

Member State law - Germany



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This page provides information on the German legal system.

The Federal Republic of Germany is a democratic, federal and social state under the rule of law. Together with the principles of a democratic, federal and social rule of law, fundamental rights are the inviolable nucleus of the German Constitution, the observance of which the Federal Constitutional Court oversees.

Legal sources

The Basic Law is the German constitution. There is a framework for Germany's legal and value framework. It sets out:

- the basic guiding principles of fundamental rights
- the basic state order and the main governance principles of the state and its highest institutions
- the principles for the elections to the Bundestag
- the status and rights of the freely elected members of the Bundestag
- the organisation and functioning of the Bundestag.

Types of legal instruments — description

In Germany, the Constitution, the laws, the regulations and the statutes are the main **sources of law**. In addition, **unwritten sources** of law are governed by the general rules of international law and customary law. In principle, case law is not a source of law, even though it has an important role to play in practice. Only certain decisions of the Federal Constitutional Court have the force of law.

Germany is a federal state with 16 Länder. As a consequence, **federal laws** apply 'their scope to cover the entire territory of the Federal Republic' and **national laws**, which apply only in the federal state in question. Each Land has its own constitution and, in the context of the rights conferred upon it by the Basic Law, also the power to pass laws and regulations and statutes.

The **legislative powers** of the Federal Government and the Länder are regulated in detail in the Basic Law. The Länder retain the power to legislate, in so far as they have not been transferred to the Federal Government under the Basic Law. The main legislative powers of the Federation derive from Article 71 to 74 of the Basic Law. Other federal legislative powers are also provided for in various parts of the Basic Law.

Exclusive legislative power of the Federal Government

In the area of the exclusive federal legislation, the Länder have the power to legislate only if and to the extent that they are expressly authorised to do so in a federal law (Article 71 of the German Constitution).

According to Article 73 of the Basic Law, the Federal Government has exclusive legislation, inter alia, on: foreign affairs, defence (including civil protection), citizenship, freedom of movement, passport, registration and expulsion, immigration and emigration, and extradition, monetary, monetary and exchange, the unity of the customs and trade area, air transport, cooperation between the Federal Government and the Länder in the criminal police and the law on weapons and explosives.

Competing legislation

In the area of concurrent legislation, the Länder have the power to legislate as long as, and to the extent that, the Federal Government does not make final use of its legislative competence in the same field (Article 72 of the Basic Law). The competing legislation covers, inter alia, the following **areas**: civil law, criminal law, road transport, the law on associations, the residence and the right of establishment of foreigners, the law of the economy, labour law and certain aspects of consumer protection. In certain areas listed in Article 74 of the Basic Law, which fall within the scope of competing legislation, the Federal Government only has

the power to legislate only if and in so far as the production of equivalent living conditions in Germany or the preservation of the legal or economic entity in the interest of the general government requires legislation at federal level.

The Basic Law also regulates the case of conflict between Federal and Land law. The basic rule is laid down in Article 31 of the Basic Law: **'Federal law breaks down national law'**. This principle is applied without prejudice to the hierarchy of conflicts in law, so that, for example, federal orders take precedence over a state constitution.

Hierarchy of norms

At the top of the national standard pyramid is the Fundamental Law. It has a higher ranking than any other national legal source. As a constitution, it forms the basis of the entire German legal system. In Germany, all legislation must be both formal and substantive. Article 20(3) of the Basic Law provides, in this respect, that legislation on constitutional order and executive violence and case law are bound by law and law. The fundamental rights laid down in Article 1 to 19 of the Basic Law bind the legislation, executive violence and case law as directly applicable law (Article 1(3)). **The primacy of the Fundamental Law** is ultimately enforced by the Federal Constitutional Court. Only the Federal Constitutional Court can declare it invalid in the event of the unconstitutionality of a Parliamentary Act.

Article 79(2) stipulates that the amendment to the Fundamental Law shall **require** the approval of two thirds of the members of the Bundestag and two thirds of the Federal Council. The Bundesrat is the institution through which the federal states participate in the legislation and administration of the Federal Government and in matters of the European Union. Certain core elements of the Basic Law, namely the structure of the federal government in countries, the principle of participation in legislation or the principles laid down in Articles 1 and 20, are completely withdrawn (Article 79(3)).

