



Fachbereich WD 4

**Parliamentary supervision of private bodies
which spend public monies**

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Aktenzeichen: WD 4 - 3000 - 058/25
Abschluss der Arbeit: 20.11.2025
Fachbereich: WD 4: Haushalt und Finanzen

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1. What remit does the Committee responsible for ex-post examination of implementation of annual budget within the Parliament have to examine the spending of public money?

The Bundesrechnungshof and the audit courts of the sixteen constituent states of the Federal Republic are autonomous and independent institutions of government auditing. The Bundesrechnungshof examines federal financial management. Its duty is to audit accounts and examine the performance, regularity and compliance of financial management. Each year, the Bundesrechnungshof submits an annual report on major audit findings and audit recommendations to the German Bundestag, to the Bundesrat and to the Federal Government. This report is used by Parliament to approve the accounts for preceding years. The observations are not limited to the year for which approval is sought. Most of them deal with topical issues that are still open for remedial action. The annual report also highlights savings potentials or options for increasing revenue. In addition to annual reporting, the Bundesrechnungshof may at any time inform the legislative bodies and the Federal Government of matters of particular significance.

The audit recommendations are discussed by the **Auditing Committee of the Budget Committee**. The Auditing Committee (18 Members of Parliament) is a subcommittee of the Budget Committee. Its task is to review the findings of the Bundesrechnungshof and to ensure that the defects and shortcomings identified in the audited agencies are remedied. Generally, the Auditing Committee imposes conditions and reporting duties. The point of contact is the supreme federal authority in question which has been authorised in the budget plan to manage the federal funds in question. Finally, the Auditing Committee prepares for the discharge of the Federal Government by the plenary session of the German Bundestag on the basis of the Bundesrechnungshof's observations.

Legal Basis:

Basic Law (Grundgesetz)

Article 114

Rendering of Accounts, Court of Audit

(1) The Federal Ministry of Finance shall render an annual account of all receipts and payments, and all assets and liabilities, and shall submit it to both Houses of Parliament within the following financial year in order to obtain the grant of discharge for the Federal Government.

(2) The Bundesrechnungshof, whose Members shall enjoy judicial independence, shall audit the account and examine the performance, regularity and compliance of financial management. It shall report annually directly to both Houses of Parliament and to the Federal Government. In all other respects, the powers of the Bundesrechnungshof shall be determined by federal legislation.

Federal Budget Code (Bundeshaushaltsordnung)

Part V: Audit

Section 88

Functions of the Bundesrechnungshof

(1) Subject to the provisions set out below, the Bundesrechnungshof shall examine the entire financial management of the Federation, including its special funds and undertakings.

(2) On the basis of its audit findings, the Bundesrechnungshof may advise both Houses of the Federal Parliament, the Federal Government and individual federal ministries. Where the Bundesrechnungshof gives advice to Parliament, it will inform the Federal Government at the same time.

2. Are there any bodies which spend public monies that fall outside the remit of the Committee responsible for ex-post examination of implementation of annual budget within the Parliament and if so, what is the main reason that their accounts cannot be examined?

The following entities are subject to the audit of the Bundesrechnungshof:

- The financial management of the Federation and its special funds (e.g. the Special Fund of the German Armed Forces, the Special Fund for Infrastructure and Climate Neutrality).
- Public corporations established under federal law (e.g. the Federal Employment Agency), including those federal enterprises of the same legal form.
- Social security institutions established under federal or state laws, receiving grants from the Federal Government or where the Federation has entered into guarantee commitments (e.g. Statutory Pension Insurance, Pension Insurance Miners, Railway and Maritime as well as the statutory Health Fund).
- The Federation's activities in private-law enterprises of which it is a shareholder (such as Deutsche Telekom AG and Deutsche Bahn AG).
- The Bundesrechnungshof may also carry out examinations of bodies or other third parties outside the Federal Administration where these receive or handle federal funds (e.g. the constituent states, local authorities, or grantees).

Legal Basis:

Budgetary Principles Act (Haushaltsgrundsätze-gesetz)

Section 55

Audit of Bodies Incorporated under Public Law

(1) The Bundesrechnungshof or the appropriate State Court of Audit shall examine the financial engagement of any body incorporated under public law which is not a territorial entity, a local authority grouping, an association of territorial entities or local authority groupings, nor a religious society within the meaning of Article 137 Section 5 of the German constitution of 11

August 1919, provided that such entity receives from the Federation or a federal state any grants, the reason for or amount of which is governed by law, or that the Federation or federal state is required by statute to give guarantees. The same shall apply where, with the consent of the Audit Court, examination is provided for in the charter. This shall be without prejudice to any other audit rights established under Section 48 above.

