which impinge on and hamper the implementation process. On the one hand, as authorized by amendment of the Basic Law (article 91c) the OZG is designed to “top-down” commit the *Länder* and local authorities to digitize their public functions and services by setting up digital portals and to link them with a (national) portal (*Portalverbund*). On the other hand, the autonomy that the *Länder* as well as the local authorities possess in organizational matters, including the digitization of their administration, has remained in principle unimpaired. Hence it continues to be lastly up to them to decide whether and how to follow the federal “top-down” guidance or whether to “go it alone” in getting their own (“bottom-up”) digital solutions or even remain inactive (see Mergel 2021, 333). So the stage has been constitutionally and politically set for difficult, retarding and possibly failing implementation processes (see Kuhlmann and Hauberger 2021, 5; Kuhlmann and Wollmann 2019). Indicatively according to an evaluation study on the implementation of the OZG the actors of the subnational government levels “declared to be not obliged to implement the legislation (i.e. OZG, H.W.)” (Bundesregierung 2008, 5).

¹For a listing of the pilot role assumed by the *Länder* see Nationaler Normenkontrollrat 2021, 9

Consequently in particular local authorities have often come up and worked with their own digital applications and “insular solutions” in the development and installation of which they already invested sizable financial and personnel resources. In addition for elaborating and operating their own digital infrastructure they have often drawn on and (possibly long-term) contracted (professional/commercial) IT consultants.

5.5.2.1 Legal Private Data Protection and Cultural Reservation

The introduction of digitalization has so far been hampered also by legal regulations on data and privacy protection which in Germany, due to its pronounced rule of law (*Rechtsstaat*) tradition, are stricter and more detailed than in other countries with, for instance, an Anglo-Saxon law tradition (see Kuhlmann and Heuberger 2021, 6). As the storage and utilization of individual data is in principle strictly limited to the respective legally and operationally responsible authorities a digital application which often requires the involvement of several authorities with their respective data sets encounters barriers.

At the same time in Germany, more so than in other countries, citizens are reluctant to transmit private data online to public authorities as the legally protected privacy shielded from public realm is highly valued. This appears deeply rooted in the country’s rule of law tradition as well as in a political culture in which the ill experience with state security control and repression under the Nazi and also Communist regime still lingers in the collective memory (see Mergel 2021, 333). At the same time this private data prudishness goes somewhat paradoxically hand in hand with the wide-spread readiness to share and circulate personal, even intimate information, data, photos etc. in the social media and Internet platforms.

5.5.2.2 Shortage of IT-Skilled Personnel

Another hurdle against swift digitization is the shortage of IT-skilled personnel. The vocational training and professional practice of local government staff is so far essentially still tailored to carrying out by the tradition largely legal rule- based administrative tasks while IT-related skills have so far been neglected.

Consequently, it has turned out difficult for the existing (and often aged) staff to adequately respond to the digital challenge. At the same time the local authorities have been financially restricted to sufficiently recruit new IT-versed personnel.

5.5.2.3 Costs of Digitization

While the local authorities could avail themselves of pertinent federal and Land funding for the acquisition and installation of digital hardware as well as software they have been largely left on their own money when it comes to pay for the current

operation, maintenance and importantly updating of once installed digital solutions. These follow-up costs are deterrent particularly for small municipalities which, struggling anyway with tight budgets and lacking skilled IT staff, have to “purchase” support from expensive external IT providers if they dare at all to “go digital”.

5.5.2.4 Digital Usage Gap

The scale and mode of digitizing public administration has so far been infringed upon also by continuing widespread inclination of the citizens to deal with public administration face-to-face. While according to a recent survey up to 94 per cent² of the population already use the Internet for personal and social communication (entertainment, online banking, online shopping etc.) the readiness to communicate online with public administration is distinctly smaller. According to another representative survey³ some 70 per cent turn to the Internet to get information (about office hours etc.) and to possibly also make appointments, but with regard to social benefits (such as child benefit or unemployment benefits) two thirds still prefer the face-to-face contact with public administration. So the propensity to seek the personal face-to-face contact and counselling particularly in the personally and socially sensitive public services still prevails. Similarly other survey data⁴ indicate that 59 per cent of the citizens of over 40 years and 37 per cent of those under 30 years still prefer to interact “in face” with public authorities⁵ which signals a remarkable generation divide.

At this point it should be added that the citizens have on the average annually only 1.7 direct contacts with public administration (see Kersting and Graubner 2023, 244). This holds true also for public services (such as the issuance of driving licence, building permit and the like) which become personally relevant, as a rule, hardly more than once in a lifetime—with the exception of the annual tax return. In certain life situations (such as unemployment, social assistance and the like) the contacts are more frequent and typically require and imply personal counselling or care and hence “in face” interaction.

²Conducted by phone between February and April 2019 among 6016 persons, see Statistisches Bundesamt 2021a, b, 394

³See InitiativeD21 2022, representative survey, comparing the German Länder ($n = 500$ per Land), Austria and Switzerland ($n = 1002$ respectively)

⁴Conducted online in June 2021 among 7852 persons, see Initiative D21, 10

⁵See *ibid.*, 28, see also Kuhlmann and Heuberger 2021, 5, InitiativeD21 *ibid.*, Mergel 2021, 333.

5.5.2.5 “Bifurcation” of (Traditional) Analogous and Digitized Administration

Thus, it turns out that with the advent and ascent of e-government the local employees are faced with a double work load as besides attending their tasks online they, at the same, maintain the traditional “in face” communication with the citizens (see Kersting and Graubner 2023, 359). Consequently, employees often perceive digitalization not as relieving but as adding to their workload (see Kuhlmann and Heuberger 2021, 4). The continuing “bifurcation” of administrative operations cannot help having a retarding effect on the direction and rate of digitization and making it more costly rather than saving costs.

5.5.3 Implementation Trajectories and Variants

On the local level the digitization of public services has been pursued mainly on two alternative trajectories.

On the one hand, digitization has been advanced within the OZG’s “one for all” strategy as counties and municipalities undertook “trial runs” and pushed them ahead. A case in point the Main-Kinzig county⁶ in the Land of Hesse where the “pilot” project on the issuance of the driving licence was successfully pursued unto the “maturity level 2” and even “maturity level 3” and where the successfully tested digital solution was subsequently adopted by other local authorities.

On the other hand, local authorities have proceeded, without being directly involved in a “one for all” project, to develop their own digital solution. The City of Dortmund (some 590,000 inhabitants) in the Land of Northrhine- Westphalia makes for the instructive example of a “home-grown” solution.⁷ However, as local “home-grown” solutions are tailored to specific local conditions and also based on digital software worked out with individually contracted IT providers a patchwork of various and varying local digital solutions has emerged which defies vertical coordination and “uniform” coverage.

Noteworthy advances are owed to the “one-stop shops” (*Bürgerämter*) which, partly dating back “pre-NPM” to the 1980s, in the meantime exist in most municipalities with over 15,000 inhabitants. They are guided by the concept that the citizen/user should, in contacting the local administration, have to do with a “single window” (“front office”) that bundles and “channels” the access to the various services and their respective “back offices” (see Kuhlmann and Wollmann 2019, 269). Predating the arrival of OZG they have often led to digitize administrative “bread and butter” tasks, such as the issuance of passports and residents’ parking permits

⁶<https://www.onlinezugangsgesetz.de/SharedDocs/kurzmeldungen/Webs/OZG/DE/2020/fuehrerschein.html>

⁷https://www.dortmund.de/de/leben_in_dortmund/nachrichtenportal/alle_nachrichten/nachricht.jsp?nid=681951

(see Bogumil et al. 2019, 61). However, according to a study carried out in 2017/2018 (see Bogumil et al. 2019) 83 per cent of the “one-stop shops” were digitally restricted to provide information about the services offered, office hours, making appointments and downloading forms (“maturity level 1”), while further online processing (“level 2”) has been attained only in one third and a “maturity level 3”-type completion in merely 10 per cent (see Bogumil et al. 2019, p. 61, table 10).

5.6 Summary and Perspective

Of the 575 “tasks bundles” which the OZG of 2017 was originally intended to digitize by the end of 2022 only 105 were effectively implemented by the deadline of 2022. The authoritative *Nationaler Normenkontrollrat* (Regulatory Control Council) concluded bluntly that “four years of implementation (of the OZG provisions, H.W.) still show only small tangible success” (NKR 2021, 2). In a summary of available findings it was pointedly said that “there is still no sign of a real breakthrough” (Kölker and Opiela 2022) and that the self-imposed target “has been missed by a huge margin” (INMS 2023). In a parliamentary hearing that the Federal Parliament held on October 9, 2023 on the state of “administrative digitization” there was agreement among the experts and practitioners that the goal of the OZG has been clearly missed.⁸

In a similar vein according to the Digital Economy and Society Index (DESI) which the European Commission annually compiles Germany ranked in 2022, with regard to “digitization of public services”, still 18th among 27 EU countries below the EU average (score 63 versus 67,3) (see European Commission 2022). “The country is still underperforming in this area, despite several initiatives from the federal government to accelerate digitalisation in public services” (ibid.).

In the meantime an amendment of the Digital Access Act (OZG) was introduced by the federal government and adopted by the Federal Parliament (*Bundestag*) on March 22, 2024. The OZG 2.0. aims at effectuating the coordination of the digitization efforts and measures in the federal multi-level system and at improving the user access by creating a central digital “citizen’s account”.

However, the Federal Council (*Bundesrat*) immediately declined to approve the amendment on the ground that the crucial issue of the follow-up financial costs remained unresolved.⁹ So the legislative process has been (temporarily) stalled, but in view of the national urgency of the matter there is hardly any doubt that an

⁸ See also the parliamentary hearing held by the Federal Parliament on October 9, 2023 on the state of “administrative digitisation” <http://www.bundestag.de/dokumente/textarchiv/2023/kw41-pa-inneres-digitalisierung-969,060>

⁹ See Frankfurter Allgemeine Zeitung, March 25, 2024, “Die ausgebremste Digitalisierung” (“The slowed down digitisation”)

intergovernmental agreement will be reached on further pushing and promoting digitization on all government levels.

At this point the digitization of income tax system (the so-called ELSTER system) merits being mentioned and highlighted which, operated on the *Länder* level, has been introduced 25 years ago, that is prior to and thus independent of the OZG of 2017. Its application and practice has called a “success story”.¹⁰ In the meantime up to 93 per cent of the all tax payers have come to file their tax declarations online through ELSTER. After processed by the revenue office the tax assessment is digitally fed back to the tax payer thus running the entire digital (“maturity level 3”) cycle. This “success story” hints at the potential which further and future digitization in other sectors promises to hold if adequately conceptualized and institutionalized.

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Chapter 6

Local Government Personnel



Abstract In this chapter gives a (data-based) overview of the public personnel in Germany's multi-level system with a focus on the local government level.

Breaking down the public employees by government levels and task areas lends itself to analyse the vertical distribution of administrative functions in the multi-level system as well as horizontally the size and functional profile of the respective government level as well as of the different types of local authorities. Judged by the average personnel strength in key task areas the county-free municipalities stand out in the performance of local government responsibilities.

Keywords Public sector personnel · Local government personnel · County-free municipalities

6.1 Germany's Public Sector Employment in International Comparison

Measured by the public employment quota, that is, the share of public employees of the country's entire workforce, Germany stands out, in international comparison, by a remarkably small public employment sector with a quota of 10.6 per cent (as of 2015 and 2019), second only to Switzerland (with 9.9 per cent). This differs significantly from other OECD countries with markedly larger public employment sector, particularly from Nordic countries topping the list, such as Norway and Finland (with 30.6 per cent and 24.9 per cent respectively), but also from France (with 21.4 per cent). In 22 OECD countries the average share is 18.1 per cent (see Kuhlmann and Wollmann 2019, 125 et seq. Table 3).¹

¹For updated comparative data see OECD 2023, figure 12.1). For discussion and comparative data for selected OECD countries between 1995 and 2015 see Kuhlmann and Wollmann 2019, 125 et seq. Table 6.3.3.; for related comparative data between 1974 and 1991, see Lorenz and Wollmann 1999, 505, table 6

6.2 Public Employees in Germany by Levels

In Germany's federal system the public personnel employed by the federal government level amounts to 282,700 (without military) or 5.4 per cent of the country's total public sector workforce (as of June 2022, see Table 6.1). As constitutionally laid down (article 30 Basic Law) the federal government may set up administrative institutions of its own in the subfederal space only in the constitutionally enumerated matters. Among the latter the Federal Employment Agency (*Bundesagentur für Arbeit*) prominently stands out which with a staff of 96,000 is Germany's numerically largest public employer (see Chap. 2, Sect. 2.3.2 and Chap. 9, Sect. 9.1 in this book).

The personnel of the *Länder* comprises 2.6 million employees that make up some 50 per cent of the total public sector personnel. In interpreting this proportion of *Länder* personnel one has to note that (as of 2022) some 893,000 employees (or 34.3 per cent of the entire *Länder* workforce) are school teachers (see Table 6.2, col.5, line 12) and 621,000 (or 23.9 per cent) are university personnel so that education sector adds up to 58 per cent of the total number of *Länder* employees (ibid., col. 5, lines 12 and 13). Moreover 288,300 (or 11.6 per cent) are in the police force (ibid., col. 6, line 8) for which the *Länder* are operationally and financially responsible except for the contingent of federal (largely border) police (ibid., col. 3, line 8). Furthermore some 180,000 (or 6.9 per cent) are employed in the judicial system (with most of the courts being operated by the *Länder*) (ibid. col. 5, line 10) and some 143,000 (or 5.5 per cent) in tax administration run by the *Länder* in handling federal as well as Land taxes (ibid., col., lines 10 and 9). Thus, some 80 per cent of the *Länder* personnel are employed essentially in four task areas, to wit, in education, police, judiciary and taxes (see Schrappner 2021, 107; Färber 2021, 232; Reichard and Schröter 2021, 209).

The size and proportion of the local government personnel amounts to 1.7 million employees (or 31.6 per cent of the entire public sector workforce (see Table 6.1) which indicates the wide range of public functions and services performed by the local authorities in Germany's decentralized multi-level system. As spelled out and substantiated in Chap. 2, Sect. 2.7 in this book, the traditional multi-function model of local government is characterized by the "duality" of (voluntary and mandatory)

Table 6.1 Public employees by levels (as of June 30, 2022)

	Employees (in 1000)	Percentage (%)
Federation	2827 ^a	5.4
<i>Länder</i>	26,030	50.0
Local authorities	17,015	32.6
Social security	3750	0.7
Total	52,060	100

Source: Federal Statistical Office (Statistisches Bundesamt) 2023, own adaptation and calculation <https://www.destatis.de/DE/Themen/Staat/Oeffentlicher-Dienst/Tabellen/beschaeftigungsbereiche.html>

^aWithout military

Table 6.2 Employees in public service by levels and areas (as of June 30, 2022)

S. no.	Sector	Total in 1000	Federal		Länder		Local authorities	
			Numbers in 1000	Per cent (%)	Numbers in 1000	Per cent (%)	Numbers in 1000	Per cent (%)
1	Total	52,060	5257 ^a	100.0	26,036	100.0	17,015	100.0
2	General services	17,390	4216	80.2	7939	30.5	5234	30.8
3	Administration	5778	447	8.5	1607	6.2	3724	21.9
4	Public safety and order	5269	678	12.9	3087	11.9	1504	8.8
5	Defence	2430	2430	46.2	0,0	0.0	0,0	0.0
6	Police	3500	617	11.7	2883	11.1	0,0	0.0
7	Tax administration	1960	515	9.8	1439	5.5	0,6	0.0
8	Judicial system	1863	57	1.1	1806	6.9	0,0	0.0
9	Education, science, research, cultural matters	18,048	152	2.9	15,939	61.2	1926	11.3
10	General education and vocational schools	10,095	0,0	0.0	8934	34.3	1160	6.8
11	Universities	6255	10	0.2	6216	23.9	0,0	0.0
12	Social security, family, youth, labour market	8968	119	2.3	348	1.3	4759	28.0
13	Day-care for children	2840	0,0	0.0	102	0.4	2738	16.1
14	Health, environment, sport, recreation	2935	95	1.8	543	2.1	2293	13.5
15	Hospitals	1566	0,0	0.0	230	0.9	1336	7.9
16	Housing, urban planning, sewage, waste management	1276	0,0	0.0	175	0.7	1100	6.5
17	Nutrition, agriculture, forestry	461	19	0.4	367	1.4	75	0.4
18	Energy, water supply, public services/ utilities	1655	164	3.1	286	1.1	1295	7.6
19	Traffic, communication	1216	194	3.7	407	1.6	419	2.5

^aIncluding 170,000 military

self-government tasks and “delegated” tasks transferred to them by the State/Land. In sum up to 80 per cent of the pertinent (federal, Land and EU-derived) legal provisions are administered by the local authorities (see Schmidt-Eichstaed 1999, 330; Rechlin 2004, 10). Furthermore, about two thirds of all public (infrastructural) investments are carried out by them local authorities (see Ruge and Ritgen 2021, 129 f.).

6.3 Administrative Decentralization in Comparative Perspective

In taking the share of the federal/central level employees compared to the total public sector workforces as an indicator of the country's degree of administrative decentralization Germany's federal system with the federal employees amounting to 5.4 per cent of the entire public labour force (see Table stands out, in the international comparison, as the administratively most decentralized among the OECD countries, followed by (federal) Switzerland with 7.7 per cent while in other federal countries the share of the central/federal level employees is significantly higher, such as in Canada with 30.8 per cent (for comparative data see OECD 2019, 86 fig. 3.4; for a comparative discussion and data see Kuhlmann and Wollmann 2019, p. 126 et seq., Table 6.3). By contrast, unitary countries are typically marked by a significantly larger percentage of central government personnel, such as in Italy (with 60.8 per cent) and in France (with 43.7 per cent) which attests the continuing strong administrative role of central government. Among unitary countries the Nordic countries stand out with a distinctly smaller share of central government personnel (for instance, Norway with 30.95 per cent and Sweden with 29.27 per cent) which points at a significantly higher degree of administrative decentralization than in other unitary countries.

6.4 Distribution of Local Government Personnel by Tasks

The largest share of the total local government workforce is engaged in overall administrative functions with 413,000 employees (or 29.3 per cent) (see Table 6.3, line 2) out of whom 278,000 (or 19.7) pertain to ("core") administration and some 134,000 (or 9.5 per cent) to "public safety and order". The former relate to "city hall" and akin administrative "core" functions (ibid., line 3), while the latter (ibid., line 4) comprise car registration, passport issuance etc. as well as (building etc.) inspection which encompassing functions typically assigned to the local authorities as "delegated" tasks.

The second largest employment segment pertains to the task area "social and youth" (with 339,000 or 24.1 per cent) (see ibid., line 12) signalling the focal importance which social and youth matters traditionally have on the local government agenda. Hereby the task segment "children, youth and family assistance" looms large (with some 248,000 or 17.6 per cent) (ibid., line 18) indicating the broad involvement of local personnel in the provision of personal social services. Among the latter, in turn, "all-day child care" takes the lead with a staff of 192,000 (or 13.6 per cent) (ibid., line 19) employed in local authorities-operated kindergartens and kin facilities. The 27,540 employees (or 1.9 per cent) in "basic support for job seekers" (ibid., line 16) can plausibly be largely related to the (104) "option municipalities" (counties and county-free municipalities) that have assumed the sole responsibility for attending the long-term unemployed (see Chap. 9, Sect. 9.6 in this book). A total

Table 6.3 Local government employees (FTE) by task areas (as of June 30, 2021)

S. no.		Number	Percentage (%)
1	Administrative functions	413,480	29.3
2	Administration	278,945	19.7
3	Public safety and order	134,530	9.5
4	Regulatory affairs	81,300	5.8
5	Fire protection	36,445	2.6
6	School and culture	115,190	8.2
7	School	76,040	5.4
8	Culture and science	39,150	2.8
9	Theatre, music schools etc.	11,170	0.8
10	Libraries, evening adult schools etc.	13,345	0.9
11	Social and youth	339,805	24.1
12	Social assistance	78,150	5.5
13	Basic support and assistance SGB XII	17,540	1.2
14	Basic support for job seekers SGB II	27,540	1.9
15	Assistance for asylum seekers	5350	0.4
16	Social facilities (without youth assistance)	7210	0.5
17	Children, youth and family assistance	248,560	17.6
18	All-day child care	192,010	13.6
19	Health and sport	37,400	2.6
20	Health services	24,770	1.8
21	Sports promotion	12,630	0.9
22	Environmental development	191,025	13.5
23	Spatial planning and development	25,975	1.8
24	Construction and housing	30,665	2.2
25	Supply and disposal	14,335	1.0
26	Traffic space, transport facilities, public transport	35,295	2.5
27	Nature and landscape preservation	40,430	2.9
28	Public green	21,265	1.5
29	Economy, tourism	37,940	2.7
30	Separate accounting	164,365	11.6
31	Hospitals	42,810	3.0
32	Supply and disposal	36,640	2.6
Total		1,412,450	100.0

Source: Statistisches Bundesamt, Fachserie 14, Reihe 8, 2021, own compilation and calculation

of 5350 employees (or 0.4 per cent) (ibid., line 18) are administratively engaged in “assistance for asylum seekers” (see Chap. 10, Sect. 10.7 in this book).

The third largest employment segment is geared to environmental development with a staff of 191,025 (or 13.5 per cent) (ibid., lines 23 to 30) which break down into a scope of (mainly “infrastructural”) tasks comprising, inter alia, “nature and landscape preservation” (2.9 per cent), “traffic and public transport” (2.5 per cent), “construction and housing” (2.2 per cent) and “supply and disposal” (1 per cent). While, in terms of personnel strength these task areas oscillate between 1 per cent

and 2 per cent of the local government workforce they substantially constitute key areas of local government responsibilities. At this point it should be reminded that a significant share of “infrastructural” services (water, sewage etc.) is “outsourced” to (legally and financially separate) organizations and companies (for instance, municipal utilities, *Stadtwerke*) (see Chap. 8, Sect. 8.4 in this book) whose workforce, although they remain municipally owned, is are not counted in the statistics as theirs.

A forth important personnel segment pertains to “school and culture” with 115,000 employees (or 8.2 per cent) (ibid., line 7). Out of these 76,040 (or 5.4 per cent) are employed, within the local authorities’ largely “technical” responsibility for the schools, primarily as “technical” personnel (such as janitors) (see Chap. 12, Sect. 12.3 in this book). As aforementioned the employment and payment of the school teachers falls to the *Länder* (see also Table 6.2, col. 5, line 12). Within the “school and culture” segment the components “theatres, music schools etc. (11,170 employees or 0.8 per cent, see Table 6.3, line 10) and “libraries, adult evening schools etc.” (with 13,345 staff or 0.9 per cent) appear in terms of numerical strength to be of minor importance, but in substance they are a centrepiece of the “voluntary” self-government responsibilities of the local authorities for the looking after the “quality of life” of the “local community”.²

6.5 Types of Local Authorities

In breaking down the local government personnel by the type of authorities the (107) county-free municipalities stand out with 386,000 employees or 27.3 per cent of the entire local government and with an average staff size of 3614 employees per local authority (see Table 6.4).³ The (294) counties with 240,000 employees (or 16.9 per cent of the entire workforce) and a staff average of 818 come second. The (10,792) county-affiliated/“belonging to a county” (*kreisangehörig*) municipalities have a total of some 555,000 employees or 39.3 per cent of the entire workforce with a staff average of 53. The some 1250 intermunicipal bodies (*Ämter* etc.) in which many of the small county-affiliated municipalities are grouped have 34,725 employees (or, 2.4 per cent of the total) with a staff average of 275.

In taking average personnel size as a meaningful indicator of the operational strength and importance of the respective local government type the county-free municipalities come out as the prime “working horses” in local government activities. They are followed by the counties whose average personnel size of 818 points

²As for local theatres an internationally all but unique particularity deserves being highlighted. Germany has an unusual density of some 60 local theatres that are owned and operated by municipalities of which eight have less than 50,000 inhabitants. Many of them date back to the nineteenth and eighteenth century when they were founded in then existing states and statelets by the rulers as residence and court theatres (see <https://de.wikipedia.org/wiki/Stadttheater>. For a list see Statistisches Jahrbuch Deutscher Gemeinden 1986, 214 et seq.)

³Data as of 2021. For corresponding data for 1992 and 1995 see Lorenz and Wollmann 1999, 503, Table 6.4

Table 6.4 Local government employees (FTE) by types (as of June 30, 2021)

Type	Number of employees	Percentage (%)	Number of employees per authority ^a
County-free municipalities (<i>Kreisfreie Städte</i>)	386,765	27.3	36,146
County-associated/“belonging to a county” municipalities (<i>Kreisangehörige Gemeinden</i>)	555,920	39.3	530
Counties (<i>Landkreise</i>)	240,680	16.9	8186
Intermunicipal bodies (<i>Ämter, Verbandsgemeinden, Samtgemeinden</i>)	34,725	2.4	276
Total	1,412,000	100.0	

Source: Statistisches Bundesamt, Fachserie 14, Reihe 6, 2021, own compilation and calculation

^aCalculated on the basis of 107 county-free municipalities, 10,792 county-associated municipalities, 294 counties, 1254 intermunicipal bodies (as of end 2022)

Table 6.5 Number (average) of employees per local authority by selected task areas

Type	County-free municipalities	Counties	County -affiliated municipalities	Intermunicipal bodies
Child, youth, family assistance	550	705	15	53
Assistance for asylum seekers	127	72	–	–
Basic support for jobseekers	86	149	25	–
School	49	60	27	31

Source: Statistisches Bundesamt, Fachserie 14, Reihe 8, 2021, own compilation and calculation

at their operational role which is also significant but is distinctly smaller than that of the county-free municipalities. In either category the heavy working load underscores that the county-free municipalities as well as, to a lesser degree, the counties are in charge of carrying out (voluntary and mandatory) self-government tasks as well as tasks “delegated” to them by the *Land*.

As for the multitude of county-affiliated municipalities their staff average of 53 which points at their, by and large, limited task profile. However, they vary considerably in population size and operational status whereby middle-sized municipalities may assigned be additional (“delegated”) tasks. This applies particularly to the middle-sized municipalities which, called “county municipalities” (*Kreisstadt*), are seats of the respective county administration.

The “intermunicipal bodies” (*Ämter* etc.) have an average personnel size of 276 which hints at the operational importance they may have in supporting their “member” municipalities.

