Germany

Self-rule

INSTITUTIONAL DEPTH AND POLICY SCOPE

Germany has two-tiered regional governance consisting of sixteen Länder and (Land)Kreise. Several Länder have a third tier between these two, Regierungsbezirke (administrative districts). Two Länder have a fourth tier of regional governance, Landschaftsverbände in North-Rhine Westphalia and Bezirksverband Pfalz in Rhineland-Palatinate.¹

The 1949 Basic Law of the German Federal Republic granted eleven Länder extensive competences, which include legislative powers for culture, education, universities, broadcasting/television, local government, and the police (C 1949, Art. 74; Council of Europe: Germany 1999; Hrbek 2002; Swenden 2006; Watts 1999a, 2008). Länder also exercise residual competences (C 1949, Art. 70). In addition, the Basic Law states that Länder are responsible for the implementation of most federal laws (C 1949, Arts. 83–85). The federal government may legislate to preserve legal and economic unity with respect to justice, social welfare, civil law, criminal law, labor law, and economic law (C 1949, Art 72.2), and it has authority to establish the legislative framework in higher education, the press, environmental protection, and spatial planning (C 1949, Art. 72.3; Reutter 2006). The federal government exercises sole legislative authority over foreign policy, defense, currency, and public services (C 1949, Art. 73; Council of Europe: Germany 1999; Hrbek 2002; Swenden 2006; Watts 1999a, 2008). It also has exclusive authority over immigration and citizenship (C 1949, Arts. 73.2 and 73.3), though Länder administer inter-Land immigration and have concurrent competence on residence (Bendel and Sturm 2010: 186-187; C 1949, Arts. 74.4 and 74.6).² However, this is not enough to qualify for the maximum score on policy scope.³ The constitutional division of authority was extended to the five new Länder after unification in 1990.

A constitutional reform in 2006 broadened the legislative powers of the Länder (Behnke and Benz 2008; Benz 2008; Burkhart 2008; Gunlicks 2012; Jeffery 2008; Moore, Jacoby, and Gunlicks 2008). The reform allowed Länder to deviate from federal law in the management of the penal system, and from laws governing shop closing hours and restaurants (C 1949, Art. 72.3). Länder gained authority over the remuneration and appointment of civil servants and large areas of university law (C 1949, Arts. 74.27 and 74.33). The federation gained competences in international terrorism (C 1949, Art. 73.9a).

¹ Most Länder also have an upper tier of local government that does not meet our population criteria. These include Ämter (Brandenburg, Mecklenburg-Vorpommern, and Schleswig-Holstein), Gemeindeverwaltungsverbände (Baden-Württemberg and Hessen), Samtgemeinde (Lower Saxony), Verbandsgemeinde (Rhineland-Palatinate and Saxony-Anhalt), Verwaltungsgemeinschaften (Bavaria), and Verwaltungsverbände (Saxony) (Council of Europe 2012: Germany; Walter-Rogg 2010).

² Between 1949 and 1994 Länder had a concurrent legislative competence to regulate citizenship within their borders but dual Land and federal citizenship has never actually existed (Kramer 2005: 171).
The next level of regional governance consists of Regierungsbezirke, re-established in the larger states of West Germany in 1945, in Saxony in 1993, and in Saxony-Anhalt in 1990. Regierungsbezirke currently exist in Baden-Württemberg, Bavaria, Hessen, and North-Rhine Westphalia, and were abolished in Rhineland-Palatinate (1999), Saxony-Anhalt (2003), Lower Saxony (2004), and Saxony (2012) (Heinz 2017: 28). They have served mainly as deconcentrated administrations, except in North-Rhine Westphalia and Bavaria. In 2001, Regierungsbezirke in North-Rhine Westphalia set up regional consultative assemblies (Regionalräte) composed of communal representatives (Law No. 430/2005, Art. 7). We code North-Rhine Westphalia separately. In Bavaria each of the seven Bezirke co-exist with, but are independent from, Bezirkstäge which encompass the same jurisdictions. Bezirkstäge have directly elected assemblies with competences in culture, special schools (e.g. for pupils with hearing difficulties), disabled people, health care institutions, and environmental protection (Law No 850/1998, Art. 12).

