3

GERMANY'S FIGHT AGAINST COVID-19

The tension between central regulation and decentralised management

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3.1 Introduction

As happened throughout the world, Germany's society and economy suffered as a result of restrictions that were imposed to combat the Covid-19 pandemic. Although infection and fatality rates in Germany in 2020 were relatively low in international comparison and its economic crisis less grievous than in other countries, the burdens of the pandemic weighed heavily on those who fell ill or lost income and livelihoods due to lockdown measures. The question at issue in this chapter, then, is whether Germany's federal multilevel system of government was a help or hindrance in managing the pandemic. In particular, it examines the country's efforts not only to cure the ill, prevent infections, and control the spread of the virus but also to provide compensation for economic damages and avoid a deeper depression.

To begin with, Germany is a federal country with a population that stood at 83.2 million at the end of 2019: 18.3 per cent of people were younger than 20 years, 53.3 per cent were between 20 and 60 years, and 28.4 per cent were older than 60. The fastest-growing age group – which increased by 33 per cent in the last decade – were people of age 80 years and older. Seventy-seven per cent of Germany's inhabitants live in areas of high-to-medium population density; overall, the country has 107 free cities, 1,951 cities, and 8,056 villages, all of which are located within 294 counties.

In the German federal system, local governments are the lowest level of governance and lie within 16 states (*Länder*), of which three are city states. In terms of the Basic Law, the federation (*Bund*) and the *Länder* have full constitutional powers and their own institutions; accordingly, local governments have the right of self-administration in all local matters. The federal government in office during the pandemic was a 'grand coalition' led by Chancellor Angela Merkel and

bringing together the Christian Democratic and Social Democratic parties. At the state level, the governments were likewise coalitions made up of the country's various parties with the exception of the right-wing group, Alternative for Germany.

As regards health care, medical services are split between, on the one hand, private-sector medical practices and hospitals – either commercial or owned by non-profit organisations – and pharmacies, and, on the other, local-government-owned hospitals and state-owned university hospitals. Patients may choose where they receive medical treatment. The majority of the population has health cover through either the country's Social Health Insurance or private insurance.

The first case of Covid-19 in Germany was recorded on 27 January 2020. At this early stage, given that there were so few patients and that they and the people they had been in contact with were soon isolated, the public was not overly worried; but at the beginning of March, the rate of infection grew as infected persons took part in mass events and there were increasing numbers of people returning from skiing trips to Ischgl in Austria (see [Chapter 4](#), in this volume). On 25 March, the federal parliament declared an 'epidemic situation of national importance' and, two days later, specified the Law for Protection against Infection by passing the Law to Protect the Population during an Epidemic Situation of National Importance, thereby imposing a nationwide lockdown.

By the end of May, infection rates had declined and Germany began to relax its restrictions incrementally, with inner-European frontiers being reopened to spare the domestic tourism sector and revive trade and industry. However, in late summer, when more and more people returned from holidaying abroad in countries with significant levels of infection, the number of new infections again increased – indeed, at the beginning of October, the number exploded within only a few days to more than 19,000 a day and the seven-day incidence to 130 per 100,000 inhabitants. Berlin, Bremen, and several cities and counties surpassed the critical number of 50 cases per 100,000 inhabitants; many cities and counties even experienced a seven-day incidence of more than 200 new infections per 100,000 inhabitants.

As at 1 November 2020, Germany's total number of infections had reached 532,930 (or 649 per 100,000 inhabitants), with 356,410 recoveries in that figure and 10,481 deaths (or 13 per 100,000 inhabitants). Infection rates varied substantially among the states, although, in general, during the first wave of infection they were higher in Western Germany than in East Germany, whereas in the second wave that emerged in October they were at their highest in some East German counties.

Although the Covid-19 pandemic caused the sharpest recession in the history of the Federal Republic of Germany, the economy recovered quite well until the beginning of October. This stabilisation was in good part the result of the numerous support programmes rolled out at all levels of government, as well as the use of a Keynesian-style fiscal policy accepting of the fact of a decline in tax revenue and willing to fund additional expenditure by means of public debt.

3.2 The federal constitutional and legislative framework

Multilevel governance in Germany takes the form of an executive federal system in which the federal level is generally responsible for legislation (both exclusive and concurrent) and the state and local levels are responsible for administration and the execution of laws (Huegelin and Fenna 2015; Färber 2015). That is to say, the *Länder* regulate only some policy fields as their own competence – these mainly involve the police, some aspects of environmental law, and education in schools and universities; however, the *Länder* decide on the way in which to execute federal law and on the institutions through which this is accomplished.

Government actions against infectious diseases are among the concurrent competences set out in the Basic Law (article 74(19)); in terms of these provisions, the federation can pass legal regulations if and insofar as they are necessary either for the unity of the law or economy or for the provision of equivalence of living conditions in Germany. The *Länder* convert federal law into regulations for implementation and then often transfer the associated administrative responsibilities to their local governments. If federal law does not furnish details about its administration, the *Länder* are free to determine this within their broad scope of action. Cities and counties are usually responsible for civil protection and emergency management. Municipalities have to follow the regulations laid down in federal and *Land* laws and decrees; conversely, they can act freely only if what they want to do is not (yet) regulated.

