



**BUNDESRECHTSANWALTSKAMMER**

## **Stellungnahme Nr. 06/2023**

**Februar 2023**

**Registernummer: 25412265365-88**

### **Zur Konsultation zum jährlichen Bericht über die Rechtstaatlichkeit in der EU 2023**

Mitglieder des AS Europa

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**Verteiler:** Europäische Kommission

Die Bundesrechtsanwaltskammer ist die Dachorganisation der anwaltlichen Selbstverwaltung. Sie vertritt die Interessen der 28 Rechtsanwaltskammern und damit der gesamten Anwaltschaft der Bundesrepublik Deutschland mit rund 166.000 Rechtsanwältinnen und Rechtsanwälten gegenüber Behörden, Gerichten und Organisationen – auf nationaler, europäischer und internationaler Ebene.

### **Stellungnahme**

Die Bundesrechtsanwaltskammer bedankt sich für die Möglichkeit, an der öffentlichen Konsultation der Europäischen Kommission zum geplanten jährlichen Bericht über die Rechtstaatlichkeit in der EU 2022 teilzunehmen. Auf den Fragebogen der Konsultation, der nur in englischer Sprache verfügbar ist, antwortet sie auf Grundlage der Erfahrungen ihrer Experten wie folgt:

# 2023 Rule of Law Report - targeted stakeholder consultation

Fields marked with \* are mandatory.

## Introduction

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The annual Rule of Law Report lies at the centre of the European rule of law mechanism, which acts as a preventive tool, deepening multilateral dialogue and joint awareness of rule of law issues. So far, three editions of the Rule of Law Report have been published in 2020, 2021 and 2022.

In the preparation of the first three editions of the Rule of Law Report, the Commission has relied on a diversity of relevant sources, including from Member States, country visits, and stakeholders' contributions collected through the targeted stakeholder consultation [1]. The information provided has informed the Commission's country-specific assessments in preparing the Report. Building on the positive experience from the first three editions of the Rule of Law Report, the Commission is now inviting stakeholders to provide written contributions for the preparation of the 2023 Rule of Law Report through this targeted consultation.

The contribution to be provided should include (1) information on measures taken to implement the recommendations addressed to the Member State in the 2022 Rule of Law report, as well as developments with regard to the points raised in the respective country chapter and (2) any other significant developments since January 2022 [2] falling under the 'type of information' outlined in the next section.

The input should be short and concise and summarise information related to one or more of the areas referred to in the template. You are invited to focus on the areas that relate to the scope of work and expertise of your organisation. Existing reports, statements, legislation or other documents may be referenced with a link (no need to provide the full text). Stakeholders are encouraged to make references to any contributions already provided in a different context or to Reports and documents already published. Contributions should focus on significant developments both as regards the legal framework and its implementation in practice.

**If you wish to submit information concerning several Member States, you will have to fill-in the questionnaire separately for each Member States (due to the size of the questionnaire). There is no limit to the number of contributions submitted by a single participant. In such cases, you are not required to repeat the information in the section "about you" that is non-mandatory nor the information on horizontal developments.**

Please provide your contribution by **20 January 2023**. Should you have any requests for clarifications or encounter difficulties in filling in the questionnaire, you can contact the Commission at the following email

address: rule-of-law-network@ec.europa.eu.

[1] For the consultation for the 2022 Report, see [https://ec.europa.eu/info/publications/2022-rule-law-report-targeted-stakeholder-consultation\\_en](https://ec.europa.eu/info/publications/2022-rule-law-report-targeted-stakeholder-consultation_en)

[2] Unless the information was already submitted in the consultation for the previous Rule of Law Reports.

## Type of information

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The topics are structured according to four pillars: I. Justice system; II. Anti-corruption framework; III. Media pluralism; and IV. Other institutional issues related to checks and balances. The replies could include aspects set out below under each pillar. This can include challenges, current work streams, positive developments and best practices:

### Legislative developments

- Newly adopted legislation
- Legislative drafts currently discussed in Parliament
- Legislative plans envisaged by the Government

### Policy developments

- Implementation of legislation
- Evaluations, impact assessment, surveys
- White papers/strategies/actions plans/consultation processes
- Follow-up to reports/recommendations of Council of Europe bodies or other international organisations
- Important administrative measures
- Generalised practices

### Developments related to the judiciary / independent authorities

- Important case law by national courts
- Important decision/opinions from independent bodies/authorities
- State of play on terms, nominations and expired mandates for high-level positions (e.g. Supreme Court, Constitutional Court, Council for the Judiciary, heads of independent authorities included in the scope of the questionnaire[1])

### Any other relevant developments

- Respondents are free to add any further information, which they deem relevant; however, this should be short and to the point.

If there are no changes, it is sufficient to indicate this and the information covered in the contributions for the previous Rule of Law Reports should not be repeated.

[1] Such as: media regulatory authorities and bodies, national human rights institutions, equality bodies, ombudsman institutions, supreme audit institutions and, where they exist, transparency authorities.

## About you

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\* I am giving my contribution as

- Academic/research institution
- Business association
- Civil society organisation/NGO
- International organisation
- Judicial association or network
- Media organisation or association
- Public authority or network of public authorities
- Other

\* Organisation name

*250 character(s) maximum*

Bundesrechtsanwaltskammer

Main Areas of Work

- Justice System
- Anti-corruption
- Media Pluralism
- Other

Please insert an URL towards your organisation's main online presence or describe your organisation briefly:

*500 character(s) maximum*

<https://www.brak.de/>

Transparency register number

Check if your organisation is in the transparency register. It's a voluntary database for organisations seeking to influence EU decision-making

