

# **A survey of the German non-ministerial federal administration**

## **Methodology and survey content**

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## **1 Background**

We are still in a very early stage in the process of developing a German survey. We started by translating questions from the COBRA-document and then discussed the relevance of the issues covered for our own research interests.<sup>1</sup> What was also a 'hot issue' in our discussions were characteristics of the German politico-administrative system in general, and of German federal agencies in particular, which only to a certain degree can be appropriately grasped by the questions used in earlier surveys. Thus, in the surveys conducted in Belgium, Ireland, and Norway, much emphasis is put on NPM-style instruments of inter-organizational governance (e.g. contract-management, performance indicators). From a German point of view, it is of high relevance also to investigate the functioning of hierarchical instruments, such as the practice of different oversight mechanisms (see our paper for the LEUVEN-conference on the German non-ministerial federal administration), the federal level being a 'latecomer' with respect to NPM-style reforms (Jann 2004). In addition, we would like to highlight the role of agencies as political actors of their own right, a perspective that only to some degree is covered by the questions in the COBRA-document. We will further elaborate on these aspects below.

Our motivation for participating in the seminar is twofold: On the one hand, we hope to get useful 'input' from those seminar participants that already have completed their surveys and have started with the analysis and comparison of their data. On the other hand, it would be especially relevant for us to get into contact with COBRA-members that, like us, still are in a preparatory phase and struggle with the appropriate survey questions and practical issues. We are particularly interested in research conducted in Denmark and the UK, since these countries are included in our research project on core executives in Western Europe, in which one dimension of analysis covers vertical interaction and agency autonomy (Jann et al. 2005).

## **2 Sample selection**

### **2.1 Criteria for the selection of the survey population: Who is in?**

The sample of the German survey will comprise most organizations the fulfill each of the following three criteria, which are relatively easy to apply.

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<sup>1</sup> We would like to thank Marian Döhler for enriching discussions on the many facets of German federal agencies and useful comments on an earlier draft of this paper.

1. There is a direct oversight relationship between a ministry and the organization.
2. The organization is vested in (federal) public law.
3. The scope of the organization encompasses the whole country.

These criteria permit us to cover a large variety of organizations with different legal forms, which often are not clearly observable from the name of the organization. These legal categories include:

(1) Direct federal administration (type-1 agencies)

- Federal agencies without subordinate units (*selbständige Bundesoberbehörden*)
- Federal agencies with subordinate units (*schlichte Bundesoberbehörden*)
- Federal commissioners (*Beauftragte des Bundes*)
- Institutions of public law, being part of the direct federal administration (*nicht rechtsfähige Bundesanstalten*)

(2) Indirect federal administration (type-2 agencies)

- Institutions of public law (*rechtsfähige/teilrechtsfähige Anstalten*)
- Statutory bodies (*Körperschaften*)
- Public Foundations (*Stiftungen*)

However, we have some doubts whether all organizations in this survey population can be considered as ‘agencies’, the critical cases being the *Körperschaften* and the *Stiftungen*. This will be discussed below.

## 2.2 Who is out, and why?

According to the criteria mentioned above, the following organizations will be definitely excluded from the survey:

- Federal Bank (*Bundesbank*) and Federal Office of the Auditor General (*Bundesrechnungshof*) (these organizations have no superordinate ministry and represent the rare type of ‘ministerial-free’ administration)
- Subordinate units (regional and local offices) of the *schlichte Bundesoberbehörden* (e.g. tax administration, waterways) (these do not have a direct oversight relationship with the respective ministry)

- State-owned private-law companies (e.g. Railways, Air Traffic Control) (these organizations - although at least partially owned by the state - are not vested in public law)
- Charged administration (*Privatrechtliche Auftragsverwaltung*) (not vested in public law)
- All organizations at the state (*Länder*) and local level
- ...

