

**Linn • Sobolewski**

# **The German Bundestag Functions and procedures**

**18<sup>th</sup> electoral term**

LINN · SOBOLEWSKI  
THE GERMAN BUNDESTAG  
– FUNCTIONS AND PROCEDURES –



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GERMAN  
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– FUNCTIONS AND PROCEDURES –

Organisation and working methods  
The legislation of the Federation

by  
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## Introduction

The Basic Law, the constitution of the Federal Republic of Germany, has placed the German Bundestag at the centre of Germany's representative democracy. The Bundestag's function is to form a majority which allows a government to take up office and remain in power for the duration of the electoral term. It is responsible for scrutinising the work of the government and other executive bodies. And the Bundestag is assigned a central function in the legislative process at federal level and in approving the budget. Due to this special status, the German Bundestag is generally regarded as the most important body in Germany's political opinion-forming and decision-making process.

This book aims to explain the German Bundestag's organisation and working methods. By offering a "look behind the scenes", it seeks to set out how the German Bundestag fulfils its constitutional functions in practice, in the framework of the parliamentary system of government of the Federal Republic of Germany.

The first section introduces the Bundestag's political actors – its Members, parliamentary groups and organs – and describes their working methods. It looks in depth at the work of the committees, which play an important role at the Bundestag. This is followed by a detailed explanation of how the German Bundestag's plenary sittings are organised and held. The section continues with an examination of the Bundestag's participatory rights in matters concerning the European Union, which are becoming ever more important. Finally, an overview is provided of Parliament's participatory rights in relation to other organs and bodies.

The second section looks in detail at the legislative process. Taking a specific law as an example, the reader is shown the individual stages that a

law passes through, from the first draft to its promulgation in the Federal Law Gazette, and learns how the relevant constitutional bodies – the Bundestag, the Bundesrat, the Federal Government and the Federal President – work together in this process. Particular emphasis is placed on the procedure in the German Bundestag.

The final section of this book offers information about the support services which the Administration of the Bundestag provides to Parliament and its Members to enable them to fulfil their functions.

Taken together, this wealth of practical information offers a clear overview of the German Bundestag's functions and procedures.

# 1. Organisation and working methods

## Elections and composition

The Members of the German Bundestag are elected in general, direct, free, equal and secret elections for an electoral term of four years (Articles 38 and 39 of the German constitution, the Basic Law). Taking each of these principles in turn:

- *general* means that every citizen aged 18 and over has the right to vote;
- *direct* means that the voters elect Members of Parliament directly, i.e. without the involvement of any intermediary;
- *free* means that no one may put voters under pressure of any kind to vote in a particular way;
- *equal* means that each vote carries the same weight with respect to the final composition of the Bundestag;
- *secret* means that it must be ensured that no one can check how someone else has voted.

The German Bundestag is composed of at least 598 Members. Half of them are elected directly in the 299 constituencies on the basis of the first of two votes cast by each voter, while a further 299 Members are elected on the basis of the second vote, which is cast in favour of one of the lists of candidates put forward by the political parties in each of Germany's *Länder*, or federal states (Section 1 of the Federal Electoral Act). This second vote determines the composition of the Bundestag, i.e. the relative strengths of the parties represented in Parliament. Parties are only taken into consideration in the seat allocation process if they have received at least five per cent of the second votes cast or won at least three constituency seats.

At times, the Bundestag may have more Members due to what are known as "overhang" seats. If a party wins more direct constituency seats in a single *Land* than the number to which it would be entitled based on its share of the second votes, all of the party's successful constituency candidates take up their seats in the Bundestag regardless. This results in the

Bundestag increasing from its statutory size (598 Members) by the number of these overhang seats.

In line with requirements laid down by the Federal Constitutional Court, the German Bundestag decided in the spring of 2013 to change the electoral law. The Additional Member System was retained. However, a new two-stage seat allocation process was introduced. The second stage involves the Bundestag's total number of seats being increased until any overhang seats gained by one party are fully compensated for by extra "balance seats" allocated to the other parties. This restores the balance between the parties on the basis of the second votes. In the elections to the 18th German Bundestag, there were four overhang seats, all won by the CDU. The new seat allocation process resulted in 29 extra balance seats, 13 of which went to the CDU, ten to the SPD, four to the Left Party, and two to Alliance 90/The Greens.

The 18th German Bundestag, elected on 22 September 2013, is thus composed of 631 Members (598 statutory seats, plus four overhang and 29 balance seats). The CDU/CSU has 311 seats in total, followed by the SPD with 193, the Left Party with 64 and Alliance 90/The Greens with 63.

## ► The Members

For the successful candidates, election to the Bundestag constitutes a mandate to represent the interests of the people as a whole and thus, through the system of representative democracy enshrined in the Basic Law, to realise the rule of the people by the people. They carry out this mandate by performing the functions assigned to the Bundestag by the constitution: in particular, to form a governing majority, to appoint the government and the members of other constitutional bodies, to scrutinise the work of the executive, to pass federal laws, and to approve the budget. In other words, it is the Members of the German Bundestag who together form the German Bundestag, the only constitutional body of the Federal Republic of Germany directly elected by the people. In its position as a constitutional body, the Bundestag acts through its Members. Its functions are their functions. With their vote in Parliament, they determine who governs the country and what rules apply in society. When they support the government's policies, Members stand for their success or failure. Their task is to engage critically with their political opponents and, by developing and setting out political alternatives, to get voters on their side. To this end, they are in constant communication with the pub-

lic, particularly in their constituencies and at the seat of the Bundestag in Berlin. As the democratically legitimised link between the state and society, Members take on board the opinions, positions and interests of the people they represent to ensure that they are taken into account in the political opinion-forming and decision-making process. This is a regulated process in order to allow a balance to be struck between the various interests and values present in society, and solutions to be reached based on the common good. Once decisions have been taken, it is up to the Members to publicly explain, support or criticise them, whether in the plenary of the German Bundestag, in interviews with the press, at public meetings, or in one-to-one talks with those affected. In other words, with their election to the Bundestag, Members assume an office of state whose duties cannot be compared to those of other offices or professions.

To enable them to fulfil these wide-ranging duties, Members acquire a special status upon their election with specific rights and obligations. This status is regulated in particular by the Basic Law, the Members of the Bundestag Act, and the Rules of Procedure of the German Bundestag. The core regulation is Article 38 (1), second sentence of the Basic Law, which states that the Members are representatives of the whole people, not bound by orders or instructions, and responsible only to their conscience. This central provision touches on several key aspects of the Members' legal status.

Firstly, they are representatives of the whole people. In their actions and decisions, Members are accountable not just to individual sections of the population, interest groups or their constituencies, but ultimately to the people as a whole. The Bundestag fulfils its function of representing the whole people through the participation of all its Members. This requires all Members to have the same powers of participation, and thus, in principle, the same rights and obligations.

This constitutional provision also makes clear that Members have what is known as an "independent mandate". The independent mandate strengthens Members' ability to form their own political opinions and take independent decisions, by stipulating that orders or instructions of any kind, for example from groups of voters or interest groups, are not legally binding. Even decisions by a Member's own party or parliamentary group are therefore ultimately no more than non-binding recommendations. In other words, the independent mandate protects Members from pressure or influence by political or economic groups which could inter-

fere with their autonomous and independent activity in Parliament. It enables them to take decisions on the basis of their own political convictions (their conscience), without having to fear a loss of parliamentary rights, let alone their mandates, as a result. Article 38 of the Basic Law is also the basis for a range of core parliamentary rights which cannot be withdrawn, such as the right to speak and vote, the right to participate in the work of the committees, rights to receive information and put questions, certain rights to table motions, and the right to join together with other Members to form a parliamentary group. These rights will be examined in greater depth in a later section.

The Members' rights and duties are centred around their obligation to participate in the work of the German Bundestag, its sittings and decisions. For this reason, attendance registers are displayed on each day when the Bundestag is sitting. Any failure by Members to enter their names in the register or to participate in certain votes carries financial penalties, which were substantially increased at the start of the 18th electoral term, and now stand at up to 200 euros for each sitting day or recorded vote that is missed. That said, it is up to Members to determine how they fulfil their duty of participation, given the independence of their mandate, as Members are not legally obliged to perform any specific services. This is another way in which membership of the Bundestag differs from other offices and professions: Members must decide for themselves – within the framework of their duties of participation – how to fulfil the wide-ranging functions associated with their office. Ultimately, they are accountable only to the electorate, who, when casting their vote, also decide whether they were satisfied with each Member's work in the previous electoral term.

The exercise of the mandate of a Member of the Bundestag is central to his or her activity. Nonetheless, Members are permitted in principle to engage in activities of a professional or other nature alongside the exercise of the mandate. As the Members' mandate from the electorate is for a limited period of time, they are generally permitted, as time allows, to continue previous professional activities or take up new activities. This ensures that their professional future is more secure after they leave office, and thus strengthens their independence. It also allows people who are self-employed to hold a mandate as a Member of the Bundestag. That said, people who hold positions in the public service, such as civil servants, judges, soldiers or other public-service employees, are automatically suspended from those positions for the duration of their term of

office as Members of the Bundestag. In return, they are entitled to be reinstated after they leave office.

While Members are entitled in principle to engage in secondary activities, they are required to comply with far-reaching disclosure and publication obligations enshrined in the Code of Conduct for Members of the German Bundestag. The Code of Conduct, also referred to as the "transparency rules", essentially aims to ensure that the public can access information about the secondary activities of each individual Member at any time. In this way, potential combinations of interests or economic dependencies are disclosed, and members of the public can draw their own conclusions regarding the way in which a Member exercises his or her mandate.

All Members of the Bundestag are therefore required to notify the President of the Bundestag, on a continuous basis, of their individual activities and positions, whether voluntary or paid. They have to provide information about activities pursued prior to their acceptance of the mandate, paid activities in which they engage alongside the fulfilment of their mandate, functions they perform in companies, corporations, associations, foundations and other organisations, shareholdings in companies, agreements on future activities, donations and other benefits received in respect of political activity, and gifts received from guests or hosts. If Members engage in a paid activity, they are required in principle to disclose the name and registered office of the client or organisation concerned, and to report the income they earn above certain *de minimis* limits. Members who breach these notification requirements face sanctions (in the form of an admonishment, a statement indicating that the requirements have been breached published as a Bundestag printed paper, or a fine). In accordance with the Code of Conduct, most of the information provided is published on the Bundestag's website, [www.bundestag.de](http://www.bundestag.de), and in the Official Handbook of the German Bundestag, and is continuously updated. Income is indicated in the form of ten categories, beginning with 1,000 euros (Category 1) and ending with a secondary income of over 250,000 euros (Category 10).

There are also types of payment which Members are generally prohibited from accepting to ensure their independence is not compromised. These include payments which are only granted in the expectation that the interests of the payer will be represented and asserted in the Bundestag (known as "payments by interested parties"). The same applies, in the context of secondary activities, to the acceptance of benefits without the Member rendering an appropriate service in return (known as "unearned

income"). The acceptance of donations, i.e. payments to support a Member's political activity, can also be impermissible in certain circumstances. All in all, the Bundestag has established a system of legal rules which, while not requiring complete transparency from Members, nonetheless provide a public record of whether individual Members are engaging in activities alongside their mandate, and if so, what those activities are.

The Members of the German Bundestag receive payments from the public purse for carrying out their work. In this context, a distinction has to be made between Members' remuneration, which represents their "income" for the work they perform in Parliament, and what are known as Members' allowances, which cover costs incurred by Members in connection with the fulfilment of their mandate.

The Basic Law stipulates in Article 48 (3) that the Members of the Bundestag are "entitled to remuneration adequate to ensure their independence". The Federal Constitutional Court found as early as 1975 that the fulfilment of a mandate has become a full-time job for Members. It ruled that the remuneration must provide an adequate livelihood for Members and their families, including for Members who have no professional income or who lose their professional income, in full or in part, as a result of their mandate. At the same time, it ruled, the level of Members' remuneration must be commensurate with the importance of their mandate, taking into consideration the workload involved and their status within the constitutional framework. In view of the formal equality of all parliamentarians, the remuneration must in principle be the same for each Member. In its judgment on Members' remuneration, the Federal Constitutional Court also emphasised that Parliament itself must decide on the level of the financial benefits for Members.

The Bundestag took these requirements into account by choosing, since 1995, to base Members' remuneration on that of holders of public office whose responsibilities and workload are comparable to those of Members of Parliament. The Members of the Bundestag Act specifies that the office-holders in question are judges of the highest federal courts (who, like Members, take decisions for the whole of Germany, are not bound by instructions, and are subject only to the law), and mayors of cities, towns and municipalities (who are also elected to office for a fixed term, and who have responsibility for a section of the population roughly equivalent in size to a constituency). However, the actual level of Members' remuneration has always remained below these benchmarks. Not only that: whenever the Bundestag has adjusted the level of remuneration, it has

faced public criticism that this is "inappropriate" and "self-serving" on the part of the Members. The Bundestag therefore set up an Independent Commission to Examine Legal Provisions Specific to Members of the Bundestag, which published its recommendations on 18 March 2013, including recommendations on the procedure for adjusting Members' remuneration (Bundestag printed paper 17/12500). In a bill adopted on 21 March 2014, the German Bundestag accepted the Commission's recommendations and decided to link Members' remuneration to general wage developments in Germany in future. This indexing procedure will be applied for the first time on 1 July 2016. In advance of this, Members' remuneration – on which, incidentally, Members pay tax – has been aligned in two stages with the remuneration of federal judges, bringing it to 9,082 euros with effect from 1 January 2015. Members who hold positions of special responsibility involving a higher workload receive supplementary allowances. Specifically, the President of the Bundestag receives a supplementary allowance equivalent to 100% of the current Members' remuneration, while the Vice-Presidents of the Bundestag receive 50% and Members who chair committees, committees of inquiry or study commissions receive 15%.

Another element of remuneration is adequate retirement provision for Members. The superannuation benefits they receive are intended to close the provision gap caused by their parliamentary mandate, which typically involves giving up another occupation in which they would otherwise be accumulating pension credits. Members are, in principle, entitled to begin receiving superannuation benefits upon reaching their 67th birthday, provided that they belonged to the Bundestag for at least one year. The amount to which Members are entitled for one year of membership is equivalent to 2.5% of Members' remuneration, i.e. 227 euros at present, and the amount rises by a further 2.5% for each year of membership to a maximum level of 67.5% of Members' remuneration, a level attained after 27 years in Parliament. The rate of increase has been gradually lowered from its previous level of 4% per year, and the maximum level has been reduced from 75%. In line with a proposal made by the Independent Commission, from the Bundestag's 19th electoral term the maximum level will be reduced further to 65% of Members' remuneration, and Members will lose their entitlement to early retirement with full benefits. Instead, Members will only be able to begin receiving their superannuation benefits from the age of 63 at the earliest, and this will involve reductions in the level of benefits they receive. All in all, the law offers Members a retirement provision which helps to ensure their political and economic independence, including during their term of office.

Finally, the personal benefits which Members receive also include transitional emoluments. These are intended to help former Members to resume their previous careers or take up a new occupation when they leave Parliament; former Members are paid the equivalent of the current Members' remuneration for up to 18 months, depending on the length of their membership.

Under the Members of the Bundestag Act, other income received by a (former) Member is offset against the payment of remuneration, superannuation benefits and transitional emoluments. This can, depending on the circumstances, reduce a Member's entitlements to zero.

Members' allowances, which consist of benefits in kind and financial benefits, serve to cover costs incurred by Members during their term of office in connection with the fulfilment of their mandate. These allowances include:

- a furnished office at the seat of the Bundestag in Berlin;
- use of the Bundestag's common information and communications system;
- free use of all transport services provided by the rail operator Deutsche Bahn AG within Germany and of official Bundestag vehicles within Berlin's city boundaries;
- reimbursement of substantiated expenditure on information and communications technology equipment, in particular, up to a maximum annual limit of 12,000 euros;
- reimbursement of expenditure in connection with the employment of staff to assist the Member with the performance of his or her parliamentary work in Berlin and in his or her constituency. A maximum monthly allowance of 16,913 euros (as at: March 2015) is available for this. If the conditions for reimbursement (enshrined in detailed implementing provisions) are met, the Members' staff have their salaries paid to them direct by the Administration of the Bundestag;
- a monthly expense allowance of 4,267 euros (as at: January 2015) to cover all other expenditure incurred by Members in connection with the fulfilment of their mandate. It compensates, in particular, for the cost of the establishment and upkeep of one or more constituency offices, additional expenditure incurred at the seat of Parliament in Berlin (e.g. for a secondary residence), travel costs arising in the fulfil-

ment of the mandate, and expenditure on constituency work, representative duties, invitations, etc. Unlike Members' remuneration, this expense allowance is tax-free. On the other hand, Members (unlike other workers) cannot offset costs incurred in connection with their work against their tax liability, not even if their actual expenditure exceeds the amount of the monthly expense allowance.

## ► The parliamentary groups

The newly elected and re-elected Members of the Bundestag gather in Berlin in the first few days after the election to form and constitute parliamentary groups. In accordance with the Bundestag's Rules of Procedure, a parliamentary group may be formed on the following conditions: firstly, it must comprise at least 5% of the Members of the Bundestag, i.e. currently at least 32 Members. In addition, its members must belong to the same party or to parties which have similar political objectives and do not, therefore, compete with one another in any of the 16 *Länder*. For example, the CDU (present in all *Länder* apart from Bavaria) and the CSU (present only in Bavaria) have formed a single parliamentary group in every electoral term since 1949.

Parliamentary groups are sometimes also referred to as "parties in Parliament". They are the organisations through which political objectives and initiatives are implemented and pursued in concrete terms, and they play a decisive role in the work of the Bundestag. It is in their parliamentary groups that the political parties agree on the positions they then present to the Bundestag and the general public.

Parliamentary groups are expected to take a unanimous stance on the major issues of the day. And parliamentary groups themselves need unity on such issues, both to sharpen their political profile and to ensure the effectiveness of their parliamentary work. They do not need to "whip" their members into line to ensure unity of this kind.

With regard not only to the passage of legislation but also to a host of other parliamentary functions in the Bundestag, the Rules of Procedure confer certain rights exclusively on the parliamentary groups – or 5% of the Members of the Bundestag. For instance, only they have the right to introduce bills, table motions or submit major and minor interpellations; to move amendments to bills even at third reading; to request postponement of items of business or of a sitting; to question whether the plenary

has a quorum; and to demand a recorded vote or a debate on a matter of topical interest, and so on. Without doubt, therefore, the parliamentary groups are the key centres of political power, and the main driving forces, in the work of the Bundestag.

The parliamentary groups are not organs of the Bundestag, but rather parts of the Bundestag vested with rights of their own. This autonomy entitles them to assert their constitutional rights, and those of the Bundestag, before the Federal Constitutional Court. In view of the fact that they perform various duties assigned to them by the Basic Law, the Members of the Bundestag Act (which states in Section 47 (1) that "The parliamentary groups shall assist in the performance of the duties of the German Bundestag") and the Bundestag's Rules of Procedures, they are legally entitled to state funding for their work. This consists of a basic sum for each parliamentary group and a component based on the number of members in the group, as well as an additional sum given to each opposition parliamentary group.

Each parliamentary group elects an executive committee comprising a chairperson, several deputy chairpersons, parliamentary secretaries and a varying number of other Members. In the CDU/CSU parliamentary group, the chairperson of the Bundestag group of CSU parliamentarians is also traditionally the first deputy chairperson of the CDU/CSU parliamentary group.

Each parliamentary group sets up a number of working groups or working parties to prepare the ground for decisions subsequently taken by the parliamentary group as whole. Each parliamentary group also appoints a spokesperson for each Bundestag committee. He or she is responsible for coordinating the work of the members of the parliamentary group on the respective committee and for ensuring that they act in line with the positions agreed by the group as a whole. Thus, the work of the Bundestag's committees, too, is prepared and steered by the parliamentary groups.

In the 1st electoral term (1949 – 1953), the Bundestag was composed of 8 parliamentary groups. From the 4th to the 9th electoral term (1961 – 1983), the Bundestag had only three parliamentary groups (CDU/CSU, SPD, and FDP). In the 10th and 11th electoral terms (1983 – 1990) they were joined by a fourth – that of the Greens. In the 12th electoral term (1990 – 1994), a special feature of the first all-German elections enabled two further groupings to enter the Bundestag: the PDS/Left List and Alliance 90/The Greens. In the 15th electoral term, the Bundestag was com-

posed of four parliamentary groups (SPD, CDU/CSU, Alliance 90/The Greens and FDP); in the 16th and 17th electoral terms, the Left Party entered the Bundestag as a fifth parliamentary group. In the Bundestag elections in 2013 for the 18th electoral term, the FDP failed to secure the minimum 5 per cent of the vote required to enter Parliament, with the result that it is no longer represented in the Bundestag for the first time since 1949.



## The chairpersons of the parliamentary groups



Volker Kauder  
Chairman of the CDU/CSU parliamentary group



Gerda Hasselfeldt  
First deputy chairwoman of the CDU/CSU parliamentary group and chairwoman of the Bundestag group of CSU parliamentarians



Thomas Oppermann  
Chairman of the SPD parliamentary group



Dr Dietmar Bartsch  
Chairman of the Left Party parliamentary group



Dr Sahra Wagenknecht  
Chairwoman of the Left Party parliamentary group



Katrin Göring-Eckardt  
Chairwoman of the Alliance 90/The Greens parliamentary group



Dr Anton Hofreiter  
Chairman of the Alliance 90/The Greens parliamentary group

## ► The Bundestag's constituent meeting

The first meeting of the Bundestag is convened by the outgoing President no later than 30 days after the election. The beginning of this first meeting marks the end of the previous electoral term, and thus also of the term in office of the previous President of the Bundestag. The meeting is therefore opened by the oldest Member of the Bundestag, known as the President by age. The meeting centres around the election of the new President of the Bundestag. In accordance with a parliamentary tradition stretching back to 1920, the largest parliamentary group nominates the candidate for this office. The Members of the 18th German Bundestag re-elected the outgoing President of the Bundestag, Professor Norbert Lammert (CDU/CSU), on 22 October 2013.

Once the new President has been elected, he or she takes over as chair of the meeting from the President by age and, again in line with parliamentary tradition, delivers a non-partisan political speech for which he or she can expect broad support in the House. This is followed by a series of votes in which the new Bundestag establishes the rules for its parliamentary work. These can only be adopted for a single electoral term, since each Bundestag is free to decide, within the framework of the Basic Law, how to organise its work.

Following the votes on the Rules of Procedure, the Bundestag decides how many deputies the President should have and proceeds to elect the Vice-Presidents. The Rules of Procedure give each parliamentary group at least one seat on the Presidium. In the 18th electoral term, the Bundestag has decided that the largest and second-largest parliamentary groups will each provide two Vice-Presidents, while the other parliamentary groups will each provide one.

The rules governing Parliament's work include, in particular, the Rules of Procedure of the German Bundestag, which are adopted during the constituent meeting. The Rules of Procedure regulate the Bundestag's internal procedures, for example the way in which bills and motions are dealt with in the plenary and the committees, the organisation of plenary sittings, and the procedures relating to votes and elections. They also contain the Code of Conduct for Members (see page 13 et seq. above). However, the main function of the Rules of Procedure is in fact to establish and safeguard the opposition's rights as the minority in Parliament. Without a binding set of rules, the majority of the day would be able to determine the Bundestag's procedures and restrict or eliminate the mi-

minority's opportunities for participation, except where such minority rights are enshrined in the constitution or other laws.

The governing coalition formed in the 18th electoral term by the CDU, CSU and SPD holds a total of 503 of the German Bundestag's 630 seats. The parliamentary groups of the Left Party and Alliance 90/The Greens hold 127 seats between them, around 20 per cent of the total number of seats. However, the Rules of Procedure provide for various minority rights that can only be exercised if at least 25 per cent of the Members support the motions concerned.

The Bundestag therefore took the decision on 3 April 2014 to strengthen the parliamentary opposition's rights by adding to the Rules of Procedure a provision on the special application of minority rights in the 18th electoral term (Rule 126a). This has temporarily adjusted the number of Members required to support certain motions in view of the relative strengths of the parliamentary groups at present. For example, in the current electoral term a committee of inquiry or a study commission must be established if 120 Members support a motion to this effect. If the opposition parliamentary groups present a united front, they can also require the Defence Committee to constitute itself as a committee of inquiry to investigate a "defence matter". Likewise, the President of the Bundestag must convene a sitting of the Bundestag upon the motion of 120 Members. These and other minority rights will be examined in greater detail in a later section.



## The Presidium



President  
Professor Norbert Lammert CDU/CSU



Vice-President  
Peter Hintze CDU/CSU



Vice-President  
Johannes Singhammer CDU/CSU



Vice-President  
Edelgard Bulmahn SPD



Vice-President  
Ulla Schmidt SPD



Vice-President  
Petra Pau The Left Party



Vice-President  
Claudia Roth Alliance 90/The Greens

## ► Election of the Federal Chancellor

Immediately after the elections to the Bundestag, and long before the Bundestag's constituent meeting, negotiations begin on the formation of a new government. Generally, they take the form of coalition talks, as it is rare for one party to gain an absolute majority. The main group responsible for the negotiations usually consists of the leaders of the parties and parliamentary groups and of the outgoing or future government. The detailed preliminary work on individual policy fields normally takes place in smaller working groups. As well as members of the main negotiating group, additional experts are also involved, such as ministers with responsibility for the subject in question, deputy chairpersons of the parliamentary groups, and chairpersons of internal working groups set up by the parliamentary groups. The aim of these negotiations, which since the 1970s have generally taken around three to four weeks, though significantly longer on occasion, is to build a parliamentary majority for a programme of political action over the electoral term and to agree on the distribution of government ministries between the coalition partners. The outcome of the coalition negotiations is adopted by the presidiums, executive committees and parliamentary groups of the parties concerned in the form of a coalition agreement, which is normally also presented to the party conferences for their approval. Following the Bundestag elections in 2013, the SPD for the first time allowed all party members to vote on the coalition agreement negotiated between the CDU/CSU and the SPD.

The Federal President is kept up to date by the chief negotiators on progress in forming a new government and must be formally informed of the final outcome as, in accordance with Article 63 of the Basic Law, the President has the task of proposing a candidate for election as Federal Chancellor to the Bundestag.

In accordance with the Basic Law and the Rules of Procedure, the Federal Chancellor is elected by secret ballot without prior debate. To be elected, the candidate must obtain the votes of the majority of the Members of the Bundestag, i.e. a total of 316 in the current electoral term. The person elected is then appointed by the Federal President and sworn in before the Bundestag.

To date, all the candidates put forward by the Federal President have been elected. Were this not to be the case, a complicated procedure set out in Article 63 (3) and (4) of the Basic Law, and providing for several

ballots, would have to be applied. Were no candidate to gain a majority in these ballots, the Federal President would have the power to dissolve the Bundestag. This shows how central the election of the Federal Chancellor is to the functioning of the parliamentary system.

Since the coalition parties agree well before the election of the Federal Chancellor on the composition of the Federal Government (the Cabinet), the Federal Chancellor is generally able to propose a list of ministers to the Federal President on the same day as his or her election. The ministers are then appointed by the Federal President and sworn in before the Bundestag.

Traditionally, the Federal Chancellor delivers a government policy statement during one of the next plenary sittings, in which he or she presents the broad outlines of the new government's programme. The Chancellor's statement is followed by a general debate in the new Bundestag, often lasting several days. With this debate, the political work of the new Bundestag begins.

## The organs of the Bundestag

The organs of the Bundestag are office-holders and bodies elected or appointed by the plenary of the Bundestag to perform a range of specific parliamentary functions.

### ► The President and Vice-Presidents

The President and the Vice-Presidents are elected for one electoral term. They cannot be removed from office by a decision of the Bundestag. This arrangement is intended to strengthen their independence in carrying out their official duties, especially in chairing the plenary sittings of the Bundestag. Should circumstances arise which cast doubt on a President's or Vice-President's suitability to remain in office, their resignation is the only way to enable the appointment of a successor.

In the Rules of Procedure, the most important duties of the President are described as follows:

"The President shall represent the Bundestag and conduct its business. He or she shall uphold the dignity and rights of the Bundestag, further its work, conduct its debates fairly and impartially,

and maintain order in the Bundestag. The President may participate in the meetings of any committee without being entitled to vote."

The President represents the Bundestag in its dealings with all German constitutional bodies and in the public domain, both in Germany and internationally. Since the Bundestag, as the only constitutional body directly elected by the people, is the supreme authority in the structure of state, the President of the Bundestag is second in rank only to the head of state, the Federal President. All correspondence concerning the Bundestag (rather than the parliamentary groups or Members) must be addressed to the President. The President also represents the Bundestag in any legal disputes. He or she does not do so in person, however, legal representatives being appointed by the Bundestag. To ensure the Bundestag's independence, the President is empowered by Article 40 (2) of the Basic Law to exercise proprietary and police powers in the Bundestag buildings. At the same time, the President is head of a supreme federal authority in the form of the Administration of the German Bundestag (see p. 141 et seq.). The Act on Political Parties also assigns the President of the Bundestag the executive functions of administering the allocation of public funding to the political parties.

The President's most visible public function is to conduct the sittings of the plenary, alternating with the Vice-Presidents. The President opens and closes the sittings, calls each item of business on the agenda, opens and closes debates, grants leave to speak and determines the order in which speakers are called. As a matter of principle, the President in the Chair is impartial in his or her conduct of sittings and resolves any procedural questions which may arise. Public criticism of the President's conduct of sittings constitutes a breach of parliamentary order. To ensure the orderly conduct of plenary sittings, the President may call upon speakers who digress to keep to the subject under debate, and call to order any Member who, when speaking or interrupting another speaker, commits a breach of order, for instance by making an insulting remark or disturbing the debate by making excessive noise. In the case of a non-minor breach of order or failure to respect the dignity of the Bundestag, the President may impose a fine of 1,000 euros on a Member of the Bundestag, rising to 2,000 euros if the breach is repeated. In the event of a serious breach of order, the President may even suspend a Member from participating in the Bundestag's sittings and meetings of its bodies for up to 30 sitting days – with consequences in terms of the amount the Member receives as an expense allowance.

If disturbances in the Bundestag threaten to obstruct business in the House, the President may interrupt the sitting, if necessary by leaving the Chair. The President may also expel any person from the public gallery who disturbs the sitting by behaving in a disorderly or unseemly manner.

During the plenary sittings, the President and the Vice-Presidents generally alternate in the Chair every two hours. When in the Chair, the Vice-Presidents have the same powers in conducting sittings and maintaining order as those vested in the President.

