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STRUCTURE AND OPERATION OF LOCAL AND REGIONAL DEMOCRACY

Germany

GERMANY
Territorial set-up



Structure and operation of local and regional democracy

Germany

Situation in 1998

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Preliminary remark:

Germany's federal structure and its constitutional delegation of jurisdiction make local self-government the states' (*Länder*) concern. Because the various states treat legal questions of local government in many different ways, a presentation of local and regional democracy in Germany can touch on only the most fundamental provisions.

1. LEGAL BASIS**1.1. Constitutional provisions**

The federal guarantee of local self-government is Article 28, paragraphs. 1 and 2, of Germany's Basic Law:

- 1.1.1. The states' constitutional order must conform to the basic principles of the republican, democratic and social constitutional state in the sense of this Basic Law. In the states, districts and municipalities, the citizenry must have representatives chosen through general, direct, free, equal and secret elections. In district and municipal elections persons who are nationals of member states of the European Community, too, are entitled to vote and eligible for election. In municipalities, the municipal assembly may take the place of an elected territorial authority.
- 1.1.2. Communities must be guaranteed the right to regulate all their local affairs under their own responsibility, within the legal framework. Community associations also have the right of self-administration, within their legal jurisdictions, and within the provisions of the law. The guarantee of local self-government also sets the basis for local financial responsibility. This basis consists in the right of municipalities to receive a share of taxes that are levied according to the economic strength of the local community, as well as to fix the levying rate of local taxes.

Local self-government is also enshrined in the constitutions of the states which have a local tier.

1.2. Main legislative texts concerning local/regional authorities

Every state (other than the city-states) in Germany has created a basis for local self-government, in accordance with federal constitutional provisions, in the form of municipal and rural district codes (in Saarland, the local self-government law). Along with these fundamental laws, depending on the laws' structure and scope, there are also special laws such as local election laws, laws concerning local community work, laws on local taxes and, in some states, laws concerning additional local administrative levels.

2. STRUCTURE OF LOCAL/REGIONAL AUTHORITIES

2.1. Main subdivisions

The main subdivisions of local authorities in all German states, with the exception of the city-states of Berlin, Bremen and Hamburg, are the municipalities (local level) and the rural districts (regional level). Cities are not integrated into the regional level; they carry out the tasks of this level in their own right.

In some states, there is a third level, the so-called higher associations of communities (*höhere Kommunalverbände*). In Bavaria, these are the counties (*Bezirke*), in Rhineland-Palatinate the county associations (*Bezirksverbände*), in Baden-Württemberg and Hesse the state welfare associations (*Landeswohlfahrtsverbände*), in North Rhine-Westphalia the district associations (*Landschaftsverbände*) and in Lower Saxony the East Frisian district. The higher associations of communities perform, on behalf of their member communities, tasks that can be performed more effectively by larger administrative units. In the remaining states, such tasks are performed, in part, at state level.

In the city-states of Hamburg and Berlin, the lower administrative levels are the counties (*Bezirke*); in Bremen, they are the two autonomous municipalities Bremen and Bremerhaven.

Higher than the above-mentioned structures there are no regionally definable structures. The immediately higher authorities are the *Länder* (states), but these have a national quality.

2.2. Statistical data

2.2.1. Population (number of inhabitants)

City states

	Largest county	Smallest county	Total
Berlin	310 726	51 561	3 472 009
Bremen	43 616	14 476	675 265
Hamburg	385 000	98 000	1 656 000

Other *Länder*

	Largest	Smallest
Rural district	661 915	51 188
Non-district city	1 244 676	37 575
Municipality		5

2.2.2. Total number of units

		Municipalities			Rural districts	Counties	Populated areas without municipalities (military training areas)
		Total	Belonging to districts	City districts			
Baden-Württemberg	Today	1 111	1 102	9	35		1
	1950	3 384	3 374	10	63		1
Bavaria	Today	2 056	2 031 ^a	25	71	7	
	1950	7 116	7 068	48	143		
Berlin	Today					23 ^b	
	1950					West:12-East:8	
Brandenburg	Today	1 691	1 687 ^c	4	14		
	1950	1 660	1 658	2	21		
Bremen	Today	2 ^d					
	1950	2 ^d					
Hamburg	Today					7	
	1950					7	
Hesse	Today	426	421	5	21		
	1950	2 687	2 678	9	39		
Mecklenburg-Western Pomerania	Today	1 079	1 073	6	12		
	1950	Unavailable		4	20		
Lower Saxony	Today	1 032	1 023	9	38		2
	1950	4 257	4 241	16	60		
North Rhine/Westphalia	Today	396	373	23	31		
	1950	2 384	2 347	37	57		
Rhineland-Palatinate	Today	2 305	2 293 ^e	12	24 ^f		
	1950	2 924	2 912	12	39 ^g		
Saxony	Today	804	797	7	22		
	1950	Unavailable			29		
Saxony-Anhalt	Today	1 299	1 296	3	21		
	1950	Unavailable					
Saarland	Today	52			5 ^h		
	1950	343	342	1	7		
Schleswig-Holstein	Today	1 131		4	11		
	1950	1 173			17		
Thuringia	Today	1 063	1 058	5	17		
	1950	Unavailable					

a Of which 975 are unitary municipalities (*Einheitsgemeinden*) and 1 056 are members of 337 administrative associations (*Verwaltungsgemeinschaften*).

b Counties (*Bezirke*).

c Of which 1 631 municipalities belong to 158 districts (*Ämter*) and fifty-six are non-district municipalities.

d Divided into eighteen areas.

e Of which 2 555 are local communities incorporated into a total of 163 associated municipalities (*Verbandsgemeinden*) and thirty-eight are non-associated (*verbandsfrei*) municipalities and cities (including eight major cities that belong to districts).

f Plus one county association (*Bezirksverband*).

g Plus one district association.

h Plus one city association (*Stadtverband*) similar to a rural district.

2.2.3. Number of municipalities according to population figures (as at 31 December 1994)

Population	Number
Under 1 000 inhabitants	7 260
1 000-5 000 inhabitants	4 861
5 000-10 000 inhabitants	1 202
10 000-50 000 inhabitants	1 292
50 000-100 000 inhabitants	109
100 000-500 000 inhabitants	72
Over 500 000 inhabitants	12

Average population per state (*Land*)
 81 538 603: 16 = 5 096 163

Average population per county^a (*Bezirk*)
 65 001 279: 32 = 2 031 290

Average population per non-district city (*kreisfreie Stadt*) and rural districts (*Landkreis*) or districts (*Kreis*)
 81 538 603: 439 = 185 737

Average population per municipality (*Gemeinde*)
 81 538 603: 14 627 = 558

2.2.4. Surface area (in km²)

City states

		Largest county	Smallest county	Total
Berlin		127.30 ^b	9.80 ^c	889.12
Hamburg		160.50	50.00	755.30
Bremen	City of Bremen	29.71	5.02	326.55
	City of Bremerhaven	16.16	1.72	77.68

- a Leaving aside states which do not have counties.
 b Köpenick.
 c Friedrichshain.

Other Länder

	Smallest	Largest	Average
Municipality	0.11	405.14	24.11
Rural district	147.00	3 058.25	813.16
County	4 279.64	17 528.90	8 368.73

Average surface area per state (*Land*)
 $356\,978.49 : 16 = 22\,311.16 \text{ km}^2$

2.3. Special structures for particular areas

The states of Bavaria and Mecklenburg-Western Pomerania each have one island that has autonomous authorities. In Bavaria, the island is the community of Chiemsee, located in the lake of the same name. It has an area of 2.6 km^2 and a population of 407.

In Mecklenburg-Western Pomerania, the island in question is Rügen, which is identical to the rural district of the same name. It encompasses 930 km^2 and has a population of 80 466.

Other special structures are found in Baden-Württemberg, Hesse, Lower Saxony, North Rhine-Westphalia and Saarland.

In Baden-Württemberg, the area around the state capital of Stuttgart is included in the Association of the Stuttgart region. It has a surface area of $3\,654 \text{ km}^2$ and, at 30 June 1995, it had 2 562 000 inhabitants.

In Hesse, the special structure is the Frankfurt environs association (*Umlandverband*). It has an area of $1\,500 \text{ km}^2$ and a population of 1 500 000.

In Lower Saxony, there is the Association Greater Braunschweig with a surface area of $5\,077 \text{ km}^2$ and 1 170 400 inhabitants, and the Association of Greater Hanover with a surface area of $2\,289 \text{ km}^2$ and 1 109 000 inhabitants (as at 31 December 1995).

In North Rhine-Westphalia, the Ruhr Area Association of Municipalities comprises fifty-three autonomous municipalities. The association also includes eleven cities and four districts. Its area is $4\,433.51 \text{ km}^2$, and its population is about 5 402 000.

In the Saarland, there is the Saarbrücken city association (Greater Saarbrücken), which has an area of 410.63 km^2 and a population of 361 071.

