



Federal Ministry of Justice
and Consumer Protection

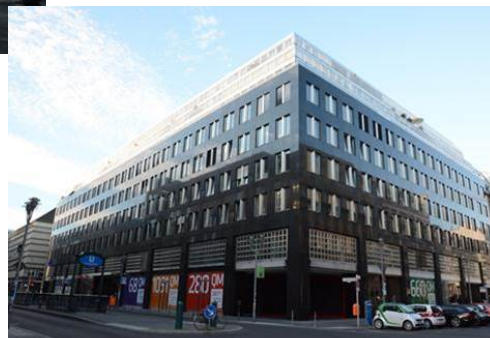
Tasks and Organisation of the Federal Ministry of Justice and Consumer Protection



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1. Tasks of the Federal Ministry of Justice and Consumer Protection

The Federal Ministry of Justice and Consumer Protection (*Bundesministerium der Justiz und für Verbraucherschutz*, BMJV) is primarily a ministry of legislation, also advising the other Federal Ministries in the preparation of legislative proposals. It drafts legislation in the fields of law assigned to its remit, these mainly being the fields of civil law, commercial and economic law, criminal law, and procedural law.

Since the beginning of the 18th legislative term, the Ministry has also been responsible within the Federal Government for the area of consumer policy, the goal of which is to establish the conditions for safe and self-determined consumer activity. In order to reduce the structural imbalance between business on the one side and consumers on the other, the Ministry focuses on ensuring the transparency, comprehensibility and comparability of products and services. This is done by introducing regulations which create a safe environment, prohibit fraud and deception, and strengthen the market position of consumers. Apart from introducing legislation and enforcing rights, further key instruments include the support of dialogue between the various stakeholders and the promotion of consumer information and awareness.

Beyond this, one of the most important tasks of the Federal Ministry of Justice and Consumer Protection is to perform the legal scrutiny of legislation drafted by other Ministries in terms of compatibility with constitutional law and the legal system as a whole. Compliance with formal drafting requirements is also monitored to ensure uniformity and the use of legal language that is as clear as possible.

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

Apart from the Federal Constitutional Court – which is an independent constitutional body of the Federation – five supreme Federal courts have been established at the Federal

level (Article 95 of the Basic Law), three of which are within the remit of the Federal Ministry of Justice and Consumer Protection (see 1.3). Primarily, these constitute the respective supreme appellate instances for the courts of ordinary jurisdiction and the administrative, finance, labour and social jurisdictions (Federal Court of Justice, Federal Administrative Court, Federal Finance Court, Federal Labour Court and Federal Social Court). In addition, there is the Federal Patent Court – a Federal court which adjudicates at first instance (Article 96 para. 1 of the Basic Law) and which also falls within the remit of the Federal Ministry of Justice and Consumer Protection.

1.1 Tasks of the Federal Ministry of Justice and Consumer Protection in the Field of Legislation

Above all, the Federal Ministry of Justice and Consumer Protection has overall responsibility within the Federal Government for the "classical" areas of law. These include:

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

Furthermore, in its capacity as one of the Ministries with responsibility for constitutional matters, the Federal Ministry of Justice and Consumer Protection (along with the Federal Ministry of the Interior) must always be consulted on issues of constitutional law and in proceedings before the Federal Constitutional Court. In this context, the Federal Ministry of Justice and Consumer Protection also has the task of performing the scrutiny of legislation (and international agreements) drafted by all other Federal Ministries in terms of compatibility with constitutional law, international law, European Union law and existing Federal law, before such draft legislation is adopted by the Federal Government. The scrutiny of draft legislation extends to an examination of the drafting methodology and to ensuring that a uniform style and unambiguous legal language have been adopted. In

addition, the Ministry's Divisions are involved in preparing EU legislation within their respective legal fields.

1.2 Tasks of the Federal Ministry of Justice and Consumer Protection in the Field of Judicial Administration

The administrative tasks of the Federal Ministry of Justice and Consumer Protection include:

- establishing the infrastructural, organisational, budgetary, and staffing conditions for the work of the Ministry as well as the Federal courts and authorities within its remit, and
- performing the administrative supervision of the Federal courts, as well as the administrative and substantive supervision of the authorities within its remit (see 1.3.); pursuant to the Federal Central Criminal Register Act, the Federal Ministry of Justice and Consumer Protection is also the "appellate instance" for complaints against official notices issued by the Federal Office of Justice.

