

The Congress of Local and Regional Authorities



22nd SESSION
CG(22)7
14 March 2012

Local and regional democracy in Germany

Monitoring Committee

Rapporteur:¹ Britt-Marie LÖVGREN, Sweden (L, ILDG²)

Draft recommendation (for vote)	2
Explanatory memorandum	5

Summary

This report is the first general monitoring of the European Charter of Local Self-Government on Germany (a visit carried out in 1999 focused solely on local finances, evaluated at the time as being in a critical situation). The report sets out in detail the complex structure of the regional and local authorities in the country. The Rapporteurs praise the federal and regional (*Länder*) constitutions for their recognition of the principle of local self-government. They draw the attention of the German authorities, however, to the persistent financial deficits of local and regional authorities, and underline the need to establish practical guarantees that complement constitutional provisions.

It is recommended to the German authorities that they strengthen and institutionalise the participatory rights of associations of local authorities both at federal and regional (*Land*) level. They are encouraged to set standards and criteria for concomitant financing in order to provide transparency in the whole financial calculation and planning process. The Government is also invited to consider extending counties' rights to impose taxes directly beyond the available ones. Finally, Germany is called on to ratify the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority.

¹ The Co-rapporteur Mr Ignacio Sanchez Amor is no longer a member of the Congress since December 2011. A second Co-rapporteur should be appointed at the next meeting of the Monitoring Committee.

² L: Chamber of Local Authorities / R: Chamber of Regions
ILDG: Independent and Liberal Democrat Group of the Congress
EPP/CD: European People's Party – Christian Democrats of the Congress
SOC: Socialist Group of the Congress
NR: Members not belonging to a Political Group of the Congress



DRAFT RECOMMENDATION³

(See Recommendation 320 (2012) adopted on 22 March 2012)

1. The Congress of Local and Regional Authorities of the Council of Europe (“the Congress”) refers to:

a. Article 2, paragraph 1.b of Statutory Resolution (2011) 2 relating to the Congress, which provides that one of the aims of the Congress shall be “to submit proposals to the Committee of Ministers in order to promote local and regional democracy”;

b. Article 2, paragraph 3 of Statutory Resolution (2011) 2 relating to the Congress, stipulating that “The Congress shall prepare on a regular basis country-by-country reports on the situation of local and regional democracy in all member states and in states which have applied to join the Council of Europe, and shall ensure, in particular, that the principles of the European Charter of Local Self-Government are implemented”;

c. Resolution 307 (2010) REV on the “Procedures for monitoring the obligations and commitments entered into by the Council of Europe member states in respect of their ratification of the European Charter of Local Self-Government (ETS No. 122)”;

d. Congress Resolution 299 (2010), which provides that the Congress will use the Council of Europe Reference Framework for Regional Democracy in its monitoring activities, as well as the reply given by the Committee of Ministers to Congress Recommendation 282 (2010) [CM/Cong(2011)Rec282final] encouraging the governments of member states to take account of the aforementioned Reference Framework in their policies and reforms;

e. the explanatory memorandum on local and regional democracy in Germany drawn up by the Rapporteurs, Britt-Marie Lövgren, Sweden (L, ILDG) and Ignacio Sanchez Amor, Spain (R, SOC)⁴ following the official visits to Germany in June and September 2011.

2. The Congress recalls that:

a. Germany signed the European Charter of Local Self-Government (“the Charter”) on 15 October 1985 and ratified it on 17 May 1988 with entry into force on 1 September 1988, declaring that the scope of Article 9, paragraph 3 did not apply to municipal associations (*Gemeindeverbände*) and counties (*Kreise*) in the region (*Land*) of Rhineland-Palatinate, while in all other regions (*Länder*), the same paragraph did not apply to the *Kreise*. None of these exceptions, made in 1988, have been removed since then;

b. Germany did not sign the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207);

³ Preliminary draft recommendation approved by the Monitoring Committee on 24 February 2012.

Members of the Committee:

L. O. Molin (President), *M. Abuladze*, *U. Aldegren*, *K. Andersen*, *L. Avetyan* (alternate: *E. Yeritsyan*), *A. Babayev* (alternate: *I. Khalilov*), *T. Badan*, *M. Barcina Angulo*, *V. Belikov*, *G. Bende* (alternate: *E. Penzes*), *G. Bergemann*, *M. Bespalova*, *V. Broccoli*, *Z. Broz*, *A. Buchmann*, *X. Cadoret*, *E. Calota*, *S. Carugo*, *S. Chernov*, *D. Chichinadze*, *B. Collin-Langen*, *M. Cools*, *J. Costa*, *D. Çukur*, *L. Dellai*, *M. De Lamotte*, *N. Dogan*, *G. Doğanoglu*, *M. Gaju*, *V. Gebel*, *G. Geguzinskas*, *S. Glavak*, *S. Guckian*, *M. Guegan*, *M. Gulevskiy*, *H. Halldorsson*, *M. Heatley*, *J. Hepburn*, *B. Hirs*, *J. Hlinka*, *C. Hughes*, *A. Ibrahimov* (alternate: *R. Aliyev*), *G. Illes*, *J. Jalinska* (alternate: *M. Juzupa*), *S. James*, *A. Jaunsleinis*, *M. Jegeni Yıldız*, *M. Juhkami*, *J-P. Klein* (alternate: *E. Eicher*), *A. Kriza*, *I. Kulichenko* (alternate: *N. Rybak*), *F. Lec*, *J-P. Liouville*, *I. Loizidou*, *M. Magomedov*, *P. Mangin* (alternate: *J-M. Belliard*), *T. Margaryan*, *G. Marsan*, *H. Marva*, *V. Mc Hugh*, *M. Merrild*, *I. Micallef*, *T. Mikus*, *K. Miskiniene*, *M. Monesi*, *G. Mosler-Törnström*, *A. Muzio*, *M. Njilas*, *Z. Ozegovic* (alternate: *V. Vasic*), *R. Paita* (alternate: *A. Miele*), *U. Paslawska*, *H. Pihlajasaari*, *G. Pinto*, *G. Policanschi*, *A. Pruszkowski*, *C. Radulescu* (alternate: *L. Sfirloaga*), *R. Rautava* (alternate: *S. Ruponen*), *H. Richtermocova*, *A. Rokofillou*, *N. Romanova*, *D. Ruseva*, *J. Sauwens*, *P. Schowtka*, *W. Schuster*, *D. Shakespeare*, *M. Simonovic* (alternate: *S. Lazic*), *G. Spartanski*, *M. Tamiros*, *A. Torres Pereira*, *V. Udovychenko* (alternate: *O. Radziievskiy*), *A. Ugues*, *G. Ugulava* (alternate: *P. Zambakidze*), *A. Uss*, *P. Uszok*, *V. Varnavskiy* (alternate: *A. Borisov*), *O. Van Veldhuizen*, *L. Vennesland*, *L. Verbeek*, *H. Weninger*, *K. Whitmore* (alternate: *P. Grove*), *J. Wiene*, *D. Wrobel*, *U. Wüthrich-Pelloli*, *D. Zmegac*.

N.B.: The names of members who took part in the vote are in italics.

Secretariat of the Committee : *S. Poirel* and *S. Cankoçak*.

⁴ Mr Ignacio Sanchez Amor is no longer a member of the Congress since December 2011.

c. the Monitoring Committee decided on 23 March 2011 to carry out the first general monitoring of the situation of local and regional self-government in Germany and its compliance with the Charter. It instructed Ms Lövgren and Mr Sanchez Amor to prepare and submit to the Congress, as Rapporteurs, a report on local and regional democracy in Germany;

d. The Congress delegation carried out a monitoring visit to Germany from 27 to 29 June 2011 visiting Berlin, Potsdam and Frankfurt (Oder) and on 27 and 28 September 2011 visiting Düsseldorf, Langenfeld (North-Rhine Westphalia), Wiesbaden (Hesse), Stuttgart and Ludwigsburg (Baden-Württemberg).

3. The Congress wishes to thank the Permanent Representation of Germany to the Council of Europe and the German authorities at central, regional and local levels, the associations of local and regional local authorities, and experts as well as other interlocutors for their valuable cooperation at different stages of the monitoring procedure and the information conveyed to the delegation.

4. The Congress notes with satisfaction:

a. that Germany recognises, both in its federal and regional (*Länder*) constitutions, the right to self-government of municipalities, setting a high standard for the protection of local authorities;

b. that Germany has made considerable progress in accepting and complying with the recommendations adopted by the Congress after its monitoring of local government finances in 1999;

c. that the principle of concomitant financing has been inserted in all regional constitutions;

d. the efforts made by some *Länder* to establish special funds and to launch subject-specific programmes to help local authorities in need to tackle their liquidity problems and to prevent further indebtedness;

e. that the mode of consultation with local government associations is formally recognised in the procedural rules of the federal government.

5. The Congress expresses some concern that:

a. although the financial situation of local authorities, already evaluated as “critical” in 1999, has seen some improvement due to a positive tax yield at local level, the situation of local authorities remain preoccupying due to the rise in social welfare spending, structural deficits of the financing of local authorities and an increasing imbalance between them;

b. many *Länder* have not set up practical guarantees for concomitant financing although they have enshrined the principle in their constitutions;

c. the participatory rights of associations of local authorities both at federal and *Land* level need strengthening, since although the mode of consultation with these associations is formally recognised in the procedural rules of the federal government, they do not appear in the standing orders of the federal as well as the *Land* parliaments;

d. counties do not have the right to impose taxes directly, beyond the available and rather insignificant taxes and that this is one of the reasons Germany upholds the explanations made in 1988 concerning the exclusion of the effect of Article 9, para. 3 of the Charter.

6. In the light of this, the Congress requests that the Committee of Ministers invite German authorities to:

a. fully respect the constitutional guarantees for local finances, ensuring that local authorities can be associated to the decision-making process regarding the structure and the yield of taxes at local level, in spite of the prevalent negative economic trends and that, given the high level of indebtedness of local and *Land* governments, local authorities be provided with adequate financial means that allow them discretion in how to use these resources;

b. establish standards and criteria for concomitant financing of local authorities providing transparency in the whole financial calculation and planning process thereby providing practical guarantees and reinforcing the framework of this principle with real planning mechanisms involving local government interests;

c. strengthen and institutionalise the participatory rights of associations of local authorities both at federal and *Land* level by inscribing them in the standing orders of the federal as well as the *Land* parliaments;

d. extend counties' rights to impose taxes directly beyond the available county taxes, in line with the Congress objective to extend the scope of the Charter to all entities having direct political legitimacy, ensuring at the same time that such taxes are not levied to the detriment of municipalities that are part of the counties, or by impinging on their fiscal yield;

e. sign and ratify, in the near future, the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207).

EXPLANATORY MEMORANDUM

Table of contents

1. Introduction.....	6
2. Political context	7
3. Constitutional and legislative bases	8
4. Administrative division of Germany	9
4.1. The Federation and the Länder	9
4.2. Local and territorial governments	11
4.2.1. Municipal governments	11
4.2.2. The municipal confederations and the counties	13
5. Main powers and responsibilities of local authorities	14
6. Organisational structure and decision-making process of local authorities	17
7. Local government finance	18
7.1. Basic principles	18
7.2. Local government budgets	19
7.3. Local revenues	20
7.3.1. Local and shared taxes	20
7.3.2. Charges and fees	21
7.3.3. Borrowing	21
7.3.4. Other local resources	21
7.4. Central grants	22
7.5. Financial equalisation	23
8. Central - local government relations and the procedure for consultations between central and local authorities.....	24
Consultation	25
9. Analysis of the situation of local democracy in light of the European Charter on Local Self-Government on an article by article basis.	25
9.1. Principle and concept of local self-government (Articles 2 and 3).....	25
9.2. Scope of local self-government (Article 4).....	26
9.3. Protection of boundaries (Article 5)	26
9.4. Administrative structures (Article 6)	27
9.5. Exercising responsibilities and government supervision (Articles 7 and 8).....	27
9.6. Financial resources (Article 9)	28
9.7. Rights to associate and legal protection of local governments (Article 10 and 11).....	31
9.8. Undertakings – reservations formulated by States (Article 12)	32
10. Conclusions and proposals	33
Appendix 1 – Programme of the 1st part of the Congress monitoring visit to Germany (27-29 June 2011)	35
Appendix 2 – Programme of the 2nd part of the Congress monitoring visit to Germany (27-28 September 2011)	37
Appendix 3 – Overview of the state of implementation of human rights at local and regional levels	38

1. Introduction

1. In accordance with Article 2 of Statutory Resolution CM/Res(2011)2 of the Committee of Ministers, the Congress of Local and Regional Authorities of the Council of Europe (hereafter "the Congress") regularly prepares reports on the state of local and regional democracy in the member states and candidate countries.

2. The Federal Republic of Germany signed the European Charter of Local Self-Government (ETS No. 122, hereafter "the Charter") on 15 October 1985 and ratified it on 17 May 1988 with entry into force on 1 September 1988. Germany made some reservations during ratification, declaring that the scope of Article 9, Paragraph 3⁵ does not apply to municipal associations (*Gemeindeverbände*) and counties (*Kreise*) in the state (*Land*) of Rhineland-Palatinate, while in all other states (*Länder*), the same paragraph does not apply to the *Kreise*. None of these exceptions, expressed in a declaration made on 1 September 1988, have been removed since then.

3. Germany ratified the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (ETS No. 106) on 21 September 1981 (entry into force 22 December 1981) and the Additional Protocol to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (ETS No. 159) on 9 November 1995 (ratified on 16 September 1998 and entry into force on 17 December 1998). Germany has not signed the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207).

4. Germany is a member of the Council of Europe, the North Atlantic Treaty Organization (NATO), the Organisation of Economic Co-operation and Development (OECD), the World Bank and the International Monetary Fund (IMF), the G8, and the G20. It is the largest contributor to the budget of the European Union.

5. The Monitoring Committee appointed Britt-Marie Lövgren (Sweden, L, ILDG) and Ignacio Sanchez Amor⁶ (Spain, R, SOC), co-rapporteurs, for, respectively, local and regional democracy in Germany. They were instructed to submit to the Congress a report and a recommendation on local and regional democracy in the country. On this visit, the two co-rapporteurs were assisted by Professor Zoltán Szente, consultant, member of the Group of Independent Experts on the European Charter of Local Self-Government and Sedef Cankoçak, Co-secretary to the Congress Monitoring Committee.

6. Taking into account that the first monitoring visit to Germany which took place in 1999 was limited in scope to a review of local finances, it was decided to prepare a new report analysing the situation of local and regional democracy in general in Germany in all aspects relevant to the implementation of the Charter. In doing so, having regard to the size and federal structure of Germany, the Congress decided to organise two visits in order to gather information about the current situation and to discuss the problems and existing challenges with the representatives of the federal and some *Land* governments, local government officials, experts and other stakeholders of local and regional democracy.

