



Deutscher**Anwalt**Verein

Position Paper

of the German Bar Association prepared by the
Committee on European Affairs

on the targeted stakeholder consultation on the
Rule of Law Report 2025

and on the additional consultation on the single
market dimension in the Rule of Law report

Position Paper No.: 1/2025

Berlin/Brussels, January 2025

Members of the Committee on European Affairs

- Rechtsanwältin Dr. Claudia Seibel (Chair and Rapporteur)
- Rechtsanwalt Prof. Dr. Robin van der Hout, LL.M.,
Brussels (Rapporteur)
- Rechtsanwalt Prof. Dr. Christian Duve, M.P.A.,
Frankfurt/Main
- Rechtsanwalt Prof. Dr. Thomas Gasteyer, LL.M.,
Frankfurt/Main (Rapporteur)
- Rechtsanwalt Prof. Niko Härting, Berlin
- Rechtsanwalt Prof. Dr. Hans-Jürgen Hellwig,
Frankfurt/Main
- Rechtsanwalt Dr. Ulrich Karpenstein, Berlin
- Rechtsanwältin Dr. Anna Oehmichen, Berlin
- Rechtsanwalt Prof. Dr. Dirk Uwer, LL.M., Düsseldorf
(Rapporteur)
- Rechtsanwalt Michael Jürgen Werner, Brussels

Guest

- Rechtsanwältin Dr. Roya Sangi, Berlin (Rapporteur)

In charge in the Brussels Office

- Rechtsanwältin Eva Schriever, LL.M.
- André Kutschmann

Deutscher Anwaltverein
Littenstraße 11, 10179 Berlin
Tel.: +49 30 726152-0
Fax: +49 30 726152-190
E-Mail: dav@anwaltverein.de

Büro Brüssel
Rue Joseph II 40, Boîte 7B
1000 Brüssel, Belgien
Tel.: +32 2 28028-12
Fax: +32 2 28028-13
E-Mail: bruesseleu@anwaltverein.de
EU-Transparency Register ID number:
87980341522-66

www.anwaltverein.de

The German Bar Association (Deutscher Anwaltverein – DAV) is the professional body comprising about 60.000 German lawyers and lawyer-notaries in 253 local bar associations in Germany and abroad. Being politically independent, the DAV represents and promotes the professional and economic interests of the German legal profession on German, European and international level. The DAV is registered in the Lobby Registry for the representation of special interests vis-à-vis the German Bundestag and the Federal Government under register number R000952 and in the EU Transparency Register under ID number 87980341522-66.

2025 Rule of Law Report - targeted stakeholder consultation

Question on horizontal developments

Key horizontal elements the DAV wishes to address concerning the access to justice and the protection of professional secrecy in EU legislation.

Access to justice

In October 2022, the 8th package of EU sanctions against the Russian Federation was adopted which contains severe restrictions of providing legal services. While we support the political aim of these sanctions, the concrete legal measures jeopardise the access to justice, as lawyers can no longer provide their services without risking violating rules on sanctions and even committing criminal acts. Therefore, numerous lawyers and law firms would rather refrain from providing legal advice in Russia-related contexts altogether, creating a gap in access to justice. Lawyers have to fear being considered as violating the sanctions regime even if objectively permitted to act, because the legal framework has meanwhile reached an impermeable level of complexity and lack clarity, transparency and comprehensibility.

The exceptions to the prohibition of legal advice require a practically impossible assessment because it is uncommon, in most cases not practically possible and in hardly any case legally justifiable to distinguish between legal advice (in non-contentious matters) and legal representation. The DAV therefore hopes that the European Court of Justice will reject the provisions concerned.

