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State Finance Beyond the Core Budget: Off-Balance-Sheet Fiscal Agencies in Germany's Fiscal Ecosystem

Abstract: The state is often perceived as a unitary fiscal actor, operating through a core budget managed by the treasury. However, recent scholarship increasingly emphasizes the role of off-balance-sheet fiscal agencies (OBFAs)—entities distinct from the treasury but tasked with similar fiscal activities, often backed by implicit or explicit state guarantees. This creates a complex and historically contingent "fiscal ecosystem," shaped by political, economic, and legal dynamics. Using Germany as a case study, this article develops a methodology to categorize and map its extensive ecosystem of OBFAs, which number in the tens of thousands. These entities are analyzed in relation to their legal status, revenue models, and debt-issuance practices, with particular attention to their alignment with Germany's constitutional debt brake and EU fiscal rules. The German case illustrates how states extend their fiscal reach by operating a more complex web of balance sheets than is often thought.

Keywords: state, public finance, fiscal policy, special funds, constitutional debt brake, EU fiscal rules

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I. Introduction

On November 15, 2023, the German Constitutional Court (*Bundesverfassungsgericht*) ruled that the government's flagship policy of financing major projects by reallocating €60 billion in unused debt to a special fund (*Sondervermögen*), the Climate and Transformation Fund (*Klima- und Transformationsfonds*, KTF), was unconstitutional. BVerfG, Nov. 15, 2023, 2 BvF 1/22, [hereinafter BVerfG, *Second Supplementary Budget Act 2021*]. This debt had initially been approved for pandemic response policies but remained unused as the COVID-19 crisis subsided. The Court ruled that the KTF did not satisfy the requirements for emergency borrowing specified in the Basic Law (*Grundgesetz*, hereinafter GG) and thus violated the so-called "debt brake," a constitutional rule that stipulates that new debt must not exceed 0.35 percent of annual economic output. The ruling not only blew a hole in Germany's public finances and jeopardized a number of important projects related to the country's industrial, digital, and sustainability transformation (Hansen and Marsh 2023); it also led to ongoing tensions within the governing coalition and resulted in a snap election at the beginning of 2025. The outgoing parliament passed an amendment to the constitutional debt rules, establishing a special fund of €500 billion for infrastructure and climate neutrality *(Sondervermögen Infrastruktur und Klimaneutralität)*—a concession that the Christian Democrats made to their future coalition partner in exchange for exempting all military spending above 1 percent of GDP from the constitutional debt brake. Why special funds are so central to German policymaking and can even make or break governing coalitions remains an unresolved puzzle in the current academic literature.

Special funds are a particular type of off-balance-sheet fiscal agency (OBFA) that have a long history in Germany (Murau 2023). OBFAs encompass all manner of entities that extend what the fiscal pillar of the German state can do, especially in conditions of constrained budgets, and include entities such as development banks, social insurance institutions, and state-owned enterprises. They are generally understood as having proliferated with the German state moving toward instituting successive debt brakes since 1949 and thus narrowing the scope of direct government spending (Milbradt 2016). As such, they are usually a contentious phenomenon. For instance, Germany's central bank, the *Bundesbank*, argues that OBFAs obscure the transparency of central government finances and make the country prone to breaking the debt brake and European deficit limit (Deutsche Bundesbank 2023). The issue is not simply the preserve of a domestic debate: The International Monetary Fund (IMF), for instance, has urged Germany to lessen its reliance on off-budget funds (IMF 2023).

In the German legal literature, this issue is primarily addressed via the concept of parallel budgets (*Nebenhaushalte*), which was extensively discussed by constitutional law scholars after German reunification in the early 1990s (Kilian 1993; Puhl 1995; Burmeister 1997; Hering 1998). By the late 2000s, the discussion on extrabudgetary entities had subsided. When interest rates were at an all-time low and the government of Chancellor Angela Merkel was pursuing its policy of a balanced budget, the idea of using public special purpose vehicles reappeared in debates on financing investment in Germany's infrastructure (see for example Wissenschaftlicher Beirat beim Bundesministerium für Wirtschaft und Energie 2020; Hermes et al. 2020). Still, it was not until the constitutional courts of Hesse and Rhineland-Palatinate had to deal with special funds set up by their state governments to address the COVID-19 pandemic that legal questions relating to parallel budgets left the fringes of budgetary constitutional law and received more attention (see Meickmann 2022; Schmidt 2022).[1]

[1] A good indicator of this is the existence of a short briefing on special funds for law students; see Waldhoff (2022). The legal cases mentioned are HessStGH, Oct. 27, 2021, P.St. 2783, P.St. 2827 and RhPfVerfGH, Apr. 1, 2022, VGH N 7/21. Other similar cases were LVerfG MV, Nov. 24, 2022, LVerfG 2/21 and VerfGH BW, July 29, 2023, 1 GR 4/22.

Nevertheless, for the most part, there remains a blind spot in the academic literature when it comes to the diverse institutional makeup of OBFAs, their relation to the treasury, their revenue patterns, as well as the multiplicity of roles they play in delivering fiscal policy. One of the main reasons for this is that fiscal policy is normally understood simply as comprising revenue collection and expenditure to influence a country's economy (Mankiw 2022). Collection normally entails taxation, borrowing, or the selling of public assets, while expenditure normally involves the disbursement of collected funds according to public policy objectives. These processes are usually understood to take place *on* the balance sheet of the treasury or core budget (Gruber 2016). From a normative perspective, undertaking activities on-balance-sheet is perceived as reinforcing fiscal citizenship by improving how citizens engage with fiscal policies, demand accountability from governments, and participate in debates over tax and spending priorities (Wagner 2007). By contrast, OBFAs are generally perceived as deviations from budgetary rigors that obscure the true extent of government liabilities and expenditures, avoid legislative scrutiny, circumvent fiscal rules, and ultimately undermine citizens' ability to hold governments accountable for their fiscal decisions (Baker 2015; Heald 2012; Bennett 2004). Their presence in the wider fiscal domain of states is gauged as a defect that has to be remedied in order to ensure the normal functioning of state finances. And yet OBFAs have been serving so many functions for so long that their institutionalization as a feature of modern states is hard to ignore. Activities that are state sponsored but do not happen on the balance sheet of the treasury have to be scrutinized and explained rather than dismissed as gimmicks.

In this article, we seek to explore this gap. We use the German case as an example of a complex and varied institutional setting that is poorly understood but ideal for exploring the question of how OBFAs relate to the modern state. First, there is no systematic knowledge about the diversity of institutional forms that OBFAs take in Germany. Some are constructed in such a way that they are close to the core budget and observe specific rules; others are farther away and may enjoy more autonomy. Some OBFAs are able to issue their own debt; others are not, but they might be able to demand specific fees. Some may even be able to fund themselves through commercial operations. Second, although the issue of the debt brake is widely debated, it is not commonly understood how the various OBFAs relate to fiscal rules at the national but also supranational level.

In order to address these issues, we conceptualize OBFAs as balance sheets that belong to a wider "fiscal ecosystem" (Guter-Sandu and Murau 2022). These are not simply "exceptions" to the rule that fiscal policy happens on-balance-sheet, but they are an integral feature of modern states. In this article, we explain what OBFAs are and how they fit into the wider "monetary architecture" of a country (in this case, Germany). We also discuss the legal status of OBFAs and argue that it has evolved historically and has resulted in a complex relationship with democratic institutions. Based on these insights, we develop a methodology at the intersection of law and political economy that allows us to conceptualize the fiscal ecosystem comprising treasuries and OBFAs. Finally, we carry out an empirical mapping exercise—based on coding schemes for legal status, revenue model, and type of debt issuance—to integrate the plethora of entities that belong to the German fiscal ecosystem into a coordinate system in order to provide a thorough overview of these institutions and outline implications for the nature of the modern state.

We present the results of our analysis in Figure 1. The figure provides a coordinate system that comprises our comprehensive system of categories taking into account the legal status and the revenue model of the core budgets and OBFAs, as well as the types of debt they issue (if any). The coordinate system comprises a selection of entities that match the criteria of either treasuries or OBFAs. For this purpose, we adopt an integrated understanding of the federal (*Bund*), state (*Länder*), and municipal

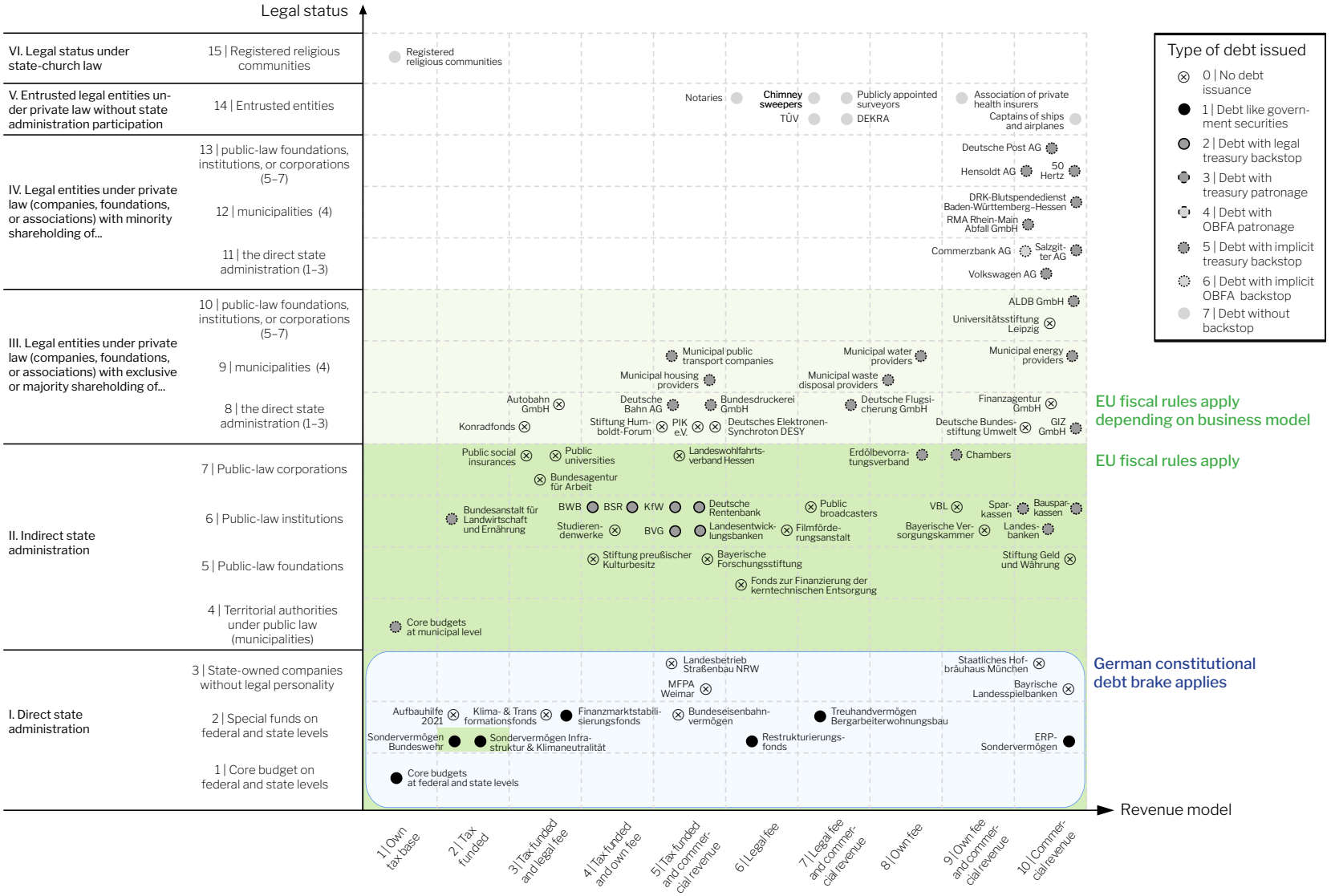
(*Kommunen*) levels. The details for the categorization of these entities are recorded in Appendix A. The depiction of entities is necessarily selective, but it is meant to be instructive enough to give a sense of the fiscal ecosystem in Germany. The totality of German OBFAs cannot be captured in our coordinate system, but we estimate that they number in the tens of thousands, possibly close to a hundred thousand.

As a result, we argue that the German state, in its historical pursuit of public policy objectives and due to various idiosyncratic reasons, has developed a complex web of specialized institutions—what we call OBFAs—that extend what the state can do fiscally but without offending the fiscal rules that constrain the core budget. One of the most important reasons for this outcome is a succession of deliberate, active choices coupled with accidental, reactive responses to various historical socioeconomic pressures that demanded governmental responses in specific fiscal contexts. This led to a strong form of path dependency that persists into the current period and determines to a great extent how the German state still responds to challenges, that is, by layering new OBFAs onto an already sprawling fiscal ecosystem teeming with similar entities. While other states also exhibit diverse fiscal ecosystems, the German state is particularly exemplary in its quantity and diversity of OBFAs, and as such serves as a rich case study for understanding the reasons why states set up OBFAs, their operational mechanics, as well as their consequences for our conceptualization of the modern state.

Our contribution is threefold. At the most fundamental level, we add to the discourse on parallel budgets (Kilian 1993; Puhl 1995; Burmeister 1997; Hering 1998; Hermes et al. 2020; Meickmann 2022; Schmidt 2022) by creating a more comprehensive picture of the German fiscal ecosystem based on our coordinate system. Second, we contribute to the incipient literature that investigates the role of OBFAs, particularly as entities that can plug the gap left by austerity measures or debt brake regulations, for instance government-sponsored enterprises (GSEs) (Quinn 2019) and national development banks (NDBs) (Marois 2021; Mertens et al. 2021). Finally, at a broader level, we contribute to reconceptualizing the fiscal pillar of modern states (Soll 2014). A widespread assumption is that states undertake fiscal activities only with apex balance sheets (that is, treasuries) (Blanchard 2023; Gruber 2016). National statisticians construct different measures of government spending and state footprints in the economy based on this (Milbradt 2016; Blinder 2022). Our contribution is to show that states inevitably create subnational balance sheets that do what national ones cannot but inevitably must do.

The remainder of this article is organized as follows. Part II develops and explains the methodology used for categorizing the German fiscal ecosystem. Part III fleshes out our empirical mapping exercise of Germany's fiscal ecosystem. Part IV discusses our findings. Part V concludes.

Figure 1. Analytical Map of Germany's Fiscal Ecosystem Comprising Treasuries and Off-Balance-Sheet Fiscal Agencies



II. Methodology

This section introduces the methodology used to develop our mapping of Germany's fiscal ecosystem in Figure 1. This methodology is inherently interdisciplinary as it combines insights from both law and political economy. We first give a brief introduction to the concept of OBFAs, which is a category used within the Monetary Architecture framework (Part II-A). Subsequently, we explain our approach to conceptualizing the legal status of treasuries and OBFAs in Germany (Part II-B), followed by their financial status (Part II-C). Finally, we explain how the German constitutional debt brake as well as the EU's fiscal rules fit into the coordinate system (Part II-D).

A. OBFAs in the Monetary Architecture Framework

Off-balance-sheet fiscal agency (OBFA) is an analytical term derived from the Monetary Architecture framework (Murau 2020). Monetary architecture refers to an institutionalist political-economic model that views historically specific monetary and financial systems as webs of balance sheets that interlock through different credit instruments. The state, in this framework, is not perceived as a unitary actor that operates only through its core budget. Instead, the state appears in a monetary architecture as a dispersed entity operating through a multiplicity of balance sheets that can, but do not have to, be coordinated (Murau et al. 2024). The Monetary Architecture framework thus assumes that there is a "fiscal ecosystem" made up of treasuries that run the core budget as well as a variety of OBFAs. These are sub-balance sheets taking over tasks and functions that could in principle also be run on-balance-sheet but—for historical, political, legal, economic, or financial reasons—are kept off the treasury balance sheet. Some but not all OBFAs are in the position to issue their own debt. In those cases, the treasury would typically offer backstops or guarantees for this debt. These backstops or guarantees can be explicit or merely implicit, which implies that they cannot be measured exactly and are a matter of expectation rather than exact science or law (Guter-Sandu and Murau 2022).

While the orthodox way of considering the state as a financial actor to date assumes that the core budget is under parliamentary control and treats financing through OBFAs as a deviation from it, the reverse perspective may be more accurate historically. Before the idea of "nation-states" emerged in Europe, public finances were dispersed and opaque. In a monarchical, maybe even absolutist setting, there was no separation between the monarch's purse and a public treasury (Soll 2014). OBFA financing preceded financing via a legally and institutionally independent core budget (Smekal 1977). And when such a core budget was established—in Prussia, for instance, via the *Hardenberg'sches Staatsschulden Edikt* of 1820—there was no parliamentary control over it. In that sense, operating the state's finances via a democratically controlled core budget seems a rather novel idea, given the historical context. It is an ideal type that had to be created via institutional change, and whose evolution was not easy to maintain (Murau 2023).

From this perspective, it is a common tendency in fiscal ecosystems to converge toward OBFA financing. On the one hand, setting up OBFAs may in some instances help mitigate the structural conflict lines between at least four different types of actors: first, the legislative branch, formed "arbitrarily" via repeated elections; second, the government, democratically legitimized by Parliament; third, the public administration, which is largely made up of career civil servants and hence not subject to the same political dynamics as democratically elected bodies; and fourth, the juridical branch, whose members are subject to a very different career progression and typically look at public finances from a different angle. On the other hand, the attempts to regulate public finances ex ante—for instance,

via debt brakes, fiscal rules, or other numerical indicators—are by their very nature restrictions designed by one generation of fiscal policymakers seeking to limit the leeway of future generations. These generate an incentive to break free from those restrictions and create financial structures to circumvent them. This is a form of "regulatory arbitrage" in the public sector that has been observed and described in relation to the private financial sector. In this sense, the fiscal ecosystem is subject to permanent contestation, renegotiation, and attempts to reform and innovate—in short, it is subject to ongoing institutional change. New OBFAs are permanently created, with some prevailing and others disappearing.

However, a clear methodology to determine what an OBFA is has been lacking. Hence, as yet there has been no rigorous attempt at providing a systematic overview of the contemporary German fiscal ecosystem. To fill this gap, we have devised a coordinate system to capture the complexity of the ecosystem. In doing so, we faced several conceptual challenges and had to make three far-reaching methodological decisions.

First, it is difficult to determine, beyond the core budget, where the state begins and where it ends. Therefore, we assume that OBFAs exist along a spectrum. Some are closer and others are more distant from the core budget, which we treat as a benchmark and reference point. We opt here for a rather broad definition and avoid ascribing too sharp of a cutoff point, applying instead an integrated legal, political-economic, and functionalist understanding.

Second, there are different degrees of "institutionalization" for an OBFA. At the highest degree of institutionalization, OBFAs may be legal entities in their own right with a clearly published balance sheet and tangible buildings as well as staff. At a lower degree, one might find mere "letterbox companies," that is, OBFAs that have their own balance sheet and are legally independent but do not have their own staff or buildings. At the lowest degree of institutionalization, OBFAs inhabit a gray area, not fully located on the treasury balance sheet but also not fully off of it. While they may not be entirely independent from the core budget, their positioning shifts authority toward the executive branch of government and away from the legislative branch. Here again we have chosen a broad definition and in principle consider all levels of institutionalization.