7. The first visit took place between 27 and 29 June 2011, and the delegation met with the leading representatives of the national associations of local authorities, members of the Bundestag committee on Human Rights and Humanitarian Aid, and of the Sub-Committee on local government (belonging to the Committee of Internal Affairs). The Congress delegation had a discussion with the Parliamentary State Secretaries of the Federal Ministries of Interior and Finance. The delegation made also a visit to the town hall of the capital city, Berlin, where it met the State Secretary of the Berlin Senate, the mayor of a capital city district (Lichterberg), and the Head of Berlin's Secretariat of the Conference of German Ministers for European Affairs. Other leading officials of Berlin were also consulted with, like the Representative of the Berlin Senate for Integration and Migration and the State Secretary for Integration, Labour & Social Issues, with whom some human rights issues were discussed. The protection of human rights was the theme in the meeting with the Ombudsman (and his deputy) for

⁵ 'Part at least of the financial resources of local authorities shall derive from local taxes and charges of which, within the limits of statute, they have the power to determine the rate.' (Art. 9 Para. 3).

⁶ M. Ignacio SANCHEZ AMOR is not a member of the Congress since December 2011.

Mecklenburg-Vorpommern. The delegation travelled to Potsdam for a meeting with the President of the Parliament of Brandenburg and the leaders of the Parliament's Petition Office. The delegation visited the President of the Constitutional Court of Brandenburg. Finally the delegation met with the mayor and the city councillors of Frankfurt an der Oder.

8. Between 27 and 28 September 2011, during the second visit, the delegation had consultations in Düsseldorf with the Minister of the Interior of North Rhine Westphalia and some leading officials of the Ministry of the Interior with the President of Municipal Policy Committee as well as with the President of the Sub-Committee on Integration of the Parliament of North Rhine Westphalia, with the mayor and some officials of the Municipality of Langenfeld. The delegation then went to Hesse and met the State Secretary of the Ministry of the Interior and Sport of Hesse as well as the Head of the Division of Local Government Law, and to Baden-Württemberg, where it met the Vice-President of the Landtag of Baden-Württemberg and the President of the Constitutional Court of the *Land*. Finally, the delegation travelled to Ludwigsburg, in Baden-Württemberg, to meet with the mayor and the members of the city council of the local authority (for the detailed programme of the two visits, see Appendices 1 and 2).

9. The co-rapporteurs wish to thank the Permanent Representation of Germany to the Council of Europe and all those whom it met on the visit for their readiness to assist the delegation and for the information they so willingly supplied. It also thanks the German delegation to the Congress, the Associations of local and regional local authorities and the Federal Ministry of the Interior officials for contributing to the organisation and smooth running of the visit.

10. It should be pointed out that this report essentially focuses on mapping out the situation of the local authorities and their relations with the *Land* governments. One reason for this focus is the fact that, following the reform which severed the direct link between the federal government and the local level as regards the transfer and financing of tasks, local government issues effectively lie within the competence of the *Länder*. The relations between the federal government and the *Länder* themselves have not been explored in this report. They will be dealt with in detail in the next monitoring report on Germany.

2. Political context

11. The Federal Republic of Germany is a federal parliamentary democracy, whose constitutional order is based on the principles of people's sovereignty and the separation of powers. The German constitution, the Basic Law (*Grundgesetz*) was approved in 1949. Although the original text of the Basic Law, because of the division of Germany into a Western and an Eastern part after the Second World War manifested itself as to be a provisional one until the entire German people approves of a new, uniform constitution, no new constitution was adopted after the reunification of the country in 1990, but the effect of the Basic Law of 1949 was extended to the Eastern part of the country, that is, to the former East Germany with some modifications.

12. As a major rule, any amendment of the Basic Law requires a two-thirds majority of both chambers of the federal legislature; however, according to Article 79 para. (3), the fundamental principles of the constitution, as expressed in the articles guaranteeing human dignity, the separation of powers, the federal structure, and the rule of law can never be modified.

13. Germany comprises sixteen *Länder*, (see Table 1, page 5), each one having its own constitution and largely autonomous internal political structure. The relationship between the federal and the *Land* governments are specified and protected by the Basic Law. The *Länder* have the power to legislate unless the Basic Law bestows legislative competencies on the Federation. Legislative procedures are instituted when a bill is submitted. This legislative proposal can be initiated by the federal government, the members of the *Bundestag* or by the *Bundesrat*.

14. The head of state is the Federal President, who is elected by the so-called Federal Convention (*Bundesversammlung*), as an institution consisting of the members of the *Bundestag* and an equal number of members elected by the parliaments of the *Länder* on the basis of proportional representation. At federal level, the legislative power is vested in the bicameral parliament, consisting of the directly elected Federal Parliament (*Bundestag*) and of the Federal Council (*Bundesrat*), a legislative body representing the sixteen *Länder*. The federal executive power is exercised by the federal government, headed by the federal chancellor, who is elected by, and responsible to the *Bundestag*.

15. Germany has a multi-party system with two strong parties and some other parties also represented in the *Bundestag*. Normally, there are coalition governments at federal level.

16. The members of *Bundestag* are elected in general, direct, free, equal, and secret elections, where as a major rule, all persons who have attained the age of 18⁷ are entitled to vote. Their mandate is four years; the last general elections were held in September, 2009, so the next will expectably be in autumn 2013. The members of the *Bundesrat* are not elected directly, but are delegated by the *Länder*. In each *Land*, county and municipal councils are elected with general, direct, free, equal, and secret vote. In local elections, people who possess citizenship in any member state of the European Union are also eligible to vote and to be elected.

17. In Germany, the independence of the Judiciary is guaranteed by the Basic Law. The judicial power is vested in the judges, and is exercised by the federal courts provided for in the Basic Law, and by the courts of the *Länder*. The Federal Constitutional Court (*Bundesverfassungsgericht*) is also an integral part of the judiciary, and is responsible for constitutional matters, for example, the constitutional review of the legal statutes.

18. It is to be noted that the German legal system is based on Roman (as well as traditional Germanic) law. As to the relationship between the national and international law, the German legal system is a monistic one, as, according to Article 25 of the Basic Law, the general rules of international law are an integral part of federal law, taking precedence over domestic laws and directly create rights and duties for the inhabitants of the federal territory.

3. Constitutional and legislative bases

19. The German federal constitution, i.e. the Basic Law, recognises the right of municipalities (*Gemeinde*) and of municipal confederations⁸ (*Gemeindeverbände*) to self-government. The principle of self-government comprises the power of municipalities and their confederations to regulate all local affairs in their own responsibility, within the limits of the law, which is recognised both in the federal⁹ and the *Länder* constitutions.¹⁰ Notably, the constitutions of the *Länder* entrench also constitutional guarantees, but the level of protection cannot be lower than that of the federal Basic Law.

20. As a major rule and within the limits of the law, local authorities are entitled to regulate and administer all local public affairs which are not conferred on other public authority (*Allzuständigkeit*). Local governments have, within the framework of the law, rights and powers to:

- a) exercise general scope of authority in their own area (*Gebietshoheit*);
 - b) determine their internal administrative organisation (*Organisationshoheit*);
 - c) recruit their personnel, and determine their division of work (*Personalhoheit*);
 - d) have their own budget, with the responsibility for their resources and expenditure (*Finanzhoheit*);
- regulate local public affairs in an autonomous way (*Rechtsetzungshoheit*).

21. The financial autonomy extends to the right of municipalities to impose local taxes and to establish their rates.

22. The most common constitutional safeguards at *Land* level are also the general scope of responsibility of local authorities in local matters, their right to be heard in all decisions affecting their interests, the principle of concomitant financing, the right to own tax revenues and to have a share in financial equalisation.

⁷ Provided they have been residing in the Federal Republic of Germany for at least three months or have had their normal place of residence in the Federal Republic of Germany and not have been excluded from the right to vote.

⁸ Although the word *Verband* has been translated as "association" in some German official texts, the word « confederation » will be used in this report (unless we are citing directly from official texts) in order to distinguish the collaborative units of local authorities from the associations of municipalities which are bodies representing municipal interests.

⁹ Art. 28 Para. 2 of the Federal Basic Law.

¹⁰ Art. 71–76 in Baden-Württemberg, Art. 83, Sect. 10–12 in Bavaria, Art. 97–100 in Brandenburg, Art. 143–149 in Bremen, Art. 137 in Hesse, Art. 72–75 in Mecklenburg-Vorpommern, Art. 57–58 in Lower Saxony, Art. 1, 78–79 in North Rhine Westphalia, Art. 49–50 in Rhineland Palatinate, Art. 117–123 in Saarland, Art. 82, Sect. 2 and 84–89 in Saxony, and Art. 87–90 in Sachsen-Anhalt, Art. 46–49 in Schleswig-Holstein, and Art. 91–95 in Thuringia.

23. In Germany, local government issues belong to the competence of the *Länder*. Thus, the institutional arrangements, the allocation of competences and the system of finance of local authorities fall within the range of responsibility of the *Länder*, which may regulate them with great autonomy. Therefore, more constitutional guarantees can be found in the *Land* constitutions. These constitutions contain quite similar provisions and safeguards as the federal Basic Law. The constitution of Brandenburg, for example, says that “[m]unicipalities and the associations of municipalities have the right to self-government ... [w]ithin their respective territory, municipalities and associations of municipalities discharge all duties of the local community that are not incumbent upon other agencies according to this Constitution or by operation of law”.¹¹ Accordingly, the constitution of Schleswig-Holstein states that “[t]he municipalities are entitled and, in the frame of their capacity, obliged to perform all public affairs on their own responsibility as far as the statutes do not prescribe something different expressively.”¹²

24. The detailed rules of local authorities are laid down by *Land* level legislation in separate local government laws (*Gemeindeverfassung* or *Gemeindeordnung*) which also establish the autonomy of local governments. Thus, for example, the *Gemeindeordnung* of Hesse says that “the democratic states are based on municipalities” and that they are its “territorial units”.¹³

25. The autonomy of the *Länder* to regulate local government matters gives rise to considerable institutional differences between their respective local government systems. In fact, the only restriction in *Land*-level regulation of local governments is that the constitutional order of the *Länder* (including their municipalities) must be based on the principles of (republican, democratic and social) rule of law (*Rechtsstaatlichkeit*). This principle of harmonisation (the so-called *Homogenitätsgebot* or *Homogenitätsklausel*)¹⁴ is the guarantee for not only the unity of constitutionalism in the country as a whole, but also for the democratic structure of local authorities in all its *Länder*.

26. The functions of local and county governments are determined by the *Länder*. It is worth noting that since the constitutional amendment of 2006, the federal government has no power to confer mandatory functions directly to local authorities.

27. It should also be noted that, according to the German local government law, the right to self-government is provided for the territorial units of the *Länder* (*Gebietskörperschaften*). This category embraces not only the municipalities, but also the municipal confederations¹⁵ (*Gemeindeverbände*), to which the counties (*Kreise*) and the institutional forms of local government cooperation belong.

4. Administrative division of Germany

4.1. The Federation and the Länder

28. Germany is a federal state composed of 16 *Länder*: Baden-Württemberg, Bavaria, Berlin, Brandenburg, Bremen, Hamburg, Hesse, Lower Saxony, Mecklenburg-Western Pomerania, North Rhine-Westphalia, Rhineland-Palatinate, Saarland, Saxony, Saxony-Anhalt, Schleswig-Holstein and Thuringia. Three of them, Berlin, Bremen and Hamburg are so-called city-states (*Stadtstaaten*), while the others have larger territories (*Flächenländer*).

¹¹ Art. 97 Para (1)-(2) of the constitution of Brandenburg.

¹² Art. 46 Para. (1) of the state constitution of Schleswig Holstein.

¹³ § 1 (1)-(2) of the local government law of Hesse.

¹⁴ Michael Sachs (Hrsg.): Grundgesetz. Kommentar. 5. Auflage, Verlag C. H. Beck, München, 2009. pp. 1001–1003.

¹⁵ See chapter 4.2.2 for a detailed definition of the term « local government association ».

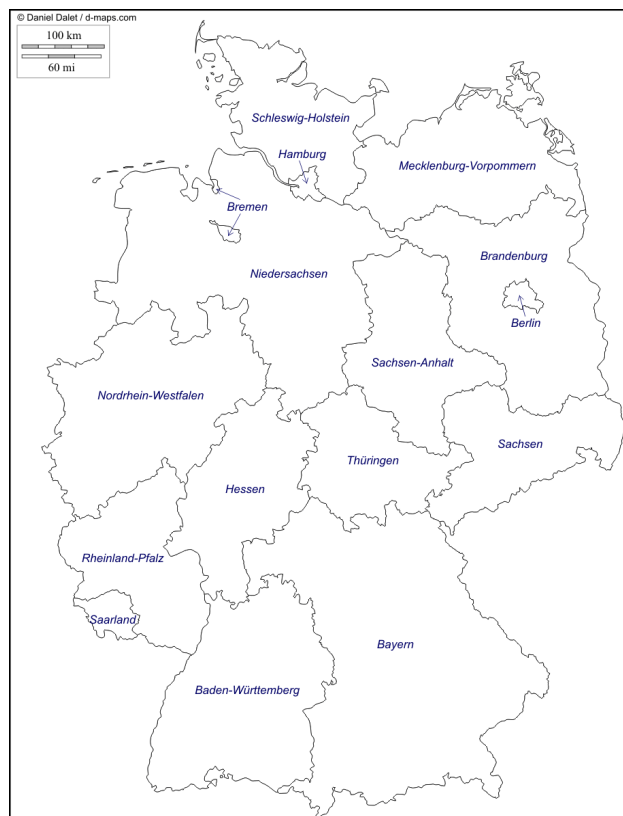
Table 1. The *Länder*

(Land)	Area (km ²)	Population (1,000)*	Capital
Baden-Württemberg	35,752	10,745	Stuttgart
Bavaria	70,552	12,510	Munich
Berlin	892	3,443	–
Brandenburg	29,479	2,512	Potsdam
Bremen	419	662	–
Hamburg	755	1,774	–
Hesse	21,115	6,062	Wiesbaden
Mecklenburg-Vorpommern	23,180	1,651	Schwerin
Lower Saxony	47,609	7,929	Hannover
North-Rhine Westphalia	34,085	17,873	Düsseldorf
Rhineland Palatinate	19,853	4,013	Mainz
Saarland	2,569	1,023	Saarbrücken
Saxony	18,416	4,168	Dresden
Saxony-Anhalt	20,446	2,356	Magdeburg
Schleswig-Holstein	15,799	2,832	Kiel
Thuringia	16,172	2,250	Erfurt

*In 2009.