Protection of professional secrecy at EU level

On a European level, in sharp contrast to the lack of empirical evidence suggesting anything to that effect, the ever-escalating spiral of anti-money laundering legislation has increased the supervision of the legal profession and professional secrecy has been severely called into question during the legislative proceedings leading to the new Anti-Money Laundering Regulation. Professional secrecy has also been called into question in several cases related to tax advice, more precisely to the European DAC-Directives (cases [C-694/20](#), [C-632/22](#), [C-432/23](#)). We welcome that the European Court of Justice has repeatedly upheld the importance of professional secrecy. The originally planned SAFE proposal even went so far as to regulate clients' tax planning via lawyers and to create an additional admission requirement for lawyers.

Lack in the protection of the professional secrecy in criminal investigations in Germany

In Germany, the protection of professional secrecy is laid down in several laws which are not always clear and sometimes contradicting. While the right to refuse to testify pursuant to section 160a of the German Code of Criminal Procedure (StPO) in conjunction with section 53 para 1 no. 3 StPO and the absolute ban on the use of evidence collected in violation of these rules apply equally to defence counsel and other lawyers, Section 160 para. 5 in conjunction with Section 97 para 1 no. 3 StPO provides for a lower level of protection for the seizure of evidence for lawyers who are not acting as defence counsel. This discrepancy has created a threat for professional secrecy in Germany and recent case law of the ECHR in the Jones Day decision has failed to balance the interest between the effectiveness of criminal prosecution and criminal defence (cf. [AnwBl 2024](#) on the Jones Day Case of the ECHR). The Convention for the Protection of the Profession of Lawyer of the Council of Europe, which will be adopted in 2025, might create the need for clarification by the German legislator.

Guaranteeing the principles of the rule of law and access to justice also requires financial resources by the Member States; this also applies to projects such as European Lawyers in Lesvos that assure the safeguarding of fundamental rights, including pro-bono legal advice, filling the lacuna between the commitment of the

Member States to respect fundamental rights of asylum applicants and the actual lack of safeguards and legal assistance.

I. Justice System

1. Please provide information on measures taken to follow-up on the recommendations received in the 2024 Report regarding the justice system (if applicable). 5000 characters maximum

We took note of the European Commission's findings for Germany in the 2024 Rule of Law Report according to which some progress has been made "on continuing efforts to provide adequate resources for the justice system".

The digitalisation of the German justice system and adequate staffing remain challenging though. The DAV continues to ask for the strengthening of the judiciary in terms of both personnel and funding from the federal level. We also call for greater support and efficiency of the German Laender in implementing the digital challenges in financial and practical terms into a coherent system.

A. Independence

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

Judicial Selection Committees

The DAV has repeatedly criticised that the appointment of judicial selection committees relies on criteria of highly political nature (cf. position papers [2/24](#); [4/23](#); [50/2022](#)). The same applies to the selection of judges.

The Judicial Selection Committees should be resilient and reflect the various legal professions. They should therefore be composed of experts, and their proposals should be binding. The diversity of the legal professions should be adequately represented in order to preserve the independence of the panel and the neutrality of its decisions.

Furthermore, a legal definition of the relevant selection criteria is advisable so that selection decisions become more transparent.

Moreover, it would be desirable if - similar to the Anglo-American system - permeability, i.e. an easier change of career between the professions of lawyers and those of members of the judiciary were possible. In the case of the bar and professional courts, the interaction of professional judges and bar judges has proven to be very positive.

Resilience of the Constitutional Court:

The German Bar Association welcomed the adoption of the law which constitutionalises some structural elements of the German Federal Constitutional Court on 19 December 2024, cf. DAV statement [58/24](#)). The DAV has actively contributed to the initiative and participated in an [expert hearing before the Legal Affairs Committee](#) of the German Bundestag as well as through a detailed [position paper](#). The adopted law elevates rules that had previously been regulated by ordinary law (Bundesverfassungsgerichtsgesetz - Federal Constitutional Court Act) with a mere majority of the votes cast to the constitutional level with the consequence that amendments to it will from now only be possible with a two-thirds majority vote in both chambers of the Federal Parliament. These rules include:

- the status of the Federal Constitutional Court as constitutional body
- the direct binding force of the decisions of the Federal Constitutional Court for public authorities
- the number of two senates and their composition of eight judges each
- the term of office of 12 years without the possibility of re-election
- and the determination of the age limit for constitutional judges.

