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### National legislation

#### Duitsland

The Federal Republic of Germany is a democratic, federal and social constitutional state. Together with the fundamental 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.

#### Legal sources

The Basic Law (Grundgesetz) is the German Constitution, which provides the framework for the legal system and values of the Federal Republic of Germany. In particular, it lays down the following:

- the fundamental rights as the supreme guiding principles
- the fundamental structure and essential structural principles of the state and its governing bodies
- the principles by which elections to the Bundestag (the lower house of the German Parliament) are conducted
- the basis for the status and rights of the freely elected members of the Bundestag
- how the Bundestag is organised and conducts its business
- the responsibilities and organisation of the Bundesrat (the upper house of the German Parliament through which the Länder [federal states] participate in the legislative process at federal level)
- the distribution of legislative and administrative competencies between the Federation and the Länder
- the fundamental principles underpinning the organisation of the courts.

#### Types of legal instruments - description

The main **written sources** of German domestic law are the Basic Law, **legislation**, **statutory instruments** and **bylaws**.

#### Legislation

Legislation in a material sense is abstract and general with external effect, while legislation in a formal sense is a legal act that has been adopted by the competent legislative bodies in accordance with the constitutional procedure.

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 framework of the competencies assigned to it 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. The Länder have legislative powers, provided such powers have not been transferred to the federal government under the Basic Law. The key legislative powers of the Federation are set out in Articles 71 to 74 of the Basic Law. In addition, further legislative powers of the Federation are stipulated at various points in the Basic Law.

#### 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, social security law and certain aspects of consumer protection. With regard to certain matters listed in Article 74 of the Basic Law as falling within 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 Germany or the maintenance of legal or economic unity renders federal regulation necessary in the national interest.

#### Statutory instrument

The statutory instrument is a regulation of abstract, general application with external effect that is adopted by the executive on the basis of appropriate statutory authorisation.

#### Bylaw

A bylaw is a legal provision of abstract, general application that can be adopted by a legal person organised under public law within the framework of the autonomy legally conferred on it and that covers persons who belong to or fall under the rules of said legal person.

#### Status of customary and case law

In addition to the written sources of law, there are **unwritten sources of law**, including the general principles enshrined in international law and customary law. In principle case-law is not a legal source, even though it plays an important role in practice. Certain decisions of the Federal Constitutional Court (Bundesverfassungsgericht) alone have the force of law.

#### International sources of law and European Union law

Under Article 25 of the Basic Law the general rules of international law are afforded a specific role within the national hierarchy of norms: in accordance with the first sentence of Article 25 of the Basic Law they are an integral part of federal law, while the second sentence of Article 25 stipulates that they take precedence over legislation; the general rules of international law therefore lie between the Constitution and legislation in the national hierarchy of norms. In accordance with Article 59(2)(1) of the Basic Law, international treaties that relate to matters of federal legislation must be approved by the competent bodies in the form of a federal law in order to apply domestically. Within the national hierarchy of norms they are therefore only ranked at the same level as a federal law.

#### European Union law

Specific constitutional provisions apply to Germany's participation in the EU (Article 23 of the Basic Law) and to other situations in which sovereign powers are transferred to international organisations (Article 24 of the Basic Law) through the conclusion of international treaties.

Under the conditions laid down in Article 23 of the Basic Law, EU primary legislation applies domestically within Germany pursuant to the necessary act to this effect (which also requires the consent of the Bundesrat); in principle, directly applicable EU secondary legislation (e.g. Regulations) applies directly in Germany on the basis of its status; secondary legislation that requires transposition into national law (e.g. Directives) in principle only becomes applicable in Germany when the national transposing legislation is adopted; in accordance with the case-law of the Court of Justice of the European Union, in the event of conflicting domestic law, EU law in principle has primacy of application and the national law must be interpreted in a manner that is compliant with EU law and mitigates such a conflict, insofar as the national law in question allows scope for interpretation.

#### Most important acts/legislation

##### Constitutional law

**Basic Law for the Federal Republic of Germany (Grundgesetz, GG) - English translation**

**Act on the Federal Constitutional Court (Gesetz über das Bundesverfassungsgericht, BVerfGG) - English translation**

##### Civil law

**Civil Code (Bürgerliches Gesetzbuch, BGB) - English translation**

**Code of Civil Procedure (Zivilprozessordnung, ZPO) - English translation**

##### Commercial law

**Commercial Code (Handelsgesetzbuch, HGB) - English translation**

**Stock Corporation Act (Aktengesetz, AktG) - English translation**

**Act on Limited Liability Companies (Gesetz betreffend die Gesellschaften mit beschränkter Haftung, GmbHG) - English translation**

##### Administrative law

**Code of Administrative Court Procedure (Verwaltungsgerichtsordnung, VwGO) - English translation**

**Administrative Procedure Act (Verwaltungsverfahrensgesetz, VwVfG)**

##### Criminal law

**Criminal Code (Strafgesetzbuch, StGB) - English translation**

**Code of Criminal Procedure (Strafprozeßordnung, StPO) - English translation**

#### 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 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 guaranteed by the Federal Constitutional Court. Only the Federal Constitutional Court can declare an act of Parliament invalid in the event of any such act being unconstitutional.