Source: Deutschland 2011. Statistisches Bundesamt, Wiesbaden, 2011.

29. All *Länder* are in an equal legal position, and enjoy the same constitutional status, which provides wide-ranging autonomy for them vis-à-vis the Federation, including the three city-states, even if they are not situated in a large territory.

Figure 1. The territory of the *Länder*

30. Each *Land* has its own constitution and separate government structure. The *Länder* have quite a wide autonomy to determine how they govern themselves, as the federal constitution stipulates only a democratic minimum, to the effect that each *Land* must "conform to the principles of republican, democratic, and social government, based on the rule of law" - although in most *Länder* the parliamentary government mirrors that of the federal government, to a certain degree and in different shapes. For example, in the *Länder*, there are unicameral legislative bodies (*Landtags*).

The city-states are governed in a slightly different way, which follows from the fact that they have a double status as *Länder* and municipalities.

31. The allocation of powers and duties is determined by the federal constitution which states that the *Länder* are responsible for all public functions and tasks that are not assigned expressly to the federal government, meaning that the latter has only residual functions that are enumerated by the Basic Law. The underlying concept of German federalism is that while the federation exerts wide-ranging legislative powers in areas of interstate matters, the *Länder* are mainly responsible for the implementation of both the federal and the *Land*-level law. Thus, German federalism differs from those federal systems where there are dual executive (and judicial) structures serving each level of government.

32. In those areas where parallel or concurrent legislation is possible, the federal law takes precedence over the law of the *Länder*.

33. In 2006, the federal structure was reformed by a constitutional amendment, strengthening the Federation's legislative power in areas of supra-regional matters, while the competence of the *Länder* in the field of regional affairs was increased. Nevertheless, there are some areas, like taxation, where both the Federation and the *Länder* have concurrent legislative powers.

34. It is worth noting that the *Länder* have an institutionalized influence on the federal policy-making in many areas, through the *Bundesrat*, which consists of the representatives of the *Länder governments*. In this way, the *Länder* have a voice in all federal issues where the *Bundesrat* is always consulted and in some cases the consent of the *Bundesrat* is required.

35. As mentioned above, local government issues fall within the scope of the authority of the *Länder*. The federal government may influence *Land*-level local government policy mainly through federal legislation (granting new tasks and functions) and the system of taxes.

36. As a consequence of this system of distribution of tasks and functions, no less than 16 local government systems exist in Germany, the differences among which essentially reside not in the system adopted, but in its implementation. Under these circumstances, the *Land* is to be regarded as the counterpart of the central government in unitary states. In Germany, the "central-local relationship", a crucial sphere of the local democracy, refers to the relations between the *Land* government and the local governments.

4.2. Local and territorial governments

37. As we saw above,¹⁶ local government issues, as such, do not fall within the legislative power of the Federation, or, in other words, they are reserved for the *Länder* who enjoy quite a wide range of autonomy in regulation and maintenance of their own local government systems. As a consequence, the competences and the internal institutional arrangements of the local authorities sometimes vary considerably in the different *Länder*. Nonetheless, there are some principles and institutional features that prevail in the whole country.

38. In all but the three city-states, the local government system consists of municipalities and, in 10 of the 16 *Länder*, municipal confederations. Both have their own scope of responsibilities.

39. In some *Länder*, in particular in the larger ones, as Baden-Württemberg, Bavaria, Hesse, North Rhine-Westphalia and Saxony there are so-called governmental districts (*Regierungsbezirke*), but these are in fact the regional organs of the *Land* governments, that is, the part of the organisational system of the *Land* administration without self-government.

4.2.1. Municipal governments

40. In Germany, there are more than 11,000 municipalities constituting the basic level of local governance. They are communities (*Gemeinde*) or towns (*Städte*) with the same rights of local self-

¹⁶ See para. 20.

government. Owing to the considerable differences in size of territory, population and municipal structure of the *Länder*, the number of their municipalities varies.

41. As said earlier, the three city-states, which are both *Länder* of the Federation and urban municipalities, have special structures. However, their common feature is that no parallel institutions operate for the municipality as a local government, and for the city-state as a *Land*. Berlin and Hamburg both have a two-tier system, since their municipal self-government is divided into districts. Bremen consists of Bremen and Bremerhaven, and the two cities are administered separately from each other.

Table 2. Administrative division of Germany (30.09.2011)

<i>Land</i>	Administrative districts*	Number of municipalities	
		municipalities**	municipal boroughs***
Baden-Württemberg	4	1,101	9
Bavaria	7	2,056	25
Brandenburg	–	419	4
Hesse	3	426	5
Lower Saxony	–	1024	8
Mecklenburg-Vorpommern	–	805	2
North-Rhine Westphalia	5	396	22
Rhineland Palatinate	–	2,306	12
Saarland	–	52	–
Saxony-Anhalt	–	220	3
Saxony	3	469	3
Schleswig-Holstein	–	1,116	4
Thuringia	–	942	6
Berlin	–	1	1
Bremen	–	2	2
Hamburg	–	1	1
Total	22	11,336	107

**Regierungsbezirke*.

** Including communities (*Gemeinde*) and towns (*Städte*).

*** *Kreisfreie Städte*.

Source: Statistisches Bundesamt, Wiesbaden, 2011.

42. As the analysis of the statistical data of Tables 1 and 2 shows, there are considerable differences in the number and size of local authorities in the various *Länder*. While in Bavaria, for example, the average population of a municipality is about 6,000, an average municipality in North Rhine Westphalia is almost 43,000. In general, it can be said that, whereas South Germany is more fragmented with a greater number of municipalities, the North-Western part of the country has more integrated local government systems. From this point of view, the former, that is, a relatively fragmented or “small-municipality” system is the norm in those *Länder* which belonged to Eastern Germany before the reunification. However, as Table 3 below demonstrates, in those *Länder* where most local communities have their own government, the fragmentation is counterbalanced by municipal confederations (*Kommunalverbände*), which promote the collaboration of smaller municipalities (the majority of which have no administration of their own) to concentrate their capacities on better public service delivery in certain areas (see 4.2.2.).

43. The larger cities, according to the special conditions set by the respective *Länder*, have a special administrative status, to the extent that they are not part of a county (*Landkreise*), and fulfil both the functions of municipalities and counties in their own territory. At the moment¹⁷, there are 107 such municipal boroughs in the whole country. In most of the *Länder* they are named *kreisfreie Städte*, but they are called *Stadtkreise* in Baden-Württemberg. On the basis of their relationship with the counties, they are usually distinguished from the other municipalities, the so-called *kreisangehörige Städte*, which compose the respective counties. Quite interestingly, in contrast with some other European

¹⁷ These data reflect the situation of October 2011.

countries, these special sorts of local government are seen in the German approach as middle-level units from an administrative point of view. In some *Länder*, there are intermediate forms of municipalities (*Mittelstädte*, *Große Kreisstädte*, *Selbständige Städte*), which are parts of the counties, but which perform certain (but not all) types of county tasks themselves.

44. In addition, it is worth noting that the double status of the three city-states, Berlin, Bremen and Hamburg, (each of them is a municipality and a *Land*), does not entail a parallel organisation structure, their deliberative body being the legislative organ of both the *Land* and of the municipal government.

45. Berlin, as the capital city of the unified Germany, has a special administrative status, which does not come from its position as the capital, but rather from its status as a *Land*. It is remarkable that a recent constitutional amendment introduced a new provision into the Basic Law naming Berlin as the capital city of the Federal Republic of Germany and stating that its status shall be regulated by federal law. Berlin has a two-tier administrative system. It has 12 boroughs (*Bezirke*), which are seen as local government units without legal entity.¹⁸

46. The representative body of the central administration of Berlin is the House of Representatives (*Abgeordnetenhaus*) composed of at least 130 members,¹⁹ who are elected by those German nationals entitled to vote in general, equal, free, secret and direct elections. The executive body is the Senate, which consists of the Governing Mayor and a maximum of eight other members. While the Governing Mayor is elected by an absolute majority of the members of the House of Representatives, the other Senate members are appointed and removed by the Governing Mayor. The relationship of the legislative and executive bodies is based on parliamentary government, which means that the Governing Mayor is required to have the majority support of the *Land* parliament.

47. As to the second level of Berlin's government, the borough assembly bears the legislative and decision-making responsibilities. Each of them is composed of 55 members, who are elected at the same time as the House of Representatives in a general, equal, secret and direct election. The executive functions are performed by the borough mayor and the councillors of the borough (*Bezirksstadträte*) elected by the borough assembly. The boroughs have their own functions and tasks, but the Senate may issue guidelines and general administrative provisions relating to their activities. The Senate supervises their application and the lawfulness of their administrative activity.

48. It is to be noted that while the general tendency is the slow decrease of the number of municipalities, in some *Länder*, the number of municipalities and municipal confederations has shown high stability, particularly since the comprehensive integration process of municipalities carried out in the 60s and 70s. Thus, in Hesse since 1981, and in Bavaria, Rhineland Palatinate and Saarland since the 1990s, no changes have taken place in this number, while in some others, like in Baden-Württemberg, or Lower Saxony only minor changes have occurred. Nonetheless, in Brandenburg and Saxony-Anhalt, significant municipal integration has been accomplished since the first Congress report on Germany. In the former case, the number of local authorities has decreased from 1,479 to 419; in the latter, from 1,289 to 220.

4.2.2. *The municipal confederations and the counties*

49. The term of "local government associations" (replaced with the term "municipal confederations" for the purposes of this report) can be used in two different ways in Germany: as denoting organisations of interest representation (see chapter 8) or collaborative units of local authorities. The latter is not only for promoting their specific interests before the central government, but also for fulfilling jointly their mandatory and voluntary tasks and functions. For this purpose, particularly the smaller municipalities, while retaining their own local representative body and mayor, establish municipal confederations, because they are not capable of performing their compulsory functions by themselves. This practice is more frequent in those *Länder* which have preserved their relatively fragmented local government system. The institutional settings of these organisations differ from each other in the various *Länder*, and their names are also different (etc. *Verwaltungsgemeinschaften*, *Verbandsgemeinde*).

¹⁸ Their number was reduced in 1998 from 23 to 12.

¹⁹ At the moment, the House of Representatives has 149 members.

50. Certain types of municipal confederations exist above the municipal level. They provide institutional framework for one or more counties and municipal boroughs for fulfilling special administrative tasks of regional interests (*Kommunalverband besonderer Art*). These are, for example, the District of Hanover, the Regional Association of Saarbrücken, and the City Region of Aachen.

51. Outside the city-states, there are county governments (*Landkreise*)²⁰ in all *Länder* - altogether 295 in 2011. According to German administrative law they exist, like the municipal governments, as independent self-governments and are considered separate territorial units (*Gebietskörperschaften*) or local government confederations (*Kommunalverbände*). However, given their current administrative status, the counties do not meet all the conditions of the definition of local self-government made by the European Charter. And that is why Germany made a declaration at the time of the deposit of the instrument of ratification of the Charter in 1988 that the requirement of the Charter concerning the right to levy local taxes would not prevail in the *Landkreise*.

Table 3. Municipal associations in Germany

<i>Land</i>	Number of			
	municipal confederations	municipalities belonging to MCs	municipalities not belonging to MCs	counties*
Baden-Württemberg	270	911	190	35
Bavaria	313	987	1 069	71
Brandenburg	53	271	148	14
Hesse	–	–	426	21
Lower Saxony	134	735	289	38
Mecklenburg-Vorpommern	78	765	40	6
North-Rhine Westphalia	–	–	396	31
Rhineland Palatinate	163	2258	48	24
Saarland	–	–	52	6
Saxony-Anhalt	19	117	103	11
Saxony	95	238	231	10
Schleswig-Holstein	85 in 2012**	1033	83	11
Thuringia	121	820	122	17
Berlin	–	–	1	–
Bremen	–	–	2	–
Hamburg	–	–	1	–
Total				295

• *Landkreise* (*Kreise in North-Rhine Westphalen and Schleswig-Holstein*).

• ** Ämter" in Schleswig-Holstein, which are not municipal confederations within the meaning of Article 28 para. 2 sentence 2 of the Basic law.

52. Since the larger cities have a special administrative status, only the villages and smaller towns belong to the counties. The counties work, as a rule, have an equalisation and complementarity function with the municipalities of their territory as their administrative role is adjusted to the financial and service producing capacity of these municipalities. They also carry out the tasks delegated to them by the *Land*. Hence the variety in the scope of their responsibilities in the different *Länder*.

5. Main powers and responsibilities of local authorities

53. As mentioned above, the execution of both federal and *Land* laws, as well as most administrative activities falls within the scope of authority of the *Länder*.

54. Although various *Land* constitutions define the powers and duties of local governments in different ways, their common feature is to provide constitutional guarantees for local autonomy. The major

²⁰ Except in North-Rhine Westphalia and Schleswig-Holstein, where they are called *Kreise*. The concept of *Landkreise* is sometimes translated as "rural districts". See for example, Structure and operation of local and regional democracy. Germany. Situation in 1998. Council of Europe Publishing, March 1999.

principle of distribution of public responsibilities is that, within the limits of the law, all local public affairs are regulated and administered by local governments. Moreover, when fulfilling their tasks and functions determined by federal or *Land* laws, local authorities exercise their responsibilities in an autonomous way. For example, the Bavarian constitution states that local authorities “have the right to order and administer their own affairs within the law”.²¹ According to the constitution of Schleswig-Holstein, [t]he municipalities are entitled and, within the frame of their capacity, obliged to perform all public affairs on their own responsibility insofar as the statutes do not expressly prescribe something different.²² Similarly, but formulated in another way, the constitution of Brandenburg declares that “[w]ithin their respective territory, municipalities and associations of municipalities discharge all duties of the local community that are not incumbent upon other agencies according to this Constitution or by operation of law”.²³ Accordingly, the relevant statutes of the *Länder* contain the same guarantees, recognising local authorities’ right to carry out their tasks and functions under their own responsibility.²⁴

55. In summary, though formulated in various ways, the basic principle is that, in their respective territories, local authorities are responsible for all tasks not expressly assigned to other (federal or *Land*) authorities by the Federal Basic law or by *Land* legislation. Although this approach does not demand a particular catalogue of responsibilities, it relates to the “affairs of the local community”, which are those “needs and interests which have their roots in the local community or are specifically related to it”, that is, are “common to the inhabitants as such by being relevant to the social life and living together in the municipality”.²⁵

56. From an administrative point of view, the tasks and functions of local authorities can be classified into two categories. Federal and *Land* laws can determine local responsibilities for municipalities and county governments. Since an amendment made to the Basic Law in 2006, the federal government has no power to confer mandatory functions directly to local authorities. It is to be noted that local authorities have the power to undertake voluntary functions as well, in order to perform certain tasks and to deliver public services of local interest.

