

Translation

**Joint Rules of Procedure  
of the Federal Ministries (GGO)**

As at 30 July 2020

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## **Chapter 1 General**

### **Section 1 Scope**

- (1) The Joint Rules of Procedure shall apply to the Federal Ministries.
- (2) The Joint Rules of Procedure shall govern the principles for the organisation of the Federal Ministries, the co-operation between the Federal Ministries and with Federal constitutional bodies as well as for external course of business. They shall govern the participation in legislation.

### **Section 2 Equality of the sexes**

Equality between men and women is a consistent guiding principle and should be promoted by all political, legislative and administrative actions of the Federal Ministries in their respective areas (gender mainstreaming).

## **Chapter 2 Organisational principles**

### **Section 3 Ministerial duties**

- (1) The Federal Ministries perform duties which are designed to meet or support government functions. This includes in particular strategic design and co-ordination of policy areas, realisation of political objectives, focal points and programmes, international co-operation, involvement in the legislative process and exercising management and supervisory functions over non-departmental public bodies within their respective remits. Expert supervision is a key element of federal administration management and oversight. The primary aim of expert supervision is to ensure that administrative action is lawful and effective.<sup>1</sup> Alignment to core ministerial tasks must be ensured by constant critical review of tasks.
- (2) The Federal Ministries shall perform executive tasks only in exceptional cases, if they concern matters of special political importance or if a different assignment

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<sup>1</sup> See the current version of *Grundsätze zur Ausübung der Fachaufsicht der Bundesministerien über den Geschäftsbereich* (Principles of expert supervision in the federal ministries for their remit), published on the federal intranet.

would not be pertinent.

- (3) Federal Ministries must exercise their duties in such a way as to ensure the ability of the Federal Government to function and to present a consistent image.
- (4) Similar duties, such as those within the scope of internal service areas, should be performed centrally by a single Federal Ministry, where appropriate and efficient.

#### **Section 4 Organisational principles for Federal Ministries**

- (1) Federal Ministries organise themselves in such a way that they can respond flexibly to changing social, political and financial conditions.
- (2) Organisational arrangements should assist in performing duties autonomously, independently and in a cost- and quality-conscious manner, while at the same time contributing to improving staff motivation and job satisfaction.
- (3) Federal Ministries pursue an organisational and personnel development, taking into account actual requirements.
- (4) The organisational units set up should be of appropriate size, with few hierarchical levels, their remit to be decided in the light of the scope and severity of the duties involved.
- (5) Duties, powers and responsibilities should be combined at each processing level.
- (6) The Federal Ministries should try and test management and steering instruments, such as guiding models, agreed targets, controlling, personnel and quality management and introduce them where appropriate. Cost-Output Accounting<sup>2</sup> should be introduced in suitable areas.
- (7) Federal Ministry staff should assist in improving the organisation and working results through a suggestion scheme. Ideas for improvement should be encouraged and implemented at all times.

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<sup>2</sup> COA manual (Regulation Series– VSF – Federal financial administration H 90 01)



## **Section 5 Electronic information and communications systems**

- (1) Federal Ministries will create the conditions for providing information, exchanging it between departments and using it in electronic form.
- (2) A secure interministerial communications infrastructure shall be in operation to ensure protected electronic communications between Federal Ministries.

## **Chapter 3 Organisational structure**

### **Section 6 The top-level management of Federal Ministries**

- (1) Federal Ministries are headed by Federal Ministers. They are represented by the State Secretary or by State Secretaries in their respective areas of competence unless laid down otherwise, without prejudice to the provisions of §Section 14 (3), 14a of the Federal Government's Rules of Procedure.
- (2) State Secretaries are in charge of administration, and are responsible for performing the Federal Ministry's duties in goal-oriented fashion. They generally have the final decision in administrative matters.
- (3) In principle, State Secretaries represent one another within a Federal Ministry on a mutual basis. The provisions of the first sentence apply to Parliamentary State Secretaries *mutatis mutandis*.
- (4) If no State Secretary is present, [the Ministry] will be represented by the appropriate head of section unless laid down otherwise.

### **Section 7 Structure of Federal Ministries and allocation of duties**

- (1) In principle, Federal Ministries break down into directorates-general and sections, the key unit within the structure of a Federal Ministry normally being the section, which is the initial decision-making authority in all matters assigned to it within its area of competence.
- (2) Between sections, and within each section, remits are defined by the subject areas they support, so that authority and responsibilities are clearly visible. Tasks which are related substantively are normally performed by a single

organisational unit. Duties are assigned under a business assignment plan.

- (3) In principle, no-one should ever be employed by more than one section, or report to more than one immediate superior, at the same time. Subject to the provisions of collective agreements and labour representation rules, the Directors-General may depart from the business assignment plan and second staff to another section within the Directorate-General and entrust them with equivalent duties for up to six months. Staff may be transferred from one Directorate-General to another, if the Directors-General involved agree. The sections in charge of staff and organisational matters must be involved.
- (4) The organisational structure of the Federal Ministry must be published.

### **Section 8 Directorates-General**

A Directorate-General is headed by a Director-General, and normally consists of at least five sections. Directorates are not set up unless objectively necessary; this usually involves merging not less than five sections.

### **Section 9 Sections**

- (1) As a general rule, a section consists of not less than four staff, in addition to the head of section.
- (2) In addition to management and leadership duties, heads of section should also handle matters specific to the section themselves.

### **Section 10 Particular forms of organisation**

- (1) Organisational units with staff functions may be set up for certain duties, especially with regard to the management of the Federal Ministry.
- (2) For temporary but complex tasks requiring personnel from across the Ministry preferably project groups should be set up. Details of the management, objectives, authority and human and material resources should be laid down in the project mandate.
- (3) The provisions of sections 8 and 9 (1) shall not apply.

## **Chapter 4 Management and work routine**

### **Section 11 Management, self-responsibility and co-operation**

- (1) Within their respective areas of responsibility, superiors involve their staff in decisions arising within their organisational unit. They encourage their staff to perform, to be prepared to work together and assume responsibility, and to be creative. This can be done in particular through dialogue with staff, agreements on targets, institutionalising feedback mechanisms between superiors and staff, and conflict moderation.
- (2) Superiors are responsible for ensuring that duties are assigned appropriately, for balancing matters, if any of their staff are over-worked or under-worked, and for work routines within their operational unit.
- (3) Superiors will hold regular review meetings with their staff. As well as performing management duties, such review meetings also serve to exchange information and experience and co-ordinate work.
- (4) Each member of staff is responsible for performing the duties entrusted to them properly and on time and in an economical fashion, and should take the initiative and work autonomously within their remit.
- (5) All section members will support one another in performing their duties, and will inform one another of all matters which are important to performing their duties and representation.

### **Section 12 Work routine**

- (1) Electronic procedures must be used in work routines as far as possible.
- (2) The progress and status of work must be traceable from electronic or hard copy records at all times (within retention periods). Document and file management are governed by the Records Management Guideline [RegR].

### **Section 13 Handling of incoming documents**

- (1) Incoming documents are any documents which are sent to the Federal Ministry electronically or in paper form.

- (2) Incoming documents must be dealt with as laid down in Annex 1 and routed directly to the head of the appropriate unit unless indicated otherwise. The head of this unit will decide on whether to inform and involve superiors, and will route incoming documents to the competent staff as quickly as possible. Incoming documents may have progress notes attached to them as shown in Annex 2.
- (3) In particular, the following documents must be passed on to the head of the Federal Ministry:
  - Incoming documents of fundamental political importance
  - Letters from Members of the German Bundestag
  - Letters from Members of the European Parliament or of a Land Parliament (Landtag).

#### **Section 14 Applications, enquiries and complaints**

- (1) Applications, enquiries and complaints must be settled as quickly and as simply as possible. Interim reports must be sent out, if an answer takes more than four weeks.
- (2) With regard to complaints concerning administrative action, the letter in reply must be submitted to one's immediate superior prior to being sent out.
- (3) Information may be given without using a specific form in response to questions of substance from members of the public. If in the case of oral enquiries there is a risk of misunderstanding, the person making the enquiry shall be informed that he/she can apply in writing. If in the case of enquiries in electronic form there are doubts as to the identity of the person making the enquiry, he/she shall be informed of the option of using the conventional post. No response shall be made to enquiries submitted anonymously or under an obvious pseudonym. No legal information which entails legal examination of a specific case shall be given.
- (4) Any media queries must be referred to the PR section.

#### **Section 15 Participation**

- (1) If a case involves a number of organisational units, the lead organisational unit must involve them in good time, the lead organisation being that which has the overall responsibility under the business assignment plan, or which is appointed in the case concerned. In the event of doubt, responsibility will be established

by the organisational section.

- (2) The lead organisational unit decides on the nature and scope of the involvement, unless this derives from other provisions.
- (3) Where texts are extensive, indications must be given as to where the involvement took place.
- (4) Involvement by way of co-signature must be restricted to cases of importance. Co-signing implies taking technical responsibility for the area represented.
- (5) It must be apparent from the case files what organisational units handled, co-signed and signed them.

### **Section 16 Correspondence**

- (1) External correspondence is conducted under the official name of the authority. If letters are written jointly by a number of Federal Ministries, the Ministries involved must be shown in their official order of precedence.
- (2) Letters must be precise, complete as to content, understandable and polite.
- (3) Electronic communications between Federal Ministries shall use the communications infrastructure described in section 5 (2).

### **Section 17 Authority to sign**

- (1) In principle, staff sign any correspondence they produce themselves. Their superiors sign where this is prescribed by statutory and administrative regulations, the importance of the matter so dictates or where they have reserved the authority to sign in exceptional cases.
- (2) Unless laid down otherwise, the Federal Minister signs letters of fundamental importance and submissions and important communications to
  - the constitutional bodies of the Federal Republic of Germany, the *Länder* and foreign states;
  - other members of the Federal Government.

### **Section 18 Form of signature**

- (1) In external correspondence, the Federal Minister signs without any

supplements. The persons authorised to act as representatives under section 6 sign 'On behalf of the Federal Minister'. If State Secretaries are represented by Directors-General, the signature will be 'On behalf of the State Secretary'. All other authorised signatories will sign 'For the Federal Ministry'.

- (2) Fair copies must normally be signed by hand. Where large numbers of similar letters are involved, signatures may be reproduced.
- (3) Letters produced and sent electronically must state the writer's name under the electronic document. If a letter has immediate effect in law, or if it is of particular political significance, it must be signed electronically as required under the signature law.
- (4) Steps must be taken to ensure that the issuing office is clearly identifiable from the sender's address and ascribed to the person signing it.

## **Chapter 5 Co-operation**

### **Division 1 Co-operation within the Federal Government**

#### **Section 19 Co-operation between the Federal Ministries**

- (1) In matters affecting the remits of more than one Federal Ministry, those Ministries will work together to ensure that the Federal Government speaks and acts consistently. Prompt and comprehensive involvement is the responsibility of the lead Federal Ministry. In simple cases, verbal involvement is sufficient, but must be recorded in the files.
- (2) Drafts from other Federal Ministries arriving for co-signature must be processed and forwarded more speedily. Opinions must be brought to the attention of the Federal Ministries concerned. As long as any differences of opinion persist, the lead Federal Ministry must not take any generally binding decisions requiring the other Federal Ministries' approval.
- (3) In the case of cross-sectional duties, the competent Federal Ministry may take initiatives which are required to prepare a cabinet submission in accordance with section 15a of the Rules of Procedure of the Federal Government. The competent Federal Ministry may demand of the lead Federal Ministry that a

matter within its remit be reviewed and the results communicated.

