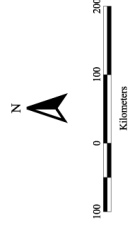


Federal Republic of Germany

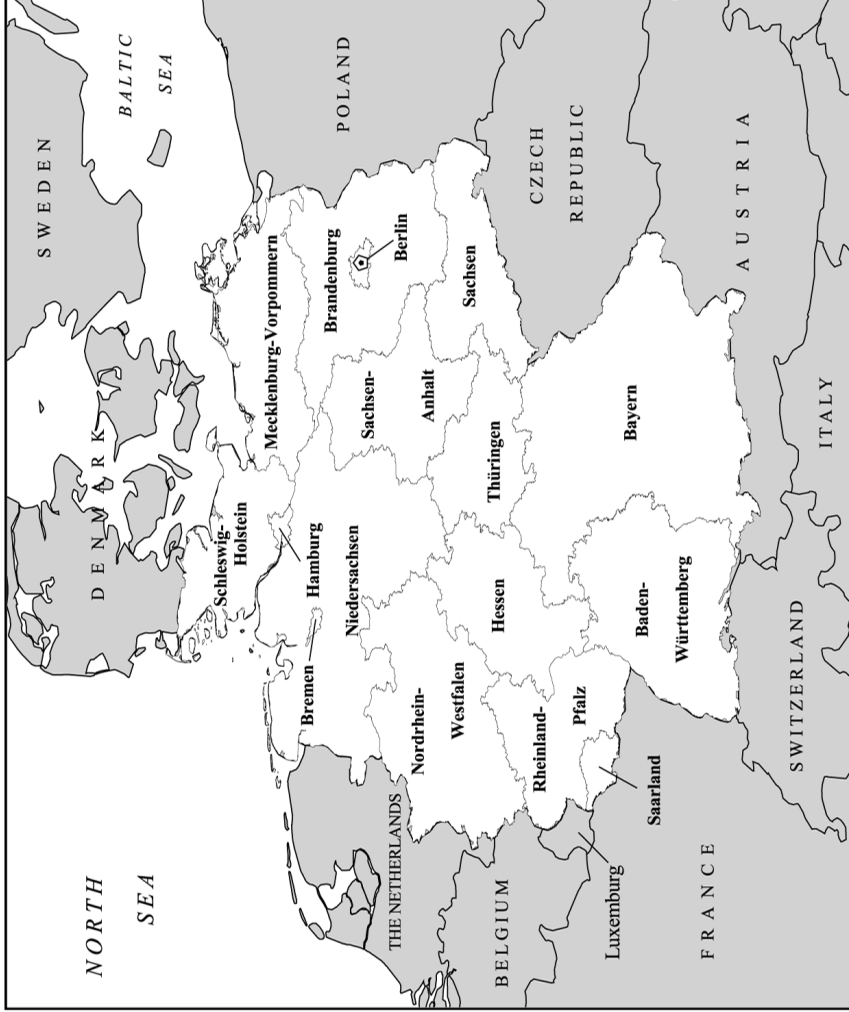
Capital: Berlin
Population: 82.5 Million
(September 2003)



Boundaries and place names are
representative only and do not
imply official endorsement.



Sources: ESRI Ltd.; CIA World Factbook;
Times Atlas of the World



Federal Republic of Germany

MARTIN BURG I

Overall, and despite several difficulties, local authorities have a comparatively strong legal and political standing within the German federal system due to their constitutionally enshrined right to self-government and to their significant administrative role.¹ Nonetheless, they have no direct and constitutionally recognized role in respect of federal legislation, although they have to implement most of it. Moreover, the increasing extent of so-called “delegated duties” has left local authorities with little to no budget room for actual self-government.² Recent reforms of the federal system have aimed at improving at least their financial situation.

The constitutional order of the Federal Republic of Germany is defined by the Basic Law (BL), which came into force in 1949. The federation established after the German reunification in 1990 consists of sixteen states (*Länder*), each of which has its own constitution, parliament, and government. Local authorities are considered a constituent part of the *Länder*; thus, in legal terms, they are not a separate order of government in the federal system.³

Local authorities and their right to self-government are constitutionally recognized in principle in Article 28(2) BL. However, local autonomy is granted only “within the laws”; therefore, it is subject to limitations by federal and *Land* legislation. Furthermore, as local authorities are considered a constituent part of the *Länder*, they possess a hybrid character;⁴ they serve not only as self-governing units but also, depending on the issue at hand, as the most subsidiary unit of *Land* administration. In this capacity, they are used to implement federal and *Land* legislation. In fact, most administrative tasks and services with direct implications for citizens are administered by local authorities. This sphere of delegated responsibilities (delegated sphere) has grown continuously over the years. However, as administrative duties have increased, local government resources have become strained. In particular, with the expansion of the welfare state, local governments

have had to assume increasing responsibilities for providing (costly) social welfare services, leaving fewer assets for actual self-government. Not surprisingly, finance is one of the top issues for local governments.

POLITICAL AND SOCIO-ECONOMIC BACKGROUND

With a territory of 357,021 square kilometres and a population of about 82.5 million people, Germany is the largest and, with roughly 231 inhabitants per square kilometre, also one of the most densely populated countries in Europe.⁵ In economic terms, Germany is the largest country in the European Union (EU) and the third largest in the world. Its gross domestic product (GDP) in 2006 amounted to €2,307 billion (US\$2,958 billion), and the GDP per capita was €28,153 (US\$36,103).⁶ Nevertheless, Germany's debt burden in 2005 totalled €1,447,505 billion (US\$1,447,505 billion),⁷ and unemployment rates have been very high for years. However, the annual GDP growth rate rose from 0.9% in 2005 to 2.7% in 2006,⁸ and prospects for 2007 were equally good. Furthermore, unemployment rates (among those aged twenty and over) declined from 12.9% in April 2006 to 10.6% in April 2007, although they still remain at very high levels, particularly in eastern Germany, with an average of roughly 18%.

Compared to some other European countries, Germany's population is fairly homogeneous in cultural and linguistic terms.⁹ Historically, there have been only a few ethnic minorities (e.g., Danes in northern Germany, Frisians in the Northwest, and Sorbs in the East).¹⁰ Due to immigration from other EU countries and, to a greater extent, from countries outside the European Union, this population make-up has changed slightly. Today, some 90% of the people are ethnic Germans, whereas 7.3 million people come from foreign countries. About 53 million people profess to be Christian (26 million Protestants, 26 million Catholics, and roughly 900,000 who belong to Orthodox churches), and there are around 3.3 million Muslims, mostly of Turkish origin (1.8 million), 230,000 Buddhists, and 90,000 Hindus.¹¹ Largely on account of immigration from the former Soviet Union, the Jewish community has grown again in recent years; today, it amounts to roughly 108,000 people. However, this is still only about one-fifth of the German Jewish population before the Holocaust.

The political system established under the Basic Law has proven very stable. Two parties, the Christian Democrats (CDU/CSU) and the Social Democrats (SPD), usually each win between 30% and 45% of the total number of votes, whereas two smaller parties, the Liberal Free Democrats (FDP) and the Greens (Bündnis 90/Grüne), each attract between 5% and 10% of all voters.¹² The CDU/CSU and the SPD have alternated in power in the federal arena as well as in the *Länder*. Apart from some local or *Land* elections, where they at times have won an absolute majority, both major parties usually

depend on a smaller party as a coalition partner. Following reunification in 1990, the Party of Democratic Socialism (PDS) emerged as a new leftist party, which had evolved from the Socialist Union Party (SED), the ruling communist party of the former German Democratic Republic; it continues to attract around 20% of voters in the East German *Länder* and is equally strong in local elections. Just recently, the PDS merged with the newly established Electoral Alternative for Labor and Social Justice (WASG) in the hope of forming a far-leftist party (Die Linke) with nationwide appeal. Their success in the last federal election in 2005 (8.7% of the votes) was one of the main reasons for the CDU/CSU and the SPD to form, for only the second time, a so-called "grand coalition" in the federal arena.

HISTORY, STRUCTURES, AND INSTITUTIONS OF LOCAL GOVERNMENT

Historically, the German concept of local (self-)government looks back on a long tradition, although the standing of local authorities has continuously improved, particularly over the past 200 years. Cities emerged as an important political, cultural, and economic force as early as the Middle Ages, at times forming powerful alliances and leagues; the historically unparalleled Hansa (with more than ninety member cities and towns) and the League of Rhenish Towns (comprising more than seventy member cities) are prominent examples from this period. With industrialization rapidly gaining pace over the course of the nineteenth century, people migrated in large numbers to urban areas, which led to a dramatic increase in the urban population over just a few decades. Following the French Revolution and Napoleon's defeat of Prussia, liberal ideas increasingly gained ground. In 1808 the reform-minded Prussian secretary of state, Baron vom und zum Stein, introduced local self-government into the Prussian Municipal Code in an effort to increase popular participation in public administration and thereby reduce the distance between the state and citizens. Henceforth, municipalities could run their affairs in their own name and on their own responsibility. An elected municipal council (*Stadtverordnetenversammlung*) would make the decisions and elect a collective body of magistrates (*Magistrat*) to implement them; state authorities, however, remained in charge of policing but could also delegate this responsibility to the magistrates. Thus was introduced, for the first time, the division of duties between state and local authorities, which remains a distinctive feature of German local governance to this day.¹³

However, local governance reached its strongest legal and political standing with the coming into force of the Basic Law in 1949. The current, constitutionally entrenched status of local governments was a direct reaction to Nazi rule, which had abolished *Länder* and local self-governance as

early as 1933 (through a process termed *Gleichschaltung*) to gain control of all public authority and keep it in line with party directives. After the end of the Second World War, federalism was re-established and so was local (self-)governance. Apart from historical tradition, it was the experiences under Nazi rule that made a decentralized federal state most appealing. The Allied Forces built the Federal Republic of Germany from the bottom up by re-establishing the *Länder* first. Even before that, however, it was local communities, with the assistance of the Allied Forces and under their supervision, that started to rebuild Germany. In the Soviet zone of occupation, which in 1949 became the German Democratic Republic (GDR), local elections were held in 1946. However, election results for the communist party, the SED, did not meet the expectations of the Soviet occupying force. As a result, local self-government was deemed to be in conflict with communist party rule and thus was eclipsed effectively over time, although it still existed on paper. A new municipal code was introduced in 1957, which adhered to the principle of "democratic centralism." Similarly to the situation under Nazi rule, local authorities were formally diminished to mere executive bodies that had to fall in line with SED directives. After the German reunification in 1990, local self-government was reintroduced in the "new" East German *Länder* using the municipal codes of West German *Länder* as a blueprint.

