

Bundesrechnungshof Act

11 July 1985

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Article 1 Legal Status

The Bundesrechnungshof shall be a supreme federal authority and as an independent institution of government audit shall be subject only to the law. Within the scope of its statutory functions, the Bundesrechnungshof shall provide assistance to the Federal Parliament and the Federal Government in their decision-making procedure.

Article 2 Headquarters and Organisational Structure

(1) The Bundesrechnungshof shall have its headquarters in Bonn. It may establish branch offices.

(2) The Bundesrechnungshof shall be composed of audit divisions and audit units. Audit groups may be established to carry out particular functions. There shall be a separate Presidential Division responsible for the general office services.

Article 3 Members of the Bundesrechnungshof

(1) The President, the Vice-President, the Senior Audit Directors and Audit Directors shall be Members of the Bundesrechnungshof.

(2) The President and the Vice-President shall be appointed as temporary civil servants for official terms of twelve years, but not beyond the end of the month in which civil servants reach their statutory retirement age. The President and the Vice-President shall retire after their tenure of office. In all other respects, the provisions of the Federal Civil Service Act concerning civil servants appointed for life, with the exception of the provisions on the service careers and the probationary periods, shall be applied accordingly.

(3) The Members must be qualified for a senior service career. In addition, they should have wide-ranging professional experience. The President or the Vice-President and at least one third of the other Members must be qualified to hold judicial office. An appropriate number of the Members should be trained economists or engineers.

(4) The Members of the Bundesrechnungshof shall enjoy judicial independence (Article 114, Paragraph (2), sentence 1 of the Basic Law). The regulations governing

independence and disciplinary action relating to judges of the federal supreme courts shall be applied accordingly. Article 48, Paragraphs (2) and (3) of the Law on the German Judiciary shall be applicable.

Article 4

Audit Officers and Support Staff

The Bundesrechnungshof shall also employ the necessary number of audit managers (administrative grades) and auditors (higher executive grades), and support staff.

Article 5

Election and Appointments

(1) Upon the proposal of the Federal Government the two Houses of Parliament shall elect the President and the Vice-President, respectively, without debate. The German *Bundestag* shall elect by the majority vote of its members in a secret ballot. The Federal President shall appoint those chosen. They must not be re-elected.

(2) The Federal President shall appoint

1. the other Members of the Bundesrechnungshof upon the proposal of its President
2. any other officers of the Bundesrechnungshof upon the proposal of its President unless the latter has been given authority for appointment.

Prior to submitting his proposals under Sub-paragraph 1 above, the President shall consult the standing committee of the Senate of the Bundesrechnungshof (Article 13, Paragraph (2) hereof).

Article 6

President and Vice-President

(1) The President shall represent the authority externally. He/she shall be responsible for the general management of the Bundesrechnungshof and shall have legal oversight.

(2) In performing the statutory functions incumbent on the President, his/her deputy shall be the Vice-President or, if the latter is prevented, the most senior head of division. In cases of equal seniority, the elder head of division shall deputise. In the cases of Article 9, Paragraph (1), sentence 2 and Article 11, Paragraph (2) the President shall deputise for the Vice-President. In the Senate, the Vice-President shall be substituted in accordance with the second half of sentence 1 and with sentence 2 of this Paragraph.

(3) The other Members shall assist the President in the performance of his/her functions. Such assistance must not prevent them from pursuing their original duties as Members of the Bundesrechnungshof unless they otherwise agree, and their judicial independence must not be impaired.

Article 7

Assignment of Duties

(1) Prior to the beginning of the audit year and in agreement with the standing committee of the Senate, the President shall assign specific duties to the divisions and audit units and shall designate the Members who shall head the divisions and audit units.

(2) Prior to the beginning of the audit year, the President shall decide on the allocation of audit officers and other staff to the audit units. At the request of the appropriate panels or divisional senates, the decision of individual cases shall be subject to the approval by the standing committee of the Senate.

(3) During the audit year the President may, with the approval of the standing committee of the Senate, make or change any decision in accordance with Paragraph (1) or (2) of this article, if a vacancy is to be filled or if the proper conduct of business so demands.

(4) In cases of doubt, the President shall decide which particular audit unit or divisional senate is to take responsibility. Paragraph (2), sentence 2 of this article shall apply accordingly.

(5) The President shall, by agreement with the Vice-President, determine for the following financial year those divisions in which he himself or the Vice-President will participate in the decision-making of panels and divisional senates. The same shall apply where the need for such determination arises in consequence of decisions made in accordance with Paragraph (3) of this article during the financial year.

