

Act on the Federal Court of Auditors (Federal Court of Auditors Act)¹

Date of signature: 11 July 1985

Full citation:

Federal Court of Auditors Act of 11 July 1985 (Federal Law Gazette 1, p. 1445), as amended by Article 15 subsection (82) of the Act of 5 February 2009 (Federal Law Gazette I, p. 160)

Section 1 – Legal status

The Federal Court of Auditors shall be a supreme federal authority and, as an independent body of government audit, shall be subject only to the law. Within the framework of its statutory tasks, the Federal Court of Auditors shall assist the German Bundestag, the Bundesrat and the Federal Government in their decision-making.

Section 2 – Headquarters and organisation

(1) The Federal Court of Auditors shall have its headquarters in Bonn. It may set up branch offices.

(2) The Federal Court of Auditors shall be composed of audit divisions and audit units. Audit groups may be formed for specific tasks. There shall be a Presidential Division responsible for management.

Section 3 – Members of the Federal Court of Auditors

(1) The President, the Vice-President, the senior audit directors and the audit directors shall be members of the Federal Court of Auditors.

¹ This working translation of the *Gesetz über den Bundesrechnungshof (Bundesrechnungshofgesetz – BRHF)* is provided by the Language Service of the Federal Ministry of Finance. Only the German text of this Act is authentic.

(2) The President and the Vice-President shall be appointed as civil servants with set tenure. The term of office of the President and the Vice-President shall be twelve years; the term of office shall end at the latest upon the expiry of the month in which the civil servants reach their statutory retirement age. The President and the Vice-President shall retire after the expiry of their term in office. In other respects the regulations of the Federal Civil Servants Act² on civil servants with life tenure, with the exception of the regulations on career brackets and the probationary periods, shall be applied to them accordingly.

(3) The members must have acquired the qualifications for a career in the higher civil service. In addition, they should have wide-ranging professional experience. The President or the Vice-President and at least one third of the other members must be qualified to hold judicial office. An appropriate number of the members should possess previous economic or technical training.

(4) The members of the Federal Court of Auditors shall enjoy judicial independence (first sentence of paragraph (2) of Article 114 of the Basic Law³). The regulations on independence and disciplinary measures relating to judges of the federal supreme courts shall be applied accordingly. Section 48 subsections (2), (4) and (5) of the German Judiciary Act⁴ shall apply.

Section 4 – Audit officers and other staff

The Federal Court of Auditors shall also have the required number of audit officers from the higher and higher intermediate civil service as well as other staff.

Section 5 – Election and appointment

(1) Upon a proposal made by the Federal Government, the German Bundestag and the Bundesrat shall elect the President and the Vice-President without debate in each case. The German Bundestag shall elect by secret vote and by a majority of its members. The Federal President shall appoint those elected. There shall be no re-election.

(2) The Federal President shall appoint:

1. the other members of the Federal Court of Auditors upon the proposal of the President,

² *Bundesbeamtengesetz*

³ *Grundgesetz*

⁴ *Deutsches Richtergesetz*

2. the other officers upon the proposal of the President unless the right to make appointments has been delegated to the President.

Before submitting his/her proposals under number 1 above, the President shall consult the Standing Committee of the Senate of the Federal Court of Auditors (section 13 subsection (2)).

Section 6 – President and Vice-President

(1) The President shall act as the representative of the authority. He/she shall be responsible for the management of the Federal Court of Auditors and shall exercise administrative supervision.

(2) The President shall, in the case of the tasks conferred upon him/her by law, be represented by the Vice-President or, if the Vice-President is indisposed, by the most senior audit director. In cases of equal seniority, the higher age shall be decisive. In the cases falling under section 9 subsection (1), second sentence, and section 11 subsection (2), the President shall represent the Vice-President. In the Senate, the Vice-President shall be represented in accordance with the first sentence, second half-sentence and with the second sentence above.

(3) The other members shall assist the President in accomplishing his/her tasks. This may not deprive them of their principal activity as members of the Federal Court of Auditors without their consent or hinder them in their judicial independence.

Section 7 – Assignment of duties

(1) In agreement with the Standing Committee of the Senate, the President shall, before the beginning of the financial year, assign the duties to the divisions and audit units and shall determine which members head the divisions and audit units.

(2) The President shall, before the beginning of the financial year, decide on the allocation of audit officers and other staff to the audit units. Upon application by the affected college or divisional senate, the decision shall, in individual cases, require the consent of the Standing Committee of the Senate.

