

State administration
in the regional and local space in Germany.
Between continuing presence and retreat

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1. Distribution of the administrative functions in Germany's federal
system

In Germany's federal system the "State" is composed of two layers: the federal level (the federal State: Federation, *Bund*) and the regional level ('regional States' called *Länder*). Whereas the local government level is, constitutionally speaking, not a third (lowest) federal level but is instead regarded as an integral part of the *Länder*, it constitutes, politically, functionally and administratively speaking, a politico-administrative level of its own.

1.1. Federal level (Federation', *Bund*)

In the distribution of the administrative functions Germany's federal and multi-level system shows a striking particularity in that the federal level ('Federation') has been denied by the Federal Constitution of 1949 (*Grundgesetz*) the right to have administrative structures of its own in the sub-federal/subnational space except for a limited number of areas enumerated in the Constitution. This distinguishes Germany's federalism system from others, for instance the U.S.

where the federal government is entitled to establish its own regional or local field offices for the implementation of federal policies and programs. In the German case this explicit vertical separation of administrative competences reflects the intention to forestall any recurrence of a predominance of the central government level.

Thus, federal administrative units and personnel exist, by and large, only on the federal government level (federal ministries etc.) and in a set of so called federal higher authorities/ agencies (*Bundesoberbehörden*), such as the Federal Environmental Agency (*Umweltbundesamt*) and Federal Health Authority (*Bundesgesundheitsamt*), which largely provide expertise (to the federal government and parliament) and exercise supervisory functions and are devoid of executive competences and lack regional or local offices (see Döhler/ Jann 2007). Similarly the highest echelon of the court system and its judicial and technical personnel is federal (such as the Federal Administrative Court, *Bundesverwaltungsgericht* while the judicial and technical personnel of the lower court echelons are employed by the respective Land.

There are only a few administrative branches with federal offices and personnel on the regional and local levels. Besides responsibilities with typically country-wide salience and outreach, such as customs, border police etc., the numerically and operationally most important exception is the Federal Agency of Labour (*Bundesagentur für Arbeit*) which has 10 regional (meso level) and 156 local level offices with a total of some 96.000 employees.

Until the 1990s the local level presence of the Federation was sizeable due to the German Federal Railroad (*Deutsche Bundesbahn*) and German Federal Post (*Deutsche Bundespost*) with a myriad of local level personnel (the former with some 320.000 and the latter with some 540.000 – mostly local level – employees. Both federally owned enterprises were privatized in 1994. The railroad system was turned into a private law company meant to be sold to

private investors (which so far has not happened), while the federal postal system has been “debundled” and split into three private stock market- listed companies the stocks of which were acquired by private investors (see Kuhlmann/Wollmann 2014: 185). Thus, the number of federal (local level) employees has been dramatically reduced.

The ensuing and prevalent organisational and personnel-wise absence of the federal level (‘Federation’) in regional and local level administration is evidenced by the fact that only some 10 percent of the entire public sector workforce are federal personnel, while 53 percent are employed by the Länder and 35 percent by the local government levels (see Kuhlmann/Wollmann 2014: p. 104 table 3.5 for international comparative data).

At this point it deserves being added that following the collapse of the communist system and German Unification after 1990 East Germany experienced an unprecedented (and also in international comparison all but unique) dismantling and decentralization of of central government level organizations and functions when the entire central government level was conspicuously dissolved and most public functions were decentralized by largely transferring (‘communalizing’) them to the local authorities, while the State economic enterprises have been ‘privatized’.

2. Administration in Länder

2.1. Scope of administrative functions.

Mirroring the quasi-monopoly that the Länder hold in administration the administrative tasks and responsibilities are very broad and comprise not only the implementation of their own legislation, but also – and primarily – that of the federal legislation as well as of the (the increasingly relevant and voluminous) EU norms. With regard to federal legislation it is constitutionally

laid down that the Länder carry out federal legal provisions as “their own” matter which is not subject to any oversight by the Federation.

2.2. Administrative procedure

Until 2006 the Federation had the right to regulate the administrative procedure for the implementation of federal law legal by way of federal legislation requiring the consent by the Federal Council (*Bundesrat*) (as the Upper Chamber composed by representatives of the Land governments). However, as component of the federalism reform of 2006 it was decided that each Land has the competence to regulate, by Land legislation, the administrative procedure for the implementation of federal legal provisions – without any involvement of the Federation.