Under the Constitution, federal and regional laws are governed by the **general rules of international law**. These include customary international law and the general principles of international law, and not the international law of law. The Basic Law expressly states that the general rules of international law are an integral part of federal law, act in the laws and produce rights and obligations directly for the inhabitants of the federal territory (Article 25). The general rules of international law that are important for the individual, that is to say, individual protective rules, include, in particular, mandatory international law, the provision of adequate legal protection for foreigners or the principle of specification, according to which criminal proceedings shall be limited by the extradition consent of the foreign State.

Simple laws are under the Constitution. They are decided by the Bundestag with the involvement of the Bundesrat. Draft laws may be submitted by the Federal Government, the Bundesrat and the Bundestag (from a political group or at least 5 % of the members) to the **Bundestag**. The Basic Law sets out the cases in which the Bundestag's legislative decision requires the approval of **the Bundesrat** (according to the statistics published by the [Bundestag](#) on its website, this is currently about 45 % of all laws). The Bundesrat may only appeal against the other legislative decisions, which the Bundestag may reject. In the event of a dispute between the Bundestag and the Bundesrat, a joint advisory body can be called upon to advise the draft laws (known as the Conciliation Committee). It consists of the same number of members from the Bundestag and the Bundesrat (currently 16). The Conciliation Committee is expected to draw up proposals for agreement, but cannot decide on the position of both the Bundestag and the Bundesrat.

Regulations rank below laws. They are issued by the Federal Government, a federal minister or a federal government. **Statutes** are lower than statutory instruments. They are issued by a body governed by public law, e.g. a municipality.

Institutional framework

Bodies of the legislature

In the Federal Republic of Germany, **legislation** is the responsibility of the parliaments. The German Bundestag is thus the main body of the legislature. It decides — with the involvement of the Bundesrat — all laws falling within the jurisdiction of the Federal Government.

Members and political groups in the Bundestag can, like the Bundesrat and the Federal Government, introduce **drafts** of new laws or amending laws in the Bundestag. Here, after a well-defined process, the debate, discussion and vote on the draft law take place.

As the federal states have a significant part of state power in Germany's federal system, the **Bundesrat** is also involved in the legislative process. He receives **all the laws for voting** and can even fail, depending on the nature of the law.

More information can be found on the web pages of the [Bundestag](#).

Legislative procedures

Legislation

Most drafts or templates are produced by the Federal Government. As a central controlling level, it has most experience with implementation and is directly aware of where in practice there is a need for new legislation.

However, new laws cannot be drafted by the Federal Government alone. The Bundesrat and the Bundestag also have the right to **submit draft laws**.

Initiatives by the Federal Government or the Bundesrat

If the Federal Government wishes to amend or amend a law, the Federal Chancellor or the Federal Chancellor must first forward the draft law to the **Bundesrat**.

The Bundesrat then normally has six weeks to issue an opinion on which the government can make written comments. The Federal Chancellor and the Federal Chancellor will then forward the draft to the Bundestag with the opinion of the Bundesrat. An exception to this procedure is the **Finance Act**. Here, bills are sent simultaneously to the Bundesrat and the Bundestag.

A similar procedure applies to the Federal Council's legislative initiative. After the majority of the members of the Bundesrat have opted for a draft law, the draft takes precedence over the Federal Government. You usually provide an opinion to the Bundestag within six weeks and then forward it to the Bundestag.

Initiatives from the middle of the Bundestag

Draft laws may also be initiated by Members of the Bundestag: Either **by at least one political group or at least five per cent by the Bundestag**.

Such drafts need not be submitted to the Bundesrat. The government is therefore drawing up **particularly focused bills** about their parliamentary groups.

Distribution of the template

Before a draft law can be discussed in the Bundestag, it must first be forwarded to the President of the Bundestag and registered by the administration.

He then is then distributed to all members of the Bundestag, the Bundesrat and the federal ministries, either in paper form or, as a rule, by electronic means.

Once the draft law is on **the plenary agenda**, he managed to get the first part of his motion: He is now facing his public and **official sitting in** the Bundestag.

Three readings in plenary

In general, draft laws in the plenary sitting of the Bundestag go through three debates — the so-called readings.

The first reading is subject to an exchange of views only if it is agreed by the Council of the elderly (the executive body of the Bundestag) or if it is requested by one of the political groups. This is often the case for legislative projects that are particularly controversial or interesting for the public.

