

Privatisation in Local Authorities –  
An Analysis of Reports on Municipal Holdings

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## **On this Publication**

Discussion on the liberalisation and privatisation of municipal functions and enterprises has been conducted not least of all against the backdrop of the crisis in local government finance. The subject of debate has been the hiving-off and transfer of local authority services to private organisations, and the fundamental redistribution of functions and resources between the public and private sectors.

Many specialist publications have deplored the lack of empirical data on the status of privatisation at the local government level. Nevertheless, it is generally assumed that many areas of local authority activities have been transferred to private enterprises and thus hived-off from core municipal administration.

On the basis of an analysis of reports on the holdings of German municipalities in 2001 and 2002, especially in the water, energy, and public transport sectors, this publication offers an initial overview of the type and extent of privatisation. 36 reports have been examined, including the largest German cities from Berlin to Brunswick.

A short note to the reader: the following publication is quite challenging in terms of the knowledge needed about German local self-government and local government administration. For a brief introduction to the constitution of German local self-government, we recommend the following article:

“Is Germany’s Traditional Type of Local Self-Government Being Phased out?” by Hellmut Wollmann (published in German Journal of Urban Studies, Vol. 41 (2002), No.1)

Download: <http://www.difu.de/index.shtml?publikationen/dfk/en/>

## Preface

Privatisation, liberalisation, public services, administrative modernisation, and the crisis in local government finances / public debt stake out a field of intensive discourse on the efficiency and quality of public services, the transfer of local social and other services for the public to the private sector, and thus, fundamentally, about the redistribution of functions between the public and private sectors.

For a considerable time now, the research area "Environment and Transport" at the German Institute of Urban Affairs (Difu) has been investigating the impact of liberalisation and privatisation in the "classical" fields of municipal services (water, energy, transport). Attention is focused on how liberalisation and privatisation affect the capacity for local government action, how local authorities see their role, and what scope they have to pursue the public interest in such fields as environmental and climate protection.

In autumn 2002, Difu initiated the research project "netWORKS." The goal of the project, which is being carried out in collaboration with four other research institutes, is to study current changes in network-related utility industries, and to draw up recommendations on how these changes can be geared towards sustainable development. Difu is chiefly concerned to analyse changes in the organisation and delivery of local services and discuss the safeguarding and development of local government formative action. Exact knowledge about the type and extent of privatisation in municipalities is an important, indeed indispensable prerequisite. However, no reliable overview of privatisation in local government services with a claim to any degree of reliability has been available to date, although many in-house and external workshops and seminars, lectures, discussion rounds, and publications have repeatedly pointed to a dynamic trend towards privatisation at the local level in Germany.

Since the timeframe and financial constraints of the "netWORKS" project precluded any comprehensive empirical survey and statistical evaluation of privatisation processes in German local government (e.g., by questionnaire), the Difu project team decided to evaluate the reports on municipal holdings that have meanwhile been issued by almost all cities in the country. It was hoped that, at least for the purposes of the project, we would gain reliable insight into and a reliable overview of the type and extent of privatisation in German municipalities, especially in utility sectors. This analysis of municipal participation is thus a compromise between what is necessary, desirable, and affordable for the investigative process in the project.

Berlin, September 2003

Jan Hendrik Trapp/Sebastian Bolay

## 1. Introduction

Many publications dealing with local government privatisation and participation in enterprises complain that an overview of the empirical status of privatisation at the local level is lacking (e.g., Monstadt/Naumann 2003, 9; Wohlfahrt/Zühlke 1999, 14; Schefzyk 2000, 38; Leitstelle Gemeindeprüfung 2001, 30). Nevertheless, it is generally assumed that many local authority activities have been transferred to private organisations.

This analysis of selected reports on the holdings of German local authorities attempts to provide a first overview of the type and extent of privatisation in German municipalities, especially in utility sectors. The study covers the thirty largest German cities from Berlin to Brunswick, including state capitals that do not fall within this category. Also included are the field partners of the "netWORKS" research association, the municipalities of Oldenburg and Schwedt/Oder. Since Wuppertal, Chemnitz, and Saarbrücken failed to reply to our requests by the deadline, they have not been included in the analysis. Rostock has been taken instead of Schwerin, state capital of Mecklenburg-West Pomerania, which also failed to reply. The total number of cities included in the study is thus  $n = 36$ .<sup>1</sup> In addition to the reports on their holdings, Bremen and Bielefeld prepare separate reports on semi-autonomous municipal agencies or *Eigenbetriebe*, which have also been taken into account.

Delays owing to the collection and processing of the statistics by the competent authorities and the time that passes before publication of the reports mean that available data do not reflect the status of privatisation at the time of the study (2003). The base years for the figures in the reports are 2001 ( $n = 22$  or 62 per cent) and 2000 ( $n = 13$  or 37 per cent). No exact year could be established for Schwedt/Oder. This volume therefore examines the status of privatisation in selected German municipalities in 2000/2001. On the assumption that the trend has persisted, privatisation is likely to be still more advanced. Apart from a comprehensive overview of all enterprises in which the municipalities under study hold an interest, separate analyses are provided for the water, transport, and energy sectors.

In addition to the prime research issue, the type and extent of privatisation in German cities, other aspects of the reports have been included as "by-products." For instance, information is supplied on addressees and groups targeted by the reports, on experience with preparing such reports, and the reasons for issuing them. Information is also supplied on public purpose performance, and the reasons for outsourcing municipal activities. Finally, enterprise-specific and fiscal ratios of the municipality and municipally-owned companies are compared.

This "loose" review is intended to give a rough impression of the function, type, and scope of the reports on local authority participation in enterprises. This study cannot provide well-grounded and methodologically impeccable conclusions about the quality of the reports themselves.<sup>2</sup>

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1 A full list is provided in the appendix.

2 See the publications by Schefzyk (2000) and the Leitstelle Gemeindeprüfung of the North Rhine-Westphalian Ministry of the Interior (2001).

Before the empirical findings of the analysis are presented in chapters 3 and 4, we briefly introduce the theoretical basis. We start by defining privatisation and its sub-forms.

## 2. Theoretical Basis and Definition of Terms

### 2.1 Privatisation

The concept of privatisation<sup>3</sup> plays a key role in this report. What is a shifting concept or even a buzzword requires clear definition. In a broad, general sense, privatisation can be described as “the transfer of property in the means of production in government, public, or cooperative ownership to private ownership” (Fuchs-Heinritz et al. 1995, 515). Legally rather than sociologically defined, privatisation can be seen as “the formation of property rights by the public sector in the private sector or their devolution to the private sector” (Richter 1996, 4). The subject matter with which we are dealing cannot be adequately captured by these insufficiently differentiated definitions.

This report distinguishes two generic forms of privatisation: formal and material, which can be further differentiated. In defining sub-categories, it is useful to distinguish between statutory tasks and enterprises.

#### *Formal Privatisation*

In the case of formal privatisation, the task or responsibility for the task remains with the public sector. If a local authority employs a private company as a sort of “vicarious agent” in performing a local government task, this is referred to as *functional privatisation*. If a municipal enterprise is transferred from a public-sector organisation to a local authority private company “while remaining under government [or municipal] control and with no change in the governmental nature of its functions” (Hellermann 2000, 3), this is referred to as *organisational privatisation*.

#### *Material Privatisation*

Material privatisation denotes the transfer of a statutory (local authority) task, and thus responsibility for its performance, to the private sector.<sup>4</sup> Material privatisation is thus also referred to as *task privatisation*. This “task perspective” on privatisation considers the issue from the standpoint of the legal system.

If the term is used with reference to companies, a distinction can be drawn in terms of extent between *partial* and *full privatisation*. From a legal system point of view, this procedure could also be called *asset privatisation*, since it involves “the transfer of

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3 For an intensive discussion of the privatisation concept see, e.g., Burgi (1999), Hill (1999a) and Wohlfahrt/Zühlke (1999).

4 Applicable law permits material privatisation in, for example, waste disposal (Para. 16 (2) Recycling and Waste Disposal Act (KrW-/AbfG) and sewage disposal (Para. 18a (2) Water Resources Policy Act (WHG)).

government [or municipal] ownership of enterprises or real property to the private sector” Hellermann 2000, 3).<sup>5</sup>

## 2.2 The Legal Basis for Local Authorities’ Economic Activities

The primary legal basis for local government and the economic activities of local authorities is the constitution of the Federal Republic, the Basic Law. According to Article 28 (2), “the municipalities shall be guaranteed the right to manage all the affairs of the local community on their own responsibility within the limits set by law.” Within the framework of local self-government, local authorities are granted scope for independent action and decisions, but they are also placed under the supervision of superordinate authorities. The right of local authorities to self-government<sup>6</sup> entails a sovereign right of organisation. This means that local authorities have the right to organise administration autonomously to meet their particular needs. Functions within the remit of local authorities can be transferred to organisational entities set up for this purpose (municipal enterprises) (Stober 1996, 78).

Although the Basic Law gives no precedence to private enterprise over public service delivery, it nevertheless places restrictions on economic activity by local authorities under Article 2 (1), Article 12 (1), and Article 14 (1) (for details see, e.g., Hill 1997).

The local government acts adopted by each state (*Gemeindeordnung: GO*) balance interests<sup>7</sup> and set certain limits to municipal economic activities:

1. Public purpose must justify the activity. Public purpose is “every public-regarding objective lying in the public interest of residents” (Heinrichs/Schwabedissen 1998, 161). According to the courts, a wide range of purposes are conceivable, such as social services, competition objectives, economic development, and the safeguarding of jobs. Profit-making alone is not a public purpose, although any economic activities undertaken by municipal enterprises are required to be efficient and profitable, yielding a return for the municipal budget. The decision on public purpose has to be made by the municipal council (Hill 1999b, 48 ff.).
2. The enterprise must be reasonably proportionate in type and extent to the capacity of the community.
3. A private organisation must not be able to perform the task better and more economically.

These limits are broader or narrower from state to state, but essentially alike.

The fourth hurdle is the locality principle. It states that economic activity is permissible only within the territory of the municipality. However, this principle has been modified in some states, for example in North Rhine-Westphalia: “Economic activity outside the

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5 In practical everyday parlance, the sale of more than 50 per cent of shares in a municipal enterprise is sometimes called material privatisation. In legal terms, however, this is not correct.

6 Tomerius and Breikreuz (2003) discuss whether the *right* to local self-government does not imply a “duty of self-government” when local functions are privatised and performed under private-public arrangements.

7 Standardized in accordance with the 1936 German State Local Government Act, Para. 67.

territory of the municipality is permissible only under the conditions set forth in Para. 18 and if the legitimate interests of the local territorial authorities are safeguarded" (GO NRW Para. 107 (3)). Local authority participation in foreign enterprises poses a particular problem. It runs counter to both the locality principle and that of public purpose. Economic activity abroad is allowed under Para. 107 (4) of the NRW local government act if permission is granted by the supervisory authorities. Other local government acts have so far made no provision for participation in companies abroad.


### 2.3 Legal Forms of Municipal Enterprise

In deciding to hive off a task from the core budget of the administration, the choice of legal form is basically free. The North Rhine-Westphalian and Baden-Württemberg local government acts do, however, impose restrictions on the foundation of stock corporations, *Aktiengesellschaften (AG)*. They may be set up, acquired, or expanded only "if the public purpose is not or cannot be equally well fulfilled in another legal form" (Para. 108 (3) GO NRW and Para. 103 (2) GO Baden-Württemberg).