Apart from this, the Ministry publishes the Federation's official organs of publication (the Federal Law Gazette and the Federal Gazette).

1.3 Remit of the Federal Ministry of Justice and Consumer Protection

The Ministry's remit includes three of the total of five supreme Federal courts. These are:

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

In addition, the following are also part of the Ministry's remit:

- the Federal Prosecutor General of the Federal Court of Justice, based in Karlsruhe, with a sub-office in Leipzig,

- the Federal Patent Court in Munich, which is competent for decisions at first instance in patent and trade mark matters,
- the German Patent and Trade Mark Office in Munich with its office in Jena and the Information and Service Centre in Berlin, and
- the Federal Office of Justice in Bonn.

The Ministry is involved at the preparatory stage in the selection of judges for the Federal Constitutional Court. Half of the judges of the Federal Constitutional Court are elected by the Bundestag and half by the Bundesrat (Article 94 para. 1 of the Basic Law). The Ministry also prepares the selection of judges for the three supreme Federal courts within its remit – the Federal Court of Justice, the Federal Administrative Court, and the Federal Finance Court. Federal judges are chosen by the Minister in conjunction with a judge selection committee that consists of the competent ministers from the sixteen Federal *Länder* and an equal number of members elected by the Bundestag (Article 95 para. 2 of the Basic Law).

2. *Organisational Structure of the Federal Ministry of Justice and Consumer Protection*

The Ministry's broad range of tasks is reflected in its structural organisation.

2.1 *Political Leadership of the Federal Ministry of Justice and Consumer Protection*

At the head of the Ministry is the Federal Minister of Justice and Consumer Protection, Dr Katarina Barley. As a cabinet member, she participates in the political decisions of the Federal Government and bears the political responsibility for her department. The Minister is supported in her work by two Parliamentary State Secretaries, Ms Rita Hagl-Kehl and Mr Christian Lange, who are responsible in particular for fostering links with the *Bundestag*, the *Bundesrat*, and the political parties. In addition, she is also assisted by two civil-servant State Secretaries, Ms Christiane Wirtz and Mr Gerd Billen. They represent the Minister in her capacity as head of the Ministry, both internally and externally. The Minister and the four State Secretaries make up the "political directorate" of the Ministry.

Based within the political directorate is the Office for EU Justice Policy. This is responsible for coordinating EU-wide cooperation in the fields assigned to the Ministry, as well as for fundamental issues of EU justice policy and strategic planning. Likewise situated within the political directorate is the Division for International Legal Cooperation which performs the task of fostering international relations with countries outside the EU. This encompasses initiatives such as the German-Chinese Rule of Law Dialogue and collaboration with the German Foundation for International Legal Cooperation.

2.2 Directorates-General, Directorates and Divisions

The Ministry is divided into seven Directorates-General, which in turn are subdivided into Directorates and Divisions. Tasks of related content are always grouped together within the same Directorate-General. For example, the Directorate-General for the Judicial System deals with topics such as procedural law, law relating to the judiciary, and law relating to *Rechtspfleger* (senior judicial officers), while the Directorate-General for Criminal Law deals with areas such as substantive criminal law, juvenile criminal law, and international criminal law. A Directorate-General is usually headed by a "political civil servant" with the rank of *Ministerialdirektor* (political civil servants can be transferred to provisional retirement at any time). The Head of Directorate-General is the highest substantive decision-making instance after the Minister and the State Secretaries. He or she supervises and coordinates the work within the Directorate-General and ensures the two-way flow of information between the political directorate and the Directorate-General. The Directorates-General are generally subdivided into two Directorates, with one exception which is subdivided into three. The Head of Directorate is responsible for management and planning in the Divisions assigned to him or her.

The Divisions are the basic organisational units of the Ministry and carry out the substantive work. The Heads of Division are assigned graduate-level employees ("higher service") – mainly trained lawyers – as well as clerical and secretarial staff in accordance with requirements. The distribution of work within a Division is determined by the Head of Division.

