



Germany

Member State law - Germany

 Please note that the original language version of this page [de](#) has been amended recently. The language version you are now viewing is currently being prepared by our translators.

This page provides you with information on the legal system in Germany.

The Federal Republic of Germany is a democratic, federal and social constitutional state. Together with the basic rights, the principles of a democratic, federal and social constitutional state form the inviolable core of the German constitution, adherence to which is safeguarded by the Federal Constitutional Court.

Sources of law

The basis of all sources of law is the German constitution: the Basic Law for the Federal Republic of Germany (Basic Law - **Grundgesetz**), which:

- Lays down the fundamental structure and essential structural principles of the state and its highest [organs](#)
- Defines the principles by which elections to the Bundestag (the German Federal Parliament) are conducted
- Provides the basis for the status and rights of the freely elected members of the Bundestag
- Outlines how the Bundestag is organised and conducts its business.

Types of legal instruments - description

The main **written sources** of German domestic law are the Basic Law, legislation, statutory instruments and bylaws. In addition, there are **unwritten sources** of law, including the general principles enshrined in international law, customary law and case law (especially decisions of the Federal Constitutional Court).

Germany is a federal state made up of 16 constituent states – the Länder. Accordingly, there are **federal laws** which apply throughout the whole territory of the Federation, and **Land laws** that only have validity in the Land in question. Each Land has its own constitution and, within the legal framework set by the Basic Law, also has the power to adopt legislation as well as statutory instruments and bylaws.

The **legislative competencies** of the Federation and the Länder are regulated in detail by the Basic Law. Articles 71 to 74 list the legislative powers of the Federation. In all other cases, the Länder are responsible.

Exclusive legislative power of the Federation

In fields subject to the exclusive legislative power of the Federation, the Länder only have the power to adopt legislation where they are expressly empowered to do so by a federal law (Article 71 of the Basic Law).

According to Article 73 of the Basic Law the Federation holds exclusive legislative power in the following **fields** (inter alia): all foreign policy issues, defence (including the protection of the civil population), citizenship, freedom of movement, passports, residency registration and identity cards, immigration, emigration and extradition, currency and money, the unity of the customs and trading area, air transport, cooperation between the Federation and the Länder concerning criminal police work, and the law on weapons and explosives.

Concurrent legislative powers

In fields subject to concurrent legislation, the Länder have the right to adopt legislation provided and to the extent that the Federation does not exercise its legislative powers in the same field (Article 72 of the Basic Law). The legal **areas** subject to concurrent legislation include civil, criminal, and road traffic law, as well as the law of association, the law relating to the residence and establishment of foreign nationals, the law relating to economic matters, employment law and certain aspects of consumer

protection. With regard to certain matters listed in Article 74 of the Basic Law as falling in the scope of concurrent legislation, the Federation has the right to adopt legislation only if and to the extent that the establishment of equivalent living conditions throughout the federal territory or the maintenance of legal or economic unity renders federal regulation necessary in the national interest.

Land laws may not conflict with federal laws. Article 31 of the Basic Law states that, “**Federal law shall take precedence over Land law**”. This principle applies irrespective of the hierarchical statuses of the conflicting legal rules of law so that, for example, a federal statute will prevail over the constitution of a Land.

Hierarchy of norms

The Basic Law heads the hierarchy of domestic norms. It is superior to all other sources of domestic law and, as the Constitution, is the instrument on which the entire German legal system depends. Every legal provision adopted in Germany must be compatible with the Basic Law both in form and in substance. To this end, Article 20 (3) of the Basic Law specifies that the legislature is bound by the constitutional order, and the executive and judiciary by law and justice. Furthermore, the legislature, executive and the judiciary are particularly bound by the basic rights laid down in articles 1 to 19 of the Basic Law, which are directly applicable law (Article 1(3)). **The precedence of the Basic Law** is ultimately safeguarded by the Federal Constitutional Court.

Article 79(2) stipulates that the Basic Law can only be **amended** by a two-thirds majority of the members of the Bundestag and two-thirds of the votes of the Bundesrat, which is the organ through which the Länder participate in the enactment of legislation within, and administration of, the Federation, and in matters concerning the European Union. Certain key components of the Basic Law – i. e. the division of the Federation into Länder, their participation, in principle, in the legislative process and the principles laid down in Articles 1 and 20 – may not be amended at all (Article 79(3)).

The general rules of **international law** rank below the Constitution but before the laws of the Federation and the Länder. The Basic Law explicitly states that these general rules are an integral part of federal law, that they take precedence over such laws and that they directly create rights and duties for the inhabitants of the federal territory (Article 25). These general rules of international law with legal effect for individuals (i.e. not just rules relevant to the State) include, for example, the guarantee of an appropriate form of legal protection for foreigners or the “speciality rule”, whereby criminal proceedings are subject to the terms of the extradition authorisation of the extraditing foreign state.