The choice of legal form is the critical factor in determining the future extent of political control and influence over a company (Richter 1996, 6). The stronger the staffing, financial, and contractual ties between the local authority and an enterprise, the greater will be the influence the municipal council can exercise. Wohlfahrt and Zühlke (1999, 53) take the view that legal forms that go beyond the *Eigenbetrieb*, the semi-autonomous municipal agency, are scarcely amenable to control or influence.

At this point we provide an overview of the possible legal forms for local authority enterprise with the specific advantages and disadvantages as regards municipal control.

Table 1: Overview of Legal Forms of Enterprise\*

	Public forms	Private forms
Without separate legal personality	<i>Regiebetrieb</i> : direct labour organisation <i>Eigenbetrieb</i> : semi-autonomous agency <i>Eigenbetrieb</i> -like facilities	<i>OHG</i> general partnership <i>KG</i> limited partnership <i>GbR</i> civil partnership <i>GmbH&amp;Co.</i> <i>KG</i> general partnership with <i>GmbH</i> as general partner
With separate legal personality <sup>1</sup>	<i>Öffentlich-rechtliche Anstalt</i> : public law institution <i>Stiftung</i> : foundation <i>Zweckverband</i> : joint authority	<i>Genossenschaft</i> : cooperative <i>GmbH</i> : limited liability company <i>AG</i> : stock corporation
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\*Source: Own presentation based on Schefzyk (2000, 24 ff.), *Beteiligungsbericht Dortmund* (2001/2002, 10 ff.) and Diederich (1992, 95 ff.).

1 Separate legal personality is the capacity to be the subject of rights and duties.

8 The conditions of Para. 1 are the three restrictions mentioned above.

### 2.3.1 Types of Public Enterprise

Regiebetrieb: *Direct Labour Organisation*<sup>9</sup>

*Regiebetriebe*, direct labour/service organisations are neither organisationally nor legally independent and are therefore not separate from the administrative authority (Diedrich 1992, 111). Accounts are fully integrated with the accounting system of the local authority. Because the entity is not independent it is under the unrestricted formal control of the local authority.

Eigenbetrieb *and* Eigenbetrieb-Like Organisations

*Eigenbetriebe* are local authority agencies that are largely independent from an organisational point of view. However, they have no separate legal personality, so that the local authority bears full liability. They are subordinated to the mayor. *Eigenbetriebe* are so-called “special assets,” i.e., separate accounting entities operating outside the municipal budget, which merely shows financial links.

In contrast to *Regiebetriebe*, *Eigenbetriebe* have their own business accounting systems and draw up their own articles laying down the responsibilities of the organisation’s organs. The organs are *Werkleitung* (operational management) and *Werksausschuss* (works or policy-setting committee). The policy-setting committee collaborates with the municipal council. Together they are responsible for basic guidelines, for monitoring strategy, and for setting prices and charges (Wohlfahrt/Zühlke 1999, 53). However, the council has no access to operating assets. Third-party participation in *Eigenbetriebe* is not possible. However, an *Eigenbetrieb* may participate in other enterprises (Schefzyk 2000, 27).

*Eigenbetrieb*-like facilities are local authority undertakings (in, for example, sports and the arts) that do not engage in economic activities but are nevertheless managed according to the same rules as *Eigenbetriebe* (Schefzyk 2000, 25). Because they have no separate legal personality, local authorities can exert strong influence on them as far as staffing, finance, and articles are concerned.

In establishing *Eigenbetrieb*-like facilities, local authorities may take over individual elements or all arrangements under the law relating to *Eigenbetriebe*. There are no essential differences in control resources, so that the two types can be subsumed under *Eigenbetrieb*, as the reports under study generally do.

Anstalt des öffentlichen Rechts: *Institution under Public Law*

*Anstalten öffentlichen Rechts*, institutions under public law, have separate legal personality and pursue a public purpose. The organs are the executive board, which manages the institution under its own responsibility, and the board of administration, which supervises the executive board. The local authority can exert influence in drawing up and amending

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9 Direct labour organisations are included at this point only for the sake of completeness, since they fall under the municipality operating budget and are therefore not included in reports on holdings.

the articles and in appointing members of the administrative board. In certain cases, the latter are bound by instructions vis-à-vis the council. Because such institutions have separate legal personality, they are more independent of local authority influence than *Eigenbetriebe* (cf. Schefzyk 2000, 27 ff.).

#### Zweckverband: *Joint Authority*

A *Zweckverband*, special-purpose joint authority, is a corporation under public law with separate legal personality. It performs tasks that can be handled only jointly and not by one local authority on its own. Such joint authorities are either facultative (*Freiverband*) or mandatory, imposed by the supervisory authority (*Pflichtverband*). A *Zweckverband* is set up for a clearly defined purpose. The organs are the director (*Verbandsvorsteher*), who is responsible for management and administration, and the joint authority meeting/ association assembly (*Verbandsversammlung*), which has all decision-making rights and supervises the director. "Members of the joint authority can be other public corporations, public law institutions, or foundations, as well as private persons." (Schefzyk 2000, 29). The influence an individual local authority can exercise over a joint authority must be considered slim, since, as a rule, no single local authority has a majority.

### 2.3.2 Types of Private Enterprise

#### Kommanditgesellschaft (KG) and GmbH&Co. KG

The *Kommanditgesellschaft (KG)* or limited partnership has no separate legal personality. But it does have partial legal capacity, which means that it can be the subject of legal rights and duties. One or more personally liable general partners and limited partners liable to the amount of their contribution constitute the partnership. The legal relationship between limited partners and general partners is strongly determined by the partnership agreement, since statutory provisions allow a great deal of leeway. Management is entrusted to the general partner/s, limited partners being excluded. The organs of the limited partnership are the management and the partners' meeting, composed of general partners and limited partners, which oversees management.

Owing to the rules on liability, local authorities can participate in limited partnerships only as limited partners. Because great flexibility is permitted in drawing up the partnership agreement, municipal influence on a *KG* varies greatly. Municipalities being excluded from management owing to their status of limited partners, their influence is limited to operative aspects. Another factor determining local authority influence is the amount of capital invested.

The *GmbH & Co. KG* is a limited partnership in which the general partner is a limited liability company (*GmbH*). The general partner is responsible for management. Local authorities can accordingly be both general partners and limited partners, which can considerably increase their influence in the partnership.

### Gesellschaft bürgerlichen Rechts (GbR): *Civil Partnership*

The civil partnership has no separate legal personality. The partners are jointly and severally liable, with liability extending both to the assets of the firm and the private assets of the partners. Partners can be natural or legal persons, including local authorities. The partnership agreement must state a common purpose. The company is managed jointly, unless the partnership agreement provides otherwise. Supervision is exercised personally by each and every partner.

### Genossenschaft: *Cooperative*

The cooperative has separate legal personality. The articles are largely prescribed by the Cooperative Act. Each member (*Genosse*) is liable only to the amount contributed. There is no personal liability provided that the bye-laws do not provide for contingent liability to make further contributions. The organs of the cooperative are the board of directors (*Vorstand*), the supervisory board (*Aufsichtsrat*), and the general meeting (*Generalversammlung*). The board of directors represents the society externally. It is elected by the general meeting. The supervisory board oversees the activities of the board of directors, and no-one may be a member of both bodies. Each member has one vote in the general meeting, regardless of the amount contributed, unless the bye-laws provide otherwise.

The cooperative offers local authorities basically the same scope for exerting influence as the limited liability company (see below). In fact, because each member generally has only one vote, municipal influence is very limited.

### Gesellschaft mit beschränkter Haftung (GmbH): *Limited Liability Company*

The *GmbH* is a company limited by shares with separate legal personality. It has certain similarities with a partnership, because corporate rights and duties can be distributed in much the same way. The articles of association are adopted by shareholders pursuant to the Limited Liability Company Act (*GmbH-Gesetz*), which permits great flexibility. Each shareholder is liable only to the amount of its contribution unless the articles impose a contingent obligation to make supplementary contributions. The organs are the management (managing directors), who represent the company vis-à-vis third parties and conduct the business of the firm; the shareholders' meeting, which has the right to make fundamental decisions; and the supervisory board. The supervisory board is a mandatory organ only when the company has a workforce of at least 500, but it can be set up under the articles of association if the firm has fewer employees. The job of the supervisory board is to oversee management.

The scope of a local authority to intervene in limited liability companies in which it has a stake depends very much on how much of the share capital and what voting rights it holds – unless the number of votes at the shareholders' meeting is not tied to the proportion of share capital held, a matter which can be settled in the articles. Where the local authority has a share of less than 10 per cent, its influence is generally marginal, since there are hardly any minority rights below this percentage.

Municipal scope for intervention can be defined when drawing up and amending the articles. Moreover, a local authority can be entitled to issue instructions to municipal representatives on the supervisory board and in the shareholder's meeting. A dilemma that faces municipal representatives in corporate bodies is that, while they are committed to the welfare of the company and required to treat sensitive corporate information as confidential, they have to defend the public interests of the municipality in the council.

Minority rights are provided for under Para. 50, 51a, and 53 of the GmbH Act. The blocking minority for individual shareholders is 25 per cent + x of share capital held, since 75 per cent of votes are required to amend the articles. A shareholders' meeting can be called by 10 per cent of votes; the convocation must state the purpose of the meeting and submit the subjects for resolution. Every shareholder has the right to inspect company books and documents without delay.

#### Aktiengesellschaft (AG): *Stock Corporation*

Like the *GmbH*, the *AG* is a company limited by shares with independent legal personality. The articles of association are strongly determined by the provisions of the Company Act (*Aktiengesetz: AktG*). The shareholders' meeting (*Hauptversammlung*) appoints the supervisory board (*Aufsichtsrat*). The board oversees the board of management (*Vorstand*), which is responsible for conducting the business of the company.


Because the organisational structures of the *AG* and the *GmbH* are comparable, there is likely to be little fundamental difference in the possibilities local authorities have for exerting influence in companies of these two types. In practice, however, influence in the *AG* is restricted by the strong binding effect of the Company Act on the articles and the decision-making competence of company organs. At any rate, the municipal council needs to take this into account in deciding matters affecting "its" stock corporations, since municipal decisions cannot override company law, which is federal law. Local authority influence is also limited by the strong position of the board of management (Richter 1996, 6).

Minority rights are provided for under Para. 120 and 122 of the Company Act. A shareholder with 20 per cent of votes may call a shareholders' meeting and submit subjects for resolution. A capital contribution of at least 500,000 also suffices for the latter right. With 10 per cent of votes or at least 1,000,000 equity, the holder has the right to vote individually on whether a member of the management board is to be given a discharge or not.

Table 2 juxtaposes the formal organisational structures of the different legal forms of enterprise to facilitate comparison.