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 so-called **eternity clause**, which guarantees that fundamental constitutional decisions laid down in the Basic Law will be retained).

The **general rules of international law** rank below the Constitution but above the laws of the Federation and the Länder. These general rules include customary international law and the general principles of international law, but not international contract law. 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. rules designed for the protection of the individual) include, in particular, 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.

Ordinary **legislation** ranks below the Constitution. Laws are passed **by the Bundestag in conjunction with the Bundesrat**. Draft laws 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 at least 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 – about 38% of all laws). As for the remaining laws passed by the Bundestag, the Bundesrat may only object to a draft law adopted by the Bundestag; this objection may in turn be rejected by the Bundestag. Where there are differences of opinion between the Bundestag and the Bundesrat, a common committee for joint consideration of draft laws (the 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).

#### Legislative process

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

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, in the case of legislation that requires its approval, it may even cause the rejection of some draft acts.

#### Legislative initiative

Most draft acts and proposals are drawn up by the **Federal Government**. As the central level of the executive, it has most experience of the implementation of legislation and a direct insight into where new statutory provisions are needed in practice.

However, not only the Federal Government but also the **Bundesrat** is entitled to initiate the draft acts.

The **members and parliamentary groups of the Bundestag** are also entitled to introduce new or revised pieces of legislation in the Bundestag as draft acts.

These are debated, deliberated on and voted on in Parliament in accordance with a precisely regulated procedure.

#### Initiatives introduced by the Federal Government or the Bundesrat

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

As a rule, the Bundesrat then has a period of 6 weeks in which to deliver its **comments on the draft act**, to which the government may in turn respond with a written counterstatement. The Federal Chancellor then forwards the draft 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 draft act, 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 acts may also be initiated by members of the Bundestag, in which case they must be supported either by **at least one of the parliamentary groups or by at least 5% of the members of the Bundestag**.

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

#### **Deliberation on the draft act and adoption of the legislation**

##### **Distribution of items for discussion**

Before a draft act can be deliberated on in the Bundestag, it must first be referred to the President of the Bundestag and registered by the administration. It is then distributed to all members of the Bundestag and Bundesrat, and to the federal ministries, as a printed document or, more usually, in electronic form. As soon as the draft act has been placed on the **agenda of the plenary**, the first stage of its passage through Parliament is over: it may then be **officially presented** in the public forum of the Bundestag.

##### **Three readings in the plenary**

As a rule, draft acts are **debated three times** in the plenary of the Bundestag. These debates are known as **readings**.

During the first reading, a debate is only held if this has been agreed in the Ältestenrat (Council of Elders, the executive body of the Bundestag) or requested 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 first reading is to **designate one or several committees** to consider the draft act and prepare it for its second 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 therefore responsible for the passage of the draft act through Parliament. The other committees are asked for their opinions.

##### **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 stakeholder 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 the parliamentary groups in the committees to find common positions. Most draft acts 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 draft act presents the plenary with a report** on the course and results of its deliberations. The **decision it recommends** forms the basis for the second reading that now takes place in the plenary.

##### **Debate during the second reading**

Before the second 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 second reading.

Following the general debate, all the provisions set out in the draft act may be considered individually. As a rule, however, the plenary moves directly to a vote on the draft act 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 draft act must first be printed and distributed. However, this procedure may be shortened 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 third 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 third reading**. When the President of the Bundestag asks for votes in favour, votes against and abstentions, the members respond by rising from their seats.

Once a draft act 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 agree to an act, it may demand that the **Mediation Committee** (Vermittlungsausschuss) be convened. The Mediation Committee consists of an equal number of members of the Bundestag and Bundesrat.

For some draft acts, referred to as **laws requiring consent (Zustimmungsgesetze)**, the consent of the Bundesrat is a compulsory requirement. These include, for example, acts which require the Länder to pay benefits to citizens or which affect the administrative competencies of the Länder.

Where **draft acts 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 draft act by an absolute majority.

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

##### **Promulgation, publication and entry into force**

Once a draft act 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 date of publication of the Federal Law Gazette in which it was printed.

#### **Means of resolution of conflicts between different legal sources**

The Basic Law governs the issue of any conflict between federal and Land law. The fundamental rule is laid down in Article 31 of the Basic Law: 'Federal law shall take precedence over Land law'. This principle applies irrespective of the hierarchical status of the conflicting legal rules of law so that, for example, a federal statute will prevail over the constitution of a Land.

Otherwise, conflicts may be resolved based on the hierarchical status of the conflicting rules of law. In the case of rules of law that formally have the same status in the hierarchy, the aspect of specificity (*lex specialis*) or the chronology of their enactment (*lex posterior*) may be taken into account.

#### **Legal databases (with appropriate links)**

##### **Gesetze im Internet (online laws)**

The Federal Ministry of Justice and the Federal Office of Justice publish almost all current federal law online. This information is available free of charge for those interested. Legislation and statutory instruments can be accessed in their current versions. They are consolidated on a continuous basis by the documentation centre at the Federal Office of Justice.