### ► The Presidium

The President and the Vice-Presidents form the Presidium (see p. 23), which meets regularly in each week of sittings to discuss the management of the internal affairs of the Bundestag. The Presidium is involved in personnel matters relating to senior civil servants in the Bundestag Administration and in concluding important contracts. It also looks closely at matters concerning public relations. Its functions include the authorisation of trips abroad by delegations from the committees and the parliamentary friendship groups. It is also involved in monitoring Members' adherence to the Code of Conduct. However, the Presidium's importance and influence go far beyond the simple exercise of these powers. In practice, it is a collegiate management body which discusses all important issues, including those which legally fall within the decision-making competence of the President of the Bundestag.

### ► Members acting as Secretaries

In accordance with Article 40 of the Basic Law, the Bundestag elects from among its ranks a number of Secretaries to assist the President and the Vice-Presidents. It is free to choose how many it appoints; in the current 18th electoral term there are 65 Secretaries, who work in rotation on sitting days.

The President and two Secretaries, one from the governing majority and one from the opposition, form the Chair. The Secretaries assist the President in conducting the sittings by keeping note of Members who wish to speak and motions that are tabled, compiling lists of speakers, recording the formal proceedings and attending to other matters as requested by the President. They play an important role in votes by establishing the

outcome in conjunction with the President in the Chair. The Chair can only decide unanimously whether the majority of votes cast is for or against (for more details about the voting procedure, see p. 70 et seq.)

## ► The Council of Elders

The Council of Elders is a joint deliberative body whose task under the Rules of Procedure is to manage the internal affairs of the Bundestag. It is composed of the President, the Vice-Presidents and 23 further Members of the Bundestag appointed by the parliamentary groups in proportion to their size. They include the parliamentary secretaries (whips) of each parliamentary group.

The Council of Elders meets regularly during each week of sittings and is chaired by the President of the Bundestag. Its meetings are also attended by a representative of the Federal Government: generally one of the ministers of state at the Federal Chancellery, who is also a Member of the Bundestag.

The Council of Elders performs two different types of function. Firstly, it assists the President in the conduct of business and ensures that agreement is reached among the parliamentary groups, for instance on the appointment of the committee chairpersons and deputy chairpersons, and on the Bundestag's work programme. Secondly, as a collegiate body it decides on the internal affairs of the Bundestag, so long as these do not fall within the exclusive competence of the President or the Presidium.

The Council of Elders establishes the Bundestag's programme of work for the coming year well in advance. It generally tries to ensure that the Bundestag convenes for two weeks of sittings at a time, followed by one or two weeks in which there are no sittings. Owing to differences in school holidays, the summer recess and special public holidays, this is not always possible, however. For many years, therefore, the number of weeks of sittings has varied between 22 and 24.

Another important task of the Council of Elders is to set the plenary's agenda for the coming week. It decides on the items of business to be dealt with (bills, motions, interpellations, government policy statements, etc.). It also decides whether a debate is to be held on any of the points on the agenda, on the length of such a debate, and on its structure. In

many cases, these agreements are prepared by the parliamentary secretaries of the parliamentary groups before the Council of Elders meets.

However, all the agreements reached in the Council of Elders are really no more than proposals which the plenary can accept or reject. For instance, any Member of the Bundestag may move an amendment to the agenda of a sitting before the first item is called so long as the motion was submitted to the President by 18.00 hours on the previous day at the latest. The Bundestag must then take a decision on the motion. Members may also raise a point of order and request changes to the planned duration and structure of a debate. They virtually never do so, however. It is also rare for the Bundestag to conduct a vote on an amendment to the agenda. Once the agenda has been approved, which occurs automatically when the first item is called, a further item of business may be placed on the agenda only with the consent of all the parliamentary groups.

The Council of Elders also deals with disputes which arise during plenary sittings and issues relating to the interpretation of the Rules of Procedure. The President also discusses many other questions with the members of the Council of Elders, including committee schedules, the referral to committee of bills and other items of business, relating to EU legislation for instance, the rights of Members, and the exercise of parliamentary rights by the Bundestag. On all such matters, the President strives for cross-party agreement between all of the parliamentary groups.

On a range of matters, the Council of Elders may take decisions by majority vote. These include, in particular, preparing the estimates for the Bundestag budget (departmental budget 02 of the federal budget). Under the Rules of Procedure, the Budget Committee, when making its recommendations to the Bundestag for the last reading of the draft federal budget, may deviate from these estimates only in consultation with the Council of Elders, i.e. only once it has given the Council of Elders an opportunity to comment. The Council of Elders also decides on necessary construction projects and the allocation of rooms to the parliamentary groups and the Bundestag Administration, as well as on matters relating to Members' personal staff, the Visitors' Service, and much more. Such decisions are prepared by commissions set up by the Council of Elders. In the 18th electoral term there are five such commissions, each chaired by a Vice-President:

- Commission on the Legal Status of Members of the Bundestag
- Commission on Buildings and Room Allocation

- Commission on Members' Staff
- Commission for the Use of New Information and Communications Technologies and Media
- Commission on Internal Affairs of the Bundestag

### ► The permanent committees

The German Bundestag is a parliament in which the emphasis is on committee work. At the beginning of each electoral term, the Bundestag establishes its permanent committees, decides on their size, and determines the distribution of posts among the parliamentary groups, i.e. the mathematical system by which committee seats and chairs are allocated to the parliamentary groups in proportion with their relative strengths. All of these decisions are, as a rule, taken on the basis of cross-party agreements.

The only committees whose establishment is required by the Basic Law are the Committee on Foreign Affairs, the Petitions Committee, the Defence Committee, and the Committee on the Affairs of the European Union. Two more committees, the Budget Committee and the Committee for the Scrutiny of Elections, Immunity and the Rules of Procedure, are required by ordinary legislation or the Rules of Procedure. In recent electoral terms, the Bundestag has generally established more than 20 permanent committees, which in organisational terms largely mirror the structure of the Federal Government; as a rule, the Bundestag establishes one specialised committee for each ministry. There are a number of exceptions: not only the Committee on Internal Affairs but also the Sports Committee is responsible for matters falling within the competence of the Ministry of the Interior. Likewise, the Finance Ministry is mirrored not only by the Finance Committee, which is responsible for matters relating to fiscal legislation, but also by the Budget Committee, which considers the federal budget and all related issues. Given that its task is to deliberate on the budget and to exercise budgetary control, the Budget Committee also participates in the parliamentary scrutiny of all federal ministries. Furthermore, since the 12th electoral term (1990–1994) a separate committee has been responsible for questions relating to tourism. The Committee on the Affairs of the European Union also falls outside the general committee structure, as its work relates not only to the Federal Foreign Office but also a large number of other government ministries.

The Committee on Human Rights and Humanitarian Aid and the Committee on Cultural and Media Affairs also have a special status. Lastly, it should be pointed out that there is no ministry which has an area of responsibility comparable with that of the Committee for the Scrutiny of Elections, Immunity and the Rules of Procedure or that of the Petitions Committee.

Once the government has been formed and the organisational structure of the federal ministries has thus been determined, the permanent committees are established for the duration of the electoral term. A special situation arose at the beginning of the current 18th electoral term, when the formation of the government, and thus also the establishment of the Bundestag's committees, was delayed by the unusually protracted coalition talks between the CDU/CSU and the SPD, and by the internal party ballot subsequently held by the SPD. For the first time in its history, the Bundestag established a "Main Committee" on 28 November 2013 to consider various items of business, especially urgent matters, during this transitional period. The Main Committee had 47 members and an equal number of substitute members, and the decision establishing it specified that it was responsible for the matters referred to it by the plenary. It served as a committee on EU affairs, foreign affairs and defence for the purposes of Articles 45, 45a and 45c of the Basic Law, as well as a petitions committee and a budget committee for the purposes of legislative provisions and Rules of Procedure. It was chaired by the President or one of his deputies, who was not entitled to vote. The Main Committee was dissolved when the permanent committees were established in mid-January 2014.

In terms of their composition, the committees are a microcosm of the plenary. The number of committee seats to which a parliamentary group is entitled on the basis of its size is calculated using the "Saint Laguë/Schepers" method.

### The Saint Laguë/Schepers method:

Using this method, the total number of Members of the Bundestag is divided by the number of members of each parliamentary group; the resulting number is then multiplied progressively by 0.5, 1.5, 2.5 and so on. These calculations produce rank order numbers according to which the seats are distributed: the first seat is allocated to the parliamentary group with the lowest rank order number, the second seat to the one with the next lowest rank order number, and so on. Using this method, the distribution of seats in the bodies of the 18th German Bundestag is as follows:

#### Relative strengths of the parliamentary groups

CDU/CSU:	311 Members
SPD:	193 Members
The Left Party:	64 Members
Alliance 90/The Greens:	<u>63 Members</u>
	631 Members

#### Calculation of rank order numbers:

CDU/CSU parliamentary group		SPD parliamentary group	
<u>631</u>	× 0.5 = 1.014	<u>631</u>	× 0.5 = 1.635
311	× 1.5 = 3.043	193	× 1.5 = 4.904
	× 2.5 = 5.072		× 2.5 = 8.174
	and so on		and so on

The Left Party parliamentary group		Alliance 90/The Greens parliamentary group	
<u>631</u>	× 0.5 = 4.930	<u>631</u>	× 0.5 = 5.008
64	× 1.5 = 14.789	63	× 1.5 = 15.024
	× 2.5 = 24.648		× 2.5 = 25.040
	and so on		and so on

On the basis of this calculation, the distribution of seats in a committee with 34 members is as follows: CDU/CSU 17, SPD 11, The Left Party 3, Alliance 90/The Greens 3.

The distribution of committee chairs and deputy chairs among the parliamentary groups is also calculated using the Saint Laguë/Schepers method. In the current 18th electoral term, the CDU/CSU therefore appoints the chairs of 12 committees, the SPD 7, and the Left Party and Alliance 90/The Greens two each. The parliamentary groups generally reach an agreement on which of them will appoint the chairperson and deputy chairperson of which committee. If they are unable to agree, a special procedure is applied: in rank order, the parliamentary groups choose which of the remaining vacant committee chairs they wish to fill.

How do Members of the Bundestag become members of a committee of their choosing? Here, too, the parliamentary groups play a key role, as it is they which appoint committee members. Therefore, if a Member wishes to sit on a particular committee, he or she must submit a corresponding request to his or her parliamentary group, which then processes and coordinates all the requests it receives. A parliamentary group may also remove individual committee members from their post and replace them with another of its members.

If possible, Members should sit only on one committee as a regular member. Substitute members may attend all the committee's meetings, but only have the right to vote when standing in for a regular member from their parliamentary group who is unable to be present. The number of votes in a committee is equal to the number of its regular members.

Members not belonging to a parliamentary group or to a grouping have a special status in the committees. On the strength of a decision by the Federal Constitutional Court, and irrespective of the proportional method of seat allocation described above, they are entitled to sit on a committee to ensure that they have sufficient opportunity to take part in the work of Parliament. Which committee they sit on is decided by the President of the Bundestag after consultation with the Members concerned. Their membership gives them the right to speak and to table motions but not to vote.

Once the process of determining the committees' composition has been completed, the President convenes their constituent meetings. These meetings are chaired by the President or by one of the Vice-Presidents. The committee must have a quorum, i.e. the majority of its members must be present. A committee is considered to have been constituted once the presence of a quorum has been ascertained and the committee chairperson confirmed in office. It can then begin its political work.

In the 18th electoral term, the Bundestag has set up the following 23 permanent committees:



## The committees:



Committee for the Scrutiny of Elections, Immunity and the Rules of Procedure (14 members)

Chairman:

Dr Johann Wadephul, CDU/CSU



Petitions Committee (26 members)

Chairwoman:

Kersten Steinke, The Left Party



Committee on Foreign Affairs (37 members)

Chairman:

Dr Norbert Röttgen, CDU/CSU



Committee on Internal Affairs (37 members)

Chairman:

Ansgar Heveling, CDU/CSU



Sports Committee (18 members)

Chairwoman:

Dagmar Freitag, SPD



Committee on Legal Affairs and Consumer Protection (39 members)

Chairwoman:

Renate Künast, Alliance 90/The Greens



Finance Committee (37 members)

Chairwoman:

Ingrid Arndt-Brauer, SPD



Budget Committee (41 members)

Chairwoman:  
Dr Gesine Löttsch, The Left Party



Committee on Economic Affairs and Energy (46 members)

Chairman:  
Dr Peter Ramsauer, CDU/CSU



Committee on Food and Agriculture (34 members)

Chairman:  
Alois Gerig, CDU/CSU



Committee on Labour and Social Affairs (41 members)

Chairwoman:  
Kerstin Griese, SPD



Defence Committee (32 members)

Chairman:  
Wolfgang Hellmich, SPD



Committee on Family Affairs, Senior Citizens, Women and Youth (36 members)

Chairman:  
Paul Lehrieder, CDU/CSU



Committee on Health (37 members)

Chairman:  
Dr Edgar Franke, SPD



Committee on Transport and Digital Infrastructure (41 members)

Chairman:  
Martin Burkert, SPD



Committee on the Environment, Nature Conservation,  
Building and Nuclear Safety (36 members)

Chairwoman:  
Bärbel Höhn, Alliance 90/The Greens



Committee on Human Rights and Humanitarian Aid  
(16 members)

Chairman:  
Michael Brand, CDU/CSU



Committee on Education, Research and Technology  
Assessment (34 members)

Chairwoman:  
Patricia Lips, CDU/CSU



Committee on Economic Cooperation and Development  
(21 members)

Chairwoman:  
Dagmar Wöhrl, CDU/CSU



Committee on Tourism (18 members)

Chairwoman:  
Heike Brehmer, CDU/CSU



Committee on the Affairs of the European Union  
(34 members)

Chairman:  
Gunther Krichbaum, CDU/CSU



Committee on Cultural and Media Affairs (18 members)

Chairman:  
Siegmund Ehrmann, SPD



Committee on the Digital Agenda (16 members)

Chairman:  
Jens Koeppen, CDU/CSU

The Rules of Procedure refer to the committees as "bodies responsible for preparing the decisions of the Bundestag". This brief description highlights the immense importance of the committees in Parliament's work. For example, committees consider all items referred to them by the plenary, especially bills. The committee then issues a recommendation for a decision, in which it advises the plenary of the Bundestag on what action should be taken on the item referred to it. Often, a committee must consider a number of different bills and motions relating to the same issue, e.g. one from the government or the parliamentary groups making up the governing coalition, one from the opposition and one from the Bundesrat. In such cases, the committee decides which text it will take as the basis for its deliberations. The other texts are then included as suggestions for amendments. The original text may therefore undergo substantial modification (for further details about the legislative process in the committees, see p. 108 et seq.).

The recommendations for decisions which committees submit to the Bundestag may relate only to items of business referred to the committees, or to questions directly connected with them. Committees are in principle not authorised to take final decisions on any matter.

The committees are expressly permitted under the Rules of Procedure to deal with matters in their sphere of competence which are not referred to them by the plenary. In such cases, a committee discusses the matters concerned and may request representatives of "its" ministry to attend its meetings and provide information. It is in fact standard practice for a committee to request "its" minister to report on planned legislation and other topical questions relating to his or her department several times during the electoral term. However, the committees' right to take up matters on their own initiative does not encompass the power to submit recommendations for decisions on them to the plenary.

The committees may also recommend that "their" ministers take specific measures. Their right to take up matters on their own initiative has become an important tool in scrutinising the work of the ministries. The committees are an ideal forum for a dialogue on questions of detail.

However, the constant process of discussion which accompanies measures planned by the executive (e.g. civilian or military procurement, transport planning, etc.) also has its drawbacks. Political scrutiny can easily lead to a degree of participation which almost turns into a form of co-government, i.e. committees come to share responsibility for decisions

taken by ministers, thereby making it more difficult for them to express criticism at a later date.

The committees are obliged to deal with the matters referred to them without delay. If, for whatever reason, a committee's deliberations on a given item of business are delayed, ten weeks of sittings after referral of the item in question a parliamentary group or five per cent of the Members of the Bundestag, i.e. currently (at least) 32 Members, may demand that the committee submit a report on the progress of its discussions. If a report is requested, it must be placed on the agenda of the Bundestag. This is an instrument by means of which a minority, and in particular the opposition, can put pressure on the committees to complete their deliberations on a given item. However, ten weeks of sittings are a long time; they may cover up to six months.

Committee meetings are prepared, convened and presided over by the respective committee chairperson. The chairperson may only convene committee meetings within the timetable drawn up by the Council of Elders. He or she is obliged to convene a meeting if either a parliamentary group on the committee or a third of all committee members so demand and at the same time inform him or her of the proposed agenda. Convening a committee meeting outside the set timetable, or outside Berlin, requires the permission of the President of the Bundestag, even if it has been agreed unanimously by the committee or requested by a parliamentary group. The committees routinely meet on Wednesdays in weeks of sittings. In preparation for their meetings, the chairperson meets with the spokespersons of the parliamentary groups on the committee – who are the main point of contact for the leaders of their parliamentary groups and who play a crucial role in determining the approach taken by their group in the committee's deliberations – in order to reach agreement on the agenda and on organisational and substantive matters for the next meeting, and to discuss long-term planning for the committee's work.

To prepare its work, each committee may, from among its members, form subcommittees for specific tasks, unless one third of its members object. Subcommittees are set up either to consider a specific bill or problem, or to deal with certain areas of the committee's remit for an entire electoral term. Examples of the latter are the Budget Committee's Subcommittee on European Union Issues and its Auditing Committee.

In exceptional cases, the parliamentary groups may nominate Members to a subcommittee who are not regular members of the respective per-

manent committee. It is also possible for several committees to establish a joint subcommittee, in particular to deal with cross-cutting issues.

A committee has a quorum if the majority of its members are present. However, a committee is always deemed to have a quorum unless, prior to a vote, a committee member requests specifically that the presence of a quorum be ascertained. This means that a committee can conduct its business and take decisions even if fewer than half of its members are present. In most cases, a request for the presence of a quorum to be ascertained is intended merely to prevent a vote being taken by the committee in a composition which does not reflect the relative strengths of the parliamentary groups in the Bundestag. If, however, a quorum is present, a vote in which a chance majority decides cannot be prevented. Such votes are not very meaningful, however, because they can subsequently be overturned by the plenary.

Each committee has the right to demand the presence of a member of the Federal Government, both at its regular meetings and at any public hearings it may hold. In practice, however, it is rare for a committee to have to resort to this right: generally, in the case of important issues ministers themselves have an interest in attending the committees' deliberations and, if they are unable to do so personally, delegate a state secretary to attend in their stead.

In principle, committee meetings are not open to the public. The committees are entitled to admit the public to their meetings, but in practice they seldom do so. Committee members believe that without the presence of the public and the media they are able to engage in more objective and more open discussions, without immediately committing themselves to a specific position in public.

As a result, however, the bulk of the Bundestag's work, i.e. the work in the parliamentary groups and their working groups, in the permanent committees and their subcommittees, in the Council of Elders and in the Presidium, takes place behind closed doors and therefore goes largely unnoticed by the public. The public forms its image of the Bundestag almost entirely on the basis of its plenary sittings, which can be followed from the visitors' galleries, on television or online. Because the number of Members actually present in the chamber is often relatively small, this image is distorted and leads people to believe, quite mistakenly, that the Bundestag does not go about its work with the necessary commitment. As the statistics on Parliament's work (see p. 92) show, the opposite is in fact true.

The committees may invite experts and representatives of interest groups to attend their non-public meetings. It is also customary for interest groups to communicate in writing their views on proposed legislation to the committees for inclusion in their deliberations. In the case of draft legislation which affects local authorities, the committees generally give the local-authority associations at federal level an opportunity to state their views before taking a decision.

In order to obtain information on a subject under debate, the committees may also hold public hearings attended by experts in the given field from outside Parliament. The committees make extensive use of their power to conduct such hearings. They are a means for the committees not only to gather relevant information but also to inform the public about a wide range of views on issues of general interest. They also give interest groups an opportunity to state their often widely diverging positions publicly in the Bundestag.

The right to request a public hearing is a minority right. A public hearing must be held upon the motion of one quarter of the committee's members (in the 18th electoral term, the motion must be supported by all committee members from the opposition parliamentary groups). However, this applies only to items of business referred to the committees by the plenary and not to those which committees take up on their own initiative.

Public hearings are broadcast live online ([www.bundestag.de](http://www.bundestag.de)); the videos can also be subsequently accessed from the online media library. In addition, the transcripts of the public hearings and the written statements submitted by interest groups and experts are also published on the committees' webpages.

A number of the permanent committees enjoy a special status, for instance the Committee for the Scrutiny of Elections, Immunity and the Rules of Procedure, also known as the 1st Committee. While most of the other committees focus on legislation, this committee deals with the German Bundestag's internal affairs. In particular, it is responsible for the interpretation and updating of the Rules of Procedure, the parliamentary procedure in connection with criminal proceedings against Members of the Bundestag (immunity procedure), the screening of Members for any previous activity for the State Security Service (Stasi) of the former German Democratic Republic, and – in the form of the Committee for the Scrutiny of Elections – for scrutiny of whether Bundestag and European elections have been conducted properly.

In its capacity as the **Committee for the Rules of Procedure**, the 1st Committee deals with questions about the application of individual provisions of the Rules of Procedure. Its decisions on their interpretation establish solutions for future disputes that are binding on the Bundestag as a whole. If it takes the view that the Rules of Procedure need to be amended in certain areas or adapted to reflect new circumstances, such as the German Bundestag's expanded competences in matters concerning the European Union, it has the right (under Rule 128 of the Rules of Procedure) to submit concrete proposals to the Bundestag, on which Parliament must take a decision. In addition, the Committee for the Rules of Procedure considers all items of business referred to it by the plenary, including bills concerning the legal status of Members or the status of the Bundestag, its organs and bodies. Amendments to the Members of the Bundestag Act or the Committees of Inquiry Act are therefore matters for the 1st Committee, for example. It is also asked for its opinion on bills which touch on its sphere of competence, such as amendments to the Federal Electoral Act.

The second core element of the Committee's work is the parliamentary procedure in connection with criminal proceedings against Members of the Bundestag. Under Article 46 (2) of the Basic Law, a Member may not be called to account or arrested for a punishable offence without the permission of the Bundestag, unless he or she is apprehended while committing the offence or in the course of the following day. This protection from prosecution and arrest, known as immunity, does not represent privileged treatment for Members compared to all other citizens who have committed an offence; its purpose is to ensure that the Bundestag, as Germany's highest legislative body, remains able to function. In its consideration of whether to waive a Member's immunity, the Committee does not examine whether the Member is guilty of the alleged crime or offence; that is left to the public prosecution office and the courts. It only examines whether the criminal proceedings are motivated by other factors, for example whether they are politically motivated.

It has long been standard practice for the Bundestag, on the basis of a decision taken anew at the beginning of each electoral term, to grant general permission for preliminary investigations to be initiated against any of its Members for criminal offences, with the exception of insults of a political nature. The public prosecution office need only inform the President of the Bundestag of its intentions before initiating a preliminary investigation. The Bundestag can, however, prohibit such investiga-

tions in individual cases if there are appropriate grounds for doing so. Searches, charges or arrests, however, always require the Bundestag's express permission on the basis of a proposal from the 1st Committee. Except in connection with insults of a political nature, this permission is usually granted.

The scrutiny of elections to the German Bundestag is, under Article 41 of the Basic Law, the responsibility of the Bundestag itself. The same applies to scrutiny of the election of German Members of the European Parliament. The Bundestag's decision is prepared by the Committee for the Scrutiny of Elections – a committee in its own right, whose composition only partly overlaps with that of the 1st Committee; its nine members are directly elected by the Bundestag. The Committee takes action in response to objections submitted regarding an election; such objections can be submitted within two months after election day by any person entitled to vote, in order to trigger a review and ascertain the legality of the preparation and conduct of the election and the counting of the ballot papers. Even if the Bundestag determines that an error was made in the conduct of the election, however, the election is not inevitably declared to be invalid. That possibility is only considered if the errors affected or could have affected the concrete distribution of seats in the Bundestag. Appeals against the Bundestag's decision can be lodged with the Federal Constitutional Court.

The screening of Members for former activity or political responsibility for the State Security Service of the former GDR is regulated by Section 44c of the Members of the Bundestag Act. Members can voluntarily request to be screened; however, if there are concrete grounds for suspicion, the 1st Committee can also decide, by a two-thirds majority, to initiate screening measures against the will of the Member concerned. The establishment of such activity or responsibility has no direct legal consequences, such as the loss of membership of the German Bundestag; instead the findings are published as a Bundestag printed paper to allow every voter to take the matter into consideration at the next election.

The 2nd Committee, the **Petitions Committee**, also enjoys a special status, deriving from Article 45c of the Basic Law and a federal law issued pursuant to it, the Act on the Powers of the Petitions Committee of the German Bundestag.

Article 17 of the Basic Law states that every person has the right to address petitions (written requests or complaints) to the Bundestag. "Re-

quests" are primarily taken to mean suggestions regarding legislation (enactment, amendment or repeal of a law). "Complaints" are primarily directed against the acts or omissions of administrative authorities.

The Petitions Committee considers all the complaints and requests addressed to the Bundestag, and submits an overview to the plenary with its recommendations for decisions, which are generally confirmed by the Bundestag without a debate. At the request of a parliamentary group, however, a plenary debate can be held on an individual petition. In other words, not only are all petitioners entitled to a written reply stating how their submissions have been dealt with; there is also a chance that the plenary of the Bundestag will deal publicly with their complaints or requests.

The German Bundestag receives more than 15,000 petitions each year. More and more often, they are submitted electronically (<https://epetitionen.bundestag.de>). Petitions which meet the guidelines for public petitions are published on this web portal, where the public can discuss them and express their support by adding their signature. In addition, petitions of particular interest are now also considered by the Committee at a public meeting attended by the petitioners. The meeting is streamed live on the Bundestag's website.

When processing petitions, the Petitions Committee not only has the power – like every other committee – to summon a member of the Federal Government to attend its meetings and to ask the Federal Government to provide information in written or oral form. Under the Act pursuant to Article 45c of the Basic Law, it also has the power to demand that the Federal Government, its subordinate authorities, and any public-law corporations, institutions and foundations submit files and provide access to their premises. It may hear petitioners, witnesses and experts, and may also request the assistance of courts and public authorities. These are powers similar to those vested in a committee of inquiry. Unlike a committee of inquiry, however, the Petitions Committee cannot hear witnesses under oath. If a petition relates to an item of business currently under discussion in one of the other committees, the Petitions Committee asks this committee for its comments.

Through its work, the Petitions Committee not only offers advice and assistance to many petitioners; it also shows the Bundestag where, as regards legislation and administration, there have been mistakes, omissions and injustices. Occasionally, in a similar way to rulings by the courts, it has brought about improvements in the law.

There are exceptions to the Petitions Committee's obligation to deal with the submissions it receives. For instance, it does not process anonymous petitions, or petitions which, if dealt with, could affect pending court cases. Lastly, the Petitions Committee refers up to 10 per cent of the petitions it receives each year to the petitions committees of the state parliaments or the European institutions because the matter addressed falls within their sphere of competence.

Two more committees which are established pursuant to the Basic Law are the Committee on Foreign Affairs and the Defence Committee (Article 45a).

The **Committee on Foreign Affairs** is traditionally one of the Bundestag's largest committees. Its primary task is not to consider draft legislation but to exercise parliamentary oversight over the Federal Government's foreign policy. Quite often, debates on foreign policy take place in the Committee on Foreign Affairs, whose meetings are not open to the public, rather than in the plenary chamber. The Committee can declare items of business confidential or secret so as to be able to discuss them without regard for reactions abroad. The bills referred directly to the Committee on Foreign Affairs are mostly draft laws ratifying important treaties with other states.

In addition, the Committee on Foreign Affairs is the lead committee for preparations for the Bundestag's decisions on deployments of the Bundeswehr abroad. In its decision of 12 July 1994, the Federal Constitutional Court ruled that deployments abroad of the German armed forces are permissible under the Basic Law in certain circumstances, but that the consent of Parliament is required for every such mission and that this consent should, in principle, be given in advance. This ruling underlined the special character of the Bundeswehr as a "parliamentary army", giving the German Bundestag a truly central role in decisions on deployments of the German armed forces abroad. The process in these cases is regulated by the Act Governing Parliamentary Participation in Decisions on the Deployment of Armed Forces Abroad. Under this Act, the Federal Government must send a request for approval to the Bundestag with detailed and specific information prior to a deployment of the armed forces. The same applies in principle regarding a request to extend a deployment, which must be submitted in good time before the expiry of an existing mandate. After the conclusion of the deliberations, in which the Defence Committee is always also involved as a committee asked for its

opinion, Parliament can either approve or reject the Federal Government's request in its entirety, but cannot amend it.

The **Defence Committee** is also not concerned primarily with legislation. Rather, the article of the Basic Law providing for its appointment (Article 45a) was incorporated in conjunction with the establishment of the Bundeswehr (as was Article 45b, which requires the appointment of a Parliamentary Commissioner for the Armed Forces) in order to guarantee effective parliamentary scrutiny of the Federal Armed Forces. For this reason, Article 45a (2) gives the Defence Committee the right to convene as a committee of inquiry at any time. A motion obliging the Committee to conduct investigations into a specific matter may be tabled by a quarter of its members; in the current 18th electoral term, such a motion can be tabled by all members of the Committee from the opposition parliamentary groups.

Hence, for defence matters the Bundestag cannot set up any other committee of inquiry; it may only request the Defence Committee to look into a particular matter as a committee of inquiry. In such cases, the Defence Committee enjoys the same rights as committees of inquiry established in accordance with Article 44 of the Basic Law, i.e. it has the power to summon and swear in witnesses and to demand the submission of files. Courts and administrative authorities are obliged to render judicial and administrative assistance. In principle, committees of inquiry hear evidence in public; the Defence Committee, however, often has to exclude the public from its meetings for security reasons, as both the files submitted to it and the witnesses' testimony may refer to confidential or secret matters. The Defence Committee convened as a committee of inquiry most recently on 26 June 2013 to investigate by 31 August 2013 the Federal Government's handling of the project to develop the Euro Hawk drone, with regard to contractual, legal, budgetary, military, technological and political aspects, as well as to examine the Federal Government's practice in investigating these events and providing information to the public.

The Committee on Foreign Affairs, the Defence Committee and the Committee on Internal Affairs (when deliberating on matters relating to internal security) are the Bundestag's three so-called "closed" committees. Participation in their meetings is restricted to the regular members and their named substitutes, i.e. in contrast to the other committees, no other Members of the Bundestag are permitted to attend their deliberations in a non-voting capacity.