(3) Within the financial year, the President may, with the consent on the Standing Committee of the Senate, make or amend a decision under subsection (1) or (2) above if a vacancy is to be filled or the decision is necessary for the proper accomplishment of tasks.

(4) In cases of doubt, the President shall determine which audit unit or divisional senate is responsible. Subsection (2), second sentence, above shall apply accordingly.

(5) The President shall, in consultation with the Vice-President, set out those divisions where he/she or the Vice-President is involved in the decision-making of the colleges and divisional senates in the following financial year. The same shall apply, where required, to decisions under subsection (3) above during the financial year.

Section 8 – Decisions of the Federal Court of Auditors

The decisions of the Federal Court of Auditors shall be made by the President (section 19, first sentence, number 2), the colleges (section 9), the audit groups (section 10), the divisional senates (section 11), and the Senate (section 13).

Section 9 – College of two or college of three

(1) The college for an audit unit shall consist of the responsible senior audit director and the responsible audit director (college of two). The President or the Vice-President shall join this college if he/she or a member of the college of two regard this as required (college of three).

(2) A college may, in an individual case, authorise a member to decide on his/her own.

Section 10 – Audit groups

With the agreement of the Standing Committee of the Senate, the President may form audit groups for specific tasks. Sections 7, 9, 14 subsection (1), numbers 3 and 4, section 15 subsection (2) and section 16 subsections (1) and (3) shall apply accordingly.

Section 11 – Divisional senates

(1) A senate shall be formed for each division and shall consist of the senior audit director as chair, the audit directors in the division and an additional audit director. The President shall appoint the additional audit director and his/her representative in accordance with the Standing Orders.

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

Section 12 – Responsibility of divisional senates

The divisional senates shall decide:

1. on applications in the cases falling under section 14 subsection (1), numbers 3 and 4, and in cases falling under section 17 subsection (1), second sentence;
2. upon application by a member, if a college fails to reach an agreement or if a matter is of special importance;
3. on matters allotted to them under the Standing Orders or by the Senate.

Section 13 – The Senate

(1) The Senate shall consist of the President as chair, the Vice-President, the senior audit directors and three audit directors. In the case of the tasks of the Federal Court of Auditors, the audit director responsible in each case under the assignment of duties (rapporteur) and another audit director (co-rapporteur) shall join the Senate. The three audit directors and their representatives as well as the co-rapporteur shall be appointed by the President in accordance with the Standing Orders.

(2) The Senate shall form a Standing Committee. This shall consist of the Vice-President as well as of two senior audit directors and two audit directors who, together with their representatives, are appointed by taking their seniority into account and in accordance with the Standing Orders. The President may participate in the Committee's consultations.

(3) The Senate may, by a two-thirds majority, form other committees and delegate consultation and decision-making on specific matters to them. A committee must include at least one of the three senior audit directors. Subsection (1), second sentence, above shall apply; it shall be incumbent upon the chair of the committee to designate the co-rapporteur.

Section 14 – Responsibility of the Senate

(1) The Senate shall decide:

1. under section 17 subsection (1), fourth sentence, section 18 subsection (2), second sentence, and section 20 subsection (1);
2. on the preparation of the comments under section 97 of the Federal Budget Code⁵, on reports under section 99 of the Federal Budget Code and on reports otherwise provided for by law unless the Standing Orders delegate the decisions to divisional senates; in the cases falling under section 19, first sentence, number 1, the decision shall be incumbent upon the college of three, and in the cases falling under section 19, first sentence, number 2, upon the President;
3. upon application by a divisional senate or upon application by a college on inter-divisional audit or consulting projects, or on matters of fundamental importance;
4. upon application by the affected divisional senate or college, if the intention is to deviate from the decision, upheld upon request, of a divisional senate or the Senate; the same shall apply to any deviation from the decision of a college insofar as it has made its decision within the framework of its responsibility for general or fundamental matters;
5. on the procedure and principles to be followed in work planning, auditing, consulting and reporting;
6. on the tasks of the regional audit offices (section 20a subsection (2)).

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

Section 15 – Voting

(1) The colleges shall make their decisions by unanimous vote.

⁵ *Bundshaushaltsordnung*

(2) The divisional senates and the Senate shall decide by a majority of votes. In the case of a tie, the chair shall have the casting vote.