Besides the difference which exists between the local government levels with regard to their operational importance comes to the fore in their respective personnel strength in indicative tasks areas (see Table 6.5). The data underscore once again the outstanding role of the county-free municipalities.

6.6 Summary and Perspective

The employment sector of the local authorities has experienced a sequence of downward and upward movements between 1991 and 2022.⁴ It shrank from a total of 1,996,000 in 1991 to a low of 1,331,000 in 2008 by 33 per cent before it gradually climbed again to 1,702,000 in 2022 and thus rising since 2008 by 27.8 per cent (see Hentze and Kauder 2024, 2). The steep decrease in the 1990s was caused, besides general cost-cutting retrenchment measures, by the sharp personnel cuts which, following German Unification, the East German local authorities effected in order to drastically reduce the oversized public workforce “inherited” from the GDR State (see Wollmann 2021, 263; Lorenz and Wollmann 1999, 499 et seq., Table 6.2, see also Chap. 14 in this book). Contrarily the gradual rise of the workforce of the local authorities which has set in since 2008 reflects the expansion of their tasks, especially in social, youth and family matters. This holds true in particular for the provision of child day-care in which the local government-employees personnel expanded by 54 per cent (see Hentze and Kauder 2024, 3).

As it has been laid bare in recent and current crises, such as the Covid-19 pandemic and the unabated influx of asylum seekers and refugees, the local authorities have increasingly experienced an acute personnel shortage which puts their performance at risk. In view of the growing need to digitize the conduct of administrative functions this shows particularly in the lack of IT-skilled personnel.

The personnel bottleneck the local authorities are coping with is going to exacerbate as the age cohort of the “baby boomers” that set off a “demographic wave” in the mid-1960s (see Pötzsch and zur Nieden 2024, 25) will enter the retirement age in the later 2020s and entail personnel gaps which the local authorities may find difficult to “fill” by recruiting adequately qualified new personnel. Hence in the medium- and long-term the capacity of the local authorities to satisfactorily perform may be at risk in key task areas.

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⁴For details and a chart on the total of local government employees from 1991 to 2022 see Statistisches Bundesamt, Fachserie 14, Reihe 8, Personal des öffentlichen Dienstes, quoted from https://www.sozialpolitik-aktuell.de/files/sozialpolitik-aktuell/_Politikfelder/Arbeitsmarkt/Datensammlung/PDF-Dateien/abbIV26.pdf

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Chapter 7

Local Government Finances



Abstract In this chapter outlines the constitutional and legal frame of the local government finances in the federal multi-level system and lays out the structure and composition of the revenues and expenditures of the local authorities. Whereas until 2019 the local authorities found themselves in an overall balanced budgetary situation they have since run into growing budgetary deficits due to the mounting tasks and challenges.

Keywords Local government finances · Local revenues · Local expenditures · Local budgetary autonomy

7.1 Constitutional and Legal Frame of Local Government Finance in the Federal Multi-level System

7.1.1 Federal Level

The Federal Constitution (Basic Law, *Grundgesetz*) of 1949 stipulates in article 28, paragraph 2, that “municipalities must be guaranteed the right to regulate all local affairs on their own responsibility within the limits prescribed by the laws. Within the limits of their functions designated by a law, associations of municipalities (i.e. the counties, H.W.) shall also have the right of self- government in accordance with the laws”. Initially the federal constitution refrained from addressing the financial status of local government except for the provision that the real property tax (*Grundsteuer*) and the trades tax (*Gewerbesteuer*) “shall accrue to the municipalities” thus acknowledging the two local taxes which, dating back to the nineteenth century, have traditionally been core elements of local government finance.

In 1969, a constitutional reform was enacted which fundamentally recast the public finances in the federal multi-level system. By introducing a revenue sharing scheme through so-called “joint taxes” (*Gemeinschaftssteuern*) the three main taxes (income, corporation and turnover/value added tax, VAT) have been divided between

the federal government level (the Federation, *Bund*) and the *Länder* (article 106 (3) Basic Law). At the same time the finance reform package of 1969 has remoulded and upgraded the financial status and “muscles” of the local government level on several scores.

First, article 106 (5) Basic Law stipulates that “a share of the revenue from the income tax (*Einkommensteuer*) shall accrue to the municipalities, to be passed on by the *Länder* to their municipalities on the basis of the income taxes paid by their inhabitants”. So the municipalities have become partners and beneficiaries of the newly introduced revenue sharing scheme. By federal legislation of 1970 the share of the municipalities was set at 14 per cent and raised to 15 per cent in 1980. In addition a constitutional amendment of 1997 prescribed that “from and after 1 January 1998, a share of the revenue from the turnover tax (*Umsatzsteuer*, VAT, H.W.) shall accrue to the municipalities. It shall be passed on by the *Länder* to their municipalities on the basis of a formula reflecting geographical and economic factors” thus extending the participation of the municipalities in the revenue sharing and further bolstering their position in the federal multilevel system (see Karrenberg and Münstermann 1999, 446). By federal legislation the municipal share was set at 2.2 per cent (see Färber 2021, 238).

Second, in article 106 (6) Basic Law the traditional right of the municipalities to collect real property and trades tax as genuine local has been not only explicitly recognized but also extended to “revenue from local taxes on consumption and expenditures”. Moreover, it was laid down that the “municipalities shall be authorised to establish the rates (*Hebesätze*) at which taxes on real property and trades are levied, within the framework of the laws” which significantly enhanced their budgetary autonomy (see Färber 2021, 244). At the same time, in a kind of “trade-off” it was prescribed in article 106 (6) Basic Law that “the Federation and the *Länder* may participate ... in the revenue from the tax on trades (*Gewerbsteuer*)”; in subsequent federal legislation it was determined that 20 per cent of the yield of the municipally levied trades tax (*Gewerbsteuer*) are divided between the federal level and the *Länder*.

Third, according to article 106 (7) Basic Law the *Länder* are to pass a share of their yield from “joint taxes” on to the local government level.

At last in 1994, article 28 Basic Law which in its original 1949 version refrained from addressing the financial status of local self-government was conspicuously amended by stipulating that “the guarantee of self-government shall extend to the bases of financial autonomy; these bases shall include the right of municipalities to a source of tax revenues based upon economic ability and the right to establish the rates at which these sources shall be taxed” (see Ruge and Ritgen 2021, 133). The constitutional amendment of 1994 fell in line with the *European Charter of Local Self-Government* that was adopted by the Council of Europe in 1985 and was ratified by all Member States of the Council of Europe, including the Federal Republic of Germany, stipulating in article 5, paragraph 1 that “the local authorities shall have adequate financial resources of their own of which they may dispose freely within the framework of their powers”.

7.1.2 Land Level

According to the (aforementioned) article 106 (7) Basic Law which stipulates that “an overall percentage of the *Land* share of total revenue from joint taxes, to be determined by *Land* legislation” shall be allotted to the municipalities and counties the *Länder* have, in individual legislation, adopted Financial Equalization Acts (*Finanzausgleich*) which regulate the allocated to the local authorities the financial resources that are made up of their share of the joint (*Gemeinschaftssteuern*) taxes and of their own tax revenues (see Färber 2021, 244 et seq.). The “equalization” resources are distributed by the respective *Land* among the local authorities in applying a certain “key” (*Schlüssel*). In order to determine the “key” the actual tax capacity of each municipality is assessed and compared with its (assumed) financial need. If the tax capacity is below the need, the difference is replenished by the Land unto a certain percentage (called the equalization rate or equalization quota). If the tax capacity of a municipality is higher than its needs, it does not receive equalization money and may even be held to contribute to what is called “vertical” financial equalization.

7.1.3 Local Level

As stipulated in the Federal Constitution and regulated by *Länder* legislation the municipalities have the right to determine the local multiplier (*Hebesatz*) on the trades tax (*Gewerbsteuer*) and on the real property (*Grundsteuer*) as well as to levy (local) consumption and expenditure taxes (such as entertainment tax, dog tax, second home tax) through municipal bylaws (*Satzungen*) adopted by the local councils (see Färber 2021, 237). Likewise they fix the charges and fees on the use of local infrastructural and service facilities.

7.2 Local Government Budgets

In referring to Table 7.1 an overview is presented on the composition of the local government budgets (data as of 2023, for comparison data for 2019 are also included in Table 7.1, see also Deutscher Städtetag 2022, 10).

Table 7.1 Revenue and expenditures of the German local authorities

		2019		2023	
		In billion Euro	In %	In billion Euro	In %
1	Revenue	26,483	100	2884	100
2	Taxes	10,438	39.4	1126	39.0
3	Property tax	1293	4.8	135	4.7
4	Trade tax (net)	4256	15.9	474	16.4
5	Share of income tax	3977	15.0	429	14.8
6	Share of VAT	755	2.8	72	2.5
7	Fees	2009	7.5	220	7.6
8	Current allowances from land/federal government	9656	36.0	1076	37.3
9	Investment allocations from land/federal government	972	3.6	119	4.7
10	Other revenue	3408	12.8	346	12.0
11	Expenditures	26,075	100	2945	100
12	Personnel	6588	25.2	766	26.6
13	Material expenses	5455	20.9	606	20.6
14	Social expenses	6070	23.1	692	23.4
15	Interest payment	235	0.8	21	0.7
16	Investments in real assets	3156	11.9	306	10.9
17	Construction measures	2411	9.2	235	8.0
18	Acquisition of property, equipment etc.	746	2.8	73	2.9
19	Other expenses	4570	15.6	552	18.7
20	Financial balance	+409		−6.1	

Source: own compilation and calculations based on data from Federal Statistical Office (Statistisches Bundesamt) 2022, also drawing on Deutscher Städtetag 2021, 10

7.2.1 Revenues of Local Government

7.2.1.1 Tax Revenues

The total tax revenues amount to 1126 billion Euro or 39 per cent of the entire revenues of the local authorities (see Table 7.1, line 4).

“Genuine” Local Tax Revenues

“Genuine” local taxes are those on which the municipalities are authorised (under article 106 (6) Basic Law) to fix the local multiplier (*Hebesätze*) on their own taxes (see Färber 2021, 244). This applies to the real property tax (*Grundsteuer*) and trades tax (*Gewerbesteuer*).

The real property tax amounts to 4.7 per cent and the trades tax to 16.4 per cent of the entire municipal revenues (ibid., lines 5 and 6).

The two “genuine” local taxes (real property and trades) add up to 60.1 per cent of the total tax revenues of the municipalities.

Still another category of genuine local taxes which are locally levied by the municipalities on their own discretion are regulated by the Local Charges Acts (*Kommunalabgabengesetz*) of the *Länder*. Typical and frequent examples are the dog tax, entertainment tax and, since 1994 with growing importance, the second home tax. By and large, the yield of these local taxes in relation to the total revenues has been minor, amounting to some 2 per cent (see IM BW 2017 15).

Share of the Municipalities in “Joint Taxes” (Gemeinschaftssteuern)

As laid down in the public finance reform of 1969 (article 106 (3) Basic Law) the municipalities receive a share of the income tax revenue as well as of the capital gains tax. By federal legislation the former was set at 15 per cent and the latter at 12 per cent. Since the share of the individual municipalities is calculated on the basis of taxes paid by the tax payers actually living in them the scheme favours economically prosperous municipalities with correspondingly taxed citizens.

The share amounts to 14.8 per cent of the entire municipal revenues (*ibid.*, line 7).

As stipulated by the constitutional amendment of 1997 (article 106 (3) Basic Law) the municipalities have been additionally afforded a share of the federal turnover/value added tax (VAT) which has set by federal legislation at 2.2 per cent. Again economically thriving municipalities have been significantly better off than economically weaker ones.

In sum the fiscal gain from sharing the VAT is relatively small with 2.5 per cent of the total revenues (*ibid.*, line 8).

In total the revenues of the local authorities from their share in income tax and VAT add up to 50.1 billion Euro or 17.3 per cent of the total tax revenues of the municipalities (*ibid.*, lines 7 and 8).

7.2.1.2 Charges and Fees

The charges (*Beiträge*) and fees (*Gebühren*) which the local authorities, by way of bylaws (*Satzungen*), may fix for the use of a broad scope of infrastructural and service facilities constitute another significant revenue source. Charges (*Beiträge*) are meant to cover investment costs incurred by infrastructural measures (for instance, in water supply, sewage disposal, local roads etc.). Fees (*Gebühren*) are charged on local citizens and enterprises for the use of the broad spectrum of locally provided facilities and services that encompass public services (water supply, garbage collection etc.), recreational and cultural facilities (swimming pools, kindergartens, adult evening classes, music schools and the like). Since the 1980s in the face of growing budgetary problems the local authorities have increasingly resorted to raise charges and fees (see Karrenberg and Münstermann 1999, 453).

They amount to 7.6 per cent of the total municipal revenues (*ibid.*, line 9).

7.2.1.3 Concession Fees

Still another revenue sources are the concession fees which the municipalities may extract from (energy, water etc.) enterprises for allowing them, by way of “concession”, to use the public space to install and operate their grids.

The concession makes up some 2 per cent of the total revenues.

7.2.1.4 Allocations

As for the allocations to the local budget the distinction is made between “general allocations” and “earmarked” (*zweckgebunden or aufgabenbezogen*) ones.

The “general allocations” are part and parcel of the local financial equalization (*Kommunaler Finanzausgleich*) which, as laid down in pertinent *Land* legislation, is fed, according to article 106 Basic Law, by the Land’s share in the “joint taxes” (*Gemeinschaftssteuern*) as well by its own tax resources which the respective Land puts into the equalization scheme. An important feature of the “general allocations” is that it is largely left to the local authorities to decide “freely”, within their local autonomy, how to spend them. “General allocations” pursue two goals (see Karrenberg and Münstermann 1999, 447 et seq.; Färber 2021, 245). First, they are meant to financially support the local authorities on the basis of certain key (“*Schlüssel*”) indicators (for instance, number of inhabitants). Second, they have a redistributive function to strengthen the financially weak local authorities and to thus reduce and levelling the disparity between them. Due to this “equalizing” rationale the size of the allocation allotted to the individual local authorities differs significantly depending on their fiscal capacity and needs. Consequently financially strong municipalities hardly or do not receive “general” allocations (see Bertelsmann 2021, B 10) or may even be requested, in sort of “horizontal” equalization rationale, to pay into the scheme.¹

In contrast, “earmarked” task-related (*aufgabenbezogen*) allocations are meant to financially support the local authorities in fulfilling specified tasks. Unlike “general allocations” on which the local authorities may autonomously decide the “earmarked” allocations are typically geared to conditions (“strings attached”) which give the Land (or federal) authority influence on and possibly exert oversight over the implementation of the “earmarked” tasks. The category of “earmarked” allocations also applies to tasks (such as the operation of kindergartens or all-day schools) in which the federal government got involved, through reimbursement and cost sharing (see Bertelsmann 2021, C 17). Since the 2020s this type of federal financial engagement has considerably increased in particular in the social and educational sectors. This shows exemplarily in the “costs of accommodation and heating of the long-term unemployed” with the federal government level reimbursing the local

¹ See <https://www.staedtetag.de/presse/pressemeldungen/2023/prognose-kommunalfinanzen-kommunale>

authorities by up to 75 per cent of the incurred spending (see *ibid.* C 21, see also Chap. 9 in this book).

The general and “earmarked” allocations add up to 1076 billion Euro or 37.3 per cent of the total revenues of the local authorities (see Table 7.1, line 10).

Investment Allocations

The local authorities receive investment allocations from the Land and federal levels on various tracks. First, such allocations may hail from the revenue sharing scheme laid down in article 106 (5) Basic Law as well as from the respective Land’s own tax revenues. Furthermore, as stipulated in article 104b Basic Law, the federal government may subsidize local level investment measures the providing federal funding which, due to the prevalent constitutional doctrine which rules out the direct financial intervention by the federal level on the local government level, has to be channelled through and managed by the *Länder* to be passed on to the local authorities. Since 2008, based on article 104b Basic Law, the federal government has stepped up local level-targeted federal interventions and investment programmes for instance in the school sector (see Bertelsmann 2021, A 15; Wollmann 2023, 355 et seq., see Chap. 12).

On the one hand, investment allocations have been welcomed by the local authorities as an additional and often indispensable financial resource to tackle a wide range of investment projects. On the other, such “earmarked” funding has been critically viewed as a “golden rein” (*goldener Zügel*) (see Karrenberg and Münstermann 1999, 450) prone to “twist the arm” of the local authorities in the setting of their own agenda.

Investment allocations amounted to 11.9 billion Euro or 4.7 per cent of the total revenues of the local authorities (see Table 7.1, line 11).

Summing up the current and investment allocations they make up 42 per cent of the total revenues (*ibid.*, lines 10 and 11).

7.2.1.5 Other Revenues

Other revenues come, *inter alia*, from the sale of municipality-owned real estate and related assets amounting to some 12 per cent of the revenues (*ibid.*, line 12).

7.2.2 Expenditures

7.2.2.1 Personnel Expenses

Among the operating expenditures the spending on personnel quantitatively stands first with 766 billion Euro or 26.6 per cent of the entire local government expenditures (see *ibid.*, line 14).

The high percentage of personnel expenses reflects the outstanding which the local authorities play in the federal multi-level system by administratively handling and executing the lion's share of pertinent (federal and *Länder* as well as EU-derived) legal provisions and public tasks (see Chap. 2 of this book).

7.2.2.2 Material Expenses (*Laufender Sachaufwand*)

Another heavy burden on the local government budgets stems from the material expenses (*laufender Sachaufwand*) which amount to 606 billion Euro or 20.6 per cent (Table 7.1, line 15).

They include all expenditures incurred by the current operation of administration and municipal facilities, including the maintenance of public buildings, office equipment and supplies, the operation and equipment of schools, payment of rents, telecommunication costs, maintenance of roads and like (see Karrenberg and Münstermann 1999, 458) with the exception of investment-related expenditures, such as for the construction of buildings, schools, roads etc. which figure under investment expenditures (see below).

7.2.2.3 Social Expenses

The second largest expenditure block is caused by expenses in the social and youth sectors that absorb 692 billion Euro or 23.4 per cent of total spending (see Table 7.1, line 16).

The social expenses have grown steeply between 2012 and 2021 by 65 per cent in the West German local authorities and by 71 per cent in the East German ones. The most sweeping increases have been caused by the “assistance of elder and disabled persons” (Social Code Book XII), by the “basic support for long-term unemployed”, particularly in its component “accommodation and heating” (Social Code Book II) (see Chap. 9 in this book), by “youth assistance” (under the Child and Youth Assistance Act) as well as by the assistance of asylum seekers (under the Asylum Seekers Assistance Act) (see Bertelsmann 2021, C1, A 10 et seq., fig. 6, see also Chap. 10 in this book).

However, the rise in local government gross spending in the social and youth sectors has been mitigated by the federal financial engagement via reimbursing and cost-sharing measures (see Bertelsmann 2021, 11, Table 7.1).

Besides, the local authorities have traditionally allotted financial support to (non-public) welfare organizations and to the broad array of (private/“societal”) local organizations and groups involved in social, charitable, environmental etc. matters (see Bertelsmann 2021, C 32). They signal a strong commitment of the local authorities along this track.

7.2.2.4 Payment of Interests

Furthermore the payment of interests on loans taken out by the local authorities amounts to 21 billion Euro or 0.7 per cent (Table 7.1, line 17). A reason for this comparatively small sum probably is that under existing legislation on local budgeting the local authorities are not allowed to incur debts for financing operational expenses and are narrowly restricted in taking out loans for financing investment expenditures. Moreover, due to low interest rate policy of the central banks since 2008 the interest payment of the local authorities has been halved (see Bertelsmann 2021, A 16, fig. 9). This is likely to change due to the hike of interest rates kicking in since 2023.

7.2.2.5 Investment Expenditures Construction and Maintenance

Investment expenditures primarily pertain to the construction and maintenance of buildings, roads and other infrastructural projects, to the acquisition of real estate as well as of pertinent holdings. Evidencing their eminent budgetary role the infrastructural projects carried out by the local authorities make up about 70 per cent of the entire public sector investments (see Bertelsmann 2021, A 13).

Acquisition of Real Estate and of Mobile Fixed Assets

The category of acquisition of real estate and mobile fixed assets comprises office equipment, IT equipment, technical infrastructure of schools, official vehicles and the like.

The investment expenditures sum up to 308 billion Euro or 10.9 per cent of the total expenditures (Table 7.1, line 18).

7.3 Variance and Disparity in the Financial Situation of Local Authorities

The financial situation of the local authorities is marked by distinct divides and discrepancies between *Länder* and regions.

This is manifested in the (“genuine”) local taxes (trades tax, *Gewerbesteuer* and real property tax, *Grundsteuer*). Thus a *Land* by *Land* comparison of the per capita yield of these local taxes shows that (West German) Land of Hessen tops the list (with 1,579 € per capita in 2020) while other West German *Länder* lag behind, in particular the Saarland (with 1,076 €), followed by East German *Länder* (with between 908 € and 815 €) (see Bertelsmann 2021, C 20, table 9). This disparity comes to the fore even more pronouncedly if one considers the (gross) yield from

the local trades tax. The South German *Länder* of Hessen (with 649 € per capita), Bavaria and Baden-Württemberg take the lead pointing at their economically and financially strong local authorities while other West German *Länder* drag behind, let alone the East German *Länder* ranging between 336 € and 299 € (see Bertelsmann 2021, E 13, table 7).

But also within the individual *Länder* the local authorities vary considerably in the amount of trades tax which they individually collect depending on the existence and composition of tax generating economic enterprises as well as on the locally fixed multiplier (*Hebesatz*). (For a detailed discussion of the differentiation and disparity of trades taxes between local authorities at the example of the Land of Nordrhein-Westfalen, see Bertelsmann 2021, E 18 et seq.)

7.4 Fiscal/Budgetary Autonomy of the Local Authorities

In order to assess the degree of “fiscal/budgetary autonomy” of the municipalities several approaches premised on different assumption may be pursued.

First, the fiscal autonomy of the local authorities may be indicated by the percentage of “genuine” local taxes determined by them autonomously as compared to the total local government revenues. The real property and trades taxes which fall under this category of locally levied “genuine” taxes add up to some 21 per cent of the total local government revenues (see Table 7.1, lines 5 and 6). In international perspective this would indicate a comparatively limited fiscal autonomy particularly compared with Sweden where over 50 per cent of the local government revenues are levied by the municipalities themselves (see Kuhlmann and Wollmann 2021, 28, table 2.4).

Second, if in the German case the “genuine” local taxes and those received through the “revenue sharing” system are added the total share of local tax revenues amounts to 38 per cent (Table 7.1, lines 5 to 8). This would indicate a budgetary autonomy ranking in the middle of OECD countries (see Kuhlmann and Wollmann 2019, 28, table 2.3).

Third, another approach to assess the budgetary autonomy of the local authorities may plausibly be guided by the assumption that their budgetary leeway turns out to be the more restricted the more they depend on allocations from the state. As for Germany the pertinent allocations (general/current plus “earmarked” allocations from the Land and the federal levels add up to 41.5 per cent of the total revenues (Table 7.1, lines 10 and 11). This signals a fiscal dependence which, in comparative terms, is distinctly higher than in Sweden but smaller than, for instance, in the UK (see Kuhlmann and Wollmann 2021, 29, table 2.4; see also Marcou and Wollmann 2008, 146, fig. 3 for comparative data and discussion).

7.5 Summary and Perspective

In absolute figures the total revenues of the local authorities have grown between 2019 and 2023 from 2648 billion to 2884 billion Euro (by 9 per cent). While in 2019 the finance balance showed an overall budget surplus of 409 billion Euro it has since 2019 turned into a budget deficit that reached an amount of 61 billion Euro in 2023 (see Table 7.1, line 22) and possibly of 10 billion Euro in 2024 (see Deutscher Städtetag 2022, 18 with table).

The corona pandemic which broke out in early 2020 and triggered the country's deepest economic downturn since long has also heavily impacted on the revenues and expenditures of the local authorities. On the revenue side, this setback showed particularly in the cyclically sensitive local trades tax, but also in the share of the municipalities in the equally sensitive income tax and VAT (see Bertelsmann 2021, B 4). At the same time local government expenditures rose due to corona containment measures and to mounting-related social spending.

In this precarious situation the allocations from the *Länder* as well as the federal reimbursement and cost sharing measures have obtained "paramount importance" in particular by "cushioning" the steeply climbing local expenditures incurred in the social and youth sector. The financial equalization schemes (*Kommunaler Finanzausgleich*) of the *Länder* has proved a centrepiece ("*Herzstück*", *ibid.*, 11) of local government finances. This applies especially to financially weak and vulnerable among the local authorities (see Bertelsmann 2021, A 12).

However since 2022 the local authorities have experienced growing budgetary uncertainties and trepidations (see Deutscher Städtetag 2022, 3 et seq.). In a dramatic joint appeal in July 2023 the presidents of the three local government associations sounded alarm warning that the local government finances are at the brink of collapsing and that incisive structural reforms were needed, such as significantly expanding the local government share in the revenue-sharing joint taxes.³ Although the conspicuous ruling handed down by the Federal Constitutional Court on November 16, 2023 which declared the federal budget of 2021 unconstitutional and void does not only directly affect the federal budget by prompting short-term and long-term cuts and saving measures in the federal budgets but is likely to impinge on the local government budgets as well by possibly shifting financial burdens to them and by curbing federal funding.

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Chapter 8

Provision of Public and Personal Social Services



Abstract In this chapter addresses the provision of personal social services and of public services. The provision of personal social services (such as elder care) has historically been marked by the predominant role of non-public non-profit organization based on the principle of subsidiarity. Following the market liberalization set off by the federal legislation of 1994 private sector providers began to prevail. Contrarily public services (such as water supply, sewage, energy etc.) have historically been largely provided by actors and companies owned by or connected with the local authorities exemplified by the municipal utilities (*Stadtwerke*). Under the EU-driven market liberalization since the 1980s the latter lost ground to the private sector competitors before the reverse trend of “remunicipalization” gained momentum.

Keywords Provision of personal social services · Provision of public services · *Stadtwerke* · Privatization · Remunicipalization

8.1 Historical Background

In the late nineteenth century, the local authorities, particularly in the rapidly growing industrial municipalities, increasingly engaged themselves in tackling the infrastructural and socio-economic problems caused by the rampant industrialization and urbanization. This incipient municipal interventionism was criticized by contemporary conservatives and Manchester liberals as “municipal socialism” (see Kühl 2001; Bönker et al. 2016, 72; Wollmann 2016b, 314, c, 189).

