



BUNDESRECHTSANWALTSKAMMER

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Registernummer: 25412265365-88

Zur Konsultation zum jährlichen Bericht über die Rechtsstaatlichkeit in der EU 2025

Mitglieder des AS Europa

RA Dr. Sebastian Cording
RA Dr. Hans-Joachim Fritz
RA Marc André Gimmy
RAin Dr. Margarete Gräfin von Galen (Vorsitzende)
RA Andreas Max Haak
RA Dr. Frank J. Hospach
RA Dr. Christian Lemke
RA Maximilian Müller
RAin Dr. Kerstin Niethammer-Jürgens
RA Dr. Hans-Michael Pott
RA Jan K. Schäfer, LL.M.
RAin Stefanie Schott
Prof. Dr. Gerson Trüg
RA Andreas von Máriássy

RA Dr. Christian Lemke, Vizepräsident, Bundesrechtsanwaltskammer
RAin Astrid Gamisch, LL.M., Bundesrechtsanwaltskammer, Brüssel
Ass. jur. Nadja Wietoska, Bundesrechtsanwaltskammer, Brüssel
Ass. jur. Frederic Boog, LL.M., Bundesrechtsanwaltskammer, Brüssel
Ass. jur. Sarah Pratscher, Bundesrechtsanwaltskammer, Brüssel

Mitglieder der Arbeitsgemeinschaft Sicherung des Rechtsstaates

RA Jan Helge Kestel, Präsident RAK Thüringen
RA Prof. Dr. Christoph Knauer, Vorsitzender des Ausschusses Strafprozessrecht
RA Guido Kutscher, Vorsitzender des Ausschusses ZPO/GVG
RA Prof. Dr. Christofer Lenz, Vorsitzender des Ausschusses Verfassungsrecht
RAuN Hans Ulrich Otto, Präsident RAK Hamm
RA Dr. Sigrid Wienhues, Vorsitzende des Ausschusses Verwaltungsrecht

RAin Leonora Holling, Schatzmeisterin Bundesrechtsanwaltskammer, Berlin (Vorsitzende)
RAin Stephanie Beyrich, Bundesrechtsanwaltskammer, Berlin
RAin Eva Melina Buchmann, Bundesrechtsanwaltskammer, Berlin

Bundesrechtsanwaltskammer

The German Federal Bar
Barreau Fédéral Allemand
www.brak.de

Büro Berlin – Hans Litten Haus

Littenstraße 9
10179 Berlin
Deutschland
Tel. +49.30.28 49 39 - 0
Fax +49.30.28 49 39 -11
Mail zentrale@brak.de

Büro Brüssel

Avenue des Nerviens 85/9
1040 Brüssel
Belgien
Tel. +32.2.743 86 46
Fax +32.2.743 86 56
Mail brak.bxl@brak.eu

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 2025 teilnehmen zu dürfen. Auf den Fragebogen der Konsultation, der nur in englischer Sprache verfügbar ist, antwortet sie auf Grundlage der Erfahrungen ihrer Expertinnen und Experten wie folgt:

2025 Rule of Law Report - targeted stakeholder consultation

Fields marked with * are mandatory.

Introduction

The annual Rule of Law Report lies at the centre of the Annual Rule of Law Cycle, which acts as a preventive tool, deepening multilateral dialogue and joint awareness of rule of law issues. So far, five editions of the Rule of Law Report have been published since 2020.

As every year, the Commission would like to invite the stakeholders to provide contributions to the 2025 Rule of Law Report. On the basis of these contributions and on-going developments, further targeted questions may be shared at a later stage of preparation of the 2025 Rule of Law Report, in particular in the context of country visits, or bilateral contacts.

The Commission invites stakeholders to provide contributions which include:

- (1) information on measures taken to implement the recommendations addressed to the Member State in the 2024 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 2024^[1] and up to the date of submission falling under the ‘type of information’ outlined below.**

The input should consist of a short summary, if possible in English, covering the areas referred to below. Legislation or other documents may be referenced with a link. Contributions should focus on significant developments since the last Rule of Law Report both as regards the legal framework and its implementation in practice.

If you would like to provide further specific **input related to the single market dimension in the Rule of Law report**, you can also respond to the additional targeted consultation available [here](#).

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

Type of information to be included:

Under each of the four pillars, the replies should include references to the following types of information:

A) Legislative developments

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

B) 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

C) 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, Prosecutor General, heads of independent authorities included in the scope of the request for input[2])

D) Any other relevant developments

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

Please also indicate whether the developments reported are linked to the implementation of reforms and investments under the RRP, where applicable. To simplify your answers to the questionnaire, **if there are no developments, it is sufficient to indicate this** and the information covered in the contributions for the previous Rule of Law Reports does not need not be repeated.