In the event of pandemics, a high degree of centralisation obtains, given that they invariably impact on economic development and that the *Bund* has the competences relevant in taking ameliorative measures, including competences in taxation and expenditure management, the regulation of social insurance (in regard to pensions, health and long-term care, and unemployment), and in covering state- and local-level deficits if necessary. In all cases in which the details of administration are regulated or the states are obliged to pay for measures, the approval of the *Bundesrat* – the federal second chamber representing state governments – is compulsory.

Not least because of the strong position of the *Länder* governments in the *Bundesrat*, a coordinated decision-making process among the federal chancellor and all 16 minister-presidents is a common occurrence in many areas. These parties decide on political measures that would apply more or less uniformly across Germany. Particularly in cases where the issues are thorny – such as imposing lockdowns on citizens and enterprises – this coordinated process is advantageous in building consensus and facilitating unified communication about the measures decided upon; the disadvantage is that this tends to leave the federal and state parliaments, in particular its non-governing parties, partly excluded from decision-making.

Finally, as all measures are part of administrative law, they fall under the jurisdiction of the administrative courts. Given that pandemic restrictions very often conflict with basic rights, the courts have to decide whether the

actions are proportionate to the goal of protecting the population and whether the constraints on basic rights are necessary for achieving this goal. In practice, the courts often check whether the explanatory statements provided in regulatory documents warrant limitations on the individual's rights to freedom of action.

3.3 Preparedness for a national disaster: The institutional framework

In Germany, institutions that manage natural disasters are separated from those dealing with epidemics or pandemics, albeit that disasters often include medical problems and vice versa. The relevant regulations and institutions can nevertheless be orchestrated in cooperation with each other and across all levels of government if necessary. Since 2001, the Law to Protect against Infections – a merger of several pre-existing laws – has regulated measures to prevent and curb infectious diseases. To achieve these goals, it empowers the responsible ministries and agencies to pass decrees to restrict basic rights such as freedom of assembly, freedom of movement, and the inviolability of the home.

The central actor at the federal level – besides the Ministry of Health – is the Robert Koch Institute (RKI), which is one of three administrative successors of the former Federal Health Agency. The RKI cooperates with the other responsible federal and *Land* agencies and scientific institutions, as well as with foreign institutions, particularly so the World Health Organisation. It produces Germany's official epidemiological statistics, publishes them, and advises political institutions. It undertakes its own research and provides technical assistance to *Land* health agencies.

The 2001 Law to Protect against Infections also regulates compensation where people are forced into quarantine due to contact with an infected person or to entry from a country with high epidemic risks. Such persons receive the same financial compensation as they would have if they were ill, namely six weeks of full payment, followed by 90 per cent of net income; however, their employers are refunded by the responsible *Land* administration. The same compensation is paid if schools and kindergartens are closed in terms of pandemic regulations and parents have to stay home from work to take care of their children.

Land governments usually include ministries (often those for social affairs) which are – among other fields of action – responsible for health matters. They coordinate their policies, if necessary, in a Conference of Ministers of Health. As the *Länder* have to transfer federal regulation into *Land* law that often affects several *Land* ministries, the state chancelleries have a central role not only in regulation but in their 'public relations' function of declaring and explaining the special *Land* regulations.

The local level is the most important in administering a pandemic; some local governments may be even more deeply involved than others because they own a local hospital. In the implementation and administration of pandemic

measures, local health agencies and local regulatory offices are the decisive actors. The former collect data and produce local disease statistics, trace the contacts of infected persons, place them under quarantine, and determine whether they stay at home; they also receive information about travellers from countries with high infection rates and control their observance of quarantine measures. In turn, the local regulatory offices monitor compliance with pandemic regulations.

All the necessary functions and responsibilities existed prior to the Covid-19 pandemic. However, whereas all levels of governments routinely undertake exercises to stay prepared for natural disasters, the health authorities did not undertake comparable exercises for the eventuality of an infectious disease like Covid-19.

This pandemic, in particular the lockdown that was imposed to curb it, not only affected public health but also impacted, severely, on the economy. In this regard, the key institutional actors were the Federal Ministry of Finance and Federal Ministry of Economic Affairs, both of which drew on their experience of managing the global financial crisis of 2008.

3.4 Rolling out measures to contain the pandemic

3.4.1 Taking the initiative

Local governments, particularly the affected counties, were the first to react when the virus began to spread in February following an increase in infections due to large public events such as carnivals and beer festivals. The *Länder* governments requested quarantines in the municipalities concerned. Although the head of the county authority was responsible, the regional boards of the *Land* administration were involved in all measures at the local level to combat epidemics.

When infections escalated in late February both in number and rate, it was time for the *Bund* to take action. On 27 February 2020, a crisis management group, including medical experts and the RKI, was established by the Federal Ministry of Health and Federal Ministry of the Interior. All of the country's governments nevertheless attempted for a long time to convince the public that infections in Germany could remain purely localised incidents, but this strategy failed when holidaymakers returned ill from skiing in Ischgl in Austria and the rate and spread of infections escalated again.