In Germany local government is administered through counties and municipalities. No areas fall directly under federal or *Land* rule; the entire country is subject to local government. However, as jurisdiction over the organizational powers of local authorities lies with each of the sixteen *Länder*, "local government" may come in different shapes; this is particularly true for its internal organization but may equally be said of its precise powers and responsibilities. Nevertheless, some general trends may be discerned.

Large municipalities with more than 100,000 citizens are usually assigned the status of "independent city" (i.e., "county-free").¹⁴ Because of their size, these municipalities can offer public services through the city administration as a single unit. In rural areas, by contrast, public services are provided by counties as well as by their constituent (smaller) municipalities. Again, the precise division of duties between counties and their municipalities is laid down in *Land* statutes and may therefore vary. As a general rule, the division of responsibilities depends on the capacities of the individual local unit; for reasons of administrative efficiency, counties will regularly assume the execution of duties that cannot be handled effectively by their constituent municipalities. For instance, hospitals will usually be run by the county, whereas administrative duties, such as residential citizen registration, may remain with the constituent municipalities.

Very small municipalities have become rare as repeated territorial reforms have redrawn municipal boundaries and amalgamated these communities

with adjacent (larger) municipalities (through a process termed *Eingemeindungen*) in an effort to increase the administrative capacities of individual local units. From a functional perspective, counties could be described as the rural-area equivalent to independent cities. Overall, there are roughly 12,241 municipalities, only 116 of which are “county-free” independent cities, whereas the overwhelming majority are constituent municipalities of the 313 counties: 39.9% of municipalities (representing only 2.9% of the overall population) have fewer than 1,000 inhabitants, and roughly 12% of municipalities (representing 42.1% of the overall population) have between 10,000 and 100,000 citizens; only 0.3% of municipalities have 200,000 to 500,000 or more citizens (representing 23.3% of the population).¹⁵

The concept of local self-governance, as enshrined in Article 28(2) BL (see further below), implies the general competence of local authorities to attend to all affairs of importance to the local community (so-called *Allzuständigkeit*, or general competence). This means that, in principle, local authorities may (and are supposed to) attend to all issues of local importance (see below).

As this concept of *Allzuständigkeit* is a main characteristic of local governments,¹⁶ there is no such thing as “single-purpose” local governance. Nonetheless, local authorities may, of course, agree among themselves to join forces and create joint administrative units to serve just *one* purpose, in what is called *interkommunale Zusammenarbeit*. For instance, they may, having regard to capacity and cost effectiveness, share their resources and establish a joint administrative body to take care of sewage and/or waste disposal. Such joint administration is particularly common between smaller communities but is equally practised within larger conurbations, as well as between counties and independent cities. However, it is important to emphasize that such joint administrative units have no right to self-government because only their constituent members are considered “local government” in the constitutional sense; only they enjoy local autonomy.

As regards metropolitan regions, one has to distinguish Berlin, Hamburg, and Bremen, which are historical peculiarities because they have always been recognized as *Länder*. However, all three city-states possess institutions and administrative structures that are somewhat similar to those of municipalities. Berlin, for instance, possesses the institutions of mayor and senate, which constitute the *Land* executive, and the so-called house of representatives (*Abgeordnetenhaus*), which is the *Land* parliament. However, due to Berlin’s double nature as a city-state, the mayor, senate, and the house of representatives equally serve as “local government”; in fact, there is no separate level of local government apart from the said institutions because Berlin’s famous districts (*Bezirke*) are mere subdivisions of the main city-state administration and have no legal personality of their own.¹⁷ Due to their double nature, city-states may, at times, serve

as important mediators in political debates between local governments and the *Länder*.

Apart from city-states, one can distinguish further metropolitan regions or conurbations with structures of regional administration (e.g., agglomeration Frankfurt/Main and the Ruhr region),¹⁸ although they are quite diverse and heterogeneous.¹⁹ In some cases, new administrative entities have been established to cope more effectively with specific problems arising from the relationship between large cities and their surrounding areas (e.g., Verband Region Stuttgart and Region Hanover).²⁰ In North Rhine-Westphalia, and to some extent in Lower-Saxony, one finds so-called *höhere Kommunalverbände* (i.e., higher level associations of municipalities), which are regional government institutions on top of the local governments (in North Rhine-Westphalia they are called *Landschaftsverbände*).²¹ These associations are created as public corporations formed by their member cities to fulfil local public tasks; their roots go back to the nineteenth century, and they are nowadays mostly charged with responsibilities of a social and cultural nature, such as youth and disabled welfare or museum maintenance. A further example of a newly created strong city-region governmental arrangement is the so-called Regionalverband Ruhr; it is also a public corporation formed by the cities and counties of the Ruhr region.²² Although its current competences are limited mainly to planning, business development, and public relations, it might, nonetheless, represent an “institutional nucleus” for an unconventional model of regional administration for a metropolitan region. The Regionalverband Ruhr is promoted (in typically German fashion) “top-down” as a result of governmental initiative, in contrast to privately initiated institutions, such as the Initiativkreis Ruhrgebiet, which is a voluntary association of major (mostly private) business enterprises of the region aiming to promote the region’s image by supporting ventures of symbolic value, such as the European City of Culture 2010 project. On the one hand, this arrangement produces some advantages for local government, particularly because for most major business enterprises the maxim “think global, act local (regional)” applies, whereas the position of state and local authorities is rather to “think regional, act regional, and promote acting globally.” Furthermore, institutions such as the Regionalverband Ruhr represent a model of how to create a strong shared public governmental institution and might give impetus to the further creation of such shared public service agencies with possibly broader competences. On the other hand, such entities face considerable reservations on the part of municipalities and counties. Such political reservations against a large-scale institution are always made by those institutions that will be terminated as a result of the establishment of the new institution and are subject to interorganizational jealousies. Additionally, the concern has been raised that the establishment of such “mixed

administration” leads to problems of legitimacy, transparency, and above all, accountability. Another point made is the danger of weakening the power of the local authorities, as well as local civil-society projects. However, the competences of these regional entities are still few, and their legal status remains mostly unclear. Legally, as well as politically, large cities and counties, therefore, continue to play the predominant role within those regional areas.

CONSTITUTIONAL RECOGNITION OF LOCAL SELF-GOVERNMENT

As has been mentioned, the right of local authorities to self-government is constitutionally enshrined in Article 28(2) BL. Further reference to local governments is made in Articles 105(5) and 106(6) (regarding tax-raising powers and apportionment of revenues) and in Article 115c(3) BL (concerning the extension of the federation’s legislative powers during a state of defence). However, these additional provisions only supplement the principle that is basically set forth in Article 28(2) BL. The latter is mostly self-explanatory and reads in full:

Within the limits prescribed by law, municipalities shall be guaranteed the right to regulate all local affairs on their own responsibility. Within the limits of their responsibilities as defined by law, associations of municipalities shall equally have the right of self-government according to the laws. The guarantee of self-government shall include the basis of financial autonomy; it shall comprise the right of municipalities to a source of tax revenues that corresponds with their economic ability and the right to fix the rates at which these sources shall be taxed.

Provisions similar to those of Article 28(2) BL are also contained in the constitutions of the sixteen *Länder*, thus reinforcing the constitutional recognition of local authorities and their right to self-government. This legal and constitutionally enshrined status is primarily the same for all municipalities regardless of their size and socio-economic importance, although larger municipalities (especially independent cities and conurbations) will, without doubt, regularly have more political influence. Even Berlin, despite being the capital of the Federal Republic of Germany, enjoys no particular constitutional status apart from its *Land* status, which is not in any way connected to its function as the capital city and is no different from the status of Hamburg or Bremen. By contrast, the constitutional standing of counties is somewhat weaker; above all, the reason for this is that, in view of the self-government competences of their constituent municipalities, they may not attend to all affairs of local importance but are granted the right to self-government only “within the limits of their responsibilities as defined by law.”²³

It is important to stress that Article 28(2) BL, as well as the corresponding *Land* constitutional provisions, grant local autonomy only as an institutional guarantee, not as a basic right.²⁴ This means that local autonomy is guaranteed (only) in principle, while its precise scope is subject to legislative modelling and, therefore, cannot be deduced directly from the Basic Law. Local self-government exists only “within the laws.” Thus the federal and *Land* lawmakers define the precise extent and limitations of local self-government; metaphorically speaking, they are (at the same time) “friend and foe” regarding local autonomy.