Table 2: Organisational Structures of the Different Types of Enterprise\*

Legal form	Organ level		
	Supervisory body	Operative management	Supreme decision-making body
<i>Regiebetrieb</i>	No independent organs		
<i>Eigenbetrieb</i>		<i>Werksleitung:</i> operational management	<i>Werksausschuss:</i> policy-making committee
<i>Anstalt des öffentlichen Rechts</i>		<i>Vorstand:</i> board of management	<i>Verwaltungsrat:</i> board of administration
<i>Zweckverband</i>		<i>Verbandsvorsteher:</i> director	<i>Verbandsversammlung:</i> joint authority meeting
<i>GmbH&amp;Co. KG</i>		<i>Geschäftsführung:</i> board of management	<i>Gesellschafterversammlung:</i> shareholders' meeting
<i>GbR</i>	<i>Gesellschafter:</i> partners (pooling of interests)		
<i>Genossenschaft</i>	<i>Aufsichtsrat:</i> supervisory board	<i>Vorstand:</i> board of management	<i>Generalversammlung:</i> general meeting
<i>GmbH</i>	<i>Aufsichtsrat:</i> supervisory board <sup>1</sup>	<i>Geschäftsführung:</i> board of management	<i>Gesellschafterversammlung:</i> shareholders' meeting
<i>AG</i>	<i>Aufsichtsrat:</i> supervisory board	<i>Vorstand:</i> board of management	<i>Hauptversammlung:</i> shareholders' meeting

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\*Source: Own presentation based on Schefzyk (2000, 24 ff.), Beteiligungsbericht Dortmund (2001/2002, 10 ff.) and Diederich (1992, 95 ff.).

1 Mandatory with a workforce of over 500, otherwise facultative.

#### 2.4 Advantages and Disadvantages for Local Authorities of Private Companies Limited by Shares (*GmbH* and *AG*)

Because hierarchies can be kept flatter, the *GmbH* and the *AG* have the advantage over public enterprises of simpler and shorter lines of decision. Furthermore, companies limited by shares are more flexible in hiring and firing, since they are not subject to public service law.

The *AG*, in particular, offers local authorities disadvantages with regard to control and influence. This is because of the strong prescriptive effect of company law, which, being federal law, takes precedence over state local government law. This limits both the possibilities of drafting the articles to suit the purposes of the local authority and the organisational freedom of corporate organs.

Local politicians who are members of the organs of companies in which the local authority participates are, as we have seen, caught between their commitment to local public interest and to the interests of the enterprise. They have a duty not to disclose confidential information, which makes communication between the company and the local authority, especially the council, more difficult. The duty to observe secrecy also applies vis-à-vis the political groups in the city council to which members of the supervisory board belong. Supervisory boards in private companies limited by shares are frequently not in a position to exercise political control in a municipal enterprise

(Schneider 2001, 11). This can mean that such companies are able to operate relatively free from municipal intervention. What is more, there is often little awareness among members that companies in which the municipality participates perform functions within the remit of the local council (Beyer 1997, 212). Control over municipal enterprises is therefore limited, and in this context the term "undercontrol" is often used.

## 2.5 Means of Control and Legal Form

As we have seen, the choice of legal form for a hived-off enterprise affects the means available to the local authority to exercise political influence and control. By undertaking economic activities in a private legal form, local authorities make themselves subject to company law, which, being federal law, overrides state law, i.e., in this case the given state local government act, the *Gemeindeordnung* (Beteiligungsbericht Oldenburg 2002, 10). In the case of the *GmbH*, the shareholder has relatively broad scope for action to defend its interests in the company. It is different with the *AG*, which, as we have seen, is difficult for the local authority to control owing to its strong subjection to company law. And the *KG*, too, offers little means of exerting influence, since municipalities can participate only as limited partners.

However, with the exception of the *AG* and *KG*, the public sector can – at least in theory – secure controlling influence over all the other types of enterprise mentioned. For example, local authority influence in an *Eigenbetrieb* need not necessarily be greater than in a *GmbH* fully owned by the municipality. Our thesis is that the most important factor for municipal influence is the practical form given the relationship between the enterprise and the local authority, the legal form chosen for the undertaking being of secondary importance. There are three types of interlinkage between the local authority and a company by which municipal influence can be safeguarded (Schefzyk 2000, 143 f.):

- Personnel links:  
The local authority has the right to appoint members to the different organs of the company. If the local authority has a majority of members, it can be said to have a controlling influence. If these members are bound by instructions, municipal influence is stronger still. In any case, it must have the right of control (in the most drastic case recall of municipal representatives from the company organs) if it is to be said to have a controlling position. In practice municipal representatives in corporate organs often receive instructions (Leitstelle Gemeindeprüfung 2001, 14).
- Financial links:  
Financial links arise from participation in the nominal capital of the enterprise. The local authority has a controlling position if it holds the majority of capital. However, this must translate into a majority of votes in the general meeting if business policy is to be actively influenced.
- Contractual agreements, articles of association:  
Purposive drafting of the company articles can give a local authority a controlling position. Another instrument is the conclusion of control agreements under which the local authority retains sole power of decision. Guidelines for the standardisation of

participating interests have so far tended to be the exception (Leitstelle Gemeindeprüfung 2001, 14).

There are often complaints about excessive control in municipal enterprises, especially in public enterprises, because they are often subject to the bureaucratic rules of budgetary and public service law. This makes the flexible, efficient conduct of business more difficult (Röber 2001, 8). The hiving-off of municipal enterprises can, on the other hand, lead to inadequate control, because “after outsourcing tasks, personnel restrictions (may) ensue, since important members of staff transfer to the private company. Another cause may lie in the public partner being inadequately informed” (MBU/UBA 2001, 271). Municipal companies often complain that political goals and performance standards are not defined. As a result of inadequate control, local authorities are not in a position to impose politically motivated corporate objectives. This means that municipal companies can often operate relatively independently (Röber 2001, 8 ff.). However, when the political authorities and management have common interests, concretely defined objectives can be attained, for example, training apprentices over and above actual needs (Schneider 2001, 12).

## 2.6 Reports on Holdings

With the progressive privatisation of municipal functions, the local authority budget is becoming less and less meaningful. To counter this, many state local government acts now require local authorities to issue reports on their participation in companies. The states that have introduced this requirement are Baden-Württemberg, Bavaria, Mecklenburg-West Pomerania, Lower Saxony, North Rhine-Westphalia, Rhineland-Palatinate, Saarland, and Saxony-Anhalt.

The aim of the reports is to establish transparency and provide basic information for the control of companies and groups in which municipalities have interests. In practice, however, the reports are primarily accounting tools focusing on the past. They can accordingly contribute little towards the control of municipal holdings (Bals s.a., 7 ff).

The reports list the enterprises in which a local authority has a stake, however large or small. However, state local government acts differ in the demands made of such reports. In Baden-Württemberg, for instance, direct and indirect holdings have to be listed in full with all the relevant data if the local authority has a share of over 50 per cent. If a municipality has an indirect stake of less than 25 per cent in a company, only the interest held needs to be stated along with the object of the enterprise and a note on the fulfilment of its public purpose. In Saarland, in contrast, every holding in excess of 5 per cent has to be listed.<sup>10</sup>

There are also differences in the information that reports are required to supply. On the whole, local government acts give municipalities a great deal of leeway in preparing reports.

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<sup>10</sup> A detailed overview of the state local government acts and their provisions relating to the report on holdings is to found, for instance, in Schefzyk (2000, 68 ff.).

### 3. Empirical Findings

#### 3.1 Methodology

For the first complex under study – the type and extent of privatisation in German local authorities, especially in utility sectors – a quantitative evaluation of the 36 reports available was chosen. The number of enterprises and their classification was first of all determined on the basis of the organisation charts contained in almost all reports on municipal holdings, which, as a rule, show both the size of the local authority stake and the legal form. Organisation charts were checked for completeness and, where necessary, information on individual companies was supplemented. A similar procedure was followed in the evaluation by water, energy, and public transport sectors.

The present analysis of the reports cannot, however, be complete in the sense that absolutely *all* the holdings of *all* the municipalities under study have been covered. Firstly, Nuremberg, Hanover, and Kiel supplied no data on public enterprises (*Eigenbetrieb, Anstalt öffentlichen Rechts, Zweckverband*). Secondly, most reports provide no information on any foundations (*Stiftungen*) or associations (*Vereine*) in which municipalities participate.<sup>11</sup> Savings banks (*Sparkassen*) were left out of account, because they are a special form of local authority enterprise.

Another problem in the quantitative assessment of interests is posed by the numerous so-called “daughter” and “grandchild” companies<sup>12</sup> of directly held enterprises in which municipal participation is minimal. For example, some cities in North Rhine-Westphalia hold marginal interests in RWE AG and therefore formally in the numerous indirect holdings of RWE AG without, however, having the slightest influence on the latter. Understandably, these interests are not mentioned in the reports. The analysis covers all holdings included in the reports, with the exception of savings banks, associations, and foundations, as well as negligible indirect interests.

In calculating total local authority holdings, enterprises were assigned to four categories in order to avoid double counting: direct majority interests, direct minority interests, indirect majority interests and indirect minority interests. Enterprises were assigned to these categories in accordance with the following definitions:

- A *direct interest* means that the local authority itself holds a share.
- An *indirect interest* means that the municipality owns no share itself, i.e., directly, but only through one of its “daughter” companies.
- A *majority interest* means that the local authority holds a share of at least 50 per cent either directly or indirectly. Enterprises in which the local authority had a precisely 50 per cent stake are included because it can block any corporate decision.

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<sup>11</sup> The figures from reports that do provide such information suggests that the number is not inconsiderable. Augsburg alone is involved in 35 foundations. However, foundations and associations are unlikely to be of great financial relevance. Typical are the *Volkshochschulen*, adult education centres.

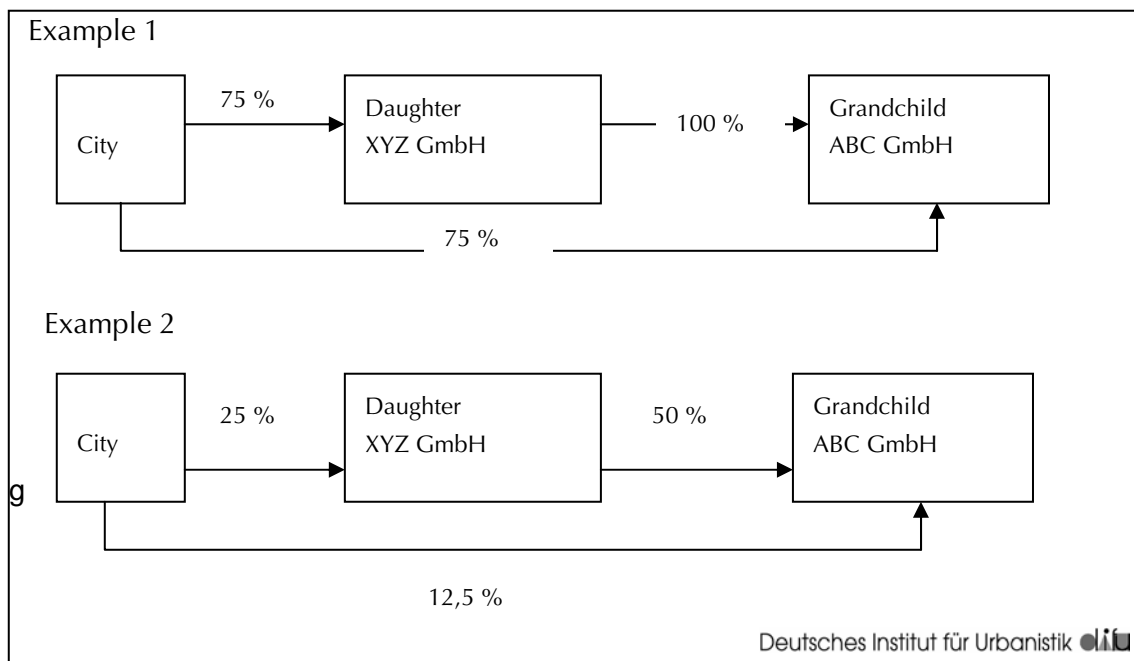
<sup>12</sup> A “daughter” company is one in which the municipality has a direct stake. A “grandchild” company is one in which the municipality participates indirectly via a “daughter.”