Third, when trying to map OBFAs, an empirical issue arises concerning the "level of aggregation" to keep the complexity manageable. We have chosen the lowest level of aggregation for OBFAs that are individual, clearly discernible balance sheets and exist in low numbers. For instance, there are two main public development banks at the federal level in Germany. In this case, we have integrated all the actual entities into the coordinate system. A higher level of aggregation is needed if the number of entities is larger but still countable. For instance, we have identified twenty-seven special funds on the federal level and 154 on the state level in Germany. Even though this number constantly changes, it is clearly discernible; but populating the coordinate system with all these special funds would create a data cloud that barely conveys any meaning. Hence, we have chosen to only include representative examples while making sure that they cover the entire spectrum. We have adopted the highest level of aggregation when dealing with such a large group of entities that it gets too complex to even come up with a clearly discernible list of existing balance sheets. For instance, it is difficult to get a complete list of all municipal service providers in Germany that are part of the spectrum. There are around eleven thousand municipalities in Germany, which operate a range of public-private sub-balance sheets. In this case, rather than attempting to collect data on the necessarily tens of thousands of observations, we simply refer to some of the most important categories of service providers in the figure without attempting to be comprehensive, to keep the complexity manageable.

With these three constraints in place, we have endeavored to construct as comprehensive a picture of the German fiscal ecosystem as possible. In doing so, we have also attempted to reconceptualize public finance, as viewed through the Monetary Architecture framework, and thus advance our understanding of the modern state. Below we provide further insight into the legal and financial bases of OBFAs.

B. Conceptualizing the Legal Status of German OBFAs

The primary characteristic that determines the position of an entity in the fiscal ecosystem is its legal status. To define the spectrum within which a balance sheet can be positioned, we distinguish between six different broad categories that bridge public law (*Öffentliches Recht*), private law (*Zivilrecht*), as well as state-church law (*Staatskirchenrecht*). These constitute layers that define the positioning of an entity along the y-axis in the coordinate system. The higher the ordinal number assigned, the greater the distance between the balance sheet and the core budget of the elected parliament, in other words, the less public control there is over the entity's spending. While it is true that categorization by legal form can be blind to the specificities of the German political and administrative system in individual cases, we nevertheless believe that the legal form of a public organization is a good indicator for measuring the distance from the elected parliament, which in theory should have full control over government spending. Yet the full picture only emerges when both axes are considered, as the aggregate composition of an entity's revenues complements the level of public control.

1. Concepts Underpinning the Legal Status

Germany's political system is best understood as a layered construct shaped by the 1949 Basic Law (*Grundgesetz*), which introduced parliamentary democracy within an already existing state system. As Meinel (2021) aptly observes, this creates a "dual constitution" in which the old, federally organized administrative system coexists—and sometimes clashes—with newer principles of parliamentary democracy. The evolution of OBFAs illustrates this tension, particularly in relation to the constitutional budget cycle that places parliamentary approval at the center of the political process (Heun 2018b, Rn. 6).

Key legal concepts to be introduced here are therefore Parliament's constitutional right to approve the budget and its dimensions for Germany's parliamentary democracy, and the older German administrative law concept of the separation of the administrative state into a bundle of legal entities.

As in most Western constitutional states, the German Basic Law provides for a budget cycle with four stages—executive budget initiative, parliamentary approval, executive implementation, and subsequent control—as the standard procedure for budget management (Heun 2018b, Rn. 5). From a democratic perspective, the power of the parliament to approve the budget is the essential element for legitimizing and controlling public spending (ibid. at Rn. 6). Together with tax legislation, it allows for the centralized management of public revenues and expenditures under democratic principles (Heun and Thiele 2024, 165–66).

Constitutional law therefore requires that all government expenditures appear in the budget (*Grundsatz der Einheit und Vollständigkeit*) and makes the allocation of public expenditure a periodic political exercise, establishing the yearly rhythm of fiscal policymaking. These mechanisms guarantee continuous parliamentary oversight of government activity. Each year, elected representatives have a

say in how public funds are allocated. Following the Böckenförde model of democratic legitimacy[2]—which typically underpins the constitutional principle of democracy in Germany (Meinel 2021, 22)—this process ensures that public spending enjoys a high degree of democratic legitimacy because Parliament, as the institution closest to the sovereign people, ultimately decides. See BVerfG, *Second Supplementary Budget Act 2021*, para. 158.

However, not all public expenditures should be subject to annual parliamentary approval. There are certain state functions that require independence from the parliamentary majority, for example the ruling party or coalition. Public broadcasters are a case in point in that regard; they must be financed in a way that shields them from direct parliamentary influence, in order to preserve their editorial autonomy in relation to the government and its parliamentary majority. See BVerfG, July 20, 2021, *Staatsvertrag Rundfunkfinanzierung* [BVerfGE] 158, 389 [422–23]. In such cases, legal independence as a separate legal entity (*Rechtsträger*) is a vital safeguard.

This leads to the introduction of a second key legal concept: The German state can be described as a bundle of legal entities (*Rechtsträger*) (Wissmann 2023, 42). Historically, the concept of the *Rechtsträger* has ensured institutional continuity by preserving and integrating established public bodies within successive constitutional frameworks. Today, the *Bund* and the sixteen *Länder* are the principal territorial legal entities (*Gebietskörperschaften*), democratically governing their respective populations. Municipalities also fall into this category—but strictly speaking they are not the third tier of the federal state and have a somewhat unique position within the state (see Article 28 GG). In addition, a large number of other legal entities, both public and private, belong to the German state. Some of these public authorities are older than the current German state and were integrated into the administrative state at some point. Others are relatively new, having been established in recent decades.

The strict separation of legal entities is central to German budgetary law. Budgets are assigned to specific *Rechtsträger*, regardless of financial interdependencies and risks transferred to other entities through financial engineering. This approach dates back to the Prussian budgetary constitution (Puhl 1995, 122–24). The predecessors of the Basic Law and the respective state constitutions always made it clear that all revenues and expenditures had to be included in a budget. However, this only ever referred to the revenues and expenditures of the relevant territorial authority, that is, the legal entity—a doctrine confirmed by the Federal Constitutional Court shortly after the introduction of the Basic Law in 1949. BVerfG, July 20, 1954, *Investitionshilfe* [BVerfGE] 4, 7 [26].

Spending through the core budgets of the federal and state governments therefore has the highest democratic legitimacy, as spending decisions are made by members of Parliament, who are closest to the voters. This implies that the spending decisions of other legal entities that are part of the German state generally have a weaker form of democratic legitimacy, as they have their own budgets that are not subject to direct parliamentary control like the core budgets are. However, a binary distinction between core and other budgets would not provide the full picture. Building on further concepts of German public administrative law, we therefore introduce further layers to the y-axis (see Table 1).

[2] Böckenförde's account postulates that all state action must be traced back to the sovereign's will, that is, the people of Germany or the people of the respective federal state. In a parliamentary democracy, the people formally decide only on the composition of the parliament, not on the formation of the government. Therefore, it must be possible to trace back all state action in some way to parliamentary decisions (see Böckenförde 2004, Rn. 9–22).

Table 1. Conceptualizing the Fiscal Ecosystem According to Legal Status

I. Direct state administration	**I. Unmittelbare Staatsverwaltung**
1. Core budgets on federal and state levels	1. Kernhaushalte des Bundes und der Länder
2. Special funds on federal and state levels	2. Sondervermögen des Bundes und der Länder
3. State-owned companies without legal personality	3. Bundes- und Landesbetriebe
II. Indirect state administration	**II. Mittelbare Staatsverwaltung**
4. Territorial authorities under public law (municipalities)	4. Gebietskörperschaften des öffentlichen Rechts (Gemeinden)
5. Public-law foundations	5. Stiftungen des öffentlichen Rechts
6. Public-law institutions	6. Anstalten des öffentlichen Rechts
7. Public-law corporations	7. Körperschaften des öffentlichen Rechts
III. Legal entities under private law (companies, foundations, or associations) with exclusive or majority shareholdings of...	**III. Juristische Personen des Privatrechts (Unternehmen, Stiftungen oder Vereine) mit alleinigen oder mehrheitlichen Anteilen...**
8. ...the direct state administration (1–3)	8. ...der unmittelbaren Staatsverwaltung (1–3)
9. ...territorial authorities under public law (4)	9. ...der Gebietskörperschaften des öffentlichen Rechts (4)
10. ...public-law foundations, institutions, or corporations (5–7)	10. ...der Stiftungen, Anstalten oder Körperschaften des öffentlichen Rechts (5–7)
IV. Legal entities under private law (companies, foundations, or associations) with minority shareholdings of...	**IV. Juristische Personen des Privatrechts (Unternehmen, Stiftungen, Vereine) mit Minderheitsbeteiligungen...**
11. ...the direct state administration (1–3)	11. ...der unmittelbaren Staatsverwaltung (1–3)
12. ...territorial authorities under public law (4)	12. ...der Gebietskörperschaften des öffentlichen Rechts (4)
13. ...public-law foundations, institutions, or corporations (5–7)	13. ...der Stiftungen, Anstalten oder Körperschaften des öffentlichen Rechts (5–7)
V. Entrusted legal entities under private law without participation of the state administration	**V. Beliehene juristische Personen des Privatrechts ohne Beteiligungen der Staatsverwaltung**
14. Entrusted entities (companies, foundations, associations)	14. Beliehene Unternehmen, Stiftungen oder Vereine
VI. Legal entities under state-church law	**VI. Juristische Personen aus dem Staatskirchenrecht**
15. Registered religious communities	15. Öffentlich-rechtliche Religionsgesellschaften

2. Legal Layering of German State Structures

In the realm of public law, Category (I) refers to the direct state administration (*umittelbare Staatsverwaltung*). This comprises the core budgets (*Kernhaushalte*) on the federal and state levels ($y = 1$), special funds (*Sondervermögen*, $y = 2$), as well as federal- and state-level enterprises without legal personality (*Bundes- oder Landesbetriebe*, $y = 3$). First, core budgets are included in this category because the final expenditure is usually not made by Parliament but by the entities that are part of the direct state administration. Second, special funds and federal and state enterprises are part of this category as the former are managed by the ministerial bureaucracy and the latter are subject to ministerial control. As federal and state enterprises are somewhat more independent in their day-to-day operations, we place them in the third position and special funds in the second position on our y-axis.

Category (II) comprises the indirect state administration (*mittelbare Staatsverwaltung*). This entails municipal territorial authorities (*kommunale Gebietskörperschaften*), for convenience referred to as municipalities, as well as foundations (*Stiftungen*), institutions (*Anstalten*), and corporations (*Körperschaften*) under public law (*des öffentlichen Rechts*). What distinguishes these public bodies from those in Category (I) is their own legal personality, that is, these bodies do not belong to the legal entities of the *Bund* or the *Länder*, but to the German administrative state in general. In other words, they are separate legal entities and are integrated into the German administrative state through the concept of indirect state administration (*mittelbare Staatsverwaltung*). Such bodies exist at both the state and federal levels.

The group of public bodies that fall under Category (II) is the most heterogeneous in terms of its relationship with the political sphere. For example, some public authorities belonging to the indirect state administration have rights that effectively grant them independence or explicit self-government status. Municipalities, universities, and public broadcasters are cases in point as they are required by constitutional law to be self-governing.[3] These entities therefore typically have special councils that decide by majority vote on issues that affect only their interest group. See BVerfG, Dec. 5, 2002, *Lippeverband* [BVerfGE] 107, 59 [100–01]. By contrast, other public authorities of the direct and indirect state administration are subject to ministerial control, which means that the government, in the form of the ministry, has the explicit right to direct the actions of the administrative body by means of internal regulations or direct orders. It is important to note that a hierarchical state administration makes it possible to trace individual decisions of the public administration back to the will of the people in accordance with Böckenförde's theory of chains of legitimacy (Dreier 2015a, Rn. 121). However, the ministry's right to give political instructions is not always explicitly mentioned in the law governing a certain public entity, and the political use of it can differ from entity to entity.

We have therefore decided to structure Category (II) as follows: Municipalities are shown separately at $y = 4$. In a strict legal sense, they are corporations under public law, but their legal status and self-government rights over their territory are unique in the German state. Public-law foundations are placed at $y = 5$ as they typically regulate certain assets. They are free in their day-to-day management, but the parliamentary legislator usually delegates certain tasks to them. Institutions under public law (*Anstalten des öffentlichen Rechts*) are positioned at $y = 6$. By definition, these legal entities are intended to serve a

[3] Regarding municipalities, see BVerfG, Oct. 7, 2014, *Optionskommunen* [BVerfGE] 137, 108 [156]. Regarding universities, see BVerfG, May 29, 1973, *Hochschulurteil* [BVerfGE] 35, 79. Regarding public broadcasters, see BverfG, Mar. 25, 2014, *ZDF-Staatsvertrag* [BVerfGE] 136, 9 [37].

specific public purpose on a permanent basis, based on a stock of material and human resources (Wissmann 2023, 128). A heterogeneous group of public institutions fall under this category. At $y = 7$, we locate corporations under public law (*Körperschaften des öffentlichen Rechts*). These have the greatest distance from the direct state administration as they consist of members with legal capacity, united by an act of public authority. This legal form is common for traditionally self-governing bodies such as public universities or local health insurance funds (*Ortskrankenkassen*).

A complicated case is the central bank. While the *Bundesbank* could be seen as belonging to Category (II), we keep it out of the fiscal ecosystem. Its legal status as a federal legal person *sui generis* (*Bundesunmittelbare Person des öffentlichen Rechts*) cannot be equated with that of a regular public-law institution and remains purposefully vague. Moreover, since the European Central Bank was established in 1998, the *Bundesbank* has been fully integrated into the Eurosystem. Legally, the *Bundesbank* remains a national institution; functionally, however, it can be seen as "borrowed" by the EU to implement its monetary policy, which makes its legal status even more puzzling (Dermine and Markakis 2025). Since our analysis focuses on institutions rather than policy instruments, we adhere to the traditional distinction between the monetary and fiscal spheres—in line with the European System of Accounts (ESA) and the allocation of competences between the EU and its member states (see Article 3 and Article 5 of the Treaty on the Functioning of the European Union (TFEU)). Still, as Rademacher (2022) correctly points out, the lines between these policy areas are blurred on the instrumental level.

In the realm of private law, Category (III) involves private-law companies (*Unternehmen*), foundations (*Stiftungen*), or associations (*eingetragene Vereine*) that are fully or majority owned by the state. The use of private-law entities as the legal form for administrative bodies is often driven by efficiency considerations or longer-term privatization projects. Both imply less political control in some way, so we attribute a higher ordinal number on the y-axis to these legal entities than to public legal entities. To determine proximity or distance from the state's core budgets, we distinguish between those owned by the direct state administration; those owned by the indirect state administration, comprising either public-law foundations, institutions, or corporations; and those owned by municipalities. Category (IV) is constructed in analogy to Category (III) but with the state as minority shareholder, indicating less political control. Category (V) looks at those private-law companies, foundations, or associations that are entrusted by the state (*Beliehene*) but do not have any state ownership—this is no longer a legal but merely a functional categorization.

Finally, Category (VI) involves legal entities of state-church law (*Staatskirchenrecht*). From a legal point of view, these entities cannot be assigned to the state, as there is in principle a strict separation between the state and the churches (Puhl 1995, 47). Nevertheless, from a functional perspective, it is worth including registered religious communities such as (broadly speaking) the Catholic and Protestant churches on the y-axis. Article 137(5) of the former Weimar Constitution (WRV), which was incorporated into the Basic Law by Article 140 GG, allows registered religious communities to organize themselves as public corporations, with the privilege of levying taxes. Furthermore, since the Principal Decree of the Imperial Deputation (*Reichsdeputationshauptschluss*) of 1803, which separated the state from the churches, the churches have enjoyed certain other privileges from the state. Under Article 140 GG, which incorporates Article 138 WRV, the federal states are obliged to provide financial support to the churches (*Staatsleistungen*). Historically, this was a form of compensation to the churches for state expropriations allowed by the Principal Decree (see Korioth 2023, 75). At the same time, churches and other religious communities play an important role in public welfare. There are even provisions in the German Social Security Code that explicitly enshrine a principle of subsidiarity for state welfare in cases where other institutions, such as churches, can provide certain welfare services.

C. Conceptualizing the Financial Status of German OBFAs

The second characteristic that determines the position of an entity in the fiscal ecosystem is its financial status. This is important to ascertain because the more capacity an entity has to raise its own funds, the more independent it becomes from the core budget. There are various ways to accomplish this, and here we distinguish between an entity's revenue model and its debt issuance.

1. Revenue Model

To determine a balance sheet's revenue model, we have developed a coding scheme—depicted in Table 2—that allows us to position the entity along the x-axis of the coordinate system. The higher the ordinal number assigned, the greater the distance of the balance sheet from the budget of the legislator.

Table 2. Coding Scheme to Define Proximity to Core Budget Based on Revenue Model

	(i) Right to levy taxes	(ii) Funded via taxes	(iii) Funded by fees set by law	(iv) Funded by self-defined fees	(v) Funded by commercial revenue
1 | Own tax base	1	x	x	x	x
2 | Tax funded	0	1	0	0	0
3 | Tax funded + legal fee	0	1	1	0	x
4 | Tax funded + own fee	0	1	0	1	x
5 | Tax funded + commercial revenue	0	1	0	0	1
6 | Legal fee	0	0	1	0	0
7 | Legal fee + commercial revenue	0	0	1	0	1
8 | Own fee	0	0	0	1	0
9 | Own fee + commercial revenue	0	0	0	1	1
10 | Commercial revenue	0	0	0	0	1

Legend: 0 = no; 1 = yes; x = either yes or no.

An entity is beyond the control of the budget legislator if it is financed exclusively by its own revenue. This removes the capability of elected representatives to elicit behavioral changes by manipulating the allocated budget (Heun 1989, 384–85). Section 26 of the Federal Budget Code, which is replicated at the state level (Section 26 BHO/LHO), partially reflects this.[4] According to this provision, federal and state enterprises without legal personality (*Bundes- und Landesbetriebe*) must at least provide a summary

[4] Bundeshaushaltsordnung (BHO), v. 19.8.1969, BGBl. I, S. 1284. An English translation of the Federal Budget Code can be found at https://www.bundesfinanzministerium.de/Content/EN/Downloads/Resources/Laws/1969-08-19-federal-budget-code.pdf?__blob=publicationFile&v=9.

of their operating budget, which is then attached to the annual budget law. The same applies to special funds (*Sondervermögen*), which have to summarize their revenues, expenditures, and commitment appropriations. In both cases, only the appropriations to be paid and the transfers to be received are included in the budget. On the other hand, the aggregated revenue and expenditure of other public bodies with their own legal personality (*Verwaltungsträger*), positioned on our y-axis from 4 to 8 (with the exception of municipalities at $y = 4$), appear in the Budget Act only if they are at least partly financed by the federal or state budget (see Section 26(3) BHO/LHO). Conversely, the revenues and expenditures of financially autonomous public entities can successfully escape the budget, jeopardizing the budgetary sovereignty of Parliament and the completeness and transparency of the budget (Heun 2018b, Rn. 20).