As has been mentioned, the German concept of local self-governance, as entrenched in Article 28(2) BL, implies that local authorities have the general competence to regulate all affairs of importance to the local community (a concept termed *Allzuständigkeit*). This fundamentally means that, in principle, local authorities may (and are supposed to) attend to all issues of local importance. They may, for instance, run public libraries, museums, theatres, opera houses, or concert halls but may equally provide airport facilities, energy/water supply, and waste/sewage disposal, as well as run hospitals, kindergarten facilities, or homes for the elderly. Of course, these vast competences do not go unchecked; local authorities may engage in such activities only within their financial capacity, and in all their activities, local authorities must observe the laws and limitations set by the federal and *Land* parliaments. However, contrary to the Anglo-Saxon concept of *ultra vires*,²⁵ the concept of *Allzuständigkeit* means that local authorities do not act illegally if they take measures in areas that do not belong to the powers *explicitly* transferred to them by legislation. Local authorities require a legal basis only for those measures that regulate and restrict the rights and freedoms of individuals (*Eingriffe in Eigentum und Freiheit*); in all other cases, in view of their general competence, they need not be empowered specifically to take action locally.²⁶

In practice, the sheer volume of (sometimes very detailed) federal and *Land* statutes has considerably limited local autonomy and, at times, made it questionable. It should be mentioned, too, that many of these restrictions on local autonomy originate from EU legislation, which plays a major role in many local government activities (e.g., local planning and public procurement). As a result, the promise of far-reaching powers, which the concept of *Allzuständigkeit* might imply, is at times described as a “mere fiction” in light of factual developments.²⁷ However, as local autonomy is constitutionally guaranteed in principle, Article 28(2) BL protects local authorities against excessive or immoderate restrictions of local autonomy and preserves a “core sphere” (*Kernbereich*) of responsibilities that must remain with local communities (i.e., finances, local planning, personnel matters, organizational autonomy, and the freedom to engage in joint administration with neighbouring communities). In addition, Article 28(2) BL protects local authorities to

some extent against the revocation of responsibilities they have hitherto assumed (*Aufgabenentzug*). As the Basic Law adheres to a principle of decentralized allocation of powers, such revocation of responsibilities in order to reallocate them to a higher (more centralized) administrative level (*Hochziehung*) must be justified by an overriding public interest. As a result, only very substantial gains in cost efficiency, for instance, may justify the removal of responsibilities from local communities. Where federal or *Land* statutes have infringed upon the constitutional guarantee, local authorities may invoke their right to self-government before the Federal Constitutional Court (Bundesverfassungsgericht) or the respective constitutional courts of the *Länder* and seek the annulment of these statutes in a proceeding called *Kommunalverfassungsbeschwerde*. This proceeding is in some ways similar to the *Verfassungsbeschwerde*, the process for hearing the constitutional complaints of individuals, who may invoke their basic rights before the Federal Constitutional Court.

The essential motives for the constitutional recognition of local self-government have been to enable bottom-up democracy through the participation of citizens and thus enhance the freedoms and liberties of individuals. The very notion of “self-governance”²⁸ implies that citizens may participate in public administration and attend to the affairs and issues that are relevant to their lives and directly affect them; it equally implies that citizens enjoy some degree of autonomy as to “whether” and/or “how” they want to attend to those affairs. Self-governance typically increases efficiency, as it brings administration within increased proximity to the people and the issues it has to address. It also allows for more self-determination and, hence, promotes individual freedom and democracy. The Federal Constitutional Court has aptly stated that “the very nature and intention of local self-government is to activate people to get involved with their affairs.”²⁹

It is broadly perceived by the general public as well as scholars that these main purposes behind the constitutional recognition of local self-government (i.e., more democracy, more individual freedom, and more effectiveness) are largely being attained. Local governments are generally deemed to be more in touch with local issues, less politicized, and more effective. These benefits from administration through local governments have remained undisputed ever since the Basic Law was enacted in 1949, and they are broadly acknowledged across all political parties. Furthermore, as part of recent administrative reforms, most *Länder* have transferred additional responsibilities to local authorities (through a process termed *Kommunalisierung*, or municipalization). As has been mentioned, local authorities not only serve as self-governing units but are also used to implement federal and *Land* legislation. In this capacity, they greatly relieve federal and *Land* administrations. In most cases where additional responsibilities have been transferred to local authorities, this has been done with explicit reference to their more efficient and more cost-effective performance of administrative tasks.³⁰

Although mayors and county administrators are democratically elected, along with their respective councils, genuine legislative powers are vested only in the parliaments of the federation and of the *Länder*. Local authorities, by contrast, are primarily considered to be executive; thus their legislative powers are relatively weak. However, as the notion of “self-governance” implies, they are not merely executing legal provisions but may also determine such provisions and regulate local affairs in a meaningful manner. They mainly do so through so-called *Satzungen*, or municipal bylaws.³¹ Such bylaws, however, have to observe the legal delimitations defined by federal and *Land* laws. Furthermore, if such bylaws are to restrict the rights of citizens or enterprises, they need – according to the rulings of the Federal Constitutional Court – a legal basis in federal or *Land* statutes.³²

In conclusion, it is worth stressing that a very substantial number of administrative tasks with direct implications for citizens are carried out by local authorities, a tendency that is increasing. This may be illustrated clearly by the fact that roughly 1,277,795 civil servants work for local governments (compared to 481,372 federal and 2,076,852 *Land* employees), which is equal to about 33% of all civil servants.³³ Moreover, local government spending usually amounts to about 15% of overall government spending. Taking into account that local governments are not responsible for military expenditure, pensions, and health insurance, these figures are even more impressive; in fact, leaving social insurance aside, local government spending makes up roughly 28.6% of overall government spending.³⁴ At the same time, however, *local autonomy* is increasingly limited by federal and *Land* statutes as well as by EU legislation. Nevertheless, local authorities have, due to their constitutionally enshrined right to self-government and their significant administrative role, a comparatively strong legal and political standing within the federal system. In fact, this finding is underlined by international studies of political scientists that attest to the fact that local authorities in Germany have “the highest” degree of autonomy and achieve the best level of effective performance.³⁵

GOVERNANCE ROLE OF LOCAL AUTHORITIES

The German concept of local self-governance, which is directly inferred from Article 28(2) BL, implies that local authorities have, within the limits of the law, the general competence to attend to all affairs of importance to the local community (the concept of *Allzuständigkeit*) and do not need to be empowered specifically by federal or *Land* legislation to take action locally. As has been pointed out, this constitutional “starting point” is basically the same for all municipalities, regardless of their size.

However, a substantial part of local administration stems from the delegated sphere and thus has the quality of “state nature.” As has been

explained, local authorities possess a hybrid character. Not only do they serve as self-governing units, but they also implement federal and *Land* legislation. In this capacity, they act as the most subsidiary unit of a decentralized *Land* administration.³⁶ As local authorities may provide public administration at the greatest proximity to the citizens concerned, it is broadly held in most *Länder* that local authorities generally perform more efficiently and more cost effectively than superior *Land* authorities. As far as delegated duties are concerned, the extent of assigned powers and responsibilities largely depends on the size and capacity of the individual local unit and is laid down in *Land* statutes; from this background, the distinction is derived between independent ("county-free") cities, on the one hand, and counties and their constituent municipalities, on the other. In addition, considering local autonomy, two kinds of delegated duties have to be distinguished: some delegated duties leave no autonomy to local authorities (so-called *Pflichtaufgaben nach Weisung*), whereas in other cases, local authorities are assigned autonomy as to *how* they perform the delegated duties (so-called *Pflichtaufgaben ohne Weisung*). For instance, they are obliged to organize waste or sewage disposal but are left with a certain degree of discretion to determine the most expedient way to do so. Depending on the degree of assigned autonomy, local authorities are subject either to more or to less detailed orders from *Land* authorities (see further below).

In terms of their organizational structure, local governments consist of an elected executive body (i.e., the mayor or county administrator) and an elected collective body (council). It should be stressed that this organizational structure is exactly the same in small municipalities as in large cities such as Frankfurt and Munich. Whereas mayors (and county administrators) are full-time officials and get a salary that depends on the size of the local community,³⁷ councillors are only part-time officials who receive some financial compensation for their time and effort.³⁸ In some *Länder* mayors were previously elected by the municipal councils. However, in an effort to boost citizen participation and to increase the democratic legitimacy of mayors, municipal councils and mayors are nowadays elected directly by the people in all major *Länder*; by contrast, county administrators are sometimes still elected by the county council. In general, the fact that mayors are elected directly by the citizens has made them more independent of municipal councils and has increased their political influence; usually, their direct election has led to a more local agenda less influenced by party politics.³⁹

In recent years, the implementation of reforms has occasioned some further reallocations of power.⁴⁰ In particular, with the expansion of the welfare state, the extent of delegated duties (delegated sphere) has grown continuously; as a result, the finances of local governments have become

more and more strained. These financial strains have forced local authorities to reassess their activities and to focus on their core business. Partly following international models of “lean government” and New Public Management, there has been a shift from the concept of a “providing state” to a more “enabling state.” Particularly with regard to such activities as water and energy supplies as well as waste and sewage disposal, which are characterized by the provision of services (as opposed to those administrative tasks that regulate and restrict the rights and freedoms of individuals), there has been a tendency toward privatization. Apart from that, and as a result of what in Germany is called *Neues Steuerungsmodell* (a variant of New Public Management),⁴¹ a shift in the perception of public administration has taken place; that is, administrative tasks and services are now perceived as “products” and are assessed more rigorously with regard to their cost impact. Thus, although the objectives of public administration have remained the same (i.e., serving the public interest instead of maximizing profits), public administration has been likened somewhat to running a private business. In addition, increased output orientation has introduced more self-responsibility in budgetary and other matters. Overall, as a result of these developments and due to the outsourcing and privatization of activities, the executive powers of mayors (and county administrators) have generally expanded. However, if deemed necessary, councils may still intervene. Moreover, most *Länder* have enhanced the possibilities for residents to influence decisions directly through local polls and referendums (*Bürgerbegehren* and *Bürgerentscheid*). In a number of cases, these forms of citizen participation have been initiated to oppose privatization. In some cases, cities and municipalities have also reversed the privatization of activities without such initiatives, contrary to the overall trend.