25412265365-88

\* Country of origin

Please add the country of origin of your organisation

- Afghanistan
- Albania
- Algeria
- Andorra
- Angola
- Antigua and Barbuda

- Argentina
- Armenia
- Australia
- Austria
- Azerbaijan
- Bahamas
- Bahrain
- Bangladesh
- Barbados
- Belarus
- Belgium
- Belize
- Benin
- Bhutan
- Bolivia
- Bosnia and Herzegovina
- Botswana
- Brazil
- Brunei Darussalam
- Bulgaria
- Burkina Faso
- Burundi
- Cabo Verde
- Cambodia
- Cameroon
- Canada
- Central African Republic
- Chad
- Chile
- China
- Colombia
- Comoros
- Congo
- Costa Rica
- Côte D'Ivoire
- Croatia
- Cuba
- Cyprus
- Czechia
- Democratic Republic of the Congo
- Denmark
- Djibouti
- Dominica
- Dominican Republic
- Ecuador
- Egypt
- El Salvador

- Equatorial Guinea
- Eritrea
- Estonia
- Eswatini
- Ethiopia
- Fiji
- Finland
- France
- Gabon
- Gambia
- Georgia
- Germany
- Ghana
- Greece
- Grenada
- Guatemala
- Guinea
- Guinea Bissau
- Guyana
- Haiti
- Honduras
- Hungary
- Iceland
- India
- Indonesia
- Iran
- Iraq
- Ireland
- Israel
- Italy
- Jamaica
- Japan
- Jordan
- Kazakhstan
- Kenya
- Kiribati
- Kuwait
- Kyrgyzstan
- Laos
- Latvia
- Lebanon
- Lesotho
- Liberia
- Libya
- Liechtenstein
- Lithuania
- Luxembourg

- Madagascar
- Malawi
- Malaysia
- Maldives
- Mali
- Malta
- Marshall Islands
- Mauritania
- Mauritius
- Mexico
- Micronesia
- Monaco
- Mongolia
- Montenegro
- Morocco
- Mozambique
- Myanmar
- Namibia
- Nauru
- Nepal
- Netherlands
- New Zealand
- Nicaragua
- Niger
- Nigeria
- North Korea
- North Macedonia
- Norway
- Oman
- Pakistan
- Palau
- Panama
- Papua New Guinea
- Paraguay
- Peru
- Philippines
- Poland
- Portugal
- Qatar
- Republic of Moldova
- Romania
- Russian Federation
- Rwanda
- Saint Kitts and Nevis
- Saint Lucia
- Saint Vincent and the Grenadines
- Samoa



- San Marino
- Sao Tome and Principe
- Saudi Arabia
- Senegal
- Serbia
- Seychelles
- Sierra Leone
- Singapore
- Slovakia
- Slovenia
- Solomon Islands
- Somalia
- South Africa
- South Korea
- South Sudan
- Spain
- Sri Lanka
- Sudan
- Suriname
- Sweden
- Switzerland
- Syrian Arab Republic
- Tajikistan
- Tanzania
- Thailand
- Timor-Leste
- Togo
- Tonga
- Trinidad and Tobago
- Tunisia
- Turkey
- Turkmenistan
- Tuvalu
- Uganda
- Ukraine
- United Arab Emirates
- United Kingdom
- United States of America
- Uruguay
- Uzbekistan
- Vanuatu
- Venezuela
- Viet Nam
- Yemen
- Zambia
- Zimbabwe

First name

Dr. Ulrich

Surname

Wessels

Email Address of the organisation (this information will not be published)

BRAK.bxl@brak.eu

**\* Publication of your contribution and privacy settings**

You can choose whether you wish for your contribution to be published and whether you wish your details to be made public or to remain anonymous.

- Anonymous - Only your type of respondent, country of origin and contribution will be published. Organisation name, URL, transparency register number, first name and surname given above will not be published. **To maintain anonymity, please refrain from mentioning the name of your organisation and any details from which your organisation can be identified in the rest of your contribution.**
- Public - Your personal details (name, organisation name, transparency register number, country of origin will be published with your contribution).
- No publication - Your contribution will not be published. Elements of your contribution may be referred to anonymously in documents produced by the Commission based on this consultation.

I agree with the personal data protection provisions.

[Specific privacy statement targeted stakeholder consultation 2023 rule of law report.pdf](#)

## Questions on horizontal developments

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In this section, you are invited to provide information on general horizontal developments or trends, both positive and negative, covering all or several Member States. In particular, you could mention issues that are common to several Member States, as well as best practices identified in one Member State that could be replicated. Moreover, you could refer to your activities in the area of the four pillars and sub-topics (an overview of all sub-topics can be found below), and, if you represent a Network of national organisations, to the support you might have provided to one of your national members.

Overview topics for contribution

[list of topics 2023 Report.pdf](#)

Please provide any relevant information on horizontal developments here

*5000 character(s) maximum*

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## Questions for contribution

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The following four pillars (I.-IV.) are sub-divided into topics (A., B., etc.) and sub-topics (1., 2., 3., etc.). For each of the topics and sub-topics, you are invited to provide (1) information on measures taken to implement the recommendations addressed to the Member States in the 2022 Rule of Law report, as well as developments with regard to the points raised in the respective country chapter of the 2022 Rule of Law Report and (2) any other significant developments since January 2022[1]. Please include a link to and reference relevant legislation/documents (in the national language and/or where available, in English) if relevant. Significant developments can include challenges, positive developments and best practices, covering both legislative developments or implementation and practices.

If there are developments you consider relevant under each of the four pillars that are not mentioned in the sub-topics, please add them under the section "other - please specify". Only significant developments should be covered.

Information provided in reply to the first question under each pillar, related to the follow-up to the recommendations, does not need to be repeated in subsequent parts of the questionnaire, but can be cross-referenced in the subsequent questions, where relevant. All other questions are not limited to the recommendations, but as in previous years, cover the entire scope of the Report.

[1] Unless already covered in the input for the previous Rule of Law Reports.