Our x-axis is not entirely determined by legal considerations in the strict sense. The German fiscal constitution provides a complex tax system for the federal state but hardly any rules for other revenue systems such as social security contributions—it is therefore often referred to as a "Tax Constitution" (*Steuerverfassung*) (see BVerfG, July 18, 2005, *Risikostrukturausgleich* [BVerfGE] 113, 167 [200]; Korioth 2022, Rn. 72, 94). The coding scheme thus indicates the degree of financial autonomy an OBFA can have. The starting point at $x = 1$ is an entity with its own tax base, which mainly applies to the core budgets of the federal government and the states (which we may also refer to as "treasuries") since it corresponds to the legislature's power to levy taxes. Still, municipalities also have their own tax base, which gives them a unique position in our coordinate system. The position at $x = 2$ refers to entities that receive tax funding from the core budget but have no right to levy taxes, such that the parliament has full control over their revenues (see Kluth 2022, Rn. 86). At $x = 3$, we position entities that are funded by taxes and special levies set by parliamentary legislation (see ibid. at Rn. 86). For entities at $x = 4$, the degree of financial autonomy is increased by the entity's discretion to set its own special fees, which are added to the tax-funded revenue base (see ibid. at Rn. 86). The same applies to the position at $x = 5$, where commercial revenue is a source of autonomous funding in addition to the financial resources allocated to the entity through the core budget.

From $x \geq 6$, the increasing degree of financial autonomy from the budget is indicated by the absence of tax funding and possibly the ability to generate autonomous revenue via commercial operations. Nevertheless, when the parliamentary legislator determines the legal fees, it still exercises major control over the income base of an entity, which is therefore positioned at $x = 6$ or $x = 7$. However, these resources do not appear in the Budget Act. Finally, entities that can determine their income base through their own fees at $x = 8$ and $x = 9$ are essentially independent of Parliament. The word "essentially" is deliberately chosen because—at least in theory—the legislature can still prohibit the levying of special fees, which leads to the conclusion that the entities with the highest degree of financial autonomy are those that exclusively finance themselves via commercial revenue ($x = 10$).

2. Debt Issuance

The third characteristic determining the positioning of a balance sheet in the fiscal ecosystem refers to the type of debt it issues. The coding scheme depicted in Table 3 allows carving out proximity and distance of OBFA debt to the debt issued by treasury balance sheets, taking into account the debt instrument itself as well as the backstop it receives from a hierarchically higher balance sheet. We attach to the debt-issuance characteristics the variable "z."

Some entities are in a position to issue their own debt ($1 \leq z \leq 7$), whereas others are not ($z = 0$). Whether or not an entity issues its own debt does not necessarily have an implication for its proximity to or distance from the core budget. For instance, special funds (*Sondervermögen*) are the closest OBFA type to the core budget; some special funds have the right to issue their own debt, others do not. However, among those OBFAs that do issue their own debt, the type of this OBFA debt and the backstop it receives (if any) are good indicators for proximity to or distance from the core budget.

Table 3. Coding Scheme for Debt-Issuance Characteristics

	(i) Right to issue debt	(ii) Debt same as government securities	Issues its own debt with...				
			(iii)	(iv)	(v)	(vi)	(vii)
0 | No debt issuance	0	x	x	x	x	x	x
1 | Debt like government securities	1	1	x	x	x	x	x
2 | Debt with legal backstop	1	0	1	x	x	x	x
3 | Debt with treasury patronage	1	0	0	1	x	x	x
4 | Debt with OBFA patronage	1	0	0	0	1	x	x
5 | Debt with implicit treasury backstop	1	0	0	0	0	1	x
6 | Debt with implicit OBFA backstop	1	0	0	0	0	0	1
7 | Debt without backstop	1	0	0	0	0	0	0

(iii) explicit backstop provided by law (*Gewährträgerhaftung*)

(iv) explicit backstop provided by a treasury through letter of comfort (*Patronatserklärung*)

(v) explicit backstop provided by an OBFA through letter of comfort (*Patronatserklärung*)

(vi) implicit backstop provided by a treasury

(vii) implicit backstop provided by an OBFA

Legend: 0 = no; 1 = yes; x = either yes or no.

The first question to ask is whether the debt issued is identical to regular government securities (*Bundeswertpapiere*) ($z = 1$). This applies not only to the core budget but also to special funds whose bonds—once floated on the financial market—are indistinguishable from the bonds issued to create revenue for the core budget. If an entity issues its own type of debt instrument, the best backstop is a debt-assumption guarantee by public law (*Gewährträgerhaftung*) ($z = 2$). A private-law alternative is a letter of comfort (*Patronatserklärung*), which we classify as an explicit backstop that can be provided either by a treasury ($z = 3$) or another OBFA ($z = 4$).

Finally, it is possible to provide implicit backstops by either the treasury ($z = 5$) or another OBFA ($z = 6$). By definition, there can be no legal certainty as to whether or not an implicit backstop exists for a balance sheet. Hence, these are not primarily a legal category (Polackova 1998; Bora et al. 2016). In our definition, an implicit backstop is on the one hand characterized by the fact that all parties involved assume that government agencies will provide financial support in the event of financial problems. On the other hand, an implicit backstop implies that there is no explicit legal obligation to provide financial support, but the granting of financial assistance is also not expressly excluded. There are some indicators that an implicit backstop exists. For instance, if a legal entity in the fiscal ecosystem is by law declared to be unable to go bankrupt (*Insolvenzunfähigkeit*), this may be taken as an indicator that another treasury or OBFA will have to provide a financial backstop in case of payment difficulties. Moreover, a financial company may assume that it is systemically relevant and "too big to fail," and therefore would receive a public bailout if it were unable to meet its debt obligations. Other indicators could be that an entity is fully owned by a government agency or has previously received financial support that may be taken as a precedent.

D. Conceptualizing the German Debt Brake and the EU Fiscal Rules

Finally, our methodology considers the relationship of entities that are part of the German fiscal ecosystem to two sets of constraints imposed by governing institutions: the German constitutional debt brake and the European fiscal rules. While both apply to the German fiscal ecosystem, they are constructed differently and try to solve different problems. Therefore, both sets of rules need to be analyzed independently. While the German debt brake follows a more static approach and applies only to legal entities of the *Bund* and the *Länder*, the European fiscal rules adopt a more fluid approach based on statistical criteria, which necessitates case-by-case decisions for each entity to determine whether or not the entity falls under the European fiscal rules.[5] While the German debt brake sets a binary rule for debt issuance, the European fiscal rules follow a process-oriented approach in which the entire debt of the government sector is taken into account in an overall economic assessment of fiscal discipline.

1. The German Constitutional Debt Brake

Germany's constitutional debt brake is enshrined in Article 109 GG and Article 115 GG. According to these provisions, the budgets of the *Bund* and the *Länder* shall, in principle, be balanced without revenue from credits. According to Article 109(3) GG, this requirement is met if the income from loans does not exceed 0.35 percent of the nominal gross domestic product. Moreover, Article 109(3) GG further specifies the debt brake with a so-called "cyclical component" (*Konjunkturkomponente*) and an emergency clause that foresees "exceptions for natural disasters or unusual emergency situations beyond governmental control and substantially harmful to the state's financial capacity."

Following the legalistic approach of German budgetary law by distinguishing between different legal entities, the drafters of the current German debt brake made it abundantly clear in 2009 that this rule only applies to the budgets of the legal entities of the *Bund* and the *Länder* (Kube 2023a, Rn. 119; Heun 2018a, Rn. 36). Otherwise, they feared "unfeasible information requirements for the preparation of the federal and state budgets, both in terms of content and timing." BT-Drucks. 16/12410, 10–11

[5] As a result, it is hardly possible to map the area of European fiscal rules, which is defined by the European System of Accounts, as the general government sector.

(parliamentary document). However, as recently confirmed by the Federal Constitutional Court's ruling on the *Klima- und Transformationsfonds*, the term "budget" refers not only to the core budget but also to the budgets of special funds as well as federal and state enterprises because these are legally assigned to the legal entities of the *Bund* and the *Länder*. BVerfG, *Second Supplementary Budget Act 2021*, para. 175. Since the recent legislative history of Articles 109, 115 GG—and that of Article 143d GG, which was introduced at the same time—clearly shows that the authors did not intend to exempt special funds from the constitutional requirement of a balanced budget,[6] this reasoning did not come as a surprise to the legal community.[7]

A year earlier Article 87a GG had been amended to create a special fund for the German military in response to Russia's full-scale invasion of Ukraine. The main purpose of constitutionalizing the special fund was to exempt it from the constitutional debt brake without any further legal risk, as *lex posterior derogat legi generali*.[8] In 2025, the constitutional legislator used the same technique to establish a €500 billion special fund to renew Germany's infrastructure (Article 143h GG). Furthermore, the legislator exempted "defence expenditures and the expenditures of the Federation on civil defence and civil protection as well as on the intelligence services, on protection of information technology systems and on assistance for states under attack in breach of international law" from the constitutional debt brake if they "exceed 1 per cent in relation to the nominal gross domestic product" (Article 109(3)(fifth sentence) GG)—a radical and almost ridiculous approach to preserving the status quo.

Three German *Länder*—Baden-Württemberg, Bremen, and Rhineland-Palatinate—have decided to extend the scope of their debt brakes beyond that of the *Bund*. Their debt brakes also refer to borrowing by state-controlled legal entities beyond the direct state administration if the interest or amortization payments are made from the states' core budgets.[9] Although an exception, these cases do not call into question the legalistic approach of distinguishing between different legal entities because the legislator implemented this extension through a legal fiction.[10] Hence, borrowing by state-controlled legal entities in Baden-Württemberg, Bremen, and Rhineland-Palatinate is treated in exactly the same way as borrowing by legal entities of the state.

On the y-axis in Figure 1, the constitutional debt brake applies to balance sheets that fall into Category (I) at $1 \leq y \leq 3$, while entities that belong to any of the other categories are not covered by the rule. The only exception are special funds at $y = 2$ that have been explicitly exempted from the debt brake.

Two specifications in Articles 109 and 115 GG— the cyclical component and the emergency clause—imply some scope for government borrowing for entities that are subject to the debt brake. Yet, following the Federal Constitutional Court ruling on the *Klima- und Transformationsfonds*, this room for maneuver has been drastically reduced, especially in the years after an exogenous shock (Südekum 2023;

[6] The BVerfG refers to that legislative history and to Article 143d(1) GG in paras. 178–79 of that judgment.
[7] It was not even contested by the federal government in that case, see paras. 58–83.
[8] See Article 87a (1a)(second sentence) GG: "Paragraph (3) of Article 109 and paragraph (2) of Article 115 shall not apply to the credit authorisation."
[9] See Article 84(1) Verfassung des Landes Baden-Württemberg v. 11.11.1953, GBl. S. 173; Article 131a Landesverfassung der Freien Hansestadt Bremen in der Fassung der Bekanntmachung v. 12.8.2019, Brem.GBl. S. 524; Article 117(3) Verfassung für Rheinland-Pfalz v. 18.5.1947, VOBl. S. 209.
[10] The legal fiction is expressed in the wording of the provisions: "Einnahmen aus Krediten im Sinne von . . . entstehen dem Land auch dann, wenn . . . " ("Revenue from credits in the sense of . . . shall also accrue to the Land if . . . "). Moreover, legislative history indicates the use of a legal fiction, see for instance LT-Drucks. 16/7462, 5 ("gelten als Nettokreditaufnahme des Landes auch") or LT-Drucks. 15/4966, 7 ("Ausnahmen vom Rechtsträgerprinzip").

Korioth 2024).[11] Thus, the Court's ruling has further cemented the two-track fiscal system, in which separate legal entities follow different budgetary logics than the core budgets.

Therefore, after the court ruling in November 2023, there was a political discussion about whether the *Bundestag* should once again trigger the emergency clause for flood relief, following the logic of the climate fund ruling, or whether it should pay the required €2.7 billion into the special fund from its regular budget, which implied cutting spending elsewhere. The relatively small amount also sheds light on the requirement of Article 109 GG that a natural disaster has to significantly impair the state's financial capacity in order to allow emergency borrowing (Pracht 2023). The "built-in austerity" is thus the burden of proof for the budgetary legislator to justify further emergency borrowing in the years following the disaster (Südekum 2023). In contrast, the common legal practice until the ruling was to use the estimated overall economic damage to justify compliance with this requirement. Under the current debt brake, for example, it is more difficult to recover from exogenous shocks such as natural disasters by committing to future government spending in an effort to guide private-sector expectations. For the Federal Constitutional Court, this is no problem at all. In paragraph 212 of its ruling, it explicitly stated that such a commitment to the private sector can also be achieved by annually triggering the emergency borrowing clause.

2. The EU Fiscal Rules

The European fiscal framework consists of a heterogeneous set of rules that are intended to ensure the budgetary discipline of the member states. First, there is the primary law provision of Article 126 of the Treaty on the Functioning of the European Union (TFEU), which is further specified in Protocol No. 12 on the Excessive Deficit Procedure annexed to the Treaties (Article 51 Treaty on the European Union (TEU)). These provisions focus on the legal obligation of member states to avoid excessive government deficits and the monitoring of the budgetary discipline procedure by the Commission and the Council. Second, there is a bundle of secondary legislation, known as the Stability and Growth Pact (SGP), which further specifies and modifies the monitoring and sanctioning of compliance with the fiscal rules.[12] Third, there is the European Fiscal Compact, an international treaty signed by all member states except the Czech Republic and Croatia, which in essence strengthens the former rules and foresees further obligations for its signatories.[13]

Unlike the German debt brake, which applies only to the legal entities of the *Bund* and the *Länder*, the European fiscal rules apply to the entire government sector as defined by the statistical provisions of the European System of Accounts (Heun 2014, 105). Therefore, a member-state government cannot escape European law by claiming that it has no control over the budgets of another state authority such as a municipality (Bandilla 2017, Rn. 51). The European System of Accounts recognizes that

[11] In an attempt to end the common practice of borrowing under the emergency clause of the debt brake to create reserve capacity, the Federal Constitutional Court ruled that emergency borrowing under the debt brake must be justified and approved annually and reaffirmed the principles of annual budgeting, annuity, and the current-year principle. This effectively ended the practice of using multiyear credit authorizations, such as the €30 billion flood relief fund of 2021, without renewed parliamentary approval (Pracht 2023). The court placed the burden of proof on the legislature to show a material link between the original emergency and the continued borrowing, thereby effectively limiting fiscal space in the years following the initial shock (Südekum 2023).

[12] See European Commission (2024) for the legal acts.

[13] Treaty on Stability, Coordination and Governance in the Economic and Monetary Union, Mar. 2, 2012, https://eur-lex.europa.eu/EN/legal-content/summary/treaty-on-stability-coordination-and-governance-in-the-economic-and-monetary-union-also-known-as-the-fiscal-compact.html.

governmental and administrative structures—in our language, fiscal ecosystems—differ between member states, which makes it unfeasible for the European Union to establish one-size-fits-all binary debt rules such as the German debt brake. These would hardly be credible, as it would be easy for each member state to circumvent them through legal engineering. Therefore, the European fiscal rules follow an economic approach to determine which units are to be allocated to the general government that the rules address as a whole.

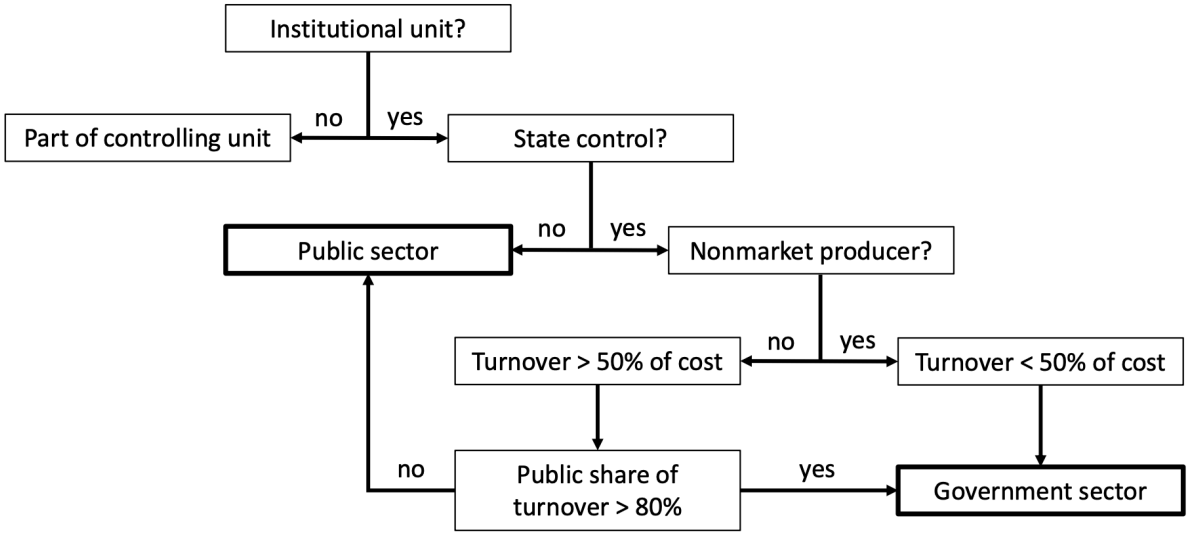
This economic approach is reflected in the term "government deficit," which is central for the whole European fiscal framework.[14] The starting point is the legal obligation in Article 126(1) TFEU that member states are to avoid excessive government deficits. While the terms "government" and "deficit" are further defined by Protocol No. 12 on the Excessive Deficit Procedure, the question of when a government deficit is excessive is deliberately left open. Instead, Protocol No. 12 and secondary legislation of the SGP precisely define the criteria according to which the Commission and Council monitor each member state's budgetary discipline. In line with a systematic reading of Article 126 TFEU, it can be assumed that compliance with budgetary discipline is to be read interchangeably with compliance with the obligation to avoid an excessive deficit (Dornacher and Thiele 2023, Rn. 26). Hence, the famous Maastricht criteria (3 percent of GDP for the government deficit and 60 percent of GDP for government debt) are—according to Article 126(2) TFEU—one indicator for budgetary discipline or a nonexcessive government deficit. The same holds for the tighter 0.5/60 rule of the Fiscal Compact.

The necessary definitions to determine what counts as a government deficit are laid down in Protocol No. 12, which is further specified through Regulation (EC) No. 479/2009, which in turn refers to Regulation (EC) No. 2223/96 on the European System of Accounts. Following the European System of Accounts, the protocol and the regulations understand the "general government" as comprising four subsectors: central government, state government, local government, and social security funds. However, in line with the European System of Accounts, the commercial operations of these entities are to be excluded from the calculation of the government deficit. In practice, these legal provisions translate into a decision tree as depicted in Figure 2.