Given that the measures contemplated in the Law to Protect the Population during an Epidemic Situation of National Importance need the approval of the *Bundesrat*, the *Länder* were directly involved in the decision-making process. Being part of the 'grand coalition' government, the heads of the governing factions of the *Bundestag* and the heads of the Social Democratic Party participated in developing the measures. The final decision to impose a nationwide lockdown under common rules was taken in a meeting between Chancellor Merkel and

the minister-presidents of the *Länder*. Public life was severely restricted: all shops not necessary for essential supplies had to close, as did schools, universities, restaurants, theatres, opera houses, and the like. Face masks were made compulsory in all places where people were in close proximity to each other, as was social distancing of least 1.5 m; and people were allowed to work from home if their employers agreed to it.

The debate in the *Bundestag* took place under extreme time pressure. At that point, only the right-wing party Alternative for Germany was critical of the lockdown regulations. By law, the Ministry of Health was authorised to regulate by decree, inter alia, the requirements for entry to the country; rules for public transport; data gathering for the identification and early registration of infected persons; measures in special institutions, such as long-term nursing homes; the provision of medicines; and health care for outpatients. The Ministry's powers were limited until 31 March 2021 but could be extended for another year.

3.4.2 Federal action

The actions of the *Bund* had two main goals: combating Covid-19 infections and stabilising the economy. In regard to the first, the Federal Ministry of Health (*Bundesgesundheitsministerium* 2020) not only passed the necessary decrees for the lockdown but also arranged additional medical equipment for all hospitals, long-term nursing homes, and medical practices. In March 2020, Germany ran out of masks and protective clothing because the federal government had not built up reserves of the necessary equipment in case of a pandemic. Consequently, the Ministry bought 1.7 billion FFP2, KN95, and FFP3 masks, along with about 4.2 billion simpler medical masks.

The Ministry also coordinated a nationwide database on intensive-care beds with ventilators and offered subsidies for hospitals that converted normal hospital beds into ones for intensive care. By July 2020, 32,400 beds had been registered, with the Federation paying for 39,700 more (RBB Online 2020). The RKI took 'normal' measures of health protection and regularly reported to the public. The head of the RKI and its experts advised federal and state governments to prepare for the near future and consider the necessary measures to take. In addition, the Ministry organised digital information systems – by the end of October, its Covid-19 cell phone app had been downloaded by 40 million people.

As people hesitated to consult their medical doctors and dentists due to fear of infection, medical service providers suffered economic losses; as a result, by the end of April 2020, a programme of financial support was set up for all decentralised medical services; it included compensation to all hospitals for empty beds (Covid-19-*Krankenhausentlastungsgesetz*).

Germany introduced border controls from 16 March 2020 with several, though not all, of its neighbouring countries (e.g. not for the Netherlands); this regulation was based on the new Covid-19 Law. People who wanted to enter

from high-risk countries had to stay in quarantine for 14 days. Where borders were closed, foreign commuters living across the border were de facto excluded from their workplaces unless they arranged accommodation in Germany. Couples and family members were separated from each other. Long-distance truck drivers who transported food to Germany, for example from southern Europe, had to stay in their vehicles to avoid quarantine. From early February, passengers returning by plane from high-risk regions had to provide their travel and Covid-19-related health information that was sent to their local health administration in control of quarantine.

The *Bundestag* also changed its own rules of procedure to enable it to continue operations. The quorum was lowered to one-quarter and virtual participation in committee meetings was allowed, with written votes cast during session weeks. This exemption was terminated on 30 September 2020, but then later renewed until the end of 2020 (*Deutscher Bundestag* 2020).

Because lockdown measures and later restrictions impacted on economic activity not only in Germany but in other countries from which German enterprises import materials for their production processes and to which they export their products, the economy experienced its deepest decline since the Second World War. Three federal ministries – finance, economic affairs, and labour and social affairs – took steps to help prevent businesses from going bankrupt and those who could not work, from sinking into poverty (*Bundesfinanzministerium* 2020a), among them the following:

- The regulations for prolonged short-term allowances were reactivated. The number of registered recipients boomed by 624,977 between March and June 2020 but declined afterwards. Despite the *Bund's* efforts, Germany's unemployed increased from 2.335 million in March to 2.955 million in August 2020 but has since then started to decline slightly.
- The self-employed were offered increased access to basic security benefits for jobseekers.
- People in under- or unemployment were protected from losing their accommodation if they could not afford to pay their rent for the three most burdened months (March to May).
- Small enterprises and the self-employed received subsidies to keep them financially liquid. The duty to declare insolvency was suspended until December 2020.
- Severely affected large enterprises, including Lufthansa and TUI, a leading tourism company, received substantial financial subsidies in the form of credits and/or government shareholding. The *Bund* had permission from the EU for an exemption from the latter's ban on public financial aid to such enterprises.
- A special programme to the value of EUR 1 billion was established for economically damaged cultural enterprises; the programme included subsidies for investments in providing for hygiene measures at events.