Electoral rights (i.e., the rights to vote and to run in local elections) extend to all people of German nationality and are equally enjoyed by nationals from other EU member states if they have had local residency over some period of time (usually after a few months); this flows from Articles 17(2) and 19 of the European Community (EC) Treaty and from Article 28(1), sentence 3, BL. However, nationals from foreign countries outside the EU are not entitled to take part in local elections. In this regard, the Federal Constitutional Court has ruled that such electoral rights would contradict the Basic Law.⁴²

As regards public servants, local authorities may employ or dismiss whomsoever they consider appropriate or inappropriate. As part of their right to self-government, they enjoy complete autonomy in personnel matters.

FINANCING LOCAL GOVERNMENT

Finances are a major issue for local governments. Throughout Germany, many municipalities are unable to balance their budgets and have run up

large deficits. There is a tendency to take up loans (*Kassenkredite*) just to cover current expenditures. Thus the debt burden is increasing without investments being made for future benefits. To give some figures: whereas overall loans have risen dramatically from around €1 billion in 1992 (US\$1.276 billion)⁴³ to €27.6 billion in 2006 (US\$35.39 billion), overall investment expenditures have fallen from roughly €34 billion in 1992 (US\$43.38 billion) to around €19 billion in 2006 (US\$24.37 billion).⁴⁴

Not surprisingly, there is general concern about a “crisis” of local (self-) governance, although only in financial terms and not with regard to the political and administrative benefits associated with it. In fact, there is consensus that the financial difficulties did not arise solely from excessive spending on the part of local authorities. Instead, these difficulties are, apart from the weak economy, mostly of a structural nature. Over the past decades, local governments have been given increasing numbers of cost-intensive responsibilities. In particular, in a practice called *Bundesdurchgriff*, the federal government was allowed, with the consent of the *Länder*, to delegate such responsibilities directly to local authorities without being obliged to provide sufficient funding. Prominent examples of such delegated duties are social welfare services for children and youth, for the elderly, and in particular, for the unemployed,⁴⁵ where local authorities cover 70% of the expenses for housing and heating assistance.⁴⁶ Only recently has the Basic Law been amended in the hope of preventing such practices in the future.

As part of their right to self-government, local governments are, in principle, entitled to manage their finances according to their own discretion (the principle of so-called *Finanzhoheit*). For this reason, they possess various sources of income; above all, they have a constitutional right to their own source of tax revenues, namely the property tax (*Grundsteuer*) and the commercial tax (*Gewerbesteuer*). It should be mentioned, however, that the property tax generates only a small proportion of the overall tax revenue. Thus the commercial tax is local governments’ main source of tax income,⁴⁷ and they may themselves fix its rates.⁴⁸ However, due to Germany’s weak economy in recent years, commercial tax revenues withered dramatically, adding to the financial difficulties of local governments. Only when the economy picked up again did revenues from the commercial tax rise substantially (by 18.7%), increasing from €23.42 billion in 2005 (US\$28.65 billion) to €27.8 billion in 2006 (US\$35.65 billion), and prospects for 2007 were equally good.⁴⁹

In addition to the said taxes, local authorities may charge fees (*Gebühren*) for public services. Based on Articles 106(6) and 105(2a) BL, they may also create new types of local excise taxes (*örtliche Verbrauchs- und Aufwandsteuern*) in the exercise of what is called their *Steuerfindungsrecht*; examples of such local excise taxes include entertainment taxes, dog-licence fees, and second-residence taxes. All such taxes and levies are laid down in

municipal bylaws (*Satzungen*). Apart from these cases, local authorities lack the right to introduce new taxes or to raise taxes by themselves. In addition to the above, however, local authorities are constitutionally entitled to a certain share of so-called “joint taxes” (e.g., income tax, corporate income tax, and value-added tax). However, for these taxes, they depend completely on decisions made by federal or *Land* officials. Despite there being substantial financial distributions (*Finanzzuweisungen*) from the federation and the *Länder*, which stem from these “joint taxes,” these revenue equalizations have often proven insufficient to finance all the delegated administrative tasks that local governments have to perform as the lowest level of *Land* administration. Such insufficient funding is also not compensated for by financial transfers between local authorities; contrary to the position in some other federal countries, there is no obligation for such mutual financial solidarity between local governments under German law. However, the special financial circumstances of cities in conurbations (*inter alia*, due to their high spending for cultural activities, etc.) will most likely be taken into account to some extent in future financial distributions on the part of the *Länder*, although details remain unclear.

It has to be mentioned that, apart from the said financial transfers, taxes, levies, and fees, a substantial part of local governments’ income is generated through commercial activities. In fact, many municipalities run partly profitable public enterprises, sometimes alone, sometimes jointly with neighbouring municipalities, and sometimes with private partners (i.e., in a public-private partnership). Quite regularly, profits made from services, such as energy/water supply and waste/sewage disposal, are used to cross-subsidize less profitable activities, such as public transport. This may again illustrate the “multipurpose” approach of the German concept of local self-governance, which aims to attend universally to all affairs of local importance. According to the statutes of all *Länder*, commercial activity on the part of local authorities is admissible only if it is “in the public interest.”⁵⁰ In addition, *Land* statutes provide that such activity must also be “required,” as the public interest in question may not be attained to the same degree by private companies. However, there is generally a rather broad understanding of the notion of “public interest” as including more or less everything from creating jobs to securing water and energy.⁵¹ In some cases, public enterprises offer their services not just locally but also on a European and, at times, even global scale. This is partly a result of the more “business-minded” approach related to New Public Management. However, this dilutes the true approach of local authorities, which is to universally attend to local affairs.⁵²

In 2006 overall annual budgets (of all local authorities taken together) were balanced for the first time in years, even showing a slight surplus of €1.75 billion (US\$2.24 billion), with overall revenues at roughly €158 billion

(US\$202.6 billion) and overall expenditures at roughly €156.25 billion (US\$200.4 billion);⁵³ however, this result was mainly achieved by drastic cuts in public spending (e.g., investments and personnel expenditures) over recent years (table 5.1).

Although overall annual budgets were balanced in 2006, the financial situation is improving only slightly, as the debt burden from past borrowing is still immense and many municipalities are far from consolidating their overall budgets; to give some figures, the overall debt burden of German municipalities amounted to roughly €88 billion (US\$112.85 billion) by the end of 2006.⁵⁴ This is particularly true for local governments in the East German *Länder*, which generally still trail behind economically. In this context, it should be mentioned that *Land* statutes do not provide for bail-outs of bankrupt local governments. In fact, local governments are not legally capable of falling into insolvency because their assets are not to be liquidated.⁵⁵ Instead, if local authorities do not manage to balance their budgets and have to take up additional loans, they need the prior approval of specially assigned *Land* authorities, which supervise local governments' public spending.⁵⁶ They have to prepare a plan (called a *Haushaltskonsolidierungs- oder -sicherungskonzept*), which also needs approval,⁵⁷ indicating how they intend to consolidate their budgets in the near future (mainly by cutting spending). However, supervising authorities have often tacitly approved of (sometimes questionable) additional borrowing to prevent immediate collapse.⁵⁸

Apart from taking up loans, numerous municipalities have also engaged in so-called "US cross-border leasing."⁵⁹ The latter implies a "lease and lease back" arrangement between two parties that are situated in different countries. Its aim is to make use of the tax laws of different jurisdictions. Basically, it depends on the fact that, for tax purposes, some countries assign the taxable ownership of an asset to the entity that has legal title to it, whereas other countries (like the United States) assign the taxable ownership (and the depreciation allowances that come with it) to the party that has the most indicia of tax ownership, legal title being only one of several factors to be considered. Thus, if a leasing arrangement lasts for a sufficiently long time (e.g., ninety-nine years), these jurisdictions will treat the lessee as the effective owner of the asset, although the lessee has no legal title to it and is only leasing it (to lease it back to the lessor). By way of example, local authorities in Germany might lease their sewage infrastructure to a US investor, only to lease it back and partially benefit from the depreciation allowances of the US investor. As the practice of "US cross-border leasing" leaves property relations unscathed, it was unclear whether it needed prior approval on the part of the supervising authorities.⁶⁰ Following a change in US tax regulations, however, the practice of cross-border leasing largely lost its practical importance.

Table 5.1

Local government finance 2006: Percentage of revenue sources and expenditures

Source of income (€158 billion; US\$202.6 billion)	Percentage of total income	Expenditure items (€156.25 billion; US\$200.4 billion)	Percentage of total expenditure
Taxes	38.3	Personnel	25.7
• commercial tax	17.6	Operating	20.0
• share of income tax	12.8	Social-welfare services	23.9
• share of value-added tax	1.8	Loan interest	3.0
Administration fees	10.0	Capital expenditure	12.1
Federal/ <i>Länder</i> transfers	27.3	• construction	9.3
Capital-related financial distributions (federal/ <i>Länder</i>)	4.7	• new assets	2.8
Other income	19.7	Miscellaneous	15.3
		Investments (<i>inter alia</i>)	12.1
		Construction measures	9.3
		Purchase of assets	2.8

Source: Translated and adapted from "Kommunale Finanzen 2005 bis 2007 – Prognose der kommunalen Spitzenverbände," press release, 9 February 2007, <http://www.staedtetag.de/10/pressecke/presse-dienst/artikel/2007/02/09/00441/index.html> (viewed 28 January 2008).

