



Responding to COVID-19 with 100 per cent Postal Voting: Local Elections in Bavaria, Germany

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Contents

Responding to COVID-19 with 100 per cent postal voting: Local elections in Bavaria, Germany	5
Institutional and political context	6
Legal basis for the runoffs, 29 March 2020	8
Campaigning, election day and health precautions	9
Turnout and conclusions	11
References	12
About the author	16
About International IDEA	16

Responding to COVID-19 with 100 per cent postal voting: Local elections in Bavaria, Germany

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Bavaria, a federal state (*Land*) of Germany, held local elections during the COVID-19 pandemic in March 2020. After North Rhine-Westphalia, Bavaria was the second most-affected state in the country. Due to its proximity to Austria, many German citizens returned home from February vacations at Austrian ski resorts which afterwards turned out to be COVID-19 hotspots. Despite the uncertain context and the high number of COVID-19 infections, state officials decided to hold local elections on the scheduled dates. The first round took place on 15 March 2020 with a runoff on 29 March 2020.

In the first round, voting took place under relatively normal circumstances. Voting methods included in-person voting at polling stations (with certain health precautions), and more flexible postal voting. Postal voting could be requested by any citizen until the last moment without giving any reason, a regulation intended to ensure that even those in quarantine shortly before the election would be able to participate. During the runoff, the pandemic reached its climax and state officials decided to hold an all-postal voting election. Questions were raised about the legal validity of this decision. After a negotiated process in the state Parliament which included all political parties, a clause on postal voting was added to the Bavarian Infection Protection Law (IPL). One of the first jurisdictions globally to hold elections entirely by mail, Bavaria provides an example of how elections can be adapted during a pandemic while adhering to democratic procedures.

This case study will first present the institutional and political context of local elections in Bavaria. As the local elections were held in two rounds, it will present the decisions guiding the administration of each round in turn, and their consequences. The various health precautions that were taken to protect voters and polling officers will also be presented.

Local elections are the most administratively complex in Bavaria and those held during the pandemic presented additional logistical challenges. Even with all-postal voting, municipalities and district electoral management bodies (EMBs) faced different problem-solving scenarios for delivering, receiving and counting postal votes. However, by opting for the best possible flexibility in the voting procedure during both rounds, citizens were enabled to participate in the elections in different ways, depending on their state of health and infection risk. The ability to draw on a long tradition of postal voting in Germany made the adjustment easier, even under considerable time pressure.

Institutional and political context

Bavaria is the second most populous and geographically the largest of Germany's 16 federal states (*Länder*). It is structured into 2,056 municipalities and 71 administrative districts (*Landkreise*). Below the *Länder*, the local level is formed by two more legally independent entities—the districts, and independent towns and municipalities. Since 1960, local elections in Bavaria have taken place every six years and include the election of Lord Mayors, Mayors and district councillors (*Landräte*), district councils (*Kreistage*) and city- and municipal councils (*Stadt- und Gemeinderäte*). Voting for the different councils follows a personalized proportional system with open lists using accumulation (more than one vote per candidate) and *panachage* (voting for candidates from different party lists) between the various lists. Exceptions to the rule might be applicable in small municipalities with less than 3,000 inhabitants and when the municipality presents only one list, or when no candidate is running (STMI Bayern n.d.).

On 15 March 2020, city and municipal councils were elected in all 2,056 municipalities and 71 administrative districts in Bavaria. In addition, Lord Mayors and Mayors were elected in 24 towns independent from districts and 1,909 municipalities, and district councillors were elected in 64 rural districts. Around 10 million citizens were eligible to vote (in a total of 4,000 electoral contests) and 39,500 representatives were elected (Trost, Hadem and Krefting 2020). Election runoffs were necessary—i.e. where no councillor/mayoral candidate secures an absolute majority in the first round—in 279 municipalities, 15 large district towns, 16 independent towns and 18 administrative districts, including the five largest Bavarian cities: Munich, Nuremberg, Augsburg, Regensburg and Ingolstadt (Bayrisches Landesamt für Statistik 2020).