(2) The provisions of Section 53 above shall also apply to enterprises having the legal form of a corporate body under public law, irrespective of the size of the interest held by the Federation or federal state, unless such enterprises are exempt from examination by the audit authority (cf. Section 48, Paragraph (2) sentences 2 and 3).

Federal Budget Code (Bundeshaushaltsordnung)

Section 91

Audit of Bodies or other Third Parties outside Federal Administration

(1) Except as otherwise provided by legislation, the Bundesrechnungshof shall be entitled to audit bodies outside the federal administration if they

1. implement parts of the federal budget or have expenses reimbursed by the Federation,
2. manage federal funds or assets,
3. receive federal grants,
4. are bodies incorporated under private law, directly or indirectly majority-owned by the Federation and/or any of its separate property funds, are not exposed to competition, and if - pursuant to their specified objective - are engaged, entirely or for the most part, in the provision of public services or have been set up for that purpose, and receive for that purpose appropriated federal funds or guarantees from the Federation or one of its separate property funds, or
5. manage funds that the Federation has allocated to the federal states for the fulfilment of their tasks.

The Bundesrechnungshof may also extend its examinations to any third parties to whom such funds are passed on by the said bodies.

(2) The audit shall cover the proper and sound management and use of funds. In the case of grants, it may extend to the financial management of the recipient's other resources in so far as this is deemed necessary by the Bundesrechnungshof for the purpose of its examination.

(3) Where the Federation has granted loans out of budget funds, or has provided sureties, guarantees or other warranties, the Bundesrechnungshof may carry out examinations with the parties concerned to ascertain whether adequate steps have been taken to safeguard federal interests, or whether requirements for recourse against the Federation were fulfilled.

(4) In the case of the bodies incorporated under private law mentioned in Paragraph (1) sentence 1 item 4 hereof, the audit shall cover the entirety of the financial management of the body concerned. If such incorporated body is a business, the audit shall be conducted according to commercial principles.

Section 92

Audit of State Participation in Private-Law Enterprises

(1) The Bundesrechnungshof shall examine, with due regard to commercial principles, the management of the Federation's direct or indirect shareholdings in private-law enterprises.

(2) Paragraph (1) applies in like manner to commercial or industrial cooperatives of which the Federation is a member.

3. Does the Committee Responsible for ex-post examination of implementation of annual budget within the Parliament have the power to examine public money that is received by a private body which is not audited by the Supreme Audit Institution? Please describe.

As in Ireland, the Auditing Committee of the Budget Committee cannot directly examine the accounts of private organisations which spend public monies. It can indirectly examine the monies spent by private organisations through its examination of the accounts of the supreme federal authority or other public authority which granted the monies to the organisation and/or by examining any reports by the Bundesrechnungshof on the spending of such monies.

4. Does the committee responsible for ex-post examination of the implementation of the annual budget within Parliament have the power to compel witnesses to give information or to attend a hearing? Please describe the process.

Federal Ministries, generally represented by the Federal Minister or a Permanent Secretary of State or other senior staff, are held accountable by the Auditing Committee for any mismanagement. Representatives of organisations which receive subsidies or of private institutions may be invited to the committee meetings, but they may not be required to attend. Only committees of inquiry specially established by the German Bundestag have the right to examine witnesses.

Legal Basis:

Basic Law (Grundgesetz)

Article 43

Right to require presence, right of access and right to be heard

(1) The Bundestag and its committees may require the presence of any member of the Federal Government.

(2) The members of the Bundesrat and of the Federal Government as well as their representatives may attend all sittings of the Bundestag and meetings of its committees. They shall have the right to be heard at any time.

Article 44 Committees of inquiry

(1) The Bundestag shall have the right, and on the motion of one quarter of its Members the duty, to establish a committee of inquiry, which shall take the requisite evidence at public hearings. The public may be excluded.

(2) The rules of criminal procedure shall apply mutatis mutandis to the taking of evidence. The privacy of correspondence, posts and telecommunications shall not be affected.

(3) Courts and administrative authorities shall be required to provide legal and administrative assistance.

(4) The decisions of committees of inquiry shall not be subject to judicial review. The courts shall be free to evaluate and rule upon the facts that were the subject of the investigation.