Another committee of particular importance is the **Committee on the Affairs of the European Union**. Provision for its appointment was incorporated into the Basic Law (Article 45) in connection with the ratification of the Maastricht Treaty in late 1992. In addition to 34 Members of the Bundestag, the Committee also includes 15 German Members of the European Parliament. While these MEPs are not entitled to vote, they participate in the deliberations and thus ensure close cooperation between the parliamentary bodies at national and European level. As a "committee on integration", the EU Affairs Committee is responsible for all fundamental issues relating to European integration, including institutional reform of the European Union, enlargement, and cooperation with the European Parliament and the national parliaments of the other Member States. In addition, as a cross-cutting committee it deals in particular with European initiatives touching on several different policy fields. One of the special features of this committee is that – on the strength of authorisations issued on a case-by-case basis by the plenary – it can exercise the rights of the Bundestag under Article 23 of the Basic Law vis-à-vis the Federal Government. This involves issuing opinions on legislative proposals of the European Union; the Federal Government participates in the decision-making process on such proposals in the Council, but is required to first agree with the Bundestag on the stance it will take.

The **Budget Committee** also ranks among the committees enjoying a special status. It is regarded as the most powerful committee since it deals with all matters relating to planning and control of the federal budget, and in practice it decides on the apportionment of budget funds. In view of the particular importance of the budget, the chairperson of the Budget Committee traditionally always comes from the largest opposition parliamentary group – a custom which, although not enshrined in the Rules of Procedure, is nonetheless upheld. This underlines the significance of Parliament's scrutiny of the government.

The main function of the Budget Committee is to serve as the lead committee in the deliberations on the draft federal budget submitted annually by the Federal Government. All other budgetary bills, such as bills on budgetary amendments and bills to amend the budget law and the budget (bills on supplementary budgets), are also referred to the Committee for consideration. The Committee therefore appoints rapporteurs for each departmental budget for the entire electoral term. They work continuously with their own budget area and become thoroughly familiar with the aims, financial plans and programmes of the corresponding

ministry. The rapporteurs thus acquire an in-depth knowledge of their subject which can rarely be achieved by other Members of the German Bundestag.

The Budget Committee also has the right to scrutinise and to be consulted on all laws which may have a considerable impact on the public finances (so-called finance bills). If a bill will have an impact on the budget, for example if it will increase expenditure or decrease revenue, the Budget Committee assesses whether it and the measures it proposes are compatible with the overall budgetary situation. If it decides that this is not the case, and is confirmed in its view by the Bundestag, the bill has to be dropped. Examination of such bills by the Budget Committee is intended, where possible, to ensure the Federal Government does not exercise its rights under Article 113 of the Basic Law. In accordance with this article, the Federal Government has the possibility of preventing the entry into force of laws which will raise expenditure or decrease revenue. It may also ask the Bundestag to reconsider any bills it deems financially unjustifiable. The Federal Government has in fact never made use of these rights. In practice, ways to provide cover for new expenditure or to make up for losses in revenue are discussed by Members of the Bundestag and representatives of the Federal Finance Ministry during the Budget Committee's deliberations on the bill in question.

In addition, the Budget Committee influences the specifics of how budget funds are used. In the Budget Act, certain decisions on the execution of the federal budget are regularly left to the Budget Committee: it then decides, at the request of the Federal Finance Minister, whether certain appropriated funds in the budget may in fact be spent in the current financial year.

In the course of the 17th electoral term (2009 – 2013), the Budget Committee took on important new functions in connection with the efforts to resolve the eurozone crisis. Facing the risk of sovereign debt defaults with unforeseeable consequences for the entire international banking system, Germany and its eurozone partners set up various assistance programmes; these are, however, tied to strict conditions designed to consolidate the public finances of the country in question and boost its economic performance, with compliance being monitored by the "Troika", consisting of the European Commission, the International Monetary Fund and the European Central Bank. These efforts have resulted in the Fiscal Compact and the European Stability Mechanism (ESM). The latter has been established as an international financial institution which can pro-

vide stability support to ESM members experiencing severe financing problems, subject to strict conditions and requirements. The Budget Committee has to be consulted on matters concerning the ESM and the disbursement of financial assistance (for further details, see p. 79 et seq.).

In order to streamline its work, the Budget Committee has established two subcommittees:

The Auditing Committee scrutinises the execution of the expenditure authorised by the Budget Committee, audits federal financial management, and makes preparations for the German Bundestag's plenary to grant the Federal Government discharge, based on the annual report produced by the Bundesrechnungshof, Germany's Supreme Audit Institution. The results of this scrutiny are continuously fed into the budgetary process, creating a circular process involving review, ongoing scrutiny and planning by Parliament, with the findings in one field benefiting all the others.

The Subcommittee on European Union Issues deals with the preliminary deliberations on the EU items referred to the Budget Committee.

In addition, four other parliamentary bodies with special functions are attached to the Budget Committee, all of them composed of members of the Budget Committee:

The Confidential Committee set up under Section 10a (2) of the Federal Budget Code is responsible for discussion and decisions on the intelligence services' budgetary plans.

The Federal Finance Panel established under Section 3 of the Act on Federal Debt Management regularly examines all issues relating to federal debt management and the Federation's holdings in companies under private law.

The Parliamentary Panel on Financial-Market Stabilisation established under Section 10a of the Financial-Market Stabilisation Act and Section 16 of the Restructuring Fund Act deals with the €480bn. Financial-Market Stabilisation Fund, which financed necessary measures to bail out financial institutions in Germany in the wake of the financial crisis. It also deals with the Restructuring Fund, which was created as a preventive measure to improve financial system stability and which administers the bank levy. The Panel discusses all matters relating to these funds, and examines long-term developments in policy relating to the financial market.

The special panel established under Section 3 (3) of the Stabilisation Mechanism Act and Section 6 (2) of the ESM Financing Act exercises the Bundestag's participatory rights if purchases of government bonds of a euro member on the secondary market are planned under Article 18 of the Treaty Establishing the European Stability Mechanism (ESM) and the Federal Government invokes the particular confidentiality of the matter.

All in all, the Bundestag is continuously involved through its Budget Committee in the conduct of the Federation's financial affairs and, of course, also actively exerts a certain degree of political influence on the decisions involved. This is one of the reasons why budget debates are among the highlights of the parliamentary year. They are not only an occasion for arguments about individual budget items; the entire government programme in terms of the expenditure involved is generally hotly debated by the government and the opposition. The Federal Chancellor's budget is particularly likely to trigger a general debate on his or her policy principles, while budgets for important departments – e.g. labour and social affairs, defence, foreign affairs – prompt public scrutiny of government policy.

As the influence of technology on the environment and all areas of human life increases, so too does the political responsibility of the Bundestag in this field. To meet this challenge, in 1990 the Bundestag created a new instrument for gathering information and preparing parliamentary decision-making. It gave the **Committee on Education, Research and Technology Assessment** the task of initiating technology impact analyses and seeking ways to translate their findings into practical policy. These scientific analyses are prepared by the Office of Technology Assessment at the German Bundestag (TAB). In 1990, the Committee tasked the Karlsruhe Research Centre, now the Karlsruhe Institute of Technology, with running the TAB. It is currently supported, on the basis of cooperation agreements, by the Helmholtz Centre for Environmental Research in Leipzig, the Institute for Futures Studies and Technology Assessment, and VDI/VDE Innovation und Technik GmbH. The Committee is responsible for commissioning analyses and setting priorities. It reviews the requests for technology analyses received from the specialised committees and the parliamentary groups, pools them and tasks the TAB with preparing the analyses in accordance with their political relevance. The subjects analysed by the TAB are geared to the German Bundestag's needs, and therefore cover a wide spectrum of topics, ranging from "electric mobility con-

cepts" to "remote sensing: application potentials in Africa" and the "valorisation of biodiversity", to "opportunities and criteria for a sustainability label for consumers". The results of the TAB's work are generally public. Further information on its work can also be found online at [www.tab-beim-bundestag.de](http://www.tab-beim-bundestag.de).

### ► Committees of inquiry and other bodies

Apart from the permanent committees, the Bundestag can – or must – set up a number of other committees, commissions and similar bodies, all of which differ significantly from the permanent committees as regards their composition, tasks and working methods.

Under Article 44 of the Basic Law, the Bundestag has the right to set up committees of inquiry to investigate specific matters; it is obliged to do so upon the motion of one quarter of its Members (in the 18th electoral term, a motion of 120 of its Members is required). This very important minority right is used in particular by the opposition to ensure investigation of cases of alleged misgovernment, maladministration or misconduct on the part of individual politicians.

The rights of committees of inquiry and the procedures they must follow are enshrined in the Committees of Inquiry Act.

The motion calling for the establishment of a committee of inquiry must contain a precise description of the subject of the inquiry. When deciding to set up a committee of inquiry, the Bundestag also decides on its size. The rules of criminal procedure apply, with the necessary modifications, to the taking of evidence by a committee of inquiry. Courts and administrative authorities are required to provide judicial and administrative assistance. The committee takes evidence in particular by holding hearings of witnesses and experts and requesting access to files. It is also possible for a special investigator to be appointed; the committee of inquiry has the right to do so at any time, and is required to do so on the motion of one quarter of its members. In principle, committees of inquiry must hear the necessary evidence – by examining witnesses, for example – in public.

Committees of inquiry summarise their findings in a report which they submit to the plenary. If there are differences of opinion on the findings between the governing coalition and the opposition, as is usually the case, the report contains both the majority and the minority view.

In the 18th electoral term, the Bundestag has established two committees of inquiry:

The Committee of Inquiry on the NSA Affair, which was established unanimously in March 2014 upon a joint motion by all four parliamentary groups, is to investigate whether, in what way and on what scale the intelligence services of the USA, the UK, Canada, Australia and New Zealand have collected data on communication activities from, to and in Germany. It is also to determine whether and to what extent data on communication activities and their contents of members of the Federal Government, federal staff, Members of the Bundestag or members of other constitutional bodies has been collected or analysed by the intelligence services of these states. The committee is also to form conclusions on how to safeguard the constitutionally guaranteed protection of the confidentiality of electronic communication.

The second committee of inquiry has the task of investigating, in connection with data about the purchase and/or possession of child and youth pornography supplied from a Canadian investigation, the length of the resulting procedure in Germany, related events concerning the former Member of the German Bundestag Sebastian Edathy, and the handling of the case of an officer from the Federal Criminal Police Office whose name appeared in the supplied data.

A distinction must be made between committees of inquiry as described above and study commissions, which the German Bundestag may establish to prepare legislative decisions on complex and important issues, and is required to establish on the motion of one quarter of its Members (in the 18th electoral term, 120 Members are required). Study commissions are composed of Members of the Bundestag and external experts, who enjoy the same rights as the parliamentarians. They submit a report to the Bundestag no later than the end of the electoral term. Unlike those of the permanent committees, these reports do not contain a concrete recommendation for a decision by the Bundestag. Rather, if the Bundestag is to take a decision on recommendations made by a study commission, they must be taken up by the plenary or the Federal Government and introduced in the Bundestag in the form of a bill or motion.

In the 17th electoral term (2009–2013), the German Bundestag established two study commissions:

The Study Commission on the Internet and Digital Society was tasked with examining the internet's effects on society and formulating re-

commendations for political action to further enhance the parameters for the information society in Germany.

The Study Commission on Growth, Wellbeing and Quality of Life – Paths to Sustainable Economic Activity and Social Progress in the Social Market Economy was established to study the importance attached to growth in the economy and society and to examine how factors influencing quality of life and social progress can be given due consideration. The aim was to update the purely economic and quantitative indicator that is gross domestic product as a measure of wellbeing in society, and to supplement it with environmental, social and cultural criteria, for example.

The Parliamentary Advisory Council on Sustainable Development is a special kind of parliamentary body. Its task is to scrutinise and support, on Parliament's behalf, the Federal Government's national sustainable development strategy, and the Federal Government's sustainability policy at European level and the level of the United Nations. The Parliamentary Advisory Council follows and supports deliberations by other bodies of the German Bundestag relating to sustainable development, for example, by submitting expert opinions and recommendations for the lead committee's consideration. The Advisory Council, which has 17 members in the 18th electoral term, submits regular reports on its work to the Bundestag.

Under Article 45d of the Basic Law and the Act on the Parliamentary Oversight of the Federation's Intelligence Activities, a Parliamentary Oversight Panel is responsible for scrutinising the work of the intelligence services (Federal Intelligence Service, Federal Office for the Protection of the Constitution, Military Counterintelligence Service). Its members are elected by the Bundestag by the vote of a majority of its Members at the beginning of each electoral term. The Federal Government is obliged to submit detailed information to the Panel on the federal intelligence services' general activities and on operations of particular importance. It must also report on other operations if the Panel so requires. The Panel's powers include the right to examine dossiers and data files belonging to the intelligence services, the right to interview their staff, and the right of access to all units of the intelligence services. The Federal Government may only refuse to provide information if this is necessary because of compelling issues relating to access to intelligence, in order to protect the right to privacy of third parties, or if the core area of executive responsibility is affected. In the event of a refusal, the Federal Government

must inform the Parliamentary Oversight Panel of the reasons. In individual cases, the Panel can also exercise its duty of oversight by commissioning an expert to carry out investigations. The Parliamentary Oversight Panel submits a report to the Bundestag in the middle of and at the end of each electoral term. It continues its work after the end of the electoral term until the newly elected Bundestag appoints a new Parliamentary Oversight Panel.

In addition to scrutinising the activities of the intelligence services, the Parliamentary Oversight Panel is also responsible for oversight in the case of restrictions imposed on the privacy of posts and telecommunications in line with a law enacted pursuant to Article 10 of the Basic Law. For this purpose, after consultation with the Federal Government it appoints the so-called G 10 Commission for the duration of each electoral term. The members of the G 10 Commission need not be Members of the Bundestag. Both of these bodies meet behind closed doors.

The intelligence services may only restrict the privacy of posts and telecommunications under certain conditions, which are defined in the law enacted pursuant to Article 10 of the Basic Law. Such measures require in principle the prior consent of the G 10 Commission. The Commission, which is an independent body and not bound by instructions, takes a decision each month on whether the measures are admissible and necessary. In the case of certain surveillance measures, the consent of the Parliamentary Oversight Panel itself is required. The Federal Government must notify the Panel at six-monthly intervals of all measures restricting the privacy of posts and telecommunications. The Panel then reports to the Bundestag once a year.

The G 10 Commission has also been given certain decision-making rights concerning powers (e.g. information on communications via telecommunications networks) granted to the intelligence services until 9 January 2016 under the Counter-Terrorism Act (2002), the Act Supplementing the Counter-Terrorism Act (2007), and the Act Amending the Federal Act on the Protection of the Constitution (2011). The Parliamentary Oversight Panel must also be informed about these types of measures at intervals of six months at the most.

Similar issues arise in the case of the Customs Criminological Office, which has the power, under the Foreign Trade and Payments Act and the War Weapons Control Act, to suspend the privacy of correspondence, posts and telecommunications in individual cases, albeit by order of a

regional court. To ensure parliamentary scrutiny in these cases too, Section 23c (8) of the Customs Investigation Service Act provides for the appointment by the Bundestag of a special body consisting of nine Members, to which the Federal Minister of Finance must report any interference with the basic right to privacy enshrined in Article 10 of the Basic Law at intervals of no more than six months.

To facilitate the fight against organised crime, Article 13 of the Basic Law was amended, thereby making possible the acoustic surveillance of private residences as part of criminal investigations. As this constitutes a substantial encroachment on private individuals' basic rights, such operations must be subject to parliamentary scrutiny. This task is performed by a panel consisting of nine Members of the Bundestag, established under Article 13 (6) of the Basic Law, on the basis of the Federal Government's annual report on the use of technical surveillance means.

Article 94 of the Basic Law stipulates that half of the 16 judges of the Federal Constitutional Court are elected by the Bundestag and half by the Bundesrat. Unlike the Bundesrat, the Bundestag does not elect these judges directly. Rather, it sets up a Committee for the Election of Judges for this purpose. Under Section 6 of the Federal Constitutional Court Act, the Bundestag, using a system of proportional representation, elects the 12-member Committee from among its Members. The composition of the Committee cannot be changed by the parliamentary groups once the election has taken place. This prevents shifting majorities in these very important elections.

To be elected as a judge to the Federal Constitutional Court, a candidate must receive a two-thirds majority, i.e. at least eight votes, in the Committee. As a rule, this is only possible if the opposition also votes in favour of the candidate. The other eight judges of the Federal Constitutional Court are elected by the plenary of the Bundesrat, also by a two-thirds majority.

### ► The Parliamentary Commissioner for the Armed Forces

In accordance with Article 45b of the Basic Law, a Parliamentary Commissioner for the Armed Forces is appointed to safeguard basic rights and to assist the Bundestag in exercising parliamentary oversight over the Bundeswehr, the Federal Armed Forces. The Commissioner's role includes, in particular, investigating potential violations of the basic rights of ser-

vice personnel or infringements of the principles of internal leadership, and reporting to Parliament on the conditions within the Bundeswehr. His or her appointment and legal status are regulated by the Act on the Parliamentary Commissioner for the Armed Forces. The Commissioner, who is not a Member of the Bundestag, is elected by the Bundestag in a secret ballot for a term of five years. To be elected, a candidate requires the votes of a majority of the Members of the Bundestag, i.e. at least 316 votes at present.

The Commissioner takes the initiative if circumstances come to light which suggest that the basic rights of service personnel or the principles of internal leadership have been violated. Moreover, the Bundestag or the Defence Committee may instruct the Commissioner to look into specific matters. He or she has the right to visit troops at any time, without previously announcing the visit, and on such occasions to demand information from superiors and speak with service personnel without their superiors being present. Every member of the armed forces has the right to contact the Commissioner direct. The Commissioner is thus the "ombudsman" of service personnel, an additional institution dealing with petitions alongside the Petitions Committee of the Bundestag set up pursuant to Articles 17 and 45c of the Basic Law.

The Parliamentary Commissioner for the Armed Forces submits an annual report on his or her work to the Bundestag. Moreover, he or she may submit reports on individual matters. The President of the Bundestag refers these reports to the Defence Committee for deliberation; the Committee then reports to the plenary of the Bundestag. As a rule, the Commissioner's report is debated in the Bundestag too. In line with a long-standing tradition, the President gives the Commissioner leave to speak in the course of the debate if a parliamentary group or five per cent of Members (currently at least 32), who must be present, so demand.

## Plenary sittings of the Bundestag

A week of sittings at the Bundestag generally follows the following schedule: the executive committees of the parliamentary groups meet on Monday afternoon, as well as several of the parliamentary groups' key internal bodies, while most of the groups of Members from a specific *Land* (federal state) within the parliamentary groups meet on Monday evening. Tuesday morning is reserved for the working groups set up by

the parliamentary groups, and Tuesday afternoon for full meetings of the parliamentary groups. The committees and the Presidium generally meet on Wednesday morning; from 13.00 hours, Members of the Bundestag put questions to the Federal Government in the plenary, which is followed by Question Time. On Thursday, the Bundestag meets in plenary session from 09.00 hours until late in the evening; the Council of Elders meets at 14.00 hours. The Bundestag also meets in plenary session on Friday from 09.00 hours until the early afternoon. This schedule is occasionally altered, for instance for the budget debate, which normally takes up four sitting days.

### ► Questions put to the Federal Government

The session of questions put to the Federal Government represents an opportunity for the Members of the Bundestag to obtain information about the deliberations of the Federal Government immediately after its weekly cabinet meetings. In practice, the questions largely concentrate on a single topic from the cabinet meeting, of which the Federal Government informs the Bundestag in advance. Before this 30-minute session begins, a member of the Federal Government is given leave to speak for up to 5 minutes. The Members subsequently pose questions, which can be prefaced by introductory remarks; the questions must be concise and permit brief replies. The Members are not limited to asking about the topics discussed at the preceding cabinet meeting, however; they can also put questions of topical interest on matters for which the Federal Government is responsible.

This session is followed by Question Time, which lasts two hours. Every Member of the Bundestag is entitled to address up to two questions to the Federal Government for oral reply during Question Time in each week of sittings. The questions must be concise, permit a brief answer, and must not contain statements which are not to the point. Each question may be divided into two sub-questions, and must refer to fields for which the Federal Government is directly or indirectly responsible. The questions must be submitted to the President of the Bundestag not later than 10.00 hours on the Friday preceding the week of sittings in which they are to be answered. This time limit is intended to enable the questions to be forwarded to the Federal Government before noon on the same day. The ministries responsible for replying thus have just under three days to carry out the research needed for the reply. Often such research is not

only necessary in the ministry concerned but in other ministries, subordinate federal agencies and *Land* governments as well. The questions are usually answered by parliamentary state secretaries or ministers of state from the federal ministries, but sometimes by the ministers themselves.

During Question Time the President calls the question and the name of the questioner. Where the latter is not present, his or her question is answered in writing if he or she has submitted a corresponding request to the President before the beginning of Question Time. Otherwise the Federal Government does not reply to the question. However, questioners may also withdraw their question and table it again for the next week of sittings, if they are unable to be present in the plenary when it is likely to be called. Questions which cannot be called for lack of time are answered by the Federal Government in writing; the reply is also sent to the Parliamentary Secretariat, which ensures that it is included in the annex to the minutes of plenary proceedings.

The questions received by the Friday deadline are grouped in a printed paper in accordance with the departmental responsibilities of the Federal Government. Under the Rules of Procedure, the President determines the order in which these departments are called. In practice, they are called in the official order established by the Federal Government. To ensure that all of the ministries take questions on a regular basis, there is a rotating system for calling the departments in Question Time, based on their official order, with the department following the last called in the previous Question Time taking questions first. However, if the final department called in the preceding week failed to take at least half of the questions submitted for it, it is listed first.

In Question Time the questioners are entitled to put up to two supplementary questions following the initial reply to their question. Every other Member of the Bundestag may put one other supplementary question. The President will generally permit such questions as long as they do not threaten to upset the proper conduct of Question Time. This occasionally results in a lengthy exchange of questions and answers on a specific subject, with Members from the governing coalition often participating by putting supplementary questions in support of the government.

In addition to these normal questions for Question Time, the President permits questions of obviously urgent public interest (known as "urgent questions") to be put during Question Time if they were submitted no later than noon on the previous day. However, they are deducted from

the number of questions which the Member of the Bundestag concerned may submit in that week. Urgent questions are called at the beginning of Question Time.

Each Member of the Bundestag is also entitled to submit up to four questions every month to the Federal Government for written reply. The questions are to be answered by the Federal Government within one week of receipt by the Federal Chancellery. The replies received in the course of a week are published in a printed paper during the following week.

Extensive use is made in the Bundestag of the above-mentioned rights to put questions. In the 17th electoral term (2009–2013) a total of 26,305 oral, written and urgent questions were put.

However, these are not the only options available to individual Members as part of the parliamentary right to put questions, which is one of the classic means by which Members scrutinise the work of the Federal Government. Other instruments available to Members include major and minor interpellations, which are subject to specific provisions in the Rules of Procedure and differ in terms of their form, procedure and effect (see p. 75 et seq.)

## ► Debates

In plenary sittings decisions are taken which have been prepared in the parliamentary groups and committees. They are binding political decisions of the Bundestag. Debates form the core of plenary sittings. As regards some items on the agenda, particularly where politically undisputed decisions are concerned, the Council of Elders may agree that no debate is to take place; in such cases a vote is taken immediately, either on referral of an item or on its adoption or rejection. In general, however, plenary sittings consist of a series of debates.

As a rule, the order of the items of business on the agenda and the duration of the debates are agreed by the Council of Elders and confirmed by the Bundestag. If, exceptionally, no agreement is reached in the Council of Elders, the decision is taken by the plenary, usually following a short procedural debate.

These agreements on the organisation of plenary sittings require the majority in Parliament to reach an understanding with the opposition, whose interests in ensuring that its initiatives are considered must be

respected. In the current 18th electoral term, a cross-party agreement has been reached which governs the order of items of business on the plenary agenda, debate formats, and the question of which parliamentary groups choose the topics of the two core-time debates on Thursdays (see p. 62) and the first two items on the agenda on Fridays, which are equally important. This agreement treats the first two items on Thursdays and Fridays – each of which normally involves a debate lasting 96 minutes – as a block and gives the opposition parliamentary groups the right to determine the subject of the second item on the agenda on either the Thursday or the Friday, with the day alternating from week to week. For the rest of the day on Thursdays and Fridays, the agenda mostly alternates between items chosen by the governing coalition and the opposition parliamentary groups, and in most cases the debates scheduled on these items are relatively short.

Speaking time is distributed among the individual parliamentary groups in line with a fixed formula, which is agreed at the beginning of each electoral term. It is based on the relative strengths of the parliamentary groups, but also takes other factors into account, such as a bonus for the opposition. In other words, it is based on political considerations, not mathematics. Agreement is reached on the formula for the distribution of speaking time for debates of varying length (debate formats). For instance, in the 18th electoral term, if a total of one hour of speaking time is available, the CDU/CSU parliamentary group is allocated 27 minutes, the SPD 17 minutes, and the Left Party and Alliance 90/The Greens parliamentary groups 8 minutes each.

Within this framework, the parliamentary groups themselves decide which of their members will speak for how long on a given item. The Parliamentary Secretaries inform the President in the Chair of the names of the speakers from their parliamentary groups and their individual speaking times, and it is parliamentary custom for the President to abide by these stipulations. That said, in the 17th electoral term there were several occasions when Members who wanted to present a divergent view from that of their parliamentary group, and who therefore had not been nominated as speakers by their group, were given leave to speak as additional speakers – outside the speaking time allocated to the parliamentary group in question – in recognition of their constitutionally guaranteed right to speak. In such cases, the speaking time assigned to Members is based on the agreed allocation for Members who are not attached to any parliamentary group.

Pursuant to the second sentence of Article 43 (2) of the Basic Law, the members of the Federal Government and the Bundesrat have in principle an unlimited right to speak. In practice, however, their speaking time is deducted from the speaking time of the parliamentary group concerned; as a rule, therefore, the overall ratio between the speaking times of the parliamentary groups does not change.

Within the framework of the decisions taken by the Council of Elders and the parliamentary groups, the President in the Chair determines the order in which speakers are called. Pursuant to the Rules of Procedure, the President must take certain aspects into consideration in doing so:

"In so doing, the President shall be guided by the need to ensure that debates are conducted properly and efficiently, with due regard to the different views of political parties, the arguments for and against the subject under debate, and the relative strengths of the parliamentary groups; in particular, a divergent opinion shall be heard after a speech has been delivered by a member of the Federal Government or a person commissioned by it."

One important task of the President in the Chair is to ensure that individual speakers keep to the speaking time available to them. If Members exceed the speaking time allocated to them, the President, after warning them once, directs them to discontinue speaking.

When the time allocated for the debate on an item of business has elapsed, the President closes the debate once the last speaker has finished speaking. Depending on the type of item under discussion and what stage it has reached in the parliamentary process, the debate is generally followed by a vote on the item of business or its referral to the specialised committees. However, certain debates are also held on important political topics without having an item of business as defined in Rule 75 (1) of the Rules of Procedure or a government policy statement as their subject; these are known as "agreed debates".

Debates vary in terms of their form and length. Public attention focuses in particular on the general debates, which usually follow government policy statements, but are also held in particular during the annual deliberations on the federal budget, which span several days. Important, contentious bills and major interpellations can also lead to long and heated debates. However, Parliament's work is primarily concerned with a wealth of detail, and this attracts little public attention. The Bundestag's agenda is dominated by a large number of short debates, often on highly specific

topics, in which Members who specialise in these issues present the position of their parliamentary groups.

In order to cope with this large amount of work, it is possible, if previously agreed by the Council of Elders, for the written text of speeches to be included in the minutes instead of a debate being held; the speeches are then published as annexes to the stenographic record of the plenary sitting. This practice is also due to the limited time available even on a full sitting day, which lasts from 09.00 hours until 21.00 hours or later, and is also intended to allow the parliamentary groups to set out their political positions.

The speeches often deal in detail with highly specialised issues and therefore have to be thoroughly prepared; this explains why these debates are not always particularly spontaneous and why Bundestag sittings can seem lacking in passion and excitement, with few Members even in the plenary chamber in many cases. It is important to bear in mind, however, that the debates and decisions in the plenary are often the culmination of a lengthy political opinion-forming process, and the issues involved have already been discussed in depth in the parliamentary groups, their internal bodies and the committees. The point of the plenary sittings is therefore not for Members to make up their minds or try to win over Members with opposing views. Instead, plenary debates allow Members to explain to the public the decisions reached through the parliamentary process and to set out the positions of the parliamentary groups.

The often low attendance in the plenary chamber is also explained by the fact that during a week of sittings in Berlin there are a great many other tasks which the public – rightly – expects Members to perform.

In addition to participating in the deliberations and votes in the plenary of the German Bundestag and in its committees, Members' duties include attending meetings of their own parliamentary group, its working groups and working parties; reading political and specialist journals; studying files, motions and bills; possibly preparing their own speeches and contributions to debates; making telephone calls, dealing with correspondence from all sections of the population, particularly from their own constituency; and having political discussions with members of the public, other parliamentarians and representatives of interest groups. In view of their numerous duties, individual Members must be able to decide for themselves which parts of plenary sittings on which items on the agenda they consider it important to attend. Hence their presence in the plenary can-

not be taken as a yardstick for measuring the sense of duty, commitment, interest or performance of the Members of the German Bundestag.

Yet the impression that plenary sittings are poorly attended continues to prevail among the public – an unsatisfactory state of affairs for the Bundestag and its Members. The package of parliamentary reforms which the Bundestag adopted in 1995 therefore contained a number of measures intended to make plenary sittings more attractive both within and without Parliament.

In particular, these reforms introduced what is known as the "core time": on the Thursday of a week of sittings, debates are held on fundamental, central topics that also attract a high level of public interest. No meetings of other bodies take place during these core-time debates, which last around four hours in total and are regularly broadcast live by the media. Ideally, speaking time should be limited to about 10 minutes to give as many Members as possible an opportunity to speak. In addition, the possibility of suspending the sitting if an insufficient number of Members are present has been extended: not only may doubts about the presence of a quorum be expressed by a parliamentary group or five per cent of Members, but the President in the Chair may, in agreement with the parliamentary groups, interrupt the sitting if the presence of less than 25 per cent of Members of the Bundestag is established during a core-time debate.

One special form of debate is the "debate on matters of topical interest". It was originally introduced to give Members who were not satisfied with the reply given by the Federal Government to a question in Question Time, and regarded it as evasive or in any case inadequate, an opportunity for further discussion. In the meantime the possibilities of taking up a matter of general topical interest in this way have been expanded: a debate on matters of topical interest takes place if agreed in the Council of Elders or if a parliamentary group or five per cent of Members, i.e. currently at least 32 Members, so demand.