- A *minority interest* is held by the local authority if it owns less than a 50 per cent share either directly or indirectly.

If a local authority participates both directly and indirectly via a "daughter" company in an enterprise, it has been classified in terms of the larger interest. For example, an enterprise in which a local authority has a 10 per cent direct stake and a 20 per cent indirect interest via a fully-owned daughter is classified as an indirect interest. In no case were direct and indirect holdings equal.

For the purpose of assigning indirect second, third and fourth tier holdings to the categories of majority or minority interest, percentages were calculated.<sup>13</sup> In example 1 in figure 1, the municipality has a "calculated holding" of 75 per cent in ABC GmbH, and thus an indirect majority interest; in example 2 the figure is 12.5 per cent.

Figure 1: Examples of "Calculated" Participation Rates



Both quantitative and qualitative methods were used to analyse other data contained in the reports in their aspect as tools for managing holdings. Analysis of prefaces and introductory chapters (where available) provided information on the addressees of the reports, on why municipalities issued the reports, and why activities were outsourced to enterprises in municipal ownership. Information about the performance of enterprises' public purposes and comparisons between company-specific and fiscal ratios were culled both from descriptions of individual companies and superordinate, summary chapters of the reports. Sometimes report data was supplemented by information obtained by the authors from the Internet sites of municipalities and municipal enterprises.

<sup>13</sup> See the Mannheim report for an example of this procedure.

It was also important in the context of netWORKS<sup>14</sup> research to investigate whether and to what extent such reports can be tools for controlling companies in which local authorities have an interest. Crucial for a better understanding of the reports is not only how up-to-date they are, but also how the data have been processed and presented to take account of target groups' level of knowledge and competence. The authors' impressions from analysis of the reports – supplemented by information about the practical experience of managerial staff from municipal companies presented at a Difu workshop – were combined to provide the basis for a general assessment of the functionality of the reports for the control of municipally-owned companies.

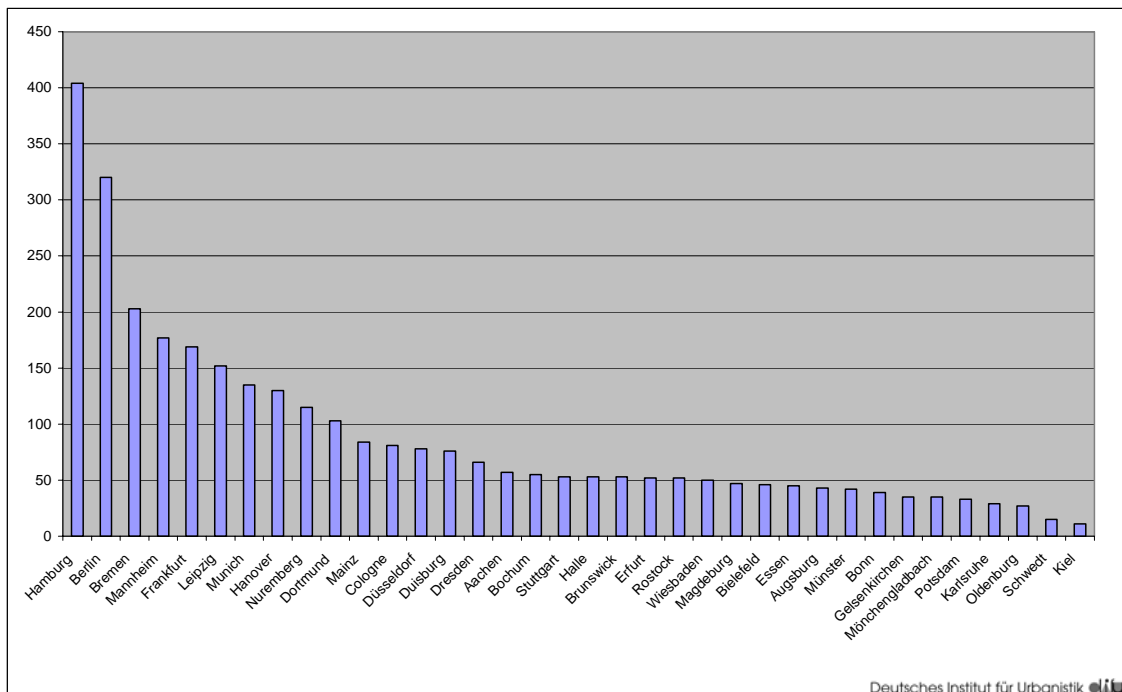
## 3.2 Type and Extent of Privatisation in the Municipalities under Study

### 3.2.1 Number of Holdings

According to our analysis of the 36 reports on local authority holdings, the municipalities under study participate in a total of 3034 domestic and 178 foreign companies. This gives an overall total of 3212. Hamburg leads with interests in 404 enterprises, and Kiel tails the field with only 11. On average, each municipality has 84.3 domestic and 4.9 foreign holdings, giving an average total of 89.2.

In all, domestic holdings of German local authorities are distributed as follows:<sup>15</sup>

Figure 2: Number of Domestic Holdings



14 See the foreword of this volume on "netWORKS."

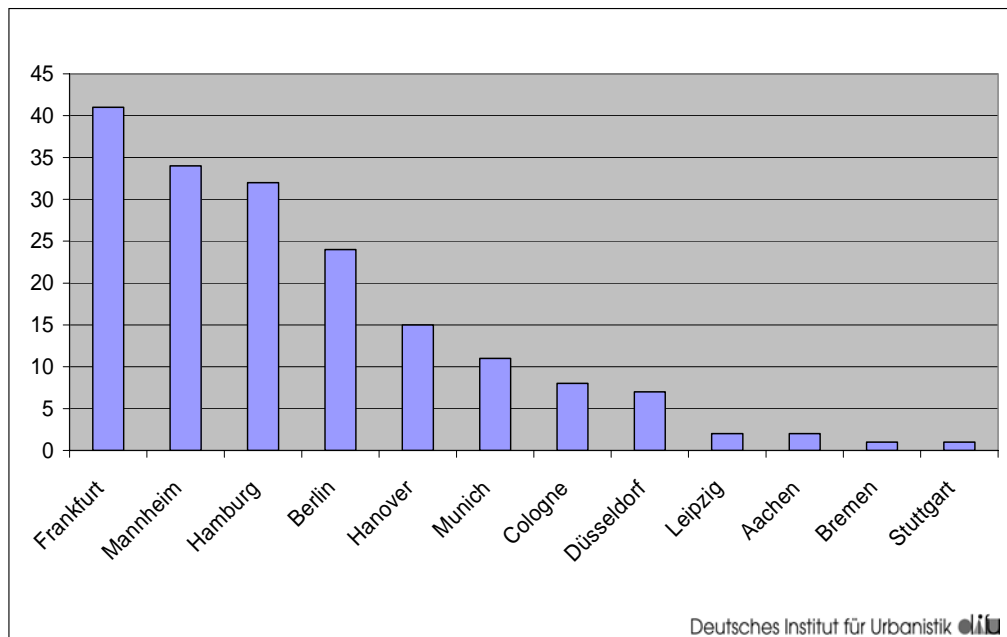
15 A complete overview is to be found in the appendix.

As figure 2 suggests, there is a (more or less positive) link between the size of the municipality and the number of holdings, which can also be proved statistically.<sup>16</sup> The bigger the city, the more enterprises it owns.

Participation by German local authorities in foreign companies is not uncontroversial, since it clearly conflicts with the locality principle and the principle of public purpose to which they are beholden. Municipalities accordingly do not hold direct interests in foreign companies but only indirect stakes through “daughter” companies. All 178 interests recorded abroad are indirect holdings via a (partly-owned) municipal enterprise. German municipalities had an indirect majority stake in 70 foreign companies, and a minority interest in 108.

Foreign holdings are distributed among 12 of the 36 municipalities. Foreign “grandchildren” are generally linked to local authorities via one or two large German “daughter” companies. Frankfurt am Main leads the field with 41 holdings abroad, mostly acquired through the international activities of Fraport AG, in which the Frankfurt municipality has a 20 per cent interest. Other major holders of foreign assets are the Mannheim MVV Energie AG, and the Messe GmbH in Munich.

Figure 3: Number of Foreign Holdings



### 3.2.2 Legal Forms of Participation

Many different legal forms of participation are to be found at the local authority level, ranging from the limited liability company (*GmbH*) and cooperative society (*Genossen-*


<sup>16</sup> For these values the Spearman correlation coefficient is  $r = 0.682$ , indicating a level of significance of 0.01 and thus a medium positive association. A chi-square test carried out in Difu independently of “netWORKS” for cities in North Rhine-Westphalia, which had taken part in a survey conducted in 2002, showed that there was a significant link between population and the number of interests held.

*schaft*) to forms like the *AG & Co. OHG*, a combination of stock corporation and general partnership. By far the most frequent is the *GmbH*<sup>17</sup> with 75.7 per cent, followed by the *GmbH&Co. KG* (limited partnership in which a *GmbH* acts as general partner) with 6.8 per cent, and the *AG* with 6.1 per cent. Then come two public enterprise forms, the *Eigenbetrieb* (semi-autonomous municipal agency) with 4.8 per cent, and the *Zweckverband* (special purpose joint authority) with 1.9 per cent. "Others" include the *AG&Co. KG* (combination of stock corporation and limited partnership), the *GmbH&Co. OHG* (combination of limited liability company and general partnership), the *AG&Co. OHG* (combination of public limited company and general partnership), the *KG auf Aktien* (general partnership limited by shares), and the *OHG* (general partnership), all of which are represented less than four times.

There is a strikingly high proportion of limited liability companies (*GmbH*) among municipal enterprises. No other type of company is anything like as frequent. No other type of private company seems to be as suitable for local authority purposes. The reason why the *GmbH* is so popular is probably because it is relatively easy to set up, because local authority influence is easy to ensure in drawing up and amending the articles of association, because it offers all the advantages of a private company as regards management flexibility, and because there are no restrictions on local authorities forming this type of company. In contrast, certain states (e.g., North Rhine-Westphalia) do impose restrictions on the setting up of *Aktiengesellschaften*. It is much more complicated to found a *GmbH&Co. KG* than a "simple" *GmbH*, since two companies (*GmbH* and *KG*) have to be established.

Table 3: Legal Forms of Domestic Municipal Companies

Legal form	Number	Frequency in %
<i>GmbH</i>	2 297	75.7
<i>GmbH&amp;Co. KG</i>	205	6.8
<i>AG</i>	187	6.1
<i>Eigenbetrieb</i>	146	4.8
<i>Zweckverband</i>	58	1.9
<i>Öffentlich-rechtliche Anstalt</i>	41	1.4
<i>Genossenschaft</i>	40	1.3
<i>GbR</i>	40	1.3
<i>KG</i>	6	0.2
Others	14	0.5
Total	3 034	100

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Local authorities set up noticeably fewer public companies than private ones. It should be pointed out, however, that not all reports include public companies. For example, Nuremberg, Hanover, and Kiel provide no information on public enterprises. A Difu Internet

17 The non-profit *GmbH* (*gGmbH*) as a subform of the *GmbH* was included under "*GmbH*." A nonprofit *GmbH* differs from a "normal" *GmbH* primarily from a fiscal point of view and in the object of the enterprise, not in relation to local authority control.

search showed that these municipalities have six *Eigenbetriebe* or *Eigenbetrieb*-like enterprises, which, given the large number of domestic companies with local authority participation (n = 3034) carry little overall weight and have no impact on basic trends. They have therefore not been included in the evaluation.