Laws published in German may be used freely in all the formats provided. The legal texts that can be accessed online are not the official versions. These can only be found in the paper edition of the Federal Law Gazette.

##### **Can it be accessed free of charge?**

Yes.

##### **In which languages is it available?**

Laws are made available in German. [English translations](#) are provided in many cases.

##### **What are the available search criteria?**

###### **1. Title search**

It is possible to perform a search limited to the words contained in the long or short title and the official abbreviations of all available laws. Two different operators can be used:

###### **AND operator:**

A search is performed for documents in which all the entered words appear.

###### **OR operator:**

A search is performed for documents in which at least one of the entered words appears.

###### **2. Full-text search**

It is also possible to perform a keyword search of all available legal texts. Here again two different operators can be used:

###### **AND operator:**

A search is performed for documents in which all the entered words appear.

###### **OR operator:**

A search is performed for documents in which at least one of the entered words appears.

##### **Rechtsprechung im Internet (online case-law)**

Since 2010 the Federal Ministry of Justice and the Federal Office of Justice have published selected rulings by the Federal Constitutional Court, the federal supreme courts and the Federal Patent Court online. This information is available free of charge for those interested. The rulings are anonymised and, in principle, are published in unabridged form. The database is updated daily.

Rulings may be used freely in all the formats provided.

##### **Can it be accessed free of charge?**

Yes.

##### **In which languages is it available?**

Rulings are made available in German.

##### **What are the available search criteria?**

###### **1. 'Simple search'**

The standard search ('simple search') allows you to perform a full-text search of all rulings published by the Citizens' Helpdesk (Bürgerservice). Where possible, the user's entries are assigned to certain metadata and the spellings are standardised. After the search has been performed, the search terms are displayed underneath the search form together with the number of hits. An input field is available where you can enter almost all the specific search criteria that can be used with an internet search engine.

Possible hits are suggested automatically in a list while the search term is being entered. After the user has started entering a search criterion, text and other search terms appear in the automatically generated suggestion list and can be adopted directly into the search mask from there. The system also recognises and highlights input errors. The quick search function interprets the entries and offers alternative spellings via the suggestion list (the 'Did you mean?' function).

Search entries are linked by an 'and' by default; the user does not need to enter the word 'and'. An intersection search is performed automatically for search criteria that have been entered one after another. By entering the operators 'OR' or 'NOT', the user can specify whether the searched documents can be included or excluded. The input sequence of the search terms is retained when the search terms are presented. OR or NOT relationships are presented separately in the list of search terms.

###### **2. 'Advanced search'**

The advanced search function offers the user the possibility of relating individual search criteria to each other across all documents in a differentiated way. In addition to the full-text search, the advanced search allows a metadata search based on the following search criteria:

Court

Legal provision

Date

Document reference number/ECLI

##### **Verwaltungsvorschriften im Internet (online administrative regulations)**

Under the overall responsibility of the Federal Ministry of the Interior, the Federal Government, in a joint project with juris GmbH, provides a comprehensive online database containing current administrative regulations issued by the highest federal authorities. This information is available free of charge for those interested. The database contains 'living documents', i.e. the government departments update the documents made available on an ongoing basis. New administrative regulations and administrative regulations that are being revised can be added at any time by juris GmbH.

Administrative regulations are not laws. They are abstract, general regulations within the administrative organisation and are issued by higher-level administrative bodies or superiors to subordinate bodies or employees for the purpose of specifying the organisation and actions of the administration

concerned. Further details on individual administrative regulations can be found, if required, on the [websites](#) of the federal ministry within whose area of responsibility the matter in question falls.

**Can it be accessed free of charge?**

Yes.

**In which languages is it available?**

Administrative regulations are made available in German.

**What are the available search criteria?**

#### **1. Title search**

It is possible to perform a search limited to the words contained in the long or short title and the official abbreviations of all available administrative regulations. Two different operators can be used:

**AND operator:**

A search is performed for documents in which all the entered words appear.

**OR operator:**

A search is performed for documents in which at least one of the entered words appears.

#### **2. Full-text search**

It is also possible to perform a keyword search of all available legal texts. Here again two different operators can be used:

**AND operator:**

A search is performed for documents in which all the entered words appear.

**OR operator:**

A search is performed for documents in which at least one of the entered words appears.

#### **[Justizportal des Bundes und der Länder \(federal and state justice portal\)](#)**

The Federal Ministry of Justice and the administrations of the Länder make legal texts available online for interested citizens. A charge applies in some cases. There are also some differences in the search criteria.

#### **Other legal databases**

##### **[Bundesgesetzblatt \(Federal Law Gazette\)](#)**

The Federal Law Gazette is published in printed form and electronically via the following link: <https://www.bgbl.de/xaver/bgbl/start.xav> The printed version is binding.

##### **[Bundesanzeiger \(Federal Gazette\)](#)**

The Federal Gazette is published electronically via the following link: <https://www.bundesanzeiger.de/pub/de/amtlicher-teil>

The electronic version is binding.

##### **[Dokumentations- und Informationssystem für Parlamentarische Vorgänge \(documentation and information system for parliamentary business\)](#)**

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