



BUNDESRECHTSANWALTSKAMMER

Stellungnahme Nr. 18/2020

Mai 2020

Registernummer: 25412265365-88

Zur Konsultation zum jährlichen Bericht über die Rechtstaatlichkeit in der EU 2020

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Verteiler: Europäische Kommission

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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.

Die Bundesrechtsanwaltskammer bedankt sich für die Möglichkeit, an der öffentlichen Konsultation der Europäischen Kommission zum geplanten jährlichen Bericht über die Rechtstaatlichkeit in der EU 2020 teilzunehmen. Auf den Fragebogen der Konsultation, der nur in englischer Sprache verfügbar ist, antwortet sie auf Grundlage der Erfahrungen ihrer Experten wie folgt:

Annual Rule of Law Report - stakeholder consultation

Fields marked with * are mandatory.

Introduction

In the Political Guidelines, President von der Leyen announced that the Commission will set up a comprehensive European rule of law mechanism covering all Member States, with objective annual reporting by the European Commission[1]. In July 2019, the Commission adopted its Communication on Strengthening the rule of law within the Union - a blueprint for action, setting out some of the features of such a mechanism[2]. The first annual Rule of Law Report is one of the major initiatives of the Commission's Work Programme for 2020. The new European rule of law mechanism will act as a preventive tool, deepening dialogue and joint awareness of rule of law issues.

In the preparation of the annual Rule of Law Report, the Commission will rely on a diversity of relevant sources, including input to be received from Member States, country visits, and stakeholders' contributions. In order to facilitate the appropriate involvement of stakeholders, the Commission is inviting stakeholders to provide written contributions to the Report through this targeted consultation. The objective is to feed the assessment of the Commission with factual information on developments on the ground in the Member States.

The input should consist of a short summary, preferably in English, of information in the areas referred to in the template. You are invited to focus on the areas that relate to the scope of work of your organisation. The contribution should highlight significant developments, primarily since January 2019. 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 reference to any contribution 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.

Please provide your contribution by 4 May 2020. In case of requests for clarifications, you could contact the Commission at the following email address: rule-of-law-network@ec.europa.eu.

[1] https://ec.europa.eu/commission/sites/beta-political/files/political-guidelines-next-commission_en.pdf [2]

COM(2019) 343 final

Type of information

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 as regards the following types of developments in particular. This can include challenges, current workstreams, positive developments and best practices:

Information prepared and collected by your organisation

- any reports, statements or other documents relating to relevant developments in a Member State published by your organisation
- other direct information on the situation on the ground

Legislative developments

- legislation in force legislative drafts currently
- discussed in Parliament legislative plans envisaged by
- the government

Policy developments

- implementation of legislation
- evaluations, impact assessments, surveys
- white papers/strategies/action plans/consultation processes
- follow-up to reports/recommendations of Council of Europe bodies or other international organisations
- important decisions/opinions from independent bodies/authorities

Developments related to the judiciary / independent authorities

- important case law by national courts
- important decisions/opinions from independent bodies/authorities

Any other relevant developments

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

You are invited to provide concrete information on what you see as significant developments either horizontally at European level (concerning several or all EU Member States), and/or at Member State level, focusing primarily on developments since January 2019. If you intend to, you will be able to provide input separately per Member State.

Please feel free to provide a link to and reference relevant legislation/documents. Significant developments can include challenges, positive developments and best practices, covering both legislative developments or implementation and practices (as outlined under "type of information").

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.

About you

* I am giving my contribution as
Judicial association or network

*** 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

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 decisionmaking

25412265365-88

*** Country of origin**

Please add the country of origin of your organisation

Germany

*** First Name**

Ulrich

*** Surname**

Wessels, Dr.

*** Email Adress 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. All other personal details (name, organisation name, transparency register number) will not be published.
- 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](#).