Legislation ranks below the Constitution. The legislative powers of the Federation in relation to the Länder are enumerated in detail by the Basic Law (Articles 71-74). Laws are passed by the Bundestag in conjunction with the Bundesrat. Bills may be introduced in the **Bundestag** by the Federal Government, by the Bundesrat, or from the floor of the Bundestag (by a parliamentary group or 5% of its members). The Basic Law specifies the cases in which final approval of a law by the Bundestag requires the consent of the **Bundesrat** (currently - according to statistical material published by [the Bundesrat](#) on its website at – about 45% of all laws). As for the remaining laws passed by the Bundestag, the Bundesrat may only object to a bill adopted by the Bundestag, which in turn may be rejected by the Bundestag. Where there are differences of opinion between the Bundestag and the Bundesrat, a common committee for joint consideration of bills (the so-called Mediation Committee) composed of an equal number of members of the Bundestag and the Bundesrat (currently 16 members each) may be convened. The role of the Mediation Committee is to produce proposals for achieving unanimity, though it cannot itself make decisions on behalf of the Bundestag and the Bundesrat.

Statutory instruments are subordinate to legislation and may be issued by the Federal Government, a federal minister or the Land governments. **Bylaws** rank beneath statutory instruments and may be issued by a corporate body organised under public law (e.g. a municipality).

Institutional framework

Institutions responsible for the adoption of legal rules

German laws are made by the country's parliaments. The Bundestag is therefore the most important legislative organ. It decides on all laws that fall within the sphere of competence of the German Federation in a legislative process that also requires the participation of the Bundesrat.

The Bundesrat, the Federal Government and the members and parliamentary groups of the Bundestag are entitled to introduce new or revised pieces of legislation in the Bundestag as **bills**. These bills are debated, deliberated on and voted on in Parliament in accordance with a precisely regulated procedure.

Under Germany's federal system, the Länder hold a considerable share of the powers of the state, and therefore the Bundesrat also participates in the adoption of legislation. **All acts are submitted to the Bundesrat for it to vote on** and – depending on the nature of the proposed legislation – it may even cause the rejection of some proposals.

For further details please refer to the website of the [Bundestag](#).

Decision - making process

Passage of legislation

Most bills and items for discussion are drawn up by the Federal Government. As the central level of the executive, it has most experience of the implementation of legislation and possesses direct knowledge of where new statutory provisions are needed in practice.

However, not only the Federal Government but also the Bundesrat and members of the German Bundestag are entitled to **initiate the bills** that result in new legal acts.

Initiatives introduced by the Federal Government or the Bundesrat

If the Federal Government wishes to amend or introduce a law, the Federal Chancellor must initially refer the bill to the **Bundesrat**.

As a rule, the Bundesrat then has a period of 6 weeks in which to deliver its comments on the bill, to which the government may in turn respond with a written counterstatement. The Federal Chancellor then forwards the bill to the Bundestag with the Bundesrat's comments. One exception to this procedure is **the draft Budget Act**, which is transmitted simultaneously to the Bundesrat and the Bundestag.

A similar procedure applies when legislative initiatives are introduced by the Bundesrat. Once the majority of the members of the Bundesrat have voted in favour of a bill, it goes first to the Federal Government, which attaches its comments to it, usually within 6 weeks, and it is then forwarded to the Bundestag.

Initiatives introduced from the floor of the Bundestag

Draft laws may also be initiated by members of the Bundestag, in which case they must be supported either by **at least 1 of the parliamentary groups** or by **at least 5% of the members of the Bundestag**.

Bills introduced in this way do not have to be submitted first to the Bundesrat. For this reason, the government sometimes arranges for particularly **urgent bills** to be introduced by its parliamentary groups in the Bundestag.

Distribution of printed papers

Before a bill can be deliberated on in the Bundestag, it must initially be referred to the President of the Bundestag, then registered and printed by the Administration.

It is then distributed to all members of the Bundestag and Bundesrat, and to the federal ministries, as a Bundestag printed paper.

As soon as the bill has been placed on the **agenda of the plenary**, the first stage of its passage through Parliament is over: it may then be **officially introduced** in the public forum of the Bundestag.

Three readings in the plenary

As a rule, bills are debated 3 times in the plenary of the Bundestag – these debates are known as readings.

During the 1st reading, a debate is only held if this has been agreed in the Council of Elders (i.e. a special executive body of the Bundestag) or demanded by one of the parliamentary groups. For the most part, this happens when legislative projects are particularly controversial or of special interest to the public.

The primary goal of the 1st reading is to **designate one or several committees** to consider the bill and prepare it for its 2nd reading. This is done on the basis of recommendations made by the Council of Elders.

If several committees are designated, one committee is given overall responsibility for the deliberations on the item, and is responsible for the bill's passage through Parliament. The other committees are asked for their opinions on the bill.