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

The Federal Ministry of Justice and Consumer Protection has seven Directorates-General. The breakdown reflects the Ministry's fields of responsibility. With the exception of Directorate-General Z, the Directorates-General are competent for specific areas of law:

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

2.3.1 Directorate-General Z (Administration) has the task of establishing the infrastructural, organisational, budgetary, and staffing conditions for the work of the Ministry as well as the Federal courts and authorities within its remit. The Ministry places major emphasis on increasing the use of IT in order to rationalise its work processes, improve its communication capabilities, and enhance the flow of information both internally and externally. In addition, Directorate-General Z supervises various "eJustice" projects aimed at using modern IT applications to access the Federal Courts and authorities within the Ministry's remit, to support internal communication and document management at the courts, to manage the collaboration between Federation and *Länder* as well as European projects within the field, and to coordinate IT standards at both the national and international level. Directorate-General Z is also responsible for advancing the use of electronic tools to optimise the Federation's legislative process. For instance, the "eNorm" software application makes it possible for one and the same electronic document to be worked on from the first draft of an instrument right through to its promulgation, thereby helping to avoid media incompatibilities, duplication of work and numerous other sources of error. Another area of focus is the facilitation of electronic access to Federal law. The current and former versions of all Federal

laws and statutory ordinances (including any amendments) are made available to subscribers via the "juris" computer-based system of legal information, whilst a collection of laws currently in force can also be accessed on the "Gesetze-im-Internet.de" website, a service provided to the public free of charge. Directorate-General Z is responsible for the administration of the Federation's participatory interests in the "juris GmbH" company.

2.3.2 Directorate-General R (Judicial System) is responsible for the courts constitutions – i.e. for Federal law regulations on the structure and organisation of the courts and public prosecution offices. The Directorate-General's sphere of responsibility also includes the procedural rules for ordinary jurisdiction (i.e. the civil and criminal courts, including criminal investigation proceedings) as well as for administrative and financial jurisdiction. It also covers the law governing debt enforcement (including the law on compulsory sale by public auction) as well as insolvency law and the law governing court costs. Furthermore, Directorate-General R is responsible for processes of extra-judicial conflict resolution (mediation and arbitration in particular), for the law governing the legal professions (law relating to the judiciary and *Rechtspfleger*; professional law for lawyers, patent lawyers and notaries), for legal training, and for the law governing lawyers' fees. Directorate-General R also provides assistance for the further training of judges and public prosecutors, most notably within the scope of its responsibility for the German Judicial Academy (*Deutsche Richterakademie*).

Current areas of focus include conceptual work on the legal examination of amendments to family court proceedings and proceedings in non-contentious matters, criminal investigation proceedings and insolvency law, as well as amendments relating to the implementation of the EU Directive on the resolution of disputes arising from consumer contracts (ADR Directive), along with work on the modernisation of the law governing debt enforcement.

Beyond this, the project group that was set up in Directorate-General R for the *Reappraisal of the role of the judiciary and the judicial administration during the Nazi period* is tasked with supervising the activities of the *Independent Academic Commission at the Federal Ministry of Justice and Consumer Protection for the Critical Study of the National Socialist Past* which was established in 2012 to

investigate continuities and breaks within the institution and its staff as well as in substantive aspects of the Ministry's legislative work, with a particular emphasis on the 1950s and 1960s. The political significance of this reappraisal project is communicated to the wider public, the project group taking particular care to involve groups persecuted under the Nazi regime.

2.3.3 The work in Directorate-General I (Civil Law) centres on civil law, which governs the legal framework for private legal relationships between citizens in our liberal society. Some of the provisions deal specifically with the regulation of contractual relationships between companies and consumers.

The core of German civil law has been laid down in just under 2,400 sections of the German Civil Code (*Bürgerliches Gesetzbuch*, BGB). The Civil Code contains comprehensive general regulations governing legal transactions as well as provisions governing specific types of contract such as contracts of sale, tenancy agreements, loan agreements, and tourist travel contracts. In addition, it regulates property law (including real estate law and mortgage law), the law of succession, family law including matrimonial law (marriage, matrimonial property regimes, divorce and the legal consequences of divorce), the law relating to parent and child matters (parentage, custody, rights of access, guardianship, adoption), maintenance law, and provisions on the legal custody of adult persons in need of protection.