The first step of the decision tree is to determine whether an entity can be considered an institutional unit. For instance, special funds that fall under Category (I) are assigned to the central or state government since they do not have their own legal personality (Schmidt et al. 2017). The second step requires an assessment of whether an institutional unit is controlled by the state or not. This is in line with the rationale of the fiscal rules that want to hold the member states responsible for their fiscal activities (European Commission 2022, 4). According to paragraph 2.38 of the European System of Accounts, the general government secures control over a corporation as a result of special legislation, decree, or regulation that empowers the government to determine corporate policy. To apply this general definition in practice, there is a list of indicators that are the main factors to be considered in deciding whether a corporation is controlled by government. For example, an institutional unit is considered to be controlled by the state when the state can appoint senior executives, determines the charter of the entity and basic contractual agreements, or is responsible for the majority of the organization's financing. A further indication is the level of risk borne by the state in a nonprofit organization (see Article 2.38 ESA in conjunction with Article 2.39 ESA). Furthermore, under paragraph 2.38 of the European System of Accounts, it is for the statistical bodies to decide whether a single indicator is sufficient to establish control or a number of separate indicators are required.

[14] See for instance Article 1 or Article 3(3) of the Fiscal Compact.

Figure 2. Checklist for Determining Sectoral Affiliation of a Public Institutional Unit



Source: Created based on the respective figure in Destatis (2022).

If an institutional unit is determined to be controlled by the state, an assessment is made as to whether it is a market or a nonmarket producer. Legally, this assessment is a consequence of "the exclusion of commercial activities" in Article 2 of Protocol No. 12, since the second paragraph of Article 1 of Regulation (EC) No. 479/2009 translates this text to mean that the government sector only includes institutional units that produce nonmarket services as their main activity. The primary test criterion according to paragraphs 20.29–20.31 of the European System of Accounts is whether more or less than 50 percent of production costs are covered by sales. However, the assessment also includes qualitative criteria—for instance, whether the state is the only customer or whether there is competition with private providers. There is also a further quantitative test criterion for units that cover at least 50 percent of their production costs through sales. If they generate more than 80 percent of their revenue from the core and/or extra budgets of the state, they are also assigned to the government sector.

When we translate the decision tree into our coordinate system, we can determine that the EU fiscal rules apply to all entities of the direct and indirect state administration ($1 \leq y \leq 7$). Moreover, they can possibly apply to legal entities under private law with exclusive or majority shareholding of the direct or indirect state administration ($8 \leq y \leq 10$). Some but not all of these entities are nonmarket producers and can therefore be counted toward the government sector. At these levels of the coordinate system, an individual case-by-case decision is required to determine whether or not an entity is affected by the EU fiscal rules.

III. Mapping Germany's Fiscal Ecosystem

In this section, we give an overview of the entities that are part of the coordinate system in Figure 1. We proceed along the y-axis and successively address the direct state administration, the indirect state administration, legal entities under private law with exclusive or majority shareholdings of the direct or indirect state administration, legal entities under private law with minority shareholdings of the direct or indirect state administration, entrusted legal entities under private law without any shareholding of the direct or indirect state administration, as well as legal entities under state-church law. Along the way, we provide an overview of the types and—if possible—total number of entities that populate each of the fifteen layers. For each entity, we report its respective classification as a triplet (x|y|z) that codes the revenue model, its legal status, and its debt-issuance characteristics as introduced in Part II. For details on the classification of all entities, we refer our readers to Appendix A.

A. Direct State Administration

1. Core Budgets on the Federal and State Levels

The first layer on the vertical axis of Figure 1 pertains to the core budget of the *Bund* and the sixteen core budgets of the *Länder* (1|1|1). This structure has been codified with the passing of the Basic Law for Western Germany in 1949, which built on but also reorganized the historically developed fiscal structures (see Article 104a(1), Article 106, and Article 109(1) GG). The German reunification of 1990 did not come with the development of a new constitution, even though the Basic Law was originally thought of merely as a temporary solution for a divided Germany; instead, reunification meant that five *Länder* were added to the Federal Republic.

Run by the federal- and state-level treasuries, these core budgets have their own tax base. Still, the core budgets of the *Länder* are not fully separate as the revenue distribution system (*Länderfinanzausgleich*) enshrined in Article 106 GG seeks to equalize the economic conditions of the *Länder* to guarantee adequate funding of the respective tasks assigned to *Bund* and *Länder*.[15] This mechanism depoliticizes the fiscal relationship between the federal and state governments and thus enables both levels to exercise budgetary sovereignty.

The core budgets on the federal and state levels can all issue debt in the form of government securities. Federal debt is issued in the form of federal securities (*Bundeswertpapiere*), which are floated by the *Bundesrepublik Deutschland – Finanzagentur GmbH*, a federal debt-management corporation. See Section 1 Bundesschuldenwesengesetz (BSchuWG) v. 12.7.2006, BGBl. I, S. 1466. Bavaria has replicated this model and established the *Bayerische Finanzagentur GmbH* in 2020. See Article 13 BayernFonds- und Finanzagentur-Gesetz (BayFoG) v. 27.4.2020, GVBl., S. 230 (BayRS 670-1-F). In other states such as Lower Saxony or North Rhine-Westphalia, debt management is carried out by the finance ministry itself (see Niedersächsisches Finanzministerium 2024; Finanzverwaltung des Landes Nordrhein-Westfalen 2024). Importantly, the revenue distribution system implicitly backs the debt of the *Länder* since the future tax revenues of other *Länder* and the *Bund* de facto stand behind the debt (see Schmidt 2023, 130).

[15] BVerfG, June 24, 1986, *Finanzausgleich I* [BVerfGE] 72, 330 [383]; BVerfG, May 27, 1992, *Finanzausgleich II* [BVerfGE] 86, 148 [213]; BVerfG, Oct. 19., 2006, *Berliner Haushalt* [BVerfGE] 116, 327 [328].

Table B1 in Appendix B provides an overview of key numbers for the *Bund* and the sixteen *Länder*. It indicates the volumes of total expenses, total revenue, new debt, as well as total nominal debt for the years 2022 and 2023.

2. Special Funds on the Federal and State Levels

The first category of OBFAs, located in closest proximity to the core budgets, are special funds (*Sondervermögen*) or, more accurately, dependent special funds (*unselbständige Sondervermögen*) of the *Bund* and the *Länder*. Special funds are sometimes seen as the quintessential parallel budgets that are outsourced from the core budget. Yet, they are in fact as close to the core budget as it gets and in principle subject to both the German debt brake and the EU fiscal rules. A major difference from funds in the core budget is that special funds allow superannuation—in other words, money attributed to special funds can be spent across different fiscal years. As of 18 September 2025, there were twenty-seven special funds on the federal level (Deutscher Bundestag 2025; Bundesregierung 2025). For the state level, we have identified a total of 154 special funds as of June 2023 (see Appendix C).

Special funds are a heterogenous category of entities that were often introduced in reaction to crises or large-scale transformations and have different debt-issuance and revenue models. Concerning debt issuance, Table 4 classifies the twenty-seven federal special funds according to whether they hold debt and whether they have autonomous authorization to issue debt. Six special funds hold debt and have authorization to issue debt. Seven further special funds hold debt, but do not have authorization to issue debt. Another fourteen special funds neither hold debt nor have the authority to issue debt. Concerning revenue models, special funds have a variety of revenue schemes, which entails a diverse classification on the x-axis. Figure 1 shows seven of them. For classification details, see Appendix A.

The x-axis shows a variety of classifications due to the different revenue schemes of the various special funds. For instance, the special fund *Aufbauhilfe 2021*, which had been created in reaction to the flood disaster in Ahrtal, is exclusively tax funded and cannot issue its own debt (2|2|0) (BMF 2024b, 43). The *Klima- und Transformationsfonds* is both tax funded and funded via a legal fee, the carbon emission trading scheme, but is not in the position to issue its own debt (3|2|0) (BMF 2024b, 41). The same categorization on the x-axis applies to the *Finanzmarktstabilisierungsfonds* because it is funded via both taxes and legally determined contributions from credit institutions; however, it is in the position to issue debt that is equivalent to regular government securities by the *Bund* (3|2|1). Sections 3d–e Stabilisierungsfondsgesetz v. 17.10.2008, BGBl. I S. 1982. The *Bundeseisenbahnvermögen* receives income from the federal budget and from its real estate business but cannot issue debt (5|2|0) (Bundeseisenbahnvermögen 2024). The *Restrukturierungsfonds* is funded by legal fees from German credit institutions and can issue debt (6|2|1). Section 12b–c Restrukturierungsfondsgesetz v. 9.12.2010, BGBl. I S. 1900, 1921. The *Treuhandvermögen Bergarbeiterwohnungsbau* generates its revenue via legal fees and commercial revenue. Originally financed by fees levied on coal mining companies, it gave loans for building apartments for coal miners, still receives payments for interest and principal of these loans, and has the right to issue debt (7|2|1) (BMF 2022b, 45). The *ERP-Sondervermögen* generates its revenue exclusively via commercial revenue. With a funding stock dating back to the Marshall Plan, it is today a revolving fund that uses the proceeds of its loans for financing new loans and grants. It has the right to issue debt (10|2|1) (Zentrales Innovationsprogramm Mittelstand 2024). Last but not least are the recently established special funds for the military and infrastructure: the *Sondervermögen Bundeswehr* and the *Sondervermögen für Infrastruktur und Klimaneutralität*. Both are exclusively tax funded, cannot issue their own debt (2|2|0), and are to some degree exempt from the debt brake.

Table 4. Classifying Federal Special Funds According to Credit Authorization and Debt Holding (as of 18 September 2025)

	Does hold debt	**Does not hold debt**
Has credit authorization	• Financial Market Stabilization Fund *(Finanzmarktstabilisierungsfonds)*; • Investment and Amortization Fund *(Investitions- und Tilgungsfonds)*; • Restructuring Fund *(Restrukturierungsfonds)*; • German Federal Armed Forces Special Fund *(Sondervermögen Bundeswehr)*; • Infrastructure and Climate Neutrality Special Fund *(Sondervermögen Infrastruktur und Klimaneutralität)*; • Economic Stabilization Fund Corona *(Wirtschaftsstabilisierungsfonds Corona)*.	
Has no credit authorization	• Federal Railway Property *(Bundeseisenbahnvermögen)*; • Investor Compensation Scheme for Securities Trading Firms *(Entschädigungseinrichtung Wertpapierhandelsunternehmen)*; • Indemnity Fund *(Entschädigungsfonds)*; • European Recovery Program Special Fund *(ERP-Sondervermögen)*; • Post Office Civil Servants' Pension Fund *(Postbeamtenversorgungskasse)*; • Trust Fund for Miners' Housing Construction *(Treuhandvermögen Bergarbeiterwohnungsbau)*; • Special Purpose Fund of the Federal Agricultural Bank *(Zweckvermögen Landwirtschaftliche Rentenbank)*.	• Compensation Fund for the Inclusion of Severely Disabled People *(Ausgleichsfonds für Teilhabe schwerbehinderter Menschen)*; • German Inland Navigation Fund *(Dt. Binnenschifffahrtsfonds)*; • Sewage Sludge Compensation Fund *(Klärschlamm-Entschädigungsfonds)*; • Climate and Transformation Fund *(Klima- und Transformationsfonds)*; • Revolving Fund for Voluntary Care Sector *(Revolvingfonds)*; • Special Fund Reconstruction Aid *(Sondervermögen Aufbauhilfe)*; • Special Fund Reconstruction Aid 2021 *(Sondervermögen Aufbauhilfe 2021)*; • Special Fund for the Expansion of Childcare (*Sondervermögen Kinderbetreuungsausbau*); • Special Fund for the Expansion of All-Day Educational and Care Services *(Sondervermögen Ausbau Ganztagsbetreuung)*; • Special Fund for Municipal Investment Support *(Sondervermögen Kommunalinvestitionsförderfonds)*; • Federal Pension Fund *(Versorgungsfonds des Bundes)*; • Federal Pension Reserve Fund (*Versorgungsrücklage des Bundes*); • Provision for Final Payments for Inflation-Indexed Federal Securities *(Vorsorge für Schlusszahlungen für inflationsindexierte Bundeswertpapiere)*; • Special Purpose Fund of Deutsche Postbank AG *(Zweckvermögen Deutsche Postbank AG)*.

Moreover, a range of special funds played a key role in German history but no longer feature in the coordinate system. The *Deutsche Bundesbahn* and *Deutsche Bundespost*, Germany's public railway and postal corporations, were organized as special funds until their privatization in 1993 and 1994. Their predecessors, the *Reichsbahn* and the *Reichspost*, issued their own bonds according to a 1924 law (Reiter 1967). After World War II, the Burden Sharing Fund (*Lastenausgleichsfonds)* compensated German citizens for property damage or other disadvantages as a result of the war. In the 1990s, several special funds were set up to manage German reunification. The German Unity Fund *(Fonds Deutsche Einheit)* issued bonds to provide financing to the new *Länder* for infrastructure investments. The Redemption Fund for Inherited Liabilities *(Erblastentilgungsfonds)* took over the liabilities of the former German Democratic Republic while the Compensation Fund for Currency Conversion *(Ausgleichsfonds Währungsumstellung)* helped smooth monetary unification by servicing compensation claims of credit institutions and foreign trade companies in East Germany (Deutsche Bundesbank 1998).

As a side note, there are occasional references to "independent special funds" (*selbständige Sondervermögen*) in the literature (for example, Reimer 2020, sec. III.1). However, there is no formal legal category for independent special funds. In our conceptualization, entities that could possibly be classified as such belong to an ordinal number of 4 or higher on our y-axis (Deutscher Bundestag 2023).

3. State-Owned Companies Without Legal Personality

The third category of entities that belong to the direct state administration are state-owned companies without a legal personality (*Bundes- and Landesbetriebe*). Since 2018, no such companies have existed on the federal level (BMF 2023, 29). Most of them were formally privatized in the last few decades, for example the *Bundesdruckerei*, which prints bank notes, passports, and ID cards (Bundesdruckerei 2024). However, state-owned companies still exist on the state level, fulfilling various types of tasks. By their nature, they are—and according to the Federal Administrative Court must be—profit oriented. BVerwG, Aug. 29, 2007, *Persönliche Gebührenfreiheit für Bundesland* [BVerwGE] 129, 219. On the one hand, they can be funded by taxes or commercial revenue. Examples of such state-owned companies are the *Landesbetrieb Straßenbau Nordrhein-Westfalen* (5|3|0), a road construction agency (Finanzminister des Landes Nordrhein-Westfalen 2023, 222-224) and the only state-owned company in Thuringia, the *MFPA Weimar* (*Materialforschungs- und -prüfanstalt an der Bauhaus-Universität Weimar*) (5|3|0), a nonuniversity research institution investigating and accrediting life cycle material engineering (Freistaat Thüringen 2023, 107-109.). On the other hand, they can be fully funded by commercial revenue. In Bavaria, Munich's famous brewery, the *Hofbräuhaus* (10|3|0), and the state-owned casinos (*Landesspielbanken*) (10|3|0) are governed as *Landesbetriebe* fully funded by commercial revenue. To our knowledge, state-owned companies do not issue debt.

B. Indirect State Administration

4. Territorial Authorities Under Public Law (Municipalities)

In the indirect state administration, we classify the core budgets of municipalities or "territorial authorities under public law" (*Gebietskörperschaften des öffentlichen Rechts*) as being in the closest proximity to the core budgets. "Municipality" is an umbrella term that covers 10,753 communes *(Gemeinden)* and 106 independent towns *(kreisfreie Städte)* as well as 294 counties *(Landkreise)* that group together a number of communes and are thus called associations of municipalities *(Gemeindeverbände)*.[16]

[16] There are other forms of associated municipalities (see Wissmann 2023, 129–31).

Municipalities play an important role in the German political and economic system as they fulfill the function of local government. Even though municipalities legally pertain to the *Länder*, they are de facto a third level in the multilevel system (Dreier 2015b, Rn. 86). We categorize municipalities as entities with their own tax bases and with the ability to issue debt that the *Länder* implicitly back (1|4|5) (Korioth and Müller 2016, 414).[17] Article 28(2) GG legitimizes the right of municipalities to self-government as far as local matters are concerned. See BVerfG, Nov. 19, 2014, *Schulgesetz Sachsen* [BVerfGE] 138, 1 [16]. Still, municipalities fulfill various administrative tasks on behalf of the *Länder*, which in turn are in principle responsible for the execution of both federal and state law (*Bundes- und Landesrecht*) (Articles 30, 83 GG). This dichotomy is reflected in the financial constitution. On the one hand, the constitutional right to self-governing comprises the bases of financial autonomy of municipalities, which includes municipalities' right to a source of tax revenue based on economic capacity and their right to determine the rates at which these sources are taxed (Article 28(2) GG). On the other hand, Article 106(9) GG makes it abundantly clear that revenues and expenditures of municipalities (and associations of municipalities) shall also be deemed to be revenues and expenditures of the *Länder* under the revenue distribution system (*Länderfinanzausgleich*).

Table B2 in Appendix B provides an overview of the expenses, revenue, new debt, and total debt of German municipalities, aggregated by state.

5. Public-Law Foundations

Public-law foundations (*Stiftungen des öffentlichen Rechts*) occupy the fifth layer in our conceptualization of Germany's fiscal ecosystem. They have a higher degree of institutionalization than entities of the direct state administration. The Bundesverband deutscher Stiftungen (2021, 6) indicates a total of 823 public-law foundations for all of Germany. According to a list published by the Federal Ministry of Finance, there were thirty-six public-law foundations on the federal level as of December 31, 2022 (BMF 2024a). On the state level, the information is very heterogenous. We found 241 public-law foundations in Bavaria (Bayerisches Landesamt für Statistik 2024) and seventeen in Brandenburg (Land Brandenburg 2024). There are also public-law foundations on the municipal level (Martini 2011).

In Figure 1, we depict a range of different public-law foundations that have different revenue schemes, but none of the foundations we found had the right to issue their own debt ($z = 0$). For instance, the *Stiftung preußischer Kulturbesitz* (4|5|0) administers museums, libraries, archives, and research institutes. The *Bayerische Forschungsstiftung* (5|5|0) supports various forms of research in Bavaria. The *Fonds zur Finanzierung der kerntechnischen Entsorgung* (*Kenfo*) (6|5|0) is the largest federal public-law foundation. It is tasked with providing financing for the disposal of radioactive waste produced by the nuclear-energy industry. The *Stiftung Geld und Währung* (10|5|0) has the purpose of commemorating the importance of a stable currency.

[17] Korioth and Müller (2016) discuss whether a backstop exists from *Länder* for municipalities and conclude that it is an implicit backstop as the liability of the *Länder* is not completely excluded but that it is also not an automatic mechanism that municipalities and creditors can rely on. Another indicator of an implicit backstop could be that the state of Rhineland-Palatinate recently amended its state constitution to allow temporary debt-restructuring measures for municipalities, with the state taking over certain amounts of municipal debt. See Droege (2022).

6. Public-Law Institutions

Public-law institutions (*Anstalten des öffentlichen Rechts*) are positioned at the sixth layer. While they tend to have a greater level of independence from the core budget than public-law foundations, it becomes significantly more difficult to get an accurate overview of the number of entities that correspond to this category. Therefore, we opt here for a higher level of aggregation. On the federal level, their official number amounts to twenty-six (Bund.de 2024b). In addition, there are public-law institutions on the state and municipal levels. To approximate the great variety of public-law institutions, we provide some examples.