By way of summary, it should be stressed once more that, overall, local governments are extremely dependent on financial transfers from the federation and *Länder*. In the past, these transfers have proven insufficient on many occasions, which has considerably undermined the autonomy of local governments. There is consensus that the Föderalismusreform I (see further below) must be followed by a second set of constitutional reforms, the so-called Föderalismusreform II, which are supposed to tackle the financial arrangements of the Basic Law in order to provide steady and adequate funding for all orders of government in light of their respective duties.⁶¹ As the commercial tax has proved to be a rather unreliable source of revenue in economically weak times, there has been some debate about whether it should be abolished altogether.⁶² However, there is broad consensus – in line with the constitutional provisions of Article 28(2) BL – that the commercial tax should then be replaced by another (hopefully steadier) source of tax revenue that would give local governments equal financial influence over the local economy and allow them to set a municipal rate.⁶³

SUPERVISION OF LOCAL GOVERNMENTS

Local authorities are highly regulated and have to observe numerous legal provisions. However, their activities are monitored very cautiously. In fact, there is hardly ever a case where a superior *Land* authority would take

formal action and, for instance, take over a local government or replace a democratically elected council or its decisions. Instead, in a predominant number of cases, supervision takes place in an informal, cooperative, and advisory manner, whereas formal supervisory actions are considered a “rule of last resort.”⁶⁴ One of the main reasons for this is the close political ties between the local and *Land* authorities, which, however, are mostly independent of party affiliations and based more on good personal working relations. This is particularly true for local governments in metropolitan regions and large cities.

Regarding the extent of supervisory powers, the kind of local activity at issue has to be distinguished.⁶⁵ Where local authorities enjoy autonomy, orders from superior *Land* authorities must respect this sphere of autonomy. Thus, with regard to mere self-governance and those delegated duties whose most expedient fulfilment is largely determined by the local authority (*Pflichtaufgaben ohne Weisung*), superior authorities may assess only the lawfulness of a local decision. By comparison, with respect to those delegated duties where local authorities enjoy no autonomy (*Pflichtaufgaben nach Weisung*), the local authorities are subject to detailed instructions regarding the lawfulness and usefulness of their activities.

Where formal supervisory measures are taken, there may be some dispute about whether the supervising authorities have correctly defined the legal delimitations of local autonomy and their degree of discretion or whether they have infringed on local autonomy by defining these delimitations too narrowly. Therefore, local governments may challenge such supervisory measures in the administrative courts by invoking their right to self-government and claiming that they have exercised their autonomy in accordance with the laws.

INTERGOVERNMENTAL RELATIONS⁶⁶

Constitutional and political developments since 1949 have left the *Länder* with relatively few competences in legislation apart from local government, police functions, and general culture. The federation, by contrast, has assumed major responsibility for legislation via three sources: exclusive legislative powers (Art. 71 BL), concurrent legislative powers (Art. 72 BL), and framework legislative powers (Art. 75 BL). One of the major goals of the 2006 federalism reform was to redistribute these powers in such a way as to give the *Länder* additional responsibilities and thereby strengthen the role and status of the *Land* parliaments.⁶⁷

Federal legislation is enacted through the Bundestag, which is the directly elected federal parliament representing the entire German electorate, and the Bundesrat, which represents *Land* executives.⁶⁸ Within this bicameral parliamentary system, there is no (constitutionally recognized)

institution to represent local governments. Hence, they depend on the *Länder* to mediate their interests through the Bundesrat. The same is true as regards the legislation of the European Union, of which Germany is a member state. As the political process in the European arena falls within the competence of the federation as a whole, local authorities, once again, depend largely on the *Länder* to mediate their interests. Whereas legislative powers are concentrated in the federal government, administrative powers rest mainly with the *Länder*, which implement not only their own statutes but also the largest part of federal legislation.

This allocation of powers creates a high degree of interdependence between the different orders of government. Cooperation between local municipalities plays an important role and is especially common between small rural municipalities that are close to one another as well as within major conurbations. Some of the most common fields of intermunicipal cooperation are information technology, waste disposal, water supply, public transport, regional marketing, and tourism promotion.⁶⁹ Cooperation is mostly created on a contractual basis or by means of joint institutions (*Zweckverbände*).⁷⁰ The latter usually are responsible for only a few specific purposes (e.g., waste disposal and public transport). It is interesting to note that in the field of building law, Section 2(2), phrase 1, of the Federal Building Code (*Baugesetzbuch*) even contains a legal obligation for neighbouring municipalities to mutually consider and harmonize their urban planning.⁷¹ Furthermore, municipal planning authorities have to conform to regional and federal planning principles; on the other hand, the federal and regional planning authorities should take account of local planning needs (so-called *Gegenstromprinzip*).⁷²

Relations between local authorities and *Länder* are governed by the constitutions of the respective *Länder*.⁷³ In each *Land*, the Ministry of the Interior is responsible for the relations between the *Land* authorities and local governments. These relations are primarily hierarchical and provide the possibility for supervision, although the latter is exercised only sparingly. However, as previously mentioned, local authorities may, to some extent, participate in *Land* legislation.⁷⁴ Agreements of cooperation between local authorities and other orders of government are particularly important for implementing infrastructure projects, especially those (partly) financed by the EU.

As regards the relationship between local authorities and the federation, it is important to remember that local government is not seen as a separate third order of government but as a constituent part of the *Länder*.⁷⁵ Legislative competences are exercised solely by the federation and the *Länder*, whereas administrative responsibilities are shared among the federation, the sixteen *Länder*, and the local authorities. However, no federal authorities are directly responsible for local governance, not even in large cities. Nonetheless, in a practice called *Bundesdurchgriff*, the federal government

was allowed, under the previous Article 84 BL and with the consent of the *Länder*, to delegate specific tasks directly to local governments by means of federal legislation without being obliged to finance or reimburse them. *Land* governments often gave their required assent because they then benefited from additional influence in the federal lawmaking process. However, local government finances suffered as a result, and many municipalities are still struggling with immense debt.⁷⁶

The recent reform of the federal system, the Föderalismusreform I, which came into force in the autumn of 2006, might bring some relief. The amended Article 84 BL clearly states that this practice is no longer legitimate. Under the amended Article 84 BL, only *Land* governments may delegate administrative tasks to local authorities. *Land* constitutions, however, stipulate that financial funding appropriate to the tasks delegated must be allocated to local governments (so-called *Konnexitätsprinzip*).⁷⁷ As a result, the *Länder* now more often take sides with local authorities and together urge more federal funding.⁷⁸ For instance, municipalities, *Länder*, and the federation are in a dispute about the financing of the targeted 750,000 new preschool and kindergarten placement options that should be created in Germany by 2013.⁷⁹

Because local authorities have no constitutionally recognized role in the passing of federal legislation, they have formed three major associations to jointly articulate and lobby their interests: the German Association of Cities,⁸⁰ the German Association of Towns and Municipalities,⁸¹ and the German County Association.⁸² The largest is the German Association of Cities, comprising more than 5,500 cities and towns with a total of 51 million citizens.⁸³ Local governments play a major role in implementing federal (and *Land*) legislation and therefore possess, as is widely acknowledged, significant experience and expertise. By expressing their views through the above associations, they make themselves heard and may have a noticeable impact on the political debate in the federal arena, although only in an informal manner. In coordinating their work, the associations have also formed a joint working committee at the federal level: the Federal Union of Local Government Central Associations. Repeatedly, local authorities and their associations have requested an official role in the federal lawmaking process and a formally recognized voice in impact assessment; however, the Föderalismusreform I did not take up these reform proposals.⁸⁴ To date, only some *Länder*⁸⁵ have assigned an official role to local authorities in the *Land* lawmaking process.⁸⁶

To lobby their interests in the EU, the above associations in 1991 established a Common Bureau in Brussels (Europabüro der deutschen kommunalen Selbstverwaltung). However, of the twenty-four seats Germany holds in the EU's Committee of the Regions,⁸⁷ the largest share goes to *Land* representatives; the associations of local authorities have obtained only three

seats. Moreover, these three seats were obtained only after political intervention by the German chancellor and the Bundestag. Overall, the Common Bureau in Brussels hardly compensates for the rather weak institutional role of local authorities in the European political arena. Thus local authorities, once more, depend largely on the *Länder* to mediate their interests.

In conclusion, it should be stressed that, despite the recent reforms of the federal system, local governments still depend on the *Länder* to mediate their interests in the federal and European arenas. *Länder*, however, will often have their own interests (financial or other) at stake and will try to promote these. Nevertheless, the issue of local self-government often makes relations between federal and *Land* governments more difficult.

POLITICAL CULTURE OF LOCAL GOVERNANCE⁸⁸

All political parties that are established in the federal or *Land* arenas are also active in local government. In most municipalities or counties, mayors (or county administrators) come from the major political parties. Nonetheless, local governments are generally less influenced by major party politics. Local politics tends to be less ideologically charged and more issue-related.⁸⁹ Most politicians decide early whether they want a political career in local government or in the federal and/or *Land* arenas. Although there are no reliable statistics available on gender representation, it can be said that mayors and county administrators are predominantly male. Women will more often serve as council members, as the attendant duties are more easily combined with family life. Thus gender representation comes down to the general difficulties encountered by women in pursuing a professional career alongside their family obligations.

In several *Länder*, so-called "free voters' associations" play an important role locally. These are associations of citizens who belong to no political party. Voter associations have the right to be treated on an equal basis with conventional political parties.⁹⁰ As their political agenda and significance are limited to the local sphere, however, they do not receive public funding, unlike the parties. Nonetheless, this practice does not lead to significant competitive disparities because, in general, candidates for local office have to provide for most of their campaign costs themselves. Therefore, this practice is generally in line with the Basic Law.⁹¹

A common problem, seen not only in the local arena, is that political parties find it difficult to recruit people to become involved in politics. Thus it is not surprising that voter turnout at local elections is alarmingly low, even lower than that for federal and *Land* elections, and is declining even further. For instance, in North Rhine Westphalia, voter turnout dropped from over 80% in 1975 to 54.4% in 2004; in other *Länder* the figures are similar. More recently, in April 2007, only 36.5% of the eligible

voters in Saxony-Anhalt cast their ballots. By comparison, voter turnout for the 2005 federal election (*Bundestagswahl*) was 77.7%.

In addition to the above, the three local government associations play an important role in *Land* and federal political debates, although only in an informal, but no less effective, manner.