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

countries. Lastly, Directorate-General I deals with the field of law relating to the regulation of unresolved property claims in connection with German reunification.

2.3.4 Directorate-General II (Criminal Law) deals with the norms in our legal system which proscribe certain acts and make them subject to penalty or a non-criminal fine. What is known as "core criminal law" is laid down in the Criminal Code. This encompasses crimes such as murder, manslaughter, robbery, theft, and insult. But it also covers offences such as criminal attacks on the security of the Federal Republic of Germany (such as high treason or membership of a terrorist organisation) and certain economic crimes. Overall responsibility for all these legal norms – as well as for other legislation that primarily relates to issues of criminal law, such as the Juvenile Court Act, the Regulatory Offences Act, or the Military Criminal Code – lies with the Federal Ministry of Justice and Consumer Protection. Further criminal offences are contained in special acts. These are referred to as "supplementary criminal law" and may in certain instances fall within the competence of another Ministry. Where this is the case, the competent Divisions within the Directorate-General for Criminal Law work hand in hand with the relevant Ministry that has overall responsibility.

The Directorate-General for Criminal Law also contains Divisions that are responsible for the consequences of criminal law. These consequences may stem from entries in the Federal Central Criminal Register, for example, or from the Act on Compensation for Criminal Prosecution Measures which provides for compensation in cases where a person has suffered damage resulting from a criminal judgement that is subsequently quashed, or from a sentence that is later reduced, or from having been held in remand detention. The sphere of responsibility of Directorate-General II also includes crime prevention and the concrete options for achieving it.

In addition, Directorate-General II has supervisory competence for the Federal Public Prosecutor General of the Federal Court of Justice. By contrast, responsibility for the public prosecution offices of the *Länder* lies with the individual *Länder* themselves, as does responsibility for the prison service.

The influence of the European Union on national criminal law is constantly growing. Criminal activity itself is taking on an increasingly international dimension and its prosecution is moving in the same direction. This is why a number of legal instruments have already been developed within the European Union to facilitate the cross-border fight against crime, one example being the European arrest warrant. Representatives of the Directorate-General for Criminal Law are active in negotiating such instruments in Brussels and in preparing the ground in Germany for their implementation at national level. Individual cases of mutual legal assistance and extradition that fall within the Federation's sphere of responsibility are dealt with by the Federal Office of Justice in Bonn. The Ministry's Directorate-General for Criminal Law has supervisory responsibility for the Federal Office of Justice in the processing of individual cases.

2.3.5 Directorate-General III (Commercial & Economic Law) is responsible for legislation in the area of commercial and company law, accounting and reporting law, insurance contract law, industrial property protection (patent law, utility model law, design law, trade mark law, the law against unfair competition), and copyright law. Furthermore, it is responsible for performing the scrutiny of draft legislation of all other Ministries in the fields of economic law, law of public finance, and tax law. Special mention should be made of its tasks in the field of the law governing the financial markets and in dealing with the financial and economic crisis since late 2008. Its work in the field of the law on new communications technologies and new technologies in the natural sciences also deserves particular attention. More than any other Directorate-General, the remit of Directorate-General III is anchored in international developments and its work is determined by these developments. This is why a major focus of Directorate-General III is on participating in the work of the European Communities and the European Patent Organisation, as well as the United Nations and its specialised agencies. Important projects in this area include the fight against product piracy, the EU-level work to introduce a Community patent applicable throughout the EU, and the associated efforts to establish a European patent jurisdiction.

2.3.6 Directorate-General IV (Constitutional and Administrative Law; European and International Law) is responsible for constitutional law, general and special administrative law, international law including human rights, EU law, and the scrutiny of legal provisions which encompasses the examination of draft legislation in terms of systematic legal logic and compliance with formal requirements. It participates in cases before the Federal Constitutional Court where the Federal Government is one of the parties or is entitled to present an opinion, and has overall responsibility for the Federal Constitutional Court Act.