Summing the categories “public legal form” and “private legal form,” private companies clearly predominate.

Table 4: Ratio of Private to Public Domestic Companies

Private companies	2 789	92 %
Public companies	245	8 %
Total	3 034	100 %
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Interests abroad, which cannot easily be classified in terms of the German pattern of legal forms, represented 5.5 per cent of all holdings in 2000/2001. The 36 municipalities under study thus had more foreign holdings than domestic *Eigenbetriebe* (4.8 %) and only slightly fewer holdings abroad than *Aktiengesellschaften* (6.2 %).

### 3.2.3 Ratio of Majority to Minority Interests

Local authority leverage for controlling companies in which they hold an interest is generally provided by a municipal majority of share capital, and thus of votes in the shareholders' meeting. The greater the municipal share in a company, the more easily will it be able to intervene.<sup>18</sup> In the case of minority interests, in contrast, the municipality is hardly in a position to impose its will, even if it is the relatively biggest shareholder.

The ratio of majority to minority interests is almost equal.

Table 5: Majority and Minority Interests

Majority interest (50 % – 100 %)	1 561	51 %
Minority interest (< 50 %)	1 473	49 %
Total	3 034	100 %
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In the overall analysis (n = 3034), it was not possible to deal separately with fully owned municipal enterprises, since the data provided by reports was not always sufficiently detailed. Some reports merely state whether the municipality holds a majority interest in a company without mentioning any figures.<sup>19</sup> Nor was it possible to find out how many of these 3034 German municipal enterprises had private shareholders. In this regard, too, the information supplied was too incomplete. Although the reports record the level of municipal participation, they often fail to mention who owns the remaining shares. Are

<sup>18</sup> This is at least theoretically so. Whether the municipality actually exercises its power is another matter.

<sup>19</sup> Owing to the smaller number of companies involved, differentiation was, however, possible in the sectoral analysis (cf. chapter 3.3).


the holders private companies or other municipal enterprises,<sup>20</sup> or other municipalities? Considering only the 31 companies listed as *Stadtwerke* (organizational groupings of municipal utilities) in the reports, it transpires that 51 per cent (n = 16) are fully owned by municipalities and 49 per cent (n = 15) are partly owned by third parties. In one of these cases, only other municipalities hold shares in the *Stadtwerk*, so that 45 per cent of *Stadtwerke* in large cities have a private shareholder.<sup>21</sup>

What has not yet been taken into account is whether participation is direct or indirect. This will be done in the next chapter.

### 3.2.4 Ratio of Direct to Indirect Interests

Local authority influence and control vary not only in accordance with the size of the municipal share in the company but also depending on whether the holding is direct or indirect. The more indirect the interest and the more “distant” the company is from the local authority, the more difficult it is for the local authority to exert influence. In two thirds of cases (65 %), municipal participation is via daughter companies. 35 per cent of interests are thus direct. It should be remembered that there are many companies in which a municipality participates both directly and indirectly. In these cases the greater holding was taken into account.

Table 6: Direct and Indirect Interests

Direct interest	1 058	35 %
Indirect interest	1 976	65 %
Total	3 034	100 %
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### 3.2.5 Local Authority Control Resources

In order to determine theoretical control resources, the separate evaluations in terms of majority and minority interests and of direct and indirect participation have to be considered together. Only then do we obtain a meaningful overall picture:

20 For example, the MW Energie AG, wholly owned by the Mannheim municipality, has interests in utilities of other local authorities (including Offenbach and Solingen).

21 To give an idea of the dimensions: of the 972 undertakings that belong to the Association of Municipal Enterprises (*Verband kommunaler Unternehmen: VKU*) in Cologne, 27 per cent (n = 263) have a private shareholder). 73 per cent (n = 709) are thus wholly owned by local authorities (UNI 2003, 13).

Table 7: Ratio of Direct and Indirect Participations to Municipal Holdings

	Direct interest		Indirect interest	
	Majority (50 % - 100 %)	687	23%	874
Minority (< 50 %)	371	12%	1 102	36 %
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In fewer than a quarter of companies (23 %) is the formal influence of the local authority indisputable, since it has a majority, direct interest. It is at least questionable in the remaining 77 per cent of enterprises. If holdings abroad are included, the share of companies in which the local authority can exercise control neither through majority nor direct ownership increases to almost 79 per cent. Moreover, companies in which the local authority has a precisely 50 per cent holding have been classified as majority interests for the purpose of our analysis. Direct majority interests include 55 companies (8 %) in which municipalities hold a 50 per cent share; 89 companies (10 %) are classified under indirect majority holdings. If we subtract these companies, because local authorities cannot make independent decisions in their regard, the proportion of companies that are subject to direct formal municipal control is even smaller. The figure for this survey is then around 20 per cent.

Some local government acts lay down that the articles or bye-laws of private companies must require “that the public purpose of the company ... be fulfilled and the municipality ... be given reasonable influence, especially in the supervisory board or a corresponding supervisory organ of the company” (GO Baden-Württemberg, Para. 103 (1) Sentences 2 and 3).<sup>22</sup> Otherwise, forming or participating in a company is not permitted. However, the public purpose of the enterprise is examined by the supervisory authorities solely in the course of approval proceedings. No later checks are made, so that approval once granted cannot be withdrawn. In the many private companies in which the municipality has a (direct or indirect) interest of less than 50 per cent, it is doubtful whether the conditions of “fulfilling a public purpose” and “reasonable municipal influence” are met throughout – all the less so when private parties hold shares in the (municipal) enterprise. For the performance of a (costly) public purpose can easily conflict with the chiefly monetary goals (profit making) of private companies and fall victim to competitive pressure in markets.

Unlimited control is possible only in the case of a majority, direct interest where private shareholders do not have a blocking minority of 25 + per cent.

### 3.3 Sectoral Analysis

Private municipal companies have been operating for decades in the fields of water, energy and public transport; organisational privatisation is thus nothing new in these sectors (Schneider 2001, 3).

In this section of the analysis, the only municipal enterprises included were those within the administrative territory of the 36 municipalities under study that were operating in

<sup>22</sup> The North Rhine-Westphalian local government act has a similar provision.

one of the three sectors at the point in time when the report was drawn up in 2000/2001. Not included are the many subsidiaries of *Stadtwerke* outside the home local authority territory in other municipalities, like those of the Munich *Stadtwerke*, which has interests in the utilities of other Bavarian municipalities.

In the case of Nuremberg, Kiel, and Hanover, whose reports provide no information on *Eigenbetriebe*, an Internet search was conducted to ascertain whether they had such agencies operating in the water, energy, and public transport sectors. Hanover has a sewerage agency which is included in the sectoral analysis.


### 3.3.1 Water

The analysis of holdings in the water sector covers 58 companies in the 36 municipalities under study. They included both water supply and sewage disposal utilities. 21 of the 36 cities own two separate companies for water supply and sewage disposal. From a statistical point of view, each of the local authorities under study had 1.61 enterprises dealing with water in the municipal territory.

Table 8 shows the count by legal form of enterprise.

Table 8: Legal Forms of Enterprise in the Water Sector

Legal form	Number	Percentage•
<i>GmbH</i>	27	47
<i>Aktiengesellschaft</i>	14	24
<i>Eigenbetrieb</i>	13	22
<i>Anstalt öffentlichen Rechts</i>	3	5
<i>Zweckverband</i>	1	2
Total	58	100


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Relative to the overall analysis (cf. 25 f.), the *Eigenbetrieb* and *AG* are frequent and the *GmbH* correspondingly rare. The high proportion of *Eigenbetriebe* can probably be explained by the tax advantages offered public enterprises in the sewerage sector. All 13 *Eigenbetriebe* operate in this field. These advantages are also available to the three institutions under public law (*Anstalten des öffentlich Rechts*) and the joint authority (*Zweckverband*).<sup>23</sup>

Organisational privatisation in the water sector is less advanced than in local authority economic activities as a whole. In 2000/2001, just under 30 per cent of water-sector companies in the cities under study were public enterprises (*Eigenbetrieb*, *Anstalt öffentlichen Rechts*, *Zweckverband*) compared with a good 8 per cent of public companies in all task areas (cf. 26).


<sup>23</sup> The same arrangements apply for waste disposal.

Table 9: Ratio of Private to Public Companies in the Water Sector

Private companies	41	71%
Public companies	17	29 %
Total	58	100 %
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Ownership of companies operating in the water sector needs to be examined to ascertain the type or form of privatisation.

Table 10: Ownership and Legal Form of Enterprise in the Water Sector

	<i>Eigenbetrieb</i>	<i>Anstalt öffentlichen Rechts/ Zweckverband</i>	<i>GmbH</i>	<i>AG</i>	Total	
100% municipal share (direct interest/"daughter company")	13	2	9	1	25	43 %
100% municipal share (indirect interest/"grandchild company")		0	5	2	7	12 %
Majority company (municipal share 50-100%)		1	12	9	22	38 %
Minority company (municipal share < 50%)		1 <sup>1</sup>	1	2	4	7 %
Total	13	4	27	14	58	100 %
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1 This enterprise is a joint authority.

Third parties hold shares in 45 per cent of municipal enterprises in the water sector. In 7 per cent of cases the municipality share is under 50 per cent. This figure is, however, comparatively low when one considers the overall analysis. Municipalities have only a minority interest in 49 per cent of the companies recorded. The transfer of property rights to third parties (partial privatisation) has not progressed very far in the water sector in comparison with the overall analysis (and, as we will see, with the energy sector). 38 per cent (n = 22) of municipal companies recorded in the water sector have private shareholders. In three, the private party even has a majority share.<sup>24</sup> By comparison, 55 per cent (n = 32) of companies are fully owned directly or indirectly by the given municipality. In four cases other municipalities also hold an interest.

### 3.3.2 Energy

The 36 municipalities reported participation in 42 enterprises in the energy sector. In contrast to the water sector, most local authorities have only one company in the energy sector supplying residents and industry with energy. The average figure is 1.17 companies


<sup>24</sup> Gelsenkirchen is an exception as regards the size of the municipal share: Gelsenwasser AG is almost entirely in private hands. The municipality has retained only 2.8 per cent, while other municipal shareholders have a total of 12.4 per cent.

per municipality. However, the companies included in this list are not to be equated with the *Stadtwerke*, since in some cities the function of the latter has changed in recent years: Some *Stadtwerke* now operate as holding companies,<sup>25</sup> with operative business being completely or partly outsourced to subsidiaries. In other cities, however, the *Stadtwerke* still supply customers directly with energy. Companies that supply customers directly with energy in the municipality have been included.

The distribution of legal forms on enterprise in the energy sector of the 36 cities under study is as follows:

Table 11: Legal Forms of Enterprise in the Energy Sector


Legal form	Number	Percentage•
<i>GmbH</i>	24	57
<i>AG</i>	18	43
Total	42	100

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In the energy sector, organisational privatisation is thus much more advanced than overall or in the water sector. In the 36 municipalities under study there is not a single public enterprise remaining. Here, too, the most frequent type of company (43 per cent) is the *Aktiengesellschaft*, a type that represents only 6 per cent of all companies included in the overall analysis.