57. The range of responsibilities, both the local and the transferred tasks and functions varies in the different *Länder*, in accordance with their various regulations. Nevertheless, the most typical local mandatory functions are as follows:

- social welfare, in particular
 - social benefits
 - maintenance of social facilities
 - kindergarten
 - nursery service
- public health,
 - health protection
 - maintenance of hospitals
- education, including
 - primary and
 - secondary schools, and
 - vocational education
- housing and town planning
- public transport, including
 - urban road and
 - train transport

²¹ Art. 11, Para. (2) of the constitution of Free State of Bavaria.

²² Art. 46, Para (1) of the constitution of Schleswig-Holstein. The constitution of Hesse contains the principle almost in the same way. See Art. 137, Para (1) of the constitution of Hesse.

²³ Art 97, Para (2) of the Constitution of the Land of Brandenburg.

²⁴ See for example the § 2 of the Local Government Law of Hesse (Hessische Gemeindeordnung).

²⁵ BVerfGE 79, 121 (151 f.).

- public utilities (communal services)
 - water supply,
 - electricity,
 - public heating,
 - gas
- economic services, for example
 - supporting local investments,
 - tourism
- environment, public sanitation, thus
 - road maintenance,
 - water and sewage,
 - waste collection and waste disposal,
 - environment protection,
 - public cemeteries

58. Most of the local functions are full and exclusive, in the sense that the local government has an exclusive responsibility for performing these tasks; but they also have the right to obtain the services from other providers. Notably, in some areas, there are responsibilities and parallel tasks shared with federal and *Land* authorities. The Federation and the *Land* governments have or can have direct functions in social welfare, public health and public transport as well (for example maintaining public service institutions).

59. Alongside the local government functions, the *Länder* may transfer certain responsibilities to local authorities. Virtually, these transferred competences are *Land* administration tasks in nature, but for practical reasons they are fulfilled by municipalities. The differentiation between the local government and the transferred duties does not only have theoretical significance, since the latter tasks are carried out by local authorities under the direction and a supervision of the respective *Land* authorities. Each *Land* has a wide-ranging discretion which tasks it delegates to the local authorities.

60. The most usual transferred tasks embrace some classical administrative activities of registration and issuance of certificates concerning citizenship, marriage, birth, death, etc. The authority to grant licenses for certain activities is also usually conferred upon local governments. Moreover, local authorities take part in the administration of federal, *Land* and local elections as well as in statistical activities. Besides these, other functions ranging from general security to the protection and maintenance of historical monuments can also be transferred to them.

61. As a consequence of the general competence of local governments to regulate and administer local public affairs, all local authorities have the right to undertake voluntary tasks. Municipalities may undertake the fulfilment of all public tasks and functions which are not conferred to the exclusive responsibility of other public authorities. Certainly, the financial and institutional capacity of the respective local authorities imposes a natural limitation on local governments to do so.

62. As for the competences of the counties, they differ also in the various *Länder*, according to their respective regulations and depend on the capacity of the municipalities on their territory. The municipalities belonging to the counties and the counties themselves have basically complementary functions. The counties primarily perform those tasks that the smaller municipalities are not able to carry out in an effective way. They therefore have an important role in social and welfare services, in public education, leisure, sports and culture.

63. As we saw above, in some *Länder* the smaller municipalities carry out their tasks jointly, within the framework of municipal confederations. Sometimes such structures may be established not for general cooperation reasons but for performing specialised tasks and functions. They may be founded by counties, possibly with the participation of municipal boroughs (*höhere Kommunalverbände*). They exist, for instance, in Bavaria (*Bezirksverbände*) and in North Rhine Westphalia (*Landschaftverbände*). Furthermore, the municipalities also set up specialised confederations for particular tasks (*Zweckverbände*), such as waste disposal, or for running public service institutions. The right of local authorities to regulate their own administrative structure expands to establish other kinds of service delivery, e.g. the so-called *Arbeitsgemeinschaften* (working groups or ventures) without legal entity for cooperation on the basis of agreements under public law (agreements concluded for specific

purposes), and – in some Federal *Länder* - for the establishment of joint companies in the legal form of institutions under public law. In addition, these type of confederations can also be established on the basis of civil law, particularly on the basis of company law".

6. Organisational structure and decision-making process of local authorities

64. The federal Basic Law, prescribing only general requirements to guarantee the democratic existence of local authorities, allows *Länder* a wide margin of appreciation to regulate the internal structure of local governments. The *Länder* must of course respect the right of local authorities to determine their own administrative structure, adjusting their organisation to the local needs and financial capacities.

65. Despite the wide regulatory powers of the *Länder*, in practice, there are remarkable similarities between the local governments of the various *Länder*. The main legislative and decision-making body everywhere is the council, established by general, direct, free, equal and secret elections. In accordance with Community law, the citizens of any member state of the European Union are also eligible to vote and to be elected in county and municipal elections. Local councils are elected by a proportional voting system in all *Länder*. Nevertheless, half of the councillors of the municipalities and counties are elected in a plurality voting system based on majority rule²⁶. Although the general use of the proportional system indicates homogeneity in the relevant *Land*-level legislation, there are considerable differences in the particular regulations of the electoral systems. For example, while the d'Hondt method (based on the principle of the maximum "division numbers" obtained through a division of the votes cast for each party list by 1, 2, 3 and so forth until the number of maximum numbers calculated corresponds to the number of seats to be distributed) is a widespread way of transferring votes to mandates (used in Bavaria, Baden-Württemberg, Lower-Saxony, Saarland, Saxony and Schleswig-Holstein), the so-called Hare-Niemeyer system (based on the quota method with compensation according to the largest remainder) is used in Brandenburg, Hesse, Mecklenburg-Vorpommern, North Rhine Westphalia, Rhineland Palatinate, Saxony-Anhalt and Thuringia.

66. The members of the local councils are elected for five years, with the exception of Bremen and Bavaria, where the mandate is limited to four and six years respectively.

67. In certain *Länder*, in the smaller municipalities, a local assembly of inhabitants may exist instead of an elected representative body.

68. The representative body (local council or assembly) makes the more important decisions, adopts local decrees (by-laws) and determines the major local policy issues. The council takes all municipal decisions, unless they are subject to the mayor's authority or are delegated to other units of the local government. Another key function of the council is to control the local executive. The council, as the major decision-making body, has a number of exclusive powers which cannot be conferred on other organ of the local authority. Consequently, only the representative body may decide, for instance, to initiate a change of municipal boundaries, issue local government by-laws or approve the local government budget. Certain tasks can be transferred to the mayor and the committees of the council.

69. The council's rules of operation are determined by local government law and other statutory provisions of the respective *Länder*, as well as the municipal rules of procedure.

70. The representative bodies are the municipal parliaments, which reflect some of the institutional characteristics of the federal and *Länder* parliaments. The councillors are usually grouped into party factions and the work of the council is assisted by committees.

71. The council is composed of the mayor, who is usually (but not each *Land*) also the chairman of the representative body, and the local councillors. The mayor is responsible not only for presiding the council, but also for managing the municipal administration. The council may empower the mayor to conduct certain matters in his/her own responsibility.

²⁶ Earlier, in three *Länder*, an elections threshold is used: 3% in Rhineland Palatinate and 5% in Saarland and in Schleswig-Holstein but the Federal Constitutional Court struck down these rules as unconstitutional.

72. Except in the city-states, the mayors are usually elected directly²⁷ and therefore have a strong legitimacy. This is the basis for the frequent evaluation of German local government system as being a “quasi-presidential” one, where the mayor has a central position. He is frequently the head of the local executive and is responsible for implementing the decisions of the council and carrying out other delegated tasks. The mayor (usually named *Oberbürgermeister* in municipal boroughs) may appoint or, in some *Länder*,²⁸ the council may elect, the members of his/her executive body (so-called *Beigeordnete*), who have a political responsibility to the council, which can dismiss them. In this respect, most local authorities operate in the manner of parliamentary organs.

73. In many larger municipalities, there are districts or other subordinate units (*Bezirken, Ortschaften*) with limited decision-making powers for organising and providing stronger cooperation among local inhabitants as consumers of local public services. Such subordinate units are legally independent parts of a municipality.

74. As discussed above, the three city-states have a special internal structure, as a result of their double status as *Länder* and municipalities.

7. Local government finance

7.1. Basic principles

75. The legal bases of local government finance are laid down by the Federal Basic law, by the various *Land* constitutions, as well as by the laws on local government (*Gemeindeordnung*), on financial equalisation and other laws of the *Länder*. At *Land* level, the responsible minister (frequently the Minister of the Interior), is usually authorised by the *Land* legislature to enact ordinances implementing the higher level laws. These ordinances determine, for instance, how local budgets are to be structured or the management methods of municipal enterprises. As a rule, each year, all local authorities have to approve their respective budget by-laws, which are their annual financial plans for expected revenues and spending.

76. The Basic Law stipulates that both the federal and *Land* level governments are responsible for financing their own expenditure.²⁹ Therefore, since local authorities are charged mainly with tasks and functions by the *Land* governments, the *Länder* are responsible for financing local authorities. The Federation may finance directly only those tasks for which it is responsible under the Basic Law.

77. The relevant constitutional and legal provisions, either federal or *Land* level, aim to achieve a clear allocation of tasks and functions between the various levels of government and to assure adequate financial resources necessary to fulfil these tasks. The basic principle of burden-sharing is to establish a link between the administrative and financial responsibilities at all levels of government. In 2006, a reform of federalism (*Föderalismusreform I*) not only clarified the power-sharing system between the Federation and the *Länder*, but also drew sharper demarcation lines. As a second step, another constitutional amendment (*Föderalismusreform II*) entering into effect on 1 August 2009, modernised the financial relationship between the two levels (*Finanzverfassungsreform*), determining also the narrow field where the federal government may give financial incentive and support local governments.

78. Regarding the basic regulation of local government finance at *Land* level, each state *Land* constitution recognises the financial autonomy of local governments. Moreover, all *Länder* constitutions contain the principle of concomitant financing (*Konnexitätsprinzip*) as a safeguard that if *Land* government delegates its powers to local authorities, it simultaneously has to provide the adequate resources necessary to carry them out.

²⁷ However, there are some exceptions to this rule. For example, in Schleswig-Holstein, only the full-time mayors are to be elected directly.

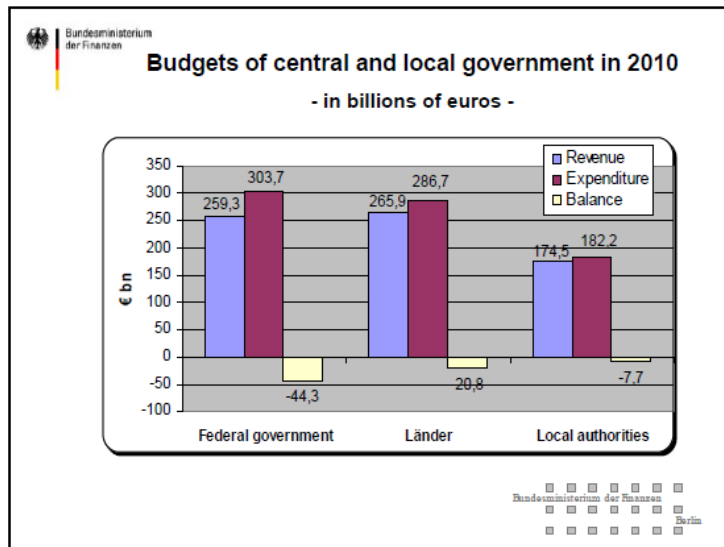
²⁸ In Rhineland-Palatinate, Baden-Württemberg, Hesse and North Rhine-Westphalia.

²⁹ Basic Law, Art. 104a, Sect. (1).

7.2. Local government budgets

79. Local authorities have a great share in public spending. In 2010, they spent almost one-quarter of all government expenditure (see Figure 3). Although the total local government budget has a deficit of 7.7% billion euros (7.2 billion in 2009), its proportion is relatively lower than those of the federal and *Land* governments'. Nevertheless, the deficit rates of the last two years reveal the negative effects of the contemporary world financial crisis, because the total local government budget had shown a positive balance between 2006 and 2008.³⁰ These negative effects resulted in dangerous indebtedness in a number of local authorities, in particular in those regions which were struggling with economic problems already before the crisis.

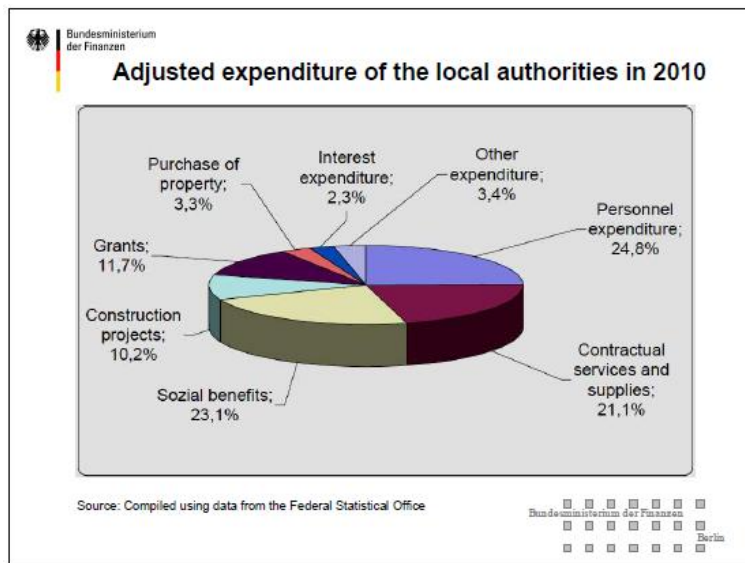
Figure 2.



Source: Federal Ministry of Finance.

80. If we look at the expenditure side, local government budgets are divided into current and capital expenditures. Current spending covers the administrative and operational costs of local authorities, including the costs of the public service delivery. Capital expenditure is used for local investments and developments. In theory, the municipalities may (and sometimes are bound to) transfer funds from the current to the capital budget; when capital revenues exceed investment expenditure, the surplus may be assigned to a general reserve.

Figure 3.



³⁰ Data provided by the Deutscher Städte und Gemeindebund, see also www.dstgb.de.

Source: Federal Ministry of Finance.