Member State covered in contribution [only one choice possible]

**If you wish to submit information concerning several Member States, please fill in the questionnaire separately for each Member State. There is no limit to the number of contributions submitted by a single participant.**

- Austria
- Belgium
- Bulgaria
- Croatia
- Cyprus
- Czechia
- Denmark
- Estonia
- Finland
- France
- Germany
- Greece
- Hungary
- Ireland
- Italy
- Latvia
- Lithuania
- Luxembourg
- Malta
- Netherlands
- Poland
- Portugal

- Romania
- Slovak Republic
- Slovenia
- Spain
- Sweden

## I. Justice System

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Please provide information on measures taken to follow-up on the recommendations received in the 2022 Report regarding the justice system (if applicable)

*3000 character(s) maximum*

The so-called pact for the rule of law (Pakt für den Rechtsstaat) shall be continued as a pact for digitalization (Digitalpakt). The current plan is to provide 50 million euros per year (over the next four years 200 million euros) for digital projects. (see answer to 2.1.2)

### A. Independence

Appointment and selection of judges, prosecutors and court presidents (incl. judicial review)

*(The reference to 'judges' concerns judges at all level and types of courts as well as judges at constitutional courts)*

*3000 character(s) maximum*

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Irremovability of judges, including transfers, (incl. as part of judicial map reform), dismissal and retirement regime of judges, court presidents and prosecutors (incl. judicial review)

*3000 character(s) maximum*

-

Promotion of judges and prosecutors (incl. judicial review)

*3000 character(s) maximum*

-

Allocation of cases in courts

*3000 character(s) maximum*

-

Independence (including composition and nomination and dismissal of its members), and powers of the body tasked with safeguarding the independence of the judiciary (e.g. Council for the Judiciary)

*3000 character(s) maximum*

-

Accountability of judges and prosecutors, including disciplinary regime and bodies and ethical rules, judicial immunity and criminal/civil (where applicable) liability of judges (incl. judicial review)

*3000 character(s) maximum*

-

Remuneration/bonuses/rewards for judges and prosecutors, including observed changes (significant and targeted increase or decrease over the past year), transparency on the system and access to the information

*3000 character(s) maximum*

-

Independence/autonomy of the prosecution service

*3000 character(s) maximum*

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Independence of the Bar (chamber/association of lawyers) and of lawyers

*3000 character(s) maximum*

Practising German lawyers (Rechtsanwälte) are registered with the respective regional Bar (27 + one for the lawyers with rights of audience in civil matters at the German Federal Court of Justice) that is competent for the lawyers established in its district. The umbrella organization of all 28 Bars in Germany is The German Federal Bar (Bundesrechtsanwaltskammer/BRAK) in Berlin. The regional Bars are independent from the State and self-regulatory within the statutory framework set by the federal legislator. They are public bodies (Körperschaften des öffentlichen Rechts) which are under the supervision of the legal authorities of the respective Land as regards compliance with legal duties transferred to them for self-regulation (Rechtsaufsicht). The regional Bars are in charge of admission to the profession, the control of compliance with legal professional rules and regulations and decisions on enforcement of violations within the limitations provided by the law. The regional Bars issue warnings and impose sanctions on a lawyer who violates his professional duties. This is in turn controlled by an independent disciplinary jurisdiction for the legal profession. Its highest instance is the Federal Court of Justice (Bundesgerichtshof). However, a big part of the work of the regional Bars is to provide professional support and counselling for their members. Furthermore, regional Bars can act as intermediary in case of disputes between their members. The regional Bars are headed by practising lawyers who are elected by their peers and fulfil their various tasks on an honorary basis, supported by a professional administration. The German Federal Bar (Bundesrechtsanwaltskammer, BRAK) is a self-regulatory body incorporated under public law (Körperschaft des öffentlichen Rechts) and represents the interests of the regional Bars and thus of all 166,000 German lawyers. It is the umbrella organization of all 28 Bars in Germany. Its role is a purely representative one, vis-à-vis the parliaments in Berlin and Brussels. BRAK does not have a regulatory function. The legal supervision is exercised by the Federal Ministry of Justice. Within the organization of BRAK, there is a so-called lawyers' parliament (Satzungsversammlung) that acts as a legislative body for issues which are delegated for self-regulation to practicing lawyers. It determines the rules applicable to all German lawyers of all regional bars. BRAK is headed by elected practising lawyers on an honorary basis with support of a professional administration. In Germany we have had very positive experiences with this system comprising supervision of the profession through regional Bars, control exercised by an independent judiciary and representation of interests through BRAK. Regards the supervision of bars by justice ministries – which is considered an obstacle to their independence here, we would like to point out that in the field of AML the Commission complains about a lack of state supervision.

Significant developments capable of affecting the perception that the general public has of the independence of the judiciary

*3000 character(s) maximum*

The German judiciary enjoys the high respect of the public. It is considered independent, impartial and corruption-free. Regular surveys testify to this perception.

German judges are career judges who rarely have an individual public profile. In Germany, the Second State Examination provides the qualification for being a judge. It is also the entry requirement for the German legal profession. While a number of younger practicing lawyers change from the bar to the bench after having practiced for some years, there are hardly any such moves on the senior level.

In contrast to the selection of the judges at the Federal Constitutional Court, political influence on the selection of civil judges is limited. Judges are promoted on the basis of their qualifications and track record. Prior to being promoted to a Court of Appeal, a first instance judge usually spends some time on secondment with the Court of Appeal (Erprobung). Many presidents of courts have also accomplished secondments with a ministry of justice on the local or federal level, or with the German Federal Court of Justice.

The German public has no significant issues with the independence of German judges. The general trust in judicial independence is currently heightened by court decisions regarding measures combating the COVID-19 crisis, which strengthen the public's faith in the independence of the German judiciary. Nevertheless, there are recurring complaints about the length of proceedings and the number of civil matters is decreasing. The Federal Ministry of Justice has commissioned a review to better understand this development. In addition, video hearings are to be considered for use more extensively in the future. A draft law to this effect has been published by the Federal Ministry of Justice (§128a ZPO-E).

## B. Quality of justice

*(Under this topic, you are not required to give statistical information but should provide input on the type of information outlined under section*

*2)*

Accessibility of courts (e.g. court/legal fees, legal aid, language)

*3000 character(s) maximum*

German court fees in civil and commercial matters are modest, they are calculated with reference to the amount in dispute and are capped at an amount in dispute of EUR 30 million.