In addition, the federal government initiated an economic stabilisation programme to the cost in 2020 of EUR 103 billion. The programme focused on four areas:

- Families received an additional children allowance and a tax reduction for single parents. There was wage continuation for parents with ill children or nursing family members. The turnover tax declined from 19 per cent/7 per cent to 16 per cent/5 per cent for the second half of 2020.
- Various forms of tax relief sought to lower the tax burden and improve liquidity. Small and medium-sized enterprises (SMEs) received a bonus of EUR 2,000 if they maintained the same number of vocational training places. Subsidies of another EUR 150 million were allocated to accelerate digitalisation. A special credit programme was introduced to support non-profit organisations suffering from the Covid-19 restrictions.
- Local governments that cover a share of the accommodation costs of the basic security benefit allowances were supported by a higher federal transfer. Together the *Bund* and *Länder* provided EUR 12 billion to compensate for losses of local business tax. Additional transfers sought to mitigate the pandemic's impact on local public transport enterprises, local sport organisations, and local investments in climate protection.
- 'Investment expenditures for a better future' covered a bonus for electric cars and electric loading infrastructure, subsidies for the modernisation of automobile industries, and the purchase of low-emission vehicles. German Railway received additional government investment of EUR 6 billion. A further billion euros were spent on investments in climate change, research in general, and medical research related to Covid-19.

A special factor in federal crisis policies was that Germany presided over the EU Council of Member States in the second half of 2020. The federal government was therefore deeply involved in developing and negotiating the EUR 750 billion EU programme. For many German politicians, the fact that the EU intended for the first time to take on own debt – which is forbidden in the Treaty – is not only a political problem but a legal question. It can be expected that the German Federal Constitutional Court will again be involved in the 'interpretation' of the content of the European competences.

3.4.3 State action

As the *Länder* have competences in many fields that deal with the fight against Covid-19, particularly in the implementation of federal regulations, they had an important influence on the management of the pandemic. During the first lockdown in April and May 2020, they all applied the same restrictions, but by mid-April divergent ideas were already appearing in regard to the speed and details of reopening economic activity and social life.

When, in May, the number of infections had declined, the political initiative shifted to the *Länder*. The minister-presidents, fearing that local enterprises – particularly shuttered retail outlets, hairdressing salons, hotels, and restaurants – would not survive a longer lockdown, began to develop hygiene regulations for these enterprises. The first divergences in regulation thus appeared in an effort to safeguard regional economic sectors.

For instance, when retail outlets reopened, North Rhine-Westphalia allowed furniture stores and kitchen studios to do so too because many of their manufacturing suppliers operate in this state. *Länder* with a high share of tourism – such as Bavaria, Mecklenburg-Pomerania, and Schleswig-Holstein – tried to reopen hotels and restaurants as quickly as they could under strict hygiene regulations. Similarly, Mecklenburg-Pomerania initially restricted hotels to longer stays in order to prevent crowds of weekend guests from entering the state. Later the states held cultural and sports events for in-person spectators – all under hygiene and social-distancing regulations that varied from state to state. Angela Merkel expressed disapproval of such risky events but was unable to coordinate the divergent state policies.

Finally, when infection rates increased again in certain regions from the end of August 2020, the minister-presidents of those states where the incidence had been below average refused to implement decisions taken in the meetings of the federal chancellor and the minister-presidents: they argued that divergent rates of infections called for differences in policy. For example, Saxony-Anhalt tried to march to the beat of its own drum and, among other things, refused to fine people for not wearing masks. Indeed, in all matters of state competence, the state governments passed regulations that differed from each other's to one extent or another, whether it be in the opening of schools and universities, guidelines for hotels and restaurants, the number of people and households allowed to meet, the size of social, cultural and sports events, and more.

The reasons for the divergence stem from several factors: differences among states in infection rates; the economic composition of a state and how the pandemic response affected its chief industries; and the federal and state elections in 2021 that were to take place in Baden-Württemberg, Rhineland-Palatinate, Thuringia, Saxony-Anhalt, Berlin, and Mecklenburg-Pomerania.

The most conspicuous public conflict was that between the minister-presidents of Bavaria and North Rhine-Westphalia, Markus Söder and Armin Laschet. Both states were among the first to witness Covid-19 infections, with Bavaria having, until October 2020, the highest number of confirmed cases (874 per 100,000 inhabitants vs. 807 in North Rhine-Westphalia) as well as the highest death rate (22 per 100,000 inhabitants vs. 12 in North Rhine-Westphalia). Söder argued for a stricter regulation, Laschet, for a liberal policy. As the two were in consideration to be the chancellor candidates of the Christian parties [Christian Social Union (CSU) in Bavaria and Christian Democratic Union (CDU) in all other states] in the federal elections in September 2021, they represented two policy styles in open competition with each other.