Höherer Kommunalverbänder exist in five Länder and these combine two or more (Land)Kreise (districts) and Kreisfreie Städte (district-free cities) into a tier of governance above the Kreise. Most of these can be considered to be single-purpose government and they provide social assistance or promote regional culture (Burgi 2009: 142; Council of Europe 1996, 1999, 2012). We code four höherer Kommunalverbänder in two Länder: Regionalverband Ruhr since 2004 and, since 1950, two Landschaftsverbände (Rheinland and Westfalen-Lippe) in North-Rhine Westphalia, and one Bezirksverband (Pfalz) in Rhineland-Palatinate.

The assembly of Regionalverband Ruhr is indirectly elected by the assemblies of the participating four Kreise and eleven Kreisfreie Städte and is primarily responsible for traffic planning, regional economic development and regional spatial planning but also has limited competences in culture, sport, tourism, and recreational facilities (Law No. 96/2004, Art. 4).

In addition, there are the Region Hannover in Lower Saxony since 2001, the Regionalverband Saarbrücken in Saxony since 2008, and the StädteRegion Aachen in North-Rhine Westphalia since 2009. These were established by merging Landkreise with Stadtkreise and their competences are slightly more extensive than those of other Kreise but too fine-grained to be captured by our measurement and they are estimated at the same level as (Land)Kreise and Kreisfreier Städte.

Until 2004 the competences of the predecessor of the Regionalverband Ruhr, the Siedlungsverband Ruhrkohlenbezirk established in 1920, were limited to regional planning and waste disposal. In 2004, the Regionalverband Ruhr replaced the Siedlungsverband Ruhrkohlenbezirk. Regionalverband Ruhr. Politik & Regionalverband. “Über uns”. <https://www.rvr.ruhr/politik-regionalverband/ueber-uns/>
Westphalia and are indirectly elected by the assemblies of the Kreise and Kreisfreie Städte within their territory and have limited competences in health care, disabled persons, youth policy, schools for children with special needs, day care, and culture (Law No. 657/1994, Arts. 5 and 7b). The assembly (Bezirkstag) of the Bezirksverband Pfalz comprises sixteen out of thirty-six Kreise within Rhineland-Palatinate and is directly elected (Law No. 146/1994, Art. 5). The Bezirksverband has limited competences in culture, health, education, energy, and the environment. Regionalverband Ruhr, Landschaftsverbände, and Bezirksverband (Pfalz) score 2 on institutional depth and 1 on policy scope because they share competences with the participating Kreise.

Länder are subdivided into Kreisfreie Städte (or StadtKreis) and (Land)Kreise except for the city states (Stadstaaten) Berlin, Bremen, and Hamburg (Burgi 2009; Council of Europe: Germany 1999; Wollmann 2010). Kreisfreie Städte, which are consolidated municipal (Gemeinde) and Kreise governments, and (Land-)Kreise, exercise competences delegated by the participating municipalities (Gemeinde) and are non-deconcentrated governments with limited competence in cultural–educational policy, including cultural activities, student exchange, public libraries, adult education, and promotion of tourism. In addition, they implement many federal and Land policies, including those concerned with social welfare, hospitals, secondary schools, waste collection, and roads (Committee of the Regions 2005; Council of Europe: Germany 1999). (Land-)Kreise and Kreisfreie Städte score 2 on policy scope.

FISCAL AUTONOMY
Before 1966, Länder set the base and rate of income, corporate, inheritance, property, and vehicle taxes, while the federal government set customs and excise, VAT, and consumption taxes. The basic law gave the federal government the right to request a share of Länder income and corporate taxes (Adelberger 2001).