## **Section 20 Interministerial committees on organisational, information and communications matters**

- (1) Representatives of the organisational, information and communication areas of the Federal Ministries work together on inter-departmental committees. The Federal Court of Audit, the Federal Commissioner for Data Protection and Freedom of Information, and the Federal Commissioner for Efficiency in Public Administration sit on committees in an advisory capacity. The committees are chaired and managed by the Federal Ministry of the Interior.
- (2) The committees decide on the organisational and technical standards required for co-operation between the Federal Ministries, and act in an advisory and co-ordinating capacity to ensure that the Federal Ministries and authorities are constantly improving their structures within their remits in organisational, economic and technical terms.
- (3) The committees inform one another of all material matters within their respective remits; they co-ordinate their working programmes and decisions on cross-remit items of business.
- (4) The committees lay down their aims, duties and the form of co-operation in joint rules of procedure.

## **Section 21 Co-operation with Federal Government Commissioners, Federal Commissioners, and Federal Government Co-ordinators**

- (1) Federal Government Commissioners, Federal Commissioners, and Federal Government Co-ordinators must be involved from an early stage in any projects affecting their duties.
- (2) Federal Government Commissioners, Federal Commissioners, and Federal Government Co-ordinators shall inform the Federal Ministries – unless stipulated otherwise by law – at an early stage of matters of fundamental political importance, insofar as duties of the Federal Ministries are affected.
- (3) The Federal Ministry of the Interior shall keep a list of the offices mentioned in paragraph 1 and publish it on the federal intranet. The list shall be regularly updated in consultation with the offices mentioned in paragraph 1, with the

Federal Ministries, and with the Federal Chancellery, where these are affected.

## **Section 22 Cabinet submissions**

- (1) Decisions by the Federal Government are prepared for by way of written cabinet submissions. Without prejudice to the provisions of section 51, covering letters must contain:
  1. a brief outline of the matter and a statement of reasons for the decision proposal;
  2. a reference to the form in which the decision should be taken (section 20 of the Federal Government Rules of Procedure), and in particular whether an oral debate at cabinet level is considered necessary, and whether a decision needs to be taken particularly urgently;
  3. details of which Federal Ministries were involved and with what results;
  4. the results of any associations involved, and in particular presenting the main suggestions which should not be followed;
  5. details of which Land Governments were involved, the results of that involvement and any problems expected, especially if a Bundesrat procedure has to be conducted;
  6. the opinions of the offices involved under section 21 (1);
  7. the foreseeable costs and budgetary effects of implementing the decision proposal under section 44 (2), (3) and (5).
- (2) The covering letter must contain enclosed the decision proposal and the speaking notes for the Federal Government spokesperson. If any further documents are required, they should be included as additional enclosures.
- (3) With regard to cross-sectional tasks, the consent of the competent Federal Ministries should be obtained. With regard to proposed appointments for positions in a body, it should be stated whether efforts were taken to create or maintain equal opportunities for participation of women and men in these bodies.
- (4) If a personal attempt at achieving agreement under section 17 of the Federal Government Rules of Procedure is made to no avail, the cabinet submission must state this. The material points at issue must be stated, together with proposals for solutions. The Federal Ministry striving for a dissenting solution must send the lead Federal Ministry a contribution which must be included in the cabinet submission.



### **Section 23 Procedure for cabinet submissions**

- (1) Cabinet submissions must be addressed to the head of the Federal Chancellery; they shall also be sent to the heads of the respective Federal Ministries, the head of the Office of the Federal President and the President of the Federal Court of Audit in the quantities specified by the Federal Chancellery at the same time. The offices involved under section 21 (1) will be sent the cabinet submission for information.
- (2) Cabinet submissions are signed by the head of the Federal Ministry or, if he/she is incapacitated, by his/her representative specified under section 6 (1).
- (3) At least eight days should elapse between when the cabinet submission reaches the Federal Chancellery and when it is debated by the Federal Government, except in cases of urgency.

### **Section 24 Informing the Federal Chancellery**

- (1) The Federal Ministries will inform the Federal Chancellery in good time of all matters of fundamental political importance.
- (2) When dealing with interpellations, queries and applications, as well as during the legislative procedures, the lead Federal Ministry will inform the Federal Chancellery and Federal Ministries involved of co-operation with the German Bundestag, the Bundesrat and the Mediation Committee by forwarding correspondence for information.
- (3) Should the lead pass to another Federal Ministry, the outgoing Federal Ministry must inform the Federal Chancellery and the Federal Ministries involved immediately. The incoming Federal Ministry will confirm that it is assuming the lead to the Federal Chancellery and the Federal Ministries involved.
- (4) The Federal Chancellery will inform the lead Federal Ministry of co-operation with constitutional bodies in accordance with the provisions of paragraph 1.

### **Section 25 Press and public relations work**

- (1) The Press and Information Office of the Federal Government will use the resources of PR work to inform citizens and the media of the Federal

Government's aims and proposals.

- (2) Communications by the Federal Government's Press and Information Office to the media on the work of a Federal Ministry will require the latter's consent, unless the Federal Ministry sent them to the Federal Government's Press and Information Office.
- (3) Any interministerial PR projects of the Federal Government's Press and Information Office which affect the remit of a Federal Ministry must be discussed with that Ministry.
- (4) Each Federal Ministry informs the citizens and the media of its work and aims via its press and PR work. Federal Ministry press releases must be sent to the Federal Government's Press and Information Office in the first instance.
- (5) Interministerial PR work by Federal Ministries must be agreed with the Federal Government's Press and Information Office.

**Section 26 Co-operation with non-departmental public bodies within the remit of another ministry or the Federal Chancellery**

- (1) Generally, Federal Ministries and authorities within the remit of another Federal Ministry or the Federal Chancellery work together directly. When co-operating with the Federal Office for the Protection of the Constitution, the Federal Criminal Police Office, the Federal Office for Information Security, the Federal Police, the Federal Office of Economics and Export Control, the Customs Criminological Office, the Military Counterintelligence Office, the Federal Intelligence Service and the Public Prosecutor General of the Federal Court of Justice, the competent Federal Ministry or, in case of the Federal Intelligence Service the Federal Chancellery, must be notified without delay. Notification is also required in cases of importance. The right of the competent Federal Ministry and Federal Chancellery to instruct shall remain unaffected.
- (2) Co-operation with German delegations abroad is arranged via the Federal Foreign Office, unless there are special rules for working with German delegations under inter-governmental or supra-governmental treaties and conventions, or no arrangements achieved in cases of urgency.

## **Division 2 Co-operation with the German Bundestag**

### **Section 27 Attendance at sessions**

- (1) The business of the German Bundestag is governed by its Rules of Procedure.
- (2) Members of Federal Ministries should not attend sessions of the German Bundestag or its committees unless necessary. When attending committee meetings, they represent the views of the Federal Government and are bound by the instructions given to them.
- (3) Should questions arise during sessions which fall within the remit of another Federal Ministry, the lead Federal Ministry must inform that [Ministry] immediately; if such questions are also of fundamental political importance, the Federal Chancellery must also be informed.

### **Section 28 Major and minor interpellations**

- (1) The Federal Chancellery will refer major and minor interpellations which the German Bundestag addresses to it to the lead Federal Ministry for answering, unless the Federal Chancellor or persons authorised to represent him or her answer themselves, because of the political importance of the interpellation. The lead Federal Ministry must involve the Federal Chancellery, if the answer affects policy guidelines (Article 65 of the Basic Law).
- (2) Interpellations are answered in the name of the Federal Government. Answers to major interpellations are normally settled under section 15 (1) of the Federal Government's Rules of Procedure; otherwise the lead Federal Ministry agrees matters with the Federal Chancellery.
- (3) When a major interpellation reaches the Federal Chancellery, the German Bundestag must be informed in writing immediately, and in any event within three weeks, whether and if so, when, the Federal Government will reply, subject to the provisions of section 102 of the German Bundestag's Rules of Procedure. If an answer is refused altogether, or within the next three weeks, reasons must be stated. As soon as it becomes foreseeable that the Federal Government will not be answering by the time as originally stated, the German Bundestag must be informed of the reasons preventing that and the time when a reply may be expected. The provisions of paragraph 5 second sentence apply *mutatis mutandis*.

- (4) As a general rule, minor interpellations must be answered in writing within 14 days after receipt by the Federal Chancellery (section 104 (2) of the German Bundestag's Rules of Procedure). If no answer can be given within that time, the German Bundestag must be informed of the reasons preventing that immediately, stating when a reply may be expected. The provisions of paragraph 3 third sentence apply *mutatis mutandis*. Communication in good time giving reasons is required even if an answer is refused on the subject. The provisions of paragraph 5 second sentence apply *mutatis mutandis*.
- (5) For major and minor interpellations, a copy for the German Bundestag must be enclosed with the reply. If the reply is given by the Federal Chancellery, copies must also be sent to the lead Federal Ministry and Federal Ministries involved; if given by the lead Federal Ministry, to the Federal Chancellery and Federal Ministries involved.

### **Section 29 Oral and written questions**

- (1) Oral and written questions will be answered by the head of the lead Federal Ministry as briefly as possible. The provisions of section 28 (1) apply *mutatis mutandis*. The Federal Chancellery will inform the German Bundestag as to what member of the top-level management will answer the tabled oral question in the plenary session. Under section 105 in conjunction with Annex 4 to the German Bundestag's Rules of Procedure, oral questions must be answered at the next question time and written questions within one week after receipt by the Federal Chancellery.
- (2) The German Bundestag, the Federal Chancellery, the Federal Ministries involved and the Press and Information Office of the Federal Government must each be sent a copy of the reply addressed to the questioner in response to written questions, and to oral questions, where these are to be answered in writing.

### **Section 30 Routing and implementing resolutions**

The Federal Chancellery will route resolutions by the German Bundestag containing requests to the Federal Government to the lead Federal Ministry and inform the Federal Ministries involved. The head of a Federal Ministry will reply to the German Bundestag in the name of the Federal Government where

necessary.

### **Section 31 Applications from the floor of the German Bundestag**

- (1) When applications are made from the floor of the German Bundestag, the competent Federal Ministry will verify whether the Federal Government is required to make a statement to the German Bundestag in session or to any of its committees, or whether any other action is required. The provisions of section 30 apply *mutatis mutandis*.
- (2) If a Member of the German Bundestag makes an application which would result in a decrease in revenue, or increase in expenditure, the competent Federal Ministry, in conjunction with the Federal Ministry of Finance, will assist in establishing the financial impacts (section 10 (3) of the Federal Budget Code).

### **Section 32 Informing the German Bundestag of budgetary development changes**

If considerable changes to the budgetary development have occurred whose effects on financial planning are more than merely minor, the Federal Ministry of Finance must submit a cabinet proposal to the Federal Chancellery in preparation for informing the Bundestag (section 10 (2) of the Federal Budget Regulations). Once the Federal Government has reached a decision, the Federal Chancellor will inform the President of the German Bundestag.