Generally, the divergences were minor, did little to compromise the equivalence of living conditions in Germany, and reflected the usual kinds of intergovernmental dynamics at work in federal states:

- Some states topped up the first federal enterprise support programme with their own state subsidies in administering the programme's payment process. The efficiency of these procedures varied depending on the digitalisation of the state administration concerned. False applications for support were a common problem, with some state administrations being less capable than others of identifying them.
- In April and May 2020, Mecklenburg-Pomerania 'closed' its state borders to all tourists – including Germans – who did not have reservations for seven days or more. It sought to exclude day-trippers and weekend tourists to avoid overcrowding at its beaches.
- When infection rates in counties started to rise again in October 2020, Mecklenburg-Pomerania, Schleswig-Holstein, and Bavaria initiated or maintained bans on overnight stays by travellers from high-infection counties and cities (ones with 50 infections per 100,000 inhabitants in the past seven days). Given that the autumn holidays begin at the same time in many of Germany's states, travellers who had made hotel bookings in the mentioned states protested at the measures – some went to the administrative courts, which decided that the state actions were inappropriate. After but a few such judgments, the state governments withdrew their regulations.
- Schools and kindergartens did not reopen in summer at the same time. The states decided individually on the opening date, the number of in-person and digital lessons, and the like. Later, they all agreed that, in spite of increasing infection rates, it was important to keep schools and kindergartens open and avoid repeating the experience of a total lockdown. Nevertheless, the regulations varied from state to state in their details regarding, for example, whether pupils needed to wear masks during lessons, or whether to close a whole school or only parts of it in case of infections.
- The states diverged with regard to permits for cultural and sport events, particularly in respect of the maximum number of spectators. After long discussion, they agreed on a common policy for spectators at first- and second-league soccer matches: a restricted number of spectators, with electronic tickets for special seats, were allowed as long as infections rates remained low. However, rising infection rates led again to soccer and tennis matches being played in empty stadiums.
- In spring, Mecklenburg-Pomerania paid accommodation bonuses to workers from Poland who had to reside in Germany given that the requirement that they spend a fortnight in quarantine on crossing the border meant they could no longer commute daily to their places of employment in Germany. The regulation was reintroduced in autumn after the infection rate in Poland placed it on the list of high-risk countries.

- When in August 2020 the Federal Chancellor and minister-presidents decided to introduce a fine of a minimum of EUR 150 for people not wearing a mask or refusing to do so, the minister-president of Saxony-Anhalt declared that he would not follow this agreement. By contrast, other states imposed even higher fines for so-called mask deniers (EUR 500 in Berlin). A mask denier taking a long-distance train trip thus ran the risk of a multitude of different fines on one and the same journey.

All the states endeavoured to prevent total lockdowns and instead adopt context-specific management for cities and counties with high infection rates. There were also identifiable factors behind the growing number of infections from August 2020 onwards, such as foreign labourers in large slaughterhouses working under insufficiently hygienic conditions and living together in cramped accommodation; numerous people living together in refugee homes; travellers returning from summer holidays in high-risk countries, particularly in the Balkans; wedding parties with more than 400 guests; and illegal parties where hundreds of young people would revel without masks or social distancing. Usually, it was enough to reduce local infections within a few weeks by identifying sources of infection, tracing contacts, conducting tests, and quarantining all of the identified contact persons – that is, until mid-October 2020 when Germany too was caught in the long-dreaded ‘second wave’ of Covid-19 infections.

This led to a unanimous agreement among the states to impose a new, partial lockdown in November. To reduce unnecessary contact between people, the states closed restaurants, gyms, cinemas, theatres, and opera houses; expanded the duty to wear masks (with a fine for mask deniers); and restricted the number of contacts in public to 10 persons from two households; in addition, hotel accommodation was available only for business purposes.

3.4.4 Local government action

Because local governments are the lowest level of administration in Germany, they played an important role in combating the pandemic. Within the legal frameworks set by federal and state laws and decrees, they gave Covid-19 restrictions further detail applicable in their respective territories:

- Local health agencies tested people for Covid-19 infection, traced their contacts, placed them under quarantine, and controlled whether these observed the restriction. They conducted testing not only by using their staff but also by acting in cooperation with non-profit organisations and private laboratories. They collected data on infections and sent them via the state health administration to the RKI.
- Local regulatory agencies, which included local auxiliary police, monitored observance of Covid-19 regulations, in particular whether restaurants and cafés complied with minimum distances and maximum numbers of visitors,

whether masks were worn and whether customers' details were recorded for contact tracing in case any of them proved to have been infected. The agencies enforced compliance with closing hours in high-infection communities and issued fines if regulations were violated.

- Local administrations authorised local events ranging from concerts and sports events to markets of various kinds, fairs, carnival parades, and political demonstrations, doing so without regard to whether the organisers were public or private actors or even the local government itself: permits could be granted only if the application complied with all the regulations. These processes held the potential for conflict given that the events in question were often of considerable importance not only for restaurants and hotels but so too for a local retail trade keen to attract spendthrift foreign guests.