### 2.3 Borderline organizations: The *Körperschaften* and the *Stiftungen*

With respect to international comparison, one has to ask whether the organizations in our sample fulfill the criteria for genuine ‘agencies’. There is certainly no straightforward answer possible to that question. Drawing on the definitions by Talbot (2004) and Pollitt et al. (2004), an ideal-type agency is (1) structurally separated from the main hierarchy of the ministry (the often-cited ‘at arm’s length’-criterion), (2) carries out tasks at the national level (3) other than commercial ones (thus excluding public corporations), (4) is subject to ministerial influence, including budget or operational goal modifications, and therefore (5) not totally independent from its ministry from a legal point of view, (6) is vested in public law, (7) has some degree of ‘extra autonomy’ in comparison with ministry divisions, (8) is staffed by public servants, and (9) is financed by the state budget (including cases where agencies are – partially or entirely – financed by their own revenues but with the state being financially reliable for the agency).<sup>2</sup>

All type-1 authorities certainly fulfill these criteria. However, one has to be more careful when it comes to the type-2 authorities. First of all, these are subject to legal, but not to functional oversight by the ministry. Thus, criterion (4) is only partially fulfilled, one exception being the *Bundesagentur für Arbeit* (Labor Administration), which is subject to functional oversight, despite its status as “statutory body”. Furthermore, the “statutory bodies” almost by definition have decision-making bodies that represent their members (having members and not ‘users’ being an important characteristic of these organizations). This is the result of the German principle of self-governance (*Selbstverwaltung*), with the involvement (in the case of labor market or social security) or even delegation of administrative functions (as in the case of physicians) to involved actors.<sup>3</sup> This involvement becomes visible through the statutory

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<sup>2</sup> The definition, which is used in the COBRA-document, is somewhat broader, but does not explicitly refer to the concept of ‘agency’.

<sup>3</sup> The ‘institutions of public law’ lack the element of self-governance and can be considered as agencies with greater managerial leeway than type-1 agencies. Like all type-2 organizations, they might be exempted to follow

bodies' internal governance structure, where a general assembly (*Mitgliederversammlung*) or an administrative council (*Verwaltungsrat*, e.g. *Bundesagentur für Arbeit*) takes fundamental decisions and supervises the governing board or the monocratic leader (Loeser 1994: 132). Again, criterion (4) is only partially fulfilled for the *Körperschaften*. However, we plan to include those *Körperschaften* where the federal government takes part in the decision-making bodies ('intermediate statutory bodies'), and will exclude the so-called 'autonomous statutory bodies' without direct involvement of the government (Loeser 1994: 133). For those bodies, one might also speak of "More Autonomous Bodies" or MABs, which indicates that they are 'further away' from ministries than 'typical' agencies (Pollitt et al. 2004).

Moreover, we are not sure yet whether to include the public law foundations, although they fulfill all the criteria mentioned above. Their number being relatively low anyway (n = 20), foundations usually have tasks that are 'far away' from core state activities and thus of marginal interest. However, one could also argue that they represent a very autonomous legal type of agency, but nevertheless might be subject to steering and control by the ministries.

In sum, the research will contribute to a better understanding of the non-ministerial part of the German federal administration beyond legal categories. This is especially important in the German context, where legal classifications and 'informed guesses' on the federal administration prevail. Of course there are some exceptions, based on small-n case studies (Böllhoff 2005; Döhler 2004; Welz 1988), but no broad survey of federal agencies has been conducted yet.<sup>4</sup>

## 2.4 How to detect the relevant organizations according the selection criteria

Having established selection criteria for the relevant population, which helped us to specify which organizations will definitely not be part of the survey, we now have the task to detect and identify the survey population. One approach would be to search the federal budget documents for relevant agencies. Yet, we have to be sure that all organizations of the population are mentioned in the budget documents. Generally speaking, this applies to all type-1 agencies (direct federal administration), while type-2 agencies have their own budgets and only are mentioned in the federal budget if they receive grants from federal ministries (Becker

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the Federal Budget Regulations (*Bundshaushaltsordnung*) or the civil service personnel regulations (*Dienstrecht*).

<sup>4</sup> A recent replication of the classical Aberbach/Putnam/Rockman-studies on the politicization of the federal bureaucracy also included senior public servants in about 40 (type-1) agencies, but this research does not include the aspects of autonomy, steering and control (Schwanke and Ebinger 2005).

1989: 311), which for instance is the case for the *Bundesagentur für Arbeit* (Federal Labor Market Agency, a statutory body) or the social security funds.

A different approach would be to rely on information provided by the government as a whole and by the respective ministries on the Internet, as well as internal documentations of the Federal Ministry of the Interior (which is responsible for the public sector), research literature, newspaper clippings and so on.

In the context of earlier research on federal agencies, Marian Döhler (University of Potsdam) has established a database that includes a population of roughly 160 non-ministerial organizations at the federal level, which serves as the basis for the survey. The actual survey-sample will be somewhat smaller, since this database also includes all *Körperschaften* and *Stiftungen*.