EMERGING ISSUES AND TRENDS

The role of local government has been inseparably intertwined with the federal system since the beginning of the Federal Republic of Germany. By far, the greatest part of administration occurs in local arenas. In addition, the responsibilities of local governments are to increase even further in the years to come due to administrative reforms in all *Länder*.⁹²

Financial issues were a concern in the past and led, *inter alia*, to the abolition of the *Bundesdurchgriff* as part of the Föderalismusreform I. Fiscal issues will continue to play a role in the proposed second set of constitutional reforms, the Föderalismusreform II, which will, among other things, tackle the financial arrangements of the Basic Law and the distribution of tax revenues in order to provide steady and adequate funding for all orders of government in light of their respective duties.⁹³

Immigration from foreign countries, especially from outside the EU (*inter alia*, from Turkey and from other Muslim countries), has been a social, cultural, and political issue in Germany. Immigrants have included refugees (temporary or permanent), ethnic Germans from the former Communist bloc, and "guest workers" with their families, many of whom have obtained permanent residence. The administrative and financial responsibilities to regulate their legal affairs lie with local governments. As many immigrants are low-skilled and thus more likely to be unemployed than German residents, they often draw a disproportionate share of social assistance and, in some cities, have become a financial burden.⁹⁴ However, although local governments must cope with the local outcomes of national policies, the legislative competences to regulate migration and the issues associated therewith lie with the federation and the *Länder*. Locally, immigration-related cultural problems and public controversy have arisen repeatedly in connection with the construction of mosques⁹⁵ and Muslim community centres.⁹⁶

Although Germany has no strong regional structures (apart from the *Länder*) either in the government sphere or in civil society, metropolitan regions are evolving, and new appropriate forms of local self-government are developing on a regional level. But these promising developments are still under way, and they are still met with skepticism on the part of municipalities. In addition, there are sister-city arrangements all across Europe, and there is a good deal of cross-border cooperation between

neighbouring cities. One such example is Region Bodensee around the Lake of Constance. Its aim is mainly to coordinate the activities of adjacent Swiss, Austrian, and German municipalities as regards, for instance, public transport and transportation infrastructure (be it streets or a common network of bicycle roads for tourists) and educational/cultural activities and festivals. Such cooperation is mostly informal and aims to jointly promote the region as a whole (e.g., as a business location and tourist destination), enhancing, at the same time, a transfrontier regional identity. In certain cases, transfrontier cooperation may also take the institutionalized form of a cross-border joint administrative unit to provide public services (e.g., waste treatment); however, as the creation of such joint administrative units implies a transfer of sovereign rights, and as municipalities are not subjects of international law, they may not engage in such cooperation merely on the basis of their right to self-government under Article 28(2) BL. Instead, according to Articles 24(1a) and 32 BL, they depend on the federation and their *Land* to consent and to sign the relevant international (framework) agreement.⁹⁷ Apart from that, as mentioned above, some public enterprises are offering their services (e.g., energy supply or waste disposal) not only locally but also on a European and, at times, even global scale.⁹⁸

The standing of local governments within the EU is rather weak. Comparable to the situation with regard to federal legislation, local governments largely depend on the *Länder* to represent their interests.⁹⁹ Although the EU's Committee of the Regions represents the interests of federal subentities, Germany has sent only a few local government representatives; instead, the representatives of the *Länder* dominate the German delegation.

By way of summary, it can be stated that local governments would have a much stronger standing within the federal system if there were no *Länder*, whereas the sixteen *Länder* would hardly be in a position to exercise administrative tasks without the base of local authorities. However, as legislation rests with the *Länder* (or the federation), it is the *Länder* (not local governments) that make all major decisions. In the process, they do not always protect local governments from disadvantageous federal action.

NOTES

- 1 For general information regarding local governments and the German federal system, see, for instance, Arthur B. Gunlicks, *Local Government in the German Federal System* (Durham, NC: Duke University Press, 1986); Arthur B. Gunlicks, "Constitutional Law and the Protection of Subnational Governments in the United States and West Germany," *Publius: The Journal of Federalism* 18, no. 1 (Winter 1988): 141–58; Charlie Jeffery, ed., *German Federalism Today* (Leicester, UK: Leicester University

- Press, 1991); Jutta A. Helm, "Introduction: German Cities between Globalization and Unification," *German Politics and Society* 16, no. 4 (Summer 1998): 7–17; Vincent Hoffmann-Martinot and Helmut Wollmann, eds, *State and Local Government Reforms in France and Germany: Divergence and Convergence* (Wiesbaden: Verlag für Sozialwissenschaften, 2006).
- 2 For further reference regarding the financial arrangements of the German Constitution, see Lars P. Feld and Jürgen von Hagen, "The Federal Republic of Germany," in *The Practice of Fiscal Federalism*, ed. Anwar Shah, 125–50 (Montreal and Kingston: McGill-Queen's University Press, 2007), 125.
 - 3 See Hans-Peter Schneider, "Federal Republic of Germany," in *Distribution of Powers and Responsibilities in Federal Countries*, ed. Akhtar Majeed, Ronald L. Watts, and Douglas M. Brown, 123–54 (Montreal and Kingston: McGill-Queen's University Press, 2005), 129. See also Jutta Kramer, "Federal Republic of Germany," in *Constitutional Origins, Structure, and Change in Federal Countries*, ed. John Kincaid and G. Alan Tarr, 143–78 (Montreal and Kingston: McGill-Queen's University Press, 2005).
 - 4 For further reference, see also Stefan Oeter, "Federal Republic of Germany," in *Legislative, Executive and Judicial Governance in Federal Countries*, ed. Katy Le Roy and Cheryl Saunders, 155–64 (Montreal and Kingston: McGill-Queen's University Press, 2006).
 - 5 For further information, see "Facts about Germany," produced in cooperation with the Federal Foreign Office of Germany, <http://www.tatsachen-ueber-deutschland.de/en> (viewed January 2008).
 - 6 Exchange rate on 1 June 2006: €1 = US\$1.2824; see <http://www.destatis.de> (viewed 28 January 2008).
 - 7 Exchange rate on 1 June 2005: €1 = US\$ 1.2234; see <http://www.destatis.de> (viewed 28 January 2008).
 - 8 Annual growth rates have been low for years: 1.2% in 2001, 0% in 2002, -0.2% in 2003, and 1.2% in 2004; see <http://www.destatis.de> (viewed 28 January 2008).
 - 9 See Oeter, "Federal Republic of Germany," 139.
 - 10 See Schneider, "Federal Republic of Germany," 125.
 - 11 For further information, see "Facts about Germany," produced in cooperation with the Federal Foreign Office of Germany, <http://www.tatsachen-ueber-deutschland.de/en> (viewed January 2008).
 - 12 See Oeter, "Federal Republic of Germany," 138.
 - 13 See further, Martin Burgi, *Kommunalrecht* (München: C.H. Beck, 2006), § 3 margin no. 4ff.
 - 14 However, depending on the relevant *Land* statutes, there are cities with more than 100,000 citizens that are not "independent," and there are independent cities with fewer than 50,000 inhabitants.
 - 15 See "Tabelle: Kreisfreie Städte, Landkreise und Gemeinden nach Größenklassen," <http://www.dstgb.de> (viewed 28 January 2008).
 - 16 See Burgi, *Kommunalrecht*, § 6 margin no. 27, with reference to the rulings of the Federal Constitutional Court referred to below in note 26.

- 17 For greater detail, see Andreas Musil and Sören Kirchner, *Das Recht der Berliner Verwaltung – unter Berücksichtigung kommunalrechtlicher Bezüge* (Heidelberg: Springer, 2002).
- 18 The Ruhr region comprises an area of about 4,435 square kilometres with over 5.3 million inhabitants. It is Germany's largest conurbation, its major centres being Duisburg, Essen, Bochum, and Dortmund. It is part of the even greater metropolitan Rhine-Ruhr region (including Düsseldorf, Cologne, and Bonn) with an area of roughly 10,000 square kilometres and a total population of more than 10 million people.
- 19 For further reference, see also Arthur Benz and Anna Meincke, "Sub-National Government and Regional Governance in Germany," in *State and Local Government Reforms in France and Germany: Divergence and Convergence*, ed. Vincent Hoffmann-Martinot and Helmut Wollmann, 59–74 (Wiesbaden: Verlag für Sozialwissenschaften, 2006), 65.
- 20 Verband Region Stuttgart comprises an area of 3,654 square kilometres with a population of about 2,566,950; see <http://www.region-stuttgart.org> (viewed 28 January 2008). Region Hanover consists of an area of 2,290 square kilometres with a population of 1,127,908 people; see http://www.hannover.de/de/buerger/wahlen/zahlen_daten/index.html (viewed 28 January 2008).
- 21 For more detail, see Martin Burgi and Bettina Ruhland, *Regionale Selbstverwaltung durch die Landschaftsverbände in Nordrhein-Westfalen im Spiegel von Rechtsprechung und Rechtsliteratur* (Frankfurt: Frankfurter Verlagsgruppe, 2003); and Janbernd Oebbecke, *Gemeindeverbandsrecht Nordrhein-Westfalen* (Stuttgart: Deutscher Gemeindeverlag, 1984).
- 22 See Section 1 of the Law Regarding the Regionalverband (Gesetz über den Regionalverband Ruhr) of 3 February 2004 (GV NRW S. 96), last amended on 5 April 2005 (GV NRW S. 351).
- 23 See Article 28(2) BL. See further, Burgi, *Kommunalrecht*, § 20 margin no. 12ff.
- 24 For further reference, see Franz-Ludwig Knemeyer and Matthias Wehr, "Die Garantie der kommunalen Selbstverwaltung nach Artikel 28 Abs. 2 GG in der Rechtsprechung des Bundesverfassungsgerichts," *Verwaltungsarchiv (VerwArch)* 92 (2001): 317–43; Friedrich Schoch, "Der verfassungsrechtliche Schutz der kommunalen Selbstverwaltung," *Jura* (2001): 121–33.
- 25 See Veith Mehde, "Steering, Supporting, Enabling: The Role of Law," *Local Government Reforms, Law and Policy* 28, no. 2 (April 2006): 164–81, at 165.
- 26 See *Entscheidungen des Bundesverfassungsgerichts* [Decisions of the Federal Constitutional Court] (*BVerfGE*) 79, 127 (146); and *BVerfGE, Neue Zeitschrift für Verwaltungsrecht (NVwZ)* 2003, 850 (851).
- 27 See for further reference, Mehde, "Steering, Supporting, Enabling," 168.
- 28 For further reference regarding the concept of "self-governance," see Janbernd Oebbecke, "Selbstverwaltung angesichts von Europäisierung und Ökonomisierung," *Veröffentlichungen der Vereinigung der Deutschen Staatsrechtslehrer (VVDStrL)* 62 (2003): 366–405; and Martin Burgi, "Selbstverwaltung angesichts von Europäisierung und Ökonomisierung," *Veröffentlichungen der Vereinigung der Deutschen Staatsrechtslehrer (VVDStrL)* 62 (2003): 406–57.

