



Fachbereich WD 2

Cost control of private law firms' services in international litigations

The Federal Minister of Finance must report to the German *Bundestag* and the German *Bundesrat* on all revenue and expenditure as well as on assets and liabilities (Article 114(1) German Basic Law).¹ The budget account enables parliamentary control of budget implementation. According to the Basic Law the parliament also has a right to ask questions and obtain information from the federal government, enabling the parliament to monitor the implementation of the budget. In this context, 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 of information.

The *Bundestag* and *Bundesrat* are supported in their auditing activities by the Federal Audit Office, which also performs additional tasks relating to the independent auditing of the efficiency and regularity of the Federal Government's budgetary and economic management and reports annually to the Federal Government, the *Bundestag*, and the *Bundesrat* (Article 114(2) of the Basic Law).²

The Federal Audit Office also reviews the estimation and use of financial resources for the deployment of external consultants based on the criteria of necessity and economic efficiency.³

Since 2007, the *Bundestag's Budget Committee* (Haushaltsausschuss) has been regularly informed about the federal administration's expenditure on external consulting services. To this end, at its 22nd meeting on 28 June 2006, it instructed the Federal Ministry of Finance to urge the Federal Ministries to record payments to external consultants and to report annually on the

1 Basic Law for the Federal Republic of Germany, available at: https://www.gesetze-im-internet.de/englisch_gg/englisch_gg.html.

2 Kube, in: Dürig/Herzog/Scholz, Grundgesetz Kommentar, 107. EL März 2025, Art. 114 Rn. 1 f.

3 Wissenschaftliche Dienste des Deutschen Bundestages, Haushaltsrechtliche Aspekte externer Beraterverträge, Überprüfung der Notwendigkeit und Wirtschaftlichkeit der Mittelveranschlagung bzw. -verwendung durch den Bundesrechnungshof, [WD 4 - 3000 - 090/20](#) vom 20. August 2020.

departments' payments to external consultants.⁴ The report to the *Bundestag's Budget Committee* on expenditure for external consulting services (consultant report) has been continuously developed since then, also taking into account resolutions of the *Bundestag's Audit Committee* (Rechnungsprüfungsausschuss) and proposals of the Federal Audit Office.

According to Article 65, sentence 2 of the Basic Law, the management of the federal budget lies within the responsibility of the Federal Ministries, which are therefore responsible for ensuring compliance with budgetary requirements (such as reviewing the necessity of expenditures in accordance with § 6 Federal Budget Code and economic efficiency and thrift in accordance with § 7 Federal Budget Code). The implementation of requirements from the *Bundestag's Budget Committee* and thus also the proper reporting of the respective expenditures for external consulting services are subject to the „principle of ministerial autonomy“.

This also applies to the application of the currently valid definition of external consulting services. This was last amended by the *Bundestag's Budget Committee* on June 9, 2021, and has been applied across departments since the consultant's report for the 2020 fiscal year. According to this definition, “responding to or clarifying the application of the law and risks in a specific individual case, e.g., in the context of legal representation,” is not considered an external consulting service. On the other hand, the revised definition nevertheless includes external support services, provided that the “advisory nature is paramount”.

Whether and to what extent payments to law firms for representation before European courts and in international arbitration proceedings are classified by the Federal Ministries as external consulting services within the meaning of the applicable definition and thus listed in the consultant's report is beyond our knowledge.

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.⁵

The provisions of public procurement law do not apply to legal services relating to legal representation in court or administrative proceedings or to out-of-court dispute resolution in the sense of arbitration and conciliation proceedings. It is irrelevant whether the proceedings are national proceedings in Germany or proceedings in other EU member states, third countries, or before international organizations and institutions.⁶

4 Wissenschaftliche Dienste des Deutschen Bundestages, Haushaltsrechtliche Aspekte externer Beraterverträge, Überprüfung der Notwendigkeit und Wirtschaftlichkeit der Mittelveranschlagung bzw. -verwendung durch den Bundesrechnungshof, [WD 4 - 3000 – 090/20](#) vom 20. August 2020.

5 Competition Act, available at: https://www.gesetze-im-internet.de/englisch_gwb/.

6 Gabriel-Groth, in: Gabriel/Mertens/Stein/Wolf, BeckOK Vergaberecht, 36. Edition, Stand: 01.02.2023, § 116 Abs.1 Nr. 1 Rn. 4 f.

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.

* * *