Article 8

Decisions of the Bundesrechnungshof

The decisions of the Bundesrechnungshof shall be made by the President (Article 19, sentence 1 no. 2), the panels (Article 9), the audit groups (Article 10), the divisional senates (Article 11), and the Senate (Article 13).

Article 9

Panels of Two or Three Members

(1) Any sectional panel shall consist of the appropriate Senior Audit Director and the appropriate Audit Director of the particular audit unit (panel of two members). The President or the Vice-President shall join this panel if one of them or a member of the panel of two considers this necessary (panel of three members).

(2) In individual cases, any panel may authorise one of its members to decide on his or her own.

Article 10

Audit Groups

In agreement with the standing committee of the Senate, the President may establish audit groups to carry out special assignments. Articles 7, 9, 14 Paragraph (1), Sub-paragraphs 3 and 4, and Article 15, Paragraph (2) and Article 16, Paragraphs (1) and (3) shall apply accordingly.

Article 11

Divisional Senates

(1) Senates shall be established for each division and shall consist of the Senior Audit Director as chairperson, the Audit Directors of the division and the Audit Director of an audit unit outside the particular division. The Audit Director of the other audit unit and his or her substitute shall be appointed by the President in accordance with the standing orders.

(2) The President or the Vice-President may join any divisional senate. In this case he or she shall take the chair.

Article 12

Responsibilities of Divisional Senates

The divisional senates shall decide

1. on requests made under Article 14, Paragraph (1), Sub-paragraphs 3 and 4, and on cases of Article 17, Paragraph (1), sentence 2;
2. at the request of a Member if a panel fails to reach an agreement or if a matter is of special importance;
3. on matters assigned to them under the standing orders, or by the Senate.

Article 13

The Senate

(1) The Senate shall consist of the President as chairperson, the Vice-President, the Senior Audit Directors and three Audit Directors. Where functions peculiar to the Bundesrechnungshof are involved, the Senate shall be joined by the Audit Director responsible in accordance with the schedule of responsibilities (rapporteur) and the Audit Director of another audit unit (co-rapporteur). The three Audit Directors and

their substitutes and the co-rapporteur shall be designated by the President in accordance with the standing orders.

(2) The Senate shall establish a standing committee. This shall consist of the Vice-President and of two Senior Audit Directors and two Audit Directors who are designated, together with their substitutes, with regard to their seniority and in accordance with the standing orders. The President shall be entitled to participate in the committee's deliberations.

(3) The Senate may establish other committees by a two-thirds majority vote of its members and commission them to discuss or decide on specific subject matters. Each committee must comprise at least one of the three Audit Directors. Paragraph (1), sentence 2 of this Article shall apply; the designation of the co-rapporteur is incumbent on the chairperson of the committee.

Article 14

Responsibilities of the Senate

(1) The Senate shall decide

1. on such matters as are laid down in Article 17, Paragraph (1), sentence 4; Article 18, Paragraph (2), sentence 2, and Article 20, Paragraph (1) hereof;
2. on the drafting of the observations under Article 97 of the Federal Budget Code, on reports under Article 99 of the Federal Budget Code and on other statutory reports unless such decisions are delegated to divisional senates by virtue of the standing orders; in the cases of Article 19, sentence 1, no. 1, the decision shall be incumbent on the panel of three, and in the case of Article 19, sentence 1, no. 2 on the President;
3. at the request of a divisional senate or at the request of a panel on such projected missions of audit or advisory action envisaged as may affect several divisions, or on matters of general policy;
4. at the request of the appropriate divisional senate or panel where it is intended to depart from decisions made either by a divisional senate or the Senate, and where such decisions are being upheld on seeking reappraisal; the same shall apply to any departure from the decision made by a panel with regard to its responsibility for matters of general or fundamental policy;
5. on the proceedings and principles to be followed in work planning, auditing, provision of advice and reporting;
6. on the scope of responsibilities of the field offices (Article 20 Paragraph (2) hereof).

(2) The President may also refer other matters to the Senate or consult it prior to making his own decisions.

Article 15

Voting

- (1) The panels shall make their decisions by unanimous vote.
- (2) The divisional senates and the Senate shall decide by the majority vote of their respective membership. In the case of a tie, the chairperson shall have the casting vote.

Article 16

Commissioned (Acting) Members

- (1) In so far as an Audit Director is prevented from performing his duties over more than a short period of time, the President may, after consulting the standing committee of the Senate, commission any officer of non-Member status to act in the Audit Director's place during the time of the latter's prevention, or for any other period of time he may determine. The same shall apply during such time as the established post of an Audit Director is vacant. Article 3, Paragraph (3), sentence 1 shall be applicable to the officer so commissioned.
- (2) Paragraph (1) sentences 1 and 3 shall apply accordingly if an Audit Director is prevented from participating in his divisional senate's decision-making process.
- (3) During the term of his commission, the officer shall have the status of a Member of the Bundesrechnungshof.