- 29 See *BVerfGE* 11, 266 (270).
- 30 For further reference, see, for instance, Gerhard Banner, "Local Government – A Strategic Resource in German Public Management Reform," in *State and Local Government Reforms in France and Germany: Divergence and Convergence*, ed. Vincent Hoffmann-Martinot and Helmut Wollmann, 125–44 (Wiesbaden: Verlag für Sozialwissenschaften, 2006), 139.
- 31 For further reference regarding municipal bylaws (*Satzungen*), see Eberhard Schmidt-Aßmann, *Die kommunale Rechtssetzung im Gefüge der administrativen Handlungsformen und Rechtsquellen* (München: Vahlen, 1981); and Hartmut Maurer, "Rechtsfragen kommunaler Satzungen," *Die Öffentliche Verwaltung (DÖV)* (1993): 184–94.
- 32 See *BVerfGE* 33, 125. See further Burgi, *Kommunalrecht*, § 15 margin no. 36ff.
- 33 See "Finanzen und Steuern – Personal des öffentlichen Dienstes – Fachserie 14 Reihe 6, 2005," January 2007, <http://www.destatis.de> (viewed 28 January 2008).
- 34 See "Rechnungsergebnisse des öffentlichen Gesamthaushalts – Fachserie 14 Reihe 3.1, 2004," October 2006, <http://www.destatis.de> (viewed 28 January 2008).
- 35 See Mike Goldsmith, "Local Politics in Europe," in *Les Nouvelles Politiques Locales*, ed. Richard Balme, Alain Faure, and Albert Mabileau, 149–161 (Paris: Presses de Sciences Po, 1999), 149; and Jefferey Sellers, "The Nation-State and Urban Governance: Toward Multilevel Analysis," *Urban Affairs Review* 17, no. 5 (2002): 611–41.
- 36 Oeter, "Federal Republic of Germany," 155.
- 37 In small municipalities with fewer than 10,000 inhabitants, this salary will total from €4,226 to €5,370 (US\$5,680 to US\$7,218); in municipalities with 60,001 to 100,000 citizens, it amounts to roughly €7,430 (US\$9,987); and in cities with more than 500,000 citizens, it totals roughly €10,600 (US\$14,248). Exchange rate on 31 June 2007: €1 = US\$1.344; see <http://www.destatis.de> (viewed 28 January 2008).
- 38 In Northrhine-Westfalia, by way of example, these monthly financial compensations amount to between €184 (US\$247) in municipalities with fewer than 20,000 inhabitants and €501 (US\$673) in cities with more than 450,000 inhabitants.
- 39 For further reference, see Burgi, *Kommunalrecht*, § 10 margin nos 5 and 8.
- 40 Jörg Bogumil, "Die Umgestaltung des Verhältnisses zwischen Rat und Verwaltung – das Grundproblem der Verwaltungsmodernisierung," *Verwaltungsarchiv (VerwArch)* 93 (2002): 129–48.
- 41 Jörg Bogumil, Stephan Grohs, Sabine Kuhlmann, and Anna K. Ohm, *Zehn Jahre Neues Steuerungsmodell – Eine Bilanz kommunaler Verwaltungsmodernisierung* (Berlin: Edition Sigma, 2007); Veith Mehde, *Neues Steuerungsmodell und Demokratieprinzip* (Berlin: Duncker & Humblot, 2000). The concept of New Public Management was probably first articulated by David Osborne and Ted Gaebler, *Reinventing Government: How the Entrepreneurial Spirit Is Transforming the Public Sector* (Reading, MA: Addison-Wesley, 1992).
- 42 See *BVerfGE* 83, 37ff; and *BVerfGE* 83, 60ff.
- 43 Exchange rate on 1 June 1992: €1 = US\$1.2760; see <http://www.destatis.de> (viewed 28 January 2008).

- 44 See German Association of Cities, press release concerning the financial situation of local governments, 9 February 2007, <http://www.staedtetag.de/10/presseecke/pressediens/artikel/2007/02/09/00441/index.html> (viewed 28 January 2008).
- 45 For further reference, see Martin Burgi, "Künftige Aufgaben der Kommunen im sozialen Bundesstaat," *Deutsches Verwaltungsblatt (DVBl)* (2007): 70–8; Friedrich Schoch, "Die Verfassungswidrigkeit des bundesgesetzlichen Durchgriffs auf Kommunen," *Deutsches Verwaltungsblatt (DVBl)* (2007): 261–9. For a basic portrayal of the financial situation of the municipalities within Germany, see Hans Günter Henneke, Hermann Pünder, and Christian Waldhoff, *Recht der Kommunalfinanzen* (München: C.H. Beck, 2006).
- 46 See "Aktuelle Finanzlage der Städte – Rückblick auf 2006 und Prognose für 2007," press release, 9 February 2007, <http://www.staedtetag.de/10/presseecke/pressediens/artikel/2007/02/09/00441/index.html> (viewed 28 January 2008).
- 47 The commercial tax can be considered a German peculiarity. Basically, it is a tax on profits, but profits are assessed in a standardized manner (with assumed profits and allowances) in an effort to assess the so-called "objective," and thus comparable, "earning capacity" (*objektive Ertragskraft*) of an enterprise.
- 48 See Articles 106(6) and 28(2) BL.
- 49 See "Kommunale Finanzen 2005 bis 2007 – Prognose der kommunalen Spitzenverbände," press release, 9 February 2007, <http://www.staedtetag.de/10/presseecke/pressediens/artikel/2007/02/09/00441/index.html> (viewed 28 January 2008).
- 50 See also Matthias Ruffert, "Europarecht zwischen Liberalisierung und Stabilisierung öffentlicher Daseinsvorsorgeaufgaben: Zur Bedeutung des Art. 295 EGV," in *Kommunale Perspektiven im zusammenwachsenden Europa*, ed. Hans-Günter Henneke, 10–32 (Stuttgart: R. Boorberg Verlag, 2002).
- 51 By contrast, it would be inadmissible for local authorities to run their own car-production facility – see OLG Hamm, "Wettbewerbsverstoß: Erwerbswirtschaftliche Betätigung einer Gemeinde in NRW," *Deutsches Verwaltungsblatt (DVBl)* (1998): 792–4 – or, for instance, to run a "public bakery," as there is no need for such activity in the public sector. For a critical overview of the political implications, see Martin Burgi, "Die Repolitisierung der Staatswirtschaft," in *Der Wandel des Staates vor den Herausforderungen der Gegenwart – Festschrift für Winfried Brohm zum 70. Geburtstag*, ed. Carl Eugen Eberle, Martin Ibler, and Dieter Lorenz, 35–49 (München: C.W. Beck, 2002); and recently, Joachim Suerbaum, "Durchbruch oder Pyrrhussieg? Neues zum Schutz Privater vor der Kommunalwirtschaft," *Die Verwaltung* 40 (2007): 29–51.
- 52 See also Janbernd Oebbeke, "Die örtliche Begrenzung kommunaler Wirtschaftstätigkeit," *Zeitschrift für das gesamte Handels- und Wirtschaftsrecht (ZHR)* 164 (2000): 375–93; Matthias Ruffert, "Grundlage und Maßstäbe einer wirkungsvollen Aufsicht über die kommunale wirtschaftliche Betätigung," *Verwaltungsarchiv (VerwArch)* 92 (2001): 27–57.
- 53 See "Kommunale Finanzen 2005 bis 2007 – Prognose der kommunalen Spitzenverbände," press release, 9 February 2007, <http://www.staedtetag.de/10/presseecke/pressediens/artikel/2007/02/09/00441/index.html> (viewed 28 January 2008).