## **Division 3 Co-operation with the Bundesrat and the Mediation Committee**

### **Section 33 Co-operation with the Bundesrat**

- (1) The business of the Bundesrat is governed by its Rules of Procedure. Questions by the Bundesrat to the Federal Government (section 19 of the Bundesrat's Rules of Procedure) and attendance at sessions of the Bundesrat (sections 18, 40 of the Bundesrat's Rules of Procedure) are subject to the provisions of sections 29, 27 (2) and (3) *mutatis mutandis*.
- (2) The provisions of section 30 apply to resolutions and interpellations by the Bundesrat which include requests to the Federal Government *mutatis mutandis*.
- (3) The provisions of section 32 apply to informing the Bundesrat of changes to the budgetary development *mutatis mutandis*.

## **Section 34 Co-operation with the Mediation Committee**

- (1) The business of the Mediation Committee is governed by the Joint Rules of Procedure of the German Bundestag and Bundesrat for the Committee under Article 77 of the Basic Law<sup>3</sup>.
- (2) Members of the Federal Government may attend sessions of the Committee, and must do so, if the Committee so rules. If members of Federal Ministries are allowed to attend by resolution of the Committee, the provisions of section 27 apply *mutatis mutandis*.

## **Division 4 Proceedings before the Federal Constitutional Court**

### **Section 35 Proceedings before the Federal Constitutional Court**

- (1) In proceedings before the Federal Constitutional Court, the lead Federal Ministry responsible for the subject matter at hand represents the Federal Government. It must involve the Federal Ministries of the Interior and Justice and all substantively involved Federal Ministries at all stages of the proceedings in good time, especially in preparing applications which instigate proceedings, declarations of joinder, statements and oral proceedings. It determines who the representative(s) shall be in the hearing: they must be appointed by cabinet resolution, if the significance of the proceedings so requires.
- (2) The cabinet decides on whether to bring proceedings before the Federal Constitutional Court by the Federal Government or making itself party to existing proceedings.
- (3) Any procedural documents which the Federal Constitutional Court addresses to any of the parties immediately must be forwarded to the Federal Chancellery and the Federal Ministries to be involved immediately.
- (4) Once the involvement procedure is completed, the lead Federal Ministry will speak 'in the name of the Federal Government'. Opinions must be signed by the competent State Secretary, unless the head of the Federal Ministry rules

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<sup>3</sup> Joint Rules of Procedure of the German Bundestag and Bundesrat for the Committee under Article 77 of the Basic Law (Mediation Committee) of 19 April 1951 (official announcement of 5 May 1951 – Federal Law Gazette, Part II, p. 103), as per official announcement of 16 May 1995 (Federal Law Gazette, Part I, p. 742).

otherwise. A copy must be sent to the Federal Chancellery and each Federal Ministry involved.

- (5) The lead Federal Ministry may refrain from involving other Federal Ministries, if it furnishes information as to fact to the Federal Constitutional Court which are restricted to its remit.
- (6) If it is intended to appoint a professor in law or a lawyer as attorney to represent the Federal Government at hearings, the Federal Ministries of the Interior and of Justice must be involved.
- (7) Written powers of attorney under section 22 of the Federal Constitutional Court Act will be issued by the head of the lead Federal Ministry. No power of attorney is required, if the head of the lead Federal Ministry or a duly authorized representative under section 6 (1) represents the Federal Government. A power of attorney must be presented, if the Federal Government is represented by a professor in law, a lawyer or civil servant, without prejudice to the rules on issuing permission to give evidence.
- (8) The Federal Ministries involved may send observers to the hearings and pronouncements of the Federal Constitutional Court in consultation with the lead Federal Ministry.

## **Division 5 Co-operation with other bodies**

### **Section 36 Co-operation with the *Länder***

- (1) Federal Ministries work directly with the supreme *Land* authorities.
- (2) If a Federal Ministry works with a *Land* Ministry with a different remit, it should inform the competent Federal Ministry in fundamental matters.
- (3) Working directly with other *Land* authorities or public law corporations and institutions under *Land* law is only allowed in the cases permitted under the Basic Law, under other legislation or by agreement with the *Land* government concerned.
- (4) Letters to the supreme *Land* authorities must also be sent to the representatives

of the *Länder* to the Federation, if they are politically significant.

### **§ 37 Co-operation with the European Union<sup>4</sup>**

- (1) When matters within their own remit are concerned, generally Federal Ministries work directly with the bodies and offices of the European Union, unless European Union regulations stipulate otherwise.
- (2) In matters of fundamental importance, the Federal Foreign Office must be involved in the interests of a cohesive German policy on Europe.
- (3) The Federal Ministry of Finance must be involved in all matters affecting finance. Any measures which might result in reduced revenue or additional expenditure in the current financial year or in future financial years require the consent of the Federal Ministry of Finance. In matters of inter-ministerial importance, the appropriate Federal Ministries must be involved.

### **Section 38 Co-operation with foreign states and international organisations<sup>5</sup>**

- (1) The supreme Federal authorities only work directly with the authorities and representatives of foreign states and the bodies and offices of international organisations, if this is done under international or inter-governmental treaties or conventions, if the Federal Foreign Office agrees to direct co-operation or the Federal Government so expressly decides.
- (2) The Federal Foreign Office must be informed of matters of fundamental importance, if it is proposed to work directly with foreign bodies.

### **Section 39 Use of records by third parties**

- (1) Unless otherwise regulated by law, Federal Ministries shall decide on access to their records after due consideration. Prior consent shall be obtained from other Federal Ministries before their records are released. If unpublished records of the German Bundestag or Bundesrat are also affected, their consent shall also be required.

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<sup>4</sup> The guidelines for official communications with foreign countries and with foreign offices in Germany shall apply (published on the federal intranet).

<sup>5</sup> The guidelines for official communications with foreign countries and with foreign offices in Germany shall apply (published on the federal intranet).



- (2) The following records may be considered for release:
1. official projects (published by Federal Ministries or at their request) and
  2. research projects of official interest.
- (3) The decision may be subject to the requirement that the manuscript be presented to the relevant Federal Ministry prior to publication and, if the record has not been used in line with actual circumstances, that the objections be dealt with or an official counter-statement be added to the work. The general right of a Federal Ministry to counter views represented in the work shall be unaffected.

## **Chapter 6 Legislation**

### **Division 1 Preparation of Federal Government bills**

#### **Section 40 Informing the Federal Chancellery**

If a bill is to be drawn up, the Federal Chancellery must be informed, and must be kept informed as drafting progresses and of the proposed timetable for the legislative procedure. If work on the bill is affected by major events, the Federal Chancellery must be informed accordingly.

#### **Section 41 Identification of interests**

When drawing up bills which impinge on the interests of the *Länder* or local councils, the views of the *Länder* and the national associations of local authorities should be obtained before settling a draft.

### **Division 2 Structuring Federal Government bills<sup>6</sup>**

#### **Section 42 Federal Government Bills**

- (1) Bills consist of the draft text of the law (bill), the explanatory memorandum for the bill (explanatory memorandum) and an introductory summary (cover sheet) as defined in Annex 3.

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<sup>6</sup> See Cabinet decision of 20 December 1989: Measures to improve legislation and administrative regulations (Joint Ministerial Gazette 1990, p. 38); the Cabinet decision of 11 December 1984 on review questions for federal regulation is no longer relevant since the main substance of the review questions has been incorporated into sections 43 et seqq.

If the National Regulatory Control Council comments on the bill (section 45 (2)), its comments shall be attached to the bill; the same applies to comments by the Federal Government.

- (2) Generally, the text of the law consists of a title, an introductory caption and the individual provisions contained in paragraphs or articles (Annex 4). Bills should provide for amendments required to other legislation and the repeal of obsolete legislation in order to clear up the law.
- (3) The preparation of draft legislation is subject to the provisions of the Guidelines for Drafting Legal Provisions and Administrative Regulations issued by the Federal Ministry of the Interior.
- (4) The structuring of draft legislation is subject to the provisions of the Manual on Legal Drafting issued by the Federal Ministry of Justice and recommendations of the Federal Ministry of Justice in individual cases.
- (5) The language used in bills must be correct and understandable to everyone as far as possible. It should reflect the equality of men and women. Generally bills must be submitted to the Unit for Legal Drafting Support to review their linguistic accuracy and comprehensibility. They should be submitted at an early stage as far as possible. The results of the review will have the status of a recommendation.
- (6) Bills should meet the criteria for Internet publication given in the Ordinance on Barrier-Free Information Technology. Explanatory texts should be prepared for any non-text elements such as tables, images and symbols.
- (7) Before they are sent to the Federal Cabinet, laws that are to be notified under Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations (OJ L 204, 21.7.1998, p. 37–48), last amended by Directive 2006/96/EC (OJ L 363, 20.12.2006, p. 81-106), are to be sent to the European Commission in draft form via the Federal Ministry of Economics and Technology. Treatment by the Federal Cabinet shall not take place until the time limits provided for in Article 9 of the Directive have elapsed.

#### **Section 42a Bills containing provisions regulating the access to, or the pursuit**

## **of, regulated professions**

- (1) Federal Government bills that contain provisions falling within the scope of Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications (OJ L 255 of 30.9.2005, p. 22; L 271 of 16.10.2007, p. 18; L 93 of 4.4.2008, p. 28; L 33 of 3.2.2009, p. 49; L 305 of 24.10.2014, p. 115), last amended by Directive 2013/55/EU (OJ L 354 of 28.12.2013, p. 132; L 268 of 15.10.2015, p. 35; L 95 of 9.4.2016, p. 20) and restrict the access to, or the pursuit of, regulated professions or a particular way of pursuing them are to be reviewed for their conformity with the principle of proportionality, in accordance with Directive (EU) 2018/958 of the European Parliament and of the Council of 28 June 2018 on a proportionality test before adoption of new regulations on professions. The review is to examine, in particular, compliance with the provisions of Article 4 (3) and (4) and Articles 5 to 7 of Directive (EU) 2018/958.
- (2) Generally, the review is carried out before the bill is submitted to the Federal Cabinet, but before the bill is adopted by the German Bundestag at the latest.
- (3) In accordance with Article 8 of Directive (EU) 2018/958, the general public is to be informed and appropriately involved. To this end, bills are to be published on the internet.
- (4) Continuous control and transparency measures are determined by Article 4 (6) and Article 11 of Directive (EU) 2018/958.
- (5) In addition, the regulations issued by the Federal Ministry for Economic Affairs and Energy apply

### **Section 43 Explanatory memorandum**

- (1) The explanatory memorandum must explain:
  1. the purpose and necessity of the bill and its individual provisions;
  2. the matters of fact underlying the bill, and the findings on which it is based;
  3. whether there are other possible solutions, and whether the task can be performed by private parties, and what considerations led to their being rejected, as the case may be (Annex 5);
  4. whether duties of disclosure, other administrative obligations or reservations on the granting of permission are being introduced or extended

together with corresponding government monitoring and permission procedures, and what grounds argue against replacing them by a self-obligation of the addressee of the legal norm;

5. the regulatory impacts (section 44);
  6. what considerations underlie the date set for entry into force, for example for enforcement in organizational, technical and budgetary terms; and whether the law can be limited as to time;
  7. whether the bill proposes to simplify the law and administrative procedures, and in particular whether it simplifies or supersedes current regulations;
  8. relations to and compatibility with the law of the European Union;
  9. whether in the case of implementation of a directive or other legislative act of the European Union additional arrangements will be made beyond their scope;
  10. whether the bill is compatible with international law treaties made by Germany;
  11. changes to the current legal position;
  12. whether Article 72 (3) or Article 84 (1) third sentence of the Basic Law justifies any exceptions for the entry into force and how these may be taken into account.
- (2) Within the scope of concurrent legislation in the areas covered by Article 74 (1) nos. 4, 7, 11, 13, 15, 19a, 20, 22, 25 and 26 of the Basic Law, an account must be given as to why the bill and its principal individual provisions must become federal law (Article 72 (2) Basic Law).
- (3) If the bill contains provisions of administrative procedures of the *Länder* without the possibility of diverging under Article 84 (1) fifth sentence of the Basic Law, an explanation must be given for an exception due to a special need for federal law.
- (4) The explanatory memorandum shall not treat the question of the act's need for Bundesrat consent. Explanations on this point shall be included only in case of Article 87 (3) second sentence of the Basic Law and in explanatory memoranda of ratifying legislation.

