

Manual for Drafting Legislation

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Recommendations of the Federal Ministry of Justice for drafting laws and
statutory instruments in conformity with legal requirements
pursuant to section 42 (4) and section 62 (2) of the
Joint Rules of Procedure of the Federal Ministries

Foreword to the updated and expanded third edition

Ever since the Federal Republic of Germany was founded in 1949 the Federal Ministry of Justice has served as the centralized body within the Federal Government with responsibility both for examining whether draft laws and statutory instruments proposed by the federal ministries meet legal and formal requirements and for advising the ministries on preparing their legislative proposals. When the Federal Cabinet assigned the Federal Ministry of Justice this task on 21 October 1949, the then Federal Minister of Justice, Dr Thomas Dehler, set out the – still applicable – requirements made of the scrutiny of legislation when he assured the Cabinet that

“This measure is in no way intended to curtail the competence of the ministries within their particular remits, rather it guarantees that federal legislation is legally incontestable as well as legally and formally standardized; it must be implemented with the requisite thoroughness without, however, unreasonably delaying the submission of draft laws to the Cabinet or the promulgation of statutory instruments.”

Since then the Federal Ministry of Justice has been rising to these obligations on a daily basis. Where it is involved at an early stage, the scrutiny of legislation can make a very key contribution to improving the quality of legal provisions. The main task is to examine whether new provisions are consistent with the current legal system: Are they compatible with the Constitution? Do they conform to European and international law? Do they fit coherently into the existing system of legal provisions of the same rank? However, the examination not only looks at whether provisions are legally consistent. If they are to reach citizens, businesses and legal practitioners, legal provisions must also be well structured and worded so that their meaning is clear and easy to understand.

What is needed to achieve all of the above is a uniform standard which the federal ministries can apply when drafting legislation and on which the scrutiny of legislation can also be based. This third edition of the Manual sets out that standard. Its recommendations are based on legal requirements and, above all, on practical legislative experience. They are constantly evolving in the course of everyday legislative work. Thus, this third edition takes account both of the growing influence of European legislation and recent decisions of the Federal Constitutional Court and of the consequences of the reform of Germany's federal structure. Most of the recommendations are relevant to every legislative proposal. However, consideration has also been given to those special cases which arise only from time to time. We have retained the tried and tested structure of previous editions of the Manual.

I hope that all those involved in the drafting and scrutiny of legislation will find that this Manual facilitates their work and that it contributes to creating legally consistent and comprehensible regulations.

(Brigitte Zypries)

Note from the authors

Since the last edition of this Manual for Drafting Legislation was published in 1999 there have been various reasons to update it. For example, the Joint Rules of Procedure of the Federal Ministries, to whose specifications on legislative drafting this Manual has always made reference, were fundamentally revised. European Union legislation is continuously evolving and its influence on German legislation has grown. The reform of Germany's federal structure and decisions of the Federal Constitutional Court, for instance on amending statutory instruments by an Act of Parliament, have an influence on how legislation is framed. Account also needed to be taken of the German spelling reform. In addition, new aids and sources of information have become available which can be used to advantage when drafting legislation.

We have analyzed experience gained in the course of the scrutiny of legislation of especially frequent errors made in regard to legal conformity and have taken that experience as the basis when formulating and rendering more precisely some recommendations and simplifying others. Only very few of the previous formal specifications have been changed. In future, for example, the designations for the structural units "subsection" and "number" will always be written out in German, even when provisions are being cited, and the citation of EU law follows European practice. Providing drafting assistance for amending bills in the context of the parliamentary process is becoming an increasingly important aspect of the work of the federal ministries; that is why the relevant recommendations have been revised in cooperation with the Parliamentary Secretariat of the German Bundestag.

The legal and formal requirements for legislative drafting have been augmented by the addition of pertinent examples. Where these have been taken from texts which in the original do not correspond to the new or more precise specifications, they have been adapted for this edition of the Manual.

This third edition is the result of collaboration within the division responsible for basic issues concerning the scrutiny of legislation in the Federal Ministry of Justice. I would especially like to thank the following members of my staff: Manfred Helge Frank, Martin Geipel, Astrid Habermann, Andreas Ignaczak, Wolfgang Leiner, Gudrun Schiebel and Claudia Seitz. My thanks also go to the staff of the Society for the German Language, to Antje Baumann, Michaela Blaha, Sibylle Hallik and Stephanie Thieme, for their linguistic advice and, not least, to all those colleagues who have time and again raised questions

and problems regarding legal conformity and have thus contributed to the continuous development of the recommendations contained in this Manual.

For the Scrutiny of Legislation Division

(Elke Schade)

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Part A

Scrutiny of legislation

Part A: Scrutiny of legislation

1 Preliminary remarks

- 1 Given the weak status of the Reich Ministry of Justice in the Weimar Republic and following the injustice of the National-Socialist regime there were calls for the establishment of a centralized, independent body with responsibility for conducting a legal examination of draft laws and statutory instruments. Initially, responsibility for monitoring compliance with legal requirements fell to the Legal Office of the Administration of the Combined Economic Area, then to the Federal Ministry of Justice. On 21 October 1949 the Federal Cabinet resolved

“... that the Federal Ministry of Justice will participate in the preparation of draft legislation by examining compliance with legal requirements and ensuring the uniform use of legal terminology. The same applies to statutory instruments issued by the Federal Government or by the federal ministries.”

The first report on the work of the Federal Government (“Reconstructing Germany”) published in 1950 described this task as follows:

“Experience shows that each ministry tends to regard matters to be regulated by law from the perspective of the needs of their own administration. Despite all the efforts of the administrative ministries to abide by the law and the Constitution, a true democratic state based on the rule of law must have a body which examines ... all draft legislation. The Ministry of Justice, which is not bound by any administrative interests and only considering of safeguarding the law, is most especially suited to fulfilling this task.”

- 2 The importance of the Federal Ministry of Justice’s scrutiny of legislation already becomes clear when one considers that most laws are launched by the Federal Government. During the 15th electoral term (which ended prematurely in 2005 after three years), 274 out of the 385 promulgated laws were based on Federal Government bills. Including the 70 laws which were based on drafts submitted by the parliamentary groups in the coalition and on preliminary work done by the Government, the Federal Government had a direct influence on some 89% of all promulgated laws.
- 3 The **extent** and **content** of federal legislation in force and the **changes** it undergoes frequently come in for **criticism**. This is sometimes more, sometimes less discriminating and

informed, depending on the critic's point of view and intent. The following criticisms are voiced: There are too many regulations. Regulations are amended too quickly and too frequently. The flood of regulations stifles economic activity. It curtails citizens' possibilities of developing their full potential. All too frequently legislation merely acts as an alibi. It is too detailed. Not enough attention is paid to whether the regulations can actually be applied in practice. The legislature does not respond quickly enough. The effectiveness of the regulations is not monitored once the legislative process has been completed.

These critical remarks cannot and will not be addressed in any detail here. A fundamental consideration of the role of the law and the current legislative process would go beyond the scope and remit of this Manual. Nevertheless, reference has been made to this criticism since the role of the Federal Ministry of Justice, the centralized body responsible for examining the legal conformity of new legislation, and its recommendations cannot be regarded in isolation. Although this Manual is geared entirely to practical application, there are links at various points to fundamental legal issues, including the legislative process, which also play a role in the above-mentioned critical remarks.

- 4 The problem which is generally referred to as the "flood of regulations" should be considered against the following statistical backdrop: For decades the body of federal legislation in force has comprised around 2,000 principal acts and 3,000 principal statutory instruments, allowing for some fluctuation. These acts of law vary in length: The German Civil Code, for instance, comprises 2,385 sections; many laws and statutory instruments, by contrast, consist of less than five sections. In total the principal acts together comprise some 47,000 individual provisions; statutory instruments total around 40,000 individual provisions. Nowadays, the legislative process primarily entails amending existing regulations. Over the course of the (three-year) 15th electoral term, for example, the Income Tax Act was amended a total of 24 times. Given the body of existing regulations and the extent of legislation, the legislature is responsible, on the one hand, for enacting **reliable, clear and comprehensible legislation** and, on the other hand, for continuously examining legislation in force to see whether it is still **necessary**. The scrutiny of legislation makes a key contribution to that.

2 Terms of reference

- 5 The **Federal Ministry of Justice**'s responsibility for the scrutiny of legislation is established in section 46, section 42 (4), section 62 (2), first sentence, and section 72 (3) of the Joint Rules of Procedure of the Federal Ministries.¹ It is complemented by the relevant federal minister's or the Federal Minister of Justice's right to raise an **objection** in the Cabinet to a draft law or statutory instrument or to a measure taken by the Federal Government on account of its non-compatibility with prevailing law (section 26 (2) of the Rules of Procedure of the Federal Government²).
- 6 The scrutiny of legislation conducted by the Federal Ministry of Justice supports the legislative activities of the individual federal ministries. It **examines**
- ◆ draft laws (bills) drawn up by the Federal Government before they are submitted to the Cabinet for adoption (section 46 (1), section 51 no. 2 GGO*),
 - ◆ statutory instruments[#] drawn up by the Federal Government before they are submitted to the Cabinet for adoption (section 62 (2) and (3) read in conjunction with section 46 (1) and section 51 no. 2 GGO*),
 - ◆ statutory instruments drawn up by the federal ministries before they are issued (section 62 (2) read in conjunction with section 46 (1) GGO*), and
 - ◆ statutory instruments drawn up by other bodies authorized to do so on the basis of subdelegation (margin nos 800 et seqq.) before they are issued (in accordance with section 62 (2) read in conjunction with section 46 (1) GGO*).
- 7 The Ministry can be asked to conduct further examinations in the course of the **parliamentary process**, for example
- ◆ by the specialist department with overall responsibility, namely to examine suggestions made by the Bundesrat in the context of preparing a statement or counter-statement by the Federal Government, and to examine drafting assistance (margin nos 836 et seqq.) for use in the Bundestag committee with overall responsibility (section 52 (2), section 56 (3) GGO*), and
 - ◆ by the parliamentary groups forming the Government, namely to examine motions for an amendment or recommendations for a decision.

¹ The current German and English versions of the Joint Rules of Procedure of the Federal Ministries (*Gemeinsame Geschäftsordnung der Bundesministerien*, GGO) are retrievable at: www.bmi.bund.de.

² Rules of Procedure of the Federal Government (*Geschäftsordnung der Bundesregierung*, GOBReg) of 11 May 1951 (Joint Ministerial Gazette p. 130), as last amended by publication of 21 November 2002 (Joint Ministerial Gazette p. 848)

* Joint Rules of Procedure of the Federal Ministries

Sometimes also referred to in English as "ordinances".

3 Scope

- 8 The examination conducted by the Federal Ministry of Justice is a legal examination. More specifically, it comprises an examination of **systematic** and **formal aspects** of each proposal within the context of the legal system as a whole. It begins with the preliminary question of whether the extent of the planned regulation is in fact necessary to achieve the stated regulatory objective. The scrutiny of legislation focuses on whether the regulations are compatible with **higher-ranking law** (“vertical scrutiny of legislation”), primarily in regard to
- ◆ constitutionality,
 - ◆ compatibility with European Union law, and
 - ◆ compatibility with international law, especially the United Nations’ General Declaration of Human Rights and the European Convention on Human Rights and Fundamental Freedoms,
- wherever there is an obvious link to the draft law or the ministry submitting the draft has raised queries in that regard. In particular, the explanatory memorandum relating to the draft will indicate whether such links exist.
- 9 Further, the scrutiny of legislation includes an examination of whether the planned regulations **fit seamlessly into the existing legal system** (“horizontal scrutiny of legislation”), by asking the following questions, for example:
- ◆ How does the new legislation relate to existing legislation?
 - ◆ Has the draft been properly structured according to organizing principles?
 - ◆ Is the relationship between rule and exception appropriate?
 - ◆ Have duplicate and contradictory regulations been avoided?
 - ◆ Has what was intended been properly expressed?
 - ◆ Are references to other provisions clear (e.g. static or dynamic references)?
 - ◆ Can superfluous provisions in this particular legal field be repealed?
 - ◆ Is the normative content clear in each instance?
 - ◆ Are the provisions easy to apply?
- 10 At the same time, the relevant requirements as to form and style must be complied with (**legal conformity**), for instance as regards headings, enacting clauses, citation, amending formulae and provisions on entry into force. Legal provisions are also examined to see whether they are **linguistically correct and comprehensible**.

4 Procedure

- 11 The scrutiny of legislation is conducted by various departments within the Federal Ministry of Justice which each specialize in different legal fields – essentially in line with departmental competences – and have experience of the scrutiny of legislation (**co-scrutiny divisions**). A separate division is responsible for basic issues concerning the scrutiny of legislation. It also examines draft laws proposed by the Federal Ministry of Justice. Special units in the Ministry are involved when overarching issues need to be addressed (e.g. regarding general administrative law, data protection, regarding costs and fees, criminal offences and administrative fines in ancillary legislation, or procedural law). Given its importance, constitutional law is regularly used as a yardstick in the scrutiny of legislation; it is a matter for the constitutional law departments, in particular the Basic Rights Division.
- 12 In accordance with section 42 (1) GGO,* a bill consists of the draft text of the law (bill), the explanatory memorandum (section 43 GGO*) and a front sheet (Annex 5 to section 42 (1) GGO*). Only the draft text of the law is **subject to legal scrutiny** (section 42 (1) and (4), section 46 (1) GGO*); the front sheet and the explanatory memorandum are only included where this is necessary to understand the text of the law or they contain details affecting its relationship to other legislation. In accordance with section 62 (2) GGO* the same applies to draft statutory instruments drawn up by the Federal Government or by the federal ministries.
- 13 The specialist departments in the ministries with overall responsibility can already **involve** the Federal Ministry of Justice **in preparing the bill** (section 46 (3) GGO*). That enables any issues arising to be clarified at an early stage, which can facilitate the final scrutiny of legislation prior to submission to the Cabinet and thus speed up the overall process. Generally, draft laws and statutory instruments are sent to the Federal Ministry of Justice after the preparatory work has been completed together with an **explicit request that the scrutiny of legislation be conducted**. Where necessary, the division responsible for the legal examination involves other divisions in the Federal Ministry of Justice (e.g. those responsible for constitutional law) and compiles a summary of all their comments. When the ministry with overall responsibility has dealt with any objections and the examination has been completed, the co-scrutiny division confirms that there are neither any systematic nor structural concerns (**scrutiny report**). In accordance with section 51 GGO,* the ministry with overall responsibility can then state in its covering letter to the Cabinet submission that the Federal Ministry of Justice confirms that the bill has undergone legal scrutiny. This

* Joint Rules of Procedure of the Federal Ministries

confirmation not only testifies to the fact that the Federal Ministry of Justice was given the opportunity to examine the bill, but also that it actually carried out the examination and that it raises neither systematic nor formal objections.

- 14 The scrutiny of legislation as outlined above takes time, especially when other departments need to be involved. Section 46 (2) GGO* therefore contains a reminder that the Federal Ministry of Justice must be given **sufficient time to examine and discuss** questions arising in the context of the examination. It is in the interest of the individual ministries that their drafts are carefully examined and they receive advice on legal aspects. In accordance with section 50 GGO,* the period for final examination of the bill is normally four weeks. That period may be reduced if all those involved agree thereto.

5 Using the Manual

5.1 Structure

- 15 According to section 42 (4) GGO,* the structuring of draft legislation is subject to the provisions of the **Manual**. Further, the Federal Ministry of Justice may make **recommendations** in individual cases. The Manual is designed as a practical resource for all those involved in drafting or examining legislation.
- 16 The Manual takes account of **all the relevant legal requirements**, including the constitutional framework and the Joint Rules of Procedure of the Federal Ministries. It also incorporates experience gained in everyday legislative practice.
- 17 The **Manual** first sets out general guidelines for writing laws, as well as recommendations concerning designations, citation and cross-references. It then addresses the different types of legislation and their typical structure, i.e. beginning with how to write a title and ending with provisions on the period of validity. Specific details concerning statutory instruments are only included when they differ from those applied to laws. The Manual contains a **Table of contents** and an **Index**.# The electronic edition of the (German version of the) Manual is retrievable on the Federal Ministry of Justice's website (<http://hdr.bmj.de/vorwort.html>). The Table of contents, Index# and all cross-references to individual margin numbers are linked to the respective passages of text in the electronic edition.

* Joint Rules of Procedure of the Federal Ministries

The Index is only included in the German print version of the Manual.

5.2 Definitions

- 18 Some terms first need to be clarified to help in understanding the Manual. The explanations have been kept as simple as possible and are limited to basic principles and address neither the manifold distinctions drawn in the theory of law-making nor the terminology used when documenting legal norms. First of all, a distinction is drawn between **legislation** and a **legislative act**: “Legislation” refers to the process of enacting laws, to law-making. “Legislative act” describes the specific subject matter of the legislative process, i.e. the entity which the bodies involved in the legislative process are dealing with. Each legislative act can contain a combination of new regulations, amendments and repeals.
- 19 It is a characteristic of rules of law that they prescribe, in an abstract and general manner, the legal consequences which arise when a specific condition laid down is met. A distinction is drawn between acts and statutory instruments, depending on which body is involved in the legislative process: **Acts** are rules of law grouped together under a title which are enacted by the legislative bodies provided for in the Constitution pursuant to a procedure prescribed by the Constitution. **Statutory instruments** are rules of law grouped together under a title which are issued by the executive bodies referred to in the Constitution (e.g. the Federal Government, federal ministries, *Land* governments) based on certain preconditions set out in the Constitution. The terms “provision” and “norm” as used in the following refer only to **individual regulations**, i.e. individual sections or articles.
- 20 **Principal acts** (margin nos 320 et seqq.) and **principal statutory instruments** (margin nos 761 et seqq.) comprise legal rules which regulate a separate, more or less complex subject matter. The legal rules are grouped together under a title and brought into force as a “new” act or a “new” statutory instrument, always for an unlimited period of time.
- 21 By contrast, **amending acts** (margin nos 492 et seqq.) and **amending statutory instruments** (margin nos 812 et seqq.) contain amendments to existing rules of law. Here, too, these rules are grouped together under a title. The amending acts and amending statutory instruments themselves have **no period of validity**: Upon their entry into force they effect amendments, i.e. at clearly specified places the wording of the principal acts or the principal statutory instruments is either replaced by new wording or new wording is added, or else the wording is repealed. Once the amending acts and amending statutory instruments have been executed, i.e. they come into force, they can no longer be the subject matter of new law-making since they represent mere “empty shells” which can no longer have legal

force. They augment the number of legislative acts, though not the number of principal acts and principal statutory instruments.

- 22 Amending acts in the form of **individual amending acts** (margin nos 516 et seqq.), **omnibus acts** (margin nos 717 et seqq.) or **laws ratifying international treaties** (ratifying legislation; [Annex 1](#)) are also referred to in German as “**Artikelgesetze**” (article laws) since their structural subdivisions are articles not sections. “**Artikelverordnungen**” (article statutory instruments) are also possible.

6 Aids to preparing drafts and conducting the scrutiny of legislation

6.1 Official gazettes

- 23 Having recourse to the authentic, official texts of legislation in force is of decisive importance when preparing new laws and conducting the scrutiny of legislation. The **Federal Government’s official gazettes** are, therefore, essential aids, i.e. the Federal Law Gazette, the Federal Gazette, the Electronic Federal Gazette and the Federal Ministry of Transport Gazette. Article 82 para. 1 of the Basic Law, the Act on the Promulgation of Statutory Instruments and Notifications,³ section 76 GGO* and special laws determine which legislative acts need to be published in which gazette. The Federal Ministry of Justice is responsible for promulgation in the Federal Law Gazette, in the Federal Gazette and in the Electronic Federal Gazette. The editors of the official gazettes which have their offices in the Federal Office of Justice report directly to the Ministry. They are responsible for preparing the texts to be promulgated for production of the original text and for printing. The Bundesanzeiger Verlagsgesellschaft mbH is responsible for the production and sale of the texts.
- 24 Two separate parts of the Federal Law Gazette are published at irregular intervals, depending on the volume of promulgated material: The **Federal Law Gazette I** contains laws and statutory instruments drawn up by the Federal Government, decisions of the Federal Constitutional Court, and orders and notices whose publication in the Federal Law Gazette is required by law. The **Federal Law Gazette II** comprises treaties, the legislation enacted to bring them into force, as well as the related notices. The most recent editions of the Federal Law Gazette are retrievable online.⁴

³ Act on the Promulgation of Statutory Instruments and Notices (*Gesetz über die Verkündung von Rechtsverordnungen und Bekanntmachungen*), as consolidated and published in the Federal Law Gazette III, Index No. 114-1, as last amended by Article 6 of the Ordinance of 31 October 2006 (Federal Law Gazette I p. 2407)

* Joint Rules of Procedure of the Federal Ministries

⁴ www.bundesanzeiger.de

- 25 With only a few exceptions, the **Federal Law Gazette III** contains all federal legislation in force on 31 December 1963 in unabridged form and organized by subject area. The system applied to this collection still forms the basis for the documentation of federal legislation currently in force. The Act on the Collection of Federal Legislation of 10 July 1958⁵ and the Act on the Completion of the Collection of Federal Legislation of 28 December 1968⁶ were authoritative when it came to establishing which texts were federal legislation in force and which texts were consolidated. Any legislative amendments promulgated after 31 December 1963 are based on the wording printed in the Collection of Federal Legislation.
- 26 Every year the Federal Ministry of Justice publishes directories of legislation in force as supplements to the Federal Law Gazette. The **Directory of Legislation in Force A** (light-blue supplement to the Federal Law Gazette I) includes all currently applicable federal laws and statutory instruments, including the title and date of signature of the original and the publication reference. It also lists the publication references of all previously enacted amendments since the full text was last officially published. Each principal act and each principal statutory instrument is included by subject area according to the system applied to federal law (margin no. 25) and can be easily located using its index number (the **FNA Index No.**). The **Directory of Legislation in Force B** (pink supplement to the Federal Law Gazette II) contains the treaties and agreements adopted in the preparation and process of establishing German unity. The directories of legislation in force are available online to online subscribers to the Federal Law Gazette via the homepage of the Bundesanzeiger Verlagsgesellschaft mbH.⁷
- 27 The **Official Journal of the European Union** is the gazette of record of the European Union. It comprises two linked series, the L Series and the C Series, as well as a supplementary S Series, and is published daily in all official languages of the European Union. The L Series contains all Union regulations and directives and other legislation. The C Series contains information and notices. The C Series also comprises that part of the Official Journal, the CE Series, which is only published in electronic form. It contains preparatory legal acts. Public invitations to tender are published in the S Series. A semi-annual, two-volume directory of Community law in force accompanies the Official Journal. The first volume contains a systematic index, the second volume a chronological and alphabetic

⁵ Act on the Collection of Federal Legislation (*Gesetz über die Sammlung des Bundesrechts*, BRSG) of 10 July 1958 (Federal Law Gazette I p. 437)

⁶ Act on the Completion of the Collection of Federal Legislation (*Gesetz über den Abschluss der Sammlung des Bundesrechts*, BRSAbschlG) of 28 December 1968 (Federal Law Gazette I p. 1451)

⁷ www.bundesanzeiger.de

register. All the issues of the Official Journal of the European Union are retrievable online via the European Union's portal,⁸ as is the Directory of European Union Legislation in Force.

6.2 Databases

- 28 It is impossible nowadays to prepare and scrutinize legislation without relying on **electronic aids**. Each piece of legislation – whether it is a first legislative regulation or an amendment – must fit seamlessly into the existing legal system. Those involved in drafting and scrutinizing legislation therefore need to be able to find out information on applicable federal legislation. Only then will it be possible to avoid undesirable duplicate regulations, ambiguities and inconsistent linguistic usage. And, not least, electronic aids can be used as a basis for formulating precise amending formulae.
- 29 The most important tool when drafting legislation – both first legislative regulations and amendments – is juris GmbH's **Legal Information System**. **juris** maintains Germany's most comprehensive collection of information on all legal matters, which it is constantly expanding. The Legal Information System guarantees a high quality of information thanks to juris's close cooperation with the documentation services of the Federal Constitutional Court, Germany's five supreme courts, the Federal Office of Justice and the *Länder* (federal states). The system is accessible to anyone who is interested, upon payment of a fee. **juris** offers those working on legislation a variety of search options, in particular the following categories:
- ◆ Court decisions
 - ◆ Laws/statutory instruments
 - ◆ Administrative provisions.
- Other categories include bibliographical references, periodicals, dictionaries, collective wage agreements, aids, notifications and press.
- 30 The category **laws/statutory instruments** covers all legislation promulgated at federal level which are included in the Directory of Legislation in Force A, legislation promulgated at *Länder* level, European Union law, and double taxation agreements concluded between Germany and other countries.
- 31 The most important information on **each federal law and each federal statutory instrument** can be found in a framework document, including the full title, the date of enactment, the publication reference of the first version and any revised versions, the index number in the Directory of Legislation in Force A (FNA Index No.) (margin no. 26), as well as

⁸ <http://eur-lex.europa.eu/oj/direct-access.html?locale=en>

information regarding amendments made and regarding links to European Union law. The **full, currently applicable wording** of federal principal acts and principal statutory instruments is also included; either the full text or individual provisions can be displayed and researched. The wording of earlier versions of **each individual provision** are also available. Footnotes list the respective amendments, including the publication reference and the date of entry into force. In addition, information is available on links to other norms and deviating *Land* legislation, as well as on relevant past court decisions and literature. This information can be accessed via links. Annexes to laws and statutory instruments are likewise documented in so far as they can be presented. The **Federal Office of Justice**⁹ is responsible for this documentation. Amendments are added as soon as possible following promulgation.

- 32 Databases open up many possibilities which are significant in many respects when it comes to drafting legislation: They make it easier to quickly access information on how to **correctly cite** a law or statutory instrument (margin nos 169 et seqq.). When amendments are being planned it is possible to check whether the **amending formulae** (margin nos 552 et seqq.) refer to the right place in the text of the provision to be amended. It is possible to do extensive research into which provisions are relevant in regard to certain issues. Other aspects can also be looked up, such as the date of enactment or of entry into force. A search based on **relevant terms** such as, for example, “contestation”, “consumer” and “enterprise” is also possible, enabling these terms to be used uniformly in federal law.
- 33 A piece of legislation will often make reference to other legal provisions. So that the intended legal links do not get mixed up when either the main provisions or the referenced provisions are amended, the **problems associated with referencing** need to be borne in mind when amendments are made (margin nos 218 et seqq.). The database cites individual sections, though only down to the level of the subsection, and all other provisions which refer to the **referenced provision**.
- 34 The database can also be used to establish which legal provisions contain an authorization to issue **statutory instruments** or which statutory instruments are based on which enabling provisions.
- 35 The texts in the database can also be used to draw up **synopses**. Synopses are useful and often indispensable when amendments are being planned and prepared. One column of the

⁹ As at 2008: Division I 3, Federal Office of Justice, Adenauerallee 99–103, 53113 Bonn, www.bundesjustizamt.de

synopsis contains the full text of the currently applicable version of an individual provision, law or statutory instrument, a second column the full text of the desired new version and a third column the necessary amendments.

- 36 The ***Gesetze im Internet*** (Laws on the Internet) database can be used to search the current wording of nearly all federal laws and statutory instruments for free.¹⁰ This database is made available in cooperation with juris GmbH's Legal Information System.
- 37 Further information about applicable law is available via **EUR-Lex**, a service provided by the European Office of Publications.¹¹ EUR-Lex contains, among other things, EU law, the publication references of the implementing provisions in Member States' national legislation, documents on preparatory legislative work, parliamentary questions and the case-law of the European Court of Justice and the European Court of First Instance.¹² It is possible to carry out a parallel search by switching between available language versions. EUR-Lex also provides access to the Official Journal of the European Union, L and C Series, from 1998 onwards. German language versions of these documents can be accessed via juris.
- 38 In addition, the ***Gesetzesportal*** (Law Portal) database contains information about ongoing legislative processes, legislative amendments and new laws taken from the **Federal Law Gazette I and II**, parliamentary printed papers, the minutes of plenary proceedings, and the consolidated texts of applicable and outdated versions of legislation. This portal is operated by juris GmbH and the Bundesanzeigerverlag and can be accessed via a link on juris's website.
- 39 Decisions issued by all the federal courts are also retrievable online.¹³

6.3 Other tools

- 40 The table of contents of the Federal Law Gazette contains further information under the titles of individual laws and statutory instruments. The reference "**FNA**" refers to the Directory of Legislation in Force A (margin no. 26). Amendments to a law plus their publication references, for example, can be identified using the index number quoted there. The reference "**GESTA**" plus a number refers to the GESTA Information System.

¹⁰ www.gesetze-im-internet.de

¹¹ <http://eur-lex.europa.eu/homepage.html?locale=en>

¹² Treaty of Lisbon: the European Court of Justice comprising the Court of Justice and the European Court of First Instance, as well as non-constitutional courts

¹³ www.bundesverfassungsgericht.de; www.bundesgerichtshof.de; www.bverwg.de;
www.bundesarbeitsgericht.de; www.bundessozialgericht.de; www.bundesfinanzhof.de;
www.bundespatentgericht.de

- 41 The **GESTA** Information System (Status of Federal Legislation) was used up until the summer recess of 2007 to document all bills introduced in the Bundestag and Bundesrat and their further progress in the parliamentary process. Since then GESTA has been continued as a constituent part of the **DIP** (Documentation and Information System of Parliamentary Procedures) database. The GESTA numbers quoted in the Federal Law Gazette can be used to easily and quickly search the legislative material which is available on each law in the DIP. The DIP is a joint information system of the Bundestag and Bundesrat. It documents the entire parliamentary consultation process on a law – as set down in printed papers and the minutes of plenary proceedings – and thus provides full access to all electronic documents (bills, committee reports, debates in plenary etc.) The DIP is available online (<http://dip21.bundestag.de/dip21.web/bt>).
- 42 The Federal Ministry of Justice has issued Guidelines on Drafting Ratifying Legislation and Statutory Instruments Relating to International Treaties (guidelines in accordance with section 73 (3) GGO*). These Guidelines were reprinted in a brochure entitled **Guidelines for Dealing with International Treaties** published by the Federal Foreign Office, and are also included as [Annex 1](#) to this Manual.
- 43 Assistance is also available when questions arise as to the need for administrative fines provisions and on formulating **criminal and administrative fines provisions** in the context of supplementary criminal provisions outside of the Criminal Code. A working group comprising representatives of the *Land* departments of justice and the Federal Ministry of Justice has elaborated **principles** which the Committee on Legal Affairs of the Bundesrat has applied since 2 March 1983 and which the Federal Ministry of Justice uses as its benchmark. These include the Principles Regarding the Need for Sanctions in the Form of Administrative Fines, Especially in Relation to Measures of Administrative Compulsion (cf. [Annex 2](#)) and the Guidance on Framing Criminal and Administrative Fines Provisions in Supplementary Criminal Provisions Outside of the Criminal Code. This guidance includes recommendations and examples and has been incorporated into the comprehensive **tool** entitled Recommendations on Framing Criminal and Administrative Fines Provisions in the Context of Supplementary Criminal Provisions Outside of the Criminal Code.¹⁴
- 44 Simplifying legislation, reducing unnecessary bureaucracy and stemming the flood of regulations are important objectives in the Federal Government's law-making. For that

* Joint Rules of Procedure of the Federal Ministries

¹⁴ The revised, second edition (of 16 July 1999) was published as Supplement No. 17a to the Federal Gazette of 22 September 1999.

reason, federal ministries must ensure, at each stage of the process of drafting new laws and statutory instruments, that their legislative proposals are necessary and effective both as a whole and at the level of the individual regulations. **Sections 42 et seqq. GGO*** are of particular relevance to **better law-making**. For example, section 42 GGO* addresses the formal requirements made in regard to structuring a bill, legal conformity and comprehensibility of the legal text. Sections 43 and 44 GGO* require that the explanatory memorandum set out both the objective and purpose of and the necessity for regulation, as well as that it outline possible alternatives and regulatory impacts. Sections 45 et seqq. GGO* address procedural requirements concerning the duties of coordination and notification up until the bill is submitted to the Cabinet and which contribute to the draft drawing on as much expertise as possible. This ensures that problems when it comes to accepting the law can be staved off as early as possible. A **Checklist for Better Law-making** ([Annex 3](#)) is also available and assists in meeting the requirements set out in the Joint Rules of Procedure of the Federal Ministries.

- 45 The ***Arbeitshilfe Gesetzgebung*** (Aid to Law-making) produced by the Federal Academy of Public Administration at the Federal Ministry of the Interior provides very useful support to those drafting legislation. It is retrievable online (though only in a German, password-protected version).¹⁵ It sets out the individual **stages** which a law has to pass through, from first considerations up to final promulgation in the Federal Law Gazette, and is augmented by texts which are relevant to legislation, as well as basic material and references to related literature.

- 46 The **eNorm** software helps to ensure that legal and editorial requirements are being observed during the drafting process. It is based on Microsoft Word. eNorm enables documents to be used consistently throughout the legislative process up to promulgation and documentation. The program uses standardized document templates for the various types of legislative instruments and has various help and check functions. For example, an error message or warning flashes up when a specific rule relevant to legal conformity has been violated. Citations of legislation can be checked and updated using the juris database of federal legislation. In addition, data can be exported in structured form (XML), which optimises the subsequent promulgation of the texts and simplifies documentation processes.¹⁶

* Joint Rules of Procedure of the Federal Ministries

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www.bakoev.bund.de/DE/03_Unser_Fortbildungsangebot/03_Unser_elektronisches_Angebot/01_Arbeitshilfen/arbeitshilfen.html

¹⁶ Further information is available at: www.enorm.bund.de

- 47 New **spelling rules** were introduced in Germany on 1 August 2006; they also apply to the language of legislation. The Federal Ministry of the Interior and the Federal Ministry of Justice keep the supreme federal authorities up to date on the spelling rules by sending out joint circular newsletters. The new spelling rules plus a glossary were published in a supplement to the Federal Gazette.¹⁷
- 48 The **Editorial Unit of the Society for the German Language (*Gesellschaft für deutsche Sprache, GfdS*) in the German Bundestag**¹⁸ specializes in giving linguistic advice on draft legislation. It provides information and advice on choice of words and meanings, on composing texts, spellings and punctuation, as well as on the spelling reform. In accordance with **section 42 (5), third sentence, GGO**,* all bills must be sent to the Editorial Unit for a review of the correctness and comprehensibility of the language used. This should be done as early as possible in the legislative process, at any rate before the bill is submitted to the Cabinet for a decision. The Editorial Unit points out linguistic errors and makes alternative wording suggestions.
- 49 The 11th edition of the **Tips for Legislative and Official Language** was published by the Society for the German Language in collaboration with the Federal Ministry of the Interior and the Federal Ministry of Justice in 1998. The publication offers advice on a range of issues, such as how to improve the comprehensibility of legal and official texts. It also contains numerous examples and suggestions.
- 50 Further help is available in the form of leaflets published by the **Federal Administrative Office** – Federal Office for Office Organization and Office Technology (BBB),¹⁹ for example the Working Manual on Citizen-Friendly Administrative Language and Leaflet M 19 “Equal Treatment in Language – Tips, Possible Applications and Examples”.

7 Review of constitutionality

- 51 The review of constitutionality is a central aspect in the scrutiny of legislation. The following questions help to identify problems of a constitutional nature in good time, to formulate them clearly and to present the relevant facts accordingly. Where uncertainties or doubts arise, it is

¹⁷ Federal Gazette No. 206a of 3 November 2006. The glossary and further information (in German) are available at: www.rechtschreibrat.com

¹⁸ Redaktionsstab der Gesellschaft für deutsche Sprache beim Deutschen Bundestag, Platz der Republik 1, Marie-Elisabeth-Lüders-Haus, 11011 Berlin, tel. +49 (0)30 22 73 30 66, email: redaktionsstab@gfds.de

* Joint Rules of Procedure of the Federal Ministries

¹⁹ www.bva.bund.de

important to involve the ministry with overall responsibility in good time and in a targeted manner in order to confirm application of the Basic Law in each specific instance (section 45 (1), third sentence, GGO*). The **Federal Ministry of the Interior** has overall responsibility as regards state organization law; the **Federal Ministry of Finance** has overall responsibility as regards financial constitutional law; the **Federal Ministry of Justice** has overall responsibility when it comes to basic rights and the legal examination in general.

52 Checklist of questions

1. Does responsibility for the legislation lie with the Federal Government?
 - 1.1. Which provision of the Basic Law or which other competences (“ascribed competences”) provide for the Federation’s **legislative competence** for the specific legislative proposal? Where there are competing competences in the cases referred to in Article 72 para. 2 of the Basic Law: Is regulation under federal law necessary to establish equal living conditions across the federal territory or to guarantee legal or economic unity in the national interest?
 - 1.2. Where the Federal Government intends to have the law executed by its own agencies: Which provision of the Basic Law provides for the Federal Government’s **administrative competence**?
 - 1.3. Where a law executed by the *Länder* is to contain a regulation concerning the administrative procedure of the *Länder* from which no deviations are permitted: Does the Federal Government have the **competence to issue administrative regulations** in accordance with Article 84 para. 1, fifth sentence, of the Basic Law?
 - 1.4. Where in a law executed by the *Länder* the costs are to be borne by the Federation in derogation of Article 104a para. 1 of the Basic Law: Which provision of the Basic Law provides that the Federal Government may carry the funding costs in full or in part (**financing competence**)?
 - 1.5. Where a law is to contain regulations concerning the financing of costs by third parties (e.g. via fees, contributions or special levies): Which provision of the Basic Law provides that the Federal Government may regulate this form of state financing of tasks (**competence to regulate financing**)?

* Joint Rules of Procedure of the Federal Ministries

2. Is the **consent of the Bundesrat** required? Which provision of the Basic Law provides that such consent is necessary? Frequent cases: Article 84 para. 1, fifth and sixth sentence, Article 104a para. 4 and Article 105 para. 3 of the Basic Law. However, such cases refer to a complicated subject matter, which is why either the Federal Ministry of the Interior (when it comes to regulating administrative procedures (Article 84 para. 1, fifth and sixth sentence, of the Basic Law)), the Federal Ministry of Finance (when it comes to regulating benefits and comparable services (Article 104a para. 4 of the Basic Law)) or the Federal Ministry of Justice needs to be **involved at an early stage**. Which individual provisions in the specific legislative proposal give rise to the need for the Bundesrat's consent and for what reason?
3. If the law is to include the **authorization to issue a statutory instrument** (transfer of legislative competence to the executive): Is the authorization to issue a statutory instrument legally admissible under Article 80 para. 1, first and second sentence, of the Basic Law? Have the content, purpose and extent of the assigned authorization been defined sufficiently precisely? Does the statutory instrument require the consent of the Bundesrat in accordance with Article 80 para. 2 of the Basic Law? Is the need for the Bundesrat to consent to the statutory instrument to be ruled out in the enabling act?
4. Where a **statutory instrument** is to be **issued**: On which concrete authorization granted by federal law is the statutory instrument based? How have the content, purpose and extent of the authorization to issue a statutory instrument been laid down in the law? Does the statutory instrument stay within these limits? Which enabling provisions need to be included in the statutory instrument's enacting clause (citation requirement under Article 80 para. 1, third sentence, of the Basic law)? Is the consent of the Bundesrat required?
5. Do the planned rules of law affect any **basic rights** or **rights equivalent to basic rights** referred to in Article 93 para. 1 no. 4a of the Basic Law? Do the planned rules of law affect any institutional guarantees (guarantees protecting legal institutions governed by private or public law)?
 - 5.1. Are any **civil liberties** affected?
 - ◆ Are **specific civil liberties** affected? Alternatively, is – as is always the case with legal provisions which impose a burden – the **residuary basic right** set out in

Article 2 para. 1 of the Basic Law (general freedom of action) at any rate affected? Which area do the civil liberties protect and is there any interference with this area of protection?

- ◆ Is that **interference admissible**? Is, according to the provisions of the Basic Law, the interference in the area protected by civil liberties permissible by law or on the basis of a law (simple legal proviso)? Is the interference permissible only under certain defined conditions or for certain purposes (qualified legal proviso)? In the case of unconditional basic rights, does the regulation observe the limits set by the basic rights of other right-holders or by other constitutional rights (inherent restrictions of basic rights)?
- ◆ Has the **prohibition of restrictive individual laws** (Article 19 para. 1, first sentence, of the Basic Law) been observed?
- ◆ Has the **principle of proportionality** been observed? What purpose does the regulation serve? Does the Constitution permit that purpose either in the general or the specific individual case? Is the regulation suited to achieving that purpose? Is it necessary to that end or would a less stringent, equally suitable means suffice? Is the regulation appropriate given its purpose and can those affected be reasonably expected to acquiesce to its application?
- ◆ Has the precept that the **essence** of a basic right may not be affected been observed (Article 19 para. 2 of the Basic Law)?
- ◆ Has the **citation requirement** under Article 19 para. 1, second sentence, of the Basic Law been observed (margin nos 427 et seq.)?

5.2. Are any **rights of equality** affected?

- ◆ Have **specific rights of equality** (absolute prohibition of discrimination) been observed?
- ◆ Has the **general principle of equality** been observed? What comparison pairs are there? Are equals given equal treatment and unequals treated in accordance with their differences? Are there expedient reasons for any differences which are in the nature of things or for which there are other objectively reasonable

grounds? Does mere arbitrariness apply or is there reason (e.g. when groups of people are treated differently) to impose strict requirements on the unequal treatment? Are the existing differences (in the case of unequal treatment) or commonalities (in the case of equal treatment) of sufficient weight to justify the unequal treatment or the equal treatment?

- 5.3. Which **guarantees protecting legal institutions governed by private law** (e.g. marriage and the family, ownership, the law of inheritance) **or guarantees protecting legal institutions under public law** (e.g. local self-government, permanent civil service) are affected? Will the traditional core area of the institutional guarantee remain unaffected?
6. Do regulations which do not directly concern relations between the state and its citizens (e.g. under private law and in international treaties) observe the **objective value decisions** expressed in the basic rights? Is the state meeting its duty to protect its citizens?
7. Are the planned legal rules compatible with the **principles listed in Article 20 of the Basic Law** (democracy, social state, rule of law, separation of powers, federalism) and **other general constitutional principles**?

More specifically:

- 7.1. Have the precepts of **legal clarity** and **legal certainty** been observed? Can citizens predict and assess what burdens will be imposed on them? (See margin nos 53 et seqq. regarding the linguistic comprehensibility of legislation.)
- 7.2. Has the principle of legitimate expectation been observed?
- ◆ Is there a case of – **in principle inadmissible – genuine retroactive effect (retroactive effect of legal consequences)**, i.e. interference with situations arising in the past which have already been concluded?
 - ◆ Is there a case of **artificial retroactive effect (retroactive linking to a state of affairs)**, i.e. interference with current circumstances which have not yet been concluded? Is this permissible, for example because the regulatory objective is more important than the principle of legitimate expectation?

- ◆ In the case of criminal laws, provisions on administrative fines, fines, and penalties imposed in disciplinary courts and in disciplinary proceedings, has the **absolute prohibition of retroactive effect** under Article 103 para. 2 of the Basic Law been observed in the case of provisions which establish criminal liability or increase a penalty?

7.3. Has account been taken of the fact that the legislature must itself take all key decisions and may not leave these to the executive (**theory of legislative reservation**)?

Finally, has the **explanatory memorandum** relating to the draft law or statutory instrument convincingly presented all those key aspects and considerations which are relevant to the legislation?

Part B

**General recommendations on
drafting legislation**

Part B: General recommendations on drafting legislation

1 Use of language

1.1 Legalese

- ◆ Only when you know what you want to write will you be able to write it clearly and concisely.
- ◆ Clear content and good use of language go hand in hand.

- 53 The academic discipline of linguistics assesses the comprehensibility of a text using the dimensions of **simplicity**, **brevity**, **conciseness**, **structure** and **organization**. These dimensions can also be applied to the language of legislation. Three aspects are important when it comes to writing comprehensible texts or improving them stylistically, namely **choice of words**, **sentence structure** and **structure of the text**.
- 54 The **language** used in regulatory texts must be **correct and**, as far as possible, **understandable to everyone** (section 42 (5), first sentence, GGO*). Those entrusted with the task of drafting legislation thus need to find the right balance between using language which is as precise as possible, given the subject matter to be regulated, and the purpose of the legislation. Those affected by a particular regulation must be in a position to understand what the legal situation is without needing to seek legal advice and then to act accordingly. Courts should be able to issue a decision based on the regulation. It should be possible to determine the limits of administrative action based on the content, purpose and extent of the regulation. There is thus a close link to the (content-related) constitutional principle of legal certainty (margin no. 52, no. 7.1 in the checklist of questions); only legal texts written in clear legal language can create legal clarity. Legislation which can only be understood “based on a subtle knowledge of the subject, exceptional methodological skills and a certain passion for mental problem-solving”²⁰ does not meet these requirements.
- 55 Who is meant by “**everyone**” depends on which group of people the legislation confers obligations or rights on. Legislation which addresses an **extensive target group** and thus, in fact, “everyone”, such as the Criminal Code, should be understandable to anyone of average intelligence.

* Joint Rules of Procedure of the Federal Ministries

²⁰ This is how the Federal Finance Court cited the Austrian Constitutional Court in an order of 6 September 2006, file no.: XI R 26/04.

In the case of legislation which addresses a **limited target group**, by contrast, “everyone” will primarily refer to those working in a specific legal field (e.g. tradespeople in the case of the Crafts Code, vintners in the case of the Wine Act, judges in the case of the German Judiciary Act). In such cases the legislature can assume that the addressees of such legislation have the necessary specialist know-how. Lay people should at least be able to understand the general gist of the purpose of the law in question.

- 56 The language of legislation is a **subset of legalese**, or legal jargon. A formalized and standardized mode of expression is characteristic of any type of jargon. It is what professionals use to converse in their own field of expertise – the language of specialists for specialists. When read by non-specialists, legal terminology loses its direct link to specialist legal thinking and its relation to specialist taxonomy. Lay people are unable to readily understand the terminology or the intended message.
- 57 One specific feature of legal jargon is that it uses terms which, formally speaking, are identical to those used in everyday language, but which have a different meaning in a legal context. Words such as “murder” and “homicide” in English, or “*Eigentum*” (property/ownership) and “*Besitz*” (property/possession) in German, for instance, are used differently in a legal context than in everyday usage, that is to say they are **specialist legal terms**.
- 58 When regulating matters in a certain specialist field, care will sometimes also have to be taken when using the **specialist terminology** available in that field. Specialist terminology should only be used where no general paraphrases are available or where such paraphrases would disproportionately increase the length of an individual provision. For example, regulations concerning food ingredients or manufacturing procedures can use the language of the food manufacturers who need to abide by those regulations.
- 59 In order to ensure that lay people do not misunderstand or even fail to understand a legislative text, attention must be paid to the idiosyncrasies of the particular jargon used when writing laws and statutory instruments. **Definitions can be included** when words have a different meaning than when they are used in everyday language or when they have been coined by the legislature. No definition need be included, by contrast, when using a term which has already been coined (and used in other legislation). This avoids superfluous and confusing repetition.

Example

Section 1 (1) of the Regulatory Offences Act

A regulatory offence shall be an unlawful and reprehensible act, constituting the factual elements set forth in a statute that enables the act to be sanctioned by imposition of a regulatory fine.

This definition applies to the entire legal system, unless the legislature explicitly introduces another definition in another law.

- 60 Sometimes, words have various meanings depending on the regulatory context (e.g. “*Widerruf*” as used in section 355 of the German Civil Code (where it means “approval”) or as used in section 49 of the Administrative Procedures Act (where it means “annulment”); “*Genehmigung*” as used in section 184 of the German Civil Code (where it means “ratification”) or as used in section 4 of the Federal Immission Control Act (where it means “licence”). Terms must be checked carefully to see whether they have **different meanings** and whether they have been **used properly**, because texts are hard to understand when terms are used in a different sense even though the actual meaning of the word is easy to comprehend.

Examples

Section 76 (1) of the Stock Corporation Act

The Board shall manage the company under its own responsibility.

In this context, “own responsibility” means that the Board is responsible for its actions and will have to bear the consequences of those actions.

Section 2 (1), first sentence, of the Fifth Book of the Social Code

Health insurance companies shall pay insured persons ... insurance benefits taking account of the general efficiency rule (section 12) in so far as these benefits are not within the realm of the insured person’s own responsibility.

Here, “own responsibility” means that those insured do not receive any insurance benefits from the health insurance companies.

A term which is already in use in legal contexts should not be ascribed a different meaning if there is no reason for doing so. Coining a new term would then be the better option.

The database of federal law kept by juris (margin nos 29 et seqq.) can be used to search individual provisions which use identical terms. This word check makes it easier to use terms uniformly or to coin new ones.

- 61 **The use of specialist terminology must be carefully planned:** First, it needs to be clarified which specialist terms are already in use in other legal texts or whether new terms need to be coined, and to what they are to refer. The connection between these terms needs to be established – possibly with the help of a simple sketch depicting the relationship between them. This can be used as a basis for deciding which terms to use. They must be unambiguous and used consistently.

1.2 Comprehensibility

- 62 Precision and clarity are particularly important in legal texts. Expressing legal matters precisely and clearly so that they can be understood by the general public requires a great deal of textual work – which takes time and effort.

You need to find

- ◆ the right words,
- ◆ the right sentences, and
- ◆ the right balance between precision and comprehensibility.

- 63 The following generally applicable rules will help in writing texts which readers find easy to understand:

- ◆ What do you want to say?

Write down keywords or draw a sketch to illustrate which interrelationships need to be clarified and which factual conditions will lead to which legal consequences. Then write your first draft and afterwards read it again with a critical eye:

- ◆ Is there a better way of saying something?

Check your choice of words and sentence structure

- Use short sentences. One idea = one sentence.
- Put the main statement at the beginning of the sentence.
- If possible, use only one main clause and no more than one subordinate clause.
- Put the main idea in the main clause.
- Use verbal phrases rather than nominal phrases.
- Avoid strings of attributes, especially long participial constructions. Use relative clauses instead.
- Avoid the passive voice; use the active voice instead.

Be brief

- Delete filler words.
- Use short words.

- 64 Particular care should be taken when writing new legislation. Existing provisions need to be revised if they are unclear and difficulties arise applying them.

Some legal issues are complicated and the provisions explaining them were written in the past for the exclusive use of lawyers at the highest level of abstraction.

Example

Section 164 (2) of the German Civil Code

If the intent to act on behalf of another is not evident, the lack of intent on the part of the agent to act on his own behalf is not taken into consideration.

Attempting to express the content of this provision so that it is easier for the general public to understand would not only make it considerably longer, doing so could also interfere with the linguistic and systematic unity of the law.

- 65 However, despite making every effort to ensure that regulations are written so that they are both readily comprehensible and precise, comprehensibility should not be achieved at the expense of precision of the legal content. If a legislative text is hard to understand this can sometimes be compensated by means of **accompanying texts**, for instance the explanatory memorandum, explanatory notes on a federal ministry's website or brochures containing explanations and practical examples. In such cases, precedence should be given to general comprehensibility over precision. Where laws are enacted by administrative bodies, their task is to act as an "intermediary" between the law and those affected by it. The authorities can compensate for any difficulties which may arise when it comes to understanding these texts by providing the general public with advice and support.

1.3 Legislative techniques and comprehensibility

- 66 Legal provisions can often be difficult to understand because special legislative techniques have been used (e.g. legal fiction, rule–exception relationship, cross-references). Reading a provision in isolation will then generally not provide a conclusive answer to a specific question. Other provisions in the same or another law will also have to be consulted. These legislative techniques are, however, generally indispensable. They make the law **clear** and **manageable** when it comes to applying it to the most diverse subject matters. They ensure that the law is applied effectively and, above all, uniformly.

67 **Rules of interpretation** and, if necessary, **explicit predefinitions** are used to establish how individual provisions relate to one another. For example, the choice of words used in a citation indicates whether a static or dynamic reference is being used (margin nos 225 et seqq.). Constitutional requirements and legal taxonomy (e.g. the hierarchy of norms, natural and legal persons) are taken as read and do not need to be repeated or explained in the legal text. When drafting legislation it can be assumed that the authorities and – in cases of dispute – the courts will apply the generally recognized rules of interpretation.

1.4 Choice of words: general remarks

68 The language of legislation in Germany is **German**. German is also the official language (section 23 (1) of the Federal Administrative Procedures Act) and the language of the courts (section 184, first sentence, of the Courts Constitution Act) in Germany. Anyone wishing to use foreign words or to refer to foreign-language texts should bear this in mind (margin no. 78 et seq.). Naturally, German spelling rules apply (margin no. 47). However, one specific rule applies to the language used in legal texts: Where the spelling reform permits two spelling variants, the old spelling is always still used. This is done to maintain the uniformity of the language of legislation as far as possible.

69 Words must be used correctly and **consistently**.

70 In the first instance that means that the chosen word must express the **intended meaning** as precisely as possible.

Example

Section 17 (2) of the Act on Satellite Data Security

A request is sensitive if ...

The word “sensitive” can be used, among other things, to mean “easily emotionally upset”, “delicate”, “easily irritated” and is therefore generally used in connection with a person’s sensitive faculties. In this context, though, it is not the request which is “sensitive”, but the response, i.e. the transmission of the requested data. In German, the equivalent word “*sensitiv*” is also a foreign and vogue expression which should be avoided.

Better alternatives would be:

A request is security relevant if ...

A request involves the transmission of security relevant data if ...

- 71 Likewise, consideration should be given to the **relationship between individual words** and to the context. Illogical references cause confusion, make it hard to understand the proposition expressed in the provision and deflect from the actual regulatory context.

Example

Do not write: "... which includes incentives to make personal contributions, inclusive of neighbourly help ... "

Instead write: "... which includes incentives to make personal contributions as well as to make use of neighbourly help."

- 72 **The language of legislation must have integrity and probity**, i.e. it should not deliberately obscure or "window dress" a matter.

In a provision on poultry keeping, for instance, using the term "small aviary" to refer to a tight wire hut would be window dressing. The term "aviary" is generally used to refer to a closed, roofed area which is fenced in on at least three sides and which birds can fly around in. It would be better to use the term "cage" to refer to a small space in which an animal is kept.

Words are often also borrowed from the language of politics or advertising to sugar-coat an issue. For example, using the term "dynamization" to refer to a change in benefits paid will lead the vast majority of readers to think that the amount of the benefit has increased. The term should thus be avoided. The same goes for "adaptation", for example, when attempting to disguise the fact that benefits have been cut.

- 73 **Use words which are up to date.** Old-fashioned expressions or terms which are no longer in use should be avoided.

Example

Use "death" rather than "demise".

- 74 Less attention is often paid to varying the use of words when writing legislation, because legal norms are easier to understand if the same words or turns of phrase are used **uniformly** to refer to the same content. This applies to the choice of words used in one particular law and in various different laws. If, for example, one wishes to use up-to-date terms when a law is amended although it contains a great deal of outdated terminology, the outdated terms should also be replaced in the older provisions, especially where there are more revised than old provisions.

- 75 Nevertheless, legal texts should also – within reason – **vary the use of words**. A variety of different words can be used, unless the terms and expressions have a specific meaning in a legal context. For instance, words should neither be used too frequently nor should related terms be used in the same context.

Examples

Do not write: “Notwithstanding an existing obligation to insure, Members of the Bundestag shall be obligated to ... ”

Instead write: “Notwithstanding an existing obligation to insure, Members of the Bundestag must ... ”

Do not write: “The employer is authorized to relinquish the authorization ... ”

Instead write: “The employer may relinquish the right ... ”

- 76 Despite being called to use modern legal language, **vogue words should be avoided**. Certain expressions are used in everyday language for a certain time (e.g. “going forward”, “time horizon”) and then go out of fashion again when other words and phrases become popular.
- 77 In German, any number of nouns can be combined to form a new noun. Nevertheless, particular caution should be attached to using such **compound nouns**. Incredibly long compounds should be avoided in German (e.g. “*Großkreditobergrenzenüberschreitungen*” (large loan upper limit overruns)). The same applies when choosing short titles for laws and statutory instruments (margin no. 334).

Often, compound nouns can very easily be split up in both German and English.

Example

Do not write: “*Einkommenserzielungsabsicht*” (income-generation intent)

Instead write: “*die Absicht, Einkommen zu erzielen*” (the intention to generate an income)

When used judiciously, compound nouns can, however, also serve to draw a distinction between various terms and promote linguistic economy. The following questions can help you choose the right term:

- ◆ Is the compound noun in standard usage?
- ◆ Is it clear and unambiguous?

- ◆ What is the compound noun's function in the text; is it, for example, often used as a key term and does it thus help readers understand the text?

Example

Do not write: "the balance upon expiry of each business year"

Instead write: "annual closing balance"

- 78 **Foreign words should not be used**, especially not to follow a fashion, to window dress or obfuscate an issue (margin nos 72, 76). For example, a foreign word which is commonly used in German can be chosen where no appropriate German term is available. That especially applies to English loan words used in German, for instance in the field of information technology, since they are already in common usage (e.g. "*Internet*", "*Homepage*", "*Server*"), as well as to standardized job titles (e.g. "*Controller*").

Where foreign words need to be used but they are not generally known, definitions or accompanying texts can be useful (margin nos 59, 65).

- 79 Legislation is not permitted to make reference to **foreign-language texts**, even if those affected (e.g. in the field of air traffic law) customarily use the foreign-language text. Reference may only be made to published German translations (margin nos 221 et seqq.); care should be taken to quote a generally accessible publication source.

1.5 Choice of words: specific remarks

- 80 The text of a law or statutory instrument must make it unambiguously clear **who the addressees of a specific regulation are** and what the **constituent elements** and the **legal consequences** are. In particular, it must be clear to what extent certain behaviour is required or prohibited. It must, for example, be clear whether a regulation is mandatory or whether there is any leeway subject to contractual agreement. It must be clear whether the administration is bound in its actions or whether it may use its discretion.
- 81 When formulating obligations and prohibitions which carry a penalty or fine, attention must be paid to observing the **principal of clarity and definiteness of criminal provisions** (Article 103 para. 2 of the Basic Law). The field of application and consequences must be clear from the wording of the law. The Guidance on Framing Criminal and Administrative Fines Provisions in Supplementary Criminal Provisions Outside of the Criminal Code were developed for regulations which are not included in the Criminal Code or the Regulatory Offences Act (margin no. 43).

82 Care should be taken when using auxiliary verbs in German. For example, “**können**” can be used to express various meanings. In common, everyday language “*können*” * indicates a **possible course of action** – just like the technical term “discretionary act”. In administrative provisions “*können*” also expresses the fact that the administration is granted a **discretionary power**. However, in everyday language the word “*können*” can also be used in the sense of “to be able to”.

Examples

Section 437 of the German Civil Code

If the thing is defective, the buyer may ...

1. ... demand cure,
2. ... revoke the agreement ... or reduce the purchase price ..., and
3. ... demand damages, or ... demand reimbursement of futile expenditure.

Here, “may” indicates the various possible actions available to the buyer.

Section 121 (2), first sentence, of the Insurance Supervision Act

Permission may be denied where facts justify the assumption that effective supervision of the reinsurance undertaking is impaired.

Here “may” indicates a discretionary power.

Section 17 (1) of the Asylum Procedure Act

If the foreigner does not have sufficient command of the German language, an interpreter, translator or other language mediator shall be provided at the hearing as standard procedure in order to translate into the foreigner’s native language or another language which the foreigner can reasonably be supposed to understand and in which he can communicate

Here “can” means “be able to”.

83 “*Können*” may not be used where an authority is bound in its decisions or where **prohibitions and obligations** are imposed. Instead, **imperatives** formed using “*müssen*”, “*sind zu*” and “*haben zu*” (must) or “*dürfen nicht*” (must not) should be chosen. An authority’s obligation can also be expressed using the **imperative present** (“*Die zuständige Behörde erteilt .../übersendet ...*”; “The competent authority issues .../transmits ...”).

84 The German auxiliary verb “*sollen*” should also be used circumspectly. **Directory provisions** (“*Soll-Vorschriften*”) differ from discretionary provisions (“*Kann-Vorschriften*”) and

* Translated into English either as “can” or “may”.

mandatory provisions (“*Muss-Vorschriften*”) and can mean different things: “*Sollen*” can, for example, be used in a context where an authority is obliged to act in a certain way. However, it may, in exceptional cases, refrain from acting in a certain way, namely in an atypical situation. The verb “*sollen*” can also be used to mean that the legal consequence of a violation is less severe. A testator, for instance, “should” state in the declaration the time when and the place where he or she wrote down the will. Where this information is missing, the will is nevertheless deemed to be valid if the necessary ascertainments can be established in some other manner (section 2247 (2) and (5) of the German Civil Code).