[2] 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

* 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
- Checks and Balances
- 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 indicate the country of origin of your organisation

- 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
- Other - please specify

First name

Dr. Ulrich

Surname

Wessels

Email Address of the organisation

BRAC.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 2025 rule of law report.pdf](#)

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

[List of topics - 2025 Rule of Law Report.pdf](#)

Please provide any relevant information on horizontal developments here

5000 character(s) maximum

Questions for contribution

Under each pillar, you are invited to provide information on measures taken to implement the recommendations addressed to the Member State in the 2024 Rule of Law report, as well as developments with regard to the points raised in the respective country chapter of the 2024 Rule of Law Report and any other significant developments since January 2024 and up to the date of submission^[3]. Please always include a link to and reference relevant legislation/documents (in the national language and/or where available, in English). **Significant developments** can include challenges, positive developments and best practices, covering both legislative developments or implementation and practices.

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.

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

Member State/enlargement country covered in contribution [only one choice possible]

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

- Albania
- Austria
- Belgium
- Bulgaria
- Croatia
- Cyprus
- Czechia
- Denmark
- Estonia
- Finland
- France
- Germany
- Greece
- Hungary
- Ireland
- Italy

- Latvia
- Lithuania
- Luxembourg
- Malta
- Montenegro
- Netherlands
- North Macedonia
- Poland
- Portugal
- Romania
- Serbia
- Slovakia
- Slovenia
- Spain
- Sweden

I. Justice System

Please provide information on measures taken to follow-up on the recommendations received in the 2024 Report regarding the justice system (if applicable)

5000 character(s) maximum

On the current political situation in Germany:

In his government statement on November 13, 2024, Chancellor Olaf Scholz (SPD) announced that he would request a vote of confidence on Wednesday, December 11, 2024. The German Bundestag decided on this on Monday, December 16, 2024, and denied him a vote of confidence. As a result, the Federal President, Dr. Frank-Walter Steinmeier, dissolved the Bundestag and ordered new elections in Germany. These will take place on February 23, 2025. A new government will then be formed. This will determine which legislative proposals and reforms will be implemented in the next legislative period. The short-term dissolution of the Bundestag in 2024 complied with the rules of the German Constitution (Basic Law, Grundgesetz), but meant that numerous legislative proposals could no longer be implemented and were subject to discontinuity

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)

5000 character(s) maximum

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)

5000 character(s) maximum

Promotion of judges and prosecutors (incl. judicial review)

5000 character(s) maximum

Allocation of cases in courts

5000 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)

5000 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)

5000 character(s) maximum

Independence/autonomy of the prosecution service

5000 character(s) maximum

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

5000 character(s) maximum

One of the central characteristics of a lawyer is independence, as i. a. recently confirmed by the CJEU in the Halmer case (C-295/23). Independence is the only way to ensure that lawyers can fulfil their duties in the constitutional state on an equal footing with the judges and public prosecutors. Ensuring this independence of lawyers is one of the main tasks of the Bars as self-governing bodies with responsibility towards their members and any citizens seeking legal advice. A successful and efficient system of self-government of the legal profession is established in Germany, including the regional Bars and the Bar for lawyers at the German Federal Court of Justice, that are in charge of admission to the profession, the control of compliance with legal professional rules and regulations and enforcement decisions, as well as the German Federal Bar (Bundesrechtsanwaltskammer, BRAK), that represents interests of the regional Bars and thus of all approximately 166,000 German lawyers.

A crucial issue for the independence of lawyers is the protection of the lawyer-client confidentiality as a core value of the legal profession and a precondition for the trust between lawyers and their clients and thus for their access to justice. In principle, this essential right of the client - and the respective right and obligation of the lawyer – is protected by various legislation, in particular regarding criminal procedure law. However, the protection offered by the law is spread through a high number of different codes and laws and in addition mostly focussed on criminal defense lawyers. Furthermore, confidentiality of the lawyer-client relationship has always been insufficiently protected particularly against search and seizure measures. This is i. a. demonstrated by an increasingly widespread practice of ordering the inspection of lawyer's correspondence by Public prosecutor's offices. In addition, also on a European level it is aimed to increase the supervision on the legal profession, in particular in the field of anti-money laundering (cf. below). Similar threats to confidentiality may arise in tax matters, notably with regard to the German implementation of the DAC-6 Directive (cf. below). All such developments are to be strongly criticized. It is crucial to maintain the independence of the profession as a cornerstone of the guarantee of access to justice for everyone and the preservation of the rule of law.

Also threatening behaviour and aggression towards lawyers can potentially endanger the independence of lawyers. For example, after the terrorist attack in Solingen, the German tabloid press reported inflammatorily about a lawyer in Dresden who had represented the alleged future assassin in his asylum proceedings a year earlier. As a result, she was threatened on a massive scale and right-wing extremists demonstrated with gravestones in front of her law firm. In addition, a shitstorm poured (especially) over lawyers who work in the field of migration law. More information: <https://www.brak.de/newsroom/news/brak-praesident-wir-vertreten-das-recht-nicht-taten/>

As a recent survey of the BRAK shows, more than half of the participating lawyers (55.10 %) have been exposed to threatening behaviour, verbal or physical attacks at least once in the last two years in connection with their work as lawyers. According to the survey, most of the attacks were effected by (former) clients, the opposing party or persons related to them. Please find more details here: <https://www.brak.de/newsroom/news/europaweite-studie-anwaeltinnen-und-anwaelte-haeufig-wegen-ihres-berufs-bedroht/>

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

5000 character(s) maximum

The German judiciary continues to enjoy a high reputation among the public. It is regarded as independent, impartial and free of corruption. Regular surveys confirm this perception (e. g. World Justice Project; Rule of Law Index 2024; Germany ranks 5th in the world).