2.3. Discharge/implementation of legal provisions

As to the implementation of legal (Land, federal or EU) provisions it is in principle up to each of the Länder to decide whether this should be done by the Land’s own administrative organisation and personnel or by “delegating” it to the local authorities.

2.3.1. Implementation by administrative units and personnel of the Land

The conduct by Land administrative units and personnel pertains relates particularly to the education sector (schools, universities etc.) personnel etc.) and the police force where the lion’s share of Land personnel is employed. Moreover, certain functions (environmental protection, health control etc.) are (varying between Länder) discharged by meso level or local level special purpose Land units and field offices (*Staatliche Sonderbehörden*)

2.3.2. Implementation by “delegation” to local authorities

On the basis of the traditional “dualistic task” model of Germany’s local government structure (see Kuhlmann/Wollmann 2014: 75 ff.) the Länder have adopted the practice of “delegating” the implementation of legal provisions to the local authorities, preferably to the counties (*Kreise*, in French: ‘arrondissement’) and “county free municipalities” (*kreisfreie Städte*), that is (as a rule larger) municipalities which, in combining county and municipal functions, stand organisationally and territorially “outside” the counties (in French: ‘municipalité hors d’arrondissement’). The “dualistic” model has been introduced into the German state and local government tradition since the beginning of the 19th century (and has actually been “borrowed” from France’s post-1789 municipal legislation). Thus, the counties and municipalities concerned carry out a “duality” of tasks (for further details see below, section 3.2).

2.4. Organisation

While, due to the autonomy which the Länder have in determining their organisational structure, there is considerable organisational variance in details between them while general organisational ‘blueprint’ has important features in common.

2.4.1. (Central) Land level

The central level carries the Land government, its ministries as well as central level special purpose or general purpose Land agencies’ (*Landesoberbehörden*)

2.4.2. Meso level administrative districts (*Regierungsbezirke*)

After 1945 most newly established (West German) Länder introduced a meso-level administrative district (*Regierungsbezirk*) headed by a Land government appointed ‘president’ (*Regierungspräsident*) as a level between Land

government and the local authorities. Historically this institutional scheme goes back to 1806 and 1808 when the then independent States Bavaria and Prussia put in place meso-level administrative districts as a key element to modernize their outdated (late medieval) administrative structures (whereby some guidance was gleaned from France's post-1789 "invention" of the *départements* and from the 'Napoleonic' *préfet*). In the organisational setting of the Länder the meso-level administrative districts have been assigned the main function, as general purpose entities, to "bundle" and coordinate the sectoral policies issued by central government and the pertinent special purpose administrative units as well as to supervise the activities of local authorities.

The meso-level administrative district is a key element of Land administration was put in place in six (West German) Länder of North-Rhine Westphalia, Lower Saxony, Hesse, Bavaria and Baden-Wuerttemberg (typically the demographically larger Länder between 17.8 million and 7.9 million inhabitants) as well as after Unification in three (East German) Länder of Saxony, Saxony-Anhalt and Thuringia (in the latter case the modified form of central level Land agencies). Since 2000 the meso-level district has been abolished in two (West German) Länder and three (East German) Länder (see below).

2.4.3 Single purpose administrative agencies/offices (Staatliche Sonderbehörden)

In varying organisational intensity and constellation the Länder have established single purpose administrative units to provide for the discharge of special supervisory or executive tasks by placing them on the meso or local levels. In the Land of Baden-Württemberg in total 480 single-purpose Land agencies and office existed (before they were reduced to 350 in 2005, see below).

3. Local government administration

4.1 *Types of local authorities*

The local government structure is made up of two tiers: the counties (*Kreise*) as upper level and the municipalities (*Städte, Gemeinden*) as the lower level.

Besides, (demographically larger) cities have been given the status of ‘county free’ municipalities (*kreisangehörige Städte*) which combine the municipal and county functions and stand organisationally outside the counties.