The above-mentioned city-states, which have both state and municipal responsibilities, should also be considered areas with special structures within local government structure.

2.4. Regulations governing changes in structures

The provisions concerning changes in structure or in boundaries of local authorities are similar in all local constitutions. They permit changes in municipal boundaries, and dissolution or establishment of municipalities, in the public interest. Such boundary changes are state organisational acts that, as a rule, are enacted by law. In some states, a law is not required if the municipalities involved agree on the changes in structures. In such cases, approval by the municipal supervisory board suffices.

Before every change of boundary, the municipalities involved and citizens affected must receive the opportunity to air their views. In addition, the citizenry may participate in the discussion by means of the appropriate instruments for such participation outlined in the relevant local constitution. In addition to the local administrations, the municipal supervisory board and the highest level municipal associations are competent to inform the public.

2.5. General units of state administration at local/regional level and their relationship with local/regional authorities

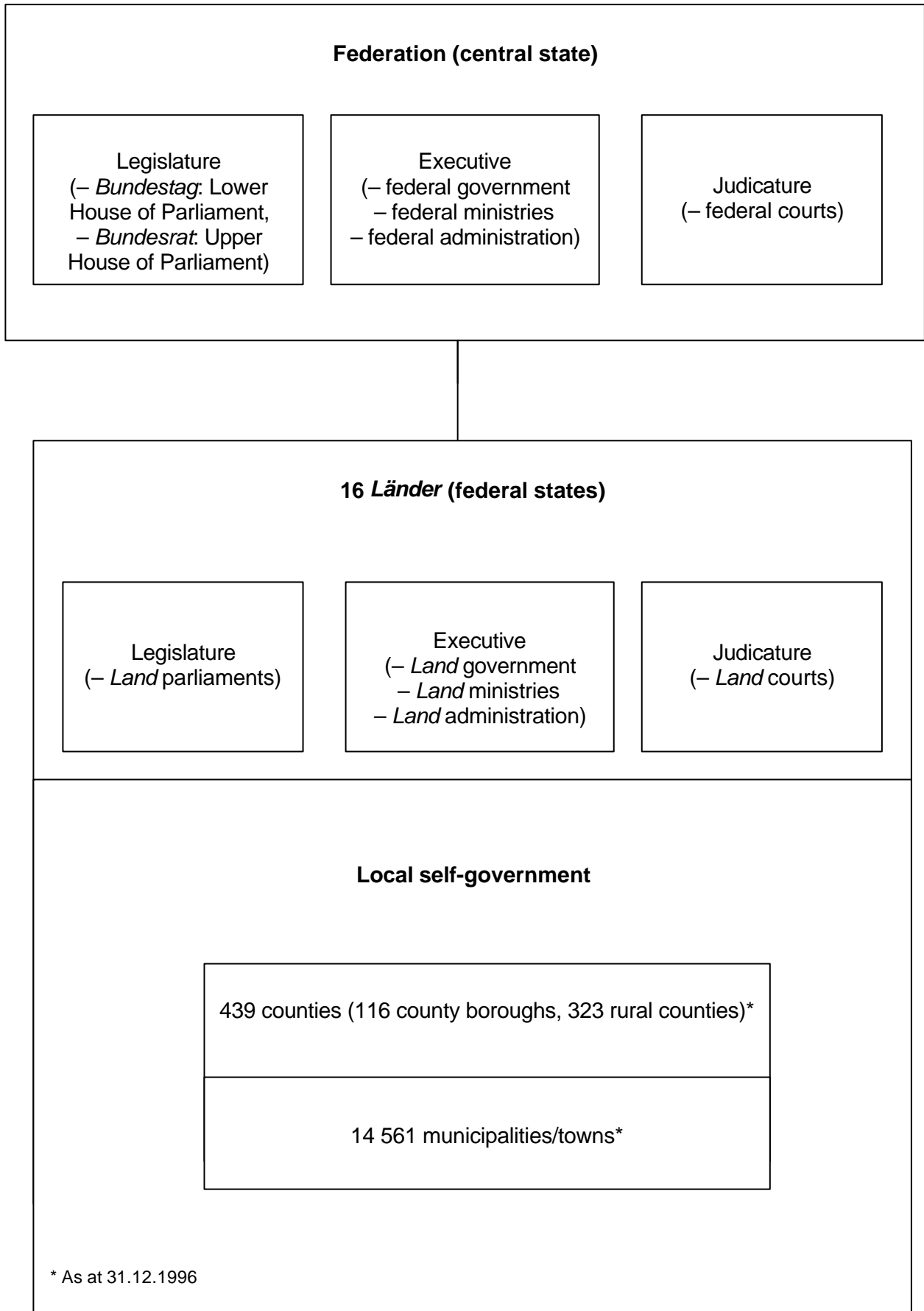
As a rule, the general units of state administration at the local level are the district administrative offices (*Landratsämter*).

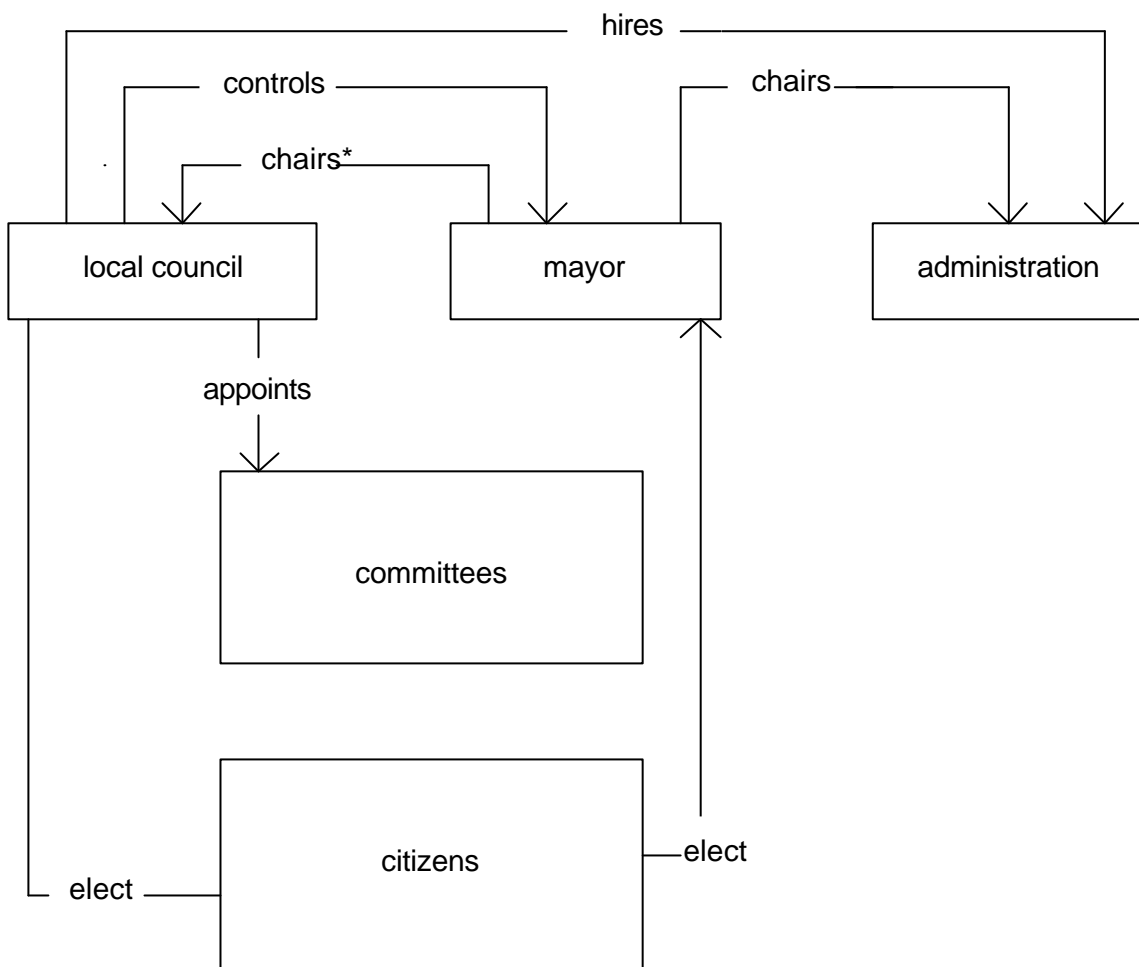
In some states, there are both general and special state administrative agencies at local authority level. In Baden-Württemberg, while the state administrative agencies have an area of responsibility that is congruent with that of the rural districts, they do not deal with all its aspects. In the large district cities (as a rule, with at least 20 000 inhabitants), and in some large administrative associations (amalgamations of municipalities for the purpose of carrying out certain tasks), the local governments themselves perform the state tasks of the lower state administrative agency, with some exceptions. In the non-district cities, the municipality performs all state administrative tasks under its own responsibility.

The special administrative agencies have a limited range of tasks and are primarily responsible for providing specialised consultation to the general administrative agency. Often, their local area of responsibility encompasses several districts.