German judges are professional judges who rarely have an individual public profile. In Germany, the Second State Examination is the prerequisite for practicing as a judge. It is also the entry requirement for the German legal profession. While a number of younger practicing lawyers move from the legal profession to the bench after a few years of practice, there are hardly any such changes at a senior level.

In contrast to the selection of 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 (selection of the best). Before a judge of the first instance is promoted, he or she usually spends a certain amount of time at the court of appeal (trial). Many court presidents have also completed secondments to a Ministry of Justice at local or federal level or to the Federal Court of Justice.

The German public does not see major problems regarding the independence of German judges, although there are repeated complaints about the length of proceedings and the number of civil cases is declining.

The following developments have occurred in this context:

Video hearings will be easier to conduct in civil and specialist courts in the future. The Act to Promote the use of video conferencing technology in Civil and Specialist Courts (Gesetz zur Förderung des Einsatzes von Videokonferenztechnik in der Zivilgerichtsbarkeit und den Fachgerichtsbarkeiten) was published in the Federal Law Gazette (Bundesgesetzblatt) on 18.07.2024. This is an important step towards digitalisation. Besides, the BRAK calls for an audiovisual documentation of the main hearing in criminal cases (cf. below). Until this is finally achieved, Germany continues to have a significant deficit regarding the rule of law in criminal proceedings that, in a longer perspective, might affect the perception of the public regarding the independence of the judiciary.

The Bundestag adopted the draft 'Act to strengthen Germany as a centre of justice by introducing commercial courts and English as a court language in civil jurisdiction' (Gesetz zur Stärkung des Justizstandortes Deutschland durch Einführung von Commercial Courts und der Gerichtssprache Englisch in der Zivilgerichtsbarkeit).

The so-called Justice Location Strengthening Act (Justizstandort-Stärkungsgesetz) is intended to authorise the federal states to set up specialised adjudication chambers for commercial matters before which proceedings can be held in English. The German government hopes that this will strengthen Germany's position as a centre of justice in international competition and with private arbitration tribunals.

On 27 September 2024, the Federal Council (Bundesrat) adopted a resolution to strengthen the resilience of the Federal Constitutional Court (Resilienz des Bundesverfassungsgerichts) at the request of several federal states.

The resolution welcomes the proposal presented by the Federal Minister of Justice and various parliamentary groups in the Bundestag to expand the regulations on the Federal Constitutional Court enshrined in the Basic Law. This primarily concerns the status and organisation of the court, the term of office of its judges and the binding effect of its decisions. To date, these have only been regulated in the Federal Constitutional Court Act, which – unlike the Basic Law – can be amended as a simple law in parliament with a simple majority. The law has come into force.

The proposed constitutional amendments make an important contribution to ensuring the court's ability to function, independence and non-partisanship.

For further information: <https://www.brak.de/presse/presseerklaerungen/der-brak-2024/endlich-staerkung-des-bundesverfassungsgerichts/>

With regard to the protection of the Federal Constitutional Court, it should be underlined that the preservation of the rule of law entails enhancing the resilience of the legal profession as well. In this regard, the BRAK warmly welcomes the approaching finalisation of the Convention on the protection of the profession of lawyers within the framework of the Council of Europe. It is of crucial importance to coherently recognise and safeguard the fundamental role of the legal profession for the rule of law.

Besides, a modernisation of German descent law would have been desirable, also in view of the proposed EU regulation on matters of parenthood and notably in view of the decision of the Federal Constitutional Court of 9 April 2024 (1 BvR 2017/21), setting a deadline for the legislator until 30 June 2025. Unfortunately, the corresponding legislative draft is currently on hold due to the upcoming parliamentary elections.

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 in the introduction)

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

5000 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, specialised litigation counsels typically charge for their services by the hour. The hourly rate is a matter of negotiation between the lawyer and the client.

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. Section 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 Section 116 ZPO. The decision to grant or refuse legal aid is taken by the judge who is responsible for the main proceedings.

Furthermore, another form of financing court proceedings is legal expenses insurance. If the case has chances of success, statutory financing kicks in. In Germany, legal expenses insurance is quite popular currently and many legal actions are financed by insurance companies. The policyholder has a free choice of lawyer according to sections 127, 129 of the German Insurance Contract Act (VVG) in conjunction with section 3 (3) BRAO. This German system of ensuring free choice of lawyer has also found its expression in the corresponding provisions of the European Directive 2019/138. 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.