Article 17

Exclusion for Belief of Prejudice

- (1) No Member of the Bundesrechnungshof shall be permitted to exercise his or her functions if and when there is good reason for doubting his or her impartiality. The decision on whether this is the case shall be incumbent on the divisional senate to which the Member concerned belongs. Article 16, Paragraph (2) shall not be applicable. If the Member concerned is to be excluded from a decision to be made by the appropriate audit group or by the Senate, the decision on the exclusion shall be incumbent on the latter. The Member concerned may not participate in that decision. No other Member shall substitute for him in this regard.
- (2) The Members of the Bundesrechnungshof must refrain from dealing with matters in which they themselves or their relatives as defined by Article 20, Paragraph (5) of the Act on Administrative Law and Procedure have been involved or for which they themselves or their relatives are responsible.
- (3) Paragraph (1) sentence 1 and Paragraph (2) shall apply accordingly to audit officers and other staff acting within the functions of the Bundesrechnungshof. The

decision on whether there is good reason for doubting their impartiality shall be incumbent on the appropriate panel or the Members of the appropriate audit group.

Article 18

Jurisdiction of the Federal Disciplinary Court

(1) Formal disciplinary proceedings against a Member of the Bundesrechnungshof and inquiries as defined by Article 66 of the Law on the German Judiciary, in so far as they concern a Member of the Bundesrechnungshof, shall be subject to the jurisdiction of the Federal Disciplinary Court. In respect of the President and the Vice-President of the Bundesrechnungshof, the right of application vested in the supreme government departments under Articles 63 Paragraph (2) and 66, Paragraph (3) of the Law on the German Judiciary shall be exercised by the President of the German *Bundestag* or the President of the *Bundesrat*.

(2) The non-permanent assessors of the Disciplinary Court must be Members of the Bundesrechnungshof. They shall be designated for a period of five years by the Presidium of the Federal Court of Justice in the order of nomination by the Bundesrechnungshof's Senate.

(3) The proceedings in the Disciplinary Court shall be subject to the provisions of the Law on the German Judiciary.

Article 19

Matters to be Kept Confidential

Where in accordance with Article 10a of the Federal Budget Code the budget provides that the audit incumbent on the Bundesrechnungshof shall be carried out either

1. by the appropriate panel with the active participation of the President or the Vice-President, or
2. by the President alone or, if the post of President is vacant, by the Vice-President,

the divisional senates and the Senate shall not be responsible. In the cases governed by sentence 1 no. 1 of this Article other officers may be summoned to assist. The panel of three Members decides by majority vote.

Article 20

Standing Orders¹

¹ The Bundesrechnungshof's standing orders as of 19 November 1997 have been published in the Internet under www.Bundesrechnungshof.de.

(1) The Senate shall adopt and issue standing orders for the Bundesrechnungshof. These standing orders shall set out the arrangements provided for in Article 11, Paragraph (1) sentence 2 and in Article 13, Paragraph (1) sentence 3 and Paragraph (2) sentence 2. The standing orders may also specify organisational and procedural details for the Bundesrechnungshof, in particular arrangements for

1. the temporary substitution of the Senior Audit Directors and Audit Directors,
2. the establishment and organisation of audit groups (Article 2, Paragraph (2), sentence 2 hereof),
3. the decision-making process in the bodies concerned,
4. guidance for the pursuance of auditing and advisory projects in so far as these activities may affect several divisions.

(2) The standing orders shall be duly notified to the two Houses of Parliament and the Federal Government.

Article 20a

Field Offices of the Bundesrechnungshof

(1) The Bundesrechnungshof may establish field offices which will be subject to its administrative and technical oversight.

(2) The field offices shall perform the audit tasks assigned to them by the Bundesrechnungshof subject to the legal provisions applicable to the latter and in accordance with the Bundesrechnungshof's instructions. In the course of fulfilling the audit tasks assigned to them, they have the same authority vis-à-vis the audited bodies as does the Bundesrechnungshof. The details of this shall be regulated by the Bundesrechnungshof's standing orders.

(3) The Bundesrechnungshof shall determine the location of the field offices.

(4) The staff of the field offices will be appointed by the Bundesrechnungshof's President.

Article 21

Article 22 (repealed)

Article 23 Berlin clause

In accordance with section 13 subsection (1) of the Third Transition Act, this Act shall also apply in the Land of Berlin.

Article 24 – Entry into force, cancellation of existing regulations

(1) This Act shall enter into force on the day after its promulgation.