- 85 The verb “*gelten*” likewise has different meanings. It can refer to a **legal fiction**, to an **irrefutable or refutable assumption**, or it can be used to **refer to a specific provision**. Care must be taken to ensure that the choice of words and the regulation are unambiguous. Often, choosing another phrase can create more clarity.
- 86 The wording of the text must indicate who has the **burden of producing evidence and the burden of proof**. A conditional clause beginning with “**unless**”, “**if ... not**” or “**so long as**” contains an **exception**.

Example

Section 473, first sentence, of the German Civil Code

The right of pre-emption is not transferable and does not pass to the heirs of the person entitled to it unless otherwise provided.

This simultaneously regulates the burden of providing evidence and the burden of proof, which can also be explicitly set down.

Example

Section 363 of the German Civil Code

If the obligee has accepted performance offered to him as performance of contract, he bears the burden of proof if he does not wish to have the performance considered as performance of contract because it was different from the performance owed or because it was incomplete.

- 87 It is also possible to precisely express the **relationship between several regulations**. Where, for example, one regulation is subsidiary to others, the following phrase can be used: “**unless other legislation** contains any regulations as to costs” or, less ambiguously, “regulations as to costs in other laws shall **take precedence**”. The wording can also be made more specific in the individual case: “... unless costs are levied in accordance with other laws.” Such references must be sufficiently precise.

Where other provisions are also applicable, the following wording can be chosen: **“notwithstanding the rights of third parties”** or **“notwithstanding the provisions on ...”**.

Example

Authorization shall be given notwithstanding the rights of third parties.

That means that the authorization granted by the administrative authority does not rule out the right to defensive demand under the civil law of third parties.

The phrase “provisions in other laws shall **remain unaffected**” can, by contrast, mean various things: It could be used to make a clarifying reference to other legal norms although the scope of the two individual provisions does not overlap. It can, secondly, indicate that both provisions are simultaneously applicable. Sometimes the phrase is used to express precedence.

Examples

Clarification:

Section 16 (1) of the Criminal Code

Whosoever at the time of the commission of the offence is unaware of a fact which is a statutory element of the offence shall be deemed to lack intention. Any liability for negligence shall remain unaffected.

That means that anyone who made a mistake of fact cannot be penalized for an intentional act due to the lack of intention. In contrast, punishability due to negligent action is not ruled out.

Parallel application:

Section 13 of the General Equal Treatment Act

(1) Employees shall have the right to lodge a complaint with the competent department in the firm, company or authority, ...

(2) The rights of worker representatives shall remain unaffected.

As well as the right of appeal under section 13 (1) of the General Equal Treatment Act, employees can also assert their rights under sections 84 and 85 of the Works Constitution Act.

Precedence:

Section 18 (2), first sentence, of the Federal Allotment Act

Any authorization of the allotment holder to using his arbour existing upon the entry into force of this Act shall remain unaffected ...

In accordance with section 3 (2), second sentence, of the Federal Allotment Act, harbours may not be used for residential purposes. Anyone permitted to use his or her harbour as a residence prior to 1 April 1983 retains that authorization; the ban is thus subsidiary thereto.

- 88 Subordinate clauses beginning with “**in particular**”, “**for example**” or “**generally**” can be added to explain or concretize individual elements of a provision. Such introductory phrases are used if the provision covers other, similar cases which are referred to in the subordinate clause.

Examples

Section 1 (3) of the Property Act

This Act also refers to claims to assets and rights of use and enjoyment which were acquired unfairly by the acquirer, government agency or third party, for example through the abuse of power, corruption, coercion or deceit.

Section 3 (1) of the Ordinance on Small and Medium-Sized Combustion Plants

Only the following fuels may be used in combustion plants:

...

5. natural, solid wood, for instance in the form of sawdust, chips, grinding dust or bark ...

- 89 The conjunctions “if”, “where”, “provided that” and “in so far as” introduce **conditional clauses**. However, “if” expresses an unlimited or absolute condition; it entirely rules out or permits a legal consequence.

Example

Section 56f (1), first sentence, number 1 of the Criminal Code

The court shall order the suspended sentence to take effect if the convicted person

1. commits an offence during the operational period showing that the expectation on which the suspension was based has been disappointed, ...

That means that if the convicted person commits an offence during the probationary period, the suspended sentence is revoked.

Using the limiting conjunctions “**in so far as**” and “**so long as**” means there is a certain degree of **latitude** as regards the condition. The legal consequence applies only to the extent set out in the provision. It should always be possible to replace “in so far as” with “to the extent that” in a sentence.

Example

Section 6, first sentence, of the Freedom of Information Act

The right of access to information does not apply in so far as it is precluded by the protection of intellectual property.

That means there is no right of access to the extent that intellectual property is protected.

90 The word “**and**” is used whenever

- ◆ various constituent elements have a cumulative effect, or
- ◆ various legal consequences are to be linked cumulatively to one element of a rule.

The individual items in a list can also be separated using commas. In such cases, the last item in the list should be preceded by “**and**” or “**as well as**” to make the cumulative nature of the list clear.

Example

Section 89 (1) of the German Civil Code

The provision of section 31 applies with the necessary modifications to the treasury and to corporations, foundations and institutions under public law.

91 The word “**or**” is used whenever

- ◆ there are several alternative constituent elements, or
- ◆ various legal consequences are to be linked to one element of a rule but only one of them is applicable.

Example

Section 439 (1) of the German Civil Code

As cure the buyer may, at his choice, demand that the defect is remedied or a thing free of defects is supplied.

Where a comma is used to separate the individual conditions or legal consequences, the word “or” must precede the last condition or legal consequence.

92 It is often useful to enumerate and number the individual items in a **list** to increase clarity (margin no. 107). The conjunction “and” does not need to precede the last item in such a list if the cumulative nature of the list is already clearly established in the introductory sentence.

If, by contrast, the list contains alternatives, the last condition or legal consequence must be preceded by the word “or”.

Examples

Cumulative list:

Section 10 (3) of the Ordinance on a Debtor Directory

The holder of the licence shall ensure that copies handed or sent to him

1. are kept separately,
2. can be located at any time until such time as they are destroyed, and
3. are protected against unauthorized access.

List of alternatives:

Section 8 (2) of the Ordinance on Protection Against Bluetongue Disease

Anyone who intentionally or negligently

1. vaccinates animals contrary to section 2 (1),
2. does not ensure that a susceptible animal is placed in a stall or not moved contrary to section 3 (3),
3. moves a susceptible animal contrary to section 6 (1), first sentence, or
4. does not, does not correctly or does not in good time make report contrary to section 6 (2),

shall be deemed to have committed a regulatory offence within the meaning of section 76 (2), number 2 of the Animal Diseases Act.

93 The conjunctions “**and/or**” and “**and ... respectively**” are not sufficiently precise and should therefore not be used. Where it is not important whether

- ◆ conditions are met together or individually, or whether
- ◆ legal consequences are to arise individually or together,

this should be made explicitly clear.

Example

Section 3 (1) in Annex 2 to section 21 of the Civil Aviation Ordinance

The following signals, either given together or individually, shall mean that an aircraft is in difficulty which is forcing it to land, though it does not require any immediate assistance:

1. Repeated switching on and off of the landing lights;
2. Repeated switching on and off of the navigation lights; ...

94 Where a negative paraphrase of a **multinomial constituent element** is used it must be made clear whether the items are alternatives or cumulative.

Example

Do not write: "The rate of increase shall be reduced ... in the case of living areas which do not have any central heating or a bathroom."

Instead write: "The rate of increase shall be reduced ... in the case of living areas in which the feature of a central heating or the bathroom or both features are lacking."

The second example is preferable. The following questions would arise if the first example were used: Does the legal consequence arise in a living area without central heating or in a living area without a bathroom? Or where the living area has neither central heating nor a bathroom?

1.6 Sentence length and sentence structure

- 95 Shorter sentences are easier to understand than longer sentences. The average person's short-term memory cannot process sentences containing more than seven objects or 22 words. If you need to write longer sentences, be careful to structure them very clearly. The following tips will be useful.*
- 96 **Important propositions** should be placed at the grammatically most important spot in a sentence (e.g. subject or object). This can often mean placing the predicate as early in the sentence as possible. Subclauses should, where possible, be placed after the predicate in the main clause.
- 97 **A sentence** should, wherever possible, only contain **one proposition**. Long and complicated sentences comprising a main clause and several subclauses should be split into several main clauses or shorter sentences.

Example

Do not write: "The transitional allowance is paid for the period in which civil servants hold the office from which they have been dismissed, at least for the duration of six months, at most for the duration of three years."

Instead write: "The transitional allowance is paid after dismissal for the period in which the civil servant held his or her last office. That period shall be no less than six months and no more than three years."

- 98 Sentences should not be overloaded with too many clauses. Often such sentences contain too many **genitive** or **nominal chains** and should therefore be rephrased.

* N.B.: These tips refer to German only. In some cases, other rules may apply to other languages.

Examples

Do not write: "... that the possibility of the occurrence of an insured event is ruled out."

Instead write: "... that the insured event can no longer arise."

- 99 Sentences can be more difficult to understand if too much information is placed in between linked elements. A German predicate construction can be made up of several separate words. This is known as a "**Satzklammer**" or "**verbale Klammer**" (see example below). Any number of clauses can be inserted between the individual parts of the predicate construction. Wherever possible this should be avoided by choosing a different construction (in English a noun plus a relative clause is generally used).

Example

Do not write: "*Der Medizinische Dienst **hat** Maßnahmen zur Rehabilitation **zu empfehlen.***"*

Instead write: "*Der Medizinische Dienst **empfiehlt** Maßnahmen zur Rehabilitation ...*"*

- 100 A very frequently used construction in German is the **Nominalklammer**, a nominal phrase comprising an article and noun and (often a string of) attributes placed between the article and the noun (e.g. "*die sich sonst aus den Auflagen ergebenden Pflichten*"**). Such constructions can become very difficult to read the longer the string of attributes becomes. This should be avoided by using a relative clause (e.g. "*die Pflichten, die sich aus den Auflagen ergeben*"**).
- 101 **It is possible to avoid repeating nouns**, for instance by using pronouns such as "this", "he/she/it", and "which", if they are clearly attributable.

Examples

Section 267 (1) of the Commercial Code

Small corporations are those which do not exceed at least two of the following three criteria: ...

Section 10 (1), first and second sentence, of the Youth Courts Act

Instructions shall be directions and prohibitions by which the youth can conduct his life and which are intended to promote and guarantee his education.

- 102 **Explanatory elements** introduced by "for example", "in particular", "above all" and "for instance" (margin no. 88) should be placed in a separate sentence if they would otherwise make the sentence too long.

* The Medical Service shall recommend rehabilitation measures.

** The obligations which result from the conditions imposed.

Example

Do not write: "The long-term care insurance funds must inform and advise insured persons and their relatives in regard to issues linked to the need for long-term care, in particular in regard to services provided by the long-term care insurance funds and services and assistance provided by other organizations."

Instead write: "The long-term care insurance funds shall inform and advise the insured persons and their relatives regarding issues linked to their need for long-term care. These shall, in particular, include questions concerning services provided by the long-term care insurance funds, as well as services and assistance provided by other organizations."

- 103 Care should be taken when using **infinitive constructions** in German. It is often possible to avoid infinitive constructions in German by using a subordinate clause beginning with "*dass*" (that) or "*damit*" (so that).
- 104 Depending on whether the **predicate is in the active or passive voice**, the emphasis will either be placed on those carrying out the act or on the "object of the action".

Active phrases should therefore be used where it is necessary, for reasons of legal certainty, to establish clearly who acted or who is required to act. Active phrases should also be used where otherwise the reference to the person acting would have to be added using "by", since this often gives rise to complicated sentence structures.

Example

Do not write: "The organizational structure shall be regulated by the federal ministry."

Instead write: "The federal ministry shall regulate the organizational structure."

Passive constructions are, however, often shorter, since they contain no reference to the person carrying out the action; the focus is on the action, which thus becomes an anonymous event.

Example

Section 7a (1), second sentence, of the General Railways Act

Permission shall be granted where the requirements made of railways under this Act and the associated ordinances are met.

1.7 Structuring the text

105 **Logically and clearly structuring** a text can contribute significantly to ease of comprehension. For that reason attention should from the outset be paid to ensuring that related content is placed close together and that propositions move from the main issue to subordinate issues, from basic issues to specific issues. Predetermined structures should therefore be used to formally structure the content. This applies both as regards the text as a whole (e.g. division, chapter, part; see margin nos 377 et seqq.) and individual provisions (margin nos 368 et seqq.). For example, it is logical to begin new content in a new section or in a new subsection. If possible, each section should contain a maximum of five subsections and each subsection should be limited to a maximum of three sentences.

106 **Superfluous text** should be **deleted**.

Examples

Do not write: "The provisions under sections 10 and 11 shall apply mutatis mutandis."

Instead write: "Sections 10 and 11 shall apply mutatis mutandis."

Do not write: "... regularly reoccurring tasks in the course of everyday life ..."

Instead write: "... regular tasks of everyday life ..."

107 **Enumerations**, for instance of rights and obligations, of conditions and legal consequences, of persons affected and subject matters, are key elements of legislative texts. They can be easier to understand by ordering and numbering the individual items in a **list** (margin no. 92). This is especially recommended where the sentence contains several longer items. In such cases it is especially important to precede the list with a complete sentence or clause.

Example

The application must include:

1. The names of the parties, their legal representatives and authorized representatives;
2. The name of the court to which the request is submitted;
3. The child's date of birth;
4. ...
- ...
13. The declaration that the settlement in the simplified procedure is not ruled out under section

108 **Enumerations in the body of the text** will remain clear and well-structured if definite articles and prepositions are repeated before each item in the list.

Example

Do not write: "The Federal Ministry of/for ... shall report about developments regarding the long-term care insurance, the status of nursing care in Germany, and implementation of recommendations and suggestions of the Committee on Issues Concerning Long-Term Care."

Instead write: "The Federal Ministry of/for ... shall report about developments regarding the long-term care insurance, regarding the status of nursing care in Germany, and regarding the implementation of the recommendations and suggestions of the Committee on Issues Concerning Long-Term Care Insurance."

- 109 The **items in a list** can be **weighted** by listing them either in ascending or descending order of importance (climax and anticlimax). Similar content can be highlighted by using similar clauses or sentence structures ("parallel structures").

Examples

Anticlimax:

Anyone who intentionally or negligently violates the life, limb, health, liberty, property or other right of another ...

Parallel structure:

A term of imprisonment shall be imposed on anyone who

1. commits theft during which he or another involved person
 - a) carries a weapon or another dangerous implement,
 - b) carries another implement or means by which resistance by another person ... can be overcome ...

1.8 Equal treatment of women and men in language

- 110 Draft legislation should also reflect the equality of men and women by linguistic means (section 42 (5), second sentence, GGO,* section 1 (2) of the Federal Act on Gender Equality). However, when legal provisions refer to people, in German the grammatical gender of the chosen personal nouns does not always match the natural gender of those to whom those nouns refer. In German legal texts, grammatically masculine forms are conventionally used to generalize (**generic masculine**). When the relevant gender is unknown or is irrelevant in a given context, this may be justified. For example, in German the terms "*der Eigentümer*" (the owner), "*der Verkäufer*" (the seller), "*der Mieter*" (the lessee), which all take the masculine article, can refer to both men and women, as well as to legal

* Joint Rules of Procedure of the Federal Ministries

persons. Personal nouns which take the feminine article are rare in German (e.g. “*die Waise*” (the orphan), “*die Geisel*” (the hostage), “*die Person*” (the person)).

- 111 Given the principle of the equality of men and women (Article 3 para. 2 Basic Law), legal provisions must as a general rule refer to both men and women. However, a build up of masculine nouns and pronouns can create the impression that women are not being referred to or are merely implied. Linguistic gender equity in legislation aims to both **directly address women** and to make them visible, since they are equally affected by the law.
- 112 Nevertheless, **linguistic gender equity** should not be achieved at the expense of either the **comprehensibility** or clarity of legal provisions. The following principles therefore apply to legal texts:
- ◆ The personal noun must be specific and precise (do not write “*der Verkäufer und/oder die Verkäuferin*”).
 - ◆ It should be possible to read the text aloud.
 - ◆ The text should be clear and understandable.
 - ◆ The wording should not be too far removed from everyday language use.
- 113 The recommendations regarding linguistic gender equity apply only to a limited extent to personal nouns which (also) cover **legal persons**, their organs and other groups of people which do not have legal capacity. In contrast to natural persons, they only have grammatical gender in German. If natural persons also need to be referred to, there is no need to place particular emphasis on their natural gender. This makes the text easier to understand.

Examples

When referring only to natural persons:

Bürger und Bürgerinnen (male citizens and female citizens)

Soldaten und Soldatinnen (male soldiers and female soldiers)

When also referring to legal persons:

Vermieter (lessor), *Mieter* (lessee), *Arbeitgeber* (employer)

- 114 There are various **possibilities** for creating linguistic gender equity in German, in particular:
- ◆ Gender-neutral personal nouns (“*die Vertrauensperson*” (the trusted third party), “*das Mitglied*” (the member), “*der Flüchtling*” (the refugee)),

- ◆ Creative paraphrases which avoid the use of a personal noun (“*wer den Vorsitz führt ...*” (whoever holds the chair), “*als Vertretung ist bestellt ...*” (the following is appointed as deputy),
- ◆ Double forms (“*Beamte und Beamtinnen*” (male civil servants and female civil servants)).

115 The use of **economic spellings** for pairs of nouns is **not permitted** in legal texts. One variant is the German *Binnen-I*. Here, a capital “I” is placed in the middle of the word, for instance “*VerkäuferIn*” to denote both male and female sellers. Another variant is the use of slashes or parentheses, for instance “*die Verkäufer/In*”. It is impossible to read either of these forms aloud. The double article (“*der/die VerkäuferIn*”) adds to the confusion. Matters get increasingly more problematic when the noun needs to be declined in German (“*des/der Verkäufer/s/In*”, “*den Verkäufer(n)/Innen*”).

116 **Gender-neutral personal nouns** which provide no information on the natural gender of the person or persons referred to are the **best way** to ensure linguistic gender equity. Preference should be given to such gender-neutral personal nouns in order to avoid the use of the generic masculine.

The following are recommended:

- ◆ Compound nouns and phrases which include **gender-neutral words** such as “*Person*” (person) and “*Mitglied*” (member), for instance “*Vertrauensperson*” rather than “*Vertrauensmann*”, “*Ratsmitglied*” rather than “*Ratsherr*”;
- ◆ **Gender-neutral nouns** from which no female form can be derived, such as “*Mensch*” (human) “*Opfer*” (victim), “*Vormund*” (guardian) and compounds including the suffix “*-ling*” (“*Prüfling*” (examinee), “*Flüchtling*” (refugee)),
- ◆ **Gender-neutral pronouns**, such as “*alle*” (everyone), “*diejenigen*” (those who), “*niemand*” (no-one);
- ◆ **Collective and group nouns**, for instance compounds ending in the suffix “*-schaft*”, “*-personal*” or terms such as “*Geschäftsleitung*” (management) and “*Vorsitz*” (chair);
- ◆ **Plural forms** of substantivized adjectives, such as “*Angehörige*” (relatives), and “*Minderjährige*” (minors), and participles such as “*Heranwachsende*” (adolescents) and “*Studierende*” (students) where a group of people is being referred to. The singular forms of masculine and feminine substantivized adjectives and participles are also the same, which means only the article needs to be repeated (“*der oder die Angestellte*” (employee)).

117 **Creative paraphrases** render gender-specific terms in a gender-neutral manner. Possible options in German include:

- ◆ **Adverbials** (do not write “*handeln als Vertreter*” (act as representative), instead write “*handeln im fremden Namen*” (act on behalf of another));
- ◆ **Attributes** (do not write “*Rat eines Arztes*” (the advice of a doctor), instead write “*ärztlicher Rat*” (medical advice));
- ◆ **Verbal paraphrases**, which are in any case preferable to nominal phrases (e.g. do not write “*der Rechtsnachfolger ist*” (the successor in title is), instead write “*in die Rechtsstellung ist eingetreten ...*” (... has taken over the legal status));
- ◆ Using the **passive voice** where it is clear who has to act or has acted (e.g. do not write “*Der Antragsteller muss folgende Unterlagen beifügen: ...*” (The male applicant must enclose the following documents: ...), instead write “*Dem Antrag sind folgende Unterlagen beizufügen: ...*” (The application must include: ...; cf. margin no. 104));
- ◆ Using relative clauses plus the pronoun “**whoever**”. Although the reference to the word “whoever” uses masculine forms (e.g. “*wer ..., hat sein Recht verwirkt*” (whoever ..., shall have forfeited his right), frequent usage of this construction can be avoided by checking to see whether it can be left out if the context is clear or whether it can be replaced by “*eigen*” (their own)).

Examples

Do not write: “Whoever enters the building must show his ID card.”

Instead write: “Whoever enters the building must show an ID card.”

118 Consistently using fully written-out **double forms** can make laws and statutory instruments difficult if not impossible to read and they distract attention from the regulatory content. These disadvantages can be avoided by using double forms only **occasionally** and **at the same time** using gender-neutral language (margin no. 116). Double forms should primarily be used in key provisions in a text, for example where the functions, rights and obligations of individual people are being addressed and it is therefore important to show that reference is being made to both men and women. Double forms can also be skilfully used to make women visible at appropriate places in the text or as a solution whenever it is not possible to use gender-neutral language, for instance when describing individual people (e.g. “*die Präsidentin oder der Präsident*” (the female President or the male President), “*die Bundesministerin oder der Bundesminister*” (the female Federal Minister or the male Federal Minister)).

- 119 When a **legal provision is amended**, the opportunity should be taken to replace generic masculine forms used alongside double forms with gender-neutral personal nouns or creative paraphrases.
- 120 Where, in exceptional cases, **only men** are being referred to, this must be made clear, for instance by adding “male”, “only” or “exclusively”. These additions are not necessary in provisions which only affect men on account of stipulations made by the legislature elsewhere (e.g. in connection with military service and the alternative civilian service).

Examples

Section 80 of the Act on the Legal Status of Soldiers

Where the persons referred to in section 59 are obliged to perform military service (sections 1 and 3 of the Military Service Act), the provisions applicable thereto shall have precedence.

Section 1 (1) of the Military Service Act

All men over the age of 18 years who are German nationals within the meaning of the Basic Law shall be obliged to perform military service ...

- 121 As far as **job, official and functional titles** are concerned, laws and statutory instruments should expressly determine a designation which refers to both men and women. Older legislation which does not or only partly meets this requirement must be adapted accordingly in the course of making other amendments.

Examples

“Midwives” and “male midwives” who are authorized or have state accreditation equivalent to such authorization may continue to use their professional title.

The recognized trade of “Funeral Services Specialist” is officially recognized.

Professional, official and functional titles ending in the suffix “**-mann**” in German (e.g. “*Vertrauensmann*” or “*Amtmann*”), the equivalent being “-man” in English, cannot reasonably be used to refer to women. They should therefore be replaced at the earliest opportunity (e.g. when making legislative amendments) by gender-neutral terms (e.g. “*Vertrauensperson*”) or a corresponding term ending in the suffix “**-frau**” (e.g. “*Amtfrau*”) should be added.

- 122 Where the wording and **choice of words used in official forms** (e.g. applications) **and personal documents** (e.g. ID cards, passports and certificates) have been laid down in legislation, care should be taken to ensure that the chosen terms also refer to women. This can be guaranteed by using gender-neutral terms and phrases (“*Unterschrift*” (signature) rather than “*Unterschrift des Inhabers*” (the holder’s signature)) or – where that is not

possible – by using double forms and writing out the designation for men and women (“*Unterschrift des Inhabers oder der Inhaberin*”). Where it is not possible, in individual cases, to use a pair of nouns where the non-applicable form is to be deleted (e.g. in official documents), separate documents should be issued for men and women.

- 123 Whether preference needs to be given to legal or linguistic aspects can only be assessed on a case-by-case basis in the context of a specific regulation. It will be easier to write a legally and linguistically sound and at the same time gender-neutral text by choosing gender-neutral options and skilfully using double forms.

1.9 Spellings

- 124 The following recommendations should be followed carefully to ensure the consistency of legislation. Deviations can only be justified to guarantee **consistency** within an individual law or statutory instrument, for instance when drafting amendments which are to be added to an “old” text.
- 125 The following should be noted in regard to numbers: A **numeral** is a symbol used to represent a **number**. There are ten Arabic numerals (0 to 9) and seven Roman numerals (I, V, X, L, C, D, M). The number 15 thus comprises the Arabic numerals 1 and 5, the number IX the Roman numerals I and X.
- 126 Numbers up to and including twelve, when they are used as cardinal and ordinal numbers, are always **written out** in German; the numbers 13 and above are always expressed as **Arabic numerals**.

Example

Staff councils are formed in all offices generally employing at least five people who are entitled to vote, three of whom may be elected. Employees who regularly work less than 18 hours per week cannot be elected.

The number 1 (“*eins*”) can be written in German if it needs to be distinguished from the indefinite article “a” (“*ein*”).

- 127 Times, percentages, technical data such as measurements, weights and other standardized units, as well as schematic lists are **always expressed as Arabic numerals**. One-digit numbers are not preceded by a zero.

Example

Section 1 (3) of the Time Act

The coordinated world time is determined by a timescale which has the following features:

1. On 1 January 1972, 0:00 hrs it corresponded to 31 December 1971, 23:59;59.96 hrs, the mean solar time along the zero meridian.
2. ...

128 The designations for measurements, weights and other standardized **units** are written out in running text. In tables, outlines etc. they may be referred to by their standard abbreviations (margin nos 139 et seqq.).

129 **Fractions** are written out in running text.

Examples

Such a law requires the approval of two thirds of the members of the Bundestag.

Where the decision adopted at the shareholders' meeting requires a qualified majority (two-thirds or three-quarters majority), ...

When calculating the value of spaces of time shorter than one month, one thirtieth of the value is used for each day.

130 A **ratio** is quoted as in the following example: "The ratio of Vitamin B12 to mannitol (E 421) may not be smaller than 1:1 000."

131 Words made up of **a number and a suffix** are written as one word in German, for example "*achtfach*", "*achtmal*" (eightfold, eight times). The same applies when the number is expressed using digits, for instance "*27fach*" (27 times).

132 Numbers comprising **more than three digits** (counting from the decimal point) are separated into groups of three using a non-breaking space. There are exceptions to this rule (e.g. page numbers). Full stops are **not** used in German to separate groups of numbers (where in English commas are sometimes used).

Example

Section 23 (3), second sentence, of the Act on Judicial Remuneration and Compensation

The compensation shall amount to

1. 5 euros for each hour of use in the case of an investment sum of more than 10 000 to 25 000 euros; ...

- 133 One-digit **dates** are written without a preceding zero. The name of the month is always written out in full. The year is cited using four digits.

Example

This Act shall enter into force on 1 January 2009.

Other spellings are permitted in outlines, tables, forms etc. where this is necessary for formatting reasons. A consistent style should be adopted within such outlines, tables, forms etc.

- 134 **Amounts of money** are expressed using Arabic numerals. When quoted in the running text of a provision, the words “million” and “billion” are written out in full. The number of millions and billions is expressed using Arabic numerals.

Example

Section 22 (2), first sentence, of the Lawyers’ Remuneration Act

The value in the same matter shall be a maximum of 30 million euros, ...

There are **exceptions** to this rule (see also margin no. 135 et seq.). For example, where amendments are made to legislation, attention should be paid to ensuring consistency with the existing text. Where, by way of exception, amounts of money are written out in full, the numeral “one” must be declined in the same way as the indefinite article in German.

Example

*Der Mindestnennwert einer Aktie muss **einen** Euro betragen.**

- 135 Millions and billions are expressed using Arabic numerals in budget acts and in tables.

Example

Section 1 of the Budget Act 2007

The federal budget for the financial year 2007 is adopted as proposed in the Annex to this Act broken down into income and expenditure totalling 270 500 000 000 euros.

- 136 The amount of a fine is always written out in **administrative fines provisions** (cf. margin no. 68 of the Guidance on Framing Criminal and Administrative Fines Provisions in Supplementary Criminal Provisions Outside of the Criminal Code, margin no. 43). The basic rule (margin no. 134) applies to coercive fines, however.

* The minimum nominal value of a share must be **one** euro.

- 137 When quoting amounts of money the **name of the currency** follows the amount in German. The name of the currency is always written out in German, although abbreviations (e.g. EUR, SFR) or a generally recognized currency symbol (e.g. €, \$) may be used in outlines, tables, forms etc. The singular form of the currency is used in German, even when the amount of money is larger than 1 (“*10 cent*”, “*50 Euro*”). Full euro amounts are quoted without any zeros after the decimal point (“The severely handicapped shall be paid ... a bonus of 68 euros per month”); other spellings may be used in outlines, tables, forms etc.
- 138 Where numbers are to be **rounded up or down**, the text must indicate to which unit and according to which rule they are to be rounded.

Example

Section 30b of the Road Traffic Licensing Ordinance

Hub capacity shall be calculated as follows:

1. ...

...

3. The hub capacity shall be rounded up or down to the next full cubic centimetre.

4. If the number to be rounded is followed by a digit between 0 and 4, the number is rounded down, if followed by a digit between 5 and 9, it is rounded up.

1.10 Abbreviations

- 139 **Abbreviations are never used in the running text of legal provisions.** Therefore, terms such as “*zum Beispiel*” (for example) and “*in der Fassung vom*” (as amended) must be written out in full in German.
- 140 Only few **exceptions** to this rule are **permissible**. For instance, predefined abbreviations of the official gazettes are used when quoting the publication reference (margin no. 178 et seq.). Proper names and other official designations which include abbreviations may also be used in a provision. Using abbreviations in **tables, outlines or formulae** often makes for better presentation.
- 141 Whenever abbreviations are in fact used, recourse must be taken to official or **commonly used** abbreviations or symbols.

For example, units and unit symbols for measurements, weights and other standard units (margin no. 178) can be found in the **Ordinance on Units of Measure**.²¹ The Ordinance also contains information on the use of prefixes and their symbols to designate decimal multiples and parts of units (e.g. kilo-, deci-, milli-, micro-).

Abbreviations of the names of Germany's constitutional organs, supreme federal authorities, highest federal courts of justice, federal authorities, federal courts, federal offices and other institutions are listed in the Federal Office of Administration's **List of Abbreviations**.²²

- 142 The **full forms** of abbreviations which are **not generally known** should be **included**, for instance in a legend, in parentheses or in a footnote. Where it can be assumed that the abbreviation is known to the addressees of a particular provision, this recommendation may be ignored.
- 143 Where new abbreviations are created for exclusive use in one specific provision (annex, table, formula), they should be made up of individual elements of the full form. Where, in German, such abbreviations end on an upper-case letter (e.g. "PKH" for "Prozesskostenhilfe" (legal aid)), they are written without a full stop at the end.

1.11 Reference dates and time limits

- 144 Reference dates and time limits are very important elements of legal provisions. They can determine whether rights have arisen or expired, whether a person's actions are of legal relevance or not, and whether regulations are effective or no longer valid. Reference dates and time limits must guarantee legal clarity and legal certainty. It is therefore particularly important that, for example, **transitional provisions** and **provisions on entry into force and expiry** are linguistically precise and unambiguous.
- 145 A **reference date** generally marks a decisive point, for example the point at which an old law is replaced by new law, thus the beginning or the end of a period of time or a time limit (margin nos 149 et seqq.). It must be **unambiguously clear whether the date** quoted in a phrase containing a reference date **is included or not**.
- 146 Care must be taken when writing sentences including a reference date. The following, for example, could be easily misunderstood: "The application may be made **up to**

²¹ Ordinance of Units of Measure (*Einheitenverordnung*, EinhV) of 13 December 1985 (Federal Law Gazette I p. 2272), as last amended by Article 5 of the Act of 3 July 2008 (Federal Law Gazette I p. 1185), as amended

²² Notice of the Federal Office of Administration of 15 August 2005 (Joint Ministerial Gazette p. 1061)

12 December 2008”, since the phrase does not indicate whether 12 December 2008 is included in the period of time or not. Other wording can create greater clarity:

Examples

If 12 December 2008 is not to be included, i.e. the period of time **ends** on 11 December 2008, 24:00 hrs:

- ◆ The application may be made up to the expiry of 11 December 2008.
- ◆ The application may be made up to and including 11 December 2008.
- ◆ The application may be made before 12 December 2008.

Depending on the regulatory purpose, negative delimitations may also be useful:

Examples

- ◆ Applications cannot be made after 11 December 2008.
- ◆ Applications made after 11 December 2008 will not be considered.
- ◆ Applications made from 12 December 2008 will not be considered.

If the reference date marks the beginning of a period of time, the following phrases can be used:

Examples

If the period of time **begins** on 12 December 2008, 0:00 hrs:

- ◆ Applications may be made from 12 December 2008.
- ◆ Applications may be made on 12 December 2008 at the earliest.
- ◆ Applications may be made from the start of 12 December 2008.
- ◆ Applications may be made after 11 December 2008.
- ◆ Applications may be made after the expiry of 11 December 2008.

147 When using the preposition “**on**”, a distinction must be drawn between referring to the beginning of a period of time in the future and the end of a period of time in the past. The whole of the day specified is always included in the period of time which begins or ends. For example, “... shall enter into force on 13 April 2008” means that the provision will apply from the beginning of the day referred to, i.e. 0:00 hrs. By contrast, “... shall cease to be effective on 12 April 2008” means that the previously applicable provision will lapse at the end of the day referred to, i.e. at 24:00 hrs.

148 If the reference date referred to in a provision is the **first** or the **last day of a month or year**, then generally the turn of the month or year is being referred to, i.e. the end of the last day of the month or year at midnight (24:00 hrs) or the start of the first day of the month or year at

midnight (0:00 hrs). This has led to various phrases being customarily used in legislative practice. For example, the period which ends on 31 December 2008, 24:00 hrs can be referred to both as “up to 31 December 2008” and “up to 1 January 2009”.

Given general linguistic conventions and in the interest of legal clarity, in such cases the point in time should also be **unambiguously** phrased in line with the recommendations in margin nos 145 et seqq.

149 A **time limit** is a delimited, i.e. specific or determinable, period of time within which something must be done. It is always calculated in whole days: **Time limits begin** at midnight (0:00 hrs) at the start of a calendar day; **time limits end** at midnight (24:00 hrs) at the end of a calendar day.

150 Where time limits are quoted in **weeks, months or years**, the expiry date is often hard to determine. That is why the intended meaning should always be clearly expressed. References to **calendar** weeks, months and years are unambiguous. Thus, for example, a week always has seven days, but if the calendar week is specified as the time limit, it does not begin until the following Monday at 0:00 hrs and ends the following Sunday at 24:00 hrs.

A statement is clear if it specifies the date on which the time limit begins and ends in accordance with the above recommendations.

Examples

From 1 January 1995 to the end of 10 June 1995 the rental fee shall be calculated in accordance with the First and Second Basic Rent Ordinance ...

From 11 June 1995 until 31 August 2001 the lessor may demand an increase in the rental fee.

151 See margin nos 447 et seqq. on how to write provisions on periods of validity using time limits which take the date of promulgation as their point of reference.

2 Designations

2.1 Designation of the Federal Republic of Germany, the *Länder*, other states and relevant national territories

152 According to Article 20 para. 1 of the Basic Law, the German state is **designated** as “**the Federal Republic of Germany**”. This designation must also be used in legislation and is always written out in full.

- 153 Where all 16 **Länder** (federal states) of the Federal Republic of Germany are to be referred to together, the phrase “the *Länder*” is sufficient. Where individual *Länder* or *Land* governments are being referred to, they may be listed individually (e.g. “The governments of Berlin, Brandenburg, ... shall be authorized to ...”).
- 154 Citations including the designation “**the German Democratic Republic**” now only occur in legislation relating to past subject matters (e.g. treaties of the German Democratic Republic). The addition “the former” is superfluous.
- 155 Several phrases can be used to designate the **national territory of the Federal Republic of Germany**: “the territory of the Federal Republic of Germany”, “the federal territory” or “Germany”. However, the same term should always be used consistently to refer to the same matter within one specific piece of legislation or legal area.
- 156 The phrase “**the scope of this Act**” is in particular suitable where specific provisions do not apply to the entire federal territory or their territorial application extends beyond the federal territory.
- 157 **Territory outside of the Federal Republic of Germany** can be referred to generally as “abroad”. The adjective “foreign” can be used to describe the law, institutions and matters of other states. The *Länderverzeichnis für den amtlichen Gebrauch in der Bundesrepublik Deutschland*²³ contains the specific **designations of other states**, including English designations.

2.2 Designation of international organizations and international treaties

- 158 Federal laws and statutory instruments must cite the German designations of **international organizations** as determined by the member states in the respective founding treaties. The German designation can be found in the German version of the treaty or its official German translation. Where the Federal Republic of Germany has ratified an international agreement, the German text can generally be found together with the respective ratifying legislation in the Federal Law Gazette II. The same applies to the designation of the **organs** of international organizations. If the founding treaty does not lay down any specific designations for these organs, those the international organization itself has chosen should be used. Once

²³ Cf. <http://www.auswaertiges-amt.de/cae/servlet/contentblob/373538/publicationFile/188585/Laenderverzeichnis.pdf>

again, only the German designations should be used in German laws and statutory instruments.

- 159 The Federal Ministry of Justice's **Guidelines for Drafting Ratifying Legislation and Statutory Instruments Relating to International Treaties** must be consulted as regards the designations of **international treaties** used in ratifying legislation and statutory instruments relating to international treaties ([Annex 1](#)).
- 160 Reference can only be made to the text of a treaty in other federal legislation if it has been published in **German** (treaty language or official German translation) and the **publication source is generally accessible**. The legislation must precisely specify the publication source or the institution where the text can be accessed (margin nos 79, 221 et seqq.).
- 161 When treaties which the Federal Republic of Germany has **ratified** are **cited** in other federal legislation, they must always be quoted together with their **date**, their full and unabbreviated **long title** and **the relevant ratifying legislation's publication reference** in the Federal Law Gazette II.

Example

Agreement on ... of/adopted on/signed on ... [date] (Federal Law Gazette [year] II p. ..., ...)

Where the parties to the agreement have determined a **short title**, this should be used as the citation title.

- 162 The following should be noted when quoting the **publication reference of a treaty** which was published in the Federal Law Gazette II or in the Reich Legal Gazette: A treaty's publication reference is the same as that of the ratifying legislation or of the statutory instrument relating to a treaty by means of which the international agreement became German law. That means the publication reference must quote the number of the page on which the copy of the ratifying legislation or the statutory instrument relating to a treaty begins. The number of the page on which the copy of the text of the treaty begins must also be cited. The year in which the gazette was published must also be cited. The year is always quoted before the Roman numeral "II" (which refers to Part II of the Federal Law Gazette).

Examples

Agreement on the Privileges and Immunities of the International Tribunal for the Law of the Sea adopted on 23 May 1997 (Federal Law Gazette 2007 II p. 143, 145)

Agreement between the International Tribunal for the Law of the Sea and the Federal Republic of Germany Regarding the Headquarters of the Tribunal signed on 14 December 2004 (Federal Law Gazette 2007 II p. 143, 159)

The same applies to treaties which were published in the Reich Legal Gazette. It should be borne in mind that the Reich Legal Gazette was published in two parts from 1922 onwards.

Examples

(Reich Legal Gazette 1911 p. ...)

(Reich Legal Gazette 1922 II p. ...)

- 163 If the last published official text of a treaty has been corrected, the publication reference for the **correction** must also be cited. In such cases, the page on which the correction is reprinted is cited in addition to the reference to the publication of the ratifying legislation or the statutory instrument relating to the treaty. If the correction was printed in an edition of the Federal Law Gazette published in a later year, the year of the publication in the Gazette must also be cited.
- 164 Where a treaty has been amended, reference must also be made to the **amendment**. The full title of the amending agreement need not be quoted. The reference should read:
- The Treaty/Convention/Agreement on ... signed/adopted on/of ... (Federal Law Gazette [year] II p. ..., ...), as (last) amended by the Treaty/Protocol (etc.) signed/adopted on/of ... (Federal Law Gazette [year] II p. ..., ...) ...
- 165 **Well-known** international treaties can be cited using their citation title. This is only relevant to basic treaties and conventions, for example the Treaty on the European Union, the Treaties on the Founding of the European Communities, the Convention on the Protection of Human Rights and Fundamental Freedoms, and the Treaty on German Unification.
- 166 Where a law or statutory instrument **repeatedly** makes reference to one specific international treaty, **only the citation title** need be used after it has been referred to the first time using its full title.
- 167 The full citation (cf. margin nos 168 et seqq.) is used when referring to **ratifying legislation** or to statutory instruments relating to international treaties.

3 Citing legislation

168 Precise information is required for it to be possible to determine the authoritative wording of legislation and to enable it to be located using the publication reference. The **rules on citation** are particularly important where

- ◆ reference is made in the running text of an individual provision to another text (margin nos 218 et seqq.);
- ◆ reference is made in the introductory sentence of an amending act or amending statutory instrument to the legislation to be amended (margin nos 544 et seqq., 829); or
- ◆ the relevant enabling provision is cited in a statutory instrument's enacting clause (margin no. 780).

3.1 Full citation

169 Laws and statutory instruments are **in principle** cited using their **full citation**. The full citation comprises

- ◆ the citation title (the long title or, in some cases, possibly the short title, cf. margin no. 173),
- ◆ the date of signature or of the (last) full-text publication (margin nos 174 et seqq.),
- ◆ the publication reference (margin nos 177 et seqq.) and,
- ◆ where applicable, a reference to the last amendment (margin nos 189 et seqq.).

Example

Act on the Reduction of Bad Housing Subsidies as published on 13 September 2001 (Federal Law Gazette I p. 2414), as last amended by Article 8 of the Act of 5 September 2006 (Federal Law Gazette I p. 2098)

170 The full citation is **always** used in the **introductory sentence** (margin nos 544 et seqq., 829) of an amending act or amending statutory instrument.

171 **Exceptions** are possible, for instance when laws and statutory instruments are **repeatedly cited** in the running text of a principal act or principal statutory instrument. In such cases the full citation need only be used upon first mention of the text; the citation title (margin no. 173) then suffices upon further mention. The law containing an authorization to issue statutory instruments is usually quoted using its full citation in a statutory instrument's enacting clause (margin no. 787 et seq.).

172 Only the citation title (margin no. 173) of **well-known** laws and statutory instruments need be quoted. Examples of well-known German laws are the Basic Law, the German Civil Code and the Criminal Code. In the case of laws or statutory instruments which will be read by specific groups of people, references within the same legal area, for instance, can use the citation title rather than the full citation. However, where only the citation title is used, this automatically constitutes a dynamic reference (margin no. 243); if this is not intended, the sentence should be re-written.

3.1.1 Citation title

173 The **citation title** of a law or statutory instrument is its designation (margin nos 324 et seqq.), i.e. the title without an abbreviation. Where a **short title** has been created (margin nos 331 et seqq.), that is used as the citation title (no. 1 in Annex 6 to section 42 (2) GGO*). An abbreviation (margin nos 341 et seqq.) is **never** included in the full citation or used in the text of the legislation (do not write “Article 3 GG”, instead write “Article 3 of the Basic Law”).

If either the long or short title has been **changed**, the law or statutory instrument is always cited using the new long or short title. Changes to the citation title will have no bearing when citing the publication reference or the date of signature or of publication since this information does not change.

If the first legislative regulation or a replacement act or statutory instrument to be cited is **part of an omnibus act** or of an omnibus statutory instrument (margin nos 720, 813 et seqq.), only the citation title of the principal act or principal statutory instrument is cited, not that of the “omnibus”.

The citation title of **ratifying legislation** or of a statutory instrument relating to a treaty follows a set pattern (cf. Guidelines for Drafting Ratifying Legislation or Statutory Instruments Relating to International Treaties, [Annex 1](#)). It always includes the title of the treaty plus the date of its conclusion.[#]

* Joint Rules of Procedure of the Federal Ministries

Conventions vary: German example: *Vertrag vom ... [date] über... [subject]*; English example: Treaty on ... [subject] of ... [date]

3.1.2 Date of signature or of the last notification of the full text

174 In the full citation, the citation title is immediately followed by a date, generally the date on which the act or statutory instrument was **signed into law**. The date of signature is published immediately below the title in the promulgated version. In the case of principal acts or principal statutory instruments enacted or issued as part of an omnibus act or omnibus statutory instrument (margin no. 720), the date of the “omnibus” is used. The date of signature is cited as follows:

Example

Insurance Contract Act of 23 November 2007 ...

175 If the law or statutory instrument has been re-published after several amendments have been made, the date of **notification** of the declarative revised version (margin no. 867) must be used rather than the date of signature. This is quoted underneath the title in the notice. To make it clear that the date is that of the re-publication and not the date of signature, the following wording is used:

Examples

Act on Reserves for Recipients of State Benefits as published on 27 March 2007 (Federal Law Gazette I p. 482)

Fertilizer Ordinance as published on 27 February 2007 (Federal Law Gazette I p. 221)

176 **No date** is included when citing those laws and statutory instruments enacted and issued up to 31 December 1963 which were included in the collection of federal legislation in the **Federal Law Gazette III**.

3.1.3 Publication reference

177 Among other information the full citation always includes the publication reference for the **last officially published version** of the full text of the law or statutory instrument. There are **three possibilities**, i.e. the publication reference can comprise

- ◆ the promulgation reference, i.e. the source where the text was promulgated plus the date of signature;
- ◆ the notice of publication reference, i.e. the source where notice was given of publication of the text plus the date of notice;
- ◆ the publication reference in the Federal Law Gazette III, without a date.

178 The **official gazettes** are quoted as follows in the full citation in German:

- ◆ Publication in the ***Bundesgesetzblatt*** (Federal Law Gazette):
In Part I: (BGBl. I S. ...),*
In Part II: (BGBl. ... [year] II S. ...);**
- ◆ Publication in the ***Bundesanzeiger*** (Federal Gazette):
(BAnz. S. ...),***
Supplements to the Federal Gazette: (BAnz. Nr. ... vom ...);****
- ◆ Publication in the ***elektronischer Bundesanzeiger*** (Electronic Federal Gazette):
(eBAnz²⁴ AT ... [number of the official publication in that year in Arabic numerals] ... [year] V ... [number of promulgated statutory instruments promulgated in Arabic numerals], e.g. (eBAnz AT46 2006 V1);#
- ◆ Publication in the ***Verkehrsblatt*** (Federal Ministry of Transport Gazette):
(VkBl. S. ...);##
- ◆ Publication in the **Official Journal of the European Union:**
Series L: (ABl. L ... [no. in Series L] vom ... [date of publication of the OJ: D.M.YYYY], S. ...),§
Series C: (ABl. C ... [no. in Series C] vom ... [date of publication of the OJ: D.M.YYYY], S. ...).§§

Some of the information pertaining to the official gazettes has changed over the course of time. For example, the Federal Gazette was cited as follows up to and including 1982: (BAnz. Nr. ... vom ...); the designation of the Federal Ministry of Transport Gazette was not abbreviated in the reference. Before 1 July 1967 the Official Journal of the European Communities was cited as follows in German: (ABl. EG S. ...), then as: (ABl. EG Nr. ... S.), and from February 2003 as follows: (ABl. EU Nr. ... S. ...). This information does not need to be changed in applicable legislation; in individual cases it may make sense to adapt it to the above specifications for the sake of consistency within a legislative text.

* The convention in English translations is: (Federal Law Gazette I p. ...)

** The convention in English translations is: (Federal Law Gazette ... [year] II p. ...)

*** The convention in English translations is: (Federal Gazette p. ...)

**** The convention in English translations is: (Federal Gazette No. ... of ...)

²⁴ Abbreviations ending in a lower-case letter are written without a full stop in German if they summarize several individual words.

The convention in English translations is: (Electronic Federal Gazette A ...)

The convention in English translations is: (Federal Ministry of Transport Gazette p. ...)

§ The convention in English is: (OJ L ... [no. in Series L], ... [date of publication of the OJ: D.M.YYYY], p. ...)

§§ The convention in English is: (OJ C ... [no. in Series C], ... [date of publication of the OJ: D.M.YYYY], p. ...)

179 Where, **by way of exception**, the publication references of legislation are to be cited which was enacted before 31 December 1963, but which was not printed in the collection of federal legislation in the Federal Law Gazette III (margin no. 182), the previous official gazettes must be referenced as follows:

- ◆ Publication in the Federal Law Gazette:
Up to and including 1950: (BGBl. S. ...),*
From 1951: cf. margin no. 178;
- ◆ Publication in the *Reichsgesetzblatt* (Reich Legal Gazette):
Up to and including 1921: (RGBl. S. ...),**
From 1922 in the Reich Legal Gazette I: (RGBl. I S. ...),***
In the Reich Legal Gazette II: (RGBl. ... [year] II S. ...).****

180 In the case of references to publications in the **GDR Law Gazette**, the publication reference is cited as “(GBl. I Nr. ... S. ...)”[#] in German, in the case of special issues as “(GBl. Sonderdruck Nr. ...)”,^{##} the word “*Sonderdruck*” (Special Issue) can be abbreviated to “SDr.”. The publication references of publications in the **Joint Ministerial Gazette** are cited as “(GMBL. ... S. ...)”.^{###} **Other publications**, such as the gazettes of the *Länder*, other publications of the German Reich and the official gazettes of the federal and *Länder* authorities, are cited using their full designation.

181 The **year** of the official gazette is cited only when it differs from the year of signature or notification.

Example

Ordinance on the Training and Examination of Podologists of 18 December 2001 (Federal Law Gazette 2002 I p. 12)

In the case of **ratifying legislation** in accordance with Article 59 para. 2, first sentence, of the Basic Law, the year is always quoted.

* The convention in English translations is: (Federal Law Gazette p. ...)

** The convention in English translations is: (Reich Legal Gazette p. ...)

*** The convention in English translations is: (Reich Legal Gazette I p. ...)

**** The convention in English translations is: (Reich Legal Gazette ... [year] II p. ...)

The convention in English translations is: (GDR Law Gazette I No. ... p. ...)

The convention in English translations is: (GDR Law Gazette Special Issue No. ...)

The convention in English translations is: (Joint Ministerial Gazette p. ...)

Example

Act relating to the Protocol of 21 May 2003 on Pollutant Release and Transfer Registers of 13 April 2007 (Federal Law Gazette 2007 II p. 546)

- 182 **Special rules** apply to legislation included in the **collection of federal legislation** in the Federal Law Gazette III (margin no. 25) which has not been re-published since 31 December 1963. The publication reference then reads:

..., as consolidated and published in the Federal Gazette III, Index No. ..., ...

Example

Section 3 of the Act on the Promulgation of Statutory Instruments, as consolidated and published in the Federal Law Gazette III, Index No. 114-1, as last amended by Article ... of the Act of ... (Federal Law Gazette ...), ...

The index number (FNA Index No.; margin no. 26) should be taken from the Directory of Legislation in Force A, which is published annually. It is not necessary to quote the date here, since the reference to the Federal Law Gazette III makes it clear that the version applicable on 31 December 1963 is authoritative.

Where laws or statutory instruments were included in Part III citing only their title, date and publication reference, but not together with the full text, they remain applicable federal law. However, in such cases the collection of federal legislation is not an adequate source. That is why first the original publication reference including the date is cited, then the publication reference which includes the index number in the Federal Law Gazette III. The following notation is used:

Example

Ordinance on Prizes of 28 August 1939 (Reich Legal Gazette I p. 1585; Federal Law Gazette III 56-1)

- 183 The promulgation reference includes the **page number** on which the law's or statutory instrument's citation title can be found.

- 184 **Additional page numbers** may need to be quoted if

- ◆ the first legislative regulation or the replacement act or statutory instrument being cited is **part of an omnibus act** or of an omnibus statutory instrument (margin no. 185);

- ◆ the entry into force of a law or statutory instrument was made dependent on a **condition** and the entry into force was therefore notified separately (margin no. 186);
- ◆ the text of the law or statutory instrument has been **corrected** (margin no. 187).

185 If the first legislative regulation or the replacement act or statutory instrument to be cited is **part of an omnibus act** or omnibus statutory instrument (margin nos 720, 813), the page number which needs to be quoted is that on which promulgation of the omnibus act or omnibus statutory instrument begins, plus the page on which the law or statutory instrument to be cited begins, if this is different.

Example

The Transformation Tax Act was created by means of Article 6 of the Act on Fiscal Measures Accompanying the Introduction of the European Company and for the Modification of Other Tax Regulations of 7 December 2006 (Federal Law Gazette I p. 2782). Article 6 is printed on p. 2791 et seqq. The new law is thus cited as follows:

Transformation Tax Act of 7 December 2006 (Federal Law Gazette I p. 2782, 2791)

186 If the entry into force of a law or statutory instrument was made dependent on a **condition** and the entry into force was therefore notified separately (margin nos 452 et seqq.), the notice of publication reference, including page number, also needs to be cited. Generally speaking, notice of entry into force will be given in the same official gazette as the relevant law or statutory instrument, which is why only one additional page reference usually needs to be cited.

Example

Investment Allowance Act 2007 of 15 July 2006 (Federal Law Gazette I p. 1614, 3404)

If the law or statutory instrument and the notice of its entry into force are not published in the same year of the official gazette, the year in which the publication was printed in the gazette also needs to be included.

Example

Third Act to Amend Consumer Tax Acts of 9 December 2006 (Federal Law Gazette I p. 2830; 2007 I p. 498)

187 **Corrections** are also identified by citing additional pages numbers. To indicate a correction, the number of the page on which the correction can be found follows the number of the page on which the full text was published. If the correction was printed in a later annual edition of

the Federal Law Gazette, that year also needs to be included. No special reference need be made to the fact that the publication refers to a correction.

Examples

Act to Amend Opposition Proceedings Under Patent Law and the Patent Costs Act of 21 June 2006 (Federal Law Gazette I p. 1318, 2737)

Public Participation Act of 9 December 2006 (Federal Law Gazette I p. 2819; 2007 I p. 195)

In the case of acts or statutory instruments created by means of omnibus acts or statutory instruments (margin nos 720, 813), account only needs to be taken of **corrections to the omnibus act** or **omnibus statutory instrument** which affect the cited act or statutory instrument.

- 188 If the publication reference needs to include **several references**, for example a reference to a correction and a reference to the notification of a conditional entry into force, these must be listed in chronological order.

Example

Trade Marks Act of 25 October 1994 (Federal Law Gazette I p. 3082; 1995 I p. 156; 1996 I p. 682)

3.1.4 References to amendments – citing the (last) amendment

- 189 If a law or statutory instrument has been amended since the official text was published, the full citation must make reference to that fact. It must be possible to trace back all **promulgated** amendments, including to any annexes or addenda, in an unbroken chain; entry into force of the amendment is not relevant in this context. Only those amendments need be cited with which the legislature amended the wording of the law or statutory instrument. Decisions of the Federal Constitutional Court in which the individual provisions in a law are declared incompatible with the Basic Law or other federal legislation or are declared null and void are **not** included in the reference to amendments.
- 190 The reference is introduced by the words “**..., as amended by ...**” (*..., das (die) durch ... geändert worden ist*). If the law or statutory instrument has been amended several times since the full text was last published, then reference is only made to the last amendment. The following phrase is then used: “**..., as last amended by ...**” (*..., das (die) zuletzt durch ... geändert worden ist*).

The phrase “last amended by ...” (*zuletzt geändert durch ...*) can often still be found in older legislation. In the past, the phrase “**as last amended by ...**” was used only if it was necessary to clarify whether the amendment referred only to individual provisions or to the entire law or statutory instrument. This distinction is, however, no longer made.

- 191 Where **two references to amendments** were published on the same day in the Federal Law Gazette and they do not refer to each other, both amendments are cited, since there must be no gap in the chain of references to amendments. Likewise, reference must also be made to the **second to last amendment** if this was omitted when the last amendment was published. The sequence is: last amendment, omitted amendment.

Example

..., as last amended by Article ... of the Act of ... (Federal Law Gazette ...) and by Article ... of the Act of ... (Federal Law Gazette ...), ...

- 192 If the amending act or the amending statutory instrument was amended before it even entered into force, then both references must be included in the reference to an amendment of the respective principal act or principal statutory instrument. The acts or statutory instruments which amend the amending act or the amending statutory instrument cannot be cited as a direct amendment of the principal act or principal statutory instrument. This leads to a **two-part reference** (e.g. “... the Act ..., as last amended by the Act ..., which in turn was amended by ...”). Such complicated phrases can, however, be avoided if the necessary amendments always refer to the principal act or principal statutory instrument (margin nos 670 et seqq.).
- 193 The amending act or the amending statutory instrument is generally **not cited using its citation title** (i.e., do not write “..., as amended by the Act to Strengthen Competition in the Statutory Health Insurance of ...”, write instead “..., as amended by the Act of ...”).
- 194 If the amendment is part of a law used to amend several laws, the **amending structural unit and, if necessary, other subunits** need to be cited.

Example

The Foreign Costs Ordinance of 20 December 2001 (Federal Law Gazette I p. 4161; 2002 I p. 750), as amended by Article 3 paragraph 1 of the Act of 21 December 2007 (Federal Law Gazette I p. 3189), ...

3.2 Citing elements of legislation

195 Legal provisions often make reference to individual elements of laws or statutory instruments, especially when this is necessary to

- ◆ take over their content in full or in part by means of a cross-reference (cf. margin no. 218),
- ◆ precisely designate the text to be amended in amending formulae (cf. margin no. 554, 564 et seqq.), or
- ◆ cite the statutory authorization in the enacting clause of a statutory instrument (cf. margin nos 780 et seqq.).

196 Designations of structural units and their subunits are **always written out in full** in German (with the exception of the symbol “§”) (e.g. Part, Chapter, section, subsection, Article, half-sentence, number, letter, double letter, point).

Examples

*Nach § 1 Absatz 2 Nummer 1 Buchstabe a ...**

Gemäß Absatz 2 Nummer 1 Buchstabe a ...#

Previously, the structural units “*Absatz*” (subsection) and “*Nummer*” (number) were only written out in German at the beginning of a citation, but within a citation they were abbreviated (to “*Abs.*” and “*Nr.*”). For the sake of consistency, this distinction has now been dropped. Since the new spelling variant does not carry any meaning, there is no need to replace abbreviations used in existing legislation. Such changes can be made when a law or statutory instrument is re-published (margin no. 879).

197 When citing ranges of individual units the word “**to**” must always be written out.

Example

Sections 8 to 12 shall apply.

198 If the highest-level structural unit is cited in the singular, the **verb will also be in the singular** if the unit is cited together with **several subunits**.

* In accordance with section 1 (2) number 1 letter (a) ...

Pursuant to subsection (2) number 1 letter (a)

Examples

Section 14 (5) to (7) applies mutatis mutandis.

Subsection (2), first to third and sixth sentence, applies mutatis mutandis.

The first sentence, numbers 8 and 9, applies mutatis mutandis.

- 199 **Several identical units at the beginning of a citation** are used together with the article in German. The symbol “§” is then doubled and the verb is in the plural.

Examples

*Die §§ 3 und 5 Satz 1 sowie § 6 Absatz 1 sind entsprechend anzuwenden.**

Die in den Absätzen 1 und 2 genannten Voraussetzungen gelten auch für ...#

- 200 If a list of the same structural units includes individual subunits, the list continues by only **repeating the structural unit**. This rule is especially important in the case of bundled amending formulae (margin nos 624 et seqq.).

Example

In section 1 (1) number 4, section 2 (5), second sentence, and subsection (6), section 3 number 13 letter (b) and number 15 and section 15, the words “scope of this Act” are replaced by the word “Germany” in each case.

- 201 If within a citation the structural units are linked by means of the conjunction “**or**”, repeating the designated unit after the conjunction makes it easier to understand the sentence.

Examples

If the sale was made in accordance with section 929a or section 930 or if the thing sold in accordance with section 931 was not the direct property of the seller, ...

If the marriage is dissolved before the spouse dies or the conditions set out in section 2077 (1), second sentence or third sentence, are met, ...

If the individual units which are linked in a citation using the conjunction “or” are the subject of the sentence, the verb will be in the singular.

Example

Section 3 or section 6 applies mutatis mutandis.

* Sections 3 and 5, first sentence, as well as section 6 (1) shall apply mutatis mutandis.

The conditions referred to in subsections (1) and (2) also apply to ...