Section 16 – Member by commission

(1) If an audit director is prevented from exercising his office on a more than short-term basis, the President may, after consulting the Standing Committee of the Senate, commission an officer who is not a member of the Federal Court of Auditors to carry out the duties for the time during which the audit director is indisposed or for a specific period. The same shall apply as long as the established post of an audit director is vacant. Section 3 subsection (3), first sentence, shall be applied to the officer.

(2) Subsection (1), first and third sentences, above shall apply accordingly if an audit director is prevented from being involved in his/her divisional senate's decision-making.

(3) For the duration of the commission, the officer shall have the status of a member of the Federal Court of Auditors.

Section 17– Exclusion on grounds of partiality

(1) A member of the Federal Court of Auditors may not act if there is a reason capable of justifying doubt in his/her impartiality. The divisional senate to which the affected member belongs shall decide whether this condition is fulfilled. Section 16 subsection (2) shall not apply. If the member is to be excluded from a decision by the audit group or the Senate, the latter shall decide. The member affected may not be involved in the decision. There shall be no representation in this regard.

(2) The members of the Federal Court of Auditors may not act in a matter in which they themselves or their relatives within the meaning of section 20 subsection (5) of the Administrative Procedures Act⁶ have been involved or for which they themselves or their relatives are responsible.

(3) Subsection (1), first sentence, and subsection (2) above shall apply accordingly to audit officers and other staff acting in the accomplishment of the tasks of the Federal Court of

⁶ *Verwaltungsverfahrensgesetz*

Auditors. The responsible college or the members of the audit group shall decide whether the doubt as to impartiality is justified.

Section 18 – Responsibility of the Federal Service Court

(1) The Federal Service Court shall be responsible for disciplinary proceedings against a member of the Federal Court of Auditors and scrutiny proceedings within the meaning of section 66 of the German Judiciary Act which concern a member of the Federal Court of Auditors. The President of the German Bundestag or the President of the Bundesrat shall exercise the right of application of the supreme service authority provided for under section 63 subsection (2) and section 66 subsection (3) of the German Judiciary Act in respect of the President and Vice-President of the Federal Court of Auditors.

(2) The non-permanent associate judges of the service court must be members of the Federal Court of Auditors. The Presidium of the Federal Court of Justice shall appoint them for the duration of five financial years in the order on a list of nominations prepared by the Senate.

(3) The regulations of the German Judiciary Act shall apply to the procedure in the service court.

Section 19 – Matters necessitating secrecy

If, under section 10a of the Federal Budget Code, the budget provides that the audit by the Federal Court of Auditors shall be conducted

1. by the responsible college with the involvement of the President or the Vice-President, or
2. by the President alone or, if his/her post is vacant, by the Vice-President

the divisional senates and the Senate shall be relieved of their responsibility. In the cases falling under the first sentence, number 1 above, other officers may be enlisted to assist in the procedure. The college of three shall decide by a majority of votes.

Section 20 – Standing Orders

(1) The Senate shall issue the Standing Orders of the Federal Court of Auditors. It shall make the arrangements provided for under section 11 subsection (1), second sentence, and section 13 subsection (1), third sentence, and subsection (2), second sentence. It may also

determine details concerning the organisation and procedure of the Federal Court of Auditors, in particular

1. concerning the representation of senior audit directors and audit directors,
2. concerning the formation and organisation of audit groups (section 2 subsection (2), second sentence),
3. the procedure in the decision-making bodies,
4. rules on the implementation of interdivisional audit and consulting projects.

(2) The German Bundestag, the Bundesrat and the Federal Government shall be notified of the Standing Orders.

Section 20a – Regional audit offices

(1) The Federal Court of Auditors may set up regional audit offices which are under its administrative and technical supervision.

(2) The regional audit offices shall carry out the auditing tasks assigned to them by the Federal Court of Auditors in analogous application of the provisions applicable to it and in accordance with its instructions. Within the framework of the auditing tasks assigned to them, they shall, in relation to the audited agencies, have the same powers of audit as the Federal Court of Auditors. The details shall be regulated by the Standing Orders of the Federal Court of Auditors.

(3) The Federal Court of Auditors shall determine the location of the regional audit offices.

(4) The officers shall be appointed by the President of the Federal Court of Auditors.

Section 21

-

Section 22 (repealed)

-

Section 23 – Berlin clause

In accordance with section 13 subsection (1) of the Third Transition Act⁷, this Act shall also apply in the *Land* of Berlin.

Section 24 – Entry into force, cancellation of existing regulations

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

(2)

⁷ *Drittes Überleitungsgesetz*