



# The Federal Administration of Interior Affairs

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## 1 INTRODUCTION: FEDERAL ADMINISTRATION/ STATE ADMINISTRATION

As enshrined in the Basic Law, federalism is based on the principle that all the powers not specifically assigned to the Federation as central state are reserved to the *Länder*. According to Article 30 of the Basic Law, the exercise of state powers and the discharge of state functions is a matter for the German states (*Länder*) unless otherwise provided for or permitted by the Basic Law. The same applies to public administration. According to Article 83 of the Basic Law, the *Länder* execute federal laws in their own right unless the Basic Law otherwise provides or permits. The Basic Law contains special provisions on the content and limits of the federal administration (Articles 83 to 91).

If the *Länder* carry out federal laws in their own right, as is usually the case, there are three ways in which the Federal Government may exert influence: firstly, by issuing general administrative rules with the consent of the *Bundesrat*; secondly, by exercising oversight to ensure that the *Länder* execute federal laws in accordance with the law (Article 84); and thirdly, the Federal Government may take the necessary steps to compel

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the *Länder* to carry out their duties (Article 37). Such steps would be taken only as a last resort and require the consent of the *Bundesrat*. This instrument has never been used since the Basic Law entered into force and is only a theoretical option in the state practice of relations between the Federation and the *Länder*.

If the *Länder* execute federal laws as a delegated matter, such laws require the consent of the *Bundesrat*, that is, the chamber representing the *Länder*, which must also consent to general administrative regulations of the Federation. The Federation has a comprehensive right to issue instructions, which is related to the lawfulness and expediency of the execution (Article 85 of the Basic Law).

In the exercise of oversight and the administration by delegated authority, the authority to act lies with the *Länder* (external action and accountability); that is, they are accountable in court and out of court for executive actions.

## 2 EXCEPTION: FEDERAL ADMINISTRATION

Further, the Basic Law contains provisions on the execution of federal laws by the Federation itself (federal administration [*bundeseigene Verwaltung*] in accordance with Articles 86 and 87). A distinction is drawn here between obligatory and optional federal administration. According to Article 87 (1), first sentence of the Basic Law, obligatory federal administration comprises the foreign service, the federal financial administration, the administration of federal waterways and shipping as well as the federal defence administration according to Article 87b of the Basic Law. According to Article 87 (1), second sentence of the Basic Law, the federal administration may comprise the Federal Police, the Federal Criminal Police Office and the Federal Office for the Protection of the Constitution. A federal law is required to establish each of these authorities.

In addition, according to Article 87 (3), first sentence of the Basic Law, autonomous superior federal authorities and new federal corporations and institutions under public law may be established by a federal law for matters for which the Federation has the power to legislate. A federal law is required for these central authorities active throughout the federal territory because they perform tasks which are, in principle, the responsibility of the *Länder*. Federal authorities at intermediate and lower levels may be established with the consent of the *Bundesrat* and an absolute majority of the *Bundestag* in cases of urgent need.

Taken together, these provisions express the central message for Germany's administrative federalism: the framework for the federal administration is more narrowly defined than that of the *Länder*. As the state authority with a concentration on legislation (including the Federal Government's right to introduce legislation), the Federation is supposed to be able to claim key areas of administration only under certain conditions. The prohibition on mixed and joint administration between the Federation and the *Länder* is an additional instrument to contain federal administrative activity. Nor is the evolution of legal form a way to intervene in the powers of the *Länder*. The Federation is prohibited from departing from the form of public law in order to assume responsibilities of the *Länder*, for example, through foundations by means of private law. This applies in particular to the totality of services (see Wolff 2018).

### 3 STRUCTURE OF THE FEDERAL ADMINISTRATION

The internal structure of the federal administration follows the same principles found in the administrations of the *Länder*. As in the *Länder* (see Chap. 8 and Kloepfer 2011 and Kloepfer and Greve 2018), a distinction is drawn between direct federal administration by federal authorities without legal personality and indirect federal administration by independent legal entities having legal personality, namely corporations, institutions or foundations under public law.

The direct federal administration, that is, that which is bound by instructions, is divided into three levels: central, intermediate and lower. Examples are as follows:

- The central level includes the federal ministries as supreme federal authorities, the superior federal authorities immediately subordinate to them and responsible for the entire federal territory, and the federal institutions without legal personality.
- The intermediate level includes the regional finance offices and the waterways and shipping directorates.
- The lower level includes the main customs offices, the Bundeswehr careers centre and the waterway and shipping offices.

Within this structure, a comprehensive right to issue legal and expert instructions applies. Its functioning in compliance with the rule of law depends on the integrity and expertise of the public service (in particular

the civil service) and its adherence to law and justice (Article 20 (3) of the Basic Law). At the top of the instruction-giving hierarchy is the federal minister as head of the supreme federal authority; he or she also belongs to the government sphere and holds office by virtue of the federal chancellor's authority to organise. As the federal chancellor is elected by the *Bundestag*, this chain of authority ensures the necessary democratic legitimation of every administrative act at the federal level.