For the provision of public services (water, sewage, energy, waste, public transport etc.) the municipalities, besides providing such services directly (“in-house”) by units and personnel in their core administration, established companies as municipal utilities (called *Stadtwerke*). These have become a (“path-dependent”) hallmark and pillar of the local level provision of public services.

While in the face of mounting social problems (urban poverty, housing shortage etc.) the municipalities, in line with their traditional responsibility for the urban

poor, embarked upon (still embryonic) social activities (see Bönker and Wollmann 2000, 329 et seq.), private (“bourgeois” philanthropic) initiatives and organizations sprang up engaging in social activities as well. Such societal (“bourgeois”) involvement was advocated, as a reformist response to the secular “social question” (“*die soziale Frage*”), by the Association for Social Policy (*Verein für Socialpolitik*) and its professorial members then somewhat ironically dubbed “professorial lectern socialists” (*Kathetersozialisten*) (see Wollmann 2010, 257 et seq.). At the same time non-public non-profit and charitable organizations emerged affiliated particularly with the Catholic Church.

Later identified as “independent welfare organizations” (*freie Wohlfahrtsverbände*) these non-profit organizations have (“path-dependently”) become the main players in personal service provision well unto the 1990s (see Bönker and Wollmann 2000, 331).

Moreover, in the course of the late nineteenth century, societal organizations have emerged from the local “social community” (see Wollmann 2006). Categorized also as “third sector” organizations (see Salamon and Sokolowski 2016) they typically sprang from self-help initiatives that aimed at providing personal social care, energy, housing and the like for their themselves or for their peers (see Henriksen et al. 2016, 23) and were often in the form of cooperatives (*Genossenschaften*). An intriguing early example are the energy cooperatives which appeared in the late nineteenth century when rural dwellers founded cooperatives in self-help initiatives since the private sector electricity companies eschewed such remote areas as economically unattractive for them (see Yildiz et al. 2015, 61; Kahla et al. 2017, see also Chap. 11 in this book).

8.2 Development After 1949

8.2.1 Provision of Public Services

After 1945 the municipal utilities (*Stadtwerke*) continued to hold their (“path-dependent”) strong role in the provision of public services (see Bönker et al. 2016, 72 et seq.). While the first post-war federal conservative-liberal coalition government embarked upon large-scale privatization of major state-owned enterprises such as Preussag, VEBA and Volkswagen the local authority-owned *Stadtwerke* remained exempt from privatization.

The *Stadtwerke* exist in various organizational forms. Until the 1990s most of them had the form of *Eigenbetriebe*¹ which are operationally and financially integrated into the local core administration. By contrast *Eigengesellschaften* are institutionally and financially stand-alone and are legally organized mostly as

¹Linguistically drawing on its equivalent in the French administration (“*régie*”) *Eigenbetriebe* are in German also labelled *Regiebetriebe*, see Wollmann 2016d, 3

limited companies or stock companies (see Wollmann 2016a, 3; Grossi et al. 2010; Grossi and Reichard 2016).

As a rule public services (energy, water, public transport etc.) are provided by the *Stadtwerke* in the form of multi-utilities. The bundling of services allows their cross-subsidization. So local authorities use the profits made, for instance, in the energy sector to subsidize loss-incurring services such as public transport.

The local authorities collect a concession fee (*Konzessionsabgabe*) from (grid-based) service companies (private as well as *Stadtwerke*) for allowing them to use the public space and streets to set up and operate transmission grids underground or above ground. The concession fees constitute a sizeable source of local government revenue.

The role of the *Stadtwerke* has differed in the various sectors:

- In the *energy sector*, the *Stadtwerke* have co-existed alongside private energy producers and distributors (see Chap. 11, Sect. 11.8.3 in this book). Some *Stadtwerke* run their own power stations, but mostly confine themselves to the transmission and distribution of energy they purchase on the energy market.
- Water supply and sewage disposal has traditionally been provided mostly by *Stadtwerke* (see Lieberherr et al. 2016).
- *Waste management* has only gradually emerged as a public function after 1945. While in larger municipalities this task has been taken on mostly by the *Stadtwerke* small municipalities often continue to rely on contracts with private providers (see Dreyfus et al. 2010).
- Other public services often provided by the *Stadtwerke* include public transport and public swimming baths and the like.

8.2.2 Provision of Personal Social Services

With its conceptual roots in the “Social Doctrine” (*Soziallehre*) of the Catholic Church dating back to the nineteenth century the subsidiarity principle (*Subsidiaritätsprinzip*) signifies that the local authorities shall engage in personal social services only if and when non-profit (“charitable”) organizations as well as complementary family support fall short of ensuring adequate care and services (see Bönker et al. 2010, p. 103). Accordingly Germany has been classified, along with Italy, as a “conservative welfare state regime” (Esping-Andersen 1990). The privileged role of the non-profit organizations labelled “welfare organizations” (*Wohlfahrtsverbände*) was legally recognized by federal legislation in 1961. They gained a quasi-monopoly in the provision of personal social services (for instance, in the provision of residential and domiciliary care for the elderly, see Wollmann 2022), while the direct involvement of the local authorities through facilities and personnel of their own was minor. Because of their close, if not symbiotic cooperation with the local authorities in local social matters the *Wohlfahrtsverbände* assumed a quasi-public/municipal function and standing (see Bönker et al. 2016, 77).

8.2.3 *Involvement of Societal Organizations, Cooperatives*

With the advances of the welfare state and in the face of the dominant position of the welfare associations the historically once important (philanthropic) initiatives and self-help-based societal organizations largely faded away (see Bönker and Wollmann 2000, 330). Similarly, the energy cooperatives which peaked in 1930 (with over 6000 units) subsequently sharply dwindled due to the concentration in the energy sector.

8.3 Marketization and Privatization Since the 1990s

8.3.1 *Provision of Public Services*

Since the mid-1990s radical changes unfolded in the provision of public services. The most radical shifts occurred in the energy sector (for details see Chap. 10 in this book). The 1998 Federal Energy Act which responded to the EC's Energy Directive 96/92 was designed to promote the market liberalization in Germany's energy sector. The legislation was meant to strengthen competition by eliminating the regional monopolies in energy provision had somewhat contradictory effects on two scores. First, it turned out to strengthen the already dominant position of the big energy companies (such as RWE, E.on, Vattenfall). Second, faced with the market dominance of the big energy providers many municipalities chose to sell ("privatize") local grids and shares of their *Stadtwerke* to private investors. In this context RWE and E.on established subsidiaries holding minority stakes in about 100 *Stadtwerke*. In the mid-2000s only 30 per cent of the municipal energy companies were still fully owned by local authorities.

Besides *waste management* has been transformed by two major regulatory changes (see Dreyfus et al. 2010) which preceded the pertinent EU initiatives. Since the mid-1980s the responsibility for waste management has gradually shifted from the local authorities to private enterprises. This change was fostered by the Recycling Waste Management Act of 1994 that confined the local authorities to be responsible for household waste. In the face of the private companies entering the market local authorities often found it difficult to compete as their private rivals that benefitted from more modern technology and lower pay. So many local authorities decided to outsource (contract out) municipal waste management. Another major change in the waste management sector was triggered by the 1993 Technical Guidelines for the Disposal of Municipal Solid Waste (*TA Siedlungsabfall*) under which incineration became the only legally admitted method of handling waste disposal. As many local authorities lacked the financial means to build new incineration plants they often cooperated with private investors and relied on public-private partnerships (PPPs).

Changes in the *water* sector have been less sweeping. Although private sector companies, including the French giants, Veolia and Suez, and their German

counterparts, RWE and E.on, have entered the water market since the 1990s and have acquired (as a rule minority) stakes in the *Stadtwerke* in almost half of the Country's 109 largest cities, water provision remained predominantly in public/municipal operation (see Hecht 2015; Lieberherr et al. 2016, 254).

The changes in ownership were accompanied and complemented by a trend towards "corporatizing" municipal companies in almost all sectors, particularly by transforming them into limited liability companies (GmbH) or stock companies (*Aktiengesellschaft*) (see Grossi and Reichard 2016). In the course of "outsourcing" and "corporatizing" local government tasks and activities a spectrum of "mixed" ("hybrid") companies and public-private-partnerships (PPPs) has emerged. As a result some 40 per cent of the local companies have become co-owned by private investors and entrepreneurs mostly holding minority shares (see *ibid.*, 302).

8.3.2 *Provision of Personal Social Services*

In the course of the 1990s the provision of personal social services has also been significantly remoulded by the adoption of the 1994 legislation as exemplarily shown in the field of elder care/long-term care (see Bönker et al. 2016; Wollmann 2022). By introducing the insurance principle based on the contribution of employers and employees and by providing "universalistic" (albeit conditioned) coverage of service costs the 1994 legislation incisively changed the previous system in which, as a consequence of the "subsidiarity logic" (*Subsidiaritätsprinzip*), the responsibility for the provision of care fell back, in the last resort, on the needy or their family. Thus, the 1994 legislation has turned the traditional "conservative welfare state" (Esping-Anderson 1990) into a "mixed model" (King-Dejardin 2017, p. 94). Moreover, inspired by the neo-liberal policy-inspired focus on market competition the 1994 legislation abolished the traditional privilege of the non-profit welfare organizations (*Wohlfahrtsverbände*) and thus opened the personal service market to all providers. Furthermore the newly created long-term care insurance funds (*Pflegekassen*) have been assigned the responsibility for licensing service providers and concluding agreements on the price and quality of services which resulted in sidelining the involvement of the local authorities. Thus a "process of demunicipalisation and de-localisation of care" (Evers and Sachße 2003: 73) has ensued which practically put an end to the influence that the local authorities traditionally had on the local level personal service provision (see Wollmann 2016b, p. 318).

Indicatively following the reform of 1994 the share of private sector/commercial providers operating long-term homes has risen between 1999 and 2011 from 34.9 per cent to 40.4 per cent and that of the municipalities fell from 8.5 per cent to 5.1 per cent, while the welfare organizations maintained their share of around 55 per cent (see Bönker et al. 2016, 77, table 6.1). In rendering domiciliary long-term care the private sector providers strongly expanded as well (from 51 per cent to 62.9 per

cent) whereas domiciliary service offered by local government personnel has almost disappeared (ibid., Wollmann 2022).

8.4 A New Wave of Changes Since the 2000s

8.4.1 “Remunicipalization” in Public Service Provision

Since the 1990s local level delivery of public services has undergone changes varying between sectors (see Bönker et al. 2016, 75 et seq. with references).

Whereas, well unto the 1990s, it was all but taken for granted in the political and academic discourse that the privatization of service provision would lead to “better quality at lower costs”, this assumption has since been seriously called into question on several scores. Comparative studies suggest that in the provision of public services public enterprises are on a par with and may be even superior to private sector providers (for an overview see Mühlenkamp 2013, 18). The balance sheet turns out even more favourable for public/municipal provision if the transaction costs of the outsourcing of services (costs of monitoring, contract management etc.) and positive “welfare effects” (social, ecological etc. benefits) of public/municipal provision are taken into account (see Mühlenkamp 2013, 18). Besides local authorities have (re-)discovered the financial gains that may attain for their coffers by operating public utilities themselves instead of outsourcing them to outside (private) providers (see Wollmann 2016b, 323).

The positive reassessment of the role and merits of public/municipal sector provision is also reflected in the politico-cultural “value change” that shows in representative surveys as well as in national and local referendums in which the privatization of public/municipal assets and services was rejected often by broad majorities (see Kuhlmann and Wollmann 2019, 241).

Against this backdrop the local authorities have proceeded to “remunicipalize” facilities and services by re-purchasing shares previously sold to private companies or by re-insourcing previously outsourced (contracted out) services on the occasion of the expiry of the concession contracts (for an international overview see the country chapters in Wollmann et al. 2016a, b, c, d, e).

In Germany the most striking comeback of the local authorities and their companies has occurred in the energy sector. Since the mid-1990s municipalities have increasingly repurchased local grids and shares of their *Stadtwerke* (see Bönker et al. 2016, 79 et seq.; Kuhlmann and Wollmann 2019, 242, see Chap. 10, Sect. 10.8.3.2 in this book).

Since the mid-2000s local authorities have also moved to remunicipalize and “re-insource” the provision of waste management, especially collection and transport (see Dreyfus et al. 2010, 156 with references). The remunicipalization trend has been supported by the booming market for waste and secondary raw materials

which made it economically attractive for the local authorities to resume their engagement (see Bönker et al. 2016, 80).

The water sector has traditionally been marked by the predominance of local government-owned water works (*Wasserwerke*). While during the 1980s private water companies, particularly the French water giants, turned to acquire minority shares in municipal water works the municipalities concerned have seen cause, not least pressured by local groups, to repurchase previously sold shares of their “water works” (see Lieberherr et al. 2016, 254; Hecht 2015).

When intending to remunicipalize previously sold grids and assets or to re-insource previously outsourced service provision the local authorities have typically faced protracted negotiations with the “outgoing” provider particularly about the financial compensation for carried-out investments etc. Moreover, they often lack the skilled personnel to resume handling the operation on their own after having abandoned it. So in many cases the municipalities have chosen after all to renew the expired contracts (see Grossi and Reichard 2016, 303).

In sum the *Stadtwerke* have shown a remarkable institutional and operational resilience and “comeback”. After they seemed on the retreat in the 1980s under the pressure of the EU’s market liberalization they have since the 1990s succeeded in not only holding on to public service provision but in expanding and reinforcing their position. This comeback and renewed strength of the *Stadtwerke* has also been noted in the international debate in which “the German *Stadtwerke* model is perceived... as a role model for a community- based company” (Wagner et al. 2021, 3). Tellingly the German term “*Stadtwerk*” has been adopted and used in other countries and languages (ibid.).

8.4.2 Remunicipalization “Lite” in the Provision of Personal Social Services?

Whereas, on the one hand, the local authorities have largely withdrawn from the direct provision of personal social services (see Bönker et al. 2016, 80 et seq.) in a development identified as a “de-localization” (Evers and Sachße 2003) they have, on the other hand, made steps ushering in an, as it were, “re-localization” (Wollmann 2022) or a “remunicipalization lite” (Bönker et al. 2016, 81). This trend been propelled by a public and medial debate in which the widespread dissatisfaction with the quality of personal social services, especially elder care/long-term, care services, has been voiced and accentuated in the alarmist notion of “(national) care emergency” (*Pflegenotstand*).² Against the backdrop the municipalities have been prompted to embark on activities and instruments that aim at monitoring and supervising the conduct of the providers of residential as well as domiciliary care. While under the (federal) Home Supervision (*Heimgesetz*) Act it falls to the *Länder*

²<https://de.wikipedia.org/wiki/Pflegenotstand>

exercise such supervising function³ in most *Länder* the task of monitoring and checking the operation of care homes has been assigned (“delegated”) to local authorities. All monitoring findings on the provision of care are published every 4 years in a (national) Care Report (*Pflegebericht*). Besides some municipalities have proceeded to elaborate and publish local “care reports” (*Pflegeberichte*) on their own which shows the importance the provision of personal social services continues to have on the local political level.

8.4.3 “Comeback” of Cooperatives

Recently, the cooperatives have experienced a “comeback” (see Bauer and Markmann 2016; Wollmann 2016b, 326 et seq., 2018).

8.4.3.1 Energy Cooperatives

This development is exemplified by the ascent of the energy cooperatives (*Energiegenossenschaften*) whose number rose between 2001 and 2013 from 66 to 700 (see Stappel 2021, see Chap. 11, Sect. 11.8.4 in this book).

8.4.3.2 Social Cooperatives

Another examples are the “social cooperatives” (*Sozialgenossenschaften*). Amounting to some 330 most of them have been founded since the early 2000s, half of them as self-help cooperatives and one third as cooperatives with an altruistic orientation (see Stappel 2021; Alscher 2011).

Notwithstanding the remarkable (re-)emergence of societal (third sector) initiatives, organizations and actors their further course and expansion should be assessed with caution.

As for the situation and further course of the social cooperatives a major hurdle lies in their precarious financial potential. Although they have proved to be able to mobilize and attract financial resources (donation money, membership fees, also user charges), personnel resources (volunteers) as well as entrepreneurial and organizational skills) their long-term viability depends crucially on the availability of adequate public funding. The salience of this financial aspect has been highlighted in a major international study on the “third sector” (see Enjolras et al. 2016, 9).

With regard to energy cooperatives it should be borne in mind that their development (and their future course) heavily hinges on their legal and fiscal frame and context (see Chap. 11 in this book).

³<https://de.wikipedia.org/wiki/Heimaufsicht>

8.5 Summary and Perspective: “Pendulum Swinging Back”

Finally the question shall be addressed as to whether the movement which the provision of public services has over time undergone can meaningfully be analysed and interpreted by drawing on the image of a “swinging pendulum” (for the following see Bönker et al. 2016, 81).

The *pendulum* image goes back to Polanyi’s seminal work on the *Great Transformation* (see Polanyi 1944) in which long-term swings from state regulation to the markets and reverse were hypothesized as performing a “pendulum swing” (see Stewart 2010). It was resumed by Millward (see Millward 2005) and has been recently been taken up in the international comparative debate on the development and trajectory of public and social service provision (Wollmann and Marcou 2010; Hall 2012; Wollmann 2016b, 331 et seq.).

On first sight the German case seems to render some evidence for a “pendulum swinging back and forth” between municipal/public sector-based public and social services provision to outsourcing/privatization and back to municipal/public sector-based provision.

Upon closer inspection, however, the picture appears less compelling. First, substantial sectoral differences come into sight. The trend towards remunicipalization has pronouncedly taken shape in Germany’s energy sector and its *Energiewende* (energy turnaround) (see Chap. 10 in this book). Yet, in other public utility services the changes have been minor. In the case of social services provision there has been almost no remunicipalization. These sectoral differences expose the limits of the remunicipalization hypothesis.

A second problem with the remunicipalization hypothesis is that it suggests a return to the *status quo ante*, in other words to the conditions that prevailed (historically speaking) before the neoliberal age. Even in the sectors that have experienced a strong revival in local authority involvement and control there are distinct differences between the “post-liberal” present and the “pre-liberal” past. This applies to the regulatory framework as well as to the way public companies are run. Although the focus on and salience of private sector enterprises and business practices may have weakened since the mid-1990s, it remains much stronger than before in the 1960s and 1970s.

From a historical perspective, both these observations demonstrate that the recent trend towards remunicipalization is less sweeping than the preceding neoliberal privatization and outsourcing wave. It should thus be interpreted as a partial re-balancing and re-adjusting rather than a fundamental rollback of market reforms. The pendulum might have swung back, but the pendulum has halted far from its original position.

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Chapter 9

Combatting Unemployment



Abstract In this chapter addresses the various phases and changes which the involvement of the local authorities in combatting unemployment has undergone. It highlights the reform of 2004 which ushered in a profound financial and organizational reform of social and unemployment assistance. In its wake, a quarter of the pertinent local authorities “opted” (as so-called “opted local authorities”, *Optionskommunen*) to attend the long-term unemployed in a stand-alone comprehensive responsibility which has no parallel in other countries.

Keywords Long-term unemployment · Stand-alone responsibility · “Opted local authorities”

9.1 Federal Responsibility for Labour Market Policy

The competence for policymaking and legislation in the field of labour market policy lies primarily with the federal government level.

Operationally federal labour policy is largely carried out by the Federal Employment Agency (*Bundesagentur für Arbeit*) which is a federal authority under the oversight of the Federal Ministry of Labour and Social Affairs. As an exception to the constitutional rule that the federal government may not have regional or local offices of its own the Federal Employment Agency possesses a vertical administrative structure made up of 10 (meso level) regional directorates, 156 local agencies and 600 local offices (*Arbeitsämter*) (see Fig. 2.2 in Chap. 2). The Federal Employment Agency is in charge of managing the (contributions-based) unemployment insurance scheme and of unemployment-combatting activities, particularly job-placement and vocational retraining. Including its meso and local offices it counts some 96,000 employees (as of 2022) which makes it the numerically largest public body in Germany.

9.2 Involvement of the Local Authorities in Unemployment-Related Activities Since 1970s

Against the backdrop of the full employment which economically reigned until the early 1970s before the world-wide oil price crisis of 1973 took its toll the issue of unemployment did not figure on the local political agenda (see Wollmann 2008, 210 et seq. with references). Under the (federal) Social Assistance Act (*Sozialhilfegesetz*) of 1961 the county-free municipalities and the counties were responsible (as a mandatory self-government task) to provide and finance social assistance (“subsistence allowance”, *Hilfe zum Unterhalt*) to the socio-economically needy. In the case of unemployment the insurance-type contribution-based unemployment benefit scheme was available. So in the face of the overall favourable economic situation the local authority-funded “subsistence allowance” was only rarely claimed.

The situation changed dramatically since the mid-1970s as unemployment started to rise and people out of work resorted, after their time-limited contributions-based unemployment benefit elapsed, resorted in growing numbers to the local authorities-funded “subsistence allowance” (*Hilfe zum Unterhalt*). Consequently the share of unemployed among social assistance recipients steadily increased from 5.9 per cent in 1977 to 10.3 per cent in 1980 and jumped to 20.6 per cent by 1998.

Against this background the local authorities increasingly turned to engage themselves in labour market-related activities as they were eager to get the unemployed back to gainful work and to thus unburden their local budgets. In order to achieve this they embarked on different paths.

First, they “discovered” the “assistance to work” (*Hilfe zur Arbeit*) clause, a hitherto, as it were, dormant provision in the (federal) Social Assistance Act of 1961 as a “subsistence” benefit which, instead of letting the beneficiary “passively” collect it, could be turned into “active” use by prompting the recipient to accept and perform “public interest” (*gemeinnützig*), “additional” and time-limited work whereby the latter proviso was meant to prevent such job creation from competing with or displacing employment in the general (“first”) labour market. In the course of the 1990s the obligation of social assistance recipients to accept “reasonable” (*zumutbar*) work offered to them was legislatively tightened by sanctioning the refusal to take on the offered work though reducing or cutting off the allowance. By critics this was seen as a transition from the “welfare state” to a “workfare state” (see Wollmann 2008, 163, on the “workfare state” debate see Jessup 1995, Jones 1996). The number of social assistance recipients employed under this scheme grew from 119,000 (in 1993) to 200,000 (in 1997) and to some 400,000 (at the end of the 1990s).

Another trajectory for the local authorities to get involved in labour market-related activities was opened when the Federal Employment Agency inaugurated a massive job creation programme which hinged on the creation of time-limited (1–2year) jobs defined as being “in the public interest” (*gemeinnützig*) and “additional”. The guiding policy intention was to establish a “second labour market” which would not displace nor compete with the general (“first”) labour market”, but

was to serve as a training ground for (long-term) unemployed to make them “fit” to re-enter the “first labour market”. The local authorities became prime promoters and organizers of such job creation measures (*Arbeitsbeschaffungsmaßnahmen*). They founded local employment companies (*Beschäftigungsgesellschaften*) as vehicles of job creation in the “second labour market”.

At the same time the local authorities, following their traditional social policy commitment, continued to assist long-term unemployed through debt counselling, socio-psychological counselling, drugs rehabilitation and the like in order to help them retain or regain the physical and mental precondition for re-entering the (first) job market.

Thus, since the 1970s the local authorities, particularly the county-free cities and the counties, but also smaller county-affiliated (“belonging to a county”, *kreisangehörige*) municipalities increasingly engaged themselves in a range of activities that proved to complement the labour market activities and measures pursued by the Federal Employment Agency.

However two crucial problems arose with mounting urgency. First, as unemployed whose contributions-based unemployment benefit paid out by Federal Employment Agency elapsed resorted to the local authorities—financed social assistance scheme in ever larger numbers the local authorities found themselves under mounting budgetary pressure and suspected that the existing local “subsistence” benefit scheme might turn into a lasting ersatz unemployment benefit scheme. Second, a politically and operationally serious hiatus opened between Federal Employment Agency and its local field offices (*Arbeitsämter*), on the one hand, and the local authorities, on the other, because of the organizational, interest and cultural differences and mismatch between the two administrative spheres. So while the federal actors as labour market “professionals” were primarily focused on achieving “fast success” in job placement and hence were inclined to concentrate on “easy to place” (at best short-term) unemployed, the local authorities, dealing with the “more difficult to place” (probably long-term) unemployed, acted through personnel that were closer to and more empathic with the local needy. Thus a functional disconnect between the two spheres emerged which was critically compared to a “shunting yard” (“*Verschiebebahnhof*”) (see Wollmann 2008, 165).

9.3 The Double Barrelled Reform of 2004

In its momentous “Agenda 2010” policy the “red-green” federal government under Chancellor *Gerhard Schröder* in 2003 embarked upon a radical reform of the unemployment insurance and the social assistance systems. It was essentially guided by the recommendations of a high profile Commission that was appointed by the federal government and labelled after its chairman “Hartz Commission” (see Bönker and Wollmann 2006: 194 ff.).

9.3.1 Introduction of “Hartz IV”

Laid down in § 19 Social Code Book (*Sozialgesetzbuch II, SGB II*) which entered into effect on July 1, 2004 a prime component of the reform hinged on introducing the “basic support for job seekers” (*Grundsicherung für Arbeitssuchende*) officially called “unemployment benefit II” (*Arbeitslosengeld II*) and commonly known as “Hartz IV”. It essentially aimed at supporting long-term unemployed whose time-limited contributions-based unemployment benefit (now termed “employment benefit I”, *Arbeitslosengeld I*) had expired. In (largely) replacing the local government—financed social assistance scheme by the (federal) tax funded “unemployment benefit II” (“Hartz IV”) was meant to relieve the local authorities of the related heavy financial liability and burden.

Conceptually the provision of the “Hartz IV” benefit was linked with the “support and demand” (*Fördern und Fordern*) maxim as programmatically highlighted in the heading of Chap. 1 of the new Social Code Book II (see Aretz et al. 2019). On the “demand” (*Fordern*) side of the basic formula in § 2 SGB II stipulates that the beneficiaries of the “basic support” are obliged to “actively participate in all measures to integrate them into work, in particular by completing a cooperation plan” and, as a crucial component of the “integration to work”, “to accept the offer of a reasonable (*zumutbar*) job opportunity” (§ 10 SGB II). The refusal of such “reasonable” (*zumutbar*) job offer was a “breach of duty” (“*Pflichtverletzung*”) that may be sanctioned by reducing the benefit (§ 31, 31a SGB II). Critics saw in the sanction-armed “demand” (*Fordern*) side of the benefit scheme the continuing traces of a “workfare state” and of its “stigmatizing” connotations (see Mohr 2012).