### **3 Practical aspects of the survey**

#### 3.1 Selection of respondents and how to contact them

For successful research it is of course important to have a sound questionnaire. However, since our object of study consists of (sometimes very big) organizations, it is of tremendous importance to find a respondent who has the necessary insight into the functioning of the organization. In other words, the validity of the data heavily depends on the selection of an appropriate respondent. First of all, senior staff (e.g. directors, division heads) with at least two years of experience in the organization probably fulfill the precondition of having a good insight into the governance of the organization and its relations to external actors. Second, one should also think about how to contact these persons. Apparently, the Norwegian team had some negative experience taking contact via the respective organization's official email-address. A different and hopefully more promising strategy would be to write to the head of the agency and ask for a contact person. In that way, one can make sure that he/she (or at least his/her personal staff) is informed about the survey, and that he/she selects the final respondent, which might not be the case if an email was sent to the official address.

#### 3.2 Expert feedback

After having finished a preliminary version of the survey, we plan to discuss the questionnaire both with other researchers (German as well as COBRA-partners), and - more importantly - with public officials from agencies and perhaps ministries. This seems important to us in or-

der to increase the validity of the survey and to avoid phrasings that might be easy to grasp for public administration researchers, but which are unclear and complicated from a practitioner's point of view.

### 3.3 External support/legitimacy of the survey

It is still an open question to us whether we will try to gain external support, e.g. by the Federal Ministry of the Interior, in order to increase the respondent rate of the survey. On the one hand, a support letter from the minister or the secretary of state might increase the willingness of the respondents to fill in the questionnaire. On the other hand, this type of support from the politico-administrative sphere of interest might put pressure on the respondents (or may make them suspicious about political implications), leading to a lower response rate.

Nevertheless, our participation in the COBRA-network will surely contribute to the legitimacy of the survey, which we will stress in our letters to the agencies. This aspect will probably make it easier for us to ask questions which do not really fit German agencies from a practitioner's point of view, but which are highly relevant from a comparative research perspective.

## 4 Survey content: Questions in the COBRA-document

In the following paragraphs, we discuss some of the questions from the COBRA-document that we would like to modify for our own survey, or which we think require further refinement and clarification.

### 4.1 Age of the organization

One aspect that seems to be difficult to grasp – especially when it comes to cross-national comparison – is the age of the organization. The COBRA-document follows the Belgian phrasing, which is roughly the same as the Irish one, but adding the aspect of “change of name”: “In what year was your organization with her present name and form established?” (Cluster 1, Q1). Two aspects are important here: (1) Is it helpful to ask for both change of name and form? (2) What is the meaning of ‘present form’?

When it comes to the first aspect, we reached the conclusion that it would be more precise to ask separately for ‘name’ and ‘legal form’. Consequently, our question is: “In which year was

the organization in her present legal form and/or with her present name established?”, the answer categories being divided into ‘both (legal form and name change at the same time)’ plus the date of the change, ‘name’ and ‘legal form’ plus one date each (if change of name and legal form did *not* happen at the same time). This differentiation of answer categories takes into account that a change of name and a change of legal form might happen at the same time, but not necessarily so.

As to the meaning of ‘present form’, it seems obvious to us that this implies ‘legal form’. However, when it comes to the formulation of hypotheses that include the age of the organization, such as “the older the organization, the more reluctant it will be towards structural reforms”, it becomes clear that major structural changes such as mergers and secessions (and maybe changes of legal form, which we expect to be less frequent) or portfolio changes might represent the most relevant aspect in relation to ‘age’. But one could also think of major structural reforms and/or ‘functional’ reforms that expand or narrow the legal authority/mandate of an agency. If structural/functional change was included in the question, then one would have to define what a relevant change would be. One indicator for a major structural/functional change could be modifications of the organization’s legal basis (law, governmental ordinance, decree) in addition to structural changes, which underlines the importance of those changes. Another criterion for a major structural/functional change is that of merger with other organizations or parts of organizations (e.g. one division) or secession. Thus, the decisive question is whether one can assume that such changes are either reflected in a change of name and/or of legal form, or whether one has to ask an additional question (such as Q 9, cluster 1, which does not refer to the aspect of legal form and/or name).