As part of its task to carry out the scrutiny of legal provisions, it examines draft legislation from the other Federal Ministries as well as from the specialist Directorates-General of the Federal Ministry of Justice and Consumer Protection in terms of conformity with constitutional law and compatibility with existing national law. Furthermore, it examines whether the systematic logic of laws and the principles of legal logic have been adhered to. Recommendations on the standard formal structure and wording of legislation are contained in the *Handbook on Formal Requirements for Drafting Legislation* published by the Federal Ministry of Justice and Consumer Protection, the third edition of which was published in 2008. This Directorate-General also ensures that draft legislation is subjected to scrutiny in terms of linguistic comprehensibility and correctness. It is supported in this task by linguists.

Directorate-General IV is also where the Ministry's competencies for areas extending beyond the national legal system are brought together. In the fields of public international law (including human rights), it is responsible for the legal scrutiny of proposed legal instruments under public international law which involve the Federal Republic of Germany. It also takes a drafting role and carries out scrutiny in respect of legislation to be implemented into domestic law. Furthermore, it is involved in the drafting and negotiation of international treaties. It deals with all the general and cross-sectoral matters relating to European Union law, particularly where these matters touch upon European primary law (i.e. the Union Treaties and the Charter of Fundamental Rights). In addition, Directorate-General IV assumes the legal representation of the Federal Government before the Court of Justice of the European Court in cases falling within the remit of the Federal Ministry of Justice and Consumer Protection.

Also based within Directorate-General IV is the Representative of the Federal Government for Matters Relating to Human Rights who is responsible for representing the Federal Republic of Germany before specific international mechanisms that review compliance within Germany with internationally-agreed human rights. Most importantly, in her capacity as the Agent of the Government, she represents the Federal Republic of Germany before the European Court of Human Rights, the UN Human Rights Committee, the UN Committee on the Elimination of Racial Discrimination, and the UN Committee against Torture. She is also the liaison officer for the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, for the Commission against Racism and Intolerance of the Council of Europe, and for the Fundamental Rights Agency of the European Union. In addition, she is responsible for drafting and implementing certain human rights treaties of the United Nations and the Council of Europe. The Representative also sits on the board of trustees of the German Institute for Human Rights.

2.3.7 The main focus of Directorate-General V (Consumer Policy) is on protecting the interests of consumers in the legal and commercial spheres. Top priorities include the areas of consumer policy relating to the information society, financial services, the energy and transport sectors, and the health and social service sectors. Alongside these substantive aspects, further key areas include consumer information, consumer awareness, consumer research, and the enforcement of consumer protection. Directorate-General V has overall responsibility for the EC Consumer Protection Implementing Act, the Consumer Policy Report, and the Act for the Improvement of Health-related Consumer Information (*Verbraucherinformationsgesetz*, VIG) insofar as this impacts on matters of consumer protection in the marketplace. In addition, Directorate-General V is responsible for Germany's main product testing organisation (*Stiftung Warentest*) and for the Federation of German Consumer Organisations (*Verbraucherzentrale Bundesverband*). Through membership in international organisations, Directorate-General V is able to foster worldwide contacts in the field of consumer policy. Based within Directorate-General V is the Ministry's Research Representative who is responsible in particular for coordinating the Ministry's research activities, the Federal Government's research programmes, and the European Research

Framework Programmes. Beyond that, Directorate-General V deals with issues of sustainability, corporate social responsibility, civil society, and demographics.

3. *Employees of the Federal Ministry of Justice and Consumer Protection*

The Federal Ministry of Justice and Consumer Protection started work in 1949 with approximately 80 members of staff. It now has some 766 employees (as at January 2018). There are approximately 296 lawyers, 48.3 per cent of whom are women. The lawyers include 90 judges, public prosecutors and other officials who are seconded to the Federal Ministry of Justice and Consumer Protection from the *Länder* for a fixed period of time – usually between two and three years. During this time, they do not perform any judicial duties but are assigned as experts to the Ministry's Divisions where they work in the capacity of ordinary desk officers. In 2014 the spectrum of professional expertise at the Ministry was expanded with the integration of colleagues from the field of consumer policy. The Ministry's staff now includes economists, natural scientists, and political scientists. Employee interests are represented by the Staff Council, the Gender Equality Representative, and the Representation of Disabled Staff Members.

Following the Federal Government's move from Bonn to Berlin in 1999, most of the Ministry's employees work at its headquarters in Berlin. The Federal Ministry of Justice and Consumer Protection has retained a sub-office in Bonn with 4 employees.