Public development banks are a quintessential case for public-law institutions. Germany has two development banks on the federal level, the *Kreditanstalt für Wiederaufbau* (KfW, founded in 1948)[18] and the *Deutsche Rentenbank*[19] (founded in 1949), as well as sixteen development banks on the state level (5|6|2).[20] While the development banks do not typically have a banking license, they finance themselves by issuing debt securities and via contributions from treasuries on the federal and state levels, respectively.

In addition, there are public financial institutions that do have a banking license and operate a revenue model based on commercial operations (10|6|5). The foremost case is *Sparkassen*. With a few exceptions, *Sparkassen* are regional public savings banks owned by regional municipalities. Typically, *Landesbanken* are public financial institutions that have historically developed as a joint venture of German states and the *Sparkassen* located in the respective states. Currently, after several rounds of consolidation, five institutes are left that operate in Germany.[21] Together, *Sparkassen* and *Landesbanken* hold a market share of around a third in Germany (Destatis 2024c). Moreover, *Landesbausparkassen* are public building societies without a banking license. Currently, five of them exist in Germany. Two of them are integrated in a *Landesbank* or regional *Sparkassen*. Two others are *rechtsfähige Anstalten des öffentlichen Rechts* (legally independent public-law institutions). The fifth one is a stock corporation owned by *Sparkassen* (Sparkassenverband Bayern 2023; LBS Landesbausparkasse NordWest 2024; Finanzgruppe Ostdeutscher Sparkassenverband 2023; LBS 2024).

Public broadcasters are another prominent example of public-law institutions in Germany. The key institutions are the *Arbeitsgemeinschaft der öffentlich-rechtlichen Rundfunkanstalten der Bundesrepublik Deutschland* (ARD), which comprises nine *Landesrundfunkanstalten* that are responsible for broadcasting television and radio shows for one or more *Länder*, *Deutsche Welle*,[22] as well as the *Zweites Deutsches Fernsehen* (ZDF). Guiding principles are independence from the government, federalism, and media pluralism. Sources of

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[18] See Section 2 Gesetz über die Kreditanstalt für Wiederaufbau (KredAnstWiAG) in der Fassung der Bekanntmachung v. 23.6.1969, BGBl. I S. 573.

[19] See Section 2(1) Gesetz über die Landwirtschaftliche Rentenbank in der Fassung der Bekanntmachung v. 12.12.2013, BGBl. I S. 4120.

[20] The following state development banks are legally independent institutions: *Landeskreditbank Baden-Württemberg*, *LfA Förderbank Bayern*, *Investitionsbank Berlin*, *Investitionsbank des Landes Brandenburg*, *Bremer Aufbau-Bank*, *Hamburgische Investitions- und Förderbank*, *Investitions- und Förderbank Niedersachsen*, *NRW.Bank*, *Investitions- und Strukturbank Rheinland-Pfalz*, *Saarländische Investitionskreditbank*, *Sächsische Aufbaubank*, *Investitionsbank Sachsen-Anhalt*, *Investitionsbank Schleswig-Holstein*, and *Thüringer Aufbaubank*. The *Wirtschafts- und Infrastrukturbank Hessen* and the *Landesförderinstitut Mecklenburg-Vorpommern* are legally part of their *Landesbanken* (see Becker 2023, Rn. 36).

[21] The five *Landesbanken* comprise *Landesbank Baden-Württemberg* (*LBBW*), *BayernLB*, *Landesbank Hessen-Thüringen* (*Helaba*), *Nord/LB*, and *SaarLB* (see Becker 2023, Rn. 24–35).

[22] The *Arbeitsgemeinschaft der öffentlich-rechtlichen Rundfunkanstalten der Bundesrepublik Deutschland* (ARD) comprises *Bayerischer Rundfunk* (BR), *Hessischer Rundfunk* (hr), *Mitteldeutscher Rundfunk* (MDR), *Norddeutscher Rundfunk* (NDR), *Radio Bremen*, *Rundfund Berlin-Brandenburg* (rbb), *Saarländischer Rundfunk* (SR), *Südwestrundfunk* (SWR), and *Westdeutscher Rundfunk* (WDR).

revenue are special fees and advertising (7|6|0). The public broadcasters are free regarding what to spend but Parliament controls the size of their overall budget by determining the amount of the special fee. See BVerfG, July 20, 2021 *Staatsvertrag Rundfunkfinanzierung* [BVerfGE] 158, 389 [422–23].

Public pension institutions can also be organized as public-law institutions (9|6|0). The largest of these institutions is the *Versorgungsanstalt des Bundes und der Länder* (VBL).[23] It provides complementary pension schemes for public employees who are not public officials. The core pension scheme is mandatory for public employees at the federal level and the state level, with the exception of Hamburg and Saarland. 4.9 million people have complementary pension schemes with VBL, working for 5,300 public employers. But there are also other *Versorgungsanstalten*. Liberal professionals who are organized in respective chambers are mandated to use their chamber's pension institution. In Bavaria, for example, the Bavarian chamber pension institutions are hosted by the *Bayerische Versorgungskammer*, which also hosts *Versorgungsanstalt der Kaminkehrergesellen mit Pensionskasse des Schornsteinfegerhandwerks* (for chimney sweeps in general). See Article 1 Gesetz über das öffentliche Versorgungswesen (VersoG) in der Fassung der Bekanntmachung v. 16.6.2008, GVBl. S. 371 (BayRS 763-1-I). Three specific professions run their own complementary pension institutions, which are also organized as public-law institutions. These are *Versorgungsanstalt der deutschen Bühnen* (for actors employed by German theaters), *Versorgungsanstalt der deutschen Kurorchester* (for musicians working with German orchestras), and *Versorgungsanstalt der bevollmächtigten Bezirksschornsteinfeger* (for senior chimney sweeps). These three institutions have delegated their operations to *Bayerische Versorgungskammer*. See Article 54 VersoG.

Moreover, some municipally owned companies that were at some point granted their own legal personality are organized as public-law institutions (4/5|6|2). In Berlin, for instance, the *Berliner Stadtreinigungsbetriebe* (BSR), the *Berliner Verkehrsbetriebe* (BVG), and the *Berliner Wasserbetriebe* (BWB) were legally transformed into public-law institutions in 1994 by the *Berliner Betriebe-Gesetz*. See Section 1 Berliner Betriebe-Gesetz (BerlBG) v. 14.7.2006, GVBl. S. 827 (BRV 27-1).

Our last three examples are the *Bundesanstalt für Landwirtschaft und Ernährung*, a public-law institution that is responsible for various German agricultural policy issues (2|6|5);[24] the *Filmförderungsanstalt* (film funding agency) (6|6|0);[25] and *Studentenwerke* and *Studierendenwerke*, which are public-law institutions established by law of German states.[26] They administer public student grants and operate dormitories, canteens, cafeterias, and so on (4|6|0).

7. Public-Law Corporations

Public-law corporations (*Körperschaften des öffentlichen Rechts*), positioned at the seventh layer, is a broad category of entities that exist on the federal, state, and municipal levels. A public-law corporation is built around its members, who can change over time while the legal entity still exists (Wissmann 2023, 128).

[23] The VBL is an anomalous example of a public-law institution as it has no parliamentary legal basis and is governed solely by its statute. This is because its predecessor, the *Zusatzversorgungsanstalt des Reichs und der Länder* (ZRL), was set up before the introduction of the Basic Law. See BGH, July 20, 2021, *Zusatzversorgungsanstalt des Reichs und der Länder* [BGHZ] 190, 314.

[24] See Sections 1, 2 Gesetz über die Errichtung einer Bundesanstalt für Landwirtschaft und Ernährung (BLEG) v. 2.8.1994, BGBl. I S. 2018, 2019.

[25] See Sections 1, 2, 122–43 Filmförderungsgesetz v. 23.12.2016, BGBl. I S. 3413.

[26] The legal bases for the work of the fifty-seven *Studentenwerke* or *Studierendenwerke* can be found through the links provided at Deutsches Studierendenwerk (2024). The only exception is *Studentenwerk Göttingen*, which is a public-law foundation.

The official number of public-law corporations on the federal level is sixty (Bund.de 2024a). By contrast, there is no general overview of the number of public-law corporations on the state and municipal levels. For instance, the state of Bavaria provides an incomplete list of eight categories of state-level public-law corporations that are related to research, education, and communal self-governance.[27]

The *Bundesagentur für Arbeit*, for instance, administers the German unemployment insurance system and provides services for managing the labor market such as job placement and employment promotion (3|7|0). Even though it was previously called the Bundes*anstalt* für Arbeit, it is nevertheless a *corporation*, not an *institution* (*Anstalt*). It is a textbook example of the state's ability to be more flexible in creating legal entities. The *Bundesagentur* has ten regional directorates and consists of 150 employment agencies with approximately 600 branches as well as 301 job centers and around one hundred institutions responsible for paying child benefits (*Familienkassen*) (Bundesagentur für Arbeit 2024). The legal status of the *Bundesagentur* is stipulated in Section 367(1) of SGB III.

Public health and pension insurances are also organized as public-law corporations. For instance, those comprise the *Betriebskrankenkassen*, *Innungskrankenkassen*, *Ersatzkassen*, the *AOK-Bundesverband*, and the *Träger der gesetzlichen Rentenversicherung*. See Sections 143–48 of SGB V. As their scope does not necessarily match the state structures, we categorize them as federal-level public-law corporations (Heun 2004, 657–58). The logic of public social insurance perfectly fits with the idea of a public-law corporation that unites different members for a special purpose (3|7|0).

There are various other examples: First, public universities are typically state-level public-law corporations, except for the *Bundeswehr Universitäten* in Hamburg and Munich, which belong to the federal level. For the academic year 2021–2022, Destatis lists 307 public universities in Germany (3|7|0) (Destatis 2024a; 2024b). Second, chambers (*Kammern*) are a scheme for the self-governance of different professions (*berufsständische Körperschaft*). This comprises industry and commerce (*Industrie- und Handelskammern*), craftsmen (*Handwerkskammern*), farmers (*Landwirtschaftskammern*), and liberal professions (*berufsständische Kammern*) such as lawyers, medical doctors, and architects (9|7|5). Third, municipal corporations (*Zweckverbände*) are associations of municipalities that have their own legal personality and serve for the joint provision of public services, ranging from waste disposal or the provision of public housing to urban development or health care. For instance, the Landeswohlfahrtsverband Hessen (2024) is a supralocal social welfare organization that finances social services for disabled, mentally ill, or socially disadvantaged people on behalf of the municipalities and supports them in their everyday lives and at work (5|7|0) (Geis 2023, 271). Finally, the *Erdölbevorratungsverband* is a public-law corporation organized as a public-private hybrid because it is mandated by law that all companies that import or process crude oil or refined products become members of it (8|7|5). Sections 2(1), 13 Erdölbevorratungsgesetz (ErdölBevG) v. 16.1.2012, BGBl. I S. 74. It is controlled by a board comprising elected members from private companies and government officials.[28] The corporation operates the German strategic oil reserves. See Section 1 ErdölBevG.

[27] Namely, *Bayerische Akademie der Schönen Künste*, the *Bayerische Akademie der Wissenschaften*, the *Bayerischer Kommunaler Prüfungsverband*, *Hochschulen für angewandte Wissenschaften und Technische Hochschulen*, *Kommunale Spitzenverbände*, *Staatliche Kunsthochschulen*, *Staatliche Universitäten*, and *Zweckverbände* (BayernPortal 2024).

[28] See Sections 14–22 ErdölBevG in conjunction with Section 2 Satzung des Erdölbevorratungsverbandes, https://www.ebv-oil.org/cms/pdf/Satzung20120401.pdf.

C. Legal Entities Under Private Law (Companies, Foundations, or Associations) with Exclusive or Majority Shareholdings of . . .

8. . . . the Direct State Administration (1–3)

Turning to the private sector, the eighth layer of Figure 1 comprises private-law entities that are fully or majority owned by the *Bund* or the *Länder* as well as their special funds and state-owned companies without legal personality (*unmittelbare Mehrheitsbeteiligungen des Bundes und der Länder*). While we cannot determine the exact number of such legal entities, we can provide some data points that indicate orders of magnitude. The 2023 investment report of the federal government lists fifty-six companies, mainly limited liability companies (*Gesellschaften mit beschränkter Haftung*, *GmbHs*) and stock companies (*Aktiengesellschaften AGs*) that are fully or majority owned by the *Bund* (two of which do not have any business activities) and nine companies that are fully or majority owned by federal special funds (BMF 2023, 35–44). Moreover, there are fifty-seven foundations on the federal level (BMF 2024a). Similar structures exist for the *Länder* (Bayerisches Staatsministerium der Finanzen und für Heimat 2024). This category comprises a range of entities that have previously been part of the direct or indirect state administration but were transformed into private-law entities in the context of privatization movements.

Such constructions have frequently been chosen in the infrastructure sector. The *Deutsche Bahn AG* (DB AG) is a key example (5|8|5). It operates most of the German rail network, which is owned by the federal government. Since its privatization in 1994, it has had the legal form of a stock company that is 100 percent owned by the *Bund*. Gesetz zur Neuordnung des Eisenbahnwesens v. 30.12.1993, BGBl. I S. 2378; ber. BGBl. 1994 I S. 2439. Previously, it was a special fund (*Sondervermögen*, $y = 2$) operating under the name *Deutsche Bundesbahn* and thus was part of the direct state administration. The original idea was to gradually sell the stocks of the DB AG to private investors; however, this process did not go beyond a preparatory stage and was never implemented for political reasons (Kopper 2011). In fact, Article 87e(4) GG guarantees that the DB AG is majority owned by the *Bund*. Moreover, the *Autobahn GmbH* is tasked with planning, construction, operation, maintenance, financing, and asset management of German highways (3|8|0). It was established in 2020 following the transfer of responsibility for managing Germany's motorways from the states to the federal government in 2017. Until 2017, under the previous version of Article 90(2) GG, German motorways were managed by the *Länder* on federal commission (*Auftragsverwaltung*). Another entity in this category from the infrastructure sector is the *Deutsche Flugsicherung* (DFS), which is organized as a GmbH and fully owned by the *Bund* (7|8|5). The German state has delegated its authority for air traffic control to *DFS GmbH* as an entrusted company (*beliehene Gesellschaft*).

Private-law companies that are fully owned by the direct state administration can also be found in other sectors. In the field of international development policy, the *Gesellschaft für Internationale Zusammenarbeit* (GIZ)—which was formed in 2011 via a merger of several public development organizations—is fully owned by the *Bund*. It is mainly responsible for technical cooperation, which includes advisory services, financial contributions, and project support (10|8|5). The *Bundesrepublik Deutschland – Finanzagentur GmbH* is tasked with Germany's public debt management (10|8|0). Until 2001, its predecessor—the *Bundesschuldenverwaltung*—managed the public debt for the *Bund* and its special funds, and was then replaced by the *Bundeswertpapierverwaltung*, which in turn was incorporated into the *Finanzagentur GmbH* in 2006 (see Kube 2023b, Rn. 220–22 with further references). Finally, the *Bundesdruckerei*, which is tasked with the production of various documents such as passports and

identity cards, used to be a state-owned company without legal personality but was privatized in 1994. In 2009, the *Bund* purchased it again and is now its sole owner (5|8|5).

An example of a majority-controlled association (*eingetragener Verein*) is the *Potsdam Institute for Climate Impact Research* (PIK). It has various members among which are the *Bund* and the *Land Brandenburg*.[29] Around two-thirds of its annual budget is provided by German public authorities (5|8|0).

Finally, there are a variety of private-law foundations. For instance, the *Endlager Konrad Stiftungsgesellschaft mbH* (*Konradfonds*) compensates the city of Salzgitter and its region for their willingness to host the German nuclear storage site (3|8|0). The *Stiftung Humboldt Forum im Berliner Schloss* has rebuilt the city palace in Berlin, known as *Humboldt Forum* (5|8|0). The foundation owns it and operates it. The *Deutsches Elektronen-Synchroton DESY* is a member of *Helmholtz-Gemeinschaft Deutscher Forschungszentren e.V.* and develops, constructs, and operates particle accelerators (5|8|0). The *Deutsche Bundesstiftung Umwelt* has the purpose of promoting environmentally friendly projects for small and medium enterprises (10|8|0).

9. . . . Territorial Authorities Under Public Law (4)

At the ninth layer, we position private-law entities that are exclusively or majority owned by municipalities. Article 28(2) GG legitimizes the right of municipalities to self-government in local matters. This includes the provision of public services to the local community. Municipal enterprises therefore play a crucial role in the economy, for example as utilities in the provision of gas, water, and electricity. Public transport companies or housing associations are other examples in this category. While a number of municipal service providers are organized as public-law entities (see, for example, the BVG at $y = 6$ or *Landeswohlfahrtsverband Hessen* at $y = 7$), many municipal enterprises are set up as limited liability or joint-stock companies, for instance for reasons of flexibility as political influence is somewhat more limited than in the case of public-law entities. Although the range of private-law companies, foundations, or associations wholly owned by one or more municipalities is quite broad, there are five typical examples: public transport companies, energy companies, waterworks, waste management companies, and housing associations.[30]

Under state legislation, municipalities are principally required to ensure that public transport is available to their communities. Legally, this means that public transport operators have to fill the gaps when private transport operators are unwilling or unable to provide that particular service to the local community. In practice, however, there is often no competition between private transport companies and their public rivals; instead, local public transport is mainly provided by municipal companies. The reason for this is simple: Public transport is hardly profitable at the local level, especially in rural areas. Furthermore, the so-called "*Deutschlandticket*" has capped ticket revenues since May 2023. For public transport operators, (5|9|5) applies.

In the energy sector, municipal utilities play a major role in the provision of energy at the local level, which allows them to conduct some sort of energy policy at the community level. Energy supply in Germany is generally only a private-law matter through the conclusion of private-law supply contracts.

[29] See Section 4 Vereinssatzung des Potsdam-Institut für Klimafolgenforschung e.V. (PIK), https://www.pik-potsdam.de/de/institut/ueber/images/satzung-pik.

[30] "MOCs [municipally owned corporations] thus continue to operate in important infrastructure sectors, most notably energy, public transport, water and waste management, as well as housing" (Wansleben and Neumann 2024, 800).

Moreover, energy utilities usually provide a good revenue source for the municipality and their revenue is often used to cross-subsidize other municipal companies such as the public transport operators (10|9|5).[31]

Municipal housing providers have a long history in the German welfare state as they allow municipalities to pursue housing policies at the local level, for example by providing affordable housing for all sections of society (see Lange 2023). According to the website of *GdW Bundesverband Deutscher Wohnungs- und Immobilienunternehmen*, an umbrella association of the housing industry, there are currently about 740 municipal and other public housing providers, which own around 2.5 million apartments (Wohnungswirtschaft Deutschland 2024). For them, (5|9|5) applies.

Another public utility is the municipal water companies. Municipalities usually have bylaws that require the local population to buy their water and sewerage from the municipal water company as they also operate the local pipes and sewage treatment plants (8|9|5). Federal and state law delegate the task of waste disposal to the municipalities. Municipal waste disposal providers finance themselves like municipal water providers (8|9|5).