4.2. *The traditional and typical ‘dualistic task’ model of local government*

In the pursuit of ‘functional reforms’ public (Land) functions are, as a rule, transferred, by way of ‘delegation’, to the local authorities, particularly to the counties and to the county-free municipalities. In this the “dualistic model” or the “duality of functions” is basic which has traditionally been a trade-mark of German local government.

On the one hand, the local authorities discharge tasks which are based on and derived from the “general competence” clause guaranteed, as an essential of ‘local self-government’ (*kommunale Selbstverwaltung*), by the Federal Constitution, article 28, and by the Länder constitutions. Typical examples are urban planning, social and cultural activities and the like. On the other hand, the local authorities carry out tasks that are ‘delegated’ to them by the State (Land) (in German ‘*Auftragsangelegenheiten*’ or ‘*Pflichtaufgaben zur Erfüllung nach Weisung*’). These ‘delegated’ functions relate to the maintenance of “public order and safety”, such as the issuance of driver licences, environmental protection etc. In the German debate such transfer of State functions to the local authorities, be it counties or municipalities, is also labelled “communalization” (*Kommunalisierung*) as in German parlance ‘*Kommune*’ is used as ‘generic’ terms which pertains to the counties as well as to the municipalities.

The wide range of self-government and “delegated” functions of the local authorities adds up to, it has been assessed, the some 70 to 80 percent of all legal

(federal, Land and EU) provisions that are applied and implemented by the local authorities.

The implementation of local self-government tasks and “delegated” functions differs in two crucial dimensions. First, while the conduct of local self-government tasks lies, in principle, in the responsibility of the democratically elected and politically accountable local councils as the anchor and pivot of local democracy, the ‘delegated’ tasks are assigned to the executive head of the local authorities (the head of county, *Landrat*, respectively the mayor, *Bürgermeister*) as the solely responsible local level actor whereas the elected local council has no influence nor scrutiny in the ‘delegated’ matters. Thus, the more extensively the local ‘executive’ position-holder (*Landrat* or *Bürgermeister*) is put in charge of carrying out ‘delegated’ tasks in his/her sole operational responsibility the more the power relations within local government are moving towards strengthening the position of the local ‘executive’. Second, whereas with regard to local self-government matters the supervisions exercised over the local authorities by the upper (State) level is limited to a ‘legality review’ (*Rechtsaufsicht*), the oversight to which the local ‘executive’ is exposed in the conduct of ‘delegated’ tasks includes an administrative supervision (*Fachaufsicht*) which pertains to the ‘expedience’, ‘merits’ (in French: *l’opportunité*) of the administrative operation under consideration. In some variants of the “delegation” of functions the upper (State) level, in exercising and enforcing its administrative supervision, may have the right to intervene directly by giving binding instructions.

On this backdrop the ‘delegation’ of tasks by the State to the local authorities as a key strategy of “functional reforms” might be interpreted not as a modality of (administrative, leave alone political) *decentralization* of State functions, but as a form of administrative *deconcentration* as the local executive (*Landrat* or mayor) is put in charge to practically act as a “local agent of the State (Land)”

which might be interpreted as coming close to a ‘statelisation’ (‘*Verstaatlichung*, in French: *étatisation*’) of local level activities and actors. By the same token the transfer of tasks from State (Land) operation to the local authorities, in the ‘communization’ terminology, might be called (at best) a ‘pseudo communalization’ instead of a ‘real’ (‘genuine’) one which solely applies to fully fledged local self-government tasks.

However, the critical gist of this interpretation needs to be moderated to some degree, by hinting at the local political context in which the local ‘executive’ is embedded and due to which he/she may be act, in the conduct of ‘delegated’ business, as a politically accountable local politician rather than as ‘agent of the State’. This aspect probably holds true all the more as, since the beginning of the 1990s, in all Länder the direct election of the mayor (and in part also of the heads of county, *Landräte*) has been introduced (see Wollmann 2007). which is liable to strengthen his/her disposition to listen and be sensitive to the local political context and to possibly defy objections and instructions by the upper State (Land) authorities, thus turning the ‘pseudo’ communalization into a ‘real’ one after all.