Questions on horizontal developments

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

[Stakeholder consultation - topics.pdf](#)

Please provide any relevant information on horizontal developments here

Questions on developments in Member States

The following four pillars are sub-divided into topics and sub-topics. You are invited to provide concrete information on significant developments, focusing primarily on developments since January 2019, for each of the sub-topics which are relevant for your work. Please feel free to provide a link to and reference relevant legislation/documents. Significant developments can include challenges, positive developments and best practices, covering both legislative developments or implementation and practices (as outlined under "type of information").

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.

Member States covered in contribution [several choices possible]

Please select all Member States for which you wish to contribute information. For each Member State, a separate template for providing information will open. **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

Justice System - Germany

Independence

Appointment and selection of judges and prosecutors

3000 character(s) maximum

-

Irremovability of judges, including transfers of judges and dismissal

3000 character(s) maximum

-

Promotion of judges and prosecutors

3000 character(s) maximum

-

Allocation of cases in courts

3000 character(s) maximum

-

Independence (including composition and nomination 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 ethical rules. *3000 character(s) maximum*

-

Remuneration/bonuses for judges and prosecutors *3000 character(s) maximum*

-

Independence/autonomy of the prosecution service
3000 character(s) maximum

-

Independence of the Bar (chamber/association of lawyers)
3000 character(s) maximum

Practising German lawyers (Rechtsanwälte) are registered with the respective regional Bar that is competent for the lawyers established in their district. There are 27 regional Bars in Germany. In addition, there is a special Bar for the lawyers with rights of audience in civil matters at the German Federal Court of Justice (Bundesgerichtshof). The umbrella organization of all 28 Bars in Germany is The German Federal Bar (Bundesrechtsanwaltskammer) 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 federal state as regards compliance with the 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 can issue warnings and even 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) in Karlsruhe. However, a big part of the everyday work of the regional Bars is to provide professional support and counseling for their members. Furthermore, regional Bars can act as intermediary in case of disputes between their members.

The regional Bars are run by practising lawyers who are elected by their peers and fulfil their various tasks on an honorary basis. They are supported by a professional administration.

The German Federal Bar is also a self-regulatory entity and represents the interests of the 27 regional Bars and thus the interests of all 166,000 German lawyers. Its role is a purely representative one. i. a. representing the profession vis-à-vis the parliaments in Berlin and Brussels. The German Federal Bar does not have a regulatory function. The legal supervision is exercised by the Federal Ministry of Justice. Within the organization of The German Federal Bar, there is a so-called lawyers' parliament (Satzungsversammlung) that acts as a legislative body for issues which are delegated for self-regulation to the practicing lawyers. It determines the rules that are applicable to all German lawyers, irrespective of the regional Bar they are registered with.

The German Federal Bar is also run by practising lawyers who are elected and take on their tasks on an honorary basis. Again, they are supported by the professional administration.

In Germany we have had positive experiences with this system comprising supervision of the profession through the regional Bars, control exercised by an independent judiciary and representation of interests through The German Federal Bar.

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 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.

Different from the selection of the judges of 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 Supreme Court.

The German public has no significant issues with the independence of the 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 belief 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 an examination to better understand this development.

Other - please specify

3000 character(s) maximum

-

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 "type of information".)

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

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 (Rechtsanwaltsvergütungsgesetz). Agreed legal fees in court proceedings may not undercut the statutory fee schedule. Even though alternative fee arrangements are permissible. In commercial matters, specialized litigation counsel typically charge 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, its own lawyers' fees as well as the statutory lawyers' fees of the opposing party.

If a party is unable to finance a litigation by itself, it can apply for legal aid. If the case has changes of success, statutory financing kicks in. In Germany, legal insurance is quite popular and many litigation cases are funded 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 own funds but without any insurance bringing a claim can still be prohibitively costly.

Resources of the judiciary (human/financial)

3000 character(s) maximum

-

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

3000 character(s) maximum

Within the German court system, a tracking of cases takes place 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 digitalization of the German courts and the electronic communication between the courts and its users, notably lawyers, is in the process of implementation. Practicing lawyers are connected via a secured electronic communications platform (BeA). There remains much to be done to bring the German court system into the age of digitalization.