As a rule, the district administrative office (*Landratsamt*), a state agency, is the supervisory body for the municipalities that belong to districts. Supervision of non-district municipalities and rural districts conforms to the structure of the state in question. If the state in question has state intermediate level agencies, such as district boards (*Regierungspräsidien*), then these agencies are the municipal supervisory bodies for the non-district cities and for the rural districts. If the state has no such intermediate level agencies, the supervisory body is the relevant Minister of the Interior, who is the supreme supervisory body in all states.

Structure of Germany



Structure of local authorities

* Not in Hesse, Lower Saxony;
only as honorary mayor in Brandenburg, Mecklenburg-Western Pomerania,
Saxony-Anhalt, Schleswig-Holstein.

3. BODIES OF EACH CATEGORY OF LOCAL OR REGIONAL AUTHORITIES

According to Article 20, paragraphs. 1 and 2 of the Basic Law, all state power emanates from the people and is exercised by the people in elections and referenda, and by special legislative, executive and judicial bodies. For the municipalities and associations of municipalities, this basic principle is more specifically set forth in Article 28, paragraph 1, but it must conform to the principles of the democratic constitutional state in the sense of the Basic Law.

Within this framework, the states have the freedom to specify this principle in greater detail, however. This is why there are differences, some of them considerable, from state to state, in the legal form and design of local authorities' bodies.

3.1. Deliberative body

3.1.1. Title and composition

All local constitutions provide for elected bodies to represent the people. These bodies can have different titles. Customary titles include the terms municipal council (*Gemeinderat*), municipal representative assembly (*Gemeindevertreterversammlung*), city council assembly (*Stadtverordnetenversammlung*), municipal representation (*Gemeindevertretung*), county assembly (*Bezirksversammlung*), council (*Rat*) and city council (*Stadtrat*). For the district level, the corresponding term is district assembly (*Kreistag*).

For the counties (*Bezirke*) in Bavaria and Rhineland-Palatinate, the corresponding body is known as the "county assembly" (*Bezirkstag*), while the other higher local associations have association assemblies.

The municipal representative body is the supreme local administrative body and takes decisions of a fundamental nature.

The composition of the various bodies depends on the applicable local constitutions. The number of members depends on the size of the community. As a rule, members are elected by the people. There are exceptions in some states with the association assemblies of the higher municipal associations. In such cases, assembly members are selected by the municipal representative bodies that belong to the associations.

The mayors are elected directly by the people and are, by virtue of their office, members, and usually chairpersons, of the municipal representative bodies. In some states they do not have the right to vote in all matters.

3.1.2. Method of election

The members of the municipal, district, county or association representative bodies are, with the exception mentioned in 3.1.1, elected by the people, in equal, secret, direct and free elections, for terms of four or five years, depending on the provisions of the applicable local election laws. There is a great variety of electoral systems.

Proportional election, with lists of candidates proposed by the various parties. If there is only one valid election proposal, or none at all, a majority election is held.

Majority election with proportional equalisation. This electoral system is a two-step mixed system that is also known as the “personalised proportional election”. It consists of a majority election in electoral districts and an equalising proportional election on the basis of reserve lists.

In several states (Baden-Württemberg, Bavaria, Brandenburg, Mecklenburg-Western Pomerania, Lower Saxony, Rhineland-Palatinate, Saxony, Saxony-Anhalt and Thuringia) voters may give their votes entirely or partially to one candidate (accumulation) and/or divide their votes among several candidates or election proposals (splitting). To this purpose, local voters have at least three votes. In some states, voters have a number of votes that corresponds to the number of seats to be distributed (Baden-Württemberg, Bavaria, Rhineland-Palatinate). In major cities like Stuttgart or Munich, every eligible voter can cast sixty to eighty votes respectively. Not more than three votes may be given to any one candidate, though.

3.2. Executive body

After the reforms of past years in several states, the executive bodies in almost all states is the mayor or district administrator (*Landrat*). In Hesse, in the cities of Schleswig-Holstein and in Bremerhaven it is the municipal council (*Gemeindevorstand* or *Magistrat*). The municipal council consists of the mayor as the chairman and other councillors.

In Berlin, the county (*Bezirk*) office has the executive function. The county office consists of the county mayor and six county councillors.

In the seven counties of Hamburg, executive functions are performed by the county assemblies and the county offices (*Bezirksamt*). The members of the county assembly are elected by the population of the county from among its inhabitants for a term of four years.

County office is the administrative authority of the county headed by a *Bezirksamtleiter* – head of county office – who is elected by the majority of votes of the members of the county assembly and appointed by the Senate of the Hanseatic City of Hamburg.

The mayors, and in some states also the district administrators, are directly elected by the people in majority elections. This is not yet valid until the elapse of a transitory period in North Rhine-Westphalia and Lower Saxony, and in Mecklenburg-Western Pomerania and Schleswig-Holstein.

3.3. Political head of the local/regional authority

The political heads of the local authorities are municipal councillors, the district councillors (*Kreisräte*) or mayors, or the district administrators (*Landräte*) (distribution of authority varies according to local constitution). In cases in which the mayor/district administrator is also the administrative head, he must carry out the resolutions of the representative body. He may also have primary influence over his own area of responsibility (especially with respect to discharging ongoing administrative affairs).

In the administrative areas in which the district administrative office or district administration (*Landratsamt* or *Kreisverwaltung*) is the lower state administrative agency, the district administrator is also simultaneously the head of this agency. Where state responsibilities have been given over to municipalities, these tasks are discharged by the mayor – in cases in which he is also administrative director.

In addition, the deliberative and executive authorities are connected by many links, power of mutual co-operation and control and notification regulations. The demarcation of responsibility between the two bodies is not rigid; instead, it is designed flexibly to permit transfer of responsibility from the representative body to the mayor or district administrator. The mayor and the district administrator represent respectively the municipality and the district in their external relationship.

3.4. Head of the administration

3.4.1. Title, nature of the function and relationship to the deliberative body

In most states, the mayor/district administrator is also the head of the administration.

North Rhine-Westphalia and Lower Saxony modelled their local administration on the British pattern: they used to have the so-called “dual leadership” (*Doppelspitze*): the office of mayor/municipal director involved primarily representative functions, whereas the municipal or district directors were the heads of administration. Currently, transitory provisions are in force, which copy the developments which have taken place above all in the southern states. In North Rhine-Westphalia and Lower Saxony, too, the mayors will in future also be the heads of administration. The offices of municipal or district directors will be abolished.

3.4.2. Method of appointment

In future, the mayors in all states will be elected directly by the people. The term of office is independent of the municipal representative body’s legislative term. (Excepting North Rhine-Westphalia and Lower Saxony, where the term of office is coupled with that of the municipal representative body.)

District administrators are elected directly by the people (Bavaria, Hesse, North Rhine-Westphalia, Rhineland-Palatinate, Saarland, Saxony, Saxony-Anhalt, Thuringia) or by the district assembly (Baden-Württemberg, Brandenburg, Mecklenburg-Western Pomerania, Lower Saxony, Schleswig-Holstein).

As a rule, full-time mayors, district administrators (as administrative directors) and other chief executive officers are appointed as temporary civil servants. Mayors who serve on a voluntary basis in small communities are appointed honorary civil servants.

3.5. Division of power and responsibilities between the different bodies of the local or regional authority

In principle, the municipal representative body and the district assembly are responsible respectively for all the municipality's and rural district's affairs, within the framework of the law, except for those affairs the mayor or the district administrator have been entrusted with by law or resolution. The deliberative body can empower the mayor/the district administrator to take resolutions on certain affairs or types of affairs. Such transfer of responsibility can be revoked at any time.

3.6. Legal provisions concerning the internal structures of local/regional authorities

Where the internal structures of the local authorities are not set forth in the local constitutional laws, the local authorities may issue local legal regulations (bye-laws).

4. DIRECT CITIZEN PARTICIPATION IN DECISION-MAKING

The main vehicle of direct citizen participation in the decision-making process at the level of the local authorities are the elections for municipal representative bodies and for the district assemblies.

4.1. Referendums

In all states, local referenda may be held, for important municipal affairs, in the form of a citizens' decree (*Bürgerentscheid*). The state Constitution outlines the framework of what can or cannot be decided by citizens' decree. Within this framework, the municipality can decide through local law (main code) on other important municipal affairs.

A citizens' decree is brought about by the municipal council, by means of a certain required majority, or following a citizens' petition (*Bürgerbegehren*). For such a petition, a quota set forth in the relevant municipal code must be attained (for example, a quota of 15% of the municipality's citizens in Baden-Württemberg, Rhineland-Palatinate, Saxony-Anhalt, a quota of 10% in Mecklenburg-Western Pomerania, of 20% in Thuringia); it is only in Bavaria that the constitution does not stipulate a quota.