Lawyers in civil litigation are still predominantly paid pursuant to the statutory fee schedule (Act on the Remuneration of Lawyers, Rechtsanwaltsvergütungsgesetz, RVG). Agreed legal fees in court proceedings may not undercut the statutory fee schedule. Alternative fee arrangements are permissible, though. In commercial matters, specialized litigation counsel typically charges for their services by the hour. The hourly rate is a matter of negotiation between the lawyer and the counsel.

However, irrespective of the agreed hourly rate, a prevailing party is only entitled to the reimbursement of the statutory legal fees for the matter. This rule manages the cost risks of the parties. In particular, a claimant can calculate the cost risk involved when bringing a matter. Such risk is capped to the court fees, the claimant's own lawyers' fees as well as the statutory lawyers' fees of the opposing party.

If a person requires legal representation in court proceedings, the plaintiff or the defendant may apply for legal aid. § 114 of the Code of Civil Procedure (Zivilprozessordnung, ZPO) stipulates that parties who, due to their personal and economic circumstances, are unable to pay the costs of litigation, or are only able to pay them in part or only in instalments, will be granted assistance with the court costs upon filing a corresponding application, provided that the action they intend to bring or their defence has sufficient prospects of success and does not seem frivolous. Legal aid may also be granted to parties by virtue of their office as well as to legal persons or an organisation that has the capacity to be a party in legal proceedings pursuant to § 116 ZPO. The decision to grant or refuse legal aid is taken by the judge who is responsible for the main proceedings. The decision is solely based on whether the conditions for granting legal aid are met, irrespective of the amount of legal aid costs previously covered by the state.

Furthermore, another form of financing court proceedings is legal expenses insurance. If a party is unable to finance a litigation by itself, it can apply for legal aid. If the case has chances of success, statutory financing kicks in. In Germany, legal expenses insurance is quite popular current and many legal actions are funded financed by insurance companies. Third-party litigation funding is also increasing. While these mechanisms ease access to justice, it must be noted that for certain parties with sufficient funds of their own, but without insurance, bringing legal action can still be prohibitively costly.

The Ministry of Justice is currently working on the digitalization of civil litigation and plans to build a prototype in 2023. In doing so, the Ministry of Justice aims to improve access to justice for citizens.

## Resources of the judiciary (human/financial/material)

*(Material resources refer e.g. to court buildings and other facilities)*

*3000 character(s) maximum*



The so-called pact for the rule of law (Pakt für den Rechtsstaat) shall be continued as a pact for digitalization (Digitalpakt). The current plan is to provide 50 million euros per year (over the next four years 200 million euros) for digital projects.

Background:

In the past, the BRAK has repeatedly approached those responsible in politics with demands and position papers in order to further consolidate the pact for the rule of law. The pact's inherent demand that the judiciary be not only adequately, but also optimally staffed and equipped, has been emphasized time and again. The challenges that had to be met in the past two years - not least as a result of the pandemic - have impressively demonstrated that the ability of the rule of law to function depends to a large extent on the judiciary's ability to work - also digitally. In order to be able to meet current and future challenges, both within and outside of a crisis, it is therefore urgently necessary to provide the judiciary with all the material and financial resources it needs to reliably ensure access to justice. The preparation of facts in online proceedings by the legal profession must remain guaranteed in order to maintain and strengthen the functionality and effectiveness of the judiciary and thus of the rule of law.

Current developments are encouraging and will strengthen the structures of the rule of law.

### Training of justice professionals (including judges, prosecutors, lawyers, court staff)

*3000 character(s) maximum*

To be admitted as a Rechtsanwalt in Germany, you have to be qualified to become a judge in accordance with the German Judiciary Act (Deutsches Richtergesetz, DRiG). To obtain this qualification, it is necessary to first study law at a university and pass the First State Examination, then undergo practical legal training and finally pass the Second State Examination. The first examination comprises an elective subject from an academic priority area and a compulsory subject set by the state.

Pursuant to § 43a (6) of the Federal Lawyers' Act (Bundesrechtsanwaltsordnung, BRAO) the lawyer is obliged to regularly pursue continuing training. Pursuant to § 15 FAO (Fachanwaltsordnung) Bar-approved specialist lawyers are obliged to pursue continuous training in their field of expertise. Bar—approved specialist lawyers are obliged to provide proof of their continuous training vis-à-vis the Bars. Otherwise, they lose the right to call themselves a specialist lawyer.

§ 43f of the Federal Lawyers' Act will oblige lawyers to undergo mandatory training. Lawyers need to acquire knowledge of professional law in the future. In detail, Lawyers must pursue training in the amount of at least ten hours of professional law by the end of the first year of their admission at the latest.

Deutsches Anwaltsinstitut, Deutsche Anwaltsakademie und Deutsche Richterakademie and others provide training for justice professionals.

To prepare law students in addition to their mandatory education at universities for the legal profession as well as professional law issues, The BRAK, the Hans Soldan Foundation, the DAV as well as the Deutsche Juristen-Fakultätentag are jointly supporting the Soldan Moot for nine years - a student competition on legal professional law, which is organized by the Institute for Procedural Law and Legal Profession at the University of Hanover.