In order to further strengthen access to justice, BRAK is advocating an increase in lawyers' fees. Lawyers are part of the rule of law. In this respect, an appropriate remuneration is important to ensure the provision of high quality legal services.

The federal and state justice ministers met in Berlin on 28 November 2024 for their fifth federal-state digital summit. The meeting focused on the plan to jointly develop a standardised nationwide justice cloud, i.e. a joint cloud infrastructure for justice-related IT applications at federal and state level.

The federal and state governments want to gradually realise the first operational version of a standardised

federal justice cloud by the end of 2026. The development is to be financed from the digitalisation initiative for the justice system. As part of the digitalisation initiative, the federal government will provide up to 50 million euros per year until 2026, i.e. up to 200 million euros in total.

Resources of the judiciary (human/financial/material), remuneration/bonuses/rewards for judges and prosecutors, including observed changes (significant and targeted increase or decrease over the past year)

(Material resources refer e.g. to court buildings and other facilities. Financial resources include salaries of staff in courts and prosecution offices.)

5000 character(s) maximum

In the past, the BRAK has repeatedly addressed political decision-makers with demands and position papers to maintain and promote the rule of law.

The demand that the judiciary should not only be adequately, but also optimally staffed and equipped, has been emphasized time and again. The preservation of a functioning rule of law depends on the ability of the judiciary to work, including in digital terms. It must be equipped with all the material, human and financial resources it needs to guarantee reliable and modern access to justice. In this regard, the processing of facts in online proceedings by the legal profession must also be guaranteed in order to maintain and strengthen the functionality and effectiveness of the judiciary.

The legal profession must also be in a position to continue to guarantee effective access to justice, while providing modern services in line with the desired equipment of the judiciary. In this context, attention must be paid to both the appropriate evolution of the lawyer's remuneration (cf. above) and the provision of sufficient legal aid (cf. above) for those seeking legal advice who are in need.

Training of justice professionals (including judges, prosecutors, lawyers, court staff, clerks/trainees)

5000 character(s) maximum

To be admitted as a Rechtsanwalt in Germany, one has 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 Section 43a (6) of the Federal Lawyers' Act (Bundesrechtsanwaltsordnung, BRAO) the lawyer is obliged to regularly pursue continuing training. Pursuant to Section 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.

Section 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. Training institutions such as 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 eleven 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. Furthermore, the BRAK is

working together with schools in Berlin to familiarize pupils with the legal profession, its importance for the Rule of Law and the system of self-administration at an early stage.

Digitalisation (e.g. use of digital technology, including electronic communication and AI tools, within the justice system and with court users, procedural rules, access to judgments online)

5000 character(s) maximum

The BRAK welcomes the discussions on the digitalisation of the judiciary in Germany and the willingness of all stakeholders to further advance the digitalisation (e.g. pact for digitalisation, 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.

With regard to AI, at some courts, AI tools are being used or tested for the automated anonymisation of judgments (cf. for example <https://www.baden-wuerttemberg.de/de/service/presse/pressemitteilung/pid/gemeinsames-ki-projekt-zur-anonymisierung-von-urteilen>), the analysis of large volumes of documents (e. g. FraUKe, OLGA and Codify) and the support in preparing of judgments (e. g. FraUKe, OLGA and Frida). Law firms – especially larger ones – also use AI applications for document analysis, text preparation and research. Insufficient funding of the courts, lacking knowledge and discussions about the functioning and legal basis (esp. regarding the training) of such systems are hampering widespread use of AI technologies in the justice system.

Nevertheless, the BRAK considers the use of AI replacing decision-making to be fundamentally excluded due to the judicial reservation (Richtervorbehalt) and the right to the lawful judge. This applies in particular in criminal and law enforcement proceedings. This does not necessarily mean that any supportive use of AI is at all times excluded, e. g. when it comes to the analysis of big data sets in particular circumstances. However, the BRAK particularly stresses that any risk of an automation-bias regarding the decision of the judge as well as the use of predictive policing measures, lie detectors or facial recognition tools in public spaces must remain excluded.

Unfortunately, the draft law on audiovisual documentation of the main hearing in criminal cases at the district courts and higher regional courts (Dokumentation der strafgerichtlichen Hauptverhandlung) was subject to fundamental criticism (no need for the proposed recording of main hearings, danger for justice and for the establishment of the truth) from judges, the party “CDU” (Christian Democratic Union) and the federal states. It therefore was pending at the Federal Council (Bundesrat) without a realistic perspective to be adopted. After the dissolution of the Bundestag the law is subject to discontinuity. As the CDU is against the law and the CDU is, according to the current polls, very likely to win the next elections it cannot be expected that the project of introducing the recording of main hearings in criminal procedures at the district and higher regional courts will be taken on the agenda in the next legislative period. If Germany continues to not having any recording of the content of main hearings (like witness statements, expert statements etc.), at the courts which are competent regarding severe cases, Germany continues to have a significant deficit regarding the rule of law in criminal proceedings.