81. In a technical sense, the local budgets are divided along functional lines into departmental and sectional items. It is worth noting that since 2003, 13 *Länder* (all but the city-states) have adopted new legislation for introducing the double-entry budgeting system for municipalities instead of the traditional input-based cameral one. The new method is expected to make local government financial management more flexible, applying budget classification by product areas and focusing on resource-oriented approach.

82. The German local authorities cannot declare bankruptcy. To prevent municipalities from going bankrupt or becoming overly indebted, the supervisory authorities may require suffering municipalities to implement remedial measures in order to restore their financial balance. It is to be noted that in the recent years, some *Länder* have launched financial rescue programmes for their local authorities, most of who were seriously endangered by structural underfinancing due to inadequate financing of delegated tasks.

7.3. Local revenues

83. In Germany, in accordance with the principles of the Charter, local authorities have their own financial revenues and therefore local government spending is partly covered by local resources.

7.3.1. Local and shared taxes

84. The main source of local revenue is taxation. Its share in the total local government income was 36.6 per cent in 2010.³¹ Central, *Land*-level and local taxes, in their delicate balance as set by the Basic Law, are intended to meet the general financial requirements of all government levels. In the German approach, the emphasis is laid on a well-balanced allocation of tax revenues among the federal, *Land* and local governments in order to provide adequate resources for their respective range of responsibilities. Local authorities can have resources from the taxes imposed by the Federation or by the *Länder* as so-called shared taxes. Most local government resources come from this kind of tax revenues.

85. The largest item in local tax revenues comes from the business tax. Although it is regulated by the Federation, local authorities have the power, under the rate-capping *Land* legislation, to determine its rate in their own territory (*Hebesatzrecht*). Local authorities received 26.9 billion Euros last year, which amounts to 15.4 per cent of their total revenues. It is to be noted that the municipalities are obliged to transfer part of the revenue from business tax to the Federation and to their respective *Länder* (trade tax apportionment).

86. The municipalities' share of the revenue from the income tax is specified by the Basic Law, empowering federal legislation to make sure that municipalities may establish supplementary or reduced rates with respect to their share of the tax - which has not happened so far. The local governments' share in income tax revenues was 13.2% in 2010 and 15% in 2011.

87. Since 1998, municipalities also have a direct share of the revenues from the turnover tax (as defined by their *Länder*) on the basis of a formula reflecting geographical and economic factors. In 2010, this share amounted to 1.9% and in 2011 to 2.2%.

88. Local taxes include land tax, entertainment tax, dog tax, and tax for second dwellings. In the legal sense, land tax is very similar to business tax as both are imposed by the federal government, and municipalities may fix their rates within the limitation of the *Land* legislation.

89. In effect, "real" local taxes do not play an important role in local government finance. By real local taxes we mean taxes which are, within the overall limits of the law, imposed by local authorities themselves, setting also their rates. In this sense, real local taxes are only the dog tax, the entertainment tax and some other taxes producing only a small amount of local revenue.

³¹ It is to be noted that the revenue structure can be highly different in the various *Länder*. For example in Ludwigsburg, Baden-Württemberg, where the Congress delegation made a visit, the share of tax revenues amounts to more than 70% of the total resources; solely the business tax revenue contributes with 34.8% to the total budget of the city.

90. As a major rule, the counties do not have the power to levy taxes and they do not have direct tax revenues. The only exceptions are hunting and fishing taxes³² without any real financial significance. The counties are financed by the municipal contributions from their own territory, and by central grants allocated by the respective *Länder*.

7.3.2. Charges and fees

91. Charges and fees are paid by local citizens and corporations as users of the local public services delivered by the respective local governments. Some local services are designed on the basis of the cost-covering principle, so their rates are adjusted to the real service-producing costs. Usually, public services undertaken by the municipality voluntarily fall within this category. Nonetheless, in the case of most kinds of public services such as social, welfare, education, culture or sport services, this principle cannot prevail.

92. Contributions and fees paid by local citizens and companies as public service users represented about 10% of all local government revenues in 2010.

7.3.3. Borrowing

93. Local authorities have the power to borrow in order to complete their own insufficient financial sources. This right is however limited by budgetary laws. In principle, municipalities may borrow only for the purposes of financing investments or temporarily bridging their liquidity problems, and only if the intended objective cannot be financed otherwise. Municipal borrowing always requires the approval of the supervisory authority, in particular when the local authority is taking part in a state-funded financial recovery programme. The function of the approval is to make sure that borrowing does not result in an excessive financial commitment endangering the financial balance of the local authority. Experience shows that local authorities usually prefer the local savings banks (mainly local Sparkassen, Girozentralen). The table below shows the municipalities' borrowing trends in the last decade (in billion euros):

Figure 4:



7.3.4. Other local resources

94. Local authorities, depending on their size, economic capacity, property and other local capabilities, may collect other income as well. For example, some municipalities are able to use their properties to receive money from licensing (e.g. from giving concessions).

³² Nevertheless, in some *Länder*, counties are not entitled even to levy hunting and fishing taxes.

95. Local governments have also the right, within the limits of the law of the various *Länder*, to revenues from other economic activities such as running companies or participating in undertakings under private law.

7.4. Central grants

96. As a consequence of their responsibility for adequate financing of local authorities, the *Länder* allocate grants to municipalities if the latter's revenues are insufficient to fulfill their mandatory duties. In theory, transfers from the *Länder* are allocated to cover all financial requirements where the local resources (tax revenues, fees and charges) are not enough. From this point of view, grants have a supplementary function in local government finance.

97. The form and amount of central grants are determined by *Land* legislation. Basically, there are general and earmarked grants. The former are actually block grants, which are spent freely by local authorities, while the latter are refunds, debt service assistance and investment grants, allocated for specific targets.

98. The share of central grants in local government budget amounted to 35.7% in 2010. Undoubtedly, block grants provide much more financial freedom for local authorities, but, at the same time, this way of central support appears to be more vulnerable, because they can hardly be connected to particular financial needs.

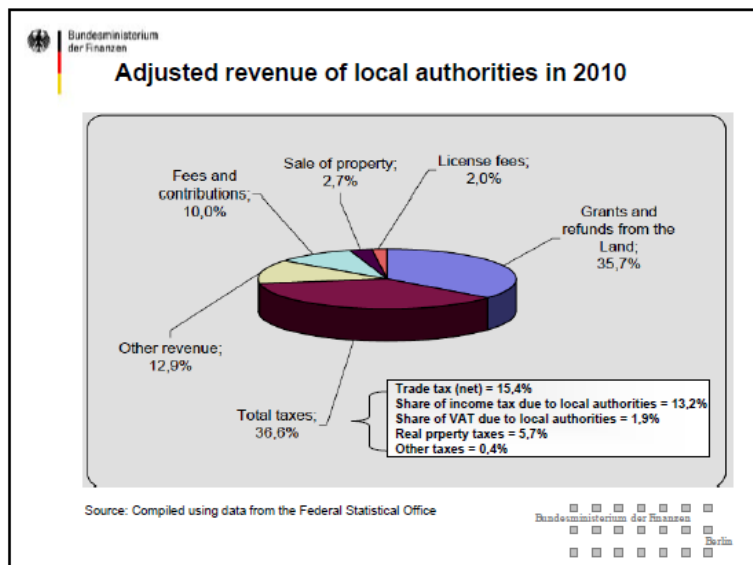
99. The specific or earmarked grants are allocated for specialised targets. Sometimes municipalities may get these resources through an application system. It is the case usually in the area of urban development or other kind of development programmes, where, as a first step, the central government determines and publishes the relevant targets every year, and the interested local authorities must apply for support.

100. Although in theory the Federation should finance the tasks transferred by the federal legislation to the local authorities, since 2006, the Federation is prohibited from financing the tasks transferred by the federal legislation to the local authorities directly. Nonetheless, since the federal constitutional amendment of 2009, there have been some exceptions; the Federation may grant financial assistance for particularly important investments by the *Länder* or by municipalities (and municipal confederations), "provided that such investments are necessary to avert a disturbance of the overall economic equilibrium, to equalise differing economic capacities within the federal territory, or to promote economic growth".³³ Federal legislation, with the consent of the *Bundesrat*, or executive agreements under the Federal Budget Law may specify what sorts of investments can be promoted in this way. Moreover, if the Federation requires municipalities (and municipal confederations) to provide special facilities increasing their expenditure or reducing their revenue, that is, causing special burden to them, the Federation may grant the necessary compensation.

101. During the two visits, the Congress Delegation found that, according to the general experience, the financial transfers are frequently insufficient to finance the delegated tasks for which they are allocated. In these cases, in contrast with the original function of central transfers, local revenues have to be used to supplement the grants assigned by the *Land* government. If this is indeed the case, it means that the constitutional principle of concomitant financing is not fully implemented. In this range, local authorities fulfill their activities on behalf of *Land* governments using their own (ie. local) resources, although the latter should have a different function and should be spent for local public services.

³³ Art. 104a, Para. (4) of the Federal Basic Law.

Figure 5.



7.5. Financial equalisation

102. The regional discrepancies and the differences in financial and economic capacity of the various *Länder* and local authorities are balanced by the financial equalisation system. From a point of view of local governments, financial equalisation has several different dimensions. Firstly, there is a system of appropriation of the entire tax revenue between the different levels of government, mainly between the Federation and the *Länder*. Secondly, the total of the *Länder* portion of tax revenue has to be distributed among them, equalising their different financial capacities. For the same purpose, the financially weaker *Länder* receive funds from the Federation as supplementary grants. Notwithstanding the above, local authority revenues are taken into account in assessing the financial capacity of the *Länder* since the *latter* are responsible for providing their municipalities with appropriate and adequate financial resources. Then, financial equalisation works within the various *Länder* in order to equalise the considerable differences which exist between the financial situations of the individual local authorities.

103. One of the major objectives of the financial equalisation system is to guarantee a minimum level of resources for local authorities, enabling them to perform their tasks, taking into account their financial capacity. In addition, excessive differences in the financial means of individual local authorities have to be equalised. As a matter of fact, only the "natural" or structurally related disadvantages are balanced in this way, and not those for which the individual local authorities are themselves responsible. To sum up, financial equalisation has several different functions, such as fiscal, supportive and redistributive functions within the *Länder*.

104. Local governments' sources for financial equalisation are, on the one hand, the tax revenues of the *Länder* and the central grants they distributed to local governments, on the other. Although the particular apportionment of the tax revenue between the *Land* and its local authorities varies according to the relevant *Land* legislation, on average, 20% of the tax revenue of the *Länder* is allocated to local governments, while the amount or proportion of central transfers depend on the distribution of tasks and functions between the *Länder* and their local authorities.

105. Practically, the *Länder* are responsible for distributing the sources of financial equalisation between their local authorities according to the relevant *Land*-level legislation. The allocation is based on individual local authorities' financial needs, applying a standard procedure and taking the individual financial capacity of the respective municipalities into account. In this mechanism, an average per capita expenditure burden is calculated to assess the justified financial needs. In doing so, the average costs of fulfilled tasks and the number of inhabitants are taken into account. In some cases, the inhabitants are weighed differently, as in the three city-states (which are, as we have seen above, both municipalities and *Länder* in their own right), or, in general, in larger municipalities which deliver public services not only for their own citizens but also for the inhabitants of the surrounding area.

106. It is also within the competence of the *Länder* to assist indebted local authorities. Some have established central funds for consolidating local government debts. For example, in Hesse, the *Land* government has provided such a fund from which local authorities may get sources, for bridging their difficult financial situation, on condition of undertaking certain commitments for careful economic management. It is important that the participation of municipalities in this process is voluntary.

107. Although, as mentioned above, the Federation has not been able to transfer tasks directly to local authorities since 2006, it has launched a federal programme to promote local investments in the recent years under the provisions of the Basic Law. For instance, the so-called *Konjunkturpaket I* was started for supporting infrastructure investments in structurally weak communities, and the *Konjunkturpaket II* to promote other special investments in municipalities.

108. Likewise, the Federation (together with the *Länder*) supports the economic recovery of Berlin and some Eastern *Länder*. Berlin, Brandenburg, Saarland, Saxony-Anhalt and Thuringia, are to be supported by the Federation within the framework of the so-called *Solidarpakt II*, from 2011 to 2019 to the tune of 800 million Euros per year – a total of 7.2 billion Euros for the whole period.

109. The need for national solidarity in itself indicates that economic equalisation between parts of the former Eastern Germany and the western *Länder* has not yet been accomplished. Since the reunification of Germany in 1990, one of the greatest challenges the country has faced is the huge regional discrepancy between the new *Länder* of former East Germany and those of the previous *Bundesrepublik*. Since then, it has been an important goal for each federal government to reduce the differences in the level of income and living standards between East and West. The integration costs of the Eastern *Länder* have been almost inestimable in the last two decades. Nonetheless, even if it has not yet ended, this long process has not proved to be unsuccessful, which can be demonstrated by the comparative data of the average local government revenue per capita in the former Eastern and Western *Länder*.

110. The Congress delegation heard some criticism of the financial equalisation system during the visit, according to which certain prosperous middle-sized and large municipalities are deprived of an excessive part of their sources in the name of solidarity, which sometimes can lead to an “over levelling” of revenues. Certainly, the scale and method of the central redistribution of resources, or more exactly, the financial equalisation, is always a difficult and sensitive issue, but under the conditions set by the Charter, these decisions belong to the political discretion of the competent public authorities.

8. Central - local government relations and the procedure for consultations between central and local authorities

111. Along with finances, the administrative supervision of local authorities is another crucial area of central–local government relations. In Germany, the forms, procedures and instruments of administrative supervision is regulated by *Land* legislation. As to local government tasks and functions, the scope of supervision is limited to the legal control of local government actions to ensure compliance with legal requirements. Supervisory power is exercised by the regional organs of the *Landrat* (for *kreisangehörigen Kommunen*), or the *Land* government itself (for *kreisfreie Städte* and *Landkreise*). In some *Länder*, special institutional arrangements are applied to legal control, as in Lower-Saxony or Saxony-Anhalt, where such control has been transferred to the counties.

112. The instruments of legal control (like the right to request information or to suspend an unlawful action) are similar to those in other Council of Europe member states. The most powerful supervisory action, such as appointing a government commissioner to take over to act on behalf of the council or the dissolution of the representative body, may be taken only eventually, when legality cannot be restored in any other way. It must be noted that if a local authority does not agree with the action of the supervisory organ, it can file a case against the latter before an administrative court.

113. Supervision has a different nature when it relates to the fulfilment of delegated tasks. *Land* authorities may determine the way these powers are exerted by the local administration, as well as control the effectiveness of the use of the transferred funds.