Only one debate on matters of topical interest can take place per sitting day; an additional debate on a different topic, if necessary, is postponed to the following sitting day. In recent years, almost every week of sittings has included at least one debate on a matter of topical interest, and sometimes as many as three.

Debates on matters of topical interest have two distinctive features: firstly, the Rules of Procedure limit the length of the debate to an hour

and, secondly, the speaking time of each individual speaker may not exceed five minutes. The Federal Government has also stated its willingness in principle to keep to this time limit. The speaking time taken up by members of the Federal Government, the Bundesrat and persons commissioned by them is not deducted from the available speaking time. However, they may not – on account of the constitutionally guaranteed right of representatives of the government and the Bundesrat to be heard at any time (Article 43 (2), second sentence of the Basic Law) – be directed to discontinue speaking; under the Rules of Procedure, a parliamentary group may therefore demand that a debate without any restrictions concerning the duration or speaking time be opened if a representative of the government or the Bundesrat speaks for longer than 10 minutes. In substantive terms, debates on matters of topical interest can cover the entire spectrum of politics. They often deal with current events in Germany and abroad, or with political comments which provide an opportunity for Members to criticise the opposing parliamentary groups and to highlight their own positions. As debates on matters of topical interest are designed as a minority right, they are an opportunity for the opposition to place a subject of its choosing on the plenary's agenda at short notice.

In an effort to make plenary debates more lively and to encourage a spontaneous exchange of arguments and viewpoints, the Rules of Procedure permit the possibility of making remarks – called brief interventions – during or at the end of a contribution to the debate. The instrument of questions put to the speaker in the course of his or her speech only permits direct questions to be addressed to the speaker; in the case of a brief intervention, however, a question may be introduced by a short statement, or a statement may be made independently of a question. In order to keep more or less to the overall timetable for the debate, brief interventions may not last longer than three minutes. If the brief intervention follows a contribution to the debate, the speaker may reply once, and likewise has three minutes available to do so.

A time limit of five minutes applies to several kinds of statements which can be made by Members during or outside a debate. Thus the President gives precedence to Members requesting leave to speak to move a procedural motion. Such a motion must relate to the item of business under debate or to the agenda. Leave to speak on the Rules of Procedure is thus restricted exclusively to procedural matters: the issue with which a debate is concerned may not be dealt with in detail. It is, however, often difficult to distinguish between procedural aspects and the issues at stake.

Members may deliver a statement on the debate to rebut any remarks made about their person in the course of a debate or to correct observations that they themselves have made. Under the Rules of Procedure, leave to make such a statement is granted after the conclusion, suspension or adjournment of the debate. However, the President may give precedence to Members requesting the floor for this purpose in the course of the debate itself.

After the conclusion of a debate, Members may explain why they are voting in a particular way. As a rule the President permits such explanations of vote before a vote is taken. Such statements may only be made on the final vote on an item. If they are made in writing, they are included in the annex to the Stenographic Record.

Finally, the President may, before calling the first item on the agenda or after the conclusion, suspension or adjournment of the debate, grant leave to a Member to make a statement on matters not included in the agenda. The Member must inform the President of the subject of the statement in advance. It may not refer to an item on the agenda but is merely intended to give Members an opportunity to provide information on an event, outline the actual course of events or make personal comments on remarks made outside the Bundestag on an event concerning the Member or on a political event. In practice, this option is seldom used.

The term "statement" is used in another sense elsewhere in the Rules of Procedure. In connection with deliberations on recommendations of the Mediation Committee and on an objection lodged by the Bundesrat to a bill adopted by the Bundestag, only statements may be made; in both cases a debate prior to the vote is expressly declared to be inadmissible. In theory, the duration of such statements is not limited. In practice, however, speakers limit themselves to five minutes. The difference between such statements and contributions to a debate is that the speaker may only explain the parliamentary group's position on the compromise proposal or on the objection lodged by the Bundesrat, without referring to the statements made by the other parliamentary groups. (For further details about these aspects of the legislative process, see p. 128 et seq.)

## ► Items of business

The items of business dealt with by the Bundestag in its plenary debates are extremely diverse.

Rule 75 of the Rules of Procedure enumerates all the items of business which may be placed on the agenda or discussed in connection with items on the agenda. Since bills and all items relating to the legislative process will be dealt with later (p. 94 onwards), only the other items of business which have not yet been mentioned will be discussed here. The deliberations on an item of business can, as a rule, begin at the earliest on the third day after the relevant printed paper has been distributed. This is intended to ensure that Members have time to prepare for the debate. However, in most cases it is possible to depart from this rule, if a two-thirds majority so decides.

Not every item on the agenda necessarily concerns an item of business. One important example in practice are government policy statements, which the Federal Government is entitled to deliver at any time (Article 43 (2), second sentence of the Basic Law). Government policy statements may be made by the Federal Chancellor or by any other member of the Federal Government.

One particularly important government policy statement is that delivered by the Federal Chancellor to the Bundestag upon taking office, in which he or she sets out the government's policies for the electoral term ahead. In the course of the electoral term, the Federal Government can choose to make statements to Parliament on topical political issues. Government policy statements are announced in time for them to be placed on the agenda and for the parliamentary groups to be able to prepare for the subsequent debate.

Reports and documents submitted by the Federal Government for the information of the Bundestag, may, following an agreement in the Council of Elders, be referred by the President of the Bundestag to a committee without being placed on the agenda. They are then only placed on the agenda if the committee wishes to recommend that the Bundestag take a decision going beyond acknowledgement. When such a written communication of the Federal Government is debated, and whether it is debated in the plenary at all, thus depends on the political importance of such reports. In any case, interested members of the public have access to them as soon as they are published as Bundestag printed papers.

Motions may vary considerably in content. They are included in the agenda as autonomous items. In most cases they are motions tabled by Members of the Bundestag calling on the Federal Government to submit a bill to deal with a specific matter, to take specific measures, to comment on

substantive issues, or to report on events or policy fields specified in the motion.

Motions tabled by Members must be signed by a parliamentary group or five per cent of Members (currently at least 32), where the Rules of Procedure do not provide otherwise.

Different provisions apply, for example, to a motion of no confidence in the Federal Chancellor, which aims to bring about a change of government and has far-reaching political consequences. A motion of no confidence in the Federal Chancellor (Article 67 of the Basic Law) must contain a proposal for the election of a new Federal Chancellor and be signed by a quarter of the Members of the Bundestag or by a parliamentary group which comprises at least a quarter of the Members. Thus, a motion of no confidence is in reality a motion for the election of a new Federal Chancellor (so-called constructive vote of no confidence). Forty-eight hours must elapse between the motion and the vote (Article 67 (2) of the Basic Law). Like the election of the Federal Chancellor at the beginning of the electoral term (Article 63 of the Basic Law), this election is held by secret ballot, and the proposed successor is elected only if he or she obtains the votes of the majority of the Members of the Bundestag; the Federal President then has to appoint the successor. At the same time, the previous Federal Chancellor is dismissed. Once the members of the new Federal Government have been appointed and sworn in, the change of government is complete. To date, a motion of no confidence has been moved on two occasions: it failed in 1972 (Rainer Barzel versus Willy Brandt), because Barzel obtained only 247 votes (instead of 249); by contrast, it was successful in 1982, when Helmut Kohl was elected Federal Chancellor with 256 votes, thus replacing Helmut Schmidt.

In a number of other cases, too, the Basic Law or the Rules of Procedure prescribe a minimum number other than five per cent of Members. This applies in particular as regards a motion to convene the Bundestag (one third of Members under Article 39 (3) of the Basic Law; in the 18th electoral term, 120 Members are required) and a demand for establishment of a committee of inquiry (one quarter of Members, Article 44 of the Basic Law) or a study commission (one quarter of Members, Rule 56 of the Rules of Procedure), each of which require the support of a minimum of 120 Members in the 18th electoral term.

Motions can, however, also be tabled by the Federal Chancellor, the Federal Government, or individual ministers.

For example, under Article 68 of the Basic Law, the Federal Chancellor may move a motion for a vote of confidence. In this case too, forty-eight hours must elapse between the motion and the vote, which – in contrast to the election of the Federal Chancellor – is public and takes the form of a recorded vote. If such a motion of the Federal Chancellor for a vote of confidence, which may be combined with the vote on a bill, is not carried by the majority of the Members of the Bundestag, “the Federal President, upon the proposal of the Federal Chancellor, may dissolve the Bundestag within twenty-one days. The right of dissolution shall lapse as soon as the Bundestag elects another Federal Chancellor by the vote of a majority of its Members” (Article 68 (1) of the Basic Law). This possibility has been used on five occasions, most recently by Chancellor Schröder, who received 151 “yes” votes to 296 “no” votes, with 148 abstentions, in the vote on 1 July 2005. On the same day, the Federal Chancellor proposed to the Federal President that the Bundestag should be dissolved. On 21 July 2005, the Federal President dissolved the 15th German Bundestag and called an early election for 18 September 2005.

A motion is also used by the Federal Government to obtain the Bundestag’s consent for a mission abroad by German armed forces, required under the Act Governing Parliamentary Participation in Decisions on the Deployment of Armed Forces Abroad.

According to the Rules of Procedure, all of these types of motion are “in principle given one reading”, unlike bills, which are given three readings, and laws ratifying international treaties, which are in principle given two readings. Normally, however, motions are referred to the committees – usually several committees – and later receive a final reading together with the recommendation for a decision from the (lead) committee.

Motions tabled by Members must, if the movers so demand, be placed on the agenda for the next sitting and also be discussed if at least three weeks have passed since distribution of the relevant printed papers. After ten weeks of sittings have elapsed, a parliamentary group or five per cent of Members, i.e. currently at least 32, may demand that the committee submit to the Bundestag a report on the progress of its deliberations. Moreover, if so demanded, this report must be placed on the agenda. This protects the minority in Parliament from any attempts by the majority to drag out the consideration of opposition initiatives.

The procedure is different in the case of motions for resolutions, which are not placed on the agenda but are submitted as non-autonomous

items relating to other items of business. As regards their content, there is no difference at all between motions for resolutions and the above-mentioned motions tabled by Members. Just like the latter, they must be signed by a parliamentary group or five per cent of Members, but they are not subject to any time limits and may be moved while the item to which they refer is being discussed. Motions for resolutions may be moved not only with respect to bills but above all with respect to the federal budget and its departmental budgets and also with respect to government policy statements, reports of the Federal Government, major interpellations and EU items, resolutions of the European Parliament, stability measures and statutory instruments. The reasons for these motions are generally stated during the debate on the item of business to which they refer. Motions for resolutions are voted upon either after the final vote on the related item of business or, if no final vote is taken, after closure of the debate. Motions for resolutions relating to the federal budget may be voted upon at third reading.

Motions for resolutions relating to items of business may not be referred to a committee if the movers object. If such an objection is lodged, a parliamentary group or five per cent of Members, who must be present, may demand that the vote be postponed until the next sitting day so that the motion for a resolution can be examined more closely and, if need be, discussed.

Motions for amendments are also non-autonomous items which are only dealt with together with the item of business to which they refer, e.g. bills and motions. However, motions for amendments can also be tabled in relation to motions for resolutions or recommendations for a decision on autonomous motions. They may be tabled by any individual Member, although in the case of bills this is limited to the second reading. As far as bills are concerned, motions for amendments at third reading are only permitted on provisions which were amended at second reading, and can only be tabled by a parliamentary group or five per cent of Members.

Procedural motions concern the item of business under debate or the agenda. In some cases procedural motions may also be moved by a single Member of the Bundestag, e.g. motions for an item to be included in or removed from the agenda. The Bundestag takes a decision on all procedural motions by voting on them, except where minority rights are concerned. Minority rights may not be overruled by the majority. In the Rules of Procedure such minority rights are apparent from the word "demand". Thus a parliamentary group or at least five per cent of Members, who

must be present, may demand a recorded vote on an item of business, which must then be taken. A parliamentary group or five per cent of Members, who must be present, can also table a motion for the presence of a quorum in the plenary to be ascertained, or a motion to summon a member of the Federal Government. It is not possible to list all conceivable procedural motions here.

Other items of business include recommendations and reports on matters concerning the scrutiny of elections, immunity and the Rules of Procedure, on petitions, and on proceedings before the Federal Constitutional Court.

In the case of certain government items, the Rules of Procedure provide for special procedures.

For example, there are a number of statutory instruments which must, by virtue of a law, be submitted to the Bundestag. Under the Rules of Procedure, statutory instruments which require the consent of the Bundestag or whose repeal it may demand within a specified period of time are referred directly to the appropriate committees by the President in consultation with the Council of Elders; the report and any recommendation for a decision submitted by the lead committee is placed on the agenda.

Stability measures are bills of the Federal Government pursuant to Section 8 (1) of the Act to Promote Economic Stability and Growth. The President refers them directly to the Budget Committee, which must deliberate on them within the week of sittings following receipt of the Bundesrat's comments. The Budget Committee's report must be placed on the agenda within four weeks; Members may only move motions for amendments aiming to reduce expenditure.

Other government items which are subject to special procedures are budgetary bills (all items concerning the Budget Act and the budget) and finance bills (e.g. bills with considerable financial implications for the Federation).

Special rules also apply to the way in which EU documents are dealt with. The laws accompanying the Treaty of Lisbon and the measures to ensure the stability of the euro have given the Bundestag far-reaching rights to information and participatory rights. Given the importance of these rights, a separate chapter is devoted to the procedures for dealing with EU affairs in the committees and in the plenary (see p. 71 et seq.).

The "major interpellation" is the most effective parliamentary instrument for obtaining the comments of the Federal Government on important poli-

tical questions and then publicly debating them. Such interpellations were already known in the Reichstag at the time of the Kaiser, when they were initially the only possibility of addressing questions to the government.

Major interpellations may be submitted to the President by a parliamentary group or five per cent of Members (currently at least 32). The President informs the Federal Government of them. As soon as the Federal Government's reply has been received, it is placed on the agenda and debated. Major interpellations are primarily used by the opposition parliamentary groups as a means of scrutinising the government's political approach. In general, major interpellations are concerned with matters of political importance, on which the government is asked to provide information and is held to account, both in terms of its general approach and on matters of detail. If a parliamentary group or five per cent of Members so demand, a debate must also be held if the Federal Government delays replying for too long or does not reply at all. The Rules of Procedure do not specify a time limit for replies to major interpellations, however.

In addition to major interpellations, which always aim to bring about a public debate, there are "minor interpellations", which allow information on specific issues in written form to be demanded from the Federal Government. They must also be signed by a parliamentary group or five per cent of Members. The President of the Bundestag forwards them to the Federal Government, requesting it to reply to them in writing within two weeks. The minor interpellation has been dealt with once the Federal Government has replied in writing. Both the questions and the answers are published as Bundestag printed papers. They are not debated. Minor interpellations, too, are primarily used by the opposition as a means of obtaining information and scrutinising the government's work.

## ► Votes

There are various procedures for votes in the Bundestag: as a rule, votes take the form of a show of hands. In the final decision on bills, voting is by standing or sitting, given the importance of the matter. If the Chair does not agree on the result of a vote, the ballot must be repeated by counting the votes.

The procedure for this (known as the *Hammelsprung*) is as follows: the President requests the Members to leave the Chamber. At a signal from the President, they re-enter the Chamber from the lobby through one of

three doors marked "Yes", "No" and "Abstention" and are counted aloud by the Secretaries. The Secretaries inform the President of the result of their count. The latter then announces the result to the plenary.

This procedure is also used if, prior to a vote, a parliamentary group or five per cent of the Members, i.e. currently (at least) 32, who must be present, express doubts about the presence of a quorum and its presence is not confirmed unanimously by the Chair. However, so long as no such doubts are expressed, it is assumed that there is a quorum, i.e. that more than half the Members are present. Binding decisions can then be taken by the House.

A recorded vote is held if demanded by a parliamentary group or at least five per cent of the Members of the Bundestag, who must be present. Generally speaking, such votes are only demanded on major political issues which are hotly disputed in the House. Under the supervision of the Secretaries, all the Members place their voting cards in ballot boxes located within the plenary chamber. The plastic voting cards bear the name of each Member, that of his or her parliamentary group, and either "Yes" (blue), "No" (red) or "I abstain" (white). The President in the Chair announces the result, which appears in the minutes of the plenary proceedings and on the Bundestag's website, with the way each Member voted being indicated next to his or her name. This allows the public to see how the individual Members voted.

If a secret ballot is held, the Members enter a polling booth and place a cross beside the name of their preferred candidate on the ballot paper. They place the ballot paper in an envelope, and insert the envelope into a ballot box under the supervision of the Secretaries.

Secret ballots are used in particular to elect the President of the Bundestag, the Vice-Presidents, the Federal Chancellor and the Parliamentary Commissioner for the Armed Forces. Traditionally, when the President of the Bundestag and the Federal Chancellor are elected, the Secretaries call out the name of each Member in turn to go up and cast his or her vote. Secret ballots are only held in the case of elections to certain offices, not, however, in the case of bills or motions.

## **The Bundestag's participation in EU affairs**

The development of the European Union has led to a significant transfer of responsibilities to the European level. With more and more policies

being made at EU level, however, the participation of the national parliaments is essential to ensure democratic legitimacy. The principle of democracy enshrined in the Basic Law dictates that the Bundestag plays a crucial role in conferring democratic legitimacy on European integration. As the Federal Constitutional Court has underlined in numerous rulings, the Bundestag must remain the central forum where public political debate takes place and legally binding decisions are taken, including and especially in matters concerning the European Union.

The key constitutional provision governing parliamentary participation in EU affairs is Article 23 of the Basic Law, which was inserted in the constitution in connection with the ratification of the Maastricht Treaty. It stipulates that any changes in the EU's treaty foundations and any transfer of sovereign powers require the consent of the Bundestag and Bundesrat. In addition, the Federal Government is obliged to keep the Bundestag informed about EU matters comprehensively and at the earliest possible time. Before participating in legislative acts of the European Union, the Federal Government must give the Bundestag an opportunity to state its position and must take its position into account during the negotiations. The details are regulated in the laws which accompanied the Treaty of Lisbon: the Act on Cooperation between the Federal Government and the German Bundestag in Matters concerning the European Union (also known as the Cooperation Act), a revised version of which was passed in 2013, and the Act on the Exercise by the Bundestag and by the Bundesrat of their Responsibility for Integration in Matters concerning the European Union (also known as the Responsibility for Integration Act) of 2009. Both laws provide for comprehensive rights to information and participatory rights. The Cooperation Act regulates the details of the Federal Government's notification obligations in EU matters and the Bundestag's participation by delivering opinions to the Federal Government in accordance with Article 23 (2) and (3) of the Basic Law. The Responsibility for Integration Act regulates the Bundestag's participation in special projects at European level which are of particular relevance for the integration process, such as amendments to EU treaties, an expansion of European legislative competences, or changes to EU voting procedures.

### ► Participatory rights under the Cooperation Act

Under Section 3 of the Cooperation Act, the Federal Government must notify the Bundestag comprehensively, as early as possible, continuously,

and – in principle – in writing about matters concerning the European Union. The notification has to provide information about, in particular, the Federal Government's decision-making process, the preparation and course of discussions within the EU institutions, and the opinions of the European Parliament, the European Commission and the other EU Member States, as well as the decisions that have been taken. It also covers informal ministerial meetings, euro summits, the Eurogroup and comparable institutions which complement or are otherwise particularly closely related to EU law. The same also applies to all preparatory bodies and working groups. Notification involves the forwarding of the relevant documents and the Federal Government's reports, which are set out in detail in Section 4 of the Cooperation Act. The Bundestag must be informed in advance and in sufficiently good time for it to be able to form an opinion on the subject of the meetings and the Federal Government's position and to influence the Federal Government's negotiating line and voting decisions.

A key factor which influences the form that the notification takes, the subsequent procedure in the Bundestag and Parliament's participatory rights is the concept of "EU projects" (Section 5 of the Cooperation Act). EU projects include, in particular, all proposals for legislative acts such as regulations and directives, as well as proposals for treaty changes and the opening of accession negotiations, but also reports, communications, green and white papers, action plans, and mandates for international agreements. The Federal Government transmits EU projects to the Bundestag with a forwarding letter (a process known as formal forwarding, Section 6 of the Cooperation Act). No later than two weeks after transmission, the Federal Government must also provide a formal report about the EU project's main content and political significance, the timetable for the procedure at European level, and Germany's particular interests. The report also contains an appraisal of the project in terms of its compatibility with the principles of subsidiarity and proportionality. If the project in question is a proposal for an EU legislative act, the Federal Government additionally transmits a comprehensive appraisal within two weeks of its referral to the Bundestag committees, but no later than the start of its discussion by the Council bodies. As well as providing information about the European Union's competence to adopt the proposed legislative act and its compatibility with the principles of subsidiarity and proportionality, the appraisal also offers a comprehensive assessment of the impact it will have on the Federal Republic of Germany.

In the realm of the Common Foreign and Security Policy (CFSP) and the Common Security and Defence Policy (CSDP), the Federal Government also provides comprehensive, continuous notification as early as possible, and as a rule in writing. The notification includes the forwarding of a summary of the legislative acts that are due to be the subject of discussion, an appraisal of them and a prognosis of the future course of discussions (Section 7 of the Cooperation Act). At the Bundestag's request, the Federal Government formally forwards documents of fundamental importance in accordance with the provisions of Section 6 (1) of the Cooperation Act.

The procedure for dealing with EU documents is enshrined in Rules 93 and 93a to d of the Bundestag's Rules of Procedure. All EU documents are forwarded by the Federal Government directly to the European Affairs Documentation Division in the Administration of the Bundestag. In addition, the Bundestag receives all adopted texts directly from the European Commission and all resolutions from the European Parliament. In total, the Bundestag receives almost 25,000 documents each year, which are catalogued in EuDoX, the Bundestag's internal information system. They include around 800 EU projects which are formally forwarded by the Federal Government, around 9,000 documents that are information material or communications from the Federal Government, around 1,880 documents transmitted directly by the Commission, and around 125 resolutions of the European Parliament. Formally forwarded documents first undergo a prioritisation procedure at the Bundestag so that Parliament can concentrate on politically significant initiatives. In advance of the decision on which committees a document should be referred to as the lead committee and committees asked for their opinion, the document's relevance for deliberations is assessed by the Administration of the Bundestag in consultation with the parliamentary groups (prioritisation). The chairperson of the Committee on the Affairs of the European Union then submits a proposal for referral to the President of the Bundestag.

In principle, all committees discuss European affairs insofar as they relate to the specialised areas for which they are responsible. The EU Affairs Committee, as the integrative cross-cutting committee, deals both with issues relating to European integration and with European initiatives which touch on several different policy fields.

The deliberations on EU documents vary in intensity. Drafts of important regulations and directives are discussed at length in the committees, with consultations taking place with the relevant government representatives

and, more and more frequently, with members or at least representatives of the European Commission. Interparliamentary dialogue on major EU projects has also increased in importance, for example in the form of joint meetings of the committees of the national parliaments and of the European Parliament. In addition, the national parliaments of the EU Member States engage in dialogue via an electronic platform they run jointly with the European Parliament. IPEX ([www.ipex.eu](http://www.ipex.eu)) allows them to share information about the progress of their deliberations on EU projects, and about any concerns they may have regarding compliance with the principle of subsidiarity.

The appropriate committees may also declare EU documents which have not – or not yet – been referred to them to be items for discussion. If they want to submit a recommendation for the Bundestag to deliver an opinion under Article 23 (2) or (3) of the Basic Law, however, the EU document must be formally referred to them. The committees may also base their deliberations and recommendation for a decision on a follow-up document to an EU document previously referred to them. A lead committee can also present a recommendation for a decision more than once, in particular in order to take account of new developments.

In most cases, the committee deliberations end with acknowledgement of the EU document. However, if the lead committee submits a recommendation for a decision to the plenary, the Bundestag can, on the basis of the recommendation, take the decision to deliver an opinion.

By means of opinions it delivers to the Federal Government, the Bundestag has an opportunity to influence the negotiating position of the Federal Government, which takes decisions in the Council together with the governments of the other EU Member States. In principle, the Bundestag can deliver opinions on all EU projects. The Federal Government must use these opinions as a basis for its negotiations and report to the Bundestag continuously about the consideration given to its opinions in the negotiations (Section 8 (2) of the Cooperation Act). This gives the Bundestag the opportunity to adapt and supplement its opinion in the course of the often protracted discussions on a project at EU level.

The Federal Government is subject to stricter constraints in the case of opinions delivered by the Bundestag about legislative acts such as regulations and directives (Section 8 (4) of the Cooperation Act). In such cases, the Federal Government must invoke the requirement of prior parliamentary approval in the negotiations in the Council if the main inter-

ests expressed in the Bundestag's decision cannot be asserted. The Bundestag must be notified in a special report. Before the final decision in the Council, the Federal Government must seek an agreement with the Bundestag. However, the Federal Government may take divergent decisions for important reasons of foreign or integration policy. In any case, it is obliged to notify the Bundestag in writing, without delay, about how its opinion has been implemented and the reasons for any divergence from it – and, if demanded by a quarter of the Members of the Bundestag, the Federal Government is also required to provide information about this during a plenary debate. Before the opening of negotiations on a country's accession to the EU or on amendments to the contractual foundations of the EU, and prior to Council decisions on the introduction of the euro in a Member State, the Federal Government is required to reach an agreement with the Bundestag; in such cases, it is not enough for it to simply seek an agreement (Sections 9 and 9a of the Cooperation Act).

The Committee on the Affairs of the European Union has special rights with regard to opinions. It has a special position compared to the other specialised committees, in that it can be empowered by the Bundestag in individual cases to exercise Parliament's rights under Article 23 of the Basic Law in relation to the Federal Government. If empowered in this way, it must, before stating its opinion to the Federal Government, request an opinion on the EU document in question from the committees concerned. If it wishes to deviate from the opinion of one or more committees, a joint meeting with the committees concerned has to be convened. Even if it has not been empowered by the plenary, the EU Affairs Committee may exercise the rights of the Bundestag in relation to the Federal Government unless one of the committees concerned objects. The Bundestag retains the right to take a decision itself on a matter concerning the European Union at any time. In addition, the EU Affairs Committee is entitled, in matters where it is only involved as a committee asked for an opinion, to propose amendments – which are debated in the plenary – to the recommendation for a decision submitted by the lead committee.

### ► **Participatory rights under the Responsibility for Integration Act**

To allow it to exercise its responsibility for integration, the Bundestag has special participatory rights in relation to further steps towards inte-

gration. In the case of amendments to the EU treaties, an expansion of European legislative competences or changes to EU voting procedures, the Bundestag's prior consent is required in the form of a law or decision. Specifically, the Responsibility for Integration Act sets out the following provisions:

Under Section 2 of the Responsibility for Integration Act, consent in the form of a law, as defined in Article 23 (1) of the Basic Law, is necessary for the simplified treaty revision procedure under Article 48 (6) of the Treaty on European Union, which permits revisions in areas including the internal market, economic and monetary policy and employment policy. There are a range of special treaty revision procedures, limited to specific areas, which also require consent in the form of a law, as defined in Article 23 (1) of the Basic Law (Section 3 of the Responsibility for Integration Act). In the case of the general bridging clause contained in Article 48 (7) of the Treaty on European Union, which allows a change in the voting modalities in the Council or in the legislative procedure to be applied, a law as defined in Article 23 (1) of the Basic Law is required even for the German representative in the European Council or the Council to approve the proposal (Section 4 of the Responsibility for Integration Act). The same applies, under Section 7 of the Responsibility for Integration Act, in the case of the competence clauses, which permit a substantive extension of the EU's competences without the need for treaty change. The flexibility clause of Article 352 of the Treaty on the Functioning of the European Union allows the EU's existing competences to be extended for a specific purpose. Section 8 of the Responsibility for Integration Act stipulates that this, too, requires a law on the basis of Article 23 (1) of the Basic Law.

By contrast, a decision of the Bundestag is sufficient basis for the German representative in the European Council or the Council to approve a proposal for the application of special bridging clauses relating to specific policies (Sections 5 (1) and 6 (1) of the Responsibility for Integration Act). A decision of the Bundesrat is also required if the interests of the *Länder* are affected (Sections 5 (2) and 6 (2) of the Responsibility for Integration Act). The Bundestag – and the Bundesrat in certain cases – can also take a decision instructing the German representative in the Council to use the emergency brake mechanism (Section 9 of the Responsibility for Integration Act). This mechanism allows a member of the Council to convene the European Council if it believes a planned legislative act affects fundamental aspects of its criminal justice system or social security system.

Since the entry into force of the Treaty of Lisbon, the Bundestag has also had the option of delivering a reasoned opinion, also known as a subsidiarity objection (Section 11 of the Responsibility for Integration Act), directly to the competent EU institutions. The principle of subsidiarity dictates that the EU may act only if and insofar as the objectives of the proposed action cannot be sufficiently achieved by the Member States but can rather, by reason of the scale or effects of the proposed action, be better achieved at EU level. The national parliaments may, within eight weeks from the date of transmission of a draft legislative act in all official EU languages, state in a reasoned opinion why they consider that the draft in question is incompatible with the principle of subsidiarity. If at least one third of the parliaments deliver opinions in which they conclude that the draft is incompatible with the subsidiarity principle, the European Commission must review the proposal ("yellow card") and, if appropriate, amend or withdraw it. The required threshold drops to a quarter of parliaments if the draft concerns police and judicial cooperation in criminal matters. If more than half of the parliaments register concerns about subsidiarity ("orange card"), however, and the Commission nonetheless decides to maintain its proposal, a draft can be stopped under the ordinary legislative procedure by 55 per cent of the votes in the Council or a simple majority in the European Parliament.

In their deliberations on the EU documents referred to them, whether as the lead committee or a committee asked for its opinion, the committees also monitor compliance with the principles of subsidiarity and proportionality (Section 11 of the Responsibility for Integration Act, Rule 93a (1) of the Rules of Procedure). If the filing of an objection of non-compliance is planned in this context, the Committee on the Affairs of the European Union must be informed without delay, in order to give it the opportunity to first state its opinion. If the lead committee only intends to acknowledge the document in question, a report must nevertheless be given to the Bundestag if the Committee on the Affairs of the European Union expresses concerns regarding infringement of the principles of subsidiarity and proportionality. A subsidiarity objection is raised by the Bundestag in the form of an opinion, which the President of the Bundestag transmits to the presidents of the European Parliament, the Council and the European Commission.

In the case of a legislative act which has already been enacted, the Bundestag can bring a subsidiarity action before the European Court of Justice (Section 12 of the Responsibility for Integration Act, Rule 93d of the

Rules of Procedure); it is obliged to do so upon the motion of one quarter of its Members (in the 18th electoral term, the motion must be supported by 120 Members). At the request of one quarter of its Members who do not support the bringing of the action (in the 18th electoral term: 120 Members), their view must be made clear in the application.

