



Federal Ministry
of Justice

Tasks and Organisation of the Federal Ministry of Justice



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1. Tasks of the Federal Ministry of Justice

The Federal Ministry of Justice [*Bundesministerium der Justiz* (BMJ)] is primarily a ministry of legislation and advice. It drafts legislation in the fields of law assigned to its remit, mainly in the fields of civil law, commercial and economic law, criminal law and procedural law of the different jurisdictions. The tasks of the Federal Ministry of Justice also include performing legal scrutiny of legislation drafted by other Ministries in terms of compatibility with constitutional law and the legal system as a whole, as well as in terms of compliance with formal drafting requirements to ensure uniformity.

Responsibility for the administration of justice, i.e. for the courts and public prosecution offices, lies mainly with the individual Federal *Länder*. This follows from the general principle of Article 30 of the Basic Law, the German constitution. It provides that the exercise of state authority and the discharge of state functions are the responsibility of the Federal *Länder*, to the extent that the Basic Law does not mandate or allow a different rule. Article 92 of the Basic Law places this in concrete terms for the judiciary.

At the Federal level, in addition to the Federal Constitutional Court, which is an independent constitutional body of the Federation, five supreme Federal courts (Article 95 of the Basic Law) have been established, of which three are within the remit of the Federal Ministry of Justice (see 1.3). Primarily, they constitute the respective supreme appellate instance for the courts of ordinary jurisdiction, as well as in the administrative, finance, labour and social jurisdictions (Federal Court of Justice, Federal Administrative Court, Federal Finance Court, Federal Labour Court and Federal Social Court). Furthermore, there is the Federal Patent Court, a Federal court which adjudicates at first instance (Article 96 para. 1 of the Basic Law), and which is also within the remit of the Federal Ministry of Justice.

1.1 Tasks of the Federal Ministry of Justice in the Field of Legislation

The Federal Ministry of Justice has overall responsibility within the Federal Government above all for the “classical” areas of law. They include:

- civil law (law of obligations, property law, family law, law of succession),
- commercial and company law, the law on protection of industrial property and copyright law,
- criminal law,
- courts constitution law and procedural law for the individual jurisdictions (except labour and social jurisdiction, in respect of which the Ministry adopts a merely advisory role),
- service or professional law for judges, public prosecutors, lawyers, notaries, patent lawyers and “*Rechtspfleger*” (senior judicial officers).

Furthermore, in its capacity as Ministry with responsibility for constitutional matters, the Federal Ministry of Justice, along with the Federal Ministry of the Interior, must always be consulted in respect of issues of constitutional law as well as in proceedings before the Federal Constitutional Court. The Federal Ministry of Justice also has the task in this context of performing the scrutiny of legislation drafted by all other Federal Ministries, as well as international agreements, in terms of their compatibility with constitutional law, international law, European Union law and existing Federal law, before such draft legislation is adopted by the Federal Government. The scrutiny of draft legislation also extends to an examination of the drafting methodology and to ensuring that a uniform style and unambiguous legal language has been adopted. The Ministry’s divisions are also increasingly involved in preparing EU legislation within their respective legal fields.

1.2 Tasks of the Federal Ministry of Justice in the Field of Administration

The administrative tasks of the Federal Ministry of Justice include

- establishing the organisational, budgetary and staffing conditions, as well as the infrastructure, for the work of the Ministry and the Federal courts and authorities within the remit of the Federal Ministry of Justice, and
- performing administrative supervision of the Federal courts, as well as administrative and substantive supervision of the authorities within its remit (see 1.3.); the Federal Ministry of Justice also constitutes the “appellate instance” for appeals (“complaints”) filed under the Federal Central Criminal Register Act in respect of official notices issued by the Federal Office of Justice.

Furthermore, the Federal Ministry of Justice publishes the Federation's official organs of publication (the Federal Law Gazette and the Federal Gazette)

1.3 Remit of the Federal Ministry of Justice

The remit of the Federal Ministry of Justice includes three of the total of five supreme Federal courts, which are:

- the Federal Court of Justice based in Karlsruhe (with a panel in Leipzig),
- the Federal Administrative Court based in Leipzig, and
- the Federal Finance Court based in Munich.

Furthermore, the following are also part of the Federal Ministry of Justice's remit:

- the Federal Prosecutor General of the Federal Court of Justice, based in Karlsruhe, with a sub-office in Leipzig,
- the Federal Patent Court in Munich as the court of first instance in patent and trade mark matters,
- the German Patent and Trade Mark Office in Munich with its office in Jena and the Technical Information Centre in Berlin, and
- the Federal Office of Justice in Bonn.