The local elections in Bavaria were the only elections in Germany that were administered during the first wave of the COVID-19 pandemic. As in many other European countries, the rapid spread of COVID-19 was not anticipated and state authorities were relatively unprepared for the pandemic. Unlike France, for example, Germany did not declare a state of health emergency but tackled the pandemic through social distancing.

A science-based public health response

At the beginning of March 2020, COVID-19 cases were still relatively low. On 8 March, the Robert Koch Institute (RKI, a public health institute) registered a total of 902 infections, 172 of them in Bavaria—by then the third most affected region. However, COVID-19 infections then grew exponentially. In an extraordinary national television address on 18 March, Chancellor Angela Merkel clearly expressed the gravity of the situation and made a plea for voluntary social distancing, while rejecting the idea of a curfew. She also announced a general shutdown of public life to the minimum necessary levels.

As COVID-19 continued to unfold rapidly across the country, federal and state governments agreed on further social distancing restrictions including a contact ban (on gatherings of more than two persons, with the exception of family and household members) effective from 23 March (Tagesschau 2020). These decisions were broadly supported by the public (Marx and Kornmeier 2020). The reasons for this were the general fear of infection but also continuous and transparent public communication and a science-based approach on the part of federal and state governments, which were in regular contact with leading scientists and research institutes throughout the peak of the crisis. The podcasts of Christian Drosten, head of virology at the Charité university hospital in Berlin, received a high level of attention from the German public (NDR 2020).

It is important to understand the characteristics of the German federal political system in order to grasp the dispersion of responsibilities. The federal system provides state

governments with unique decision-making powers in various policy areas such as education. The competencies of the state governments also include the implementation of measures under the Infection Protection Law (IfSG). Through the IfSG the instruments for infection protection are available to the state authorities, but not to the federal government. Ultimately, this is only limited by the principle of proportionality (and measures taken may limit the fundamental rights of citizens to a considerable extent). As a consequence, German state governments had decisive power in the implementation of regulations to prevent the rapid spread of COVID-19. The federal government had only coordinating power and could make recommendations on the implementation of the law rather than its substance. Only in late March (28 March 2020) did the German Parliament update the IfSG law, granting the federal government more competencies when dealing with an epidemic (though this amendment includes a time limit of one year) (Deutscher Bundestag 2020).

The specific characteristics of the German federal system are also reflected in the electoral management system. Germany's Basic Law (*Grundgesetz* or constitution) article 28, paragraph 1 stipulates the principles for local elections as follows: 'the constitutional order in the *Länder* must conform to the principles of a republican, democratic and social state governed by the rule of law within the meaning of this Basic Law. In each *Land*, county and municipality the people shall be represented by a body chosen in general, direct, free, equal and secret elections' (Bundesamt für Justiz 2020). In this context the *Länder* are responsible for the administration of local elections, which results in different electoral systems being in operation across Germany. In Bavaria, the Southern German Council Constitution (*Süddeutsche Ratsverfassung*) is the applicable local constitution, and places mayors in a strong position as regards electoral administration. Bavaria's Ministry of Interior, Sports and Integration oversees the local elections but their administration is under the authority of each municipality or district council respectively (Korte 2017).

During the month of March, several rounds of negotiations between the federal and the state levels concluded in a catalogue of 'lockdown' measures applicable to all German federal states. Some state governments implemented even more restrictive measures, among them Bavaria: already on 20 March 2020, Bavarian Prime Minister Söder had announced a curfew for at least two weeks (starting from 0:00 the following day) (BayMBl 2020b). For the following weeks, only people from the same household were able to meet and go outside, and with a valid reason only. (The negotiated measures agreed upon at federal level a few days later allowed also for meetings with one person not belonging to the same household.) This decision fell in the period between Bavaria's two election rounds of 15 and 29 March. From that moment on, the normal conduct of the second election round would have been impossible.