Table 12: Ownership and Legal Form of Enterprise in the Energy Sector

	<i>GmbH</i>	<i>AG</i>	Total	
100% municipal share (direct interest/"daughter company")	3	2	5	12 %
100% municipal share (indirect interest/"grandchild company")	3	4	7	17 %
Majority company (municipal share 50 – < 100%)	15	8	23	54 %
Minority company (municipal share < 50%)	3	4	7	17 %
Total	24	18	42	100 %

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As far as ownership in the energy sector is concerned, both organisational privatisation and the sale of shares to third parties (partial privatisation) are more advanced than in the water sector. Only 29 per cent (n = 12) of energy enterprises are still wholly owned,

25 A *Konzern* is a group of several legally independent companies under common management, regardless of whether they are natural or legal persons (Schruff 1993, quoted in Schefzyk 2000, Two types of *Konzern* can be distinguished: The *Stammhauskonzern* (parent company group) and the *Holdingkonzern* (holding group), both of which are to be found at the municipal level. In the parent company group the holding company itself is operative, whereas in the holding group it is responsible only for the administration and management of subsidiaries. This type of private-law combination utility permitted by a holding structure can offer municipalities the advantage that taxable gains in one unit (subsidiary) can be offset against losses in another (Schefzyk 2000, 37).

whether directly or indirectly, by the given municipality. In 54 per cent of cases ( $n = 23$ ) the municipality is the controlling shareholder, and in one sixth (17 per cent;  $n = 7$ ) it has only a minority interest.

Stuttgart and Berlin have completely privatised their energy utilities. If we add the two fully privatised entities to the seven minority interests, municipalities have little or no influence over no less than 20 per cent of energy sector enterprises.

The “death” of the *Stadtwerke* that many had believed would ensue from the liberalisation of the energy sector has not occurred (Leciejewski 2003). Apparently *Stadtwerke* have developed strategies for holding their own in the market. For example, the MVV Energie AG, which is still largely owned by the Mannheim municipality, is now the fifth largest electricity supplier in Germany. Other strategies include forming alliances with other local authorities (such as that between the *Stadtwerke* in Mainz and Munich) or the sale of shares to private (energy) companies in order to maintain the enterprise’s position in the market.<sup>26</sup>


### 3.3.3 Public Transport

All enterprises providing public transport services in one of the cities under study were included in the evaluation of this sector. Supralocal transport associations and companies providing suburban passenger rail transport services were not taken into account.

Most municipalities own a public transport enterprise that operates passenger services ranging from bus to underground. The average is 1.3 companies per city. It is striking that, as in the energy sector, public enterprises play almost no role, organisational privatisation being well advanced. 40 per cent of public transport companies are *Aktiengesellschaften*, a much higher proportion than in the overall analysis (6 per cent).

Table 13: Legal Forms of Enterprise in Public Transport

Legal form	Number	Percentage•
<i>GmbH</i>	27	58 %
AG	19	40 %
<i>Eigenbetrieb</i>	1	2 %
Total	47	100 %

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The organisational structures of members of the Association of German Transport Operators (*Verband deutscher Verkehrsunternehmen: VDV*)<sup>27</sup> diverge considerably from those described in the reports on local authority holdings. 73 per cent of VDV members are limited liability companies (*GmbH*), 15 per cent stock corporations (*AG*), 9 per cent semi-autonomous municipal agencies (*Eigenbetrieb*), and 3 per cent “others” (VDV quoted by Bracher/Trapp 2003, 19f.). These differences could be explained by the different struc-

<sup>26</sup> See Burgi (2002) on partnerships between *Stadtwerke* and private companies.


<sup>27</sup> Over 90 per cent of the entire public transport market is represented in the VDV.

tures of the local authorities behind the statistics. This analysis has been almost exclusively concerned with large cities, whereas VDV statistics include public transport enterprises from smaller communities and rural districts.

Many enterprises in the public transport sector are integrated in holding companies. This explains the high figure of 55 per cent of enterprises fully but only indirectly owned by local authorities. The participation of private parties in municipal public transport operators have so far tended to be the exception. The given municipality is directly or indirectly the sole shareholder in 32 companies (68 per cent). Minority interests are the exception. Full privatisation has not yet occurred in this sector. A local authority public transport enterprise still exists in every municipality.

Table 14: Ownership and Legal Forms of Enterprise in the Public Transport Sector

	<i>Eigenbetrieb</i>	<i>GmbH</i>	<i>AG</i>	Total	
100 % municipal share (direct interest/"daughter company")	1	5	0	6	13%
100 % municipal share (indirect interest/"grandchild company")	0	14	12	26	55 %
Majority company (municipal share 50 – < 100 %)	0	6	7	13	28 %
Minority company (municipal share < 50 %)	0	2	0	2	4 %
Total	1	27	19	47	100 %

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### 3.4 Trend towards the "Municipality Group"

According to their reports, 8 of the 36 municipalities under study now explicitly regard themselves as municipal groups of enterprises: "*Konzern Stadt*".<sup>28</sup> Apart from the label, there is a clear trend among the local authorities under study towards group formation (Killian/Scheider 1999, 19 ff.). The outsourcing of further local authority functions in services for the public and core administration to separate companies has led increasingly to the creation of group structures, with municipal "daughter" companies in turn hiving-off tasks to new enterprises. The founding of new companies, which take on comparatively new functions such as city marketing, also leads to group formation. This development is evident from even a cursory glance at organisation charts and municipal participation structures, to which several pages of the reports are often devoted. Without the respective "parent company" imposing requirements in economic and substantive planning, "grandchild" companies risk developing too great a dynamic of their own. This means decreasing control over municipally-owned companies

This could cause problems for local authorities in the democracy theoretical field, because control of these companies by the city council is no longer fully ensured.<sup>29</sup>

28 The 8 cities are: Augsburg, Brunswick, Duisburg, Essen, Gelsenkirchen, Mannheim, Nuremberg, und Wiesbaden.


29 On the problem of group control by the council cf. Wohlfahrt/Zülke 1999.

## 4. Other Findings of the Analysis

### 4.1 Addressees of Reports on Municipal Holdings

The prefaces to the reports were examined to establish addressees and target groups. 24 of the 36 reports (67 per cent) had a preface with information on addressees. A total of 51 are mentioned. The principle addressees are the municipal council, mentioned 19 times (37 per cent) and citizens, with 16 mentions (31 per cent). The public and the administrative authorities were each named 6 times (12 per cent), interested parties three times (6 per cent), and business once (2 per cent).

Table 15: Addressees of Reports on Participating Interests

Municipal council	19	37 %
Citizens	16	31 %
Public	6	12 %
Administration	6	12 %
Interested parties	3	6 %
Business	1	2 %
Total	51	100 %
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The reports are thus chiefly intended for the city council and local citizens. However, no clear distinction can be drawn between “citizens,” “public,” and “interested parties.” These categories are likely to overlap or even coincide. Since citizens will regard themselves as addressees only if they take a certain measure of interest in local politics, it seems reasonable to subsume these three diffuse categories under “civic public.” We thus find two major target groups: the city council with 19 mentions and the “civic public” with a total of 25 mentions. The functionality of the reports accordingly depends strongly on how they meet the demands of these two main target groups, both of which will tend to have no more than a layman's knowledge of managing holdings. What is primarily demanded of reports is that they be comprehensible and transparent, and that the information they provide be relevant, meaningful, and up-to-date (cf. Schefzyk 2000).

### 4.2 Local Authority Experience in Preparing Reports on Holdings

24 reports contain information on how many reports the given municipality has already issued. Hanover and Bielefeld have had the greatest experience in this regard, having already published twelve. On average, each local authority has brought out 6.75 reports, and thus has gathered considerable experience in preparing such documents.

Table 16: Experience with Reports on Municipal Holdings

Number	Cities		
2	Mainz	Bremen	
3	Halle	Frankfurt	
4	Augsburg	Hamburg <sup>1</sup>	Magdeburg
5	Wiesbaden	Brunswick	
6	Potsdam	Mönchengladbach	
7	Bochum	Gelsenkirchen	Munich
8	Erfurt	Berlin	Münster
9	Leipzig	Dortmund	Bonn
10			
11	Karlsruhe	Düsseldorf	
12	Hanover	Bielefeld	
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1 Hamburg operates with updates, and therefore does not produce a new report every year. So far it has issued four new ones.


#### 4.3 Reasons for Preparing Reports on Holdings

The reasons given for drawing up a report point to the goals, to the underlying conception and functions the authors assign to it. 27 of the reports (75 %) contain a preface explaining the reasons for producing the document. For main reasons emerge:

- Performance of a duty pursuant to the respective local government act: “With the report on holdings, the Essen municipality fulfils its obligations under Paragraph 112 (3) of the North Rhine-Westphalia Local Government Act” (Beteiligungsbericht Essen 2002).
- The reports contribute to the control and supervision of enterprises in which local authorities have a stake: they are “a tool based on business management data for controlling municipal enterprises” (Beteiligungsbericht Wiesbaden 2000).
- They provide insight, improve the information base, and establish transparency. They give “an independent overview of holdings” (Beteiligungsbericht Halle 2000).
- They examine the tasks of municipal companies and give an account of the purposes they serve: They “render account of how and with what degree of success municipal enterprises fulfil their purpose” (Beteiligungsbericht Dortmund 2001/2002).

Table 17: Reasons for Preparing Reports

Reason	Number of mentions	Percentage•
Information, insight, transparency	19	50
Duty under local government act	11	29
Control	6	16
Rendering account	2	5
Total	38	100

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The main reason why local authorities prepare reports on the enterprises in which they participate is to give addressees information about the companies in which they participate and to provide greater transparency on the network of municipal interests. The report “creates a uniform information base intended to facilitate discussion and clarify the contribution of municipal enterprises” (Beteiligungsbericht Bonn 2001), and is an “indispensable reference work” (Beteiligungsbericht Mannheim 2001).

#### 4.4 Information on the Performance of Public Purpose

Companies in which a municipality holds an interest are required to perform a public purpose which goes beyond a mere monetary contribution to the municipal purse (cf. chapter 2.2). Some local government acts, like those of North Rhine-Westphalia and Baden-Württemberg, explicitly require that the report provide information on the extent to which each company fulfils its public purpose, this being one of the fundamental characteristics of public enterprises.

11 of the 36 reports (31 per cent) contain information on public purpose performance. Even in North Rhine-Westphalia, where the local government act specifically demands such an account, only a slightly higher proportion of reports (one third = 33 per cent) include this information. A study by the *Leitstelle Gemeindeprüfung* (local authority supervisory department at the Ministry of the Interior) in North Rhine-Westphalia produced similar results: “More than half the reports either provide no information at all on this point (performance of public purpose) or merely reproduce the corporate objective from the relevant articles” (Leitstelle Gemeindeprüfung 2001, 50). In the reports covered by this analysis, information on the performance of public purposes was often dealt with as followed: “Company XY supplies the public and companies with water, thus fulfilling the public purpose.”

#### 4.5 Reasons for Outsourcing to Municipal Companies

The following economic or financial and political reasons are given for hiving off municipal enterprises from the core administration through organisational privatisation (Wohlfahrt/Zühlke 1999, 3.f.)

Economic and financial reasons include:

- more economical operation through commercial thinking,
- more flexible personnel policy,
- tax advantages,
- possibilities of offsetting losses e.g., through integration in a public utility (combination utility),
- possibilities for cooperation with other companies, e.g., to exploit economies of scale,
- generation of additional know-how,
- access to private capital.