### Digitalisation (e.g. use of digital technology, particularly electronic communication tools, within the justice system and with court users, including resilience of justice systems in COVID-19 pandemic)

*3000 character(s) maximum*

The BRAK welcomes the discussions on the digitalization of the judiciary in Germany and the willingness of all stakeholders to further advance the digitalization in areas where concrete steps towards digitalization have already taken place (e.g. pact for digitalization – Digitalpakt). BRAK demands better technical equipment and infrastructure throughout the country, the consistent implementation and further development of electronic legal transactions, the establishment of an e-justice portal and the use of digital litigation to improve the access to justice. The implementation of structured legal proceedings (strukturiertes Verfahren) is rejected, as an alternative, BRAK recommends to put forward an digital asset analysis (elektronischer Anlagenspiegel) which implies a separate document besides the pleading wherein the party submissions including offers of evidence and annexes are presented in chronological order. With regard to AI, there are no vigorous reservations about the use of decision-supporting AI systems as long as the parties involved are sufficiently informed about whether and which AI system will be used to support judicial decision-making. Nevertheless, The BRAK considers the use of AI to replace decision-making to be fundamentally excluded due to the judicial reservation (Richtervorbehalt) and the right to the lawful judge. However, in civil or administrative court proceedings the parties involved could be given the option of voluntarily submitting them to an automated decision, provided that the decision is contestable. The use of AI in criminal and law enforcement proceedings must remain excluded. With regard to criminal proceedings, however, BRAK firmly underlines the risks of digital technologies. We reject the digitalization of main proceedings, for example, as promoted in the Commission's Communication of December 2020, not least because it infringes on the rights of the defence. BRAK calls for audio-visual documentation of main proceedings in criminal cases. In this respect, it is very welcome that the Federal Ministry of Justice has now presented a corresponding draft law. The documentation of main hearings is thus definitely coming. It is also very welcome that the use of video hearings in civil proceedings and other specialized jurisdictions is to be used to a much greater extent. Here, too, legislation has been drafted. Furthermore, digitalisation is based on the condition that electronic file inspection is further promoted. Therefore, a speedy introduction of the electronic file (e-file) at the courts should be actively pursued; the use of e-files will be mandatory as of 1.12026. BRAK welcomes the intended early introduction of e-files at the highest federal courts. BRAK furthermore suggests that e-filing should also be introduced as soon as possible at the lower instances, and in doing so, the aim should be to make the provisions applying to codes of procedure and individual instances as uniform as possible.

Use of assessment tools and standards (e.g. ICT systems for case management, court statistics and their transparency, monitoring, evaluation, surveys among court users or legal professionals)

*3000 character(s) maximum*

Within the German court system, a tracking of cases takes place (in most Länder) to check the workload of the judges. A statistic with case numbers is published. There is, however, no quality or satisfaction evaluation of the German courts' performance. The German Federal Bar also does not do any such surveys. The BRAK has a statutory task to provide for all the members of the Bars a secure electronic communication system for electronic legal transactions (besonderes Anwaltspostfach - beA) and to maintain the necessary infrastructure. In Germany, the digitalization of the judiciary and the implementation of secured electronic communication in the field of justice are fairly advanced. Since the Act on the Promotion of Electronic Legal Transactions of 2013 (ERVGerFöG), electronic legal transactions in the field of justice and thus the digitalization of the judiciary has become increasingly established. Since 1 January 2018, all lawyers have been obliged to receive electronic documents sent by other parties to the proceedings in electronic legal transactions, in particular the courts, in their special electronic mailbox (beA). The use of electronic legal transactions became mandatory as of 1 January 2022 for all professional participants in court proceedings. The courts will have to switch to electronic file management by 2026 at the latest. In addition, digitalization projects for court files are underway in different German Länder. Currently, 2026 is the deadline for the implementation of an electronic organization of court files. Furthermore, the legal foundations for additional electronic legal transactions with courts, public authorities, lawyers and notaries, as well as other "professional" participants in proceedings, are constantly further developed in the framework of legislative procedure.

Law firms have to decide for themselves how to make use of modern technology within their firms. Larger law firms are already well advanced in this respect.

Digitalization also takes place in smaller units or individual law firms. Work is becoming increasingly digital. The vast majority of small law firms also uses standard software developed for law firms (e.g. RA-Micro, Annotext, Advolux, etc.) and online research tools (e.g. Juris, Beck-Online, etc.).

Geographical distribution and number of courts/jurisdictions ("judicial map") and their specialization, in particular specific courts or chambers within courts to deal with fraud and corruption cases

*3000 character(s) maximum*

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## C. Efficiency of the justice system

*(Under this topic, you are not required to give statistical information but should provide input on the type of information outlined under section*

*2)*

Length of proceedings

*3000 character(s) maximum*

German first instance court proceedings in civil and commercial matters at the district court level can be accomplished within a year.

However, in many complex matters they take much longer, notably if the court appoints an expert. There is a general public sentiment that German civil courts are overworked and that therefore some cases take too long to be decided. Efforts are underway to strengthen the judiciary by increasing the number of judges and supporting the court administration.

German judges traditionally actively assist the parties in amicably settling their dispute. Accordingly, many cases are concluded not by a judgement, but by a pre-judgment settlement. Accordingly, statistics on the length of proceedings do not necessarily properly reflect the actual time span of a dispute from the commencement of the dispute until judgment.

In the last ten years, German civil cases have decreased. The German Federal Ministry of Justice has commissioned a review of the reasons for this development. In the past, alternative dispute resolution was supported by the State with a view to relieving the courts of their caseload.

Digitalization should also help here and promote, for example, the increased use of video hearings in civil jurisdiction and in other specialized jurisdictions. The Federal Ministry of Justice has published another draft law in this regard (§128a ZPO-E).

Other - please specify

*3000 character(s) maximum*

In early 2022, several German banks started terminating lawyers' collective escrow accounts after a change in the Federal Financial Supervisory Agency's (BaFin) risk assessment for such accounts. The change only meant increased due diligence obligations, no need to terminate the accounts. Collective escrow accounts provide more security for clients than the lawyers' own accounts and make it easier for lawyers to handle such sums. The BRAK has been working closely with the Ministry of Finance to find a solution. In this process, the lawyers' parliament (Satzungsversammlung) has decided to introduce some changes that clarify that lawyers are under no obligation to have such collective escrow accounts.

## II. Anti-Corruption Framework

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Where previous specific reports, published in the framework of the review under the UN Convention against Corruption, of GRECO, and of the OECD address the issues below, please make a reference to the points you wish to bring to the Commission's attention in these documents, indicating any relevant updates, changes or measures introduced that have occurred since these documents were published.