9.3.2 Introduction of the “Citizen’s Benefit” (*Bürgergeld*)

The federal (social democratic/green/liberal) coalition government which was formed following the federal election of September 2021 pursued the reform of the existing unemployment benefit scheme (“Hartz IV”) as a key plank of its political agenda. The introduction of the reformed benefit scheme renamed “citizen’s benefit” (*Bürgergeld*)¹ was accompanied by a heated political controversy whether and how to deal with the politically sensitive demand (*fordern*) side of the benefit scheme. During the legislative process the first government draft that bore the handwriting of the Social Democrats and the Greens refrained from stipulating sanctions relating to the (“demand”/*Fordern*) clause of the benefit scheme. After a parliamentary and legislative tug-of-war a compromise was reached according to which the new “citizen’s benefit” (*Bürgergeld*) scheme was linked with mild sanctions.² Under

¹<https://en.wikipedia.org/wiki/B%C3%BCrgergeld>

²So the monthly payment of the benefit could be reduced by 10 per cent in the case the beneficiary misses appointments made with the jobcentre and up to 30 per cent in the case of failing to apply

the “citizen’s benefit” (*Bürgergeld*) scheme which went into effect on January 1, 2023 single adult jobseekers received a basic rate of 502 Euro per month compared to previously 449 Euro. In 2024 the sum was increased to 563 €. In addition the costs for rent and heating continue to be covered. The “mild” sanctions for non-compliance with re-employment measures or not accepting “reasonable” job offers remained in place. The introduction of *Bürgergeld* also increased the amount of personal wealth that beneficiaries can hold without a part of their unemployment grant being deducted. A single adult can own up to €40,000. In early 2024 some 5.5 million persons received “citizen’s benefit” of whom some 4 million were in an “employable” (*erwerbsfähig*) age.³

In an important extension of the coverage of the “citizen benefit” scheme the “recognized” asylum seekers and Ukraine refugees, the latter immediately without having to go through a recognition process, are entitled, on par with German citizens, to claim the “citizen’s benefit” as well as the costs for rent and heating (see Chap. 10).

Meanwhile the “citizen’s benefit” scheme, its rate, its coverage and related (“mild”) sanctions have become the issues of an increasingly heated and politically polarized discussion. First, it has been alleged and criticized with growing political resonance that the “citizens’s benefit” has financially reached a point which, along with its “fringe benefits”, such as housing and heating costs, makes it unattractive for the long-term unemployed to seek or accept re-employment. Second, it is critically argued and objected that the motivation of the long-term unemployed to prepare for and seek a new job is undermined by legally and practically providing no or only mild sanctions on not complying with re-employment furthering measures (vocational retraining etc.) or on not accepting “reasonable” job offers.

Against this backdrop the social democratic/Green/liberal coalition under Chancellor *Olaf Scholz* in January 2024 moved to markedly tighten the sanctions in the “citizen’s benefit” scheme by stipulating that in the case “sustained refusal” to accept “reasonable” job offers the payment of the “citizen’s benefit” may be suspended for 2 months. In order to reach the difficult intra-coalition and inter-party compromise the duration of the provision has been limited to 2 years with its continuation depending on the results of an accompanying evaluation.

for offered jobs or of failing to attend vocational retraining courses.

³https://www.focus.de/finanzen/news/kontroverse-enthuellungen-buergergeld-die-grosse-illusion-der-arbeitsreform_id_260012822.html

9.4 Continuing Operational and Financial Commitment of the Local Authorities

Although since the introduction of the federally funded “Hartz IV”/“citizen’s benefit” scheme the local authorities have been relieved from a heavy financial burden they continue to be operationally and financially involved in attending long-term unemployed on several scores.

First, in a key provision of the 2004 reform (§ 16a SGB II) the local authorities have been assigned an array of activities that aim at the “integration of the long-term unemployed into working life”.

As legislatively spelt out these “municipal integration services” (*kommunale Eingliederungsleistungen*) include “caring for minor children or children with disabilities or caring for relatives at home, debt counselling, psychosocial support, addiction counselling”. Hence, in pursuing the “integration” mandate the local authorities are held to mobilize and tap the institutional and personnel potential of which they traditionally dispose in the provision of personal social services, of children, youth and family assistance which in the broad “social and youth” sector which makes up about one quarter of the total local government personnel (see Chap. 5, table 3, lines 12 et seq. in this book).

Moreover, according to the legislation of 2004 the local authorities were initially also put in charge of covering the “accommodation and heating” costs of the long-term unemployed. Responding to the complaints and demands of the local authorities the federal government has step-wise assumed these costs by raising the federal compensation up to 47.4 per cent by 2020 (see Bertelsmann 2021, D, 7) and finally up to 75 per cent.

9.5 Two Variants of Implementing the Unemployment-Related Organizational Measures “from a Single Source”

Another key objective of the 2004 reform was to set up an organizational structure that should be capable to implement all long-term unemployment-related tasks “from a single source” (“*aus einer Hand*”). This “from a single source” strategy aimed at overcoming and rectifying the operational disconnect and inefficiency which hitherto took effect as, on the one hand, the Federal Employment Agency was in charge of managing the task triad of paying out the unemployment benefit, vocational training and job placement, and on other hand, the local authorities were assigned crucial complementary “integration” tasks (psychosocial support, debt counselling etc.).

During the legislative process a battle line shaped up between the federal (social democratic/Green coalition) government and its parliamentary majority, on the one side, and the christian democratic majority in the Federal Council (*Bundesrat*), on

the other. While the former preferred an institutional solution revolving around Federal Employment and its field offices, the latter advocated the local authorities assuming the sole responsibility in comprehensively handling the unemployment-related functions. At the same time a dissent was manifest also between the local government levels. So the association of counties pleaded for the local authorities taking on the sole responsibility, perhaps also as an opportunity to strengthen the position of counties in the multi-level setting, while the association of the municipalities were hesitant to shoulder such sole responsibility, probably concerned about the costs looming particularly in large cities with high unemployment rates (see Wollmann 2008, 165 with references).

After a protracted political and parliamentary process a compromise was reached.

First, an organizational model was introduced in which, with the Federal Employment Agency continuing as the dominant actor, “working groups” (*Arbeitsgemeinschaften*, after 2010 renamed “joint institutions”, *gemeinsame Einrichtungen*) were set up jointly by Federal Employment Agency along with its local field offices (*Arbeitsämter*) and the territorially related county-free municipalities or counties. The “joint institutions” are, in turn, in charge of setting up “jobcentres” which have the task of implementing the broad portfolio of unemployment-related measures.

Second, in a conspicuous and consequential institutional innovation (§ 6a SGB II) counties and county-free municipalities have been admitted to “opt” (“*optieren*”) (hence commonly known as “opted local authorities”, *Optionskommunen*) for assuming the sole responsibility for conducting, “out of one hand”, the full gamut of the long-term unemployment-related functions, to wit the triad of managing the unemployment benefits, job placement and vocational retraining as well as complementary tasks ascribed (in § 16a SGB II) to the local authorities. The “opted local authorities” (*Optionskommunen*) have entered institutionally and operationally uncharted territory in an internationally unparalleled operational position and outreach.

The further course of events was marked by constitutional controversies brought before the Federal Constitutional Court about the distribution and delineation of functions in the country’s federal multi-level system.

First, the formation of “working groups” established by the Federal Employment Agency (and its local offices) and local authorities was constitutionally questioned for violating the constitutional rule that the federal government level and the *Länder* may not form “mixed-administration” (“co-administration”) unless explicitly permitted in the Basic Law.⁴

Second, the provision that the expenditures incurred by “option local authorities” for operating the “basic support for job-seekers” are covered by federal funding was constitutionally questionable as it was deemed incompatible with the constitutional

⁴In its ruling of December 12, 2007 Federal Constitutional Court decided that the formation of the “working groups” was constitutionally unwarranted “mixed administration” (see BVerfGE 119. 331- 394). Art 91e GG was designed to “heal” this flaw

principle that direct financial relations between the federal and the local government levels are not admitted.

Following the ruling of the Federal Constitutional Court handed down on December 20, 2007 an amendment of the Federal Constitution (article 91e Basic Law) was adopted which, entering into force on July 21, 2010, was designed to put the implementation of the “basic support for job-seekers” scheme on a constitutionally firm ground. The new article 91e Basic Law lays down that, the federal level, the Länder or the local authorities may “cooperate in joint institutions” (*gemeinsame Einrichtungen*) and that the federal level “shall bear the necessary expenditures including the administrative expenses”.⁵ Follow-up federal legislation, inter alia, gave the (initially time-limited) “option local authority” construct permanent legal validity.

At the end of this constitutionally and politically bumpy process of institution building 302 “joint institutions” (*gemeinsame Einrichtungen*) have been established by the Federal Employment Agency and by counties or county-free municipalities that is in 75 per cent of the total number 401 counties and county-free municipalities. By contrast, 104 local authorities that is 25 per cent of the total number counties and county-free municipalities, “opted” and decided to become so-called “opted local authorities” (*Optionskommunen*) within the legislatively admitted maximum. Out of the 104 “option local authorities” 88 (or 85 per cent) are counties and 16 (or 15 per cent) are county-free municipalities; among the latter the City of Stuttgart, capital of Land of Baden-Württemberg, and six big Ruhr cities in the Land of Northrhine-Westphalia stand out. The numerical preponderance of the counties mirrors the preference which they showed from the outset to “opt” for assuming the sole responsibility. The reason and motive for this inclination and preference arguably is that the counties are largely situated in rural areas and comprise small county-affiliated (“belonging to a county”/*kreisangehörigen*) municipalities where unemployment problems are usually distinctly smaller. By contrast the lesser share of the county-free municipalities probably reflects the hesitancy and restraint to which in particular big cities tended to show in the face higher unemployment rates and financial and operational burdens resulting from shouldering the sole responsibility.

While the total number of recipients of the “unemployment benefit II”/ (“citizen’s benefit”) has (slightly) decreased in recent years (from 4.3 million in 2013 to 3.8 million in 2021 and 3.9 million in 2023)⁶ with an unemployment rate averaging around 5.7 per cent⁷ the problem load to be tackled by the job centres (both in the “joint institution” variant and in the “opted local authority” mode) has remained

⁵ In its ruling of October 7, 2014 the Federal Constitutional Court confirmed that, with regard to the “option local authorities”, art. 91e GG allowed, by way of exception, the federal funding of local government operations, see BVerfGE 137108

⁶ <https://de.statista.com/statistik/daten/studie/242062/umfrage/leistungsempfaenger-von-arbeitslosengeld-ii-und-sozialgeld/>

⁷ <https://de.statista.com/statistik/daten/studie/1224/umfrage/arbeitslosenquote-in-deutschland-seit-1995/>

momentous. As the “recognized” asylum seekers and the refugees from Ukraine have been given access, on par with German citizens, access to the “citizen’s benefit” and the related unemployment-related services the workload of the jobcentres be it in “joint institutions” or in the “option” variant has correspondingly grown. Since the job placement of asylum seekers and refugees hinges on sufficient language skills and appropriate qualifications the pertinent activities of the jobcentres that focus on language courses and vocational (re)qualification are writ large. Out of the more than 1 million refugees from Ukraine some 140,000 have in the meantime found adequate employment and many others are enrolled in language, qualification and integration courses.⁷

The different task load which the county-free municipalities and counties are faced with in dealing with the long-term unemployed shows in the average number of local personnel engaged in this task. Whereas in the county-free municipalities on the average a staff of 86 (per local authority) are employed in this matter, in the counties on the average 15 are correspondingly engaged (see Chap. 5, table 6 in this book).

9.6 Organizational and Functional Profile of the “Opted Local Authorities”

In setting up the “jobcentres” which have the responsibility, in the pivotal “out of one hand” logic, for performing the broad scope measures (payment of the unemployment benefit, job placement, vocational retraining) in which they replace the Federal Employment Agency as well as for carrying out the gamut of tasks assigned to the local authorities (§ 16a SGB II) as genuine local government tasks. The “opting” counties and county-free municipalities have acted within their organizational autonomy with a significant leeway and variance. In some the jobcentres have been installed within the existing social welfare department (*Sozialamt*), in others as a stand-alone unit within or outside core administration or as a local company (for an overview see Deutscher Landkreistag 2016). Counties have tended to “delegate” the payment of the unemployment benefit (“Hartz IV”/“citizen’s benefit”) and the related counselling etc. to their “member” municipalities, while retaining the responsibility for the labour-market-related measures (job placement etc.). In pursuing their job placement efforts the jobcentres avail themselves of their contacts with and personal knowledge of local and regional actors, such as locally situated enterprises, the chamber of commerce and crafts and the like, also linking up with their traditional local level economic promotion policy and experience. In pushing vocational retraining the jobcentres also commission and cooperate with private enterprises and consultants. In tackling the crucial legislative mandate (§ 16a SGB II) to “provide comprehensive and comprehensive care and support for integration into work” they draw on their (social welfare, youth welfare and the like) units and staff

and involve and tap the local network of non-profit, voluntary and self-help organizations (see case reports in Deutscher Landkreistag 2016, 2020).

Along with the mounting importance and urgency which the digitization of public administration has been given (see Chap. 4 in this book) the on-line access to the services of the jobcentres has become an important target of digital promotion as well (see Hessischer Städtetag 2020, 5).

9.7 Oversight, Monitoring, Benchmarking

Their operations of the “opted local authorities” (*Optionskommunen*) are subject to the legal oversight (*Rechtsaufsicht*) by the Land authorities. Moreover § 48a SGB II lays down that “to assess the performance” of the *Optionskommunen* the Federal Minister of Labour compiles indicator-based comparisons and publishes the results quarterly. Furthermore, according to § 6a SGB II the *Optionskommunen* are obliged to gather a set of performance data (with a focus in on the “rate of effected job placements”) and to transmit them to the Federal Employment Agency to “enable nationally uniform data collection, reporting, evaluation and benchmarking”. For this purpose the “option” jobcentres have been divided up into 15 “comparison groups”. The data are published on the Internet monthly. Thus a remarkably dense system of oversight, monitoring and transparency has been put in place.

Besides the *Optionskommunen* have, on their own, initiated a process of “benchlearning” as an exercise of mutual learning and improvement.⁸ For this purpose ten “comparison groups” (*Vergleichsringe*) have been formed each made up of a mix of counties and county-free municipalities meant to compare their performance based on a set of indicators. Each of the “comparison groups” meets three times a year in a workshop “to compare notes” and to “learn” from each other.

9.8 Evaluation of the Two Variants of Local Government Involvement

In 2010 an evaluation study, as legislatively stipulated, was undertaken to comparatively assess the performance of the “joint institutions” and the “opted local authorities” (*Optionskommunen*) particularly with regard to job placement, that is, getting long-term unemployed re-employed in the “first labour market”. While the evaluators concluded that the two models showed, in their overall performance, “no significant difference” (“*keine grossen Unterschiede*”) (see Bundesregierung 2008, 16) they held that “joint institutions” and their jobcentres achieved a higher job

⁸see <https://kommunale-jobcenter.de/benchlearning/?msclkid=569f94a2d04511ecbbe3793b36a72153>

placement score than the “option local authorities” (ibid. 18, 20). In explaining this finding the evaluators argued that the staff in the jobcentres of the “joint institutions” had predominantly a “labour administration” background and thus experience in job placement, while those in “opted local authorities” are often drawn from local social administration with a social care “culture” (ibid. 24) and correspondingly with greater emphasis on (socio-psychological etc.) counselling writ large.

This assessment was by and large corroborated by another evaluative study (see Mergele and Weber 2020) in which it was concluded that the “joint institutions” and their jobcentres are, compared to “opted local authorities”, “by approximately 10 per cent” more effective in job placement, while the jobcentres of the “option local authorities” were deemed to do better, because of their traditional social responsibility and competence and direct local proximity, in helping unemployed that are caught in difficult life situations to find re-employment (see Deutscher Landkreistag 2016, 7).

9.9 Summary and Perspective

The fundamental reform of the support of long-term unemployed initiated in 2004 revolved around two key components: first, the introduction of “unemployment benefit II”, named “citizen’s benefit”, Bürgergeld since 2021; and second, the reorganization of the provision of long-term unemployment-targeted measures (both local authorities-related ones under § 16a SGB II and labour market-related ones) “from a single source” (“aus einer Hand”).

Under the “citizen’s benefit” scheme which went into effect on January 2023 single adult jobseekers receive a basic rate of 502 Euro per month which has been raised to 563 Euro taking effect on January 1, 2024.⁹ As of end of 2023 there were 3.9 million employable recipients of the “citizen’s benefit”. Originally there were only mild sanctions in place on not complying with retraining etc. requirements. Besides, as of end 2023 some 1.2 million Ukraine refugees are, without having to undergo a recognition procedure, entitled, on a par with German citizens) to receive the “citizen’s benefit” and have access to labour market services.

Meanwhile the “citizen’s benefit” scheme, its rate, its coverage and hitherto related (“mild”) sanctions have become the issues of an increasingly heated and politically polarized discussion. First, it has been alleged and criticized in the public debate with growing political resonance that the “citizens’s benefit” has financially reached a point which, along with its “fringe benefits”, such as housing and heating costs, makes it unattractive for the long-term unemployed to seek or accept re-employment. Second, it has been critically argued and objected that the motivation of the long-term unemployed prepare for and seek a new job is undermined by

⁹ <https://de.statista.com/statistik/daten/studie/1396/umfrage/leistungsempfaenger-von-arbeitslosengeld-ii-jahresdurchschnittswerte/>

imposing only mild sanctions on not complying with re-employment fostering measures (vocational retraining etc.) or on not accepting job offers.

Against this backdrop the social democratic/Green/liberal coalition under Chancellor Olaf Scholz in January 2024 moved to markedly tighten the sanctions in the “citizen’s benefit” scheme by stipulating that in the case “sustained refusal” to accept “reasonable” job offers the payment of the “citizen’s benefit” may be suspended for 2 months. In order to reach the difficult intra-coalition and inter-party compromise the duration of the provision has been limited to 2 years with its continuation depending on the results of an accompanying evaluation. On the top of it, with an eye on the upcoming federal election in September 2025, the Christian Democratic Party has recently come forward with the suggestion to remould and trim the “citizen benefit” scheme and in particular to curtail the hitherto financially privileged position of the Ukraine refugees.¹⁰

In this context the support of the Ukraine refugees has come under mounting criticism, as of the some 1 million Ukraine refugees 850,000 are in working (employable) age while so far only 25 per cent have taken up gainful employment in the German labour market and keep staying on in Germany although expected and called upon by Ukraine legislation to return and serve in their country’s military. It has been pointed out that in pertinent neighbouring countries (such as Poland, the Czech Republic, Denmark and the Netherlands the benefits granted to the Ukraine refugees are significantly more limited and conditioned¹¹ while their (re-) employment rate is considerably higher.¹²

As for the conspicuous reorganization to have local authorities-related tasks under § 16a SGB II as well as labour market-related ones which resulted in setting up 302 “joint institutions” (gemeinsame Einrichtungen), jointly organized by the Federal Employment Agency, and local authorities, on the one hand, and in putting in place 104 “opting local authorities” (Optionskommunen) which take on a comprehensive stand-alone responsibility for the long-term unemployed; on the other, it deserves being called to mind and highlighted that the latter institutional variant is unique and without parallel in other European countries.

In 2010 an evaluation study, as legislatively stipulated, was undertaken to comparatively assess the performance of the “joint institutions” and the “option local authorities” (Optionskommunen) particularly with regard to job placement, that is, getting long-term unemployed re-employed in the “first labour market”. While the evaluators concluded that the two models showed, in in their overall performance, “no significant difference” (“keine grossen Unterschiede”) (see Bundestag 2008, 16) they held that “joint institutions” and their jobcentres achieved a higher job placement score than the “option local authorities” (ibid. 18, 20). In explaining this

¹⁰ <https://www.merkur.de/wirtschaft/buergergeld-streichen-menschen-in-arbeit-bringen-cdu-will-ukraine-gefuechteten-das-zr-93019380.html>

¹¹ <https://www.mdr.de/nachrichten/welt/politik/europa-sozialleistungen-ukraine-gefuechtete-vergleich-100.html>

¹² https://www.focus.de/finanzen/news/arbeit-statt-buergergeld-unsere-nachbarn-zeigen-wie-sie-ukrainische-fluechtlinge-integrieren_id_259918752.html

finding the evaluators argued that the staff in the jobcentres of the “joint institutions” had predominantly a “labour administration” background and thus experience in job placement, while those in “option local authorities” are often drawn from local social administration with a social care “culture” (ibid. 24) and correspondingly with greater emphasis on (socio-psychological etc.) counselling writ large.

This assessment was by and large corroborated by another evaluative study (see Mergele and Weber 2020) in which it was concluded that the “joint institutions” and their jobcentres are, compared to “option local authorities”, “by approximately 10 per cent” more effective in job placement, while the jobcentres of the “option local authorities” were deemed to do better, because of their traditional social responsibility and competence and direct local proximity, in helping unemployed that are caught in difficult life situations to find re-employment (see Deutscher Landkreistag 2016, 7). Moreover the “option local authorities” are apparently apt to comprehensively draw on and bring to bear the entire scope of local actor networks and resources as well as their proximity and connexions with the local level entrepreneurial world and employment potential.

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Chapter 10

Assisting Asylum Seekers and Refugees



Abstract The influx of asylum seekers and refugees that peaked in 2015/16 and has dramatically risen again since Russia's invasion of Ukraine in February 2022 has increasingly impacted on the EU's decision-making and has profoundly shaped Germany's political, financial and operational agenda. This applies in particular to the local authorities in their prime responsibility and task to accommodate and integrate the asylum seekers and refugees.

Keywords Asylum seekers · Refugees · Accommodation · Integration

10.1 Background

In Germany the number of asylum seekers and refugees entering the country rose from some 25,000 in the early 2000s dramatically to 476,000 in 2015 and climaxed with 745,000 in 2016 coming primarily from Syria and Iraq. After receding to some 122,000 in 2020 another wave has set in following Russia's invasion of Ukraine in February 2022 with over 1 million Ukrainians fleeing to Germany.¹ The number of asylum seekers and refugees (both from the Ukraine and other countries) climbed from 244,000 in 2022 by 28 per cent to 330,000 in 2023.

The other European countries have, to various degrees, experienced the massive influx of asylum seekers and refugees as well. In the absorption of Ukraine refugees Germany stood with a total of 1,086,000 (as of end 2023) at the top followed by Poland (with 958,000), the Czech Republic (with 366,000) and the UK (210,000).²

¹ <https://de.statista.com/statistik/daten/studie/154286/umfrage/asylantraege-erstantraege-in-deutschland-seit-1995/>

² <https://mediendienst-integration.de/migration/flucht-asy/ukrainische-fluechtlinge.html>

10.2 International and EU Legal Context

The Geneva Refugee Convention of July 28, 1951 is a United Nations multilateral treaty that defines who is a refugee, lays out the right of individuals who are granted asylum and addresses the responsibilities of nations that grant asylum. Germany signed the Geneva Refugee Convention as early as November 19, 1951.

In 2001 the EU adopted the *Temporary Protection Directive* (2001/55/EC)³ which was designed to ensure immediate, temporary protection for displaced people from outside the external border of the Union. It was intended to be used in exceptional circumstances to cope with the “mass influx” of refugees. If and when invoked by the EU it required EU member states to accept and host refugees.

On March 3, 2022, confronted with the mounting wave of refugees triggered by the Russia’s invasion of Ukraine on February 24, 2022 the EU ministers unanimously agreed to, for the first time, invoke the Temporary Protection Directive. It is designed to allow Ukraine citizens to enter EU countries without visa, to exempt them from the “ordinary” asylum recognition process and to immediately grant them the right to (temporary) residence, social assistance, labour market access etc. As for Germany, the EU Directive has been transposed by the (federal) Residence Act (*Aufenthaltsgesetz*) of 2004.

In the face of the mounting influx of refugees the calls for revising the international and European frame have intensified. This pertains in particular to the so-called *Dublin system* which, laid down in EU regulations in 2003 and 2013, spells out the first-country-of-entry principle under which countries with directly accessible borders (to wit particularly Greece and Italy) are responsible for processing the asylum application before the asylum seekers and refugees are distributed to other countries. The failure of reach agreements among the other EU countries about follow-up distribution has led to uncontrolled “secondary migration” that has especially affected Germany.

After protracted negotiations the European Council and the European Parliament on December 20, 2023 reached an agreement on reforming the EU asylum and migration system.⁴ In an important clause the EU’s new Asylum Procedure Regulation (APR) stipulates that control and processing facilities may be set up at the EU borders and that the member States may reject asylum applications “if the safe third country concept applies”. On April 10, 2024, the European Parliament voted in favour of the new rules on migration, followed by their formal adoption by the Council of the EU, on May 14, 2024. It will ensure that the Union has strong and secure external borders and that no EU country is left alone under pressure.⁵

³https://en.wikipedia.org/wiki/Temporary_Protection_Directive; <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex:32001L0055>

⁴See <https://www.consilium.europa.eu/en/press/press-releases/2023/12/20/the-council-and-the-european-parliament-reach-breakthrough-in-reform-of-eu-asylum-and-migration-system/>

⁵https://home-affairs.ec.europa.eu/policies/migration-and-asylum/pact-migration-and-asylum_en

10.3 Federal Constitutional, Legal and Political Setting

On the national level the competence to regulate the entry and recognition of asylum seekers and refugees lies with the federal government level.

Accordingly asylum seekers and refugees may be granted (“recognized”) asylum protection on three grounds:

First, that protection may be based on article 16a Federal Constitution (*Grundgesetz*, Basic Law) according to which “persons persecuted on political grounds shall have the right of asylum”. This “right of asylum” has been programmatically included among the “fundamental rights” (*Grundrechte*) laid down in the Federal Constitution which makes it the only the European constitution to accord such constitutional right to foreigners. This exceptional constitutional provision on asylum protection is rooted in Germany’s historical and moral obligation in view of the repression and persecution under the Nazi regime. However in the face of the rising influx of refugees since the late 1980s the asylum article of the Basic Law has been, in May 1993 after a heated political controversy, restricted laying down that the “right of asylum” “may not be invoked by a person who enters the federal territory from a member state of the European Communities or from another third state in which application of the Convention Relating to the Status of Refugees and of the Convention for the Protection of Human Rights and Fundamental Freedoms is assured”. By introducing the notion of “safe third countries” the constitutional amendment was meant to somewhat curb the exercise of the “right of asylum”.

Second, “refugee protection” is granted under the Asylum Act of 1982 which relates to and embodies the 1951 Geneva Refugee Convention.