As indicated above, video hearings will be easier to conduct in civil and specialist courts in the future, which fosters digitalisation.

Furthermore, digitalisation is based on the condition that electronic file inspection is further promoted. Therefore, a speedy introduction of the electronic file (e-file, E-Akte) at the courts should be actively pursued; the use of e-files will be mandatory as of 1.1.2026. BRAK welcomes the intended early introduction of e-files at the level of the highest federal courts (cf. also below).

The federal and state justice ministers met in Berlin on 28 November 2024 for their fifth federal-state digital summit. The meeting focused on the plan to jointly develop a standardised nationwide justice cloud, i.e. a joint cloud infrastructure for justice-related IT applications at federal and state level.

The federal and state governments want to gradually realise the first operational version of a standardised federal justice cloud by the end of 2026. The development is to be financed from the digitalisation initiative for the justice system. As part of the digitalisation initiative, the federal government will provide up to 50 million euros per year until 2026, i.e. up to 200 million euros in total.

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

5000 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 elektronisches Anwaltspostfach, beA) and to maintain the necessary infrastructure. BRAK provides a secure access to e-justice-systems for all lawyers (identity provider). 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 digitalisation 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, digitalisation 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. Digitalisation also takes place in smaller units or individual law firms. Work is becoming increasingly digital. Law firms also use standard software especially developed for law firms and online research tools.

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

5000 character(s) maximum

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)

Developments related to efforts to improve the efficiency of the justice system (e.g. as regards length of proceedings)

5000 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 the judgment.

In the last ten years, German civil cases have decreased. In September 2020, the Federal Ministry of Justice commissioned a comprehensive research project to investigate the causes of the decline in the number of cases filed with the civil courts. The 400-page final report was published in April 2023. As expected, the number of new first-instance proceedings at the local and regional courts has been declining for years. From 2005 to 2019, the number of new cases at the local courts fell by around 36% and at the regional courts by around 21%. (cf. https://www.bmj.de/SharedDocs/Pressemitteilungen/DE/2023/0424_Abschlussbericht_Eingangszahlen_Zivilgerichte.html)

In the past, alternative dispute resolution was supported by the State with a view to relieving the courts of their caseload. Digitalisation should also help here and promote, for example, the increased use of video hearings in civil jurisdiction and in other specialized jurisdictions. The law came into force in 2024.

Any other developments related to the justice system - please specify

5000 character(s) maximum

In June 2024, German authorities extradited a German citizen, the non-binary person Maja T., to Hungary, despite an emergency appeal, that was already submitted to the German constitutional court. This case proved the urgent need for a reform of the German IRG (act on international mutual assistance), since currently there are no legal remedies to ordinary courts available against such a decision, which also constitutes a violation of EU law. A draft law was published in autumn, currently the legislative procedure faces the risk of never being completed due to the elections in February and the principle of discontinuity, which would apply.

The functioning of an efficient and safe rule of law system and notably the confidentiality of the lawyer-client-relationship depends i. a. on the applicable rules for data protection. In this regard, in 2024 different evolutions shall be reported:

Following the ECJs ruling SpaceNet and Telekom Deutschland (C-793/19 und C-794/19) Germany has still not replaced its laws allowing for general and indiscriminate retention of data. A draft of the ministry of justice (BMJ) of October 2022, replaced the general indiscriminate retention with a “quick freeze” approach. A new draft December 2024, initiated by the FDP fraction in parliament, is currently debated. In 2022 already, German lawyers had called for further restrictions to the quick freeze approach in order to protect client lawyer communication (BRAK position paper 52/2022, cf. https://www.brak.de/fileadmin/05_zur_rechtspolitik/stellungnahmen-pdf/stellungnahmen-deutschland/2022/stellungnahme-der-brak-2022-52.pdf). These have not been implemented in the current FDP draft. Some parties (CDU, CSU, SPD) are, to the contrary, demanding to introduce a minimum storage period for IP-addresses and cell phone queries (Funkzellenabfragen). Corresponding drafts are also being debated in parliament. Whereas the drafts aiming at the storage of IP-addresses (and in part) cell phone queries include the deletion of the current statutory rules on general indiscriminate data retention, the FDP draft does not. Whereas it is currently clear that no court would allow data retention based on these rules due to their violation of EU and constitutional law, there is a risk that some courts might feel conflicted, if not obliged to apply these rules, if the legislator deliberately retains them.

On federal level as well as in some Länder laws have proposed to allow AI-supported (in some cases real-time) facial recognition in public places and on the public internet. This raises serious concerns regarding the right to privacy core area of private life, including the possibility of seeking legal advice confidentially and anonymously. Not being able to do so and being analysed by (AI-)software would also affect the right to a fair trial (Art. 6 ECHR, Art.1, 2, 20 (3) GG) including the right to an effective defence (Art. 6 (3) c ECHR), the right to respect for private and family life (Art. 7 CFR, Art. 8 ECHR) and the right to the protection of personal data (Art. 8 CFR).