3.3 Citing the individual books of the Social Code

202 The Social Code developed into its present form over a long period of time and in stages. The individual books of the Social Code were created by means of omnibus acts and do not yet represent a uniform codification. That is why the rules applicable to the citation and amendment of the individual books of the Social Code differ from the generally applicable rules. The books of the Social Code are now treated as separate principal acts, since, for example, some have already been re-published separately.

203 The **full citations** of the individual books of the Social Code currently follow an established pattern in German.*

204 Some older omnibus acts which were used to create individual books of the Social Code still contain **substantive transitional provisions** (margin no. 747). The law on statutory long-term care insurance, for example, is set out in the Eighth Book of the Social Code as well as in Articles 40 et seqq. of the omnibus act, i.e. the Long-Term Care Insurance Act of 26 May 1994 (Federal Law Gazette I p. 1014). Because they contain substantive provisions, these omnibus acts have become separate ancillary principle acts. The citation thus follows the generally applicable rules:

Example

Article 40 of the Long-Term Care Insurance Act

205 **In individual provisions**, the individual books of the Social Code are designated in the same way as well-known laws, i.e. using only their citation title.

Example

Section ... of the Eighth Book of the Social Code shall apply mutatis mutandis.

The numerals designating the individual books form part of the title and are therefore always written using an upper case letter in both German and English.

206 When **referring in one book of the Social Code to another book of the Social Code** the following example should be followed:

* For examples, please refer to the German version of the Manual.

Example

Section ... of the Nth Book shall apply mutatis mutandis.

207 **References within the same book** of the Social Code are worded in the same way as references within a text, i.e. not using the citation title.

208 In the case of definitions or similar rules which **only apply to one of the books of the Social Code**, the following wording should be used: “For the purposes of this Book, ...”.

Example

Section 13 of the Third Book of the Social Code

For the purposes of this Book, workers shall also be home-workers ...

However, in the case of definitions which are to apply to the **entire Social Code**, the wording should be: “Within the meaning of the Social Code ...”.

3.4 Citing provisions of the Unification Treaty

209 Formally speaking, the Treaty of 31 August 1990 between the Federal Republic of Germany and the German Democratic Republic on the Establishment of German Unity – generally referred to as the **Unification Treaty** – is an international treaty, as is the **Agreement** of 18 September 1990 between the Federal Republic of Germany and the German Democratic Republic on Implementation and Interpretation of the Unification Treaty, which was signed in Berlin on 31 August 1990.

210 The **law** of 23 September 1990 (Federal Law Gazette 1990 II p. 885) **ratifying** the Unification Treaty and the Agreement is not only special as regards its content but also as regards its legal form. It refers to several comprehensive **elements of the instruments**, each of which has influenced current federal law in a specific manner and must therefore be **cited as precisely as possible** either separately or in connection with federal provisions. That is why the publication reference includes both the page number of the ratifying law and the page on which the respective element begins; it may also be expedient to cite the page on which the concrete passage to which reference is made is printed.

211 The ratifying law of 23 September 1990 itself contains the standard consent clause as well as various enabling powers – i.e. new principle legislation – and amends federal legislation. The powers are no longer of any relevance since all the requisite statutory instruments have since been issued. The amendments ordered at the time have entered into force. That is why

there is no longer any need to refer to the law ratifying the treaty in any new legislation. Today's citations refer only to the individual elements of the instruments.

- 212 The **Unification Treaty** (Federal Law Gazette 1990 II p. 885, 889) contains all those key regulations which were required to establish German unity. Since the Unification Treaty is well-known, the full citation need not be used.

Example

... the territory referred to in Article 3 of the Unification Treaty ...

- 213 The **Protocol** (Federal Law Gazette 1990 II p. 885, 905) includes clarifications on individual regulations laid down in the Unification Treaty or its Annexes II or III upon the signing of the Treaty. If at all, they are only cited in connection with the Unification Treaty and always as follows:

Example

Article 35 of the Unification Treaty of 31 August 1990 (Federal Law Gazette 1990 II p. 885, 889) read in conjunction with number 14 point 1 of the Protocol (Federal Law Gazette 1990 II p. 885, 905)

- 214 **Annex I** to the Unification Treaty (Federal Law Gazette 1990 II p. 885, 907) contains special provisions regarding the transition of federal law pursuant to Articles 8 and 11 of the Treaty. It is subdivided into chapters corresponding to the former remits of the federal ministries. Some chapters are further subdivided by subject area, such as administration of justice, civil law etc.

Each chapter or subject area is divided into Sections I, II and III, each of which has separate legal relevance:

- ◆ **Section I** in each case lists the laws and statutory instruments which **did not** enter into force for the territory of the GDR. These exceptions are generally irrelevant when it comes to citation.
- ◆ **Section II** in each case lists the laws and statutory instruments which were repealed, amended or supplemented on the occasion of accession – with effect for the entire federal territory. They **amend the wording** of these laws and statutory instruments. They are of relevance when it comes to citation only if they need to be quoted as the last amendment to a law or a statutory instrument.

Example

The Act on the Establishment of the Federal Monopoly Administration for Spirits, as consolidated and published in the Federal Law Gazette III, Index No. 602-1, as amended by Annex I, Chapter IV, Subject Area B, Section II, number 12 of the Unification Treaty of 31 August 1990 read in conjunction with Article 1 of the Act of 23 September 1990 (Federal Law Gazette 1990 II p. 885, 972), is amended as follows: ...

New laws were also created (cf. Federal Law Gazette 1990 II p. 885, 991, 992, 993, 1159, 1169), which – subject to re-publication – are cited as follows:

Example

The Act on the Establishment of a “Credit Management Fund” of 23 September 1990 (Federal Law Gazette 1990 II p. 885, 993), as amended by section 14 (2) of the Act of 11 December 2001 (Federal Law Gazette I p. 3519), ...

In addition, other special provisions are also included which are further subdivided (cf. Federal Law Gazette 1990 II p. 885, 951, 961, 1042, 1059, 1138, 1144). These do not constitute new principal acts; this is clear because they lack a title. Nevertheless, as well as the existing federal laws and statutory instruments, statutory provisions were created which also need to be observed (**ancillary principal legislation**). The publication reference of such provisions must be cited as precisely as possible:

Example

... in accordance with Annex I, Chapter III, Subject Area E, Section II, number 1, paragraph 8 of the Unification Treaty of 31 August 1990 (Federal Law Gazette 1990 II p. 885, 961) ...

- ◆ **Section III** in each case lists the federal laws and statutory instruments which entered into force with specific provisos in the territory of the GDR after the effective date of accession. The **provisos** do not amend the wording of the legislation, but constitute **rules on application and transitional rules** (margin nos 412 et seqq., 684 et seqq.) which exist alongside the principal acts or principal statutory instruments for which they were issued (ancillary principal legislation). Where the text of a provision contains a reference to such a rule, the publication reference must be as precise as possible.

Example

The proviso referred to in Annex I, Chapter XI, Subject Area E, Section III, number 2 of the Unification Treaty of 31 August 1990 (Federal Law Gazette 1990 II p. 885, 1110) shall remain unaffected.

- 215 **Annex II** to the Unification Treaty (Federal Law Gazette 1990 II p. 885, 1148) contains special provisions on **GDR law which continue to apply**. It is structured in the same way as Annex I. It also contains Sections I, II and III. Citations should be as precise as possible. However, there is generally no need to explicitly state that the law or statutory instrument is a law or statutory instrument of the GDR since this is already indicated in the reference.
- 216 **Annex III** of the Unification Treaty (Federal Law Gazette 1990 II p. 885, 1237) contains the Joint Declaration of the Governments of the Federal Republic of Germany and of the German Democratic Republic on Regulating Open Property Issues. The Joint Declaration does not contain any individual regulations, only basic parameters which are not cited in other legislation.
- 217 Article 3 of the **Agreement** of 18 September 1990 (Federal Law Gazette 1990 II p. 885, 1239) contains additional legislation of the GDR which continues to apply. Where Articles 4 and 5 amend the annexes to the Unification Treaty, this information also needs to be cited as follows:

Example

The proviso set out in Annex I, Chapter XI, Subject Area B, Section III, number 8 of the Unification Treaty of 31 August 1990 (Federal Law Gazette 1990 II p. 885, 1110), as amended by Article 4 number 7 of the Agreement of 18 September 1990 (Federal Law Gazette 1990 II p. 885, 1243), ...

4 Referencing other texts

4.1 General remarks

- 218 Constituent elements and legal consequences do not always need to be set out in full in laws and statutory instruments. The legislature can take recourse to existing texts and make reference to them. Cross-references can refer to other regulations or to parts of them.

Cross-referencing means that those texts to which reference is made (**referenced provisions** and other referenced texts) become an element of the provision containing the reference (**main provision**).

219 A distinction is drawn between

- ◆ declaratory references, which merely state that note should be taken of other texts (margin no. 230),
- ◆ constitutive references, by means of which the referenced text becomes a constituent part of the main provision (margin no. 231),
- ◆ analogous references, which do not adopt the wording of the referenced text exactly as it stands but only analogously (margin no. 232),
- ◆ internal references, which refer to other provisions in the same law or statutory instrument (margin no. 233 et seq.),
- ◆ external references, which incorporate other texts, generally other legal provisions (margin no. 235 et seq.),
- ◆ rule-specific references, which refer to specific regulations (margin no. 237),
- ◆ content-related references, which refer to provisions grouped together under a specific term on account of their content (margin no. 238),
- ◆ static references, which refer to a very specific version of the referenced text (margin nos 239 et seqq.), and
- ◆ dynamic references, which refer to the referenced text including any subsequent amendments thereto (margin nos 243 et seqq.).

220 For it to be possible for readers to recognize which type of reference is being used, references of the same type should always be worded in the same way within a law or a statutory instrument.

221 The referenced text must be suited to augmenting the legal content of the main provision, i.e. it must be **suitable for referencing**. Whoever formulates a provision and includes other texts by means of a cross-reference is responsible for the ensuing regulatory content created in that context.

222 References must be clear and unambiguous – there must be no doubt as to which provisions are being referred to (**principle of clarity and definiteness**). That is why the references in the main provision must, firstly, be as concrete as possible.

Example

Where the first sentence in section 5 (2) of a law (referenced provision) contains regulations concerning administrative proceedings and the second sentence contains regulations concerning competence, and reference is to be made in the main provision to the regulations concerning competence, then it is not sufficient to refer to “section 5 (2)”, reference must be made to “section 5 (2), second sentence.”.

The principle of clarity and definiteness also requires that the referenced text itself can be determined as precisely as possible so that it can be incorporated into the main provision. It would, for instance, not be permissible to refer to an ill-defined body of provisions.

- 223 A further basic condition for establishing whether the referenced text is suitable for referencing is that it has been **published** and is **permanently and generally accessible**. Since the referenced text becomes a constituent part of the main provision and legislation is only enacted in German, reference may thus only be made to texts **written in German**. Foreign-language texts must be translated into German, they must be published and permanently and generally accessible in order that reference may be made to them.
- 224 A key step in the process of creating new legal provisions and amending existing ones is establishing their relation(s) to other legal provisions. Each amendment to a legal provision must, therefore, include an examination of whether and to what extent it has an impact on other provisions which refer to it (**referencing check**). If a legal provision contains dynamic references (margin nos 243 et seqq.), the main provision will undergo the same legal developments as the referenced provisions. Those who are responsible for the main provision should, therefore, not leave the referencing check to those who are responsible for amending the referenced provisions, but should themselves keep track of legal developments which the referenced provisions undergo so as to be able to decide whether amendments also need to be made to the main provision.

4.2 Advantages and disadvantages of referencing

- 225 The referencing technique has its **advantages**: Cross-references help keep texts short and simple, since they obviate the need to repeat certain passages of text in full. Unnecessary deviations in individual provisions can be avoided. In addition, cross-references ensure that the same constituent elements apply to or the same legal consequences arise for comparable subject matters. Cross-references can thus help create a coherent system by indicating the links between different subject matters to be regulated.

- 226 Cross-references are sometimes unavoidable. Certain regulatory content can in effect only be incorporated into a provision by means of a reference, for instance maps, tables and models which cannot be presented in textual form.
- 227 There are also **disadvantages** to using cross-references: Cross-references disrupt the coherence of the text and interrupt the flow of reading. It is impossible to understand the overall regulatory content by reading the main provision on its own; it has to be read together with the referenced provision. These disadvantages can be mitigated if the main provision refers to the content of the referenced provision(s).

Example

Section 55 of the Administrative Courts Ordinance

Sections 169 and 171a to 198 of the Courts Constitution Act concerning the public nature of the hearing, court officers, the language of the court, deliberations and voting shall apply mutatis mutandis.

The disadvantages of referencing are not so relevant in the case of internal references (margin no. 233 et seq.), since the information which is not included in the main provision can be gleaned relatively simply from the referenced provision in the same law or statutory instrument. In contrast, it can be significantly more difficult to understand a provision containing an external reference (margin no. 235 et seq.), since the full regulatory content will not become clear by reading the main provision and its context alone.

- 228 The advantages and disadvantages of references must always be carefully weighed up against each other.
- 229 If the referenced provision itself contains references, recourse will have to be taken to the main and the referenced provision as well as to other provisions in order to establish what exactly is being regulated. That is why reference should not be made to provisions which themselves refer to other provisions (**no serial references**).

Bad example

Section 98 (1), first sentence, of the Fifth Book of the Social Code – Statutory Health Insurance
The **statutory instruments on accreditation** regulate further details regarding participation in health care provided by statutory physicians ... and the restriction of accreditations.

Section 33 (2), fourth sentence, of the Ordinance on Accreditation for Statutory Health Insurance-Affiliated Physicians

Accreditation may be denied only where ... **provisions under *Land* legislation** on the professional training of physicians preclude this.

Section 31 (1), first sentence, and subsection (2) of the Act on Health Care Professionals of North Rhine-Westphalia

The **professional code of practice** regulates ... further details. The professional code of practice is enacted by the competent chamber ...

4.3 Different types of cross-references and their citation

230 **Declaratory references** merely make reference to other provisions which need to be observed anyway under currently applicable law. They add nothing to applicable law; in fact, they merely serve to provide information on existing provisions and make it easier to locate them.

Declaratory references are generally **non-essential**. Given its function, legislation should be restricted to including real regulations. Additional information should be included in guidelines, brochures and commentaries.

Where, in a specific individual case, use of a declaratory reference is justified, the chosen wording should make it clear that it refers to additional information and that it does not order that a certain matter becomes applicable; phrases including the verb “to apply” should be avoided (cf. margin no. 85).

231 In contrast, in the case of **constitutive references** the main provision is not complete without the content of the referenced text. The regulatory content of the main provision can only be understood by reading the referenced provision as well, i.e. the referenced provision becomes part of the main provision. Constitutive references can fulfil very **different functions**, which are each expressed by means of different wording.

- ◆ Where reference is made to the constituent elements of another provision, the following can be used, for instance:

Example

Section 2 (2) of the Temporary Contracts in Academia Act

... **Under the conditions laid down in the first sentence**, it shall also be permissible to impose a time limit on the employment contracts of non-academic and non-artistic personnel.

- ◆ Where reference is made to legal consequences set out in other provisions, the following can be used, for instance:

Section 1301, first sentence, of the German Civil Code

If the marriage does not take place, each engaged person may require the other to return what the former gave as a present or as a sign of the engagement, **under the provisions on the return of unjust enrichment.**

- ◆ The following phrases can be used to make a reference so as to avoid having to repeat terms once they have already been used:

“... in accordance with section ...”; “... pursuant to section ...”; “... within the meaning of section ...”; “... referred to in section ...”

This is not necessary, however, if the relevant legislation begins with a list of definitions.

- ◆ Referencing can also be used to describe the relationship between different provisions:

Example

Section 34 (3) of the Limited Liability Companies Act

The provisions set out in section 30 (1) shall remain unaffected.

232 **A reference by analogy** is used where the referenced text would not fit into the main provision if it were cited verbatim. If the referenced provision cannot be read verbatim together with the main provision, the regulation can only apply “mutatis mutandis” or “accordingly”. This must be made clear in the main provision to avoid confusion.

It may be necessary to make explicit reference to deviations in order to make it easier to understand the regulatory content of the main provision.

Example

Section 2249 (1), fourth sentence, of the German Civil Code (Emergency will made before the mayor)

The making of the will is governed by the provisions of sections ... of the Notarial Recording Act; **the mayor takes the place of the notary.**

233 An **internal reference** points to other parts of the same law or the same statutory instrument. Only the text of the individual provisions to which reference is made is indicated, i.e. without the citation title of the law or statutory instrument.

Example

Section 163 (1) of the Criminal Code

If someone commits one of the acts indicated in sections 154 to 156 out of negligence, then imprisonment for not more than one year or a fine shall be imposed.

- 234 References **within an individual provision** do not cite the number of the section. The same applies to lower-level units such as subsections and sentences.

Examples

Reference within a section:

Section 34 (5), first sentence, of the Infection Protection Act

If one of the elements referred to in subsections (1), (2) or (3) arise in one of the persons referred to in subsection (1), these persons or, in the cases referred to in subsection (4), the person having their care and custody, shall notify the community facility without undue delay.

Reference within a subsection:

Section 35 (2), fifth sentence, of the Federal Act on War Pensions

The second and third sentence shall not apply where the spouse, civil partner or parent provides care not only on a temporary basis ...

Reference within a sentence:

Section 127 (2), number 4 of the Building Code

..., in so far as they are an element of the traffic systems referred to in numbers 1 to 3 or are necessary ... in accordance with the principles of urban planning;

- 235 **External references** are used when reference is made to texts not included in the relevant legislation itself. These can be references to provisions in other laws and statutory instruments issued by the same legislature. However, reference can also be made in this way to legal provisions laid down by other legislatures (e.g. references in German federal law to EU law). Finally, reference can also be made to texts which do not constitute legislation (margin no. 241).

If reference is made to another legislative text, it must always be quoted using a **full citation** (cf. margin nos 168 et seqq.).

Example

Section 2 (1) of the Ordinance on Coastal Shipping

Coastal shipping may only be conducted

1. using maritime ships flying the German flag in accordance with the German Flag Act as published on 26 October 1994 (Federal Law Gazette I p. 3140), as last amended by Article 25 of the Act of 15 December 2001 (Federal Law Gazette I p. 3762);
- ...
3. using ships registered in a Member State of the European Communities and flying the flag of such a State, in accordance with Council Regulation (EEC) No 3577/92 of 7 December 1992 on applying the principle of freedom to provide services to maritime transport within Member States (maritime cabotage) (OJ L 364, 12.12.1992, p. 7).

236 If a statutory instrument is issued to execute a law which is mentioned in the title of the statutory instrument, the citation title or the addition “of the Act” may be used instead of the full citation when referring to provisions of that law in the text of the statutory instrument.

See margin no. 171 et seq. as regards further possible exceptions where the full citation need not be used.

237 Provisions to which reference is made should generally be described as precisely as possible, even if several provisions are cited (**rule-specific reference**). Such references can be quickly located during a referencing check (margin no. 224) by means of an electronic search of the database of federal legislation (margin no. 33). The rules on citation set out in margin nos 168 et seqq. must be observed when writing such cross-references.

238 References to other provisions can also be framed as **content-related references**. If, for instance, the “civil-law provisions on finding” are declared applicable, reference is being made to the text of sections 965 to 984 of the German Civil Code, without the citation title “German Civil Code” and the provisions referred to having to be explicitly named. Such references need to be updated less frequently than a precise citation. However, it is not as easy to locate content-related references in the body of applicable law as it is to find rule-specific references when carrying out the required referencing check whenever legal amendments need to be made (margin no. 224). For the sake of the clarity and definiteness of the main provision, content-related references should only be used if the referenced provision can easily be found in a well-known law or if listing several individual referenced provisions would make the regulation confusing, although it would otherwise be easy to locate.

- 239 A **static reference** refers to a version of a text which is applicable at a specific point in time or during a specific period of time. This will generally be the version which applies upon the entry into force of the main provision.
- 240 A static external reference is generally identified by means of a **full citation** (margin nos 169 et seqq.) without the need for any specific addition. References to well-known laws or statutory instruments can also use a static reference and the full citation. If the law can only be cited using the citation title (margin no. 173), the static reference is identified by including, for example, the phrase “in the version applicable **on ...**” (*in der am ... geltenden Fassung*). The same applies if only the citation title is used when repeatedly naming a law or a statutory instrument. In the case of legislative acts of the European Union, the abbreviated citation also makes it clear that a static reference is being used if first the full citation without any additional information was used (margin no. 281).
- 241 A static reference can be used to make reference to **any text which is suitable for referencing** (margin nos 221 et seqq.) – even to legal provisions laid down by other legislatures. The legislature does not need to be identified. The legislature in question is aware of the content of the referenced provision and can, therefore, decide whether it wants to incorporate it. The following information must be provided regarding the referenced text, also taking account of the respective rules on citation:
- ◆ The full title,
 - ◆ The date of publication, and
 - ◆ The publication reference.
- 242 **Static references to private sets of rules** are also permissible. However, they should be restricted to those cases in which it is not anticipated that the provisions will constantly be updated. A static reference to private sets of rules, for example the norms and standards of internationally recognized associations, is expressed by specifying the precise edition or date of the regulation.

Example

Section 1 (2) of the Ordinance on Units

The definitions and relations listed in DIN 1301 Part 1, December 1993 edition, shall apply to the units listed in Annex 1.

Where reference is made to private sets of rules, to maps or other collections of documents which are not included as annexes to the legislation, information must also be added

regarding when they were published or issued, where they are kept, and where they can be ordered or accessed. This information can be provided in a separate provision in the law or statutory instrument, in an annotation or annex.

Examples

Section 5, second sentence, of the Ordinance on Electromagnetic Fields

In so far as they are applicable, the measuring and calculation procedures set out in the Draft of DIN VDE 0848 Part 1, May 1995 edition, shall be used; these can be ordered from VDE-Verlag GmbH or Beuth Verlag GmbH, both in Berlin, and are archived at the German Patent Office.

The noise protection zone determined in accordance with section ... is represented on a topographical map at a scale of 1:50 000 and on maps at a scale of 1:5 000. The topographical map is included as Annex 2 to this Ordinance. The maps at a scale of 1:5 000 are stored in an archive at ... [name and possibly address of place where archived].

243 **A dynamic reference** is used when the legislature wants the main provision to keep track of future developments which the referenced provision undergoes; reference must then be made to the currently applicable version of the text.

A reference always becomes a dynamic reference when the phrase “**as amended**” (*in der jeweils geltenden Fassung*) is used. This in particular applies where the rules on citation require the use of the full citation, for example upon the first mention of laws, statutory instruments or EU legislative acts which are not generally well-known. Depending on the nature of the referenced text, the citation may also be supplemented by a suitable expression, such as “the text as amended and published in ... shall be authoritative”. Once it has been made explicitly clear that the reference is dynamic, it is sufficient thereafter only to use the **citation title** (margin no. 173) for the law or statutory instrument referred to without the need for any additions; in the case of EU legislative acts, the abbreviated citation will then suffice (margin no. 281). This makes it clear that recourse should be taken to the currently applicable version of the referenced provision.

244 **N.B.:** Dynamic references cannot be used to the same extent as static references. The referenced provisions must fulfil certain **conditions** so that dynamic references can be used:

- ◆ There must be a sufficiently meaningful relation between the main provision and the referenced provision.
- ◆ Attention must be paid to the fact that developments which the referenced provision undergoes should not lead to any key changes being made to the main provision.

245 **Dynamic internal references** (margin no. 233 et seq.) can safely be used since the legislature will itself take a decision on any subsequent changes to the referenced provision.

246 Extreme care must be taken where reference is to be made to **regulations set by other legislatures**.

- ◆ In such cases the legislature responsible for the main provision cannot decide what developments the referenced provision will undergo in the future. The other legislature (i.e. that of the referenced provision) need not take account of the impact its own legislation has on the main provision; a dynamic reference can therefore lead to a hidden shift in legislative powers.
- ◆ Under no circumstances may a dynamic reference to regulations introduced by other legislatures be used where the **constitutional requirement of the specific enactment of a provision** (*grundrechtlicher Gesetzesvorbehalt*) or the **theory of legislative reservation** (*Wesentlichkeitstheorie*) require that the legislature itself take a decision.

247 Against this backdrop, dynamic references to **private sets of rules** (e.g. standards set by the Deutsches Institut für Normung e.V. (DIN)) are **not permissible** for constitutional reasons. Nor may the legislature indirectly transfer its legislative activity to private bodies, since the legislature cannot then predict or control amendments.

248 **European Union law**, in particular directives of the European Communities, are only suitable for referencing if they have been defined sufficiently precisely. Generally speaking, static references should be used when referencing Union law, especially directives, which leave the Member States leeway as regards implementation (margin no. 240). In exceptional cases, dynamic references to directives and their annexes can be used if they contain technical rules which need to be adopted without any changes (margin no. 243). If they are frequently amended, this saves the trouble of having to frequently adapt legal texts.

Example

Section 3b (1) number 1 letter (a) of the Chemicals Act

Biocidal products within the meaning of this Act shall be: biocidal active substances and preparations which contain one or more biocidal active substances ... and which belong to a product type listed in Annex V of Directive 98/8/EC of the European Parliament and of the Council of 16 February 1998 concerning the placing of biocidal products on the market (OJ L 123, 24.4.1998, p. 1), as amended, ...

4.4 Referencing provisions which are not in force or which are void

- 249 Reference can also be made to provisions which are **no longer in force** or which will cease to be effective in the foreseeable future. This is possible because the legislature could just as well include the text of the referenced provision in the main provision. It is sufficient for the referenced text to be accessible on account of its having been published and for everyone to have the possibility of finding out about it. By their very nature such references will always be static references, since the referenced text can no longer be amended.
- 250 Under certain circumstances even a reference to a void provision will also be unproblematic. It should be checked whether establishing a link between the referenced provision and the main provision is unconstitutional.

Example

The referenced provision is void on account of the lack of legislative competence; the main provision was, however, enacted correctly. The lack of competence regarding the referenced provision has no bearing on the main provision.

- 251 It is also possible to refer to provisions which have **not yet come into force**, on condition that the referenced provision has already been promulgated. That way everyone has the opportunity to find out about it. It is, however, not permissible to make reference to provisions which have not yet been promulgated.

4.5 Referencing technical rules

4.5.1 General clauses

- 252 When reference is made to technical rules set by private regulators, this should always be done using legally prescribed general measures of safety in the form of **general clauses**, since such references are sometimes inadmissible for constitutional reasons or problematic for copyright reasons. Technical rules including a plethora of technical details in running text would overload the provision. In addition, the legal provision would constantly have to be revised so as to keep pace with scientific and technical developments.
- 253 In order to make legal provisions easy to understand and to ensure uniform application of the law, only the following general clauses should be used for technical rules:

- ◆ The generally recognized rules of technology,
- ◆ The state of the art, and
- ◆ The current state of science and technology.

Which of these three basic forms is appropriate will depend on the risk potential associated with the regulated subject matter and on the extent to which that risk potential can be controlled by technical means.

254 Limiting phrases such as “the generally recognized rules of safety technology” should be used only where necessary to clarify a particular matter.

255 The general clause “**the generally recognized rules of technology**” is used when the risk potential is comparatively low or in cases where proven experience shows that risk to be technically manageable. Generally recognized rules of technology can be technical specifications for procedures, facilities and modes of operation which have been set down in writing or communicated orally and which are, according to prevailing opinion among the groups involved (specialists, users, consumers and public authorities), suited to achieving the statutory objective and have generally proven their worth in practice or will, according to prevailing opinion, prove their worth in the foreseeable future.

256 The requirements regarding the general clause “**the state of the art**” fall somewhere between those made of the general clause “the generally recognized rules of technology” and those made of the general clause “the state of science and technology”. “The state of the art” refers to the level of development of advanced procedures, facilities and modes of operation which, according to prevailing opinion among leading experts, suggest that achievement of the statutory objective is guaranteed. Procedures, facilities and modes of operation or comparable procedures, facilities and modes of operation must have proven their worth in practice or should – if this is not yet the case – have been successfully tested in normal operation where possible.

European Union law also uses the phrase “the best available technology”, which largely corresponds to the general clause “the state of the art”.

257 The general clause “**the state of science and technology**” denotes the most stringent requirements and is therefore used in cases in which the risk potential is very high. “The state of science and technology” refers to the most advanced level of development of procedures, facilities and modes of operation which, according to prevailing opinion among

leading experts from science and technology, are deemed necessary on the basis of the latest scientifically tenable insights to achieve the statutory objective and achievement of the objective appears to be guaranteed.

4.5.2 Legal presumptions for complying with general clauses

- 258 One disadvantage of general clauses is that users, those affected and the administrative authorities first have to determine the relevant regulations from a multitude of regulations set by the most diverse bodies. This uncertainty can be countered by making provision in the law or in the statutory instrument – for instance by means of **legal presumptions** – so that the list of regulations which need to be applied can be defined more precisely.
- 259 The provision itself can describe those technical rules upon compliance with which it can refutably be assumed that the requirements of the general clauses will be met (known as a “**one-level assumption**”).

Example

Section 35 (1) of the Ordinance on Gas Grid Access

The transport customer shall ensure that the gas to be fed into the grid conforms to the generally recognized rules of technology. ... It is assumed that the generally recognized rules of technology will be complied with where the technical rules of the German Association for Gas and Water have been complied with.

However, the disadvantage of using a one-level assumption is that it gives the regulating body considerable power. One-level assumptions are therefore only recommended for use in regulations laid down by private regulatory bodies if they have undertaken to comply with a public procedure analogous to the German standard DIN 820 “Standardization – Part 1: Principles”²⁵ and governmental influence has been sufficiently safeguarded contractually.

- 260 Preference should be given to naming only one institution which is authorized to determine and designate the technical rules in a specific procedure (known as a “**two-level assumption**”).

Example

In accordance with section 21 (3) of the Dangerous Substances Ordinance, the tasks of the Committee on Dangerous Substances shall include ascertaining the rules and findings referred to in section 8 (1) of the Ordinance. Its decisions shall thus be binding to the extent that they set

²⁵ These can be ordered from Beuth Verlag GmbH, Berlin.

down the rules and findings declared authoritative in section 8. **By giving notice of the rules and findings ascertained by the Federal Ministry for Labour and Social Affairs in accordance with section 21 (4) of the Dangerous Substances Ordinance, the refutable assumption arises that they represent generally recognized rules or scientifically proven findings within the meaning of section 8 (1).** The same shall apply mutatis mutandis to notification of the Committee's findings regarding the state of the art.

The disadvantage of using a two-level assumption is that the technical rules only become visible for citizens and the administrative authorities on account of the combination of legal presumptions and publication. The advantage of a two-level assumption over a one-level assumption is that the technical rules and findings do not become binding until an official decision has been taken and they have been published.

4.5.3 Limitations when referencing technical rules

- 261 Where a general clause provides that technical rules must be complied with and a presumption is made in favour of certain rules, this presumption does not rule out **other rules being applicable**. It is, therefore, not necessary to include an exception which permits the use of other technical rules. However, those applying other rules must, in the case of dispute, be able to prove that one of those rules is covered by the general clause.
- 262 Further **exceptions** can explicitly be permitted if the same level of safety is guaranteed in another way. It may be possible to link the exception to certain conditions from the outset (e.g. appraisal by experts, decisions by a public authority).

Examples

Exception with no restriction:

Section 3 (3) of the Ordinance on High-Pressure Gas Pipelines

The competent authority may permit exceptions to the provisions set out in the Annex to this Ordinance. Moreover, derogations to the state of the art are possible to the extent that the same level of safety is guaranteed in another way.

Exception with restriction:

Section 3 (2) of the Ordinance on the Construction and Operation of Magnetic Levitation Trains

Derogations from the generally recognized rules of technology are permissible if at least the same level of safety is proven as is the case when these rules are complied with. The entrepreneur must provide proof to the Federal Railway Authority that at least the same level of safety is guaranteed.

263 It is necessary to remain **open to new developments** where compliance with the technical rules prescribes a certain standard. Naturally, no generally recognized rules of technology can apply to new developments. It would take much too long if technical rules first had to be developed for a new development before approval. In addition, problems of competition could arise. An exception clause tailored to this situation must therefore provide that new developments will be approved if the standard provided for in the general clause is achieved.

Example

The competent authority may ..., upon application, permit exceptions if this reflects technical progress and the level of safety is guaranteed in another way.

264 If, on the other hand, the generally recognized rules of technology are not sufficient to avert specific risks to those legal interests to be protected, it may be provided that the authority can impose **additional requirements** on a case-by-case basis.

Example

Furthermore, plants must meet more than the requirements set out in section ..., which are set by the competent authority on a case-by-case basis to avert specific risks to employees or third parties.

5 Specific features of European Union law

5.1 Designation of the European Union, the European Communities, the founding treaties, members, bodies and legislation, and of the European Economic Area

265 The European Union is a union of 27 European states²⁶ built upon a comprehensive **body of treaties** which has evolved over time. These treaties establish the structures, bodies and procedures which regulate and shape relations between the Member States. Over the course of time a multitude of terms and designations have arisen which are often used inconsistently. However, they should be used consistently in German legislation based on the recommendations set out below.

*The **Treaty of Lisbon** of 13 December 2007 sets out how the European Union is to be restructured as from its entry into force (which is planned for 1 January 2009). The most important changes have been noted in italics at the end of the relevant margin number or directly in a footnote. Where a margin number does not contain any reference to the Treaty of Lisbon, it can be assumed that the recommendation stays as it is.*

²⁶ As at: 2008

266 The European unification process is built upon the following **founding treaties**:

- ◆ The EU Treaty, or The Treaty on European Union;
- ◆ The EC Treaty, or The Treaty Establishing the European Community;
- ◆ The Euratom Treaty, or The Treaty Establishing the European Atomic Energy Community.

It is not necessary to use the **full citations** of the above treaties.

The **Communities** established on the basis of the Treaty Establishing the European Community and the Treaty Establishing the European Atomic Energy Community are referred to in legislation as

- ◆ The European Community,
- ◆ The European Atomic Energy Community.

Otherwise commonly used **abbreviations** for the communities (EC, EAEC or Euratom) may only be used in exceptional cases (margin nos 139 et seqq.).

These two communities form the first pillar of the European Union.

Treaty of Lisbon

*The Union is based on the Treaty on European Union (**EU Treaty**) and the Treaty on the Functioning of the EU (**TFEU**). The Treaty Establishing the European Atomic Energy Community (Euratom Treaty) continues to apply in modified form. The EC Treaty has been replaced by the TFEU. Article 6 of the EU Treaty has been revised, as a result of which the **EU Charter of Fundamental Rights** becomes legally binding on the Member States when it comes to implementing Union law and it must therefore be complied with during the scrutiny of legislation. It is not necessary to use the **full citations** of these treaties. The commonly used **abbreviation** “EU” may only be used in legislation in exceptional cases (margin nos 139 et seqq.).*

267 The designation “**European Union**” is an umbrella term covering the European Communities, the Common Foreign and Security Policy (CFSP), and police and judicial cooperation in criminal matters. The designation is also used to refer to activities in individual areas of the CFSP or police and judicial cooperation in criminal matters. These areas are known as the second and third pillars of the European Union.

Treaty of Lisbon

The three-pillar structure has been abolished. The (European) Union has replaced the European Community. It is its legal successor and has legal personality. The term “European Community” has been replaced by “European Union” or “Union”.

268 Where legislation makes reference to the Member States of the European Communities or of the European Union, the term “**Member States of the European Union**” is always used.

269 The term “**Union citizens**” is used to designate nationals of the Member States of the European Union.

270 The **institutions of the European Communities** are designated as follows:

- ◆ **The European Parliament;**
- ◆ **The Council**, or Council of the European Union; in legislative acts and in the introductory sentence in regulations, directives and decisions, the term “Council of the European Union” is used to refer to the Council comprising representatives of the Member States at ministerial level; “Council” is used in the title of the legislative act and in the agreement itself;
- ◆ **The Commission**, or Commission of the European Communities; these designations are used in legal texts, although the Commission itself uses the designation “European Commission”;
- ◆ **The Court of Justice of the European Communities**; in addition to the Court of Justice there is the Court of First Instance and the European Union Civil Service Tribunal;
- ◆ **The Court of Auditors**, or Court of Auditors of the European Communities.

The **European Council** is a separate institution from the Council of the European Union. It is a body of the European Union which, under Article 4 of the EU Treaty, denotes the regular meetings of the heads of state and government of the Member States and the President of the European Commission in which policy guidelines are laid down for the European Union.

Treaty of Lisbon

*The designations of the **EU institutions** are as follows:*

- ◆ **The European Parliament;**
- ◆ **The European Council**, comprising the heads of state and government of the Member States, the President of the European Commission and the President of the European Council itself; it sets general policy objectives and priorities;

- ◆ **The Council**, comprising one representative from each Member State at ministerial level;
- ◆ **The Commission**, or *European Commission*;
- ◆ **The Court of Justice of the European Union**, comprising the Court of Justice, the General Court (the former addition “of first instance” has been dropped) and specialized courts;
- ◆ **The Court of Auditors**.

271 Where legislation makes general reference to the **legislative acts of the institutions of the European Communities** or to the founding treaties (margin no. 266), the following may be used, depending on the purpose of the planned regulation:

- ◆ “the law of the European Community” or “the law of the European Atomic Energy Community”,
- ◆ “legislation enacted by the European Community” or “legislation enacted by the European Atomic Energy Community”, or
- ◆ “the legislative acts of the European Community” or “the legislative acts of the European Atomic Energy Community”.

Where general reference is to be made to the legislative acts of both communities, the term “European Communities” may be used.

Where reference is made only to the **legislative acts of the second and third pillars**, this can be done using the phrase “the legislative acts of the European Union in the realm of the Common Foreign and Security Policy” or “the legislative acts of the European Union in the realm of police and judicial cooperation”. The phrase “**European Union law**” or “**legislative acts of the European Union**” should be used where reference is made both to the CFSP and to police and judicial cooperation in criminal matters. It can also be used to refer in sum to European Community law **and** legislation in the realms of the second and third pillars of the European Union.

Treaty of Lisbon

*Once the Treaty of Lisbon comes into force the phrases “**European Union law**” and “**legislative acts of the European Union**” will be used. The previous distinction based on the three-pillar structure will be dropped.*

272 The Agreement of 2 May 1992 (Federal Law Gazette 1993 II p. 266) also established a uniform European Economic Area, and is generally referred to as the “EEA Agreement”. The

designation “**Agreement on the European Economic Area**” is used in legal texts. Where other Contracting States of the EEA Agreement are to be included in addition to the Member States of the European Union, reference is to be made to “**the Member States of the European Union and the other States Party to the Agreement on the European Economic Area**”.

5.2 Citing European Union law

- 273 European Union law is always cited according to conventions established at European level. This applies to the treaties, the legislative acts of the European Communities, as well as to the legislative acts in regard to the third pillar of the European Union. The **Common Guidelines for the Quality of Drafting Community Legislation**,²⁷ on which the European Parliament, the Council of the European Union and the Commission of the European Communities reached agreement, and the Joint Practical Guide of the European Parliament, the Council and the Commission for persons involved in the drafting of legislation within the Community institutions²⁸ (extract included in [Annex 4](#)) must be observed.
- 274 As well as European treaties, **regulations** and **directives** of the European Communities and **framework decisions** and **decisions** of the European Union taken in the context of the third pillar are also often cited in legal practice. Fixed rules have evolved regarding the titles of these legislative acts.

Treaty of Lisbon

*A new system of regulatory instruments has been established in the European Union (Article 288 paragraph 1 of the TFEU). The **legislative acts of the European Union** are designated as follows:*

- ◆ *Regulation*
- ◆ *Directive*
- ◆ *Decision*
- ◆ *Recommendation*
- ◆ *Opinion*

Where the method of citation has not been specified precisely by the European Union, citations must follow the previous patterns.

²⁷ Interinstitutional Agreement of the European Parliament, the Council of the European Union and the Commission of the European Communities of 22 December 1998 (OJ C 73, 17.3.1999, p. 1)

²⁸ The revised version (now entitled “Joint Practical Guide of the European Parliament, the Council and the Commission for persons involved in the drafting of European Union legislation”) is retrievable at: <http://eur-lex.europa.eu/content/pdf/techleg/joint-practical-guide-2013-en.pdf>

275 Where reference is made in a law or statutory instrument to a legislative act of the European Communities or of the European Union, the full designation (**full citation**) must be used.

276 The **title of a regulation** of the European Communities²⁹ follows this sequence in German:*

- ◆ The designation “*Verordnung*” (Regulation),
- ◆ The abbreviated designation of the enacting community in brackets (*EG, EAG*),³⁰
- ◆ The official serial number, comprising the abbreviation “*Nr.*”, the serial number, a slash and the year of enactment,
- ◆ The enacting institution(s),
- ◆ The date of adoption,
- ◆ The designation of the subject matter of the regulation, and
- ◆ The OJ reference (margin no. 177).

German example³¹

Verordnung (EG) Nr. 490/2007 der Kommission vom 3. Mai 2007 zur Festlegung pauschaler Einfuhrwerte für die Bestimmung der im Sektor Obst und Gemüse geltenden Einfuhrpreise (ABl. L 116 vom 4.5.2007, S. 1)

277 The **title of a directive** of the European Communities³² follows this sequence in German:#

- ◆ The designation “*Richtlinie*” (Directive),
- ◆ The official serial number, comprising the year of enactment, the serial number and the abbreviated designation of the enacting community (*EG, EAG*),³³
- ◆ The enacting institution(s),
- ◆ The date of adoption,
- ◆ The designation of the subject matter of the directive, and
- ◆ The OJ reference (margin no. 177).

German example³⁴

Richtlinie 2004/81/EG des Rates vom 29. April 2004 über die Erteilung von Aufenthaltstiteln für Drittstaatsangehörige, die Opfer des Menschenhandels sind oder denen Beihilfe zur illegalen

²⁹ Treaty of Lisbon: regulation of the European Union

* Conventions may be different in other languages. In English, for example, the name of the enacting institution precedes the designation “Regulation” when only one institution is involved.

³⁰ Treaty of Lisbon: EU

³¹ Treaty of Lisbon: Examples of how regulations of the European Union are to be cited are not yet available.

³² Treaty of Lisbon: directive of the European Union

Conventions may be different in other languages. In English, for example, the name of the enacting institution precedes the designation “Directive” when only institution is involved.

³³ Treaty of Lisbon: EU

³⁴ Treaty of Lisbon: Examples of how directives of the European Union are to be cited are not yet available.

Einwanderung geleistet wurde und die mit den zuständigen Behörden kooperieren (ABl. L 261 vom 6.8.2004, S. 19)

278 The **title of a framework decision** or of a **decision** of the European Union³⁵ follows this sequence in German:[#]

- ◆ The designation “*Rahmenbeschluss*” (Framework Decision) or “*Beschluss*” (Decision),
- ◆ The official serial number, comprising the year of enactment, the serial number and the abbreviated designation of the enacting institution,
- ◆ The enacting institution(s),
- ◆ The date of adoption,
- ◆ The designation of the subject matter of the framework decision or of the decision, and
- ◆ The OJ reference (margin no. 177).

German example³⁶

Rahmenbeschluss 2006/960/JI des Rates vom 18. Dezember 2006 über die Vereinfachung des Austauschs von Informationen und Erkenntnissen zwischen den Strafverfolgungsbehörden der Mitgliedsstaaten der Europäischen Union (ABl. L 386 vom 29.12.2006, S. 89)

279 Additional information must be included in the publication reference in line with the rules on citing federal law if the last official text of a regulation, directive, framework decision or decision has been corrected (margin no. 187). The **reference to a correction** should only cite the issue number of the Official Journal (OJ) of the European Union and the page number. If the correction was published in another year of the Official Journal, this must also be noted.

German example³⁷

Richtlinie 2006/88/EG des Rates vom 24. Oktober 2006 mit Gesundheits- und Hygienevorschriften für Tiere in Aquakultur und Aquakulturerzeugnisse und zur Verhütung und Bekämpfung bestimmter Wassertierkrankheiten (ABl. L 328 vom 24.11.2006, S. 14, L 140 vom 1.6.2007, S. 59)

280 As when citing federal law, the full citation of a legislative act of the European Union includes a **reference to any amendments made to the text**. Where a legislative act has been

³⁵ Treaty of Lisbon: decision of the European Union within the meaning of Article 288 paragraph 1 of the TFEU

[#] Conventions may be different in other languages. In English, for example, the name of the enacting institution precedes the designation “Framework Decision” when only one institution is involved.

³⁶ Treaty of Lisbon: Examples of decisions within the meaning of Article 288 paragraph 1 of the TFEU are not yet available.

³⁷ Treaty of Lisbon: Examples of references to a corrigendum relating to future legislative acts of the European Union are not yet available.

amended several times, reference is made only to the last amendment. The reference to an amendment only designates the amending legislative act, its serial number and OJ reference.

German example³⁸

Verordnung (EWG) Nr. 2913/92 des Rates vom 12. Oktober 1992 zur Festlegung des Zollkodex der Gemeinschaften (ABl. L 302 vom 19.10.1992, S. 1), die zuletzt durch die Verordnung (EG) 1791/2006 (ABl. L 363 vom 20.12.2006, S. 1) geändert worden ist.

- 281 Where repeated reference needs to be made to a legislative act of the European Union, it is sufficient to use the full citation the first time it is mentioned in the legislative text. Thereafter, the **abbreviated citation** may be used **instead of the full citation**, i.e. comprising only the type of legislative act and the reference number (margin nos 240, 243, 248).

German examples³⁹

in margin no. 276: Verordnung (EG) Nr. 490/2007

in margin no. 277: Richtlinie 2004/81/EG

in margin no. 278: Rahmenbeschluss 2006/960/JI

- 282 A number of particularities arise when citing **individual provisions** of European Union law because the subdivisions of legal provisions differ from those used under German law. These subdivisions must be adopted as they stand.

- 283 As well as subdividing articles into paragraphs, numbers and letters, European Union law also contains subparagraphs, points and indents ([Annex 4](#)).

Examples⁴⁰

Article 23 paragraph 2 point (c) of Regulation (EC) No 1774/2002 ...

Article 4 paragraph 1 first indent of Regulation (EC) No 2580/2001 ...

5.3 Adapting federal law to European Union law

- 284 Legislative acts of the European Union are increasingly giving rise to legislative activities of the German Federal Government. Each piece of legislation occasioned by European Union

³⁸ Treaty of Lisbon: Examples of references to amendments relating to future legislative acts of the European Union are not yet available.

³⁹ Treaty of Lisbon: Examples of abbreviated citations of future legislative acts of the European Union are not yet available.

⁴⁰ Treaty of Lisbon: Examples of how to cite subdivisions of future legislative acts of the European Union are not yet available.

law must be measured against the requirements made of the respective legislative act, as well as of the remainder of European Union law. That is why German legislation must be examined in regard to whether it contains any gaps or contradictions as regards European requirements and, where necessary, it must be adapted. Section 43 (1) no. 8 GGO* requires that the explanatory memorandum of a bill sets out whether and if so which **links there are to European Union law** and that the draft, if it contains such links, is compatible with European Union law.

Treaty of Lisbon

A bill must be compatible with the Charter of Fundamental Rights. This must be explained in the explanatory memorandum where such links exist.

5.3.1 Implementing arrangements in conformity with European Union law relating to regulations of the European Communities⁴¹

- 285 Regulations have **direct application**, i.e. there is no need for any domestic implementing acts or special notification under domestic law.
- 286 Nevertheless, it may be necessary to issue **additional provisions of domestic legislation** to implement a regulation. The Member States are obligated to take suitable domestic measures to guarantee the unrestricted application of a regulation. Some regulations explicitly authorize the Member States to enact additional provisions to implement the regulation.
- 287 Where implementation of a regulation is the sole regulatory purpose of the draft, this may already be explicitly expressed in the **title** by means of its **designation**: Because the designation of the regulation to be named is often very long, it may make sense to come up with a content-related short title.

Example

Title: Regulation Implementing Regulation (EEC) No 1349/72 of the Council of the European Communities on the production and marketing of eggs for hatching and of farmyard poultry

Short title: Hatching Eggs Marking Regulation

* Joint Rules of Procedure of the Federal Ministries

⁴¹ Treaty of Lisbon: regulations of the European Union

- 288 Implementing provisions may not impair the direct effect of a regulation. They must thus be framed so that they **do not change the purpose or effect of the regulation**.
- 289 It is **not permissible to render the directly applicable provisions included in the regulation** in provisions of domestic legislation. This would create confusion concerning copyright and priority.
- 290 Implementing provisions often need to contain **criminal or administrative fines provisions** relating to regulations. The Recommendations on Framing Criminal and Administrative Fines Provisions (margin no. 43) contain further information about and examples of sanctioning breaches of duty by means of a statutory instrument.

5.3.2 Implementing directives of the European Communities⁴² and framework decisions of the European Union⁴³ in conformity with European Union law

- 291 In contrast to regulations, which have direct application in all Member States of the European Union, the **Member States** generally have to **implement** (transpose) directives **into domestic law**. Directives are binding on the Member States they address as regards the objective to be achieved, although they leave it to the relevant domestic authorities to choose the form and methods for achieving that objective.
- 292 The ministry with overall responsibility is responsible for the **timely implementation** of legislative acts and other decisions of the European Union which are binding on the Member States (section 75 (1) GGO*). The general rules regarding the preparation of laws and statutory instruments apply to that implementation (section 75 (2) GGO*).
- 293 When it comes to implementing provisions under federal law, it must be ensured that
- ◆ the principle of the **distribution of powers** between the federal and *Land* legislatures is observed;
 - ◆ only laws and statutory instruments are chosen since the law set out in the directive must be transposed into **generally binding legal norms** (general administrative provisions can at most be used as an adjunct to implementation);
 - ◆ the legislature restricts itself to those regulations which are actually **necessary**.

⁴² Treaty of Lisbon: directive of the European Union

⁴³ Treaty of Lisbon: Framework decisions no longer constitute legislative acts.

* Joint Rules of Procedure of the Federal Ministries

- 294 When **examining the need to implement** content it must be borne in mind that directives often use terminology and regulatory techniques which are alien to German federal law. When transposing directives it is thus not sufficient to merely declare the wording of their provisions binding. The most important work will involve writing legislation which conforms to the directive and **fits perfectly** into the German legal system.
- 295 In order to establish whether a directive needs to be implemented, existing federal legislation will need to be **compared** to the requirements laid down in the directive. It may be necessary to introduce provisions in an area covered by the directive in which legal provisions already exist under federal law or when a provision in a directive is not entirely covered by provisions under federal law.
- 296 When determining whether a directive needs to be implemented it can be useful to **ask the following questions**:
- ◆ What is the directive's material scope? Remember to include the recitals.
 - ◆ Which provisions need to be further elaborated and which do not permit any leeway as regards transposition?
 - ◆ Which legal areas of German law are affected?
 - ◆ Are there already any federal provisions which address the subject matter of the directive in these legal areas?
 - Which legal provisions correspond fully to the directive?
 - Which legal provisions are broader than those in the directive?
 - Which legal provisions are more restrictive than those in the directive?
 - ◆ Is it imperative to make changes in line with the requirements laid down in the directive?
 - Do any legal provisions need to be repealed?
 - Is it sufficient to amend existing legal provisions?
 - Do any new legal provisions need to be created?
 - ◆ If new regulations need to be created:
 - Can transposition be conflated in one new principal act or in one new principal statutory instrument?
 - Do any additions need to be made to existing legislation?
 - ◆ Do the amendments have any effect on other legislation?
- 297 Where **doubts arise as to how to interpret** individual phrases in a directive when examining the need for its transposition, it is recommended that other versions published in the Official Journal be consulted to ascertain the legislature's will. This also applies where

the German translation of the directive contains legally significant phrases which are usually phrased differently under German law.

298 Where special regulations need to be enacted to implement the directive, the **following options are available**:

- ◆ Separate provisions in federal law (margin no. 299), or
- ◆ Literal implementation of individual provisions in the directive (margin no. 300), or
- ◆ A reference to the individual provisions in the directive (margin no. 301).

It is only possible to assess which option is appropriate in reference to the directive in question. The chosen option must be suitable for achieving the binding objective set out in the directive and for fulfilling the principle of clarity and definiteness.

299 When implementing a directive by means of **separate legislation**, close attention must be paid to ensuring that the directive is fully transposed, that only those provisions which are necessary are actually created, that they are easy to understand and fit smoothly into the existing legal system.

300 **Literal implementation** of individual provisions is only an option if the respective regulations have been sufficiently defined in the directive and they are easy to understand. Before literally transposing provisions and legal terms from directives it must be carefully examined whether and how they fit into applicable German law. The following must be borne in mind:

- ◆ Where a directive uses terms which are also in common usage in German legislation, it is only possible to transpose them without any problems arising if those terms also cover the same content.
- ◆ A broad term applied in European Union law may not be transposed by means of an identical but more restrictive German term.

301 Implementation by means of a **reference** is only possible where the directive has been sufficiently defined and is easy to understand and its subject matter has not yet been otherwise regulated under German law. Usually reference will merely be made to individual provisions in a directive. The advantages and disadvantages of referencing (margin nos 225 et seq.) must be carefully weighed up when making reference to provisions in directives in order to examine whether the addressees can easily understand the referenced provisions when they are read either separately or together with German legal provisions.

302 The above explanations apply accordingly to the implementation of **framework decisions of the European Union** in the realm of the third pillar. They do not have direct effect and are binding on the Member States only as regards their objective. Domestic legal and administrative provisions must be adapted as effectively as possible to the objective, although the Member States are free to choose the form and methods for achieving that objective.

Treaty of Lisbon

*The legal form of the “framework decision” no longer exists. Because the three-pillar structure has been dropped, European Union legislative acts whose objectives alone are binding are enacted in the form of a **directive**. A distinction must be drawn to “**decisions**” of the European Union within the meaning of Article 288 paragraph 4 of the TFEU, all of whose parts are binding but which must be transposed (margin nos 303 et seqq.).*

5.3.3 Implementing decisions of the European Union in conformity with European Union law (Article 34 paragraph 2 point (c) of the EU Treaty)⁴⁴

303 All the parts of the decisions of the European Union are **binding**. Where they address Member States they will generally need to be **implemented** (transposed) in domestic law. The specific content of each respective decision is authoritative. In contrast to directives, decisions not only contain objectives. They do not grant any leeway when it comes to implementation.

304 The federal ministry with overall responsibility is responsible for the **timely implementation** of the decisions of the European Union which are binding on the Member States (section 75 (1) GGO*). The general rules on preparing laws and statutory instruments apply to that implementation (section 75 (2) GGO*). Attention must be paid to complying with the division of powers between the federal and *Land* legislatures when it comes to implementing legal provisions in federal law.

305 **New statutory provisions need to be created** where the provisions in the decision are not yet fully covered by federal statutory provisions.

306 Where **doubts arise as to how to interpret** individual phrases in the decision when examining the need for implementation, other versions of the decision published in the

⁴⁴ Treaty of Lisbon: decisions within the meaning of Article 288 paragraph 4 of the TFEU

* Joint Rules of Procedure of the Federal Ministries

Official Journal should be consulted to determine the European legislature's will. This also applies where the German translation of the decision contains legally significant phrases which are normally framed differently under German law.

307 The domestic statutory provisions which need to be created must fully implement the binding content of the decision of the European Union and must also fulfil the requirements of definiteness and clarity of legislation. Where the decision in question does not contain any specific provisions, the **following options** are available for implementing decisions of the European Union:

- ◆ Separate provisions in federal law (margin no. 299), or
- ◆ Literal implementation of individual provisions in the decision (margin no. 300), or
- ◆ A reference to the individual provisions in the decision (margin no. 301).

Before literally implementing the decision's provisions and legal terminology it must be carefully examined whether and how they fit into applicable German law. The following must be borne in mind:

- ◆ Where a directive uses terms which are also in common usage in German legislation, it is only possible to transpose them without any problems arising if those terms also cover the same content.
- ◆ A broad term applied in European Union law may not be implemented by means of an identical yet more restrictive German term.

5.4 Citation requirements under European Union law

5.4.1 Citation requirement when implementing directives of the European Communities⁴⁵

308 In accordance with a general agreement reached between the Council and the European Commission, when implementing (transposing) directives the Member States must make reference in the implementing provisions to the directive. This **citation requirement** is always included in the concluding provisions of the directive. The reference to the directive to be implemented contains valuable information. Firstly, readers learn which source of European Union law needs to be consulted in addition; secondly, the reference identifies the domestic provisions in such a manner that it can be ascertained to what extent federal law is influenced by directives of the European Communities. A few rules need to be observed for the reference to fulfil both these purposes.

⁴⁵ Treaty of Lisbon: directives of the European Union

309 Reference to the directive to be implemented is made by means of a **full citation**, i.e. including the OJ reference and citing the last amendment. The citation requirement may be complied with in various ways and in various places when implementing directives in domestic law.

310 The most common way of doing this is by means of a reference in a **footnote** to the title of the law or statutory instrument, which is phrased as follows:

This Act/Ordinance serves to implement Council Directive .../.../... of ... on ... (OJ L ..., ..., p. ...).⁴⁶

Where **delimitable, separate parts** of the law or statutory instrument refer to the directive, for instance a section in a statutory instrument or an article in an omnibus act, the footnote should be rendered more precisely and added to the respective section or article heading:

Section/Article ... of this Ordinance/Act serves to implement Council Directive .../.../... of ... on ... (OJ L ..., ..., p. ...).⁴⁷

Where **several directives** are being implemented, they must all be cited as precisely as possible in the footnote:

Section X of this Act serves to implement Directive ... and section Y serves to implement Directive ...⁴⁸

Separate footnotes can also be included at the relevant place in the law or statutory instrument.

311 **The footnote does not have legal force**, since it merely provides information upon promulgation. It should nevertheless already be included in the draft law or statutory instrument in order to draw attention to the links to the relevant directive during parliamentary consultations. The office with overall responsibility can still make changes or additions to this information in the course of preparing promulgation.

⁴⁶ Treaty of Lisbon: Examples of how to cite future legislative acts of the European Union in footnotes to the title of the implementing legislation are not yet available.

⁴⁷ Treaty of Lisbon: Examples of how to cite future legislative acts of the European Union in footnotes to individual provisions in the implementing legislation are not yet available.

⁴⁸ Treaty of Lisbon: Examples of how to cite future legislative acts of the European Union in footnotes in the implementing legislation are not yet available.

Where a reference to a directive has been promulgated incorrectly or information is missing, the reference must be corrected or an addition made by means of **correction** in accordance with section 61 (3), second sentence, GGO;* where a reference has been omitted the same procedure can be used to add it in.

- 312 The directive can also be referred to in the **title** of a law or statutory instrument to fulfil the citation requirement. This makes sense where implementation of the directive is the sole regulatory content of a principal act or principal statutory instrument. Since full citation, which generally includes the publication reference, would make the title long and difficult to read, a supplementary footnote should be used to indicate the directive's publication reference in the Official Journal of the European Union (OJ reference), unless the directive is cited in full in the text of the law or statutory instrument.

Example

Ordinance to implement Council Directive 80/68/EEC of 17 December 1979 on the protection of groundwater against pollution caused by certain dangerous substances (Groundwater Ordinance)*

* (OJ L 20, 26.1.1980, p. 43)

The title **cannot** include the reference if a law or statutory instrument needs to be used to implement **several directives**. The title would then be too long and would contain too much information if the full citations of several directives were included. This cannot be remedied by including a summary description of several directives in the title, because the citation requirement would then not be fulfilled.

- 313 Another possible option would be to refer to the implementation of the directive in the **text** of individual provisions. At least at first mention, the full citation of the directive must be used in accordance with margin no. 277.
- 314 The citation requirement must also be complied with when giving notice of **revised versions** of a law or statutory instrument (margin no. 882). Where the citation requirement has been fulfilled by including a reference in a footnote when promulgating a law or a statutory instrument, the revised version must also be notified with a reference in a footnote to implementation of the directive. Because the law or statutory instrument will in future only be

* Joint Rules of Procedure of the Federal Ministries

cited using the notice of publication reference, the reference to all the implemented directives should be included there.

The same applies accordingly where applicable domestic provisions already comply with a directive adopted at a later point in time. Since in such cases it is not necessary to transpose the directive by means of a legislative act, the citation requirement can be fulfilled when this law or statutory instrument is re-published. The reference is phrased in the same way as for the promulgation (margin no. 309 et seq.).