#### **Section 44 Regulatory impacts**

- (1) Regulatory impacts means the main impacts of a law: This covers its intended effects and unintended side-effects. The account of the foreseeable regulatory impacts must be drawn up in consultation with the respective competent Federal Ministries, and with regard to the financial implications it must be indicated what

the calculations or assumptions are based on. Whether the impacts of the proposal correspond to a long-term development, and in particular which long-term impacts the proposal has shall be indicated. The Federal Ministry of the Interior can issue recommendations for regulatory impact analysis.

- (2) The impacts on the public budgetary income and expenditure (gross) are to be presented. The Federal Ministry of Finance may issue general instructions on this subject in consultation with the Federal Ministry of the Interior. The income and expenditure accrued to the federal budget must be broken down for the period of the Federation's multiyear financial planning stating whether and if so, to what extent, the additional expenditure or reduced revenues are taken into account in the multiyear financial planning, and how they can be compensated for. It may become necessary to calculate, or even estimate, the sums in consultation with the Federal Ministry of Finance. If there are no foreseeable financial impacts, this must be stated in the explanatory memorandum.
- (3) Any impacts on the budgets of the *Länder* and local authorities must be stated separately. The lead Federal Ministry responsible for the bill must obtain details of expenditure from the *Länder* and national associations of local authorities in good time.
- (4) The Federal Ministries must determine and set out compliance costs to the public, industry, and public administration as defined in section 2 of the Act on Establishing the National Regulatory Control Council.
- (5) Details must be given of:
  1. the costs to industry, and to small and medium-sized enterprises in particular, and the impacts of the law on unit prices and price levels in general;
  2. in consultation with the Federal Ministry of Food, Agriculture and Consumer Protection, the impacts of the law on the consumer.

The Federal Ministry responsible for the bill shall collect information from the experts and associations involved, in particular consumers and small and medium-sized enterprises. The Federal Ministry of Food, Agriculture and Consumer Protection shall be involved at an early stage with regard to the first sentence, No. 2.

- (6) Upon request of an interested party under section 45 (1) to (3) details must be given of any further impacts which this party expects.
- (7) In the explanatory memorandum for the bill, the lead Federal Ministry must state whether and, if so, after what period of time, a review is to be held to verify whether the intended effects have been achieved, whether the costs incurred are reasonably proportionate to the results, and what side-effects have arisen.

### **Division 3 Involvement and information**

#### **Section 45 Involvement within the Federal Government**

- (1) Before a draft bill is submitted to the Federal Government for adoption, the lead Federal Ministry must involve the Federal Ministries affected by the bill and the National Regulatory Control Council within the framework of its legal competence at an early stage for any preliminary work and the drafting of the bill. All those Federal Ministries whose remits are affected shall be involved (Annex 6). The Federal Ministries of the Interior and of Justice shall be involved to determine whether legal provisions are compatible with the Basic Law and in all other cases in which there is doubt about applying the Basic Law. In the case of proposed legislation which, due to its complexity, requires extensive examination with regard to European law, and in other justified cases, the Federal Ministries with interdisciplinary European law competences (especially the Federal Ministry of Economics and Technology, the Federal Ministry of Justice and the Federal Foreign Ministry) shall be involved with issues of European law at an early stage.
- (2) If the National Regulatory Control Council gives an opinion on the bill, the lead Federal Ministry shall verify whether the Federal Government has been requested to comment on this opinion.
- (3) Where responsibilities of the offices mentioned in section 21 (1) are affected, they must be involved from an early stage. Generally, the Federal Commissioner for Efficiency in Public Administration must be involved.
- (4) When transmitting the Ministry draft, steps must be taken to ensure that those involved have sufficient time to examine and debate questions falling within their competence. The lead Federal Ministry is responsible for involving all parties in good time.

- (5) If there are differences of opinion between the main Federal Ministries involved, extensive or expensive preparations should not be started or instigated before the cabinet has taken a decision. This is without prejudice to the responsibility of the Federal Minister for urgent matters within his or her remit.

#### **Section 46 Examination of draft legislation in accordance with systematic and legal scrutiny**

- (1) Before a bill is submitted to the Federal Government for adoption, it must be sent to the Federal Ministry of Justice to be examined in accordance with systematic and legal scrutiny.
- (2) When transmitting the draft bill, it should be borne in mind that, where draft bills are of considerable scope, the Federal Ministry of Justice must have sufficient time to examine and debate questions arising in the course of the examination under paragraph 1.
- (3) If the Federal Ministry of Justice was involved in preparing a bill and has already subjected it to examination under paragraph 1, the draft need not be resubmitted to it subject to its consent.

#### **Section 47 Involvement of the *Länder*, national associations of local authorities, the expert community and associations**

- (1) Draft bills must be sent to the *Länder*, national associations of local authorities and representatives of the *Länder* to the Federation as early as possible, if their interests are affected. If any of the Federal Ministries involved can be expected to dissent on essential points, the draft bill must not be sent out without their consent. If a legislative project is to be treated confidentially, this must be indicated.
- (2) The Federal Chancellery must be informed of the involvement. Its consent must be obtained where bills are of particular political importance.
- (3) The prompt involvement of central and umbrella associations and of the expert community at federal level is subject to the provisions of paragraphs 1 and 2 *mutatis mutandis*. The timing, scope and selection will be left to the discretion of the lead Federal Ministry, unless specific rules stipulate otherwise. The involvement referred to in paragraph 1 should take precedence over the

involvement referred to in this paragraph and to the notification referred to in section 48 (1).

- (4) When involving parties under paragraphs 1 and 3, it must be expressly pointed out that this is a bill which the Federal Government has not yet adopted. The bill may be accompanied by the explanatory memorandum and cover sheet.
- (5) If an oral hearing is conducted with regard to a bill, the national associations of local authorities are to be involved if their interests are affected. These associations should be allowed to speak at hearings before central and national associations and the expert community.

### **Section 48 Informing other bodies**

- (1) If it is intended to make bills available to the press and other bodies officially not involved or other persons before the Federal Government has adopted them, the lead Federal Ministry or, in matters of fundamental political importance, the Federal Chancellery, will determine how this is to be done.
- (2) If a bill is sent to the *Länder*, the expert community, or associations involved, or third parties for the purposes of paragraph 1, it must be sent to the parliamentary groups' offices, the Bundesrat and to Members of the German Bundestag and Bundesrat on demand for information.
- (3) Decisions as to whether to put the bill on the Federal Government's intranet or on the Internet will be taken by the lead Federal Ministry in consultation with the Federal Chancellery and other Federal Ministries involved.
- (4) Information under paragraphs 1 to 3 is subject to the provisions of Section 47 (4) *mutatis mutandis*.

### **Section 49 Labelling and transmission of drafts**

- (1) Bills must be marked with the date and labelled as 'draft'. Any changes to the previous draft must be highlighted.
- (2) When transmitting a bill, it must be stated whether it is a legislative project requiring the consent of the Bundesrat.

### **Section 50 Period for final examination**



The period for final examination of a bill by the parties involved under sections 44, 45 and 46 is normally four weeks. It may be reduced, if all the parties involved agree. For bills which are extensive or difficult in legal terms, the time allowed is extended to eight weeks, if any of the Federal Ministries involved under section 45 so requests.

## **Division 4 The treatment of bills by the Federal Government**

### **Section 51 Submissions to the cabinet**

If bills are presented to the Federal Government for adoption under section 3, the covering letter to the cabinet submission must state, without prejudice to the provisions of section 22,

1. whether the consent of the Bundesrat is required;
2. that the Federal Ministry of Justice has confirmed that it has examined the bill under section 46 (1);
3. that the requirements of section 44 are met;
4. what dissenting opinions exist as a result of involvements under sections 45 and 47;
5. what costs the implementation of the law will impose on the Federation, Länder or local authorities, and whether the Federal Ministry of Finance and the bodies stated in sections 44 and 45 have given their consent;
6. whether the National Regulatory Control Council has commented on the bill under section 45 (2) and whether the Federal Government has drafted its response to these comments;
7. whether in the case of implementation of a directive or other legislative act of the European Union additional arrangements will be made beyond their scope;
8. whether the bill is particularly urgent (Article 76 (2) fourth sentence of the Basic Law).

### **Section 52 Equal accountability for bills; wording assistance to the German Bundestag and Bundesrat**

- (1) The Federal Ministries shall be equally accountable for bills adopted by the Federal Government, irrespective of differing views held by individual Federal Ministries.
- (2) The Federal Ministries involved and the Federal Chancellery must be informed of any wording assistance which varies substantively from decisions by the

Federal Government or which is of greater specificity without undue delay, possibly before passing to the committee stage.

### **Section 53 Counterstatement by the Federal Government in response to the comments of the Bundesrat**

- (1) The lead Federal Ministry will, if necessary, draw up a counterstatement in response to the comments of the Bundesrat which is to be structured to match the Bundesrat's comments and to be sent to the Federal Chancellery as a cabinet submission. Should the Bundesrat's comments include significant alternative proposals, these will be stated in a new cover sheet. If it is intended to follow the Bundesrat's requests for changes, this must be clear from the Federal Government's counterstatement.
- (2) On demand by the competent committee of the German Bundestag, the lead Federal Ministry will send a synopsis containing the text of the Federal Government bill, the the Bundesrat's opinion and vote on the bill, as well as the Federal Government's counterstatement and vote on the bill to the competent committee and the Federal Ministries involved.