No legislation was passed 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.

Art. 16 of Directive (EU) 2024/1348 and Art. 21 of Directive (EU) 2024/1351 of the European Parliament and of the Council of 14 May 2024 provide for free legal information for applicants in asylum procedures. However, Section 12b (1) AsylG-E of the German government’s draft of an Amendment Act (GEAS-Anpassungsgesetz) contains the provision that this legal advice is to be provided by the Federal Office for Migration and Refugees (BAMF) itself instead of independent advisors.

The transfer of legal advice for asylum applicants to the BAMF is from a rule of law perspective unacceptable as this means that the asylum authority advises on its own administrative act. The asylum authority would find itself in a conflict of interest and would also not fulfil the criteria developed by the Council of Europe for the quality and management of legal assistance. Legal advice must be provided by independent counsellors. These are lawyers and organisations that can provide qualified legal advice. The German Federal Bar (BRAK) has already positioned itself against this regulation in a letter from its Vice President, Dr Remmers to the Legal Affairs Committee and the Committee on Internal Affairs and Homeland Affairs of the German Bundestag dated 16 December 2024 as well as in BRAK Position Paper No. 80/2024 of October 2024.

II. Anti-Corruption Framework

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 2024 Report regarding the anti-corruption framework (if applicable):

5000 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 and with foreign authorities. Indicate any relevant measures taken to effectively and timely cooperate with OLAF and EPPO

5000 character(s) maximum

Preventing money laundering plays a crucial role in the fight against corruption. The non-financial sector is very complex. Unlike the financial sector, it is not a standardised mass market. Its multitude of different industries and professional groups is subject to an equally diverse number of regulations.

The obligations to prevent money laundering also apply to the legal profession. In Germany, the regional Bars have been responsible for the supervision of lawyers in this area since 1 July 2017 and since the implementation of the (EU) Money Laundering Directive (EU) 2015/849. The Bars have formed a joint working group of the regional Bars to create a uniform understanding of risk and a uniform administrative practice, which provides a forum for an intensive exchange of information and experience. In addition to providing extensive information material and tools for persons subject to anti-money laundering (AML) requirements that are member of the respective Bar, the Bars have also developed joint audit programmes that include, among other things, record sheets for written audits to determine whether lawyers are, on the one hand, obligated parties within the meaning of the Money Laundering Directive and, on the other hand, whether they are fulfilling their AML obligations. The chambers' audits also include on-site inspections at law firms and companies, as well as the imposition of sanctions for violations of AML obligations as a regulatory authority in accordance with Section 73b I BRAO.

In 2022, Section 177 para. 2 No. 8 BRAO came into force. It gives the BRAK additional competences in the area of AML. The BRAK has set up its own AML committee to support us in political decisions in the area of AML. The working group of the regional Bars will continue to be responsible for coordinating the daily supervisory tasks.

Immediately after the last Financial Action Task Force (FATF) Germany review in 2022, a working group of the federal chambers for the legal advisory professions has been set up, which meets regularly and exchanges information on questions of administrative practice, case law, interpretation and application notes on AML obligations and a common risk understanding for the inherent risks of these professions. The German Federal Bar (BRAK), the Federal Chamber of Tax Advisors (BStBK), the Federal Chamber of Notaries (BNotK), the Chamber of Public Accountants (WPK) and the Chamber of Patent Attorneys (PAK),

among others, are participating in the working group.

The EU's oft-voiced criticism of lawyers' alleged lack of risk awareness and the fact that too few cases of suspected money laundering are reported is not correct: in recent years, the legal profession has significantly increased the number of reports it makes: while in the years up to 2020, there were still around 20 reports per year, according to 160 suspicious activity reports in 2023, according to the annual report of the German Financial Intelligence Unit (FIU), cf. https://www.zoll.de/DE/FIU/Aktuelles-FIU-Meldungen/2024/fiu_jahresbericht_2023.html. This puts Germany well above the European average. Risk awareness and understanding of the inherent risks in the legal profession has increased significantly since the last FATF Germany audit and since the regional Bars, as supervisory authorities, have been carrying out constant supervision and educational work since 2017. It should also be noted that, unlike tax advisors and auditors, not all lawyers are subject to AML requirements. According to statistical surveys, only 30-35% of the legal profession engages in the risk-increasing activities referred to in Article 2 of the aforementioned Money Laundering Directive.

Furthermore, it should be taken into account that in most cases, lawyers are only misused for money laundering at the third stage, namely to feed illegally acquired assets into the legal cycle. At this stage, the criminal origin of the funds is difficult to recognise because they have previously been channelled through the banking sector.

Furthermore, unlike for example tax advisors and auditors, lawyers might not have comprehensive insight into the origin of the funds, since it is not likely that the funds pass through lawyer escrow accounts. The low number of reports submitted by lawyers compared to those from the financial sector is due in particular to the fact that EU legislation itself provides for exceptions to the reporting obligation in certain cases. As lawyers are also subject to professional secrecy obligations under national law, they cannot file a report if there is no explicit reporting requirement because they are bound by confidentiality. It is therefore paradoxical to provide for far-reaching exceptions to the reporting requirement in order to comply with the right to a fair trial and at the same time to accuse the legal profession of filing relatively few reports.