Differing legal/administrative mitigation strategies

During the first two weeks of March, people started to express concerns about the consequences of the COVID-19 pandemic on the electoral process in Bavaria. On 15 March, the day of the first round in Bavaria, the RKI reported 4,838 cases of COVID-19 and 12 deaths in Germany, affecting all 15 federal states. Bavaria reported 886 infections (RKI 2020). Most states announced the closure of daycare centres and schools from 16 March 2020. However, at the first round the potential infection risk posed by voting was rather downplayed; the authorities, including Bavarian Prime Minister Söder, had been placating the public with the message that 'ballot papers and pencils are not infectious' (Trost, Hadem and Krefting 2020). As the situation continued to deteriorate, state officials changed their strategy and decided on all-postal voting for the runoff elections.

The relevant electoral laws are a set of laws, regulations and decrees, namely the Gemeinde- und Landkreiswahlgesetz (Municipal and District Election Law, GLKrWG) and the Gemeinde- und Landkreiswahlordnung (Municipal and District Elections Decree,

GLKrWo) together with the Gemeinde- und Landkreiswahlbekanntmachung (Municipal and District Elections Notice, GLKrWBek) (STMI Bayern n.d.). The Bavarian GLKrWG regulates when elections take place (every six years) including the month of the election 'on a Sunday in March' (article 9). Therefore, theoretically, the election date could have been postponed, but not later than the end of March 2020. Also, postponing the local elections to 2021 would have conflicted with the general provision of holding elections every six years. Germany's legislation only provided partial answers on how to deal with this novel situation. The election law of Bavaria did not regulate the case of a pandemic nor did the IfSG (Lindner 2020a). Therefore, the decision to hold the elections, with public health precautions, was the option most closely aligned with existing electoral law.

The applicable instruments defined in the GLKrWo provide a degree of flexibility when dealing with pandemics. Consequently, the first round was administered with minor amendments to the electoral process. These amendments targeted mainly the protection of the health of the citizens in terms of implementing existing social distancing regulations during the voting process and facilitating flexibility in postal voting (according to the provisions outlined in the GLKrWo and in compliance with the IfSG quarantine regulation). The regulations further included complying with hygiene standards (i.e. washing hands regularly) (STMI Bayern 2020a). Therefore, no specific and new regulation for the first election round was necessary. However, because the decision to undertake an all-postal voting election implied deviations from the election law, administering the second round required additional legal steps (Lindner 2020b; Michl 2020) to align necessary adjustments with existing electoral law.

Legal basis for the runoffs, 29 March 2020

The day after the first round (16 March), the Bavarian State Ministry of Health and Care acknowledged the deteriorating general situation and the need to slow the spread of COVID-19. The ministry accordingly declared a general provision to administer the runoff elections on 29 March 2020 exclusively via postal voting with a reference to the article 28 paragraph 1 sentence 2 of the IfSG (STMI Bayern 2020c). The provision went into force on 20 March 2020 and was justified with reference to the overall changing health situation after the first round, in particular the raised level of threat to the health of the German population (from 'moderate' to 'high', assessment by the RKI of 17 March 2020).

The general provision stated that ballot papers should be sent automatically, without prior request, to all persons entitled to vote (BayMBL 2020a). Any other voting method was excluded. Amending regulations of the electoral process by a general (administrative) provision of the government was heavily criticized by experts who questioned its legal validity (Gietl and Michl 2020; Lindner 2020b). Legal experts argued in their assessment that an administrative act (which the general provision is considered to be) could not replace election law and therefore the Bavarian Government was not empowered so to act, nor on the basis of the currently applicable IfSG. First, because local elections are under the competencies of state legislation, and second, as, in particular, the referred article 28 of the IfSG did not cover a 'specific duty to act under election law' (Gietl and Michl 2020). This legal uncertainty, it was argued, could render the votes cast invalid, necessitating new elections.