Political reasons include:

- reducing municipal subsidy requirements and thus disburdening the city budget,
- no restrictions imposed by local government constitutional law,
- less control by the public, e.g., no need for parliamentary legitimation, since supervisory boards meet behind closed doors,
- no political obstructions to decision-making,
- weakness of political authorities in making unpleasant decisions such as price and charge increases, and in implementing rationalisation measures,
- attractiveness of neo-liberal positions and paradigms.

12 of the 36 reports (33 per cent) provide information on why the municipality participates in companies. To some extent, the prefaces to the reports cite the reasons mentioned. "A wide range of criteria have applied in deciding to form private companies or to participate in such companies. There are fiscal, sometimes organisational, and occasionally political reasons for doing so" (Beteiligungsbericht Nürnberg 2002). Apart from the provision of services for the public, the focus is on the optimum and efficient performance of functions. By hiving off enterprises, the municipality intends to "achieve steady optimisation of the quality and efficiency in the performance of municipal tasks" (Beteiligungsbericht Köln 2002). "Especially when major investment is required, disengagement from the municipal budget is essential for the flexible and economically sensible performance of functions" (Beteiligungsbericht Erfurt 2002). The difficult financial situation of local authorities is an important topic in this context: "It will also be necessary in future to ease the burden on local budgets through the divestment of municipal enterprises" (Beteiligungsbericht Bremen 2000). Participation in companies is also intended, for example, "to maintain the attractiveness of Dresden despite the need to save" (Beteiligungsbericht Dresden 2001) and to "contribute to the quality of life in the city" (Beteiligungsbericht Bochum 2002/2003). At the same time they are intended to "ease the burden on local government administration" (Beteiligungsbericht Leipzig 2002). In all, "the importance [of municipal participation in companies] will continue to grow" (Beteiligungsbericht Potsdam 2000).

#### **4.6 Comparison between Enterprise-Specific and Fiscal Ratios of the Municipality and Municipal Companies**


19 reports (53 per cent) provide a comparison between enterprise-specific and fiscal ratios of the municipality and municipal companies. Some reports, for example, offer com-

parisons of flows between the municipal budget and companies, of the relevant levels of investment, or of staffing levels in companies and administrative entities.

Two reports compare levels of investment by municipal companies and by the local authority. In Karlsruhe and Hanover, for instance, municipal companies account for 63 per cent of all local authority investment. In some cities, municipal companies have been responsible for investing several hundred million euros.

Table 18: Profit/Loss for the Municipal Budget from Municipal Companies

City	Profit/loss for operating budget, round figures, in million
Düsseldorf	+116
Hanover	+61
Münster	+29
Bielefeld	+14
Gelsenkirchen	+6
Karlsruhe	-3
Brunswick	-13
Rostock	-21
Bonn	-59
Essen	-159

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10 reports give a precise listing of flows (financial) resources from the municipality to companies and from companies to the municipality (28 per cent). As apportioned to the cities under study, income and expenditure are more or less in balance. It should be noted that one-time effects (e.g., proceeds of sales) may cause distortions. This list can therefore provide only a cursory overview.

## 5. Summary for the Busy Reader

- What has been examined?

In order to determine the extent and quality of privatisation in German municipalities, especially in utility sectors, a quantitative evaluation of 36 local authority reports on municipal holdings<sup>30</sup> was carried out. The number of companies in which local authorities participate and their classification was first of all determined on the basis of the organisation charts contained in almost all reports, which, as a rule, show both the size of the local authority interest and the legal form of the enterprise. Where necessary, information from the organisation charts were supplemented by detailed information on the individ-

30 The study covers the thirty largest German cities from Berlin to Brunswick, including state capitals that do not fall within this category. Also included are the field partners of the "netWORKS" research association, the municipalities of Oldenburg and Schwedt/Oder.

ual holdings in the overall report. A similar procedure was followed in evaluation by utility sector in the fields of water, energy, and public transport.

Records of municipal undertakings show some gaps, firstly because certain reports provide no information on public enterprises (*Eigenbetrieb* [semi-autonomous agency], *Anstalt öffentlichen Rechts* [institutions under public law], *Zweckverband* [joint authority]), and secondly because most reports give no information on foundations and associations (*Stiftung, Verein*). Savings banks (*Sparkasse*) were left out of account, because they are a special type of local authority enterprise.

The base years for the figures in the reports are 2000 (n = 13 or 37 per cent) and 2001 (n = 22 or 62 per cent).

- Number of Holdings

According to our analysis of the 36 reports on local authority holdings, the municipalities under study together participate in a total of 3034 domestic and 178 foreign companies. This gives a total of 3212. Hamburg leads with interests in 404 enterprises, and Kiel tails the field with only 11. On average, each municipality has 84.3 domestic and 4.9 foreign holdings; this gives an average total of 89.2.

- Legal forms of German Municipal Companies

By far the most frequent form of company recorded in the reports is the *GmbH* (limited liability company) with 75.7 per cent, followed by the *GmbH&Co. KG* (limited partnership in which a *GmbH* acts as general partner) with 6.8 per cent, and the *AG* (stock corporation) with 6.1 per cent. Then come two public enterprise forms, the *Eigenbetrieb* with 4.8 per cent, and the *Zweckverband* with 1.9 per cent.

- Ratio of Private to Public Companies

92 per cent of municipal companies are private in form, 8 per cent public.


- Direct Formal Control Resources of Local Authorities

In fewer than a quarter of companies (23 %) is the formal influence of the local authority indisputable, since it has a majority, direct interest. It is at least questionable in the remaining 77 per cent. If holdings abroad are included, the share of companies in which the local authority can exercise control neither through majority nor direct ownership increases to almost 79 per cent. Moreover, companies in which the local authority has a precisely 50 per cent share have been classified as majority interests for the purpose of our analysis. Direct majority interests include 55 companies (8 %) in which municipalities hold a 50 per cent share. 89 companies (10 %) are indirect majority holdings. If we subtract these enterprises, because local authorities cannot make independent decisions in their regard, the proportion of companies that are subject to direct formal municipal control is even smaller. The figure for this survey is then around 20 per cent.

- Comparison between Selected Public Service Sectors

Table 19: Legal Forms of Municipal Enterprise: Comparison between Sectors


Legal form	Water	Energy	Public Transport
<i>GmbH</i>	47 %	57 %	58 %
<i>Aktiengesellschaft</i>	24 %	43 %	40 %
<i>Eigenbetrieb</i>	22 %		2 %
<i>Anstalt öffentlichen Rechts</i>	5 %		
<i>Zweckverband</i>	2 %		
Total	100 %	100 %	100 %

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Organisational privatisation in the water sector is below average for the overall analysis and in comparison with the other sectors. Over 25 per cent of companies in the water sector are public in form (*Eigenbetrieb*, *Anstalt öffentlichen Rechts*, *Zweckverband*) compared with a good 8 per cent of companies in all task areas, 0 per cent in the energy sector, and 2 per cent in public transport. This is likely to be because of the tax advantages available to public organisational forms in the sewage disposal sector.

Table 20: Ownership of Municipal Companies: Comparison between Sectors

	Water	Energy	Public Transport
100% municipal share (direct interest/"daughter company")	43 %	12 %	13 %
100% municipal share (indirect interest/"grandchild company")	12 %	17 %	55 %
Majority company (municipal share 50 – < 100%)	38 %	54 %	28 %
Minority company (municipal share < 50%)	7%	17 %	4 %
Total	100 %	100 %	100 %

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In the energy sector, not only is organisational privatisation most advanced (in the cities under study it has been fully implemented; cf. table 20), but asset privatisation is also relatively widespread. Only 29 per cent of enterprises are still fully owned, directly or indirectly, by the given local authority. In the water sector 55 per cent are still fully in municipal ownership, and in the public transport sector 68 per cent.

- Group Formation

According to their reports, 8 of the 36 municipalities under study now explicitly regard themselves as municipal groups of enterprises: "*Konzern Stadt*".<sup>31</sup> Apart from the label, there is a clear trend among the local authorities under study towards group formation (Killian/Scheider 1999, 19 ff.). The outsourcing of further local authority services for the

31 The 8 cities are: Augsburg, Brunswick, Duisburg, Essen, Gelsenkirchen, Mannheim, Nuremberg, and Wiesbaden.

public and core administrative functions to separate companies has led increasingly to the creation of group structures, with municipal “daughter” companies in turn hiving-off entities to new enterprises. The founding of new companies, which take on comparatively new tasks such as city marketing, also leads to group formation. Without the respective “parent company” imposing requirements in economic and substantive planning, “grandchild” companies risk developing too great a dynamic of their own. This means decreasing control over municipal companies and a reduction in the local authorities possibilities of exerting influence.

- Experience in Preparing Reports on Holdings

On average, each municipality has brought out 6.75 reports, and thus has gathered considerable experience in preparing such documents. Hanover and Bielefeld have had the greatest experience in this regard, having already published twelve.

- Reports on Holdings as Control Tools?

Because the two principal target groups, the “civic public” and the “municipal council” are unlikely to be well-versed in most of the accounting ratios cited, a theoretical introduction to the most important ones is appropriate to facilitate understanding of the subject matter. Appreciation and evaluation of the figures also requires forecasts and reviews of at least the most important companies. Most reports offer both a review and theoretical section.

Overall, however, it is more than questionable whether the report on municipal holdings is a tool that can compensate the loss of information relevant for local authority control caused by the hiving off of entities from municipal administration and their consequent exclusion from the municipal budget (Beuß 2001, 164). This is also because the information and figures contained in the reports are often out of date by the time it is published.

The report on holdings alone cannot be a tool for the local authority to control enterprises in which it has a stake. Other tools for the management of participations must be employed, such as economic plans, annual financial statements and quarterly reports, shareholder and supervisory board meetings, or council committees on holdings for the purpose of controlling and guiding enterprises. In addition, the articles of association of entities being hived off establish an important basis for local authority control from the very outset. Reports on holdings offer a general overview of the “*Konzern Stadt*”, the “municipality group,” which grows in importance in proportion to the number of enterprises involved.