3.2. The institutional layer of intermunicipal formations

As most Länder (with the exception of North Rhine Westphalia and Hesse) have, to a larger or lesser degree, refrained from carrying out major municipal level territorial reforms they have turned to putting in place intermunicipal formations (called *Ämter* or *Verwaltungsgemeinschaften*) which have inserted a new (additional) institutional layer between the (small) municipalities and the counties (as well as the other upper levels of Land administration) (see Wollmann 2010, 2017). While institutionally they are analogous to France’s system of ‘*intercommunalité*’ they differ significantly in that the establishment of the layer of intermunicipal bodies in the German Länder concerned has effected by, in the last resort, binding Land legislation. Without going into

detailed discussion (see Wollmann 2017) it should be pointed out that, counting in the layer of the intermunicipal formations, the number of tiers adds up to five (sic!) (in Länder with a meso district level), to wit, Land government, meso-level, county, intermunicipal formation and municipalities. This has added up and amounted to an institutional “over-crowding” and “over-density” particularly in demographically small Länder (with some 2 million inhabitants) which has been increasingly criticized and finally prompted and ushered in reforms.

3.3 Local level territorial reforms

At this point, it should be reminded that the functional reforms in terms of transferring State (Land) functions to the local authorities have often been prepared or accompanied by local level territorial reforms which aimed at enhancing the capability of the local government authorities (counties as well as municipalities) to carry out an expanded scope of functions by demographically and territorially enlarging them by way of amalgamations. More recently particularly East German Länder, such as Mecklenburg-Vorpommern, Brandenburg and Thuringen have taken steps to create ‘macro-counties’ (‘regional counties’) in order to strengthen their operational capacity (see Kuhlmann/Wollmann 2014, p.128 ff., Wollmann 2017).

4 New wave of functional reforms

Since the early 2000s, in almost all Länder, a “new wave” of “functional reforms” has been set off which, in most cases, aimed at reorganizing the entire subregional and local organization of respective Land by reassigning the administrative functions. While the direction of the functional reforms was mostly ‘downward’ by ‘decentralizing’ or ‘communalizing’ the tasks, to a certain degree such re-distribution of tasks went also ‘upward’ and ‘sideward’.

In most cases functional reforms has gone hand in hand with the abolition of organisations. In East German Länder they have been accompanied by, in part, far-reaching territorial reforms, particularly by rescaling the counties and municipalities as well as the intermunicipal formations (*Ämter* and *Verwaltungsgemeinschaften*).

In all Länder the functional reforms (as well as in part accompanying territorial reforms) have been driven particularly by two factors.

For one, there has been mounting criticism the organisation of the administration of the Länder having gotten institutionally ‘over-crowded’ and ‘over-institutionalized’ to the point of having become dysfunctional and too costly. The institutional ‘over-density’ has become particularly palpable in those Länder which, notwithstanding their comparably small demographical size (for instance the Land of Saxony Anhalt with 2.2. million inhabitants) have a five-tier organizational scheme with Land government, meso level, county, intermunicipal formation, municipalities and, on the top of it, special purpose Land agencies/offices. In the smaller, but also in the larger Länder the criticism has been directed particularly against the meso-level administrative district and the special purpose agencies. Moreover the inadequate size of the counties, the multitude of small-size municipalities and ensuing extent of intermunicipal formations have been criticized for causing operational inefficiencies and costs.

Second, it was the very budgetary plight that drew the critical attention on the operational and costly inefficiencies of the existing multi-level organisation and underscored the need of functional (as well as related territorial) reforms.

While the functional reform strategies of the Länder had essentially two goals and measures in common, namely to cut back the existing organisational ‘over-density’ and to transfer state (Land) functions, by way of ‘delegation’ (‘communalization’) to the local authorities, two reform variant can be

distinguished as follows.

4.1 Variant. Abolishing respectively doing without meso-level administrative districts.

Since 2000 the meso-level administrative districts have been abolished in four Länder (Rheinland-Pfalz, Saxony-Anhalt, Lower Saxony and Saxony) in 2000, 2004, 2005 and 2012 respectively. These typically are demographically small Länder (between 2.2 and 4.0 inhabitants with the exception of Lower Saxony counting 7.9 million people). They join the five Länder which from the outset decided to do without meso level districts (Saarland, Schleswig-Holstein, Mecklenburg-Western Pomerania, Brandenburg which, too, characteristically are population-wise small Länder between 1.2 million 2.4 million people. Hence, now in total 7 out of 13 Länder (not counting the 3 City States Berlin, Hamburg and Bremen) do without meso level administrative districts.