5.4.2 Reference to implementation of framework decisions and decisions of the European Union

315 Framework decisions and decisions of the European Union also generally need to be implemented (transposed) in domestic law. There is, however, no citation requirement. Nevertheless, there is a **requirement that certain information needs to be included as well as a labelling requirement** similar to that which applies for directives. In order to indicate the links to European Union law, in the case of legislation which serves to implement framework decisions and decisions, the relevant information should be included in accordance with margin nos 310 et seqq.

Here, too, the preferred option is a **footnote**, since the designations of the legislative acts of the European Communities and the legislative acts in the realm of the third pillar of the European Union are often very long and are therefore hardly suitable for use in the **title**. A subject matter-related designation should therefore be chosen for the law or statutory instrument; a short title can also be created on that basis. It is acceptable for a short title to generally only partially reflect the reference to European Union law if the footnote refers to the decision to be implemented in the full citation.

Treaty of Lisbon

*The designation “framework decision” no longer exists. Due to the abolition of the three-pillar structure, legislative acts of the European Union whose objective alone is binding are to be enacted in the form of a directive. A distinction is drawn to **decisions of the European Union** within the meaning of Article 288 paragraph 4 of the TFEU, all of whose parts are binding; the recommendations concerning references to implementation apply accordingly.*

5.4.3 Reference to compliance with the procedure pursuant to the Notification Directive

316 Where a draft law or statutory instrument contains **technical provisions or provisions for information society services**, the provisions of Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations (OJ L 204, 21.7.1998, p. 37), as last amended by Directive 2006/96/EC of 20 November 2006 (OJ L 363, 20.12.2006, p. 81) (Notification Directive), must be complied with.

In accordance with Article 8 of Directive 98/34/EC, the Member States of the European Union are obligated to communicate to the European Commission any draft technical regulation and draft provisions for information society services.⁴⁹ The Member States may adopt the legal provision only after expiry of the time limits set out in Article 9 of Directive 98/34/EC. Any breach of the duties of notification set out in Articles 8 and 9 of Directive 98/34/EC leads to the **inapplicability of the provisions in question**.

317 Compliance with Directive 98/34/EC must be ensured when enacting technical standards and regulations. This **reference** is made by means of the following **footnote** upon official publication:

The obligations set out in Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations and of rules on Information Society services (OJ L 204, 21.7.1998, p. 37), as last amended by Directive 2006/96/EC of 20 November 2006 (OJ L 363, 20.12.2006, p. 81), have been complied with.

In contrast to the footnote included when implementing directives, this footnote will not be changed until such time as the Notification Directive is amended.

318 The recommendations made in regard to footnotes added when implementing the general citation requirement (see margin nos 308 et seqq.) apply accordingly as regards **where to place** the footnote and the relevant procedure. The reference to Directive 98/34/EC should already be included in the **draft** law or statutory instrument. That way attention can be drawn during consultations on the draft to the obligations under the directive. In particular, the reference serves as a reminder that the European Commission must be given the

⁴⁹ Please refer to the EU Manual published by the Federal Ministry of Finance for information about this procedure.

opportunity to conduct the necessary review before the technical provisions are adopted. These time periods must also be borne in mind when writing the provision on entry into force.

Reference to the Notification Directive is made neither in the title of laws and statutory instruments nor in the individual provisions themselves, since the information does not make it easier to understand the law or statutory instrument. It only expresses the fact that the legal provisions comply with the procedure set out in the Notification Directive and indicates that the domestic legislation is one which has a special relation to European Union law.

- 319 Once they have been added to legislation, references to the notification **do not need to be adapted** when the Notification Directive is subsequently amended. Thus, references to the precursor to Directive 98/34/EC (i.e. Directive 83/189/EEC) which have already been promulgated do not change. The same applies when this legislation is re-published. Only when legislation is amended after the entry into force of Directive 98/34/EC or its amendments are amended will reference need to be made to the current version of the Notification Directive when amendments are made.

Part C

Principal acts

1386 Federal Law Gazette 2007 I No. 31, published in Bonn on 19 July 2007

Date of promulgation

**Act
Establishing the German Ethics Council
(Ethics Council Act, EthRG)**

Title =
Long title
(short title,
abbreviation)

of 16 July 2007

Date of signature

The Bundestag has adopted the following Act:

Enacting clause

**Section 1
Establishment of the German Ethics Council**

An independent council of experts shall be formed, bearing the name German Ethics Council.

Individual provision

**Section 2
Duties**

Section heading

(1) The German Ethics Council shall pursue the questions of ethics, society, science, medicine and law that arise and the probable consequences for the individual and society that result in connection with research and development, in particular in the field of the life sciences and their application to humanity. Its duties shall include but not be limited to the following:

1. informing the public and encouraging discussion in society, engaging the various social groups;

...

**Section 11
Entry into force**

This Act shall enter into force on 1 August 2007.

Provision on period of
validity (here:
entry into force)

The constitutional rights of the Bundesrat have been observed.

Closing formula

The above Act is hereby signed into law. It shall be promulgated in the Federal Law Gazette.

Signed at Berlin on 16 July 2007

Date of signature

The Federal President
Horst Köhler

Signatories

The Federal Chancellor
Dr Angela Merkel

The Federal Minister of
Education and Research
Annette Schavan

The Federal Minister of Justice
Brigitte Zypries

The Federal Minister of Health
Ulla Schmidt

[The above original example has been adapted in line with the rules set out in this Manual.]

Part C: Principal acts

320 Our complex system of legislation needs to be continually adapted to new developments either by amending or reorganizing existing regulations or creating entirely new ones. It is often not easy to decide when a number of regulations need to be combined to create a separate legislative instrument. As a simple rule of thumb one can say that it always makes sense to regulate a subject matter by creating a new principal act (*Stammgesetz*) if there is a sufficiently close link between the planned legal provisions, if they can be meaningfully delimited from matters which have already been regulated elsewhere, or if they are of special public interest. If regulations which have already been enacted elsewhere are not to be included in the new principal act, then it needs to be examined whether they need to be adapted or repealed.

1 Title

1.1 Importance and constituent parts

321 Each principal act needs a title. It is part of the official text of the law. Writing the title is generally the last step in the legislative process, because the title is dependent on the **content** of the law. Only a working title is used up until that point. If the content changes, the working title will have to be reviewed. The title (plus the enacting clause) is also debated during the bill's second reading in the German Bundestag and is not adopted until the text of the law has been set down (Rule 81 (2), first sentence, of the Rules of Procedure of the German Bundestag⁵⁰).

322 The title comprises the **long title**, the **short title** and an **abbreviation**. The long title is mandatory; a short title and abbreviation are added in line with the recommendations set out in the following.

323 A distinction is drawn between the title and **citation title**. The citation title indicates the subject matter of the law and should be short enough to ensure that any provision in which the law is cited is still easy to read. Where it is possible to come up with a pertinent designation, it is not necessary to find a short title, and this designation becomes the citation title.

⁵⁰ Rules of Procedure of the German Bundestag (*Geschäftsordnung des Bundestages*, GOBT) as published on 2 July 1980 (Federal Law Gazette I p. 1237), as last amended by publication of 26 September 2006 (Federal Law Gazette I p. 2210). The current German and English versions of the Rules of Procedure of the German Bundestag are retrievable at: www.bundestag.de.

1.2 Long title

- 324 The long title provides information about the rank and content of the law. In particular, it serves to make it easier to locate the law, to delimit it from other laws and to cite it (margin no. 173).
- 325 The long title must include the word “Act” to indicate the **rank** of the legislative instrument. The rank needs to be indicated in order to delimit this type of legislation from subordinate legislation (also called delegated or secondary legislation), for example statutory instruments.
- 326 The rank can include part of the summary of the contents of the law. This is common practice in the case of implementing and introductory acts. Implementing acts can be issued in connection with international treaties and legislative acts of the European Union.

Example

Act to Implement the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property adopted on 14 November 1970 ...

Introductory acts (margin nos 756 et seqq.) are primarily enacted in connection with comprehensive codifications (e.g. the German Civil Code, the Criminal Code, the Courts Constitution Act); they contain transitional rules (margin nos 412 et seqq.).

- 327 The term indicating the rank of the legislation (“Act”) is generally the first word of the long title. It may also be placed at the end of the long title if a word composition is chosen which is succinct enough to describe the content of the law by itself.

Examples

Act on Protection against Aircraft Noise
Federal Civil Service Act

- 328 The specification of the rank is followed by a brief **summary of the content** of the law. The word “concerning” should be avoided. Depending on the subject matter, “on” or “against” may be used.

When summarizing the content, care should be taken to choose meaningful terms which indicate the subject matter covered in the law and make it easier to locate the principal act. Keywords will suffice.

Examples

Act on the Environmental Compatibility of Detergents and Cleaning Agents
Introductory Act to the Courts Constitution Act
Act to Implement the Single Payment Scheme

Where new subject matters are being regulated, it may make sense to use a more detailed description, especially when no short title (margin nos 331 et seqq.) has yet been created.

Example

Act to Implement the Decision of the German Bundestag of 21 June 1991 on Completing German Unity

However, no attempt should be made to repeat the key content of the law in the title, since that will make it extremely difficult to cite the act.

Bad example

Act to Implement the Convention based on Article K.3 of the Treaty on the European Union on the Use of Information Technology for Customs Purposes adopted on 26 July 1995, on the Protocol pursuant to Article 34 of the Treaty on the European Union to Amend the Convention on the Use of Information Technology for Customs Purposes Regarding the Establishment of a Files Identification Database for Customs Purposes signed on 8 May 2003 and on Council Regulation (EC) No 515/97 of 13 March 1997 on Mutual Assistance between the Administrative Authorities of the Member States and Cooperation between the Latter and the Commission to Ensure the Correct Application of the Law on Customs and Agricultural Matters

- 329 Text in parentheses containing explanations or describing key terms in a particular legal field should be avoided in the long title. Such **additions** also make it more difficult to cite the law. Parentheses in the title should be reserved for the short title and abbreviations.

Bad example

Act to Implement the Judgment of the Federal Constitutional Court of 3 March 2004 (audio surveillance of residential premises)

- 330 If the principal act relates to European Union law, this may be indicated in the title (margin no. 312).

1.3 Short title

331 The long title is often too long to be suitable for use as the citation title. In such cases it will be necessary to come up with a short title which makes citation easier. The short title is included in **parentheses**.

Example

Act on the Rehabilitation and Compensation of Victims of Prosecution Methods Contrary to the Rule of Law in the Acceding Territory (Criminal Rehabilitation Act, ...)

332 Once a short title has been defined, it becomes the citation title (no. 1, third sentence, in Annex 6 to section 42 (2) GGO*).

333 The short title is a compound noun comprising one key term, or sometimes several key terms, and the rank of the legislation.

334 Using a **word composition** (margin no. 77) as the short title is unproblematic. Even a long word composition (within reason) hardly interrupts the flow of reading. When used as the citation title (margin no. 332) it is seen as an identifying sign for the legislation and is therefore readily understood.

Example

Act on the Use of Administrative Data for the Purpose of Economic Statistics (Administrative Data Use Act, ...)

335 The **key terms** used in the short title should be taken from the long title itself. They should be carefully chosen. Where, for instance, words or endings used in the long title are left out, this could make the short title vague and contracted, although this can sometimes be more acceptable than other word compositions (margin no. 77).

Example

Act on the Level Crossings of Railways and Roads (Railway Level Crossings Act, ...)

336 Short titles may, in exceptional cases, be formed not by repeating key terms in the long title itself but by summarizing the content of the law by means of another **keyword**. This makes sense where a more detailed long title has been chosen when regulating new subject

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matters. However, the disadvantage of this approach is that the link between the long title and the short title is no longer readily recognizable.

Example

Act on Protection against Threats to the Security of the Federal Republic of Germany Through the Dissemination of High-Quality **Remote Sensing Data** (**Satellite Data** Security Act, ...)

Bad example

Act on German Real Estate Stock Corporations with Listed Shares (**REIT** Act, ...)

337 The **rank** is **always** quoted **at the end** of the short title.

Examples

Information Dissemination Act

Federal Judicial Election Act

The word “Act” (*Gesetz*) is used to designate the **rank** of a law. “Code” (*Gesetzbuch*) should only be used for more comprehensive codifications, such as the Commercial Code, the Building Code or an Environmental Code.

338 The word **Ordnung** is no longer used in German to indicate the rank of new legislation, because it is not unequivocally apparent whether the text is a law or a statutory instrument.

339 A text may be designated as a **“Federal Act”** (*Bundesgesetz*) if it needs to be distinguished from *Land* legislation (*Landesgesetz*). This presupposes that at least one *Land* has already enacted a principal act with an identical citation title. However, the *Länder* generally already designate their laws as *Land* legislation.

Example

Federal Immission Control Act

The addition “Federal” may also be made where the tasks, structure, procedures etc. of a federal body are being regulated and these could be confused with those of a *Land* government. In many cases, however, “Federal” is already part of an institution’s proper name (e.g. Federal Central Criminal Register, Federal Archive).

- 340 The title of a principal act does not include a **year**. There are only two exceptions to this rule:
- ◆ First, the year may be included in the title of a law if it regulates **measures of a recurring nature which are limited as to time**. This applies, for example, to statistical surveys (e.g. Microcensus Act 2005). What is special about these laws is that their provisions are executed as soon as they have been fully implemented, but similar regulations need to be enacted again and again (cf. margin no. 481).
 - ◆ Second, the year may be a constituent part of the title of what is known as an **annual principal act** which regulates specific subject matters and legal consequences for a very specific calendar year, for example budget acts.

A distinction needs to be drawn to principal acts whose regulations are geared to a particular **fiscal year**, for instance tax laws. These are permanent laws which are amended only when the need to do so arises. Only then – and without quoting a year – is it clear at a glance that these are permanent regulations.

1.4 Abbreviation

- 341 An abbreviation comprising a sequence of letters needs to be chosen for each law. Just like the long title, the abbreviation above all serves to make it easier to locate the law. It therefore has to be **distinctive** and must differ from the abbreviations of all the other principal acts which are applicable at the same time. The abbreviation should not be changed whilst the principal act exists.
- 342 The abbreviation is part of the title. However, it is used neither in the full citation nor in the body of the text, at most in tables or outlines. The abbreviation is of particular relevance for database searches, is used in the specialist literature and aids communication in specialist circles or among those affected by the law in question.
- 343 The abbreviation is added to the long title in brackets.

German examples

Gesetz über Ordnungswidrigkeiten (OWiG)*

Umwandlungssteuergesetz (UmwStG)**

* Regulatory Offences Act

** Tax Conversion Act

344 Where a short title has been created along with the long title, the short title and the abbreviation are placed after the long title in brackets and separated by a dash in German.*

German examples

Gesetz zum Schutz vor gefährlichen Stoffen (Chemikaliengesetz – ChemG)[#]

Gesetz über die Haftung und Entschädigung für Ölverschmutzungsschäden durch Seeschiffe (Ölschadengesetz – ÖISG)^{##}

345 One important aspect when choosing an abbreviation is whether it can be used in the database of federal law kept by juris (margin no. 29). New official abbreviations should, therefore, be coordinated with the **Federal Office of Justice**, which is responsible for the automated documentation of federal law (margin nos 31, 645).

346 The abbreviation should bear **sufficient similarity** to the citation title. Where abbreviations are already being used for certain words in other legislation, the same abbreviations should be used. Where an abbreviation needs to be chosen for a new principal act, it should therefore be examined whether specific abbreviations are already common for the words which need to be abbreviated. If so, the same abbreviations should be used.

347 The abbreviation should comprise **individual letters** or **initials** of no more than one syllable. Abbreviations do not need to be pronounceable as a word. No spaces or special characters (e.g. hyphens) should be used.

348 The abbreviation includes the initial which designates the **rank** at the end. In German, the following are used:

- ◆ “G” for “*Gesetz*” (Act)
- ◆ “GB” for “*Gesetzbuch*” (Code)
- ◆ “EG” for “*Einführungsgesetz*” (Introductory Act)
- ◆ “AG” for “*Ausführungsgesetz*” (Implementing Act)
- ◆ “DG” for “*Durchführungsgesetz*” (Implementing Act).

* A different convention applies when German laws are cited in English translations or texts: An English equivalent of the long title is followed by the German short title (in italics) and an abbreviation set in brackets, separated by a comma.

[#] In an English translation the law would be cited as follows: “Act on Protection against Dangerous Substances (*Chemikalien Act*, ChemG)”

^{##} In an English translation the law would be cited as follows: “Act on Liability and Compensation for Damage Caused by Oil Pollution Through Seagoing Vessels (*Ölschadengesetz*, ÖISG)”

Placing these initials at the end of the abbreviation means the rank can be abbreviated in a readily comprehensible manner using at most two letters. The letter “G” used to indicate the rank of an act in German may also be used elsewhere in an abbreviation, although the reference will then be a different one (e.g. *Gerichtsverfassungsgesetz* – *GVG* [Courts Constitution Act], *Urlaubsgeldgesetz* – *UrlGG* [Vacation Bonus Act]).

2 Date of signature

349 The date of signature indicates the date on which the Federal President signed the act into law. In the Federal Law Gazette the date of signature is quoted underneath the title of the law. The bill already contains a line, below the title, which begins “of ...” (no. 2, third sentence, in Annex 6 to section 42 (2) GGO*).

3 Enacting clause

3.1 Significance and status

350 Each law must have an enacting clause (no. 2, first sentence, in Annex 6 to section 42 (2) GGO*). The enacting clause indicates who adopted the law. Further, it testifies to the fact that the law was enacted in line with the principles set out in the Basic Law. The enacting clause therefore contains the information that the German Bundestag adopted the act, possibly with a qualified majority, and, if the consent of the Bundesrat was necessary and was given, that the Bundesrat gave its consent.

351 The enacting clause is placed below the line reserved for the date of signature (no. 2, third sentence, in Annex 6 to section 42 (2) GGO*). It does not form part of the text of the law.

352 The enacting clause is included above the text of the **bill**. It thus provides the opportunity, in the course of the legislative process, to discuss whether the bill requires a specific majority or the consent of the Bundesrat.

353 The enacting clause must be **reviewed** each time amendments are made to the bill in the course of the legislative process, since changes to the content may establish or abolish the need for the Bundesrat to give its consent or the need for a specific majority in the Bundestag. It is, therefore, not possible to choose the correct enacting clause until the Bundestag and the Bundesrat have taken their final resolutions.

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3.2 Various forms

354 The following enacting clauses are used:

- ◆ For laws requiring neither a qualified majority nor the consent of the Bundesrat:
“The Bundestag has adopted the following Act:”
- ◆ For laws not requiring a qualified majority but requiring the consent of the Bundesrat:
“The Bundestag has adopted the following Act with the consent of the Bundesrat:”
- ◆ For laws requiring the majority of the Members of the Bundestag and the consent of the Bundesrat (Article 29 para. 7, second sentence, Article 87 para. 3, second sentence, read in conjunction with Article 121 of the Basic Law):
“The Bundestag has adopted the following Act by a majority of its members and the consent of the Bundesrat:”
- ◆ For laws which amend the Basic Law (Article 79 para. 1 of the Basic Law):
“The Bundestag has adopted the following Act with the consent of the Bundesrat; Article 79 paragraph 2 has been observed:”

Other phrases may also be chosen for laws which newly delimit the federal territory (Article 29 of the Basic Law). In the case of laws resulting from a state of defence, the aforementioned enacting clauses do not take account of the specific features of the legislative process in such cases and may therefore not be appropriate.

3.3 Consent of the Bundesrat

355 If it is deemed necessary for the Bundesrat to give its consent to the law, reference should be made thereto when transmitting the bill so that other offices can be involved (section 49 (2) GGO*). The correspondence accompanying the transmission should also state which **individual provision** is regarded as establishing the **need for the Bundesrat to give its consent** and for which objective reason it is deemed necessary that the provision establishing the need for the Bundesrat to give its consent be included in the law in the first place. However, the question of whether the Bundesrat needs to give its consent does not need to be set out in the explanatory memorandum; it only needs to be included in the cases referred to in Article 87 para. 3, second sentence, of the Basic Law and in the explanatory memorandum in ratifying legislation (section 43 (4) GGO*). Where doubts arise as to whether

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the law requires the consent of the Bundesrat, the Federal Ministry of the Interior and the Federal Ministry of Justice should be consulted (margin no. 51).

- 356 Where, contrary to the opinion of the Federal Government, the Bundesrat has assumed that it needs to give its consent to a law and it has explicitly given such consent, the ministry with overall responsibility for the law together with the Federal Ministry of the Interior and the Federal Ministry of Justice must **re-examine** the need for the Bundesrat to give its consent. Which of the aforementioned enacting clauses is added above the text of the law when it is countersigned by the Federal Chancellor will depend on the outcome of this review. Despite the explicit consent of the Bundesrat, the law is promulgated as not requiring the consent of the Bundesrat, i.e. without any reference to the consent of the Bundesrat in the enacting clause, if the review reveals that it contains no provision establishing the need for the Bundesrat to give its consent.
- 357 If the Bundestag proceeds on the assumption when taking its decision that the law does not require the consent of the Bundesrat, but the law does in fact require such consent and the Bundesrat has given its consent, the law must be promulgated as requiring the consent of the Bundesrat, i.e. the consent of the Bundesrat must be referred to in the enacting clause.

4 Table of contents

- 358 A relatively long principal act should include a table of contents to provide an overview and orientation to those applying the law. This most especially holds for laws containing further subdivisions beyond sections, for instance divisions, parts or chapters. In order to be able to draw up a table of contents each structural unit in the law must have a heading. The table of contents must render the law's entire structure down to sections as the smallest structural unit, as well as any annexes. It indicates how the law has been organized. The draft of the table of contents can throw up systematic weaknesses in the law and thus assist in making the relevant corrections. A table of contents is not necessary, by contrast, in short or simply structured acts (up to around 20 sections).
- 359 The table of contents comes **after the enacting clause**.
- 360 Like the title and the enacting clause, the table of contents is dependent on the content of the law. If the content of the law is changed at the drafting stage or during the legislative process, the table of contents will also need to be reviewed.

5 Organization

5.1 Structure

361 The structure of a principal act is dictated by its content. That is why it is not possible to provide one pattern to fit all cases. There are, however, some **rules of thumb** which must be observed when structuring a draft law: More important provisions come before less important ones; substantive provisions come before rules of procedure; rules precede their exceptions; and obligations are set down before sanctions.

A law is generally structured in the following sequence:

- ◆ Scope or area of application (incl. any necessary definitions)
- ◆ Main part
- ◆ Procedure and competence
- ◆ Criminal provisions, administrative fines provisions
- ◆ Transitional provisions
- ◆ Entry into force

362 General **definitions of the purpose of the principal act may not** precede the above. The purpose of the law should be readily recognizable after reading the provisions it contains and is often even obvious from the long title. A distinction must be drawn between general definitions of the purpose of the law and provisions on its **scope or area of application**. Such provisions can, where appropriate, be placed at the beginning of the law.

Example

Section 1 of the Federal Disciplinary Act

Section 1

Personal scope of application

This Act shall apply to civil servants and retired civil servants within the meaning of the Federal Civil Service Act. Former civil servants receiving maintenance allowances in accordance with the provisions of the Civil Servants Benefits Act or equivalent earlier regulations shall, up until such time as they cease to draw those allowances, be regarded as retired civil servants, their emoluments as their pension.

363 Definitions should always be placed together at the beginning of a law when terms are used repeatedly throughout the text to refer to the same content; these definitions may also be of relevance to any related statutory instruments.

364 **Authorizations** to issue statutory instruments (margin nos 381 et seqq.) should be included with the provisions they serve to frame. Several authorizations to issue statutory instruments within a law may be grouped together at a suitable place.

365 **Tables, lists and figures** should, if at all possible, be included as **annexes** in order to avoid overloading the actual text of the law. They have the force of law. Where several annexes follow the text of the law, they should be numbered.

Example

Section 3 (2) of the Court Fees Act

Costs shall be levied in accordance with the cost schedule in Annex 1 to this Act.

The heading of the annex should clearly create a link to the text, if possible to the provision to which it makes reference.

Example

Annex 1

(to section 3 (2))

Cost schedule

The law's citation title does not need to be repeated here, since the annex forms part of the law. Where reference is made to the annex in various provisions in the law, it is sufficient to refer to it only as "Annex" or, if there are several annexes, including a number (e.g. "Annex 3").

366 In exceptional cases, particularly long annexes may be printed separately in volumes of annexes to the Federal Law Gazette. In such cases, reference must be made in a footnote to the **volume of annexes** and how to obtain it as follows:

The annex is published in a volume of annexes to this issue of the Federal Law Gazette. Subscribers of the Federal Law Gazette I will be sent the volume of annexes upon request under the publishing company's terms and conditions. Non-subscribers can purchase the volume of annexes for a fee.

367 When drafting principal acts it must also always be examined whether other provisions can be repealed or need to be adapted. Where **consequential amendments** need to be made in other provisions, the form of an omnibus act (margin nos 717 et seqq.) should be chosen,

Article 1 of which then contains the new principal act, Article 2 the consequential amendments and Article 3 a provision on entry into force. Where it is only necessary to repeal other provisions, this may be ordered in the last section of the principal act under the heading “Entry into force, expiry”.

5.2 Individual provisions and their designation

- 368 The structural subdivisions of a principal act are individual provisions (sections or articles).
- 369 An individual provision in a principal act is the smallest structural unit in which legal rules are grouped together and given a specific designation. The designation of a provision comprises a type designation and a numerical designation. The **type designation** is generally “section” (denoted by the symbol “§” in German). The type designation “Article” is used in ratifying legislation in accordance with Article 59 para. 2, first sentence, of the Basic Law, and in introductory acts (no. 3 in Annex 6 to section 42 (2) GGO^{*}). Arabic numerals are used for the **numerical designation** which follows the type designation (e.g. section 3; Article 7).
- 370 All the individual provisions in a principal act must have the same type designation and must be serially **numbered**, even when superordinate units are also used (i.e. Part 1, sections 1 to 3; Part 2, sections 4 and 5 etc.). Otherwise a provision could only be unambiguously identified in conjunction with the superordinate unit. This would unnecessarily increase the length of any citation.
- 371 It is not permissible to **add letters** to the numerical designation (e.g. section 27a) in first legislative regulations. Such numbering arises, by way of exception, when amending acts insert new provisions at a later date. This avoids a great deal of renumbering of subsequent units and associated consequential amendments (margin no. 593).
- 372 Individual provisions should be given a **heading**. This makes it easier for readers to find their way around the text of the law and can help them in regard to matters of interpretation. The headings should therefore summarize the subject matter of the provision using keywords. Where it proves difficult to summarize the subject matter in a heading, this indicates that too many matters have been regulated in one single section containing too many subsections. Choosing a heading therefore shows at an early stage where there are shortcomings as regards the structuring of the material to be regulated, which can help to structure it more clearly.

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- 373 **Certain** headings have proved useful for specific provisions. Transitional regulations are generally given the heading “Transitional provisions”; where necessary, the subject matter can be defined more precisely. A section which regulates criminal and administrative fines is given the heading “Criminal and administrative fines provisions”. Authorizations to issue statutory instruments should be referred to as such in the heading (e.g. “Authorization to issue statutory instruments”). The last provision in a principal act always contains a provision on the law’s entry into force. The heading “Entry into force” is always used. If the provision also regulates expiry of the law, the heading “Entry into force, expiry” is used.
- 374 Sections containing several regulatory ideas are broken down into **subsections**, articles into **paragraphs**. **Numbers** may be added within individual sections, articles and subsections. **Letters** should only be used as subdivisions of numbers. **Double letters** are permissible as subdivisions of letters; further subdivisions should be avoided. Should the question of whether to make further subdivisions arise, the subject matter as a whole likely needs restructuring. A logical and clear structure aids clarity and comprehension (margin no. 105).
- 375 The **subsections or paragraphs** in a section or article are indented in the original German texts of laws and statutory instruments.* They should be numbered using Arabic numerals and the numbers placed in brackets.
- 376 Where **lists** are used, the individual items in the list should not be identified using indents, but using numbers or letters. Full sentences or clauses should be used to introduce a list (margin no. 107). The individual items in the list should be elements of only one sentence.

Where numbers or letters are used the text is indented (“hanging indent”). Care should be taken to ensure that the text which follows which is not part of the text in the individual numbers or letters is not indented (subsequent subsection).

Example

Section 13 (2) of the Act on the Trade in Medicinal Products

(2) The following shall not require a licence in accordance with subsection (1):

...

3. The veterinarian in the context of operating a veterinary dispensing station for
 - a) refilling, packaging or labelling medicines in unmodified form,

...

* Different formatting conventions apply to the English translations of German laws and statutory instruments.

e) mixing finished medicinal products for immobilizing zoological, wild or enclosed animals,

where these activities are carried out for the animals he is treating,

4. The wholesaler ...

6. The manufacturer of active substances intended for the manufacture of medicines produced pursuant to a procedure described in the homeopathic part of the pharmacopoeia.

The exceptions referred to in the first sentence shall not apply to the production of blood preparations, serums, vaccines, allergens, test serums, test antigens and radioactive medicines.

5.3 Superordinate structural units and their designation

377 Superordinate structural units help to make it clear how the law is structured. A superordinate structural unit groups several provisions together under a subheading, which indicates the content using keywords. Subheadings help to structure the law (margin no. 372 et seq.), aid clarity and help readers when it comes to matters of interpretation.

378 Superordinate units should only be used to the extent that they are necessary to clearly structure a long law. The **number** of structural levels in a principal act will depend on the number of regulations it contains. No superordinate units will generally be necessary where a law comprises less than 20 sections.

379 These units also include a type and numerical designation in addition to a designation of the content.

The **type designations** “Part”, “Chapter”, “Division” and “Subdivision” are used (no. 3 in Annex 6 to section 42 (2) GGO*). Numbering does not make the type designation superfluous. It would not be possible to unequivocally cite a structural unit which has been numbered only as “3” and which does not include a type designation; the correct designation is “Division 3”.

380 Serial Arabic numerals are used to number units within one type designation. The **numerical designation** always follows the type designation (e.g. “Part 2” not “2nd Part” or “Second Part”; “Chapter 1” not “Chapter I”).

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6 Authorization to issue statutory instruments

6.1 Authorization

- 381 The legislature may authorize the executive to issue **statutory instruments** to supplement or implement a principal act (Article 80 of the Basic Law). This makes sense, for example, to avoid laws becoming overloaded with too many details or to ensure that provisions can be adapted more quickly to already foreseeable changes. The constitutional requirements made of the enabling provision and of the statutory instruments are set out in Article 80 of the Basic Law. The requirement of parliamentary approval which results from the principles of the rule of law and the precept of democracy demand that the legislature take all key decisions in fundamental areas, especially the area of the exercise of basic rights.
- 382 When an authorization to issue statutory instruments has been given, the legislature may issue further regulations on the subject matter, but only by means of a law. The legislature should not be permitted itself to issue entire statutory instruments, however. It would be misleading to designate such regulations as a “statutory instrument”, since that would not correspond to their legal character. In addition, there would also be the risk that individual regulations in “statutory instruments” created in that manner would go beyond existing authorizations. For that reason the Federal Government may **not** introduce such **laws in the guise of statutory instruments** by way of bills.⁵¹ Cf. margin nos 690 et seqq. regarding an **exception** in the case of **amending legislation**.
- 383 In accordance with Article 80 para. 1, first sentence, of the Basic Law, **only** the Federal Government, a federal minister or a *Land* government **may be authorized to issue statutory instruments**. The designation “federal minister” here stands for the highest federal authority, not for the person who heads that authority.⁵² For that reason the enabling provision should refer to the relevant federal ministry as the addressee of the authorization.
- 384 Several federal ministries may also be authorized to issue **joint statutory instruments**. Joint statutory instruments issued by several *Land* governments, by *Land* governments and the Federal Government, or by *Land* governments and federal ministries are not permissible.

⁵¹ Cf. the Joint Circular of the Federal Ministry of the Interior and the Federal Ministry of Justice of 21 March 2006 occasioned by the decisions of the Federal Constitutional Court of 13 and 27 September 2005 (file nos 2 BvF 2/03 and 2 BvL 11/02).

⁵² Cabinet decision of 20 January 1993 (Joint Ministerial Gazette p. 46)

385 The federal ministries' **full, official designation** must be used in the enabling provision. It is not recommended that the relevant federal ministry be referred to by its full designation only once in an enabling provision or another provision in the law and for only the designation "federal ministry" to then be used in the other enabling provisions. This results in the enabling provisions being incomplete and in them needing to be cited together with the provision containing the full designation of the addressee of the authorization.

6.2 Form

386 The principle of clarity and definiteness set out in Article 80 para. 1, second sentence, of the Basic Law must be observed when formulating enabling provisions. As a result, the **content, purpose** and **scope** of the authorization to issue statutory instruments must be defined in the law.

387 The requirements made as to the clarity and definiteness of enabling provisions will depend on the subject matter covered and on the **intensity of the interference** involved. Especially strict requirements are made of regulations which impose a burden on citizens and impact their basic rights. This in particular applies to tax legislation and cases in which the authorization is given to issue criminal and administrative fines provisions.

388 The enabling provision should be written so that it is possible to foresee in which cases and with what objective it is to be applied and the possible content of the statutory instruments to be issued. The **more carefully** the enabling provision is written, the fewer difficulties will arise when the statutory instrument itself is subsequently drafted.

389 The enabling provision must be **framed** so that all the specifications as to content, purpose and scope are **immediately** clear. It should not contain mere references to existing authorizations, otherwise difficulties will arise at a later stage when it comes to writing the statutory instrument's enacting clause. Before new, separate enabling provisions are created, the relationship between the planned authorization to issue statutory instruments and existing authorizations to issue statutory instruments should be examined.

390 The enabling provision must always include the **words "statutory instrument"**. In addition, the section heading must make it clear that the provision contains enabling powers (e.g. "Authorization to issue statutory instruments"). Cf. margin no. 364 regarding where to place this provision.

6.3 Obligation or discretionary power

- 391 It should be clear from the wording of the enabling provision whether the addressee is obligated to issue a statutory instrument or whether it has the discretionary power to do so.
- 392 If it is to be left to the **discretion** of the addressee to decide whether to issue a statutory instrument, the following phrase may be used: “The Federal Ministry of/for ... is authorized to issue a statutory instrument ...” or “The *Land* governments may issue a statutory instrument ...”.
- 393 **No discretion** is granted when phrases such as the following are used: “... shall issue provisions on ... by way of a statutory instrument”. Phrases such as “shall issue” or “shall determine by way of a statutory instrument” express the obligation to make use of the authorization. If reference is made to “necessary” implementing provisions, the addressee of the authorization is also obligated to issue a relevant statutory instrument.*

6.4 Subdelegation

- 394 In accordance with Article 80 para. 1, fourth sentence, of the Basic Law, the enabling provision may provide that the addressees of the authorization can transfer that authorization **by way of a statutory instrument (“subdelegation”)**. Subdelegation is used to transfer the authorization to issue statutory instruments to **governmental** agencies other than those referred to in Article 80 para. 1, first sentence, of the Basic Law, such as individual *Land* ministries, other federal authorities or federal institutes. These “subdelegates” must be designated in the enabling provision. The subdelegates to whom reference is made in the law should always be the authority or institute, never the person heading it.
- 395 Subdelegation is **sensible** when regulating subject matters which differ across different geographic regions or which require specific specialist know-how. It may often be possible for administrative authorities to regulate such matters more simply, more quickly and more aptly because they are closer to the subject matter or deal with it on a more regular basis, given that they are more familiar with regional or technical specificities.

* The imperative present can also be used in German (*Das Ministerium erlässt ...; Das Ministerium bestimmt ...*) (margin no. 83) to indicate such obligation.

Example

Section 144 (4) of the Telecommunications Act

The Federal Ministry of Economics and Technology, in consultation with the Federal Ministry of Finance, is authorized to regulate, by way of a statutory instrument not requiring the consent of the Bundesrat, details concerning the levying of the contributions. ... The Federal Ministry of Economics and Technology may transfer the authorization referred to in the first sentence by way of a statutory instrument, while ensuring compliance with the rule on consulting the Federal Ministry of Finance, to the Federal Network Agency ...

- 396 Where the enabling provision permits subdelegation, the authorized agency is not obligated to further delegate that authorization. Even if the authorized agency has in turn transferred the authorization to issue statutory instruments to a subdelegate, it is still authorized **itself** to issue the statutory instrument on the basis of the original authorization.
- 397 The authorized agency may only use subdelegation to appoint a different addressee of the authorization. The participation rights and need for consent set out in the authorization to issue statutory instruments remain unchanged.
- 398 Unless the statutory enabling provision provides otherwise, the authorized agency may also give the subdelegates the power to further transfer the authorization by way of a statutory instrument (“They may further transfer this authorization by way of a statutory instrument.”), as a result of which **multiple subdelegations** are possible.

6.5 Participation rights

- 399 In addition to having to meet constitutional requirements, the authorization to issue statutory instruments may also include regulations concerning the procedure for issuing the statutory instrument. In particular, other offices may be granted **participation rights**. That participation may range from the mere right to be heard on a matter, to regulations on consulting other agencies, to reservations of consent. Participation rights which do not grant joint decision-making powers, for instance rights to be heard, may be granted to both governmental and private agencies. A **breach** of statutory participation rights can lead to the statutory instrument being null and void.
- 400 It may **make sense** to **involve** third parties when issuing a statutory instrument in order to benefit from their geographic proximity or their specific know-how or experience during the legislative process. Third parties’ participation rights can, however, prolong the procedure for issuing the statutory instrument and make it error-prone.

That is why it should always be carefully examined, before granting participation rights when statutory instruments are issued, whether those rights are necessary for specific reasons related to the statutory instruments to be issued. In order to be able to make use of the specialist know-how and experience of specialist departments, specialist circles and associations, the *Länder* and local authorities, it will generally be sufficient to involve those agencies referred to in sections 45 and 47 read in conjunction with section 62 (2), first sentence, of the Joint Rules of Procedure of the Federal Ministries.

- 401 Where third parties are to be granted participation rights, the enabling provision should **precisely designate each agency** which is to be involved in the issuing of the statutory instrument and should **precisely state the nature of their participation**. When regulating participation the legislature should not limit itself to certain provisions which assign the body issuing the statutory instrument the decision as to which agency is to be involved and to what extent in the procedure for issuing the statutory instrument. Vague collective terms such as “associations and experts in the involved industry”, “the involved circles” or “competent specialist authorities” will generally not suffice.

Example

Section 41 (3) of the Investment Act

The Federal Ministry of Finance is authorized, after hearing the Deutsche Bundesbank, to enact detailed provisions, by way of a statutory instrument, concerning the methods and bases for calculating the total expense ratio ...

Bad example

Section 8 (2) of the Act on Metrology and Verification

Before issuing statutory instruments in accordance with subsection (1), a select circle of experts from among consumers and the involved industry shall be heard.

6.6 Participation of the Bundestag

- 402 Some laws provide that the Bundestag must be involved before a statutory instrument is issued in order that it be given an express opportunity to exercise oversight. Provisions which authorize the Bundestag to participate should, however, **not** be provided for in **Federal Government bills**.

This not only leads to an undesirable intermingling of the tasks of the Parliament and of the Government, but will also unnecessarily complicate the procedure for issuing the statutory

instrument. The separation of the tasks and responsibilities of the Parliament and Government would be **compromised** if the body issuing the statutory instrument were bound by a parliamentary decision when issuing that instrument. The Parliament could take an influence on the text and content of the statutory instrument, which would then, however, be attributed to the Government as the body issuing the statutory instrument. In addition, in cases in which the statutory instrument requires the consent of the Bundesrat, differences of opinion between the Bundestag and the Bundesrat could arise which would make it more difficult or even impossible for the statutory instrument to be issued.

- 403 If, however, the Bundestag decides to participate in the procedure for issuing a statutory instrument, a distinction should be drawn between whether the statutory instrument is issued with or without the consent of the Bundesrat. If the **consent of the Bundesrat is not required**, the following wording could, for example, be used:

Example

Section 292 (4) of the Commercial Code

The statutory instrument shall be brought before the Bundestag before promulgation. It may be amended or rejected by a resolution of the Bundestag. The resolution of the Bundestag shall be transmitted to the Federal Ministry of Justice. The Federal Ministry of Justice is bound by the resolution in promulgating the statutory instrument. If the Bundestag has not dealt with the statutory instrument after the expiration of three weeks in which Parliament is sitting since its receipt, the statutory instrument shall be transmitted in its unamended form to the Federal Ministry of Justice for promulgation. The Bundestag deals with the statutory instrument upon the application of as many members of the Bundestag as are necessary for the formation of a parliamentary political group.

- 404 Should the statutory instrument require the **consent of the Bundesrat**, attention will have to be paid to ensuring that the right of participation of the Bundestag interferes neither with the right of the Bundesrat to give its consent nor with the procedure prescribed therefor. For that reason it should be laid down that the statutory instrument should first be passed to the Bundestag, which may either amend or reject it by resolution within a time limit specified in the enabling provision. It should be further laid down that the statutory instrument must be forwarded to the Bundesrat once the Bundestag has been involved.

Example

Section 9 (4) of the Fertilizer Act

Statutory instruments in accordance with subsection (3) shall be brought before the Bundestag. They shall be transmitted before being transmitted to the Bundesrat. The statutory instruments may be amended or rejected by resolution of the Bundestag. The resolution adopted by the

Bundestag shall be transmitted to the Federal Government. If the Bundestag has not yet dealt with the statutory instrument before the expiration of three weeks in which Parliament is sitting since receipt of the statutory instrument, the statutory instrument shall be transmitted to the Bundesrat in its unamended form.

6.7 Consent of the Bundesrat

- 405 Where the Federal Government or federal ministries are authorized to issue a statutory instrument, the enabling provision **must always state** whether or not the statutory instrument requires the consent of the Bundesrat so that it is always clear pursuant to which procedure the statutory instrument is to be issued. However, this information can convey different meanings.
- 406 If the enabling provision is to form part of a principal act which is subject to the consent of the Bundesrat or which is executed by the *Länder*, the need for consent results directly from Article 80 para. 2 of the Basic Law. The statement that the statutory instrument requires the consent of the Bundesrat is then only of **declaratory relevance**.
- 407 The need for the Bundesrat to consent to a statutory instrument in accordance with Article 80 para. 2 of the Basic Law only arises “subject to other federal statutory provisions”. It may be **ruled out by federal law**. The enabling provision must include an explicit reference to the fact that the consent of the Bundesrat is not desired.

Example

Section 8 (1) of the Act on Radio and Telecommunications Terminal Equipment

The Federal Ministry of Economics and Technology is authorized ... by way of a statutory instrument not requiring the consent of the Bundesrat ... to regulate the procedure for the recognition of the designated agencies and ... to specify details regarding the fees to be paid for the regulated matters, the amount of the fee and the reimbursement of expenses.

- 408 If the need to obtain the Bundesrat’s consent for the statutory instrument is **constitutively ruled out**, that will have a bearing on the legislative process, since according to the consistent past decisions of the Federal Constitutional Court that provision triggers the need to obtain consent for the law by means of which this enabling provision was created.
- 409 The option of ruling out the Bundesrat’s need to give its consent should be exercised **only sparingly**. It may be sensible to rule out the need for that consent in the case of less

important statutory instruments in order to ease the Bundesrat's workload or to ensure that statutory instruments can be issued more quickly in an emergency.

Example

Section 70 (1) of the Food and Fodder Code

Statutory instruments in accordance with this Act requiring the consent of the Bundesrat may be issued without the consent of the Bundesrat in the event of imminent danger or where it is necessary for them to immediately enter into force to implement legislative acts of the European Community.

- 410 Even if a statutory instrument introduced by the Federal Government or by federal ministries does **not require the consent of the Bundesrat**, the enabling provision should **make it clear** that the statutory instrument may be issued without the consent of the Bundesrat.

Example

Section 10 of the Coinage Act

The Federal Ministry of Finance is authorized, by way of a statutory instrument not requiring the consent of the Bundesrat, to deny or to permit, subject to conditions, that medals and coinage be manufactured, sold, imported or disseminated for sale or other commercial purposes if there is a danger of their being confused with German euro commemorative coins.

- 411 In cases where an authorization of the Federal Government or the federal ministries is to be transferred (**subdelegation**, margin nos 394 et seqq.), when it comes to the question of whether the statutory instrument transferring the authorization requires the consent of the Bundesrat, the same as was determined for the original authorization will generally apply. Since the authorization to subdelegate the statutory instrument is always included in the original enabling provision, the text of the provision can generally be kept shorter and less complex if the need to obtain the consent of the Bundesrat is not reiterated in the authorization to subdelegate.

Example

Section 16 (2) of the Financial Services Supervision Act

Further details concerning ... shall be determined by the Federal Ministry of/for ... by way of a statutory instrument not requiring the consent of the Bundesrat. ... The Federal Ministry may transfer the authorization to the Federal Agency by way of a statutory instrument.

7 Transitional provisions

- 412 Laws become fully effective **upon their entry into force**. They frame the legal system for the future and therefore generally cover all legal relations which arise in the future. A new law can, however, also have a bearing on **existing legal relations**. A distinction will then have to be drawn between matters which have already been completed and those which have not. Transitional provisions clarify or change the effect of the law or of individual regulations or frame them in a specific way with a view to the intended future legal system.
- 413 Under procedural and substantive law, in cases of doubt the **new law applies** to legal relations which arose on the basis of old regulations which have since been replaced but those relations **cannot yet be regarded as concluded** or **are permanent** (e.g. ongoing proceedings, marriages or relations between parents and children, and continuing contractual relations such as tenancy). If a right other than the new right is to apply, this must be explicitly set down. In non-constitutional law, special principles developed in past court decisions can apply in respect of how existing legal relations are to be treated following legislative changes (e.g. past court decisions regarding Article 170 of the Introductory Act to the German Civil Code).
- 414 By contrast, new regulations do not cover legal relations which had already been **conclusively** settled upon the entry into force of the new law. These not only include those legal relations for which the legally required consequences have already arisen. Anyone who has already fulfilled the conditions of a previously applicable provision can in principle also still lay claim to the legal consequence stipulated therein. In such legal relations the legal situation which applied when the relation arose is thus still decisive. On the grounds of legitimate expectation it is not permissible to interfere with such concluded matters.
- 415 When it comes to new principal acts, it must therefore be examined whether **adjustment rules** need to stipulate how ongoing proceedings and existing legal relations are to be dealt with. It is often not possible to abruptly transition from one legal situation to another, because account needs to be taken of existing legal relations for constitutional or other reasons. Cases of “artificial retroactive effect” are often the result (margin no. 52, no. 7.2).

It must also be examined whether those affected by new legislation need **time to adapt** to the new legal situation after the new law enters into force (known as “lead time”). For example, it may be necessary for the desired legal situation to take effect gradually in respect of legal relations arising in the future.

Example

Section 118 (2) of the Energy Management Act of 7 July 2005

Section 24, fourth sentence, shall be applicable from 1 October 2007.

416 The following rules of thumb should be borne in mind when examining whether a transitional rule is needed:

- ◆ A transitional rule is necessary if the **legal situation to be created** on the basis of the new law cannot be fully achieved straight away.
- ◆ Where there are **doubts** as to what extent matters have been concluded or are still open, a transitional rule should set down how these matters are to be dealt with in the future.
- ◆ Always **weigh up** the expectation associated with a certain legal situation continuing against the state's interest in immediately implementing a new provision. The more pressing the issue of concern the legislature is pursuing in establishing the new provision and the more imperative the need for it to be implemented immediately, the greater the need to immediately adapt the legal situation to the new provisions.
- ◆ The need for a transitional rule may result directly from **basic rights**. For example, the need to introduce transitional rules results from Article 12 para. 1 of the Basic Law if the new regulations concern access to or remaining in a profession.

417 Considerable **flexibility** exists when it comes to formulating transitional provisions. In many cases it will suffice to rule out the application of a new law or individual provisions to existing legal relations or to limit it to legal relations arising after the entry into force of the new law. The following phrase should not be used: "This Act applies only to legal relations existing after the entry into force of this Act". Apart from the self-evident truth that the law applies to future matters, it is not readily recognizable how previous matters are to be dealt with. It is recommended that existing legal relations be taken as the point of reference.

Example

Section 102 (1) of the Residence Act

Other measures undertaken prior to 1 January 2005 in accordance with the law pertaining to foreigners, in particular time limits and geographic restrictions, ... shall remain valid. Measures and agreements in connection with the furnishing of security shall also remain valid, even if they relate in part or in their entirety to periods after this Act comes into force. The same shall apply to the effects by force of law resulting from the filing of applications pursuant to section 69 of the Foreigners Act.

- 418 Whether the new law applies to existing legal relations can also be made dependent on **specific conditions** or can be linked to restrictions.

These can be reference dates and events before the law's entry into force as well as the fulfilment of certain conditions after entry into force. In such cases it is sufficient to refer to the new law by means of a self-reference, for instance "This Act shall not apply to ..." or "This Act applies to ...".

Example

Section 13 (1) of the Paramedics Act

Applicants who had successfully completed their training as a paramedic in accordance with the 520-hour programme before this Act came into force or who had begun such training and successfully completed it after this Act came into force shall be granted permission in accordance with section 1 if they have done at least 2,000 hours of work in the rescue service and the conditions set out in section 2 (1) numbers 2 and 3 are met. When calculating the number of hours consideration must be given to all times in which the applicant was engaged in practical work for an organization commissioned with carrying out rescue services or in facilities of the fire service's rescue services.

- 419 If the **date of the law's entry into force** is to be made the point of reference in the transitional provision and this is set down by means of a commencement formula (margin nos 448 et seqq.) in the provision on the law's entry into force, the transitional provision may also include a commencement formula.

Examples

The commencement formula in the provision on entry into force reads:

... shall enter into force on ... [insert: the date of the first day of the third calendar month following promulgation].

A transitional provision could be worded as follows if the transitional period is to be set at six months:

Plants erected after ... [insert: the date of the first day of the ninth calendar month following promulgation] may be operated only if ...

A transitional provision could be worded as follows if the transitional period is to be set at three years:

Plants erected after ... [insert: the day and month of the entry into force of the act as well as the year of the third year following entry into force] may be operated only if ...

- 420 If the provision on entry into force stipulates that **different provisions are to enter into force at different times** (margin nos 455 et seqq.), it must be made explicitly clear which of the dates the transitional provision takes as its point of reference. Stating a specific date or using a commencement formula are user-friendly ways of doing this. The date of entry into force can, however, also be specified by making reference to the relevant provision on entry into force (“Entry into force of this Act in accordance with section ... (...)”).
- 421 If the entry into force of the new law is to be linked to the repeal of previous regulations, but those repealed regulations are to continue to apply for a transitional period, it is recommended that only the date of entry into force be used as the interface. Where previous law is to **continue to apply**, it is important for those applying the law to be able to ascertain which is the last amended version of the law whose regulations are to continue to apply to old cases. To that end the date and publication reference of the superseding law should also be cited, since this contains information on which law will continue to apply.

Example

Section X

Transitional provision occasioned by this Act

As regards ... [legal relations/applications etc.] which [arose/were made] before the entry into force of the Act of ... [insert: date and publication reference] on ... [insert: date of the entry into force of this Act], sections Y to Z of the Act on ... [insert: citation title and publication reference], as previously amended, shall continue to apply.

However, the authoritative text of the law can also be indicated using a static reference.

Example

Section X

Transitional provision occasioned by this Act

As regards ... [legal relations/applications etc] which [arose/were made] before ... [insert: date of the entry into force of this Act], sections Y to Z of this Act as amended on ... [insert: date and publication reference of the last time the full text of the principle act was published (enactment or new publication)], as last amended by the Act of ... [insert: date and publication reference of the last amendment prior to the repeal of the regulations], shall continue to apply.

- 422 Transitional provisions are generally included in one or several sections at the end of the principal act **before the provision on its entry into force**. Transitional provisions should be kept strictly separate from provisions indicating when the law enters into force. The heading should be: “Transitional rule”, “Transitional rules”, “Transitional provision” or “Transitional provisions”, unless headings describing the subject matter in more detail are used. Long

transitional provisions occasioned by a larger-scale codification can be grouped together in a separate introductory act (margin nos 756 et seqq.).

- 423 If it is anticipated that the law will be amended frequently and comparable transitional rules will be needed in each case, it may be worth examining whether a “standing” transitional rule (**blanket rule**) can be included.

Example

Section 71 (1) of the Court Fees Act

In the case of legal disputes which were pending before the entry into force of an amendment to this Act, costs shall be levied under previous law. This shall not apply in proceedings on an appeal filed after the entry into force of an amendment to this Act. ...

The blanket rule can also provide that whether old cases are to be dealt with in line with previous law is to be linked to an event which marks the change-over from the old to the new law.

Example

The costs shall be calculated only in accordance with that law which applied at the point in time of the placing of the order.

As in any other transitional rule, the blanket rule can link the continued application of the old law to specific predetermined conditions.

8 Consequential amendments

- 424 New principal acts not only need to be logical in themselves, they must also fit seamlessly into the legal system as a whole. It is therefore not sufficient only to coordinate the individual provisions of the new principal act among themselves, since the links between the new provisions and **existing law** also need to be clarified. If existing regulations conflict with those in the new principal act or they become incorrect or need supplementing, the existing regulations need to be brought into line with the new principle law. This is done by means of consequential amendments.
- 425 Where consequential amendments need to be made, the bill takes the form of an **omnibus act** (margin nos 717 et seqq.). Article 1 of the omnibus act contains the new principal act. One or more articles following the order of the index numbers as set out in the Directory of Legislation in Force A should be used for the consequential amendments. In contrast to the

principal act, the articles containing the consequential amendments are written in amending language. The recommendations made regarding amending acts therefore also apply here (margin nos 552 et seqq.).

426 When the omnibus act enters into force, only the new principal act becomes applicable as a stand-alone law. The consequential amendments, in contrast, are executed in the relevant existing principal acts (margin no. 710).

9 Citation requirement under Article 19 of the Basic Law where basic rights are restricted

427 In accordance with Article 19 para. 1, second sentence, of the Basic Law, a law which restricts a basic right must **specify** the basic right affected and **the article in which it appears** in the Basic Law. The aim of this principle is to ensure that no unintended interference with basic rights occurs. The legislature should be clear about what effects its legislation has on the basic rights concerned and should indicate how they are restricted (warning and awareness-raising function).

428 Whether or not the citation requirement needs to be fulfilled depends on the respective basic right. According to the consistent past decisions of the Federal Constitutional Court, **the requirement needs to be fulfilled** only in regard to basic rights which the legislature may restrict on the basis of explicit authorization:

- ◆ Article 2 para. 2, third sentence, of the Basic Law (right to life, physical integrity, freedom of the person),
- ◆ Article 6 para. 3 of the Basic Law (separating children from their families),
- ◆ Article 8 para. 2 of the Basic Law (freedom of assembly),
- ◆ Article 10 para. 2 of the Basic Law (privacy of correspondence, posts and telecommunications),
- ◆ Article 11 para. 2 of the Basic Law (freedom of movement),
- ◆ Article 12 paras 2 and 3 of the Basic Law (obligation to work and forced labour),
- ◆ Article 13 paras 2 to 5 and 7 of the Basic Law (inviolability of the home),
- ◆ Article 16 para. 1, second sentence, of the Basic Law (citizenship, extradition).

429 **In contrast**, the citation requirement **does not need to be fulfilled** in regard to those provisions which have a bearing on basic rights with which the legislature is fulfilling a duty to frame regulations or regulate matters as provided for in the Basic Law:

- ◆ Article 2 para. 1 of the Basic Law (free development of one's personality),
- ◆ Article 5 para. 2 of the Basic Law (right to freely express one's opinion),
- ◆ Article 6 paras 1 and 2 of the Basic Law (marriage and family),
- ◆ Article 9 paras 1 and 3 of the Basic Law (freedom of association),
- ◆ Article 12 para. 1 of the Basic Law (occupational freedom),
- ◆ Article 14 of the Basic Law (property, inheritance, expropriation),
- ◆ Article 16a of the Basic Law (right of asylum),
- ◆ Article 19 para. 4 of the Basic Law (legal remedies).

430 Article 2 para. 2, second sentence, of the Basic Law (freedom of persons) is not cited when enacting criminal provisions since it is obvious and the legislature is readily aware that a prison sentence will restrict a person's freedom. **Further**, the citation requirement **does not need to be fulfilled** where the legislature stipulates constitutional limits in the case of unconditional basic rights (e.g. Article 4 paras 1 and 2 of the Basic Law). Neither does it need to be fulfilled in the case of basic rights in respect of equality before the law (e.g. Article 3 para. 2 of the Basic Law) and rights equivalent to basic rights (Article 33 para. 5, Articles 38, 101, 103 and 104 of the Basic Law, Article 137 para. 3 of the Weimar Constitution read in conjunction with Article 140 of the Basic Law).

431 On account of the citation requirement's warning and awareness-raising function, the reference to the restriction of basic rights should **immediately follow the provision which restricts these rights**.

Examples

Section 24 (2) of the Federal Waterway Act

For the purposes of monitoring of the federal waterways by the river police, agents of the Federal Waterways and Shipping Administration may enter premises, facilities, institutions and watercraft. The basic right to the inviolability of the home (Article 13 paragraph 1 of the Basic Law) is thus restricted.

Section 21 of the Act to Prevent and Combat Infectious Diseases in Humans

In the event of a publicly recommended preventive vaccination or a vaccination in accordance with Section 17 (4) of the Soldiers' Act ordered in pursuance of this Act or by a highest *Land* health authority, only vaccines may be utilized which contain micro-organisms which are excreted by those vaccinated and can be absorbed by other persons. The basic right to physical integrity (Article 2 paragraph 2, first sentence, of the Basic Law) is thus restricted.

- 432 References to provisions which restrict basic rights should be listed collectively in the **concluding provisions** of the principal act only if separate references would make the text of the law confusing or the same basic right is restricted on account of various provisions. General statements such as “basic rights are restricted under this Act” should be avoided in view of the warning and awareness-raising function of the citation. Instead, the individual provisions in the law and their restriction of basic rights should be specifically named.
- 433 The **heading** for such a concluding provision is: “Restriction of a basic right” or “Restriction of basic rights”.

Example

Section 102 of the Insolvency Statute

Section 102

Restriction of a basic right

Section 21 (2) number 4, as well as sections 99 and 101 (1), first sentence, shall authorize a limitation of the basic right of privacy (letters, telecommunications) (Article 10 of the Basic Law).

10 Exclusion of deviating *Land* legislation when enacting federal legislation⁵³

- 434 When the federal legislature, as part of its own original task of implementing federal legislation, enacts legislation without the consent of the Bundesrat on **establishing a public authority** or the **administrative procedure** of the *Länder* (**Article 83, Article 84 para. 1 of the Basic Law**), the *Länder* may as a matter of principle issue deviating *Land* legislation. Authorizations granted to the Federation to issue statutory instruments which include the authorization to issue regulations concerning the administrative procedure of the *Länder* are thereby regarded as rules of procedure.

The Federation may regulate the administrative procedure of the *Länder* **without** the *Länder* having **the option of deviating therefrom** if, by way of exception, there is a special need for a federal regulation. Such a law requires the consent of the Bundesrat. The explanatory memorandum must explain why an exception has been made on account of a special need for a federal regulation (section 43 (3) GGO*). However, the right to deviate may not be ruled out in the case of regulations concerning the establishment of a public authority (esp. the assignment of tasks to specific *Land* authorities).

⁵³ For details see the Joint Circular of the Federal Ministry of the Interior and of the Federal Ministry of Justice of 30 August 2006 on the impact of the reform of Germany’s federal system on the preparation of Federal Government bills and on the legislative process (see the report of the same title published by the Federal Government, Bundesrat Printed Paper 651/06).

* Joint Rules of Procedure of the Federal Ministries

435 There are various **legally conform alternatives** for ruling out the possibility of the *Länder* deviating from a particular regulation (no. 4 in Annex 4 to section 42 (2) GGO*):

- ◆ Regulations concerning the administrative procedure of the *Länder* which may not be deviated from are listed in a **concluding provision** in the relevant principal act under the heading “Exclusion of deviating *Land* legislation”:

Land legislation may not deviate from the regulations concerning administrative procedure set out in sections ...

If the regulation contains enabling powers and the statutory instruments issued in accordance with those powers are also not to include deviating regulations, the following wording is used:

Land legislation may not deviate from the regulations concerning administrative procedure set out in sections ... or from regulations issued on their basis.

- ◆ Where **only one provision** is affected, the exclusion may be regulated in the respective provision. Reference may be made to the passage in the text containing the procedural rule or the content of the procedural rule may be explained:

Land legislation may not deviate from section ... /the nth sentence/number

Land legislation may not deviate from a statutory instrument in accordance with section .../the nth sentence/number

Land legislation may not deviate from the licence procedure.