A citizens' decree is successful when the majority achieved for or against an important community matter attains the minimum percentage of eligible voters required by the relevant state Constitution. If the decree is unsuccessful, the municipal council must deliberate on the matter again. A citizens' decree has the same effect as a final resolution of the municipal council. During the period of two or three years when it is legally binding, a citizens' decree can only be amended by instruments of direct democracy, i.e. another citizens' decree. Upon expiry of this period, the municipal council can take decisions to supplement or amend the citizens' decree.

4.2. Other forms of direct participation

Other forms of direct participation include:

- Citizens' application (*Bürgerantrag/Einwohnerantrag*):
Citizens' can ask the municipal council to deal with a specific municipal matter that falls within the council's responsibility. The state constitution can require the application to be supported by a certain percentage of the citizens. Municipal regulations in the state of North Rhine-Westphalia give every citizen, either as an individual or as a member of a group, the right to communicate in writing to the municipal council proposals or complaints related to municipal affairs.
- Application for the holding of a citizens' assembly:
Citizens' assemblies are held regularly to allow the inhabitants of municipalities to discuss important municipal affairs. Citizens' assemblies can be called by the council, and they must be held when a certain minimum percentage of the citizenry (for example, 10% in Baden-Württemberg) petitions for them in writing. The citizens' assemblies may make suggestions and proposals which have to be dealt with by the competent body of the municipality within specified time limits (usually three months).
- Collaboration of local experts:
The municipal council/district assembly can consult with local experts in individual matters, or it can appoint such experts as permanent consultants in the municipal council's/district assembly's decision-making and deliberative committees.

5. CONDITIONS FOR OFFICE OF LOCAL ELECTED REPRESENTATIVES

5.1. Eligibility and term of office

The conditions are set forth in the relevant election laws. The main conditions include German nationality or the nationality of a member state of the European Union, the minimum age of 18 years, and the requirement of having lived in the municipality for at least six months.

Elected municipal and district councillors serve on a voluntary basis. They do not enjoy immunity and indemnity and they are not civil servants; their special legal status presents the following main characteristics:

- they have a free mandate resulting from their election by the people;
- they are required to accept their office and to exercise it for the prescribed period;
- they cannot be employees of the relevant municipality or rural district, or certain categories of employees of the legal supervisory body;
- they are prohibited from being involved in certain cases where there is conflict of interest;
- they receive accident insurance in accordance with regulations for civil servants;
- they receive legal membership and contributory rights related to their activity within the representative body. These rights include individual membership rights (such as the right to participate in meetings, the right to speak, the right to make motions, procedural rights and voting rights), or group membership or minority rights (such as the right to move that a meeting be called, and the right to access files).

Any member of a municipal or district representative body can at the same time be a member of the state or federal parliaments.

As regards full-time mayors/district councillors, the electoral laws may provide that their office prevents them from holding a seat in the state or federal parliaments at the same time.

In contrast to federal and state elections the public authorities do not provide any funds or economic support for parties or candidates in local elections. There are no regulations governing the private funding of candidates.

Depending on the local constitution the term of office of electoral representatives ranges from four to six years. In Hesse and Schleswig-Holstein the term of office is four years, in Bavaria six years and in all other states five years.

The terms of office of mayors and district administrators is laid down in the local constitutions.

- in Baden-Württemberg and Saarland it is eight years;
- in Bavaria and Hesse it is six years;
- in Mecklenburg-Western Pomerania it is seven to nine years;
- in Lower Saxony and North-Rhine Palatinate it is five years;
- in Rhineland-Palatinate and Brandenburg it is eight years for full-time mayors/district councillors, five years for honorary mayors;
- in Saxony and Saxony-Anhalt it is seven years;
- in Schleswig-Holstein it is six to twelve years, depending on the standing orders
- in Thuringia it is six years for full-time mayors/district councillors, five years for honorary mayors.

The conditions governing resignations are laid down in the state constitutions. As a rule, a municipal councillor has to inform the mayor in writing that he intends to resign from his office. However, resignation must be justified, as it is permissible to refuse an honorary position – including membership in the municipal representative body – only if there is a valid reason for doing so.

5.2. Duties and responsibilities of local elected representatives

The elected representatives are required to discharge their tasks in a way which is not motivated by their personal advantages and responsibly; they are sworn to secrecy, and are required to take part in meetings of the municipal representative body, unless important matters prevent them from doing so. Only the Constitution of North Rhine-Westphalia expressly requires local representatives to disclose their personal or financial interests. The Constitution provides that members of the council have to inform the mayor or, where they are members of the county representative body, the head of this county about their economic and personal situation if this may be important for the discharge of their mandate.

Local elected representatives may be sanctioned if the local authority has been damaged following a council decision. In such case, the members of the council are liable:

- a. if they acted deliberately and grossly neglected their duties,
- b. if they participated in the decision-making process although they were precluded from doing so by act of law and they were aware of the reason for such preclusion,
- c. if they approved the appropriation of expenses without being authorised to do so by law or by the budget constitution if the necessary funds are not provided at the same time (quotation from section 43, Local Constitution of North Rhine-Westphalia).

Furthermore, local elected representatives may be sanctioned under most of the state constitutions, if they constantly disrupt meetings of the municipal representative body. Article 53 of the Bavarian constitution provides that the head of the municipal representative body may exclude disruptive members from a meeting if the other members agree. Any particularly disruptive member may be excluded for two more meetings if he or she had been excluded from a past meeting and within two months disrupts another meeting.

Where a municipal councillor does not take part in the meetings or votes of the municipal representative body without a satisfactory reason, the municipal council may impose a fine of up to DM 200 on the councillor, as stated in, for instance, Article 48 of the Bavarian Constitution. In addition, the council may revoke the councillor from his or her office, after being fined twice for neglecting his or her duty and failing to take part in the meetings for another six months.

There are no restrictions on councillors' functions and activities after the end of their term of office. Moreover, they can continue to exercise their profession or carry out their previous activities while being a member of the representative body, which is why no aid is provided to assist their vocational reintegration.

5.3. Working conditions

The working conditions depend largely on the size of the municipality and on the tasks the council has reserved for its own decision and which it has not delegated to the mayor. As a rule, it can be assumed that local representation work leaves the representatives enough time to continue in their jobs. Therefore the council meetings tend to take place in the evenings. The local authorities are required to provide the necessary equipment for the representatives to be able to discharge the tasks associated with their mandates. This includes the provision of workrooms, equipment and office material.

Information and documentation is mostly provided by the local associations. The political parties, their foundations and above all the local study institutes provide sufficient information for candidates or local representatives who want to learn about their tasks or other local policy issues.

All state constitutions provide that nobody may be prevented from applying for, accepting, or exercising a mandate as member of a council, county representative body or committee. It is not admissible to discriminate against an employee on account of his applying for, accepting or exercising such mandate. This includes the dismissal and the termination of the employment relationship for the said reason. Furthermore, the members of councils, county representative bodies or committees are to be given leave from their work insofar as the discharge of their tasks so requires. As a rule, leave is considered necessary if the activity is directly connected with the mandate or if it is carried out at the request of the council, representative body or committee and cannot be carried out outside working hours (section 44 of the Local Constitution of North Rhine-Westphalia).

As municipal representatives as a rule continue in their previous jobs, there are not any provisions concerning their holiday leave. They are therefore entitled to leave from their ordinary work. Being away on leave is one of the valid reasons for not taking part in a meeting.

Full-time mayors and district administrators are entitled to the same statutory leave as other civil servants or public employees.

5.4. Remuneration

As local representatives continue in their jobs and carry out their mandate outside working hours, they are not remunerated. However, the state constitutions provide that local representatives are paid an expense allowance/are compensated for any loss of earnings and reimbursed for special expenditure. The expense allowance is paid as a standard amount and/or as a payment for meetings. This allowance pays for any expenses incurred in relation to the mandate such as telephone costs, postage, literature, representation costs, etc. Local representatives are entitled to a compensation for the loss of earnings, where such loss is a result of exercising the mandate and if such exercise needs to take place within regular working hours. The loss of earnings is calculated on the basis of the number of regular hours the local representative was not able to work. The compensation is calculated on the basis of the standard hourly rate, which is laid down in the standing orders of a local authority, or a compensation sum is paid amounting to the actual and established loss of

earnings. The Local Constitution Order of North Rhine-Westphalia, for example, provides that persons who are not (or only insignificantly) gainfully employed or self-employed (for instance less than twenty hours' work a week), but who run a household comprising at least two persons, are paid at least the standard hourly rate for the time they are away from home on account of their function, or, alternatively, they are paid the necessary costs for a home help upon application.

The amount of the expense allowance is either laid down by ordinance of the competent state government or by local authorities within the limits laid down by the state government.

Full-time mayors and district administrators, as temporary civil servants, are paid a remuneration, the amount of which is determined in accordance with the number of inhabitants of the municipality.