114. Notably, the respective governments of the three city-states are not supervised by a superior level of government in the way the other municipalities are controlled. The simple reason for this is

that, as we have seen, the legal (administrative) control of local authorities is not under federal but *Land* authority, and the city-states are themselves *Länder* in their own right. Therefore, legal control over their actions is exercised by the constitutional courts of these *Länder*.

115. The lawfulness of economic management of local authorities is controlled by audit offices of the *Länder*, except in some cases (eg. North Rhine-Westphalia or Baden-Württemberg), where special bodies fulfil this task.

Consultation

116. The procedure of consultation between the central and local authorities takes place through the national associations of local authorities. There are three national associations representing the interests of various segments of local authorities: The *Deutscher Städtetag* (Union of Large Towns) and the *Städte- und Gemeindebund* (Association of Towns and Municipalities), represent the cities and communes; the *Landkreistag* (Union of Counties) works for the counties. Almost all local authorities are members of these associations on a voluntary basis. Local government associations are organised at national level and they have regional branches for coordination with *Länder* governments.

117. The national local government associations have some participatory rights enshrined in the standing orders of the *Bundestag* and in the rules of procedure of the federal government. As regards the first, it provides opportunity for associations to state their opinion in certain forums (like non-public committee meetings³⁴ and public hearings), while the Joint Rules of Procedure of the Federal Ministries contains some rules for involving the national associations in the governmental decision-making process.

118. Nevertheless, participatory rights of local government associations are missing in the procedure of the *Bundesrat*, although it is an important forum of the representation of local and regional interests at federal level.

9. Analysis of the situation of local democracy in light of the European Charter on Local Self-Government on an article by article basis.

This analysis is based on the last recommendation.

119. As mentioned above, the first monitoring report on Germany was limited to financial matters and did not extend to other institutions and areas of the local and regional democracy in Germany. Still, when we summarise our conclusions, we will also examine how Recommendation 64 (1999) on the situation of local finances in the Federal Republic of Germany, approved by the Congress of Local and Regional Authorities of Europe on 12 June 1999 on the basis of the first Congress monitoring report, has been implemented by the federal and *Land* authorities of Germany.

9.1. Principle and concept of local self-government (Articles 2 and 3)

Article 2 – Constitutional and legal foundation for local self-government

The principle of local self-government shall be recognised in domestic legislation, and where practicable in the constitution.

Article 3 – Concept of local self-government

- 1 Local self-government denotes the right and the ability of local authorities, within the limits of the law, to regulate and manage a substantial share of public affairs under their own responsibility and in the interests of the local population.
- 2 This right shall be exercised by councils or assemblies composed of members freely elected by secret ballot on the basis of direct, equal, universal suffrage, and which may possess executive organs responsible to them. This provision shall in no way affect recourse to assemblies of citizens, referendums or any other form of direct citizen participation where it is permitted by statute.

120. Article 2 of the Charter requires signatory countries to recognise the principle of local self-government in their domestic legislation. The German legal system acknowledges this principle, and both the Federal Basic Law and the *Land* constitutions contain constitutional guarantees for the

³⁴ In this case, the committee reports have to contain the opinions of the local government associations.

administrative and legal status of local authorities. As we have seen above, Article 28 Section (2) of the Basic Law provides the right for local governments to regulate all local affairs under their own responsibility, within the limits prescribed by the laws. The right of self-government is also guaranteed, within the limits of the law, for the associations of municipalities. The financial autonomy, including the right of municipalities to have tax revenues are also defended by the Basic Law.

121. Remarkably, the constitutional recognition of the principle of local self-government resembles that of the Charter in a number of *Land* constitutions, referring to the right to regulate and administer local affairs in an autonomous way. The power of local authorities can be exercised within the legal framework provided by federal and *Land* legislation, in accordance of the Article 3, para. 1 of the Charter.

122. As it was described in Chapter 3 of this report, the constitutional status and the basic rights of local authorities are recognised equally in the federal and the *Land* constitutions. Most relevant laws of the *Länder* repeat and specify this status.

9.2. Scope of local self-government (Article 4)

Article 4 – Scope of local self-government

- 1 The basic powers and responsibilities of local authorities shall be prescribed by the constitution or by statute. However, this provision shall not prevent the attribution to local authorities of powers and responsibilities for specific purposes in accordance with the law.
- 2 Local authorities shall, within the limits of the law, have full discretion to exercise their initiative with regard to any matter which is not excluded from their competence nor assigned to any other authority.
- 3 Public responsibilities shall generally be exercised, in preference, by those authorities which are closest to the citizen. Allocation of responsibility to another authority should weigh up the extent and nature of the task and requirements of efficiency and economy.
- 4 Powers given to local authorities shall normally be full and exclusive. They may not be undermined or limited by another, central or regional, authority except as provided for by the law.
- 5 Where powers are delegated to them by a central or regional authority, local authorities shall, insofar as possible, be allowed discretion in adapting their exercise to local conditions.
- 6 Local authorities shall be consulted, insofar as possible, in due time and in an appropriate way in the planning and decision-making processes for all matters which concern them directly.

123. As also discussed in Chapter 3 of this report, local authorities have, as a major rule, responsibilities in their own area. Although some tasks and functions are divided between the different levels of government, the Charter's requirement for full and exclusive local government powers is a principle requiring discretionary power for local authorities, rather than a strict rule excluding cooperation with administrative organisations. The general competence principle (*Allzuständigkeit*) complies fully with the related provision of the Charter. The prevalence of this principle is reinforced by the freedom of local governments to undertake more tasks for the welfare of the local population on a voluntary basis.

124. The Charter also requires that local authorities should have discretionary power even as regards delegated powers, so as to adapt their exercise to local conditions. The delegation of tasks is practised in each *Land*. Although central supervision in these cases extends not only to the lawfulness, but also to the effectiveness of local authorities' action. Still, the successful fulfilment of such duties needs a strong cooperation between the central and local authorities, allowing some discretion to the latter. Problems arise from the financing of delegated tasks, which was repeatedly evaluated by mayors, local representatives and officials as insufficient during the visit. But the scarcity of finances does not relate to this Article of the Charter, and will be discussed below (see section 10.6.).

9.3. Protection of boundaries (Article 5)

Article 5 – Protection of local authority boundaries

Changes in local authority boundaries shall not be made without prior consultation of the local communities concerned, possibly by means of a referendum where this is permitted by statute.

125. The European Charter requires that local authority boundaries not be changed without prior consultation with the local communities concerned, possibly by means of a referendum where this is permitted by statute.

126. The administrative law of various German *Länder* makes the change of local government boundaries possible. The whole process is regulated by law and needs the concerning local authorities' participation in the decision-making procedure. In some *Länder*, as in Baden-Württemberg, Brandenburg, Saxony, Saxony-Anhalt and Thuringia, any change to the status of a municipality requires a consultative referendum of the local community prior to the final decision. The rights of local authorities are protected also by *Land* constitutional courts. Municipalities may lodge complaints against the procedure.

127. The number of local authorities of the old *Länder* was 8,513 in 1994, while those of the former East Germany comprised 6,295 municipalities. The unified Germany altogether consisted of almost 15,000 individual local governments in the early 1990s. While in the Western *Länder* some progress has been achieved towards further integration of the local government system, only tentative reforms were accomplished in the Eastern *Länder* in the 90s. Since the first monitoring visit in 1999, municipal mergers have occurred in different degrees in the various *Länder* (see para. 38). The Congress delegation has not heard any contestation of the merger processes or any other change to local government boundaries.

9.4. Administrative structures (Article 6)

Article 6 – Appropriate administrative structures and resources for the tasks of local authorities

- 1 Without prejudice to more general statutory provisions, local authorities shall be able to determine their own internal administrative structures in order to adapt them to local needs and ensure effective management.
- 2 The conditions of service of local government employees shall be such as to permit the recruitment of high-quality staff on the basis of merit and competence; to this end adequate training opportunities, remuneration and career prospects shall be provided.

128. The right to determine their internal administrative structures belongs to local authorities who should be able to adapt their structures to the local needs and ensure effective management. Apparently, this organisational autonomy can be restricted only by law, in order to ensure the democratic operation of all local governments.

129. The basic conditions and framework for local authorities' internal structures are regulated by the local government laws of the respective *Länder*. These laws set only general requirements as is usual in all democratic societies. It means that the local representative body cannot decide on what kind of organs it establishes or which type of officers it appoints, because the basic organisational and staffing issues are regulated by laws. Nevertheless, within these frameworks, individual local authorities are free to shape their own administrative structures (*Organisationshoheit*). In this sphere, they may determine the structure of their organs, the division of tasks and the internal communication and cooperation between them. The rapporteurs have not heard any objections or concerns expressed on this issue.

9.5. Exercising responsibilities and government supervision (Articles 7 and 8)

Article 7 – Conditions under which responsibilities at local level are exercised

- 1 The conditions of office of local elected representatives shall provide for free exercise of their functions.
- 2 They shall allow for appropriate financial compensation for expenses incurred in the exercise of the office in question as well as, where appropriate, compensation for loss of earnings or remuneration for work done and corresponding social welfare protection.
- 3 Any functions and activities which are deemed incompatible with the holding of local elective office shall be determined by statute or fundamental legal principles.

Article 8 – Administrative supervision of local authorities' activities

- 1 Any administrative supervision of local authorities may only be exercised according to such procedures and in such cases as are provided for by the constitution or by statute.

- | | |
|---|---|
| 2 | Any administrative supervision of the activities of the local authorities shall normally aim only at ensuring compliance with the law and with constitutional principles. Administrative supervision may however be exercised with regard to expediency by higher-level authorities in respect of tasks the execution of which is delegated to local authorities. |
| 3 | Administrative supervision of local authorities shall be exercised in such a way as to ensure that the intervention of the controlling authority is kept in proportion to the importance of the interests which it is intended to protect. |

130. Local authorities have different sorts of responsibilities and duties, as far as their freedom to choose how fulfill them. In local public affairs, which are the primary mandatory functions of local governments (*Pflichtaufgaben*), local authorities decide whether and how to accomplish them, while in case of voluntary tasks (*freiwillige Aufgaben*), municipalities have the widest discretionary power. The local power is the narrowest when local government carries out delegated tasks (*vom Staat zugewiesene Aufgaben*), because in all these cases, it exercises power on behalf of the central government, under its instructions and control.

131. These types of tasks and functions of local government are quite typical in the Council of Europe member states. The practice of delegating tasks and functions from the central government to local authorities under the strong control of the former is not incompatible with the principles of the Charter, provided that the central government simultaneously provides adequate financial compensation.

132. According to the Charter, the central administrative supervision of local authorities must be based on constitutional or statutory provisions, and normally can aim only at ensuring compliance with the law. Thirdly, central control must be exercised in a way so as to ensure proportionality between the extent of the intervention into local autonomy and the public interest for which it is exerted.

133. The rapporteurs' opinion is that all conditions prevail in Germany.

9.6. Financial resources (Article 9)

Article 9 – Financial resources of local authorities

- | | |
|---|---|
| 1 | Local authorities shall be entitled, within national economic policy, to adequate financial resources of their own, of which they may dispose freely within the framework of their powers. |
| 2 | Local authorities' financial resources shall be commensurate with the responsibilities provided for by the constitution and the law. |
| 3 | Part at least of the financial resources of local authorities shall derive from local taxes and charges of which, within the limits of statute, they have the power to determine the rate. |
| 4 | The financial systems on which resources available to local authorities are based shall be of a sufficiently diversified and buoyant nature to enable them to keep pace as far as practically possible with the real evolution of the cost of carrying out their tasks. |
| 5 | The protection of financially weaker local authorities calls for the institution of financial equalisation procedures or equivalent measures which are designed to correct the effects of the unequal distribution of potential sources of finance and of the financial burden they must support. Such procedures or measures shall not diminish the discretion local authorities may exercise within their own sphere of responsibility. |
| 6 | Local authorities shall be consulted, in an appropriate manner, on the way in which redistributed resources are to be allocated to them. |
| 7 | As far as possible, grants to local authorities shall not be earmarked for the financing of specific projects. The provision of grants shall not remove the basic freedom of local authorities to exercise policy discretion within their own jurisdiction. |
| 8 | For the purpose of borrowing for capital investment, local authorities shall have access to the national capital market within the limits of the law. |

134. As a longstanding effect of the world economic and financial crisis, it is usual nowadays almost in every member state that financing is the most crucial part of the local government system. And so it is in Germany too. During the visit, the current system of local finance was heavily criticized by some mayors and councillors. As one of them claimed, the existing system undermines the financial stability of municipalities. Some of them held that the current tendencies in local government finance are unsustainable.

135. The Congress delegation has become aware of the danger the indebtedness of a number of municipalities represents. Although the total deficit of the whole local government sector has been below of that of the other levels of government, it seems vital to stop the trend towards debt

accumulation. The world economic and financial crisis contributed naturally to this process, narrowing not only the local tax revenue base, but also reducing the capital resources of local authorities. The social cost of the economic depression has also increased the financial burdens of local governments, as the rising costs of unemployment and social services have burdened local budgets. Although these problems, because of the significant regional disparities, have affected local authorities in different ways, a growing number of municipalities are now in a serious fiscal situation.

136. The 1999 report of the Congress had taken note of similar problems and difficulties. It might therefore be interesting to see what kinds of recommendations were adopted on the basis of that report and how those proposals were followed and implemented.

137. In relation to Article 9 para. 1 of the Charter, the Congress recommended that the federal authorities consider reforming local taxation with two aims: firstly, to restore strong local taxation in application of Article 28 (2) of the Constitution, particularly bolstering those local taxes the rate of which can still be set by local authorities, and, secondly, to revise the arrangements for the transfer of resources for compulsory spending linked to the implementation of federal and *Land* legislation. In addition, the Congress encouraged an extended financial contribution from the federal government to strengthen local finances. It was suggested to examine the possibility of introducing the principle of concomitance at federal level, as well as a mechanism to evaluate the actual costs incurred through implementation of federal legislation at local level. The German authorities were invited to consider the possibility of federal financial participation in those welfare services which require nation-wide harmonisation, with local authorities and the *Länder* taking responsibility only for supplementary local or regional services.

138. As to the reform of local taxation, the German authorities chose another way to strengthen the financial capacity of local governments, through two reforms of federal-*Land* relations, in 2006 and 2009. These changes did not establish new local taxes in a strict sense, the rate of which the local councils could decide themselves. Rather, the major direction of these measures was to stabilise or raise the share of local authorities in tax revenues, imposed both at federal or *Land* levels. In fact, this progress is not in contrast with the particular Congress recommendation, since in the case of business and land taxes, local authorities have, within the limits set by federal law, the power to set the rate of the tax (*Hebesatzrecht*). Similarly, the direct role of the Federation in local government finance has not been strengthened; to the contrary, it has been weakened. As we saw above, the Federation is no longer empowered to transfer mandatory tasks directly to local authorities or to finance them, since the constitutional amendment of 2006.