The activity of all authorities is subject to the law on their area of responsibility and the obligations of constitutional law, in particular regarding fundamental rights, and to the general and specific federal law on administrative procedures (see the chapter by Ziekow). This activity is subject to comprehensive supervision by the Federal Administrative Court and the Federal Constitutional Court (see Chap. 12). The Federation alone has the authority to carry out federal administrative tasks (responsibility and external representation).

In terms of organisation, the reason for establishing superior federal authorities is the need for an effective structure for carrying out non-ministerial, subject-related tasks. Delegating additional authority to the administration is intended to enable the ministerial level to devote itself to its policy-related tasks. This often happens as the result of an increased workload, which the ministry is not able to handle or new developments, in particular concerning administrative processes, such as the shift to digital technologies and the security of data and information. Decisions on overall policy remain the responsibility of the relevant ministry.

#### 4 THE BMI AND ITS EXECUTIVE AGENCIES

The Federal Ministry of the Interior, Building and Community (BMI) is the ministry responsible for the classic interior affairs of the Federation (see Fröhlich et al. 1997). The principle of ministerial autonomy notwithstanding, the supreme federal authorities are guided by the general internal administration at the federal level, which is based at the BMI. Although its areas of responsibility have changed numerous times since it was established 70 years ago, the federal ministry has always kept BMI in its German abbreviation. Within the Federal Government, the BMI is the ministry responsible for issues related to the Constitution (together with the Ministry of Justice), organisation, public service law and security. Police matters and public security, including protection of the Constitution, migration and emergency management as well as the public service are key

tasks. The BMI's executive agencies reflect the ministry's broad range of tasks and make up its administrative substructure (Table 6.1):

The BMI has the most executive agencies of any federal ministry (20). The Federal Ministry for Economic Affairs and Energy (BMW<sub>i</sub>) has six executive agencies, including the Federal Cartel Office; the Federal Ministry of Health (BMG) has five, including the Federal Institute for Drugs and Medical Devices; and the Federal Ministry for the Environment, Nature Conservation and Nuclear Safety (BMU) has four, including the Federal Environment Agency.

Including the Federal Police, which employs roughly 46,300 staff (the state police forces employ approximately 270,000), the BMI is responsible for around 60,000 federal civil servants and other federal staff. Only about 1100 of them work within the federal ministry itself.

**Table 6.1** Executive agencies of the Ministry of the Interior, Building and Community

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- Federal Equalisation of Burdens Office (BAA)
  - Federal Office for Central Services and Unresolved Property Issues (BADV)
  - Federal Office for Migration and Refugees (BAMF)
  - Federal Office of Civil Protection and Disaster Response (BBK)
  - Federal Office for Building and Regional Planning (BBR)
  - Federal Agency for Public Safety Digital Radio (BDBOS)
  - Procurement Office of the Federal Ministry of the Interior (BeschA)
  - Federal Office for the Protection of the Constitution (BfV)
  - Federal Institute for Population Research (BIB)
  - Federal Institute of Sport Science (BISp)
  - Federal Criminal Police Office (BKA)
  - Federal Agency for Cartography and Geodesy (BKG)
  - Federal Agency for Civic Education (BpB)
  - Federal Police (BPoL)
  - Federal Office for Information Security (BSI)
  - Federal Office of Administration (BVA)
  - Federal Statistical Office (Destatis)
  - Federal University of Administrative Sciences (HS Bund)
  - Federal Agency for Technical Relief (THW)
  - Central Office for Information Technology in the Security Sector (ZITiS)
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See the website of the BMI: <https://www.bmi.bund.de/EN/ministry/ministry-node.html>

## 5 SUPERVISION

Expert supervision is usually performed at the order of the minister by the organisational unit responsible for the matter in question (*Fachreferat*); administrative supervision is performed by the relevant divisions of the directorate-general responsible for central tasks (see Pieper 2006). Daily practice is characterised by close and trusting interaction between ministries and their executive agencies. The division requests reports on specific matters as needed and, as a rule, responds by issuing instructions, either in agreement with the action proposed by the superior federal authority or rejecting the proposed action and suggesting an alternative. It is also standard for the executive agency to report to the ministry on its own initiative and ask for instructions. If there are very many similar cases, for example, with regard to nationality law (responsibility of the Federal Office of Administration), a single standard procedure is often agreed below the level of administrative regulations. After new legislation enters into force, the ministry usually consults the relevant executive agency concerning the practical application. Ministries regularly schedule meetings with all their executive agencies on matters of mutual concern (budget, staffing, organisation, supervisory practice). These meetings are usually led by the minister or an administrative state secretary depending on the priority of tasks carried out by the executive agency.

Supervision of the ministry's remit (so-called subordinated sector) is generally considered a key task of the relevant ministry. This is based on the principle of relieving supreme federal authorities of the task of processing individual cases and on the executive agencies' need for guidelines whose policy orientation can only be formulated by the ministry. Supervisory tasks are therefore diverse, requiring knowledge of the subject and policy expertise as well as a culture of leadership. The supreme federal authorities conducting supervision need to provide their executive agencies with understandable, clear and practicable instructions where needed, along with the specific description of the space for discretionary decisions wherever possible. In addition to respect for the hierarchy, an understanding for the productivity of the executive agencies is also needed. Looking after their personnel and material resources and representing their concerns to the parliament are priorities of supervision.