Land legislation may not deviate from the regulations set out in a statutory instrument on

- ◆ It is not necessary to include a list in those exceptional cases where the exclusion applies to **all the regulations** pertaining to the administrative procedure of the *Länder* contained in the principal act. In such cases the concluding provision in the principal act may bear the heading “Exclusion of deviating *Land* legislation” and reads:

Land legislation may not deviate from the regulations concerning the administrative procedure set out in this Act.

* Joint Rules of Procedure of the Federal Ministries

If the regulation contains enabling powers and the statutory instruments issued in accordance with those powers are also not to include deviating regulations, the following wording is used:

Land legislation may not deviate from the regulations concerning administrative procedure set out in this Act or from regulations issued on its basis.

Since subsequent legislative amendments to procedural law would always require the consent of the Bundesrat if this general exclusion were retained, the above should be used **sparingly**. It may be preferable to individually list each of the regulations which are excluded from the right to deviate in order to make it easier to make subsequent legislative changes.

436 The federal legislature does not need to rule out the right to deviate if a procedural rule is already **binding** on account of **European Union law** or **international law** and no leeway is granted when it comes to implementation. This enables the federal legislature to implement a supranationally or internationally binding procedural rule without the consent of the Bundesrat. Under Article 59 para. 2 of the Basic Law, only the ratifying legislation may require the consent of the Bundesrat if the treaty to which it refers contains binding procedural rules.

437 Where a *Land* has laid down a deviating regulation in accordance with Article 84 para. 1, second sentence, of the Basic Law, federal regulations subsequently laid down in regard to establishing public authorities and the administrative procedure on its basis may not **enter into force** in that *Land* until six months after promulgation at the earliest, unless otherwise specified with the consent of the Bundesrat – for example on account of the implementation of European law which is tied to a time limit (Article 84 para. 1, third sentence, of the Basic Law). The federal legislature thus has three possibilities for laying down when such regulations enter into force:

- ◆ The provisions all enter into force **on the same date**, which must be **no less than six months after promulgation**; it may be possible for different provisions to enter into force on different dates (margin nos 455 et seq., 713, 752). This is the easiest option, since no distinction need be drawn between the individual *Länder* nor is the consent of the Bundesrat required.

- ◆ The provisions all enter into force on the **same date no later than six months after promulgation**; however, this presupposes a certain degree of urgency and requires the consent of the Bundesrat.
- ◆ The provisions enter into force in compliance with the minimum period of six months **in those Länder** in which deviating provisions were laid down, and an earlier entry into force is laid down **for all the other Länder**. The principle of legal clarity requires that the provision on entry into force explicitly specifies which provisions enter into force when in which *Länder*. If the entry into force is to be split up in this way, the Federal Ministry of the Interior and the Federal Ministry of Justice must be involved at an early stage.

11 Provisions on the period of validity

11.1 Entry into force

- 438 The date of entry into force marks the point at which legal rules **become effective**. There is a distinction between this and the existence and applicability of the law: The law **comes into existence** upon its promulgation. The date specified as regards **applicability** of the law, for example regarding individual matters, specific assessment periods or specific business years, may differ from the date of its entry into force. Provisions on applicability are thus rather more like transitional provisions (margin nos 412 et seqq.). Like any other provision in the law, a date for their entry into force must be set down. They must therefore on no account be mixed with provisions on entry into force.
- 439 Each law must specify the **date on which it comes into force**. If the entry into force is not explicitly specified, the law comes into force on the fourteenth day after the end of that day on which the issue of the Federal Law Gazette containing it is published (Article 82 para. 2, first and second sentence, of the Basic Law).
- 440 Determining the date of entry into force is **part of the legislative process**. It is therefore the task of the legislature alone. It is not permissible for the law to authorize the Federal Government or a federal ministry to determine the date of its entry into force or to postpone the start of the period of validity specified in the law.
- 441 **The first draft** should already include a provision on entry into force. It should be reviewed repeatedly throughout the legislative process.

442 The legislature is free to determine the date on which the law enters into force. Account must be taken of the fact that many regulations require a certain preparatory period before they can be implemented (e.g. regarding the issuance of accompanying statutory instruments or organizational preparations undertaken by the administration). In such cases, an appropriate **lead time** between promulgation and entry into force should be included. In the cases referred to in Article 72 para. 3, second sentence, and in Article 84 para. 1, third sentence, of the Basic Law, the entry into force must be a date no less than six months after promulgation (margin no. 437).

443 The provision on entry into force is set out in the **last section** in the principal act. That is the only way to guarantee that the provision refers to the law as a whole. Other rules apply when the principal act is part of an omnibus act (margin no. 750).

11.2 Precise definition

444 The date of entry into force must be defined **as precisely as possible** for all parts of the law. This results from the principle of legal clarity.

445 In the case of laws which neither require lead time nor are to have retroactive effect, the provision on entry into force generally reads:

This Act shall enter into force on the day following its promulgation.

The date of promulgation is the date on which the relevant issue of the Federal Law Gazette is published.

Using a phrase to indicate that the law enters into force "... on the day of its promulgation" **should be avoided**, by contrast. This wording means that the law becomes effective at the start of the day on which the Federal Law Gazette is published, i.e. at 0:00 hrs. That always implies retroactive effect, which may possibly not be permissible.

446 Specifying a **concrete** date on which the law comes into force is always unambiguous and at the same time user-friendly. That way the entry into force is set for 0:00 hrs on the specified date (margin no. 147).

Example

This Act shall enter into force on 1 January 2008.

Where concrete dates in the future have been specified these must be constantly reviewed throughout the legislative process to check whether a later date needs to be used instead.

- 447 The law can also come into force after the end of a period of time following promulgation which is specified in the law. This is advisable if those affected need **time to adapt** before the regulations become effective. The provision can be worded as follows, for instance:

Example

Section 4 of the Act on the Weight Specification on Heavy Loads to be Transported by Ship
This Act shall enter into force one month after its promulgation.

The disadvantage of such phrases is that it is not exactly clear whether the day of promulgation itself is the first day of the specified time period or whether, as determined in Article 82 para. 2, second sentence, of the Basic Law, it should not be included when calculating the time period. The remedy here is to use a commencement formula.

- 448 If the lead time is foreseeable but no specific date for the law's entry into force can be included in the bill, the date of entry into force should be laid down by means of a **commencement formula**. This formula specifies the period of time between the day of promulgation and the start of the first day of validity. The commencement formula is executed by the editorial office of the official gazette responsible for publishing the law as soon as the date on which the gazette is published becomes known. Only that specific date is then published in the official gazette. Whether the information in the official gazette is correct can be verified by consulting the enactment.
- 449 The exact wording will depend on which lead time applies before the law comes into force. A **simple version** is possible if the law is to enter into force one "calendar week", one "calendar month" or one "calendar year" following promulgation. If that is the case, the rest of the unit of time in which the law was promulgated counts are part of the lead time.

Example

Lead time = rest of the month of promulgation plus five months:

This Act shall enter into force on ... [insert: date of the first day of the sixth calendar month following promulgation].

Explanation: If the law is promulgated on 24 June 2007, the Act enters into force on 1 December 2007.

450 It is particularly important that the chosen period of time refers to a “**calendar**” month, week or year, since these terms could also have other meanings or be interpreted differently (cf. section 188 (2) to section 191 of the German Civil Code).

Examples

- a) Lead time = two full calendar weeks, possibly including the rest of the week in which the law is promulgated:
... shall enter into force on ... [insert: date of the Monday of the third calendar week following promulgation].
- b) Lead time = three full calendar months, possibly including the rest of the month in which the law is promulgated:
... shall enter into force on ... [insert: date of the first day of the fourth calendar month following promulgation].
- c) Lead time = one and a half years, possibly including the rest of the month in which the law is promulgated:
... shall enter into force on ... [insert: date of the first day of the 19th calendar month following promulgation].
- d) Lead time = one full calendar year, including the rest of the year in which the law is promulgated:
... shall enter into force on 1 January ... [insert: year of the second calendar year following promulgation].

451 If the commencement formula is to take as its point of reference the specific **calendar day** and is to cover a period of entire **months**, the wording will be more complicated since the months of the year are not all the same length.

Example

... shall enter into force on ... [insert: date of that day of the eighth calendar month following the month of promulgation whose number corresponds to the date of promulgation or, if there is no such calendar day, the date of the first day of the next calendar month].

Method of calculation

- promulgated: 17 July 2007; entry into force: 17 March 2008
- promulgated: 31 August 2007; entry into force: 1 May 2008, since there is no 31 April
- promulgated: 29 June 2008; entry into force: 1 March 2009, since there is no 29 February 2009.

Where, in contrast, the period of time is to cover entire **years**, other wording may also be used.

Example

Lead time = three years from the day of promulgation:

... shall enter into force on ... [insert: the day and month of the law's promulgation and the year of the third year following promulgation].

11.3 Conditional entry into force

- 452 The legislature may make the law's entry into force **dependent on** the occurrence of **an external event**. This can be an actual event (e.g. payment of funding for a bailout fund) or a legal event (e.g. conclusion of a treaty, entry into force of a legislative act).
- 453 It must be possible for those applying the law to unequivocally identify the external event. The external event is generally unequivocally identifiable if it is apparent from the Federal Law Gazette. However, the occurrence of an external event may also not be evident for the general public, which means that the actual entry into force remains unclear. In such cases the provision on entry into force must also provide for the **official monitoring and notification of the occurrence of the condition**. It should also be specified who is responsible for giving notice thereof.

Examples

Section 16 of the Act on Establishing the Academy of Fine Arts

This Act shall enter into force on the day on which the Interstate Treaty on the Dissolution of the Academy of Fine Arts funded by Berlin and Brandenburg comes into force. The Federal Government Commissioner for Culture and the Media shall give notice in the Federal Law Gazette of the date of the entry into force.

Article 5 of the Act to Implement the Act Revising the Convention on the Grant of European Patents of 29 November 2000

This Act shall enter into force on the day on which the Act Revising the Convention on the Grant of European Patents of 29 November 2000 comes into force for the Federal Republic of Germany in accordance with Article 8 paragraph 1 thereof. The Federal Minister of Justice shall give notice in the Federal Law Gazette of the date of the entry into force.

- 454 The occurrence of the external event itself effects the entry into force. In such cases the notice therefore only serves to – immediately – establish and make known that the condition has been fulfilled and when that occurred. The notice thus does not grant any discretionary leeway as regards the date of entry into force. The **text** of the notice must specify the condition which gave rise to the law's entry into force.

Example

**Notice
of the Entry into Force of the
Act to Implement the Act Revising the
Convention on the Grant of European Patents of 29 November 2000
of 19 February 2008**

In accordance with Article 5, second sentence, of the Act of 24 August 2007 to Implement the Act Revising the Convention on the Grant of European Patents of 29 November 2000 (Federal Law Gazette I p. 2166), notice is hereby given that the Act entered into force for the Federal Republic of Germany on 13 December 2007 in accordance with Article 5, first sentence, of that Act upon the entry into force of the Act Revising the Convention on the Grant of European Patents of 29 November 2000 in accordance with Article 8 paragraph 1 of that Act.

11.4 Entry into force at different points of time

- 455 Where necessary, the provision on entry into force may specify that different parts of the same principal act are to enter into force at **different points in time** (*“gespaltenes Inkrafttreten”*). Attention must be paid to ensuring that the subsets of provisions entering into force at an earlier date can be applied independently at the specified point in time.
- 456 All the provisions which are to come into force at one particular point in time should be grouped together in **“subsets”**. The provision stipulating the date of entry into force must determine a specific point in time for each “subset”. The date for each subset should be indicated in a separate sentence. If numerous sentences are necessary, they should each be placed in a separate subsection. For each date of entry into force the relevant provisions are listed in the sequence in which the sections appear in the text.
- 457 It is advisable to first specify the date on which the **majority** of the legal provisions are to enter into force, **subject to** the dates on which the special subsets are to enter into force. The following phrasing can be considered:

This Act shall enter into force, subject to the second sentence, on

The second sentence then specifies the other date. Where there are several such deviating dates, it is better to create subsections. The following wording can then be used:

This Act shall enter into force, subject to subsections (2) to (n), on

The following subsections then list the specific dates for the entry into force of the subsets of provisions. They should be listed in temporal sequence.

- 458 However, it is also possible to **first** specify the **specific dates for the entry into force of various subsets of provisions** and then to add: “The remainder of this Act shall enter into force on ...”. It is then not necessary to list each of the remaining provisions individually.

The **order** of the various specific dates for the entry into force of subsets of provisions should also follow their temporal sequence. Therefore, those provisions should be listed first which become effective first – or which have the longest retroactivity.

Example

Section 25 of the Electrical and Electronic Equipment Act

Section 25

Entry into force

(1) Section 6 (1), first sentence, section 14 (1), section 15, section 16 (1) and sections 17 to 22 shall enter into force on the day following promulgation.

(2) Section 5 shall enter into force on 1 July 2006.

(3) Section 12 shall enter into force on 31 December 2006.

(4) The remainder of this Act shall enter into force on 13 August 2005.

- 459 It may be desired to use one of the individual dates for entry into force as a point of reference elsewhere in the principal act (e.g. in transitional provisions or when regulating reference dates, application and exclusion dates). In such cases it must be possible to clearly identify to which of the various dates of entry into force reference is being made. It is recommended that the relevant date is **precisely specified or defined by means of a commencement formula** (margin nos 448 et seqq.), which safely prevents misunderstandings arising. Should that, by way of exception, not be desired, reference must be made to the provision on entry into force. The intended point in time for the entry into force must be precisely defined. That can be done directly (“Entry into force of this Act in accordance with section ... (...)”), or indirectly by making reference to the provision for which the special provision stipulating entry into force has been introduced (“Entry into force of section ... of this Act”).

- 460 The possibility of having different parts of a law enter into force at different times is especially relevant if a principal act is to be accompanied upon its entry into force by **statutory instruments** for which the principal act contains the enabling provisions. This is necessary because in such cases a statutory instrument cannot be issued until the enabling provision

has entered into force (section 66 (1) GGO^{*}). In addition, a certain amount of time needs to be included between the statutory instrument's signature and promulgation (for printing, distribution). In order to guarantee that the statutory instrument and the principal act enter into force at the same time, the enabling provision must thus enter into force before the remaining provisions of the law and before the statutory instrument is signed into law. When prepared accordingly, the statutory instrument can thus be signed into law and promulgated on the day following promulgation of the enabling law at the earliest. The date of the statutory instrument's entry into force can then be set as the date on which the remainder of the provisions in the law enter into force.

- 461 It is also possible to **combine** conditional entry into force with different provisions entering into force at different times.

Example

Section 40 of the Maritime Distribution Statute

(1) This Act shall enter into force for the Federal Republic of Germany, subject to subsection (3), on the day on which the Convention on the Limitation of Liability for Maritime Claims adopted on 19 November 1976 comes into force.

(2) Notice shall be given in the Federal Law Gazette of the date on which this Act enters into force.

(3) Section 2 (3) shall enter into force on the day following promulgation of this Act.

11.5 Linked entry into force

- 462 It may be necessary to allow **various legislative acts** to enter into force in full or in part on the same day. In such cases a single date for entry into force should be chosen and specified in both the acts either precisely or by means of a commencement formula (margin nos 448 et seqq.). A good way of doing this is by setting the laws out in the same omnibus act (margin nos 717 et seqq.).

- 463 By way of exception, a more complicated and more unusual procedure can be considered, although it places greater emphasis on the close link between the two laws. That is the case where a **principal act and its introductory act** (margin nos 756 et seqq.) are adopted in the course of separate legislative processes but they are to enter into force on the same day. Their simultaneous entry into force can be guaranteed by declaring in the principal act that the provision on the entry into force of the introductory act is authoritative (known as "linked entry into force"). The principal act can then not enter into force without the introductory act.

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464 One special feature of linked entry into force is that the provisions stipulating the entry into force in the two acts make reference to the other act **using their citation titles** (margin nos 173 et seqq.). Such reciprocal referencing presupposes that the decision to link the two laws was already taken at the drafting stage. Only then can the following wording be used:

Last provision in the introductory act:

This Act and the ... [insert: citation title of the new act] shall enter into force on

Provision on entry into force in the new act:

This Act shall enter into force on that day determined by means of the ... [insert: citation title of the introductory act].

Example

Article 110 para. 1 of the Introductory Act to the Insolvency Statute

... the Insolvency Statute and this Act shall enter into force into force on 1 January 1999.

Section 359 of the Insolvency Statute

This Statute shall enter into force on the day determined by means of the Introductory Act to the Insolvency Statute.

11.6 Retroactive entry into force

465 Laws generally become effective from a certain point in time after their promulgation. In exceptional cases, they can enter into force from a point in time which predates their promulgation. Where retroactive entry into force is being considered in a specific instance, it will also be necessary to conduct a **special examination of its permissibility and expediency**.

466 Retroactive entry into force is expressed using the following wording:

This Act shall enter into force with effect from

467 Retroactive entry into force is not permissible in the case of laws which **establish criminal liability or increase a penalty**: In accordance with Article 103 para. 2 of the Basic Law, an act may be punished only if punishability was prescribed by law before the act was carried out. Where a law containing criminal or administrative fines provisions is to enter into force retroactively, a separate regulation needs to be created for the criminal or administrative fines provisions in line with the recommendations regarding separate entry into force of

different provisions (margin nos 455 et seqq.). The earliest possible date is the day following promulgation.

- 468 It is, moreover, also not possible to allow laws to enter into force so that detrimental legal consequences arise for a period of time predating the law's promulgation (which would give rise to "**genuine retroactive effect**"). This prohibition may only be breached if compelling reasons relating to the general interest or the individual's non-existent or no longer existent legitimate interest in trust permit that breach. Whether genuine or artificial retroactive effect has been brought about (margin no. 52, no. 7.2) needs to be carefully examined on a case-by-case basis.

11.7 Time limits, expiry

- 469 In contrast to entry into force, the end of the law's period of validity does not generally have to be determined at the outset. Most laws therefore do not contain a provision on expiry. They apply **for an indefinite period**.
- 470 It is, nevertheless, possible to set a time limit for the law's period of validity. Laws containing such a time limit are known as **time-limited laws** and they contain an explicit **expiry date**.

Example

This Act shall enter into force on the day following its promulgation and shall cease to be effective on 30 June 2010.

A time limit may also be determined for individual provisions in a law. An individual provision's limitation in time can be determined in the final provision on validity or directly in the individual provision itself.

Example

Section 3 (2) of the Act against Restraints on Competition
... undertakings or associations of undertakings are – upon application – entitled to a decision pursuant to section 32c, This provision shall cease to be effective on 30 June 2009.

- 471 Circumspection is required when imposing limits on the law's duration of validity since it often goes against users' expectations as to the constancy and reliability of legislation. In addition, doing so holds two **dangers**: There may not be sufficient time to extend or repealed the time limit and thus to ensure that the provisions are permanently valid, if this is desired. In such cases the provisions would become ineffective; once provisions have become ineffective

they must be re-enacted. That, in turn, holds the danger that the time limit will simply be extended as the deadline approaches without sufficient time being available to carefully examine whether and to what extent regulation is in fact still necessary.

- 472 Introducing a time limit may, for example, be worth considering where it is likely that the **regulation will only be needed temporarily**. This is generally assumed to be the case for emergency laws which bring about urgent or one-time relief.

Example

In accordance with the Act Granting Aid to the Victims of Doping, the victims of doping in the GDR can receive one-off financial assistance.

Section 9 of the Act Granting Aid to the Victims of Doping

Section 9

Entry into force, expiry

This Act shall enter into force on the day following its promulgation. It shall cease to be effective upon expiry of the year 2007.

- 473 Time limits can also be considered for **transitional provisions**. They may expire after the end of the transitional period so as to automatically consolidate legislation in force.
- 474 Introducing a time limit will often suggest itself if it is not possible to predict whether the law is appropriate and suited to its intended purpose (“**experimental legislation**”). Usually, the same can be achieved by means of an unlimited law if an eye is then kept on legal developments (e.g. by carrying out an **evaluation**).
- 475 The time limit is laid down together with entry into force **in the final provision** in the principal act. Its heading is “Entry into force, expiry”.
- 476 The expiry should be regulated **in the principal act** even if it is part of an omnibus act (margin no. 746). Otherwise, there is a great risk that the provision on expiry will be overlooked when subsequent amendments are made to the principal act. In addition, if the provision on expiry is laid down in another article in the omnibus act, an undesirable regulatory remnant will arise (margin no. 747) throughout the law’s period of validity. In such cases the principal act will need to include a concluding provision with the heading “Expiry”.
- 477 A **specific date** should be given on which the law ceases to be effective. If the law is to become ineffective on the first day of a particular month or year at 0:00 hrs or on the last day

of a particular month or year at 24:00 hrs, then the following wording can be used: "... shall cease to be effective on ...". If, in contrast, the provision is to cease to be effective on a date which is not the first or last day of a particular month or year, the following wording is used: "... shall cease to be effective upon expiry of ..." (margin no. 150).

478 If a **commencement formula** (margin nos 448 et seqq.) is included, for example because the provision on entry into force also contains a commencement formula, then care should be taken to ensure that it precisely designates the day on which the period of validity is to end.

Examples

a) Two commencement formulae; period of validity: six months

Section ...

Entry into force, expiry

... shall enter into force on ... [insert: the date of the first day of the calendar month following promulgation]. ... shall cease to be effective on ... [insert: the date of the last day of the sixth calendar month following promulgation].

b) Entry into force on the day following promulgation; period of validity: six months

Section ...

Entry into force, expiry

... shall enter into force on the day following its promulgation. ... shall cease to be effective upon expiry of ... [insert: the date of that day of the sixth calendar month following promulgation whose date corresponds to the day of promulgation or, if the month does not have that date, the date of the last day of that calendar month].

Method of calculation applied in example b)

- Promulgated: 27 June 2007; entry into force: 28 June 2007; expiry: 27 December 2007
- Promulgated: 31 May 2007; entry into force: 1 June 2007; expiry: 30 November 2007, since there is no 31 November
- Promulgated: 30 August 2007; entry into force: 31 August 2007; expiry: 29 February 2008, since there is no 30 February 2008.

479 Expiry may also be linked to the occurrence of an external event (e.g. the expiry of another legislative act) (known as "**conditional expiry**"). Notice must be given of the occurrence of the condition if it would otherwise be unclear whether expiry has been effected (margin nos 452 et seqq.).

Example

Section 3 of the Act on Public Participation in the Drawing up of Programmes Relating to Batteries Containing Dangerous Substances

This Act shall cease to be effective on that day on which the obligation to draw up programmes within the meaning of Article 6 of Council Directive 91/157/EEC ceases to be effective. Notice shall be given in the Federal Law Gazette of the date on which the Act ceases to be effective.

- 480 If, in the case of time-limited laws, it transpires at a later date that their provisions need to be effective for longer or that they are needed for an unlimited period, the limitation may be **extended** or **repealed**.

Example

The Energy Security of Supply Act 1975 of 20 December 1974 (Federal Law Gazette I p. 3681) was to cease to be effective on 31 December 1979 in accordance with section 18, second sentence, of the Act. Section 18, second sentence, was repealed by Article 1 of the Act of 19 December 1979 (Federal Law Gazette I p. 2305).

- 481 Time-limited laws can also be linked to the **achievement of a regulatory purpose**. In such cases the limitation as to time arises out of the very nature of the matter. Such laws are only applicable law until such time as the measures described in them have been concluded. They automatically cease to be effective as soon as the applicable purpose has been achieved.

Example

Census Act 1987 of 8 November 1985 (Federal Law Gazette I p. 2078)

However, it is often not easy for everyone to recognize whether and when the regulatory purpose has been achieved. That is why in such cases the law itself should also already **explicitly specify a point in time at which its validity ends** (“... shall cease to be effective on ...” or “shall cease to be effective at the latest on ...”). If this has been overlooked, the expiry of the old law should be determined when a further law with a similar regulatory purpose is enacted.

Example

Section 21 of the Census Act 1987

This Act shall enter into force on the day following its promulgation. The Census Act 1983 of 25 March 1982 (Federal Law Gazette I p. 369) shall cease to be effective on the same date.

482 It is not necessary to limit the validity of a law as to time if that limitation already results from the Basic Law. The Basic Law provides for the time-limited validity of certain laws. **Budget acts**, for instance, only apply for the period for which they set out the budget (Article 110 para. 2 of the Basic Law). Laws adopted in a **state of defence** by the Joint Committee and statutory instruments issued on the basis of such laws are time-limited in accordance with Article 115k paras 2 and 3 of the Basic Law.

12 Closing formula

12.1 Significance

483 Once a law is ready for promulgation a closing formula is added. The closing formula testifies that the law was enacted in accordance with the provisions of the Basic Law and that the Federal President signed it into law and ordered its promulgation.

484 The closing formula contains information on

- ◆ the fact that the rights of the Bundesrat have been observed in the case of a bill to which the Bundesrat may lodge an objection (Article 77 of the Basic Law),
- ◆ the consent of the Federal Government in the case referred to in Article 113 of the Basic Law,
- ◆ the consent of *Land* governments in the case referred to in Article 138 of the Basic Law,
- ◆ the act's signing into law and the order for promulgation.

485 The closing formula is commonly **not added until the law has been enacted**. It must correspond to the final version of the enacting clause. It is added by the federal ministry with overall responsibility to that version of the law which will be used in the original text (section 58 (2), second sentence, GGO*).

12.2 The individual closing formulae

486 If the law requires neither the consent of the Bundesrat nor the consent of the Federal Government in accordance with Article 113 of the Basic Law, the closing formula reads:

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The constitutional rights of the Bundesrat have been observed.

The above Act is hereby signed into law. It shall be promulgated in the Federal Law Gazette.

- 487 If, in accordance with the enacting clause, the law was enacted with the consent of the Bundesrat and is not subject to the consent of the Federal Government in accordance with Article 113 of the Basic Law, the closing formula only consists of a reference to its being signed into law and the order for promulgation:

The above Act is hereby signed into law. It shall be promulgated in the Federal Law Gazette.

- 488 If both the consent of the Federal Government (Article 113 of the Basic Law, section 54 GGO*) and the consent of the Bundesrat are required, the closing formula reads:

The Federal Government has given the above Act the consent required in accordance with Article 113 of the Basic Law.

The above Act is hereby signed into law. It shall be promulgated in the Federal Law Gazette.

- 489 If the law only requires the consent of the Federal Government (Article 113 of the Basic Law, section 54 GGO*), the closing formula reads:

The constitutional rights of the Bundesrat have been observed.

The Federal Government has given the above Act the consent required in accordance with Article 113 of the Basic Law.

The above Act is hereby signed into law. It shall be promulgated in the Federal Law Gazette.

- 490 If, by way of exception, a passage of text in the law requires the consent of one or two *Land* governments (Article 138 of the Basic Law: changing the regulations governing the notarial profession as it exists in Baden-Württemberg and Bavaria), that consent is certified directly above the reference to the signing into law and the order for promulgation:

The government(s) of ... [name of the *Land/Länder*] has/have given the consent required in accordance with Article 138 of the Basic Law to ... [insert: citation of that place in the text of the law necessitating the consent].

- 491 The closing formula does **not have the force of law**. The Federal President certifies and is responsible for the closing formula (Article 82 para. 1, first sentence, of the Basic Law).

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Part D

Amending acts

3343 Federal Law Gazette 2006 I No. 65, published in Bonn on 28 December 2006

Date of promulgation

**Fourth Act
to Amend the Act
Establishing a Foundation
“Remembrance, Responsibility and Future”**

Title [Long title]

of 21 December 2006

Date of signature

The Bundestag has adopted the following Act:

Enacting clause

**Article 1
Amendment to the Act Establishing a Foundation
“Remembrance, Responsibility and Future”**

Article heading

The Act Establishing a Foundation “Remembrance, Responsibility and Future” of 2 August 2000 (Federal Law Gazette I p. 1263), as last amended by Article 4 paragraph 12 of the Act of 22 September 2005 (Federal Law Gazette I p. 2809), is amended as follows:

Introductory sentence

1. In section 5 (4) the following sentences are appended:

“Decisions may also be taken in written proceedings, unless at least one third of the members of the Board of Trustees object to such proceedings in an individual case. Such a decision requires the consent of the majority of the members of the Board of Trustees. The fourth and fifth sentence shall not apply to the election of members of the Foundation’s Board of Directors (section 6 (2)).”

Regulatory language

Amending formula

2. In section 8 (1) the words “the legal oversight of the Federal Foreign Office from 1 January 2007” are deleted.

Amending formula

**Article 2
Entry into force**

This Act shall enter into force on the day following its promulgation.

Provision on period of validity (here: entry into force)

The constitutional rights of the Bundesrat have been observed.

Closing formula

The above Act is hereby signed into law. It shall be promulgated in the Federal Law Gazette.

Signed at Berlin on 21 December 2006

Date of signature

The Federal President
Horst Köhler
The Federal Chancellor
Dr Angela Merkel
The Federal Minister of Finance
Peer Steinbrück

Signatories

[The above original example has been adapted in line with the rules set out in this Manual.]

Part D: Amending acts

1 Amending legislation: general remarks

492 Legislative proposals in legal fields in which no legislation of equal or of lower rank already exists are rare nowadays. The vast majority of legislative activity no longer consists in the enactment of new regulations but in the amendment of existing legislation (margin no. 4).

493 Each proposal for a legislative amendment must maintain the unity and clarity of the legal system:

- ◆ The desired amendments must fit seamlessly into existing principal legislation. It is therefore always the **principal act** regulating the relevant subject matter which is amended.
- ◆ Various coexisting principal acts referring to the same legal matters – in the widest sense of the meaning – create confusion and problems applying the law. Where several principal acts unnecessarily break a legal matter up they should be conflated (**concentration of the law**).
- ◆ All upcoming proposals for legislative amendments must also be consolidated across departmental boundaries. Where it is possible to foresee that further amendments will need to be made in the near future, then it should be examined especially carefully whether two separate amending acts are absolutely essential or whether they cannot be combined into one legislative act (**concentration of legislation**).
- ◆ Amendments should create consistent regulations (**consistency of the law**). In order to avoid amendments having to be made which are in turn susceptible to amendment, various legislative techniques can be employed, for instance cross-referencing (margin nos 218 et seqq.) or an authorization to issue statutory instruments (margin nos 381 et seqq.).
- ◆ In order to guarantee that the law is continually consolidated and to ensure that separate acts to consolidate legislation become superfluous, draft amending legislation should be taken as an opportunity to examine whether provisions in the law to be amended have become superfluous or redundant (e.g. old transitional provisions), need to be updated (e.g. outdated designations) or whether regulatory remnants (margin no. 686) from earlier amending legislation can be eliminated (**consolidation of legislation**).

494 The following **basic means** are available for amending applicable law, though they differ quite considerably as regards their structure:

- ◆ A **replacement act** (*Ablösungsgesetz*), which constitutively revises the principal act (margin nos 504 et seqq.);
- ◆ An **individual amending act** (*Einzelnovelle*), which in the main only amends one principal act (margin nos 516 et seqq.);
- ◆ An **omnibus act** (*Mantelgesetz*), which amends, creates or repeals several laws in one legislative act (margin nos 717 et seqq.).

495 Which of these is best suited in an individual case will depend on the **extent of the changes** to be made. The type and extent of the necessary changes thus need to be clearly established before a decision can be taken on which type of amending act is the most appropriate.

496 A distinction is drawn between **main** and **consequential amendments**. The extent of the amendments to be made by means of the legislative proposal is the sum of these two types of amendments.

497 **Main amendments** serve to directly implement a policy objective. If other provisions need to be revised on account of main amendments being made, then **consequential amendments** ensure consistency between the new provisions and existing legislation. Consequential amendments are never made in isolation, only in combination with main amendments. Which consequential amendments are necessary can be established by consulting the database of federal law maintained by juris (margin nos 28 et seqq.).

498 Before drafting an amending act it often makes sense to draw up a three-column **synopsis** at an early stage. This compares the desired, consistent version of the principal act with the previous wording and highlights the necessary amendments (margin no. 35). The committees of the German Bundestag may also ask for such synopses to be drawn up for use in their deliberations (section 53 (2) GGO*).

499 If the text is not to be constitutively revised by means of a replacement act, a predetermined **amending technique** has to be used to amend applicable law so that the wording of existing, precisely specified texts can either be wholly or partially repealed, supplemented or

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replaced by new wording. In legislative terms, an amendment always comprises two distinct parts:

- ◆ The **amending language part** comprising the **introductory sentence**, which specifies the principal act to be amended, and the **amending formula**. The amending formula indicates where in the wording of the principal act which change is to be made (e.g.: “In section ... the word ‘...’ is replaced by the words ‘...’”).
- ◆ The **regulatory language part**, which is embedded within the amending formula and contains everything which will become part of the new wording of the principal act (e.g. “In section ... the word ‘authorized’ is replaced by the words ‘**permitted or tolerated**’”). The regulatory language part and the unamended wording must, when read together, follow the general recommendations on drafting legislation set out in Part B.

While the amending language part ceases to be of legal significance upon the entry into force of the amending act once the wording is executed in the principal act, the regulatory language part becomes an effective element of the principal act from that point onwards.

500 The amending technique (margin nos 552 et seqq.) has its **disadvantages**: It is difficult to pinpoint the contextual significance of the amendments in such amending acts. The amending formulae usually refer to individual words, phrases or sentences etc. The changes are not listed according to their significance, but follow the order of the sections in the principal act. It is **only** possible to understand the amendments **by comparing** the amended wording with the old wording of the principal act. The wording of the law which will apply in the future must, therefore, first be pieced together. As a result, it is hard for the general public to see how the legal situation will change.

501 The **advantages** of the amending technique are that it is not the principal act as a whole but only the amendments which are discussed and agreed on during the legislative process. For those applying the law the amendments become visible as such, making it easy to understand the amendment procedure. Using the amending technique also means that those who regularly work with the principal act can quickly gain an overview of how much has to be relearned and changed.

502 The advantages and disadvantages of the amending technique need to be **weighed up** on a case-by-case basis. The advantages generally outweigh the disadvantages where

- ◆ legislation is to focus on the current extent of amendments to be made,

- ◆ the amendments are to be highlighted, and
- ◆ the extent of the textual changes is small compared to the extent of the principal act affected.

In legislative terms possible options in such cases are either an **individual amending act** (margin nos 516 et seqq.) or an **omnibus act** (margin nos 717 et seqq.).

503 If the aim of the legislative proposal is to **comprehensively reorganize** a subject area, then only using the amending technique could make this procedure confusing and unclear and could fail to sufficiently highlight the political significance of the legislative proposal. Addressees would only have access to the full wording of the principal act if the amending act were followed by re-publication (margin nos 859 et seqq.). For that reason, where a subject matter needs to be comprehensively reorganized, a new principal act should be created and previously applicable law repealed. In legislative terms, only a **replacement act** will be able to fulfil this task (margin nos 504 et seqq.).

2 Replacement acts

504 A replacement act is one means of framing legislative amendments. It represents an alternative to an individual amending act (margin nos 516 et seqq.).

505 A replacement act creates a new principal act to take the place of one or several applicable laws. Here, the comprehensive amendments are not dealt with in the context of an amending act which changes individual passages of text, rather the entire wording of the future principal act is **re-enacted**. This is also termed **constitutive revision**. The “old” principal act is thereby repealed.

As is the case with a first legislative regulation, a replacement act is written in regulatory language. That is why it is not possible to identify what has and what has not been amended in the new principal act.

506 In legislative terms, a replacement act corresponds to a **first legislative regulation** as regards the title, the enacting clause, the structure and the closing formula, for example. It always requires the consent of the Bundesrat if it contains provisions which necessitate that consent; whether these provisions were already included in the “old” principal act is irrelevant.

- 507 The replacement act may on no account contain the introductory sentence “The Act ... reads as follows: ...”. Such an **introductory sentence would prevent the replacement**. The wording would be exchanged, but it would still be the “old” law which would have to be cited using its previous publication reference.
- 508 The replacement act is generally given the **same long title** as the law it replaces. The fact that the long title must delimit one principal act from other principal acts (margin no. 324) is not the decisive issue here, because the replacement act takes the place of the previous principal act. Moreover, a distinction can be drawn between the two laws on account of their different dates of issue and publication references.
- 509 The official **abbreviation** of the superseded principal act should be retained. The database of federal law maintained by juris indicates the current version of replacement acts by adding the year to the official abbreviation. Users can none the less carry out a search of the database using the official abbreviation.

German example

*Telekommunikationsgesetz (TKG)**

Act of 25 July 1996 (Federal Law Gazette I p. 1120); abbreviation used by juris: “TKG”,

Replacement Act of 22 June 2004 (Federal Law Gazette I p. 1190); abbreviation used by juris: “TKG 2004”.

- 510 Since the replacement act is a **new principal act**, it will be cited in the same way as a first legislative regulation, i.e. using its short or long title, date of signature and the promulgation reference (margin nos 169 et seqq.).
- 511 Constitutive revision provides the opportunity to make improvements, especially those of a linguistic or systematic nature. This opportunity should be fully grasped. The recommendations in Parts B and C must be observed.
- 512 Particular care should be taken to check **cross-references** to the “old” principal act contained in other legislation. Dynamic references to the replaced act can sometimes be retained as cross-references to the replacement act. This presupposes that the long title of the replaced act is retained and the location of the referenced provision has not changed. The database of federal legislation maintained by juris (margin no. 33) can be used to identify all those (main) provisions in other laws and statutory instruments which previously

* Telecommunications Act

referred to provisions in the old principal act. The main provisions **must each be examined** in regard to whether the cross-references are still correct in terms of their content and whether the citations are correct. Where necessary, they must be amended by means of consequential amendments (margin no. 515).

- 513 The characteristic feature and essential element of any replacement act is **the rule on the expiry of the previous legal provisions**. The principal act to be replaced needs to be explicitly repealed; where a replacement act replaces several principal acts, they must all be listed.
- 514 The provision on expiry is included in the same provision as the provision on entry into force, which is given the heading **“Entry into force, expiry”**. The law to be replaced is cited using its full citation (margin no. 169), i.e. the citation title, possibly the date of signature or publication, the publication reference and possibly the reference to the amendment.

Example

The Accommodation Statistics Act of 14 July 1980 is to be replaced by the Accommodation Statistics Act of 22 May 2002.

Section 8 of the Accommodation Statistics Act of 22 May 2002 (Federal Law Gazette I p. 1642)

Section 8

Entry into force, expiry

This Act shall enter into force on 1 January 2003. The Accommodation Statistics Act of 14 July 1980 (Federal Law Gazette I p. 953), as last amended by Article 5 number 6 of the Act of 19 December 2000 (Federal Law Gazette I p. 1765), shall cease to be effective on the same day.

- 515 Where **consequential amendments** need to be made in other legislation (e.g. changes to main provisions in other principal acts or principal statutory instruments), the draft should be cast as an **omnibus act**. Article 1 of the act contains the new principal act. One or more articles need to be created for the consequential amendments which follow the same order of the index numbers as they appear in the Directory of Legislation in Force A (margin no. 26). In contrast to the principal act, the articles containing the consequential amendments are written using amending language. The guidelines regarding the omnibus act, in particular on writing the title, must be observed (margin nos 717 et seqq.). If the consequential amendments need to cite the replacement act using the full citation, those parts which have not yet been written are first replaced by an insertion formula.

Example

Section ... of ... [insert: citation title of the act] of ... [insert: date of signature and publication reference of the act] shall apply mutatis mutandis.

3 Individual amending acts

3.1 Characteristic features

516 An individual amending act is one **means of framing amendments**. It is an alternative to a replacement act (margin nos 504 et seqq.), but differs from an omnibus act (margin nos 717 et seqq.).

517 An individual amending act in the main makes changes to only **one principal act**. If provisions in other principal acts or statutory instruments become incorrect as a result, then it also contains the requisite consequential amendments so as to ensure the consistency of the remaining law (margin no. 496 et seq.).

518 It may not contain a main amendment to another principal act. In practice, several principal acts are often affected by related main changes, in which case an **omnibus act** is used.

519 An individual amending act uses a special **amending technique** (margin nos 552 et seqq.) which does not affect the substance of the principal act. The same technique is used to make amendments to omnibus acts.

3.2 Title

520 An individual amending act must have a title. It is part of the official wording of the law. In contrast to a first legislative regulation, the **focus is not on being able to cite the law**, since neither an amending act nor an individual amending act is normally cited in full. Reference only needs to be made to an individual amending act in the full citation of a principal act where it (last) amended that act. However, the reference to the amendment (margin nos 189 et seqq.) only comprises the type designation "Act", the date of signature and the publication reference.

521 An individual amending act's long title follows a **fixed pattern** which identifies it as an individual amending act. It is then also not necessary to come up with a pertinent description of the subject matter. This makes it easier to find a title particularly when only a few amendments are planned.

522 The long title begins with an ordinal, which is expressed as a **numeral**.

Examples

Seventh Act to Amend the Federal Act on Refugees and Expellees

Fifteenth Act to Amend the Conscripts' Pay Act

Twenty-Sixth Act to Amend the Law on the Legal Status of Members of the German Bundestag

523 The numeral serves to **draw a distinction to earlier individual amending acts** referring to the same principal act. Not all the legislative acts on account of which the principal act in question is amended are counted, only the individual amending acts. When counting, other amendments, for example on account of an omnibus act, are thus not included.

524 Declaratory **notification** of the text (margin nos 859 et seqq.) does not affect the consecutive numbering of the individual amending acts. Numbering recommences following constitutive revision (margin no. 505).

525 If the **citation title** of a principal act has been **amended**, the numbering of the individual amending acts does not begin again.

526 If earlier individual amending acts **did not include a number**, the first individual amending act to be given an ordinal number is assigned that number which it would have been assigned had each individual amending act been numbered consecutively from the beginning. If the **numbering** between the last individual amending act given an ordinal number and the current proposal for an amendment **has been interrupted**, the number of the last individual amending act which was not counted should be added.

527 The numeral is followed by the type designation. Only the type designation "**Act**" is permissible for amending acts.

528 The information regarding the subject matter which follows the type designation then refers only to the formal purpose of "**amendment**" and the citation title of the principal act to be amended. The genitive case is used in German (e.g. "*Gesetz zur Änderung des ...*"). Phrases such as "Act to Supplement ..." or "Act to Amend and Supplement ..." should not be used. Where the amendment is occasioned by the need to implement an EU legislative act, reference to the title is generally included in a footnote (margin nos 310, 315). There is no space in the title to include other information, for instance the reason for the amendment. In special cases it may make sense for the title of the individual amending act to make

reference to the subject matter of the amendment, for example if a comprehensive law is only changed in a few places or only for one reason. In such cases, a brief description of the subject matter may be added to the title after a dash.

Example

Nth Act to Amend the Criminal Code – Raising the Upper Limit of the Daily Rate Applied to Fines

529 In the title of the individual amending act the law to be amended is referred to using its **citation title**, i.e. the long title, possibly the short title. The abbreviation, date and publication reference are not included.

Example

If the Act's short title is "Federal Immission Control Act", then the title of the seventh individual amending act is:

Seventh Act to Amend the Federal Immission Control Act

530 If the principal act's citation title has been changed, then the **new citation title** is included in the title the next time the act is amended by means of an individual amending act.

531 Where **consequential amendments** need to be made, the legislation affected should not be named in the title of the individual amending act. Additions such as "... and to amend other legislation" are not permissible.

532 Since it is not necessary to be able to cite an individual amending act (margin no. 520) and on account of the formalized manner in which the subject matter is presented (margin no. 528), individual amending acts have **no short title**.

533 In addition, individual amending acts **do not need an official abbreviation**. If the individual amending act is, nevertheless, to be assigned an official abbreviation, then care must be taken that it ends with the initials "ÄndG" in German, so that it is not confused with the abbreviation of the principal act. In such cases the abbreviation must be coordinated with the **Federal Office of Justice**, which is responsible for documenting federal legislation (margin no. 31).

3.3 Date of signature

534 The date of signature, which will later be placed on the line below the title of the act, is the date on which the Federal President signs the act into law. A line beginning “of ...” is already added underneath the title at the drafting stage (margin no. 349).

3.4 Enacting clause

535 An individual amending act is a stand-alone law and therefore needs an enacting clause. The recommendations regarding the **enacting clause** in principals acts apply accordingly to individual amending acts (margin nos 350 to 357).

536 In order to write the enacting clause correctly one first needs to carefully examine whether the individual amending act requires the consent of the Bundesrat. It cannot be assumed as a matter of course that an individual amending act will require the consent of the Bundesrat if the principal act to be amended was enacted with the consent of the Bundesrat. Rather, the decisive factor is **whether the individual amending act requires the consent of the Bundesrat on account of its own content** (margin no. 52, no. 2.).

3.5 Structure

537 The **subdivisions** of individual amending acts are **articles**. The type designation “Article” is followed by the numerical designation expressed in Arabic numerals. Article headings are generally not necessary. However, it may make sense to include article headings if the individual amending act contains several articles, for example on account of consequential amendments.

538 In principle, all the amendments affecting the principal act referred to in the title should be included in the first article.

539 It is possible to derogate from this principle in the cases referred to in margin nos 540 and 541.

540 If individual amendments are to become effective **after a significant time lapse** and they refer to **different provisions** in the principal act, it is recommended that all those amendments which are to enter into force at the same point in time are put in one separate article. This makes it easier to write a provision on the entry into force of the amendments

and at the same time makes it clear that several temporally distinct legislative proposals have been combined into one legislative act on the grounds of the concentration of legislation. The sequence of the articles follows the temporal sequence in which they enter into force. Within each article the sequence of the amendments follows the order of the sections in the principal act being amended.

- 541 It may occasionally be necessary to **amend the same provisions** in the principal act **several times** within one legislative act and to have these amendments enter into force at different points in time. To do this, all the amendments which are to enter into force on the same day are grouped together in a separate article. The sequence of the articles follows the temporal order in which they are to enter into force. A later amendment is based on the wording of that provision which was occasioned by a previous amendment. This gives rise to specific particularities (margin nos 632 et seqq.).
- 542 The **consequential amendments** which need to be made in other principal acts or principal statutory instruments (margin nos 497, 636 et seqq.) are grouped together in one article, generally "Article 2". A separate paragraph is created for each amendment. Several articles can be created if need be. The order of the amendments is based on the sequence in the Directory of Legislation in Force A (margin no. 26).
- 543 The **last article** in an individual amending act contains the provision on entry into force (margin nos 708 et seqq.). If entire laws or statutory instruments need to be repealed on account of the main amendments, the provision on the period of validity needs to be expanded accordingly under the heading "Entry into force, expiry".

3.6 Introductory sentence

- 544 Each amendment to a principal act is preceded by an **introductory sentence** which specifies the law to be amended. That is the only way the amending formulae which follow can be precisely implemented (cf. margin no. 629 et seqq. regarding the special case of amendments to only one provision).
- 545 The introductory sentence to Article 1 of the individual amending act states which principal act is the subject matter of the main amendment. This is generally a principal act which is current law, i.e. which has been promulgated and has entered into force. However, it is also possible to amend a principal act which has been promulgated but which has not yet entered into force (known as "pending legislation").

- 546 The principal act – even if it is generally well-known – must be referred to in the introductory sentence using its **full citation** (margin no. 169), i.e. including its citation title, possibly the date of signature or publication, publication reference and, possibly, a reference to an amendment. The full citation is followed by the standard phrase “... is amended as follows:”.
- 547 The law’s **citation title** is its long title. If a short title has been created, then that is the citation title. The law to be amended should not be referred to using its abbreviation or by means of a title comprising its long title, short title and abbreviation.

Example

If the title of the law is “Act on Drivers of Motor Vehicles and Trams (Drivers Act, FPersG)”, then the introductory sentence below the heading “Article 1” reads:

The Drivers Act as published on 19 February 1987 (Federal Law Gazette I p. 640), as last amended by Article 1 of the Act of 6 July 2007 (Federal Law Gazette I p. 1270), is amended as follows: ...

- 548 If the law has been given a **new citation title**, then the new citation title must be included in the introductory sentence together with the new citation title and publication reference of the last official full-text publication.

Example

The “Ordinance on Leaseholds”, as consolidated and published in the Federal Law Gazette III, Index No. 403-6, was given the new title, in line with its rank, of “Act on Leaseholds (Leaseholds Act, ErbbauRG)” on account of the Act of 23 November 2007 (Federal Law Gazette I p. 2614). The introductory sentence to subsequent amendments then reads:

The Leaseholds Act, as consolidated and published in the Federal Law Gazette III, Index No. 403-6, as last amended by ..., is amended as follows: ...

- 549 If the act to be amended has already been amended once or several times since the last time the full text was published, the introductory sentence to the amending article must make reference to the (last) amendment. The **reference to the amendment** reads: “..., as (last) amended by ..., ...”.

In legislative practice, the reference to an amendment always refers to the last **promulgated** amending act, even if this has not yet entered into force (known as a “pending amendment”, cf. margin nos 670 et seqq.). This ensures that the amendments can be traced along an

unbroken chain back to the last full-text publication. For details regarding the reference to the amendment, cf. margin nos 189 et seqq.

- 550 When drafting an amending act it is often difficult to refer correctly to the last amendment to the principal act, for example in the case of parallel ongoing proposals for legislative amendments (margin no. 676). In such cases the reference to the amendment is generally incomplete (“as last amended by ...”). This can prove problematic, since an **incomplete introductory sentence** means it is not possible to precisely determine which wording of the law the amending act is supposed to change.
- 551 If it is anticipated that further amendments to the principal act will enter into force or be promulgated before the draft amending act is adopted, and if individual amending formulae refer to the same passages in the text, then it must be possible to identify from the bill itself **which (future) wording** of the principal act the amending formulae take as their point of reference. The following phrase can, for example, be used at the drafting stage:

..., as last amended by [... Draft of an Act to Amend the ... Act, Bundestag Printed Paper ...], ...

Alternatively, footnotes can be added to the relevant passages of text in the bill to indicate which future version of the provision to be amended is being used as its basis. The footnotes must then be removed once the other amendments have been adopted and promulgated. The difficulties involved in correctly referring to parallel ongoing proposals for legislative amendments and keeping track of them during consultations, as well as the errors which occur when amendments are not coordinated with each other can be avoided by heeding the call for the concentration of legislation (margin no. 493), i.e. by combining all upcoming proposals to amend the principal act into one amending act.

3.7 Amending formula

- 552 The introductory sentence is followed by the individual amendments to the principal act. The **order** in which the amendments are detailed is based on the structure of the principal act. Whether the planned amendments to the principal act are more or less important, or whether they are main or consequential amendments is irrelevant. Following the structure of the principal act makes it easier to incorporate the individual amendments into the applicable wording of the law. Cf. margin nos 624 et seqq. regarding the exception of bundled amending formulae.

- 553 Each individual amendment needs to be written so that it is unambiguously clear what the future wording of the law will be. There must be no room for interpretation. This is achieved by using **standardized phrases** for the amending formula.
- 554 The **amending formula** must state precisely **where** the applicable wording is to be amended and **what** change is to be made.
- 555 The amendment can refer to an entire structural unit (e.g. repealing a section) or can affect parts of the wording within one structural unit (e.g. replacing individual words in a sentence).
- 556 These are the individual amending formulae:

... is/are repealed/deleted.

– if the current wording will cease to apply and is not being replaced by new wording (margin nos 575 et seqq.).

... is/are inserted .../placed in front .../appended.

– if new wording is to be added to the current wording (margin nos 589 et seqq.).

... reads/read as follows:.../ ... is/are replaced by ...

– if the previous wording is to be replaced by new wording (margin nos 614 et seqq.).

- 557 In German, the plural of “*Wort*” (word) as used in the amending formulae is not “*Worte*” but “*Wörter*”, because the term refers to the smallest independent linguistic unit.
- 558 Where numbers, characters or formulae are inserted, placed in front, appended, replaced or deleted, such details in the text are referred to as “**a particular**” or “**particulars**”.
- 559 If individual **parts of particulars**, for example in a list of sections, need to be amended, then special attention needs to be paid to ensuring that the amending formula is clear and easy to understand. The passage should make as much sense as possible.

Example

Do not write: The particular “section” is replaced by the particular “sections” and the particulars “and 134” are inserted after the particular “133”.

Instead write: The particulars “section 133” are replaced by the particulars “sections 133 and 134”.

560 For the sake of simplicity, a **mixed passage of text**, for instance comprising a number and more than one word written out, is referred to as “**words**” (but cf. margin no. 646 regarding the table of contents). If the passage of text comprises only one word written out and at least one number or a character, it is referred to as “**particulars**”; **punctuation marks** are ignored. This distinction is formal in nature and serves to create standardized and uniform amending language.

Examples

The particulars “sections 13 and 14” are replaced by the words “section 13 (2) numbers 1 and 3”.

The words “section 15, second sentence” are replaced by the words “section 15 (2), first sentence”...

The word “applications” is deleted in the clause preceding number 1.

561 Text which cannot be described more precisely is referred to as “**wording**” in the amending formulae (for examples, cf. margin nos 608, 611).

562 All citations of the current and future wording are marked using **quotation marks** in the amending formula.

Examples

In section 3 the words “advertisements or” preceding the word “applications” are deleted.

In section 4 the phrase following the words “staff council” is deleted.

In section 6 (1) the particulars “section 17 (3)” are deleted.

3.7.1 Structure

563 Each section in the principal act to be amended is given a **separate number**. Amendments to additional constituent elements of the law, for example the **table of contents**, **subheadings** of higher-ranking structural units or **annexes**, are also each given a separate number.

Example

1. In the table of contents the particulars regarding section 3 read as follows:
“section 3 (repealed)”.
2. Section 3 is repealed.
3. In section 17, ... is
4. Annex 2 reads as follows:
“...”

564 The **passage of text** to be amended should be referred to as precisely as possible, i.e. down to the lowest structural unit (subsection, sentence, half-sentence or clause, number, letter). The entire structure up to the unit of “section” must be clear.

Examples

1. Section 3 (4) is repealed.
2. In section 17 (2), first sentence, **number 5** the word “...” is replaced by the words “...”.

565 If only one subunit in a section is amended, it is referred to together with the next available higher-ranking structural units.

Example

1. Section 5 (3), first sentence, is repealed.

566 Where **several amendments** refer to **different subunits** of a section, for instance subsections, sentences or numbers, the amending formula is further subdivided. This can lead to a multistep amending formula whose steps need to be referred to using letters, possibly double letters, and possibly even triple letters.

Example

1. Section 2 is amended as follows:
 - a) Subsection (1) is amended as follows:
 - aa) In the first sentence, the word “...” is inserted after the word “...”.
 - bb) The second sentence is amended as follows:
 - aaa) In number 5 the word “...” is deleted.
 - bbb) Number 6 is deleted.
 - ccc) Numbers 7 and 8 become numbers 6 and 7.
 - b) Subsection (4) is repealed.
2. Section 5 reads as follows:

“Section 5

...”

However, **subdividing** an amending formula **beyond double letters** can make it confusing. A possible alternative is to **completely revise** a continuous passage of text (margin no. 614).

567 Amending formulae should **not be divided up unnecessarily** (cf. also the examples in margin no. 598).

Example

Do not write:

7. Annex 1 reads as follows:
“Annex 1 ...”
8. Annex 2 reads as follows:
“Annex 2 ...”

Instead write:

7. Annexes 1 and 2 read as follows:
“Annex 1 ...
Annex 2 ...”

568 **Several amendments in one sentence** which is not subdivided by means of a numbered list are **grouped together in one formula**, as are several amendments in a non-subdivided number or a non-subdivided letter.

Example

1. Section 3 is amended as follows:
 - a) In the first sentence the particulars “...” are deleted and the word “...” inserted after the word “...”.
 - b) In the second sentence, number 3 the word “...” is deleted and the words “...” are replaced by the words “...”.

569 The words “in” “preceding”, “before” or “after” indicate precisely **where** the amendment is to be made.

Examples

1. Section 6 is amended as follows:
 - a) In subsection (1), second sentence, the word “...” is deleted.
 - b) In subsection (2) the particulars “...” are inserted after the particulars “...”.
2. Section 9 (3) is amended as follows:
 - a) In the clause preceding number 1 the word “...” is replaced by the word “...”.
 - c) In number 3 the words “...” are inserted before the word “...”.
 - d) In number 4 the particulars “...” are inserted after the particulars “...”.

570 Sentences are not numbered in principal acts. If the amendment is to be made in one of several sentences in a section or subsection, the amending formula must, nevertheless, refer to the sentence by means of a number.* **Numbering sentences** is not problematic if, in line

* German example: “In Satz 2 werden ...” / English example: “In the second sentence ...”

with the requirement that provisions be structured clearly and comprehensibly, only a few, short sentences have been included (cf. margin no. 63).

571 Complex sentences containing lists can cause difficulties when numbering sentences (margin no. 107). If the list is preceded by a **colon**, this does not interrupt the sentence. The part of the sentence up to the colon can, for instance, be described in the amending formula as “the clause preceding number 1”.

572 **Lists** which, contrary to the recommendation in margin no. 376, comprise **several sentences** cause particular difficulties when being cited. The amending formula for complicated sentence structures also needs to be phrased so that it is easy to clearly pinpoint which passage of text is to be amended.

Example

Section 3 of the Income Tax Act

The following are tax free:

1. ...

...

24. **Benefits granted under the Federal Child Benefit Act;**

...

29. Salaries and income

a) paid to the diplomatic representatives of foreign states, the civil servants assigned to them and any persons in their service. **This does not apply to German nationals or to persons residing permanently in Germany;**

b) **of the career consul, members of the consulate and its staff, in so far as they are members of the posting state.** This does not apply to persons residing permanently in Germany or who pursue a profession, a trade or another gainful activity outside of their office or service;

...

36. Income from basic nursing services ... if these services are provided by relatives of the person in need of long-term care. **The same applies, mutatis mutandis, if the person in need of long-term care receives a nursing allowance based on private insurance contracts in accordance with the requirements set out in the Eleventh Book of the Social Code or a lump-sum allowance in accordance with the provisions on allowances for the provision of care in the home;**

...

The sentences in bold in the above example are cited as follows:

Section 3 **number 24** of the Income Tax Act

Section 3 number 29 letter (a), **second sentence**, of the Income Tax Act

Section 3 number 29 letter (b), the **clause preceding the second sentence**, of the Income Tax Act

Section 3 number 36, **second sentence**, of the Income Tax Act

Other clauses can be referred to precisely using the words “preceding” or “after”.

Examples

In the clause **preceding** number 1 ...

In number 29 the clause **preceding** the letter (a) ...

573 Such sentence structures give rise to the problem that some of the individual items in the list comprise several separate sentences and are at the same time part of an overall sentence. Separate **sentences within one number** or one letter are only counted there, however. When citing the sentences within the number or the letter it is thus irrelevant how many sentences there are outside the respective number or the respective letter.

574 If the **overall sentence** containing such a list is only one of several sentences in a section or subsection, this must also be indicated in the amending formula or citation by means of the sentence number. If, for instance, several sentences followed the list in section 3 of the Income Tax Act, the examples in margin no. 572 would have to be cited as follows:

Section 3, first sentence, number 24 of the Income Tax Act

Section 3, first sentence, number 29 letter (a), second sentence, of the Income Tax Act

Section 3, first sentence, number 29 letter (b), the clause preceding the second sentence, of the Income Tax Act

Section 3, first sentence, number 36, second sentence, of the Income Tax Act

In the first sentence in the clause preceding number 1 ...

In the first sentence number 29 in the clause preceding letter (a) ...

3.7.2 The amending actions “repeal” and “delete”

575 The amending actions “repeal” and “delete” mean that the wording referred to is to be removed entirely. The distinction between the two actions is formal in nature: entire structural units (e.g. parts, chapters, sections, subsections, sentences, numbers, letters) are **repealed**.

Parts of a sentence, for example individual words or particulars, as well as headings are **deleted**. This distinction is even made where the legal provision concerned has not yet entered into force or has become null and void.

- 576 The amending actions “**repeal**” and “**cease to be effective**” only differ in regard to where they occur; however, only provisions which have already come into force can cease to be effective. If the amending formula on account of which a certain structural unit is to be removed is in the last section or the last article on the entry into force or expiry, the amending formula reads:

Section(s) ... shall cease to be effective on

or:

... shall enter into force on ... ; at the same section(s) ... shall cease to be effective.

Otherwise it reads:

Section(s) ... is/are repealed.

- 577 Repealing **higher-ranking structural units** means they are repealed in their entirety, i.e. including all the lower-ranking structural units they contain (e.g. subsections, subheadings).

Example

Chapter 8 Part 3 is repealed.