139. The Congress also recommended the setting-up of an Institutional Committee which brings together the representatives of the *Bundestag* and the *Bundesrat* and the representatives of municipalities, towns and *Landkreise* to review local authorities' financial situation, to propose new ways of improving it and to assess the situation on a permanent basis. An additional proposal was that the Committee examine the possibility of the introduction of the principle of concomitance at federal level as well as a mechanism for the evaluation of the actual costs incurred through implementation of federal legislation at local level.

140. In line with the former recommendation, in 2010, the federal government set up the Municipality Finance Commission to elaborate proposals to restructure local government finance. The Commission was composed of the representatives of the federal and *Land* governments and of the national local government associations. The key areas of the Commission's activity were the rationalisation of the tasks and powers of local authorities, reconsideration of the relevant "standards", the review of the role and position of local government interests in the legislative process, and the replacement of the business tax in local budgets. While the Commission was able to make proposals in the first two issues,³⁵ no agreement had been reached on business tax revenues when it ended its work in June 2011.

141. The proposal to abolish the business tax was initiated by the federal government. The major argument for this idea was the need to provide incentives for the economy in order to promote economic recovery. Moreover, the business tax revenue was said to be too susceptible to short-term

³⁵ For example, the Commission made more than 200 proposals to change the relevant laws conferring mandatory tasks on local authorities, and, as a result of the negotiations, the expenditure side of local authorities will be significantly relieved until 2014 by the federal government taking over the costs of the basic pensions.

economic trends, which, during an economic recession, might endanger the financial balance of local authorities. The Congress delegation found that, in contrast to the leading representatives of the Federation, all local politicians and officials the rapporteurs met with during the visit rejected the federal government plan to abolish the business tax. They argued that any other proposed tax would yield less revenue for municipalities than the business tax, and would shift the burden from the economic sector to the local citizens. Business tax is an important link between the municipalities and local enterprises, providing means and instruments for local authorities to encourage local investments. This means that until 2014, which is during the current mandate of the federal parliament, no change should be expected in this field.

142. The Congress recommendation relating to the recognition of the principle of concomitant financing of transferred tasks has not been followed; the opposite has prevailed. Since the federal reform of 2006, the federal government has not been allowed to confer tasks directly on local authorities. Nevertheless, the principle of adequacy in local government finance is one of the guidelines of the financial equalisation in the whole country.

143. In relation to Article 9 para. 2, it was recommended that all *Länder* introduce in their constitutions provisions relating to the principle of concomitance, which was entrenched in only some *Land* constitutions.³⁶ The expectation was that provisions for compensation which is “corresponding” or “appropriate” to the new tasks delegated to local authorities would be made explicit. At the same time, the Congress emphasised that the introduction of the principle of concomitance should not lead to a decrease in financial equalisation transfers to weaker municipalities.

144. This recommendation has been fully accepted and implemented, as the principle of concomitant financing for covering costs of tasks delegated by *Land* governments to local authorities. The relevant *Land* constitutions now guarantee local governments to obtain adequate financial means “at the same time” or “without delay” with the delegation of the tasks and functions.³⁷ Nevertheless, the practice of the implementation of this principle was criticised by some interlocutors the delegation met, who claimed that, despite this constitutional guarantee, “additional statutory tasks are consistently transferred to municipalities without sufficient financing”. Recent examples of this shortcoming is the financing of the maintenance of kindergartens for children under the age of three, or the North Rhine Westphalia *Land* government’s project to provide “social tickets” for public transport to people in need, where the continuation of the programme is financially uncertain. The rapporteurs are of the opinion that while the concomitance principle has really been transplanted into *Land* constitutions, as recommended by the Congress in 1999, further guarantees to ensure the effective implementation of the principle – apart from some sporadic statutory regulations in some *Länder* – have not been established by the *Länder*.³⁸ Under such circumstances, there is a risk for this achievement to become a dead letter without any real effect to secure the financial balance of local authorities.³⁹ Thus, the principle cannot prevent the central government from transferring national financial burdens to local authorities.

145. With reference to Article 9 para. 3, the Congress recommended that federal and *Land* authorities consolidate the financial independence of local authorities and proposed some particular ways to do so: Firstly, to avoid any infringements of municipalities’ right to set the rates of their own taxes, especially in the context of the proposed reform of business tax, which might be replaced by proportions of VAT. Secondly, to restore minor local excise taxes, where they were greatly reduced in number. Then, to introduce, as allowed under Article 106 (5) of the federal Constitution, the provision that local authorities may take a higher proportion of income tax, and, finally, to amend the federal Constitution to make it possible for a local tax for the benefit of *Landkreise* to be introduced, so as to remove the relevant reservation expressed by Germany at the time of the ratification in relation to Article 9 para. 3 of the Charter.

³⁶ These were the state constitutions of Baden-Württemberg, Brandenburg, Schleswig-Holstein and Thuringia.

³⁷ The relevant provisions which have been introduced into the state constitutions are: Art. 83, Sect. 3 in Bavaria, Art. 102, 131–133 in Bremen, Art. 137, Sect. 4 in Hesse, Art. 72, Sect. 3 in Mecklenburg-Vorpommern, Art. 57, Sect. 4 in Lower Saxony, Art. 78, Sect. 3 in North Rhine Westphalia, Art. 49, Sect 5 in Rhineland Palatinate, Art. 120, Sect 1 in Saarland, Art. 85, Sect. 1 in Saxony, and Art. 87, Sect. 3 Sachsen-Anhalt.

³⁸ With the exception of Hesse, where a special committee was set up to assess the real costs of transferred tasks. The committee is presided by the head of the state audit office, and is composed of the representatives of the ministries and the local government associations.

³⁹ Another unfavourable consequence can be that the local authorities launch constitutional complaints before the state constitutional courts, because it is hardly the best way to solve these problems.

146. All these recommendations were set to strengthen local governments' financial capacity and autonomy. The redistribution of tax revenues between the levels of government has only slightly changed in the recent years.

147. According to the Charter, local resources must be sufficiently diversified to enable local authorities to keep pace (as far as practically possible) with the real evolution of the cost of carrying out their tasks. The self-evident intention of this principle is not only to enable local authorities to cover the rising costs of public service delivery, but also to secure some room to manoeuvre for them. Needless to say that the world economic and financial crisis beginning in 2008 has affected the financial strength of local authorities in a negative way. It was one of the reasons for setting up a committee for preparing proposals on the restructuring of local government finance with the participation of the federal government and all interested parties.

148. As to Article 9 para. 6, Recommendation 64 proposed that the *Länder*, which pursue the policy of special funds in excessive numbers, convert at least some of these into general investment grants for local authorities. This recommendation has not been followed; the total share of general (block) grants has not changed significantly. Conversely, an opposite trend has more chance to prevail, because nowadays *Länder* governments seem to be more willing to provide additional resources as special or subject-specific grants for municipalities.

149. In relation to Article 9 para. 8 of the Charter, Recommendation 64 suggested that the federal authorities and the *Länder* ease borrowing limits, especially at the time when numerous German local authorities were facing a local financing crisis. Paradoxically, as the overall financial situation has worsened in recent years, the significance of curtailing and limiting borrowing and establishing a debt ceiling (*Schuldenbremse*) in order to break and reduce indebtedness, has grown. The emergence of debt management funds in some *Länder*⁴⁰ can provide effective financial assistance for local authorities, and is a step in the right direction in so far as it does not endanger the ultimate financial autonomy of the local authorities.

9.7. Rights to associate and legal protection of local governments (Article 10 and 11)

Article 10 – Local authorities' right to associate

- 1 Local authorities shall be entitled, in exercising their powers, to co-operate and, within the framework of the law, to form consortia with other local authorities in order to carry out tasks of common interest.
- 2 The entitlement of local authorities to belong to an association for the protection and promotion of their common interests and to belong to an international association of local authorities shall be recognised in each State.
- 3 Local authorities shall be entitled, under such conditions as may be provided for by the law, to co-operate with their counterparts in other States.

Article 11 – Legal protection of local self-government

Local authorities shall have the right of recourse to a judicial remedy in order to secure free exercise of their powers and respect for such principles of local self-government as are enshrined in the constitution or domestic legislation.

150. The Charter requests the signatory countries to provide the right for local authorities to cooperate and, within the framework of the law, to form consortia with other local authorities in order to carry out tasks of common interest. According to this requirement, each state has to recognise the entitlement of local authorities to belong to an association for the protection and promotion of their common interests and to belong to an international association of local authorities. In accordance with this principle, the federal Basic Law of Germany declares that “[w]ithin the limits of their functions designated by a law, associations of municipalities shall also have the right of self-government according to the laws”, which is almost the repetition of the Charter’s relating rule.

151. Generally, the view of local government associations is listened to at both the federal and *Land* level in the decision-making process of law-makers. The representatives of the associations recognise that consultation on key issues affecting local government interests is in practice. Notably, these

⁴⁰ In Hesse, for example, a special rescue package of three billion euros has been established for giving financial assistance to local authorities to ensure their financial balance and bridge liquidity problems. Local authorities may join the programme, starting in 2012, on a voluntary basis.

procedures are less formalised, and the participatory rights of local government associations are not entrenched in standing orders of the *Bundesrat*, and the *Land* legislatures.

152. The Congress delegation heard some criticism relating to legislative procedures, which provide only poorly conceived forms of involvement for local government interests. Strictly speaking, local government associations have hardly any institutionalised participatory rights in law-making processes; they express their views mostly on a customary basis. Only in some *Länder* are the associations formally involved in the law-making process. For example, the constitution of Lower Saxony prescribes that they have to be heard prior to any regulation by law or ordinance concerning municipalities or counties.⁴¹ The idea to establish a special chamber (*Kommunalkammer*) alongside *Land* legislature, which could be a forum for representing municipal interests, has been discussed, but no *Land* has decided to set up such a body yet.

153. Frequently, federal legislation is seen as the crucial area for local government interest, and the *Länder* seem to vindicate the role of representing them against the federal government. However, the core issues are discussed and decided by the respective *Land* governments, so any consultation between central and local governments has to take place at that level.

154. Local authorities must have also the right to legal protection of their constitutionally and legally recognised rights and autonomy. For this purpose, they should have the right of recourse to a judicial remedy in order to secure the free exercise of their powers and respect for such principles of local self-government as these to be enshrined in the constitution or domestic legislation.

155. The major form of this right is the constitutional complaint, which provides the local authorities with a means to turn to the constitutional court of the *Land* to repeal *Land* laws and statutory regulations that violate their constitutional or legal rights. The Congress delegation had the opportunity to ascertain at the constitutional courts of Baden-Württemberg and Brandenburg that this is a living practice and that municipalities do use this instrument. Apparently, local authorities usually appeal to the *Land*-level constitutional courts in two types of constitutional controversies: sometimes they look for remedies against changes in municipal boundaries, and, more recently and frequently, in relation to local finances.

9.8. Undertakings – reservations formulated by States (Article 12)

Article 12 – Undertakings

- | | |
|---|---|
| 1 | Each Party undertakes to consider itself bound by at least twenty paragraphs of Part I of the Charter, at least ten of which shall be selected from among the following paragraphs: <ul style="list-style-type: none"> – Article 2, – Article 3, paragraphs 1 and 2, – Article 4, paragraphs 1, 2 and 4, – Article 5, – Article 7, paragraph 1, – Article 8, paragraph 2, – Article 9, paragraphs 1, 2 and 3, – Article 10, paragraph 1, – Article 11. |
| 2 | Each Contracting State, when depositing its instrument of ratification, acceptance or approval, shall notify to the Secretary General of the Council of Europe of the paragraphs selected in accordance with the provisions of paragraph 1 of this article. |
| 3 | Any Party may, at any later time, notify the Secretary General that it considers itself bound by any paragraphs of this Charter which it has not already accepted under the terms of paragraph 1 of this article. Such undertakings subsequently given shall be deemed to be an integral part of the ratification, acceptance or approval of the Party so notifying, and shall have the same effect as from the first day of the month following the expiration of a period of three months after the date of the receipt of the notification by the Secretary General. |

156. As discussed earlier, Germany made two declarations on the scope of the Charter in Germany. These were announced in two letters from their Permanent Representative, dated 17 May 1988, and handed to the Council of Europe at the time of deposit of the instrument of ratification. According to these declarations, Article 9, paragraph 3 of the Charter would not apply to the *Verbandsgemeinden*

⁴¹ Art. 57, Para. 6. of the constitution of Lower-Saxony, or Art. 97. Para. 4. of the constitution of Brandenburg. Sporadically, these rights are recognized by law (like in Hesse), or in the rules of procedure of state legislature (as in Brandenburg).

and the *Kreise* in Rhineland Palatinate, and the same Article would not be applied to the *Kreise* in all other *Länder*. According to the German authorities, the reason for these reservations is that the federal Basic Law recognises the relevant right to financial autonomy (including the ability to establish the rates of local taxes) only for municipalities.⁴² The Congress delegation has been informed that the withdrawal or modification of these declarations are not on Germany's political agenda.

157. It is worth noting that German authorities have expressed their view about the legal nature of these declarations arguing that they are "in a strict sense" not reservations, but "announcements" circumscribing the scope of application of the Charter. The opinion of the delegation is that although it is not clear what the significance of this differentiation is, the Vienna Convention on Law of Treaties of 1969 defines the concept of reservation unambiguously declaring that "(d) »reservation« means a unilateral statement, however phrased or named, made by a State, when signing, ratifying, accepting, approving or acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State" [Article 2 (Use of Terms)].

158. Germany has not ratified the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207) yet, because, according to the German interpretation of the Protocol, the establishment of procedures of access to official documents held by local authorities⁴³ needs a relevant law, which is missing in two *Länder* (Bavaria and Lower Saxony).

10. Conclusions and proposals

159. Following the analysis of the information, data and personal views set out during these visits, and the article-by-article analysis of the implementation of the Charter, the rapporteurs have reached the conclusion that Germany complies with the requirements of the Charter. In this respect, the country should be seen as a sum of its 16 *Länder*, and their various local government systems. The delegation found that Germany has made considerable progress in accepting and complying with the recommendations made by the Congress after its monitoring of the local government finances in 1999.