In some cases, the outlines of supervision have become less clear in recent years, partly due to the assertiveness and importance of the executive agencies and partly due to a misunderstanding of the requirement to

follow instructions, which is felt to interfere with the nature and content of the tasks to be carried out. However, it should be noted that there are, in principle, no areas in which instructions do not apply. Executive agencies are not autonomous even if they are privatised or assigned the legal form of institutions. In every case, a minister will be politically accountable to the *Bundestag* for his actions or failure to act. The minister will be able to fulfil this responsibility only if he or she has the authority to give instructions, at least concerning the lawfulness of the activity. If functions belonging to expert supervision are delegated to bodies such as management boards of institutions under public law, organisational responsibility remains with the supreme federal authority. Nor can target agreements concluded between the ministries and individual executive agencies take the place of the ministries' right to issue instructions in a specific case (see also Chap. 22). Therefore, they do not reinforce the instrument of classic supervision and are allowed by law only within a narrowly defined framework.

## 6 EXCURSUS: 'MINISTER-FREE ZONES'

Within the hierarchical structure of government administration, the principle of being bound by instructions (*Weisungsgebundenheit*) applies in all but a few exceptional cases. So-called minister-free zones always require a legal basis and important objective reasons (see Schmidt-Bleibtreu et al. 2017). These reasons might be a greater need for neutrality in performing duties or for independent decision-makers having special expertise. For example, a minister has, at most, limited possibilities to provide technical supervision and instructions when it comes to decisions made by the audit offices and audit committees. Within the remit of the BMI, the compilation of statistics by the Federal Statistical Office is largely governed by community law, which takes precedence over national law. Community law requires the independence of the European Union's statistical office Eurostat, of the EU Member States' statistical offices and their directors, and gives this independence priority over the principle of democratic legitimation.

Distinct from 'minister-free zones' is the complete independence of supervision in the case of institutions which, according to the Constitution or Union law, are not part of the administrative hierarchy. For example, the Basic Law guarantees the independence of the *Bundesbank* (Federal Central Bank) and the *Bundesrechnungshof* (Federal Court of Audit). The

European Court of Justice ruled that the federal and state data protection officers in Germany, as in the other EU member states, must become independent bodies and no longer fall within the remit of a ministry (see below). The administrations of the German *Bundestag*, the *Bundesrat* and the Federal Constitutional Court are also independent of supervision in a broader sense. However, they too are subject to oversight by independent courts.

## 7 CENTRAL SERVICE PROVIDER: FEDERAL OFFICE OF ADMINISTRATION

The Federal Office of Administration (BVA) is a superior federal authority within the remit of the BMI that provides services for all the federal ministries. The law establishing the BVA dates from 1959 and is based on Article 87 (3), first sentence of the Basic Law. The BVA performs special tasks of the federal administration with which it has been entrusted by law or based on a law (e.g. matters related to nationality, resettlement, emigration, German schools abroad and civil servants). It also performs tasks assigned to it by other federal ministries in agreement with the BMI. In these cases, the relevant federal ministries perform expert supervision, while the BMI remains responsible for administrative supervision and organisation. Thanks to its diverse tasks, for years the BVA has viewed itself as the engine of digital transformation in the federal administration (see Ritgen 2019).

## 8 FROM SUPERIOR FEDERAL AUTHORITY TO SUPREME FEDERAL AUTHORITY: FEDERAL COMMISSIONER FOR DATA PROTECTION AND FREEDOM OF INFORMATION

Outside the remit of the BMI, the Federal Commissioner for Data Protection and Freedom of Information (BfDI) monitors federal bodies' compliance with data protection law. Following its creation in 1978, the federal commissioner's office was located within the BMI until a decision of the European Court of Justice in 2016 called for its independence. Since then, the BfDI answers only to the *Bundestag* and is no longer under the supervision of the Federal Government. In this regard, the BfDI's status is very similar to that of the *Bundesrechnungshof* (see Chap. 12), and it has the task of monitoring and advising the government and parliament. The BfDI must be consulted on proposed legislation relevant to data



protection, but he or she has no right of veto even if he or she identifies violations of data protection law. But the entry into force of the EU's General Data Protection Regulation has strengthened the BfDI's position. In practical terms, the BfDI and the data protection commissioners of the *Länder* act as the defenders of citizens' fundamental right to privacy. The European Court of Justice also regards compliance with the General Data Protection Regulation in all the EU Member States as an important task (see Thomé 2018).

## 9 LESSONS LEARNED

For the federal administration to be effective, it must also be lean. Good relations between supreme and superior federal authorities must be maintained with the help of supervision based on trust and the rule of law. This also applies to functions carried out by bodies under private law, in which case legal supervision and the responsibility of organisation must remain entirely with the Federation. Target instruments do not make appropriate instruments of supervision.

Key future projects of the federal administration are the digital transformation of the administration, IT security and modernisation of the administrative registers (see Chap. 19). With regard to IT security, the Federal Office for Information Security (BSI) was established by law already in 1991 and has steadily expanded since then.

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