- 578 If a single higher-ranking structural unit is to be removed but the structural units it contains are not, only the **heading** of the higher-ranking structural unit is deleted.

Example

The heading “Part 3” is deleted.

- 579 If repealing one or more subsections leaves only one section remaining, the existing **subdivision into subsections** becomes **superfluous** and should be deleted. The same applies accordingly to numbers and letters.

Examples

1. Section 133 is amended as follows:
 - a) The subsection designation “(1)” is deleted.
 - b) Subsection (2) is repealed.

2. Section 134 is amended as follows:
 - a) Subsection (1) is repealed.
 - b) The subsection designation "(2)" is deleted.
 - c) Subsection (3) is repealed.

580 Repealing numbered structural units in a principal act will create **gaps** in the numbering. Additional amending formulae are necessary to ensure consecutive numbering.

Example

1. Section 3 is repealed.
2. Sections 4 to 20 become sections 3 to 19.

Renumbering the sections means the headings of any higher-ranking structural units will also change.

581 If further amendments are to be made to the structural units which need to be renumbered, the renumbering will no longer be consecutive.

Example

1. Section 3 is repealed.
2. Sections 4 to 14 become sections 3 to 13.
3. Section 15 becomes section 14 and in the second sentence the word "..." is deleted.
4. Sections 16 to 20 become sections 15 to 19.

582 **Cross-references** to the repealed structural units and to those structural units which have moved up will always need to be checked and, where necessary, adapted (margin nos 218 et seqq., 497). The extent of the amendments to be made can be determined by consulting the register of cross-references in the database of federal legislation.

583 To reduce the amount of work this involves, **gaps** in the numbering are often in practice **tolerated**. When re-publishing the law the following is added after the relevant numerical designation: "(repealed)" (margin no. 885).

584 Sentences are not numbered in principle acts. Where, however, individual **sentences** are **repealed**, they must be precisely described in the amending formula using a numerical designation. The following sentences are not renumbered, they move up automatically. If amendments need to be made to these sentences, the new numbering is used.

Example

1. Section 3 is amended as follows:
 - a) The second sentence is repealed.
 - b) In the new third sentence, ... is

585 Because sentences automatically move up in terms of the numbering, **cross-references to specific sentences** in other provisions may need changing. That is why, when repealing sentences, careful attention must be paid to adapting cross-references which refer to the repealed sentences or the sentences which move up. The extent of the amendments can be determined by consulting the register of cross-references in the database of federal legislation, though only down to the level of the subsection (margin no. 33).

586 Where **individual words**, numbers etc. are deleted, the affected text passages are identified using **quotation marks**. If a word or a number etc. is used **several times** in the structural unit to be amended and it is to be deleted every time it is used, this is indicated by adding "in each case". However, if it is only to be deleted **once**, that place where it is to be deleted needs to be clearly indicated by means of a citation.

Examples

1. In section 3 the word "... " is deleted in each case.
2. In section 5 (2) the words "... " after the word "... " are deleted.

587 Where text is repealed or deleted, the remaining text must still be **linguistically correct** afterwards. Additional amendments may therefore have to be made.

Example

In the sentence "The notices referred to in sections 5 and 6 or the application referred to in section 7 must be submitted in writing to the competent authority together with the documents referred to in section 12" the possibility of including notices is to be eliminated; the amending formula then reads:

In the first sentence the words "The notices referred to in sections 5 and 6 or" are deleted and the following word "the" replaced by the word "The".

Sometimes instead of giving instructions for several individual amendments to be made it may make sense to replace a passage of text with new wording. In the above example the amending formula could read:

In the first sentence the words "The notices referred to in sections 5 and 6 or the application referred to in section 7" are replaced by the words "The application referred to in section 7".

588 Likewise, attention must be paid to ensuring that **punctuation is used correctly**.

Examples

In the third sentence the semicolon and the following clause is replaced by a full stop.

In subsection (3) the words “in any case at the latest after two years,” following the word “...” are deleted.

If there is a danger that a punctuation mark will be overlooked, especially because it is used at the beginning of a citation in quotation marks, reference can be made specifically to it in the amending formula.

Example

In subsection (3) the comma and the words “in any case at the latest after two years,” following the word “...” are deleted.

3.7.3 The amending action “insert”

589 The amending action “insert” is used when new structural units are to be inserted **between two existing structural units**. Words, characters, numbers, clauses or lower-ranking structural units can also be inserted **within an existing structural unit**.

590 The amending formula must first indicate the passage **after** which the new text is to be inserted. When inserting structural units this will be the structural unit after which it is to be inserted.

Example

1. The following sections 7a to 7d are inserted after section 7:

“Section 7a ...”

2. The following number 3a is inserted after section 9 (1) number 3:

“3a. ...”

591 Where text is to be inserted within a structural unit, the passage **after** which the new text is to be placed is cited. Only that much wording needs to be cited as is necessary to precisely identify the text beyond all doubt. Sometimes an amending formula can be worded more concisely by citing the passage **in front** of which the new text is to be placed. The passage which serves as the point of reference is put in **quotation marks**. The text which is to be inserted is also identified using quotation marks.

Examples

1. The following Part 3 is inserted after section 19:

“Part 3
Criminal and administrative fines provisions
Section 20
Criminal provisions

...

Section 21
Administrative fines provisions

...”

2. The previous Part 3 becomes Part 4.
3. The previous sections 20 and 21 become sections 22 and 23.

or:

1. The following Part 2a is inserted after section 19:

“Part 2a
Criminal and administrative fines provisions
Section 19a
Criminal provisions

...

Section 19b
Administrative fines provisions

...”

596 **Renumbering** can mean that **cross-references** may become incorrect and need to be adapted (margin no. 582).

597 If one of the structural units which needs to be renumbered **also** has to be **amended**, the amending action referring to the renumbering may only go down as far as the level of that structural unit. Once the instruction has been issued for the amendment to be made renumbering of the remaining structural units can continue.

Example

1. Section 5 is amended as follows:
 - a) The following subsection (2) is inserted after subsection (1):

“(2) ...”
 - b) The previous subsection (2) becomes subsection (3) and is amended as follows:
 - aa) In the first sentence, ...
 - bb) In the second sentence, number 2, ...

- c) The previous subsection (3) becomes subsection (4) and the words “...” are deleted.
- d) The previous subsections (4) and (5) become subsections (5) and (6).

598 If one of the structural units which needs to be renumbered **also has to be revised**, the individual amending steps can be joined together in the amending formula.

Example

- 1. Section 5 is amended as follows:
 - a) The following subsection (2) is inserted after subsection (1):
“(2) ...”
 - b) The previous subsection (2) becomes subsection (3).
 - c) The previous subsection (3) becomes subsection (4) and reads as follows:
“(4) ...”

If the structural unit to be revised follows the inserted structural unit, the amending action “replace” should be used rather than insertion and revision:

Example

- 1. Section 7 is amended as follows:
 - a) Subsection (2) is replaced by the following subsections (2) and (3):
“(2) ...
(3) ...”

599 If whole **sentences are to be inserted**, only the sentence which serves as the point of reference for the amendment is referred to by means of a numerical designation. Since sentences are not numbered in principal acts, the inserted sentences are not given a numerical designation, nor are the following sentences renumbered. They automatically move down.

Example

The following sentences are inserted after the first sentence:
“...”

600 Where amendments need to be made to a sentence which has automatically moved up or down in terms of the numbering, it is referred to using the new numerical designation.

Example

“... in the new fourth sentence.”

601 When sentences automatically move up or down, **cross-references** to **specific sentences** in other provisions will need to be checked and, possibly, adapted (margin no. 585).

602 Each amending action referring to an insertion must be written so that the new legal text observes the rules of **grammar**, **spelling** and **punctuation**. Other amending actions may have to be used in addition to insertion (margin no. 587 et seq.).

3.7.4 The amending action “place in front”

603 The amending action “place in front” is used when it is necessary to ensure that new text is placed at the beginning of a specific structural unit. That way, new sections can be placed at the beginning of a law or new subunits placed at the beginning of a structural unit. Individual words, numbers etc. can also be inserted in front of existing text within a structural unit. The recommendations in margin nos 589 et seqq. apply accordingly to this **special form of insertion**.

604 If the **same types of structural units** are inserted in front of an existing structural unit, the amending formula takes the existing structural unit as its point of reference.*

605 The amending action “place in front” is also used when a new section is to be placed in front of an existing higher-ranking structural unit. That way a distinction can be drawn between whether a new section 8a still belongs to Part 1 because it is inserted after section 8 or whether it belongs to Part 2 because it is inserted in front of section 9.

606 The **numerical designation** of structural units placed in front of other text must be precisely identified. Generally speaking, subsequent structural units will have to be renumbered by means of further amending steps.

607 Renumbering can mean that **cross-references** also need to be adapted (margin nos 582, 585). To keep the extent of the work involved in doing so to a minimum, in suitable cases structural units can be **given letters**, as is the case when inserting text.

* In German the amending formula begins with the word “*Dem*” (The), e.g. “*Dem § ... wird folgender § ... vorangestellt.*”

Example

1. The following Part 1 is placed in front of the original Part 1:

“Part 1
Scope of application
Section 1
...
Section 2
...”

2. The previous Parts 1 to ... become Parts 2 to ... and the previous sections 1 to ... become sections 3 to ...

or

2. The previous Part 1 becomes Part 1a and the previous sections 1 and 2 become sections 2a and 2b.

608 Where text is placed in front of other text **within a structural unit**, the passage of text **in front** of which the new text is to be placed needs to be identified.

Example

1. The following sentence is placed in front of section 2 (1):
“...”
2. Section 3 is amended as follows:
 - a) The following subsection (1) is placed in front of the wording:
“(1) ...”
 - b) The previous wording becomes subsection (2).

3.7.5 The amending action “append”

609 The amending action “append” is used when text needs to be added to the end of a numbered structural unit.

Examples

In section 1 the following subsection (3) is appended:

“(3) ...”

In subsection (3) the following sentence is appended:

“...”

610 Where several amendments are to be made in a structural unit, the appending **comes at the end** of what may be a multi-step amending formula **on each respective level**.

Examples

Section 5 is amended as follows:

- a) Subsection (2) is amended as follows:
 - aa) The first sentence is repealed.
 - bb) The following sentences are appended:
“...”
- b) The following subsection (3) is appended:
“(3) ...”

The word “to” or “after” is not used when appending text, since it is clear that text is to be added at the end of the structural unit to which reference is made.

611 If appending text means that a **section which was previously not subdivided** is divided into subsections, the amending formula reads:

- 1. Section ... is amended as follows:
 - a) The wording becomes subsection (1).
 - b) The following subsection (2) is appended:
“(2) ...”

612 If a new number is added to a numbered **list**, the numbers preceding it will usually also have to be changed.

Example

- 1. Section 3, first sentence, is amended as follows:
 - a) In number 2 the word “or” is replaced by a comma.
 - b) In number 3 the full stop at the end is replaced by the word “or”.
 - c) The following number 4 is appended:
“4. ...”

613 However, a new number is “inserted” at the end of a list if the **sentence continues** beyond the last item in the list.

3.7.6 The amending action “reads as follows”

614 The amending action “**reads as follows**” is used to indicate that the wording of a structural unit has been replaced entirely without changing the numerical designation of the structural unit. This amending action can be used when a structural unit needs to be completely rewritten or the content is entirely or largely new. It is usually better to rewrite (revise) a

structural unit if using other amending actions would make matters confusing on account of the extent of the amendments to be made. This is usually the case when more than half of the existing wording needs to be changed.

Examples

Part 8 reads as follows:

“Part 8 ...”

Sections 3 to 5 read as follows:

“Section 3 ...”

Subsection (3) reads as follows:

“(3) ...”

Subsection (2), third sentence, reads as follows:

“...”

The first sentence number 2 reads as follows:

“2. ...”

The previous text does not need to be repealed in a separate step, since the revised wording replaces the previous text, i.e. the previous text is “overwritten”.

- 615 If a structural unit is to be replaced by new wording but the **previous wording is to be retained under another numerical designation**, the structural unit is not revised. Instead, the structural unit containing the new wording is first inserted or placed in front of the old wording and then the numerical designation of the previous units is changed.

Examples

1. The following section 4 is inserted after section 3:

“Section 4 ...”

2. The previous section 4 becomes section 4a.

3. Section 5 is amended as follows:

- a) The following subsection (2) is inserted after subsection (1):

“(2) ...”

- b) The previous subsection (2) becomes subsection (3).

- 616 If repealing individual countable structural units (e.g. sections) gives rise to **gaps** in the principal act which need to be marked as “(repealed)” in the course of the re-publication

(margin no. 583), such gaps can also be **re-labelled** and used as a placeholder. Likewise, a provision on entry into force which has been fully executed can be overwritten by revising it.

617 The revised text is written in **regulatory language** since it will become part of the principal act, and it is identified using quotation marks. Where a structural unit is rewritten, the new wording begins with the relevant type and numerical designation and, possibly, the heading, even if they have not changed.

618 Changes to the content of a section may necessitate its heading being revised.

Example

1. Section 3 is amended as follows:

a) The heading reads as follows:

**“Section 3
Board; representation”**

b) The following subsection (3) is appended:

“(3) ...”

619 References to other provisions, especially **cross-references**, on account of the amending action “reads as follows” need to be checked and, where necessary, adapted (margin nos 582, 585). First, changing the content may lead to inconsistencies with other provisions which refer to the revised provision. Second, rewriting a structural unit may have changed its structure such that other provisions referring to individual subunits are no longer correct.

3.7.7 The amending action “replace”

620 The amending action “replace” means that one text passage is exchanged for another. The amending action “replace” is, for instance, used where **many or a few** similar **structural units** are to be exchanged by a certain number of structural units, in particular sections, subsections or sentences. Using this amending action is less confusing and less error-prone than partially revising and then repealing the corresponding number of structural units. In the case of re-publication, sections which were repealed in this way would be marked as “(repealed)” (margin no. 583).

Examples

Parts 3 and 4 are replaced by the following Part 3:

“Part 3 ...”

Sections 3 to 5 are replaced by the following sections 3 to 5d:

“Section 3 ...”

The third sentence is replaced by the following sentences:

“ ...”

Numbers 6 and 7 are replaced by the following numbers 6 to 13:

“6. ...”

- 621 The amending action “replace” can also be used to exchange **individual words** or clauses. In such cases reference is made to the relevant parts of the previous text and they are identified using quotation marks. The new text is also highlighted using quotation marks.

Example

In subsection (3) the words “no more than one year” are replaced by the words “no more than three years”.

Where a word or a number etc. is used **several times** in the structural unit to be amended and it is to be replaced each time, this is indicated by adding “in each case”.

Example

In section 2 (2) and (3) the word “...” is replaced by the word “...” in each case.

- 622 The amending action “replace” is also used where further text is to be added at the end of a **sentence**. In such cases the new text **replaces** the **full stop at the end**. In the interests of creating uniform amending language this action is always unambiguous and preferable to other options. The new text must be written in regulatory language and identified using quotation marks. The full stop at the new end of the sentence should not be forgotten.

Example

1. In section 5, first sentence, the full stop at the end is replaced by the words “; section 5 shall apply mutatis mutandis.”.

- 623 When one text passage is exchanged for another the consequences for the legislative text as a whole need to be checked very carefully. For instance, replacing individual passages of text may have consequences as regards **spelling**, grammar and punctuation in the

remainder of the text. The question may arise of whether subsequent structural units need to be **renumbered** (margin nos 580, 592). It may also be necessary to check and possibly adapt **cross-references** accordingly (margin nos 582, 585).

3.7.8 Bundled amending actions

624 Sometimes **individual words** used several times in the principal act **need to be replaced by new words throughout the text**.

Examples

“information” needs to be replaced by “data”,
“the Federal Minister” by “the Federal Ministry”,
“the chairman” by “the chair”.

625 Where a word to be exchanged is used in a structural unit to which further amendments need to be made for other reasons, all the amendments affecting that particular structural unit are included in one amending formula. It is then often recommended that the section, subsection or sentence be rewritten, since otherwise the amending formula will become confusing.

626 If the words to be exchanged are used in sections to which **no further amendments need to be made**, according to the standard pattern of amending formula the same amending formulae would have to be listed in the order in which the sections appear in the text. However, this can make the amending act confusing and unclear. For that reason, these amendments can be **bundled** together in one amending formula in the chain of amending formulae. However, if other amendments are placed in between these amendments, the bundled formula is made **the last amending formula**.

627 The structural units to be amended are listed in the running text in ascending order and are **identified precisely** down to the smallest structural unit to be amended.

Example

25. In section 3 (1) and (2), section 4 (3), first sentence, sections 6 to 8, 18 (1), second and third sentence, and section 32 (2) the word “...” is replaced by the word “...” in each case.

628 Where a bundled amending formula is used, attention must be paid both to the use of **upper and lower case letters** as well as, in German, to the **declination** of the words to be exchanged.

Example

25. The following are replaced:

- a) In sections 2, 3 and 17 the words “The Federal Office” by the words “The Federal Agency” in each case,
- b) In section 16 (1) and section 18 the words “the Federal Office” by the words “the Federal Agency” in each case.

3.8 Amending only one provision

629 If only one change is to be made to the principal act (e.g. in a single section), the introductory sentence and the amending formula are **combined**. In German it is especially important to phrase the reference to the amendment as a **relative clause** in the full citation of the principal act in question, otherwise the reference might be misunderstood to be the last amendment to the section to be amended.* The sentence generally begins with a reference to where the amendment is to be made.

English example

In section ... of ... [Act] as published on ... (Federal Law Gazette ...), as last amended by Article ... of the Act of ... (Federal Law Gazette ...), the particulars “...” are replaced by the particulars “...”.

630 In German the problem can sometimes arise that the law to be amended and the designation of the place where the amendment is to be made have the same grammatical gender (e.g. “*die Insolvenzordnung*” and “*die Überschrift*”, or “*die Zivilprozessordnung*” and “*die Inhaltsübersicht*”). Here, careful wording will make it clear to what the amending formula refers.

631 The amendment to the text described in the introductory sentence is subdivided using numbers and, possibly, using letters if various subordinate structural units are to be amended.

Example

Section ... of ... [Act] of ... (Federal Law Gazette ...), as last amended by Article ... of the Act of ... (Federal Law Gazette ...), is amended as follows:

1. Subsection (1) reads as follows:

* German example: “*In § ... des ... [Gesetzes] in der Fassung der Bekanntmachung vom ... (BGBl. ...), das zuletzt durch Artikel ... des Gesetzes vom ... (BGBl. ...) geändert worden ist, wird die Angabe ‘...’ durch die Angabe ‘...’ ersetzt.*”

“(1) ...”

2. Subsection (2) is amended as follows:
 - a) In the first sentence, the word “...” is inserted after the word “...”.
 - b) The second sentence is repealed.

3.9 Several amendments to individual provisions in the same legislative act

632 Where several amendments are to be made to the same provisions in a principal act by means of a single legislative act (**multiple amendments**), the amendments are sorted according to the date of their entry into force and grouped together in separate articles (margin no. 541). A good example is the Third Act to Amend the Postal Act of 16 August 2002 (Federal Law Gazette I p. 3218). The introductory sentence to the article containing the first amendment cites the law to be amended using its full citation (margin nos 169 et seqq.).

Example

Article 1

Amendment to the Postal Act

The Postal Act of 22 December 1997 (Federal Law Gazette I p. 3294), as last amended by Article ... of the Act of ... (Federal Law Gazette ...), is amended as follows: ...

It is sufficient to use the law’s citation title and to cite the preceding article when making reference to the amendment in the introductory sentence to the next article. Subsequent amendments are then made to that text which arises on the entry into force of the preceding article. The multiple amendment should be identified in the article heading by means of a phrase such as “Further amendment to the ... Act” or “Amendment to the ... Act 2010”.

Example

Article 2

Further amendment to the Postal Act

The Postal Act, as last amended by Article 1 of this Act, is amended as follows: ...

633 Where multiple amendments are made, the desired changes will at least in some cases refer to the same passages of text. Attention must then be paid to ensuring that the subsequent amending formula refers to the text passage to be amended in the form it will take following the entry into force of the preceding amendment.

634 Special care needs to be taken when further amendments are to be made to the principal act **before the entry into force** of the further – still pending – amendment, since both the

principal act as well as, in certain circumstances, the act containing the pending amendment may need to be amended (in the example used in margin no. 632 this would be Article 2; cf. also margin nos 670 et seqq.).

635 Instead of making multiple amendments in several articles, in suitable cases it may be better to amend one provision in the principal act in such a way that **the wording itself** indicates what will apply at which points in time.

Example

The monthly grant amounts to

1. 400 euros in 2007 and 2008,
2. 422 euros in 2009 and 2010,
3. 446 euros from 2011 onwards.

3.10 Structure of consequential amendments

636 Individual amending acts can also lead to consequential amendments having to be made in other laws or statutory instruments. Consequential amendments which guarantee that the amended provisions are consistent with other legislation need to be formulated using the right amending formula in **each individual case** (cf. margin nos 624 et seqq. regarding the special features of bundled amending formulae). Writing provisions which make sweeping amendments does not ensure that the wording of the legislation concerned is unambiguously clear. This is of no use when it comes to documenting legislation and impairs the clarity of norms (bad example: “Where reference is made in provisions to regulations which are to be amended or repealed by means of this Act, they shall be replaced by the corresponding regulations set out in this Act.”).

637 Consequential amendments are generally **grouped together in one article**. A heading, for example “Consequential amendments”, helps to place the article in the right context within the law.

638 In contrast to the article containing the main amendments to the principal act, the article containing the consequential amendments is **subdivided into paragraphs**. A separate paragraph is created for each affected law and for each affected statutory instrument. Each paragraph begins with an introductory sentence for the respective law or the respective statutory instrument. Often only one provision is amended (cf. margin nos 629 et seqq.). The introductory sentence and the amending formulae are framed in line with general recommendations.

639 The **order** of the laws and statutory instruments to be amended follows that of their index numbers as they appear in the Directory of Legislation in Force A (margin no. 26). This order must also be retained where the consequential amendments refer partly to laws and partly to statutory instruments; thus, no distinction is drawn between the rank of the legal rules.

Example

Article 2

Consequential amendments

(1) The ... [Act] of ... (Federal Law Gazette ...) is amended as follows:

1. ...

2. ...

(2) Section ... of the ...[Ordinance] of ... (Federal Law Gazette ...), as amended by the Ordinance of ... (Federal Law Gazette ...), is repealed.

(3) In section ... of the ... [Act] as published on ... (Federal Law Gazette ...), as last amended by Article ... of the Act of ... (Federal Law Gazette ...), the particulars “...” are replaced by the particulars “...”.

640 Dividing the article into paragraphs may make things confusing if very comprehensive consequential amendments need to be made to individual laws or statutory instruments, for example. In such cases, **separate articles** can be used for the laws and statutory instruments to be amended and the articles in the individual amending act should be given headings which designate the law or statutory instrument to be amended, for instance “Amendment to the ... [Act]”.

3.11 Other types of amendments

3.11.1 Amending the title

641 Where the title of a law needs to be amended, this is the first amendment and comes before all the other amending formulae.

642 **Changing the short title** (margin no. 331) should be avoided if at all possible. Amending generally well-known short titles in particular can cause confusion and uncertainty. For example, despite having a new citation title, the law will still have to be cited using its old date of signature and its old publication reference. When individual amending acts are enacted at a later stage, the new citation title will have to be included in the title, whilst the numbering will be based on how often the principal act has been amended since its

enactment (and not since the citation title was changed) on account of individual amending acts (margin no. 525). Since the short title of the principal act is used in cross-references, when the short title is changed all the cross-referencing provisions (main provisions) in other laws and statutory instruments will then also have to be adapted.

- 643 The same applies when it comes to **changing the long title** if the law has no short title. It may nevertheless be possible to change the title if it no longer appropriately reflects the subject matter of the law.
- 644 A **short title may be added** to a principal act if up until that point it has only had a long title which made citation difficult. In such cases, though, provisions in other laws and other statutory instruments making reference to this act will have to be adapted because the new short title will then become the citation title.
- 645 An **official abbreviation** should not be changed, since the principal act, all provisions on validity, and all main and referenced provisions (in the case of cross-references) are listed under this abbreviation in the database of federal legislation. If the principal act has no official abbreviation, a non-official abbreviation is documented. This should be used if an official abbreviation is added at a later stage. The Federal Office of Justice, which is responsible for documenting federal law, can provide details on abbreviations.

3.11.2 Amending the table of contents

- 646 If the principal act has an official table of contents, it **also needs to be amended** if amendments to provisions have repercussions for the table of contents. The table of contents merely serves better orientation. It has no normative content and merely sets out the structure of the law. To make this clear, amending formulae referring to the table of contents use the term “particulars”.

Examples

1. In the table of contents, the following particulars are inserted after the particulars concerning section 12:
“Section 12a ...”.
- or:**
1. The table of contents is amended as follows:
 - a) The particulars concerning section 20 read as follows:
“Section 20 ...”.
 - b) The particulars concerning section 36 read as follows:

“Section 36 (repealed)”.

- c) The particulars concerning sections 36a to 40 are replaced by the following particulars:
“Section 37 ...”.
- d) The particulars concerning section 43a are deleted.

3.11.3 Linguistic changes occasioned by a proposal for legislative amendments

647 Each proposal for a legislative amendment provides the opportunity to also make the necessary linguistic changes to the relevant principal act. This need will arise in the cases described in the following.

648 If the text contains **male job titles, official designations and functions** such as “businessman” or “spokesman”, these should be replaced by gender-neutral terms (e.g. “spokesperson”) or the corresponding female designations should be added (e.g. “spokeswoman”). Care should be taken to ensure both consistent linguistic usage and comprehensibility and clarity of the legal text (margin nos 110 et seqq.).

649 **Personalized authority designations** (e.g. “the Federal Minister of Finance”) can usually be replaced by neutral designations (e.g. “the Federal Ministry of Finance”) (margin no. 383). If a provision specifically addresses the head of an authority, a gender-neutral term should be chosen (margin nos 110 et seqq.; cf. e.g. section 26 of the General Equal Treatment Act).

650 **Outdated designations for offices, authorities, institutions** etc. should be replaced by their current titles. This applies in particular to any German titles comprising the prefix “*Reichs-*” (Reich). Outdated designations need to be changed because in many cases they no longer indicate which office is competent today (cf. Article 129 of the Basic Law).

651 Such amendments often need to be made in several individual provisions in one law. The use of **bundled amending formulae** (margin nos 624 et seqq.) is recommended.

3.11.4 Eliminating “Berlin clauses”

652 So-called “Berlin clauses”, provisions governing the scope of application of legislation, stipulated that a legal provision applied to Berlin. They became null and void on 3 October 1990 after the Allies had declared on 1 October 1990 that they would be suspending their rights in relation to Berlin as of 3 October 1990 and the Sixth Transitional Act of 25 September 1990 (Federal Law Gazette I p. 2106) simultaneously came into force.

Where a principal act still contains a Berlin clause, this should be **repealed** the next time the principal act is amended or, possibly, **overwritten** by rewriting or replacing the relevant passage of text.

653 Federal laws enacted in the period in which German unification was being established and which applied to Berlin may contain a few provisions whose applicability to Berlin was ruled out by means of “negative Berlin clauses”. When the principal act is amended, this opportunity should be used to check and, where necessary, repeal, such clauses.

3.11.5 Amendments to the Social Code

654 When amendments are to be made the Social Code, special attention needs to be paid to its particular structure (margin no. 202).

655 Where one of the books of the Social Code needs to be **amended**, it is treated like a principal act.

656 Particular care must be taken if amendments are to be made to the **transitional provisions** (margin no. 204) which are still contained in individual omnibus acts, since these regulatory remnants are not part of the respective book of the Social Code. A separate article needs to be created in the amending act to amend such regulatory remnants.

Example

Article ...

Amendment to the Long-Term Care Insurance Act

In Article 45 of the Long-Term Care Insurance Act of 26 May 1994 (Federal Law Gazette I p. 1014, 2797), as last amended by ..., the words “...” are deleted.

Article 1 of the Long-Term Care Insurance Act created the Eleventh Book of the Social Code – Social Long-Term Care Insurance; Article 45 contains a transitional provision.

657 In the interests of the clarity of social legislation, these regulatory remnants should be **consolidated** in the relevant omnibus acts, i.e. provisions which have become null and void should be repealed, the others should, if possible, be incorporated into the relevant book of the Social Code.

3.11.6 Amendments in connection with regulations in the German Unification Treaty

- 658 The legislature may adopt regulations which derogate from the provisions of the German Unification Treaty and its annexes (margin nos 209 et seqq.). However, the wording of the Treaty itself may **not** be amended. Amending formulae such as “Annex I, Chapter ..., Part III, number ... of the Unification Treaty ... is amended as follows:” are therefore not possible.
- 659 New transitional law occasioned by German unification should always be included in the **concluding provisions of the principal act** whose subject matter is affected.
- 660 Transitional rules which deviate from the Unification Treaty may in particular be considered if they refer to the measures listed in Annex I, Part III, to their content or their period of validity. If the **measures** regarding a principal act listed in Annex I, Part III are to be dropped and the law is then to apply “without qualification” in the territory referred to in Article 3 of the Unification Treaty, it is recommended that the following wording is used:

The measure listed in Annex I, Chapter ..., Subject Area ..., Part III, number ... of the German Unification Treaty of 31 August 1990 (Federal Law Gazette 1990 II p. 885, ...) no longer applies.

Clarifying which measures in the Unification Treaty no longer apply makes a key contribution to the **consolidation of legislation** and thus to ensuring that the legal system is clearly structured, since it is no longer easy to establish whether and if so using which measures a federal legal provision must still be applied in the acceding territory and whether account still needs to be taken (for a transitional period) of the law of the German Democratic Republic.

- 661 If other regulations are to be “superimposed” on the measures listed in Annex I Part III in regard to a principal act, it must be made clear which regulations are to replace which measures. The following phrases are possible:

The following provisions apply in place of the measures listed in Annex I, Chapter ..., Subject Area ..., Part III, number ... of the German Unification Treaty of 31 August 1990 (Federal Law Gazette 1990 II p. 885, ...): ...

In derogation of the time limits set out in Annex I ..., the provisions on ... shall continue to apply until

3.11.7 Amending provisions which restrict basic rights

- 662 Where principal acts are amended in such a way that the newly introduced provisions restrict basic rights, the **citation requirement under Article 19 para. 1, second sentence, of the Basic Law** must be fulfilled (margin nos 427 et seqq.). The relevant reference is added immediately after the provision in the principal act which restricts basic rights. Only by way of exception should the individual regulations restricting basic rights be grouped together in a concluding provision in the principal act. Where such a provision already exists, it will generally also need amending (margin no. 431 et seq.).
- 663 If the amending act affects individual provisions which already restrict basic rights, the citation requirement is not fulfilled on account of the reference which is already included in the principal act. Due to the citation requirement's warning and awareness-raising function, a **new statutory reference** to the restriction of basic rights needs to be included if the amending act extends the existing restriction of basic rights. In such cases, the reference can also be included in the concluding article of the amending act without it having to become part of applicable federal law requiring documentation. Such a new reference only need not be included if the amending act merely repeats the provisions restricting basic rights (e.g. by rewriting it) or it only changes the provision in a manner which does not lead to or authorize a new restriction of basic rights.

3.11.8 Amending annexes

- 664 An annex (margin no. 365 et seq.) is a constituent element of a law and must be amended in the same way as other structural units.
- 665 Amendments to a law can refer **only** to its annexes. In such cases the introductory sentence and the reference to the last amendment are worded in the same way as an amendment to only one provision (margin nos 629 et seqq.).

Example

Annex 1 (Cost schedule) to the Court Fees Act of 5 May 2004 (Federal Law Gazette I p. 718), as last amended by ..., is amended as follows: ...

- 666 If further amendments are also made to the principal act, the amending formula concerning the annex comes last.

Example

...

17. (e.g. repeal of the Berlin clause)
18. Annex ... is repealed.

667 Where annexes are revised, replaced or appended, the amending formula should **directly** render its wording.

Example

18. Annex ... reads as follows: ...

However, if the text of the annex is too long and printing it at that particular place would make the structure of the amending act confusing and unclear, the new wording of the annex can be printed as an addendum to the amending act.

Examples

18. Annex ... contains the authoritative version as per the addendum to this Act.

18. Annexes 1 to 5 in the addendum to this Act are appended.

The heading of the addendum then reads: "Addendum to Article ... number 18", for example. The content of the addendum then follows, without quotation marks, i.e. the complete wording of the annex(es), beginning with the (respective) heading.

668 The standard amending formulae are used when **individual parts** of the annex to a principal act are **amended**; the individual places where amendments are to be made should be described as precisely as possible.

Example

18. Annex ... is amended as follows:
 - a) Part A ... reads as follows: ...
 - b) Number ... is amended as follows:
 - aa) In the item "Sepiolit" in column 1 the particulars "E 553" are replaced by the particulars "E 562".
- ...

669 If **text in a table** or outline is revised or text is inserted, existing headings above the individual columns should be included in the amending formula along with the corresponding field in the table.

Example

Article 16 number 12 letter (p) of the Act of 22 December 2006 (Federal Law Gazette I p. 3416):

12. Annex 1 (Cost schedule) is amended as follows:

...

p) Number 2221 reads as follows:

No.	Fee	Fee or rate in accordance with section 34 of the Court Fees Act
"2221	Annual fee for each calendar year in which proceedings are conducted. The fee is also levied for the respective calendar year in which the day of the confiscation falls and in which the proceedings are suspended.	0.5 – at least 100 euros, in the first and last calendar year at least 50 euros in each case."

3.11.9 Amendments where there are pending amendments

670 Extra care must be taken where amendments are to be made to a principal act whose last amendment has been promulgated but has not yet entered into force (pending amendment). In such cases, the pending amendment already exists, but has not yet effected the change to the wording of the principal act (margin no. 438).

671 If the pending amendment enters into force **before the new amendment**, the pending amendment will determine on which wording the new amendment will be based (margin nos 551, 633).

672 If, by contrast, the new amendment is to enter into force **before the pending amendment**, consistency of the pending amendment must be checked. Particularly when the amendments affect **the same text passages in the principal act**, there is generally a risk that the pending amendment can no longer be executed on the date on which it is to enter into force because the amending formulae are based on wording which no longer exists. In such cases, the pending amendment must be prevented from entering into force as promulgated. The content must be framed differently using new amending formulae on the basis of the wording as amended.

673 A **three-step procedure** can be applied in such cases: First, an article is created which orders the new amendment to the principal act. A second article then repeals the amending formulae of the promulgated amending act, which could no longer be executed in the new

wording. Finally, the principal act is amended once more in another article so that the content of the pending amendment can be unambiguously implemented in the future wording.

674 The **dates for the entry into force** of this three-step amendment must be defined separately in each case. The new amendment can enter into force, as desired, at a point in time before the date on which the pending amendment was promulgated. The repeal of the pending amendments which could not be executed should become effective as soon as possible, i.e. on the day following promulgation. Finally, implementation of the content of the previously pending amendment as per the new wording should enter into force on the originally desired date.

675 The three-stage procedure has the following advantages: When an amending act enters into force, its amending formulae are executed in the respective principal act and become void as a result. The consequence of this is **that amending acts can no longer be amended once they have entered into force**. From that point in time onwards only the principal act (as amended) can be amended. Consequently, an amending act can only be amended as long as and in so far as it has not yet entered into force. If, however, it were possible to directly amend the amending formulae of the promulgated amending act, establishing the authoritative wording of the principal act would be a relatively arduous task. One would first have to implement the current amendments in the principal act, then implement the necessary amendments in the act which contains the pending amendments and then at a later date incorporate these amended amendments into the wording of the principal act; the reference to the amendment regarding the principal act would then be complicated (cf. margin no. 192). In contrast, the recommended three-stage technique makes it clear which wording of the principal act is enacted on which date.

3.11.10 Parallel amendments

676 Where a principal act is amended in parallel legislative proposals, it must be unambiguously clear which amendment determines the applicable wording at which point in time. When drafting legislation it is thus recommended that the wording on which each draft is based is recorded in an appropriate manner (cf. margin no. 551). Close attention should be paid to developments in both legislative processes in order, where necessary, to be able to adapt the draft with the help of drafting assistance to the amended sequence once the amendments come into force. Sometimes it will also be sufficient to ensure that the two amending acts are promulgated in a specific order.

677 Where amendments to the same principal act resulting from various legislative proposals **enter into force on the same day**, it must be unambiguously clear in which order the amending actions are to be carried out. Various amendments affecting the same passages of text in the principal act will otherwise be incorporated into the wording according to their date of signature and promulgation.

3.11.11 Amending provisions on the period of validity

678 Extreme care must be taken when provisions on the period of validity are to be amended. Amending a provision on entry into force should **only** be considered in the first place if **lead time** before a law enters into force has been determined, i.e. a longer period of time elapses between its promulgation and entry into force. If the date of entry into force is to be amended, it must be ensured that the corresponding amending act is promulgated and enters into force before the date of entry into force which is to be amended. Otherwise, the amendment will come too late: A principal act which has entered into force would have to be repealed, amendments in the principal act which have entered into force would have been executed, so that only this principal act could be amended. If legal consequences which have already arisen would have to be reversed, the legislature would have to introduce explicit regulations to that effect (cf. margin nos 465 et seqq. regarding the problem of retroactive effect).

679 If the **principal act** is **time limited** (margin nos 469 et seqq.), the amendment may refer to postponing the end of the period of validity or dropping the time limit. In such cases, the amending formula should be written so that it replaces the date of expiry with the new date or repeals the provision on expiry. In any case, it must be ensured that the corresponding amending act is promulgated and enters into force before the law ceases to be effective. If this is not done, the law will cease to be effective and have to be re-enacted.

3.11.12 Time-limited amendments

680 In certain cases one can consider imposing a time limit on amendments by including a **provision on expiry** in the principal act. This presupposes that the wording of the principal act is unambiguous, clear and leaves no gaps even after the amendment ceases to have effect. This is, for instance, the case when a **structural unit** with **distinct** content is **inserted** or **appended** and this structural unit can be dropped again without that having any further impact on the remaining wording. In such cases an amending formula is used to first order that the structural unit is inserted into or appended to the principal act. Then this structural unit must cease to be effective on the desired date as per the provision stipulating the period

of validity in the principal act; to that end the provision on entry into force which has already been executed can, for instance, be overwritten. The advantage of doing this is that it is possible to establish from the principal act itself whether certain regulations are only to apply for a specific period of time.

Example

Article ...

Amendment to the ... [Act]

The ... [Act] of ... (Federal Law Gazette ...), as last amended by Article ... of the Act of ... (Federal Law Gazette ...), is amended as follows:

1. In section ... the following subsection (...) is appended:

...

8. Section ... reads as follows:

“Section ...

Time limit

Section ... (...), shall cease to be effective on”

In regulatory terms it is also possible to order that the inserted or appended structural unit ceases to be effective in the provision on the period of validity in the amending act. However, such a time limit can easily be overlooked. At any rate, the expiry must refer to the structural unit inserted into or appended to the principal act and not to the amending formula.

Example

Article ...

Entry into force, expiry

This Act shall cease to be effective on the day following its promulgation. Section ... (...) of the ... [Act] of ... (Federal Law Gazette ...), as last amended by Article ... of this Act, shall cease to be effective on

681 Where such a separate structural unit is to be **inserted for a limited period**, it is recommended that the existing **numbering** is not changed but rather that **letters are added** (margin no. 593). Where, nevertheless, the following structural units are to be renumbered after making the insertion, it is sufficient to allow the inserted structural unit to cease to be effective after the end of the time limit. Where a gap arises in the principal act after repealing a countable structural unit (e.g. a section), this must be identified as “(repealed)” when the principal act is re-published (margin no. 583).

682 **Other amendments** can best be limited as to time by the amending act providing for **multiple amendments** to the principal act (margin nos 541, 632 et seqq.). Where, for

instance, a time limit is to be imposed on the amendment of individual words or particulars, first an amending formula needs to be framed in such a way that the wording applies for the limited amount of time and then another amending formula is written which, based on the wording which applies for a limited period, reinstates the original wording. On no account is it possible to limit the time of the amending formula itself in order thereby to allow the original wording to be revived.

683 **Instead of using time-limited amendments** the intended purpose can sometimes just as easily be achieved by including an application or transitional rule in the principal act (margin nos 412 et seqq., 684 et seqq.). That way deviating rules can be set down for certain matters for a specific period of time. Such a provision then becomes void once it has served its regulatory purpose. It can be made valid for a fixed period of time in the same way as inserted or appended provisions (margin no. 680) or it can be repealed at a later date in order to consolidate legislation.

3.12 Transitional provisions

684 When amending applicable law it is often not possible to create a seamless transition between the old and the new legal situation because, for constitutional or other reasons, account needs to be taken of existing legal relations. In such cases a **transitional provision** is needed. It sets out how existing legal relations are to be dealt with. Without a transitional provision it would not be permissible to treat matters which have not yet been completed according to the previously applicable provisions, since these have in the meantime been repealed or amended. Transitional rules can also be used to clarify all those cases in which it is not clear whether the old or the new law is to be applied to a certain matter (cf. margin nos 412 et seqq. regarding transitional provisions).

685 Since they modify the applicability of the new law, transitional provisions are similar, in structural terms, to a regulation in a principal act. That is why they are **inserted into the respective principal act**. The addressees can thus find the new or amended provisions and the accompanying transitional provisions in the same law. If the principal act has an accompanying introductory act, then the transitional provision can be placed in the introductory act (margin no. 759).

686 Were the amending act to contain an own article with transitional rules, this would lead to an undesirable intermingling of amending language and regulatory language parts (margin no. 499). The amending act would do more than merely amend the existing principal act and

would itself become a kind of “ancillary principal act” with a period of validity which would be hard to determine. On account of this transitional provision the amending act would have to be listed in the Directory of Legislation in Force A (margin no. 26) under its long title with a separate index number in the database of applicable federal legislation. Such **regulatory remnants** unnecessarily increase the number of applicable principal acts and make it considerably more difficult to gain an overview of the extent of applicable law (margin no. 493). They should, therefore, be avoided.

687 Where amending acts with transitional rules still exist, these regulatory remnants should be eliminated by repealing them or – if they are still applied to relevant cases – transferring them to the concluding provisions of an appropriate principal act. This procedure makes a key contribution to the **consolidation of legislation**.

688 Transitional provisions are regularly placed in the principal act’s concluding provisions. They can be bundled in one provision or, depending on the occasion for the legal amendment, grouped together in several different sections. In individual cases it may be expedient to place them elsewhere.

689 Transitional provisions usually include an **effective date for the amendment**. This should not be described as “Entry into force of this Act”, since that would refer to the principal act. Therefore, a specific date or – if one has not yet been determined – a commencement formula should be used (e.g. [insert: date of entry into force in accordance with Article ... of this Act]); the following can also be used: “Entry into force of the Act of ... [insert: date of signature and publication reference of this Act]”, i.e. of the individual amending act. If the transitional provision is to make reference to previously applicable law, this should be done as follows: “applicable law until ...” or “this Act as applicable until ...”.

3.13 Amendments to statutory instruments by the legislature⁵⁴

690 Where the legislature wishes to amend a **set of related** laws and statutory instruments, the statutory instruments can be adapted by parliamentary act if the **following preconditions are met**:

- ◆ The amendment to the statutory instrument needs to be made in the context of the legislature’s amendment of a particular legal area.

⁵⁴ For details, see the Joint Circular of the Federal Ministry of the Interior and the Federal Ministry of Justice of 21 March 2006 occasioned by the decisions of the Federal Constitutional Court of 13 and 27 September 2005 (file nos 2 BvF 2/03 and 2 BvL 11/02).

- ◆ The legislature needs to apply **regulations in the Basic Law concerning legislation** in order to enact the amending act (Articles 76 et seqq. of the Basic Law); the question of whether the amending act requires the consent of the Bundesrat is also based on the regulations applicable to formal legislation and not on Article 80 para. 2 of the Basic Law.
- ◆ When amending a statutory instrument the legislature must **observe the limits imposed by the authority conferred by law** (Article 80 para. 1, second sentence, of the Basic Law).

691 The consequence as regards the work involved in drafting the amendments is that the **extent** of the amendments to statutory instruments set out in laws must be limited to what is **occasioned directly by the amendments in the law**. The legislature may not amend a statutory instrument independently of the accompanying legislative measures.

692 As regards the **authority conferred** by law which needs to be observed, it appears constitutionally justifiable for the legislature to amend a statutory instrument in an amending act on the basis of authorization which it has only amended or created on account of the amending act.

693 It is not permissible to **issue entire statutory instruments** in a law. Only the body authorized to issue the statutory instrument is permitted to do that. Cf. the possibility described in margin no. 460 as regards when amending acts need to become effective at the same time as the new statutory instrument referring thereto.

694 The **citation requirement** under Article 80 para. 1, third sentence, of the Basic Law applies only to the body authorized to issue the statutory instrument. If the legislature itself amends a statutory instrument, an enacting clause does not need to be placed in front of the statutory amendments.

695 Where the legislature has amended an existing statutory instrument, the ensuing set of legal rules needs to be qualified as a statutory instrument for reasons of the clarity of norms. So-called "**relaxation clauses**" (*Entsteinerungsklauseln*) used to be common in the concluding provisions of amending acts. Their purpose was to downgrade those parts of the statutory instrument amended by the legislature from the rank of law to the rank of statutory instrument. They are **no longer necessary**.

3.14 Permission to publish

696 Where a law has been amended several times or to a great extent, the concluding provisions of an amending act may provide that the federal ministry competent as to the subject matter may publish the new version of the amended act in the Federal Law Gazette (permission to publish).

697 The text of the law as published in the Federal Law Gazette contains the official wording on which subsequent amending acts will be based (margin no. 175). Since publication **determines the authoritative wording of the law**, the competent ministry requires special permission from the legislature to publish the text. The permission grants the ministry the power to set down the applicable wording of the principal act as per a reference date and to publish it in the Federal Law Gazette.

698 The permission to publish does not establish any power to legislate; its exercise has no effect on the legal situation. It merely permits, in the interests of legal certainty, the **declaratory determination of the legislative text** on a specific date.

699 The permission to publish is generally included in a separate article which precedes the provision on entry into force in an amending act and bears the **heading "Permission to publish"**. It contains the following information:

- ◆ The name of the federal ministry competent to publish the text,
- ◆ The citation title of the law to be published,
- ◆ A specified or specifiable date on which the wording will be determined.

700 The permission to publish may stipulate a **specific date**.

Example

Article 2 of the First Act to Amend the Act on the Reserve Fund for Pensions for Civil Servants of 21 December 2006 (Federal Law Gazette I p. 3288)

The Federal Ministry of the Interior may publish in the Federal Law Gazette the text of the Act on the Reserve Fund for Pensions for Civil Servants as amended on 1 January 2007.

701 Often a reference date is chosen for inclusion in the permission to publish which is **dependent on the entry into force** of the law which contains the permission to publish.

Example

Article 2 of the First Act to Amend the Animal Protection Act of 18 December 2007 (Federal Law Gazette I p. 3001)

The Federal Ministry of Food, Agriculture and Consumer Protection may publish in the Federal Law Gazette the text of the Animal Protection Act as amended upon the entry into force of this Act.

- 702 If **different provisions** in the amending act **are to enter into force at different times** (margin no. 455 et seqq.), it must be made clear which of the various dates of entry into force are taken as the point of reference for the law. It is therefore recommended that in cases in which different provisions are to come into force at different times the date is determined by stating a concrete date or using a commencement formula (margin no. 448) in the permission to publish.

Example

Article 3

Permission to publish

The Federal Ministry of/for ... may publish in the Federal Law Gazette the text of the ... [Act] as amended on ... **[insert: date of entry into force in accordance with Article 4 paragraph 2]**.

- 703 The **effective date** should be specified so that account is taken of as many of the amendments to the principal act which are currently at the consultation and promulgation stage as possible. Publication makes little sense if it is already known that the act will be amended again directly thereafter (margin no. 861).
- 704 **No additional powers should be included** in the permission to publish, for example the authorization to correct obvious errors, to eliminate inconsistencies in the wording, to change the numbering in the law or create a new heading (bad examples: section 33 (2) no. 2 of the Corporation Tax Act; section 51 (4) no. 2 of the Income Tax Act).
- 705 The competent federal ministry is anyway authorized to eliminate printing errors and other **obvious errors** upon publication. That is why the procedure pursuant to section 61 GGO* must be observed, though a separate corrigendum does not need to be published.
- 706 All other additions can create **considerable problems**. Amending a heading, the order of provisions or punctuation can already lead to the legally relevant content of the law being altered. Where the legislature deems a new heading, other numbering or even moving

* Joint Rules of Procedure of the Federal Ministries

sections around to be sensible or necessary, it may not leave it to the competent federal ministry to enact these changes, but must regulate such matters itself.

707 Cf. margin no. 714 regarding the entry into force of the permission to publish.

3.15 Entry into force

708 The date of entry into force should also be **explicitly and precisely** determined in an individual amending act (cf. Article 82 para. 2 of the Basic Law). Those aspects which need to be taken into consideration regarding the provision on entry into force have already been detailed in regard to the enactment of principal acts (margin nos 438 et seqq.); the same applies to individual amending acts unless reference is made in the following to specific other features.

709 The provision on entry into force is **placed** in the last article in the individual amending act.

710 The phrase “**This Act shall enter into force on ...**” is also used in individual amending acts. It indicates the start of the law’s effectiveness or period of validity. That means that the individual amending formulae become effective, are executed in the principal act and thus become void. From that point onwards the text of the principal act contains the new, amended version.

711 The amending formulae always refer to a very specific version of a legislative text. If the entry into force of the amendments is set too far in the future, there is a greater risk that the text to which the amendments refer will have been amended in the meantime. Amendments which have been promulgated but have not yet entered into force (pending amendments) could then lead to the text becoming inconsistent or to it no longer being possible to execute the amendments (margin nos 670 et seqq.). For that reason the **lead time** before amendments enter into force **should not be too long**.

712 Where pending amendments need to be amended or repealed by means of an amending act, for example because they have in the meantime become completely or partly obsolete, it must be ensured that the new amending act enters into force **before** the amending act containing the pending amendments (cf. margin nos 670 et seqq. for details).

713 If **individual amendments are to become effective on different dates**, the provision on the period of validity is framed in line with the structure of the amending act. Grouping

together amendments which are to enter into force on the same date **in a separate paragraph** (margin no. 540 et seq.) makes the provisions on entry into force very clear and unambiguous.

Example

Article ...
Entry into force

- (1) This Act shall enter into force on the day following its promulgation, subject to paragraph 2.
- (2) Article 2 shall enter into force on ... [insert: date of the first day of the fourth calendar month following the date of promulgation].

If amendments which are to enter into force on different dates are included **in only one article**, the entry into force must take the corresponding amending formula as its point of reference, i.e. must make reference to them by means of their number, possibly a letter or double letter. Sometimes it may be necessary to specify the amended structural unit in the principal act as well. Care should always be taken to ensure that the wording of each provision on entry into force in the principal act is unambiguous and clear.

Example

Article ...
Entry into force

- (1) This Act shall enter into force on the day following its promulgation, subject to paragraphs 2 and 3.
- (2) Article 2 numbers 2 to 4 letter (a) shall enter into force on 1 January 2010, number 6 of section 13 of the ... [Act] shall enter into force on the same day.
- (3) Article 3 paragraphs 5, 7 to 10 number 1 letter (a), number 3 letters (c) and (d) shall enter into force on 10 April 2014.

714 An article in the individual amending act containing **permission to publish** (margin nos 696 et seqq.) is not dependent on the provision stipulating entry into force and therefore does not need to be specifically mentioned there. This authorization is directed only at the designated federal ministry and becomes effective on the day of promulgation.

3.16 Closing formula

715 An individual amending act also requires a closing formula. It has the same function as the closing formula in a first legislative regulation, which is why the same closing formulae can be used (margin nos 483 et seqq.). However, the closing formula must be **carefully coordinated with the content of the individual amending act**. It may on no account be

taken over wholesale from the principal act or an earlier individual amending act without being checked. The individual amending act can, for instance, be a bill to which the Bundesrat may lodge an objection although the principal act and an earlier individual amending act required the consent of the Bundesrat, or vice versa.

716 The closing formula does not have the force of law. The Federal President certifies and is responsible for the closing formula (Article 82 para. 1, first sentence, of the Basic Law).

369 Federal Law Gazette 2007 I No. 11, published in Bonn on 30 March 2007

**Act on the Exemption of Attachment of Old-Age Provisions
of 26 March 2007**

The Bundestag has adopted the following Act:

Article 1

Amendment to the Code of Civil Procedure

The Code of Civil Procedure as published on 5 December 2005 (Federal Law Gazette I p. 3202; 2006 I p. 431), as last amended by Article 4 of the Act of 26 March 2007 (Federal Law Gazette I p. 358), is amended as follows:

1. In the Table of Contents the following particulars are inserted after the particulars concerning section 851b:

“Section 851c Exemption of attachment of old-age pensions
Section 851d Exemption of private pension assets with tax benefits”

2. ...

Article 2

Amendment to the Insolvency Statute

In section 36 (1), second sentence, of the Insolvency Statute of 5 October 1994 (Federal Law Gazette I p. 2866), as last amended by Article 13 of the Act of 22 December 2006 (Federal Law Gazette I p. 3416), the particulars “851c and 851d” are inserted after the particulars “850i”.

Article 3

Amendment to the Act on Insurance Contracts

The Act on Insurance Contracts, as consolidated and published in the Federal Law Gazette III, Index No. 7632-1, as last amended by Article 2 of the Act of 19 December 2006 (Federal Law Gazette I p. 3232), is amended as follows:

1. In section 165 (3) the following sentence is appended:

“The same shall apply mutatis mutandis unless the claims may be attached in accordance with section 851c of the Code of Civil Procedure.”

2. The following section 173 is inserted after section 172:

...

Article 4

Entry into force

This Act shall enter into force on the day following its promulgation.

The constitutional rights of the Bundesrat have been observed.

The above Act is hereby signed into law. It shall be promulgated in the Federal Law Gazette.

Signed at Berlin on 26 March 2007

The Federal President
Horst Köhler

The Federal Chancellor
Dr Angela Merkel

The Federal Minister of Justice
Brigitte Zypries

The Federal Minister of Finance
Peer Steinbrück

Date of promul-
gation
Title =
Long title
Date of signature
Enacting clause

Introductory
sentence

Amending formula

Amendment to an
individual provision
(introductory
sentence and
amending formula
combined)

Article heading

Provision on period
of validity (here:
entry into force)

Closing formula

Date of signature

Signatories

[The above original example was adapted in line with the rules set out in this Manual.]

4 Omnibus acts

4.1 Characteristic features

- 717 An omnibus act is one means by which various laws can be amended, created or repealed in a **single legislative act**. There must be a sufficiently close link between the individual parts of an omnibus act.
- 718 Omnibus acts are often also referred to as “*Artikelgesetze*” (article laws) in German, although this term is somewhat misleading since the structural subdivisions of individual amending acts, ratifying legislation and introductory acts are also articles.
- 719 The form of an omnibus act is in particular required whenever **several principal acts** are affected by **main amendments** which are closely linked as regards content and thus an individual amending act with consequential amendments is not an option (margin no. 517 et seq.).
- 720 An omnibus act can combine **all the basic forms of legislation**. In individual articles and under one title it can be used, among other things, to
- ◆ amend several, sometimes numerous principal acts,
 - ◆ replace principal acts and at the same time amend others, or
 - ◆ combine first legislative regulations with the amendment or replacement of principal acts.
- 721 Further, an omnibus act contains **consequential amendments** to be made in other laws or statutory instruments if this is necessary to preserve the consistency of the remaining body of law with the provisions amended or newly created in the omnibus act.
- 722 The omnibus act has only **one enacting clause and one closing formula**, as well as **one provision on entry into force**.
- 723 The **recommendations regarding principal acts, replacement acts and individual amending acts** largely also apply to omnibus acts. That is why only specific features of omnibus acts will be detailed in the following.

4.2 Title

724 An omnibus act needs a **long title**. It is part of the official wording of the law. In contrast to a first legislative regulation, it **does not need to be readily citeable**. An amending act is normally not cited in full (margin no. 520). That is why omnibus acts generally **do not need a short title**.

725 The long title is created in the same manner as the long title of a principal act (margin nos 324 et seqq.). However, when it comes to **stating the subject matter** (margin no. 328), it is not sufficient to merely string together the citation titles of the acts to be amended. Rather, a generalized description is required which indicates the subject matters of the regulations set out in the individual articles. Usually a few words will suffice to describe the purpose of the legislative proposal.

Examples

Act to Reform the Legal Advice Act

Act to Implement the Guidelines of the European Union on the Rights of Residency and Asylum

Act to Amend Provisions Pertaining to Motor Vehicle Tax and Motorway Toll Charges

726 No account need be taken of any **consequential amendments** when writing the long title.

727 The long title of an omnibus act never includes a **year**. Only recurring omnibus acts may include the year of signature in their title as a distinguishing feature. That way the long title – which otherwise remains the same – can be re-used in the future.

Examples

Annual Tax Act 2007

Annual Tax Act 2008

728 In contrast to individual amending acts (margin no. 522), the long title of an omnibus act does not in principle include a **numeral**. The title may only begin with a numeral if this serves to distinguish it from omnibus acts of the same type.

Examples

Second Act to Modernize the Judiciary

Second Act on the Consolidation of Federal Law in the Area of Competence of the Federal Ministry of the Interior

729 Where, in exceptional cases, an official **abbreviation** is created for an omnibus act, this should be done in consultation with the Federal Office of Justice (margin no. 31), which is responsible for documenting federal legislation.

4.3 Enacting clause

730 The draft of an omnibus act must be preceded by an enacting clause. The same applies to the **enacting clause** of an omnibus act as applies to that of principal acts (margin nos 350 to 357).

731 The enacting clause refers to the **omnibus act as a single entity**. If only one article contains a provision which requires the consent of the Bundesrat or a qualified majority, the entire law requires that consent or that qualified majority. It should therefore be checked whether the amendments giving rise to the need for the consent can be realized separately or by means of another legislative proposal which already requires the consent of the Bundesrat or necessitates a qualified majority.

4.4 Structure

732 The structural subdivisions of an omnibus act are consecutively numbered **articles**. Arabic numerals are used as the numerical designation for these articles (e.g. "Article 3", not "Article III").

733 A **separate article** must be created in the omnibus act **for each principal act**, regardless of whether only individual provisions in the principal act are to be amended, replaced or enacted for the first time. Only those consequential amendments which become necessary as a result may be grouped together in one article.

734 The individual articles in an omnibus act should follow the **sequence** of the index numbers in the Directory of Legislation in Force A (margin no. 26). A different sequence may be possible if individual parts of the omnibus act are particularly important.

735 Long omnibus acts can be preceded by a **table of contents**. This merely serves clarity and otherwise carries no meaning.

4.5 Headings and structure of the articles

736 Each article in an omnibus act requires a heading.

737 If an article contains an **entire principal act** (first legislative regulation or replacement), the **title** of the principal act is used as the article heading. The remainder of the **structure** of the article corresponds to that of a principal act (margin nos 361 et seqq.), although it does not have its own enacting clause, an own date of signature, an own provision on entry into force or an own closing formula (margin no. 722).

738 The **heading of an amending article** first states the purpose (“Amendment to”) and the citation title of the law to be amended.*

Example

Article 1
Amendment to the Act on the Trade in Medicinal Products

739 An article which contains main amendments to a principal act is **structured in the same way** as Article 1 of an **individual amending act** (margin nos 544 et seqq., 552 et seqq.).

740 The **heading of an article** which contains a number of **consequential amendments** to be made in various laws or statutory instruments must indicate that it refers to the adaptation to the new legal situation.

Examples

Consequential amendments

Amendments to other legislation

Amendments to other acts pertaining to the law of social legislation and benefits law

741 An article containing **consequential amendments** is **subdivided into paragraphs** which deal with the legal provisions to be amended in the sequence of their index numbers in the Directory of Legislation in Force A. The same recommendations as apply to individual amending acts apply accordingly here (margin nos 636 et seqq.).

* In German this will be in the genitive case, e.g. “*Änderung des Arzneimittelgesetzes*”.