Third, “subsidiary (also called ‘humanitarian’) protection” may be claimed by persons who, although not meeting the criteria to acquire refugee status, can prove that they face a risk of serious harm in their country of origin.

Moreover, in accordance with the EU Temporary Protection Directive since April 2022 refugees from Ukraine have been granted the protected status (including residence permit etc.) upon entering Germany without having to go through the “normal” scrutiny and recognition process.

Furthermore asylum seekers whose asylum application was rejected and who hence are bound to return to their country of origin may stay under the protection of the so-called “deportation ban” (“*Abschiebungsverbot*”) which means that such “push-back” to the country of origin shall not take place if a “considerable concrete danger to life, limb or liberty” exists in that country.

In the political and medial debate the demands and calls for reducing and containing the influx of asylum seekers and refugees have increasingly defined the political agenda. The political tensions have been heightened by the ascent and electoral advances of the far-right political party “Alternative für Deutschland” (Alternative for Germany) which has turned the “migration and asylum issue” into a central theme of its nationalist and xenophobic message and propaganda.

10.4 Federal Level Administrative Procedure

On the federal level the Federal Office for Migration and Refugees (*Bundesamt für Migration und Flüchtlinge*, BAMF) which is a higher federal authority (*obere Bundesbehörde*) under the supervision of the Federal Ministry of the Interior is responsible for the implementation of the asylum procedures. This includes in particular the decision-making process on granting asylum protection. Moreover it coordinates and financially supports subsequent integration courses and activities country-wide. The BAMF has some 8000 employees, is located in the City of Nuernberg and has 68 local branch offices.

Among the asylum seekers and refugees four groups can be distinguished.

- Asylum seekers and refugees who, upon arrival, enter and find themselves in the process of the scrutiny and decision-making by the BAMF.
- The “recognized” asylum seekers and refugees whose asylum application is accepted (“recognized”) by the BAMF.
- On par with “recognized” asylum seekers stand Ukraine refugees who, as decided in spring 2022 in accordance with the pertinent EU Directive, are granted the “recognized” status without antecedent scrutiny and approval process.
- “Tolerated” (*geduldet*) asylum seekers and refugees who, although their asylum application was refused by the BAMF, are protected from being “deported” (“pushed back”) under the “deportation ban” (*Abschiebeverbot*).
- Asylum seekers and refugees who, although denied the “recognized” or “tolerated” status, nonetheless stay on “illegally” either because their country of origin refuses to readmit them or because their “deportation”, often requiring police escort, encounters delays.

To illustrate and substantiate the profile of the decisions taken by the BAMF the data for 2022 may serve as example.⁵

In 2022, 25,925 asylum seekers and refugees were denied entry already at Germany’s border because they lacked personal documents, came from so-called “safe third countries” or had been previously rejected.

The BAMF processed a total of 228,673 asylum applicants of whom 128,463 (56.2 per cent) were granted the “recognized” asylum protection.

- Out of the latter 1937 (or 15.1 per cent) were based on the “right to asylum” under article 16a Basic Law.
- A total of 38,974 (or 30.4 per cent) on the (Geneva Convention-related) Asylum Act.
- And 30,020 (or 23 per cent) on “subsidiary protection”.
- Besides 30,020 (or 23 per cent) were “tolerated” to stay under the (“deportation ban”, “*Abschiebeverbot*”).
- Furthermore about 1 million refugees from Ukraine obtained the protected status without going through the antecedent asylum recognition process.
- In 2022, 18,787 (“rejected”) asylum seekers were deported (*abgeschoben*) that is, were returned to their country of origin (in part under police escort) and 4158

were relocated under the Dublin system to another EU country. Moreover, 7877 returned voluntarily to their country of origin.⁶

- Moreover a significant contingent of the “rejected” asylum seekers have “illegally” stayed on either because their country of origin refuses to readmit them or their “deportation” has not been effected.

10.5 Länder Responsibilities

In the initial phase, while the asylum application is still processed by the BAMF (taking on the average some 10 months) the individual *Länder* are obliged to accommodate and provide livelihood to the asylum seekers in so-called “Initial Reception Centres” (*Erstaufnahmeeinrichtungen*) which they operate and finance. For the distribution of the asylum seekers and refugees among the *Länder* the so-called “Königstein formula” is applied which, practised in the financial relations between the federal level and the *Länder* since the 1950s in allotting financial burdens and benefits, is oriented on their population size and revenue capacity (see Müller 2013, 11 et seq.).⁷

Moreover, importantly, the *Länder* bear the financial costs following from the Asylum Seeker Benefit Act (*Asylbewerberleistungsgesetz*) (see below Sect. 10.6.1).

10.6 Benefits Schemes

10.6.1 Asylum Seeker Benefits

Under the (federal) Asylum Seeker Benefit Act (*Asylbewerberleistungsgesetz*) various categories of asylum seekers receive benefits.

The benefits are mainly made up of so-called basic benefits which cover the expenditure for housing, food, heating and clothing as well as for consumer goods. Moreover they comprise cash benefits as subsistence assistance as well as special benefits in case of need especially in the event of illness, pregnancy and childbirth. They are lower than the “citizen’s benefit” granted under the federal Social Code (see below), but higher, except France, than in other European countries (for an overview see Wissenschaftlicher Dienst 2023).

The asylum seeker benefit scheme pertains to asylum seekers who are still being “processed” by the BAMF while not any more accommodated in the “initial reception centre” of a *Land*. Moreover it even covers the “tolerated” asylum seekers

⁶ See <https://mediendienst-integration.de/migration/flucht-asyl/zahl-der-fluechtlinge.html>

⁷ <https://mediendienst-integration.de/migration/flucht-asyl/abschiebungen.html>

whose asylum claim was refused by the BAMF but who are allowed to stay on due to the “deportation ban”.

The asylum seeker benefit scheme is financed by the *Länder* budgets. It amounted to 41 billion Euro in 2021⁸ and counted 482,300 asylum seekers receiving such benefits in 2022 which was an increase by 21 per cent over 2021.

The payment of the Asylum Seeker Benefits to the beneficiaries has been delegated by the *Länder* to the counties and county-free municipalities as a “delegated” self-government matter.

In the face of the increasing costs and the future uncertainties mounting criticism has been directed at the rate and coverage of this benefit scheme. In early March 2024 the *Länder* minister presidents agreed that for the payment of the asylum seeker benefit in the future paycards shall be used instead of normal money transfer in order to make the money flow more transparent and to prevent it from being deviated, in the worst case to traffickers. Some counties have put this practice in place already previously on their own. Moreover, the asylum seekers have been obliged to accept and perform “public interest” (*gemeinnützig*) work (see Schuler and Caspari 2024).

10.6.2 “Citizen’s Benefit” (“*Bürgergeld*”)

Once asylum seekers are “accepted” (“recognized”) they are entitled, on par with German citizens, to receive the “job seeker benefit” (“citizen’s benefit”) and have access to the scope of unemployment-related measures (vocational retraining, job placement etc.) operated by the jobcentres (see Chap. 9, Sect. 9.10.6 in this book). Since June 2022 the Ukrainian refugees are covered by “citizen’s benefit” (*Bürgergeld*) without antecedent “recognition” process (see *ibid.*).

10.7 Local Level Responsibilities and Activities

10.7.1 Accommodation and Provision of Livelihood for the Asylum Seekers and Refugees

Following the decision of the federal agency BAMF to accept (“recognize”) the asylum application the crucial task of providing the accommodation and livelihood for the asylum seekers and refugees falls to the local authorities which constitutes

⁸see <https://de.statista.com/statistik/daten/studie/376537/umfrage/verteilung-der-fluechtlinge-auf-die-bundeslaender-in-deutschland-nach-dem-verteilungsschlüssel/>. Under this formula for instance 21.44 per cent of the refugees have been assigned to the Land of Northrhine-Westfalia, 15.19 per cent to the Land of Bavaria and 2.79 per cent to the Land of Thuringia (see Müller 2013, p. 18, for all Länder see *ibid.*, table 3)

the hallmark and centre piece of Germany's asylum management system. Moreover the local authorities are held to take care also of "tolerated" asylum seekers and even of "illegal non-leavers".

Under *Land* legislation the local authorities are in charge as a ("delegated") mandatory local government task. The *Länder* proceed to assign the asylum seekers to the counties and county-free municipalities-oriented primarily on the population size. The counties, in turn, are in charge to place them in county-affiliated (*kreisangehörigen*) municipalities.

In order to cope with the task to provide accommodation the local authorities have sought to set up the so-called shared accommodation facilities (*Gemeinschaftsunterkünfte*) operated by the local authorities themselves or by non-public non-profit organizations or private associations. Appropriate sites to set up such collective facilities have been made available by the local authorities on their own real-estate and to some degree also by the federal government (for instance by making use of abandoned military sites and facilities). Moreover, the local authorities have been legislatively aided to find sites for shared accommodation facilities by a 2014 amendment of the (federal) Building Code which authorizes them to correspondingly "re-zone" areas in which hitherto dwelling functions are not admitted.

When the first huge wave of refugees poured into the country peaking with 750,000 refugees in 2016 many local authorities resorted to emergency measures, such as converting school gyms, putting up tents on school yards or finding other stopgap solutions. Subsequently, the local authorities proceeded, with financial support from the federal and *Länder* governments, to set up and expand shared accommodation facilities either on their own or through non-public and voluntary organizations. So in the meantime for instance the City of Leipzig (620,000 inhabitants) succeeded to provide 50 shared accommodation facilities for a total of 4606 residents, most of them operated by non-public non-profit organizations, such as Red Cross, Malteser and the like.⁹ Similarly, the City State of Berlin (3.7 million inhabitants) has achieved shared accommodation facilities that house up to 30,000 residents and are mostly run by non-public organizations and private associations.¹⁰

In the height of the wave of refugees in 2015/2016 amidst a mood of solidarity and a "welcome culture" many refugees found, at least temporary, accommodation with private families and friends. Moreover, the local authorities proceeded to procure private accommodation in the local housing markets.

Particularly in large cities and metropolitan areas the housing markets proved increasingly tight so that the local authorities resorted to rent (often costly) accommodation in private pensions or hotels. In rural areas where the local housing markets, due to the ongoing "rural exodus", are less tight it has been easier for the local

⁹ <https://www.bpb.de/themen/migration-integration/zahlen-zu-asyl/265776/asylbedingte-kosten-und-ausgaben/>

¹⁰ For a list see <https://www.leipzig.de/jugend-familie-und-soziales/auslaender-und-migranten/gefluechtete-in-leipzig/unterkuenfte-fuer-gefluechtete>

authorities as well as for the asylum seekers themselves to procure or find accommodation.

Confronted since early 2022 with a new surge of asylum seekers and refugees the local authorities have stepped their efforts to set up new accommodation facilities or even, similar to the 2015/2016 crisis, envisage stopgap measures such as converting school gyms and the like. In pursuing such activities they have increasingly encountered the protest of local residents and citizen groups. The cases of local protests against setting up new accommodation facilities for asylum seekers have become more numerous and sometimes politically heated. As a telling case in point, for instance, in late December 2023 in the North German municipality of Greifswald (60,000 inhabitants, seat of a renowned university) a binding local referendum was adopted ruling out the establishment of an accommodation facility for asylum seekers on a municipality-owned piece of land. Moreover local politicians, including the medially vocal and political influential local government associations, have increasingly sounded alarm and warned that the local authorities have reached and exceeded their operational capacities to cope with the accommodation responsibility and related tasks.

10.7.2 *Integration Activities*

Besides the provision of accommodation the responsibility of the local authorities revolves around a broad spectrum of activities aiming at the “integration” of asylum seekers and refugees in the German political, economic and cultural environment. In the integration strategies the acquisition and improvement of German language skills has been key for asylum seekers in many regards, especially in finding employment. Hence local authorities have been eager to pursue activities, along with private initiatives and “voluntary” actors, to organize meetings, “chat groups” and the like. In this regard the adult evening schools (*Volkshochschulen*) which exist particularly in county-free municipalities play a significant role in offering language courses, training and tutoring to asylum seekers and refugees.

In the pursuit of the complex integration goal a wide range of local level organizations and actors are involved that comprise, besides local government departments and offices proper (social, youth etc. administration), a multitude of non-public organizations and voluntary associations that form an important supportive local network (see Deutscher Landkreistag 2016, 1). For example, initiated and financially supported by the “Land of North-Rhine Westphalia” since 2020 “local integration management centres” have been set up in all 84 counties and county-free municipalities which have the mandate to coordinate the manifold integration-related activities of the local authority and local level organizations and actors.¹¹ In other *Länder* similar organizational steps have been undertaken.

¹¹ <https://berlin-hilft.com/unterkuenfte-berlin/>

10.7.3 *School-Related Activities*

Since (as of 2024) among the 1.1 million refugees from Ukraine are some 210,000 school-age children¹² their educational integration constitutes a paramount challenge. While in Germany's education system the operational and financial responsibility for the schools falls to the *Länder*, the local authorities have the task to provide the buildings and technical equipment of the schools (see Chap. 12 in this book). In order to cope with the wave of school-age children (the children from Ukraine have increased tenfold since 2022 the local authorities have come under pressure to expand the physical and technical infrastructure of the schools. Moreover they have been urged to recruit local government-financed personnel to ensure foreign language versed supportive personnel and to offer language-tutoring to the children concerned.

10.7.4 *Unemployment-Related Activities*

On “unemployment”-related measures (“citizen’s benefit”, vocational training etc.) for “recognized” asylum seekers and Ukrainian refugees, see Chap. 9 in this book. Three quarters of the job centres are set up as joint institutions (“*gemeinsame Einrichtungen*”) operated jointly by the Federal Employment Agency and the respective local authority (county or county-free municipality), while one quarter of them are run in the stand-alone responsibility of a so-called “opting local authority” (*Optionskommune*) (see *ibid.*).

10.8 Summary and Perspective

Confronted with the influx of asylum seekers and refugees years proved a by and large remarkable capability and vigour to cope with these unprecedented challenges.

However, since Russia's invasion of Ukraine and its aftermath the situation has worsened. The influx of asylum seekers and refugees has again risen to 330,000 in 2023 by 28 per cent over 2022. Indicatively the local authorities and their government associations have increasingly sounded alarm and warned that they have reached and often already exceeded their operational capacity to provide accommodation and integration services.

Against this backdrop the “asylum seeker and migrant” issue has become an increasingly urgent and divisive theme on the country's political agenda. Indicatively the Federal Chancellor Scholz and the Länder minister presidents met on November 7, 2013 and March 6, 2014 in an all but hectic sequence of “asylum summits”

¹²<https://mkjfgfi.nrw/kommunales-integrationsmanagement-nrw-0>

aiming at containing the influx of asylum seekers and refugees and at coping with its financial and political consequences. The scope of the agreed-upon and meanwhile embarked-upon measures comprise: Intensifying border controls, accelerating the asylum application examining procedure, stepping up the deportation back to their countries of origin of rejected asylum seekers, introducing paycards for the payment of the benefit in order to render the “money flow” more transparent and “controllable” and making it obligatory for asylum seekers to accept “public interest”, *gemeinnützig*, work (see Schuler and Caspari 2024). In a wider perspective these measures are politically intended and expected to make it less attractive to seek asylum protection in Germany and thus to lessen the “pull-factor” of its asylum system.

In the ongoing and still intensifying political debate more far-reaching demands have been forwarded. So the chairman of the Christian Democratic Party and leader of the parliamentary opposition *Friedrich Merz* recently proposed that a “ceiling” (*Obergrenze*) on the number of asylum seekers and refugees should be fixed at not higher than 100,000 annually.¹³ The political strife has been further fuelled by the far-right political party “*Alternative für Deutschland*” (Alternative for Germany) which, pushing its nationalist, xenophobic and anti-migrant positions and slogans, has politically and electorally risen and influential representatives of which have touted the idea of a “remigration” (*Remigration*) targeted at the massive return of “migrants” to “where they come from”.¹⁴

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¹³ <https://de.statista.com/statistik/daten/studie/1308090/umfrage/gefluechtete-kinder-und-juugendliche-aus-der-ukraine-an-deutschen-schulen/>

¹⁴ Statement as of March 17, 2024 https://www.focus.de/politik/asylpolitik-friedrich-merz-will-kuenftig-maximal-100-000-fluechtlinge-pro-jahr-einlassen_id_259769958.html

Chapter 11

Involvement in the “Energy Transition” (“Energiewende”)



Abstract Triggered by the nuclear disaster of Fukushima in 2011 the federal government embarked on an internationally unprecedented “energy transition” (“*Energiewende*”) which revolves around terminating the nuclear power generation by 2022 and sets the goal to have the country’s energy consumption almost entirely generated from renewable sources by 2030. In focusing on the involvement of the local authorities in achieving the “energy transition” the chapter outlines the broad spectrum of pertinent measures and activities pursued by them, inter alia, pertaining to energy saving, generation and use of renewable (solar, wind) energy, district heating etc. Moreover, the significant involvement of the municipal utilities (*Stadtwerke*) and also of the energy cooperatives is spelt out and highlighted.

Keywords “Energy transition” (*Energiewende*) · Solar energy · Wind energy · Stadtwerke · Energy cooperatives

11.1 Expansion of the Federal Policy Agenda in the Energy Sector

In the wake of the nuclear disaster of Chernobyl in 1986 a growing anti-nuclear movement with strong local roots shaped the political debate in Germany more strongly than in other European countries. The notion and the call for an “energy transition” (*Energiewende*) gained growing political and medial attention and urgency.¹ The adoption of the (federal) Renewal Energy Act (*Erneuerbare-Energie-Gesetz*, EEG) entering into effect on April 2, 2000 marked a breakthrough unparalleled in other countries in stipulating that owners of solar installations and wind farms should be guaranteed priority access to the German electrical grid along with a feed-in tariff. The next incisive step was taken in reaction to the nuclear disaster of

¹The term “*Energiewende*” (energy transition) was coined by Krause et al. (1980) and has since become commonly used in the German debate.

Fukushima in 2011 when the federal government decided to terminate nuclear power generation by 2022 which made Germany the first country world-wide to embark on such radical trajectory. In a next dramatic move the (federal) Coal Power Phase-out Act (*Kohleausstiegsgesetz*) of 2020 laid down that the coal-generated electricity shall be gradually reduced and be terminated by 2038 which was again unparalleled world-wide.

Russia’s invasion of Ukraine in February 2022 has dramatically impacted on Germany’s energy situation because of the country’s dependence on the import of natural gas from Russia. Under the federal (Social Democratic/Green/Liberal Democratic coalition) government that was formed in December 2021 an amendment of the (federal) Renewal Energy Act was adopted taking effect on January 1, 2023 which significantly raised the previously fixed goal by laying down that by 2030 (at least) 80 per cent of the country’s gross electricity consumption shall be generated from renewable (preferably wind and solar) sources. Subsequently in order to boost the wind power generation the (federal) “Windpower on Shore Act” (*Windenergie-an-Land-Gesetz*) of July 23, 2023 prescribed that 2 per cent of the country’s territory should be available by 2032 for setting up wind power installations. With the aim to promote the generation and use of solar energy following 2022 most *Länder* adopted legislation stipulating the called “solar duty” (*Solarpflicht*) which makes it obligatory, with variance among them, to provide for photovoltaic/solar installations in the new construction (and also modernization) of public and private non-residential buildings as well as private residential ones.²

In sum, major policy initiatives and legislative activities have been inaugurated and pursued on the federal and *Länder* levels which have defined and propelled Germany’s “energy transition” (*Energiewende*) in a breadth and intensity arguably unparalleled in other countries.

11.2 The Role of the Local Authorities in Coping with the “Energy Transition”

Since many of the “energy transition”-related policy and legislative measures laid out by the federal level and the *Länder* are bound to be realized and implemented on the local level the functional and operational task profile of the local authorities has been correspondingly expanded upgrading their role and position in the country’s multi-level system.

Historically dating back to the late nineteenth century the provision of electricity, gas and district heating has been a basic responsibility of the local authorities (see Bönker et al. 2016, 72). Following the nuclear disaster of Chernobyl of 1986 environmental and energy topics have increasingly framed the political discussions on

²For an overview see <https://www.energie-fachberater.de/beratung-foerdermittel/gesetzliche-vorgaben/solarpflicht-in-den-bundeslaendern.php>

the local level as well (see Müschen 1999). The issues of the “energy transition” have also been increasingly taken up and advocated by local citizens groups and environmental activists calling on and pushing the “Local Agenda 21” (see Wagner and Berlo 2015, 563). The attention which the “energy transition” has been given on the local political agendas has heightened after the nuclear disaster of Fukushima of 2011 and further fuelled by Russia’s invasion of Ukraine.

11.2.1 Institutional Responses

Many municipalities have set up administrative units focused on energy and climate matters (*Energie-/Klimaschutzreferate*) and have appointed energy officers (*Energiebeauftragte*) who are tasked with promoting and coordinating local energy-related activities (see Müschen 1999, 672; Rösler 2005). By the same token local councils have established “environment and energy committees”. In the local political arena the directly elected mayors and county commissioners (*Landräte*) stand out in initiating energy-related activities and in mobilizing and coordinating the relevant local actor networks.

11.2.2 Energy-Related Measures of the Local Authorities Within Their Own Domain

With regard to their own domain the local authorities pursue several courses of action. First, they have proceeded to apply in their own building stock a broad arsenal of pertinent measures that comprise photovoltaic installations and solar panels. This pertains to the local authorities’ own stock of some 180,000 non-residential buildings (administrative buildings, schools, gyms and the like).

The pertinent activities of the local authorities have recently been further prompted by *Länder* legislation. The Land of Berlin’s Climate Protection Act (*Klimaschutzgesetz*) of September 10, 2021 is a case in point in stipulating a so-called “solar duty” (“*Solarpflicht*”) which makes it obligatory to equip newly constructed public buildings and also roof-top reconstruction with photovoltaic installations.³ Other *Länder* have followed suit with similar provisions. So the conspicuous perspective has been opened that the roofs of public buildings become a significant source and carrier of solar energy generation.

Moreover within their own domain the local authorities embark on other energy-saving measures, such as thermal insulation of buildings, lowering inside

³ <https://www.google.com/search?client=firefox-b-d&q=berliner+klimaschutz-+und+energiewendegesetz>

temperature, dimming street lighting, prioritizing electric vehicles in their vehicle fleet, including public transport.

11.2.3 Provision of Heating as Local Public Service

District heating has traditionally been a component of the public services provided by the local authorities through their municipal utilities (*Stadtwerke*) and other local installations.⁴ However, so far only 14 per cent of total heating demand of the residential buildings is currently covered by heating networks. At the same time the available data hint at the need and vast potential of enlarging the share of network-based district heating in residential heating. The federal Heat Planning Act (*Wärmeplanungsgesetz*) of 2023 is targeted at promoting “climate-friendly heating” (“*klimafreundliches Heizen*”) particularly by the expansion of heat networks. By 2030 up to 50 per cent of heating shall be produced by renewal energy. By 2025 65 per cent of the buildings shall be connected with such heating. The municipalities are legislatively obliged to work out and submit municipal thermal plans (*Wärmepläne*) to provide guidance to local citizens and enterprises as to where to be linked with (“decarbonized”) district heating or to seek alternative solutions (such as heat pumps).

11.2.4 Expansion of Generation and Use of Solar Energy on the Local Level

Reflecting the growing political awareness up to 87 per cent of the municipalities have adopted “climate protection concepts” by 2020 (compared to 43 per cent in 2007) (see Bertelsmann Stiftung 2021, 78).

Besides their own domain the local authorities play an influential role in promoting the generation and use of solar energy on the local level.

So the local authorities have engaged in energy-related counselling and support of local residents, enterprises and organizations in making use of energy saving, energy-efficiency and renewal energy-related measures. A growing number of local authorities have come forth with “roof panel potential analyses” (see Bertelsmann Stiftung 2021, 78) designed to increase the awareness of private owners and investors of the opportunities and potential of photovoltaic installations. By 2020 up to 87 per cent of the municipalities have adopted “climate protection concepts” (see *ibid.*).

In recent legislation the *Länder* have moved to extend the “solar duty” (*Solarpflicht*) to the construction of private residential buildings. Again the Land of

⁴<https://de.wikipedia.org/wiki/Fernw%C3%A4rme>

Berlin has taken the lead in adopting a Solar Act (*Solargesetz*) that, taking effect on January 1, 2023, expands the “solar duty” to newly constructed residential buildings and as well as to existing ones when roof storeys are added. Other *Länder* have passed similar legislation. So photovoltaic installations, in particular in the solar roof variant, are apparently spreading fast in the building sector and enlarging the generation and use of solar energy.

As for the establishment of solar parks the municipalities have been authorized by an amendment of the federal building code to adopt provisions in their land-use plans (*Bebauungsplan*) which may, inter alia, designate sites for setting up solar parks. In order to incite the municipalities to actively further the creation of solar parks an amendment of (federal) Renewable Energy Act was adopted in 2021 according to which they may receive a fee of 0.2 cent per kilowatt hour for fed-in solar park-generated electricity. This makes for an additional stimulus for the municipalities to sell or lease local government-owned sites to, and to attract would-be private solar investors as, besides getting the selling price or rent for the site, they may collect the feeding-in fee as well as resulting local trades tax (*Gewerbesteuer*).

Most of the some 70 existing solar parks⁵ are legally organized as limited companies whose shares are held largely by private investors and local citizens, but also by local energy cooperatives and *Stadtwerke*. Three of the solar parks are entirely owned and operated by *Stadtwerke*.

About a total of 1.5 million photovoltaic systems have meanwhile been installed country-wide ranging from small rooftop systems to medium-sized and large solar parks. Germany has come to rank among the world’s top photovoltaic installers with a capacity of up to 67.3 gigawatts (GW) by the end of 2022⁶ which amounted to 11.8 per cent of the country net-generated electricity.⁷

11.2.5 Expansion of the Generation and Use of Wind Power

Setting up (“onshore” wind turbines and wind parks on local (“inland”) territory has often been hindered and retarded by opposing local residents who are worried about rotor noise, depreciation of their real estate etc., by dragging-on legal proceedings as well as by conflicts between several public authorities which represent and advocate different interests and concerns (nature, animal, landscape protection etc.). In order to counteract the resulting lull in onshore wind turbines the (federal) Onshore Wind Power Act (“*Windenergie-an-Land-Gesetz*”) was adopted taking effect on July 3, 2023.⁸ It obliges the *Länder* to make 1.8–2.2 per cent of their respective territory

⁵ https://de.wikipedia.org/wiki/Liste_von_Solarkraftwerken_in_Deutschland (as of 2022)

⁶ <https://www.statista.com/statistics/497448/connected-and-cumulated-photovoltaic-capacity-in-germany/>

⁷ Germany’s 807 watts of solar photovoltaic (PV) per capita (2022) is the third highest in the world, behind only Australia and the Netherlands.