- 54 See Deutscher Städte und Gemeindebund, "Lang- und kurzfristige Verschuldung der Gemeinden von 1999 bis 2006 (in Milliarden ?)," press release, 21 March 2007, <http://www.dstgb.de> (viewed 28 January 2008).
- 55 See, for instance, Article 77(3) of the Bavarian Municipal Code or Section 128(2) of the North Rhine-Westphalia Municipal Code. However, there has been debate in recent years on whether local governments should be given the right to file for bankruptcy. For further reference in this regard, see Angela Faber, "Insolvenzfähigkeit für Kommunen?" *Deutsches Verwaltungsblatt (DVBl)* (2005): 933–46.
- 56 In general, such supervision is carried out by the regular *Land* authorities; in the case of Northrhine-Westphalia, for instance, supervision is done by a specialized *Land* authority called Gemeindeprüfstelle (see Burgi, *Kommunalrecht*, § 18 no. 24).
- 57 See, for greater detail, Dörte Diemert, *Das Haushaltssicherungskonzept* (Stuttgart: Deutscher Gemeinden GmbH, 2005).
- 58 For further references regarding this assessment, see Schoch, "Die Verfassungswidrigkeit."
- 59 See further Roman Jordans and Ellen Roser, "Aktuelle Aspekte des US-Cross-Border-Leasing," *KommJur* (2004): 208–14; Claus Pegatzky, "Cross-Border-Leasing-Transaktionen und staatliche Zuwendungen," *Neue Juristische Wochenschrift (NJW)* (2004): 324–7; Peter Smeets, Helfried Schwarz, and Daniel Sander, "Ausgewählte Risiken und Probleme bei US-Leasingfinanzierungen," *Neue Zeitschrift für Verwaltungsrecht (NVwZ)* (2003): 1061–71.
- 60 The Administrative Court of Gera, for instance, has ruled that US cross-border leasing needed prior approval of the monitoring body, as it implied transactions and risks similar to taking up credits; see VG Gera, "Unzulässigkeit eines Bürgerbegehrens gegen Cross-Border-Leasing- Genehmigungsbefürftigkeit des Cross-Border-Leasings durch Kommunalaufsicht," *Die Öffentliche Verwaltung (DÖV)* (2004): 931–2.
- 61 See, for more detail, Ferdinand Kirchhof, "Den zweiten Schritt wagen! – Die Novellierung der Finanzverfassung als notwendige zweite Stufe der Föderalismusreform," *Zeitschrift für Gesetzgebung (ZG)* (2006): 288–300.
- 62 In this regard, see Paul Kirchhof, "Die Reform der kommunalen Finanzaustattung," *Neue Juristische Wochenschrift (NJW)* (2002): 1549–50.
- 63 See Kirchhof, "Die Reform der kommunalen Finanzaustattung."
- 64 For further reference in this regard, see also Gerhard Banner, "Local Government: A Strategic Resource in German Public Management Reform," *State and Local government Reforms in France and Germany*, ed. Vincent Hoffmann-Martinot and Helmut Wollmann, 140–51 (Wiesbaden: Verlag für Sozialwissenschaften, 2006).
- 65 See further Janbernd Oebbecke, "Kommunalaufsicht – Nur Rechtsaufsicht oder mehr?" *Die Öffentliche Verwaltung (DÖV)* (2001): 406–11.
- 66 For an overview of different legal problems arising from the distribution of competences in Germany, see Eckhard Pache, "Verantwortung und Effizienz in der Mehrebenenverwaltung," *Veröffentlichungen der Vereinigung der Deutschen Staatsrechtslehrer (VVDStRL)* 66 (2007): 106–44; Thomas Groß, "Bundesstaat und Europäische Union zwischen Konflikt und Kooperation," *Veröffentlichungen der Vereinigung der Deutschen*

- Staatsrechtslehrer* (VVDStrL) 66 (2007): 152–80; and Hans Günter Henneke, ed., *Verantwortungsteilung zwischen Kommunen, Ländern, Bund und EU* (Stuttgart: R. Boorberg Verlag, 2001). See also Oeter, “Federal Republic of Germany,” 155ff.
- 67 See Arthur Gunlicks, “German Federalism Reform: Part One,” *German Law Journal* 8, no. 1 (2007): <http://www.germanlawjournal.com/article.php?id=792> (viewed January 2008).
- 68 Regarding the German bicameral system, see Oeter, “Federal Republic of Germany,” 141ff.
- 69 Hans Gerd von Lennep, “Organisationsformen Interkommunaler Zusammenarbeit,” in *Handbuch Interkommunale Zusammenarbeit in Nordrhein-Westfalen*, ed. Bernd Jürgen Schneider, 19–27 (Stuttgart: Deutscher Gemeinden Verlag, 2005), 27.
- 70 For a full description of the different forms of cooperation between municipalities, see Bernd Jürgen Schneider, ed., *Handbuch Interkommunale Zusammenarbeit in Nordrhein-Westfalen* (Stuttgart: Deutscher Gemeinden Verlag, 2005).
- 71 See Reinhard Hendler, “Interkommunale Zusammenarbeit im Bau- und Planungsrecht,” in *Kommunale Verwaltungsstrukturen der Zukunft*, ed. Hans Günter Henneke, 45–57 (Stuttgart: R. Boorberg Verlag, 2006).
- 72 Winfried Brohm, *Öffentliches Baurecht* (München: C.H. Beck, 2002), § 36 margin no. 4.
- 73 Burgi, *Kommunalrecht*, § 1 margin no. 12.
- 74 See, for example, Article 83(7) of the Bavarian Constitution, Article 71(4) of the Constitution of Baden-Württemberg, Article 57(4) of the Constitution of Lower Saxony, and Article 97(4) of the Constitution of Brandenburg, which provide that either the municipalities themselves or their leading associations must be heard in the lawmaking process.
- 75 Klaus Rennert, comment on Article 28 BL, in *Grundgesetz Kommentar*, ed. Dieter Umbach and Thomas Clemens (Heidelberg: C.F. Müller, 2002), Article 28 margin no. 70. This is stated clearly in Article 106(9) BL, which reads: “revenues and expenditures of municipalities (associations of municipalities) shall also be deemed to be revenues and expenditures of the *Länder*”; see Burgi, *Kommunalrecht*, § 2 margin no. 3.
- 76 By the end of 2006, the overall debt burden of German municipalities amounted to roughly €88 billion (US\$112.85 billion); see Deutscher Städte und Gemeindebund, “Lang- und kurzfristige Verschuldung der Gemeinden von 1999 bis 2006 (in Milliarden ?),” press release, 21 March 2007, <http://www.dstgb.de> (viewed 28 January 2008).
- 77 See, for example, Article 83(3) of the Bavarian Constitution, Article 71(3) of the Constitution of Baden-Württemberg, and Article 97(3) of the Constitution of Brandenburg. Similar provisions can be found in the other *Länder* constitutions. For more details on *Konnexitätsprinzip* in Germany’s most populated state, North Rhine-Westphalia, see Alexander Schink, “Wer bestellt, bezahlt – Verankerungen des Konnexitätsprinzips in der Landesverfassung Nordrhein-Westfalen,” *Nordrhein-Westfälische Verwaltungsblätter (NWVB)* (2005): 85–91.
- 78 See Markus Söbbeke, “Föderalismusreform – Eine Betrachtung aus kommunaler Sicht,” *KommJur* (2006): 404–41; and Henneke, Pünder and Waldhoff, *Recht der Kommunalfinanzen*.
- 79 See Deutscher Städte und Gemeindebund, press information of 15 May 2007, <http://www.dstgb.de> (viewed January 2008).

- 80 See <http://www.staedtetag.de> (viewed January 2008).
- 81 See <http://www.dstgb.de> (viewed January 2008).
- 82 See <http://www.kreise.de/landkreistag/start> (viewed January 2008).
- 83 See <http://www.staedtetag.de> (viewed January 2008).
- 84 See Söbbeke, "Föderalismusreform," 406.
- 85 See, for instance, Section 129 of the Municipal Code of Rheinland-Pfalz and the examples given above (note 77). For further reference in this regard, see also Stephan Weinberg, "Der kommunale rat in Rheinland-Pfalz- Eine Bilanz der Arbeit des bundesweit einzigartigen Gremiums," *Zeitschrift für Gesetzgebung (ZG)* (2004): 373–82.
- 86 Local governments usually invoke these provisions as an example of what works well and still hope that their reform proposals might be reconsidered as part of the ongoing debate on constitutional reform, the Föderalismusreform II, which is to address the financial relations between the *Länder* and the federation; see Söbbeke, "Föderalismusreform," 406.
- 87 EC Treaty, Article 263.
- 88 For further details, see Jörg Bogumil and Lars Holtkamp, *Kommunalpolitik und Kommunalverwaltung* (Wiesbaden: Verlag für Sozialwissenschaften, 2006), 66ff.
- 89 See *ibid.*, 222.
- 90 See Burgi, *Kommunalrecht*, § 11 margin no. 16.
- 91 See *BVerfGE* 85, 264 (328); and *BVerfGE* 99, 84ff.
- 92 For tasks in the social sector, see Burgi, "Künftige Aufgaben der Kommunen," 70ff.
- 93 See, *inter alia*, Hans-Günter Henneke, "Steuerbeteiligung der Kreise – ein notwendiges Element einer soliden Basis für Kommunalfinanzen," *Der Landkreis* (2006): 251–8. For further reference regarding the content of the Föderalismusreform II, see <http://www.bundestag.de/parlament/gremien/foederalismus2/index.html> (viewed 28 January 2008).
- 94 See, for instance, Jutta A. Helm, "Introduction: German Cities between Globalization and Unification," *German Politics and Society* 16, no. 4 (1998): 7–18, at 7, 12; and for more detail, Barbara Schmitter Heisler, "Immigration and German Cities: Exploring National Policies and Local Outcomes," *German Politics and Society* 16, no. 4 (1998): 18–41.
- 95 One very recent example is the fierce public debate about the construction of a very large mosque in Cologne. See, for instance, <http://www.3sat.de/kulturzeit/themen/109158/index.html> (viewed 28 January 2008).
- 96 For further reference, see, for instance: <http://www.tagesspiegel.de/berlin/art270,2274523> (viewed January 2008).
- 97 For further reference, see Burgi, *Kommunalrecht*, § 19 margin no. 7; Horst Heberlein, "Grenznachbarschaftliche Zusammenarbeit auf kommunaler Basis," *Die Öffentliche Verwaltung (DÖV)* (1996): 100–9; Erich Röper, "EU-Demokratisierung mittels der EU-Regionen/Euregios,," *Verwaltungsarchiv (VerwArch)* (2004): 301–4.
- 98 For more details, see Werner Hoppe and Michael Uechtritz, eds, *Handbuch kommunale Unternehmen* (Cologne: Dr Otto Schmidt Verlag, 2004).
- 99 See Schneider, "Federal Republic of Germany," 124, 129.