The primary objective of the first reading is to **identify one or more committees** on the basis of the recommendations of the Ageing Council, which will deal with the draft law and prepare it for second reading.

Where several committees are designated, a committee shall be the lead committee. He is therefore responsible for the progress of the proceedings. The other committees have a consultative role.

Work in the committees

The detailed work of the legislation takes place in the standing committees with members from all political groups. The members of the Committee are in the field of discussion and in meetings. They may also invite stakeholders and experts to public hearings.

In parallel to the committee work, the political **groups** set up working groups in which they define and define their own positions.

The committees do not rarely build bridges between the political groups. The interaction between government and opposition groups means that most of the bills are more or less revised.

At the end of the proceedings, the committee responsible **shall submit** to the **assembly a report** on the progress and outcome of the discussions. Its recommendations for decisions are the basis for the second reading now in plenary.

2nd reading debate

Before the second reading, all MEPs have received the published **recommendation for a decision in a** printed form. They are well prepared for the debate. In addition, the political groups have previously, at internal meetings, fine-tuned their position so that they can demonstrate unity during the second public meeting.

After the general debate, all the provisions of the draft law may be called upon individually. However, as a general rule, the draft law is voted on directly.

Any Member of Parliament may **table amendments** which are then dealt with directly in plenary. If the Assembly decides to amend it, the new version of the draft law must first be printed and distributed. Two-thirds of the members present may, however, consent to this procedure. Then, it is possible to proceed directly to the third reading.

Vote in third reading

A new debate shall be held at the third reading only if required by a political group or at least five per cent of the members of the Bundestag.

Also amendments are no longer allowed by individual MEPs but only by political groups or five per cent of members of the Bundestag and only in amendments at second reading.

At the end of the third reading the final vote will take place. In response to the question raised by the President of the Bundestag after approval, voting against and abstentions, Members stand by their members.

If the draft law has found the necessary majority in the Bundestag, it will be forwarded to the Bundesrat as a law.

Approval of the Bundesrat

The Bundesrat acts by means of the Bundesrat. Their participation rights are clearly defined.

The Bundesrat cannot amend the law adopted by the Bundestag. However, if he does not agree with the law, he may refer the matter to the **Conciliation Committee**. The conciliation committee brings together the same number of members of the Bundestag and the Bundesrat.

In some laws, the approval of the Bundesrat is mandatory. These are, for example, legislation which deals with the financial and administrative responsibilities of the Länder.

In the case of acts of objection, the Bundestag may allow the law to enter into force even if no agreement has been reached in the Conciliation Committee. However, a new vote in the Bundestag calls for an absolute majority.

Entry into force

Once the draft law has passed the Bundestag and the Bundesrat, it has to undergo further work before it can enter into force as a law.

The law adopted is printed first and sent to the **Federal Chancellor and the Federal Chancellor** and the **relevant minister for his countersignature**.

The Federal President will then receive the copy of the law. He shall examine whether it has been established in **accordance** with the constitution and is not manifestly contrary to the Basic Law and is not manifestly contrary to its content. It then signs it and publishes it in the **Bundesgesetzblatt [Federal Law Gazette]**.

The law is therefore promulgated. If no specific date of entry into force is specified in the Act, it shall automatically apply from the 14th day after the issue of the Federal Gazette.

More information can be found on the web pages of the [Bundestag](#).

Legal databases

On the [internet](#) for interested citizens, the Federal Ministry of Justice and Consumer Protection and the Federal Office of Justice provide interested citizens with nearly all of the current federal legislation free of charge on the internet. The laws and regulations can be consulted in their up-to-date versions. They are consolidated by the documentation centre in the Federal Office of Justice. Many important laws are also available in [English](#).

In addition, the Federal Government, under the auspices of the Federal Ministry of the Interior, for construction and home, makes available on [the internet](#) a large database of up-to-date administrative rules of the highest federal authorities free of charge on the internet.

Since the Federal Republic of Germany is a federal state, the Länder regulate their own publication. They have set up their own web sites on this basis, which are linked [↗](#) to the Justice Portal of the Federation and the federal states.

Related links

[↗ Federal Gazette](#)

[↗ Laws on the Internet](#)

[↗ Translation of bills in English to laws on the Internet](#)

[↗ Internet governance](#)

[↗ The Justice Portal of the Federal Government and the Länder](#)

[↗ Bundestag](#)

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