⁸ <https://www.bundesregierung.de/breg-de/themen/klimaschutz/wind-an-land-gesetz-2052764>

available for the installation of wind turbines by the end of 2032. This means more than doubling the currently designated areas which as of now amount to 0.8 per cent of the country’s entire territory. While leaving the hitherto valid federal provision unchanged that allows the *Länder* to prescribe a minimum distance of up to 1000 meter between the wind turbines and residential areas the new federal Onshore Wind Power Act stipulates that “the construction and operation of plants for the generation of renewable energy is in the overriding public interest and serves public safety”. This is seen as a crucial shift in the administrative approval procedure of onshore wind power installations as, whereas under the previous legal frame the administrative “weighing” (“*abwägen*”) of different concerns has often resulted in rejecting the project concerned, the new “overriding public interest” clause is interpreted and practically handled as clearly prioritizing and “putting first” the renewable energy aspect.

The local authorities which, through land-use planning and also building permit requirement are involved in setting up wind turbines and wind parks find themselves often in a dilemma. On the one hand, besides politically supporting the “energy turnaround” objective, they may welcome and foster wind-energy installations for fiscal reasons (selling or renting municipally owned sites concerned, extending the local trades tax base etc.). On the other hand, they may sympathize with local residents regarding their noise etc. concerns. At any rate, the local political arena, first of all the mayors, are called upon to assume a pivotal role in a moderating, persuasive and compromise-striking function. The 2021 amendment of the (federal) Renewal Energy Act lays down that, analogous to solar-generated electricity, the municipalities may receive a fee of 0.2 cent per kilowatt hours for fed-in wind power-generated electricity which is meant to enhance the readiness of the local authorities to engage themselves and possibly also to sooth opposing citizens.

The wind parks are mostly organized in the legal form of limited companies. While most of the shareholders are private investors, shares are also held by *Stadtwerke* and energy cooperatives. At the end of 2022 a total von 28.443 wind parks existed of which 551 were newly established in 2022. The total of “onshore” wind energy generation amounted in 2022 to 58.1 gigawatts which was 39.3 per cent of the renewal energy generation and 11.5 per cent of the country net-generated electricity.⁹ By contrast the off-shore-generated electricity amounted to 8.1 gigawatts or 5.4 per cent of renewal energy in 2022.¹⁰

⁹<https://www.wind-energie.de/themen/zahlen-und-fakten/deutschland/> For a list see https://de.wikipedia.org/wiki/Liste_von_Windkraftanlagen_in_Deutschland

¹⁰<https://www.bdew.de/service/daten-und-grafiken/erneuerbare-energien-installierte-leistung/>

11.2.6 Examples of the Growing Involvement and Outreach of the Local Authorities

Exemplar of the growing municipal involvement in energy-related activities is the city of Bonn, the former federal capital (with 330,000 inhabitants).¹¹ Under the proclaimed goal to become “climate neutral” by 2035 the city of Bonn was the first in Germany to make use of the federal legislation of 2011 and to adopt a local by-law that made it mandatory to install solar panels at the construction of new buildings on municipal real estate. Moreover, after elaborating a “solar cadastre” in which two thirds of the entire existing building stock are found suitable for solar panels the municipality inaugurated a local funding programme which was meant to encourage the owners of old stock buildings to equip them with solar panels and kin energy-efficient measures. Furthermore Bonn’s *Stadtwerk* acquired a minority share in a private company that operates wind parks and solar parks.¹² Besides the municipality-operated waste incineration plant feeds into district heating.

Besides a growing number of larger and big municipalities engaging in “energy turnaround”-related activities small municipalities have got increasingly involved as well, including (very) small localities.

This is exemplified by a group of (some 35) small localities, called “bioenergy villages”, which have succeeded in becoming “energy self-sufficient” (“autarkic”) by generating the entire locally needed electricity from renewable sources (preferably biomass) and by using (biomass-based) cogeneration to feed into local heating.¹³

As a case in point the small municipality of Freiamt (with 4300 inhabitants) makes use of a wide spectrum of renewable energy-related measures in order to achieve self-sufficiency in the provision of electricity and heat. Hence solar plants, wind and water mills as well as a biogas plant produce 14.3 million kilowatt hours of electricity per year of which 1.5 million kWh are excessive and fed into the external grid.¹⁴

In sum, notwithstanding hurdles and setbacks which the municipalities of all sizes have exhibited remarkable political engagement and operational performance in contributing to and effecting the “energy transition”.

¹¹ <https://www.erneuerbareenergien.de/solarenergie/bonn-kommunale-solarpflicht-ist-erster-schritt-hin-zur-klimaneutralitaet-2035>

¹² <https://www.bonn.de/pressemitteilungen/januar-2021/swb-investieren-in-solar-und--windenergie.php>

¹³ For details and a list of the 35 “bioenergy villages” see <https://de.wiki.bioenergiedorf>

¹⁴ <https://www.swr.de/swraktuell/baden-wuerttemberg/energiedoerfer-102.html>

11.3 The Stadtwerke as Key Local Actors in the Energy Sector

11.3.1 Looming “Demise” of the Municipal Utilities (*Stadtwerke*)?

The *Stadtwerke* have, dating back to the late nineteenth century, traditionally played a pivotal role in the provision of electricity, gas and district heating, often as multi-utilities combining the provision of energy, water, public transport etc. (see also Chap. 6 in this book).

Well onto the late 1980s, the electricity market in Germany was characterized by a mix of private sector and municipal providers (for the following see Bönker et al. 2016, 73 et seq.; Wollmann et al. 2010, 173 et seq.). On the one side the former comprised nine large electricity and transmission (“grid”) companies and some 60 regional distributors. They generated about 80 per cent of the electricity, owned most of the long-distance high voltage transmission grids and distributed/supplied about 70 per cent to the end consumer. The large energy companies divided the market between themselves under “regional agreements” which amounted to regional oligopolies.

On the other side the municipalities, essentially through the municipal utilities (*Stadtwerke*), held a significant segment of electricity transmission and distribution/supply. Thus, some 30 per cent of electricity and 70 per cent of gas were supplied to the end-consumer by municipal utilities. The local authorities often used the profits made in the energy sector to cross-subsidize loss-making services such as public transport. In tending to carve out and defend “protected local markets” the municipalities and their *Stadtwerke* came close to forming local “monopolies”.

Since the mid-1990s Germany’s energy market was upended by the EU’s neo-liberal market liberalization policy. In 1996 the European Commission issued the Directive 96/92/EC which obliged EU member countries to ensure price competition on the national electricity markets. Transposed into German law by the (federal) Energy Management Act (*Energiewirtschaftsgesetz*) of 1998 the legislation triggered market liberalization which unleashed a wave of private company mergers that resulted (somewhat paradoxically) in the formation of the (hitherto market dominating) “Big Four” (E.on, RWE, EnBW and Vattenfall). Faced with competitive pressure from the big energy providers and with mounting financial problems many municipalities decided to sell local grids and shares of their *Stadtwerke* which resulted in RWE and E.on acquiring holdings in some 100 *Stadtwerke*. By the mid-2000s only 30 per cent of the energy-related *Stadtwerke* remained in the sole ownership of the municipalities (see Wollmann et al. 2010, 177 et seq.). Critics foreboded the “demise of the *Stadtwerke*” (*Stadtwerkesterben*).

11.3.2 The “Comeback” of the Stadtwerke

Since the early 2000s the energy providing *Stadtwerke* have experienced a conspicuous “comeback” which was fostered by several factors and events (see Wollmann et al. 2010, 178 et seq.; Hall et al. 2013; Bönker et al. 2016, 79 et seq.).

First, the European Commission, in recognizing the competitive potential of local energy companies in the local and regional energy markets, turned to exert pressure on the “Big Four” (E.on, RWE, EnBW, Vattenfall) to sell previously acquired local grids and minority shares in *Stadtwerke*. Second, the local authorities “rediscovered” and re-valued the political and financial advantages of being involved in energy generation, transmission and supply. So they turned to re-purchase previously sold grids and assets or to “re-insource” previously “outsourced” services. Additional political pressure came from local citizen initiatives and local referendums that called for the remunicipalization of assets and services (see Kuhlmann and Wollmann 2019, 242).

The decision of the local authority as to whether to renew or terminate the “outsourcing” the service provision was typically preceded and accompanied by conflicts and negotiations with the sitting company particularly about the compensation made for the construction, maintenance of the grid etc.

Tellingly, in many cases this “tug of war” has ended with renewing the concession with the sitting provider (see Grossi and Reichard 2016, 303).

In the meantime, the number of newly founded *Stadtwerke* has markedly risen. Between 2006 and 2016 some 150 new energy-related utilities have been established bringing their total number up to some 900 (see Wagner et al. 2021). Many of them were founded jointly by public/municipal and private partners (PPPs). Most are limited liability companies and about 50 of them are in full municipal ownership. Besides already existing *Stadtwerke* have merged or entered intermunicipal cooperation in order to strengthen their operational capacity and outreach.

As most *Stadtwerke* provide energy for fewer than 100,000 clients are exempt from the “unbundling” mandate of the EU Acceleration Directive 2003/54/EC according to which energy companies are in principle obliged to organisationally and financially separate (“unbundle”) the generation and provision of energy. Only in large local markets with over 100,000 clients, such as in Berlin and Hamburg, the energy nets are operated by separate (City- owned) grid companies.

In order to strengthen their competitive capacity the *Stadtwerke* have adopted various strategies. They have formed joint grid companies (*Netzbetriebsgesellschaften*) to economise and achieve economy of scale. They have set up “shared services” (for billing, book keeping, call centres etc.) to cut operational costs and have set up joint offices to purchase energy collectively from the European Energy Exchange (EEX).

The share which they have in the country’s total generated electricity has risen from less than 10 per cent in 2010 up to 20 per cent by 2020 while they supply 46 per cent of domestic homes with electricity.

11.4 The “Comeback” and Rise of the Local Energy Cooperatives

Energy cooperatives sprang up in Germany first in the late nineteenth century when rural dwellers founded cooperatives typically in self-help initiatives as the private sector electricity companies refrained from connecting remote rural areas which proved entrepreneurially unattractive for them (see Yildiz et al. 2015, 61; Kahla et al. 2017).¹⁵ The over 6000 electricity cooperatives which operated mainly as rural distribution cooperatives became the second largest group in the German rural cooperative association in 1930. As a result of the concentration process that took place in the energy sector in the late 1930s and continued in the 1940s under the Nazi regime the number of cooperatives dwindled to some 40. After 1945 this continued as their numerical size until the late 1990s.

Since the early 2000s the number of newly established energy cooperatives has steeply risen. Besides reflecting the growing (“green”) engagement of citizens in environmental issues the “revival” of the energy cooperatives was prompted by the (federal) Renewable Energy Act of 2000 that guaranteed a feed-in tariff for electricity generated from renewable sources for a 20 year period. Whereas prior to 2006 just eight new cooperative were founded their number jumped between 2008 and 2013 from 67 to 772 and has since grown more slowly to reach 896 in 2020 (data from DGRV 2021, 2 table).

The 835 energy cooperatives have some 200,000 members—on the average 292, ranging from up 50 to 500 and more (for these and the following data see DGRV 2021, tables). The vast majority (95 per cent) of the members are private citizens, 2 per cent banks and enterprises and 2 per cent public entities, such as *Stadtwerke*. Typically local citizens subscribe to a share in the cooperative (averaging 560 Euro, but may go up to 10,000 Euro and more) and receive a dividend on their share. In some cases energy cooperatives hold a minority share in the respective *Stadtwerke* and enter into formal cooperation with them.¹⁶

The (835) energy cooperatives are members of an association which, in turn, is linked with the (powerful) umbrella organization (DGRV)¹⁷ that encompasses the entire cooperatives structure (with 5071 cooperatives) and related actors, including its bank system. Through its central office¹⁸ it conducts extended PR and lobbying activities on behalf of its members, issues press releases, carries out and publishes annual surveys among the members etc.

Some 70 per cent of the energy cooperatives engage in electricity generation, mostly focusing on solar energy, primarily operating photovoltaic installations, while 17 per cent use biomass, 15.2 per cent hydro power and 11 per cent wind

¹⁵ See also <https://de.wikipedia.org/wiki/B%C3%BCrgerenergiegenossenschaft>

¹⁶ For examples see <https://www.energiegenossenschaften-gruenden.de/kooperation-stadtwerke.html?msclid=a1c3a3dfaf4b11ecba75802c7e60c44f>

¹⁷ Deutscher Genossenschaft- und Raiffeisen-Verband

¹⁸ <https://www.dgrv.de/bundesgeschäftsstelle-energiegenossenschaften/>

power (see DGRV 2021, 8 table). Thus solar energy generation clearly prevails while wind power noticeably lags behind which reflects the local acceptance problems the installation of wind turbines often runs into. Some are concentrating on the provision of local heating, particularly by running block- unit heating power plants (see Klagge and Meister 2017).

In 2020 the energy cooperatives-generated electricity amounting to 8.8 billion kilowatthours (see DGRV 2021) which makes for 1.7 per cent of the country's entire electricity production of 502 billion kilowatthours and 3.5 per cent of the total electricity generated from renewable sources. They invested 3.2 billion Euro (ibid.).

A telling example of the history and unfolding of a cooperative energy project is the power plant (*Elektrizitätswerk*) in the small Black Forest municipality of Schönauf (counting some 6400 inhabitants).¹⁹ It emerged from a citizen initiative which was formed immediately following the 1986 nuclear disaster of *Chernobyl* with an energy-related and anti-nuclear agenda. In 1996 the group of then some 750 members founded a cooperative, bought the local grid and established the *Elektrizitätswerk Schönauf* programmatically geared to water power and renewable energy. In 2009 the *Elektrizitätswerk* gained nation-wide public and media attention when, joined by numerous environmentalist groups, it became the propellant and hub of an anti-nuclear campaign. In its further expansion it set up subsidiaries meant to plan, establish and operate wind, solar and coproduction installations as well as to counsel municipalities in energetic renovation concepts and in district heating. Moreover it holds (up to 50 per cent) shares in another four energy-related companies.

11.5 Summary and Perspective

The engagement of the local authorities in the local level generation and supply of electricity and gas dates back to the late nineteenth century with municipally owned and operated companies "Stadtwerke" becoming traditional providers. In the wake of the nuclear disaster of Chernobyl of 1986, pushed by environmentalist citizen groups and activists and in line with federal policy initiatives the concept and goal of a renewable energy-based "energy transition" (Energiewende) have increasingly shaped the local political agendas and local government practice more intensively and consequentially than in most other European countries.

The broad scope of relevant moves and activities comprises energy savings and generation measures undertaken by the local authorities in their own domain (municipal buildings, facilities and housing, promotion of district heating etc.) as well as encouraging and facilitating the setting up of wind parks and solar parks. Hereby the traditional Stadtwerke as well as the re-emerging energy cooperatives

¹⁹ <https://www.google.com/search?client=firefox-b-d&q=Elektrizit%C3%A4tswerk+sch%C3%B6nauf>

play a significant role. In this context it is up to the local authorities, in particular to the directly elected mayors, to engage themselves in settling the local conflicts that are evoked by the establishment of wind parks and solar parks in residential proximity. The unfolding of local “energy transition” is increasingly marked by the formation and dynamics of local governance-type actor constellations that are made up of and combine the formal local government actors and non-public, societal and private ones.

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Chapter 12

Extended Responsibilities of the Local Authorities in the School Sector



Abstract In the past the *Länder* had the sole operational and financial responsibility for the school sector while the local authorities were tasked with the “technical” school matters. Since the early 2000, alarmed by the findings of the OECD’s PISA studies, the federal government has financially intervened in the school sector, inter alia, by promoting all-day schools and, since 2017, the digitization of the schools. Against this backdrop the local authorities have widened their responsibilities and activities to improve the digital and educational performance of the schools. Local “education landscapes” has been formed to mobilize a broad range of local level education-related public/municipal and non-public actors and organizations.

Keywords Expansion of local government responsibilities in school matters · Digitization of schools · Local “education landscapes”

12.1 Vertical Distribution of Responsibilities in the School Sector

In the federal multi-level distribution of competences the education sector falls under the exclusive responsibility of the *Länder* in what has been identified as their “sovereignty in cultural matters” (*Kulturhoheit*) and as “a key element of their statehood (*Eigenstaatlichkeit*)”¹ (see Wollmann 2023, 357). Consequently the schools as well as the universities are traditionally public institutions basically operated and financed by the *Länder*. The remuneration of the school teachers and university professors makes up the 58.2 per cent of the entire budgets of the *Länder* (see Chap.

¹Accordingly the Federal Constitutional Court has ruled: “The sovereignty in cultural matters (*Kulturhoheit*), in particular in the school sector, constitutes a key element of the statehood (*Eigenstaatlichkeit*) of the *Länder*, BVerfGE 37, 313 (322), quote from Wollmann 2023, 255, footnote 4

6 in this book, table 2, col. 5, lines 12 and 13). Moreover the *Länder* have the competence to individually regulate the so-called “internal school matters” (*innere Schulangelegenheiten*) which comprise the specification of the school types, the framing of the curricula etc.

In the vertical distribution of responsibilities in the school sector between *Länder* and the local authorities the latter are in charge, as a “mandatory” self- government task, of attending and financing the so-called “external school matters” (*äussere Schulangelegenheiten*) which pertain to the “technical” aspects of the schools, such as the construction and maintenance of the school buildings, provision of equipment, teaching and learning material, school transport as well as the employment of non-pedagogic supportive personnel (janitors etc.). Some 116,000 employees (or 6.8 per cent of the total local government staff) are occupied in these matters (see *ibid.*, col. 7, line 11).

By virtue of the *Länder*’s “sovereignty in cultural matters” the federal government level had traditionally no competence to legislatively, operationally or financially deal with school matters.

12.2 Federal Interventions in the School Sector

12.2.1 Promotion of All-Day Schools (*Ganztagsschulen*)

In 2001 the OECD published its first PISA study in which in a broad international comparison (then comprising 31 countries) the learning performance of 15 years old pupils in three subject matters (mathematics, reading and science) was assessed. According to the findings Germany ranked 21 among 31 countries, came out below the OECD average and fell, for instance, far behind Finland and Japan. The “PISA shock” triggered a broad political debate in Germany on the urgency of profoundly reforming the school system. In 2002 the federal (“red/green” coalition) government under Chancellor *Gerhard Schröder* took the political initiative to promote, as a major plank of its education reform agenda, the introduction of all-day schools country-wide. The *Länder* accepted the federal funding putting aside constitutional and political qualms evoked by the federal interference in school matters (see Wollmann 2023, 267 et seq.).

The federal funding programme (“Education and Care”, “*Bildung und Betreuung*”) that was adopted in May 2003 laid out 4 billion Euro to be spent by 2009. In March 2018 the (christian/social democratic “grand” coalition) federal government under Chancellor *Angela Merkel* increased the federal funding by another 3.5 million Euro. Moreover, in June 2020 it was ramped up by another 2 billion Euro under the heading of “combatting the consequences of the Covid-19 pandemic”. Furthermore, in September 2021, a federal law was adopted which set the ambitious goal to entitle each child, by 2026, to be enrolled in an all-day primary school.

The decision whether, when and how to use of the federal funding programme lies primarily with the local responsible actors (*Schulträger*) that is, essentially with the local authorities themselves. It is up to them to elaborate the application (specifying available space, personnel, equipment etc.) and to submit it to the Land authorities that manage the federal funding (and possibly complementary Land co-financing). Since its inauguration the federal all-day school programme has been broadly utilized by the local authorities and has been increasingly demanded by parents and other local stakeholders. By 2021 71.5 per cent of total number of 19,041 primary schools have been turned into “all-day schools” as compared to 13.3 per cent in 2002² hence sextupling since 2002. At the same time 64.3 per cent of the (3146) the high schools (*Gymnasium*) have changed to the all-day format.

When applying for and setting up all-day schools the local authorities have often physically and technically enlarged and improved the existing stock of school buildings and equipment. Since the pedagogic concept and outreach of all-day schools are often targeted at the “inclusion” of disadvantaged children and increasingly at the “integration” of school-age minors with a “migration background” the local authorities have also seen cause to recruit (and pay) social school workers (*Schulsozialarbeiter*) on their own to assist and complement the “regular” teaching staff. So, the local authorities have become key players in initiating and activating the local “network” which, encompassing the relevant public/municipal actors (such as their administrative social and youth units) as well as non-public/societal organizations and actors that make up and invigorate the local “education landscapes” (*Bildungslandschaft*) in which the all-day schools have proved to be “crystallization points” (Klemm 2013, 307).

The numerical preponderance which all-day primary schools (*Grundschulen*) as well as all-day high schools (*Gymnasien*) have attained in the meantime in most *Länder* has ushered in an across-*Länder* conformity or even uniformity in these basic school types. Thus the previous multifariousness of school forms has been rectified that was seen by critics as a peculiar and detrimental feature of the country’s “patchwork federalism” (“*Flickenteppich-Föderalismus*”).

12.2.2 Federal Initiative to Digitize the Schools

Alongside with and parallel to its policy initiative to promote the digitization of public administration on all government levels which prompted the adoption of the (federal) Digital Access Act (*Onlinezugangsgesetz*, OZG) of August 14, 2017 (see Chap. 5 in this book) the federal (Christian democratic/Social democratic “grand” coalition) government under Chancellor Angela Merkel decided in 2017 to launch an “investment offensive” directed at the digitization of the school sector (see

² <https://www.ganztagsschulen.org/SharedDocs/Kurzmeldungen/de/m-o/neue-kmk-statistik-2020-2021.html>

Mussmann and Hardwig 2021, 13; Wollmann 2023, 372 et seq.). As such federal intervention interfered with the traditional “cultural sovereignty” (*Kulturhoheit*) of the *Länder* and was also at odds with the so-called “ban on cooperation” (*Kooperationsverbot*) a protracted political and constitutional controversy arose between the federal government and the *Länder*. At the end an amendment of the Basic Law (article 104c GG) was adopted and went into force on July 20, 2017 putting the federal intervention on constitutionally firm ground.

Under the so-called Digital Pact the federal government provided the amount of 5 billion EURO for the period between 2019 and 2024 for the digitization of the schools. Some 40,000 schools were potential beneficiaries of the funding which amounted to an average of 120,000 Euro for each (see Wollmann 2023, 375 et seq.) In 2020, in the face of the Covid-19 pandemic and of additional investment needs the federal funding was increased by another 1.5 billion Euro.

Calling up and utilizing the federal funding (and possibly complementary *Land-co-funding*) had a slow start. As the local authorities were required to work out and submit concepts of how to make use of the funding many of them initially lacked the skilled personnel to prepare, implement and IT support the digitization project. Moreover some of them were hesitant and concerned about whether and how to shoulder the incurred expenditures, be it that the immediately upcoming costs were only partially covered by the federal funding or that they were deterred by the looming follow-up costs (maintenance, repair etc. of the digital equipment, IT consultants etc.). Furthermore, in many municipalities, particularly in rural areas, the connection to broadband technology was not yet available.

Following the outbreak and upsurge of the pandemic in February 2021, the digitization of the school sector has experienced a boost. In the face of complete or partial closures of schools which were imposed as containment measures the introduction and employment of on-line-based teaching and learning strategies gained momentum. The closure interruption was often used by the local authorities to digitally upgrade the school facilities and as well as by the teachers to improve their digital skills (see Mussmann and Hardwig 2021; Köller et al. 2022).

As the Digital Pact (1.0.) was set to expire in May 2024 (its funding of 5 billion Euro was almost completely spent or committed at the end of 2023, see BMBF 2023) there are negotiations between the federal government and the *Länder* under way about financing a follow-up Digital Pact 2.0. Although the ruling social democratic-green-liberal coalition committed itself in its previous coalition agreement to continue the federal funding of a would-be Digital Pact 2.0, it has, in the face of mounting budgetary constraints, shied away from confirming its commitment. As of now (mid-2024) the federal government and the *Länder* have not yet reached an agreement on how to finance a Digital Pact 2.0. While the *Länder* insist on holding on to the previous co-financement formula of the Digital Pact 1.0 under which the federal government bore 90 per cent of the funding the federal government demands that from now on the *Länder* should shoulder 50 per cent of the funding. In the face of the current budgetary woes the outcome of the dragging negotiations and thus the

future of the Digital Pact 2.0 are uncertain, although all sides and stakeholders basically agree that a renewal and follow-up of the Digital Pact is urgently needed.³

12.3 Extended Local Government Responsibilities and “Education Landscape”

In the course of the 1980s in some municipalities “neighbourhood school” projects were initiated (see Weiss 2012, 302) which conceptually drew on the “community-education movement” that, emerging in the UK in the early 1980s, hinged on the idea of getting the local community more actively involved in local educational matters. The concept of the “community-education” inspired also an Ordinance which was passed by the Land of Northrhine-Westfalia in 1988 under the title “The Shaping of School life and the Opening of the School” (see Weiss 2012, p. 306, footnote 30).

Traditionally the responsibilities of the local authorities were focused and essentially restricted “technical” matters (construction and maintenance of school buildings, equipment, employment of “technical” personnel, such as janitors). Since the early 2000s, in the wake of the “PISA Shock” of 2001, the local government actors have seen cause to rethink and redefine the role of the local government level in the school sector and to stretching it far beyond their traditional “technical” ambit.

In 2007 the influential German Association of Cities (*Deutscher Städtetag*) organized a congress under the programmatic heading “urban education”.

Hereby the strategic concepts of a “local level education landscape” (*“kommunale Bildungslandschaft”*) was proclaimed which has been heralded as virtual “paradigm change” in the involvement of the local authorities in the school and education sector (see *Deutscher Städtetag* 2021a, b, c). The “local education landscape” (*“kommunale Bildungslandschaft”*) is intended, as an “engine of urban development”, to assemble multiple local actors and stakeholders around a common and joint local educational cause. Besides drawing on the responsible local administrative units in charge of children and youth matters it is meant to encompass the wide range of pertinent local level education-related actors and facilities, such as child day-care facilities (Kindergartens etc.), music (*Musikschulen*), adult education facilities (*Volkshochschulen*), local libraries and the like (see Vogel 2015, 10; Vorholz 2010).