## 4.2 Competition

The COBRA-document includes several questions on the issue of ‘competition’ (Cluster 1, Q11), which were used in the Norwegian survey (Questions A 5, 5a, 5b). If one assumes that legal authority and tasks in a particular policy field are exhaustively allocated among public agencies according to the principle of unambiguous *Zuständigkeit*, and thus excluding functional overlap, competition in the sense of a market situation where customers can choose their provider (and vice versa) is not possible. One could probably think of different types of competition in a broader sense, such as competition for financial resources (‘piece of the budget cake’), for (new) public tasks or for attention by the respective ministry, the parliament or the public, e.g. when it comes to the promotion of the agency’s particular view on certain

policy issues (competition with related public organizations at the same governmental level/at different governmental levels or competition with interest-organizations). However, since neither of these alternative interpretations is specified in the document, we are not sure how we should handle this aspect and will probably leave it out.

A similar problem is connected to the question whether there are organizations with similar tasks, services or products to those of the organization in question (Cluster 1, Q11). Again, if one assumes that tasks related to the execution of laws are clearly allocated, there should be no other organization that provides similar services or products. Of course there are e.g. agencies at the *Länder*-level that deal with environmental protection, but these have a quite distinct task profile from that of the Federal Environment Authority (*Umweltbundesamt*), which has advisory and policy-making tasks rather than executive ones (Döhler 2004: 180).

#### 4.3 Theory and practice of organizational autonomy

The questionnaire includes several questions on the respective organization's competence to take certain decisions (e.g. strategic and operational personnel autonomy, financial management autonomy). The phrasing of these question goes something like this: "Can your organization itself ...?". At least to German ears, this sounds very much like "do you have the legal authority to do this?". However, having competences in a certain management domain does not necessarily imply that the organization actually uses them. On the other hand, the questions pertaining to the degree of 'policy autonomy' (Cluster 2, Q3) take into account the potential gap between formal-legal competences and practice. Here, the respondents are asked: "which of the following statements is most valid for aspect XY?". The phrasing of the question thus might make a substantial difference. It would probably confuse the respondents (and increase the complexity and the length of the survey) if one started dividing answer categories into (1) formal/legal competences and (2) organizational practice. After all, as social scientists, it is the practice of autonomy, control and steering we are interested in. Therefore, one should be very precise when it comes to the formulation of survey questions in order to improve the validity of the data.

#### 4.4 Policy Autonomy and policy instruments

While discussing the COBRA-document, we particularly struggled with Question 3 in Cluster 2, which covers the policy autonomy of the organization. This question actually has two parts, one dealing with the autonomy to select the target group(s) of the organizations, the other one

covering the selection of policy instruments. The answer categories cover a continuum, ranging from the ministry taking all decisions to the agency taking all the decisions independently of the ministry. In the German context, these questions seem of little relevance, since we expect most respondents to answer that "the involved legislation leaves no room for discretion on that matter" (the residue answer category). Perhaps it would be useful to make a further differentiation of these questions, e.g. including the degree to which the agency has the autonomy to emphasize measures that are related to particular focus activities, or that are related to the degree of use of certain instruments (e.g. the level of subsidies). Furthermore, one could ask for the level of agency influence on decision procedures (e.g. the use of cost-benefit-analysis) and decision criteria.

#### 4.5 Board

In the German language, the meaning of the English word 'board' cannot be straightforwardly linked to one single type of collegial decision-making body. First of all, one has to distinguish between internal boards and external advisory boards (*Beiräte*). The latter are rather common among federal agencies. They consist of experts from research institutions, interest groups etc. and do not have any decision-making authority, but merely an advisory role. Therefore, they are not considered relevant for the question on 'boards' in the COBRA-document (Cluster 3, Q8). When it comes to internal boards, the distinction between direct and indirect federal administration should be kept in mind. In type-1 agencies, the monocratic leadership principle prevails (see paper on German agencies). However, in a number of agencies, the so-called *Beschlusskammern* have exclusive decision-making authority in certain fields (e.g. *Bundeskartellamt*, *Bundesnetzagentur*). We would not subsume these bodies under the heading of 'board', although they represent an important aspect of agency autonomy. Therefore, these bodies will be covered in a different question or as a sub-question.

When it comes to type-2 agencies (indirect federal administration), collective decision-making bodies are quite common. Since the actual name of the management board can differ among organizations (e.g. *Mitgliederversammlung*, *Verwaltungsrat*), some explanatory notes will be necessary in the survey, the decisive criterion being whether the collegial body is involved in making binding decisions for the organization or not.