Legislative work in the committees

The **detailed work on legislation** takes place in the permanent committees, which comprise members from all the parliamentary groups. The committee members familiarise themselves with the material and deliberate on it at their meetings. They may also invite experts and representatives of interest groups to public hearings.

In parallel to the work done by the committees, the parliamentary groups form **working groups**, in which they examine the issues concerned and define their own positions.

It is not unusual for bridges to be built between the parliamentary groups in the committees. Most bills are revised to a greater or lesser extent as a result of collaboration between the governing and opposition parliamentary groups.

Following conclusion of the deliberations, the committee with overall responsibility for a bill **presents the plenary with a report** on the course and results of its deliberations. The decision it recommends forms the basis for the 2nd reading that now takes place in the plenary.

Debate during the second reading

Before the 2nd reading, all members receive the published **recommendation for a decision** in printed form. They are therefore well prepared for the debate. The parliamentary groups also coordinate their positions once again in internal meetings prior to this debate, in order to present a united front in the public 2nd reading.

Following the general debate, all the provisions set out in the bill may be considered individually. As a rule, however, the plenary moves directly to a vote on the bill as a whole.

Any member of the Bundestag may table **motions for amendments**, which are then dealt with immediately in the plenary. If the plenary adopts amendments, the new version of the bill must first be printed and distributed. However, this procedure may be abbreviated with the consent of two-thirds of the members present. It is then possible for the third reading to begin immediately.

Voting during the third reading

Another debate is held during the 3rd reading only if this is requested by a parliamentary group or at least 5% of the members of the Bundestag.

Motions for amendments may no longer be tabled by individual members at this stage, but only by one of the parliamentary groups or by 5% of the members of the Bundestag. Furthermore, motions may only be tabled on amendments adopted during the second reading.

The final vote is held at the end of the 3rd reading. When the President of the Bundestag asks for votes in favour of the bill, votes against and abstentions, the members respond by rising from their seats.

Once a bill has gained the necessary majority in the plenary of the Bundestag, it is transmitted to the Bundesrat as an act.

Consent of the Bundesrat

Through the Bundesrat the Länder are involved in the shaping of every piece of legislation. In this respect, the Bundesrat's rights to participate in the legislative process are precisely defined.

The Bundesrat may not make amendments to an act adopted by the Bundestag. However, if it does not give its consent to an act, it may demand that the **Mediation Committee** be convened. The Mediation Committee consists of an equal number of members of the Bundestag and Bundesrat.

For some bills, the consent of the Bundesrat is a compulsory requirement. These include, for example, acts which affect the finances and administrative competencies of the Länder.

Where bills to which the Bundesrat may lodge an objection are concerned, the Bundestag may put an act into force even if no agreement has been reached in the Mediation Committee. However, this requires another vote in which the Bundestag passes the bill by an absolute majority.

Entry into force

Once a bill has been approved by the Bundestag and the Bundesrat, it has to go through a number of further stages before it can enter into force.

An act that has been adopted is first printed and transmitted to **the Federal Chancellor** and the **competent federal minister**, who **countersign** it.

The Federal President then receives the act for signing into law. He or she examines whether the act has been adopted **in accordance with the Constitution** and is free of evident material contraventions of the Basic Law. Once these checks have been carried out, the Federal President signs the act and orders that it be published in the Federal Law Gazette (**Bundesgesetzblatt**).

At this point, the act is promulgated. Should no specific date be mentioned in the act for its entry into force, this occurs on the 14th day after the day on which the Federal Law Gazette containing it was published.

For further details please refer to the website of the German Parliament ([Bundestag](#))

Legal databases

In its German legal database, [JURIS](#), the Federal Ministry of Justice provides, among other things, the **federal law** in its up-to-date valid version. A complete set of earlier versions is included as well as laws that have been published but have not yet come into effect.

It also contains the **Unification Treaty** and regulations of the former GDR that still apply in the Federal Republic of Germany.

The **law of the federal states** (Länder) is complete and up-to-date.

Certain pieces of legislation are also available in English: for example:

- the [Civil Code](#) (BGB),
- the [Criminal Code](#) (StGB)
- parts of the [Introductory Act to the Civil Code](#) (EGBGB).

Access to the database is **not free**.

Two legal databases containing almost all of the current Federal Law (including statutory orders) are provided for interested citizens free of charge from the site [Gesetze im Internet](#) and from [the Federal Ministry of Justice](#). Both databases are provided by the Federal Ministry of Justice together with the Juris GmbH.

Additionally, the Federal Ministry of the Interior – in cooperation with the Juris GmbH – has established [a database for the publication of federal regulations](#)

Related Links

[German Federal Government](#)

[Publication of federal regulations](#)

[Introductory Act to the Civil Code](#)

[Criminal Code](#)

[Civil Code](#)

[Bundestag](#)

[Organs](#)

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