



Fachbereich WD 2

Regulations of state legal representation in international courts, arbitration, EU courts

The **Legal Department**¹ of the **Federal Foreign Office** represents Germany in proceedings before international courts, such as the International Court of Justice in The Hague and the International Tribunal for the Law of the Sea in Hamburg.

The **Competence Center for European Law**,² which is **part of the Federal Ministry for Economic Affairs and Energy**, is responsible for **representing** the Federal Republic of **Germany** before the **Court of Justice**, the **General Court** and the **EFTA Court**. The legal representation includes:

- the ongoing analysis of all upcoming or pending proceedings before the European courts - the Court of Justice, the General Court and the EFTA Court - with subsequent notification of the specialist departments concerned as well as the *German Bundestag* and the *Bundesrat*,
- providing expert advice to the national authorities concerned and coordinating the German position in court proceedings,
- the legal representation of the Federal Republic of Germany in written and oral proceedings, as well as
- the evaluation and documentation of case law.

Litigation is of particular importance to the Federal Government in order to make German legal views and interests heard effectively. All European courts together receive around 1.500 new cases per year, which are analyzed by the Competence Center for European Law. The Federal Government participates in around 100 cases per year in written and oral proceedings.

1 Federal Foreign Ministry, „Rechtsabteilung“, 13. November 2024, <https://www.auswaertiges-amt.de/de/aamt/auswdienst/abteilungen/rechtsabteilung-214982>.

2 Federal Ministry of Economic Affairs and Energy, „Prozessvertretung vor den europäischen Gerichten“, 12. März 2024, <https://www.bundeswirtschaftsministerium.de/Redaktion/DE/Dossier/Kompetenzzentrum-Europarecht/prozessvertretung-vor-den-europaeischen-gerichten.html>.

The Federal Government mainly participates in proceedings before the European courts in the case of requests for preliminary rulings as well as infringement procedures and actions for annulment.

Participation takes place based on a **consensual decision in the relevant departments** and is considered, among other things, in cases in which provisions of German law are directly or indirectly under scrutiny. The same applies to proceedings that deal with legal issues of general legal and political importance.

Litigation in the context of **investor-state arbitration proceedings** also falls within the remit of the Federal Ministry for Economic Affairs and Energy.

If necessary, the **respective federal ministries** are **responsible for appointing lawyers** to represent them in legal proceedings. The commissioning of lawyers is **not subject to public procurement law** in accordance with Section 116 (1) no. 1 a) and b) Competition Act (“Gesetz gegen Wettbewerbsbeschränkungen”, GWB).³ However, internal administrative budgetary and department-specific requirements must be observed. Service contracts for general legal advice without any reference to a court case are subject to public procurement law.

The **costs of appointing lawyers** to represent the Federal Government in court are, as far as can be seen, **not published**. However, the **parliamentary groups** in the German *Bundestag* can **request information** from the Federal Government on the **costs of legal proceedings** as part of their right to information.

³ Competition Act (Gesetz gegen Wettbewerbsbeschränkungen – GWB), available at: https://www.gesetze-im-internet.de/englisch_gwb/.