- 742 In some cases, **several articles** can be created for the **consequential amendments**. That makes sense, for example, when individual consequential amendments are to enter into force at different times.
- 743 Especially in the case of comprehensive proposals for legislative amendments a careful check must be made of whether previously applicable **provisions need to be repealed**. One cannot assume that new provisions will supersede earlier ones. Often, old and new provisions only partially overlap. In addition, more recent general provisions do not supersede older specific provisions and it is often difficult to classify a provision as more general or more specific than another. In order to head off legal disputes, it must be precisely regulated whether and if so which provisions are no longer to apply in future.
- 744 If **only individual structural units** in a principal act or principal statutory instrument – for example only individual sections – are to be **dropped**, they are always repealed at that place where the main amendment or consequential amendment is to be made, using the corresponding amending formula (margin nos 575 et seq.).
- 745 Where, by contrast, **entire laws** or statutory instruments are to be repealed, for instance because the omnibus act contains a replacement act, the repeal can be ordered in a **final article** in the omnibus act. The article is given the heading “Repeal of previous law”, for instance. Alternatively, the last article in the omnibus act can be used and given the heading “Entry into force, expiry” (margin nos 576, 754).
- 746 The **repeal** of principal acts can also be ordered to take effect at a **later** point in time; the date on which the repeal is to become effective must then be specified in the provision on entry into force. This is equivalent to retroactively imposing a time limit on the principal act. If the repeal is to become effective much later, for example more than one year after promulgation, it is recommended that the end of the principal act’s period of validity be enshrined in the concluding provisions (margin no. 476). As a result, those applying the law will already be given the important information concerning the end of the period of validity in the principal act. The same applies accordingly to the repeal of statutory instruments.

4.6 Transitional provisions

- 747 Transitional rules may not be grouped together in the concluding articles of an omnibus act. They belong in the **respective principal act** whose enactment or amendment has necessitated the specific transitional rules (margin nos 684 et seq.). Other regulations (e.g.

authorizations to issue statutory instruments) which have a normative period of validity should also be placed in the appropriate principal act. That way those applying the law can find all the relevant provisions on a particular subject matter in the respective principal act. It also prevents **regulatory remnants** arising.

748 The recommendations set out in margin nos 412 et seqq. and 684 et seqq. apply accordingly when it comes to **writing** the transitional provisions in the respective principal acts.

4.7 Provisions on the period of validity

749 The **date of the entry into force** of an omnibus act should also be explicitly and precisely specified. The recommendations on the entry into force of principal acts (margin nos 438 et seqq.) and of individual amending acts (margin nos 708 et seqq.) apply accordingly to omnibus acts.

750 The provision on entry into force is **always included in the last article** in the omnibus act. Individual articles in the omnibus act containing entire principal acts (first legislative regulations or replacements) may not contain separate provisions on entry into force (margin nos 737, 722).

751 The last article bears the **heading** "Entry into force".

752 Often, **different provisions** in an omnibus act **enter into force at different points in time** (margin nos 455 et seqq., 713). Care should be taken when framing the provision on entry into force to ensure clarity and to precisely define those subsets of provisions which are to enter into force on which specific dates. Within the article containing the provision on entry into force these subsets can be set out in separate paragraphs, sentences or in a numbered list.

753 Where amendments which are to enter into force on the same date have been **grouped together in one article** (margin no. 713), it is sufficient to name the individual articles of the omnibus act in the provision on entry into force. If, by way of exception, **individual amending formulae in an article** are to enter into force at different points in time, these must be specified precisely. In any case, attention should be paid to ensuring that the various dates for entry into force are indicated by means of unambiguous wording in the principal act.

754 A **provision on expiry** (margin no. 576, 745) is an alternative to including a provision on repeal if an entire law or entire statutory instrument is to be dropped because the omnibus act creates new or amended principal law. The last article then bears the heading “Entry into force, expiry”.

4.8 Closing formula

755 The same closing formulae can be used in omnibus acts as are used for first legislative regulations (margin nos 483 et seqq.) or individual amending acts (margin no. 715 et seq.). The closing formula must be carefully written in line with the overall content of the omnibus act.

5 Introductory acts

756 Important codifications are often accompanied by introductory acts (e.g. the introductory acts to the German Civil Code, to the Commercial Code, to the Code of Civil Procedure, to the Courts Constitution Act and to the Insolvency Statute).

757 If a relatively large body of new legislation is introduced, numerous transitional provisions (margin nos 412 et seqq.) will generally be required. These are then not placed together at the end of the new principal law (codification) but in a separate introductory act. They can sometimes be of such fundamental importance that they must remain easily traceable and unambiguously citable for a long time.

758 On account of the direct link between a codification and its introductory act, it may make sense to enact both in one legislative act. The corresponding omnibus act often needs to include numerous consequential amendments (margin nos 497, 740 et seqq.); the introductory act then contains only transitional provisions.

759 Existing introductory acts are used as an open frame for all subsequent transitional provisions affecting the respective principal act (margin no. 681). Therefore, if a principal act which has been given an introductory act is amended and this amendment means that transitional provisions need to be introduced, these transitional provisions can be included in the introductory act. The headings of the individual articles in the introductory act should refer specifically to that act which has given rise to the respective transitional provision.

Example

Article 7 of the Second Act to Amend the Law Governing the Guardianship of Persons of Full Age of 21 April 2005 (Federal Law Gazette I p. 1073) reads:

Article 7
Amendment to the Introductory Act
to the German Civil Code

In Article 229 of the Introductory Act to the German Civil Code as published on 21 September 1994 (Federal Law Gazette I p. 2494; 1997 I p. 1061), as last amended by Article 2 and Article 4 paragraph 2 of the Act of 6 February 2005 (Federal Law Gazette I p. 203), the following section 14 is appended:

“Section 14
Transitional provision
relating to the Second Act to Amend the Law Governing the
Guardianship of Persons of Full Age of 21 April 2005

Claims for remuneration and compensation for the expenses of guardians, custodians and carers which arose before 1 July 2005 shall be based on the provisions applicable until such time as the Second Act to Amend the Law Governing the Guardianship of Persons of Full Age of 21 April 2005 (Federal Law Gazette I p. 1073) entered into force.”

760 If the introductory act is enacted in a separate legislative act, its entry into force and the entry into force of the law to be introduced are usually coupled together (margin nos 462 et seqq.).

Part E

Statutory instruments

215 Federal Law Gazette 2007 I No. 7, published in Bonn on 5 March 2007

Date of promulgation

**Ordinance
on Barrier-free Accessibility to Documents
for the Blind and Visually Impaired in Court Proceedings
(Accessibility Ordinance, ZMV)**

Title =
Long title
(short title,
abbreviation)

of 26 February 2007

Date of signature

Pursuant to section 191a (2) of the Courts Constitution Act, as amended by Article 15c number 2 of the Act of 22 March 2005 (Federal Law Gazette I p. 837), also read in conjunction with section 46 (8) of the Regulatory Offences Act, as inserted on the basis of Article 1 number 2 of the Act of 26 July 2002 (Federal Law Gazette I p. 2864, 3516), the Federal Ministry of Justice decrees the following:

Enacting clause with
enabling provision

Section 1

Scope of application

Section heading

- (1) This Ordinance regulates the requirements and procedure for making documents in court proceedings accessible to the blind or visually impaired (authorized person) in a form which is perceptible for them.
- (2) The Ordinance applies mutatis mutandis to the public prosecution office's preliminary investigations and enforcement proceedings, as well as to administrative fines proceedings if blind or visually impaired persons are involved.
- (3) The right of accessibility exists in accordance with the provisions of this Ordinance in court proceedings vis-à-vis the court, in the public prosecution office's preliminary investigations vis-à-vis the public prosecution office, in administrative fines proceedings vis-à-vis the administrative authority and in the enforcement proceedings arising in connection with these proceedings vis-à-vis the relevant enforcement authority.

Section 2

Subject matter of accessibility

Individual provision

- (1) The right of accessibility under section 191a (1), first sentence, and subsection (2) of the Courts Constitution Act, also read in conjunction with section 46 (1) of the Regulatory Offences Act, extends to documents which are to be served on the authorized person or made known to them in an informal manner. This Ordinance does not extend to those drawings and other representations included as annexes to such documents as cannot be presented in written pleadings, as well as files submitted by an authority.
- (2) The provisions on the service or informal communication of documents shall remain unaffected.
- (3) Further rights of accessibility resulting for authorized persons under other legislation shall remain unaffected.

...

Section 9

Entry into force

This Ordinance shall enter into force on the first day of the third calendar month following the date of its promulgation.

Provision on period of
validity (here: entry into
force)

The Bundesrat has given its consent.

Closing formula

Signed at Berlin on 26 February 2007

Date of signature

The Federal Minister of Justice
Brigitte Zypries

Signatory

[The above original example was adapted in line with the rules set out in this Manual.]

Part E: Statutory instruments

1 Legal form: general comments

- 761 The term “statutory instrument” is used to refer to rules of law which are grouped together under a title and issued by certain bodies referred to in Article 80 of the Basic Law (including the Federal Government, federal ministries and *Land* governments) under certain conditions specified by constitutional law (margin no. 19). Like laws, statutory instruments constitute binding legislation. In contrast to laws, however, they are not enacted by Parliament, but are issued by the **executive**. A statutory instrument is issued on the basis of a **statutory authorization** which is specified as to content, purpose and scope (margin nos 381 to 411).
- 762 It is particularly important to observe the **citation requirement** under Article 80 para. 1, third sentence, of the Basic Law. Consequently, each statutory instrument must cite its legal basis. Failure to comply with the citation requirement means the statutory instrument is null and void. Where such a reference is not included, the error cannot be made up by means of an amendment or addition to the enacting clause. Provisions in a statutory instrument for which the authorization was not or not fully declared must be re-enacted observing the citation requirement.
- 763 The legal basis for a statutory instrument is stated in its **enacting clause** (margin nos 780 et seqq.), which also indicates who issued the statutory instrument. Finally, the enacting clause testifies that those required to participate as specified in the enabling provision have in fact done so.
- 764 Certain requirements as to form and procedure apply to the issuing of statutory instruments. These are laid down in the Constitution and in the enabling provision. The **regulatory content** of a statutory instrument must be covered by the statutory **authorization** cited in the enacting clause. It must correspond to the content and purpose specified in the authorization and may not go beyond the extent provided for therein. Each court decides on its own responsibility on a case-by-case basis whether a statutory instrument is formally or substantively unlawful (**power of rejection**). That is why particular care must be taken when issuing a statutory instrument to ensure that no doubts arise as to its validity.
- 765 There are two types of statutory instruments: **principal statutory instruments** (margin nos 767 et seqq.) and **amending statutory instruments** (margin nos 812 et seqq.). In principle, they are structured and framed in the same way as principal acts (margin

nos 320 et seqq.) and amending acts (margin nos 492 et seqq.). The key rules set out in section 62 (2) of the Joint Rules of Procedure of the Federal Ministries as regards draft laws apply accordingly to draft statutory instruments.

766 Existing statutory instruments can be adapted or expanded by means of amending statutory instruments. Where fundamental amendments need to be made it is recommended that a replacement statutory instrument be issued. Principal statutory instruments should only be issued where such subordinate legislation is to be created for the first time (margin no. 493).

2 Principal statutory instruments

2.1 Title

767 The title of a principal statutory instrument is written in line with the rules applicable to principal acts (margin nos 321 et seqq.).

768 The long title and, where one has been created, the short title, must indicate the **rank** of the legislative instrument by including the word “Ordinance” (*Verordnung*) (section 62 (1) GGO*).

769 The **long title** of a principal statutory instrument likewise reflects the subject matter by means of keywords (margin no. 328). If the long title cannot be formulated sufficiently succinctly, a **short title** (margin nos 331 et seqq.) should also be provided so as to facilitate citation.

770 Where a statutory instrument is issued to **implement an act**, the act should be referred to by its **citation title** in the title of the statutory instrument. Only then will it be possible to use the citation title or the addition “of the Act” in place of the full citation in the text of the statutory instrument when referring to the provisions set out in the act (margin no. 236).

771 If a principal act contains **several authorizations** and several statutory instruments are issued to implement that act, the long titles of the statutory instruments should differ by more than just a numeral. Using numerals as the sole distinguishing feature is of little help.

* Joint Rules of Procedure of the Federal Ministries

Principal statutory instruments with the following long titles were issued in pursuance of the Explosives Act:

Bad examples

First Ordinance Pertaining to the Explosives Act

Second Ordinance Pertaining to the Explosives Act

Third Ordinance Pertaining to the Explosives Act

Good examples

Ordinance Governing Costs Associated with the Explosives Act

Ordinance on the Competence of Main Customs Offices Regarding the Prosecution and Punishment of Certain Regulatory Offences in Accordance with the Weapons Act and the Explosives Act

772 Where a principal statutory instrument is issued in order to implement a regulation of the European Communities⁵⁵ or a directive of the European Communities,⁵⁶ a framework decision⁵⁷ or a decision of the European Union, the relation to **European Union law** must be clearly indicated. This can be done by making reference in the title of the statutory instrument to the European legislative act (margin nos 312, 330).

773 Like principal acts, principal statutory instruments should also be given an **official abbreviation** (margin nos 341 et seqq.). The rank is indicated by means of an initial (“V” for “*Verordnung*” in German). This is always placed at the end of the abbreviation.

2.2 Enacting clause

774 The enacting clause of a statutory instrument has **two functions**: It states both who issued and is responsible for the statutory instrument and the legal basis for the statutory instrument.

775 The enacting clause is not part of the text of the statutory instrument; it cannot be amended at a later date.

⁵⁵ Treaty of Lisbon: regulation of the European Union

⁵⁶ Treaty of Lisbon: directive of the European Union

⁵⁷ Treaty of Lisbon: framework decisions no longer constitute legislative acts.

2.2.1 Body issuing the statutory instrument

776 The enacting clause of a statutory instrument indicates which body issued the statutory instrument as **designated** in the authorization to issue the statutory instrument. Where several federal ministries are authorized to issue a joint statutory instrument, they are listed in the order in which they are designated in the authorization.

777 Where several federal ministries issue a statutory instrument on the basis of **different authorizations (collective statutory instrument)**, the enacting clause may be formulated as follows, for instance:

Pursuant to section ... the Federal Ministry of/for ... and pursuant to section ... the Federal Ministry of/for ... decree the following:

If the collective statutory instrument is based in part on an authorization of the Federal Government, in part on that of a federal ministry, the enacting clause reads:

Pursuant to section ... the Federal Government and pursuant to section ... the Federal Ministry of/for ... decree the following:

Collective statutory instruments are **problematic** if it is not clear who is responsible for which parts of the statutory instrument and who is permitted to amend provisions which were formally issued conjointly.

778 The issuing office certifies and is responsible for the enacting clause (Article 82 para. 1, second sentence, of the Basic Law). This is made clear in the closing formula upon signature (margin no. 810 et seq.).

779 In contrast to the enacting clauses used in laws, the enacting clause in a statutory instrument does not mention whether the statutory instrument was issued **with the consent of the Bundesrat**. The Bundesrat and the Federal Government have reached agreement that where a statutory instrument does require the consent of the Bundesrat, this information is included in the statutory instrument's **closing formula** (margin no. 811).

2.2.2 Legal basis

780 The enacting clause fulfils the citation requirement under Article 80 para. 1, third sentence, of the Basic Law, which stipulates that the legal basis for the statutory instrument be cited. To

that end the phrase “Pursuant to ...,” is used to indicate **all the individual provisions** on which the statutory instrument is based.

- 781 The legal basis for a statutory instrument must be stated **as precisely as possible**. A general reference to a specific principal act does not fulfil the requirement under Article 80 para. 1, third sentence, of the Basic Law. If the enabling provision is subdivided, reference must be made to all of the subdivisions which can be used to determine the legal basis (e.g. section, sentence, number, letter, double letter).

Example

Pursuant to section 7 (1), first sentence, and the second sentence number 1 letter (d) and number 2 letter (a) of the Epizootic Diseases Act, ...

It is sufficient to name a higher-ranking structural unit where all the lower-ranking structural units are to be drawn on.

- 782 The enacting clause should specify all the authorizations relevant on the **date** on which the statutory instrument **is signed into law**. These not only need to have been promulgated, they must also already and still be in force.
- 783 The content, purpose and scope of the authorization may sometimes be defined in other provisions because they **directly frame the enabling provision**. In that case these provisions must also be listed in the enacting clause, unless the enabling provision explicitly refers to them (margin no. 388 et seq.). Such provisions are listed after the actual enabling provision by means of the addition “read in conjunction with”.

Example

Enacting clause in the Ordinance on the Transfrontier Shipment of Waste of 17 December 2003

Pursuant to section 4 (6) number 3 read in conjunction with subsection (4) of the Act on the Transfrontier Shipment of Waste, as revised by Article 9 number 1 of the Act of 9 September 2001 (Federal Law Gazette I p. 2331), ...

- 784 A special case in which the above rule must be applied arises when on account of the corresponding authorization a statutory instrument has to regulate chargeable acts, rates or reimbursements. The body issuing the statutory instrument may then not go beyond the framework set by **Part 2 of the Administrative Expenses Act** of 23 June 1970 (Federal Law Gazette I p. 821) when framing the provisions in the statutory instrument. Part 2 of that

Act should be regarded as the substantiated authorization in each case and must thus be listed in the statutory instrument's enacting clause in conjunction with the authorization.

Example

Pursuant to section 14 (2), first and second sentence, and subsection (3) of the Financial Services Supervision Act of 22 April 2002 (Federal Law Gazette I p. 1310) read in conjunction with Part 2 of the Administrative Expenses Act of 23 June 1970 (Federal Law Gazette I p. 821), ...

Amendments to the Administrative Expenses Act are listed here only if they affect Part 2 of the Act, i.e. sections 2 to 7.

785 **Pre-constitutional enabling provisions** are always cited together with the transitional provision in Article 129 of the Basic Law.

Example

Pursuant to Article 31 paragraph 2 of the Check Act, as consolidated and published in the Federal Law Gazette III, 4132-1, read in conjunction with Article 129 paragraph 1 of the Basic Law, ...

786 The information provided in the enacting clause must clearly indicate the **applicable wording of the enabling provision** relating to the bodies authorized to issue the statutory instrument (margin no. 781).

787 If the enabling provision has **not been amended** since the last time the full text of the principal act was published, i.e. after its signing into law or last re-publication, it must be referred to using the principal act's citation title, the date of signature or of publication, and the publication reference:

Pursuant to section ... of the ... [Act] of ... (Federal Law Gazette ...), ...

or

Pursuant to section ... of the ... [Act], as published on ... (Federal Law Gazette ...), ...

788 Otherwise, the **citation title of the principal act** and **that act** must be referred to which, following the last publication of the full text of the principal act,

◆ last amended the enabling provision:

Pursuant to section ... of the ... [Act], as [last] amended by Article ... of the Act of ... (Federal Law Gazette ...), ...

- ◆ subsequently inserted the enabling provision into the principal act:
Pursuant to section ... of the ... [Act], as inserted on the basis of Article ... of the Act of ... (Federal Law Gazette ...), ...
- ◆ revised the enabling provision:
Pursuant to section ... of the ... [Act], as revised on the basis of Article ... of the Act of ... (Federal Law Gazette ...), ...

Where an enabling provision was inserted or revised and then subsequently amended, it is sufficient to refer only to the last amendment.

789 Where reference is made to **several legal bases**, **each** must contain the appropriate reference to the amendment. The information concerning amendments is not weighted, i.e. no distinction is drawn between whether the amendments referred to the content or purely formal aspects, for instance only affected the section headings. Where individual legal bases for the same principal act were amended but others were not, it is sufficient to use the following wording, for instance:

Pursuant to section 3 (11), third sentence, section 12 (1) and section 52 (2), first sentence, of the Closed Substance Cycle and Waste Management Act, of which section 2 (11), third sentence, was amended by Article 8 number 2 of the Act of 27 July 2001 (Federal Law Gazette I p. 1950) and section 12 (1) by Article 1 number 4 of the Act of 15 July 2006 (Federal Law Gazette I p. 1619), ...

790 An amendment to the principal act which does not concern the enabling provision itself should only be referred to in the enacting clause if it **directly affects the authorization** (e.g. if a provision to which the enabling provision refers is amended). The following phrase is used in such cases:

... having regard to Article ... of the Act of ... (Federal Law Gazette ...) ...

Other amendments to the principal act which have no bearing on the legal basis are of no consequence for the enacting clause in the statutory instrument.

791 In order to make it clear that the reference to an amendment in the enacting clause refers to the enabling provision and not to the principal act as a whole, it makes sense to place it after

the enabling provision in a **relative clause**. Where many references to amendments need to be included, the enacting clause can also be subdivided (margin nos 795, 798 et seq.).

- 792 The **long title of the amending act** is not included. If the amendment is contained in an act which amended several acts, even if they are only consequential amendments, the article, number, the subsection etc. is listed which amended the legal basis to which reference is made.

Example

Pursuant to section 26 (1), first sentence, number 9 ... and read in conjunction with subsection (3), fifth sentence, of the General Railways Act, of which ... section 26 (3), fifth sentence, was amended by **Article 1 number 9 of the Act** of 9 December 2006 (Federal Law Gazette I p. 2833), ... decrees the following:

2.2.3 Special requirements

- 793 If the enabling provision imposes explicit **duties to involve and hear certain bodies or persons** on the body issuing the statutory instrument, the phrases “in consultation with ...” or “after hearing ...” indicate that the relevant obligations have been duly observed.

Example

Section 9 of the Act on the Conversion of Bonds to Euros of 9 June 1998

The Federal Ministry of Justice is authorized, in consultation with the Federal Ministry of Finance and the Federal Ministry of Economics and Technology, to prescribe by statutory instrument not requiring the consent of the Bundesrat that ...

Enacting clause in the Ordinance on Compensation for Conversion Expenses Incurred by Financial Institutions of 11 August 1998

Pursuant to section 9 of the Act on the Conversion of Bonds to Euros of 9 June 1998 (Federal Law Gazette I p. 1242, 1250), the Federal Ministry of Justice, in consultation with the Federal Ministry of Finance and the Federal Ministry of Economics and Technology, decrees the following: ...

- 794 If **participation rights** have not been prescribed in the enabling provision itself but **in another provision**, reference must also be made in the enacting clause to this provision using the words “read in conjunction with”, unless the enabling provision itself explicitly refers to the provision in question.

795 Where several authorizations are listed and different duties of participation and consultation have been imposed, or if one of several ministries is competent on the basis of various authorizations to issue statutory instruments, these can be **grouped together** in “**blocks**” in the enacting clause. The following phrase is recommended in such cases:

The following is decreed in accordance with

- section ... by the Federal Ministry of/for ... after hearing ... and
- section ... by the Federal Ministry of/for ... in consultation with the Federal Ministry of/for ...

796 The Federal Chancellor can issue an **organizational decree** to restructure the remits of the federal ministries and change their designations. The Competence Adjustment Act of 16 August 2002 regulates that the competences assigned in laws or in statutory instruments are transferred to the highest federal authority responsible following the restructuring, irrespective of any explicit changes being made to any rules on competence. Merely changing the name of a ministry by organizational decree does not affect the competences delegated to it (section 1 (1) and (2) of the Competence Adjustment Act). The wording of the existing authorizations to issue statutory instruments and rules on participation can, therefore, be amended at a later date in the course of the standard amending procedure or by means of a statutory instrument to amend the competences issued by the Federal Ministry of Justice (section 2 of the Competence Adjustment Act). **Until such time as** the text of the authorization to issue statutory instruments has been adapted, in order to legitimate that federal ministry which is now competent or has been renamed, the statutory instrument’s enacting clause must make reference to the changes. Where **competences are reorganized**, reference is made to the relation between section 1 (1) of the Competence Adjustment Act and the corresponding organizational decree. In the case of mere **name changes**, reference must be made to section 1 (2) of the Competence Adjustment Act.

Example

Pursuant to section ... of the ... [Act] read in conjunction with section 1 (2) of the Competence Adjustment Act of 16 August 2002 (Federal Law Gazette I p. 3165) and the organizational decree of ... (Federal Law Gazette ...), the Federal Ministry of/for ... decrees the following:

797 If, by way of exception, the statutory instrument needs to be issued with the **involvement of the Bundestag** (margin no. 402 et seq.), the statutory instrument’s enacting clause must make reference to an amending decision of the Bundestag by including the phrase “having due regard to the decision of the Bundestag of ...”. If the Bundestag has not dealt with the statutory instrument or has not taken a decision to amend it, the following phrase must be

included in the statutory instrument's enacting clause: "observing the rights of the Bundestag".

- 798 It may be necessary, in order to better **structure a long enacting clause**, to first list the enabling provisions and then to **make reference, in sum, to the** respective **changes** in a relative clause. This can be done in the following manner, for instance:

In accordance with sections X, Y and Z of the ... [Act], of which section X has been revised by Article ... of the Act of ..., section Y has been inserted by Article ... of the Act of ... and section Z was last amended by Article ... of the Act of ..., ...

- 799 The enacting clause should be **unambiguous and clear**. Long enacting clauses can be broken down using indents.

Example

In accordance with

– section ... and section ...,

– sections ... and section ..., as well as

– section ... read in conjunction with section ... and section ...

... decrees as follows:

2.3 Subdelegating statutory instruments

- 800 Where subdelegation (margin nos 394 et seqq.) is permitted, it is recommended that the transference of an authorization to issue a statutory instrument is regulated in a separate statutory instrument (subdelegating statutory instrument). This makes it easier to establish which body is competent for issuing the specialist statutory instruments.

- 801 The enabling provision included in the **enacting clause** of a subdelegating statutory instrument must cite the provision which permits the subdelegation. It is referred to in conjunction with the enabling provision which contains the object of the transfer, unless the authorization to subdelegate explicitly refers to this enabling provision.

Example

Section 142 (2) of the Telecommunications Act permits an authorization to issue statutory instruments to be delegated:⁵⁸

¹The Federal Ministry of Economics and Technology is authorized, in consultation with the Federal Ministry of Finance, by way of a statutory instrument not requiring the consent of the Bundesrat, to determine the chargeable acts and the amount of the fees, including the method of payment. ... ⁶The Federal Ministry of Economics and Technology may transfer the authorization under the first sentence by way of a statutory instrument ... to the Federal Network Agency. ⁷A statutory instrument in accordance with the sixth sentence, including its repeal, shall necessitate agreement being reached between the Federal Ministry of Economics and Technology and the Federal Ministry of Finance.

The enacting clause in the subdelegating statutory instrument reads:

Pursuant to section 142 (2), sixth and seventh sentence, ... of the Telecommunications Act ..., the Federal Ministry of Economics and Technology, in consultation with the Federal Ministry of Finance, decrees the following:

802 Subdelegation can be declared in various ways in a subdelegating statutory instrument. The statutory instrument may order that the authorization be transferred.

The authorization contained in section ... of the ... [Act] is hereby transferred to the ... [agency to be authorized].

The subdelegation can also be phrased in such a way that the subdelegate is authorized to issue statutory instruments.

The ... [agency to be authorized] is authorized to issue statutory instruments in accordance with section ... of the ... [Act].

The **subdelegate** is always the authority or institution which is to be authorized, never the person who heads the authority or institution.

803 **If the subdelegate issues** the specialist statutory instrument, the enacting clause must specify the authorization which has been transferred in conjunction with the subdelegating statutory instrument.

⁵⁸ The sentence numbering is included merely by way of illustration.

Example

Enacting clause in the Ordinance on Telecommunications Charges

Pursuant to section 142 (2), first, second, sixth and seventh sentence, of the Telecommunications Act **read in conjunction with section 1 of the Ordinance on the Transfer of Telecommunications Charges**, of which section 142 (2) of the Telecommunications Act was last amended by Article 273 number 1 and section 1 of the Ordinance on the Transfer of Telecommunications Charges was last amended by Article 465 of the Ordinance of 31 October 2006 (Federal Law Gazette I p. 2407), the Federal Network Agency for Electricity, Gas, Telecommunications, Post and Railways, in consultation with the Federal Ministry of Finance and the Federal Ministry of Economics and Technology, decrees the following: ...

2.4 Provisions on the period of validity

- 804 The provisions on entry into force and expiry in a statutory instrument are always framed and ordered in the same way **as they are in laws** (margin nos 438 et seq.).
- 805 The validity of a statutory instrument is **dependent on the authorizing act**. A statutory instrument can only become effective if an applicable enabling provision covering its content exists on the date of its signature (margin nos 381, 460). That is why it may only be signed into law once the authorizing provision in the act has entered into force (section 66 (1) GGO*). Further, the statutory instrument may not enter into force before the act which it serves.
- 806 Enabling provisions may provide that statutory instruments apply only for a **fixed** period of time. In such cases, the enabling provision already specifies a concrete date for the statutory instrument's expiry. For reasons of legal clarity, the concrete date for the statutory instrument's expiry should **also be indicated in the statutory instrument** itself, especially since the maximum statutory period does not need to be completely exhausted.
- 807 Often the enabling provision also provides for the possibility of **extending** the period of validity under certain conditions. This is in particular the case in emergency statutory instruments which are needed to implement requirements made in European Union law; they require the consent of the Bundesrat on account of their content.

* Joint Rules of Procedure of the Federal Ministries

Example

Section 4 (2) of the IACS Data Act

Statutory instruments in accordance with subsection (1) may be issued without the consent of the Bundesrat if their immediate entry into force is required to implement the legislative acts of the European Union in the scope of section 1. They shall cease to be effective six months following their entry into force at the latest; their period of validity may be extended only with the consent of the Bundesrat.

The provision on the period of validity in the statutory instrument can be phrased as follows:

Example

Section 9 of the Ordinance on the Shedding of Poultry to Protect against Classic Avian Influenza

This Ordinance shall enter into force on the day following its promulgation. It shall cease to be effective upon the expiry of 15 August 2006, unless decreed otherwise with the consent of the Bundesrat.

808 The enabling provision may provide that the statutory instrument **be limited as to time**; the legislature may also make this dependent on certain conditions.

Example

Section 3 (2), first sentence, of the Fish Labelling Act

Statutory instruments ... may be issued without the consent of the Bundesrat if ... their validity is limited to a specific period of no more than six months.

Statutory instruments issued on the basis of such an authorization **must** contain a **specific date for their expiry**. In such cases the provision on validity in the principal statutory instrument must be written as follows:

Example

Section 2 of the Ordinance on the Application of Provisions of Community Law to State Aid for Energy Crops Used in Agricultural Production in 2007

This Ordinance shall enter into force on the day following its promulgation. It shall cease to be effective on 20 October 2007, unless decreed otherwise with the consent of the Bundesrat.

809 The body issuing the statutory instrument may itself set a time limit **for other reasons** without requiring a statutory basis therefor. The provision on expiry is framed in the same way as in the case of laws (margin nos 469 et seqq.).

2.5 Closing formula

- 810 If the statutory instrument **does not require the consent of the Bundesrat**, its closing formula comprises the place and date of its signature. Statutory instruments issued by the Federal Government are signed by the involved members of the Federal Government and by the Federal Chancellor, and the Federal Chancellor then adds the date. In the case of statutory instruments issued by a federal ministry the competent member of the Federal Government adds the date. Where several federal ministries jointly issue a statutory instrument, they also jointly sign that statutory instrument into law. Sections 66 and 67 GGO* regulate who signs the original text.
- 811 The closing formula of a statutory instrument **requiring the consent of the Bundesrat** always begins with the following sentence: "The Bundesrat has given its consent". This applies both to statutory instruments for which all the cited authorizations require that the Bundesrat give its consent and for statutory instruments some of whose authorizations provide for the Bundesrat's consent and some of which do not. In such cases the closing formula ends with the place and date of signature.

* Joint Rules of Procedure of the Federal Ministries

1450 Federal Law Gazette 2006 I No. 31, published in Bonn on 13 July 2006

Date of promulgation

**Ordinance
to Amend the Ordinance on National Correspondents for Eurojust^{*)}**

Title =
Long title

of 7 July 2006

Date of signature

Pursuant to section 7 (1) of the Eurojust Act of 12 May 2004 (Federal Law Gazette I p. 902), the Federal Ministry of Justice decrees the following:

Enacting clause with
enabling provision

Article 1

The Ordinance on National Correspondents for Eurojust of 17 December 2004 (Federal Law Gazette I p. 3520) is amended as follows:

Introductory sentence

1. In section 1 the words "Article 3 of Council Decision 2003/48/JHA of 19 December 2002 on the implementation of specific measures for police and judicial cooperation to combat terrorism in accordance with Article 4 of Common Position 2001/931/CFSP (OJ L 16, 22.1.2003, p. 68) (National Correspondents)" are replaced by the words "Article 2 paragraph 2 of Council Decision 2005/671/JHA of 20 September 2005 on the exchange of information and cooperation concerning terrorist offences (OJ L 253, 29.9.2005, p. 22) (National Correspondents)".

Amending formula

2. In section 2 (1), first sentence, the words "Article 3 paragraphs 1 and 2 of Council Decision 2003/48/JHA" are replaced by the words "Article 2 paragraphs 3 and 5 of Council Decision 2005/671/JHA".

Amending formula

3. Section 3 is amended as follows:

- a) In subsection (1) the words "Article 3 paragraph 1 and paragraph 2, second sentence, of Council Decision 2003/48/JHA" are replaced by the words "Article 2 paragraphs 3 and 5 of Council Decision 2005/671/JHA".
- b) In subsection (2) the words "Article 3 paragraph 2 of Council Decision 2003/48/JHA" are replaced by the words "Article 2 paragraphs 3 and 5 of Council Decision 2005/671/JHA".

Subdivided amending
formula

4. Section 5 (2) reads as follows:

"(2) Following its transmission to Eurojust, the information stored in accordance with section 2 (1), first sentence, is to be deleted from this file, at the latest, however, six months after storage. Data sets which were amended after their storage are deleted six months at the latest following their last amendment. The information shall also be deleted as soon as the organization to which it refers has been deleted from the list referred to in Article 1 paragraph 4 of Council Common Position 2001/931/CFSP of 27 December 2001 on the application of specific measures to combat terrorism (OJ L 344, 28.12.2001, p. 93). The third sentence shall not apply if the information relates to a terrorist organization within the meaning of Article 2 of Council Framework Decision 2002/475/JHA."

Regulatory language
part of the amending
formula

Article 2

This Ordinance shall enter into force on the day following its promulgation.

Provision on period of
validity (here: entry into
force)

The Bundesrat has given its consent.

Closing formula

Signed at Berlin on 7 July 2006

Date of signature

The Federal Minister of Justice

Signatory

Brigitte Zypries

^{*)} This Ordinance serves to implement Council Decision 2005/671/JHA of 20 September 2005 on the exchange of information and cooperation concerning terrorist offences (OJ L 253, 29.9.2005, p. 22).

Footnote
(margin no. 315)

[The above original example was adapted in line with the rules set out in this Manual.]

3 Amending statutory instruments

812 The recommendations regarding **amending acts** (margin nos 492 et seqq.) apply accordingly to amending statutory instruments. Attention should be paid to the following **particularities**.

813 Amending statutory instruments usually take the form of an **individual amending statutory instrument** (margin nos 516 et seqq.) which in the main contains only amendments to one principal statutory instrument. Like a law, a principal statutory instrument can be constitutively revised (margin nos 504 et seqq.), i.e. **replaced**. Several statutory instruments can be amended, created or repealed by means of an “**omnibus**” (margin nos 717 et seqq.).

814 Amendments to **several statutory instruments** should only be grouped together in an **omnibus statutory instrument** if there is a sufficiently close link between them.

3.1 Title

815 The title of an amending statutory instrument, a replacement statutory instrument or an omnibus statutory instrument is written in accordance with the recommendations applicable to the corresponding type of law, though only the word “Ordinance” (*Verordnung*) can be used to indicate its **rank** (section 62 (1) GGO^{*}).

816 An individual amending statutory instrument or omnibus statutory instrument does not require a **short title** or an **abbreviation**. These statutory instruments’ citability is of no relevance, since they are regarded as executed as soon as they enter into force and are therefore not generally cited elsewhere.

3.2 Enacting clause

817 Enacting clauses in amending statutory instruments are phrased **in the same way** as enacting clauses in principal statutory instruments (margin nos 774 to 799). However, the enacting clause in the principal statutory instrument cannot be transferred wholesale to the amending statutory instrument without it first being carefully checked.

818 Special care should be taken to ensure that the **citation requirement** under Article 80 para. 1, third sentence, of the Basic Law has been complied with.

* Joint Rules of Procedure of the Federal Ministries

- 819 The enacting clause in an amending statutory instrument must indicate precisely which enabling provisions are **relevant as regards the specific amendment**.
- 820 All the enabling provisions which are relevant to the issuance of the statutory instrument as a whole must be cited in a **replacement statutory instrument**. Although it contains elements of the replaced statutory instrument whose content has not been changed, the legislative act encompasses the whole text. A replacement statutory instrument is thus equivalent to re-issuance.
- 821 If the principal statutory instrument was based on several enabling provisions, it may be that only one of them is relevant to an **individual amending statutory instrument**. As regards **consequential amendments** in other statutory instruments, those enabling provisions must be specified precisely which form the basis for the specific amendments.
- 822 An **omnibus statutory instrument** only has one enacting clause. The bases for authorization must cover the amendments or new provisions in all the principal statutory instruments which are to be amended or created in the individual articles. The legal bases are described globally for this one legislative act.
- 823 The authorization may have been **amended** since the principal statutory instrument was issued. If an amending statutory instrument is to be issued thereafter, attention not only has to be paid to ensuring that the enabling provision is designated correctly in the enacting clause, but a careful check must also be made as to whether the amended enabling provision covers the proposed amendments.
- 824 If the enabling provision has merely undergone a **formal change**, for example if it has been moved elsewhere in a law but its content has not changed, the enacting clause in the amending statutory instrument then refers to the provision's new designation, making reference to the amending act.
- 825 The **content** of the enabling provision may have been **broadened**. Where the structure of the provision has also been changed, for instance by means of subdivision, the enacting clause in the amending statutory instrument only needs to cite the provision by indicating that subunit which is actually drawn on.

- 826 If the **content** of the enabling provision has been **narrowed down**, this does not affect the validity of the regulations in the statutory instrument which were previously issued on that basis. Nevertheless, the principal statutory instrument can, thus, only be amended on the basis of a new authorization. However, the body authorized to issue the statutory instrument is still authorized to repeal the “excess” regulations without replacing them.
- 827 If the enabling provision is **repealed**, this does not affect the validity of the statutory instrument issued on its basis, unless the statutory instrument could no longer stand alone. This statutory instrument may only be amended in so far as a body authorized to issue a statutory instrument is permitted to regulate the subject area it covers on the basis of another or a new enabling provision. Otherwise, the only available option would be to repeal the statutory instrument without replacing it. It should, thus, be checked when repealing the enabling provision to what extent provisions in statutory instruments created on its basis can be repealed.
- 828 An existing statutory instrument can be amended on the basis of an entirely **new enabling provision** which did not yet exist when the principal statutory instrument was issued if it concerns the area previously covered by the statutory instrument.

3.3 Structure

- 829 The recommendations regarding the structure of amending acts apply accordingly to the structure of amending statutory instruments. As regards individual amending and omnibus statutory instruments, particular reference is made to the recommendations regarding the
- ◆ structure (margin nos 537 et seqq., 732 et seqq.)
 - ◆ introductory sentence (margin nos 544 et seqq.)
 - ◆ use of amending formulae (margin no. 552 et seq.)
 - ◆ amendment of only one provision (margin nos 629 et seqq.)
 - ◆ timing of multiple amendments (margin nos 632 et seqq.)
 - ◆ other types of amendments (margin nos 641 et seqq.)
 - ◆ transitional rules (margin nos 684 et seqq., 747 et seq.)
 - ◆ consequential amendments (margin nos 636 et seqq.).
- 830 Care should be taken when amending **pending amendments** and when **time-limiting** amendments (margin nos 670 et seqq., 680 et seqq.).

831 **Permission to publish** may be included in an amending statutory instrument when principal statutory instruments have been amended either several times or extensively (margin nos 696 et seqq.). Permission to publish is generally **not required** in the case of statutory instruments issued exclusively by one federal ministry or by an office authorized by means of subdelegation (margin no. 394 et seqq.). Instead of publishing a new version of one's "own" statutory instrument in the Federal Law Gazette, the statutory instrument can be constitutively revised. Permission to publish should therefore only be given if constitutive revision would be more time-consuming than re-publication, for instance because replacement would necessitate **rights of involvement and participation** being observed or the **Bundesrat** having to **give its consent**.

832 The **provisions on entry into force and expiry** in amending statutory instruments are in principle phrased in the same way as those in amending acts (margin nos 708 et seqq., 749 et seqq.).

3.4 Closing formula

833 The closing formula in an amending statutory instrument is written **in the same way** as the closing formula in a principal statutory instrument (margin no. 810 et seqq.). Nevertheless, it cannot be taken over wholesale from the principal statutory instrument without first being carefully checked.

834 Deviations from the closing formula used when a statutory instrument was issued for the first time are in particular possible where the designations or competences of those bodies have changed which are authorized to issue the statutory instrument or which were involved in its issuance. Likewise, deviations are possible where the principal statutory instrument was based on several authorizations, whilst only one has been drawn on in the amending statutory instrument.

835 In the case of statutory instruments requiring the consent of the Bundesrat, the closing formula always reads: "The Bundesrat has given its consent."

Part F

**Drafting assistance for amending
bills during the legislative process**

Part F: Drafting assistance for amending bills during the legislative process

1 General remarks

836 Bills are in many cases amended in the course of the legislative process, primarily in the Bundestag committee with overall responsibility for a particular legislative proposal. The relevant committee can ask the federal ministry with overall technical responsibility to provide what is known as **drafting assistance** (*Formulierungshilfe*), which it will then use as the basis for its deliberations. The ministry with overall responsibility can itself submit requests for amendments to the committee in the form of drafting assistance and suggest that these be used during deliberations at the committee stage.

837 The committees have **not agreed on common standards** regarding the **form and style** of drafting assistance. Where a particular committee has not laid down any specifications, it is recommended that agreement be reached with the Cabinet Division on the form in which the drafting assistance is to be drawn up and submitted.

838 A distinction is drawn between

- ◆ drafting assistance for **recommendations for a decision**, which from the outset include all the planned amendments to the bill which the committee is to recommend to the Bundestag for adoption, and
- ◆ drafting assistance for **motions for amendments**, which can be drawn up for each individual amendment or for several amendments grouped together, depending on whether a decision is to be taken on individual amendments or on a bundle of amendments. At a later stage the committee secretariat then draws up a recommendation for a decision for the Bundestag based on the amendments which have been adopted.

839 The drafting assistance for a recommendation for a decision either takes the form of

- ◆ a **proviso recommendation** (“The Bundestag is requested to adopt the bill set out in Printed Paper ... with the following provisos, while otherwise leaving it unchanged: ...”),
or
- ◆ a **synopsis** (“The Bundestag is requested to adopt the bill set out in Printed Paper ... as per the synopsis set out below.”).

The **structure** and **content** of drafting assistance for motions for amendments and proviso recommendations are largely identical. They merely set out the need for an amendment to be made. A synopsis, by contrast, comprises a summary of the bill as it appears in the Bundestag Printed Paper together with the (intended) decisions of the committee with overall responsibility. It sets out the entire wording of the bill both in the original and as amended.

840 The drafting assistance contains **grounds** for the individual amendments. These are intended for inclusion in the committee's report. The grounds should be kept as brief as possible and placed at the end; in drafting assistance for motions for amendments they can also be placed after each amendment or after several amendments relating to the same content.

841 If the committee secretariat draws up a recommendation for a decision following its deliberations on any motions for amendments, this is sometimes passed on to the ministry with overall responsibility so it can check the content and form. The aim is to create a **flawless version of the recommendation for a decision** so as to avoid the legislation having to be corrected at a later stage. It is recommended that the relevant division in the ministry with overall responsibility contact the committee secretariat immediately after the committee meeting so that it can provide support in editing the final version. Numbering will usually have to be changed on account of insertions or deletions being made, and cross-references in transitional rules or provisions on entry into force may have to be adapted.

The responsible specialist department has an interest in the production of an error-free version of the recommendation for a decision, since it will be responsible for drawing up the **consolidated version** ready for use in the original text and for printing after the law has been enacted (section 58 GGO^{*}). The bill is then combined with the amending instructions in the proviso recommendation to create one single document. A synopsis already sets out the adopted version of the text. When a synopsis has been used the final editing process merely entails inserting the unamended text passages in the left-hand column into the right-hand column and revising the formatting.

2 Drafting assistance for motions for amendments or proviso recommendations

842 Drafting assistance for motions for amendments and proviso recommendations differ formally only in regard to their framework; the actual amending instructions follow the same rules in each case.

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The **heading** must include the words “drafting assistance”. The title of the bill and the number of the Bundestag Printed Paper must be indicated, as must a reference to whether the drafting assistance relates to a motion for an amendment or to a recommendation for a decision.

Example

Drafting assistance for a proviso recommendation

Drafting assistance

regarding the Federal Government bill

– Bundestag Printed Paper 16/3657 –

Draft of a Second Act on the Consolidation of Federal Legislation in the Area of Competence of the Federal Ministry of Economics and Technology and the Federal Ministry of Labour and Social Affairs

The Bundestag is requested to adopt

the bill in Printed Paper 16/3657 with the following proviso, while otherwise leaving it unchanged:

Article 70 reads as follows:

“Article 70

Entry into force

(1) This Act shall enter into force on the day following its promulgation unless provided otherwise in paragraph 2.

(2) Article 13 shall enter into force on 1 January 2008.”

843 In principle, the **amending instructions** follow the same rules as apply to amending acts. The drafting assistance indicates those passages in the text of the bill where changes are to be made and the type of change to be made. The order in which the amending instructions appear in the drafting assistance follows the order of the articles or sections in the bill on which they are based.

844 The following amending instructions are used:

- ◆ ... is/are amended as follows: ...

- ◆ ... is/are inserted ...
- ◆ ... is/are placed in front ...
- ◆ ... is/are appended.
- ◆ ... is/are replaced by ...
- ◆ ... reads/read as follows: ...
- ◆ ... is/are deleted.
- ◆ Section X/Subsection (X)/Number X becomes section Y/subsection (Y)/number Y.

Although used in amending acts, the amending instruction "... is/are repealed." is not used here.

845 In drafting assistance relating to an **amendment to a draft principal act** the text passages to be amended and the amending instructions are numbered consecutively, beginning with the number "1". The title, higher-level structural units (margin no. 379) and sections are each given a number if they are to be amended. If various amendments have been made in one section, the number is subdivided into letters and, where necessary, the letters are subdivided into double letters. Subdivisions beyond double letters should be avoided to prevent the drafting assistance becoming confusing and unclear. In such cases the structural unit in question should be revised.

Example

Drafting assistance for a motion for an amendment to the draft of an Act ... (Printed Paper ...)

1. Section 1 is amended as follows:
 - a) Subsection (1) is amended as follows:
 - aa) In the first sentence, ...
 - bb) The following sentence is appended: "..."
 - b) Subsection (4) reads as follows: "..."

3 Special features when amending the draft of an amending act

846 Where the drafting assistance for motions for amendments and proviso recommendations relates to an amending act, it is essential that the **resulting amending act conforms to all legal and formal requirements**. That, in turn, is the prerequisite for creating a flawless principal act.

847 Amendments to several articles in an amending act are **numbered consecutively using Arabic numerals**; amendments within an article are subdivided into letters and double letters (margin no. 845).

848 The amending instructions can refer to the **amending formulae** in the draft of an amending act.

Example

The amending formula in Article 1 number 1 letter (a) of the bill needs to be corrected: The second sentence not the first sentence is to be amended.

Draft amending act

Article 1

The ... [Act], as last amended by ..., is amended as follows:

1. Section 1 is amended as follows:
 - a) In subsection (1), first sentence, the words “...” are replaced by the words “...”.
 - b) ...

Drafting assistance

1. Article 1 is amended as follows:
 - a) In number 1 letter (a) the particulars “first sentence” are replaced by the particulars “second sentence”.

849 The amending instructions can also refer directly to the text to be created in the principal act by means of the amending formula. The point of reference in such cases is the planned new **wording of the principal act**.

Example

The new section 24 in the bill is to be amended and section 25 revised. The remaining provisions are to remain unchanged.

Draft amending act

Article 1

The ... [Act], as last amended by ..., is amended as follows:

1. The following sections 24 to 27 are inserted after section 23: “...”

Drafting assistance

1. Article 1 number 1 is amended as follows:
 - a) In section 24 the words “...” are replaced by the words “...”.
 - b) Section 25 reads as follows: “...”

850 If the amending instructions refer to the amending formulae in the draft amending act (margin no. 848), problems can arise when it comes to the use of quotation marks (margin no. 851), when adapting structural units (margin no. 852) and when writing appropriate amending instructions (margin no. 853).

851 If the amending instructions in the bill indicate that structural units are to be inserted, appended or placed in front of others in the draft, or are to be replaced or revised, then various sets of **quotations marks** will coincide. In such cases, single quotation marks should be used first and double quotation marks then set inside the single quotation marks to indicate the actual amendments to the bill.

Example

1. Letter (b) in Article 1 number 1 reads as follows:
 - ‘b) The following sentences are inserted after the second sentence: “...”’

852 If the amending instructions in the bill indicate that structural units are to be inserted or placed in front of other structural units, or are to be replaced or deleted, the **structural units which follow may need to be adapted**. The following distinction is important:

- ◆ In the case of drafting assistance for a **motion for an amendment**, newly inserted amending formulae or new articles should be labelled by **adding a letter** (e.g. number 3a, Article 2a, prefixed Article 0). The renumbering should be done by the committee secretariat at a later stage (margin no. 841).

Example

The drafting assistance is to be used to insert a new article after Article 2.

Drafting assistance

1. The following Article 2a is inserted after Article 2: “...”

- ◆ In the case of wording assistance for a **recommendation for a decision**, the **renumbering** should be done immediately.

Example

The drafting assistance is to be used to also revise subsection (3), second sentence, in Article 1 paragraph 1, and to insert a new article after Article 2.

Draft amending act

Article 1

The ... [Act], as last amended by ..., is amended as follows:

1. Section 1 is amended as follows:
 - a) In subsection (1) the words “...” are replaced by the words “...”.
 - b) Subsection (2) reads as follows: “...”
 - c) ...

Drafting assistance

1. Number 1 in Article 1 is amended as follows:
 - a) The following letter (c) is inserted after letter (b):
‘c) Subsection (3), second sentence, reads as follows: “...”’
 - b) The previous letter (c) becomes letter (d).
2. The following Article 3 is inserted after Article 2: “...”
3. The previous Articles 3 to 8 become Articles 4 to 9.

853 There is a risk that the amending instructions will become confusing and unclear if one amending formula is used to make several amendments. In such cases it is recommended that the passage of text be revised.

Example

The drafting assistance is to be used to amend the amendment to the first sentence and also to repeal the second sentence.

Draft amending act

Article 1

The ... [Act], as last amended by ..., is amended as follows:

1. In section 7 (1), first sentence, the word “...” is replaced by the words “...”.

Drafting assistance

1. Number 1 in Article 1 reads as follows:
 - ‘1. Section 7 (1) is amended as follows:
 - a) In the first sentence the words “...” are replaced by the word “...”.
 - b) The second sentence is repealed.’

4 Drafting assistance in the form of a synopsis

854 Depending on the nature and extent of the planned changes and the amount of work they will entail, it may be wise to draw up the drafting assistance in the form of a **synopsis**. Such summaries compare the amended version with the draft of the bill; all the planned changes are highlighted.

855 Here, too, the **heading** must include the words “drafting assistance”. It must also be possible to recognize which bill in which Bundestag Printed Paper is the subject matter of the drafting assistance.

Example

Drafting assistance for a recommendation for a decision

Drafting assistance

Synopsis

of the Draft of an Act on the Quality and Safety of Human Tissue and Cells (Tissue Act)

– Printed Paper 16/3146 –

and the Decisions of the Committee on Health (14th Committee)

Draft

Draft of an Act on the Quality and Safety of Human Tissue and Cells (Tissue Act)

The Bundestag has adopted the following Act:

Article 1

Amendment to the Transplantation Act

The Transplantation Act of 5 November 1997 (Federal Law Gazette I p. 2631), as last amended by Article 14 of the Ordinance of 25 November 2003 (Federal Law Gazette I p. 2304), is amended as follows:

Decisions of the 14th Committee

Draft of an Act on the Quality and Safety of Human Tissue and Cells (Tissue Act)

The Bundestag has adopted the following Act:

Article 1

Amendment to the Transplantation Act

The Transplantation Act of 5 November 1997 (Federal Law Gazette I p. 2631), as last amended by Article 14 of the Ordinance of 25 November 2003 (Federal Law Gazette I p. 2304), is amended as follows:

1. The title reads as follows: “Act on the Donation, Removal and Transplantation of Organs and Tissues (Transplantation Act, TPG)” ...	1. a s i t s t a n d s ...
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856 These **basic rules** should be followed so that it is clear which amendments the Committee has adopted compared to the draft of the bill which was tabled:

- ◆ The text of the bill as **printed in the Bundestag Printed Paper** is placed in the left-hand column. The Parliamentary Secretariat makes available the authoritative Word version of the bill.
- ◆ **The title and enacting clause of the bill** are always included in both columns, even if they are not amended.
- ◆ Structural units which are **not amended** are entered in the right-hand column (“Decisions of the nth Committee”) with their type and numerical designation and the words “a s i t s t a n d s” (always written s p a c e d o u t).
- ◆ Those passages of the bill which are to be **amended** must be written in *italics* in the left-hand column and in **bold** in the right-hand column. This may affect either the entire structural unit if the text it contains is revised, or individual words, syllables, letters, numbers, or structural and numerical designations.
- ◆ If only one part of a structural unit is amended, the heading and the introductory sentence of the structural unit are nevertheless repeated in the right-hand column.

Example

In Article 2 number 1, the wording in section 2 (2) of a draft amending act is to be amended.

Draft	Decisions of the nth Committee
...	...
Article 2	Article 2
Amendment to the	Amendment to the
Act on the Abrogation of Property Law	Act on the Abrogation of Property Law
The Act on the Abrogation of Property Law of 15 August 1997 (Federal Law Gazette I p. 1955) is amended as follows:	The Act on the Abrogation of Property Law of 15 August 1997 (Federal Law Gazette I p. 1955) is amended as follows:

1. Section 2 reads as follows:

**“Section 2
Scope**

- (1) This Act shall not apply to seashores.
- (2) The provisions set out in this Act *shall not* be disregarded.”

1. Section 2 reads as follows:

**“Section 2
Scope**

- (1) *a s i t s t a n d s*
- (2) The provisions set out in this Act **can neither** be disregarded, **nor can they be waived unilaterally.**”

- ◆ Clauses preceding or following a **list** are repeated when items in the list are to be amended or deleted. The same applies to preceding and following sentences, since they have no numerical designation and can therefore not be designated “*a s i t s t a n d s*”.

Example

Number 2 in section 4 of a draft principal act is to be revised, the rest of the section is to remain unchanged.

Draft	Decisions of the nth Committee
...	...
Section 4	Section 4
Prohibition	Prohibition
The right-holder may prohibit use	The right-holder may prohibit use
1. on Sundays and public holidays;	1. <i>a s i t s t a n d s</i>
2. <i>at night.</i>	2. between 22:00 hrs and 6:00 hrs.
Section 6 shall remain unaffected.	Section 6 shall remain unaffected.

- ◆ Where a new structural unit is **inserted** into the bill, it is assigned the corresponding type and numerical designation and the following structural units are renumbered.

Example

In a draft amending act an additional section is to be amended to which no amendments were previously made.

Draft	Decisions of the nth Committee
...	...
3. In section 7 ...	3. <i>a s i t s t a n d s</i>
	4. Section 13 is repealed.
4. Section 15 is amended as follows: ...	5. a s i t s t a n d s

- ◆ Where a structural unit is to be **dropped** from the bill, the words “not applicable” are entered in **bold** in the right-hand column following the type and numerical designation. This structural unit is written in *italics* in the left-hand column. Subsequent numbering must be adapted and highlighted in bold just like an amendment.

Example

A provision previously included in an amending formula in the draft is to be dropped.

Draft	Decisions of the nth Committee
...	...
3. The following subsections <i>5 to 7</i> are appended to section 7: “(5) A business enterprise must comprise a total of ten persons. <i>(6) The competent Land authority shall take decisions on exceptions thereto.</i> <i>(7) Home work shall remain unaffected.”</i>	3. The following subsections (5) and (6) are appended to section 7: (5) a s i t s t a n d s (6) not applicable (6) a s i t s t a n d s

- ◆ The provision on **entry into force** must always be included in both columns. If the bill provided that **different provisions are to enter into force at different times**, it must be checked whether amendments to the draft, in particular changes to the numbering, mean the individual references in the provision on entry into force will have to be adapted.

857 The text processing software’s **table function** can be used to draw up synopses.⁵⁹ Attention should then be paid to ensuring that identical column widths are set and that each structural unit is placed on a separate line. This guarantees that the text passages which need to be compared are placed directly opposite one another. Automatic numbering or listing should not be used – at least not in the right-hand column.

858 If the planned amendments to the bill are so fundamental in nature that they can no longer be sensibly represented in a synopsis, drafting assistance may, by way of exception and in consultation with the committee with overall responsibility, take the form of a **revised version of the bill**.

⁵⁹ The eNorm software (margin no. 46) assists users in compiling synopses.

Part G

**Notification of revised
laws and statutory instruments**

482 Federal Law Gazette 2007 I No. 12, published in Bonn on 16 April 2007

Date of publication

**Notice
of the Revised Pension Reserves Act**

Title

of 27 March 2007

Date of notice

Notice of
publi-
cation

Pursuant to Article 2 of the Amending Act of 21 December 2006 (Federal Law Gazette I p. 3288), notice is given below of the text of the Pension Reserves Act which entered into force on 1 January 2007. The revised version takes into account:

Publication formula,
including effective
date

1. The Act of 9 July 1998 (Federal Law Gazette I p. 1800), which entered into force on 1 January 1999;
2. Article 5 of the Act of 14 December 2001 (Federal Law Gazette I p. 3702), which entered into force on 1 January 2002;
3. Article 6 of the Act of 20 December 2001 (Federal Law Gazette I p. 3926), which entered into force on 1 January 2003;
4. Article 12 of the Ordinance of 25 November 2003 (Federal Law Gazette I p. 2304), which entered into force on 28 November 2003;
5. Article 30 of the Ordinance of 31 October 2006 (Federal Law Gazette I p. 2407), which entered into force on 8 November 2006;
6. Article 1 of the Act referred to at the beginning, which entered into force on 1 January 2007.

Last official full-text
publication

List of amendments

Signed at Berlin on 27 March 2007

Date of notice /
signature
Signatory

The Federal Minister of the Interior
Wolfgang Schäuble

483 Federal Law Gazette 2007 I No. 12, published in Bonn on 16 April 2007

New page

**Act
on a Federal Pension Reserve
(Pension Reserves Act, VersRückIG)**

Title =
Long title (short
title, abbreviation)

Revised
version

**Part 1
Special Fund
“Federal Pension Reserve”**

Text

**Section 1
Scope**

(1) The provisions set out in Part 1 shall apply to the ...

[The above original example was adapted in line with the rules set out in this Manual.]

Part G: Notification of revised laws and statutory instruments

1 General remarks

859 The authoritative text of a law or statutory instrument is published in the Federal Law Gazette on the basis of a **permission to publish**, in accordance with which notice must be given of the applicable wording on a specified reference date (margin nos 696 et seqq., 831).

860 The notice itself comprises the declarative **revised version** of the text, which is preceded by the **notice of publication**.

The **notice of publication** is composed of

- ◆ the title and date of notice (margin nos 865 et seqq.),
- ◆ the publication formula (margin no. 868 et seq.),
- ◆ a list including the last full-text publication and amendments (margin nos 870 et seqq.),
- ◆ a signature (margin no. 878).

The notice of publication is followed by the **revised version**, which begins on a new page (margin nos 879 et seqq.).

861 Permission to publish does not obligate the ministry in question to actually make use of that permission. Where permission is given, expectations will nevertheless be raised. Notice should be given **as close as possible** to the cited reference date. The federal ministry designated in the permission is **responsible** for the notice.

862 The notice can become meaningless if further amendments to the law or statutory instrument are promulgated soon after the relevant reference date. Notice should therefore not be given if an amendment to the law or statutory instrument was promulgated **after the reference date** referred to in the permission to publish, but **before** the actual notification. Such an amendment could **not be included** in the notice, even if it were already in force. In such cases a subsequent amending act or a subsequent amending statutory instrument should include a new permission to publish, thus enabling account also to be taken of the new amendments.

863 **Giving notice prematurely** can also cause problems. If the reference date on which notice is to be given of the authoritative text is sometime in the future, then it makes sense to wait

before duly giving notice. The principal act or the principal statutory instrument, including any pending amendments, may be amended again in the period leading up to the reference date. No account would thus be taken of these amendments if the wording were published prematurely. As a result, the notice printed in the Federal Law Gazette would have to be corrected (margin no. 894).