10. . . . Public-Law Foundations, Institutions, or Corporations (5–7)

The tenth layer refers to private-law entities that are fully or majority owned by public-law foundations, institutions, or corporations at the federal or state level (*mittelbare Mehrheitsbeteiligungen des Bundes und der Länder*). At the federal level, for instance, the *Beteiligungsbericht des Bundes* 2023 lists eleven companies that have equity of at least €50,000 and are federally owned via intermediaries that are public institutions (BMF 2023). One example is the *ALDB GmbH*, a telecommunications and net provider (10|10|5). It is owned by the *Bundesanstalt für den Digitalfunk der Behörden und Organisationen mit Sicherheitsaufgaben* (BDBOS), a public-law institution. See Section 1(1) BDBOS-Gesetz v. 28.8.2006, BGBl. I S. 2039. A second example is the *Universitätsstiftung Leipzig*. This foundation is controlled by *Universität Leipzig*, a public-law corporation, and contributes to the university's budget (10|10|0).

D. Legal Entities Under Private Law (Companies, Foundations, or Associations) with Minority Shareholdings of . . .

11. . . . the Direct State Administration (1–3)

The eleventh layer comprises private-law entities that are minority owned by the *Bund* or the *Länder* as well as their special funds and state-owned companies without legal personality (*unmittelbare Minderheitsbeteiligungen des Bundes und der Länder*). The 2023 investment report of the federal government lists twenty-one companies (mainly GmbHs and AGs) in minority ownership of the *Bund* (two of which do not have any business activities), twenty companies that are minority owned by federal special funds, as well as sixteen cooperatives in which the *Bund* holds small shares (BMF 2023, 35–44). Similar structures exist for the *Länder* (Bayerisches Staatsministerium der Finanzen und für Heimat 2024).

[31] There are various schemes for cross-subsidizing public transport operators with profits from more profitable municipal energy companies. For example, all municipally owned companies are put under one umbrella company (usually called *Stadtwerke*) so that one subsidiary can make up for the losses of another subsidiary (Wansleben and Neumann 2024, 806).

A recurring issue is that the German state sometimes acquires minority shares in German flagship companies. For instance, the *Commerzbank AG* has been minority owned by the *Bund* via the *Finanzmarktstabilisierungsfonds* (SoFFin) since the 2007–2009 Global Financial Crisis (10|11|6) (Finanzagentur 2024). Another example is the *Lufthansa AG*, the German flagship airline. Lufthansa was originally founded in 1926, was dissolved in 1945, and was refounded in 1953. Until 1963, it was almost fully owned by the state. In 1966, Lufthansa stock was publicly traded for the first time, but the state remained majority owner. In the 1990s, the *Bund* reduced its ownership, which was held by the *Kreditanstalt für Wiederaufbau* (KfW), from 50 to 35.7 percent (*Tagesspiegel* 1997). Since 1997, Lufthansa AG has been fully privatized. However, during the COVID-19 pandemic, the *Wirtschaftsstabilisierungsfonds* (WSF)—a special fund that existed from 2020 until 2022 at $y = 3$ and was handled by the *Finanzagentur* (BMF 2022a)—temporarily became the second-largest owner of Lufthansa AG. By September 2022, the *Bund* had sold all of its Lufthansa stock (*Zeit Online* 2022). Hence, Lufthansa is currently not part of the coordinate system in Figure 1, even though it would have been included in the system for most of its history. It is still in a position to be pulled in again in moments of financial need.

The *Volkswagen AG* is another prominent example of a minority shareholding on the state level (10|11|5). The state of Lower Saxony owns 20.2 percent of Volkswagen's ordinary shares via the state-owned *Hannoversche Beteiligungsgesellschaft Niedersachsen*. Though merely a minority-shareholding structure, the Volkswagen Law grants enormous power to the state. It stipulates that major shareholder meeting resolutions require a majority of at least 80 percent, which gives the state of Lower Saxony the power to block any major resolution.[32] In contrast, for another company that the state of Lower Saxony owns via *Hannoversche Beteiligungsgesellschaft*, *Salzgitter AG*, ordinary corporate law applies (10|11|5).

12. . . . Territorial Authorities Under Public Law (4)

Many municipalities are minority shareholders in private companies. These occupy the twelfth layer. While the landscape of municipalities' minority shareholdings seems vast and opaque, the individual investment reports (*Beteiligungsberichte*) of each municipality offer some insight. There are a variety of reasons why municipalities hold these shares. In many cases, there is a specific local history. As an example, the 2023 investment report published by the city of Frankfurt am Main lists 371 companies for which the city holds less than 20 percent of their respective equity. Almost all these shares are only indirectly owned by the city of Frankfurt am Main. For just eight companies and five cooperatives, Frankfurt am Main directly holds less than 20 percent of their respective equity. The largest of these positions by value amounts to 7.73 percent of the equity of *DRK-Blutspendedienst Baden-Württemberg-Hessen*, a regional blood transfusion service. The second-largest equity position amounts to 19.23 percent of the equity of *RMA Rhein-Main Abfall GmbH*, which is tasked with garbage collection in the region (Stadt Frankfurt am Main 2023, 332, 354). Both companies can create their own debt, which may have an implicit treasury backstop and is funded by commercial revenue (10|12|5).

[32] Section 4(3) Gesetz über die Überführung der Anteilsrechte an der Volkswagenwerk Gesellschaft mit beschränkter Haftung in private Hand in der im Bundesgesetzblatt Teil III, Gliederungsnummer 641-1-1, veröffentlichten bereinigten Fassung.

13. . . . Public-Law Foundations, Institutions, or Corporations (5–7)

At $y = 13$, we position private-law entities that are minority owned by public-law foundations, institutions, or corporations at the federal or state level (*mittelbare Minderheitsbeteiligungen des Bundes und der Länder*). A first example is *Deutsche Post AG*, created in 1995 via the privatization of *Deutsche Bundespost*, which used to be a federal special fund ($y = 2$) and was founded in 1950. In anticipation of its initial public offering in November 2000, the federal government sold 50 percent of its shares to KfW in 1999 by way of a so-called "placeholder transaction." In the following years, all the federal shares were transferred to KfW (BMF 2024c). Today, KfW owns 20.488 percent of *Deutsche Post AG* (BMF 2023, 73). *Deutsche Post AG* generates its revenue via commercial operations (10|13|5). A second example is *Hensoldt AG*, an arms producer that generates revenue primarily via selling military and nonmilitary equipment (10|13|5). KfW owns 25.1 percent of its shares (BMF 2023, 164). A third example is *50Hertz Transmission GmbH*, a transmission system operator founded in 2002 (10|13|5). KfW holds 100 percent of *Selent Netzbetreiber GmbH*, which holds 20 percent of *Eurogrid GmbH*, which in turn owns *50Hertz Transmission GmbH*.

E. Entrusted Legal Entities Under Private Law (Companies, Foundations, or Associations) Without Participation of the State Administration

14. Entrusted Entities

Entrusted entities without participation of the state administration occupy the fourteenth layer. A number of legal norms assign tasks of public authority to private legal entities that are separate from the state. However, private actors need to be legitimized in order to exercise public authority. Thus, according to German administrative law, the state delegates sovereign powers to private actors by means of legislative acts. The German legal term for this process is *Beleihung*. Many of the abovementioned private-law legal entities with majority or minority shareholding by public-law entities exercise delegated public authority under this legal concept and are therefore also entrusted entities. However, the legal entities in this category are distinguished by the fact that the state has no financial interest in them. As their equity capital is entirely in the hands of the private sector, they are all in principle in the position to issue their own debt, but it is not backed by the state.

A variety of entities fall under this category. In Figure 1, we depict a number of examples. To start with, notaries mainly fulfill the task of securing the legitimacy of important legal documents such as property purchase agreements and finance themselves through fees set by federal law (6|14|7).[33] Chimney sweeps perform a mixture of tasks of public authority and other tasks. For the tasks of public authority, fees are set via federal law, which gives German states some leeway to adjust the fees. See Section 6 Kehr- und Überprüfungsordnung v. 16.6.2009, BGBl. I S. 1292. For other tasks, chimney sweeps are free to set their prices (7|14|7). Publicly appointed surveyors also perform a mixture of tasks of public authority and other tasks. For the tasks of public authority, fees are set via state-specific laws. For other tasks, publicly appointed surveyors are free to set their prices (7|14|7). German road vehicle inspectors are another example. Several technical associations compete and are basically free in setting prices for generating their revenue. The most famous ones are *Technischer Überwachungsverein*

[33] This only applies to notaries in regions where notaries are not allowed to practice as lawyers at the same time. Under such a model, they would have to be classified at y =7. On the legal fees of notaries in general, see Gerichts- und Notarkostengesetz v. 23.7.2013, BGBl. I S. 2586.

(TÜV) and *DEKRA*. For the mandatory inspections, a complex scheme of free price setting and price regulation on the level of German states applies (7|14|7). The association of private health insurers is also an entrusted entity. It is obliged to define a so-called "base tariff" and sets a respective price, an operation that is supervised by the federal treasury (9|14|7). Section 158(2) Versicherungsaufsichtsgesetz v. 1.4.2015, BGBl. I S. 434. Finally, captains of ships and airplanes fall under this category. They perform specific tasks of public authority without compensation. Specific laws charge them with maintaining safety and order on board their vehicles (10|14|7).[34]

F. Legal Entities Under State-Church Law

15. Registered Religious Communities

The outermost layer of Figure 1 is occupied by registered religious communities as legal entities under state-church law. Article 140 GG, in conjunction with Article 137 WRV, gives German churches and other religious communities that are organized as corporations of public law the privilege of taxing their members. Church tax governance is organized on the level of the German states on basis of respective legal contracts (*Staatskirchenverträge*) (Petersen 2020, 11–12). It is at the discretion of German churches and religious communities whether they use their right to tax their members, and if so, whether they collect these taxes themselves, or outsource collection to the respective tax authorities of the German states and pay fees for this service to the states.[35] Church taxes provide the bulk of revenue for the churches and other religious communities that use their tax privilege. In economic terms, the use of the privilege to tax a church's members could be qualified as a special levy, since it concerns only a special interest group and the actual use of the instrument is at the discretion of the religious community (Kirchhof 2013, 23–24). On the other hand, the law makes it abundantly clear that it is qualified as a tax (see Article 137 WRV; Hammer 2020, Rn. 1n3). We therefore classify churches (and similarly organized religious communities) as entities with their own tax base.

However, church taxes are complemented by further public provisions. German churches operate a substantial number of hospitals, nurseries, schools, kindergartens, graveyards, etc., and receive subsidies according to stipulations specific to each German state, which apply uniformly for private operators of such institutions in each state. These subsidies are complemented by fees for the users of these institutions, which are either publicly regulated (for hospitals) or determined by the institutions themselves. Article 140 GG, in conjunction with Article 138 WRV, provides churches with further public provisions for covering parts of the costs for church staff, buildings, and operations. Churches complement their income with revenues from managing their assets and with donations. As a consequence, (1|15|7) applies.

IV. Discussion

Given our analysis, what then explains the complex setup of the fiscal ecosystem and the proliferation of OBFAs? In our view, it mostly boils down to long path dependencies originating from multiple factors. One overarching dynamic is the drive to fiscal centralization that coincided with the formation of the German nation-state in the nineteenth century. Budget centralization was previously not at all

[34] See for airplanes Section 12 Luftsicherheitsgesetz v. 11.1.2005, BGBl. I S. 78, and for ships Section 121 Seearbeitsgesetz v. 20.4.2013, BGBl. I S. 868.

[35] Petersen (2020, 283–85) provides a list for several German states that clarifies which churches and other religious communities have outsourced tax collection to their respective states.

the natural state of affairs, as state budgets were traditionally widely dispersed and decentralized due to Germany's long history of scattered regionalism (*Kleinstaaterei*). Hence, fiscal centralization is not the norm but the exception. Another overarching dynamic is that, upon its passing in 1949, the Basic Law (*Grundgesetz*) integrated multiple preconstitutional structures that exhibited path dependencies from the Holy Roman Empire, the German Empire, the Weimar Republic, and also the Nazi era, thus cementing Germany's "dual constitution."

Beyond these overarching processes, other factors playing an important role in this outcome can be singled out. First, the building of the German welfare state has left its mark on the fiscal ecosystem. The main pillars of the German social security system are the OBFAs that are responsible for public pensions, public health care, unemployment benefits, and statutory social accident insurance. In 2024, the budget of these OBFAs totaled €874.6 billion and made up 42 percent of all public budgets (Destatis 2025). Whereas these OBFAs were set up in imperial times, Germany complemented them after World War II with OBFAs addressing specific issues. Among the federal special funds, examples are the compensation fund for the inclusion of severely disabled people, the special fund for the expansion of childcare, and the special pension funds. Important pension institutions specialized for specific professions are organized as public-law institutions. As an entrusted entity, the association of private health insurers is also part of the German welfare state.

Second, the political drive to privatization and deregulation has substantially transformed Germany's fiscal ecosystem in recent decades. Privatization could just mean the change in the legal status of an entity from public to private law, or it could mean selling public assets to investors. The two biggest special funds, the railway and the postal services, were organized as private-law entities and, in the case of *Deutsche Post AG*, most shares were sold to private investors. Historically, electric utilities in Germany were dominated by public ownership. As a result of privatization, most of the shares of, for example, *RWE AG* and *50 Hertz* are now owned by private investors. Further examples that we encountered in our article are *Autobahn GmbH* and *Deutsche Flugsicherung GmbH*. We also dealt with the *Bundesdruckerei* as an example of an entity that was first privatized and subsequently brought back under public control.

Third, some prominent German OBFAs originated as instruments for tackling crises. After World War II, the *Lastenausgleichsfonds*, the KfW, and the *European Recovery Program* special fund were created for the purpose of reconstruction. The *Erdölbevoratungsverband* was set up for stockpiling oil in the first oil crisis. The *Fonds Deutsche Einheit*, the *Erblastentilgungsfonds*, and the *Ausgleichsfonds Währungsumstellung* addressed the challenges of German reunification. The Global Financial Crisis triggered the setup of the *Finanzmarkstabilisierungsfonds* and of the *Restrukturierungsfonds*. The *Sondervermögen Aufbau 2021* was created for dealing with the damage from the Ahr Valley flood in 2021. The most recent crisis that triggered the creation of an OBFA was the Russian attack on Ukraine; the *Sondervermögen Bundeswehr* was established to help finance the rearmament of German armed forces.

Fourth, some consciously taken governance choices in the past have led to greater complexity in the German fiscal ecosystem. Legally, self-governance is the governing principle of German municipalities and some other public-law corporations and public-law institutions, such as universities and public broadcasters. Self-governance has a rich tradition, dating back to the Middle Ages when universities were set up as institutions governed by the community of teachers and students. The city reform in Prussia in 1808 extended self-governance that had been established in some cities and peasant republics since the Middle Ages to all Prussian communities. In the mid-nineteenth century, the state of Prussia gave several business sectors the right to set up self-governed chambers (*Kammern*) for

organizing, representing, and promoting their respective interests. In 1913, the main pillars of the German social security system that still exist today were set up as self-governed entities.

But what about budget system failures and political economy factors? As Allen and Radev (2010, 5–8) point out, they do play a major role. In our view, two points deserve a closer look: mismatched time horizons in public finance and budgetary rules.

Setting up an OBFA is an effective tool for insulating specific long-term projects from short-term political considerations by removing them from the budgetary cycle. The ideal decoupling can be achieved if an OBFA has a revenue model that does not rely on revenues from public budgets. This is basically the case for all OBFAs for which $x > 5$, although some of them have public budgets as "customers," like the GIZ. But even OBFAs that rely for their revenues on public budgets can de facto conduct their operations independently from the budgetary cycle and engage, for example, in extending long-term loans like the state development banks. Until recently that also applied to special funds set up for emergencies, like the *Aufbau 2021* special fund for financing reconstruction after the Ahr Valley flood in 2021. However, the 2023 ruling by the German Constitutional Court has rendered this tool ineffective by requiring annual justifications for ongoing links between emergencies and borrowing. BVerfG, *Second Supplementary Budget Act 2021*.

This leads us to the second point: OBFAs are often dismissed as a tool for circumventing budgetary rules. In our view, this critique is partly right but mostly wrong, as there are a variety of other reasons for the existence of OBFAs. Since 2010, special funds are not even exempt from the debt brake. Thus, the special funds set up in 2022 for the *Bundeswehr* and in 2025 for infrastructure were both enshrined in the Constitution. Rather than circumventing the debt brake, they served to safeguard the constitutional debt brake, which, if it were strictly enforced, would make it impossible to conduct a politically feasible fiscal policy while reacting to the new geopolitical challenges Germany faces today. Yet, their debt is covered by EU fiscal rules based on the European System of Accounts' definition of the government sector. Thus, budgetary rules still impose constraints. Only public entities with their own legal personality and a sustainable revenue model that is independent of the core budget are not constrained by the debt brake. If they are classified as market producers under the European System of Accounts, this also holds true for EU fiscal rules. Thus, there is still some room for legal engineering. For example, one could authorize *Autobahn GmbH* to issue debt and repay it through a road toll.

V. Conclusion

This article has set out to provide a conceptual framework for assessing Germany's fiscal ecosystem both conceptually and empirically that draws on an interdisciplinary methodology at the intersection of law and political economy. This ecosystem comprises a diversity of OBFAs, which—in line with the Monetary Architecture approach—we have defined as hybrid entities performing various fiscal activities on behalf of the state, often supported by explicit or implicit fiscal backing from the government. This diversity is a product of an idiosyncratic in-country historical evolution and transformation that comes with strong path dependencies and is characterized by a certain level of opacity and complexity.

We have systematically categorized and empirically mapped Germany's fiscal ecosystem, delving into the legal status, revenue models, and debt characteristics of the entities that populate it. We have also

discussed how these entities are regulated under Germany's constitutional debt brake and the fiscal rules established by the EU, underscoring the unique challenges that this poses and the broader implications for fiscal policy and governance. We find that the conventional focus on core budgets provides an incomplete picture of state finance. For getting the full picture, fiscal policy should be looked at through the broader category of the fiscal ecosystem.

Based on our analysis, we can provide a rough estimate of the number of entities that are part of this ecosystem. Germany has seventeen core budgets and 181 special funds on the federal and state levels. Yet, the total number of entities skyrockets as soon as we take into account the municipalities, which themselves amount to 11,153 entities with core budgets. By not only looking at the public-law foundations, institutions, and corporations at the federal, state, and municipal levels, but also the fully, majority-, and minority-owned private-law entities, we estimate that the number of OBFAs is in the tens of thousands, possibly close to a hundred thousand.

The article identifies several promising avenues for further research that can enhance our understanding of OBFAs and their impact on public finance. One key area is the need for detailed empirical analyses that capture the precise number and types of OBFAs, especially at the state and municipal levels, where data is currently sparse. Additionally, creating longitudinal datasets on various OBFA types would allow researchers to track their evolution over time and analyze the factors driving their proliferation and transformation. Moreover, we hope that this study of the German fiscal ecosystem inspires future case studies of other countries. Each study could address the specific legal and institutional context of a country and adjust the analytical categories accordingly. This would allow making comparisons between countries, carving out similarities and differences between specific countries, and providing valuable insights into global patterns of fiscal governance and the effectiveness of different regulatory approaches. Furthermore, examining the interactions between OBFAs and formal fiscal rules (such as Germany's constitutional debt brake and European Union fiscal regulations in our case) could reveal the nuanced ways these entities navigate legal constraints and fiscal pressures. Such research would not only fill significant gaps in the literature but also inform policymakers aiming to dispel fiscal opacity and increase sustainability.