As a common trend in these Länder (notwithstanding some variance between them) the reduction or abolition of lower and upper level special purpose state authorities/ offices (*Staatliche Sonderbehörden*) can be observed both by transferring the functions (downward' or 'sideward') to counties and county-free municipalities as "delegated" ('pseudo-communalized') tasks or also by transferring them 'upward) to the Land government or central level Land agencies.

The Land of Lower Saxony may serve as a case in point (for a detailed analysis see Bogumil/Kottmann 2006). First of all, because of the abolition of the four meso-level administrative districts (*Regierungsbezirk*) their functions, particularly the previously pivotal 'bundling' and 'coordination' functions, needed to be re-assigned. Although the Lower Saxony Land government initially intended to transfer 70 percent of the previous meso-level functions by

way of ‘delegation’, that is (‘pseudo’ municipalisation), to the counties and county-free cities, the decentralization effects have remained minimal, as only 10 percent of the previous meso-level functions have since been “communalized”, while the lion’s share of them has been transferred to upper level single purpose Land authorities or to ministerial administration. Whereas, it is true, 121 units of Land administration (including the four meso-level administrative district authorities) have been abolished the reform has so far resulted in a significant expansion of deconcentrated, single sector- wise organized Land administration instead of decentralizing functions, and be in the “delegation’ (‘pseudo-communalization’) mode. Moreover, the cost saving effect has so far apparently been minimal (see Bogumil/Kottmann 2006: 4).

In the Länder of Mecklenburg-Western Pomerania, Brandenburg, Saarland, Schleswig-Holstein and Saxony Anhalt, too, functional reforms have been initiated mainly by abolishing special purpose Land agencies and offices the functions and personnel were either reassigned ‘downward’ by way of ‘delegation’ and (‘pseudo) communalization’ or also ‘upward’ by integrating them into higher level Land administration. In the Länder Mecklenburg and Saxony Anhalt major territorial reforms of the counties have been embarked upon which aim at creating ‘macro counties’ (‘regional counties’) that have the potential to resume ‘bundling’ and supervisory functions which have so far been performed by central level Land authorities (see Kuhlmann/Wollmann 2014, Wollmann 2017).

4.2 Variant: Retention of meso-level administrative districts

The meso level administrative districts are still retained in six (West German) Länder (North-Rhine Westphalia, Lower Saxony, Hesse, Bavaria and Baden-Wuerttemberg) which are typically the demographically largest ones. Hence five Ländere (out of 13 Länder - not counting the three City States) have maintained

the meso-level district (whereby in North-Rhine Westphalia a critical debate about abandoning it is under way)

In this country group, too, the main goal was to reduce the array of upper and lower special purpose Land agencies and office in order to cut public spending, particularly on personnel. The transfer of the functions of the eliminated administrative units has been effected ‘downward’ by way of ‘delegation’ (‘pseudo municipalization’) to local authorities as well as ‘upward’ and ‘sideward’ by integrating them into the (thus functionally ‘upgraded’) meso-level administrative district.

The Land of Baden-Württemberg is a prime example of a “functional reform” strategy which hinges on the dissolution of 350 (out of a total of 450 existing) upper and lower level single-purpose administrative Land authorities (*Sonderbehörden*) (see Bogumil/Ebinger 2005). Their functions and personnel were transferred (‘downward’) to 35 counties and nine county-free cities but also (‘upward’ and ‘sideward’) to the four meso level administrative district authorities. The specificity of the functional reform approach embarked upon by the Baden-Württemberg Land government (*Regierungsbezirke*) was to achieve a so called efficiency gain (*Effizienzrendite*). In a somewhat fiscally shrewd tactic the Land initially covered the costs of the transfer of tasks and personnel to the local authorities entirely from the Land budget. However, in subsequent years the transfer payments from the Land were to be cut by 3 percent every year so that the Land government expected to harvest ‘efficiency gains’ of about 20 percent over the next five to seven years with the local authorities having to see to it that these ‘gains’ be generated. In comparative terms, the organisational and functional reform undertaken in the Land of Baden-Württemberg (nota bene: without accompanying territorial reforms) are deemed by many a “success story” as, on the one hand, the Land’s institutional