### **Section 54 Procedure under Article 113 of the Basic Law**

- (1) If the result of the committee debates indicates that the lead committee will propose a version of the law to the German Bundestag which satisfies one of the requirements of Article 113 (1) of the Basic Law, or if a law passed by the German Bundestag meets those requirements (Article 113 (2) of the Basic Law), the lead Federal Ministry will immediately examine, in consultation with the Federal Ministry of Finance, whether the Federal Government should demand that the German Bundestag postpone its vote on the bill (Article 113 (1) of the Basic Law) or vote on the bill a second time (Article 113 (2) Basic Law).
- (2) Should any of the Federal Ministries involved consider that the vote should be postponed, or a second vote held, it will arrange for the Federal Government to decide immediately. In the circumstances of Article 113 (1) fourth sentence of the Basic Law, the cabinet submission must possibly be accompanied by the Federal Government's comments.
- (3) In the circumstances of Article 113 (2) of the Basic Law, the bill must be presented to the cabinet in sufficient time to enable the decision to be submitted to the Federal Government within four weeks of the German Bundestag's vote.

Should the Federal Ministries involved not consider a further vote necessary, the Federal Ministry of Finance will involve the other Federal Ministries immediately, referring to the time allowed under Article 113 (2) of the Basic Law.

- (4) The provisions of paragraphs 1 and 2 will also apply, if the German Bundestag has to vote a second time on a law already passed in the course of procedures under Article 77 (2) of the Basic Law (Mediation Committee).
- (5) Should the Federal Government decide to demand that the German Bundestag postpone the vote (Article 113 (1) of the Basic Law) or vote a second time (Article 113 (2) of the Basic Law), the Federal Chancellery will inform the head of the German Bundestag, and in the circumstances of Article 113 (2) of the Basic Law the head of the Federal President's Office and of the Bundesrat and, as the case may be, the chair of the Mediation Committee.
- (6) If the law is adopted under Article 78 of the Basic Law, and provided that the Federal Government had declared a demand under paragraph 1, the lead Federal Ministry, together with the Federal Ministry of Finance, will immediately arrange for a decision by the Federal Government as to whether consent is to be given or denied. Should the Federal Government decide to refuse its consent, the Federal Chancellery will inform the head of the Federal President's Office, the head of the German Bundestag, the head of the Bundesrat and, as the case may be, the chair of the Mediation Committee within six weeks of the passage of the law (Article 77 (2) of the Basic Law).
- (7) If the bill becomes law under Article 78 of the Basic Law, and if the Federal Government has not declared a demand under paragraph 1, the Federal Government will be deemed to have decided on its consent. The same applies, if the Federal Government has declared a demand under paragraph 1, but not refused its consent (Article 113 (3) of the Basic Law). In its letter to the Federal Chancellery containing the original text of the law, the lead Federal Ministry will indicate that the Federal Government has given its consent or that the consent is deemed to be given.

## **Section 55 Procedure under Article 77 of the Basic Law**

If the law requires the consent of the Bundesrat, the lead Federal Ministry will examine whether the Federal Government should call on the Mediation Committee, and - if necessary - will arrange for a decision by the Federal

Government. Should the Federal Government demand that the Mediation Committee be convened, the Federal Chancellery will inform the chair of the Mediation Committee.

## **Section 56 German Bundestag bills**

- (1) In the case of bills introduced from the floor of the German Bundestag, the lead Federal Ministry must seek the opinion of the Federal Government in good time. It shall be accountable for the Federal Government's opinion before the German Bundestag.
- (1a) When drafting the Federal Government's comments on bills introduced from the floor of the Bundestag within the meaning of section 42a (1), the bill is to be reviewed in accordance with section 42a.
- (2) If all the Federal Ministries involved agree on the opinion, the cabinet need not be involved in less important cases.
- (3) Members of Federal Ministries must not assist in preparing such bills in accordance with systematic and legal scrutiny without the approval of the competent Federal Ministries or Federal Minister. Otherwise, the provisions of Section 52, 54 and 55 apply *mutatis mutandis*.

## **Section 57 Bundesrat bills**

- (1) The lead Federal Ministry will prepare a comment representing the views of the Federal Government on Bundesrat bills (Article 76 (3) second sentence of the Basic Law). The draft comment must be submitted to the Federal Government as a cabinet submission in good time to enable the Bundesrat bill to be passed on to the Bundestag in time, together with the Federal Government's comments. If it is not intended to make a comment, the lead Federal Ministry will state this in a cabinet submission.
- (1a) When drafting the Federal Government's comments on bills introduced from the floor of the Bundestag within the meaning of section 42a (1), the bill is to be reviewed in accordance with section 42a. If the Federal Government does not intend to provide comments, the bill is to be reviewed before the Federal Government decides whether to comment on the bill.
- (2) In the covering letter to the lead Federal Ministry, the Federal Chancellery will

point out to the date of receipt of the bill by the Federal Chancellery which also marks the beginning of the comment period under Article 76 (3) of the Basic Law.

- (3) If the Federal Government does not produce a comprehensive comment within the time allowed, the Federal Ministries will be bound to agree on a final statement by the Federal Government by the time the bill reaches the committee stage. Applications for extension of time under Article 76 (3) third sentence of the Basic Law must take the form of a cabinet submission.
- (4) Where appropriate, the covering letter to the cabinet submission must also state what the main alternatives proposed in the opinion are. If it is considered necessary that the cover sheet produced by the Bundesrat should not only refer to the Federal Government's opinion but, exceptionally, should also present the alternatives in brief itself, the reasons for this must be given and wording proposals enclosed. In all other respects, the provisions of sections 52, 54 and 55 apply *mutatis mutandis*.

## **Division 5 Issuance and promulgation of laws**

### **Section 58 Issuance of the original of a law**

- (1) As soon as the Federal Chancellery informs the lead Federal Ministry that the bill was passed, the Federal Ministry will arrange for the original of the law to be issued by the editorial office of the Federal Law Gazette, stating also whether the law as passed is to be countersigned by the lead member of the Federal Government as well as by other members of the Federal Government. The editorial office of the Federal Law Gazette is responsible for the layout of the text in the Federal Law Gazette.
- (2) The original text contains the title of the law, the short title where provided and the abbreviation, including the date. The lead Federal Ministry will add a concluding caption which matches with the final version of the introductory caption of the law. This concluding caption will state:
  1. That the Bundesrat's rights have been observed in the case of a bill not requiring the consent of the Bundesrat;
  2. That the Federal Government's consent has been obtained in the circumstances of Article 113 of the Basic Law;
  3. That the Land Governments have given their consent in the circumstances

of Article 138 of the Basic Law;

4. That the law and a promulgation order have been issued.
- (3) The lead Federal Ministry will arrange for the law to be countersigned by the competent member of the Federal Government and other members of the Federal Government as the case may be. In the circumstances of Article 113 of the Basic Law, the original text of the bill must always be countersigned by the Federal Minister of Finance. Laws can only be countersigned by members of the Federal Government personally or by their representatives appointed under section 14 (1) of the Federal Government's Rules of Procedure.
- (4) The dates in the title and underneath the final formula will be entered by the Federal President when the law is issued. Space must be left underneath the date of the final formula for the signature and Federal Great Seal.
- (5) Laws are signed by: the Federal President, the Federal Chancellor, or if they are incapacitated by their duly authorised representatives, the lead member of the Federal Government and the members of the Federal Government involved in their official order of precedence.
- (6) Should another member of the Federal Government sign on behalf of the member of the Federal Government, the name of the member of the Federal Government being signed for must be stated in front of the signature. If a member of the Federal Government is delegated to act on behalf of another Federal Ministry, the words "Delegated to discharge functions" are added.

## **Section 59 Issuance of legislation**

- (1) Once the original text has been countersigned by the members of the Federal Government in accordance with section 58 (1), (3) and (5), the Federal Great Seal will be appended to it and, if it consists of more than one page or sheet, it will be bound with black, red and gold thread the ends of which are to be wafer-sealed. The seal must be affixed to the last page of the original text, alongside the signature, before sending the original text to the Federal Chancellery.
- (2) Should the law be promulgated as not requiring the consent of the Bundesrat, even though the Bundesrat has given its express consent, the views of the Federal Ministries involved must be outlined briefly. The Federal Chancellery will arrange for the law to be countersigned by the Federal Chancellor or, if he

or she is incapacitated, by their authorised representative, and will submit the original text to the Federal President for issuance of the law.

## **Section 60 Promulgation of laws**

The Federal President's Office forwards the law signed by the Federal President to the editorial office of the Federal Law Gazette for promulgation. At the same time, it will inform the lead Federal Ministry and the Federal Ministries involved that the law has been signed. Once the law is promulgated, the editorial office of the Federal Law Gazette will inform the Federal Chancellery and the lead Federal Ministry that it has been promulgated. The original texts must be sent to the Federal Records Office.

## **Section 61 Reviewing and correcting bills and laws**

- (1) Throughout the legislative procedure, the lead Federal Ministry will check the bill for printing errors and any other manifest incorrectness and correct it as necessary. Any other bodies involved will inform the lead Federal Ministry of printing errors and any other manifest incorrectness. Once the bill has been passed to the Federal Chancellery, it must be informed of any corrections. The Federal Chancellery will also inform the constitutional bodies involved, and the lead committee in the circumstances of sections 56 and 57.
- (2) Once the law has been passed, informal correction of printing errors and any manifest incorrectness will require the consent of the President of the German Bundestag and the President of the Bundesrat. The Federal Chancellery shall be informed that the correction process has commenced.
- (3) If printing errors or any other manifest incorrectness were already present in the printer's proofs, correction proofs or in the original text, the lead Federal Ministry will make the corrections by agreement with the Federal President's Office and Federal Chancellery. In the event of printing errors and any other manifest incorrectness in the Federal Law Gazette, a communication to the editorial office will be sufficient to include corrections in the Federal Law Gazette. If such mistakes were already contained in the version passed by the German Bundestag and Bundesrat, the consents required under paragraph 2 must also be obtained.

## **Division 6 Preparation, issuance and promulgation of ordinances**

### **Section 62 Ordinances**

- (1) The term 'ordinance' is reserved for provisions designated as statutory instruments under Article 80 (1) of the Basic Law.
- (2) Draft ordinances are subject to the provisions on preparing and drafting bills (sections 42, 42a, 43 (1) nos. 1 to 11, sections 44 to 50, §58 (1) third sentence and section 61) *mutatis mutandis*. The explanatory memorandum for an ordinance need not include statements as defined in sections 43 and 44 if these statements have already been presented in the explanatory memorandum for the Enabling Act or preceding ordinance and the explanatory memorandum refers to the account already given.
- (3) The rules on cabinet submissions (sections 22, 23 and 51) apply *mutatis mutandis*
  1. if the ordinances are issued by the Federal Government
  2. if they are of general political importance, or
  3. there are differences of opinion between the Federal Ministries involved.

### **Section 63 Submission of draft ordinances by the Bundesrat (Article 80 (3) of the Basic Law)**

- (1) If the Bundesrat submits draft ordinances under section 80 of the Basic Law to the Federal Government, the Federal Ministry authorised to issue the ordinance or the lead Federal Ministry will decide on the further treatment of the submission.
- (2) The Bundesrat must be informed within a reasonable period of time as to whether and if so, to what extent, the Federal Government or competent Federal Ministry will be using its powers to issue ordinances. Matters must be referred back to the Bundesrat, even if the submission is to be approved as it stands.

### **Section 64 Submissions to the Bundesrat**

- (1) Ordinances by the Federal Government requiring the consent of the Bundesrat will be transmitted to the Bundesrat by the Federal Chancellery once the Federal Government has adopted them.