### ► Participatory rights in the framework of the European Stability Mechanism (ESM)

To tackle the financial and economic crisis in the eurozone countries, new instruments have been created to stabilise the euro and coordinate economic and fiscal policies. The temporary "euro rescue package" put together in 2010, consisting of the European Financial Stability Facility (EFSF) and the European Financial Stabilisation Mechanism (EFSM), was supplemented in October 2012 by the European Stability Mechanism (ESM). The ESM, which is intended as a permanent contribution to the stability of the euro area, initially ran in parallel with the EFSF and EFSM, and replaced them in mid-2013. The granting of financial assistance by the ESM is closely connected with the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union, which entered into force in 2013. This Treaty defines rules concerning the maintenance of budgetary discipline and introduces measures relating to economic policy coordination and the governance of the eurozone.

The ESM Treaty is an agreement under international law which complements and shows particular proximity to EU law, and thus it falls inside the scope of Article 23 (2) of the Basic Law. The German Bundestag's special participatory rights in matters concerning the ESM are regulated in the ESM Financing Act. The Bundestag's general rights under the Cooperation Act are unaffected in ESM matters; for example, Sections 3 and 4 of the Cooperation Act also apply to the general notification of the Bundestag in connection with the ESM.

In matters concerning the European Stability Mechanism, the German Bundestag exercises its budgetary responsibility and its responsibility for the existence and continued development of the stability of the economic and monetary union. The exact form in which the Bundestag or its bodies participate in the decision to be taken depends on its importance:

The fundamental decisions on granting financial assistance to an ESM member, on the adoption of a financial assistance facility agreement and

on any change to the ESM's authorised capital stock affect the overall budgetary responsibility of the Bundestag and can only be taken by Parliament as a whole (Section 4 of the ESM Financing Act). The Federal Government may only approve, through its representative, a proposal for a decision in such matters concerning the ESM or abstain from voting on such a proposal after the plenary of the Bundestag has taken an affirmative decision to that effect.

In all other matters concerning the European Stability Mechanism affecting the German Bundestag's budgetary responsibility, the Budget Committee must be involved (Section 5 of the ESM Financing Act). In the framework of its responsibility for budgetary policy, it monitors the preparation and implementation of agreements on stability support. Its advance approval is required for, among other things, the adoption or significant amendment of guidelines on the modalities for implementing financial assistance. Without an affirmative decision by the Budget Committee, the German representative must reject the proposal for a decision in the ESM bodies. In addition, the Budget Committee has the right to deliver an opinion; this applies in particular to decisions regarding the payment of individual tranches of agreed stability support. The plenary of the German Bundestag may take over and exercise the powers of the Budget Committee at any time by means of a decision taken by a simple majority.

Regarding the purchase of government bonds on the secondary market, a small Special Panel consisting of members of the Budget Committee may, for reasons of confidentiality, exercise the Bundestag's participatory rights exceptionally as long as the confidentiality requirement persists (Section 6 of the ESM Financing Act).

Section 7 of the ESM Financing Act sets out extensive notification rights which exist alongside those enshrined in the Cooperation Act and apply specifically to matters concerning the ESM.

The Bundestag's participation in two special cases is regulated by Article 2 of the law of 13 September 2012 ratifying the ESM Treaty: in the case of decisions to increase the ESM's capital stock or to change the list of the ESM's financial assistance instruments, the Bundestag's authorisation in the form of a federal law is required.

## ► Participation vis-à-vis EU institutions

As well as the subsidiarity objection and subsidiarity action set out above (p. 78 et seq.), the Bundestag has other means of communicating its views directly to an institution of the European Union:

For example, it can send an opinion to the European Commission on draft legislative acts and other matters of special interest. An opinion of this kind, which is formulated via the Bundestag's normal internal procedures, is delivered in the framework of the Commission's political dialogue with the national parliaments and has no direct legal consequences. The basis is the Commission's voluntary commitment in 2006 to take into account the arguments put forward by the national parliaments, which can relate to any conceivable political or legal issue, including concerns about subsidiarity, in advance of or at an early stage of the process in relation to legislative acts. A dialogue about current projects and initiatives also takes place in the framework of committee meetings held in Brussels and trips there by delegations, interparliamentary meetings, and the participation of Commission representatives in the meetings of the Bundestag's committees in Berlin.

In addition, it is standard practice for the European Commission to hold a public consultation on green and white papers, which set out the fundamental lines and issues of a planned legislative proposal, in order to obtain the opinions of experts, agencies, the national parliaments and the public. The Bundestag is not alone in being able to submit an opinion as part of a consultation; the parliamentary groups and all Members of the Bundestag are also free to set out their views by sending an opinion of their own directly to the Commission.

## ► Interparliamentary cooperation in the European Union

The European Parliament and the national parliaments engage in various forms of cooperation:

For many years, at the European Parliament's initiative, meetings between parliaments and committees have been taking place in Brussels, in various formats. Interparliamentary meetings usually deal with cross-cutting issues, while joint committee meetings focus on specific specialised topics or concrete legislative proposals. In addition, the parliament of the country holding the six-month presidency of the Council hosts events at which EU issues are discussed at the level of the committee chairpersons.

In 2012, to strengthen parliamentary scrutiny in the realm of the CFSP/CSDP, the national parliaments and the European Parliament established the Inter-Parliamentary Conference for the Common Foreign and Security Policy and the Common Security and Defence Policy. It meets twice a year and provides a framework for the exchange of information and best practices in the areas of foreign, security and defence policy.

The Conference under Article 13 of the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union also meets twice a year. It serves as an interparliamentary forum for discussion of issues relating to economic, financial and budgetary policy, and for an exchange of views on other issues covered by the Treaty.

The Conference of Speakers of EU Parliaments, which includes the President of the European Parliament, has the aim of strengthening the parliaments' role in matters concerning the EU. The annual conference is devoted to dialogue on European topics that are of particular importance for the national parliaments and interparliamentary cooperation.

The Conference of Community and European Affairs Committees of Parliaments of the European Union (COSAC) was established in 1989. A delegation from the Bundestag's EU Affairs Committee and from the Bundesrat participates in its twice-yearly meetings, which allow the exchange of information and best practices between the national parliaments and the European Parliament at committee level.

## **The Bundestag's participatory rights in relation to mixed institutions**

To complete the picture of the diverse functions of the Bundestag, mention must be made of those bodies and institutions in which – in accordance with the Basic Law, legal provisions or international treaties – persons commissioned by the Bundestag participate in various ways, or to which they are appointed by the Bundestag.

### **► The Federal Convention**

The most important such body is the Federal Convention. This constitutional organ normally only convenes every five years for only a few hours to perform its sole function of electing the Federal President (Article 54

of the Basic Law). The Federal Convention comprises the Members of the Bundestag and an equal number of members who are elected by the *Land* parliaments but need not themselves be Members of the *Land* parliament concerned. On the day the Federal President is elected, half the Federal Convention thus reflects the relative strengths of the political parties in the Bundestag and the other half their relative strengths in the *Land* parliaments. The fifteenth Federal Convention, which convened on 18 March 2012 and elected Joachim Gauck as Federal President, had 1,240 members: 620 Members of the Bundestag and 620 delegates of the *Land* parliaments. The number of members of the Federal Convention elected by the individual *Land* parliaments depends on the population of the *Land* concerned.

The Federal Convention is convened by the President of the Bundestag, who also serves as its chairperson.

The Federal President is elected by the Federal Convention without debate. Every German who is at least 40 years old is eligible to stand as a candidate.

Candidates may be proposed by any member of the Federal Convention. These provisions do not, however, indicate the way in which candidates are nominated in practice: the members of the Federal Convention belonging to the same party form political groups, which submit their nominations after carefully considering their candidates' suitability for the highest state office. The candidate receiving the votes of the majority of the members of the Federal Convention is elected. If this majority is not obtained by any candidate in two ballots, the person who receives the most votes in a further ballot is elected (Article 54 (6) of the Basic Law). The President of the Bundestag announces the result of the count and asks the person elected whether he or she accepts his or her election. Following a short speech by the President elect, the President of the Bundestag declares the Federal Convention to be ended; it has fulfilled its function.

## ► The Joint Committee

A constitutional body which is little known because it has virtually no functions to perform in peacetime and its meetings pass unnoticed by the public is the Joint Committee, an emergency parliament which replaces the Bundestag and the Bundesrat if, in a state of defence, the

Bundestag can no longer meet (Article 53a in conjunction with Articles 115a and 115e of the Basic Law). The number of members of the Joint Committee is based on the number of *Länder*. For every representative of a *Land*, there are two Members of the Bundestag; the latter are appointed by the Bundestag in line with the relative strengths of the parliamentary groups. The Joint Committee therefore consists of 16 representatives of the *Länder* and 32 Members of the Bundestag.

The Joint Committee is chaired by the President of the Bundestag; a member of the Bundesrat is appointed as deputy. The Joint Committee takes decisions by a simple majority; if they vote unanimously, the representatives of the Bundestag can thus always outvote the Bundesrat. The Joint Committee is not competent to take decisions in peacetime. The Federal Government must inform the Joint Committee of its defence policy plans at least twice a year in peacetime.

### ► The Mediation Committee

Article 77 of the Basic Law provides for the Mediation Committee, a body situated between the Bundestag and the Bundesrat. Its function is to seek compromise solutions in the event of legislative conflicts between the Bundestag and the Bundesrat, where requested to do so by either of these two constitutional bodies.

The Mediation Committee consists of 16 members of the Bundesrat and an equal number of Members of the Bundestag who are appointed according to the relative strengths of the parliamentary groups. Its procedure is governed by the "Joint Rules of Procedure of the Bundestag and the Bundesrat for the Committee set up pursuant to Article 77 of the Basic Law (Mediation Committee)". For details, see the section on "The mediation procedure" on p. 128.

### ► The Committee for the Election of Judges

The group of "mixed" bodies, half of whose members are appointed by the Bundestag and half by the Bundesrat, also includes the Committee for the Election of Judges, which elects the judges of the highest federal courts (Federal Court of Justice, Federal Administrative Court, Federal Labour Court, Federal Finance Court, Federal Social Court). Pursuant to the Act on the Election of Judges, the Committee for the Election of

Judges comprises 16 *Land* ministers and an equal number of members elected by the Bundestag; unlike the Committee for the Election of the Judges of the Federal Constitutional Court (see p. 54), the members of the Committee for the Election of Judges to be elected by the Bundestag need not be Members of the Bundestag, but they must have legal experience. The Committee is chaired by the federal minister responsible for the court concerned, who is not, however, entitled to vote. The departmental principle also applies to members of the *Land* governments, i.e. in every case the Committee for the Election of Judges comprises those *Land* ministers in whose area of competence the *Land* judges placed under this highest court fall; for example, the ministers of labour of the 16 *Länder* participate in the election of the judges of the Federal Labour Court.

The Committee for the Election of Judges takes its decision on the candidates in a secret ballot. If the federal minister in question agrees with the outcome, he or she asks the Federal President to appoint the elected candidate. The Federal President then signs the letters of appointment of the new federal judges.

### ► Membership of executive bodies

On the basis of legal provisions or the relevant statutes, the Bundestag sends or appoints members to a number of government steering and supervisory bodies. In some cases they are Members of the Bundestag, in others they come from other areas of public life. The Bundestag appoints:

- 16 Members of the Bundestag to the 32-member Advisory Council at the Federal Network Agency for Electricity, Gas, Telecommunications, Post and Railway, as well as 16 substitutes;
- 9 Members of the German Bundestag as members of the Rail Infrastructure Advisory Council, and nine deputy members;
- 4 Members of the Bundestag and 4 substitutes to the Stamp Plan Advisory Council at the Federal Ministry of Finance, which has a maximum of 14 members;
- 2 Members of the Bundestag and 2 substitutes to the Advisory Committee for Artistic Design of Stamps at the Federal Ministry of Finance, which has a maximum of 12 members;

- 3 of the 33 members of the Administrative Council of the German Federal Film Board and 3 substitutes;
- 1 of the 11 members of the Grant Commission of the German Federal Film Board and 1 substitute;
- 2 members of the advisory council of the arbitration body for local public transport;
- 7 Members of the Bundestag to the 30-member administrative board of KfW (Reconstruction Loan Corporation);
- 2 of the 17 members of the Broadcasting Board of the Deutsche Welle broadcasting corporation, and 2 substitutes;
- 1 of the 7 members of the Administrative Board of the Deutsche Welle broadcasting corporation, as well as 1 substitute;
- 8 Members of the Bundestag to the 32-member board of trustees of the foundation "Museum of Contemporary History of the Federal Republic of Germany" as well as 8 substitutes;
- 5 of the 20 members of the board of trustees of the foundation "Archives of the Parties and Mass Organisations of the GDR", as well as 5 substitutes;
- 2 Members of the Bundestag to the 6-member parliamentary advisory council of the "Foundation for the Sorbian People", as well as 2 substitutes;
- 8 of the 17 members of the advisory council to the Federal Commissioner for the Files of the State Security Service of the former German Democratic Republic;
- 9 members of the Scientific Advisory Board established under Section 39a of the Stasi Records Act;
- 1 Member of the Bundestag to serve on the 15-member board of trustees of the Centre of Advanced European Studies and Research (CAESAR);
- 3 Members of the Bundestag to serve on the 15-member board of trustees of the German Foundation for Peace Research;
- 2 Members of the Bundestag to serve on the 22-member senate of the Helmholtz Association of National Research Centres;

- 5 Members of the Bundestag to serve on the 17-member administrative council of the Federal Financial Supervisory Authority, as well as 5 alternates;
- 2 of the 12 voting members of the board of trustees of the Social Science Research Centre Berlin;
- 2 of the 9 members of the board of trustees of the Foundation for Humanitarian Aid to Persons Infected with HIV by Blood Products;
- 5 of the 27 members of the board of trustees of the Foundation "Remembrance, Responsibility and the Future", as well as 5 alternates;
- 4 members of the board of trustees of the Foundation Flight, Expulsion, Reconciliation, as well as 4 substitutes;
- 3 of the 14 members of the board of trustees of the Federal Cultural Foundation, as well as 3 alternates;
- 1 Member of the German Bundestag to serve on the 14-member administrative council of the Franco-German Youth Office, as well as 1 reserve.

In addition, the German Bundestag appoints members to the following bodies:

- Board of trustees of the Foundation for the Memorial to the Murdered Jews of Europe:

Members: the President of the German Bundestag, together with one Member of the German Bundestag for every 1 – 100 members of each of the parliamentary groups represented in the German Bundestag.

- Board of trustees of the Foundation for the Study of the SED Dictatorship:

The number of members depends on the number of parliamentary groups at the time of the elections: each of the parliamentary groups in the German Bundestag may nominate one member and one alternate who are Members of the Bundestag and one member and one alternate who do not necessarily have to be Members of the Bundestag.

The President of the German Bundestag appoints the 26 members of the German Ethics Council; half are nominated by the German Bundestag and half by the Federal Government.

In addition, there are many other bodies to which members are appointed by the President of the Bundestag upon the proposal of the parliamentary groups or by the parliamentary groups themselves. These members mostly serve alongside representatives of other organisations and social groups in carrying out the work of the body concerned. The rights to be involved with and influence the work of the organisations listed above make clear the many different ways in which the Bundestag brings its influence to bear in society as a whole and in the wider political context.

## International parliamentary assemblies

For the duration of its electoral term the Bundestag elects 18 parliamentarians to serve as members (called representatives) and a further 18 as substitute members (called substitutes) of the Parliamentary Assembly of the Council of Europe. The Council of Europe, founded in 1949, is the oldest intergovernmental organisation in Europe. Its aim is to protect human rights, democracy and the rule of law. Over the years, it has passed more than 200 conventions, primarily in the field of human rights. The Parliamentary Assembly, the Council of Europe's consultative body, is composed of representatives of the 47 member states' national parliaments. It elects the Secretary General of the Council of Europe and the judges of the European Court of Human Rights.

Members of the Bundestag also participate in the deliberations of the NATO Parliamentary Assembly. This assembly, set up in 1955 within the framework of the North Atlantic Treaty Organisation, is composed of representatives of the parliaments of 28 member states and a further 14 associate members. It deals with issues relating to security, politics and economics which affect the transatlantic alliance. The Assembly's aim is to foster mutual understanding of the security concerns on both sides of the Atlantic and to scrutinise and support the work of the NATO Council. The German delegation is composed of 12 Members of the Bundestag and 6 members of the Bundesrat.

The Parliamentary Assembly of the Organisation for Security and Co-operation in Europe (OSCE PA) was founded in Madrid in 1991 as the parliamentary body of what was at that time called the Conference on Security and Cooperation in Europe (CSCE) before being renamed the OSCE in 1995. The Assembly, with its seat in Copenhagen, is composed of 323 parliamentarians from 56 participating states. The German Bundestag is a founding member; the German delegation comprises 13 members.

The Assembly perceives its main functions to be:

- to follow the work of the OSCE's executive bodies in a parliamentary context;
- to assess the implementation of the objectives of the OSCE, and to develop and promote mechanisms for the prevention and resolution of conflicts;
- to support the extension and consolidation of democratic institutions in the OSCE participating states, and to enhance the legitimacy of the electoral process by observing presidential and parliamentary elections.

At several meetings each year, the Assembly considers issues relevant to the OSCE and adopts related recommendations addressed to the governments and parliaments of the OSCE participating states and to the OSCE executive bodies.

Finally, twice a year the Bundestag sends delegations to the assemblies of the Inter-Parliamentary Union (IPU), an association of parliamentarians from all over the world, founded in 1889. The IPU, which today comprises 163 member parliaments and 10 associate members, seeks to promote peace and cooperation between peoples. In addition, it strives to foster the creation of representative institutions reflecting democracy and the rule of law throughout the world and to contribute to the protection of and respect for human rights. It directs resolutions to the national parliaments and governments; in addition, its recommendations are often directed at the international organisations within the United Nations system.

The Baltic Sea Parliamentary Conference is the parliamentary forum of the Baltic Sea region. It was established in 1991 with the aim of strengthening the common identity of the Baltic Sea region by fostering closer cooperation between the national and regional parliaments. While in the early days the focus was on environmental issues and questions relating to maritime safety and security, today the member states discuss economic and social issues as well as climate change and energy policy. In addition to five Members of the German Bundestag, the German delegation also includes Members of the parliaments of the *Länder* of Schleswig-Holstein, Mecklenburg-Western Pomerania, Bremen and Hamburg.

The Parliamentary Assembly of the Union for the Mediterranean (PA UfM), established in 2004, aims to foster dialogue between the parliaments of the Mediterranean region and the European Union, to provide

new impetus for Euro-Mediterranean cooperation, and to strengthen intercultural dialogue. The Assembly was already involved in what was known as the Barcelona Process, and is currently participating in the development of the Union for the Mediterranean, founded in 2008. The Assembly's membership consists of 280 parliamentarians; Germany is entitled to three seats.

## Summary

The Bundestag's structures, procedures, powers and rules outlined here may appear confusing at first sight. However, they have developed as a result of many years' experience and have proved useful. They are all intended to make what is at the outset an unstructured assembly of around 600 Members into a parliament based on a division of labour which is able to work efficiently and economically.

In organising its work along these lines, Parliament needs to comply with only a few constitutional provisions and legal regulations (e.g. the Federal Electoral Act, the Members of the Bundestag Act). For the rest, however, it is free, in line with the principle of parliamentary autonomy, to organise its work as it sees fit (Article 40 of the Basic Law: "The Bundestag shall ... adopt rules of procedure."). The Rules of Procedure must be geared to the following guiding principles:

- The independent mandate:  
In accordance with Article 38 of the Basic Law, Members are not bound, in their parliamentary work, by instructions from voters, interest groups, parties, parliamentary groups, etc.; this also applies to any commitment, for example, which they have made to resign their seat under certain circumstances.
- The "plenary's right to be the sole decision-making body":  
The forming of the will of the Bundestag must be based on a decision of the plenary. The activities of the bodies set up by the Bundestag only serve to prepare such plenary decisions. This does not rule out constant cooperation between the specialised committees and the appropriate federal ministries.
- The principle of formal equality:  
The political groupings represented in Parliament all have the same possibilities of working. Differences resulting from the differing size of these groupings are, however, justified within certain limits.

- The principle of majority voting:  
Decisions of the Bundestag in principle require a majority of the votes cast unless the Basic Law provides for or permits exceptions (Article 42 (2) of the Basic Law).
- The protection of minorities:  
To ensure their possibilities of taking action, parliamentary minorities have many different procedural rights, such as the right to move procedural motions, on which a vote must be taken, or the right to make demands which must be met (e.g. the setting up of study commissions, the convening of the Bundestag).
- The principle that sittings are open to the public:  
Plenary sittings of the Bundestag must in principle be public (Article 42 (1) of the Basic Law). No use has ever been made of the possibility of excluding the public.

## Statistics on the work of the German Bundestag in the 15th, 16th and 17th electoral terms

	15th electoral term, 2002 – 2005	16th electoral term, 2005 – 2009	17th electoral term, 2009 – 2013
Plenary sittings	187	233	253
Permanent committees	21	22	22
Committee meetings	1,562	2,728	2,600
Committees of inquiry	2	2	2
Meetings of committees of inquiry	62	172	227
Study commissions	2	1	2
Meetings of study commissions	89	36	51
Bills introduced	643	905	844
– by the Federal Government	320	537	484
– by the Bundestag	211	264	278
– by the Bundesrat	112	104	82
Bills adopted	400	616	553
Motions	910	1,837	1,966
Consecutively numbered Bundestag printed papers	6,016	14,158	14,838
Petitions (without mass submissions)	55,264	69,937	62,899
Major interpellations	65	63	54
Minor interpellations	797	3,299	3,629
Oral questions (Question Time)	2,550	2,703	6,057
Urgent questions	37	111	107
Written questions	11,073	12,705	20,141
Debates on matters of topical interest	71	113	131

	15th electoral term, 2002 – 2005	16th electoral term, 2005 – 2009	17th electoral term, 2009 – 2013
Government policy statements	23	34	51
Sessions of questions addressed to the Federal Government following the weekly cabinet meeting	42	59	69

## 2. The legislation of the Federation

Every polity needs firm rules according to which it can exist and peacefully develop further. It should be possible for the innumerable different wishes, ideas and interests of citizens to evolve and materialise in freedom – not at the expense of someone else or of someone weaker, but in a regulated manner alongside and in harmony with his or her freedom and interests. There must therefore be universally valid rules which are binding on every citizen but also binding on authorities in the action they take.

What are these rules and who draws them up? The most important are contained in the constitution, which in Germany is called the Basic Law for the Federal Republic of Germany. It lays down the basic rights, some of which are rights protecting citizens from state intervention – such as the right to life and to physical integrity, to self-fulfilment, freedom of faith and conscience or the right freely to choose and practise an occupation or profession –, and some of which are political participatory rights, such as freedom of assembly and freedom of association, freedom of expression or the right freely to establish political parties. The Basic Law contains such important guarantees as universal equality before the law, equality of men and women and, right at the beginning, in the first sentence of Article 1, paragraph (1), the duty of all public authority to respect and protect the inviolable dignity of all people.

At the same time, the Basic Law contains all essential regulations governing the structure of the state and the basis of state action. One of these important provisions states that the executive (i.e. authorities and agencies) is bound by law and justice in its actions. The Federal Republic of Germany is not only a democratic and social federal state, it is also governed by the rule of law. This means that authorities and agencies do not act arbitrarily but on the basis of all those binding rules mentioned earlier. All action by public authority can be reviewed by courts; citizens may lodge an objection and institute legal proceedings to fight for their rights, if they should have been denied them. To this end, standards are required on which the courts have to base their decisions, and these are to be found in laws.

In a modern democratic state, legislation is therefore an extremely important matter. The essential provisions on legislation are contained in the Basic Law, which outlines the legislative procedure to be described and explained in greater detail below. This is the only way of ensuring that the relevant procedure is complied with; given its public nature, citizens may at any time exercise scrutiny and form an opinion of their own about the issues at stake.

This is the reason why federal laws may only be adopted by the Bundestag: its debates are public – they are covered by the press, radio and television – and the only people who may participate in taking the decision on each bill are the elected Members of the Bundestag. Because laws are rules binding on the entire people, they must be considered and adopted by Parliament.

Article 77 (1) of the Basic Law therefore contains the following provision: "Federal laws shall be adopted by the Bundestag." Many people may and should participate in the substantive elaboration of bills, but responsibility for them must be assumed by those elected for this purpose. Members are elected for a limited period of time, i.e. the Bundestag's four-year electoral term. The term of office of Members thus ends after this period and elections are held, as a result of which the government with its legislative programme is confirmed in office or voted out of office. This is the essential feature of a democratic state: a government may be removed from office by peaceful means and replaced by another; this is not possible under undemocratic regimes.

A state under the rule of law is therefore governed in practice with the help of laws and by means of laws, and there are thus close links between legislation and politics. Yet how is such a law produced? What stages does it pass through before it is binding on everyone, and who is involved in this process? The following section will examine these issues in greater detail in order to provide a realistic overview of the legislative process.

## Initiation of legislation

The Federal Government, the Bundesrat – the organ through which the *Länder* participate in the legislation and administration of the Federation – and the Members of the Bundestag themselves have the right to introduce bills to be deliberated on by the Bundestag (right of initiative). Bills tabled by Members must be signed by at least 5 per cent of Members or

by a parliamentary group. In the other two cases the organ concerned – the Federal Government or the Bundesrat – must take a decision to this effect.

About two thirds of bills are introduced by the Federal Government. This is not surprising; in particular, it cannot be regarded as an indication that Members themselves show too little initiative as regards legislation or merely accept what the government dictates. Rather, it is typical of the parliamentary system of government provided for by the Basic Law. In line with the Basic Law, the Federal Chancellor is elected by the Bundestag; that is, following elections to the Bundestag the majority in Parliament, which corresponds to the election result, forms the government. Because the government and the parliamentary majority are identical in political terms, it is logical that the bills which this parliamentary majority wishes to adopt are drawn up and drafted in substantive and technical terms by the government and its civil servants. The Bundestag's control mainly concerns the question as to which of these legislative proposals will ultimately be adopted and which will not, and which of them will be amended by the Bundestag. In other words, the majority in the Bundestag does not automatically agree to everything submitted to it by the government which it has voted into office.

The draft law whose various stages we shall consider in the following pages is a bill introduced by the government, which is a common and typical kind of bill.

## **Bills**

The structure of the Federal Government corresponds to the most important areas of the state and society; thus there is always a ministry responsible for every major field (e.g. Federal Ministry of Justice and Consumer Protection, Federal Ministry for Economic Affairs and Energy, or Federal Ministry of Health). Within the ministries, competencies for the countless individual items are grouped together in directorates-general, directorates and divisions. If a law is required in a particular field – in practice it is mostly a question of laws to amend existing legislation, known as amending legislation – the appropriate division is as a rule charged with drawing up a draft law.

Legislation may be prompted by many different factors. One important source is the government's programme presented at the beginning of

every electoral term, which lists the government's main political projects for the next four years; as a result of this alone, the ministries are usually instructed to prepare laws in the relevant fields. However, the initiative may also be taken by the administration itself, for example if it becomes apparent that difficulties constantly arise in implementing a specific provision or if the cost involved is unexpectedly high. In such cases the *Länder* – which pursuant to Article 83 of the Basic Law are responsible for implementing federal laws – quite often approach the relevant ministry or, at political level, the Bundesrat, requesting amendments or submitting a fully formulated draft law. Amending legislation may also be prompted by the rulings handed down by the highest courts, either if a judgment of the Federal Constitutional Court has declared a provision to be incompatible with the constitution or if, for instance, it is apparent from judgments that a specific provision continually gives rise to disputes, legal proceedings and conflicting decisions by the lower courts. Moreover, associations of trade and industry and interest groups assert their members' need for amending legislation. Or it may be a petition submitted to the Petitions Committee which draws attention to the need for action. Local authority associations too quite often approach Parliament because they know from the cities, counties and municipalities which belong to them that a specific provision places a considerable burden on the finances of municipalities or causes the local authorities great administrative difficulties. Finally, as a result of the public discussion in the mass media, certain issues may appear to be increasingly problematic or ever more urgently to require legislation.

In line with the basic relationship outlined above between the parliamentary majority and the government in a parliamentary system of government, the initiative for legislation does not always come from the government; instead, the majority parliamentary groups in the Bundestag may themselves wish to amend a law and take a political decision to this effect. In such cases it is very rare for Members from these parliamentary groups and their staff to draft the bill themselves; instead, the government, or rather the relevant ministry, is instructed to prepare a draft.

The heads of divisions in the ministries are specialists who are involved at all stages in the proceedings. They evaluate correspondence from members of the public and organisations to the ministry, follow the rulings handed down by the courts and study specialist literature. They are in contact with colleagues responsible for the relevant area in *Land* ministries and local authorities and generally keep informed about develop-

ments in the field concerned. This means they have the specialist knowledge which enables them to carry out the task of drawing up a draft bill.

At this stage the head of division will already invite organisations and groups which will be affected by the draft law to attend discussions for an exchange of views and information material. This is more efficient than drawing up provisions in a theoretical vacuum which, if they were adopted in that form, might later prove to be impossible to implement or ill-founded. However, this also means that interest groups can influence the bill even at this early stage. They are involved before they face the lawmakers proper, the Bundestag, for instance at committee hearings, where they express their views and place their expertise at the Bundestag's disposal; in this way they often learn that a bill is being prepared very early on.

To be sure, the influence of interest groups is always a contentious aspect of the legislative process. On the other hand, one must realise that these groups do not act arbitrarily on behalf of a few individuals, but in principle represent the legitimate interests of social groups. Individual members of the public, whether they be tradesmen or businessmen, members of a specific occupational group, recipients of state benefits or simply supporters committed to a specific cause, are hardly in a position to assert viewpoints alone without joining forces with like-minded people. To this end, they can join a party or relevant association, organisation or citizens' action group and help put the ideas they share into practice. Parliament too is dependent on the involvement of interested groups affected by the planned legislation. For one thing, they have considerable expertise in the field concerned, without which the Bundestag would find it difficult to draw up just and appropriate provisions. On the other, it is legitimate and useful for the Bundestag to learn of the misgivings and concerns of the affected groups in good time and possibly take them into consideration, because a bill is dependent on being accepted and observed by those affected. In taking interests systematically into account, it is important to hear not just one viewpoint but also others which may reflect different and perhaps even conflicting interests in the same field. Thus, in the case of labour law provisions, not only the employers are heard but also the trade unions; in the case of provisions concerning the production of certain goods, not only the relevant branches of industry but also consumer organisations may express their views; and as regards energy policy and industrial production, environmental organisations have regularly been involved for many years now and asked to comment

on the issues at stake. Moreover, there are experts in the relevant fields and in particular a considerable number of scientific advisory bodies which the Federal Government has formed and which can provide it with additional advice in almost every specialist field. In all, several thousand experts serve on a wide variety of scientific advisory bodies, commissions and specialised committees.