Currently, three different digitalization projects for the court's files are under way in different German Federal States. Currently, 2026 is the deadline for the implementation of an electronic organization of the court files.

Law firms have to decide for themselves how to make use of modern technology within their firms. The larger law firms are already well advanced in this respect. For solo practitioners and small law firms, the costs associated with buying state-of-the art IT equipment and the purchase of software licenses can be prohibitively high.

Other - please specify

3000 character(s) maximum

-

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 "type of information".)

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 matter. Accordingly, many cases are concluded not by 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 matter from commencing the matter 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 has been supported by the State with a view to relieving the courts of their case load.

Enforcement of judgements

3000 character(s) maximum

-

Other - please specify

3000 character(s) maximum

-

Anti-Corruption Framework - Germany

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

Authorities (e.g. national agencies, bodies) in charge of prevention detection, investigation and prosecution of corruption. Resources allocated to these (the human, financial, legal, and practical resources as relevant).

3000 character(s) maximum

Law firms take their duties to check for corruption red flags seriously, notably in areas in which client moneys are escrowed. Procedures are supposed to be in place to have an overview over corruption-prone transactions and billing partners are supposed to check for any reporting requirements on their matters.

Prevention

Integrity framework: asset disclosure rules, lobbying, revolving doors and general transparency of public decision-making (including public access to information). 3000 character(s) maximum

-

Rules on preventing conflict of interests in the public sector.

3000 character(s) maximum

-

Measures in place to ensure Whistle-blower protection and encourage reporting of corruption. 3000 character(s) maximum

-

Sectors with high-risks of corruption in a Member State and relevant measures taken/envisaged for preventing corruption in these sectors. (e.g. public procurement, healthcare, other). 3000 character(s) maximum

-

Any other relevant measures to prevent corruption in public and private sector. 3000 character(s) maximum

-

Repressive measures

Criminalisation of corruption and related offences.

3000 character(s) maximum

-

Application of sanctions (criminal and non-criminal) for corruption offences (including for legal persons).

3000 character(s) maximum

-

Potential obstacles to investigation and prosecution of high-level and complex corruption cases(e.g. political immunity regulation). *3000 character(s) maximum*

-

Media Pluralism - Germany

Media regulatory authorities and bodies

(Cf. Article 30 of Directive 2018/1808)

Independence, enforcement powers and adequacy of resources of media authorities and bodies. *3000 character(s) maximum*

-

Conditions and procedures for the appointment and dismissal of the head / members of the collegiate body of media authorities and bodies *3000 character(s) maximum*

-

Transparency of media ownership and government interference

The transparent allocation of state advertising (including any rules regulating the matter) *3000 character(s) maximum*

-

Public information campaigns on rule of law issues (e.g. on judges and prosecutors, journalists, civil society) *3000 character(s) maximum*

-

Rules governing transparency of media ownership

3000 character(s) maximum

-

Framework for journalists' protection

Rules and practices guaranteeing journalist's independence and safety and protecting journalistic and other media activity from interference by state authorities

3000 character(s) maximum

Law enforcement capacity to ensure journalists' safety and to investigate attacks on journalists *3000*

character(s) maximum

Access to information and public documents

3000 character(s) maximum

Other - please specify

3000 character(s) maximum

Other institutional issues related to checks and balances - Germany

The process for preparing and enacting laws

Stakeholders'/public consultations (particularly consultation of judiciary on judicial reforms), transparency of the legislative process, 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

Regime for constitutional review of laws.

3000 character(s) maximum

Independent authorities

Independence, capacity and powers of national human rights institutions, ombudsman institutions and equality bodies;

3000 character(s) maximum

-

Accessibility and judicial review of administrative decisions

Modalities of publication of administrative decisions and scope of judicial review 3000

character(s) maximum

-

Implementation by the public administration and State institutions of final court decisions 3000

character(s) maximum

-

The enabling framework for civil society

Measures regarding the framework for civil society organisations

3000 character(s) maximum

-

Other - please specify

3000 character(s) maximum

-

Contact

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