The Ministry is involved at the preparatory stage leading up to the selection of the judges for the Federal Constitutional Court. Half of the judges of the Federal Constitutional Court are elected by the Bundestag and half by the Bundesrat (Article 94 para. 1 of the Basic Law). The Ministry also prepares the selection of the judges for the three Federal courts within the Federal Ministry of Justice's remit, i.e. for the Federal Court of Justice, the Federal Administrative Court and the Federal Finance Court. Federal judges are chosen jointly by the Minister and a judge selection committee, comprising the competent ministers from the sixteen Federal *Länder* and an equal number of members elected by the Bundestag (Article 95 para. 2 of the Basic Law).

2. *Organisational Structure of the Federal Ministry of Justice*

The broad range of tasks of the Federal Ministry of Justice is reflected in the organisation of the Ministry.

2.1 *Political Leadership of the Federal Ministry of Justice*

At the head of the Ministry is the Federal Minister of Justice, Sabine Leutheusser-Schnarrenberger. She participates in the political decisions of the Federal Government as a member of the Cabinet. She bears political responsibility for her own department. The Minister is assisted in her work by her Parliamentary State Secretary, Dr. Max Stadler, and her State Secretary, Dr. Birgit Grundmann, a civil servant. In particular, the Parliamentary State Secretary looks after links with the Bundestag, the Bundesrat and the political parties. The civil servant State Secretary represents the Minister in her capacity as head of the Ministry, both internally and externally. The Minister and the two State Secretaries thus form the so-called “political directorate” of the Ministry.

2.2 *Directorates-General, Directorates and Divisions*

The Ministry is divided into six Directorates-General, which are, in turn, subdivided into Directorates and Divisions. Tasks of related content are always grouped together within one Directorate-General. Thus, for example, there is a Directorate-General for the Judicial System that deals, among other things, with procedural law, the law relating to the judiciary and the law relating to “*Rechtspfleger*” (senior judicial officers); there is also a Directorate-General for Criminal Law, in which, among other things, substantive criminal law, juvenile criminal law and international criminal law are dealt with. A Directorate-General is usually headed by a “political civil servant” with the rank of “*Ministerialdirektor*”, who – like the civil servant State Secretary – can be transferred to provisional retirement at any time. After the Minister and the State Secretaries, the Head of Directorate-General is the highest substantive decision-making instance. He or she supervises and coordinates the work within the Directorate-General and ensures the two-way flow of information between the political directorate and the Directorate-General. The Directorates-General are subdivided into two Directorates. The Head of Directorate is

responsible for management and planning in respect of the Divisions assigned to him or her.

The Divisions are the basic organisational units of the Federal Ministry of Justice and they carry out the substantive work. The heads of Division are assigned employees of graduate level (“higher service”) – mainly trained lawyers – as desk officers, as well as clerical and secretarial staff, depending on requirements. The distribution of work within a Division is determined by the Head of Division.

2.3 Tasks of the Individual Directorates-General in the Federal Ministry of Justice

The Federal Ministry of Justice has six Directorates-General. The breakdown reflects the Ministry’s fields of responsibility. With the exception of the Directorate-General Z, the Directorates-General are, as a rule, competent for specific areas of law:

Directorate-General Z	Administration (Central Affairs)
Directorate-General R	Judicial System
Directorate-General I	Civil Law
Directorate-General II	Criminal Law
Directorate-General III	Commercial & Economic Law
Directorate-General IV	Constitutional and Administrative Law; European and International Law

2.3.1 Directorate-General Z (Administration) has the task of establishing the staffing, organisational and budgetary conditions as well as the infrastructure for the work of the Ministry and of the Federal courts and authorities within the remit of the Federal Ministry of Justice. The Ministry attaches great importance to increased use of IT in order to rationalise working processes, as well as to improve the effectiveness of communication and the flow of information both internally and externally. In addition, Directorate-General Z supervises various projects aimed at using modern IT in access to the Federal Courts and authorities within the remit of the Federal Ministry of Justice (“*eJustice*”), as well as in internal communication and the management of documents, and also at coordinating IT standards both nationally and internationally.