The constitutional reform of 1966 divided the major taxes (income, corporate, value added) about evenly between the federal government and Länder (C 1949, Art. 106.3). The federal government sets the general framework, including the base and rate, while Länder administer tax collection (C 1949, Arts. 107–108). The Basic Law assigns some taxes exclusively to the federal
government (customs duties, highway freight tax, taxes on capital transactions, levies imposed by the EU) and some minor taxes exclusively to the Länder (taxes on property, inheritance, motor vehicles, beer, and gambling) (C 1949, Art. 106.1–2; Council of Europe: Germany 1999, 2012; Hrbek 2002; Schnellenbach 2017: 156–159; Spahn and Fötinger 1997; Swenden 2006; Watts 1999a, 2008).

Regierungsbezirke, including Regierungsbezirke in North-Rhine Westphalia, are completely dependent on intergovernmental transfers and have no tax autonomy.\textsuperscript{10} Regionalverband Ruhr and the two Landschaftsverbände in North-Rhine Westphalia have no independent tax authority, but they may charge the participating Kreise a fee to recover costs (Law No. 657/1994, Art. 22 and No. 96/2004, Arts. 19 and 20b). The Bezirksverband Pfalz in Rhineland-Palatinate has no tax authority but can also pass on charges to the participating Kreise and, in addition, it receives a grant from the Land for the services that elsewhere are provided by the Land government (Law No. 146/1994, Arts. 12 and 15). Similarly, Bezirke in Bayern receive grants from the Land and may also charge the participating Kreise a fee (Law No 850/1998, Arts. 54–55).\textsuperscript{11}

Landkreise and Kreisfreie Städte determine the rates of local business and property taxes (Burgi 2009: 148-152; C 1949, Art. 106.5–9).\textsuperscript{12} In addition, they have some capacity to levy other taxes. These differ by Land, and the amounts involved are less than 2 percent of total Kreis government revenue. The Kreise’s main income source comes from intergovernmental grants—from a fee levied on the municipalities and from grants from the Land (Werner 2006). In addition, Kreise receive a share of income revenue and value added tax.

BORROWING AUTONOMY

Since the 1950s, Länder are allowed to borrow with virtually no centrally imposed restrictions (Von Hagen et al. 2000). Several Länder sought to tie their own hands by inserting provisions in their own constitutions and statutes that restrict borrowing to investment (Wendorff 2001).\textsuperscript{13} However, the interpretation of investment created loopholes in the application of these golden rule provisions, and Länder governments have frequently by-passed them (Vigneault 2007; Joumard and Kongsrud 2003; Milbradt 2016: 67–74). Market discipline plays only a small role in constraining regional debt because Länder borrow from regional commercial banks


(Landessparkassen) rather than the bond market and are therefore not subject to credit ratings (Rodden 2003b). Market discipline is further muted by the provision in the federal constitution that the federal government shall ensure “equal living conditions” across the country (C 1949, Art. 72.2). This constitutional clause underpinned a 1992 ruling by the constitutional court which ordered a federal bailout of Saarland and Bremen (Joumard and Kongsrud 2003; Spahn and Fötinger 1997; Wendorff 2001).

In 1999, Germany almost failed to meet the 3 percent deficit ceiling for entry into the EMU and this provoked debate about the need for stronger budget constraints (Von Hagen et al. 2000; Wurzel 2003). In May 2009, the parliament adopted new fiscal rules that prohibit regional net borrowing as of 2020 except in cases of economic recession or natural disaster (Gunlicks 2012). This rule also limits the cyclically adjusted budget deficit of the federal government to a maximum of 0.35 percent of GDP from 2016 onwards (OECD 2011; Schnabel 2017: 130–150).