Where the local representative is compensated for a loss of earnings, such compensation is part of the normal income and is fully subject to taxation. The expense allowances tend to be tax-free. However, as they are generally paid as a standard sum and not as a genuine compensation for expenses incurred, there are tax-free maximum amounts for honorary councillors and allowances exceeding this sum are subject to taxation. Expense allowances paid to full-time representatives are fully tax-free.

The remuneration paid to full-time mayors/district administrators is fully subject to taxation.

The compensation for the loss of earnings is part of the income which is taken into account in determining whether a person is compulsorily insured under the health and old-age pension schemes. Expense allowances are not taken into account in this respect.

As full-time mayors/district administrators, like other civil servants, do not have to make own contributions for their old age provision, and as they are not compulsorily insured under a health insurance scheme, their remuneration is not subject to deduction for health insurance and retirement pension schemes.

Sickness costs are generally paid for from *pro rata* contributions made by the local authorities and laid down by law, and from a voluntary additional insurance of the person concerned.

5.5. Representation of sexes

A representation of sexes which corresponds to the share of the sexes in the overall population has not been achieved, despite manifold efforts. The past has shown that the share of female local representatives increases in line with the number of inhabitants of a municipality. The statistics only cover municipalities with more than 10 000 inhabitants. According to these statistics, the share of female representatives is currently 21.8%. In major towns with more than 100 000 inhabitants it is approximately 31%, in towns with between 50 000 and 100 000 inhabitants it is nearly 25% and in municipalities with between 10 000 and 20 000 inhabitants it is about 19%.

6. DISTRIBUTION OF POWER BETWEEN THE VARIOUS CATEGORIES OF LOCAL AND REGIONAL AUTHORITIES

6.1. Principles governing the distribution of power

A basic feature of the powers and responsibilities of municipalities and rural districts is the right of autonomous administration of all local affairs under local responsibility (local self-government):

- the powers of the municipality are based on the principle of responsibility for all public tasks occurring within the municipal area (universality);
- districts have inter-municipal, complementary and – not in all *Länder* – balancing functions. In their areas, the districts discharge all public tasks that exceed the capabilities of the municipalities they comprise, unless the law provides for other arrangements. The rural district must limit itself to the tasks related to the standardised supply to, and assistance for, inhabitants of the entire rural district, or at least a large portion thereof.

The state can pass laws to require municipalities and districts to discharge certain responsibilities (mandatory responsibilities), but municipalities and districts also discharge such tasks under their own responsibility. Where necessary, the state may reserve the right to issue supervisory agency directives (mandatory responsibility issued by directive), but the extent of the right to issue directives must then be legally defined.

More state responsibilities are transferred to the municipalities and districts in those states, such as North Rhine-Westphalia, which do not have a complete network of general state administration at the local administrative level, than in states which do.

The city-states discharge both state and municipal responsibilities. Powers are distributed according to an enumeration principle between the main and county (*Bezirk*) administrative levels, with an orientation to the importance of, or requirement for, standardised performance of administrative tasks.

6.2. Competencies of local and regional authorities in their own right

Competencies, as presented in the table at the end of this chapter, vary considerably from state to state, partly due to the size of the states. Therefore the tables can only roughly describe the distribution of power between the various levels. When filling in the table, the assumption was made that “state” stands for the level of the federate states (*Länder*), “intermediate” for the rural districts (*Landkreise*), in Bavaria also for the counties (*Bezirke*) (which belong to the level of municipalities), and ‘municipality’ for the towns and municipalities (*Städte und Gemeinden*).

In some states, particular tasks may exclusively be assigned to particular levels as a shared competence. Moreover, tasks which are compulsory for a particular level, may also be discharged by another level at its own discretion.

The municipalities are largely free to decide as to how to discharge their responsibility, which reflects the principle of local self-government. They can either render the services themselves or commission third parties, e.g. private service providers, to render them.

The state and the local authorities form a complex and interlocked system with regard to responsibilities planning and finances, on the basis of legal regulations, guidelines, administrative provisions, departmental planning, physical and developmental planning and structural and investment programmes. Nevertheless, the responsibilities are clearly defined.

In general, the municipalities are responsible for all matters, unless the state or other local levels are instructed by law to discharge certain tasks.

Examples of directive responsibilities (responsibilities that local or regional authorities discharge on the behalf of the state government) are:

- typical responsibilities related to public safety and order (e.g. local police agency, system of registration, personal status registration system);
- holding of elections.

Important mandatory responsibilities (not based on directives) include:

- responsibilities related to environmental protection and public health (such as water supply, wastewater disposal, waste disposal, funerals);
- fire department;
- in the educational system, the institution responsible for general and occupational schools.

Typical voluntary responsibilities include:

- general administration of the municipality or the rural district;
- the educational system (apart from compulsory education);
- the health system;
- social institutions;
- housing construction and city planning;
- traffic administration;
- public service facilities;
- culture, recreation and sports.

A typical example of the joint discharge of a responsibility is the general education schools. Municipalities provide the necessary facilities (in particular school buildings), while the state provides the necessary staff.

If a responsibility is beyond the capability of a municipality, the municipality can, or must, join together with others in a legal form of municipal co-operation, in order to discharge this responsibility (e.g. purpose-oriented association).

6.3. Participation of local/regional authorities in national, economic and spatial planning

Local authorities must be permitted to participate in spatial planning. The means by which such participation is ensured vary from state to state. In North Rhine-Westphalia, for example, regional planning is organised as a joint responsibility of state and local government, in the interest of achieving the greatest possible public acceptance. County planning councils (*Bezirksplanungsräte*) have been established, in keeping with the state planning law, at the intermediate state administrative level. The councillors are elected by the local representative bodies.

These county planning councils take objective, procedural decisions related to the preparation of area development plans, and they decide on their formal establishment. In other words, representatives of the cities and communities decide on the state planning goals in the area development plans for the local level. The state's role is limited to preparation of drafts of area development plans, to execution of the preparation procedure and, after the plans have been established by the county planning councils, to their approval as part of its legal control.

6.4. Tasks delegated to local or regional authorities acting as agents of the central authority

Examples of tasks delegated to local authorities acting as agents include:

Personal status registration (the registry office's area of responsibility), residents' registration (the tasks of the residents' registration office), issuance of passports and identity cards and other tasks in the interest of public safety and order in the areas of road transport, industrial code and construction law. The municipalities help generate numerous statistics that are required for state or federal political decisions. Municipal authorities co-operate in connection with elections for the state, federal and European parliaments; with registration of school-age children and those subject to military conscription; with certain social services such as decisions concerning payment of housing subsidies, educational subsidies and subsistence allowances; and with social insurance.

Because normally the district administration is not only the rural district's authority – a local authority – but also a state authority with civil servants, it has no delegated tasks; the state draws on the services of its own agency.

6.5. Proposals or bills leading to an important change in the distribution of power between the local or regional authorities and central government

Administrative reforms are currently being discussed at all state levels. This concern the re-distribution of power between central and local government. There is a strong tendency to assign more tasks to the local level and to integrate existing state government into municipality and district government at local level.

Function	Competent authority			Type of competence				Exercise of the competence				Remarks
	State	Intermediate	Municipality	Exclusive	Shared	Compulsory	Discretionary	Direct	Indirect	In own right	For another authority	
General administration												
Security, police	•	•	•		•	•		•				
Fire protection			•			•		•				
Civil protection	•					•		•			•	
Justice	•			•				•				
Civil status register			•	•		•		•				
Statistical office	•		•			•		•			•	
Electoral register			•			•		•			•	
Education												
Pre-school education			•	•		•		•	•			
Primary education	•		•		•	•		•	•			
Secondary education	•	•	•		•	•		•	•			
Vocational and technical	•	•	•		•	•		•				
Higher education	•			•								
Adult education			•				•	•		•		
Other												
Public health												
Hospitals	•	•	•		•	•	•	•	•			
Health protection	•		•		•	•	•	•		•		

Function	Competent authority			Type of competence				Exercise of the competence				Remarks
	State	Intermediate	Municipality	Exclusive	Shared	Compulsory	Discretionary	Direct	Indirect	In own right	For another authority	
Social welfare												
Kindergarten and nursery			•	•		•		•	•			
Family welfare services		•	•	•	•	•	•	•	•			
Welfare homes		•	•		•	•	•	•	•			
Social security		•	•	•		•		•				
Other												
Housing and town planning												
Housing			•	•			•	•	•	•		
Town planning			•	•		•	•	•		•		
Regional/spatial planning	•			•		•		•				
Environment, public sanitation												
Water & sewage			•	•		•		•	•			
Refuse collection & disposal			•	•		•		•	•			
Cemeteries & crematoria			•	•		•		•	•			
Slaughterhouses			•				•					
Environmental protection	•		•	•			•	•				
Consumer protection			•				•	•	•			
Culture, leisure & sports												
Theatres & concerts	•	•	•	•			•	•		•		
Museums & libraries	•	•	•	•			•	•	•	•		
Parks & open spaces	•	•	•	•			•	•		•		
Sports & leisure		•	•				•	•	•	•		

7. LOCAL AUTHORITY ASSOCIATIONS OR OTHER FORMS OF CO-OPERATION AT LOCAL AND REGIONAL LEVELS

7.1. Institutionalised co-operation for the performance of tasks of common interest

7.1.1. Legal framework

Municipal co-operation, when it involves a transition in tasks or powers, is governed by law (laws concerning municipal co-operation, municipal code, special laws).