Directorate-General Z is also responsible for advancing the use of electronic tools as an aid in the legislative process at Federal level. For instance, the "eNorm" software application is designed to make it possible for one and the same electronic document to be worked on from the first draft of an instrument right through to its promulgation, thus helping to avoid the use of multiple media, duplication of work and numerous different sources of error. A further focal point is facilitation of electronic access to Federal law. Current and former versions of all Federal laws and statutory ordinances, as well as all amendments, are made available to subscribers via the computer-based legal information system "*juris*", whilst a collection of laws currently in force can also be accessed on the Internet site "Gesetze-im-Internet.de", a service provided to the public free of charge. Directorate-General Z is also responsible for the administration of the Federation's participatory interests in the company "*juris GmbH*".

Finally, responsibility for fostering international relations also falls within the remit of Directorate-General Z. Within this framework Directorate-General Z is responsible inter alia for the German-Chinese Dialogue on the Rule of Law, and also performs tasks of the Federal Ministry of Justice as provided for in the Statutes of the German Foundation for International Legal Cooperation and the Institute for the Law of Countries of Eastern Europe, based in Munich.

2.3.2 Directorate-General R (Judicial System) is responsible for the courts constitutions – i.e. for Federal law regulations on the structure and organisation of the courts and the public prosecution offices (also in the Federal *Länder*). It also has responsibility for the provisions of procedural law for the different jurisdictions, including the law governing costs and fees and the rules on investigation proceedings in criminal matters. It also deals with the law on judicial procedure in the field of non-contentious proceedings, especially the procedure in guardianship cases, matters relating to the custody of persons of full age, probate cases and register cases – as well as the law relating to debt enforcement and insolvency law. Lastly, it is also competent for the law governing the legal professions (above all, judges, public prosecutors, *Rechtspfleger* (senior judicial officers), lawyers and notaries), including the law governing lawyers' fees. Directorate-General R provides assistance for the further training of judges and public prosecutors, notably within the framework of the

Deutsche Richterakademie (German Judicial Academy). Current focal points include fundamental issues relating to pre-court and extrajudicial dispute settlement at national and international level, as well as promoting the use of mediation procedures.

2.3.3 The work in Directorate-General I (Civil Law) centres on civil law, which governs the legal framework for private legal relationships between citizens in our liberal society. The core of German civil law has been laid down in just under 2,400 sections of the German Civil Code [*Bürgerliches Gesetzbuch* (BGB)]. The Civil Code contains comprehensive general regulations governing legal transactions as well as provisions governing specific types of contract, for example contracts of sale, tenancy agreements, loan agreements and tourist travel contracts. The Civil Code regulates property law (including real estate law and mortgage law), the law of succession, and family law including matrimonial law (marriage, matrimonial property regimes, divorce and the legal consequences of divorce), the law relating to parent and child matters (parentage, custody, rights of access, guardianship, adoption), maintenance law and provisions on the legal custody of adult persons in need of protection.

The tasks of Directorate-General I also encompass the protection of consumers against legal disadvantages by means of a balanced shaping of provisions of private law, for example the law on standard terms and conditions, the law governing tourist travel contracts and the law on consumer credit. This Directorate-General also deals with provisions that provide for reasonable compensation, for example, for injuries in road, rail or air traffic or for damages resulting from products or environmentally hazardous facilities. Further, great importance is attached to the harmonisation of European and international civil law as well as international private law. International private law determines which legal system should apply in cases that affect more than one state. Other important international activities include mutual legal assistance with foreign countries. Lastly, the Directorate-General deals with the field of the law relating to the regulation of unresolved property claims in connection with German reunification.

2.3.4 Directorate-General II (Criminal Law) is responsible for criminal law, including juvenile criminal law, for the law on regulatory offences, the law governing the Federal Central Criminal Register, the law on compensation for measures of criminal prosecution, the law on pardon and amnesty, as well as statistics on criminal prosecution. This Directorate-General is also competent for the law relating to crimes against the state, including the suppression of terrorism at both international and international level, as well as the criminal law in respect of traffic offences, economic crime, computer crime and environmental protection; the prevention of crime also comes within the remit of this Directorate-General. The work of this Directorate-General focuses on adapting criminal law to cover new manifestations of crime as well as ensuring the accommodation of victims' interests, in particular through provisions on compensation of the victim and on offender-victim mediation. Directorate-General II also performs the legal scrutiny of draft legislation of all the other Ministries which relates to criminal law or the law governing regulatory offences. Furthermore, Directorate-General II exercises substantive supervision over the Federal Prosecutor General of the Federal Court of Justice, as well as over the Federal Central Criminal Register and the Central Trade and Industry Register within the Federal Office of Justice. Responsibility for the public prosecution offices of the Federal *Länder* as well as for execution of sentences lies with the individual *Länder*. Directorate-General II is also competent for tasks in the field of international cooperation in criminal matters, including extradition and mutual assistance. This involves both the negotiation of agreements under international law as well as substantive supervision over the Federal Office of Justice in respect of the processing of individual cases. Both cooperation in criminal-law matters and substantive criminal law are being increasingly influenced by requirements under European law. These primarily focus on harmonisation of the national legal systems and recognition of the judicial decisions of other EU Member States.