Problems arose due to staff shortages in local health administrations. The federal government and *Länder* discussed a goal in terms of which local health agencies would establish groups of five staff members per 20,000 inhabitants to trace the contact persons of infected citizens. In April 2020, the federation offered to pay EUR 150,000 per agency to modernise their digital equipment, and, in September, EUR 4 billion for recruiting more personnel. The agencies, however, were unable to hire staff as quickly as necessary. Berlin, for example, had 200 vacancies in its health administration (Heim 2020), while in Covid-19 hotspots, local governments asked the military for support – as a result, by the end of October 2020, several thousand members of the military were working in local health agencies. In the same period, Rhineland-Palatinate asked state civil servants if they were willing to work temporarily in local health agencies involved in tracing contact persons.

Not everyone obeyed the restrictions. In summer, youngsters shifted their night-life activities to parks, squares, and pedestrian zones in the cities, seldom wearing face masks or adhering to minimum distances between people. The situation was difficult to control. When police in Stuttgart and Frankfurt tried to enforce the regulations, crowds of young people became aggressive and the police had to quell street violence; in Stuttgart, shops were damaged and plundered (*Stuttgarter Zeitung* 2020).

Moreover, Berlin as well as other state capitals had to contend with demonstrations by Covid-19 deniers. In the name of civil liberties, alternative groups and right-wing supporters staged protests against the restrictions. They denied the dangers of Covid-19 or even the existence of the pandemic, which was variously claimed to be a myth or biological experiment instigated by the likes of Chancellor Angela Merkel or a Bill Gates intent on world domination. During the demonstrations – allowed in principle by local governments as an exercise of basic rights – people did not practice social distancing or wear masks, never mind mounting an ideological challenge to the very foundations of pandemic governance in Germany. Although the police tried to make them comply with the regulations, success was anything but assured. It was unknown how many new infections resulted from these demonstrations.

The federal government and *Länder* decided in June 2020 to avoid nation- or state-wide lockdowns in future and rather impose restrictions on municipalities with high infection rates (initially, a high infection rate was considered to be more than 50 infections per 100,000 inhabitants in the past seven days, but the threshold was later reduced to 35 infections). Lord Mayors and county chief executives were frequently torn between imposing restrictions in order to contain infections and facilitating local economic recovery, particularly in the case of restaurants, mass events, and sports matches, which were important as sources of revenue and job creation but severely damaged by the lockdown in early 2020. The locally responsible politicians thus tried to ensure that the enterprises concerned could continue to operate at least in an alternative or reduced form. Until the *Bund* and *Länder* began a second nationwide lockdown on 2 November 2020, local governments acted autonomously in working out the details of their control measures.

3.4.5 Intergovernmental relations

The pandemic in Germany was managed by way of established modes of intergovernmental relations. The combination of a few common regulations and their implementation at state level allowed for slightly diverging measures, thereby giving regional actors space in which to respond differently from each other depending on the individual nature of the infection rates and economic concerns in their jurisdictions. Within this context, the meetings of the Conference of Ministers-President with the Federal Chancellor were an essential institution of intergovernmental coordination for ensuring that the spread of the coronavirus did not become uncontrollable and exceed the capacities of hospitals and intensive care beds. Further such coordination took place in the conferences of the education ministers, the health ministers, and the ministers of the interior. Federal and state governments established so-called CORONA cabinets where the ministers with key responsibilities discussed measures to be taken and consulted with national and regional medical experts.

The administration of the majority of restrictions and other measures took place at the local level, where it was regulated by national laws and state decrees. Important instruments at this level were weekly, or, if necessary, daily, crisis conferences where all administrators involved at the state and local level in concrete pandemic responses decided on how to manage impending problems. In larger states, the state district offices provided support or intervened in cases where local governments did not follow the state regulations.

‘Physical’ intergovernmental support and cooperation took several forms:

- When infections increased in spring 2020 and hospitals, medical practices and nursing homes found themselves without enough protective equipment for their staff, the federation attempted to address this as quickly as possible. However, although it was the task of the federation to have a sufficient

reserve of such equipment in the case of a pandemic, it was not available. Insofar as the *Bund* had neglected its duties, it sought to rectify the situation as expeditiously as it could.

- When the number of critical infections exceeded the regional and local capacity of hospitals and intensive care beds, neighbouring jurisdictions absorbed the overflow of patients. The RKI's database of available intensive care beds facilitated coordinated efforts of this kind. For the second wave of infections, cooperation among states was formalised to serve these purposes (NDR 2020).

For many weeks after the first lockdown, it was the states rather than the federation that dominated the field of play. When it became apparent in the summer of 2020 that the return of holidaymakers had caused a spike in infection rates, the Bavarian minister-president set up test centres for returnees near borders and in airports and offered tests for free. The Minister of Health had to follow suit a day later and roll this out as a measure for the entire territory (Hickmann et al. 2020). There was similar pressure on the states to act speedily when it came to reopening society and the economy after the first lockdown in 2020, albeit that in this instance the conflict among the minister-presidents was obvious.