In the meantime such local educational networks have emerged under different labels such as “communal education landscape”, “local responsibility network”, “regional education network”, “learning on the site” and the like with model projects in many municipalities and counties (see Weiss 2012, 304). For instance, in the Land of Northrhine-Westfalia in 51 (out of 53) counties and country-free

³ <https://de.statista.com/statistik/daten/studie/1308090/umfrage/gefluechtete-kinder-und-jugendliche-aus-der-ukraine-an-deutschen-schulen/> data for end-2023

municipalities such “regional education networks” have come into existence in which, besides and complementing the schools (e.g. by local authority-employed social workers, pedagogical counsellors), the local administrative units, the local cultural and sport facilities etc. join forces to mobilize a collective contribution of the “local community” to the common “educational cause”.

Besides in many municipalities and counties education offices (*Bildungsbüro*) which, linked with the mayor or county commissioner (*Landrat*) or with a functionally related administrative unit, have the task to coordinate education related activities and networks. In the pursuit of these activities they have been likened to and called “innovation laboratories of local government” (see März et al. 2021, 6). In the meantime about half of the county-free municipalities and counties dispose of such organizational units (see Sendzig 2020, 9).

Moreover, in a growing number of counties and municipalities local “education reports” (*Bildungsberichte*) have been elaborated and published in which data-rich overviews are given of the education-related local development and its sundry actors and institutions, often covering kindergarten, primary, secondary, vocational schools as well as vocational training. Thus, they provide the ground for the local education development planning (see Sendzig and Abendroth 2016).

As evidenced by “school development plans” which have been adopted by (municipal and county) councils the all-day schools have become key components and “crystallization cores” (Klemm 2013, 307) of the “local education landscape”.

Somewhat reminiscent of the “neighbour school” approaches of the 1980s steps have been taken in *Land* legislation to involve and entitle local authorities as well as parents’ boards in the formulation of the “school programmes” (possibly pertaining to pedagogic goals, methods etc.) or even being consulted in the appointment of the school directors (see Vorholz 2010, 70 et seq.).

12.4 Summary and Perspective

The vertical distribution, in Germany’s multi-level system, of responsibilities in the school sector has, since the early 2000s, experienced a distinct and somewhat contradictory change.

On the one hand, the school sector which was traditionally characterized by the “sovereignty in cultural matters” (*Kulturhoheit*) of the *Länder* has undergone a “centralizing” shift through a sequence of federal interventions exemplified by the federal promotion of all-day schools and of the digitization of the schools.

On the other hand, the functional and operational role of the local authorities as decentral actors has been expanded and strengthened. The “simultaneity” of two overlapping and somewhat opposite trends suggests a peculiar flexibility and adaptability of Germany’s federal multi-level system (see Scheller 2010, 277; Wollmann 2023, 379).

In sum, some 76,000 local employees (or 5.4 per cent of the total local workforce, as of 2021) are involved in and mark the broadened span of school-related

activities of the local authorities (see Chap. 6, Table 6.3, line 8). Hereby, judging by the average personnel strength in school matters per local authority, the county-free municipalities stand out with a staff of 49 compared to 27 in county-affiliated municipalities and 60 in counties (see *ibid.* table 5).

While traditionally the responsibilities of the local authorities were focused on and essentially restricted to “technical” matters (construction and maintenance of school buildings, equipment, employment of “technical” personnel, such as janitors) the local authorities have, since the early 2000s, in the wake of the “PISA-shock” of 2001, seen cause to redefine and expand their role in the school sector.

Thus, the concept of “local education landscape” (*kommunale Bildungslandschaft*) has been heralded which aims at assembling multiple local actors and stakeholders around a common and joint local educational cause. Besides drawing on the relevant local administrative units engaged in children and youth matters the “local education landscape” is meant to comprise a wide range of pertinent local level actors and facilities, such as child day-care facilities (*kindergartens*), music schools (*Musikschulen*), adult education facilities (*Volkshochschulen*), local libraries and the like (see Vogel 2015; Vorholz 2010). In line with the federal policy initiative targeted at the digitization of the schools and drawing on pertinent federal funding the local authorities have engaged themselves operationally and financially in the digitization of the schools.

The involvement of the local authorities in school sector has been challenged and stressed by the mounting influx of asylum seekers and, since Russia’s invasion of Ukraine, of Ukrainian refugees. The local authorities are called upon, within their general responsibility for the livelihood and “integration” of the asylum seekers and refugees, to provide them with adequate educational opportunities. This applies in particular to the some 220,000 school aged (out of about 1 million Ukrainian refugees) who (as of end-2023) have enrolled in general or vocational schools.³ Within their “technical” responsibility for school matters, the municipalities have to adapt the physical infrastructure of the schools and their (also digital) equipment to the growing student body.

Moreover, within their “integration” mandate they are held to assist the school-aged children in acquiring the German language skills and thus in adequately attending the school classes and in connecting with the German environment and society. These school-supporting initiatives of local authorities are deemed all the more important as meanwhile 39 per cent of the students of general and vocational schools have a “migration background” and in big city schools classes occasionally count up to 90 per cent students “with a migration background”.⁴

The OECD’s first PISA report of 2001 triggered a momentous reform debate on Germany’s school system as according to its findings the country’s school performance ranked merely 21 among then 31 survey countries and distinctly below the OECD average. Since 2001 every 2 years under the OECD umbrella internationally comparative studies have been conducted on the school performance of 15 years old

⁴<https://mediendienst-integration.de/integration/schule.html> data for 2021

pupils in three subject matters (reading, mathematics and science). While according to the PISA findings of 2018 Germany's performance level made some advances moving to 13th among then 38 countries and slightly above the OECD average it still falls clearly behind top-ranking China, but also behind European countries such as Estonia, Finland and Ireland.⁵ According to the recent PISA findings (see OECD 2023a, b).

Germany's school performance has markedly regressed between 2018 and 2022 as the "overall 2022 results are the lowest ever measured in Germany by PISA in all three subjects" (ibid.). As a result Germany ranks 21 among 81 monitored countries slightly above the OECD countries average.

So despite the federal intervention, the engagement of the *Länder* and, last but not least, the extended involvement of the local authorities the overall educational performance of Germany's schools has, in comparative perspective, remained comparatively low.

In the discussion several arguments and explanations are put forward.

So, reference is made to chronical understaffing of the teaching personnel which entails oversized classes that, in turn, leads to educationally detrimental student teacher ratios and ensuing problematic educational results.

Moreover, the high percentage of students "with migration background" is critically evoked who do not know enough German to sufficiently understand and fruitfully attend classes held in German. In the PISA report 2022 it is stated that in Germany "the percentage of the 15 years old pupils 'with migration background' has risen from 12 per cent in 2012 to 20 per cent in 2022. Some 63 per cent of immigrant students... reported that the language they speak at home most of the time is different from the language in which they took the PISA assessment" (see OECD 2023a, b). This plausibly implies that the limited knowledge of and practice in the German language negatively affects the individual educational performance. In fact, in certain (big city) districts and urban areas pupils "with migration background" make a majority of the classmates in what, as observers critically argue, tends to lower the teaching quality and learning results.

Third, according to a recent survey (see InitiativeD21 2022, 42 et seq.) about one third of the pupils of elementary schools (*Grundschulen*) still lack digital access and use in their classes which hints at a significant backlog in up-to-date teaching and learning.

This list of surmised weak spots in the existing school sector gives some clues on where and how reforms appear to be called for and promising.

⁵ <https://www.oecd-ilibrary.org/sites/28450521-en/index.html?itemId=/content/component/28450521-en>

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Chapter 13

Coping with the Covid-19 Pandemic



Abstract Traditionally Germany has a decentralized public health system in which the local health authorities (*Gesundheitsämter*) play a pivotal role in exercising a wide range of health inspection and infection disease prevention functions. In reacting to the outbreak of the Covid-19 pandemic in early 2020 extremely fast a “centralized” crisis management regime co-directed by the federal and the Länder governments was put in place. Subsequently the rapidly expanding panoply of local level measures and activities (vaccination, lockdowns, testing, tracing, monitoring etc.) was carried out under “centralized” guidance. As soon as the pandemic was regarded overcome in early 2023 the decentral local health authorities have resumed their traditional responsibility in infection control and prevention.

Keywords Covid-19 pandemic · Local health authorities (*Gesundheitsamt*) · “Centralized” Covid-19 crisis management

13.1 The Onslaught of the Covid-19 Pandemic

As many countries world-wide Germany was severely hit by the Covid-19 pandemic as well. The first case of the novel coronavirus was registered in Germany on January 28, 2020 in the Land of Bavaria whence the pandemic spread and raged in several phases until it subsided in early 2023. Country-wide the number of corona infections rose to over 38.7 million cases.¹ The virus-attributed death toll reached some 180,000. During its fateful course the pandemic profoundly changed the institutional, social and economic fabric of the country.

¹ <https://de.statista.com/statistik/daten/studie/1102667/umfrage/erkrankungs-und-todesfaelle-aufgrund-des-coronavirus-in-deutschland/>

13.2 Public Health Provision in the Multi-level System

The political responsibility and legislative competence for public health matters fall predominantly to the Länder—with the important exception of the (federal) Infection Prevention Act (*Infektionsschutzgesetz*, IfSG). The *Robert Koch Institut* (RKI) is a federal institute within the scope of the Federal Ministry of Health.² It is the federal government's central institution in the field of disease surveillance and prevention. Its core tasks are the detection, prevention and control of diseases, especially infectious diseases. They include the promotion of research and scientific findings as a basis for recommendations on health policy decisions.

The implementation of the public health-related legislative provisions and tasks essentially lies with the some 400 local health authorities (*Gesundheitsämter*) which have been established at the administrative level of the counties (*Kreise*) and county-free municipalities (*kreisfreie Städte*).³ They are in charge of a broad gamut of public health-related functions which, inter alia, encompass the hygiene inspection of local level education, recreation and care facilities. Moreover, they are tasked with implementing the (federal) legislation (IfSG) relative to the prevention and containment of communicable (infectious) diseases. Hereby they cooperate with the health-related Länder ministries and with the federal health institute (*Robert Koch Institut*, RKI).

Because of the pivotal role which they have in carrying out public health-related tasks the local health authorities (*Gesundheitsämter*) located at the administrative level of the counties and county-free municipalities form the institutional pillar in the country's highly decentralized public health system. They are directed by a physician acting as the leading public health officer (*Amtsarzt*) and staffed with medical as well as administrative personnel. Since the 1990s, due to fiscal retrenchment measures, the personnel of the local health authorities has been significantly reduced. In 2015 in total they counted some 17,000 employees among whom were 2528 physicians.

13.3 Development and Phases of the Political and Operational Reactions to the Pandemic

The political and administrative responses to the Covid-19 pandemic which reached Germany in early January 2020 unfolded in several phases (see Kuhlmann and Franzke 2021, p. 4 et seq.).

²https://de.wikipedia.org/wiki/Robert_Koch-Institut

³<https://kommunalwiki.boell.de/index.php/Gesundheitsamt>

13.3.1 Initial Local Level Responses

Following the outbreak of the Covid-19 pandemic (the first infection was registered on January 28, 2020) the infection risk was initially rated by authoritative federal health institute (*Robert Koch Institut*, RKI) as “low”. Reflecting the decentralized structure of the Germany’s public health system the local health authorities (*Gesundheitsämter*) were the first to respond on the basis of the federal Infection Prevention Act (IfSG). So it was up to them to initiate first containment measures that, comprising social distancing, masking, closures of schools and kindergartens etc., tracing and quarantining, were tailored on and restricted to the specific local situations. At that time these local measures appeared appropriate and sufficient to contain the emerging pandemic. The availability of effective vaccination still seemed a far cry.

13.3.2 Rapid Set-up of a “Centralized” Crisis Management

The rate and speed of political and operational response to the Covid-19 pandemic changed dramatically when, in the face of a mounting wave of Covid-19 infections, the federal health institute (RKI) raised the infection risk from “low/medium” to “high”. On March 16 the Federal Government and the *Länder* governments agreed on “joint guidelines to slow down the spread of the Corona virus” that was designed to pursue a concerted country-wide strategy of pandemic containment. The first country-wide Corona lockdown was decided on March 16, 2020 and came into force on March 22, 2020. Subsequently lockdowns were imposed uniformly in all *Länder* which resulted in the closure of all schools and kindergartens country-wide. On March 25, 2020, the Federal Parliament declared an “epidemic situation of national scope” (“*von nationale Tragweite*”).

In stunning rapidity in decisions taken jointly by the federal government and the *Länder* governments the existing basically decentral scheme of the public health system was turned into a “centralized” crisis management regime. This occurred dramatically when following October 2020 the Federal Chancellor and the prime ministers of the *Länder* met biweekly to reassess the situation and to deliberate on continuing or further tightening the containment measures. This mode of intergovernmental coordination and of joint central decision-making has been labelled “intergovernmental centralism” (Kuhlmann and Franzke 2021).

13.3.3 *Return to Decentral Public Health Operation*

As soon as number of Covid-19 infections, hospitalizations and deaths appeared to recede the “centralized” crisis management regime step-wise gave way to and returned to the “normalcy” of territorial coordination, subnational discretion and locally determined crisis responses. Following an agreement between the federal government and the *Länder* adopted on May 6, 2020 the federal government has almost entirely withdrawn from the “centralist” intervention. Only some common rules and parameters which were uniformly adopted in joint federal- *Länder* agreements remained in force.

Finally on April 7, 2023 the provisions of the (federal) IfSG expired which regulated a range of Covid-19 protection measures, such as wearing FFP2 masks in public transport and in hospitals and care homes. On this occasion the Federal Minister of Health officially declared the Covid-19 pandemic being overcome.⁴

So as the Covid-19 pandemic has come down to an endemic or perhaps even an “ordinary” infection disease level the “centralist” top-down intervention comes to an end while, with the “pendulum swinging back”, the traditional decentral responsibilities and mechanisms in public health provision revolving around of the local health authorities (*Gesundheitsämter*) have returned to prevail.

In other words, in the Covid-19-related crisis management two features and phases stand out which hint at a peculiar responsiveness and flexibility of Germany’s federal multi-level system in that, on the one hand, the instantaneity stands out in which a form of “intergovernmental centralism” bordering an “extra-constitutional” scheme was introduced and, on the other hand, equally fast the traditional decentral structure of the public health system and in particular the local health authorities (*Gesundheitsämter*) regained their traditional decentral role of providing public health tailored on the local situation.

13.4 Covid-19-Related Activities of the Local Level Actors

From the outset the local authorities proceeded to set up local crisis management teams and units, to install local hotlines and establish and operate vaccination centres.⁵ In dispatching personnel from other administrative units to the local health authorities they supported the latter in testing and tracing. They cooperated with the local government-operated hospitals (and other health-related facilities) as well as with long-term care homes and domiciliary care providers. Besides, in order to keep the local administration operational during lockdown periods they largely relied on “home office” work and “online” communication in providing their services.

⁴ <https://www.welt.de/politik/deutschland/article244667248/Karl-Lauterbach-Ende-der-Corona-Pandemie-Wir-haben-die-Pandemie-erfolgreich-bewaeltigt.html>

⁵For an overview see https://kommunalwiki.boell.de/index.php/Kommunen_in_der_Corona-Krise

In the early phase the local health authorities (*Gesundheitsämter*) proved, due to the previous retrenchment measures, seriously understaffed and underequipped to adequately cope with the crucial tasks of testing and tracing infection chains and quarantining. In summer 2020 the armed forces (*Bundeswehr*) dispatched soldiers and personnel to assist the local health authorities in carrying out the tracing.

Consequently, in September 29, 2020 the federal and the *Länder* governments agreed on a “Pact for the Public Health Service” which aimed at strengthening the personnel, organizational and digital resources of the local health authorities.⁶ Hereby the federal government committed itself to provide 4 billion Euro for the duration of 6 years. The goal was to create, until the end of 2021, 1500 new positions (physicians as well as other personnel) and to add another 3500 until the end of 2022.

Moreover the communication capacity of the local health authorities initially turned out to be insufficient as many of them still relied on fax and phone to transmit local data to the federal health institute (RKI), the pertinent Land authorities as well as their local counterparts. Besides if digital equipment was at all available its application was often hampered by using locally different IT systems. Since 2022 further federal programs have been forwarded to push the digitization of the public health structure, foremost of the local health authorities.⁷

13.5 Local Authority-Operated Hospitals

The involvement of the local authorities in combatting the Covid-19 pandemic was also manifested in the hospitals owned and operated by them.

In 2017 out of 560 the public sector-operated hospitals some 500 were owned and run by local authorities, about half by counties and (in particular large) municipalities; 60 hospitals were run by the *Länder*, particularly as university clinics. As compared to the total number of hospitals the share of the public sector-owned came down, between 1966 and 1917, from 37 per cent to 29 per cent, while the share of privately (commercially) run ones rose from 26.7 per cent to 37 per cent.⁸ This development mirrors the impact of the rampant privatization of the hospital sector as private investors, particularly international chains, increasingly entered the German health market.

Nonetheless the local government-operated hospitals continue to play a significant role in the provision of in-patient health care, in particular in rural areas which private sector investors tend to eschew. This strikingly showed in the course and height of the pandemic as they hold a disproportionately large percentage of beds

⁶ <https://www.bundesgesundheitsministerium.de/themen/gesundheitswesen/pakt-fuer-den-oegd>

⁷ <https://www.bundesgesundheitsministerium.de/ministerium/meldungen/bmg-foerdert-digitalisierung-des-oeffentlichen-gesundheitsdienstes>

⁸ https://www.destatis.de/error_path/400.html?al_req_id=Zsbsm1rOvBa3jwHIXRISSwAABFs

and particularly of intensity care beds that were crucially needed for the hospitalization of Covid-19 patients. While in 2017 the local government-operated hospitals made up some 26 per cent of the total number of hospitals their share of intensity care beds amounted to some 38 per cent. This contrasted sharply with the private commercially run hospitals which, while making up 37 per cent of the total number of hospitals, provided only a share of 15 per cent of the intensity care beds. So the local government-operated hospitals were disproportionately burdened with taking care of hospitalized Covid-19 patients.

13.6 Summary and Perspective

In reacting to the outbreak of the Covid-19 pandemic in early 2020 the country's traditionally decentralized public health system revolving around the local level health authorities (Gesundheitsämter) located at the administrative level of the counties and county-free municipalities (temporarily) experienced an incisive institutional and operational change.

In a dramatic shift a "centralized" crisis management regime was installed in an "extra-constitutional" setting the federal and the Länder governments jointly took the key decisions to provide country-wide guidance to combatting the pandemic. At the same time, under that centralized guidance, the local health authorities, along with the local authorities and other relevant local actors carried out the crucial functions of initiating and coordinating the broad range of Covid-19-related activities (closures, tracing, monitoring, vaccination etc.). Initially the local actors proved understaffed and (digitally etc.) underequipped. The first case of the Covid-19 virus was registered in Germany on January 28, 2020 in the Land of Bavaria whence the pandemic spread and raged in several phases before it subsided in early 2023. Country-wide the number of corona infections rose to over 38.7 million cases. The virus-attributed death toll reached some 180,000.

After the cases of Covid-19 infections and hospitalizations receded and the pandemic faded out in early 2023 the (traditional) "normalcy" of locally determined infection control has come to prevail again with the local health authorities (Gesundheitsämter) resuming centre stage again. Due to in the meantime enlarged staffing and improved (digitised) equipment of the local health authorities which has been fostered by federal funding the country's decentral public health system appears to be poised and adequately prepared to meet potential future epidemic and pandemic challenges.

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Chapter 14

Reconstruction of Local Government in East Germany Following German Unification



Abstract In this chapter deals with the historically unparalleled system change and political, institutional and functional transformation which East Germany's local government level has undergone following the German Unification. Among the unique features, inter alia, stands out that the multi-dimensional institutional transition from the centralist Socialist government regime to democratically elected local government was achieved strikingly fast and that the East German local authorities and their personnel proved, in a surprisingly short time, to be capable to effectively act and perform in an entirely changed legal and institutional frame and environment.

Keywords Simultaneity of centralizing and decentralizing trends · Achievements and shortcomings of local level performance · Impressive “track record” and “writing on the wall”

14.1 Key Features of the Post-communist Transformation

In analysing the institutional transformation of post-socialist countries, East Germany has been interpreted to be a “special/exception” case (“*Sonderfall*”, Wiesenthal 1995: 50). This is because in East Germany the collapse of the communist regime and the system transformation coincided with the process and dynamics of German unification and with the GDR's integration into the “old” Federal Republic. Hence, East Germany's transformation was, from the outset, propelled by a triad of exogenous factors, to wit,

- “Institution transfer” (Lehmbruch 2000, 14) by extending the constitutional, legal and institutional order of the “old” Federal Republic onto East Germany
- “Personnel transfer” as tens of thousands of West German officials and experts moved temporarily or permanently to East Germany to get involved in the transformation process
- “Financial transfers” from West German public budgets and social security funds to East Germany.

14.1.1 *Institution Transfer*

The *institution transfer* took off and gained momentum as the politico-administrative structure of the “old” Federal Republic’s “ready-made state” (Rose and Haerpfer 1997) was extended to East Germany. This secular institutional shift set in as early as in spring 1990 when on May 17, 1990 the (for the first time) democratically elected parliament (*Volkskammer*) of the (then still existing) GDR passed a new Municipal Charter that hinged on democratic local self-government. Subsequently in July 1990 the *Volkskammer* decided to re-establish the five *Länder* which the communist regime had abolished in the early 1950s.

The most spectacular act of institution transfer occurred when, on the basis of the Unification Treaty (*Einigungsvertrag*) which was concluded on August 31, 1990 between the governments of the two German states, the GDR was, by way of “accession” (*Beitritt*), integrated into the “old” Federal Republic (as well as into the European Union) at midnight of October 3, 1990. So, in an unprecedented historic “second” the constitutional and legal order of the “old” Republic was extended to East Germany, while, in the same moment, the GDR ceased to exist as a separate state and its legal world vanished.

14.1.2 *Personnel Transfer from West to East*

The institutional transfer was accompanied and bolstered by a massive personnel transfer and “elite import” from West to East as thousands of West German officials and specialists moved, either temporarily or permanently, to East Germany to assist the organizational and personnel transformation of Land and local administration. Twinning partnerships (*Städtepartnerschaften*) were arranged between West German and East German municipalities and counties (Wollmann 1996b, 60 et seq.). Until 1993 some 15,000 West German officials rendered “administrative aide” in Land administration and some 4000 in local authorities by counselling, training and assisting their East German counterparts (Goetz 1993: 452). Moreover, a significant number of West German officials and experts moved to and stayed permanently in East Germany.

By and large institution building in the East German *Länder* and local authorities has unfolded in organizational forms that range from (exogenously inspired) blueprint-type institutional imitation to (endogenously induced) adaptation and self-development (*Eigenentwicklung*, “autochthonous development”, Lehbruch 2000: 14) and (even) innovation (see Wollmann 1996a, b). As East Germany’s institutional transformation took place in a spectacular simultaneity of dismantling the GDR’s state structure, of remoulding existing structures and building new politico-administrative institutions this secular process bore traces of what Joseph Schumpeter, alluding to the elementary forces of capitalism, called “creative destruction” (“*schöpferische Zerstörung*”, Schumpeter 1942).

14.1.3 Institutional Transformation

The GDR's state was, typical of the (post-Stalinist) "socialist" State model, marked by the dual structure of the intertwined State and Communist Party apparatus which, by 1990, was made up of some 1000 administrative units with some 2.1 million functionaries and employees. This "dual" structure and its strict hierarchical control comprised all tiers (central, meso and local) of public administration and, under the doctrine of so-called "democratic centralism", ruled out any autonomy of lower levels (Goetz 1993: 448). A total of 14 meso-level administrative districts (*Bezirke*) were installed which, modelled on the (regional) *oblasti* in the Soviet Union, served as the regional backbone of centralist Party and State rule. In formally retaining the traditional two-tier local government structure the (191) counties (*Kreise*) and (27) "county-free" cities were turned into (centrally directed and controlled) local level State units while the some 7000 ("within county") municipalities played a minimal administrative role.

Following German Unification, the historic task to restructure the defunct GDR State was confronted with the triple challenge of either liquidating part of the "inherited" administrative structures, or of retaining and remoulding them into a new organizational architecture or of creating new ones.

The (191) counties (*Kreise*) and (some 7500) municipalities (*Städte. Gemeinden*) were the only political and administrative structure that institutionally survived the dissolution of the GDR state. Tellingly, since early 1990 when the GRD central government increasingly slid into agony and until early 1991 when the new Länder governments became operational it fell almost solely to the local authorities to bear the brunt of the secular political, institutional and socio-economic system change. In the same vein, they were, from the beginning, confronted with the task of fundamentally remoulding the organizational and personnel structure left behind by the GDR's centralist State.

Manifesting the radical departure from the communist regime's unitary and centralist state model the democratically elected GDR parliament (*Volkskammer*) on March 13, 1990 adopted a new Municipal Charter (*Kommunalverfassung*) thus essentially restoring the concept of local self- government (*kommunale Selbstverwaltung*) (Kuhlmann and Wollmann 2019: 96 et seq.). In accordance with the "dual task" model entrenched in the German tradition the local authorities are in charge of carrying out "genuine" local self- government tasks that basically follow from the traditional general competence clause, on the one hand, and "delegated" ("*übertragene*") tasks which are transferred to them by the State, on the other hand (see Kuhlmann and Wollmann 2019: 161 et seq.).

In restructuring their administration the East German local authorities, strongly drew on organizational designs and practical experience which were transmitted to them, in the frame of "administrative aide" (*Verwaltungshilfe*), by their West German counterparts and advisers. A crucial role in this played the Communal Joint Office for Administrative Management (*Kommunale Gemeinschaftsstelle für Verwaltungsmanagement*, KGSt), a local government-funded non-profit

consultancy organization which has since long acquired high reputation and influence in the field of administrative re-organization. It should be noted that since the early 1990s *KGSt* abandoned its previous advocacy of the “Weberian” administrative model and shifted to propagate a New Public Management (NPM)-inspired “managerialist” New Steering Model (*Neues Steuerungsmodell*, NSM) (see the chapter on “administration” in this book). However, when it came, after 1990, to the administrative restructuring in the East German local authorities *KGSt* conspicuously recommended to do this on the basis of the (traditional) “Weberian” legal rule-bound hierarchical model. Consequentially, in contrast to their West German counterparts the East German local authorities initially exhibited considerable restraint (Wollmann 1996b: 156; Kuhlmann et al. 2008: 856).