864 The draft of the notice is not subject to legal scrutiny (cf. section 46 (1), section 62 (2) GGO*). If, however, the notice of publication or the revised version gives rise to **questions**, especially **doubts** as to the applicable wording, the **Scrutiny of Legislation Division** in the Federal Ministry of Justice should be consulted.

2 Notice of publication

2.1 Heading

865 The heading always begins with the words “Notice of the Revised ...”. This is followed by the **applicable citation title** of the law or statutory instrument.

866 Only the currently applicable citation title may be used, since the notice may only take account of those amendments which have already been **formally adopted** and promulgated. Additions, for instance a year added to the citation title during publication, would give the impression that this was a different or a new law. In addition, it would make it quite difficult to cite the law or statutory instrument correctly.

867 The **date** of signature follows the heading on a new line: “of ...”.

2.2 Publication formula

868 The publication formula is standardized and begins: “Pursuant to ...,”. It also contains

- ◆ a reference to the article in the law or statutory instrument (only using the type designation) containing the permission to publish, as well as the date of signature and the law’s or statutory instrument’s publication reference,
- ◆ the citation title of the law or statutory instrument of which notice is to be given, and
- ◆ the reference date on which notice is to be given of the text, as indicated in the permission to publish.

* Joint Rules of Procedure of the Federal Ministries

Example

**Notice
of the Revised ... [Act]
of ...**

Pursuant to Article ... of the Act of ... (Federal Law Gazette ...), notice is given below of the text of the ... [Act] which entered into force on

- 869 If the citation title has been amended, reference is made in the publication formula to the fact that the title of the revised version differs from that of the earlier version of the law or statutory instrument.

Example

Notice of the Revised Ordinance on the Training and Examination of Midwives and Male Midwives of 16 March 1987 (Federal Law Gazette I p. 929)

Pursuant to Article 2 of the Ordinance on ... of 10 November 1986 (Federal Law Gazette I p. 1732), notice is given below of the text of the Ordinance on the Training and Examination of Midwives and Male Midwives, under its new title, which entered into force on 19 November 1986.

2.3 List including the last full-text publication and amendments

- 870 The publication formula is followed by a **list** which is preceded by the words: “The revised version takes into account: ...”. The last publication of the full text of the principal act or principal statutory instrument and all the amendments promulgated since then are numbered individually and listed together with their respective dates of entry into force. The laws or statutory instruments are not cited using their citation title, only using the type designation “Act” or “Ordinance”.
- 871 If the law or the statutory instrument was issued or constitutively revised after 31 December 1963, the **publication reference for the last official full-text publication** is cited as follows:

1. The Act of ... (Federal Law Gazette ...), which entered into force on ... ;
[The Ordinance of ... (Federal Law Gazette ...), which entered into force on ... ;]

If the law was enacted or revised in an **omnibus act**, the citation requirement set out in margin no. 185 must be observed; the same applies if the statutory instrument was part of an omnibus statutory instrument.

However, if the last official publication of the full text was a **declarative revised version**, the following phrase is used:

1. The Act of ... (Federal Law Gazette ...), as published on ... ;
[The Ordinance of ... (Federal Law Gazette ...), as published on ... ;]

If the law or statutory instrument was published in the **Federal Law Gazette III**, the following phrase is used:

1. The Act, as consolidated and published in the Federal Law Gazette III, Index No. ... ;
[The Ordinance, as consolidated and published in the Federal Law Gazette III, Index No. ... ;]

872 This is followed by the list of amending acts or amending statutory instruments of which account was taken when revising the text, in the **order of their promulgation**; the rank of the amending provision is of no consequence here.

873 Amendments which were **promulgated** on the relevant reference date, **but which have not yet entered into force**, are included in the list, since account is taken of them in a footnote in the revised version (margin nos 887 et seqq.).

Example

3. Article ... of the Act of ... (Federal Law Gazette ...), which entered into force on ... ;

874 Promulgated amendments are included in the list, even if they are **obsolete**.

Example

3. Article ... of the Act of ... (Federal Law Gazette ...), which was repealed prior to its entry into force by Article ... of the Act of ... (Federal Law Gazette ...);

875 If an individual amending act which only amends the principal act or principal statutory instrument provides that **different provisions are to come into force at different times**, it is included in the list as follows:

3. The Act of ... (Federal Law Gazette ...), which in part entered/shall enter into force on ..., in part on ... ;
[The Ordinance of ... (Federal Law Gazette ...), which in part entered/shall enter into force on ..., in part on ... ;]

In other cases in which the amendments entered into force at different times, in particular in the case of omnibus acts or omnibus statutory instruments, the following phrase should be used:

3. Article ... of the Act of ... (Federal Law Gazette ...), which in part entered/shall enter into force on ..., in part on ... ;
[Article ... of the Ordinance of ... (Federal Law Gazette ...), which in part entered/shall enter into force on ..., in part on ... ;]

876 If account needs to be taken of an amendment which is included in an **article which gives rise to consequential amendments**, the text containing the amendment must be indicated as precisely as possible:

3. Article ... paragraph ... of the Act of ... (Federal Law Gazette ...), which entered into force on ... ;
[Article ... paragraph ... of the Ordinance of ... (Federal Law Gazette ...), which entered into force on ... ;]

877 If, when publishing a law or statutory instrument, account needs to be taken of an **amendment on account of the German Unification Treaty**, the following phrase, for instance, may be used:

3. The Act of 23 September 1990, which entered into force on 29 September 1990, read in conjunction with Annex I, Chapter ..., Subject Area ..., Part II, number ... of the German Unification Treaty of 31 August 1990 (Federal Law Gazette 1990 II p. 885, ...);

2.4 Signature

878 The notice of publication is signed at the bottom by the competent federal **minister**; the signature is preceded by the place and date of signature and the minister's title. In the event of the minister being unable to sign the document, the state secretary signs "on behalf of the Federal Minister". If the relevant state secretary is unable to sign the document, then another person signs "on behalf of the State Secretary" or, by way of exception, "for the Federal Ministry".

3 Revised version

3.1 Content

879 The revised version of a law or statutory instrument contains the authoritative and flawless wording which is **applicable** on the relevant reference date. The revised version may only take account of amendments which have already been formally adopted and promulgated (margin no. 698).

Notwithstanding the above, the wording must observe current spelling rules (margin no. 47) and the requirement that the structural units “section” and “number” be written out in German (margin no. 196).

880 The text **comprises** the title (long title and, where applicable, the short title and official abbreviation), a table of contents if one has been drawn up and the regulatory part including all the structural elements, together with any annexes.

881 The text **does not include** the enacting clause and closing formula, the date of signature and the signatories' particulars.

882 The revised version must observe the **citation requirement** (margin no. 314) if the law or statutory instrument served to **implement a directive** of the European Communities.⁶⁰ To that end a footnote is added to the title of the revised version of the law or statutory instrument. The **footnote** should not simply repeat the content of the footnotes in the amending acts or statutory instruments as listed in the notice of publication. Rather, only those directives should be included whose implementation gave rise to changes to the applicable wording. If, for instance, the current wording was amended by means of an article in a comprehensive omnibus act, the explanatory memorandum will indicate whether and if so which directive has been implemented as a result.

883 If a directive did not require specific implementation because provisions set out in domestic laws or statutory instruments already fulfilled the objective of the directive (margin no. 314), a **footnote** containing this information needs to be **added** when these laws or statutory instruments are re-published.

⁶⁰ Treaty of Lisbon: directive of the European Union

884 Footnotes should also be included if the law or statutory instrument was labelled accordingly in line with margin no. 315 when implementing a framework decision or a decision of the European Union.⁶¹ If no such labelling was done, it can be added to the revised version.

885 The regulatory part indicates which sections, articles and higher-level structural units were repealed. This ensures that the numbering of the structural units is not interrupted.

Example

Section 7 (repealed)

The same applies to subsections and numbers if their wording has not been included in the revised version but they are followed by other subsections or numbers.

Example

Section ...

(1) ...

(2) (repealed)

(3) ...

1. (repealed)

2. ...

Repealed structural units are not included if this does **not interrupt** the consecutive numbering. This applies, for instance, to repealed sections with an additional letter which are not followed by another section with an additional number or if the repealed item was the last in a numbered list.

886 The revised version does not include the **wording of amendments which have already been executed**, i.e. amending provisions which, by way of exception, were contained in the law or statutory instrument to be published, as well as provisions on entry into force and expiry which became void upon their entry into force at the specified point in time. Irrespective of any headings, their content is indicated only in brackets.

Examples

Section ...

(Amendment to other provisions)

[(Repeal of other provisions)]

[(Entry into force, expiry)]

⁶¹ Treaty of Lisbon: decision of the European Union within the meaning of Article 288 paragraph 1 of the TFEU

3.2 Pending amendments, footnotes

887 A footnote must be included to make reference to **amendments** to the law or statutory instrument which were promulgated before the reference date relating to the revised version but which do not enter into force until after that date.

888 The **footnote** must be added at that place in the text to which the promulgated amendment refers. The footnote indicates the **wording of the amending provision** and the precise publication reference, plus the exact point in time from which the amendment applies (by means of a reference to the provision on entry into force).

Example

Section 12 (1) of the Transplantation Act as published on 4 September 2007 (Federal Law Gazette I p. 2206)

Section 12 Organ allocation, allocation office

(1) In order to allocate those organs requiring allocation, the national associations of health insurance companies together^{*)}, the German Medical Council and the German Hospital Federation or the federal associations of German hospitals together with a suitable facility (allocation office) shall erect or commission ...

*) In accordance with Article 42 number 1 read in conjunction with Article 46 paragraph 9 of the Act of 26 March 2007 (Federal Law Gazette I p. 378), the words "the national associations of the health insurance companies together" in section 12 (1), first sentence, will be replaced by the words "the German Association of Health Insurers" on 1 July 2008.

889 If including the amending formulae would make the text too confusing, the footnote can instead repeat the wording of the provision together with the amendments as included in the **full text**.

Example

Section 3^{*)}

...

*) In accordance with Article ... read in conjunction with Article ... of the Act of ... (Federal Law Gazette ...), as of ... the following wording shall apply to section 3:

"Section 3

..."

890 Account must also be taken of amendments based on **provisions on repeal or expiry** which were promulgated before the reference date but which did not enter into force until after that date. A footnote making reference to these must also be added.

Examples

- *) In accordance with Article ... read in conjunction with Article ... of the Act of ... (Federal Law Gazette ...), section ... will be repealed on
- *) In accordance with Article ... of the Act of ... (Federal Law Gazette ...), section ... shall cease to be effective on

891 Other facts existing on the relevant reference date of which no account is taken in the revised text but which nevertheless have a direct impact on its validity or legally relevant content should also be indicated by means of a footnote added at the relevant place in the text. Examples include external rules on validity and decisions of the Federal Constitutional Court in which individual provisions have been declared incompatible with the Basic Law or other federal law or have been declared null and void (cf. margin no. 189).

3.3 Rectifying a notice

892 If either the notice of publication or the revised version of a law or statutory instrument contains printing errors or other obvious inaccuracies, these must be **corrected**.

Example

Corrigendum to the Notice of the Revised ... [Act]

of ...

In the notice of the revised ... [Act] of ... (Federal Law Gazette ...) make the following corrections:

1. In section 157 (3), first sentence, insert the particular "(1)" after the word "subsection".
2. In section 176 (1) replace the words "judicial officer" by the words "judicial staff".

893 Where the responsible federal ministry made a mistake when formulating the notice of publication or the notice of the revised version, the corrigendum is signed in line with in-house rules. If the error was made at the printing stage, the responsible publishing organ's editorial office signs the document.

894 A notice **must be corrected** if a further amendment is promulgated and enters into force **after** the actual notice but **before** the relevant reference date. Otherwise, the wording which was pre-empted would no longer be up to date on the reference date (margin no. 863). The notice is corrected in two stages: The notice of publication is first amended and then the revised version is corrected. The amending technique serves as a model, although the amending instructions are written in the imperative.

Example

Corrigendum to the Notice of the Revised ... [Act]

of ...

In the notice of the revised ... [Act] of ... (Federal Law Gazette ...) make the following corrections:

1. In the notice of publication make the following corrections:
 - a) In number 5, replace the full stop by a comma.
 - b) Append the following number 6:

“6. Article ... of the Act of ... (Federal Law Gazette ...), which entered into force on”
2. In the revised ... [Act], replace subsections (2) and (3) by the following subsection (2):

“(2) ...”

895 If the incorrect wording of the revised version is based on an obvious **inaccuracy in the amending act** or the amending statutory instrument which was not eliminated in the course of notification, the **procedure for correcting errors set out in section 61 GGO*** must first be followed for the amending act or amending statutory instrument. The published revised version can then be corrected. It is not necessary to first publish the corrigendum to the amending act (margin no. 705).

* Joint Rules of Procedure of the Federal Ministries

**Annex 1
(to margin no. 42)**

**Guidelines on Drafting
Ratifying Legislation and
Statutory Instruments Relating to International Treaties
(Guidelines in accordance with section 73 (3), first sentence,
of the Joint Rules of Procedure of the Federal Ministries)**

Revised version, 2007

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- 3.1 Preconditions
- 3.2 Drafting a statutory instrument relating to an international treaty
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- 3.5 Concluding remark and memorandum

4 Models

Introduction

According to section 73 (3), first sentence, GGO,* the Guidelines on Drafting Ratifying Legislation and Statutory Instruments Relating to International Treaties issued by the Federal Ministry of Justice must be observed when drafting laws ratifying international treaties. These revised Guidelines cover the key requirements made in respect of the content and form of laws by means of which the legislative bodies approve international treaties and of statutory instruments by means of which international agreements are brought into effect.

The principles and models these Guidelines contain cannot provide a full overview of all the various forms which may be possible in individual cases. It is therefore recommended that those responsible for drafting laws and statutory instruments contact the International Treaty Law Division in the Federal Ministry of Justice as early as possible in the drafting process in order to clarify whether it is necessary to deviate from these Guidelines.

1 Legislation ratifying bilateral and multilateral agreements in the common case

1.1 Need for ratifying legislation

1.1.1 According to Article 59 para. 2, first sentence, of the Basic Law, treaties which regulate the **political relations** of the Federation or which relate to **subjects of federal legislation**, require the consent or participation, in the form of a federal law, of the bodies responsible in such a case for the enactment of federal law. Whether a treaty requires a law in accordance with that provision is dependent solely on its substantive content. Whether the agreement is bilateral or multilateral is of no relevance, nor is the form in which it was concluded or its designation. Treaties may require Germany's consent even though they contain no ratification clause; vice versa, they may not require Germany's consent even though they do contain a ratification clause.

1.1.2 A treaty regulates the **political relations** of the Federation within the meaning of Article 59 para. 2, first sentence, first alternative, of the Basic Law if it affects the existence of the State, its territorial integrity, its independence, its status and its weight within the international community (BVerfGE [Decisions of the Bundesverfassungsgericht] 90, 286, 359).

1.1.3 In accordance with Article 59 para. 2, first sentence, second alternative, of the Basic Law, a treaty will in particular require the consent or the participation of the bodies responsible in such a case for the enactment of federal law if it

- (a) creates rights and duties for the individual,
- (b) contains provisions whose implementation requires the involvement of the formal federal or *Land* legislature,
- (c) contains provisions with which the current domestic legal situation already concurs (known as a "parallel agreement", the agreement gives rise to the international obligation to maintain this legal situation),
- (d) contains financial obligations – over and above mere budgetary impacts – which require legislative regulation in accordance with the financial regulations of the Basic Law (cf. Article 115 of the Basic Law),
- (e) amends or supplements an existing treaty which was the subject of ratifying legislation.

Exception: The legislature has already given (i.e. has anticipated) its consent to the amendment or addition. Anticipated consent may be given by means of an

* Joint Rules of Procedure of the Federal Ministries

authorization to issue a statutory instrument (cf. 2.3 and 3 below). Anticipated consent can, however, also be assumed to have been given if the concrete amendment is not legislative in nature and if its content, purpose and scope were already provided for as part of a procedure for the amendment of the treaty as set forth in the original treaty.

No ratifying legislation is required if the treaty can enter into force in Germany in accordance with Article 80 para. 1 of the Basic Law on the basis of an authorization to issue a statutory instrument which has sufficient relation to foreign affairs (cf. 3 below).

1.2 Drafting ratifying legislation in the common case

1.2.1 Heading

1.2.1.1 The **heading** must include the title of the treaty, which follows the words “Act relating to the”. A short title or, where several treaties are being ratified simultaneously, a collective designation may be chosen in place of the title of the treaty. In English language versions, the date on which the treaty was concluded comes at the end of the heading following the word “of”.*

The heading may include an abbreviation for the treaty if one is provided for in the treaty itself or is in common usage in international dealings. The abbreviation is placed in round brackets at the end of the heading, for example “(MIGA Agreement)”; Federal Law Gazette 1987 II p. 454.

1.2.1.2 In the case of **multilateral** agreements, the bill is given the following heading:

“Draft
Act
relating to the
Agreement [or the like] on ...
of ...”

In the case of **bilateral** agreements the parties to the agreement are also named in the heading as per the title of the treaty:

“Draft
Act
relating to the
Agreement [or the like]
concluded between the Federal Republic of Germany and ...
on ...
of ...”

1.2.1.3 If the bill relates to an **amendment** to an agreement, the following heading is generally chosen:

“Draft
Act
relating to the Agreement [or the like] of ...
to amend [or the like] the ...”

* In German, the date follows the word “Agreement” [or the like]. Only examples of English conventions will be provided in the following.

1.2.1.4 The heading should not make reference to the fact that the draft relates to **accession** to a treaty.

1.2.2 Date of signature

The date of signature is included on a separate line in the draft underneath the title and is introduced by the “of”. The word “of” begins with a lower case letter in English (an upper case letter is used in German: “Vom”).

1.2.3 Enacting clause

1.2.3.1 The **enacting clause** contains information regarding enactment by the Bundestag and – where required pursuant to the procedural rules pertaining to the legislative process – the consent of the Bundesrat.

The enacting clause is already placed in front of the text of the bill.

1.2.3.2 The enacting clause of the ratifying legislation therefore reads

(a) “The Bundestag has adopted the following Act with the consent of the Bundesrat:”

in the case of laws requiring the consent of the Bundesrat

(in statutory instruments requiring the consent of the Bundesrat this information is included in the closing formula, cf. 3.2.2 and 3.3 below).

(b) “The Bundestag has adopted the following Act:”

in the case of laws not requiring the consent of the Bundesrat.

(c) “The Bundestag has adopted the following Act with the consent of the Bundesrat; Article 79 paragraph 2 of the Basic Law has been observed:”

in the case of laws which amend the Basic Law.

This formula must also be used in cases in which a non-formal amendment is being made to the Basic Law (Article 23 para. 1, third sentence, of the Basic Law); cf. the Act on the Treaty on European Union signed on 7 February 1992 (Federal Law Gazette 1992 II p. 1251).

1.2.3.3 If, contrary to the Federal Government’s opinion, the Bundesrat has confirmed that the ratifying legislation requires its consent and has therefore explicitly given its consent, the ministry with overall responsibility, in cooperation with the Federal Ministry of the Interior and the Federal Ministry of Justice, will re-examine whether the Bundesrat needs to give its consent. Despite having been given the consent of the Bundesrat, the ratifying legislation may not be promulgated as requiring the explicit consent of the Bundesrat if the examination conducted within the Federal Government reveals that the international treaty or the law does not contain any provisions establishing the need for the Bundesrat to give its consent thereto. The opinions of the federal ministries involved regarding the lack of need for the consent of the Bundesrat must be briefly outlined when the original text is transmitted for issuance (section 59 (2) GGO*).

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1.2.4 Structure of ratifying legislation

The structural subdivisions of ratifying legislation are **articles** (no. 3, fourth sentence, in Annex 6 to section 42 (2) GGO*). Articles containing several regulatory ideas are subdivided into paragraphs.

1.2.5 Consent formula (Article 1 of the ratifying legislation)

1.2.5.1 The first sentence in Article 1 of the ratifying legislation testifies to the legislature's consent to the treaty. It must include

- (a) the treaty's full and unabbreviated designation,
- (b) the date of the treaty's conclusion,
- (c) the place and date of signature by those persons authorized to sign for Germany.

The second sentence then regulates publication of the treaty referred to in the first sentence.

1.2.5.2 In the case of **multilateral** agreements, the first and second sentence in Article 1 thus generally read:

“The Convention [or the like] on ... of ..., which was signed by the Federal Republic of Germany at ... on ..., is hereby approved. The text of the Convention [or the like] is published below.”

If there is no authentic German version of the international treaty, the second sentence reads:

“The text of the Convention [or the like] is published below accompanied by an official German translation.”

The above phrases are also used in the case of so-called “mixed-purpose contracts” whose subject matter falls partly within the competence of the European Communities and partly within the competence of the Member States. Reference to this division of competences is generally made in the explanatory memorandum (cf. 1.3.1.1).

The names of the parties to the agreement are also included in the case of **bilateral** agreements – again in line with the title of the treaty:

“The Treaty [or the like] on ... of ..., which was signed by the Federal Republic of Germany and by ... at ... on ..., is hereby approved. The text of the Treaty [or the like] is published below.”

The names of the parties to the agreement are also included in the case of **multilateral intergovernmental agreements** – again in accordance with the title of the treaty:

“The Agreement between the Government of the Federal Republic of Germany and the Government of ..., which was signed at ... on ..., is hereby approved. The text of the Treaty [or the like] is published below.”

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1.2.5.3 Special cases

- (a) If the date on which the treaty was signed by the Federal Republic of Germany is the same as the date on which the treaty was concluded, only the date of signature is included. In such cases, Article 1 reads:

“The Treaty [or the like] on ..., which was signed by the Federal Republic of Germany at ... on ..., is hereby approved. The text of the Treaty [or the like] is published below (accompanied by an official German translation).”

- (b) Where, in exceptional cases, the place at which the treaty was concluded and the place at which it was signed by the Federal Republic of Germany are not identical, the place at which the treaty was concluded is inserted after the title of the treaty [or the like] together with the words “concluded at ...”.

- (c) If, in exceptional cases, the consent of the legislative bodies is obtained before the treaty is signed by the Federal Republic of Germany, Article 1 reads:

“The Treaty [or the like] on ... concluded at ... [place] on ... [date] is hereby approved. The text of the Treaty [or the like] is published below (accompanied by an official German translation).”

- (d) If several treaties constitute the subject matter of the law, it may be advisable to use the following phrase:

“The following Treaties, which were signed by the Federal Republic of Germany at ... on ..., are hereby approved:

1. the Treaty [or the like] on ...,
2. the Treaty [or the like] ...,
3. the Treaty [or the like]

The texts of the Treaties are published below (accompanied by an official German translation).”

Alternatively:

“The following Treaties are hereby approved:

1. The Treaty on ..., which was signed by the Federal Republic of Germany at ... on ...,
2. The Treaty on ..., which ...,
3. The Treaty on ..., which

The text of the Treaties are published below (accompanied by an official German translation).”

- (e) Where the Federal Republic of Germany **accedes** to a treaty, Article 1 reads:

“The Federal Republic of Germany’s accession to the Treaty [or the like] on ... concluded at ... [place] on ... [date] is hereby approved. The text of the Treaty [or the like] is published below (accompanied by an official German translation).”

- (f) If the ratifying legislation relates to an **amendment** to a treaty which was the subject of ratifying legislation, the publication reference of the earlier ratifying legislation must also be cited. If the treaty has since been amended, this amendment and – in the case of several amendments – the last publication reference are also cited:

“The Protocol [or the like] to amend the Treaty [or the like] on ... of ... (Federal Law Gazette 20XX II p. ...) [possibly also:, as (last) amended by the Protocol [or the like] of ... (Federal Law Gazette 20XX II p. ...)], which was signed by the Federal Republic of Germany at ... on ..., is hereby approved. The text of the Protocol [or the like] is published below (accompanied by an official German translation).”

- (g) If the proposed amendment was adopted at an international conference by means of a **resolution**, the consent formula reads:

“The amendment to the Treaty [or the like] on ... of ... (Federal Law Gazette 20XX II p. ...), which was adopted by resolution of the ... [name of the conference] at ... [place of the conference] on ... [date of the resolution], is hereby approved. The text of the resolution is published below (accompanied by an official German translation).”

- (h) In the case of the Conventions of the International Labour Organization (ILO Conventions), the following sentence is generally used:

“The Convention on ... as adopted by the General Conference of the International Labour Organization at ... on ... is hereby approved. The text of the Convention is published below accompanied by an official German translation.”

1.2.5.4 In the case of **other instruments** which, in accordance with Article 31 para. 2, letter (b) of the Vienna Convention on the Law of Treaties (Federal Law Gazette 1985 II p. 926), have been issued in connection with the international treaty (annexes, addenda, agreements, protocols, exchanges of notes, joint and unilateral declarations etc.), the following applies when drafting Article 1 paragraph 1 of the ratifying legislation:

- (a) If the instruments concerned are already explicitly referred to in the treaty as an integral part thereof, they do not need to be referred to again in the consent formula.
- (b) If such other instruments are not referred to in the treaty, it must be examined whether they require the consent of the Parliament on account of their content or on account of the overall context. The consent of the Parliament must in principle also cover all dependent parts of the treaty. That is why the other instruments must be listed separately in Article 1.

Instruments which do not meet these conditions must be attached as an annex to the treaty's memorandum in order to notify the legislative bodies (see 1.5 below). These other instruments may also be published separately at the instigation of the federal ministry with overall responsibility.

1.2.5.5 **Provisos** and other **declarations** which are to be attached to treaties are normally not made the subject of the ratifying legislation. They are merely notified in the memorandum. If, by way of exception, it is necessary to set down in the law that a specific proviso is to be attached in the event of ratification, the wording of the proviso should not be included in the text of the ratifying legislation.

A proviso which was already attached upon the treaty's signature may be referred to in the consent formula in the following manner:

“The Treaty [or the like] on ... of ..., which was signed by the Federal Republic of Germany at ... on ..., is hereby approved, with the proviso in respect of Article ... of the Treaty which was attached upon signature.”

If no proviso was attached during signature, the following phrase may be used:

“The Treaty [or the like] on ... of ..., which was signed by the Federal Republic of Germany at ... on ..., is hereby approved on condition that the Federal Republic of Germany attaches the proviso in respect of Article ... of the Treaty when depositing the instrument of ratification.”

Agreement should be reached with the Federal Foreign Office and the Federal Ministry of Justice on which phrase to use in an individual case.

1.2.6 Date of entry into force (generally Article 2)

1.2.6.1 Each law ratifying an international agreement must specify the date on which it enters into force (Article 82 para. 2, first sentence, of the Basic Law). Correspondingly, paragraph 1 regulates the date on which the ratifying legislation enters into force. Paragraph 2 stipulates that the date on which the treaty **takes effect** for the Federal Republic of Germany **under international law** must be notified in the Federal Law Gazette.

1.2.6.2 The provision on entry into force reads:

(a) In the case of **bilateral** agreements:

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

“(2) Notice shall be given in the Federal Law Gazette of the date on which the Treaty [or the like] enters into force in accordance with Article ... paragraph ... thereof.”

(b) In the case of **multilateral** agreements:

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

“(2) Notice shall be given in the Federal Law Gazette of the date on which the Treaty [or the like] enters into force for the Federal Republic of Germany in accordance with Article ... paragraph ... thereof.”

1.2.6.3 Instruments other than the treaty (see 1.2.5.4. above) do not need to be mentioned if they have also been mentioned in the treaty’s consent formula or if they enter into force on a different date than the treaty.

1.2.6.4 If the concluding provision stipulates that the treaty is to have **retroactive effect** and if that retroactive effect is, by way of exception, constitutionally permissible, the law ratifying the international treaty may also become effective at that point in time; for constitutional reasons the obligation under international law may not become effective before the ratifying legislation.

In cases where entry into force with retroactive effect is permissible, the provision on entry into force reads:

“(1) This Act shall enter into force with effect from”

1.2.7 Closing formula

1.2.7.1 The closing formula also contains the **order for promulgation** (section 58 (2), third sentence, no. 4 GGO*). It is generally not added until the law has been enacted and is therefore not included in the draft of the ratifying legislation.

1.2.7.2 If the law required the consent of the Bundesrat, the closing formula reads:

“The above Act is hereby signed into law. It shall be promulgated in the Federal Law Gazette.”

1.2.7.3 If the law did not require the consent of the Bundesrat (section 58 (2), third sentence, no. 1 GGO*), the closing formula reads:

“The constitutional rights of the Bundesrat have been observed. The above Act is hereby signed into law. It shall be promulgated in the Federal Law Gazette.”

1.3 Explanatory memorandum

Each law ratifying an international agreement must be explained in an explanatory memorandum (*Begründung*).

1.3.1 Re the consent formula (Article 1)

1.3.1.1 The explanatory memorandum generally reads:

“Re Article 1

“Article 59 paragraph 2, first sentence, of the Basic Law applies to the Treaty [or the like], since it relates to subjects of federal legislation.”

If the instrument in question is a “mixed-purpose contract” (a treaty concluded jointly by the European Communities and its Member States), the following is used:

“Article 59 paragraph 2, first sentence, of the Basic Law applies to the Treaty [or the like], since, in so far as it falls within the competence of the Member States of the European Communities, it relates to subjects of federal legislation.”

1.3.1.2 In the case of treaties regulating the political relations of the Federation (see 1.1.2 above), the explanatory memorandum reads:

“Re Article 1

“Article 59 paragraph 2, first sentence, of the Basic Law applies to the Treaty [or the like], since it regulates the political relations of the Federation.”

1.3.1.3 If the law requires the consent of the Bundesrat, a statement regarding the fact that provisions of the Basic Law establish the need for the Bundesrat to give its consent is added to the explanatory memorandum:

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“The consent of the Bundesrat is required in accordance with Article ... paragraph ... of the Basic Law, since ...”

1.3.2 Re the date of entry into force (generally Article 2)

The explanation regarding the date of entry into force in the case of **multilateral** agreements generally reads:

“Re Article 2

“The provision in paragraph 1 meets the requirement under Article 82 paragraph 2, first sentence, of the Basic Law.

“In accordance with paragraph 2, notice shall be given in the Federal Law Gazette of the date on which the Treaty [or the like] enters into force for the Federal Republic of Germany in accordance with Article ... paragraph ... thereof.”

In the case of **bilateral** agreements the words “for the Federal Republic of Germany” are dropped.

1.4 Concluding remarks

“Concluding remarks” are added to the explanatory memorandum regarding the individual articles in the ratifying legislation (cf. section 44 GGO*).

1.5 Memorandum

Bills introduced by the Federal Government must explain the treaty in a “memorandum” (*Denkschrift*) which follows the explanatory memorandum to the ratifying legislation and the text of the ratifying legislation. A “General Part” explains the significance, purpose and history of the treaty, the grounds for its conclusion, as well as any amendments to domestic law occasioned by it. A “Special Part” then contains details on the individual provisions according to their content, relation to other regulations and their impacts.

Where applicable, other instruments relating to the treaty should be added to the memorandum (see 1.2.5.4 above).

1.6 Publication of foreign-language treaty texts

The following principles must be applied when publishing the treaties referred to in the first sentence in Article 1 of a law ratifying an international agreement:

1.6.1 In the case of **bilateral** agreements, publication must always be done in the authentic treaty languages. An exception can be made to the rule that the text be reproduced in the language of the other party to the agreement if publication would involve the use of unusual

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characters or would, in a specific case, give rise to untenable additional costs on account of the specific circumstances. Characters used in the official languages of the United Nations are not regarded as “unusual characters”. Where an intermediate language has been used, publication in the intermediate language as well as in German may suffice.

1.6.2 In the case of **multilateral** agreements it will generally be sufficient to publish the English and/or French text along with the German treaty text or the official German translation. Other authentic language versions should only be published if a practical need or fundamental considerations speak in favour of doing so.

1.6.3 Treaties concluded in the context of the **European Communities** must be published as the authentic German treaty text. The reference to publication in the Official Journal (OJ reference) must be included when publishing the text in the Federal Law Gazette II (at the latest upon notice being given of its entry into force).

1.6.4 The German treaty text or the official German translation and the authentic language versions are always published in synoptic form.

1.7 Printing before the draft is submitted to the Cabinet

The bill, the explanatory memorandum, the treaty text in the languages in which it is to be published and the memorandum must be sent to the editorial office of the Federal Law Gazette II at the Federal Office of Justice as early as possible (section 73 (1) GGO*) so that the texts can be printed before finally being submitted to the Cabinet.

2 Additional regulations in ratifying legislation

2.1 “Piggybacking”

Regulations concerning the implementation of the international treaty in domestic law should not be included in the treaty text. This is due to the special treatment given to treaties in the parliamentary process (sections 78 (1), 81 (4), 82 (2) and 86, fourth sentence, of the Rules of Procedure of the German Bundestag), on account of the clear distinction made between the publication of domestic regulations in the Federal Law Gazette I and of international treaties in the Federal Law Gazette II (section 76 (1) and (2) GGO*), and because of separate documentation in applicable federal law.

Generally speaking, domestic regulations should therefore be reserved for a special **implementing act**.

However, exceptions may be expedient in specific cases, in particular when it comes to authorizations to issue statutory instruments whose sole purpose is to bring into force amendments to an agreement (cf. 2.3) and in the case of regulations to amend provisions on the basis of which provisions in international agreements are to be executed.

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2.2 Criminal and administrative fines provisions

2.2.1 Where the treaty obligates the parties to the agreement to introduce **criminal penalties** for certain conduct, special criminal provisions must be enacted (Article 103 para. 2 of the Basic Law). The same applies accordingly to provisions on recovery and seizure. If the crime concerned is defined sufficiently precisely in the treaty, the penalty is introduced by means of a reference to the relevant provision in the treaty and by simultaneously regulating the consequences under criminal law. If the relevant provision in the international treaty does not comply with the constitutional principle of clarity and definiteness (Article 103 para. 2 of the Basic Law), a separate definition is included in the law. The same applies to sanctions in the form of administrative fines.

Domestic provisions to implement agreements are included in the Directory of Legislation in Force A, whilst the agreement itself and the accompanying treaty texts are documented in the Directory of Legislation in Force B.

2.2.2 If the treaty obligates the parties to the agreement to introduce sanctions for certain conduct though no specific type of sanction is provided for, it is left to the Federal Republic of Germany to decide whether to meet this obligation by introducing **criminal or administrative fines provisions**. In such cases a criminal sanction may only be introduced if a need therefor is irrefutable, especially if – taking account of the criminal penalties and administrative fines imposed in comparable domestic provisions – an administrative fine is not sufficient in view of the unlawfulness of the act and the harmfulness to society of the sanctioned conduct. Administrative fines provisions are generally sufficient where only administrative unlawfulness is being sanctioned.

Please refer to the Guidance on Framing Criminal and Administrative Fines Provisions in Supplementary Criminal Provisions Outside of the Criminal Code (Supplement No. 178a to the Federal Gazette of 16 July 1999) when formulating such criminal and administrative fines provisions.

2.2.3 The criminal or administrative fines provisions must be explained in the explanatory memorandum to the ratifying legislation, including the need for such provisions.

In the cases referred to in 2.2.2, the need for the criminal sanctions must be explained separately.

2.3 Authorization to issue statutory instruments

2.3.1 Multilateral treaties are increasingly making provision for the possibility of amending or supplementing the treaty by means of decisions taken by the contracting states or certain organs representing them. Sometimes bilateral agreements also contain provisions on agreeing supplementary rules under specific circumstances. Where amendments or additions to the treaty relate to legislative subjects and therefore require the consent or participation of the body competent for the respective federal legislation in accordance with Article 59 para. 2, first sentence, of the Basic Law, in the interests of easing the legislature's workload, the treaty should include an authorization to implement such amendments or additions by way of a statutory instrument if the subject of the amendment or addition is sufficiently definite as regards content, purpose and scope (Article 80 para. 1, second sentence, of the Basic Law). The authorization should be worded precisely enough for it to be clear in which cases and for which purpose use can be made of it.

2.3.2 To that end it may be advisable to make concrete reference to the relevant regulation in the treaty:

“The Federal Government (possibly: The Federal Ministry of/for ...) is authorized in accordance with Article ... to bring into effect amendments to Article ... [or Chapter etc.] of the Treaty [or the like] by way of a statutory instrument requiring/not requiring the consent of the Bundesrat.”

2.3.3 The authorization can, however, itself define the content, purpose and scope:

“The Federal Government (possibly: The Federal Ministry of/for ...) is authorized, by way of a statutory instrument requiring/not requiring the consent of the Bundesrat and in order to implement Article ... of the Treaty, to enact provisions on

1. ...
2. ...
3.”

Such a law must be documented in the Directory of Legislation in Force A.

2.3.4 If the content, purpose and scope of the regulatory framework is already clearly determined in the treaty, the following wording may also be chosen:

“The Federal Government (possibly: The Federal Ministry of/for ...) is authorized, by way of a statutory instrument requiring/not requiring the consent of the Bundesrat, to bring into effect such amendments to Article(s) [or Annex etc.] ... to the Treaty [or the like] in accordance with Article ... thereof as are covered by the objectives of the Treaty [or the like].”

2.3.5 The content, purpose and scope of the authorization must also be explained in the **explanatory memorandum**.

2.4 Permission to publish a revised version

When comprehensive amendments are made to a treaty it may be expedient to publish a revised version of the treaty. In such cases the law relating to the amending agreement should already provide that the competent federal ministry may publish the new version of the treaty.

“The Federal Ministry of/for ... may publish the Treaty [or the like] on ... of ... as amended by the Protocol [or the like] of ... (accompanied by an official German translation), as amended on”

3 Implementing international treaties by way of a statutory instrument

3.1 Preconditions

3.1.1 A treaty whose content refers to subjects of federal legislation (Article 59 para. 2, first sentence, of the Basic Law) does not require ratifying legislation if it can enter into force in Germany on the basis of an authorization to issue a statutory instrument in accordance with Article 80 para. 1 of the Basic Law. The authorization to issue a statutory instrument must – over and above the conditions set out in Article 80 para. 1 of the Basic Law – relate to foreign subject matters, i.e. it must at least also be directed at implementing international treaties. If

the text does not include any information in this regard, it must be determined by means of interpretation, taking account of the material dealt with in the authorizing law and everyday practice when regulating the legal area by means of treaties, whether the authorization to issue statutory instruments also covers the entry into force of treaties.

3.1.2 The two most frequent cases are:

- (a) Authorizations to issue statutory instruments to implement certain types of treaties irrespective of with which state the treaties are concluded (treaties on privileges and exemptions for international organizations; passports and visas; foreign trade; international haulage; fisheries; social security etc.),
- (b) Authorizations to issue statutory instruments to implement amendments or additions to multilateral or bilateral agreements (see 2.3 above).

3.2 Drafting a statutory instrument relating to an international treaty

Nos 1 and 2 of these Guidelines apply accordingly when it comes to drafting the statutory instrument unless otherwise determined in the following. If the statutory instrument is to contain criminal or administrative fines provisions (see 2.2 above), Article 103 para. 2 of the Basic Law must be complied with. The agreements under international law and the statutory instruments issued to bring them into effect are published in the Federal Law Gazette II and documented in the Directory of Legislation in Force B; domestic regulations to implement conventions are included in the Directory of Legislation in Force A.

3.2.1 Basic principle

The recommendations in 1.2.1 concerning the heading apply accordingly. Cumbersome phrases such as “Ordinance to bring the Treaty on ... into force” should be avoided.

3.2.2 Enacting clause

The enacting clause must explicitly state the statutory provision authorizing the issuance of the statutory instrument (Article 80 para. 1, third sentence, of the Basic Law). In contrast to the enacting clause in a law, the enacting clause in a statutory instrument does not state whether it requires the consent of the Bundesrat. The Bundesrat and the Federal Government have reached agreement that where a statutory instrument requires the consent of the Bundesrat this information is included in the closing formula.

3.2.3 Introductory sentence

Statutory instruments to implement international treaties are also generally subdivided into articles and – where necessary – paragraphs (section 73 (3), third sentence, read in conjunction with sections 62 (2), first sentence, and 42 (2), first sentence, and no. 3 in Annex 6 GGO*).

3.2.4 Entry into force (Article 1)

As a general rule, Article 1 of the statutory instrument reads as follows when it refers to a **multilateral** agreement:

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“The Agreement [or the like] on ... of ..., which was signed by the Federal Republic of Germany at ... on ..., hereby comes into effect. The text of the Agreement [or the like] is published below (accompanied by an official German translation).”

In the case of **bilateral** agreements the parties to the agreement also need to be named:

“The Agreement [or the like] on ... concluded between the Federal Republic of Germany and ... at ... on ... hereby comes into effect. The text of the Agreement [or the like] is published below.”

3.2.5 Date of entry into force and expiry (generally Article 2)

If the date of the treaty’s entry into force is known when the statutory instrument is issued, the provision on entry into force and on expiry should be written as follows:

“(1) This Ordinance shall enter into force on In accordance with Article ... paragraph ... thereof, ... [short title of the treaty] shall enter into force for the Federal Republic of Germany on the same day.

“(2) This Ordinance shall cease to be effective on the day on which the Treaty ceases to be effective for the Federal Republic of Germany. Notice of the date of expiry shall be given in the Federal Law Gazette.”

If it is **not** yet possible to predict on which date the treaty will enter into force for the Federal Republic of Germany, the wording will generally be as follows:

“(1) This Ordinance shall enter into force on the day on which ... [short title of the treaty] enters into force for the Federal Republic of Germany in accordance with Article ... paragraph ... thereof.

“(2) This Ordinance shall cease to be effective on that day on which the Treaty ceases to be effective for the Federal Republic of Germany.

“(3) Notice of the date of entry into force and the date of expiry shall be given in the Federal Law Gazette.”

In such cases, the statutory instrument must thus also provide that notice must be given at a later date of the entry into force of the statutory instrument and of the treaty.

The information “for the Federal Republic of Germany” is not included in the case of bilateral agreements.

3.3 Closing formula

The following closing formula is added to a statutory instrument which requires the consent of the Bundesrat:

“The Bundesrat has given its consent.”

The place and date of signature of the statutory instrument are placed on a line underneath the closing formula.

3.4 Explanatory memorandum

An explanatory memorandum must be included when the draft statutory instrument is submitted to the Cabinet (section 73 (3), third sentence, read in conjunction with sections 62 (2), first sentence, and 42 (1) GGO*). In particular, an explanatory memorandum must be included if the law of the European Union is affected, if the statutory instrument requires the consent of the Bundesrat, if it has a financial impact on public budgets which have not been set out in the authorizing act or if it has an impact on individual prices and on the price level, in particular on the consumer price level (section 73 (3), third sentence, read in conjunction with section 62 (2), second sentence, and section 44 GGO*).

If the statutory instrument has several legal bases, the explanatory memorandum should explain the legal basis of each individual provision.

No. 1.3 of these Guidelines applies accordingly.

3.5 Concluding remark and memorandum

No. 1.4 of these Guidelines applies to the concluding remark in the statutory instrument and to the memorandum; no. 1.5 of these Guidelines applies accordingly.

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4 Models

Model A

Draft of a law
relating to a bilateral agreement

Draft of ... ¹

Draft

Act
relating to the Agreement
concluded between the Federal Republic of Germany
and ...
on ...
of ... [date]

of ...

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

Article 1

The Treaty on ... ² concluded between the Federal Republic of Germany and ..., which was signed at ... on ..., (possibly: and the Protocol to the Treaty and the exchange of notes)³ is (are) hereby approved. The text of the Treaty (possibly: and the Protocol and the exchange of notes) is (are) published below.

Article 2

(1) This Act shall enter into force on the day following its promulgation (possibly: another date).

(2) Notice shall be given in the Federal Law Gazette of the date on which the Treaty (possibly: and the Protocol and the exchange of notes) enter(s) into force in accordance with Article ... paragraph ... thereof.

-
- 1 This information is deleted as soon as the draft is submitted to the Cabinet.
 - 2 Full and unabbreviated title of the treaty.
 - 3 See 1.2.5.4 above re references to other instruments.

The insertions which need to be made in accordance with section 58 GGO* following the law's enactment must be notified to the editorial office of the Federal Law Gazette II at the Federal Office of Justice when the federal ministry with overall responsibility requests production of the original texts (e.g. closing formula, promulgation formula, order of the signatures).

After the original text has been made

- (a) the Federal President inserts the date of signature and the date under the closing formula, and
- (b) in the absence of one of the signatories, "On behalf of ... [designation of the representative]." is added in typewriting or by hand.

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Model B

Draft of a law
relating to a multilateral agreement
(including supplementary rules)

Draft of ...

Draft

Act
relating to the Convention on ...
of ... [date]

of ...

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

Article 1

The Convention (or: The Convention adopted by the Conference ...) on ...¹ of ...², which was signed by the Federal Republic of Germany at ... on ..., (possibly: and the Protocol to the Convention and the exchange of letters) is (are) hereby approved. The text(s) of the Convention (possibly: and the Protocol and the exchange of letters) is (are) published below (accompanied by an official German translation).

(possibly:)

Article 2

The Federal Government (possibly: The Federal Ministry of/for ...) is authorized, by way of a statutory instrument requiring/not requiring the consent of the Bundesrat, to issue provisions on

1. ...
2. ...

to implement Article ... of the Convention.

Article 3

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

(2) Notice shall be given in the Federal Law Gazette of the date on which the Convention (possibly: and the Protocol and the exchange of letters) enter(s) into force for the Federal Republic of Germany in accordance with Article ... paragraph ... thereof.

1 Full and unabbreviated title of the convention.

2 The date is not included if the date of the convention's signature by the Federal Republic of Germany is the same as that of its conclusion.

Cf. also the comments re Model A.

Model C

Draft of a law
relating to accession to a
multilateral agreement

Draft of ...

Draft

Act
relating to the Convention on ...
of ... [date]

of ...

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

Article 1

The Federal Republic of Germany's accession to the Convention on ... of ... (possibly: and the Protocol to the Convention and the exchange of letters) is hereby approved. The text(s) of the Convention (possibly: and the Protocol and the exchange of letters) is (are) published below (accompanied by an official German translation).

Article 2

- (1) This Act shall enter into force on the day following its promulgation.
- (2) Notice shall be given in the Federal Law Gazette of the date on which the Convention (possibly: and the Protocol and the exchange of letters) enter(s) into force for the Federal Republic of Germany in accordance with Article ... paragraph ... thereof.

Cf. also the comments re Model A.

Model D

Draft of a law
relating to an amendment to
a multilateral agreement

Draft of ...

Draft

Act

relating to the Protocol [or the like] of ... [date]
amending the Convention [or the like] on ...
of ...[date]

of ...

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

Article 1

The Protocol [or the like] amending the Convention [or the like] on ... of ... (Federal Law Gazette 20XX II p. ...) [possibly also:, as (last) amended by the Protocol [or the like] of ... (Federal Law Gazette 20XX II p. ...),], which was signed by the Federal Republic of Germany at ... on ..., is hereby approved. The text of the Protocol [or the like] is published below (accompanied by an official German translation).

Article 2

- (1) This Act shall enter into force on the day following its promulgation.
- (2) Notice shall be given in the Federal Law Gazette of the date on which the Protocol [or the like] enters into force for the Federal Republic of Germany in accordance with Article ... paragraph ... thereof.

Cf. also the comments re Model A.

Model E

Explanatory memorandum

Re Article 1

Article 59 paragraph 2, first sentence, of the Basic Law applies to the Treaty, since it relates to subjects of federal legislation.

(In the case of a treaty regulating political relations: "..., since it regulates the political relations of the Federation.")

(Possibly: The consent of the Bundesrat is required in accordance with Article ... paragraph ... of the Basic Law, since ...)

Re Article 2

The provision in paragraph 1 meets the requirement under Article 82 paragraph 2, first sentence, of the Basic Law.

In accordance with paragraph 2, notice shall be given in the Federal Law Gazette of the date on which the Treaty [or the like] enters into force (for the Federal Republic of Germany)¹ in accordance with Article ... paragraph ... letter ... thereof.

Concluding remark²

1 The information "for the Federal Republic of Germany" is not included in bilateral agreements.

2 See section 44 of the Joint Rules of Procedure of the Federal Ministries.

Model F

Draft of a statutory instrument
relating to a bilateral agreement

Draft of ...¹

Draft

**Ordinance
relating to the Agreement
concluded between the Federal Republic of Germany
and ...
on ...
of ... [date]

of ...**

Pursuant to Article/section ... of the Act of ... (Federal Law Gazette ...), the Federal Government/the Federal Ministry of/for ... decree(s) the following:

Article 1

The Agreement concluded between the Federal Republic of Germany and ... on ..., which was signed at ... on ..., (possibly: and the Protocol to the Agreement and the exchange of letters) hereby become(s) effective. The text(s) of the Treaty (possibly: and the Protocol and the exchange of letters) is (are) published below.

Article 2

- (1) This Ordinance shall enter into force on ...²
- (2) ... [short title of the international agreement] shall enter into force on the same date in accordance with Article ... paragraph ... thereof.²
- (3) This Ordinance shall cease to be effective on the day on which the Agreement ceases to be effective. Notice of the date of expiry shall be given in the Federal Law Gazette.

(Possibly: The Bundesrat has given its consent.)

1 This information is deleted as soon as the draft is submitted to the Cabinet.

2 As regards cases in which it is not yet clear when the international agreement will enter into force: cf. 3.2.5 of the Guidelines and Article 2 in Model G, with the proviso that the information "for the Federal Republic of Germany" is not included in paragraph 2.

Model G

Draft of a statutory instrument
relating to a multilateral agreement

Draft of ... ¹

Draft

**Ordinance
relating to the Agreement on ...
of ...**

of ...

Pursuant to Article/section ... of the Act of ... (Federal Law Gazette ...), the Federal Government/the Federal Ministry of/for ... decree(s) the following:

Article 1

The Agreement on ... of ... signed by the Federal Republic of Germany at ... on ... (or: adopted by the Conference ...) (possibly: and the Protocol to the Agreement and the exchange of letters) hereby become(s) effective. The text(s) of the Agreement (possibly: and the Protocol and the exchange of letters) is (are) published below (accompanied by an official German translation).

Article 2

(1) This Ordinance shall enter into force on the day on which the Agreement [or the like] (possibly: and the Protocol and the exchange of letters) enter(s) into force for the Federal Republic of Germany in accordance with Article ... paragraph ... thereof.²

(2) This Ordinance shall cease to be effective on the day on which the Agreement ceases to be effective for the Federal Republic of Germany.

(3) Notice of the date of entry into force and the date of expiry shall be given in the Federal Law Gazette.

1 See footnote 1 in Model F.

2 As regards cases in which it is not yet clear when the international agreement will enter into force for the Federal Republic of Germany: cf. 3.2.5 of the Guidelines and Article 2 in Model F, with the proviso that the information "for the Federal Republic of Germany" is added after the short title of the international agreement in Article 2.

Cf. also the comments re Model F.

**Annex 2
(to margin no. 43)**

**Principles Regarding the Need for Sanctions in the Form of
Administrative Fines, Especially in Relation to
Measures of Administrative Compulsion
2 March 1983**

1 General principle

The means available under the law on regulatory offences should only be used to sanction those legal obligations which give rise to considerable disadvantages to important community interests if they are not met in good time or not fully met.

It is not necessary to provide for the imposition of an administrative fine in the case of breaches of obligations affecting less important community interests.

2 Enforcing special obligations to perform by threatening a fine

2.1 Duties requiring action

Regulations concerning the enforcement of duties requiring action do not need to provide for any sanctions in the form of an administrative fine if they primarily serve to protect or serve the interest of the addressee or if non-observance of the respective duty requiring action does not threaten considerable disadvantages to important community interests.

2.2 Duties to furnish information, to report or notify

Regulations concerning the enforcement of duties to furnish information, to report or notify need to provide for a sanction in the form of an administrative fine only where fulfilment of those duties is the precondition which enables the competent authority to take action to safeguard important community interests.

2.3 Duties to tolerate

Regulations concerning the enforcement of duties to tolerate need to provide for a sanction in the form of an administrative fine only if non-fulfilment of the duty to tolerate precludes other administrative law measures, giving rise to considerable disadvantages to important community interests upon their postponement. In other cases, enforcement by means of administrative compulsion is sufficient.

2.4 Duties of payment

Regulations which obligate a person to pay a claim for money do not need to provide for any sanctions in the form of an administrative fine.

2.5 Other duties to cooperate

Regulations concerning the enforcement of other duties to cooperate, such as the use of registration forms, need to provide for sanctions in the form of an administrative fine only if non-observance of the respective duty to cooperate already gives rise to the fear of considerable disadvantages to important community interests. If the cooperation can be subsequently made good without considerable disadvantages arising, it must be enforced by means of administrative compulsion.

3 Refusal or denial of administrative performance

3.1 Refusal of administrative performance

No sanctions in the form of an administrative fine need be provided for if the person concerned's conduct can be governed by refusing administrative performance.

3.2 Denial of administrative performance

No sanctions in the form of an administrative fine need likewise be provided for if the person concerned's conduct can be governed by threatening to deny or by denying administrative performance, a concession or a privilege.

4 Implementing enforceable administrative acts by threatening an administrative fine

Enforceable administrative acts (orders and conditions) whose objective can already be achieved by their enforcement do not necessitate provision to be made for sanctions in the form of an administrative fine.

5 Incompatibility of threatening an administrative fine with the nature of a duty

No sanction in the form of an administrative fine should be provided for if the nature of a duty presupposes the voluntary willingness to take it on.

6 Sanction in the form of an administrative fine for negligent infringements

In principle, fines should be imposed only on intentional infringements. A fine should be threatened on negligent infringements only if this is necessary to enforce a legal duty.

7 Sanction in the form of an administrative fine on duties which apply only to certain groups of persons

No sanction in the form of an administrative fine is required if the obligation or prohibition can be sufficiently safeguarded by means of labour law, disciplinary or professional measures.

**Annex 3
(to margin no. 44)**

Checklist for Better Law-making

	Legislative proposal:	Yes	No / N/A
1.	Section 42 (2) GGO* The text of the law contains		
	▪ consequential amendments to other legislation,		
	▪ repeals of obsolete provisions.		
2.	Section 42 (5) GGO* The Editorial Unit of the Society for the German Language in the German Bundestag has reviewed the correctness and comprehensibility of the language used in the draft.		
3.	Section 43 (1) GGO* The explanatory memorandum contains explanations		
	a. pursuant to section 43 (1) no. 1 GGO*		
	▪ regarding the purpose of and necessity for the bill (see front sheet, A., explanatory memorandum, p. ...).		
	The necessity to regulate the subject matter is based on		
	○ requirements under EU law,		
	○ constitutional requirements,		
	○ ...		
b.	pursuant to section 43 (1) no. 2 GGO*		
	▪ regarding the matters of fact underlying the bill and the findings on which it is based (see explanatory memorandum, p. ...).		
c.	pursuant to section 43 (1) nos 3 and 4, Annex 7 GGO* regarding the possibility		
	▪ that the task can be performed by private parties (see explanatory memorandum, p. ...),		
	▪ of self-obligation, e.g. legal self-obligation or voluntary restraint agreements (see explanatory memorandum, p. ...).		
d.	pursuant to section 43 (1) no. 6 GGO* regarding whether		
	▪ the law can be limited as to time (see explanatory memorandum, p. ...).		

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e.	pursuant to section 43 (1) no. 7 GGO* in regard to the possibility of simplifying the law and administrative procedures, e.g. the option of using		
	▪ available business processes and organizational structures (see explanatory memorandum, p. ...),		
	▪ the means provided by e-government (see explanatory memorandum, p. ...),		
	▪ ...		
f.	pursuant to section 43 (1) no. 8 GGO*		
	▪ regarding whether the bill is compatible with the law of the European Union (see explanatory memorandum, p. ...).		
4.	Section 44 GGO*		
a.	Section 44 (1) GGO*		
	The intended effects and possible unintended side effects have been presented (see explanatory memorandum, p. ...).		
b.	Section 44 (2) and (3) GGO*		
	The impact on public budgets has been presented (see front sheet, D., explanatory memorandum, p. ...).		
c.	Section 44 (4) GGO*		
	The impact on industry and consumers has been determined and presented, in particular		
	▪ the costs to industry, e.g. one-off implementation costs, operating costs, effects on investments, trade, competition etc. (see front sheet, E., explanatory memorandum, p. ...),		
	▪ effects on unit prices, price levels in general and the consumer price level in particular (see front sheet, E., explanatory memorandum, p. ...),		
	▪ effects on consumers (see front sheet, E., explanatory memorandum, p. ...).		
d.	Section 44 (5) GGO* [new]:		
	The administrative burden in accordance with the National Regulatory Control Council Act has been determined and presented (see front sheet, F., explanatory memorandum, p. ...).		
e.	Section 44 (6) GGO* [new]: Further legislative consequences have been determined and presented at the request of the Federal Ministry of/for ... (see explanatory memorandum, p. ...).		

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f.	Section 44 (7) GGO* [new]:		
	The regulation will be evaluated; an evaluation will be conducted after ... years (see explanatory memorandum, p. ...).		
g.	The results of the regulatory impact assessment in regard to gender equality has been presented, section 2 GGO* (see explanatory memorandum, p. ...).		
5.	Section 45 (1) GGO*		
	The following federal ministries were involved for the first time on ...: Federal Ministry of/for ... The ministries were given ... days/weeks to comment.		
6.	Section 45 (2) GGO* [new], section 42 (1) GGO*		
	▪ The National Regulatory Control Council was involved on ...		
	▪ The National Regulatory Control Council submitted comments on ... ; the Council was given ... days/weeks to comment.		
	▪ The draft takes these comments into account.		
	▪ The National Regulatory Control Council's comments are enclosed with the draft.		
	▪ The Federal Government will respond to the National Regulatory Control Council's comments.		
7.	Section 45 (3) GGO* [new]		
	The following Commissioners were involved on ...: ... They were given ... days/weeks to comment.		
8.	Sections 46, 51 no. 2 GGO*		
	The Federal Ministry of Justice has		
	▪ examined the draft in accordance with systematic and legal scrutiny, and		
	▪ confirmed that the legal scrutiny has been completed; the Ministry was given ... days/weeks to complete the legal scrutiny.		
9.	Section 47 GGO*		
	<i>Länder</i> , national associations of local authorities and expert groups were involved on ...		
10.	Section 48 GGO*		
	The following other bodies were informed: ▪ ... ▪ ...		

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**Annex 4
(to margin no. 273)**

Extract from the Joint Practical Guide of the European Parliament, the Council and the Commission for persons involved in the drafting of legislation within the Community institutions (revised version: <http://eur-lex.europa.eu/content/pdf/techleg/joint-practical-guide-2013-en.pdf>)

15.4. The structural subdivisions of the enacting terms of a legislative act are set out in the following table. Acts with a simple structure comprise articles and subdivisions of articles. The higher subdivisions of acts begin with chapters, divided, if necessary, into sections. Only when the text is extremely complex can chapters be grouped in titles which may, where necessary, be grouped in parts.

Designation	Symbol	Method of reference	Comments
I. Higher divisions			
— Part	Part I, II (or Part One, Part Two)	(in) Part I, II (or Part One, Part Two)	These divisions may or may not have a title Used (together or singly) in certain long and highly structured texts
— Title	Title I, II	(in) Title I, II	
— Chapter	Chapter I, II (or 1, 2)	(in) Chapter I, II (or 1, 2)	
— Section	Section 1, 2	(in) Section 1, 2	
II. Basic unit			
— Article	Sole Article or Article 1, 2	(in the) Sole Article (in) Article 1, 2	Basic units may or may not have a title Continuous numbering (even where there are higher divisions)
or			
— Point	I, II (or A, B) or I. (or A. or 1.)	(in) point I, II (A, B) (in) point I (A or 1)	Used in certain recommendations, resolutions, declarations and statements
III. Subdivisions			
— Paragraph (numbered)	1., 2.	(in) paragraph 1, 2	Subdivisions do not have a title Independent subdivisions of an article
— Paragraph (unnumbered)	None	(in the) first paragraph	Non-independent element of an article
— Subparagraph	None	(in the) first subparagraph	Subdivision of a numbered paragraph
— Point	(a), (b) (1), (2) (i), (ii), (iii), (iv)	(in or at) (point) (a), (b) (in or at) (point) (1), (2) (in or at) (point) (i), (ii)	Generally preceded by an introductory phrase
— Indent	—	in the first indent	
— Sentence	none	in the first sentence	Followed by a full stop