3.4.6 Intergovernmental fiscal relations

Intergovernmental fiscal relations were an important dimension of pandemic management in Germany. This was so not only because of the need to stabilise the locked-down economy, but because the federation compensated for its lack of competences by making various grants to state and local governments. The impact of Covid-19 on public finance was threefold: the pandemic, and particularly the lockdowns, (1) led to the country's largest-ever drop in tax revenue, (2) generated additional public expenditures at all levels of government, and (3) increased public debt as it presented, without any doubt, a case for an exception from the constitutional 'debt brake'.

The breakdown of tax revenue shows a divergence among the levels of government because their respective tax sources were affected in different ways. After years of continuing growth in tax revenue, the federation's revenue declined by 16.3 per cent in 2020 and that of local government by slightly less (9.8 per cent). The states suffered the smallest percentage of losses (5.5 per cent), while the EU received a larger share of national tax revenue (+4.5 per cent) (*Bundesfinanzministerium* 2020b). Governments and economic experts anticipated that tax revenue would increase again in 2021, albeit remaining below the level of 2019.

Additional expenditure linked to Covid-19 caused 'automatic' stabilisers built into the tax and social security system to kick in. They varied among the levels of government. At the federal level, Covid-specific expenditure was covered not only by the normal budgets but by the social insurances, for which the *Bund*

has financial responsibility. In total, additional federal expenditure amounted to EUR 146.5 billion (for details, see *Bundesfinanzministerium* 2020c).

Länder governments supplemented federal programmes for SMEs and the self-employed by paying for add-ons. They compensated costs for closed kindergartens and also administered federal transfers to private enterprises and local governments. These activities, for which they were refunded, counted as additional expenditure. In total, state expenditure increased by 39 per cent in the second quarter of 2020 compared to the same period in 2019.

Local governments had to cover additional expenditure for staff in the local health agencies as well as for the local ‘police’ services that were needed in some communities to enforce pandemic regulations – as they were not able to employ additional staff of their own, they would often employ private security firms. In addition, local governments paid for hygiene equipment in local administration workplaces and schools. Even garbage collection generated higher expenses than usual – a great deal of refuse had to be removed, given that many people used the lockdown as an opportunity to clear out their cellars and attics, in addition to which a surge in e-commerce generated a large amount of disposable packaging. The loss of revenue from locally owned enterprises due to lockdowns and other restrictions (including from amenities such as theatres, opera houses, museums, sport stadiums, swimming pools, public transport, fairgrounds, and airports) also made its impact felt.

Overall, the financial burdens of Covid-19 were unevenly distributed among the three levels of government, conceived vertically; such unevenness also became apparent horizontally within levels of government. This reflects the fact that differing epidemiological patterns and correspondingly differing restrictions on social and economic life generated diverse impacts on regional and local economies and hence on their tax revenue.

Fiscal equalisation schemes – federal-state and state-local – stabilised public budgets. They equalised the majority of horizontal divergences in loss of tax revenue, though not the vertical effects and differences in necessary expenditure. As such, the respective superior levels of government created additional vertical grants from the federal to state tier, from the state to local tier, and from the federal to local tier, the latter despite the constitutional prohibition of direct federal intervention in local governments. To enable constitutional grants from the federation to local governments, the federation used the changes of the Basic Law in 2019. This included particular grants from federal and state budgets (50:50) for the compensation of local losses in trade tax revenues.

Vertical differences in Covid-related expenditure increases and revenue losses were most apparent in regard to public debt. Fiscal policies of a Keynesian type stabilise economic development (Auerbach 2012). They imply an acceptance of using public debt to cover deficits arising from loss of tax revenue and/or the need for additional expenditure. The *Bund* and *Länder* stated the case for an exemption from the restrictive rules of the debt brake, which usually contemplates a credit maximum of 0.35 per cent of GDP for the *Bund* and balanced budgets for

the *Länder*. In addition, the *Bund* used its *Kreditanstalt für Wiederaufbau* (Credit Institute for Reconstruction) to provide additional funding through loan guarantees on behalf of endangered enterprises. The federal budget received approval from Parliament for new credit of up to EUR 218 billion, corresponding to 13 per cent of GDP. The limit for guarantees was increased to 47 per cent of GDP (*Deutsche Bundesbank* 2020). The debt finally borrowed was allocated to a special extra-budgetary fund and is to be redeemed over 50 years.

Likewise, all *Länder* had budgetary deficits, which were estimated to amount in total to about EUR 50 billion. The states administered an important share of their debt-funded programmes in special extra-budgetary accounts. They, too, decided on a long period for redemption. Local governments also wound up with high deficits, notwithstanding the transfers paid to them. ‘Unhealthy’ cash credit was far in excess of local borrowing for investment expenditure. The sole good news for public budgets in 2020 was that interest rates in the next few years seemed likely to remain low, meaning that additional redemptions would ‘only’ become payable in the years thereafter.

In summary, Covid-19 contributed to a higher degree of fiscal centralisation. It was an open question whether this would continue after the crisis or lead to new, and fundamental, reforms granting greater autonomy to lower levels of government. A majority of members of the various parliaments asserted that the enormous increase in public debt was sustainable – assuming that this Keynesian fiscal policy would succeed in preventing a deep(er) recession.