2.3.5 Directorate-General III (Commercial & Economic Law) is responsible for legislation in the area of commercial and company law, accounting and reporting law, insurance contract law, industrial property protection (patent law, utility model law, the law on industrial designs, trade mark law, the law against unfair competition) as well as copyright law. Furthermore, it is also responsible for performing the scrutiny of draft legislation of all other Ministries in the fields of economic law, law of public

finance and tax law. The work in the field of the law on new communications technologies and new technologies in the natural sciences is due particular emphasis. The remit of Directorate-General III is anchored in international developments and its work determined by these developments more than that of any other Directorate-General. That is why a major focus of Directorate-General III is on participation in the work of the European Communities and the European Patent Organisation, as well as that of the United Nations and its specialised agencies. The tasks of modernising company law, reforming accounting rules and the law against unfair competition, establishing a Community patent and a European patent jurisdiction, as well as the issue of combating product piracy are currently at the fore.

2.3.6 Directorate-General IV (Constitutional and Administrative Law; European and International Law) is responsible for constitutional law, reparation for injustice committed by the regime of the former German Democratic Republic (GDR), and the scrutiny of legal provisions, which encompasses the examination of draft legislation in terms of systematic legal logic and compliance with formal requirements. It participates in cases before the Federal Constitutional Court where the Federal Government is one of the parties or is entitled to present an opinion, and has overall responsibility for the Federal Constitutional Court Act.

As part of its task to carry out the scrutiny of legal provisions, it examines draft legislation from the other Federal Ministries as well as from the specialist Directorates-General of the Federal Ministry of Justice as to its conformity with constitutional law and its compatibility with existing national law. Furthermore, it is examined whether the systematic logic of laws and the principles of legal logic have been adhered to and whether clear and uniform language has been used. Recommendations on the standard formal structure and wording of legislation are contained in the "Handbook on Formal Requirements for Drafting Legislation" published by the Federal Ministry of Justice; the third edition is due to be published in 2009.

Directorate-General IV also brings together competencies of the Federal Ministry of Justice for those areas that extend beyond the national legal system. In the fields of

public international law and European law it is responsible for the legal scrutiny of proposed legal instruments under public international law or the law of the European Union which involve the Federal Republic of Germany, and also takes a drafting role and carries out scrutiny in respect of legislation to implement such instruments into domestic law. It takes part in drafting and negotiating international treaties and it plays an active part in the implementation, development and extension of cooperation within the European Union in the fields of Justice and Home Affairs.

The Agent of the Federal Government for Matters Relating to Human Rights also belongs to Directorate-General IV; she is responsible for drafting and implementation of the international human rights treaties of the United Nations and the Council of Europe. In addition, as the Agent of the Government of the Federal Republic of Germany, she represents the Federal Republic of Germany before the European Court of Human Rights and before the Human Rights Committee, the Committee on the Elimination of Racial Discrimination, and the Committee against Torture of the United Nations. She is a member of the Steering Committee for Human Rights of the Council of Europe. and its subcommittees European Commission against Racism and Intolerance as well as of the. The Agent is also a member of the board of trustees of the German Institute for Human Rights.

3. *Employees of the Federal Ministry of Justice*

In 1949 the Federal Ministry of Justice started work with approximately 80 members of staff; it now has 651 employees (as of 3 November 2009). There are 261 lawyers, 107 of whom are women. The lawyers include 82 judges, public prosecutors and other public officials of the *Länder*, who are seconded to the Federal Ministry of Justice for a fixed period of time – usually for two to three years. The seconded judges do not perform any judicial responsibilities during this time; rather, they take on expert tasks within the Ministry's Divisions. The interests of the staff of the Federal Ministry of Justice are represented by the Staff Council, the Equality Commissioner and the Disabled Persons' Representative.

Since the move of the Federal Government from Bonn to Berlin in 1999, most of the Ministry's employees work at its headquarters in Berlin. A sub-office of the Federal Ministry of Justice with 22 employees has remained in Bonn.