



## BUNDESRECHTSANWALTSKAMMER

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### **Revision of the Regulations on the operation of the Registry of the International Criminal Court (ICC) in The Hague**

Members of the European Affairs Committee

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The Bundesrechtsanwaltskammer (The German Federal Bar) is the umbrella organisation of the German lawyers' professional self-regulation. It represents the interests of the 28 German Bars and thus of the entire legal profession in the Federal Republic of Germany, which currently consists of approximately 157,000 lawyers, vis-à-vis authorities, courts and organisations at national, European and international level.

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## Position

In accordance with Rule 14 of the Rules of Procedure and Evidence of the International Criminal Court the Court Registry puts in place its own Regulations to govern the organisation and management of the Registry. These regulations contain one section which relates to the activities of counsel before the Court. On 30 March 2012 the Registry presented draft amendments to the Regulations of the Registry and started a public consultation which will close at the end of May 2012.

### I.

Apart from numerous modifications and new provisions, the Registry's draft Regulations presented on 30 March 2012 contain a proposal for a new Regulation 119 *bis*, according to which the Registry shall establish a mechanism to monitor the quality of performance by counsel practicing before the Court. The new Regulation reads:

#### **"Regulation 119 bis Monitoring of performance by counsel**

1. The Registrar shall establish, after consultation in accordance with regulations 120 and 121, a mechanism to monitor the quality of performance by counsel. Such mechanism shall be respectful of the independence of counsel.
2. The Registrar, as appropriate, may make recommendations if it appears that the counsel does not show due regards to ethic in his dealings with the persons referred to in regulation 124."

There is no further explanation to the Registry's draft amendment.

### II.

The German Federal Bar is adamantly opposed to the proposed establishment of a mechanism to monitor the quality of the counsel's services as this kind of control by the Court's Registry constitutes a flagrant violation of the concept of the free exercise of the legal profession. The Charter of Core Principles of the European legal profession and the Code of Conduct for European lawyers also make it clear that the lawyer's independence is a condition for the fulfilment of his professional duties. This independence is equally important to maintain trust in the judiciary as is the impartiality of the judge. The lawyer is an independent agent of the administration of justice (§ 1 Federal Lawyers' Act, BRAO) and must not enter into any ties which jeopardize his professional independence (§ 43a Federal Lawyers Act, BRAO). The lawyer exercises his profession freely, independently, as a member of a self-regulated profession, and acts as an independent adviser and representative in all legal matters, (§ 1 Rules of Professional Practice, BORA).

Introducing a mechanism designed to enable the Court Registry to monitor and control the performance of individual lawyers is a flagrant violation of the independence of the lawyers who practice before the Court, and there is not even the slightest indication as to the considerations that would justify such a serious interference. Instead, the present proposal confirms the ICC administration's tendency towards regarding lawyers merely as dependent service providers. Apart from its existing far-reaching disciplinary powers, this also becomes obvious in the framework of the Court administration's remuneration of counsel.

The present proposal poses a threat to the traditional concept of the independent lawyer who is only committed to the interests of the client and compromises the requirement of a fair trial, an independent defence and the impartiality of the court. It should therefore be strictly rejected.