Regierungsbezirke have no borrowing autonomy. Regionalverband Ruhr and the two Landschaftsverbände in North-Rhine Westphalia are not allowed to borrow and their budget must be balanced (Law No. 657/1994, Arts. 23a–b and No. 96/2004, Arts. 20a–b). The Bezirksverband Pfalz in Rhineland-Palatinate is not allowed to borrow, but when the region has a deficit it can charge an extra levy on the participating Kreise (Law No. 146/1994, Art. 12). Bezirken in Bayern are allowed to borrow but borrowing is permitted only to fund investment and after prior authorization (Law No 850/1998, Arts. 63–65 and 93).

Borrowing by Landkreise and Kreisfreie Städte is regulated per Land but Kreise are subject to the same set of rules. Borrowing is permitted only to fund investment, and Kreise are allowed to borrow only if other sources of revenue (taxes and fees) have been exhausted (Werner 2006). Furthermore, Kreise must submit their budgets to the federal ministry of finance or its counterpart at the Land level. The total amount of the loan and assumption of securities and guarantees are subject to prior approval (Council of Europe: Germany 1999). Just like the Länder, Kreise own public savings banks and simultaneously guarantee the credit rating of those banks (Gewährträgerhaftung).

REPRESENTATION

Land and Kreis assemblies are directly elected every four or five years (C 1949, Art. 28; Reutter 2006; Vetter 2009). Land executives (Landesregierung) are elected by their assemblies (Landtag). Kreis executives (Landrat/Landräfin in Landkreise and Oberbürgermeister in Kreisfreie Städte) are either elected by their assemblies or they are directly elected by citizens. Since the 1990s, the executive head is directly elected in most Kreise (Heinelt and Egner 2014: 110–114).

Regierungsbezirke are appointed by Land governments. They have no elected assemblies and executive representatives. Since 2001, Regierungsbezirke in North-Rhine Westphalia have a consultative, indirectly elected assembly composed of locally elected representatives of Kreisfreie Städte and Landkreise (Law No. 430/2005, Art. 7). Bezirke in Bayern have assemblies elected

concurrently with *Land* representatives. The executive (*Bezirksausschuss*) is appointed by the assembly (Law No. 850/1998, Arts. 12, 21, and 26).

The assemblies of *Regionalverband Ruhr* (*Verbandsversammlung*) and the two *Landschaftsverbande* (*Landschaftsversammlung*) in North-Rhine Westphalia are indirectly elected by the assemblies of the *Landkreise* and *Kreisfreie Städte* whereby each *Kreis* selects one representative for every 100,000 citizens (Law No. 657/1994, Art. 7b and No. 96/2004, Art. 10).\(^\text{15}\)

The executives (*Verbandsausschuss* and *Landschaftsausschuss*) are elected by the assemblies (*Verbandsversammlung* and *Landschaftsversammlung*) (Law No. 657/1994, Arts. 8a and 12 and No. 96/2004, Art. 14). The assembly of *Bezirksverband Pfalz* is directly elected and the executive is appointed by the assembly members (Law No. 146/1994, Arts. 5 and 8).

*Shared rule*

There is no shared rule for *Kreise*, *Regierungsbezirke*, *Bezirke* in Bayern, *Bezirks-verband Pfalz* in Rhineland-Palatinate, and *Landschaftsverbände* and *Regionalverband Ruhr* in North-Rhine Westphalia.

*LAW MAKING*

*Länder* executives (not parliaments) are directly represented in the upper chamber, the *Bundesrat* (C 1949, Arts. 50–51), which gives them a firm grip on federal policy making (*L1, L2, L3*) (Auel 2010; Bendel and Sturm 2010: 183–184; Kramer 2005: 155–158). The *Bundesrat* has wide-ranging authority (*L4*). It can initiate and veto legislation affecting *Land* competences and has a suspensive veto on most other legislation (C 1949, Art. 76; Heinz 2017: 23–27). The 2006 constitutional reform amended the co-decision procedure between the *Bundesrat* and the *Bundestag* (lower chamber) and now gives the *Bundestag* the right to enact legislation without *Bundesrat* approval (C 1949, Art. 77). However, when legislation follows this route, *Länder* obtain the right to deviate from federal rules (*Abweichungsrecht*). Observers estimate that the effects of the reform on decision making have so far been relatively minor (Behnke and Benz 2009; Burkhart 2009; Jeffery 2008; Gunlicks 2012; Stecker 2016). *Länder* score the maximum on law making.