7.1.2. Nature of consortia or joint authorities

There are many forms of municipal co-operation.

- Local working group (*Kommunale Arbeitsgemeinschaft*):
This is an association of municipalities and municipal associations and other legal persons (legal persons under public or private law). The working group deliberates on affairs affecting all its members; it co-ordinates planning of the individual members and it initiates joint solutions, in order to provide the most cost-effective and efficient task execution possible. The working group cannot pass any resolutions that are binding for its members; the areas of responsibility of the individual members' agencies remain unaffected.
- Agreement under public law (*öffentlich-rechtliche Vereinbarung*):
In this legal form of co-operation between municipalities and municipal associations, one of the participants assumes responsibility for individual tasks of the other participants and/or executes these tasks on behalf of the other participants. Agreements to have tasks executed on a joint basis, by joint institutions, are also possible.
- Administrative unions (*Zweckverbände*):
Municipalities and rural districts can form administrative unions for the purpose of fulfilling certain tasks. As a rule, such unions are formed for a specific purpose, but they could also be formed to carry out several related tasks. In general, such unions are voluntary. But the law also permits compulsory union of local authorities for the execution of mandatory tasks.

When an administrative union is formed, the powers of the municipalities and rural districts involved are transferred to the new legal entity (administrative union = public law corporation).

These are the most common forms of co-operation between local authorities. Local associations, such as a planning association or a schools' association, may also be provided for by other laws.

Depending on which type of municipal and area reforms the states have carried out in recent decades, there can also be municipal associations, aiming at effective local self-government. As a rule, in states in which larger unitary municipalities have not been created, certain types of associations have been prescribed for municipalities. These can include:

- Administrative associations of municipalities (*Verwaltungsgemeinschaften*), formed either by municipalities that remain autonomous, or formed by law. The administrative association carries out tasks within the municipalities' delegated area of responsibility (state tasks). With respect to the other tasks of the member municipalities, it functions as their agency. In doing so, it carries out administrative preparation, executes resolutions of member municipalities and discharges ongoing administrative affairs.
- Agencies (*Ämter*)
Municipalities also remain autonomous when they form an agency. Administrative tasks are controlled at agency level, while responsibility remains with the individual autonomous municipalities. Nonetheless, certain tasks may be transferred to the agency's responsibility.

In some states, there are also higher level municipal associations which carry out certain inter-regional tasks. An example are the state welfare associations (*Landeswohlfahrtsverbände*) in Baden-Württemberg, which are associations of city and rural districts formed as inter-regional agencies for social and youth assistance. Comparable institutions are: in North Rhine-Westphalia, the district associations (*Landschaftsverbände*); in Bavaria and Rhineland-Palatinate, the counties (*Bezirke*).

7.1.3. Areas of competence of consortia or joint authorities

Local co-operation extends to tasks that exceed the administrative capabilities of individual communities or which can be carried out economically and effectively only in larger units. The preferred purposes of such co-operation are, in addition to those resulting from special laws: water supply and wastewater disposal, removal of waste and animal remains, road construction and maintenance, development and maintenance of recreational areas, maintenance of adult evening schools, fire protection and rescue services.

7.1.4. Organisational forms, relationship with member authorities, operating methods

Among the forms of local co-operation listed under item 7.1.2 above, only the administrative unions (*Zweckverbände*), in addition to prescribed administrative associations and agencies, have detailed constitutions. The bodies of an administrative union are the association assembly and the association director or chairman. In addition, an administrative council (a smaller form of association assembly) may be established (when provided for by law).

The association assembly is the administrative union's main body. It consists of representatives chosen by the association members. The association assembly corresponds to the municipal council or district assembly.

The association director or chairman is elected by the association assembly. He/she is director of the association's administration and the administrative union's legal representative. The position of association chairman corresponds to that of mayor or district administrator.

The areas of responsibility of the association assembly's administrative council, director or chairman are defined by law, or by the association's bye-laws, within the legal framework.

In order to meet its financial needs, the administrative union levies dues from the association members, if it has no income of its own or if its income is insufficient.

As a legally autonomous public law corporation, the administrative union derives its powers from the member municipalities and rural districts. These members can, with their vote in the association assembly, influence the union's fulfilment of its duties, in keeping with the organisation's bye-laws.

7.2. Legislative provisions concerning associations of local authorities at national or regional level and their relationship with government authorities

To provide a legal basis for local co-operation that extends beyond state (*Land*) boundaries, treaties are often negotiated between the affected states.

7.3. Co-operation between local/regional authorities in different countries

The guarantee of local self-government also includes the rights of the local authorities to co-operate with local authorities abroad on their own initiative. The only restriction on co-operation stems from the competencies of local authorities as laid down by law.

Germany is a contracting party to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities of 21 May 1980. By this Convention, too, Germany has pledged itself to supporting transfrontier co-operation of territorial communities or authorities in particular.

On the basis of this outline convention outline agreements have been conducted between Germany and adjacent states, which enable the local communities to co-operate on a public law basis, that is beyond the traditional transfrontier co-operation. The agreements are as follows:

- Agreement of 23 May 1991 between the Government of the Federal Republic of Germany, the Federal Republic of Germany, Lower Saxony, North Rhine-Westphalia and the Kingdom of the Netherlands;
- Agreement of 23 January 1996 between the Government of the Federal Republic of Germany, the Government of the French Republic, the Government of the Grand Duchy of Luxembourg, and the Swiss Federal Council, acting on behalf of the cantons Solothurn, Basel-Stadt, Basel-Landschaft, Aargau and Jura, on transfrontier co-operation between territorial communities and local public bodies;
- Agreement of 8 March 1996 between North Rhine-Westphalia, Rhineland-Palatinate, the Walloon, and the Belgian German-speaking community on transfrontier co-operation between territorial communities and other public bodies.

There is a long tradition of transfrontier co-operation of local authorities in Germany, which used to take place on a civil law basis. There are numerous local transfrontier contacts through working groups, associations (for example, Euregio), joint ventures and partnership contracts. Such contacts have been established almost along the entire external borders of Germany.

There are for instance the transfrontier associations in the German-Dutch and the German-Belgian border area, which were formed in order to intensify transfrontier local or regional co-operation in the areas concerned and to solve the problems arising from the fact that the regions are situated in the border areas of their countries.

These associations include Euregio in the Münsterland-Twente area, Regio Rhein-Wahl in the Lower Rhine-Wahl area (*Grenz-regio*), Rhein-Maas Nord in the Lower Rhine-North Limburg area, and Euregio Maas-Rhein in the Aachen border area-South Limburg.

The Euregio Rhein-Waal was established on 1 November 1993 to be the first transfrontier corporation under public law in Europe.

The other international associations have different legal forms or organisation. Their common feature is that their international work takes place not on a public law, but on a private law basis.

The internal legal organisation of these international associations varies according to national law. In the Euregio, for example, Rhein-Ems, a German local registered association functioning on the basis of the law for local working groups, co-operates with two Dutch local co-operation associations organised under public law pursuant to Dutch municipal co-operation law.

A different approach was selected for the Euregio-Maas-Rhein; here, the entire international organisation has been placed in a foundation, pursuant to Dutch law.

All municipalities in the German-Dutch international associations co-operate on a voluntary basis. They pursue a wide array of aims, including the areas of:

- everyday problems related to the border;
- economics and employment;
- environment and agriculture;
- traffic;
- schools and education;
- tourism, disaster relief and rescue services.

These associations derive their international authority from international “parliamentary” assemblies mainly consisting of representatives of the member communities.

Their day-to-day work is carried out primarily by working groups and secretariats. Municipal associations in the German-Dutch border area are financed mainly through contributions, although they also receive external institutional, project-related subsidies.

The co-operation between local/regional authorities in different countries also includes towns which are twinned with others. Many German towns have twin towns, some even outside Europe. There are no legal provisions governing the concept of twin towns.

The local authorities in Germany are free to join international associations of local and regional authorities. Many local authorities are members of the Council of European Municipalities – German section – and thus of the International Union of Local Authorities (IULA).

8. FINANCE

Local authorities have the following revenues:

- main source of income is taxes. They amounted to 30.55% of all local authorities' revenues in 1996;
- the second biggest source of income is state grants, amounting to 34.63% of all revenues in 1996;
- fees and contributions make up 15.11% of local revenues in 1996;
- other revenues amounted to 19.71% in 1996.

8.1. Taxes

8.1.1. Local and/or regional authorities' "own taxes"

Only basic information can be provided here since taxes vary too widely from state to state.