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

5000 character(s) maximum

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

5000 character(s) maximum

B. Prevention

Measures to enhance integrity in the public sector (including as regards incompatibility rules, revolving doors, codes of conduct, ethics)

5000 character(s) maximum

Measures to enhance general transparency of public decision-making (including rules on lobbying, asset and interest disclosure rules, gifts policy, transparency of political party, financing)

5000 character(s) maximum

Measures to prevent conflicts of interest in the public sector. Please specify the features and scope of their application (e.g. categories of officials concerned, types of checks and corrective measures depending on the category of officials concerned)

5000 character(s) maximum

--> For the three previous points, **please also provide information and figures on their application /enforcement**, such as number of detected breaches/irregularities of the various rules in place and the follow-up given (investigations, sanctions, etc.)

Measures to ensure whistleblower protection and encourage reporting of corruption, including their application (i.e. number of reports received, and the follow-up given)

5000 character(s) maximum

Specific measures to enhance transparency, integrity and accountability in sectors with high risks of corruption, with a view to monitor and prevent corruption and conflict of interests, and where applicable measures to prevent and address corruption committed by organised crime groups.

Such high-risk sectors could include: public procurement, including construction, transport/infrastructure, defence, cohesion, agriculture, environment, healthcare, citizen/residence investor schemes, large-scale investments of national interest and the spending of EU funds, urban planning.

5000 character(s) maximum

C. Repression

The legal framework on the criminalisation and sanctions for corruption and related offences, including foreign bribery

5000 character(s) maximum

Official data on the number of investigations, prosecutions, final judgments and the application of sanctions for corruption offences (differentiated by offence if possible). Please indicate whether the cases: involve legal persons; are related to the implementation of EU or national funds; involve high level corruption. Please indicate which data is publicly available and how policy-making is informed by the data

5000 character(s) maximum

Potential obstacles identified in law or in practice to the investigation and prosecution of high-level and complex corruption cases (e.g. political immunity regulation, procedural rules, statute of limitations, cross-border cooperation, pardoning)

5000 character(s) maximum

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

5000 character(s) maximum

Any other developments related to the anti-corruption framework - please specify

5000 character(s) maximum

German Act implementing DAC-6 – Dir. 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. It 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 Section 138 f of the German Fiscal Code (Abgabenordnung, AO). In this case, the lawyer has to report all the information listed in Section 138 f AO. However, 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. Furthermore, the lawyer's professional secrecy obligations are also at risk in two other respects. On the one hand the existing obligation for intermediaries to disclose cross-border tax arrangements in accordance with Section 138 d AO should also be extended to particular domestic tax arrangements. In addition, the introduction of mandatory invoicing in the B2B sector is being sought in the German implementing act. Here, too, the lawyer's professional secrecy obligations are at risk: according to Directive 2014/55/EU, an invoice must also include information on the recipient of the service - i.e. the client in the case of lawyers, as well as information on the service.

The BRAK submitted two position papers on this issue, criticizing the German legislator for not making use of the possibility of exemption as provided for in the Directive. The reporting obligations are contrary to the relationship of trust between the lawyer and the client, which is fundamental for the access to justice and a cornerstone of the lawyer's professional practice.

The CJEU has pointed out the fundamental importance of lawyers for the rule of law in several judgements (cf. C-623/22, C-694/20) on national transposition laws of the DAC-6 directive of other countries and annulled the respective provisions. These may call into question whether the German law could be upheld in this regard.

For some time now, the German Federal Bar has become aware of a development that is highly

questionable in terms of the rule of law: public prosecutors are increasingly ordering the inspection of privileged defence correspondence. Reports from colleagues show that various public prosecutor's offices are taking digital or paper correspondence between defendants and defense lawyers in order to view it in accordance with Section 110 of the Code of Criminal Procedure, even if clearly marked or recognizable as "defence counsel correspondence".

Both the order itself and the subsequent actual review are unacceptable – any privileged correspondence with defence counsel must not be subject to review by investigation authorities. In fact, it is protected by a ban on seizure under Section 97 (1) of the Code of Criminal Procedure. The BRAK is campaigning for an immediate end to this unlawful practice. According to reports, this phenomenon particularly affects matters relating to cum-ex cases or sanctions violations. This procedure constitutes an obvious violation of the freedom of seizure under Section 97 (1) No. 1 of the Code of Criminal Procedure and thus a central right of the accused. The freedom of seizure applies, also according to the established case law of the Federal Constitutional Court, to the seizure of documents in the custody of both the defense lawyer and the accused.