This legal uncertainty led to further negotiations at the political level. On 25 March 2020, the Parliament of Bavaria adopted, in a fast-track process, an amendment to the Bavarian Municipal and District Election Law (GLKrWG). The Free Democratic Party (FDP), an opposition party in the Bavarian Parliament, initiated this process as they shared the expert legal assessment by Gietl and Michl referred to above. The amendment was made possible after a telephone conference of the Bavarian Parliament's party leaders on 22 March 2020

(Schnell 2020b) and was framed as an addition to the new Bavarian Infection Protection Law (IPL) adopted on 25 March 2020.

Article 9 of the new Bavarian IPL regulates amendments to other laws and introduces a new paragraph to the Bavarian electoral law (article 60a in the GLKrWG) which stipulates—and thus confirms—the runoff election on 29 March 2020 as being exclusively administered via postal voting (BayMBl 2020a). According to the Bavarian IPL, this act came into force retroactively as of 16 March 2020. It is important to mention two substantial modifications, the inclusion of an automatic, definitive time clause and Parliament’s right to terminate a state of health emergency, which critically enabled approval of the IPL on a cross-party basis (Osel 2020). The time clause limits the validity of the law until the end of the year 2020 (STMI Bayern 2020d). Consequently, the newly added regulation to the Bavarian electoral law is also time restricted.

The number of COVID-19 cases around the runoff election justified the decision for all postal voting. On election day, Bavaria became the second most affected region with 12,881 infections (RKI 2020), out of 52,547 nationwide. This trend continued after the election. On 31 March, Bavaria counted 14,810 infection cases and 162 deaths, again the second highest numbers in Germany.

Campaigning, election day and health precautions

Responsibility for administering municipal and local elections is at municipality level. The Bavarian State Ministry of Interior, Sports and Integration has only a supervisory function in the process (it can issue general recommendations); the practicalities of implementation are at the discretion of the municipal authorities.

The first election round

All political parties suspended their campaigning activities a few days before the first round, including party leaders’ final election rallies (Jerabek 2020a). Aside from politicians’ communications via the media, including encouragement to vote, only information booths remained accessible. To facilitate voting, the pre-established arrangements continued to be used—traditional in-person voting (albeit with social distancing at the polling stations, disinfection facilities, etc.) and postal voting.

On 4 March 2020, the Ministry of Interior sent an information letter to the local EMBs (STMI Bayern 2020a) requesting polling stations to display information materials about infection protection measures. Further, citizens were asked to respect the general public health regulations and could, if they wished, bring their own pens to the voting booths. The Ministry spokesperson also declared that as schools were currently closed, they could serve as polling stations if certain precautions were taken. The final decisions were taken by municipal health departments (Schnell 2020a). One important adaptation was that citizens had longer than usual to request and cast a postal vote without providing a medical certificate. Self-isolating voters could authorize a ‘trusted person’ to pick up their ballot papers by providing a power of attorney at the polling stations until 15:00 on election day, without giving any reason (STMI Bayern 2020a; Trost, Hadem and Krefling 2020). Further, the return of postal votes was handed flexibly. For example, citizens could deliver their votes via a trusted person again. There was an increased demand for postal voting as a result (Jerabek 2020a). In the event, no increase in COVID-19 infections related to in-person voting on election day were registered (Hauskrecht 2020).

As a mitigation measure and anticipating a possible shortfall of available polling officers, the Ministry of Interior had also sent an information letter to the local EMBs on 11 March. This letter contained information on the law and potential mitigation strategies. In some cities (e.g. Augsburg and Nuremberg) some polling officers cancelled their participation out

of fear of infection but no significant shortage of polling officers or delays to processes were reported, mostly because EMBs routinely make contingencies and can draw on reserve lists (STMI Bayern 2020b; Schnell 2020a).

The runoff elections

By the time of the runoff local elections, severe restrictions to freedom of movement in Bavaria were in place and campaigning activities had switched to social media platforms. Immediately after the first round, the Ministry of Interior informed the public clearly of how elections would be adapted to the new circumstances via all-postal voting (STMI Bayern 2020b, 2020c). The communication on the exceptional voting procedure, dated 16 March 2020, was disseminated by various media channels both online and offline.