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Appendix A: Classification of Entities in the German Fiscal Ecosystem

This table provides an overview of the entities included in the analytical map of Germany's fiscal ecosystem in Figure 1. As sources for the respective categorizations, we provide an appropriate mixture of references to laws, statutes, reports, websites, and statistics.

y-value	Name of entity	x-value	z-value	Comments
I. Direct state administration				
1	Core budgets at federal and state level	1	1	The federal state and the sixteen Länder have their own tax base, respectively (x=1). They each issue their own debt (z=1).
2	*Sondervermögen "Aufbauhilfe 2021"*	2	0	This fund had been created in reaction to the flood disaster in Ahrtal; it is exclusively tax funded (x=2) and cannot issue its own debt (z=0) (BMF 2022b, 44).
2	*Sondervermögen "Bundeswehr"*	2	0	The purpose of this fund is raising funds for improving German defense capabilities by financing significant military equipment projects (z=1). Principal and interest payments are exclusively tax funded (x=0) (Deutscher Bundestag 2025).
2	*Sondervermögen für Infrastruktur und Klimaneutralität*	2	0	The purpose of this fund is raising funds for investing into German infrastructure (z=1). Principal and interest payments are exclusively tax funded (x=0) (Deutscher Bundestag 2025).
2	*Sondervermögen "Finanzmarktstabilisierungsfonds"*	3	0	This fund is funded both via taxes and legally determined contributions from credit institutions (x=3); it is in the position to issue debt that is equivalent to regular government securities by the *Bund (z=1).*[36]
2	*Sondervermögen "Klima- und Transformationsfonds"*	3	1	This fund is both tax funded and via a legal fee, the carbon emission trading scheme (x=3), and cannot issue its own debt (z=0) (BMF 2022b, 43).

[36] Sections 3d–e Stabilisierungsfondsgesetz v. 17.10.2008, BGBl. I S. 1982.

2	*Sondervermögen "Bundeseisenbahnvermögen"*	5	0	This fund receives income from the federal budget and from its real estate business (x=5), but cannot issue debt (z=0) (Bundeseisenbahnvermögen 2024).
2	*Sondervermögen "Restrukturierungsfonds"*	6	1	This fund is funded by legal fees from German credit institutions (x=6) and can issue debt (z=1).[37]
2	*Sondervermögen "Treuhandvermögen Bergarbeiterwohnungsbau"*	7	1	This fund generates its revenue via legal fee and commercial revenue (x=7). Originally financed by fees levied on coal mining companies, it gave loans for building flats for coal miners, still receives payments for interest and principal of these loans, and has the right to issue debt (z=1) (BMF 2022b, 47).
2	*ERP-Sondervermögen*	10	1	This fund generates its income exclusively via commercial revenue (x=10). With a funding stock dating back to the Marshall Plan, it is today a revolving fund that uses the proceeds of its loans for financing new loans and grants. It has the right to issue debt (z=1) (Zentrales Innovationsprogramm Mittelstand 2024).
3	*Landesbetrieb Straßenbau NRW*	5	0	Funded by taxes and commercial revenue (x=10). No issuance of debt (z=0).
3	*MFPA Weimar*	5	0	Funded by taxes and commercial revenue (x=10). No issuance of debt (z=0).
3	*Staatliches Hofbräuhaus München*	10	0	Fully funded by commercial revenue (x=10). No issuance of debt (z=0).
3	*Bayrische Landesspielbanken*	10	0	Fully funded by commercial revenue (x=10). No issuance of debt (z=0).
II. Indirect state administration				
4	Core budgets at municipal level	1	5	Cf. explanations in the body of the paper.

[37] Section 12b–c Restrukturierungsfondsgesetz v. 9.12.2010, BGBl. I S. 1900, 1921.

5	*Stiftung preußischer Kulturbesitz*	4	0	Founded in 1957 via a federal law, this foundation is jointly financed by the *Bund* and the *Länder* (Stiftung Preußischer Kulturbesitz 2024). It is funded via taxes and own fees (x=4).[38]
5	*Bayerische Forschungsstiftung*	5	0	Founded in 1990, this foundation[39] received an initial capital injection from taxpayer money and was subsequently funded by commercial revenue from investments in public companies (Bayerische Forschungsstiftung 2024). It is tax and commercial revenue funded (x=5).
5	*Fonds zur Finanzierung der kerntechnischen Entsorgung (KENFO)*	6	0	This fund is exclusively financed by a legal fee (x=6) as the law establishing it obliges energy providers to pay into the fund while ruling out any funding via taxes or debt (z=0).[40]
5	*Stiftung Geld und Währung*	10	0	This foundation funds itself by selling memorial gold coins denominated in *Deutsche Mark* that were minted upon the introduction of the euro. It is thus funded via commercial revenue (x=10) (Stiftung Geld und Währung 2024).
6	Public development banks (*KfW, Landwirtschaftliche Rentenbank*, *Landesentwicklungsbanken*)	5	2	Public development banks are funded via taxes and commercial revenues (x=5) as they finance themselves by issuing debt securities and via contributions from treasuries on the federal and state level. They issue debt securities backed by treasuries via *Gewährträgerhaftung* (z=2).[41]

[38] Section 11(3) Gesetz zur Errichtung einer Stiftung "Preußischer Kulturbesitz" und zur Übertragung von Vermögenswerten des ehemaligen Landes Preußen auf die Stiftung in der im Bundesgesetzblatt Teil III, Gliederungsnummer 224-3, veröffentlichten bereinigten Fassung.

[39] "Die Stiftung hat den Zweck, ergänzend zur staatlichen Forschungsförderung durch zusätzliche Mittel oder auf sonstige Weise universitäre und außeruniversitäre Forschungsvorhaben, die für die wissenschaftlich-technologische Entwicklung Bayerns oder für die bayerische Wirtschaft oder für den Schutz der natürlichen Lebensgrundlagen nach Art. 131 und 141 der Verfassung von Bedeutung sind, 2. die schnelle Nutzung wissenschaftlicher Erkenntnisse durch die Wirtschaft zu fördern," Article 2 Gesetz über die Errichtung der Bayerischen Forschungsstiftung v. 24.7.1990, GVBl. S. 241, BayRS 282-2-11-W.

[40] Sections 21a, 21b AtG (Atomgesetz in der Fassung der Bekanntmachung v. 15.7.1985, BGBl. I S. 1565) in conjunction with Section 28 StandAG (Standortauswahlgesetz v. 5.5.2017, BGBl. I S. 1074), special fees for nuclear power plant operators.

[41] See, for instance, Section 1a KredAnstWiAG and Section 4 Gesetz über die NRW.BANK v. 16.3.2004 (Article 1 des Gesetzes zur Umstrukturierung der Landesbank Nordrhein-Westfalen zur Förderbank des Landes Nordrhein-Westfalen und zur Änderung anderer Gesetze v. 16.3.2004, GV. NRW. S. 126).

6	Other public financial institutions (*Sparkassen, Landesbanken, Landesbausparkassen)*	10	5	Historically, *Sparkassen* and *Landesbanken* were backed by treasuries via a legal backstop (Gewährträgerhaftung). This was found in contradiction to European state aid rules and abolished via the so-called Brussels Concordance in 2001. Even though they have lost the explicit state guarantees, we can still consider them implicitly backstopped by the treasury (z=5).
6	Public broadcasters	7	0	For the public broadcasters, collection of fees is entrusted with *Zentraler Beitragsservice*, an administrative community without legal capacity (*nichtrechtsfähige Gemeinschaftseinrichtung*). Based on the treaty of broadcasting financing (*Rundfunksfinanzierungsstaatsvertrag*), they can levy a legal fee to secure financial autonomy safeguarding their independence.[42] In addition, they can generate some commercial revenue, e.g. via advertisements. Hence, they are funded via a legal fee and commercial revenue (x=7). They cannot issue their own debt (z=0).
6	Public pension institutions (*VBL, Bayerische Versorgungskammer*)	9	0	The *VBL* has discretion about the fees (as a share of employees' income) of its mandatory core pension scheme. For their additional pension scheme, employees decide about the share of their income they want to contribute. VBL thus falls into category (x=9), and they do not issue debt (z=0). For the *Bayerische Versorgungskammer*, the same categories apply.
6	Berlin public law institutions (*Berliner Stadtreinigungsbetriebe* (BSR), *Berliner Verkehrsbetriebe* (BVG) and *Berliner Wasserbetriebe* (BWB))	4/5	2	As to the law that established these institutions, the state of Berlin is fully liable for the liabilities of those institutions—which includes their debts—and grant compensation if the institutions are unable to fulfil their tasks on their own.[43] The BSR and the BWB are also allowed to raise some special fees under their own discretion[44] and fall into category

[42] Section 8 Rundfunkfinanzierungsstaatsvertrag. See also BVerfG, July 20, 2021, 1 BvR 2756/20, paras. 1–119.
[43] Section 5 BerlBG.
[44] Section 16 BerlBG.

				(x=4), whereas the BVG corresponds to (x=5). All of them can issue debt with a legal treasury backstop (z=2).
6	*Bundesanstalt für Landwirtschaft und Ernährung*	2	5	This entity receives direct support from the EU budget and the German federal budget (x=2) and has a credit allowance which allows it to issue debt with implicit treasury backstop (z=5).[45]
6	*Filmförderungsanstalt*	6	0	The German *Filmförderungsgesetz* established this entity as public law institution and mandated cinemas and broadcasters to pay legally determined fees for showing movies (x=6).[46] It cannot issue its own debt (z=0).
6	*Studentenwerke* and *Studierendenwerke*	4	0	These entities are funded by taxes, fees that they can set themselves, and commercial revenue (x=4) but cannot issue their own debt (z=0).
7	*Bundesagentur für Arbeit*	3	0	This entity is financed via taxes from the federal budget as well as unemployment insurance contributions.[47] The share for unemployment insurance contributions taken from wages is determined by law. Bundesagentur is thus funded via taxes and legal fees (x=3). It does not issue its own debt (z=0).
7	Public social insurances	3	0	Public social insurances cannot issue debt and are primarily funded via legal fees but also receive contributions from the federal budget.[48] In fact, the contributions to the pension insurance are the single biggest item on the federal core budget (Verband der Ersatzkassen 2024). Therefore, public social insurances are funded via taxes and legal fees (x=3). They cannot issue their own debt (z=0).

[45] See Section 10 BLEG.
[46] See Sections 1, 2, and 146 ff. Filmförderungsgesetz v. 23.12.2016, BGBl. I S. 3413.
[47] See sentence 4 of Article 120(1), Basic Law.
[48] See Section 220 SGB V and sentence 4 of Article 120(1), Basic Law.

7	Public universities	3	0	Public universities receive their basic funding through taxes and can charge some additional fees stipulated by law.[49] Therefore, we classify them as funded via taxes and legal fees (x=3).[50] Public universities are not in the position to issue their own debt (z=0).
7	Chambers (Kammern)	9	5	The chambers do not receive taxpayer money but are funded via fees from their members, the amount of which they determine themselves. They can also have income from commercial operations; for instance, some chambers organize pension insurance for their members and invest some of the insurance contributions on the capital market. They are thus funded via own fee and commercial revenue (x=9). In principle, they can issue their own debt (*taz. die tageszeitung* 1998). Their debt has an implicit backstop, which in some cases is underpinned by state-level bankruptcy regulations (z=0).[51]
7	*Landeswohlfahrtsverband Hessen*	5	0	This entity receives tax funding from municipalities and the state of Hesse while generating revenue from selling services. It falls into category (x=5), and does not issue its own debt (z=0).
7	*Erdölbevorratungsverband*	8	5	This entity finances its operations by a fee levied on selected refined products that is determined by the board of the corporation.[52] It thus falls into category (x=8). It issues debt that by virtue of being a public law corporation has an implicit treasury backstop (z=5).

[49] Administrative fees are determined by law. See, for instance, Section 11 NHG; Article 12 BayHSchG in conjunction with Section 5 HSchGebV; Section 12 BWLHGebG; Section 2(2) BerlHG; Section 14(2) BbgHG; Section 109b BremHG; Section 6a HmbHG; Section 56 HessHG; Section 16(6) LHG M-V; Section 17 ThürHGEG.

[50] It is true that universities may also receive additional funding through private and public grants, but these do not strictly belong to their core funding and vary substantially between different universities.

[51] Section 12 Insolvenzordnung states that it is up to the legislation of the state level whether a legal entity under public law can go bankrupt or not.

[52] However, Section 23 ErdölBevG sets up some principles regarding the calculation of the fee.

III. Legal entities under private law with exclusive or majority shareholdings				
8	*Deutsche Bahn AG* (*DB AG*)	5	5	This company is mainly funded by commercial revenue but also receives taxpayer money, especially for funding infrastructure projects (x=5). It issues its own debt via *Deutsche Bahn Finance GmbH* (Deutsche Bahn Finance GmbH 2013). While the debt of *DB AG* does not have a formal backstop, rating agencies assume that there is an implicit treasury backstop (z=5) because of the constitutional obligation of the German government to finance rail infrastructure capital expenditure (*Gewährleistungsauftrag*) (S&P Global Ratings 2018). As the *DB AG* generates more than half of its revenue on the market, its liabilities are generally not attributed to the state under the European fiscal rules. However, there is one exception: the investment grants that the German state pays to *DB AG* are subject to European debt rules and count towards the Maastricht debt ratio (Deutscher Bundestag 2022).
8	*Autobahn GmbH*	3	0	This company is funded by legal fees in the form of special levies (e.g. tolls) and taxpayers' money (x=3). It has no right to issue its own debt (z=0).[53] As the Autobahn GmbH does not generate more than half of its revenue on the market, it is in principle attributed to the state as under the European fiscal rules (Deutscher Bundestag 2022). However, since it cannot issue its own debt, this has little meaning in practice.
8	*Deutsche Flugsicherung (DFS)*	7	5	For its regulated operations, this company charges fees that are determined by the German traffic ministry. It also has subsidiaries that operate in non-regulated markets and generate commercial revenue. Therefore, it falls into category (x=7).[54] The DFS issues its own debt, which is AAA-rated (Deutsche Flugsicherung 2022, 26–27). While we could not find evidence for the existence of a legally determined backstop, the full public ownership can be interpreted by investors as an

[53] Section 7 Gesetz zur Errichtung einer Infrastrukturgesellschaft für Autobahnen und andere Bundesfernstraßen v. 14.8.2017, BGBl. I S. 3122, 3141.
[54] Regulation (EU) 2019/317 of 11 February 2019, laying down a performance and charging scheme in the single European sky and repealing Implementing Regulations (EU) No 390/2013 and (EU) No 391/2013.

				implicit treasury backstop (z=5). Its debt is not subject to the EU Fiscal Rules.[55]
8	*Gesellschaft für Internationale Zusammenarbeit* (*GIZ*)	10	5	This company is exclusively funded by commercial revenues (x=10), even though these are generated through the fulfilment of German government contracts and thus indirectly come from taxpayer money. As to publicly available information, the *GIZ GmbH* is allowed to issue a certain amount of its own debt that is not explicitly backed but may be taken to be implicitly backstopped by the Bund (z=0) (GIZ 2022). As its business model is heavily dependent on public contracts, it is a textbook example for the checklist for determining the sectoral affiliation of a public institutional entity. The *GIZ GmbH* is an entity under government control that is a non-market producer. As the public share of its turnover is larger than 80%, it is classified as part of the government sector. Therefore, its debt issued must be included in the government deficit according to the European fiscal framework.
8	*Bundesrepublik Deutschland – Finanzagentur GmbH*	10	0	This company is fully owned by the federal government, finances itself exclusively by the commercial revenue of its financial services (x=10), and does not issue any debt for its own purposes (z=0).[56]
8	*Bundesdruckerei*	5	5	This company generates commercial revenue and occasionally receives tax support (x=5) (BMF 2023, 47–50). It issues debt. We could not find clear evidence that a legal backstop exists for it but again we take its full ownership by the Bund as an indicator that market actors expect that there is an implicit backstop (z=5) (Bundesdruckerei 2022).

[55] The DFS does not feature in the list of extra budgets that belong to the general government sector in accordance with the European System of Accounts (Destatis 2021).

[56] The *Bundesschuldenwesengesetz* does not contain any explicit provisions on the financing of the Finance Agency and the distribution of the profits it generates. The annual accounts indicate that there is probably a gentleman's agreement between the Ministry of Finance and the Finance Agency, whereby the latter does not have to transfer its profits to the core budget.

8	*Potsdam Institute for Climate Impact Research (PIK)*	5	0	In addition to the core funding, the institute does not have membership fees but generates additional revenue for instance in the form of third-party research grants, which we classify here as commercial revenue (x=5) (PIK 2022, 24). The institute cannot issue its own debt (z=0).
8	*Endlager Konrad Stiftungsgesellschaft mbH (Konradfonds)*	3	0	The *Konradfonds* is funded via annual income from the federal budget, proceeds from its assets, and annual proceeds from *Kenfo*, the German nuclear waste disposal fund, which are determined by law (x=3). In our understanding, it is not in the position to issue its own debt (z=0).
8	*Stiftung Humboldt Forum im Berliner Schloss*	5	0	This foundation is funded by annual federal appropriations and admission charges which we understand as commercial revenue due to the private status of the entity. It thus falls in category (x=5). In our understanding, it is not in the position to issue its own debt (z=0).
8	*Deutsches Elektronen-Synchroton DESY*	5	0	Institutional funding for *DESY* is provided by the federal budget (90 percent) and the budgets of the states of Hamburg and Brandenburg (10 percent). This is complemented by income from innovative operations (x=5). In our understanding, it is not in the position to issue its own debt (z=0).
8	*Deutsche Bundesstiftung Umwelt*	10	0	This foundation uses the proceeds of its assets for financing its operations (x=10) (BMF 2024a). In our understanding, it is not in the position to issue its own debt (z=0).
9	Public transport operators	5	5	Public transport companies, which are owned by one or more municipalities, are structurally reliant on tax funding in addition to their revenues from ticket sales (x=5). Typically, they issue their own debt, which has an implicit backstop by the municipal treasuries (z=5).
9	Municipal energy utilities	10	5	Municipal energy utilities are solely funded by commercial revenue (x=10) while issuing implicitly treasury backed debt (z=5).

9	Municipal housing providers	5	5	Municipal housing providers are institutional landlords whose primary source of income is rental income. Depending on the local housing market, the rental income of municipal housing providers can be so high that the municipality has a legitimate business interest in its housing company. Still, in weak housing markets, the municipality has to make up the company's losses with taxpayers' money. These companies thus fall into category (x=5). In principle, they can issue their own debt, which in some states is backed by the municipalities (z=5).[57]
9	Municipal water companies	8	5	Municipalities usually have bylaws that require the local population to buy their water and sewerage from the municipal water company, for which municipalities determine the fees (x=8). In principle, they can issue their own debt which can be backed by the municipalities if approved by the municipal supervisory authority (*Kommunalaufsichtsbehörde*) (z=5).[58]
9	Municipal waste disposal providers	8	5	Municipal waste disposal providers finance themselves like municipal water providers (x=8, z=5).
10	*ALDB GmbH*	10	5	This company generates its revenue via commercial operations (x=10). Due to its full public ownership, we may assume that there is an implicit treasury backstop for the debt it issues (z=5) (BMF 2023, 339).