landscape has been simplified by trimming the density of authorities and of the number of institutional actors in the multi-level setting, while, at the same time, counties and county-free cities have been functionally upgraded by the absorption of ‘delegated’ tasks. However, as, in the case of Baden-Württemberg, the head of the county (*Landrat*) is explicitly and legally defined as the “lower administrative level of Land administration” (*untere Verwaltungsbehörde*) this arguably makes for a conspicuous case of ‘pseudo communalization’, if not of hardly concealed ‘statelisation’ (*Verstaatlichung, étatisation*).

5. Concluding remarks

- In Germany’s federal system the ‘State’ is composed of two ‘State’ layer, the ‘Federation’ (Bund) and the Länder. As the federal level is constitutionally barred from having organisations and personnel in the subnational space (with the exception of constitutionally enumerated matters) its regional and local ‘presence’ is consequentially small as evidenced by the fact that federal employees amount to some 10 percent of the entire public sector workforce. Thus, in Germany’s multi-level system the lion’s share of public administration ‘takes place’ on the subnational levels. Consequently our discussion focuses on the Länder and local government levels.
- The ‘functional reforms which the Länder have embarked upon since the 2000’s, with federalism-typical variance between in modality, intensity and timing, have, by and large, been motivated and driven by the intention, for one, to ‘simplify’ their administrative organization that has come to be increasingly criticized for being institutionally ‘over-crowded’ and, second, to reduce the organisational and personnel costs of administration.
- Arguably the most notable and consequential organisational shift has been

brought about by the abolition of the meso-level administrative district (*Regierungsbezirk* and its equivalent) in four Länder (out of 13, not counting the three City States). These four Länder (Rheinland-Pfalz, Sachsen-Anhalt, Thüringen and Niedersachsen) are tellingly among the demographically smallest Länder (between 2.1 and 4.0 million inhabitants, with the exception of Niedersachsen that counts 7.9 million people) and thus joined the already existing four Länder without meso-level (Brandenburg, Mecklenburg-Vorpommern, Saarland and Schleswig-Holstein with populations between 1.6 and 2.8 million inhabitants). Hence, it is essentially the demographically smallest Länder that have opted out of the meso-level district scheme either already in the past or more recently. The reasons guiding this option seem clear: the Länder are demographically too small to operationally and financially justify the district level no matter how prestigious and traditional its existence may be.

- In most Länder many single purpose Land authorities or offices, at the meso as well as local levels, have dissolved as well. Obviously the coordination of the single purpose activities operating outside the general purposes structures has proved to be too complicated and the ensuing transaction costs too high.
- In most Länder and instances the transfer of the functions of the abolished units of Land administration has been effected in two directions. Particularly if performing supervisory functions they have been reassigned ‘upward’ or ‘sideward’ to existing meso-level or upper level Land organizations organisation thus remaining in and even strengthening the realm of State (Land) proper. But the lion’s of ‘executive’ administrative has been transferred, by way of “delegation” (*Auftragsangelegenheiten*) to local authorities, preferably to counties and county-free municipalities. Even if such ‘delegation’ of tasks appears,

due to the administrative oversight (*Fachaufsicht*) by upper State (Land) authorities, as ‘pseudo’ instead of ‘real’ communalization it amounts to a retreat of the State (Land) from being, in terms of organisation and personnel, “present” in the subregional/local space.

- In some (East German) Länder the functional reforms have been accompanied and fostered by territorial county reforms which, in moving towards enlarged ‘macro’ (‘regional’) counties, aim at enhancing the capacity of the countries to be assigned further (hitherto upper and central level) tasks. In a similar vein in some (East German) Länder reforms are under way which aim at reducing, if not abolishing the extent of intermunicipal formations in order to create “integrated” municipalities that are capable to take on further “delegated” and “communalized” tasks.
- However the practice of functional reform, as the referred to example of the Land of Lower Saxony indicates, suggests to be cautious in assessing the rate and range of a “retreat of the State (Land)” from the subregional and local space actually taking place.

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