

## **The Defence Committee**

### **- work and functions**

#### **Establishment and composition of the committees of the German Bundestag**

The committees of the German Bundestag are cross-party bodies which are intended to prepare the decisions subsequently taken in the plenary in the course of the legislative process and support Parliament in its function of exercising control of the government. As a rule, there is a Bundestag committee which corresponds to the area of competence of each ministry. The number of committees and the number of committee members is fixed by the Bundestag every electoral term. Parliament is free to take decisions about most other committees; however, the setting up of the Defence Committee is laid down in the Basic Law or constitution (Article 45a). Apart from the Defence Committee, this is true of only the Committee on Foreign Affairs, the Committee on the Affairs of the European Union and the Petitions Committee.

#### **Composition of the Defence Committee**

In the 15th electoral term (2002 - ) the Defence Committee comprises 30 members: 13 from the SPD parliamentary group, 12 from the CDU/CSU, 3 from ALLIANCE 90/THE GREENS and 2 from the FDP. This composition reflects the relative strengths of the parliamentary groups in the plenary of the German Bundestag.

There is a substitute member for each titular member of the Committee. Until 11 May 2005, the committee was chaired by Reinhold Robbe from the SPD parliamentary group, who then took up the post of the Parliamentary Commissioner for the Armed Forces. Since 12 May 2005, the Defence Committee has been chaired by Ulrike Merten from the SPD parliamentary group. Her deputy is Thomas Kossendey from the CDU/CSU parliamentary group.

At administrative level, the Defence Committee has a secretariat with a staff of 8 to support it in its work. The secretariat's main task is to prepare, hold and follow up committee meetings. This involves, inter alia, compiling documents for the Committee's deliberations, sending out the agenda, drafting recommendations for resolutions and reports to be submitted to the plenary, and drawing up the minutes of meetings.

Moreover, the secretariat deals with submissions addressed to the Defence Committee. Finally, it is also responsible for preparing and organizing official functions, arranging visits by committee delegations and looking after visitors.

### **Functions of the Defence Committee**

The Defence Committee is the parliamentary body which corresponds to the Federal Ministry of Defence and its subordinate agencies, i.e. the armed forces and the Federal Defence Administration. However, the work of the Defence Committee is not solely restricted to the armed forces and the administration attached to them, but also includes aspects of international security policy. As a result, there is a certain amount of overlap between its terms of reference and those of the Committee on Foreign Affairs, which makes it necessary for both committees to engage in close cooperation. This is reflected, inter alia, in the fact that joint meetings of the Defence Committee and the Committee on Foreign Affairs are held in special cases.

The classic tasks of the Defence Committee include deliberating on bills and motions for resolutions referred to it by the plenary. If such an item concerns several committees, the Defence Committee either participates in the deliberations in an advisory capacity, informing the committee responsible appointed by the plenary of its opinion, or it is itself the committee responsible, which includes in its decision the opinions of the committees participating in an advisory capacity, and submits its recommendation for a resolution to the plenary.

However, in addition to its work as a parliamentary body which prepares the decisions of the German Bundestag, the Defence Committee can also consider and make recommendations on issues falling within its terms of reference on its own initiative, without an item having been referred to it by the plenary. The basis for such deliberations is mostly a report of the Federal Ministry of Defence, which the Committee has requested and which sets forth a specific matter or comments on the reports or representations of third parties. The assessments of the Defence Committee which emerge from the subsequent discussion are not legally binding on the Federal Government but are of considerable political importance.

In practice, this procedure is the instrument which the Committee most frequently uses in the exercise of parliamentary control of the Federal Government. It corresponds to the right of the committees, laid down in the Rules of Procedure of the German Bundestag, to summon a member of the Federal Government to a committee meeting at any time (Rule 68 of the Rules of Procedure).

### **The office of the Parliamentary Commissioner for the Armed Forces**

As far as parliamentary control of the armed forces is concerned, mention must also be made of the Parliamentary Commissioner for the Armed Forces, who works closely with the Defence Committee and regularly attends its deliberations. The Parliamentary Commissioner assists the Bundestag in exercising parliamentary control over the armed forces. The office of Parliamentary Commissioner is enshrined in the constitution (Art. 45b of the Basic Law). The Parliamentary Commissioner's tasks include, above all, protecting the basic rights of service personnel and ensuring compliance in the armed forces with the principles of *Innere Führung* (a concept of internal leadership which seeks to combine the demands of the military mission of the armed forces with the dignity and rights of service personnel as citizens of a democratic state). As a rule, the Parliamentary Commissioner acts on the basis of submissions he has received from service personnel. He may, however, also take up a matter on his own initiative. Finally, the plenary of the German Bundestag or the Defence Committee may instruct the Parliamentary Commissioner to look into a matter. Conversely, the Defence

Committee may decide to investigate a specific matter itself; any further action by the Parliamentary Commissioner in this case is then ruled out.