In this way it is possible to tap expertise, balance interests and win the support of those affected by a legislative proposal without Parliament simply endorsing the opinion of one group or another.

Let us now return to the draft bill prepared by experts in the ministry concerned: the text, once it has been agreed on within the ministry, is also submitted to other ministries which are concerned with the subject matter or involved in political terms, because the fields covered by the bill frequently fall within the competence of several ministries. This applies in particular to bills with financial implications, which must also be submitted to the Ministry of Finance. The situation is similar as regards bills whose implementation might affect the environment, which are subjected to an environmental impact assessment. Investigation of a bill's impact on business, prices and consumers must be carried out, in cooperation with the Federal Ministry for Economic Affairs and Energy and the Federal Ministry of Justice and Consumer Protection. And, finally, the National Regulatory Control Council must be involved in the drafting process early on. This Council is charged with assessing the administrative costs entailed by federal legislative projects (as well as existing statutory instruments) and making suggestions for improvement where necessary.

Once the text has been coordinated with the ministries involved, the bill is forwarded to the Federal Ministry of Justice for it to ensure that it meets all legal requirements. The ministry examines whether the bill is compatible with the law in force; it compares the bill with the constitution and laws which are affected or concern similar fields and considers the finer points of legal language, including increasingly gender-neutral phrasing and the methodology of references to other legislation. To ensure the linguistic accuracy of laws and, ideally, that they are worded in such a way as to be clear to everyone, the editorial team of the Society for the German Language (based at the Bundestag) is also consulted at this stage. The minister who bears overall responsibility then submits the bill to the cabinet – which comprises the Federal Chancellor and all the ministers, i.e. the Federal Government – for a decision to be taken on it.

The text adopted by the cabinet is then passed to the Bundesrat by the Federal Chancellor.

## Involvement of the Bundesrat and forwarding of the bill to the Bundestag

This stage in the procedure may come as a surprise to begin with. Why is the government's bill not forwarded immediately to the Bundestag to be dealt with under parliamentary legislative procedure? The so-called first passage in the Bundesrat provided for in Article 76 of the Basic Law results from the Bundesrat's extensive rights to participate in the legislative process once the bill has been adopted by the Bundestag (this will be considered in detail later on). The Bundesrat could at least delay the entry into force of bills to which it may lodge an objection and even prevent many laws requiring its consent from ever entering into force. So that the views of the Bundesrat and the *Länder* become known in good time, the Basic Law provides for the Bundesrat to make initial comments on the draft law even before it is submitted to Parliament; the government thus has an opportunity to take the counterproposals of the Bundesrat into consideration or attach to the draft a written statement of its position on these proposals. The comments of the Federal Government on any objections the Bundesrat may lodge are known as a counterstatement; like the comments of the Bundesrat, which have to be submitted within 6 weeks, this counterstatement is attached to the original bill either straight away or in good time. Thus the following documents are submitted to the Bundestag: the draft law drawn up by the Federal Government together with an explanatory memorandum; the comments of the Bundesrat; the counterstatement of the Federal Government on the comments of the Bundesrat, and the statement of the National Regulatory Control Council (in some cases accompanied by a response from the Federal Government). The documents submitted to the Bundestag at the beginning of the legislative process thus already reveal important aspects which may possibly give rise to conflict between the Federation and the *Länder* at a later stage.

The Federal Government's draft law, together with the explanatory memorandum, the comments of the Bundesrat, the counterstatement of the Federal Government and the statement of the National Regulatory Control Council, is transmitted to the Bundestag by the Federal Chancellor with a covering letter to the President of the Bundestag. An example of

this sort of covering letter is reproduced on page 102. It relates to the government draft of the Act for the Promotion of Families and Household-related Services (Family Benefits Act – *Familienleistungsgesetz*) of 22 December 2008, which was published on pages 2955 *et seq.* of the Federal Law Gazette, Part I, for 2008. In the following pages, this bill will be considered as it passes through the various stages of the legislative process. The aim of the bill was to assist families by increasing child benefit and the tax allowance for dependent children, by establishing school-requisites grants for children from low-income families and by improving tax relief for expenditure on what are defined as household-related services – the services of gardeners and cleaners, and care and support services for dependants, for example. To this end, several laws had to be amended, particularly the Income Tax Act, the Federal Child Benefit Act and Books Two and Twelve of the German Social Code. A separate article in the bill was dedicated to each of these instruments. This was thus a so-called 'article law', a law containing a number of articles putting in place new legislation and setting forth the amendments to existing legislation required as a result.

The interests of the *Länder* were particularly affected by the bill because it included provisions relating to taxation revenue, which is partially passed on to the *Länder*. It was therefore a so-called 'consent law', a law which cannot enter into force without the consent of the Bundesrat. Accordingly, the opening formula of the new law reads: "The Bundestag has adopted the following law with the consent of the Bundesrat: ..."

Federal Republic of Germany  
The Federal Chancellor

Berlin, 7 November 2008

Dr Norbert Lammert  
President of the German Bundestag  
Platz der Republik 1  
11011 Berlin

Dear Mr President,

I enclose the Draft Act for the Promotion of Families and Household-related Services (Family Benefits Act – *Familienleistungsgesetz*) adopted by the Federal Government, together with the explanatory memorandum and introductory page (Annex I).

I ask you to initiate the necessary proceedings for the German Bundestag to take a decision on this bill.

The Federal Ministry of Finance bears overall responsibility for this bill.

The opinion of the National Regulatory Control Council pursuant to Section 6 (1) of the Regulatory Control Council Act (*Normenkontrollratsgesetz*) is enclosed as Annex 2.

The Bundesrat decided at its 850th sitting on 7 November 2008, in line with Article 76 (2) of the Basic Law, to comment on the bill as set forth in Annex 3.

The view of the Federal Government on the comments of the Bundesrat will be forwarded.

Yours sincerely,



Angela Merkel

Every bill is accompanied by what is known as an introductory page, which briefly describes the objectives of the bill, the proposed solution and possible alternatives, and the cost of the proposed solution:

7 November 2008

## **Bill**

**introduced by the Federal Government**

### **Draft Act for the Promotion of Families and Household-related Services (Family Benefits Act)**

#### **A. Problem and objective**

Investments in families are investments in the future. For this reason, considerable improvements are to be made to the system of state compensation for family services in accordance with the principle of a sustainable families policy.

The Federal Government attaches high priority to reinforcement of the family and support for households as an area with scope for new employment opportunities. In addition, the relevant statutory provisions are to be made more people-centred.

#### **B. Solution**

- The tax allowance for each dependent child is to be increased by €192 from €3,648 to €3,840. This means that the total tax allowances per child will be increased from €5,808 to €6,000.
- Child-benefit payments for first and second children will each be increased by €10 from €154 to €164 per month, for third children by €16 from €154 to €170 and for fourth and subsequent children by €16 from €179 to €195.
- The tax rules governing household-related contributory employment and household-related services, including care services, which have hitherto been grouped under several separate headings, will be gathered into a provision for the support of households in their role as customers of service providers or as employers of persons for whom welfare contributions are payable. Support will be considerably increased to a uniform rate of 20% of expenditure up to €20,000, making a support ceiling of €4,000 per annum.

- The rules on tax relief for the cost of child care, though not substantively amended, will be concentrated into a single provision.
- Under the Second and Twelfth Books of the German Social Code (*Sozialgesetzbuch II* and *Sozialgesetzbuch XII*), an additional payment of €100 will be made for school expenditure in respect of each pupil at the start of the school year.

### C. Alternatives

None

### D. Financial effects on the public budget

#### 1. Budget expenditure excluding cost of execution

(a) Increase/decrease (–) in tax revenue (in €m.)

Tier of government	Full annual impact <sup>1</sup>	Financial year				
		2008	2009	2010	2011	2012
All tiers	– 2240	–	– 2275	– 2225	– 2240	– 2240
Federal	– 975	–	– 981	– 966	– 975	– 975
<i>Länder</i>	– 935	–	– 956	– 931	– 935	– 935
Local	– 330	–	– 338	– 328	– 330	– 330

<sup>1</sup> Impact for a full tax year.

#### (b) Other budget expenditure

The increase and graduation of child benefit under the Federal Child Benefit Act will cost the federal treasury up to €7m. a year.

Because of the increased child benefit, the federal treasury and, to a lesser extent, the treasuries of the local authorities will incur about €230m. less expenditure on jobseekers' subsistence allowance (*Arbeitslosengeld II*), while the local authorities will save some €18m. a year on benefits under Book XII of the Social Code. As for maintenance payments under the Maintenance Advances Act (*Unterhaltsvorschussgesetz*), the federal treasury will save up to €20m. a year and the *Länder* up to €40m. a year as a result of

the reckonability of child benefit. In the case of the amounts collected under Section 7 of the Maintenance Advances Act, the federal treasury will simultaneously lose out on up to €4m. in revenue, while the loss of *Länder* revenue could reach €8m.

The new school benefit will cost the *Länder* and local authorities €2m. a year under the new Section 28a of Book XII of the German Social Code, while the annual bill for the federal treasury will amount to €119m. (German Social Code, Book II, new Section 24a).

## 2. Cost of execution

...

### **E. Other costs**

...

### **F. Administrative costs**

...

The Federal Government bill printed above is already in the form of a Bundestag printed paper: the number 16 in the top right-hand corner to the left of the oblique stroke indicates the 16th electoral term, i.e. the period between the first sitting of the Bundestag elected on 18 September 2005 and the first sitting of the 17th Bundestag, elected on 27 September 2009, whereas the number to the right of the oblique stroke is the number of the Bundestag printed paper concerned. The Bundestag does not receive the draft in this form; it is at the Bundestag that it is put into this form and distributed to all Members; since the start of the 18th electoral term, it has been distributed electronically.

## **Preparation by the parliamentary groups**

Once copies of the bill have been distributed, the bill is considered by the parliamentary groups. The parliamentary groups are also divided into

working groups or working parties for specific subject areas, although these differ slightly from the areas of competence of the federal ministries. The bill in our example was therefore first considered by the Members specialising in financial and family affairs in each parliamentary group. Members need to specialise in a particular subject because the parliamentary groups are required to deal not only with bills of this kind but also with numerous other bills on a wide range of different subjects. It would therefore be completely impracticable for each of them to be considered by all the Members at the same time. The Bundestag thus takes the logical approach of dividing its work according to subject matter into different areas which largely reflect the specific areas of competence of the federal ministries. This applies both to the Bundestag's specialised committees and to the parliamentary groups' working groups or working parties.

Each parliamentary group first has to decide what position it plans to take on a particular bill – whether or not the bill is urgent, when it should be given its first reading in the plenary, which member of the parliamentary group should speak on it, which member might act as rapporteur at the committee stage, and so on. Once the parliamentary groups have given the bill their initial consideration, the Council of Elders of the German Bundestag decides the date on which the bill will be given its first reading in the plenary. The Council of Elders fulfils a very important function as a steering body in the Bundestag (see also p. 28 et seq.). The relative strengths of the political parties represented in the Bundestag are reflected on a smaller scale in the Council of Elders, just as in the other committees, commissions and bodies of the Bundestag. However, this does not mean, for example, that the Council of Elders can take a majority decision to put a government bill on the agenda immediately, whilst delaying or completely preventing deliberation on an opposition bill. In fact, the Rules of Procedure of the German Bundestag specifically state that the Council of Elders is not a decision-making body on matters of this sort. Hence it does not take majority decisions but has to find solutions which are acceptable to all the parliamentary groups. As all the political parties are represented on the Council of Elders and can thus assert their interests, agreements reached in the Council of Elders are usually accepted by the Bundestag. The Rules of Procedure also protect the interests of minority parties, in particular by stipulating that each parliamentary group is entitled to have a bill it presents placed on the agenda and discussed within three weeks.

## The first reading

The Bundestag generally deals with bills in three readings in the plenary. During the first reading, a debate is only held if this is recommended by the Council of Elders or demanded by one of the parliamentary groups. Debates tend to be held on bills of topical interest or political significance if the government wishes to state its reasons for introducing them or if the parliamentary groups wish to make public their initial position. It should be remembered that the primary reason for holding debates is not to give parliamentary groups an opportunity to convince each other of their point of view but to present to the public and the media in particular – as the most important source of public information about Parliament – the different political standpoints regarding a particular bill. Only then can the general public form an opinion about issues on the Bundestag's agenda and party-political viewpoints. Likewise, only if the public is informed about debates in the Bundestag can those affected respond to parliamentary debates concerning issues of relevance to them. By making statements on legislation being proposed and publicising the issues involved, they make their own view on the matter public. The main function of plenary debates is therefore to contribute to the transparency of parliamentary proceedings, which is so important for democracy. However, the often very complex problems which appear on the agenda of the Bundestag cannot simply be resolved through debate. Intensive preparatory work needs to be done by the parliamentary groups and specialised committees in the Bundestag, which consult relevant experts, hold hearings of those affected and of representatives of interest groups, present reports and much more.

A debate is therefore held during the first reading of a bill if the public needs to be made aware of the issues involved and the various political viewpoints before the bill is considered in greater depth by the committees. Irrespective of whether or not a debate takes place, the bill is always referred to one or more committees of the Bundestag at the end of the first reading. In exceptional cases the Bundestag may decide to dispense with the committee stage if, for example, the bill is very simple and it is clear from the outset what position the individual parties will take. This is only possible, however, if a two-thirds majority of the Bundestag votes to move straight to the second reading. This occurs only very rarely, however, since each bill should in principle be discussed in detail by the relevant committees. For the same reason the Bundestag cannot reject a bill completely or declare it disposed of during the first reading. Otherwise,

the governing majority might be inclined to reject an opposition bill if, for example, it did not want the bill to become law. Even bills from minority parties, however, must be referred to the committees and be given the chance of an in-depth discussion.

German Bundestag – 16th electoral term – 187th sitting. Berlin, Thursday, 13 November 2008

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## **President**

### **Dr Norbert Lammert:**

I call item 15:

First reading of a bill presented by the Federal Government for an Act for the Promotion of Families and Household-related Services (Family Benefits Act – *Familienleistungsgesetz*)

– Printed paper 16/10809 –

Proposal for referral to:

Finance Committee (lead committee)  
Committee on Labour and Social Affairs  
Committee on Family Affairs, Senior Citizens, Women and Youth  
Committee on Health  
Committee on Education, Research and Technology Assessment  
Budget Committee (committee asked for an opinion under Rule 96 of the Rules of Procedure)

The parliamentary groups have agreed that an hour and a quarter be allocated to this debate – I do not hear any objections, so we shall proceed as planned.

The debate is opened. I call ...

...

## **President**

### **Dr Norbert Lammert:**

The debate is closed.

The parliamentary groups have jointly proposed the referral of the bill set out in printed paper 16/10809 to the committees listed in the agenda as well as to the Committee on Education, Research and Technology Assessment. Are there any alternative proposals? – There appear to be none. The bill will therefore be referred as proposed.

In the above example, it was planned to hold a debate during the first reading and the speeches were delivered orally. In certain circumstances, however, plenary debates can also be included in written form in the minutes of plenary proceedings instead; this is possible if the speakers concerned so wish and at least two thirds of the Members of the Bundestag present agree or if it has been agreed in the Council of Elders in advance and no parliamentary group has objected.

## **The committee stage**

This government bill was referred to the Finance Committee as the "lead committee", as well as being referred to other committees for their opinion, including to the Committee on Family Affairs, Senior Citizens, Women and Youth. Designation as the "lead committee" means that this

committee is responsible for the further handling of the bill. The lead committee must, in keeping with Rule 62 of the Rules of Procedure of the German Bundestag, recommend to the Bundestag a definite decision – the acceptance of the bill, the acceptance of amendments decided upon by the committee, or the rejection of the bill – and is obliged to attend to matters referred to it “without delay”. It therefore cannot, either for political reasons or because of a heavy workload, put a bill on the “back burner”. If it does so, there is the risk that, in keeping with Rule 62 (2) of the Rules of Procedure, a parliamentary group may, after ten weeks of sittings, demand that the committee submit a report to the plenary giving its reasons for not having considered the bill. Such a report may then be placed on the agenda of the Bundestag for debate, during which the committee can expect to be criticised for its lack of action.

If a particular bill covers different subjects, it is referred to one or more committees in addition to the lead committee. These committees submit their comments and proposed amendments to the lead committee, which includes them in its report to the plenary. The deliberations of the lead committee conclude with the submission of a report and recommendation to the plenary, on the basis of which the bill is given a second reading.

This particular bill had significant implications for the federal budget (see section D above). The procedure for bills which entail high public expenditure is more complex than for other bills: in such cases, the Budget Committee is instructed by the plenary to investigate whether the bill is compatible with the budgetary situation. Unlike the comments of the committees asked for an opinion, which must first be submitted to the lead committee, the Budget Committee's report, known as the “96 report”, since it arises from Rule 96 of the Rules of Procedure, is submitted directly to the plenary for the second reading. The lead committee is therefore not free to decide whether to accept or reject the reservations of the Budget Committee, as it can with regard to the comments of committees asked for an opinion. It would be unacceptable for individual specialised committees to have so much freedom with regard to the budget: under Article 110 of the Basic Law, budget revenue and expenditure must be balanced. If a bill envisages additional spending, which cannot be met under the current budget, the plenary of the Bundestag must ensure that such expenditure is covered; otherwise, the bill cannot be adopted. The Budget Committee submits a recommendation as to how these funds can be found. Thus, in the case of such bills, known as

“finance bills”, the Budget Committee must be involved in the deliberations and must submit an independent report.

Under provisions laid down in the Rules of Procedure, the committees are relatively free to organise their work and draw up their agenda. There are, however, certain common procedural rules which every committee must follow. Thus, for every bill referred to them, the committees must appoint rapporteurs from among their members. The rapporteurs are generally appointed on the proposal of the parliamentary groups. They share with the committee chairperson the responsibility for supervising the progress of deliberations, drawing up the results of deliberations and, in particular, for signing the report submitted to the plenary. The rapporteurs must familiarise themselves thoroughly with the content and main political points of the bill. They must also consider statements relevant to the bill, read specialist literature in the relevant field and take into account the wishes and demands of interest groups as well as opinions in the press concerning the bill. The rapporteurs, moreover, liaise between the committee and their respective parliamentary group in the discussion of the bill. They ensure that their parliamentary groups are kept informed of the committee’s latest conclusions and deliberations and keep the committee informed about the views and demands of the parliamentary groups.

## Committee meetings

Once the chairperson and the rapporteurs have made themselves familiar with the subject matter of the bill and once the working groups of the parliamentary groups have come to their initial conclusions about the bill, the committee chairperson decides, in agreement with the spokespersons of the parliamentary groups (see p. 106 et seq.), when the bill will be placed on the agenda. During this meeting the content of the bill is presented and explained in detail either by a rapporteur or by a government representative. All members of the Federal Government and the Bundesrat and persons commissioned by them have access to meetings of the committees of the Bundestag, as provided for in Article 43 of the Basic Law. It is, however, also desirable for subject specialists from the federal ministries or the *Länder* to attend committee meetings so that committee members can question them directly about specific rules and about the background to, the reasons for and possible consequences of the bill. The civil servants employed by the Federal Government also have

to assist with the wording of the bill. If a committee wishes to change the substance of a provision it does not need to concern itself with the legal niceties of formulating the document but can ask the civil servants from the appropriate ministry to draw up the amendment using the appropriate legal language. During the committee's initial deliberations on the bill a general debate can also be held for the purpose of comparing the main problems and political viewpoints relating to the bill.

In exceptional cases this debate can be held in public. According to the Rules of Procedure, committee meetings are not in principle open to the public. The committee may, however, decide to admit the public during the discussion of a particular item of business or during parts of the discussion. This means that journalists, interest groups or other interested parties are free to attend the meeting.

After a general debate, the committee begins its deliberation on the individual clauses of the bill. The chairperson calls the individual chapters and sections, whereupon rapporteurs, other committee members or representatives of the Federal Government or the Bundesrat have an opportunity to express their views. At this stage amendments can be proposed and other formal motions for amendments moved. Speakers are given the floor in the order in which leave to speak was requested, while taking into consideration other factors such as the requirement to hear arguments both for and against the matter under discussion. Formal motions for amendments are voted upon at the end of the discussion of a particular chapter. If an amendment is adopted by a simple majority of those present, then the amended version of the bill presented by the government forms the basis of all discussions from that point onwards.

Amendments to bills, which can be identified most easily by examining the lead committee's recommendation for a decision (see p. 117), are often the result of discussions and negotiations in the committee. During the committee stage, Members do not give speeches intended to be heard by the public, but discuss individual points and different approaches with each other, submitting and withdrawing proposals for debate. Thus, the committee stage consists of specialised discussions which are designed to create constructive and workable legislation.

## Hearings

Often bills cannot be dealt with conclusively during committee discussions even if the preparatory work by the parliamentary groups has been

very detailed. If the subject matter of the bill is very complex, and the bill concerns a politically controversial piece of legislation, then a public hearing of experts and representatives of interest groups is often held (see p. 40 et seq.). This is now almost always the case when a major bill is introduced, as it was for our example. One of the reasons for holding a hearing is to obtain additional specialist information and advice about particular problems relating to the bill in order to assist the progress of deliberations. Another purpose of the public hearing is to attract media interest in the bill, make the significance of the issues involved clear and encourage political debate. The parliamentary groups therefore regularly endeavour to choose experts whose assessment of the difficulties, risks or chances of success of the bill either backs up their own political views or is likely to undermine the arguments of opposing parliamentary groups. The same also goes for representatives of powerful organisations such as employers' federations, trade unions or environmental organisations. The views such groups express publicly on a particular bill have a potential influence on the committee's views. Thus, amendments to bills are sometimes the result of a public hearing in the committee. In the past, bills have even been withdrawn because the majority or all of the experts invited to a hearing considered the proposed legislation either inappropriate or harmful. Holding a hearing therefore serves to widen participation in the discussion of important laws and to ensure a more effective and, in particular, public involvement of interest groups. It is no coincidence, therefore, that there has been a steady increase in the number of hearings held during electoral terms.

## The committee chairpersons

The position of committee chairperson is important and complex. Under the Rules of Procedure the committee chairpersons convene meetings, set the agenda and, like the President of the Bundestag in the plenary, preside over meetings and have the power to take measures for the maintenance of order. In practice, however, chairpersons must cooperate with the parliamentary groups, particularly with the parliamentary group spokespersons on the committee (see below), and are not permitted to set their own priorities or force through their own ideas against the committee's will. The chairpersons therefore tend to remain in the background of discussions. They endeavour to remain objective and impartial, to settle differences of opinion for the purpose of clearing up misunder-

standings and facilitating decision-making, to sum up debates and propose compromise solutions. It is the duty of the committee chairpersons to facilitate objective discussions and they are most likely to succeed in doing so if they have the confidence of all the parliamentary groups.

The confidence of the parliamentary groups in the chairpersons cannot, however, be taken for granted. This is due to the special nature of the system of committee membership in the Bundestag. Firstly, the composition of the committees reflects the relative strengths of the parliamentary groups in the Bundestag. The majority parties in the Bundestag, i.e. the coalition which voted the government into power and which gives the government its support, are also in the majority in the committees. Secondly, the relative strengths of the parliamentary groups are also reflected among the committee chairpersons taken as a whole. Thus some committees, the majority of whose members are from the coalition parties, are chaired by Members of the Bundestag from opposition parties (for instance, the chairperson of the Budget Committee traditionally comes from the opposition, a fact which underlines the importance of parliamentary scrutiny of the Federal Government). In other words, the committee chairpersons are required to promote and facilitate committee decisions shaped by the majority, with which they do not always personally agree.

The standing of the committee chairpersons therefore depends all the more on the confidence put in them by the committee members and by their resultant willingness to allow the chairpersons a certain degree of freedom in the conduct of business even if they are from a different party. In all they do, therefore, the committee chairpersons remain in constant contact with the parliamentary group spokespersons on the committee. The spokespersons, who are nominated by the parliamentary groups, occupy a position similar to that of the Parliamentary Secretaries of the parliamentary groups in relation to the plenary and the Council of Elders. Taking into account the provisions of the Rules of Procedure, they prepare the political arguments and tactics to be used by their parliamentary groups in a committee meeting; conduct preliminary discussions; negotiate the agenda, main items of business and format of the meeting with Members from other parliamentary groups; see to it that their parliamentary group colleagues on the committee attend committee meetings; and ensure that the position taken by their parliamentary group at committee meetings conforms with the overall party line. Their task is significant because otherwise the detailed specialist work done in

the individual committees would acquire a momentum of its own, becoming impossible to coordinate and leading eventually to political inconsistency.

## **The committee's recommendation for a decision and report**

Once the committee has discussed the bill and decided on a recommendation for the plenary, the rapporteurs begin the second part of their work. They submit a written report to the plenary of the Bundestag in which they present the course the discussions have taken in the lead committee and the committees asked to give their opinions. In their report, the rapporteurs focus in particular on reasons why the committee may have deviated from the government's bill. They are also obliged to include in the report the views of minorities who were outvoted.

The report starts with the committee's recommendation to the plenary. The committee may recommend that the bill be adopted, rejected or – provided all parliamentary groups agree – that the bill be shelved. If adoption of the bill is recommended, the committee also states whether the bill should be adopted in its original version, with the amendments recommended by the committee, or as the version of the bill adopted by the committee and attached to the recommendation for a decision. The recommendation is preceded by an introductory page with the same structure as that of bills, as previously described. It also sets out the majority by which the bill was adopted in the committee. In the following extracts from the committee report, the voting patterns of the parliamentary groups on the Finance Committee are shown under the section entitled "B. Solution" of the introductory page. The recommendation for a decision and the report appear as printed papers and are distributed to all Members of the Bundestag.

2 December 2008

## Recommendation

of the Finance Committee (7th committee)

for a decision on the bill presented by the Federal Government – Printed papers 16/10809, 16/11001 and 16/11125, paragraph 1.6 –

**Draft Act for the Promotion of Families and Household-related Services (Family Benefits Act – *Familienleistungsgesetz*)**

### A. Problem

The tax allowances in respect of dependent children, child benefit and tax relief for household-related employment for which welfare contributions are payable and for household-related services are considered to be too low. In addition, more payments are required to meet the school needs of pupils at the start of the school year, since transfer payments do not take account of these needs.

### B. Solution

...

In particular, the Finance Committee recommends the following amendments to the bill:

- a further increase in the tax allowance for dependent children by €24 (€12 for each parent);
- introduction of an administrative simplification whereby a notice of amendment need not be issued if child benefit is increased.

**The bill was approved as amended, with the CDU/CSU and SPD groups voting in favour, the Alliance 90/The Greens group voting against and the FDP and Left Party groups abstaining.**

**C. Alternatives**

None

**D. Financial effects**

...

**E. Other costs**

...

**F. Administrative costs**

...

**Recommendation**

The Bundestag is requested to take the following decision:

to adopt the bill – printed papers 16/10809, 16/11001 and 16/11125, paragraph 1.6 – in the form shown in the synopsis set out below.

**Eduard Oswald**  
Chair and Rapporteur

**Gabriele Frechen**  
Rapporteur

**for the Finance Committee**

Berlin, 2 December 2008

## Synopsis

showing the draft of an Act for the Promotion of Families and Household-related Services (Family Benefits Act – *Familienleistungsgesetz*)

– printed papers 16/10809, 16/11001, 16/11125, paragraph 1.6 – with the decisions of the Finance Committee (7th committee)

Bill

–

**Draft Act for the Promotion of Families and Household-related Services (Family Benefits Act – *Familienleistungsgesetz*)**

The Bundestag has adopted the following law with the consent of the Bundesrat:

**Article 1**

**Amendment of the Income Tax Act (*Einkommensteuergesetz*)**

The Income Tax Act, as promulgated on 19 October 2002 (Federal Law Gazette I, p. 4210 and Federal Law Gazette I (2003), p. 179) and amended by Article ... of the Act of ... (Federal Law Gazette I, p. ...), shall be amended as follows:

1. The summary of contents shall be amended as follows:

...

Decisions of the 7th committee

–

**Draft Act for the Promotion of Families and Household-related Services (Family Benefits Act – *Familienleistungsgesetz*)**

The Bundestag has adopted the following law with the consent of the Bundesrat:

**Article 1**

**Amendment of the Income Tax Act (*Einkommensteuergesetz*)**

The Income Tax Act, as promulgated on 19 October 2002 (Federal Law Gazette I, p. 4210 and Federal Law Gazette I (2003), p. 179) and amended by Article ... of the Act of ... (Federal Law Gazette I, p. ...), shall be amended as follows:

1. unchanged

This particular recommendation from the Finance Committee could not be drawn up in such a way that the amendments called for by the Committee were incorporated directly into the text of the recommendation submitted to the plenary. That is only possible if the Committee's amendments affect only a few points and can be presented in a brief and concise form. In such cases, the recommendation to the plenary usually states that the Bundestag is requested to "adopt the bill subject to the proviso that...". In this case, the recommendation states that the Bundestag is requested to adopt the bill "in the form shown in the synopsis set

out below". This applies particularly to recommendations which concern very comprehensive bills or which, as in this case, propose a large number of amendments. The government bill and the version recommended by the committee are then set out side by side (the "synopsis") to enable those examining them to identify which parts of the original bill should, according to the committee's recommendation, be adopted as they stand or be amended.

The plenary of the Bundestag generally accepts the recommendations of the lead committee. Therefore, contrary to what one might expect, given the division of the Bundestag into a parliamentary majority and an opposition, very few government bills are adopted by a majority of the Members of the German Bundestag without any amendments. Rather, the Members from the ruling parties, which also form the majority on every committee, examine the bill from "their" government very critically and, in more than 50 per cent of cases, introduce amendments. Thus, although there is a basic political consensus between the majority parties in the Bundestag and the government, these parties share with the opposition parties the task of exercising parliamentary scrutiny.

The committee's recommendation is followed by the committee's report which, in this case, was drawn up by four rapporteurs and may appear as part of the same printed paper or – as was the case here – as a separate printed paper. The first part of the report describes the course of committee deliberations and in particular the views of the committees asked for an opinion by the lead committee and the motions for amendments tabled, adopted or overturned in the lead committee. In our example, the report shows that the Finance Committee considered during its deliberations a petition from a citizen concerning the introduction of a "school requisites package", as was subsequently recommended by the committee. The description of the course of the committee deliberations is followed by the reasons for the recommendation, in particular for the amendments to the government bill recommended by the lead committee.