*EXECUTIVE CONTROL*

An elaborate system of executive federalism (*Politikverflechtung*) ensures that *Länder* are intimately involved in the execution and implementation of federal policy (Scharpf, Reissert, and Schnabel 1976; Scharpf 1985). Beginning in 1947, the federal chancellor invited *Land* premiers (*Ministerpräsidenten*) for informal consultation. This spurred *Ministerpräsidenten* to meet first to prepare common positions (Parker 2015: 102–103). Such conferences quickly became regularized, though meetings with the chancellor remained more irregular and the decisions were not legally

\(^{15}\) As of 2020, the *Verbandsversammlung* of *Regionalverband Ruhr* will be directly elected and will be renamed into *Ruhrparlament*. *Regionalverband Ruhr. Politik & Regionalverband “Direktwahl 2020”*  
<https://www.rvr.ruhr/politik-regionalverband/direktwahl-2020/>
binding. Land ministers also began to meet regularly on more circumscribed topics. While the original idea was to pre-empt national encroachment on Land competences, Länder coordination has arguably facilitated federal harmonization. In 1964, growing cooperation among Länder paved the way for joint policy making and intergovernmental meetings were formalized for regional economy, agriculture, and research infrastructure in a constitutional revision of 1969 (C 1949, Arts. 91a–b; Gunlicks 1984; Hueghlin and Fenna 2006: 235–238). This was later extended to information technology (C 1949, Art. 91c).

Over time a dense network of intergovernmental meetings (Ministerkonferenzen) has developed in which Länder governments meet with or without the federal government (which may or may not have voting rights) and where legally binding decisions can be reached. Apart from the Conference of Prime Ministers (Ministerpräsidentenkonferenz) there are conferences for agriculture, employment and social policy, architecture, education and research, the EU, finance, the economy, health, equal opportunity, home affairs, youth and family, justice, integration, culture, spatial planning, sports, environment, consumer protection, and traffic (Parker 2015: 102–103). Most Land prime ministers also regularly meet in region-specific conferences, for example, the northern Länder (Bremen, Hamburg, Lower Saxony, Mecklenburg-Vorpommern, and Schleswig-Holstein) and the eastern Länder (Berlin, Brandenburg, Mecklenburg-Vorpommern, Saxony, Saxony-Anhalt, and Thuringia) (Lhotta and von Blumenthal 2015).

Most ministerial conferences meet at least once per year and are chaired by different Länder taking turns, often in alphabetical order. The decision making procedures vary across the Bund–Länder and Land–Land negotiations from unanimous to majoritarian decision making and the position of the federal government can range from being a non-voting guest to a full member (Lhotta and von Blumenthal 2015).

FISCAL CONTROL
Länder did not have fiscal power sharing until a constitutional revision in 1966 gave the Bundesrat power to co-decide the base and rate of taxes, as well as their distribution between Länder and the federal level (C 1949, Art. 106). Länder also determine the annual financial equalization package (Finanzausgleich) for redistribution among Länder (Law No. 3955, 3956/2001; Hepp and Von Hagen 2012; Schnellenbach 2017: 156–159; Watts 2008). In addition, Bund–Land fiscal relations are discussed during Land–Land intergovernmental meetings (Finanzministerkonferenz) with the federal government as a non-voting guest. The Finanzministerkonferenz meets twelve times a year after the meeting of the finance committee of the Bundesrat (Finanzausschuss) (Lhotta and von Blumenthal 2015; Schnabel 2017: 130–150).