3.5 Findings and policy implications

During the first wave of the Covid-19 pandemic, the German federal system was successful in responding to its challenges and was fortunate to have a relatively low number of infections and deaths. The limited legislative powers of the central government meant that state and local governments were not inhibited in their initial response. By the end of March 2020, however, the *Bund* had initiated the common action of a nationwide lockdown, with the *Länder* passing detailed regulations in this regard and local governments administering and enforcing them. From the outset, there was a policy emphasis on focusing on local hotspots and customising tighter restrictions there to prevent the virus from spreading out of control and to limit the number of critical cases needing intensive care. With the rise in autumn of a second wave of infections, the federal system was again faced with the challenge of doubling down to contain the pandemic – and, at the time of this writing, had once more proven itself capable of containing a threat of this nature and magnitude.

Usually, citizens take little note of state-by-state differences in regulations, particularly when it is the federation that holds the legislative competence. At the end of April 2020, though, when questions about the speed and extent to which the economy and education sector should be reopened became issues of debate, it was both apparent that the state governments were dominating the political

dialogue and plain to see not only that there were differences in state government actions but that these differences mattered. Citizens often expressed their lack of understanding that regulations in their home town were different to those in another *Land* where they had gone on holiday; all the same, they did not protest at the inconvenience of restrictions in local hotspots.

The intergovernmental decision-making that underlay this situation was nonetheless unusual. Conventionally, the federation passes the necessary legal regulations, the states transform them into state laws, decrees and administrative prescriptions, and then, often along with local governments, execute them. Many competences necessary for combating pandemics are located at the state level, however, and even at the level of municipalities, which can opt to tighten restrictions if necessary. In response, the central government sought to influence the states into heeding its political preferences.

It did so in two ways: first, through the public communications of the Chancellor and Minister of Health and by inviting the Conference of the Ministers-President to consultations; and, secondly, by spending taxpayers' money on a scale hitherto unknown in Germany – sometimes it was clearly apparent that it was only the *Bund's* generous transfer payments that had broken the resistance of the minister-presidents to the plan to combat Covid-19 by means of a common, nationwide action. Neither feature of the intergovernmental management of the pandemic is without problem: the extreme dominance of executive decision-making led to sharp conflict in the federal and state parliaments, while the public debt incurred will probably result in higher – perhaps much higher – taxes in future.

The upcoming election campaigns not only for the federal elections in September 2021 but also for several State Parliament elections in 2021 have already played an important role and will continue to do so in 2021 in the formation of Covid-19 policies. The prospective competing candidates for, on the one hand, the leadership of CDU/CSU (two of them Minister Presidents), and, on the other hand, the candidate of the SPD (Social Democratic Party of Germany), the incumbent Federal Minister of Finance, may try to show their own special profile in fighting against the pandemic and its economic consequences.

Finally, observers were astonished at the divergent advice provided by academic experts working for the federal and state governments, the majority of them epidemiologists. Many of them advocated a strategy of reducing inter-personal contact in the population the higher infection rates became. A minority, however, asserted that, on balance, the harm wrought by infections would not be severe enough to warrant heavy restrictions. It is unclear whether the 'opinion' of a government invited the corresponding experts, or if the experts' advice influenced the more rigid or more liberal measures that were adopted; at any rate, powerful groups no doubt employed the halo of expertise to legitimate their particular interests.

In conclusion, Germany's executive federalism emerged as an adequate model for the management of the Covid-19 pandemic. Although a framework of legal

rules was necessary, the gravamen of the country's actions did not lie in federal legislative measures but in the regionally and locally specified application of regulations and controls, including information management and communication. That Germany utilised the scope for decentralised action inherent in its model of federalism is probably the most important reason for its relatively low Covid-19 mortality rate during the first wave of infection.

The German experience of the management of the first wave of the Covid-19 pandemic thus merits further research, particularly in the light of events subsequent to the period examined in this chapter and relating to the second wave and later period of vaccination. Three questions come to the fore:

- First, what is the 'ideal' mixture of central regulation, on the one hand, and decentralised execution and administration, on the other? What ratio of uniformity and diversity is needed in order to control infection rates and secure the population's compliance with restrictions?
- Secondly, what was the specific role of the civil service in managing the pandemic? What can we learn about new modes of working, particularly telework in home offices? What are the consequences of digitalisation not only for public administration but the education sector – the schools and universities – which, in Germany, fall under public sector management?
- Thirdly, what are the consequences of the pandemic's huge financial burdens for intergovernmental fiscal relations? Does Germany need greater decentralisation of tax-raising and -spending autonomy or greater central regulation, including more transfer payments? What was the role of multilevel tax-sharing and fiscal equalisation schemes in stabilising economic development and attempting to ensure the sustainability of public sector budgets?

Finally, the apparent contrast of the – relative – weakness of the federation in deciding restrictive measures, on the one hand, and its costly financial 'generosity', on the other hand, should be under further observance if that will continue after the pandemic or whether there will be decentralisation particularly of the intergovernmental financial relations in order to fund state and local governments 'sufficiently' by own (tax) sources.

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