On the top of it, under the Municipal Asset Act of July 6, 1990 and the Unification Treaty of August 31, 1990 a myriad of (social, cultural, health etc.) organizations that until then were operated under the responsibility of the GDR state and its state economy were transferred (“communalized”) to the local authorities. As a result, the number of local government employees virtually “exploded” (skyrocketed, for instance, in county-free cities, within weeks from 5000 to 50,000). (For the task of the local authorities to reduce their “overstaffed” personnel see below.)

14.1.4 Territorial and Functional Reforms

Immediately after the formation of the new *Länder* in October 1990 their governments and parliaments turned to territorially redraw (upscale) the counties whose size (averaging 80,000 inhabitants) was considered to seriously impair their administrative capacity (see Wollmann 2010a, b; Kuhlmann and Wollmann 2019: 203 et seq.). Moreover, territorial county reforms aimed at preparing the ground for follow-up “functional reforms”, that is, for transferring (decentralizing or deconcentrating) further administrative functions from Land administration to local authorities (see Kuhlmann and Wollmann 2019, 175).

14.2 Local-Level Personnel

The GDR’s state sector counted some 1100 administrative units with a total of some 2.1 million functionaries and employees. In addition, the ubiquitous State Security Service, *Stasi*, comprised some 85,000 official and 180,000 “unofficial” collaborators (Derlien 1993: 325).

At the local government level on the heels of the (voluntary or forced) exodus of the Communist party-appointed (“*nomenklaturist*”) position-holders, a new generation of local leaders has succeeded. Most of them were administrative “newcomers” without previous practice in municipal administration and often with a professional and occupational background in engineering and natural science, many coming

from management and technical functions in (meanwhile dissolved) state economy companies.¹ Some were administrative “old-timers” previously employed in local administration, often with a technical background as well. The fact that the East German “new local administrative elite”, be they newcomers or old-timers, predominantly have an educational and occupational background in engineering and other technical trades makes for an intriguing difference from their West German counterparts among whom a legal or quasi-legal background prevails (Wollmann 2002: 170).²

14.2.1 Reduction of Personnel

After 1990 the newly formed five *Länder* and the local authorities were confronted with the challenge of reducing an “oversized” workforce ‘inherited’ from the defunct GRD state. As of June 30, 1991 the personnel of the new *Länder* totalled some 634,000 employees which amounted to a personnel density of 39 per 1000 inhabitants compared to 29.50 in the West German *Länder* (Wollmann 1996b: 98). Between 1991 and 1999 they cut their personnel by 16.24 per cent arriving at a personnel density of about 30 employees per 1000 and hereby narrowing the gap to their West German counterparts (see Jann 2001: 114, table 1).

As a result of the myriad of institutions and personnel that after 1990 were transferred (“communalized”) to the local authorities their workforce doubled in size (per capita) compared to their West German counterparts (Wollmann 2002: 168, table 5). Since the early 1990s, the number of East German local government employees has been drastically reduced and has, by the end of the 1990s, been almost halved from some 660,000 in 1990 to some 340,000 in 1999 (see *ibid.* table, Jann 2001, 114, table) which came close to the per capita personnel size in their West German counterparts.

14.2.2 Vocational Training and Qualification of Administrative Personnel

Applying the complex legal system transferred “from West to East” and coping with the multiple administrative tasks following Unification posed unprecedented challenges to the East German administrative personnel.

In order to prepare and qualify the administrative staffs to master these difficulties a huge campaign of vocational training was launched. Funded by the federal government and the West German *Länder*, crash courses were organized and offered

¹For detailed data see Wollmann 1996b, 124, table 9.

²For detailed data see Wollmann 1996b, 125, table 10.

that involved thousands of Land and local government employees (see Wollmann 1996b: 130). However, amidst the operational turmoil and urgency, often hardly time was available to adequately attend such vocational training and qualification courses. Consequently “learning by doing” and “training on the job” was bound to prevail.

There are strong indications that East German administrative personnel have learned, by and large, remarkably fast to cope with the new legal world and task load. This was plausibly demonstrated, for instance, in a study on the implementation of the federal building law which constitutes a particularly complicated piece of legislation: After an initial period in which the legal provisions appear to have in part been “ignored” by local practitioners, their implementation and application has apparently soon arrived at largely matching the practice and standard in West German local authorities (see Wollmann 2002: 171; Kuhlmann 2004).

Besides, in dealing with the turbulence and intricacies of the transformation process, the East German administrative personnel also exhibited the disposition to seek “pragmatic” and “ad hoc” solutions. Such pragmatism arguably draws on the collective experience which the East Germans at large were prone to make under the communist regime when, vis-à-vis the endemic bottlenecks, supply gaps and malfunctions of the socialist system and economy, they learned to improvise and to “find ways out” in what in hindsight was pointedly called a “chaos competence” (Marz 1992 quoted in Wollmann 1996b, 144; see also Schimanke 2001: 180 et seq.; Kuhlmann 2004).

14.3 Concluding Remarks

On the one hand, East Germany’s transformation in Land as well as local administration has proceeded remarkably fast and has attained an institutional format and a performance profile coming, by and large, close to their West German counterparts (see Jann 2001: 105). The essential reason for this “fast track” of East Germany’s of politico-administrative transformation plausibly is that it was embedded in the process of German Unification and driven by East Germany’s integration into the “old” Federal Republic. Thus, basic institutional decisions (such as, the introduction of the Länder, of local self-government, of rule of law/*Rechtsstaat*-guided public administration, but also the inclusion in the European Union) were pre-determined and “foregone conclusions” by virtue of the GDR’s accession (*Beitritt*) to the “old” Federal Republic, spectacularly at midnight of October 3, 1990. By contrast, in the other ex-communist CEE countries the basic decisions of their politico-administration transformation (nation-building, intergovernmental architecture, accession to the EU etc.) were the result of often protracted political conflicts and compromises.

On the other hand, the “fast track” of East Germany’s transformation has had noticeably negative consequences. As it was, from the outset, strongly driven by “exogenous” factors and actors, in particular by the triad of institution, personnel

and financial transfers, East Germany's transformation came to be perceived and criticized as "externally determined" and even as "colonization" (*Kolonisierung*) (Dümcke and Vilmar 1996).

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Chapter 15

Summary and Conclusions



Abstract In responding to recent multiple challenges (climate and energy crisis, influx of migrants and asylum seekers, Russia's invasion of Ukraine etc.) Germany's multi-level political system has, on the one hand, experienced a "centralizing" shift through increased political, legislative and financial interventions and measures of the federal government (as well as of the EU). On the other hand, the political, administrative and operational role and standing of the local authorities as "decentral" actor level has grown with the accompanying expansion of their responsibilities and tasks. While the local government level has exhibited an overall impressive track record in past and current performance and achievements, enduring shortcomings as well as looming imponderabilities (potential deepening of the migration and asylum crisis, Russia's still ongoing invasion of Ukraine etc) put the political and financial viability of local government at risk.

Keywords Shifts in Germany's federal multi-level system · Changes in the multi-functional model of local government · Achievements and shortcomings of the development

15.1 Trends in Germany's Federal Multi-level System

15.1.1 *Centralizing in Multi-level Decision-Making*

In response to the recent multiple challenges the federal government has embarked upon policy initiatives and legislative and financial interventions that have entailed a centralizing effect impinging on the *Länder* and local government levels. At the same time the European Union has enhanced its "Europeanizing" influence on its Member States as well as on their subnational levels by stepping up its norm-setting and funding.

Exemplary of this development is the energy sector. Alarmed by the nuclear disaster of Chernobyl in 1986 and further propelled by the nuclear disaster of Fukushima in 2011 the federal government has embarked on a policy of "energy

transition” (“*Energiewende*”) that strongly involves the local government level (see Chap. 11).

Another striking example is the school sector. Although the *Länder* are traditionally solely responsible for the schools (and the local authorities for the “technical” school matters) the federal government alarmed by the OECD’s PISA findings initiated far-reaching reforms in the school sector (all-day schools, digitization etc.) (see Chap. 12).

Moreover, the waves of asylum seekers and refugees that peaked in 2015 and 2016 and steeply surged again following Russia’s invasion of Ukraine in February 2022 have prompted the federal government to assume a key role in politically, legislatively and financially responding to this unprecedented challenge (see Chap. 10).

In sum in responding to these (and other) international and domestic challenges the federal government has expanded its “central” policymaking position and role in the federal multi-level setting.

15.1.2 Growing Importance of the Local Authorities as Decentral Operational Level

The broad functional profile which traditionally characterizes the position of the local authorities in Germany’s multi-level system is rooted in the territoriality-based “dual task” model which comprises local self-government tasks as well as tasks “delegated” (transferred) to them by the Land level (see Wollmann 2003, 2016; Wollmann and Bouckaert 2006, see also Chap. 2 in this book). Within the country’s two-tier local government structure the “delegation” of public functions applies in particular to the (107) single-tier county-free municipalities (*kreisfreie Städte*) and (294) upper-tier counties (Kreise). Up to some 80 per cent of all implementation-requiring legal provisions are carried out by the local authorities (see Schmidt-Eichstaed 1999, 330). The same holds true also for tasks that originate directly or indirectly from the EU (see Rechlin 2004, 10). Moreover, up to two thirds of all public (infrastructural) investments are handled by the local authorities (see Ruge and Ritgen 2021, 129 f.). In comparative perspective, Germany’s local government system ranks, along with Sweden, among the functionally strongest in Europe (see Wollmann 2008, pp. 293 et seq.).

In parallel and in reaction to the growing outreach of federal (as well as EU) policy initiatives and interventions the importance of the local authorities as decentral operational level has been further enhanced. Thus they are called upon to play a key role in advancing the “energy transition” (*Energiewende*) by realizing a plethora of energy-saving and renewal energy-related activities (see Chap. 10.1007/978-3-031-68354-1_11) and in accommodating and integrating the asylum seekers and refugees (see Chap. 10).

Hence, on the one hand, under the pressure of and in response to multiple international and domestic challenges Germany's multi-level system has experienced a "centralizing" trend as the federal government has assumed new competences and tasks "top-down" affecting the subnational levels.

On the other hand, the expansion of upper (federal and EU) level policy initiatives and interventions has upgraded and strengthened the position and task profile of the local authorities in their pivotal local level implementation function. The "simultaneity" of these two overlapping seemingly contradictory, but in fact mutually supportive trends of strengthening "centralized" decision-making and "decentral" implementation arguably attests the peculiar adaptability and flexibility of Germany's federal multi-level system (see Scheller 2010, 277; Wollmann 2023, pp. 355 et seq.).

15.2 Local Autonomy

Under article 28 of the Federal Constitution (Basic Law, *Grundgesetz*) the local authorities (municipalities and counties) are "guaranteed the right to regulate all local affairs on their own responsibility within the limits prescribed by the laws". Later the 1994 amendment of article 28 Basic Law has added that "the guarantee of self-government shall extend to the bases of financial autonomy".

Although the action space within which the local authorities operate is framed and restricted by manifold (federal, *Land* and also EU-derived) legal and financial provisions the local authorities dispose of a significant degree of local autonomy. For identifying and "measuring" the scope of the local autonomy in international comparative research a "Local Autonomy Index" (LAI) has been construed which is based on 11 indicators and covers 39 European countries (see Ladner et al. 2016; Kuhlmann and Wollmann 2019, 28 et seq.). Among the indicators figure the "policy scope" (the range of local government tasks), the effective political discretion (the extent to which local government has real decisional influence over these functions) and fiscal autonomy (the extent to which local government can independently tax its population). According to this index Germany's local authorities rank fifth behind Switzerland, Sweden, Finland and Ireland in the group of 39 European countries.¹ This signals a comparatively high degree of local autonomy notwithstanding the dense net of legal provisions and financial restrictions under which the local authorities act.

¹ As of 2014

15.3 Political Actors and Arena

Until the 1990s Germany's local government system was marked, with variance among the *Länder*, by the elected local council and a council-elected mayor. In the early 1990s the *Länder* proceeded to profoundly rewrite their local government codes by introducing the direct election of the local chief executive (mayor or county commissioner, *Landrat*), the recall of the latter by local referendum as well as binding local referendums on local matters (see Chap. 3). This broad scope of direct democratic procedures is, with the exception of Switzerland, unmatched in other European countries. The direct election of the mayor and of the *Landrat* has significantly changed the local political dynamics by strengthening the leadership position particularly of the mayor in the local political arena. This also pertains to his role as key “networker” (“reticulist”, Power 1973) in activating and coordinating the (local) *governance*-type actor constellations and “policy networks”.

15.4 Local Government and Governance

Historically, dating back to the late nineteenth century the local arena was marked by the emergence and co-existence of a “political community” embodied by the elected local government, on the one side, and of a “social community” made up of an array of “societal” actors, such as non-profit charities, voluntary groups, cooperatives etc., on the other (see Wollmann 2006). In the concept and language of the “governance” debate (seminal Rhodes 1997) such multidimensional local actor constellations may be seen and interpreted as early (“embryonic”) forms of (local) *governance*-type settings. Since the 1980s, in the wake of EU-driven marketization and New Public Management-inspired “outsourcing” of the public functions the organizationally integrated local government sector has been organizationally fragmented and frayed while at the same time the non-public and societal actors and organizations have multiplied and extended. As a result (local) *governance*-type actor constellations typically made up of public/municipal as well non-public/societal actors have further expanded. In assembling around and focusing on specific policy issues they form “policy networks” (see Coleman 2015). In coping with the recent upsurge of challenges the local authorities have increasingly turned to and set on local level *governance*-type actor constellations and networks as a key action potential and strategy.

15.5 Administrative Profile

Since the early 1990s, under the budgetary pressure building up in the wake of the German Unification, an incisive administrative reform drive has been set off which, finally catching up with the internationally rampant New Public Management (NPM) movement, was guided by a NPM variant labelled “New Steering Model” (NSM) (see Banner 1991, see Chap. 4 in this book). Different from most other countries where NPM-prompted reforms have been initiated and pushed “top-down” by the central government level in Germany the NPM/NSM-inspired modernization impulse was taken up and realized at first on the local government level. By introducing managerialist principles (such as “decentralized resource management”, “achievement accounting”) the traditional “Weberian” administrative schema of legal rule-based hierarchical administration has been significantly remoulded. As a result, on the one hand, the organizational setting, operational capacity as well as citizen and customer orientation of local administration have been distinctly recast and improved. On the other hand, a comprehensive “paradigmatic” shift from Weberian bureaucracy to a managerial NSM administration has not occurred (see Kuhlmann et al. 2008, 260).

Consequently local administration is marked by a mix and “amalgam” of NSM-inspired features and traditional (“Weberian”) elements which has been labelled a “neo-Weberian” type of public administration (see Bouckaert 2023; Kuhlmann et al. 2008, 860).

15.6 Provision of Public Service Provision

In a practice dating back to the late nineteenth century the municipal utilities (*Stadtwerke*) have been a pillar in the local level provision of public services (energy, water, sewage and the like) (see Chaps. 8 and 11). After during the 1980s under the impact of the EU-propelled market liberalization they lost ground to private sector enterprises the local authorities and their companies have subsequently advanced to “re-insource” and “remunicipalize” the provision of public services (see Bönker et al. 2016; Wollmann 2018; Bauer and Markmann 2016). Indicatively the *Stadtwerke* have been recognized and touted in the international debate as a “role model of a community-based company” (Wagner et al. 2021, 3).

15.7 Local “Social” Community (Cooperatives etc.)

Historically dating back to the nineteenth century, societal (“third sector”) actors and organizations typically originated from self-help initiatives that were motivated and meant to provide personal social care, energy, housing and the like for their

themselves or for their peers (see Henriksen et al. 2016, 23). They were mostly organized in the form of cooperatives (*Genossenschaften*). Since the early 2000s the energy-related cooperatives have spread significantly (see Chap. 11, Sect. 11.4) making them the frontrunners in European countries (see Yaldiz et al. 2015).

15.8 The Operational Capacity and Performance of the Local Authorities: Between Achievements and Shortcomings

In overlooking and recapping the development of local government and its activities as addressed and laid out in this book a “balance” may finally be cautiously drawn in viewing and weighing achievements and upsides, on the one hand, and shortcomings and downsides, on the other.

15.8.1 Achievements and Upsides

In the historical development local government has exhibited a by and large remarkable “path-dependently” persistent capacity to act effectively.

15.8.1.1 Coping with the Exceptional Post-war Situation

Historically the extraordinary role stands out which the local authorities played in 1945 at the end of the Second World War that had been unleashed by Nazi-Germany. Confronted with vast destruction of housing and infrastructure throughout the country and with boundless socio-economic and human misery exacerbated by the influx of some 14 million refugees and expellees from Germany’s (former) Eastern provinces the local authorities stood practically alone to cope with this unparalleled challenge while the administrative structure of the central Reich government ceased to exist and new *Länder* structures were not yet re-established. In this crucial post-war situation the local authorities and their personnel exhibited an extraordinary readiness and ability to cope with this historically unprecedented challenge. During the subsequent years the local authorities continued to prove their key operational importance in the country’s rampant post-war reconstruction and in what became known as the “economic miracle” (see Wollmann 2017). Stored in the collective memory this singular post-war experience has shaped the self-perception and self-confidence of the local government level with regard to its position and responsibilities in the country’s federal multi-level system (see Wollmann 2017).

15.8.1.2 The Double Challenge of Functional Expansion and Territorial Reforms in the 1960s

During the late 1960s and early 1970s Germany's local government system experienced another historically extraordinary challenge on two scores: First, the functions of the local authorities greatly expanded (especially in social and ecological matters) following the policy reforms inaugurated, after 1969, by the Social Democratic/liberal coalition government under Willy Brandt aiming at promoting the "advanced welfare state". Second, in parallel the *Länder* pushed massive local level territorial reforms of the historically small-sized local level territorial structure meant to render the local authorities fit to cope with the expanded task load. As a result the number of municipalities was county-wide cut by 65 per cent and that of the counties by 45 per cent with significant variance between the *Länder* (see Chap. 2, Sect. 2.9 in this book). Thus the local government level was faced with the daunting double challenge of simultaneously shouldering a greatly expanded functional load and of managing this on the basis of a radically redrawn territorial map and of a correspondingly massively recast organizational structure. It may well be counted among their major achievements that the local authorities have by and large successfully passed this extraordinary double-barrelled "stress test".

15.8.1.3 Coping with East Germany's System Change Following German Unification

Following German Unification in 1990 and the integration of the German Democratic Republic (GDR) into the Federal Republic the East German local government level which had been dwarfed, under the centralist communist regime, to a minimal function has been rebuilt virtually "from scratch" in reviving the pre-1933 tradition (see Wollmann 2021, see also Chap. 14, Sect. 14.1.4 in this book). So the East German local government level and its actors faced the unprecedented challenge, besides coping with the secular socio-economic transformation, to act in an entirely upended legal and functional system transferred from "West to East" literally "overnight". The fact that East Germany's local authorities and their actors succeeded astoundingly fast to adopt and perform effectively may plausibly be deemed another lasting achievement of in the country's local government development and performance.

15.8.1.4 Recent Further Expansion of the Multi-functional Model of Local Government

In responding to the recent multiple challenges the local authorities have been put in charge with and have assumed more responsibilities and tasks than in most other European countries thus further widening the traditional multi-functional model.

This shows in their broad engagement in the "energy transition" (see Chap. 11) and in accommodating and integrating the asylum seekers and refugees (see

Chap. 10, Sect. 10.7). In doing so the local authorities have exhibited a remarkable readiness and capacity to effectively tackle these manifold new tasks. This is exemplified by the so-called “opted local authorities” (*Optionskommunen*) which decided to assume the sole responsibility for providing the full range of support and services for long-term unemployed (see Chap. 9, Sect. 9.6) in a stand-alone responsibility which is without parallel in other European countries. In stretching out their outreach in crucial policy areas the local authorities have characteristically widened the scope of topically related and relevant sectors and measures. These comprise, for instance, with regard to “energy transition” (*Energiewende*), energy saving and efficiency measures, installation and use of renewable energy, district heating, energy, energy counselling etc. (see Chap. 11, Sect. 11.2) or, with regard to accommodation and integration of asylum seekers, setting up collective accommodation facilities, procuring private dwelling, providing social assistance, language training, places in kindergartens and schools etc. (see Chap. 10, Sect. 10.7).

15.8.1.5 Extension of (Local) Governance-Type Actor Constellations

The expansion of local level tasks has been accompanied by the formation and extension of local actor constellations and networks that typically comprise institutions and actors tied to local *government*, on the one side, and non-public, “societal” and private sector actors and organizations, on the other, which that conceptually identified as and labelled (local) “*governance*” structures (see Rhodes 1997) and (local) “*policy networks*” (see Coleman 2015). In pursuing their activities the local authorities have increasingly turned to and set on mobilizing and coordinating such local actor constellations. So in engaging in the *energy transition* (*Energiewende*) they involve local administrative units proper, *Stadtwerke*, energy cooperatives, citizens, private investors etc. (see Chap. 11). In a similar vein in coping with the accommodation and integration of asylum seekers and refugees they engage, besides their own organizational and personnel resources, local housing companies, local voluntary groups, schools and kindergartens etc. (see Chap. 10). Likewise, in pursuing wider responsibilities in the school sector beyond the traditional “technical” ones, the local authorities have bet on the cooperation and interaction, possibly within “education landscapes”, with a broad spectrum of education-related local level actors and organizations (see Chap. 12). Although local level cooperation between municipal and non-public actors was not a novelty in the local arenas the recent intensification of such governance-type activity and interaction patterns and the strategic use and employment thereof by the local authorities in the pursuit of their activities does mark a new phase and dynamics in local level problem-solving.

In sum there are good reasons to conclude that the functional strength and operation capacity of the local government level has been affirmed and enhanced particularly on three scores.

First, the multi-functional profile which has traditionally characterized Germany's local government system and made it one of the functionally strongest in Europe has been further expanded in response to multiple challenges and has reinforced its functional salience and prominence in the decentral implementation of public tasks.

Second, the emergence and formation of *governance*-type actor constellations comprising local government related actors and non-public actors has significantly widened and complemented the action space and action capacity of local *government*.

Third, the directly elected mayors (and county commissioners, *Landrat*) who have been introduced in all *Länder* since 1990 have proved to be key political actors in local *government* as well as key ("networking", reticulist) players in the local *governance* setting and have thus added political dynamics and "muscle" to the activities of the local authorities.

15.8.2 Shortcomings and Restrictions

However in taking on and pursuing their manifold tasks the local authorities have encountered serious hurdles, restrictions and setbacks.

15.8.2.1 Multi-level Decision-Making

The retarded course and "unfinished business" of country-wide digitization (see Chap. 5) has laid bare the hurdles constitutionally and structurally innate in Germany's federal multi-level system. On the one hand, by federal legislation (Digital Access Act) of 2017 all actors and levels of the federal multi-level system are obliged to comply with and realize country-wide a common digital scheme. On the other hand, the actors on the subnational levels retain their autonomy in deciding organizational matters, including digitization. So the ground is prepared for digital delays and inconsistencies (see Mergel 2021, 333; Kuhlmann and Hauberger 2021, 5). It depends on interorganizational and interpersonal persuasion and learning to bring the digitization process to fruition.

15.8.2.2 Insufficient Operative Capacity

In struggling with the mounting task load the local authorities have increasingly reached and often exceeded the limits of their operational capacity which particularly applies to their responsibility to accommodate and integrate asylum seekers and refugees, not least those from Ukraine (see Chap. 10).

15.8.2.3 Shortage of (Skilled) Personnel

The operative capacity of the local authorities has been increasingly hampered by the shortage of qualified personnel. Because of the need to digitize municipal administration this holds true especially for IT-skilled staff (see Chap. 5). The staff shortage will foreseeably worsen in the upcoming years to the extent that the age generation of the “babyboomers” will leave the labour market. This applies to about one third of the workforce by 2030.

15.8.2.4 Budgetary Woes

Thanks to finance reform of 1969 the budgets of the local authorities had been put on an overall stable and viable basis (see Chap. 7, Sect. 7.2). However recently, confronted with mounting tasks and expenditures, the local authorities have increasingly sounded alarm and warned of a looming budgetary crisis putting the execution of crucial functions at risk.

15.8.2.5 Political Arena

The political arena is undergoing significant shifts as the political conflict level and political “climate” are becoming more divisive and polarized. This shows particularly with regard to the issues around asylum seekers and refugees.

Whereas until the end of 2010s the pertinent political climate was characterized by a widely shared attitude and mood then commonly known as a “welcome culture” (*Willkommenskultur*) the political and attitudinal tide has markedly shifted. On the local level this is reflected in the rise of protests and demonstrations against setting up further accommodation facilities for asylum seekers. According to recent polls in the meantime (as of spring 2024) a growing majority of the “native” respondents opposes the entry of more “migrants” into the country. Similarly local protests have increased against having new wind turbines installed. In general the political discord and dissent have deepened which renders agreed-upon and durable compromises and conflict resolution more difficult. The political tension has been further fuelled by the electoral rise, on the local as well as on the Land and federal levels, of the extreme right political party *Alternative für Deutschland* (“Alternative for Germany”, AfD) which propagates nationalist, xenophobic and anti-migrant positions. In the (regional) parliamentary elections which were held in the two (East German) Länder of Thuringia and Saxony on September 1, 2024 the AfD attracted up to 30 percent of the electoral votes while the “established” political parties such as the Liberal Party and the GREENS did not surmount the 5 percent hurdle and thus failed to gain parliamentary seats. Thus the “traditional” political party system on which Germany's political stability has since long been based on all government levels, including not least the local level, seems to be thrown into disarray which reflects an ongoing politico-cultural radicalization of a significant segment of the

electorate and appears fraught with looming political and socio-economic imponderabilities in the future.

15.9 Conclusion and Perspective

Over the years, from their conspicuous performance in the immediate post-1945 phase and interim landmark achievements unto their recent involvement in tackling multiple challenges Germany's local authorities have exhibited a remarkable readiness and capacity to respond to and cope with difficult situations and to carry and take on a larger and more complex load of functions and responsibilities than in most other European countries. So although, no doubt, shortcomings, delays and setbacks need to be taken into account, the overall impressive long-term "track record" of the local authorities and of their "path-dependently" proven aptitude of institutional responsiveness and learning plausibly warrant to assume and conclude that they are poised and capable to deal with and overcome the current challenges and to also face up to upcoming ones.

However, notwithstanding this overall upbeat assessment of the development and the current state of local government in Germany's federal multi-level system the looming political and financial uncertainties that are evoked particularly by the still deepening migration crisis and Russia's invasion of Ukrain cannot be overlooked as some ominous "writing on the wall".

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