BORROWING CONTROL
In 1968, the economic council for the public sector (Konjunkturrat für die öffentliche Hand) was set up to advise on economic policy measures that serve to promote economic stability and growth (Law No. 582/1967, Art. 18). Its members are the federal minister of finance, the senators of the federal states, representatives of the Kreise and Gemeinde, and a representative from the central
The council is chaired by the federal minister for economic affairs and it meets at least once per year (Schnabel 2017: 130–150).

In addition to the economic council for the public sector, a financial planning council (Finanzplanungsrat) was set up in 1969. It was composed of federal and regional finance ministers, four representatives of municipalities and municipal associations, and an observer from the central bank (Wurzel 1999). Its main task was to coordinate federal budgetary planning with the multi-annual financial planning of the Gebietskörperschaften (Länder, Kreise, and Gemeinde—but not Regierungsbezirke). In practice, its primary focus was on Kreise and Gemeinden and its advice was non-binding.16

The committee on public borrowing (Ausschuss für Kreditfragen der öffentlichen Hand) was established in 1976 to coordinate borrowing needs and debt management (Law No. 582/1967, Art. 18.3). Its members are similar to the economic council for the public sector and it can only issue recommendations (Schnabel 2017: 130–50).

In 2002, following EMU, the financial planning council was also tasked with monitoring whether federal and regional borrowing was in line with EMU deficit criteria. Its decisions were still taken by consensus and were non-binding (Law No. 1273/1969, Art. 51; Rodden 2003b).

In 2010, as part of a larger reform, the financial planning council was replaced by the stability council (Stabilitätsrat) (Gunlock 2012; Schnellenbach 2017: 159–161).17 Its members are the federal ministers of finance, economy, and technology and all Länder ministers of finance. The chair is shared between the federal finance minister and the chair of the Finanzministerkonferenz, a Land–Land institution. The stability council meets at least twice per year and the federal government and two-thirds of the Länder governments have veto power (Korioth 2016; Lhotta and von Blumenthal 2015; Law No. 2702/2009, Art. 1; Schnabel 2020: 108–113). The stability council oversees budgets, including borrowing, of the federal government, Länder governments, Kreise, and Gemeinde. It negotiates and implements austerity plans and can place governments under supervision (Law No. 2702/2009, Arts. 2–5; OECD 2011; Schnabel 2017: 130–150; Spahn 2016: 92-96).

CONSTITUTIONAL REFORM

Bundesrat approval is mandatory for constitutional amendments. Constitutional change requires a two-thirds majority in both legislative chambers (C 1949, Art. 79).

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### Self-rule in Germany

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### Rheinland-Pfalz
- **Bezirksverband Pfalz**
  - II 1950-2018: 2 1 0 0 2 2 7
  - III 1950-1999: 1 0 0 0 0 0 1
- **Regierungsbezirke**
  - II 1950-2018: 2 1 0 0 2 2
  - III 1950-1999: 1 0 0 0 0 0

### Saarland
- **Landkreise/Kreisfreie Städte**
  - II 1974-2018: 2 2 1 1 2 2 10

### Sachsen
- **Regierungsbezirke**
  - II 1993-2011: 1 0 0 0 0 0 1
  - III 2008-2011: 2 2 1 1 2 2 10
  - III → II 2012-2018: 2 2 1 1 2 2 10

### Sachsen-Anhalt
- **Regierungsbezirke**
  - II 1990-2003: 1 0 0 0 0 0 1
  - II 2007-2018: 2 2 1 1 2 2 10

### Schleswig-Holstein
- **Landkreise/Kreisfreie Städte**
  - II 1970-2018: 2 2 1 1 2 2 10

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## Shared rule in Germany

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<th>Executive control</th>
<th>Fiscal control</th>
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National legislature has: L1 = regional representation; L2 = regional government representation; L3 = majority regional representation; L4 = extensive authority; L5 = bilateral regional consultation; L6 = veto for individual region. Total for shared rule includes the highest score of either multilateral (M) or bilateral (B).


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