Please provide information on measures taken to follow-up on the recommendations received in the 2022 Report regarding the anti-corruption framework (if applicable)

*3000 character(s) maximum*

### A. The institutional framework capacity to fight against corruption (prevention and investigation / prosecution)

List any changes as regards relevant authorities (e.g. national agencies, bodies) in charge of prevention detection, investigation and prosecution of corruption and the resources allocated to each of these authorities (the human, financial, legal, and technical resources as relevant), including the cooperation among domestic authorities. Indicate any relevant measure taken to effectively and timely cooperate with OLAF and EPPO (where applicable)

*3000 character(s) maximum*

In the fight against corruption, the prevention of money laundering plays a decisive role. The non-financial sector is very complex. Unlike the financial sector, it is not a standardized mass business. Its multitude of different sectors and occupational groups is subject to an equally diverse multitude of regulations. Obligations to prevent money laundering also apply to the legal profession. In Germany, the regional Bars are competent with regard to the supervision of lawyers in this area, and they have been subject to increased obligations since 2017. The Bars have established a joint working group which provides a forum for an intensive exchange of information. The Bars have jointly developed assessment programmes which include record sheets that are used to determine whether lawyers are affected by these special obligations, they contain on-site inspections of law firms and sanctions in the event of violations. In 2022 the legislative body of the BRAK (Satzungsversammlung) has adopted a provision that is currently undergoing the legislative procedure. It gives BRAK additional competences in the field of anti money laundering (§177 II Nr. 8 BRAO). BRAK has now established its own AML committee to support us in political decisions regards AML. The working group of the bars will remain in charge of coordination of day to day supervisory tasks. The criticism often voiced by the EU about the lawyers' alleged lack of risk awareness fails to recognize the underlying facts. Even though it is true that lawyers do report a lower number of suspicions, critics fail to appreciate the reasons for this: In most instances, lawyers are only misused for money laundering at the third stage, i.e. to feed illegally acquired assets into the legal cycle. At this stage, the criminal origin of the funds is difficult to recognise, as they have previously been channelled through the banking sector. Furthermore, unlike tax advisors and auditors, for example, lawyers do not have a comprehensive insight into the origins of the funds, as funds hardly ever pass through third-party accounts anymore. The low number of reports filed by lawyers compared to those of the financial sector, is due in particular to the fact that EU legislation itself provides for exceptions from the reporting obligation in certain cases. Since lawyers are subject to confidentiality under national law, they are, accordingly, not allowed to submit a report when there is no explicit obligation to report, because of the obligation of confidentiality. It is therefore paradoxical to establish far-reaching exceptions to the reporting obligation in order to satisfy the right to a fair trial and at the same time to accuse the legal profession of filing a relatively low number of reports. Finally, only about 30 % of all German lawyers per year participate in transactions that are relevant in terms of anti-money laundering legislation and which qualify them as being subject to reporting obligations.

Safeguards for the functional independence of the authorities tasked with the prevention and detection of corruption

*3000 character(s) maximum*

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Information on the implementation of measures foreseen in the strategic anti-corruption framework (if applicable). If available, please provide relevant objectives and indicators

*3000 character(s) maximum*

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## B. Prevention

Measures to enhance integrity in the public sector and their application (including as regards incompatibility rules, revolving doors, codes of conduct, ethics training). Please provide figures on their application

*3000 character(s) maximum*

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General transparency of public decision-making, including rules on lobbying and their enforcement, asset disclosure rules and enforcement, gifts policy, transparency of political party financing

*3000 character(s) maximum*

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Rules and measures to prevent conflict of interests in the public sector. Please specify the scope of their application (e.g. categories of officials concerned)

*3000 character(s) maximum*

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Measures in place to ensure whistleblower protection and encourage reporting of corruption.

*3000 character(s) maximum*

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List the sectors with high-risks of corruption in your Member State and list the relevant measures taken /envisaged for monitoring and preventing corruption and conflict of interest in these sectors (e.g. public procurement, healthcare, citizen investor schemes, risk or cases of corruption linked to the disbursement of EU funds, other), and, where applicable, list measures to prevent and address corruption committed by organised crime groups (e.g. to infiltrate the public sector)

*3000 character(s) maximum*

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Any other relevant measures to prevent corruption in public and private sector

*3000 character(s) maximum*

German Act implementing DAC-6 – Directive on mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements.

The Directive imposes reporting obligations with regard to cross-border tax arrangements also on intermediaries. The Directive provides for an exemption of the legal profession; the German Act implementing the Directive, however, does not. Thus, lawyers, insofar as they act as intermediaries, are subject to reporting obligations. Such gold-plating is per se not prohibited. The German implementing Act provides for the possibility to release the lawyer from professional secrecy obligations in accordance with § 138 f of the German Fiscal Code (Abgabenordnung, AO). In this case, the lawyer has to report all the information listed in § 138 f AO. Where the client decides not to lift the obligation of secrecy, the lawyer still has to report some of the information and the client has to report the remainder, even if the client could be identified on the basis of the information that remains to be provided by the lawyer. The BRAK submitted two position papers on this issue, criticizing that the German legislator did not make use of the possibility of

exemption as provided for in the Directive. This reporting obligation is contrary to the relationship of trust between the lawyer and the client.

## C. Repressive measures

Criminalisation, including the level of sanctions available by law, of corruption and related offences, including foreign bribery

*3000 character(s) maximum*

In the “Jones Day” case, currently before the European Court of Human Rights, the applicants – three lawyers of the law firm Jones Day and the law firm itself are claiming a violation of Article 8 ECHR due to a search of the law firm and of the seizure of documents and electronic data.

The search was carried out on 15 March 2017 in the Munich premises of the law firm in investigation proceedings targeting the Audi stock corporation for fraud related to the use of unauthorised emissions control devices in diesel vehicles. It was aimed at the discovery of documents which the law firm had collected or created in the context of its internal investigations at the Audi stock corporation regarding the manipulation of emissions of diesel engines. The law firm had carried out these internal investigations at the request of its client, the Volkswagen stock corporation.