## Appendix

Overview of the local authorities and the number of their holdings included in the study

City	Population <sup>1</sup>	Number of Holdings
Aachen	244 000	57
Augsburg	255 000	43
Berlin	3 382 000	320
Bielefeld	322 000	64
Bochum	391 000	55
Bonn	302 000	39
Brunswick	246 000	53
Bremen	539 000	203
Dortmund	589 000	103
Dresden	478 000	66
Duisburg	515 000	76
Düsseldorf	569 000	78
Erfurt	201 000	52
Essen	595 000	45
Frankfurt	647 000	169
Gelsenkirchen	279 000	56
Halle	248 000	53
Hamburg	1 715 000	404
Hanover	515 000	130
Karlsruhe	279 000	29
Kiel	233 000	11
Cologne	963 000	81
Leipzig	493 000	152
Magdeburg	232 000	47
Mainz	183 000	84
Mannheim	307 000	177
Mönchengladbach	263 000	43
Munich	1 210 000	135
Münster	266 000	42
Nuremberg	488 000	115
Oldenburg	155 000	27
Potsdam	129 000	33
Rostock	201 000	52
Schwedt	40 000	15
Stuttgart	584 000	53
Wiesbaden	270 000	50

1 The figures are taken from the Statistisches Jahrbuch 2002 (Statistisches Bundesamt 2002).

## Overview of the reports on holdings included in the study

City	Title of the report	Base year of report figures
Aachen	Beteiligungsbericht 2002.	2001
Augsburg	Beteiligungsbericht 2001.	2000
Berlin	Beteiligungsbericht 2001.	2000
Bielefeld	Eigenbetriebe und eigenbetriebsähnliche Einrichtungen. Bericht 2001. Beteiligungsbericht 2001.	2001
Bochum	Beteiligungsbericht 2001/2002.	2001
Bonn	Beteiligungsbericht 2002 über die wirtschaftliche Betätigung der Bundesstadt Bonn.	2001
Brunswick	Fünfter Beteiligungsbericht für die städtischen Gesellschaften 2002.	2000
Bremen	Beteiligungsbericht 2000. Eigenbetriebsbericht 2000.	2000
Dortmund	Beteiligungsbericht 2001/2002.	2001
Dresden	Beteiligungsbericht 2001.	2001
Duisburg	Beteiligungsbericht 2001/2002.	2001
Düsseldorf	Beteiligungsbericht 2001. Anlage zum Haushaltsplan 2003.	2001
Erfurt	Beteiligungsbericht 2002.	2001
Essen	Beteiligungsbericht 2002.	2001
Frankfurt am Main.	Beteiligungsbericht 2001.	2001
Gelsenkirchen	Beteiligungsbericht 2000.	2000
Halle	Beteiligungsbericht 2000.	2000
Hamburg	Die Hamburger öffentlichen Unternehmen. 4. Beteiligungsbericht - Fortschreibung 2002.	2000
Hanover	Beteiligungsbericht 2002.	2001
Karlsruhe	Beteiligungsbericht für das Geschäftsjahr 2001.	2001
Kiel	Jahresabschlüsse 2000 der Beteiligungsunternehmen der Landeshauptstadt Kiel.	2000
Cologne	Die öffentlichen Unternehmen der Stadt Köln im Haushaltsjahr 2002. Anlage zum Beteiligungsbericht 2002. Stand 31.10.2002. Die öffentlichen Unternehmen der Stadt Köln im Haushaltsjahr 2002. Beteiligungsbericht. Stand 31.10.2002.	2001
Leipzig	Neunter Beteiligungsbericht 2002.	2001
Magdeburg	Vierter Beteiligungsbericht 2002.	2000
Mainz	Beteiligungsbericht 2002.	2001
Mannheim	Beteiligungsbericht der Stadt Mannheim für das Jahr 2001.	2001
Mönchengladbach	Beteiligungsbericht der Stadt Mönchengladbach für das Haushaltsjahr 2000.	2000
Munich	Finanzdaten- und Beteiligungsbericht 2002.	2001
Münster	Beteiligungsbericht 2001/2002.	2001
Nuremberg	Beteiligungsbericht 2002.	2001
Oldenburg	Bericht über wirtschaftliche Betätigung 2001.	2001
Potsdam	Beteiligungsbericht der Landeshauptstadt Potsdam 31.12.2000.	2000
Rostock	Beteiligungsbericht 2001.	2001
Schwedt/Oder	Übersicht über die Beteiligungen: <a href="http://www.schwedt.de/rathaus/index.html">http://www.schwedt.de/rathaus/index.html</a> .	-

Stuttgart	Beteiligungsbericht der Landeshauptstadt Stuttgart. Jahresabschlüsse 2001.	2001
Wiesbaden	Beteiligungsbericht der Landeshauptstadt Wiesbaden für das Geschäftsjahr 2000.	2000

## References

- Bals, Hansjürgen (s.a.)*, Vorschläge und Hinweise zur inhaltlichen und formalen Gestaltung der Beteiligungsberichte der Kommunen. Available at: [http://www.im.nrw.de/bue/doks/hinweise\\_beteiligungsberichte.pdf](http://www.im.nrw.de/bue/doks/hinweise_beteiligungsberichte.pdf).
- Beuß, Hartmut (2001)*, Konzern Stadt – Organisationsvielfalt oder Erosionsprozess der Kommunalverwaltung?, in: Innenministerium Nordrhein-Westfalen (ed.), Tagungsbericht. Forum: Kommunalaufsicht im Spannungsfeld von kommunaler Selbstverwaltung und gesamtstaatlicher Verantwortung. Available at [http://www.im.nrw.de/bue/doks/forum\\_ka.pdf](http://www.im.nrw.de/bue/doks/forum_ka.pdf), 159-172.
- Beyer, Günter (1997)*, Beteiligungsberichte, in: Klaus Ade, Handbuch kommunales Beteiligungsmanagement, Stuttgart et al.
- BMU (Bundesumweltministerium) und UBA (Umweltbundesamt) (eds.) (2001)*, Handbuch Umweltcontrolling für die öffentliche Hand, München.
- Bracher, Tilman, and Jan Hendrik Trapp (2003)*, Netzgebundene Infrastrukturen unter Veränderungsdruck – Sektoranalyse ÖPNV, Berlin (netWORKS-Papers Nr. 3).
- Burgi, Martin (ed.) (2002)*, Energiepartnerschaften zwischen privaten Versorgungsunternehmen, Stadtwerken und Kommunen: Dokumentation einer Fachtagung des Instituts für Berg- und Energierecht am 21.2.2002, Stuttgart et al.
- Burgi, Martin (1999)*, Funktionale Privatisierung und Verwaltungshilfe, Tübingen.
- Diederich, Helmut (1992)*, Allgemeine Betriebswirtschaftslehre, Stuttgart, Berlin and Cologne.
- Fuchs-Heinritz, Werner, Rüdiger Lautmann, Otthein Rammstedt und Hanns Wienold (eds.) (1995)*, Lexikon zur Soziologie, Opladen.
- Gemeindeordnungen der Länder*: <http://www.jura.uni-osnabrueck.de/institut/jkr/kronline.htm>
- Gemeindeprüfungsanstalt Baden-Württemberg (2002)*, Geschäftsbericht 2002. Available at [www.gpabw.de/gbericht/instrumente\\_der\\_beteiligungsverwaltung.htm](http://www.gpabw.de/gbericht/instrumente_der_beteiligungsverwaltung.htm).
- Heinrichs, Friedrich, und Anette Schwabedissen (1998)*, Wirtschaftliche Betätigung – Möglichkeiten und Grenzen, in: Städte und Gemeinderat, Heft 7, 160-162.
- Hellermann, Johannes (2000)*, Örtliche Daseinsvorsorge und gemeindliche Selbstverwaltung: zum kommunalen Betätigungs- und Gestaltungsspielraum unter den Bedingungen europäischer und staatlicher Privatisierungs- und Deregulierungspolitik, Tübingen.
- Hill, Hermann (1999a)*, Kommunen auf Abwegen. Kommunalwirtschaftliche Betätigung zulasten privater Unternehmen, in: idem, Kommunalwirtschaft, 59-73.
- Hill, Hermann (1999b)*, Kommunen im Wettbewerb unter veränderten rechtlichen Rahmenbedingungen, in: idem, Kommunalwirtschaft, S. 41-58.
- Hill, Hermann (1997)*, In welchen Grenzen ist kommunalwirtschaftliche Betätigung Daseinsvorsorge?, in: Betriebs-Berater, Heft 9, 425-431.
- Karrenberg, Hanns, und Engelbert Münstermann (1998)*, Kommunale Finanzen, in: Hellmut Wollmann und Roland Roth (ed.), Kommunalpolitik. Politisches Handeln in den Gemeinden, Bonn, 437-460.
- Killian, Werner, und Karsten Schneider (1999)*, Arbeitnehmervertretung im Konzern Stadt. Ergebnisse einer Umfrage zum Wandel betrieblicher Interessenvertretung, Kassel (Arbeitspapiere der Forschungsgruppe Verwaltungsautomation, Bd. 65).

- Leciejewski, Klaus (2003)*, Das Stadtwerke-Sterben ist ausgeblieben, in: Die Welt, 28.4.2003.
- Leffson, Ulrich (1987)*, Die Grundsätze ordnungsmäßiger Durchführung, 7. Aufl., Düsseldorf.
- Leitstelle Gemeindeprüfung (2001)*, Bericht über die vergleichende Untersuchung Beteiligungsverwaltung. Zusammenfassung der Ergebnisse der Leitstelle Gemeindeprüfung und der Gemeindeprüfungsämter der Bezirksregierungen. Innenministerium NRW. Available at: <http://www.im.nrw.de/bue/doks/beteilverw.pdf> (Stand: 5.6.2003).
- Monstadt, Jochen, und Matthias Naumann (2003)*, Netzgebundene Infrastrukturen unter Veränderungsdruck – Sektoranalyse Energie, Berlin (netWORKS-Papers Nr. 5).
- Richter, Klaus (1996)*, Privatisierung kommunaler Aufgaben und Leistungen – ein systematischer Überblick, in: Henning Walcha, und Klaus Hermanns, Partnerschaftliche Stadtentwicklung: Privatisierung kommunaler Aufgaben und Leistungen, Köln, 1-39.
- Röber, Manfred (2001)*, Das Parteibuch – Schattenwirtschaft der besonderen Art?, in: Aus Politik und Zeitgeschichte, Nr. 32-33, 6-14.
- Schefzyk, Olaf (2000)*, Der kommunale Beteiligungsbericht. Ein Instrument zur verbesserten Berichterstattung über die Unternehmenstätigkeit der Kommunen, Stuttgart.
- Schneider, Karsten (2001)*, Politischer Einfluss auf die Bereitstellung von Infrastrukturleistungen im kommunalen Sektor im Zuge zunehmender Dezentralisierungs- und Wettbewerbstendenzen. Beitrag zur Tagung „Die Kritizität technischer Infrastruktursysteme und die Rolle des Staates“ des Arbeitskreises Politik und Technik des DVPW am 15./16.6.2001. Available at <http://www.uni-kassel.de/~schneidk/Kritizitaet-Kommunaler-Sektor2.doc>.
- Statistisches Bundesamt (2002)*, Statistisches Jahrbuch 2002, Wiesbaden.
- Stober, Rolf (1996)*, Kommunalrecht in der Bundesrepublik Deutschland, 3. Aufl., Stuttgart.
- Tomerius, Stephan, und Tilman Breitzkreuz (2003)*, Selbstverwaltungsrecht und „Selbstverwaltungspflicht“ – Verfassungsrechtliche Überlegungen zur Rolle von Art. 28 Abs. 2 Satz 1 GG bei der Privatisierung kommunaler Aufgaben, in: Deutsches Verwaltungsblatt (DVBL), Heft 7, 426-435.
- UNI – Unternehmerinstitut der Arbeitsgemeinschaft Selbständiger Unternehmer e.V. (ASU) (ed.) (2003)*, Der Weg aus der staatliche Schuldenfalle: Konzepte und Beispiele für eine umfassende Privatisierung, Berlin (Schriftenreihe des UNI Unternehmerinstituts der ASU e.V., Bd. 10).
- Walcha, Henning, und Klaus Hermanns (1995)*, Partnerschaftliche Stadtentwicklung. Privatisierung kommunaler Aufgaben und Leistungen (hrsg. von der Konrad-Adenauer-Stiftung e.V., Aufgaben der Kommunalpolitik), Köln.
- Wohlfahrt, Norbert, und Werner Zühlke (1999)*, Von der Gemeinde zum Konzern Stadt. Auswirkungen von Ausgliederungen für die politische Steuerung auf kommunaler Ebene, Dortmund (Institut für Landes- und Stadtentwicklungsforschung des Landes NRW).