3 December 2008

**Report by the Finance Committee (7th committee) on the bill presented by the Federal Government:**

**Draft Act for the Promotion of Families and Household-related Services (Family Benefits Act – *Familienleistungsgesetz*)**

**Report by Members of the Bundestag Patricia Lips, Lydia Westrich, Carl-Ludwig Thiele and Dr Barbara Höll**

**A. General observations**

**I. Referral**

During its 187th sitting on 13 November 2008, the German Bundestag referred the Federal Government's bill, printed paper 16/10809, to the Finance Committee as the lead committee. The bill was also referred to the Committee on Labour and Social Affairs, the Committee on Family Affairs, Senior Citizens, Women and Youth, the Committee on Health, the Committee on Education, Research and Technology Assessment and the Budget Committee for their opinion. The bill was also referred to the Budget Committee under Rule 96 of the Rules of Procedure of the German Bundestag. The Budget Committee will provide separate information on this referral.

The response made by the Federal Government to the opinion of the Bundesrat and communicated in printed paper 16/11001 was retrospectively referred to the same committees under Rule 80 (3) of the Rules of Procedure of the German Bundestag. Notice of this referral was given in printed paper 16/11125 of 28 November 2008.

Subject to the referral of the bill, the Finance Committee began its deliberations at its 105th meeting, held on 12 November 2008, and concluded them at its 109th meeting on 2 December 2008. In addition, the committee conducted a public hearing at its 106th meeting on 24 November 2008.

**II. Main substance of the proposal**

...

**III. Hearing**

On 24 November 2008, the Finance Committee conducted a public hearing on the bill. The following individual experts, associations and institutions had the opportunity to deliver their opinions:

...

The results of the hearing were incorporated into the committee's deliberations. The minutes of the public discussion, including the submitted written opinions, are accessible to the public.

**IV. Opinions of the consulted committees**

...

**V. Course and outcome of deliberations in the lead committee**

... (there follows a presentation of the views of the parliamentary groups on the committee and the approved and rejected amendments)

The Petitions Committee forwarded a petition on the Federal Government's bill, requesting the comments of the committee under Rule 109 of the Rules of Procedure of the German Bundestag. The Finance Committee took account of the petition in its deliberations. The petitioner had requested assistance for lone parents in the form of a

special payment at the start of the school year. The bill proposed a change in the law that would provide an additional payment of €100 for school requisites at the start of the school year under Books II and XII of the German Social Code for pupils in years 1 to 10. The introduction of a 'school-requisites package' in Section 24a of Book II and Section 28a of Book XII of the Social Code, as envisaged in Articles 3 (2) and 4 (3) of the Federal Government's bill and recommended by the Finance Committee, related to the petitioner's request.

#### **B. Specific observations**

**Article 1** (Amendment of the Income Tax Act)

**Paragraph 3** (first sentence of Section 9 (5) of the Income Tax Act)

Rewording of the amendment arising from the concentration of the rules on child-care costs into a single provision.

...

Berlin, 3 December 2008

Patricia Lips  
Rapporteur

Lydia Westrich  
Rapporteur

Carl-Ludwig Thiele  
Rapporteur

Dr Barbara Höll  
Rapporteur

Before considering the rest of the legislative process, a further point must be made about the work of the committees. The committees are not simply required to discuss bills referred to them but may discuss all matters which fall within their area of competence. Each committee therefore closely follows and monitors the policies of the particular ministry to which it corresponds. In this context, the committees of the Bundestag are sometimes said to be "co-governing" bodies. Only by dealing constantly and in detail with all issues falling within their area of competence can the committees acquire the necessary specialist knowledge and political insight to enable them properly to assess individual bills or other formal motions from within the Bundestag and to process them properly. Thus, the committees do not "wait", as it were, for bills referred to them from the plenary but deal continuously with the policies of the corresponding ministries. They devote special attention to complex and particularly controversial bills as well as to cases of error and mismanagement, should these arise.

## **The second and third readings**

Once the committee has completed its work, the parliamentary groups must decide what position to take on the bill in its present form. Although the experts from the parliamentary groups are thoroughly

familiar with the bill, it is important that all Members now have an opportunity to form an opinion on the bill. Further discussions are held if necessary by the relevant working groups or working parties, and after the executive committees of the parliamentary groups have been informed, the topic is placed on the agenda at a full meeting of each parliamentary group. Each parliamentary group then has to decide whether or not to accept the bill in the form proposed and which Members to appoint as speakers for the debate during the second reading.

The Council of Elders sets the date on which the second reading will be held. The second reading is then placed as an item on the agenda of the plenary sitting concerned, and is duly called by the President chairing the sitting. The President first of all gives the committee rapporteur or rapporteurs the opportunity to supplement the written report, if they so desire. The general debate then takes place and is followed by a vote on the bill; if no motions for amendments have been tabled, the vote takes place on the bill as a whole. During the second reading, amendments may be moved not only by the parliamentary groups and groupings, but also by individual Members of the Bundestag. This is important for Members who do not belong to a parliamentary group. It is also important in practice, however, for individual Members to have this opportunity, as the various parliamentary groups are thus obliged to take seriously any concerns or reservations their members may express and either take these into account or dispel them in the course of discussions. If a parliamentary group simply chose to ignore the dissenting views of its members, they would probably make their opinions clear during a public sitting of the Bundestag, either by moving amendments or perhaps by voting against the party line. The public might take this as evidence of disunity within the parliamentary group and would lose confidence in its ability to take decisions. As the parliamentary groups are well aware of the risks involved, it is fairly rare for individual Members to move amendments during the second reading. It is more often the case, however, that the opposition, if it does not wish to support a particular bill, will present its views in one or several motions for amendments which it will submit for debate and to be put to the vote.

## Vice-President Dr h.c. Susanne Kastner:

I call item 5:

Second and third readings of a bill presented by the Federal Government for an Act for the Promotion of Families and Household-related Services (Family Benefits Act – *Familienleistungsgesetz*)

– printed papers 16/10809 and 16/11001 –

Recommendation and report of the Finance Committee (7th committee)

– printed papers 16/11172 and 16/11191 –

Rapporteurs:

Patricia Lips,  
Lydia Westrich,  
Carl-Ludwig Thiele, and  
Barbara Höll,  
Members of the Bundestag

Report of the Budget Committee (8th committee) under Rule 96 of the Rules of Procedure

– Printed paper 16/11184 –

Rapporteurs:

Jochen-Konrad Fromme,  
Carsten Schneider,  
Otto Fricke,  
Roland Claus, and  
Alexander Bonde,  
Members of the Bundestag

Motions for resolutions on this bill have been tabled by the group of the FDP, the group of The Left Party and the group of Alliance 90/The Greens. We shall take a recorded vote in due course on the motion for a resolution tabled by the group of Alliance 90/The Greens.

The parliamentary groups have agreed that an hour be allocated to this debate – I do not hear any objections, so we shall proceed as planned.

The first speaker is ...

...

**Vice-President Dr Hermann Otto Solms:**

The debate is closed.

Before we proceed to the vote, I should like to make two announcements.

Firstly, 52 explanations of vote have been submitted under Rule 31 of our Rules of Procedure, which we shall minute.

Secondly, Carl-Ludwig Thiele would like to move an oral amendment on second reading, which he will now present and explain and to which you may then respond if you wish.

Thank you.

**Carl-Ludwig Thiele (FDP):**

Mr President, ladies and gentlemen, I do not wish to lengthen the debate unduly. Mr Lehrieder has already touched on the point, as have Ms Westrich and Ms Lips, that, quite apart from the discussion as to what more should be done, there seems to be a cross-party consensus that the limitation of the package to the end of the tenth year of schooling is utterly wrong.

(Applause from the FDP and from SPD and Left Party Members.)

Because we in the Bundestag are all legislators, I believe it is only right that we should not wait for the Mediation Committee or until next year. Instead, my specific motion is that, in Article 3 of the bill, the words *'bis zum Abschluss der Jahrgangsstufe 10'* ('until the completion of year 10') in the third and fourth lines of Section 24a be deleted *in toto*. This would be enough to effect my desired amendment.

Should there be more in addition to this amendment, that would suit us fine. But what we can achieve today should certainly be done today.

Thank you very much.

(Applause from the FDP and The Left Party as well as from Alliance 90/The Greens Members)

**Vice-President Dr Hermann Otto Solms:**

May I ask whether one of the Parliamentary Secretaries of the coalition groups wishes to respond? Peter Struck, chair of the SPD group, would like to respond. The floor is yours, Dr Struck.

**Dr Peter Struck (SPD):**

Mr President, ladies and gentlemen, of course we admit this motion, but it is crystal-clear that the Honourable Member is playing a purely tactical game here.

(Applause from SPD Members – protest from Carl-Ludwig Thiele [FDP])

– Yes, you are, Mr Thiele. It never crossed your minds to initiate your own school-requisites package. That was our idea.

We shall reject your motion. We shall discuss the project properly in the Mediation Committee or in the next legislative process. Then we shall obtain exactly what we want.

We reject the motion.

(Applause from the SPD)

**Vice-President Dr Hermann Otto Solms:**

We now come to the vote on the bill presented by the Federal Government for an Act for the Promotion of Families and Household-related Services.

Before we proceed to the vote on the proposal from the committee, we shall now vote on the oral amendment moved by Carl-Ludwig Thiele. If you wish to vote in favour of this amendment, please raise your hand. – Who wishes to vote against? – Who wishes to abstain? – Mr Thiele's oral amendment is rejected, the coalition groups having voted against it and the opposition groups and some Members from the coalition groups having voted in favour.

In its recommendation, comprising printed papers 16/11191 and 16/11172, the Finance Committee proposes adoption of the bill contained in printed papers 16/10809 and 16/11001 as amended in committee. May I ask those who wish to vote for the bill as amended in committee to raise their hand. – Who wishes to vote against? – Who wishes to abstain? – The bill is adopted at second reading, the coalition groups having voted in favour and the opposition groups having abstained.

We now come to the

### third reading

and final vote. Those who wish to approve the bill, please stand. – Who wishes to vote

against? – Who wishes to abstain? – The bill has been adopted, with the same voting pattern as before.

We shall now take the vote on the motions for resolutions. Who votes in favour of the motion for a resolution tabled by the FDP group in printed paper 16/11225? Please raise your hand. – Who votes against? – Who abstains? – The motion is rejected, the coalition groups and the group of Alliance 90/The Greens having voted against it, the FDP group having voted in favour and the group of The Left Party having abstained.

Who votes in favour of the motion for a resolution tabled by the group of The Left Party contained in printed paper 16/11188? Please raise your hand. – Who votes against? – Who abstains? – The motion is rejected, the group of The Left Party having voted in favour of it and all the other groups having voted against.

We now come to the motion for a resolution tabled by the group of Alliance 90/The Greens in printed paper 16/11224. At the request of the group of Alliance 90/The Greens, we shall now take a recorded vote on this motion. May I ask the secretaries to take up their positions. – Are the secretaries in position? – I see that they are.

I declare the voting open. – Are there any Members of the House who have not yet cast their vote? – There are not.

I declare the voting closed and ask the secretaries to begin the count. The result of the vote will be communicated to you in due course. ...

**Vice-President Dr Hermann Otto Solms:**

Before calling the next speaker, I shall give you the result of the recorded vote, as established by the secretaries, on the motion tabled by the group of Alliance 90/The Greens on the draft of an Act for the Promotion of Families and Household-related Services. The number of votes cast was 546. There were 48 ayes, 394 noes and 104 abstentions. The motion for a resolution has been rejected.

... (There follow the names and voting behaviour of Members)

The stenographic record shows that during the second reading, a motion for an amendment to the Federal Government's bill was tabled by the Member Carl-Ludwig Thiele. A vote was taken on this motion for an amendment first, so that the voting procedure could be simplified during the rest of the second reading. Instead of a vote being taken on each paragraph or section in turn, the text was voted on as a whole. The stenographic record also shows how votes are conducted at second reading, namely by a show of hands. Furthermore, it shows that a number of Members submitted written statements on the vote in line with Rule 31 of the Rules of Procedure; these statements were printed in an annex to the stenographic record. Written or oral statements on the vote allow Members to justify the way in which they personally have voted, in particular if they do not follow the party line.

If, as in the above example, a bill is adopted as it stands during the second reading, the third reading can begin straight away. During the third reading, the final vote is taken on the bill. The Members vote by rising from their seats when the President calls for votes for, votes against and abstentions. In practice the Bundestag often proceeds immediately to the third reading even if amendments have been adopted during the second reading. This is only possible, however, if at least two thirds of the Members present agree. Generally, at least two thirds of Members give their consent. If not, the third reading can only begin on the second day after distribution of the printed papers containing the amendments adopted.

The stenographic record in the above example shows that no further debate was held during the third reading. A debate is only held if a parliamentary group or at least five per cent of Members so demand. Moreover, individual Members are no longer permitted to move amendments during the third reading; only parliamentary groups or a group of Members of equivalent size may do so. Amendments may only refer to provisions that were amended at second reading.

Immediately after the bill's third reading, votes took place on several motions for resolutions which had been tabled by the opposition parliamentary groups on the Family Benefits Act. Resolutions are intended to show the view of the German Bundestag on certain items of business which are on the agenda. Generally, the resolution calls on the Federal Government to take a concrete course of action. Resolutions are an instrument often used by opposition parliamentary groups in order to set out their views on a matter under discussion. Motions for resolutions may be tabled by one parliamentary group or at least 5 per cent of Members

(i.e. 32 at present) and are voted on at the end of deliberations on a bill or other item.

In our example, in addition to tabling a motion for a resolution, one parliamentary group demanded a recorded vote. Such a demand must be complied with, since this instrument is one of the rights guaranteed to minorities in Parliament. In votes of this kind, the stenographic record shows how each Member voted (see p. 70 et seq. for the procedures used in such votes).

A special category of bills are those relating to treaties with foreign states. These are dealt with in two readings only. In such cases, the Bundestag can only accept or reject the text as a whole. As the Federal Government negotiates the whole text of the treaty with foreign states, the Bundestag cannot subsequently amend parts of the bill.

## The passage of legislation in the Bundesrat

The Bundesrat is the forum through which the 16 *Länder* participate in the legislative process and administration of the Federation (see Article 50 of the Basic Law). As a matter of principle, the Bundesrat participates in the passage of every law adopted by the Bundestag. The extent of its participation, however, depends on whether the bill in question is one to which the Bundesrat may lodge an objection or one requiring the Bundesrat's consent.

In keeping with the Basic Law, it is more usual for bills not to require the consent of the Bundesrat in order to become law. In such cases, the Bundesrat may lodge an objection to the bill. If the Bundesrat wishes to object to a bill it must first ask the Mediation Committee to convene (for the mediation procedure, see below). The Bundestag can overturn an objection from the Bundesrat by an absolute majority, i.e. a majority of its Members; in some special cases, what is known as a "double qualified majority" is required (Article 77 (4) of the Basic Law; see p. 134). Thus, by holding another vote, the Bundestag can overcome the opposition of the Bundesrat and open the way for the law to be promulgated.

Where specifically provided for in the Basic Law, a bill requires the consent of the Bundesrat to become law. The Bundesrat may therefore exercise an absolute veto in such cases: if it refuses to give its consent, then the bill has failed. The Bundestag cannot override this veto, no matter how large a majority of its Members supports the bill, and even if support

for the bill is unanimous. A bill is considered to require the consent of the Bundesrat if it substantially affects the interests of the *Länder*. A bill may fall into this category if it affects the finances of the *Länder* or if it has a particular effect on the *Länder's* execution of legislation, the organisation of the *Land* administrative authorities or the implementation of any other measures by the *Länder*. The reform and modernisation of the federal system which took place in 2006 modified the provisions governing which bills require the Bundesrat's consent. Since this point, the number of bills requiring the consent of the Bundesrat has diminished considerably; yet these bills still constitute almost fifty per cent of bills promulgated.

The question of whether the Bundestag is concerned with a bill to which the Bundesrat may lodge an objection or for which its consent is required is thus a key aspect of the legislative process and may determine whether the Bundestag in fact succeeds in having a bill passed. It is, however, not always easy to determine into which category the bill falls. Disagreements on this issue are not uncommon between the Federal Government and the Bundestag on the one hand and the Bundesrat on the other. The Federal Constitutional Court has had to decide more than once whether a bill requires, or should have required, the consent of the Bundesrat. If the Bundesrat fails to give its consent to a bill of this kind, then the bill becomes null and void.

In the above example, there was no doubt that this was a bill requiring the consent of the Bundesrat, since it is related to taxes from which some of the revenue goes to the *Länder* (Article 105 (3) of the Basic Law). However, the Bundesrat had substantive objections to the bill. Once the Bundestag had adopted the bill and, in keeping with Article 77 (1) of the Basic Law, had submitted it "to the Bundesrat without delay", the bill was discussed by the appropriate committees at the Bundesrat. During its 852nd plenary sitting of 5 December 2008, the Bundesrat concluded that it could not consent to the bill in the form proposed. The Bundesrat therefore decided to demand that the Mediation Committee be convened.

In the case of laws which require the consent of the Bundesrat, it is also possible for the Bundestag and the Federal Government to demand that the Mediation Committee be convened. The Bundesrat is not obliged to refer a bill to the Mediation Committee if it wants to defeat a bill by refusing to give its consent. Therefore, this provides the Bundestag and the Federal Government with an instrument to prevent the defeat of a bill, through a process of mediation.

5 December 2008

**Demand by the Bundesrat that the Mediation Committee be convened**

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**Act for the Promotion of Families and Household-related Services (Family Benefits Act – *Familienleistungsgesetz*)**

**A**

During its 852nd sitting on 5 December 2008, the Bundesrat decided to demand that, pursuant to Article 77 (2) of the Basic Law, the Mediation Committee be convened with respect to the bill adopted by the German Bundestag on 4 December 2008 for the following reason:

Article 5a (new) – Financial Equalisation Act (*Finanzausgleichsgesetz*)

After Article 5, the following Article 5a shall be inserted:

**“Article 5a**

**Amendment of the Act regulating Financial Equalisation between the Federation and the *Länder***

Section 1 (1) of the Act of 20 December 2001 regulating Financial Equalisation between the Federation and the *Länder* (Federal Law Gazette I, p. 3956), as amended by Article 2 of the Eighth Act, dated 31 July 2008, amending the Municipal Finances Reform Act (*Gemeindefinanzreformgesetz*) (Federal Law Gazette I, p. 1626), shall be amended as follows:

1. After the tenth sentence, the following sentences shall be inserted:

“In order to compensate for the increase in child benefit with effect from 1 January 2009, the federal share under the fourth sentence above shall be reduced by 0.41 of a percentage point, and the share accruing to the *Länder* shall be increased by 0.41 of a percentage point. The share referred to in the fifth sentence above shall be increased from 1 January 2009 by a further 0.41 of a percentage point.”

2. In the present thirteenth sentence, the words “in the seventh to the twelfth sentences above” shall be replaced by the words “in the seventh to the fourteenth sentences above”.

Reasons:

...

**B**

The Bundesrat has also adopted the following resolution:

...

The reasons for the decision show that the Bundesrat was not in agreement with the way in which the costs were to be shared out between the Federation and the *Länder* and had therefore demanded an amendment to the bill.

## The mediation procedure

The Mediation Committee is a joint body composed of representatives of the Bundestag and the Bundesrat. The Bundesrat representatives are 16 members of the Bundesrat, one for each *Land*, although they are not bound by instructions from their *Land* governments as they are when taking decisions in the Bundesrat. The Bundestag representatives are 16 Members of the Bundestag, who, in accordance with the principle that governs the composition of Bundestag committees, reflect the relative strengths of the parliamentary groups. The chairpersonship of the Mediation Committee alternates every three months between a Member of the Bundestag and a member of the Bundesrat. Meetings of the Mediation Committee are strictly confidential; minutes of the meetings are not made available until the beginning of the second electoral term following the one during which the meeting was held, i.e. generally not until at least 4 years have passed. It is argued that if meetings were not strictly confidential committee members would be unable to reach compromises with each other and would be put under pressure by their respective *Land* governments or political parties to refuse to make concessions on particular issues.

The frequency with which meetings of the Mediation Committee are convened not only reflects the extent to which the Federation and the *Länder* disagree over legislation but also mirrors the political constellation at federal level. If the political majority in the Bundesrat is not the same as that in the Bundestag, the two organs are more likely to disagree and thus more likely to convene the Mediation Committee. For example, in the three years of the 15th electoral term (2002 – 2005), when different parties held a majority in the Bundestag and in the Bundesrat, the mediation procedure was used in 90 cases, while under the grand coalition in the 16th electoral term (2005 – 2009) the Mediation Committee was convened only 18 times. However, this does not mean that the mediation procedure is exploited wilfully by one party or another, depending on the political make-up of the Bundestag and the Bundesrat. The fact that either the Bundestag or the Bundesrat resorts to the mediation procedure

simply reflects the parties' different policies at both federal and regional level and also shows that the Bundesrat, too, is of course a political organ.

The purpose of the mediation procedure is to amend the bill in question in such a way that the Bundestag and the Bundesrat are equally satisfied with the final result. If the procedure is to succeed, the Bundestag and the Bundesrat often have to compromise on what form they would ideally like the bill to take. The Bundestag and the Federal Government have to accept the proposals of the *Länder* on certain points, and the *Länder* are also obliged to make concessions to the Bundestag. When the deliberations are over, the Mediation Committee submits a compromise proposal to the Bundestag and the Bundesrat.

17 December 2008

**Recommendation by the Mediation Committee for decision**

**on the Act for the Promotion of Families and Household-related Services (Family Benefits Act – *Familienleistungsgesetz*) –**

**Printed papers 16/10809, 16/11001, 16/11172, 16/11191 and 16/11329 –**

Rapporteur in the Bundestag: Dr Michael Meister, Member of the Bundestag

Rapporteur in the Bundesrat: Professor Ingolf Deubel, Minister of State

The Bundestag is requested to adopt the following recommendation:

The Act for the Promotion of Families and Household-related Services (Family Benefits Act – *Familienleistungsgesetz*) shall be amended in accordance with the decision annexed hereto.

Jens Böhrnsen  
Chair

Dr Michael Meister  
Rapporteur

Professor Ingolf Deubel  
Rapporteur

for the Mediation Committee

Berlin, 17 December 2008

## Annex

### Act for the Promotion of Families and Household-related Services (Family Benefits Act – *Familienleistungsgesetz*)

Article 7a (new) – (Section 1 of the Financial Equalisation Act)

After Article 7, the following Article 7a shall be inserted:

"Article 7a  
Amendment of the Act regulating  
Financial Equalisation between the  
Federation and the *Länder*

Section 1 of the Financial Equalisation Act (*Finanzausgleichsgesetz*) of 20 December 2001 (Federal Law Gazette I, pp. 3955 and 3956), as amended by ..., shall be amended as follows:

1. After the eleventh sentence, the following sentences shall be inserted:

"To compensate for the increase in child benefit with effect from 1 January 2009, the figures indicated in the fifth sentence above shall be adjusted by the following amounts:

in 2009 by  
minus EUR 794 000 000,

in 2010 by  
minus EUR 281 000 000, and

in 2011 by  
plus EUR 152 000 000.

The share indicated in the sixth sentence above shall be adjusted

in 2009 by an amount of  
plus EUR 794 000 000,

in 2010 by an amount of  
plus EUR 281 000 000, and

in 2011 by an amount of  
minus EUR 152 000 000."

2. In the present fourteenth sentence, the words "in the eighth to the thirteenth sentences above" shall be replaced by the words "in the eighth to the eleventh and in the fourteenth and fifteenth sentences above"."

The Mediation Committee was thus able to come to a compromise proposal in this case. This provided for individual amendments to the Act adopted by the Bundestag, which were summarised in an annex to the Mediation Committee's recommendation.

If the Mediation Committee proposes that the bill be amended, the Bundestag must again take a decision on the bill (the so-called "fourth reading"). The Bundestag is in theory free to decide whether it wishes to accept or reject the Mediation Committee's proposal. In practice, however, the Bundestag knows that if it were to reject the proposal, the Bundesrat could, depending on the type of bill, either lodge an objection or refuse to give its consent. In the first case, the Bundestag would then have to secure the necessary absolute majority or even a double qualified majority of its Members to try and override the objection, which is not always easy to achieve. In the second case, failure by the Bundesrat to give consent to the bill would mean that the bill had been defeated. The Bundesrat, which must take a decision on the bill following the "fourth

reading" in the Bundestag, can reject the compromise proposal and, depending on the type of bill, either lodge an objection to the bill or refuse to give the bill its consent. Alternatively, it can accept the proposal and either give its consent to the bill or refrain from lodging an objection.

The Bundestag has adopted special provisions to govern the way in which it votes on the Mediation Committee's proposal. Firstly, the Mediation Committee may stipulate, as it generally does if several amendments have been proposed, that in accordance with its Rules of Procedure which were adopted by the Bundestag with the Bundesrat's consent specifically for this purpose, the Bundestag should vote on the compromise proposal as a whole. The Bundestag therefore cannot adopt some provisions and reject others, since that would destroy the compromise reached through the mediation procedure. Secondly, the Bundestag is not permitted to hold a debate on the Mediation Committee's proposal; the parliamentary groups may only make statements on the proposal.

In the present case neither the rapporteurs nor any of the parliamentary groups had asked for the floor to make a statement during the deliberations in the Bundestag on the recommendation of the Mediation Committee. Thus it was possible to proceed to a vote immediately and the committee's proposal for amendment was adopted by a majority of the Bundestag.

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German Bundestag – 16th electoral term – 196th sitting. Berlin, Thursday, 18 December 2008

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### **Vice-President Petra Pau:**

I call supplementary item 3c:

Discussion of the recommendation of the committee established under Article 77 of the Basic Law (Mediation Committee) on the Act for the Promotion of Families and Household-related Services (Family Benefits Act – *Familienleistungsgesetz*)

– Printed papers 16/10809, 16/11001, 16/11172, 16/11191, 16/11329 and 16/11392 –

Rapporteur:

Dr Michael Meister, Member of the Bundestag

Who votes in favour of the recommendation of the Mediation Committee? – Who votes against it? – Who abstains? – The recommendation has been adopted, the CDU/CSU group and the SPD group having voted in favour and the FDP group, the group of The Left Party and the group of Alliance 90/The Greens having abstained.

The Bundesrat then also adopted the bill in the version amended by the Bundestag on the basis of the recommendation of the Mediation Committee, as the extract from the stenographic record of the 853rd sitting of the Bundesrat of 19 December 2008 printed below shows.

**President Peter Müller:**

...

We now come to item 78:

Act for the Promotion of Families and Household-related Services (Family Benefits Act – *Familienleistungsgesetz*) – printed paper 972/08

This Act, too, has come back from the Mediation Committee. I call the rapporteur...

**President Peter Müller:** I thank the rapporteur for explaining the outcome of the Mediation Committee's deliberations and for his necessary and accurate clarifications on the substance of Article 106 of the Basic Law.

There have been no further requests to speak. – Mr Krautscheid, Minister for Federal, European and Media Affairs of North Rhine-Westphalia, has submitted an **explanation of vote** for the minutes.

We shall now proceed to the vote. If you wish to vote for the Act as amended by the German Bundestag on the basis of the compromise proposals made by the Mediation Committee, please raise your hand. – That is a majority in favour.

The Bundesrat has thus given its consent to the Act.

...

After the Bundesrat had given its consent to the bill, it could finally become law (see p. 135 below, The signing and promulgation of laws).

If this had been a law to which the Bundesrat may lodge an objection, rather than a law requiring the Bundesrat's consent, the following procedure would have applied after the referral of the bill to the Mediation Committee and the submission of the Mediation Committee's compromise proposal. Here, too, the Bundestag would first have had to take a decision on the Mediation Committee's compromise proposal in a "fourth reading" (see above). Once the Bundestag had adopted the proposal, the Bundesrat would then have had to decide whether to accept the bill as amended by the Mediation Committee's compromise proposal, and therefore not to lodge an objection to the bill within two weeks. The bill would thus have been passed. Special rules apply, however, to the further procedure in the Bundestag (the so-called "fifth reading") in the case of the Bundesrat lodging an objection. A motion to reject an objection by the Bundesrat can only be tabled by a parliamentary group or by a group of Members as large as a parliamentary group. No debate is held before the vote on the motion to reject the objection; however, statements can be made in which the parliamentary groups set out their positions. And since the rejection of an objection by the Bundesrat requires an absolute majority or even a double qualified majority in the Bundestag, if the decision to lodge an objection was passed by a two-thirds majority in the Bundesrat, the Rules of Procedure stipulate that the vote should take

place through a counting of votes (the so-called *Hammelsprung*) or a recorded vote. This is the only way to be certain whether the majority required to override the objection was achieved.

Currently, there are altogether 630 Members, which means that 316 votes are required for an absolute majority; the double qualified majority needed if the Bundesrat decides by a two-thirds majority to lodge an objection means that a two-thirds majority of those present and voting is required, but this must also consist of at least an absolute majority of the total number of Members. Such majorities are not particularly easy to obtain, especially if the opposition parties have voted against the bill and are therefore unlikely to oppose the objection lodged by the Bundesrat. In such a case, the parliamentary groups which form the majority in the Bundestag have to ensure that as many of their members as possible participate in the vote, in order to achieve the required majority.

In the case of bills to which the Bundesrat may lodge an objection, if the Bundestag rejects the Bundesrat's objection in this way, the bill has been passed and can become law.

## The signing and promulgation of laws

In keeping with Article 82 of the Basic Law, the above Family Benefits Act was sent to the Federal Government to be signed by the appropriate Federal Minister and the Federal Chancellor. This procedure, referred to as countersignature, is laid down in Article 58 of the Basic Law and ensures the validity of orders and directives of the Federal President. Following countersignature, the law was sent to the Federal President to be signed. Finally, it was promulgated in the Federal Law Gazette and took effect according to the relevant provisions.