[57] See, for instance, Section 87 Gemeindeordnung für das Land Nordrhein-Westfalen v. 14.7.1994, GV. NW. 1994 S. 666, or Section 88 Gemeindeordnung für Baden-Württemberg in der Fassung v. 24.7.2000, GBl. 2000, 581, ber. S. 698. A detailed analysis is provided by Dietl (2015).

[58] This is the general principle that applies to municipalities with respect to the backstopping of debt issued by other entities. See Section 88(1) Gemeindeordnung für Baden-Württemberg and the corresponding provisions of other Länder, which can be found in Geis (2023, 318).

10	*Universitätsstiftung Leipzig*	10	0	This foundation generates its revenue from its asset base which mainly comprises real estate (x=10) (Universitätsstiftung Leipzig 2018). We did not find evidence that the *Universitätsstiftung Leipzig* issues any debt (z=0).
IV. Legal entities under private law with minority shareholdings				
11	*Commerzbank AG*	10	6	As this company is minority-owned by the *Bund* via the *Finanzmarktstabilisierungsfonds* (SoFFin) since the 2007–2009 Global Financial Crisis (Finanzagentur 2024). it features as an entity at (x=10) which issues debt that has a revealed implicit OBFA backstop (z=6).
11	*Volkswagen AG*	10	5	*Volkswagen AG* finances itself via commercial revenue (x=10) and issues debt that may be assumed to have an implicit treasury backstop (z=5).
11	*Salzgitter AG*	10	5	*Salzgitter AG* finances itself via commercial revenue (x=10) and issues debt that may be assumed to have an implicit treasury backstop (z=5).
12	*DRK-Blutspendedienst Baden-Württemberg – Hessen*	10	5	This company can create its own debt, which may have an implicit treasury backstop (z=5), and is funded by commercial revenue (x=10).
12	*RMA Rhein-Main Abfall GmbH*	10	5	*RMA* can create its own debt, which may have an implicit treasury backstop (z=5), and is funded by commercial revenue (x=10).
13	*Deutsche Post AG*	10	5	Although this is a regulated company, we classify its revenues as commercial (x=10). We assume that it has an implicit treasury backstop (z=5).
13	*Hensoldt AG*	10	5	*Hensoldt AG* generates commercial revenues (x=10). We assume that it has an implicit treasury backstop (z=5).
13	*50Hertz Transmission GmbH*	10	5	Although this company is a regulated, we classify its revenues as commercial (x=10). We assume that it has an implicit treasury backstop (z=5).

V. Entrusted legal entities under private law (companies, foundations, associations) without participation of the state administration				
14	Notaries	6	7	Notaries finance themselves through fees set via federal law (x=6).[59]
14	Chimney sweeps	7	7	For the tasks of public authority, fees are set via federal law, which gives German states some leeway to adjust the fees.[60] For other tasks, chimney sweeps are free to set their prices (x=7).
14	Publicly appointed surveyors	7	7	For the tasks of public authority, fees are set via state-specific laws. For other tasks, publicly appointed surveyors are free to set their prices (x=7).
14	*TÜV/DEKRA*	7	7	For the mandatory road vehicle inspections, a complex scheme of free price setting and price regulation on the level of German states applies (x=7).
14	Association of private health insurers	9	7	As an association under private law, the members of this association determine the membership fees of the association. We assume that association has also commercial revenue (x=9).
14	Captains of ships and airplanes	10	7	The companies that employ captains of ships and airplanes are commercial enterprises (x=10).
VI. Legal entities under state-church law				
15	Registered religious communities	1	7	We classify churches (and similarly organized religious communities) as entities with their own tax base (x=1).

[59] This only applies to notaries in regions where notaries are not allowed to practice as lawyers at the same time. Under such a model, they would have to be classified under 7. See in general for the legal fees of notaries, Gerichts- und Notarkostengesetz v. 23.7.2013, BGBl. I S. 2586.
[60] See Section 6 Kehr- und Überprüfungsordnung v. 16.6.2009, BGBl. I S. 1292.

Appendix B: Financial Volumes of Core Budgets on Federal, State, and Municipal Levels

Table B1: Expenses, Revenue, and Debt of Federal and State-Level Core Budgets in 2023 (in million EUR)

	Total expenses [a, b]	**Total revenue** [c, d]	**Financial balance** [e, f]	**Total debt** [g, h]
Federal Republic of Germany	490,201	425,302	-64,900	1,471,970
Baden-Württemberg	62,020	61,886	-103	30,544
Bavaria (Bayern)	71,025	70,917	-107	17,218
Berlin	37,145	35,456	-1,686	58,940
Brandenburg	16,060	15,569	-496	18,338
Bremen	7,716	7,389	-329	22,618
Hamburg	19,145	20,235	1,090	22,634
Hesse (Hessen)	34,745	34,066	-687	41,012
Lower Saxony (Niedersachsen)	40,372	44,100	3,728	56,424
Mecklenburg-Vorpommern	10,689	10,607	-82	7,175
North Rhine-Westphalia (Nordrhein-Westfalen)	101,500	99,741	-1,759	162,993
Rhineland-Palatinate (Rheinland-Pfalz)	21,197	22,188	991	26,486
Saarland	5,813	6,027	214	12,186
Saxony (Sachsen)	23,785	22,653	-1,132	3,259
Saxony-Anhalt (Sachsen-Anhalt)	13,408	12,735	-673	21,961
Schleswig-Holstein	18,129	17,438	-692	31,515
Thuringia (Thüringen)	12,706	12,357	-349	15,052

Sources: Statistischer Bericht, Vierteljährliche Kassenergebnisse der Kern- und Extrahaushalte des Öffentlichen Gesamthaushalts 2023 (71511); Statistischer Bericht, Vierteljährliche Schulden des Öffentlichen Gesamthaushalts 2023, 4.Quartal 2023 (71311): [a] 71511-15, Lfd. Nr. 25: adjusted expenses (bereinigte Ausgaben) for the Bund; [b] 71511-16, Lfd. Nr.

146: adjusted expenses (bereinigte Ausgaben) for the Länder; [c] 71511-15, Lfd. Nr. 48: adjusted revenue (bereinigte Einnahmen) for the Bund; [d] 71511-17, Lfd. Nr. 257: adjusted revenue (bereinigte Einnahmen) for the Länder; [e] 71511-15, Lfd. Nr. 50: financial balance (Finanzierungssaldo) for the Bund; [f] 71511-18, Lfd. Nr. 263: financial balance (Finanzierungssaldo) for the Länder; [g] 71311-02, line 59: total debt with non-public sector comprising cash credits (Kassenkredite), loans (Kredite), and securities (Wertpapiere) for Bund. Numbers for the debt levels are preliminary (as of 31 December 2023) [h] 71311-07, line 33: total debt with non-public sector comprising cash credits (Kassenkredite), loans (Kredite), and securities (Wertpapiere) for Länder. Numbers for the debt levels are preliminary (as of 31 December 2023).

Table B2: Expenses, Revenue, and Debt of Municipal Core Budgets by State in 2023 (in million EUR)

	Total expenses [a]	**Total revenue** [b]	**Financial balance** [c]	**Total debt** [d]
Baden-Württemberg	51,540	52,082	542	7,691
Bavaria (Bayern)	55,983	53,700	-2,283	16,212
Berlin	-	-	-	-
Brandenburg	11,075	11,215	140	1,051
Bremen	-	-	-	-
Hamburg	-	-	-	-
Hesse (Hessen)	28,726	27,686	-1,040	14,407
Lower Saxony (Niedersachsen)	33,343	32,124	-1,220	14,927
Mecklenburg-Vorpommern	6,732	6,557	-175	1,473
North Rhine-Westphalia (Nordrhein-Westfalen)	84,061	82,085	-1,976	47,923
Rhineland-Palatinate (Rheinland-Pfalz)	15,517	14,954	-562	11,545
Saarland	2,996	3,079	83	2,439
Saxony (Sachsen)	15,332	15,536	204	2,425
Saxony-Anhalt (Sachsen-Anhalt)	7,592	7,640	48	2,825
Schleswig-Holstein	13,045	12,834	-211	4,171
Thuringia (Thüringen)	7,312	7,607	296	1,134

Sources: Statistischer Bericht, Vierteljährliche Kassenergebnisse der Kern- und Extrahaushalte des Öffentlichen Gesamthaushalts 2023 (71511); Statistischer Bericht, Vierteljährliche Schulden des Öffentlichen Gesamthaushalts 2023, 4.Quartal 2023 (71311): [a] 71511-16, Lfd. Nr. 147: adjusted expenses (bereinigte Ausgaben) for municipalities; [b] 71511-17, Lfd. Nr. 258: adjusted revenue (bereinigte Einnahmen) for municipalities; [c] 71511-18, Lfd. Nr. 264: financial balance (Finanzierungssaldo) for municipalities; [d] 71311-07, line 21: total debt with non-public sector comprising cash credits (Kassenkredite), loans (Kredite), and securities (Wertpapiere) for municipalities.

Appendix C: List of Dependent Special Funds of the *Länder* (as of June 2023)

1. Baden-Württemberg

- Allgemeiner Grundstock und Forstgrundstock;
- Baden-Württemberg 21;
- Beteiligungsfonds Baden-Württemberg;
- Studienfonds in der Verwaltung des Ministeriums für Wissenschaft, Forschung und Kunst Baden-Württemberg;
- Versorgungsfonds;
- Versorgungsrücklage.

2. Bavaria (Bayern)

- Anlage A;
- Coburger Domänenfonds;
- Förderung des Katastrophenschutzes;
- Grundstücke A;
- Grundstücke B;
- Grundstücke D;
- Grundstücke K;
- Grundstücke W;
- Milch- und Fettwirtschaft;
- Pensionsfonds.

3. Berlin

- Ausgleichsfonds des Landes Berlin nach dem Pflegeberufegesetz;
- Daseinsvorsorge- und nicht betriebsnotwendige Bestandsgrundstücke des Landes Berlin (SODA);
- Immobilien des Landes Berlin (SILB);
- Infrastruktur der Wachsenden Stadt (SIWA);
- Schulbaufinanzierung;
- Versorgungsrücklage des Landes Berlin;
- Wohnraumförderfonds Berlin (SWB).

4. Brandenburg

- Brandenburgs Stärken für die Zukunft sichern;
- Zukunftsinvestitionsfonds des Landes Brandenburg;
- Finanzierungsfonds Flughafen BER

5. Bremen

- Fischereihafen;
- Gewerbeflächen (Land);
- Gewerbeflächen Stadt;
- Hafen Stadt;
- Immobilien und Technik (Land);
- Immobilien und Technik Stadt,
- Infrastruktur Stadt,
- Überseestadt Stadt

6. Hamburg

- Hamburger Stabilisierungs-Fonds;
- Altersversorgung der Freien und Hansestadt Hamburg;
- Versorgungsfonds f. d. Altersversorgung der Abgeordneten d. Bürgerschaft d. FHH;
- Hamburgisches Telekommunikationsnetz;
- Ausgleichsabgabe;
- Bodenordnung;
- Finanzierung Schnellbahnausbau;
- Naturschutz und Landschaftspflege;
- Schulimmobilien;
- Stadt und Hafen;
- Tierseuchenkasse der FHH.

7. Hesse (Hessen)

- Hessenkasse;
- Pflegeausbildungsfonds;
- Universitätsbibliothek Frankfurt am Main und Wohnraum- und Wohnumfeldförderung;
- Versorgungsrücklage des Landes Hessen.

8. Lower Saxony (Niedersachsen)

- Ausbau von hochleistungsfähigen Datenübertragungsnetzen u. für Digitalisierungsmaßnahmen;
- Wohnraumförderfonds Niedersachsen;
- Wohnungsbau, Wirtschaft und Agrar;
- Nachholung v. Investitionen... sowie z. Unterbringung von Flüchtlingen in Landesgebäuden;
- Bewältigung der Auswirkungen der COVID-19-Pandemie;
- Bewirtschaftung von zweckgebundenen Einnahmen;
- Förderung von Krankenhausinvestitionen;

- Nachholung von Investitionen bei den Hochschulen in staatlicher Verantwortung;
- Sicherstellung der Krankenhausversorgung in Niedersachsen.

9. Mecklenburg-Vorpommern

- Ausgleichsabgabe nach dem Sozialgesetzbuch - Neuntes Buch - SGB IX;
- Ausgleichsfonds des Landes Mecklenburg-Vorpommern nach dem Pflegeberufegesetz;
- Breitbandausbau in Mecklenburg-Vorpommern (Breitband M-V);
- Förderung der Universitätsmedizinen des Landes Mecklenburg-Vorpommern;
- Grundstock des Landes Mecklenburg-Vorpommern;
- Kommunaler Aufbaufonds;
- Kommunaler Entschuldungsfonds Mecklenburg-Vorpommern;
- Kommunaler Fonds zum Ausgleich konjunkturbedingter Mindereinnahmen Mecklenburg-Vorpommern;
- Kommunaler Haushaltskonsolidierungsfonds Mecklenburg-Vorpommern;
- Konjunkturausgleichsrücklage des Landes Mecklenburg-Vorpommern;
- Künstlerhaus Lukas Ahrenshoop;
- MV-Schutzfonds;
- Landwirtschaftssondervermögensgesetz;
- Sanierung ökologischer Altlasten in Mecklenburg-Vorpommern;
- Schienenpersonennahverkehr Mecklenburg-Vorpommern SPNV M-V;
- Strategiefonds des Landes Mecklenburg-Vorpommern;
- Unternehmenshilfe- und Beteiligungsfonds;
- Versorgungsfonds des Landes Mecklenburg-Vorpommern;
- Versorgungsrücklage des Landes Mecklenburg-Vorpommern;
- Wohnraumförderung Mecklenburg-Vorpommern;
- Zukunftsfähige Feuerwehr Mecklenburg-Vorpommern;
- Zukunftsfonds Mecklenburg-Vorpommern;
- Förderung der nachhaltigen wirtschaftlichen Entwicklung und des Ausbaus der Erneuerbaren Energien.

10. North-Rhine Westphalia (Nordrhein-Westphalen)

- Sondervermögen zur Finanzierung aller direkten und indirekten Folgen der Bewältigung der Corona-Krise;
- Sondervermögen zur Bewältigung der Krisensituation in der Ukraine;
- Bau- und Liegenschaftsbetrieb NRW;
- Pensionsfonds;
- Abrechnung Finanzmarktstabilisierungsfonds;
- Risikoabschirmung WestLB;
- Stärkungspaktfonds.

11. Rhineland-Palatinate (Rheinland-Pfalz)

- Kommunales Investitionsprogramm 3.0 - Rheinland-Pfalz (KI 3.0);
- Wissen schafft Zukunft – Sonderfinanzierung;
- Nachhaltige Bewältigung der Corona-Pandemie;
- Versorgungsrücklage des Landes beim Landesamt für Finanzen.

12. Saarland

- Transformationsfonds für den Strukturwandel im Saarland;
- Covid-19-Pandemie;
- Krankenhausfonds;
- Pensionsfonds;
- Zinsausgleichsrücklage;
- Kommunaler Entlastungsfonds;
- Saarlandpakt;
- Versorgungsrücklage Saarland;
- Zukunftsinitiative;
- Zukunftsinitiative II;
- Konjunkturausgleichsrücklage.

13. Saxony (Sachsen)

- Aufbauhilfefonds Sachsen 2013;
- Darlehensfonds für den Mittelstand;
- Fonds für digitale Teilhabe und schnelles Internet;
- Kommunaler Strukturfonds;
- Kommunaler Vorsorgefonds;
- Naturschutzfonds;
- Altlastensanierung-Altlastenfonds Sachsen;
- Brücken in die Zukunft;
- Corona-Bewältigungsfonds Sachsen;
- Grundstock;
- Klimafonds Sachsen;
- Krisenbewältigung und Neustart;
- Rettung und Umstrukturierung von sächsischen Unternehmen;
- Stadtentwicklung Sachsen;
- Strukturentwicklungsfonds sächsische Braunkohleregionen;
- Wohnraumförderungsfonds Sachsen;
- Darlehensfonds zur Markteinführung innovativer Produkte Sachsen;
- Fusionsfonds Sachsen;
- Zukunftssicherungsfonds Sachsen;
- ESF-Mikrodarlehensfonds (FZR 2000–2006);

- ESF-Mikrodarlehensfonds II (FZR 2007–2013);
- ESF-Mikrodarlehensfonds III (FZR 2014–2020);
- Nachrangdarlehensfonds zur Verbesserung der regionalen Wirtschaftsstruktur Sachsen I EFRE-Förderperiode 2007–2013;
- Nachrangdarlehensfonds zur Verbesserung der regionalen Wirtschaftsstruktur Sachsen II EFRE-Förderperiode 2014–2020.

14. Saxony-Anhalt (Sachsen-Anhalt)

- Altlastensanierung;
- Corona;
- Finanzierung der beruflichen Ausbildung in der Pflege;
- Grundstock des Landes Sachsen-Anhalt;
- Pensionsfonds für die Versorgung und Beihilfen der Versorgungsempfänger des Landes Sachsen-Anhalt;
- Schwerbehinderten-Ausgleichsabgabe.

15. Schleswig-Holstein

- Versorgungsfonds des Landes Schleswig-Holstein;
- Ausgleichsabgabe nach dem Sozialgesetzbuch IX;
- Breitband;
- Bürgerenergie.SH;
- Energetische Sanierung PROFI;
- Hochschulsanierung;
- Sondervermögen im Zentralen Grundvermögen zur Behördenunterbringung (Sondervermögen ZGB);
- IMPULS 2030;
- MOIN.SH;
- Tierseuchenfonds;
- Verkehrsinfrastruktur;
- Förderung des Einsatzes von Künstlicher Intelligenz Schleswig-Holstein.

16. Thuringia (Thüringen)

- Aufbauhilfefonds Thüringen;
- Hilfen zur Bewältigung der Energiekrise und zur Überwindung der Folgen der Corona-Pandemie;
- Katastrophenschutzfonds;
- Stadtentwicklung;
- Thüringer Pensionsfonds;
- Verbesserung wasserwirtschaftlicher Strukturen des Freistaates Thüringen – Fernwasser;

- Verbesserung wasserwirtschaftlicher Strukturen des Freistaates Thüringen-Beitragserstattung Wasserversorgung- und Abwasserentsorgung;
- WGT-Liegenschaften Thüringen;
- Wohnungsbauvermögen.

Sources: DeStatis, "Liste der Extrahaushalte 2023 (Stand: 30.06.2023)," 31 August 2023. https://www.destatis.de/DE/Themen/Staat/Oeffentliche-Finanzen/Fonds-Einrichtungen-Unternehmen/Methoden/Downloads/liste-extrahaushalte-2023-stand-30-juni-2023-pdf.pdf?__blob=publicationFile(accessed 19 February 2024), crosschecked with websites of the German Länder.