### **The Defence Committee as a committee of inquiry**

The Defence Committee has an outstanding position because it is the only committee which may declare itself to be a committee of inquiry (Art. 45a, para (2) of the Basic Law). In the case of all other committees, Parliament must take a decision to this effect. A committee of inquiry is Parliament's most effective weapon for scrutinizing the Government's conduct. Meetings in which evidence is taken are open to the public, unless military secrecy is required. Meetings at which the evidence is evaluated are not open to the public. The rules of criminal procedure apply *mutatis mutandis* to the hearing of evidence. A committee of inquiry thus has similar rights to the Public Prosecution Office.

### **The rights of the Defence Committee as regards preparation of the budget**

The federal budget is adopted annually by the German Bundestag in the form of a law. The draft budget submitted by the Federal Government is referred to the Budget Committee for deliberation. Though the Defence Committee is not assigned any formal competence as regards the deliberations on the budget law, it nonetheless exerts considerable influence on the budget deliberations by considering, in deliberations which mostly last several days, the departmental budget of the Federal Ministry of Defence and the budget of the Parliamentary Commissioner for the Armed Forces and informing the Budget Committee of its opinion. As a rule, the Budget Committee takes its recommendations into account.

In addition, the Defence Committee exerts influence on the execution of the defence budget as a result of the obligation of the Minister of Defence, irrespective of the budget law, to submit to the Defence Committee all procurement projects of special importance in security or military policy terms, as well as those procurement projects requiring an outlay of €25 million and upwards, for the Committee to deliberate on

them. In parliamentary practice, such procurement projects have so far not been implemented, even if they were included in the budget law, without the consent of the Defence Committee.

### **The influence of the Defence Committee on international missions of the Bundeswehr outside national and Alliance defence**

The intended participation of the Bundeswehr in international peace missions gave rise to the question of what the legal preconditions for such missions are. In its landmark decision of 12 July 1994 the Federal Constitutional Court stated that the provisions of the Basic Law relative to the armed forces and their deployment were intended to integrate the Bundeswehr as a "parliamentary army" into the constitutional system of a democratic state under the rule of law. This ensured, the Federal Constitutional Court continued, that Parliament had a legally relevant influence on the structure and deployment of the armed forces. For this reason the prior consent of Parliament was required for all missions of the Bundeswehr. In what way and to what extent Parliament considered the issue could be regulated by a law.

The Federal Constitutional Court also stated that, in the event of imminent danger, the Federal Government could also order deployment without Parliament giving prior consent. In this case, however, consent must be given retrospectively without delay.

In this connection, it is important to point out that Parliament may only object to a mission, or demand the cessation of a mission which is already under way. Parliament does not have the right to demand on its own initiative that a mission take place.

Given that missions are subject to Parliament's consent, the Defence Committee continually considers in depth all international missions of the Bundeswehr that are planned or already taking place. Not only military but also security and Alliance policy considerations are at stake here. This is where the above-mentioned cooperation with the Committee on Foreign Affairs comes into play.

## **The way the Defence Committee works**

The meetings of the Defence Committee take place regularly on Wednesdays in the weeks which the Bundestag has designated as weeks of sittings. Since, like the Committee on Foreign Affairs, the Defence Committee is a so-called "closed committee", access to its meetings is restricted to the titular committee members, their substitutes, the Parliamentary Commissioner for the Armed Forces, the chairpersons of the parliamentary groups and the President of the German Bundestag. Representatives of the ministries and the Land governments expressly authorized in advance and specific members of staff from the parliamentary groups and the administration are also permitted to attend. The distribution of documents concerning meetings, including the minutes, is also restricted to a group of persons decided by the Committee itself.

In the current electoral term, it has set up – initially for a limited period of two years – the Subcommittee "Development of Internal Leadership, Political Education and Social Responsibility for Members of the Bundeswehr against the Backdrop of Changing Deployment Tasks and Structures". This Subcommittee is intended to ensure adequate parliamentary consideration of these issues with regard to the Bundeswehr's increasing number of missions abroad. In addition, the Defence Committee has established two rapporteur groups – for the same limited period – on "Ground-Based Air Defence" and "Cooperation with the Business Community".