In our view, the applicants are affected to a considerable extent in terms of professional law as regards their position as a lawyer and as a law firm. The search and seizure of documents and electronic data by the public prosecutor’s office in the Munich premises of the law seriously affects the applicants’ rights as lawyers and as a law firm, especially in relation to their clients.

Data on investigation and application of sanctions for corruption offences, including for legal persons and high level and complex corruption cases and their transparency, including as regards to the implementation of EU funds

*(Please include, if available the number of (data since 2019): indictments; first instance convictions; first instance acquittals; final convictions; final acquittals; other outcomes (final) (i.e. excluding convictions and acquittals); cases adjudicated (final); imprisonment / custodial sentences through final convictions; suspended custodial sentences through final convictions; pending cases at the end of the reference year)*

*3000 character(s) maximum*

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Potential obstacles to investigation and prosecution as well as to the effectiveness of criminal sanctions of high-level and complex corruption cases (e.g. political immunity regulation, procedural rules, statute of limitations, cross-border cooperation, pardoning)

*3000 character(s) maximum*

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Information on effectiveness of non-criminal measures and of sanctions (e.g. recovery measures and administrative sanctions) on both public and private offenders

*3000 character(s) maximum*

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Other - please specify

*3000 character(s) maximum*

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### III. Media Freedom and Pluralism

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Please provide information on measures taken to follow-up on the recommendations received in the 2022 Report regarding media freedom and pluralism (if applicable)

*3000 character(s) maximum*

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#### A. Media authorities and bodies

*(Cf. Article 30 of Directive 2018/1808)*

Measures taken to ensure the independence, enforcement powers and adequacy of resources (financial, human and technical) of media regulatory authorities and bodies

*3000 character(s) maximum*

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Conditions and procedures for the appointment and dismissal of the head / members of the collegiate body of media regulatory authorities and bodies

*3000 character(s) maximum*

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Existence and functions of media councils or other self-regulatory bodies

*3000 character(s) maximum*

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#### B. Safeguards against government or political interference and transparency and concentration of media ownership

Measures taken to ensure the fair and transparent allocation of state advertising (including any rules regulating the matter)

*3000 character(s) maximum*

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Safeguards against state / political interference, in particular:

- safeguards to ensure editorial independence of media (private and public)
- specific safeguards for the independence of heads of management and members of the governing boards of public service media (e.g. related to appointment, dismissal), safeguards for their operational independence (e.g. related to reporting obligations and the allocation of resources) and safeguards for plurality of information and opinions
- information on specific legal provisions and procedures applying to media service providers, including as regards granting/renewal/termination of licenses, company operation, capital entry requirements, concentration and corporate governance

*3000 character(s) maximum*

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Transparency of media ownership and public availability of media ownership information, including on direct, indirect and beneficial owners, as well as any rules regulating the matter

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## C. Framework for journalists' protection, transparency and access to documents

Rules and practices guaranteeing journalist's independence and safety, including as regards protection of journalistic sources and communications

*3000 character(s) maximum*

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Law enforcement capacity, including during protests and demonstrations, to ensure journalists' safety and to investigate attacks on journalists

*3000 character(s) maximum*

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Access to information and public documents (incl. transparency authorities where they exist, procedures, costs/fees, timeframes, administrative/judicial review of decisions, execution of decisions by public authorities, possible obstacles related to the classification of information)

*3000 character(s) maximum*

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Lawsuits (incl. SLAPPs - strategic lawsuits against public participation) and convictions against journalists (incl. defamation cases) and measures taken to safeguard against manifestly unfounded and abusive lawsuits

*3000 character(s) maximum*

The BRAK would like to point out that sanctioning lawyers who act in lawsuits which qualify as SLAPP (as provided for in the European Commission's recommendation on SLAPP) raises serious constitutional

concerns in Germany. The right to freely chose one's profession (Article 12 of the German Basic Law, Grundgesetz, GG) has a protective effect vis-à-vis rules which either relate directly to professional activity or which at least have an objective tendency to regulate the profession. Every citizen has the right to legal assistance in court proceedings. Sanctioning lawyers in this regard would constitute a disproportionate limitation of this basic right.

It also contravenes the basic principle of lawyer-client confidentiality which is based upon the client's trust in the lawyers' independence.

Other - please specify

*3000 character(s) maximum*

## IV. Other institutional issues related to checks and balances

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Please provide information on measures taken to follow-up on the recommendations received in the 2022 Report regarding the system of checks and balances (if applicable)

*3000 character(s) maximum*

### A. The process for preparing and enacting laws

Framework, policy and use of impact assessments and evidence based policy-making, stakeholders'[1] /public consultations (particularly consultation of judiciary and other relevant stakeholders on judicial reforms), and transparency and quality of the legislative process

[1] *This includes also the consultation of social partners*

*3000 character(s) maximum*

The German Federal Bar urgently calls for the separation of powers of the legislative, executive and judiciary to be preserved, even and especially in times of crisis, despite all the tension and existing special challenges. The principles of the rule of law must be observed, regardless of whether the country is witnessing a special situation or not. The crisis must not be the 'hour of the executive', even if quick action is required. Greater parliamentary participation in lawmaking is imperative. Otherwise, the impression that will arise is that of the executive branch of government 'overrunning' the legislative and judicial branches. Each power is equally important and fulfils its specific role in a state governed by the rule of law. Anyone who threatens to upset this balance forfeits acceptance and trust in the rule of law.

Therefore, we would like to stress the following with regard to the elaboration of legislative proposals and the course of legislative procedures: Legislative acts must follow parliamentary procedure with all its deadlines and hearings in an orderly and unhurried manner. This is the only way to give all actors involved the opportunity to give the proposed acts sufficient thought. For this reason, the Joint Rules of Procedure of the Federal Ministries (Gemeinsame Geschäftsordnung der Bundesministerien, GGO) provide rules for deadlines and participation procedure within the federal government and participation by the Länder, local authority organisations, experts and associations.