160. It is noteworthy that already the first monitoring report in 1999 evaluated the financial situation of local authorities "critical", claiming that they needed to be given a sufficient financial margin to meet public needs at local level. Since then, the situation has worsened. The negative economic trends indubitably justify the long-standing discussion about the transformation of local government finances. It was also the main reason for the establishment of a commission to reconsider the whole system of local government financing and the proposal of the Federal Government to abolish the business tax. Under such conditions, it is all the more important to safeguard local financial autonomy so that they are able to obtain revenues from local taxes. The standard principle of a local authority's right to get revenue from local taxes and to have an influence on taxation, should be sustained even when appropriate objectives and goals require careful economic and financial management at all levels of government. In other words, even the need for economic recovery or debt-management cannot justify the deprivation of local authorities of their financial autonomy or of adequate financial means that allow them discretion in how to use these resources.

161. The Congress delegation acknowledges the importance of the efforts of some *Länder* to establish special funds and to launch subject-specific programmes to help local authorities in need to tackle their liquidity problems and to prevent further indebtedness. But the rapporteurs underline that the conditions of participation in such assistance schemes should not replace normal relations between the *Land* governments, or abolish the financial autonomy of the local authorities concerned.

162. The delegation suggests that the German authorities work out and lay down the standards and criteria for concomitant financing of local authorities providing transparency in the whole financial calculation and planning process. This would actually mean beefing up the framework of this principle with real planning mechanisms involving local government interests. Although this principle has been

⁴² "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." *Grundgesetz*, Art. 28, Para. 2.

⁴³ See the Art. 2, Sect. 2, point ii) b) of the Additional Protocol.

inserted in all *Länder* constitutions since the first monitoring visit, none but one *Land* has taken care of its practical guarantees (Hesse)). The principle of concomitant financing should be made a viable institution in local government finance which provides a methodology for calculating the real costs of transferred tasks. The basic aim should be the transparency and predictability of the whole process for the load-bearing local authorities.

163. After hearing differing views on the existing mechanisms of consultation between the various tiers of government and of the current system of representation of local authority interests, the delegation proposes that the German authorities strengthen and institutionalise the participatory rights of national associations of local authorities both at federal and Land level. Although the mode of consultation with these associations is formally recognised in the procedural rules of the federal government and the Bundestag, it would be desirable to institutionalise them also in the standing orders of the Bundesrat as well as the Land parliaments. The voice of local government associations can be heard in other ways too.⁴⁴ An integrated process of the assessment of the local government financial needs or the costs of the transferred functions could help, even under the circumstances of financial pressure on local authorities, to avoid later constitutional or legal disputes. Likewise, the involvement of local government interests in the national policy-making process concerning the European Union is also advisable.

164. The rapporteurs propose that German Land governments consider the extension of counties' rights to impose taxes directly beyond the available – insignificant – county taxes, ensuring at the same time that such taxes are not levied to the detriment of municipalities that are part of the counties, or by impinging on their fiscal yield. The lack of this power is a major reason why Germany upholds the explanations made in 1988 concerning the exclusion of the effect of Article 9, para. 3 of the Charter. The rapporteurs were informed that the federal government earlier made a proposal to provide a more extensive right for counties to impose taxes directly, but neither the *Länder*, nor the national local government associations supported this initiative. Nevertheless, the rapporteurs would underline that the Congress approach is to extend the scope of the Charter to all entities having direct political legitimacy. In the theoretical framework of the Charter, the real potential of local and regional authorities to levy taxes and receive local tax revenues is an indispensable prerequisite of self-government.

165. The rapporteurs also recommend that Germany ratify the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority. No doubt, the implementation of the provisions of the Additional Protocol can require the signatory states to take the necessary steps and measures, including the enactment of the proper statutory regulation.

⁴⁴ The delegation welcomes that the Municipality Finance Commission of 2011 adopted proposals to increase participation of the national local government associations in matters in which local interests are involved.

**Appendix 1 – Programme of the 1st part of the Congress monitoring visit to Germany
(27-29 June 2011)**

**PROGRAMME OF THE CONGRESS MONITORING VISIT TO GERMANY
Part I - 27 - 29 June 2011**

Congress delegation

Rapporteurs:

Ms Britt-Marie LÖVGREN
Co-rapporteur on local democracy
Member of the Monitoring Committee of the Congress
Chamber of Local Authorities, GILD⁴⁵
Councillor of Umea (Sweden)

Mr Ignacio SANCHEZ AMOR
Co-rapporteur on regional democracy
Member of the Monitoring Committee of the Congress
Chamber of regions, SOC
Member of the Assembly of Extremadura (Spain)

Expert:

Prof. Zoltan SZENTE
Consultant (Hungary)
Member of the Group of Independent Experts of the
Congress on the European Charter of Local Self-Government

Congress Secretariat:

Ms Sedef CANKOÇAK
Co-Secretary of the Monitoring Committee of the Congress

SUNDAY, 26 June 2011

Meeting with members of the German Delegation to the Congress:

Mr Günther KRUG, Head of the German Delegation to the Congress and Vice President of the Congress

Ms Birgit COLLIN-LANGEN, Member of the German delegation

Mr Joachim WAGNER, European Affairs

MONDAY, 27 June 2011

Meeting with the members of local government associations

Mr Stephan ARTICUS, Secretary General, Rat der Gemeinden und Regionen Europas (The Council of European Municipalities and Regions / German section) and Deutscher Städtetag (Association of German Cities)

Dr. Hans Günter HENNEKE, Secretary General, Deutscher Landkreistag (Association of German Counties)

Dr. Gerd LANDSBERG, Secretary General, Deutscher Städte- und Gemeindebund (Association of German Towns and Municipalities)

German Bundestag

Mrs Angelika GRAF (SPD) and **Mr Christoph STRÄSSER** (SPD), Members of the Committee on Human Rights and Humanitarian Aid

Mrs Birgid REINEMUND (FDP), Member of the Sub-Committee on local government

⁴⁵ ILDG: Independent and Liberal Democrat Group of the Congress
SOC: Socialist Group of the Congress

Federal Ministry of the Interior

Dr Ole SCHRÖDER (CDU), Parliamentary State Secretary

Ms Beate LOHMANN, Head of Department O "Administrative modernisation, administrative organisation"

Dr. Tanja LAIER, Unit O 2, Better regulation, reducing bureaucracy; Standard Cost Model, E-Government Act, Municipal Affairs

Mr Gottfried KONZENDORF, Unit O

Federal Ministry of Finance

Mr Hartmut KOSCHYK (CSU), Parliamentary State Secretary

Accompanied by **Dr. BLEY**, Director general of Department, and **Mr THIES**, Head of Division

City of Berlin

Mr Ulrich FREISE, State Secretary of the Senate Department of Interior and Sports (on behalf of Mr Wowereit, Mayor of Berlin)

Ms Christina EMMRICH, Mayor of Lichtenberg (district of Berlin)

Mr Alexander SCHNURBUSCH, Head of Berlin's Secretariat of the Conference of German Ministers for European Affairs

TUESDAY, 28 June 2011

German Bundestag

Mr Bernd SCHEELEN (SPD), President of Sub-Committee on local government and his assistant **Philipp RITSCHER**

Mr Axel TROOST (Die Linke), and his assistants **Patrick WAHL** and **Sandra SCHUSTER**

Senate of Berlin - Joint meeting with:

Mr Günter PIENING (SPD), The Representative of the Berlin Senate for Integration and Migration

Ms Kerstin LIEBICH (Die Linke), State Secretary for Integration, Labour & Social Issues

Prof. Dr Hans-Peter BULL (University of Hamburg), Specialist on issues related to local government

Dr Bernd SCHUBERT, Ombudsman for Mecklenburg-Vorpommern and

Mr Wolfgang SCHLOH, Deputy Ombudsman for Mecklenburg-Vorpommern

WEDNESDAY, 29 June 2011

Mr Gunter FRITSCH (SPD), President of Regional Parliament, Brandenburg Landtag (Potsdam)

Mr Thomas DOMRES (Die Linke), Regional Parliament's Petition Office, Brandenburg Landtag

Mr Rüdiger POSTIER, President of Brandenburg Constitutional Court

Ms Kathleen HEINRICH-REICHOW and **Mrs Andrea KRETSCHMANN**, Research Assistants to the Constitutional Court of Brandenburg

Dr Martin WILKE, Mayor of Frankfurt (Oder)

City councillors

**Appendix 2 – Programme of the 2nd part of the Congress monitoring visit to Germany
(27-28 September 2011)**

**PROGRAMME OF THE CONGRESS MONITORING VISIT TO GERMANY
Part II – 27-28 September 2011**

Congress delegation:

Rapporteurs:

Ms Britt-Marie LÖVGREN
Co-rapporteur on local democracy
Member of the Monitoring Committee of the Congress
Chamber of Local Authorities, ILDG⁴⁶
Councillor of Umea (Sweden)

Mr Ignacio SANCHEZ AMOR
Co-rapporteur on regional democracy
Member of the Monitoring Committee of the Congress
Chamber of regions, SOC
Member of the Assembly of Extremadura (Spain)

Expert:

Prof. Zoltan SZENTE
Consultant (Hungary)
Member of the Group of Independent Experts of the
Congress on the European Charter of Local Self-Government

Congress Secretariat:

Ms Sedef CANKOÇAK
Co-Secretary of the Monitoring Committee of the Congress

Tuesday, 27 September 2011

Mr Ralf JÄGER (SPD), Regional Minister of the Interior; North-Rhine Westphalia
Ms Carina GÖDECKE (SPD), President of Municipal Policy Committee of the Regional Parliament of North-Rhine Westphalia
Members of the Municipal Policy Committee

Mr Arif ÜNAL (Die Grünen), President of Integration Committee of the North–Rhine Westphalia Regional Parliament
Members of the Sub-Committee on Integration

Mr Frank SCHNEIDER (CDU), Mayor of Langenfeld
City councillors

Wednesday, 28 September 2011

Mr Werner KOCH, Permanent Secretary of State of the Ministry of the Interior and Sports
Federal State of Hesse

Mr Ulrich DREßLER, Head of the Division of Local Government Law, Associate Head of the Directorate-General of Local Affairs in the Ministry of the Interior of the German Federal State of Hesse

Ms Brigitte LÖSCH (Die Grünen), Vice President of the Regional Parliament of Baden-Württemberg

Mr Eberhard STILZ, President of the Baden-Württemberg Constitutional Court

Mr Werner SPEC, Mayor of Ludwigsburg
City councillors

⁴⁶ ILDG: Independent and Liberal Democrat Group of the Congress
SOC: Socialist Group of the Congress

Appendix 3 – Overview of the state of implementation of human rights at local and regional levels

INFORMATION ON HUMAN RIGHTS AND LOCAL AUTHORITIES

1. As in so many European countries, Germany faces challenges in the social sphere. The Bundesrepublik, with almost 82 million inhabitants, has large metropolitan areas and must cope with regional differences in economic and social situation. The German society is a multicultural one, facing all the problems of a modern post-industrial society.
2. Germany has for many years encountered a large and growing immigration movement; it is one of the most desired so-called destination countries, admitting a lot of migrants in every year. In recent years, the country has not been exempted from the effects of the economic and financial crisis which resulted in growing unemployment and indebtedness.
3. Whatever the reasons for these societal difficulties, it is clear that the local authorities have a key role to play in handling these problems in the local communities, and, in particular, in promoting and guaranteeing human rights.
4. Owing to the diversity of the local government systems within Germany, there is a variety of the direct citizen participation at local level. The various forms of local population involvement in policy- and decision-making are regulated by *Land* municipal codes and the relevant local decrees.
5. As for the most basic political participatory right, the right to vote, not only German citizens but, in accordance with EU law, the citizens of other EU member states may also vote at local elections. Other foreigners who are not German nationals and who do not have EU citizenship, are not entitled to vote, even if they have lived in a local community for a long time. Thus, in Berlin for instance, about 15% of the adult population does not have the right to vote. The current rules of naturalisation are not favourable for the extension of right to vote to these populations (e.g. the prohibition of double citizenship).
6. Other classic forms of direct citizen participation are the local referendums and initiatives. Both institutions of direct democracy are known and used at local level, according to the special regulations of the various *Länder* (*Bürgerbegehren*, *Bürgerentscheid*). As a major rule, the local inhabitants may decide directly through these referendums on local public affairs that fall within the scope of responsibility of the local representative body, except – in general - for budgetary and personal issues and the internal organisation of the local government.
7. In a number of municipalities, local inhabitants are regularly invited to certain meetings of the representative body where longstanding municipal and development plans are discussed. In Baden--Württemberg, for example, according to the local government act,⁴⁷ such open meetings must be held every year. Subject-specific public hearings might also be held for specialised aims, such as the public's opinion on local investments.⁴⁸
8. Local authorities, affected to varying degrees, must cope also with the problems of social integration of ethnic and national minorities, migrants, disabled people and other minority groups. In this field, an assortment of policies and policy instruments are applied in different regions and municipalities. The Congress delegation has had the opportunity to become acquainted with some good practices. For example Berlin, whose population represents over 180 different nationalities and which can be rightly be called a “city of immigration”, not only approved of a law on the participation and integration of those residents who have “migration background”, but has launched the so-called “The Three E’s of Berlin Integration Policy”, which promotes employment and education for migrants and provides equal opportunities for them.

⁴⁷ Art. 20a.

⁴⁸ The Congress delegation had the opportunity to get information directly about a form of it in Langenfeld, North Rhine Westphalia, where the city council and regularly organise the so-called *Bürgerfragestunde* for the same purpose.

9. Another human rights project was launched in Berlin in 2008 to combat right-wing extremism, racism and anti-Semitism (*Landesprogramm gegen Rechtsextremismus, Rassismus und Antisemitismus*) concentrating on the special education of young people and building an advisory network to strengthen grassroots democracy. In some *Länder*, there are specialised bodies with the function to integrate migrants into the local community. Thus, in North Rhine Westphalia, there are 126 so-called integration agencies (*Integrationsagenturen*). Although they are run and financed by the *Land* government, their successful work requires strong cooperation with local authorities, who have to cope with special problems as well, such as taking care of the families of illegal migrants. It should also be mentioned here that a new federal antidiscrimination law is under preparation and is expected to enter into force in 2012.
10. It is also important that all *Länder* provide institutional background for human rights protection. As a guardian of the prevalence of antidiscrimination policies, local authorities have so-called internal and/or external equal opportunity commissioners who take care of gender mainstreaming and equal opportunities for women and men.
11. Petition offices exist in all *Land* parliaments, receiving complaints and proposals from citizens some of which relate to local government issues (e.g. to change a local decree). In certain states local authorities may also set up petition offices for investigating local complaints and suggestions. In four *Länder* (Rhineland Palatinate, Schleswig-Holstein, Thuringia and Mecklenburg-Vorpommern) the office of parliamentary ombudsman (*Bürgerbeauftragte*) exists too, having by and large similar functions.