

Annex B

Regulatory agencies

Superior federal Authorities (SFAs)

“Superior federal Authorities” (SFAs) are independent higher federal authorities responsible to the ministry dealing with a given policy area (*Bundesoberbehörde im Geschäftsbereich eines Bundesministeriums*). There is no single legislative framework for the establishment of such authorities. SFAs have been established *ad hoc* as the need arises, by law or ordinance, to cover specific sectors or issues. Their mandate, powers and functioning are tailored to the sector or issues which they cover. Their structure generally corresponds to the structure of the ministries. There is an agency head, supported by directorates-general and divisions. SFAs are funded largely by the federal budget. Income through fees is secondary. They form part of their parent ministry’s budget system. An exception is the *BaFin*, whose funding consists exclusively of fees, reimbursements, and contributions from the institutions and undertakings it supervises.

Rule making powers

Generally speaking, these agencies implement regulations, with discretionary powers to interpret these and to take decisions on enforcement, but they do not make regulations themselves. There are, however, significant exceptions, with some important agencies entrusted with rule making powers. The main agencies with powers to develop regulations are the Federal Financial Supervisory Authority (*Bundesanstalt für Finanzdienstleistungsaufsicht, BaFin*); the so-called “Federal Network Agency” (*Bundesnetzagentur*, covering the electricity, gas, telecommunications, post and railway sectors); and the German federal (Social) Insurance Office (*Bundesversicherungsamt*).

Autonomy and accountability

The agencies are accountable to a parent ministry. They must report regularly to the ministry on their activities and are subject to the latter’s legal and substantial supervision. If they do not fulfil their tasks properly, their parent ministry may intervene directly (“expert and legal supervision”). In certain cases, the agency head is seconded from the ministry, and the members of the administrative council appointed by it. The agency’s administrative statutes are often subject to the approval of the responsible ministry. That said, they generally have substantial autonomy in their implementation and enforcement decisions, with parent ministries rarely intervening in these matters. They are generally authorised by law to make final decisions in individual cases.

Guidelines on ministry supervision

Federal ministries have established common principles for federal ministries in their supervision of agencies, and enshrined the relevant provision in the updated version of the *Joint Rules of Procedures* (paragraph 3, first sentence).¹ This was part of the Implementation Plan 2009 for the government’s project “Focused on the Future: Innovations for Administration”.

Self regulatory agencies (indirect federal administration)

Federal tasks may be taken over in certain fields by independent administrations (“indirect federal administration”). These agencies are not directly accountable to a federal ministry but are led by self-regulatory panels. As a rule, they are composed of representatives of the parties concerned. The ministries merely check whether the tasks are performed in line with the law. They cannot influence how tasks are carried out, *i.e.* they only exercise legal supervision. The approach is mainly used for the administration of social insurance systems (pension, health, nursing, accident and unemployment insurance).

These social insurance agencies usually have a three-tier structure: a full-time director responsible for day-to-day business, a board composed of several persons which represents the social insurance agency, and the representative committee – the supreme panel – which elects the board and the director, adopts the budget and determines the terms of reference. The board and the representative committee constitute the self regulatory panel. They are composed of volunteers who represent the contributors, *i.e.* employers and employees.

An example of a social insurance agency is the German Pension Fund (*Deutsche Rentenversicherung*). It unites the *Deutsche Rentenversicherung Bund*, the *Deutsche Rentenversicherung Knappschaft-Bahn-See* and 14 regional agencies of the pension fund.

Note

1. See: *Grundsätze zur Ausübung der Fachaufsicht der Bundesministerien über den Geschäftsbereich* (Status 2 May 2008), at: www.verwaltunginnovativ.de/cln_162/nn_684674/SharedDocs/Publikationen/DE/20080515_24_grundsaeetze_ausuebung_fachaufsicht,templateId=raw,property=publicationFile.pdf/20080515_24_grundsaeetze_ausuebung_fachaufsicht.pdf (last accessed 25 May 2009).



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