The coalition agreement of the new German government of the SPD, Grüne and the FDP which were sworn in on 08.12.2021 mentions that stakeholders should be involved in the legislative process already at an early stage. At present, this is being complied with. Generally speaking, feedback periods are appropriate.

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Rules and use of fast-track procedures and emergency procedures (for example, the percentage of decisions adopted through emergency/urgent procedure compared to the total number of adopted decisions)

*3000 character(s) maximum*

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Regime for constitutional review of laws

*3000 character(s) maximum*

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COVID-19: provide update on significant developments with regard to emergency regimes/measures in the context of the COVID-19 pandemic

- judicial review (including constitutional review) of emergency regimes and measures in the context of COVID-19 pandemic
- oversight (incl. ex-post reporting/investigation) by Parliament of emergency regimes and measures in the context of COVID-19 pandemic
- processes related to lessons learned/crisis preparedness in terms of the functioning of checks and balances

*3000 character(s) maximum*

In the past, we have criticized that feedback periods were too short. This has changed. The Federal Ministry of Justice now includes the BRAK in legislative projects from an early stage of the process. Thus, participation and transparency are ensured. This strengthens confidence in the rule of law and independent authorities.

## B. Independent authorities

Independence, resources, capacity and powers of national human rights institutions ('NHRIs'), of ombudsman institutions if different from NHRIs, of equality bodies if different from NHRIs and of supreme audit institutions

*(Cf. the website of the European Court of Auditors: <https://www.eca.europa.eu/en/Pages/SupremeAuditInstitutions.aspx#>)*

*3000 character(s) maximum*

Despite numerous calls in this regard, it has not been possible to establish an independent supervisory data protection authority at the legal profession's self-regulatory bodies as still no national legal basis for it has been created. Nor have any legislative efforts been made to centralize the supervision of data protection and implement a more sectoral orientation of such supervision in general. At present, data protection supervision in Germany is essentially assigned (apart from only a few sectoral supervisory bodies) to 17 different Länder authorities and one federal authority. This leads to inconsistent legal interpretations and divergent supervisory practice. This also complicates data protection compliance in law firms. Still no legislation has been initiated to implement the much-needed limitation of supervisory powers also for cases of Article 58 (1) (a) to (c) of the General Data Protection Regulation (GDPR) in addition to the limitations already provided for in Germany in § 29 (3) of the Federal Data Protection Act (Bundesdatenschutzgesetz, BDSG). The BRAK is

of the opinion that, notwithstanding the opening clause of Article 90 (1) of the GDPR, which is limited to cases of Article 58 (1) (d) and (e) of the GDPR, the national legislator is authorised to enact corresponding restrictions of powers, provided that this merely implements the principle of proportionality, which is also recognised under European law. Therefore, BRAK calls on the German government to promote the enactment of a corresponding provision and for further protection of lawyer-client confidentiality at EU level. To this end, BRAK calls on the federal government to advocate for an extension of the opening clause of Article 90 (1) of the GDPR to the cases of Article 58 (1) (a) to (c) of the GDPR. In December 2022, the German federal government (BfM) initiated amendments to the German rules on obtaining and storing communication traffic data for purposes of crime prevention in line with ECJ standards. A first draft by the Federal Ministry of Justice lacked sufficient safeguards to prevent, or at least minimise, the risk of the disclosure of information covered by professional secrecy and, in particular, of information revealing that citizens have contacted a lawyer. It will be virtually impossible to entirely prevent the disclosure of such information as long as storing and obtaining traffic data is permitted in any way or form. To protect lawyer - client confidentiality and thus effectively ensure access to justice, therefore, ideally no such permissions should be implemented. Where they exist, they must at least be limited in scope and accompanied by sufficient safeguards to ensure that violations of the lawyer - client confidentiality are minimised. In particular, attempts must be made to exclude information regarding a lawyer's connections by separating it at the earliest possible stage and before it is disclosed to the investigators (BRAK position paper52/2022).

Statistics/reports concerning the follow-up of recommendations by National Human Rights Institutions, ombudsman institutions, equality bodies and supreme audit institutions in the past two years

*3000 character(s) maximum*

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## C. Accessibility and judicial review of administrative decisions

Transparency of administrative decisions and sanctions (incl. their publication and rules on collection of related data)

*3000 character(s) maximum*

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Judicial review of administrative decisions:

- short description of the general regime (in particular competent court, scope, suspensive effect, interim measures, and any applicable specific rules or derogations from the general regime of judicial review)

*3000 character(s) maximum*

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Follow-up by the public administration and State institutions to final (national/supranational) court decisions, as well as available remedies in case of non-implementation

*3000 character(s) maximum*

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## D. The enabling framework for civil society

Measures regarding the framework for civil society organisations and human rights defenders (e.g. legal framework and its application in practice incl. registration and dissolution rules)

*3000 character(s) maximum*

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Rules and practices having an impact on the effective operation and safety of civil society organisations and human rights defenders. This includes measures for protection from attacks – verbal, physical or on-line –, intimidation, legal threats incl. SLAPPs, negative narratives or smear campaigns, measures capable of affecting the public perception of civil society organisations, etc. It also includes measures to monitor threats or attacks and dedicated support services.

*3000 character(s) maximum*

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Organisation of financial support for civil society organisations and human rights defenders (e.g. framework to ensure access to funding, and for financial viability, taxation/incentive/donation systems, measures to ensure a fair distribution of funding)

*3000 character(s) maximum*

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Rules and practices on the participation of civil society organisations and human rights defenders to the decision-making process (e.g. measures related to dialogue between authorities and civil society, participation of civil society in policy development and decision-making, consultation, dialogues, etc.)

*3000 character(s) maximum*

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## E. Initiatives to foster a rule of law culture

Measures to foster a rule of law culture (e.g. debates in national parliaments on the rule of law, public information campaigns on rule of law issues, contributions from civil society etc.)

*3000 character(s) maximum*

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Other - please specify

*3000 character(s) maximum*

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## Contact

[rule-of-law-network@ec.europa.eu](mailto:rule-of-law-network@ec.europa.eu)