Election administrators had a short—but manageable—timeframe in which to prepare. To prevent potential shortages of official ballot papers and envelopes, the Ministry outlined that ‘in exceptional cases, it is possible to deviate from the samples in Annexes 4, 5 and 6 of the GLKrWBek’ (STMI Bayern 2020c). This time, ballot papers were automatically sent to all citizens in the districts with runoffs scheduled—279 municipalities, 15 large district towns, 16 independent towns and 18 administrative districts (Bayrisches Landesamt für Statistik 2020). Eligible voters did not need to take any active steps, instead receiving their postal vote at home automatically. A special agreement between the Bavarian Ministry of Interior and Deutsche Post (the German postal operator) ensured that completed ballot papers would arrive at counting centres in relevant towns and municipalities before 18:00 on election day, 29 March (a Sunday). For that, voters could use roughly 19,600 mailboxes in Bavaria until 18:00 the previous evening. In addition to using the postal service, citizens also had the option to personally deliver their postal votes at electoral offices on election day itself.

As the electoral management was decentralized, regulations on how, when and where to deliver the votes varied. Local and regional newspapers and the websites of the municipalities informed citizens about the new regulations. In addition, municipalities established telephone hotlines and provided contact details for open questions and handling any irregularities (Ley 2020). In Munich, for example, in case of undelivered ballot papers, citizens could vote directly at dedicated contact points until 18:00 on election day (Ley and Rohrmeier 2020). Public information on the exceptional procedures also drew attention to the importance of complying with existing counting regulations for safeguarding voting secrecy: counting was only allowed starting 18:00 sharp, the official closing time for voting in Germany. In light of restrictions on freedom of movement, another communication issued on 26 March 2020 outlined that participation in the electoral process was a valid reason for leaving one’s home (STMI Bayern 2020d).

The distribution of postal ballots appears to have gone smoothly except in some cities, such as Augsburg and Nuremberg, where voters complained about not having received them on time. For such eventualities, provision was made for citizens to pick up replacement ballot papers at the polling stations directly (Jerabek and Pösl 2020). Which exact procedure to follow depended, again, on the respective municipality.

The shift from partial postal voting to all-postal voting in the second round was undertaken within a long-standing tradition of postal voting and already existing infrastructure in Germany. Postal voting was first introduced in 1957 and since then has been used for every election. An amendment to the regulation of postal voting was passed in 2008, which provided more flexibility as citizens did not have to provide any reason to make use of it. In recent years (leaving aside the pros and cons of the method), postal voting has also gained more popularity among German citizens. It was used by 28 per cent of voters during the last federal elections in 2017 (Bundeswahlleiter 2019).

Health measures during vote counting

During both election rounds, precautionary health measures for counting were put in place. For the first round, the State Ministry of Interior, Sports and Integration distributed hygiene advice to all municipalities. The communication stipulated that infection protection takes precedence over electoral regulations. It urged electoral officials to make information about infection control highly visible at all polling stations and recommended provision of hand cleansers (STMI Bayern 2020a; Schnell 2020a). Some polling officers who served during the first-round count expressed their frustration about a lack of sufficient health protection; no specific health and safety trainings were scheduled before the elections. It became public knowledge that a polling officer had been infected during the first round, and subsequently health precautions for counting the runoff vote were increased. Measures included provision of disposable gloves and disinfectants, sufficient facilities for regular hand washing, and requirements to distance by a minimum of 1.5 metres.

Again, decentralized responsibility for election management made for some variation in health precautions across municipalities. The majority adapted to the new circumstances by moving the counting process to larger facilities with more space. In some cities such as Erlangen, only municipal employees were invited to the count. Other cities reduced the total number of polling officers to a minimum to reduce the infection risk. In Munich, for example, around 1,500 election workers had to count 1.1 million eligible votes. This caused some delays in the announcement of the official election result. In Regensburg, for example, counting started only on Monday (Merkur 2020). The general health measures seemed to be effective. No election related COVID-19 infections or spread was reported after the election.

