



## New Reforms Tackle Old Challenges in Germany Creating New Challenges

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In Germany, government at the local level consists of counties and municipalities. Their right to self-government is recognized *in principle* in Article 28 (2) of the Constitution, the so-called Basic Law (BL). Similar provisions are contained in the constitutions of Germany's constituent units, the sixteen *Länder*. Although mayors and county administrators are democratically elected, along with their respective councils, genuine legislative powers are vested solely in the parliaments of the federation and *Länder*.

Local authorities, in contrast, are considered to be executive. Their organizational structure is laid out in statutes enacted by the *Länder* parliaments and in most of their activities, local governments are highly regulated by federal or *Länder* legislation. It is worth mentioning that local authorities possess a *hybrid* character; that is, they not only serve as self-governing units but, depending on the issue at hand, as the lowest order of the *Länder* administration. In this latter capacity, local authorities may be subject to detailed orders from *Länder* authorities. The sheer volume of federal and *Länder* statutes, many of which derive from European Union legislation, considerably limits local authorities and their right to self-government. Nevertheless, as a constitutionally enshrined and broadly

accepted principle, Article 28 (2) BL gives local governments a comparatively strong legal and political standing.

In principle, local authorities have the right to govern themselves with regard to all issues of importance to the local community. They may also choose among various forms of cooperation to jointly perform services and administrative tasks. To some extent, local governments also have responsibility for their own finances and the constitutionally entrenched right to their own source of tax revenues, the commercial and property taxes. Apart from this, they lack the right to introduce new taxes or to raise taxes by themselves. In fact, they are completely financially dependent on decisions taken at the federal level, which has jurisdiction over taxes and how they are shared.

However, the federal government tends to raise only those taxes that provide additional income for itself. Meanwhile, the commercial tax, which serves as local governments' main source of income, has withered due to Germany's weak economy. At the same time, local governments have been forced to assume increasing responsibility for administrative tasks. As these administrative duties have grown, local government resources have become strained, leaving fewer assets for self-government. Not surprisingly, finance is one of the top issues for local governments today and they have repeatedly called for improvements to their financial situation.

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The recent reform of the German federal system, the *Föderalismusreform I* which came into force in the autumn of 2006, may now bring some relief. Previously, the federal government was allowed, with the consent of the *Länder*, to delegate specific tasks directly to local governments without being obliged to finance or reimburse them. *Länder* governments often consented to this practice since it increased their political influence over federal legislation. Local government finances suffered as a result. The amended constitution clearly states that this practice is no longer legitimate. Now, only *Länder* governments may delegate administrative tasks to local authorities. *Länder* constitutions stipulate that financial reimbursement of some kind must be made to local governments if tasks are delegated.

In their political organization, local governments, in general, are less influenced by major party politics. The fierce political battles usually fought along party lines at the federal or *Länder* level do not take place to the same extent in local governments. At the local level, politics tend to be less ideologically-charged and more issue-related, driven by a desire to reach adequate and pragmatic solutions for local issues. In local elections there are numerous independent candidates, as well as voter associations that support specific local agendas which are irrelevant at the federal or *Länder*

level. In some cases, elected mayors and county administrators have no political party or belong to a party that does not hold a majority in the municipal or county council.

In eastern Germany's "New *Länder*," the constitutional status of counties and municipalities is identical to that of western Germany. Yet eastern Germans tend to be less politicized, resulting in far lower voter turnouts at local elections than in the west. Many well-established western German political parties have had great difficulties establishing themselves in the New *Länder*.

Metropolitan regions have no single, specific legal status or makeup. Three cities, Berlin, Hamburg and Bremen, have historically been recognized as *Länder* states, and therefore debates over special legal status in view of their exceptional size and socio-economic importance do not arise. However, in other smaller but still significant metropolitan regions, like the greater metropolitan areas of Hanover or Munich, or conurbations of several major cities like the Ruhr, administrative powers vary significantly and there is sometimes unclear legal status.

At the heart of the German debate is the issue of cooperative governance. What internal makeup would suit these regions best in view of their democratic legitimacy and their role as the level of government closest to the people? Should these metropolitan regions, for instance, be governed jointly by the cities involved and their representatives or should they form a new and separate level of administration with their own directly elected councils? In apparent contrast to the United States, there is no noticeable debate over whether certain metropolitan regions should have recognized legal or political standing in relation to the German federation.

Local governments are also seeking to play a bigger part in federal legislation. As they play a major role in implementing federal legislation and possess significant experience and expertise, they want an official role in the law-making process and a voice in impact assessment. There is still debate over whether such an extended right of participation is viable within the constitutional framework of the current two-order parliamentary system of the *Bundestag*, representing the entire German electorate, and the *Bundesrat*, which represents *Länder* executives.