- (2) Ordinances by a Federal Ministry or a number of Federal Ministries requiring the consent of the Bundesrat must be sent to the Federal Chancellery Chief of Staff once approved by the Federal Minister or his or her authorised representative under section 6 (1), requesting that the Bundesrat's consent be obtained. The approval must be based on the covering letter.
- (3) Accountability before the Bundesrat is subject to the provisions of sections 52 and 53 (1) *mutatis mutandis*.

### **Section 65 Consequences of the decision by the Bundesrat**

If the Bundesrat has consented to an ordinance subject to amendment, the procedure is as follows:

1. If the Federal Government issues an ordinance, it must adopt the amended version for a second time, if it wishes to issue the ordinance as amended by the Bundesrat. The cabinet submission must present the views of the lead Federal Ministry on the changes. If the Federal Government does not adopt the ordinance in the version to which the Bundesrat consented, the Federal Government must resubmit them to the Bundesrat for approval, unless it decides not to issue the ordinance.
2. The provisions of paragraph 1 apply to ordinances which are not issued by the Federal Government, but which are to be submitted to the cabinet, *mutatis mutandis*.
3. The provisions of paragraph 1 first and third sentences apply to ordinances which do not have to be submitted to the cabinet *mutatis mutandis*.

### **Section 66 Issuance; Preparation of promulgation**

- (1) Ordinances cannot be issued until the enabling legislation has entered into force.
- (2) Once the wording of an ordinance has been finalised, the lead Federal Ministry will send the text of the ordinance to the editorial office of the Federal Law Gazette or Federal Gazette, noting that the Federal Ministry of Justice has confirmed its legal examination (§46 (1)) and where the ordinance is to be promulgated (section 76).

### **Section 67 Issuance of the original of an ordinance**

- (1) Once the final version has been adopted (or, in the case of ordinances issued by a Federal Ministry, as soon as the member of the Federal Government has

signed the draft), the lead Federal Ministry will arrange for the editorial office of the Federal Law Gazette or Federal Gazette to issue the original of the ordinance. Where ordinances require the consent of the Bundesrat, no arrangements must be made for the original text to be signed until the Bundesrat's consent has been obtained.

- (2) If an ordinance is issued by the Federal Government, it will be signed by the Federal Chancellor or his or her authorised representative and by the lead member of the Federal Government. The order of signature is governed by the provisions of section 58 (5). The Federal Chancellor will sign once the members of the Federal Government involved have signed, and will add the date.
- (3) If an ordinance is issued by a Federal Ministry, it is signed by the competent member of the Federal Government. If other Federal Ministries are involved, the ordinance will also be signed by the respective members of the Federal Government. The provisions of paragraph 2 third sentence apply *mutatis mutandis*. The member of the Federal Government will sign once the members of the Federal Government involved have signed, and will add the date.
- (4) Where ordinances indicate agreement with one or more Federal Ministries in the introductory formula, they need not be signed by the respective members of the Federal Government concerned.
- (5) If the competent member of the Federal Government is unable to carry out the actions indicated in paragraphs (1) through (3), his or her representative for ordinances issued by the Federal Government shall be determined in accordance with section 14 (1) of the Federal Government's rules of procedure, and for ordinances issued by a Federal Ministry, in accordance with Section 14 (3) of the Federal Government's rules of procedure.

## **Section 68 Promulgation of ordinances**

- (1) Ordinances are to be promulgated as laid down in section 76.
- (2) For ordinances of the Federal Government, the Federal Chancellery will arrange for their promulgation; for other ordinances, the lead Federal Ministry. The completed original text must be sent to the editorial office of the Federal Law Gazette or Federal Gazette for promulgation.

## **Division 7 Administrative regulations<sup>7</sup>**

### **Section 69 Title and preparation**

- (1) Regulations containing general and abstract provisions with internal administrative binding effect must be marked as 'administrative regulations', and include an addendum showing the law to which they apply or keyword contents.
- (2) Administrative regulations are prepared in accordance with the Guidelines for Drafting Legislation and Administrative Regulations issued by the Federal Ministry of the Interior.
- (3) The aim must be to reduce the number of, and simplify, existing administrative regulations. The necessity for new administrative regulations must be justified.

### **Section 70 Structure and submission of administrative regulations**

- (1) Draft administrative regulations must be explained, if they are not comprehensible in themselves or such introduction is appropriate for other reasons. In all other respects, the provisions of section 42 (7) and sections 42a, 44, 45, 47, 48, 49, 51 and 61 (1) and (2) apply *mutatis mutandis*.
- (2) Submissions to the cabinet or Bundesrat must be accompanied by details of the impacts on public budgets, if and insofar as this has not already been done in the explanatory memorandum of a law or regulation.

### **Section 71 Issuance of the original of an administrative regulation**

If administrative regulations are to be published in the Federal Gazette, the provisions of section 67 (2) and section 68 (1) and (2) apply *mutatis mutandis*.

## **Division 8 International treaties and legislative projects of the European Union**

### **Section 72 International treaties**

- (1) Before drawing up and concluding international treaties (intergovernmental treaties, intergovernmental instruments, interministerial agreements, exchange of notes, and correspondence), the lead Federal Ministry must always verify whether settlement under international law is unavoidable or whether the aim

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<sup>7</sup> Cf. the Federal Government directive on the structure, organization, and review of administrative regulations of the Federation (VwVR) of 20 December 1989 (Joint Ministerial Gazette 1990, p. 39).

pursued can also be achieved by other means, and in particular by agreements below the level of an international treaty.

- (2) Before entering into negotiations and attending conferences on international treaties with foreign states, their bodies and international organisations, the lead Federal Ministry must inform the Federal Foreign Office in good time and obtain its consent, unless other rules exist.
- (3) The involvement of Federal Ministries in the drafting and conclusion of international treaties is subject to the provisions of sections 45, 46, 49 and 62 *mutatis mutandis*.
- (4) The Federal Ministries of the Interior and of Justice must be involved in the preparations for drawing up international treaties in order to verify that they are in accordance with the Basic Law. In the case of international treaties where the application of Article 59 (2) first sentence of the Basic Law or national implementation through regulations must be considered, the Federal Ministries of the Interior and of Justice must always be involved. For certain areas or kinds of treaties, the Federal Ministries of the Interior and of Justice and the lead Federal Ministry may lay down special procedures together.
- (5) Insofar as international treaties affect the exclusive competence or fundamental interests of the *Länder*, the *Länder* shall participate in their conclusion in accordance with the Lindau Understanding of 14 November 1957.<sup>8</sup> If the particular circumstances of a *Land* are affected, the provisions of Article 32 (2) of the Basic Law must be taken into account. If the lead Federal Ministry then considers it desirable that the *Länder* should be involved, it will inform the parties involved under paragraph 4 and state what treaty provisions it believes give cause for the involvement, and on what grounds.
- (6) Drafting international treaties is governed by the Guidelines on International Treaties published by the Federal Foreign Office. If deviation from these Guidelines is necessary in exceptional cases, such deviation must be agreed with the Federal Foreign Office in good time.

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<sup>8</sup> For the full text see Annex C of the "Guidelines on International Treaties" (2004) issued by the Federal Foreign Office.

- (7) The Federal Foreign Office shall be lead ministry for international headquarters agreements with the United Nations or intergovernmental agencies institutionally bound to the United Nations and shall ensure participation in accordance with sections 45 to 48.
- (8) The original texts of intergovernmental treaties, intergovernmental instruments and interministerial agreements are kept together with the certificates of power of attorney and other ancillary documents in the Political Archives of the Federal Foreign Office.

**Section 73 Procedure in connection with ratifying legislation under Article 59 (2) first sentence of the Basic Law and regulations on international instruments**

- (1) In the case of international treaties, the editorial office of the Federal Law Gazette must be engaged as early as possible in the preparation of cabinet submission. By the time of the cabinet submission at the latest, the editorial office shall produce the printed version of the international treaty. This document and the other documents produced by the lead Federal Ministry shall be included with the cabinet submission.
- (2) If in the case of multilateral international treaties the foreign language text alone is authentic, the lead Federal Ministry must check the German translation thoroughly before forwarding it to the editorial office of the Federal Law Gazette to verify whether its meaning coincides with that of the foreign language text in all respects.
- (3) When drafting federal laws ratifying international instruments, the Guidelines on Drafting Ratifying Legislation and Regulations Relating to International Treaties issued by the Federal Ministry of Justice must be followed. In all other respects, the treatment of federal laws ratifying international instruments under Article 59 (2) first sentence of the Basic Law is governed by the provisions of Chapter 6, sections 1 to 5. The treatment of regulations related to international treaties is subject to the provisions of Chapter 6, section 6.
- (4) If the text of an international treaty is corrected with retroactive effect (Article 79 of the Vienna Convention on the Law of Treaties), section 61 (3) shall apply *mutatis mutandis*.

## **Section 74 Legislative projects of the European Union**

- (1) Examination of legislative projects of the European Union for compliance with the principles of subsidiarity and proportionality is subject to the procedural principles decided upon by the Federal Government and the review questionnaire which the latter contain (Annexes 7 and 8).
- (2) Informing and involving the German Bundestag is subject to the Act on Cooperation between the Federal Government and the German Bundestag in Matters concerning the European Union and to the Responsibility for Integration Act.
- (3) If a proposal is presented by the European Commission, the lead Federal Ministry shall assess the expected impacts of the proposal on the (gross) public budgetary income and expenditure, including the social security system, also taking the expected enforcement impacts in the Federal Republic of Germany into account. This assessment must be taken into account when informing the German Bundestag of EU projects (Annex 9). For the additional mandatory assessment of administrative costs, the procedure decided by the Committee of State Secretaries for European Issues shall apply in the latest version published on the federal intranet by the Federal Ministry of Economics and Technology.
- (4) Informing and involving the Bundesrat is subject to the Act on Cooperation between the Federation and the *Länder* in Matters concerning the European Union and to the Responsibility for Integration Act.
- (5) The lead Federal Ministry shall involve the other Federal Ministries substantively affected (Annex 6) and offices mentioned in section 21 (1) as early as possible to enable them to co-examine the proposals comprehensively and in good time. National associations of local authorities, the expert community and associations may be involved; in that case the provisions of section 47 apply *mutatis mutandis*.
- (6) The Federal Government's attitude to proposals by the European Union must be presented uniformly to the bodies of the European Union.

## **Section 75 Procedure in connection with laws and regulations implementing**

## **EU Acts and other decisions by the European Union binding on Member States**

- (1) Within its sphere of competence, the lead Federal Ministry is responsible for the timely implementation of EU Acts and other decisions by the European Union binding on Member States. Further details shall be governed by the Consolidation Decision of the Committee of State Secretaries for European Issues on the implementation of directives in the applicable version published on the federal intranet by the Federal Ministry of Economics and Technology.
- (2) The implementation of EU Acts and other decisions by the European Union binding on Member States is subject, in the case of laws, to the provisions of Chapter 6 sections 1 to 5, and in the case of regulations, to Chapter 6 section 6.