Pursuant to Article 106, paragraph 6 of the Basic Law, municipalities are entitled to levy:

- property taxes (land and trade taxes);
- local consumer and expenditure taxes.

On this basis, municipalities levy the following real taxes:

- trade tax;
- land tax A (agricultural and forestry operations);
- land tax B (real estate).

These taxes are set and levied by the municipalities – on the basis of an assessment notice set by the fiscal administration. The municipalities have the right to fix the rate of the trade and land taxes (cf. 8.1.3). The municipalities transfer a trade-tax apportionment to the federal and state governments. This apportionment was introduced in 1969 as an offset to the municipalities' share in wage taxes and levied income taxes.

8.1.2. Taxes levied in addition to state taxes

In addition to state taxes, i.e. taxes provided for by federal or state law, municipalities may levy local consumer and expenditure taxes. The legal basis for such taxation lies, in part, in state legal provisions; in part, the taxation also takes place pursuant to the bye-laws of local authorities, which they are empowered to do under the local tax laws of the states. These additional taxes can include the following types:

- dog-ownership tax;
- hunting tax (as a rule, this tax is levied by city and rural districts);
- entertainment tax (on events held against payment, such as gambling machines, film showings and striptease performances, dances, miniature golf, bowling);
- beverage tax (exception: beer; the sale of beverages for immediate consumption is taxed);
- publican's licence tax (for the opening of a public house);
- second residence tax (for use of a residence in addition to the main residence).

8.1.3. Decision on the rate of taxes and on new taxes

The municipalities fix the levying rate applicable to the property taxes, within the framework of local government, and under their own responsibility. In addition, they fix the percentage for expenditure taxes in their bye-laws. For levy of these taxes, they are subject to a legal framework only in connection with entertainment taxes.

In most states, the law entitles local authorities to introduce and levy local consumer and expenditure taxes, as long as such taxes are not of the same type as taxes provided for by federal law. The taxes must be of a type for which the state has exclusive legislative power pursuant to Article 105, paragraph 2 a, Basic Law, or competing legislative authority pursuant to Article 105, paragraph 2, Basic Law. As a rule, the introduction of such a tax requires the approval of the supreme supervisory agency.

8.1.4. Shared taxes

Pursuant to Article 106 of the Basic Law, municipalities, apart from the Federation and the federal states, are entitled to receive a share of the revenue from income and value-added tax. Their share of the revenue from income tax is determined on the basis of paragraph 1 of the Law on the Reform of Municipal Funding and currently amounts to 15% of the revenue accrued to the individual federal state from wage tax and assessed income tax (municipal share of income tax). The municipalities' total share is distributed among them; each municipality receives a share proportional to the income tax it has generated.

At the moment, the municipalities' share of value-added tax amounts to 2.2%. It is distributed among them by the states depending on the location and economic strength of the municipalities.

8.2. Grants from higher authorities

8.2.1. Types of grants

Grants (which are funds which need not be paid back) are allocated by higher authorities in accordance with state legal provisions for municipal financial equalisation or under special legal provisions. Funds granted to the local authorities by the Federation are also managed via the state budgets.

The amount and composition of the grants is primarily determined by the state's structure and economic power.

The grants allocated to the local authorities are of the following types:

General grants, i.e. grants without purpose linkage, designed to equalise the varying taxable capacities of the municipalities:

- grants as compensation for costs incurred in the discharge of mandatory tasks;
- general grants to help defray costs of school buses;
- general grants for road maintenance;
- adjustments for the costs borne by social assistance and war victim relief agencies;

Investment grants:

- general investment grants not linked to a specific purpose;
- assignment of vehicle tax revenue shares for road construction;
- earmarked investment grants, especially for the construction of schools, kindergartens, fire brigade equipment buildings, hospitals, roads, waste disposal installations, water supply and waste water treatment plants.

Grants on demand:

to equalise special financial hardships or bottlenecks occurring in the administrative budget, as an exception also in the case of hardships caused by investments.

8.2.2. Grants conditioned by financial participation of local/regional authorities

Certain earmarked state grants for local authorities' investment projects can be granted either as fixed amounts or as proportional financing. As a rule, municipalities normally have a share in the investment costs. For example, municipalities receive various subsidies for waste water treatment projects, in keeping with the applicable support guidelines for subsidisable expenses, but they must also bear some of the costs for such projects.

8.2.3. Legal framework of grants

Subsidies to municipalities are granted:

- on a legal basis; in conjunction with relevant support guidelines or administrative provisions where appropriate;
- in keeping with the criteria set forth in support guidelines, in conjunction with estimates in the budget plan for Germany;
- solely according to amounts specified by the budget plan of Germany, in conjunction with state-budget regulations and their supplementary administrative provisions.

In cases in which it is legally defined, the grant system cannot be changed by decision of the executive. If no relevant legal provisions exist, and if the support is granted only on the basis of guidelines or administrative provisions, then these guidelines or provisions can theoretically be changed by the administration; however, the total funding for a support programme is set forth in the budget plan for Germany. The approval agency, thus, is bound to this funding level.

8.3. Brief description of the arrangements for financial equalisation

The basis for the municipal financial equalisation is Article 106, paragraph 7, of the Basic Law, the corresponding articles in the state constitutions, and sub-constitutional provisions concerning financial equalisation in the relevant states.

The purposes of the financial equalisation are to:

- strengthen the municipality's financial position;
- compensate for variations in tax income, to ensure the vitality of tax-weak municipalities (in the main, this occurs through the “general grant” – distribution formula grant – and through application-linked specific grants);
- compensate for variations in task expenses (for example, by means of special distribution formula grants for inter-municipal tasks).

In the following, the example of the state of Baden-Württemberg in 1997 is used to illustrate the municipal financial equalisation:

General financial equalisation

In the framework of the general financial equalisation municipalities are apportioned:

- 23% of the state's share in income tax, corporation tax, turnover tax and local business tax on capital and profits, minus an amount of DM 983 million and minus the contribution which the state has to make in the framework of the financial equalisation between the federal states;
- 85.59% of the financial equalisation pool;

In the framework of the equalisation of traffic burdens pursuant to section 24 of the Financial Equalisation Act, municipalities receive:

- 23.6% of the state's revenue from vehicle tax and the state's share in the fees for the use of federal motorways by heavy trucks pursuant to Act on Road-use Taxes (shared vehicle taxes);
- 26% of the state's share of additional revenue from turnover tax pursuant to section 29 of the Financial Equalisation Act.

a. Financial equalisation amount

The financial equalisation amount resulting from the local share of the community taxes and from the local share of the financial equalisation apportionment was allocated in the following way in 1997:

- 77.26% were used for distribution formula grants to municipalities, city districts, rural districts and state welfare associations, as well as for compensation for special expenses (financial equalisation amount A);
- 22.74% were used to support investments in the municipalities and rural districts (financial equalisation amount B).

i. Financial equalisation amount A

Funds to compensate for special expenses such as:

- municipalities' expenses for support of lower state administrative agencies;
- non-personnel school costs accruing to municipal school agencies;
- expenses related to tourist traffic;
- social assistance costs;
- education costs,

are taken off the financial equalisation amount A.

The remainder of financial equalisation amount A is used for distribution formula grants to municipalities, city and rural districts and to state welfare associations. For calculation of the distribution formula grant for a community, the community's tax income and requirements are balanced. Municipal tax income includes income from land tax, trade tax, (minus the trade tax apportionment) and municipal share of income tax. A municipality's general requirements are determined according to a requirement index calculated by multiplying the population by a *per capita* amount (which increases with population).

If requirements exceed tax income, the municipality receives a distribution formula grant based on lacking tax income. Financially weak municipalities receive full compensation for lacking tax income for up to 60% of requirements (baseline guarantee); uncovered requirements above and beyond this baseline are financed up to 70% through distribution formula grants.

The system of providing distribution formula grants to compensate for lacking tax income thus features elements of both vertical (to cover requirements) and horizontal (financial strength compensation) financial equalisation.

ii. Financial equalisation amount B

Financial equalisation amount B is available for municipal investment grants given, in the great majority of cases, for concrete individual measures (equalisation capital, municipal mutual funds); in a few cases, these grants are also given on a general basis (municipal investment grant).

b. Financial equalisation apportionment

The financial equalisation apportionment, which the municipalities and rural districts pay, is primarily an instrument within the horizontal financial equalisation. It is levied in proportion to tax income. The basis for assessment is the total tax strength of the municipalities and rural districts. The total consists of tax income (for municipalities, property taxes, and the municipality's share of income taxes; for rural districts, real-estate purchase taxes) and of distribution formula grants based on lacking tax income.

A total of 85.59% of the financial equalisation apportionment flows into financial equalisation amount A; the state receives the rest.

c. Traffic burden equalisation

The traffic burden equalisation has a special status among the special burden equalisations provided for in the financial equalisation law, in that funds for it do not come from the financial equalisation amount; instead, the state provides a combined amount taken from motor vehicle taxes.