## 5 Additional issues and questions in the German survey

While translating and adapting the COBRA-Document and the Norwegian, Belgian and Irish survey to the German language and context, we considered many questions as relevant and useful for a German survey. However, we got the impression that a good deal of the survey takes NPM-style structures and management techniques for granted. Accordingly, many questions are related to the functioning of those instruments and techniques (e.g. contract management). From what we know until now, contract management, pro-active human resource management (as opposed to mere 'human resource administration') and so on are of very little importance to the German federal administration. This does of course not mean that one should not investigate that issue, since our knowledge is based on single case studies and exchange with practitioners. However, we would like to put more emphasis on two aspects, which only to some degree are covered by the existing surveys.

### 5.1 Role of agencies in the political process

First of all, we are particularly interested in the role of federal agencies in the political process. From a legal-constitutional perspective, the role of German federal agencies in the political process is predominantly confined to the implementation of government policies. However, the discussions on NPM-reforms and the rise of the regulatory state both emphasize a more autonomous role for public agencies, if with somewhat different argumentative backgrounds (Döhler 2001; Hustedt 2005). In practice, a number of agencies such as the *Umweltbundesamt* or the *Bundesnetzagentur* have considerable leeway in the interpretation of their tasks (Döhler 2004). One of the major hypotheses of the DFG-project on 'Core executives in Western Europe' at the University of Potsdam is that agencies become increasingly autonomous and develop into political actors of their own right (Jann et al. 2005). Consequently, we would like to put emphasis on questions that cover the role of agencies not only when it comes to the implementation and perhaps evaluation of public policies, but also with respect to problem formulation, agenda-setting and decision-making processes.

One question from the COBRA-document is related to the tasks of the agency (Q8, cluster 2), including policy formulation, while an additional question (Q13, cluster 2) is related to the concept of policy cycle. We believe that especially the policy-cycle question probably is too close to academic reasoning about policy-making and might provoke misunderstandings among practitioners. Consequently, we intend to ask questions that serve as additional indicators for the role of the agency in each of the distinct phases of the policy process. These are,

among other things, based on the definitions given in the appendix to the COBRA-document and on a survey conducted by the Danish Ministry of Finance. The answers to these questions can then be linked to the original ‘policy-cycle’-question for comparative purposes.

In addition, we plan to use questions pertaining to the public and political attention towards the respective organization, which include items such as whether the agency had been subject to questions to the government by members of parliament, or whether the cabinet or a government commission has had the agency on its agenda during the last five years. In other words, the political salience of the agencies under scrutiny will be investigated. These individual items will be supplemented with a general evaluative question on the political salience of the organization.

The questions from the Danish survey cover aspects such as the sharing of tasks between the ministry and the agency. It includes a number of items that point out central aspects of policy-making, such as the preparation of law drafts and government ordinances, direct support and advice to the minister, participation in government commissions or involvement in the official cross-departmental policy-coordination process (*Mitzeichnungsverfahren*). In addition, the respondents are also asked in a more general manner about the sharing of policy-related tasks between the agency and the ministry. These questions cover aspects such as the access of the organization to the minister, the amount of strategic activities as opposed to executive task, and the degree of autonomy of the agency when it comes to negotiations with external actors.

## 5.2 Inter-organizational governance à la ‘Old public management’

Secondly, in addition to the questions on contract-like relationships between ministries and agencies and their modes of functioning, we intend to include some questions that are related to the ‘old public management’ instruments and processes of inter-organizational governance, including the use of ministerial decrees and the like. As far as we know, NPM-type governance mechanisms are not very widespread at the federal level (Jann 2004; Schröter 2001). It would thus be of high interest to us how e.g. legal and functional oversight, which are the two legal categories of hierarchical governance by the ministry, function in practice. Since new types of government mechanisms typically do not replace hierarchical governance mechanisms, but co-exist and intermesh with them (Christensen and Lægreid 2001; Lodge and Wegrich 2005), a sound understanding of traditional ways of governance is essential to the analysis of agency autonomy. When it comes to the issues of financial and personnel management

decisions, we believe that the respective COBRA-questions (Cluster 2, Q1 and Q2) sufficiently cover the degree of hierarchical steering vs. agency autonomy.

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