### **Division 9 Publication in official gazettes**

#### **Section 76 Publication in official gazettes**

- (1) The following is published in Part I of the Federal Law Gazette:
  1. Federal laws (Article 82 (1) first sentence of the Basic Law), unless published in Part II of the Federal Law Gazette under the provisions of paragraph 2;
  2. Regulations, unless published in the Federal Gazette - Official Section - under paragraph 3 no. 1, or in other official gazettes under section 2 of the Act on the Promulgation of Ordinances;
  3. Decisions on competence over the subject matter under Article 129 (1) of the Basic Law;
  4. The operative parts of the judgements of the Federal Constitutional Court under section 31 (2) first sentence of the Act on the Federal Constitutional Court
  5. Orders and decrees by the Federal President;
  6. Official notifications on internal affairs of the German Bundestag and Bundesrat;
  7. Other notifications generally only when required.
- (2) The following is published in Part II of the Federal Law Gazette:
  1. International treaties, the legal provisions making them effective, as well as associated notifications;
  2. Customs tariff provisions.

International treaties need not be published in exceptional cases, subject to the consent of the Federal Foreign Office, if there are overriding reasons for not publishing them.

- (3) The following is published in the Official Section of the Federal Gazette:
1. Ordinances
    - a. with a limited period of validity,
    - b. In case of imminent danger,
    - c. If their immediate entry into force is required for implementing acts of the European Union;
  2. Administrative regulations which would not be sufficiently known were they only published under paragraph 4;
  3. The explanatory memorandum for government bills, if it is desired to publish them. It is the original explanatory memorandum for the government submission that is published. Subsequent amendments to the wording of a law which are required as a result of the involvement of legislative bodies are to be indicated by footnotes, if the explanatory memorandum no longer applies in such cases;
  4. Agreements between the Federation and the *Länder* or between the *Länder* themselves where no provision is made for decisions by the legislative bodies;
  5. Awards of the Order of Merit of the Federal Republic of Germany;
  6. Notifications by the Federal authorities, and by the *Länder* authorities where prescribed by federal law or federal ordinances.
- (4) The following may be published *inter alia* in the Official Journals of the Federal Ministries:
1. Administrative regulations
  2. Appointments and dismissals of Federal civil servants
  3. The tariffs and regulations listed in section 2 to the Act on the Promulgation of Ordinances, although, to obtain *res judicata* effect, they must at least be published in the Official Journals authorised specifically for that purpose by law.

## **Chapter 7 Concluding provisions**

### **Section 77 Supplementary provisions**



- (1) The Federal Ministries may issue department-specific supplementary provisions to these Rules of Procedure. Interministerial amendments must be agreed by the committees set up under section 20.
- (2) Without prejudice to the provisions of paragraph 1 second sentence, the Federal Ministry of the Interior is responsible within the Federal Government for clarifying essential matters regarding adherence to the Joint Rules of Procedure, unless the area of jurisdiction of the Federal Ministry of Justice is affected under section 46.
- (3) In consultation with the Federal Ministries or the Federal Chancellery, as far as these are affected, the Federal Ministry of the Interior may make the following changes to these Rules of Procedure:
  1. correct printing errors and other obvious errors;
  2. in case of changed responsibilities, replace the name of the previously responsible Federal Ministry with the name of the currently responsible Federal Ministry; and in case of changes to the names of authorities or the titles of offices listed under section 21 (1), replace the previous name or title with the current name or title; and
  3. revise the remaining text to adapt to these changes.

Thereafter, the Federal Ministry of the Interior shall inform the Federal Ministries, the Federal Chancellery and the offices listed under section 21 (1) of the corrections, revisions and changes to these Rules of Procedure. It may publish the revised text.

## **Section 78 Scope of application**

The provisions of these Rules of Procedure shall apply to the supreme Federal authorities directly under the Federal Chancellor *mutatis mutandis*, unless overridden by a higher law.

## **Section 79 Entry into force and repeal**

These Rules of Procedure shall enter into force on 1 September 2000. At the same time, the Joint Rules of Procedure of the Federal Ministries (General Section) in the version of 6 February 1996, the Joint Rules of Procedure of the Federal Ministries (Special Section) in the version of 25 March 1996, and the

Recommendations regarding the use of electronic communications systems taking account of the Joint Rules of Procedure I shall cease to apply.

## **Annexes**

### **Annex 1 to section 13 (2) of the Joint Rules of Procedure**

#### **Handling of incoming documents**

##### **I. Incoming electronic documents**

1. As a rule, electronic documents are to be forwarded electronically.
2. Any electronic documents which are not received by the competent office should be forwarded or sent to the Central Mail Service.
3. Matters of particular urgency within the meaning of number II 3 below are to be clearly marked as urgent, if necessary, and are to be forwarded rapidly. The Central Mail Service shall not deal with incoming documents any further.
4. Electronic documents which the Central Mail Service is to pass on in hard-copy form must be processed as laid down in Section II.

##### **II. Incoming documents in hard-copy form**

1. Communications addressed personally should be forwarded unopened to the addressee.
2. Incoming mail should be stamped received and addressed to the competent working unit. If necessary, the precise time of receipt shall be recorded.
3. Matters of particular urgency should be marked specially. Incoming documents on political events, press releases, letters from the Federal President's office, the Federal Chancellery, the Federal Constitutional Court, the German Bundestag and Bundesrat and their committees, cabinet matters and documents requiring co-signatures must be given priority treatment.
4. If any enclosures, parcels, etc. referred to in the covering letter are missing, this must be noted accordingly.

5. Should any urgent letters which are to be submitted to the head of the Ministry in the first instance be received in more than one copy, one copy must be sent to the competent head of unit immediately marked 'advance copy'.
6. If the sender's name and address or the date of the letter are not clearly recognisable, the envelope must be attached to the letter unaltered, if the envelope shows the address. This also applies, if the date of posting may be important, or if the envelope bears official markings.
7. Incoming mail addressed to other authorities must be forwarded unopened to the appropriate authority immediately. If the mail has already been opened, it must be forwarded to the appropriate authority immediately, marked 'opened in error'.
8. Any coins, banknotes, cheques, transfer instructions, negotiable securities, postage stamps, valuables etc. must be forwarded to the payment office or cash desk against receipt. Different rules may be laid down for handling of postage stamps.
9. Valuable consignments and registered mail must only be opened by duly authorised staff, and their contents must be recorded in an incoming mail log. Any discrepancies with regard to valuable consignments or registered mail must be placed on record.
10. Mail with notice of delivery must be accompanied by the certified copy of the notice of delivery.

**Annex 2 to section 13 (2) of the Joint Rules of Procedure**

**Annotations in the course of business**

**I. Hard-copy case files**

Procedural marks may be made on incoming documents and drafts, the reserved colours being as follows:

the Federal Minister	Green ink
the Parliamentary State Secretaries	Mauve ink
the State Secretaries	Red ink
the Directors-General	Blue ink
the Directors and standing representatives of the Directors-General	Brown ink

Anyone deputising for the above uses the same coloured ink, but signs their name.

Key:

Dash with coloured ink  
or name signed   =       Noted

# hash sign in coloured ink                         =       Reserve right to sign the draft document  
closing the case, authorising deputy to sign

**II. Electronic case files**

If documents are forwarded electronically, procedural marks must be appended as defined in number I above; the appropriate notation may be used instead of colours.

## **Annex 3 to section 42 (1) of the Joint Rules of Procedure**

### **Cover sheet**

*[The cover sheet should not be more than two pages long.]\**

- A. Problem and objective
- B. Solution
- C. Alternatives
- D. Budgetary expenditure not including implementation costs  
*[listed separately for the Federation, Länder and local authorities]*
- E. Compliance costs

*[§ 2 of the Act on Establishing a National Regulatory Control Council; the Guidelines on the Identification and Presentation of Compliance Costs in Legislative Proposals by the Federal Government shall apply.]*

- E.1 Compliance costs for individuals
- E.2 Compliance costs for business and industry

*[§ 2 (2) of the Act on Establishing a National Regulatory Control Council]*  
Of which administrative costs resulting from reporting obligations

- E.3 Compliance costs for public administration

*[listed separately for the Federation and Länder (including local authorities)]*

- F. Other costs

*[in particular other costs to business and industry; costs to social security systems; impacts on unit prices and the overall price level, especially the consumer price level.]*

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\* Text in square brackets is intended as an aid in filling out the form and should not be reproduced in the draft.

## **Annex 4 to section 42 (2) of the Joint Rules of Procedure**

### **Structure of legal texts**

#### **1. Heading**

The heading always contains the title of the law. It may also include a short title and acronym. The title is also the citation title; If the law has a short title, the short title is the citation title.

#### **2. Introductory formula**

Each law must have an introductory formula, stating who adopted the law, whether the law requires a specific majority and the consent of the Bundesrat. The introductory formula comes after the heading and the line reserved for the date of issuance.

#### **3. Individual provisions**

Each law must be divided into individual provisions. Each individual provision is given a type and numerical designation. The type designation is normally '§'. The type designation 'Article' must be used in ratifying legislation under Article 59 (2) of the Basic Law as well as in introductory laws and amending acts. The numerical designation following the type designation must use Arabic numerals.

Where laws are lengthy, superordinate structures can be used (part, chapter, section, sub-section), which combine a number of individual provisions under a single designation. They too must consist of a type designation followed by a numerical designation. Superordinate structural units must be provided with sub-headings in the form of a keyword content.

Every law shall specify in its concluding provisions the date on which it shall take effect. In the absence of such a provision, it shall take effect on the fourteenth day after the day on which the Federal Law Gazette containing it was published (Article 82 (2) of the Basic Law).

#### **4. Provisions of the *Länder* on administrative procedures for which there is no possibility of deviation under Article 84 (1) fifth sentence of the Basic Law shall**

be listed in the concluding provisions of the relevant main law. The following formulation shall be used:

“section x Exclusion of deviating *Land* law  
*Land* law may not deviate from the provisions of administrative procedure stated in sections ... ”

If only one provision is concerned, a similar formulation may be included in the provision itself. If there is a special need for all administrative procedures in a law to conform to federal law, then the concluding provision may be formulated as follows:

“section x Exclusion of deviating *Land* law  
*Land* law may not deviate from the provisions of administrative procedure stated in this law.”



## **Annex 5 to section 43 (1) No. 3 of the Joint Rules of Procedure**

### **Checklist for identifying opportunities for self-regulation**

The questionnaire below may be of assistance in considering matters under section 43 (1) no. 3 of the Joint Rules of Procedure:

1. What regulation system is appropriate for the problem? Is it sufficient for society to regulate itself – through self-limitation agreements perhaps, or self-obligation? What structures or procedures should the state provide to enable self-regulation? Would it be possible for the state to make self-regulation mandatory?
2. Provided the task can be carried out by non-governmental or private bodies:
  - How is it ensured that the non-governmental service providers will provide their services for the common good (nation-wide coverage, etc.)?
  - What regulatory measures and bodies does this require?
  - How is reassignment of tasks to governmental institutions ensured in the case of poor performance?
3. Can the problem be solved in co-operation with private bodies? What requirements for the legal design of such co-operative relationships should be imposed? What practical design is suitable and necessary to enable or support such co-operative relationships in organisational terms?
4. If it seems that the problem can only be solved adequately on the basis of a programme or other target-oriented basis: what minimum content of regulation is required by the rule of law (for example stipulations on competence, aims, procedures, etc.)?