The funds (DM 453.6 million in the federal budget for 1997) are available for support of current and investment projects related to municipal road construction and local public transportation.

8.4. Other sources of income

Fees and charges paid by users of local/regional authority services amounted to DM 42 669.30 million in 1996. The legal basis for levying fees and contributions are the relevant acts of the federal states. Contributions are levied as a compensation for costs incurred for creating, procuring or extending particular public facilities or installations in return for enabling them to use these facilities and thus have economic advantages.

Other revenues, apart from taxes and grants amounted to DM 55 669.70 million in 1996. They include mainly rents and leases, licence fees, sales proceeds and borrowing.

8.5. Borrowing

8.5.1. Authorisation

As a rule, municipalities must obtain approval from the legal supervisory agency for the total amount they plan to borrow, as specified in their annual budgets (global approval).

The approval should be given or denied according to the criterion of a well-ordered budget economy. As a rule, it should be denied if loan commitments do not correspond to the municipality's long-term capabilities.

Approval may be given subject to certain terms and tied to conditions. Such terms and conditions are permissible only for the purpose of maintaining a well-ordered budget economy and for securing its long-term vitality. For example, terms and conditions may be applied to ensure that:

- certain limits for total debt payments are not exceeded;
- appropriate, market-oriented loan terms are agreed and/or that
- the loans are used primarily for certain high priority tasks.

Individual approvals of individual legal contacts with the lender governing borrowing are generally not provided for. Exceptions only apply where, under section 19 of the Act to Promote Economic Stability and Growth (federal law, designed to control the overall economy), borrowing has been restricted, or where loans are to be taken out within the temporary budget.

The present situation does not take into account the convergence criteria regarding public sector borrowing, which is decisive for the introduction of the European Single Currency.

8.5.2. Sources of borrowing

The majority of the loan sources are on the credit market – mostly banks, saving banks and other credit institutions. Other sources include public supplementary pension companies, building societies, insurance companies and other agencies, or the money is raised through municipal bonds. A low percentage of the loans come from the federal government, the ERP special fund (*European Recovery Programme – Sondervermögen*), the states and the local authorities.

8.5.3. Foreign loans

Municipalities and rural districts have incurred only minor amounts of debt abroad. The reason for this is mainly that credits abroad are made less attractive by unfavourable additional expenses and terms, as well as by added risks.

No special approval is required to obtain foreign loans. Nonetheless, limitations can arise through foreign trade law. Capital influx can be made subject to approval, by means of foreign trade law regulations. In addition, money debts incurred by Germans in a currency other than *Deutschmarks* are subject to approval by the German *Bundesbank*, pursuant to currency law.

Guarantees by the state or other bodies are not necessary and, in general, are not provided.

No information is available about loans municipalities have taken out abroad.

8.6. Economic control exercised by higher authorities

With regard to their budgets and economic management, municipalities are subject to the supervision specified by the municipal constitutions. This supervision is exercised by state agencies. In general, this supervision is of a legal nature and is limited to checks that administration is functioning legally.

The legal supervisory agency must be notified of certain types of individual municipal actions (such as passing of bye-laws, resolutions concerning the sale of property); other actions must be subjected to approval (such as loans – approval of the total amount; assumption of sureties and guarantees). Municipalities must base their budgets on five-year financial planning (result of the federal legal principles for public budgetary matters). The municipalities' financial and budgetary planning is linked into the entire public sector's economic planning through statistical financial planning records.

As they manage their budget economies, municipalities must conform to the requirements of the overall economic balance. In doing so, they must observe federal regulations in force through Article 109 of the Basic Law, in conjunction with paragraphs. 1 and 16 of the Stability and Growth Law.

Legal supervision can ensure observance of the municipal global economic balance. In addition, the amount of municipal borrowing can be limited pursuant to paragraph 19 of the Stability and Growth Law (debt limitation regulation).

All measures that must be taken by the legal supervisory body are aimed at ensuring that municipalities continually perform their responsibilities.

9. CONTROLS OVER LOCAL/REGIONAL AUTHORITIES

9.1. General administrative supervision of the acts of local/regional authorities

Municipalities and rural districts are subject to state supervision. This supervision is exercised by the legal supervisory agency. The municipal constitutions of the various states specify which agency is the legal supervisory agency. As a rule, the legal supervisory agencies for municipalities belonging to the districts are the district administrations; for rural districts and non-district cities the supervisory agency is located on the intermediate state administrative level (if present), such as the district boards (*Regierungspräsidien*). If this administrative level is not present, as a rule the Ministry of the Interior functions as the legal supervisory agency. In addition, the Ministry of the Interior is, in every case, the highest legal supervisory agency.

9.2. Types of supervision

In general, supervision of municipalities is legal supervision, i.e. state supervision is limited in the non-directive area of responsibility to the legality of task performance. Expediency controls, so-called technical supervision, exist only for tasks related to federally commissioned matters.

With both legal and technical supervision, the supervisory agency has the same means of surveillance, including:

- the right to be informed:
The legal supervisory agency can require information concerning individual affairs;
- the right of objection:
Certain measures can be prevented from taking effect or from remaining in effect.
- The right to require the issuance of directives:
The municipality can be required to take certain measures in order to fulfil its legal duties.
- The right to substitute for the municipality:
The legal supervisory agency may substitute for the municipality in carrying out certain tasks.
- Appointing a commissioner:
The legal supervisory agency can appoint a commissioner to carry out all or part of a municipality's duties.

Supervision is not intended to curtail the municipality's power to make resolutions and its willingness to take responsibility. In keeping with the principle of the smallest possible intervention, more extensive supervisory tools are considered only when less extensive ones have been unsuccessful.

9.3. Remedies for local/regional authorities against improper exercise of administrative controls

A municipality or rural district has recourse to general administrative legal protection to protect itself against improper exercises of legal supervision. In the area of technical supervision (tasks subject to directive), legal protection is available only when the external limits of the right to issue directives have been violated.

The local authorities are entitled to appeal to the state or federal constitutional courts against interventions which may affect the guaranteed area of local self-government (Article 28, paragraph 2 of the Basic Law, or in line with the state constitutions).

9.4. Audit of local/regional authorities accounts

The budgets of local authorities are audited as part of the general legal supervision.

In a local auditing, the accounts are first audited by the municipality itself. Regional auditing can be performed by the general supervision agencies, the state audit offices, or by special institutions (e.g. Bavaria: Local Audit Association).

10. REMEDIES FOR INDIVIDUALS AGAINST DECISIONS OF LOCAL/REGIONAL AUTHORITIES

In their actions, municipalities are fully integrated into the general structure of state action. To protect himself or herself against decisions by municipalities and rural districts, the individual citizen has recourse to all remedies available to protect him/her against decisions of state agencies. As a rule, legal matters are decided in administrative courts.

11. LOCAL/REGIONAL ADMINISTRATIVE PERSONNEL

11.1. Definition of main categories of personnel

Like other public service employees, municipal employees are classified into the following main categories:

- Civil servants:
Employees in a special relationship of service and trust under public law. As a rule, they are entrusted with tasks related to legal sovereignty and jurisdiction. The majority of legal aspects of this relationship are regulated by law.
- Employees:
They are employed under private law (public service employees, whose responsibilities consist mostly of mental work).
- Workers:
Persons employed under private law (public service employees, whose responsibilities consist mostly of physical labour). The recruitment requirements and remuneration of employees and workers are regulated by collective agreements.

11.2. Authority responsible for appointment

In municipalities the mayor or chief executive officer is normally responsible for questions related to administration, finances and personnel. In rural districts, the district administrator or chief executive officer is responsible. For personnel related questions, especially in certain individual cases (for example, exceptions from regulations), the state personnel committee or the municipal supervisory agency can be responsible.

11.3. Staff figures

As at 30 June 1995, a total of 1 733 923 persons were employed in the municipalities and districts, and 66 473 in the local administrative unions (overall public sector 5 371 699). Broken down by the above-mentioned types of employment, the picture is as follows:

		Municipalities/ districts	Local administrative unions	Total
Full-time	Civil servants	166 065	2 637	168 702
	Employees	784 949	31 244	816 193
	Workers	333 940	16 874	350 814
Part-time	Civil servants	11 022	113	11 135
	Employees	260 864	9 340	270 209
	Workers	177 073	6 265	183 338

12. REFORMS ENVISAGED OR IN PROGRESS

There have been far-reaching reforms of local constitution law in some states, for instance abolishing dual leadership (North Rhine-Westphalia, Lower Saxony) and introducing the direct election of mayors, and elements of direct citizen participation (referenda and citizens' decrees). Therefore, no further comprehensive reforms are currently envisaged. More modest adaptations to new developments and requirements are carried out in all states.

In the course of the administrative reform currently being concluded, the states have in recent years introduced so-called "experimental clauses" into the local constitutions. Thus, they have made it possible for local authorities to be, upon application, exempt from relevant budgetary and organisational law. As a result, local authorities can now modernise administrative action through new steering models and adjust it to scarce resources.