The German implementation of the e-evidence regulation raises some concerns regarding the implementation of the right of the defence to request such an order. The regulation refers to the national laws in this regard, presupposing the existence of such a right. The German draft bill on the other hand does not intend to introduce such a right beyond what is already provided for in national law, due to the prohibition of double regulation (Verbot der Doppelregelung). German law is very limited in this respect (no right in preliminary proceedings, discretionary decision by the public prosecutor's office discretion as to which evidence is collected, no judicial review of this of this decision). In the opinion of the BRAK this goes against the regulation, which only intends to leave specific details to the national legislator. This violates the rights of the defence and is especially considering the principle of equality of arms unacceptable. Also in the context of transposition of the European investigation order directive such a right has not been introduced into German legislation.

III. Media pluralism and media freedom

Please provide information on measures taken to follow-up on the recommendations received in the 2024 Report regarding media pluralism and media freedom (if applicable)

5000 character(s) maximum

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

5000 character(s) maximum

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

5000 character(s) maximum

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

5000 character(s) maximum

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

5000 character(s) maximum

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 financial and 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

5000 character(s) maximum

Transparency of media ownership and public availability of media ownership information, including on direct, indirect and beneficial owners

5000 character(s) maximum

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

Rules and practices guaranteeing journalists' independence and safety, including as regards protection of journalistic sources and communications, referring also, if applicable, to follow-up given to alerts lodged with the Council of Europe's Platform to promote the protection of journalism and safety of journalists

5000 character(s) maximum

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

5000 character(s) maximum

Access to information and public documents by public at large and journalists (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)

5000 character(s) maximum

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

5000 character(s) maximum

With regard to the legal acts adopted in 2024, the BRAK, as a principle consideration, points out that sanctioning lawyers who act in lawsuits which qualify as SLAPP (as originally suggested 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 Basic Law) 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 and the access to justice. The result must never be that the decision if a lawsuit is considered as SLAPP or non-SLAPP is shifted to the legal advice area.

It also contravenes the basic principle of lawyer-client confidentiality which is based upon the client's trust in the lawyers' independence (cf. above). The independence of a lawyer requires independence in all directions and includes client independence as well as social and political independence – both, confidentiality as well as the lawyers' independence are guaranteed and protected by law in Germany.

Furthermore, SLAPP-cases are less relevant in Germany as there is the legal obligation to reimburse the costs of court proceedings to the opposing party. This means that the legal costs of an abusive lawsuit (SLAPP) will have to be borne entirely by the losing party.

Any other developments related to media pluralism and freedom - please specify

5000 character(s) maximum

IV. Other institutional issues related to checks and balances

Please provide information on measures taken to follow-up on the recommendations received in the 2024 Report regarding the system of checks and balances (if applicable)

5000 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 (including rules and practices on the transparent participation of civil society to policy development and decision-making processes), and transparency and quality of the legislative process both in the preparatory and the parliamentary phase

[1] This includes also the consultation of social partners

5000 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 law making 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.

In the past, we have criticized that feedback periods were too short. Overall, this has changed. The Federal Ministry of Justice now usually 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. However, regarding some files and projects, feedback periods happened to be inappropriately short, leaving only a few days for a reply. This should be improved in the future.

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)

5000 character(s) maximum

Rules and application of states of emergency (or analogous regimes), including judicial review and parliamentary oversight

5000 character(s) maximum

Regime for constitutional review of laws

5000 character(s) maximum

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#>)

5000 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. Therefore, DPAs standing outside of the legal profession can still supervise and potentially interfere with the processing of client data – a core legal professional activity – thus conflicting with the institutional principles of independence and confidentiality of the legal profession.

Also, still no mitigating legislation has been initiated to at least 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 Section 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.

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

5000 character(s) maximum

C. Accessibility and judicial review of administrative decisions

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

5000 character(s) maximum

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)

5000 character(s) maximum

Rules and practices related to the application by all courts, including constitutional jurisdictions, of the preliminary ruling procedure (Art. 267 TFEU)

5000 character(s) maximum

Implementation of final judgments by the public administration and State institutions and follow-up given to supranational judgments, including decisions from the European Court of Human Rights, as well as available remedies in case of non-implementation

5000 character(s) maximum

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, transparency and dissolution rules)

5000 character(s) maximum

Rules and practices having an impact on the effective operation and safety of civil society organisations and human rights defenders. This includes measures to protect them 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, as well as available remedies

5000 character(s) maximum

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)

5000 character(s) maximum

E. Initiatives to foster a rule of law culture

If there have been developments related to initiatives to foster a rule of law culture, please specify, which (e.g. debates in national parliaments on the rule of law, public information campaigns on rule of law issues, contributions from civil society, education initiatives, etc.)

5000 character(s) maximum

Any other developments related to the system of checks and balances - please specify

5000 character(s) maximum

Supporting document upload

If you would like to submit any supporting document(s) to your contribution, please upload your file(s) here
35faa566-7f56-4e4c-b718-1b9d753b87c9/Beitrag_der_BRAK_zum_RoL_Report_2025_-_24.01.2025.pdf

Contact

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