## **Annex 6 to section 45 (1), section 74 (5) of the Joint Rules of Procedure**

### **The following authorities shall be involved in the legislative procedure:**

1. The **Federal Foreign Office** in the case of draft ratifying legislation under Article 59 (2) first sentence of the Basic Law;
2. The **Federal Ministry of the Interior**:
  - a) In examining legal norms for their compatibility with the Basic Law and in all other cases where doubts arise as to the application of the Basic Law, or if it is intended to obtain an expert opinion from constitutional law specialists;
  - b) In examining whether the proposed legal norms are compatible with the existing legal system;
  - c) If the interests of local government are affected;
  - d) If data protection interests are affected;
  - e) If public service interests are affected;
  - f) If the interests of sport are affected;
3. The **Federal Ministry of Justice**:
  - a) In examining legal norms for their compatibility with the Basic Law and in all other cases where doubts arise as to the application of the Basic Law, or if it is intended to obtain an expert opinion from constitutional law specialists;
  - b) In examining whether the proposed legal norms are compatible with the existing legal system;
4. The **Federal Ministry of Finance**:
  - a) In the case of provisions on taxes and other duties;
  - b) If the income or expenditure of the Federation, the *Länder* or Local Governments are affected;
5. The **Federal Ministry of Economics and Technology**, if the proposed legislation will affect matters of economic and technological policy;
6. The **Federal Ministry of Food, Agriculture and Consumer Protection**, if the proposed legislation can be expected to affect matters of food, agriculture or consumers;
7. The **Federal Ministry of Labour and Social Affairs**:
  - If the proposed legislation can be expected to affect the labour market, labour law, job protection and social security;

- If the interests of persons with a disability are involved;
8. The **Federal Ministry of Defence**:
    - If defence policy matters are affected;
    - If the defence department will be involved in the implementation of the proposed legislation;
  9. The **Federal Ministry for Family Affairs, Senior Citizens, Women and Youth**:
    - a) In examining whether the proposed legislation can be expected to affect matters of gender equity policy;
    - b) If the proposed legislation affects family and senior citizens policy matters;
    - c) If the proposed legislation affects matters of children and youth policy, especially if it advisable to consider whether the proposed legal norms are compatible with children's welfare;
  10. The **Federal Ministry of Health**, if health policy matters are affected;
  11. The **Federal Ministry of Transport, Building and Urban Affairs**:
    - a) If the proposed legislation can be expected to affect transport;
    - b) In the case of regulations under public law which may have effects on town planning or building standards;
  12. The **Federal Ministry of the Environment, Nature Conservation and Nuclear Safety** in examining whether the proposed legislation can be expected to affect the environment;
  13. The **Federal Ministry of Education and Research**, if effects can be expected on education and research;
  14. The **Federal Ministry for Economic Co-operation and Development** in examining whether the proposed legislation will affect development policy matters;
  15. The **Federal Government Commissioner for Culture and the Media**, if the proposed legislation will affect matters of cultural or media policy.

## **Annex 7 to section 74 (1) of the Joint Rules of Procedure**

### **Procedural principles for review of compliance with the principles of subsidiarity and proportionality by Federal Ministries**

When examining whether measures by the European Union are compatible with the principle of subsidiarity and proportionality (Article 5 (3) and (4) of the Treaty on European Union (TEU)), the Federal Ministries will proceed as follows:

#### **1. Review questionnaire**

Federal Ministries will base their review of compliance with the principle of subsidiarity on a **review questionnaire** based on Article 5 (3) and (4) TEU and the Protocol to the TEU, Treaty on the Functioning of the European Union (TFEU) and the EURATOM Treaty on applying the principles of subsidiarity and proportionality in the version of the Lisbon Treaty\* (Annex 8).

- When using the review questionnaire, care must be taken to ensure that subsidiarity is understood as a dynamic principle which can lead to the limitation or discontinuance of the Union's activity, or to the enhancement of the Union's activity within its existing competences.
- Examining subsidiarity using the review questionnaire should help to ensure that the actions of the European Union are close to the citizens, transparent and comprehensible.
- With the review questionnaire, the Federal Government is also responding to its constitutional obligation, as emphasised by the Federal Constitutional Court, of observing the principle of subsidiarity in measures of the European Union.

#### **2. Examination procedure**

The following guiding principles should be used by Federal Ministries for reviewing compliance with the principle of subsidiarity:

- 1) The lead Federal Ministry is responsible for examining whether a measure by the European Union is in line with the principle of subsidiarity.

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\* The criteria in the Amsterdam Protocol may also be used even though this protocol has formally been repealed.

- 2) Review of compliance with the principle of subsidiarity forms part of the normal substantive examination of measures of the European Union.
- 3) In the event of important new measures by the European Union and in all other cases where there are doubts as to whether a measure by the European Union is compatible with the principle of subsidiarity, or if such doubts are expressed by the Federal Foreign Office, the Federal Ministry of Economics and Technology, the Federal Ministry of Justice, the Federal Ministry of the Interior or by the Federal Ministry of Finance as the Federal Ministries responsible for cross-sectional tasks in the fields of European policy, European law, constitutional law and finance, the lead Federal Ministry will involve those Federal Ministries in the review of compliance with the principle of subsidiarity at as early a stage as possible.
- 4) Not important in the sense of number (3) are, above all, measures by the European Union which
  - amend or continue existing measures without involving any substantively new direction
  - further specify framework legislation
  - serve merely to implement existing provisions
  - adapt provisions to technological progress, or which are adopted by the European Commission.
- 5) This is without prejudice to involving other substantively involved Federal Ministries under the Joint Rules of Procedure.
- 6) Co-ordination is aimed at ensuring that the Federal Government applies the principle of subsidiarity consistently. In individual cases, friction may occur between what is professionally and politically desirable on the one hand and the outcome of the review of compliance with the principle of subsidiarity on the other, in which case an appropriate solution is to be striven for taking account of the opposing viewpoints.
- 7) Should the review of compliance with the principle of subsidiarity and the coordination between Federal Ministries under the Joint Rules of Procedure not result in consensus, the matter is to be referred to the Committee of State Secretaries for European Issues. Matters may be

referred to individual Federal Ministers or the cabinet (Committee on European Issues), if necessary.

- 8) The review of compliance with the principle of subsidiarity by the Federal Ministries basically concerns proposals for legal acts of the European Union. Other measures by the European Union (resolutions, action programmes) may be included, if they are designed to result in legislation and/or may have financial implications.
- 9) Should the Federal Government come to the conclusion that a measure as proposed is not in line with the principle of subsidiarity, it will take that position within the executive bodies of the Union. It will take into account whether the intended aim can be achieved at Union level by alternative measures in a manner which is in line with the principle of subsidiarity.

### **3. Subsidiarity list**

Proposals for measures by the European Union where the Federal Ministries believe that there are doubts or concerns as to compliance with the principle of subsidiarity are included in a list which is updated continuously.

## Annex 8 to section 74 (1) Joint Rules of Procedure

### Review questionnaire for review of compliance with the principles of subsidiary and proportionality by the Federal Ministries

(Version of 1 September 2011)

European Commission proposals for **legislative acts** (regulations, directives, decisions), recommendations and opinions as well as **assistance and action programmes** of the European Union are to be examined with regard to **subsidiarity and proportionality** (Article 5 (3) and (4) TEU) in accordance with the Protocol to the TEU, TFEU and EURATOM Treaty on applying the principles of subsidiarity and proportionality in the version of the Lisbon Treaty\* using the following review questions:

#### I. Preliminary questions

- 1) Do the treaties (TEU, TFEU) provide for **competence** in respect of the measures considered?
- 2) Are the measures considered compatible with the **aims** of the Union?
- 3) Is the Union's competence in respect of the measures considered **exclusive** or **non-exclusive**?
- 4) Has the Commission held comprehensive **consultations** before presenting the proposals and published **consultative documents** where appropriate?

#### II. Subsidiarity:

To be considered only if the Union's competence is **non-exclusive**:

- 1) Can the aims of the measures considered be realised sufficiently at Member State level — in Germany: at Federation and *Länder* (including local government) level?
  - What measures have the Member States already taken to achieve the aim of the measure at their level?

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\* The criteria in the Amsterdam Protocol may also be used even though this protocol has formally been repealed.

- Does the area concerned have **transnational aspects** which cannot sufficiently be covered by measures by Member States?
- Can problems of individual Member States perhaps be overcome through **targeted assistance** from existing programmes?
- Can the aims of the measures considered be sufficiently achieved through **co-operation between individual Member States**?
- Would measures by Member States on their own or the absence of Union measures be in breach of the **requirements of the Treaty** (for example need to correct distortions of competition, avoiding concealed restraints of trade or reinforcing economic and social cohesion) or otherwise constitute a significant detriment to the **interests of Member States** (for example constant use of reservation clauses such as Article 36, Article 45 (3), Article 52 and Article 62 in conjunction with Article 52 TFEU)?
- Will the **acquis communautaire** and the **institutional balance** be safeguarded by actions at Member State level?

2) Where actions by Member States are insufficient:

Could the aims of the measures considered be achieved **better at Union level** on account of their scope or effects?

- Would measures at Union level have **clear advantages** because of their scope or effects compared with action at Member State level?
- On what **quantitative or qualitative criteria** are the Commission's findings based that Union aims can be achieved better at Union level?

### III. Proportionality

The following is to be reviewed irrespective of whether the Union's jurisdiction is exclusive or non-exclusive:

1. Is the measure considered proportionate to the aims of the treaties?
  - a) Is the measure **suitable, necessary and reasonable** with regard



to the aims of the treaties (minimum intervention)?

- b) Does the measure considered require a **legislative act**, or could the aims of the measure considered be achieved by **alternative** means (such as voluntary agreements, action by social partners)?
- c) Is the **legal form** proposed for the measure one that imposes the least restrictions on the Member States, having regard to the suitability of the measure (generally directives when harmonising legislation)?
- d) Do the **regulatory scope** and the **regulatory density** of the measure considered leave sufficient room for national decisions?
- e) Does the measure considered take account of the **particular conditions** in individual Member States (such as tried and tested national provisions as well as the structure and functioning of their legal systems)?
- f) Are the **financial burdens** and the **administrative workload** on the Union, Member States, the economy and citizens as low as possible, and are they in reasonable proportion to the aims pursued?

2. Should the measure considered be **limited as to time**?

#### **IV. If funded through the Union budget:**

Are there particular grounds which would justify partial or full Union **funding**?

#### **V. Implementation:**

- 1. Is it necessary to transfer to the European Commission powers to adopt and implement legislative acts as referred to in Articles 290 and 291 TFEU? Has the proper basis for the type of delegation pursuant to Article 290 or 291 TFEU been selected?
- 2. Is it necessary to transfer **administrative implementation** to the Commission rather than to the Member States, if provided for exceptionally (for example in the case of subsidy and action programmes)?

#### **VI. Explanatory memorandum**

1. Has the pertinence of the proposal under the aspect of subsidiarity and proportionality been substantially explained by the Commission in the **explanatory memorandum**? Has the Commission explained the reasons for Union funding, if applicable?
  
2. Are all **considerations** substantiated sufficiently in the recitals?