# Federal Law Gazette

Part I

G 5702

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### **Act of 22 December 2008 for the Promotion of Families and Household-related Services (Family Benefits Act – Familienleistungsgesetz)**

The Bundestag has adopted the following Act with the consent of the Bundesrat:

#### **Article 1**

##### **Amendment of the Income Tax Act (Einkommensteuergesetz)**

The Income Tax Act, as promulgated on 19 October 2002 (Federal Law Gazette I,

p. 4210 and Federal Law Gazette I (2003), p. 179) and amended by Article 1 of the Act of 21 December 2008 (Federal Law Gazette I, p. 2896), shall be amended as follows:

1. The summary of contents shall be amended as follows:

a) The entry on Section 4f shall be worded as follows:

- |   |  |
|---|--|
| <p>“Section 4f (repealed)”</p> <p>b) Before the entry on Section 5, the following entry on Section 4b shall be inserted:</p> <p>    “Section 4b Child-care costs<br/>Section 9c Child-care costs”.</p> <p>c) The entry on Section 35a shall be worded as follows:</p> <p>    “Section 35a Tax relief for expenditure on household-related employment, household-related services and tradesmen’s services”.</p> | <p>2. Section 4f shall be repealed.</p> <p>...</p> <p style="text-align: center;"><b>Article 9</b><br/><b>Entry into force</b></p> <p>(1) With the exception of the provisions referred to in the following paragraphs, this Act shall enter into force on 1 January 2009.</p> <p>(2) Article 1 (16) shall enter into force on 2 January 2009.</p> <p>(3) Article 3 shall enter into force on 1 August 2009.</p> |
|---|--|

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The above law is hereby executed. It shall be promulgated in the Federal Law Gazette.

Signed at Berlin on 22 December 2008

Horst Köhler  
President of the Federal Republic of Germany

Dr Angela Merkel  
Federal Chancellor

Peer Steinbrück  
Federal Minister of Finance

## The Budget Act

The federal budget is drawn up each year. It determines the level of federal revenue from taxes and duties, etc., and, more importantly, sets the level of federal expenditure for particular purposes. The federal budget as a whole is broken down into departmental budgets for each of the ministries and supreme federal authorities. Each departmental budget comprises a great number of titles and items giving detailed estimates of revenue and expenditure for the financial year. The budget is sometimes referred to as “the government programme in figures” as it shows exactly what measures the government plans to undertake in the coming year and the amount of funds it intends to spend in particular areas.

The budget is laid down in the Budget Act. In other words, like any other law, the budget can only be approved by the Bundestag. The budget is submitted by the Federal Government to the Bundestag as a bill and can be adopted, rejected or amended by the Bundestag like any other bill.

The budget also stipulates how many civil servants and other staff the Federal Chancellor may employ and establishes their salary levels. This applies to each of the federal ministries and also to the Bundestag itself. Parliament thus decides how many staff may be employed, what qualifications they should hold and what duties they should perform. Moreover, the Bundestag also has the final say as regards the amount of funds the federal administration may spend on the various aspects of non-personnel expenditure. Of course, such decisions on revenue and expenditure cannot be made arbitrarily by the Bundestag. In most cases, the Bundestag is bound by previous legislation in which it has already established the volume of funds which must be set aside for particular purposes, as can be seen from our example. The use of a substantial part of the resources available for the financial year is predetermined by legislation on pensions and social assistance, laws concerning financial support for education and training, agricultural subsidies, the building of transport infrastructure and structural programmes, and previous decisions on armaments planning and other areas. Parliament therefore cannot simply decide to amend previous legislation via the Budget Act. Legislation is in place to ensure that no financial measures are introduced in the Budget Act on top of those which have already been decided upon. Numerous constraints of this and other kinds ensure, for good reason, that the budget does not have to be drafted anew each year. Parliament therefore only needs to debate and decide upon individual reductions or increases in revenue or expenditure each year. The budget debate is, moreover, highly significant in political terms. The debate frequently involves a long, hard struggle and heated public arguments between the Federal Government and the Bundestag, particularly between the government and the opposition parties, before agreement can be reached on the content of the budget.

The federal budget goes through the same procedure in principle as any other bill: a first reading in the plenary, the committee stage and a second and third reading in the plenary of the Bundestag. As the budget is only valid for one year, this procedure is repeated annually and usually lasts from September to December each year.

## Final remarks

The legislative process in the Federal Republic of Germany is relatively complex. It was not, however, deliberately intended to be difficult to understand. Its complexity is simply the price which has to be paid for involving so many different bodies in the passage of legislation, for ensuring that often difficult subject matter is examined several times over, and for making available a wide range of information to all those interested in a particular subject. The complexity of the process ultimately reflects the demands of democracy and the rule of law. In places where such principles are disregarded, in totalitarian regimes and military dictatorships, the passage of legislation is a quick and easy affair – and by no means accidentally, laws tend to be unjust and ineffective.

A final look at the passage of legislation in Germany clearly reveals the reasons behind each stage in the legislative process:

- Bills are drawn up by the specialised divisions in the relevant ministries, the subject matter of each bill being examined carefully, with information from the federal administration as well as from affected groups and other interested parties being taken into account.
- Coordination between the individual ministries and in the cabinet helps ensure that bills conform to government policy and are also compatible with the scope and limits of the federal budget.
- In the course of the initial deliberations in the Bundesrat, the *Länder* can draw on their experience of executing legislation when discussing the bill and can make their interests known.
- The first reading in the Bundestag serves to inform the Members of the German Bundestag and the public that a legislative process is underway with regard to a particular subject matter and is to be debated in Parliament.
- The detailed examination of the bill during the committee stage makes it possible for additional expert opinions and political viewpoints to be taken into account; moreover, it allows the views of the parliamentary groups to be incorporated in the bill and is often an opportunity for Members from different parliamentary groups to compromise and reach agreement on the content of the bill.
- The hearings held by the committees are an opportunity to gather additional information from experts in the subject area covered by the

bill; they increase public awareness of the issues at stake and give members of the public and interested organisations another chance to participate in the discussions.

- During the second and third readings in the plenary of the Bundestag, arguments for and against the bill are debated and the opinions and arguments of the various parliamentary groups are put forward. Media coverage of the debate by newspapers, radio and television allows the public to form their own opinions on the bill on the basis of the arguments presented in the Bundestag. Finally, the bill is adopted.
- The Bundesrat's renewed involvement after the adoption of the bill by the Bundestag serves to underline the federal structure of the Federal Republic and the important role played by the *Länder* in terms of the execution of legislation and the consideration given to regional disparities.
- Under certain circumstances, the Mediation Committee may be requested to convene. This serves to ensure that the conflicts between the Federal Government and the *Länder*, which are an inherent aspect of the federalist structure, are resolved by way of compromise and that legislation which is binding throughout the Federal Republic can be passed.
- Finally, it is possible for a law to be referred to the Federal Constitutional Court for judicial review, although this is not a common or compulsory step. This review ensures that each of the previous stages has been carried out in keeping with the law, as otherwise the item of legislation in question might be declared invalid. There are thus legal safeguards in place to ensure that the legislative procedure is conducted in keeping with the rule of law and in accordance with the Basic Law.

All this makes for a complex procedure, both for those who make the laws and for those who have to comply with them. Of course, everyone wishes from time to time that there were fewer laws, that they were less complicated and that the legislative process were quicker and more flexible. But the society for which these laws are made is not simple; it is complex, multifaceted, technically advanced and pluralist in terms of its goals, values and interests. Parliament, as the law-making body, has to reflect this. The demand for legislation – to eliminate unequal treatment, to meet justified demands, to avert possible dangers and to promote matters of importance – comes from society itself and not from the Bundes-

tag. Parliament cannot refuse to adopt laws for which there is a demand and it cannot speed up the legislative process if a bill happens to be particularly controversial or concerns a complex subject.

The passage of legislation in Germany is ultimately a condition and integral element of the rule of law, democracy and freedom. Anyone who wishes to put the legislative process into practice, to participate in it or understand how it functions must be prepared for the substantial effort this involves.

### **3. Support for the Bundestag and its Members**

Article 48 (3) of the Basic Law guarantees Members of the German Bundestag "remuneration adequate to ensure their independence". At the same time, the effectiveness of their political work is also dependent on human and technical resources, the various Members' allowances, as they are known, to which Members are also entitled under the Members of the Bundestag Act (see p. 16 et seq. above).

#### **Staff employed by the Members and the parliamentary groups**

As far as personnel are concerned, Members have a certain maximum allowance enabling them to employ personal staff on a private contractual basis to assist them in their parliamentary work. If the conditions for the reimbursement of this expenditure are met, the Administration of the Bundestag pays the salaries to the Members' staff direct. It is up to individual Members to define, in line with their specific needs, the qualifications staff should have and the tasks they are expected to perform. Currently, some 4,500 staff are employed directly by Members, many of them on a part-time basis; around 50% work at the seat of Parliament and around 50% in Members' constituency offices.

The work of the parliamentary groups also requires material support and human resources. They employ a total of some 850 members of staff, whom they pay using grants from the federal budget. Some of them are policy advisers with academic backgrounds, some administrative assistants.

#### **The Administration of the German Bundestag**

The biggest single organisation that supports the Bundestag is the Administration of the German Bundestag with its approx. 2,850 staff (full-

time and part-time). The General Service Regulations of the German Bundestag outline its main functions as follows:

"The Administration of the German Bundestag is a supreme federal authority. It serves Parliament. Within the framework of the tasks assigned to it, and on the basis of the financial resources provided under its budget, it lays the foundations for the work of the German Bundestag in terms of organisational, human and technical resources.

The Secretary-General of the German Bundestag heads the Administration of the German Bundestag on behalf of the President and represents the President in business connected with the Administration."

The Administration functions first and foremost as a service provider for Parliament and its Members. By contrast, it issues hardly any sovereign acts with external impact. The substantive preparation of legislation is not one of the Bundestag's core tasks; instead it is generally a matter for the federal ministries. The following account of the Administration's work is limited to a number of focal areas among its wide-ranging duties:

The Administration of the German Bundestag is divided into four directorates-general: Central Services; Parliament and Members; Research and External Relations; and Information and Documentation. These directorates-general are, in turn, divided into directorates and divisions. There are a number of organisational units that do not belong to any of the directorates-general, such as the Office of the President and the offices of the Vice-Presidents, the Press and Communications Centre, the Protocol Division and the Office of the Parliamentary Commissioner for the Armed Forces.

Within the Administration, the number of staff in the different career classes is currently as follows (approximate figures):

500 in the higher service, 600 in the higher intermediate service, 1,200 in the intermediate service and 600 in the ordinary service. Women make up more than 50% of the total number of employees.

### ► Central Services Directorate-General (Z)

Directorate-General Z is the administrative and technical backbone of the Administration of the Bundestag and provides the services that are essential to the smooth functioning of this large authority. It is divided

into the following directorates: Central Administration, Law, and Technical and Operational Services, each of which contains several divisions.

The two personnel divisions in the Central Administration Directorate are dedicated to the recruitment, placement and support of the Administration's staff and are obliged to scrutinise candidates' professional aptitude and personal suitability with particular care when appointments are made. The Rules of Procedure of the German Bundestag require the prior approval of the Presidium to be obtained before staff in the middle and upper management levels are promoted.

Another division in this directorate serves as the point of contact for the Administration's staff on training, further training and social matters. And the Organisation Division supports Parliament's work by ensuring that administrative procedures run properly and efficiently.

In the Law Directorate, the Budget Division is responsible for preparing the annual draft budget for the German Bundestag in accordance with the decisions of the competent parliamentary bodies and for implementing the budget that is ultimately adopted, departmental budget 02. Including the Office of the Parliamentary Commissioner for the Armed Forces, departmental budget 02 provided for expenditure of approx. 764 million euros in 2015 (equivalent to roughly 9.42 euros per head of the population and a share of 0.26% of the total federal budget). The main areas of expenditure are as follows (approximate figures):

Members' remuneration	66 million euros
Members' expense allowance	31 million euros
Members' staff expense allowance	172 million euros
Bundestag Administration staff	150 million euros

Estate management	44 million euros
Visitors' Service and Public Relations	17 million euros
Grants to parliamentary groups	83 million euros
IT equipment	27 million euros

The Legal Affairs Division is responsible for dealing with general legal and contractual matters and for managing legal disputes, including representation before the courts. The Division also supports the work of the Commission on Internal Affairs set up by the Council of Elders.

The President of the Bundestag's proprietary and police powers in the German Bundestag's buildings (Article 40 (2) of the Basic Law) are implemented by the Police and Security Division. The Bundestag Police safe-

guard public security and order in the Bundestag's buildings, which form a separate police precinct, and in this way help to ensure that Parliament can carry out its work.

Finally, a division in the directorate is responsible for personnel security controls and technical measures to ensure document security, as well as for data protection and the implementation of the Freedom of Information Act in the Administration of the Bundestag.

The Technical and Operational Services Directorate organises the Bundestag's infrastructure and is responsible for health and safety and fire safety.

The Building Planning and Properties Division coordinates the construction and refurbishment of parliamentary buildings and deals with matters relating to the management of parliamentary properties. It also includes the Secretariat of the Commission on Buildings and Room Allocation set up by the Council of Elders, which prepares the political decisions on the Bundestag's plans concerning its buildings and rooms.

The Building Maintenance Division manages the upkeep of all of the Bundestag's buildings, as well as being responsible for coordinating construction measures designed to ensure the safety of the buildings and for landscape maintenance.

Another division in this directorate is responsible for the planning and operation of technical facilities in the buildings, such as energy generation and supply, lifts, water supply and fire-extinguishing systems.

Technical and organisational support is also provided by the Central Support Services Division, whose sections include the plenary and committee assistance service, the internal courier and delivery services, the Sittings Office, the telephone switchboard and the car pool.

The Central Supplies and Logistics Division is responsible for the internal mail distribution and distribution of printed papers, office and business supplies, office equipment and cleaning, waste management, storage, and much more.

And finally in this directorate, the Procurement Division is responsible for carrying out the many procurement procedures that are necessary to meet the German Bundestag's demand for services and materials.

## ► Parliament and Members Directorate-General (P)

As its name suggests, this part of the Administration of the German Bundestag provides services that assist the parliamentary work of the Bundestag in a narrower sense. The Directorate-General is divided into four directorates: Parliamentary Services; Services for Members; Committees; and European Affairs.

The functions of the Parliamentary Services Directorate (PD) are centred on the work of the Bundestag as a whole, i.e. its plenary sittings, including their preparation and follow-up activities, as well as the duties of its governing bodies, in particular the President, the Presidium and the Council of Elders. It also supplies the staff of the plenary support service – who are seated behind the President's chair, and assist the President in the Chair in managing plenary sittings. In addition to this, the Directorate supports a number of specific committees and bodies of the Bundestag.

The Parliamentary Secretariat is the organisational unit that receives, processes and distributes all initiatives, motions and information about activities of relevance to procedures within the Bundestag: bills, motions and interpellations tabled by Members and the parliamentary groups, reports issued by the committees and all other items pass through this division, where they are edited and distributed. Another vital task is the preparation of the meetings of the Council of Elders, which deliberates on the procedures followed in the plenary and seeks to forge cross-party consensus on the questions that inevitably arise.

The Parliamentary Law Research Section provides advice on parliamentary law in the broadest sense, particularly the Rules of Procedure and constitutional law concerning Parliament. In addition, the Section draws up the speaking notes for the President in the Chair during plenary sittings, a summary of all the points on the agenda and the bills, motions for amendments, motions for resolutions, reports, interpellations, etc. that have been tabled on them. The Shorthand Writers' Service prepares the verbatim minutes of plenary sittings. Large parts of these minutes are available just a few hours later, and they are published in their entirety the following day. They are supplied to the Members and bodies of the Bundestag, as well as numerous external organisations – constitutional bodies, media corporations, academic institutions, associations, etc. The verbatim minutes are also accessible to the public via the Bundestag's website.

The Secretariat of the Committee for the Scrutiny of Elections, Immunity and the Rules of Procedure deals with all matters that relate to these

fields. In this respect, it cooperates closely with the Parliamentary Law Research Section and the Parliamentary Secretariat, given that questions concerning the Rules of Procedures arise at all levels and, in particular, come to the attention of the Council of Elders over and over again.

Secretariat PD 5 supports a number of parliamentary bodies that are responsible for oversight of the Federal Government's intelligence services. These bodies are briefed at confidential meetings and ensure the Bundestag is able to exercise scrutiny over the executive's actions in this field.

The Services for Members Directorate (PM) concentrates on the performance of activities that assist Members in the exercise of their mandates.

The Remuneration of Members Division is in charge of all matters that relate to parliamentarians' rights under the Act on the Legal Status of Members of the German Bundestag, as well as the legal status of German Members of the European Parliament. These include, in particular, the benefits paid to active and former Members, as well as Members' remuneration, expense allowances, health insurance, and retirement and surviving dependants' pensions. Furthermore, the Division is responsible for the enforcement of the Code of Conduct under which Members of the German Bundestag have to disclose, among other things, any activities they engage in alongside their mandates and the income they earn from such interests, details of which are published in the prescribed form on the internet and in the Official Handbook of the German Bundestag. The Secretariat of the Commission on the Legal Status of Members of the Bundestag set up by the Council of Elders is also part of this division.

The Members' Staff Division deals with all issues of concern to the staff who are employed by the Members of the German Bundestag to support their parliamentary work in Berlin and their constituencies. Salaries, social insurance contributions and travel expenses are paid on Members' behalf within the parameters set by labour law and the provisions on the reimbursement of expenses. Furthermore, the Secretariat of the Commission on Members' Staff set up by the Council of Elders is based in this division.

The Party Financing, *Land* Parliaments Division is responsible, firstly, for relations with the *Land* parliaments, focusing especially on the regular conferences of their presidents and secretaries-general. Secondly, it administers the allocation of public funding to political parties: it calculates and disburses the funds to which the parties are entitled, publishes their statements of account and submits regular communications on party

financing to the President of the German Bundestag. To this extent, the Division falls within the President of the Bundestag's responsibility as an authority under the Act on Political Parties, who exercises an executive, rather than parliamentary, function in this context.

The core functions of the Committees Directorate (PA) involve the provision of support for the work of the committees through their secretariats. As set out above, the committees perform the bulk of the German Bundestag's legislative work. At present, the Bundestag has 23 permanent committees, to which committees of inquiry and study commissions are added in the course of an electoral term. Each has a small staff of employees at its disposal, who assist the work of the committee with their administrative, organisational and technical expertise, acting directly in accordance with the instructions and requirements of the committee chairperson.

The heads of these secretariats make suggestions concerning the scheduling of meetings and their agendas, help to ensure that all items of business, as well as the documentation required for their deliberation, are submitted to the committees in good time; that committee meetings are conducted in line with the Rules of Procedure and to schedule; and that the subsequent follow-up activities, e.g. the framing of recommendations for decisions and reports to the plenary, the drafting of minutes, etc., are carried out in an appropriate fashion. Their other tasks include providing substantive policy advice to the committee chairpersons and maintaining contacts with the ministries, parliamentary groups, parties and concerned associations.

The European Affairs Directorate, which was created in 2013 in response to the Bundestag's increased responsibility for European policy, supports the Bundestag's committees, parliamentary groups and Members in formulating the parliamentary response to legislative projects and political initiatives launched at the level of the European Union. The Directorate includes, firstly, the Secretariat of the Committee on the Affairs of the European Union, which provides administrative, organisational and specialist support for the Committee's work. A division responsible for fundamental EU issues and economic and monetary union issues deals with all fundamental issues such as the Bundestag's participation in matters concerning the EU, and analyses economic, budgetary and financial issues, including those relating to the stability of the euro.

Another division in this directorate is responsible for analysis, advice and prioritisation in relation to all other EU policy fields. The documents re-

ceived by the Bundestag are examined and assessed in terms of their relevance for deliberations and whether discussions are proceeding in line with the deadlines. Thanks to the EU Liaison Office in Brussels, the Members, committees and parliamentary groups of the Bundestag receive information about current political developments within the EU institutions at an early stage, in particular concerning planned legislative projects and the progress of current discussions. The European Affairs Documentation Division is the central unit for the receipt of all EU documents, which are catalogued and made available in the Bundestag's internal information system. And finally, the European Affairs Research Section, which is also part of this directorate, supports Members by producing expert opinions on request, carrying out research and publishing proactive briefings on European law and European policy.

### ► Research and External Relations Directorate-General (W)

The Research and External Relations Directorate-General consists of three directorates: Research Services; International Relations; and Petitions and Submissions.

The Research Services (WD) deal with enquiries from Members, who are able to request studies or reports on any topic of relevance to federal politics which are required by the Members in the exercise of their parliamentary mandates. There are at present 10 research sections, with a total of approx. 65 research staff, who support Members' work by presenting their findings concisely and comprehensibly in forms that are suitable for the purposes of political discussion. Each year, the research staff draw up between two and three thousand studies, overviews, dossiers, etc. Alongside this, the Research Services offer what is known as proactive briefing. This means they analyse topics that are attracting broad general interest or have recently come to prominence in political discourse in short briefings and background papers. A selection of the documents produced by the Research Services is made available on the Bundestag's website and is therefore accessible to the public as well.

The International Relations Directorate (WI) focuses predominantly on the German Bundestag's external relations at the supranational and international levels. The German Bundestag cultivates manifold links with parliaments in other states and supranational parliamentary organisations, and is consequently capable of collaborating and exerting influence within interparliamentary organisations, procuring information for the

German Bundestag's own deliberations and contributing to the promotion of parliamentary and democratic structures all over the world.

The Language Service supports the performance of these functions by translating texts required for the work of Parliament, providing conference interpreters for international events and visitors, and maintaining a database of specialist parliamentary and political terminology in German, English and French.

The International Parliamentary Assemblies Division assists the President of the German Bundestag when he or she is preparing for and attending conferences of parliamentary speakers from the European Union, the Council of Europe and the G8 countries. In addition to this, the Division supports the work of the Members of the German Bundestag who serve on delegations to interparliamentary organisations, such as the OSCE Parliamentary Assembly, the Inter-Parliamentary Union, the Parliamentary Assembly of the Council of Europe, the NATO Parliamentary Assembly, the Parliamentary Assembly of the Union for the Mediterranean and the Baltic Sea Parliamentary Conference.

The Official Trips and Trips connected with Members' Mandates/Parliamentary Friendship Groups Division is responsible for the whole range of official trips and trips undertaken by Members in connection with their mandates, in particular for handling the application and approval procedures that have to be followed, reimbursing travel expenses and drafting reports on the international activities and obligations of the German Bundestag. In addition to this, the Division assists the activities of the German Bundestag's bilateral and multilateral parliamentary friendship groups. There are around 50 of these groups, whose task it is to cultivate and intensify dialogue with the Bundestag's partner parliaments.

The International Exchange Programmes Division administers the Congress-Bundestag Youth Exchange programme, an exchange scheme for school pupils and young professionals run with the US Congress under which scholarships are awarded to approx. 360 applicants from Germany each year. The German Bundestag offers International Parliamentary Scholarships for higher education graduates from 28 countries, overwhelmingly in Central, Eastern and South Eastern Europe, but also the Arab world. Furthermore, the Division organises the Bundestag's Interparliamentary Training Programme and staff exchanges with other parliamentary administrations.

The role of the Petitions and Submissions Directorate (Pet) is to support the Petitions Committee in its work. During the 17th electoral term, more than 15,000 members of the general public each year made use of their right, enshrined in Article 17 of the Basic Law, to address requests and complaints to the German Bundestag.

The Committee, with its 26 full members and 26 substitute members, is assisted by the Petitions and Submissions Directorate, which is divided into four divisions that deal with incoming submissions and a central secretariat. All the voluminous correspondence associated with the petitions procedure – during the 17th electoral term there were approx. 70,000 to 80,000 items of outgoing mail – is dealt with by about 80 Administration staff, who are also responsible for the drafting of the annual report on the work of the Petitions Committee.

### ► Information and Documentation Directorate-General (I)

The role of Directorate-General I is the management and provision of information in the broadest sense. The Directorate-General is divided into three directorates: Library and Documentation; Information and Public Relations; and Information Technology.

The Library and Documentation Directorate (ID) is responsible for the gathering, organisation, indexing and documentation of information.

With its media holdings of about 1.4 million volumes, approx. 8,000 German and foreign specialist periodicals and a constantly increasing number of electronic publications, the Library of the German Bundestag is one of the largest parliamentary libraries in the world. Its collections are focused on politics, law, economics, social affairs and modern history. The Library subscribes to official gazettes and publications from more than 2,500 organisations. Books and papers are subject indexed and can be searched and ordered from any office using an online catalogue. Publications such as glossaries, dictionaries, legislative texts, legal commentaries and approx. 1,400 periodical titles are available electronically online. The Library offers a range of information tailored to parliamentarians' needs with lists of new publications, topic-based literature tips and internet links that are organised by subject and updated on an ongoing basis. On request, subject and information specialists compile reading lists, supply factual information and advise users.

The Parliamentary Archives index and make available materials that are produced in the course of the work done by the German Bundestag and its Administration. Further to this, they archive photographs and audio and visual recordings from all fields of parliamentary life. These holdings are complemented by digitally created images and a web archive, in which the German Bundestag's internet pages are periodically preserved. Both collections are available to anyone with access to the internet. The Parliamentary Archives draw up legislative dossiers on all the laws dealt with by the Bundestag, which offer a structured overview of the whole legislative process. They publish the Official Handbook of the German Bundestag, the contents of which include accounts of its organs and bodies, as well as biographical details of all Members of the German Bundestag. The Archives also issue the Data Handbook on the History of the German Bundestag, which offers a comprehensive survey of the work of the German Bundestag, and administer the Public List of Registered Associations, which details associations that represent the interests of different groups to the Bundestag and the Federal Government.

The indexing of the printed papers and minutes of plenary proceedings of the Bundestag and the Bundesrat is the task of the Parliamentary Documentation Division. It formally catalogues and subject indexes parliamentary materials that are placed in the public domain (minutes of plenary sittings, bills, motions, interpellations, reports, EU items, etc.), and adds them to the Parliamentary Materials Information System (DIP) operated jointly by the German Bundestag and the Bundesrat, which is available online on the German Bundestag's website. The system draws on various databases, for which more than 10,000 printed papers and 250 plenary sittings from the German Bundestag alone are analysed in detail each electoral term. These records can also be downloaded in full text.

The most significant of the products offered by the Press Documentation Division is its press review, for which it collates the most important reports and commentaries of the day from 24 daily and weekly newspapers. Furthermore, the Division maintains one of the largest press archives in Germany with 26 million press cuttings in paper and – since 1999 – digital form. It is directly accessible from each Bundestag office and grows daily by roughly 600 articles culled from 50 newspapers and periodicals. In addition to this, the Press Documentation Division supplies the individual Members and the committees with various topical articles from its archives that are relevant for them or their specific field of work. As part of its efforts to supply information proactively, the Division also assem-

bles dossiers of recent press articles about specific issues that are currently being raised in society.

The Information and Public Relations Directorate (IO) provides various services to support the Members in their work and shape the perception of the German Bundestag among the wider population.

The Visitors' Service organises visits by people interested in politics who have been invited to Parliament by Members. In addition to this, it also gives individual visitors and visiting groups without such invitations opportunities to take part in diverse educational activities (visits to plenary sittings, lectures, tours of Parliament, youth projects). More than one million visitors are welcomed to the German Bundestag each year. Tours of Parliament for foreign visiting groups are offered in numerous languages on request. The Visitors' Service is also responsible for a permanent exhibition on parliamentary history, *Milestones – Setbacks – Sidetracks: the path to parliamentary democracy in Germany*, which attracts approx. 300,000 visitors every year.

The Public Relations Division disseminates factual information about the work and functions of the Bundestag in diverse forms: brochures, leaflets, specialist literature, films and the new media, as well as presentations about the Bundestag at trade fairs and exhibitions. Furthermore, the Division arranges the mobile information unit's annual tour round Members' constituencies.

The Special Projects Division arranges the German Bundestag's own events (e.g. the Open Days when Parliament opens its doors to the public) and parliamentary exhibitions, in addition to which it is responsible for approving and supporting events held by third parties in the premises of the Bundestag and the surrounding public spaces. The artworks installed in the parliamentary buildings under the 'Art in Architecture' scheme and the Art Collection of the German Bundestag, which was founded in 1969, are curated by the Art in the German Bundestag Division.

The Information Technology Directorate (IT) is responsible for equipping all parts of the German Bundestag with information and communications technology, indispensable as it is for the work of Parliament. The Directorate is divided into five IT divisions, the main responsibilities of which are the operation of data processing centres and the relevant applications, the equipment of users with PCs (hardware and software), the provision of communications technology, the development of IT systems and new applications, and IT security. The Commission for the Use of New Infor-

mation and Communications Technologies and Media established by the Council of Elders constantly has to grapple with the difficulties involved in optimising the deployment of information technology, in particular the rapid, straightforward provision of information, the use of IT to simplify the daily routines of office management and smooth communications, e.g. with constituency offices.

Whenever software and hardware problems are encountered, help is on hand from the IT Service Centre based in the Directorate. The Bundestag's own IT training centre offers in-house training courses for users who work with standard applications and special software.

The PCs supplied to each Member when their offices are equipped with communications technology are connected to the Bundestag's own intranet, via which they have access to important information systems such as the ticker service (reports from news agencies), the Press Documentation Division, the Library and much else besides. Other external databases, internal tools and resources, and access to the internet are provided via the intranet.

## ► Press and Communications

The Press and Communications Centre reports directly to the President of the German Bundestag and performs the classic functions of press and communication work (contacts with the press, radio and television, parliamentary correspondence, etc.), in particular using modern online services.

The Centre issues press releases, furnishes the *heute im bundestag* information service with reports from the plenary and committees written by its professional journalists and publishes *Das Parlament* journal.

The Online Services, Parliamentary Television Division uses the internet ([www.bundestag.de](http://www.bundestag.de)) to report on every aspect of the German Bundestag in a topical, transparent fashion that is responsive to the concerns of the general public. Events that take place in Parliament are covered in their entirety: from the agenda and the minutes of plenary proceedings to the transmission of all plenary sittings, as well as many public committee meetings and hearings that are broadcast live by Parliamentary Television. Not only that, it is possible to download the broadcast meetings of parliamentary bodies from the web archive as video-on-demand.

Parliamentary Television is primarily broadcast on the Bundestag's own in-house channel and the Berlin digital cable network, as well as being offered on the internet as Web TV. In addition to this, Parliamentary Television is broadcast over the German Federation's intranet and therefore received by all the supreme federal authorities, press centres in Berlin (e.g. the Federal Press Conference) and other interested institutions in the parliamentary and government quarter. Furthermore, programmes produced by Parliamentary Television are supplied to German and foreign television stations that wish to reflect the work done by the Bundestag.

## **Parliamentary Commissioner for the Armed Forces**

The Parliamentary Commissioner for the Armed Forces (Bundeswehr) is appointed to assist the German Bundestag in the exercise of parliamentary oversight over the armed forces and to act as a special 'ombudsman' responsible for petitions from soldiers in the Bundeswehr. He or she is supported by a Chief Administrator, a Personal Assistant and a staff of employees divided between six divisions and made up of about 50 members of the Administration. Among their other duties, these staff process approximately 5,000 submissions a year and prepare the Commissioner's annual report to the German Bundestag.