Despite the exceptional circumstances and infection control measures in place, election observation was stipulated as another valid reason to leave home. Albeit instructions were given to prioritize health protection over election observation (STMI Bayern 2020d), polling station officers were nevertheless asked to allow for election observation in line with the principle of publicity, article 17 GLKrWG. In Germany, the electoral process can be observed by any person through simply entering the election facilities. No special accreditation is necessary.

Turnout and conclusions

Although there were fears about lower turnout due to COVID-19, these were confounded; in both rounds it was slightly higher than during the last local elections, at 58.8 per cent and 59.5 per cent respectively. The former was 4.2 per cent higher than during in 2014, yet still at a relatively low level; the 2014 local elections had marked the lowest voter turnout in Bavarian local elections since 1946 (Bayrisches Landesamt für Statistik 2020). In Nuremberg the turnout increased from 47.1 per cent in the first round to 51.6 per cent in the second. The city of Augsburg also recorded an increased second round turnout from 45.3 per cent to 48.2 per cent (Merkur 2020; Bayrisches Landesamt für Statistik 2020). Moreover, the election outcome presented some surprises which indicated a competitive electoral environment despite pandemic related restrictions.

Before the pandemic, local elections in Bavaria were seen as a litmus test for the Christian Social Union (CSU) party following State Parliamentary elections in 2018 and European Parliament elections in 2019. Of particular interest, also, was whether the Alliance 90/the Greens were able to continue on a high. According to BayernTrend polls, in a representative survey conducted by the Infratest dimap opinion research institute, the Greens received a 25 per cent approval rate of their work in January 2020, second best after the CSU (Müller 2020). Although the general public supported the state governments' COVID-19 crisis management, the CSU received 34.5 per cent, their worst election result since 1952. In

addition, the Social Democratic Party (SPD) received their worst ever election result in Bavaria, with 13.7 per cent. While the Greens could not hold up to opinion poll predictions, they still gained significantly as compared to previous elections. With 17.3 per cent (up 7.1 per cent) they achieved their best local election result by far in Bavaria. In the independent cities, the Greens' score even rose by 10.6 points, to 23.2 per cent, while in the rural districts it increased by six points to 15.5 per cent (Jerabek 2020b). Also, the results of the runoff showed some surprises. For example, in Nuremberg, considered a SPD stronghold, the CSU candidate won the runoff vote. Meanwhile in Ingolstadt, the CSU incumbent lost to the SPD candidate (Merkur 2020).

Consequently, we can conclude that even with limited campaigning opportunities directly before the first election round and for the runoff election, and given the exceptional voting circumstances, a competitive electoral environment was evident with no particular electoral advantage for the incumbent parties.

Looking ahead to 2021

The discussion and decisions on how to administer the local elections in Bavaria during the COVID-19 pandemic illustrate the importance of carefully balancing electoral law with other laws and regulations for the protection of the citizens during a pandemic. Health regulations do not stand above electoral law and the right to vote in general. Further, election management during a pandemic needs to include parliaments and should be a negotiated process among all parties represented in parliament. The Bavarian local elections were complex elections to administer, yet, the already existing tradition of postal voting provided a voting method option that facilitated both democratic and public health imperatives.

The year 2021 will be a super election year in Germany. Five state elections and the election for the German Bundestag (federal Parliament) are upcoming. The first elections will take place in early spring 2021. In March, state elections are scheduled in Hessen, Baden-Württemberg and Rhineland-Palatinate. But before then, on 13 September 2020, local elections in North-Rhein-Westphalia need to be administered and again in the face of rising COVID-19 infections. Therefore, drawing from the lessons of how to administer the local elections in Bavaria will be important. This requires preparing in advance for any potentiality, to adjust electoral regulations and to prepare for health protection measures for voters and polling officers. As virologist Christian Drosten stated in his podcast from 23 June 2020, a second COVID-19 wave is to be expected and should be planned for (NDR 2020).

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About the author

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