If one chamber of Parliament should be blocked for more than three months after a candidate has been formally suggested by the Constitutional Court, a mechanism enables the other chamber to carry out the vote (so called “Blockadelösungsmechanismus”).

The DAV regrets that two aspects – despite their importance in shielding the Constitutional Court from political influence – have not been incorporated into the German constitution:

- the requirement of a 2/3 majority for the election of judges. This requirement has prevented politically one-sided appointments in the past, but, unless prescribed by the constitution, could be abolished by a simple majority in Parliament;
- the fact that amendments to the Bundesverfassungsgerichtsgesetz (Federal Constitutional Court Act) – at least in those areas in which the rights and duties of the Bundesrat are affected – should only be possible with consent of the Bundesrat. This would be consistent with the court's role in maintaining the balance of power between the Federal Government and the Länder and prevent a hijacking of the Constitutional Court by the Government.

Resilience of the Judiciary in the federal states

The DAV has called, and continues to call, for further safeguards protecting the Constitutional Courts and other Courts in the federal states (Länder) against possible attempts to impair judicial independence (cf. DAV [statement](#) on 17 September 2024). The German Bar Association will address this topic in workshops and at the Annual Conference of the German Bar Association 2025 in Berlin ([Deutscher Anwaltstag](#), 4-6 June 2025) with a focus on “Strengthening the Rule of Law - Preserving Freedom”.

“Loyalty to the Constitution” as necessary prerequisite for jurors/lay judges

The Federal Government wants to exclude persons with anti-constitutional convictions from the office of professional and lay judge by amending the German Judges Act (DRiG). The DAV welcomes the underlying idea of the [draft law](#) according to which loyalty to the constitution (Verfassungstreue) is a necessary condition for the appointment of lay judges, just like it already is for professional judges, cf. [statement](#) of 17 January 2024 and position paper [8/23](#). In its statement the DAV proposes the introduction of a positively formulated but equally mandatory requirement instead of a reason for exclusion:

‘Only those may be appointed to the office of a lay judge who offer the guarantee that they will at all times honour the free democratic constitution as provided for in the German Constitution.’

3. 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).

The DAV recommends clarifying the set of rules applicable to the return of former members of the judiciary after pausing in such functions while holding positions in the Government or Parliament. This includes the question under which conditions extremist statements made during a parliamentary term can have consequences when subsequently resuming judicial service (cf. DAV Position Paper [50/2022](#)).

Sensitivity for these issues has increased in recent years. In April 2024, a reform of the Federal disciplinary law has become effective according to which civil servants with anti-constitutional convictions shall be removed from public service more effectively. The new rules allow federal disciplinary authorities to initiate all measures including the removal of persons from civil service themselves without having to conduct administrative court proceedings. The DAV has welcomed the reform (cf. [statement](#) of 17 January 2024), but also expressed concerns as the respective civil servant now bears the burden of justifying her or his acts in a lawsuit challenging the removal from office. This makes it effectively difficult or even impossible for the civil servant to counter unlawful instructions, which is, however, the duty of every civil servant.

4. Promotion of judges and prosecutors (incl. judicial review).

Our observations in the previous contributions remain valid.

5. Allocation of cases in courts.

6. 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).

Article 97 GG guarantees the objective and personal independence of judges. German law does not know a specific body tasked with safeguarding the independence of the judiciary. Courts in charge of disciplinary proceedings against judges or complaints from

judges about interference with their independence are always composed exclusively of judges.

7. 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).

8. Independence/autonomy of the prosecution service.

Reform of the right to give instructions to public prosecutors

As a reaction to the European Court of Justice judgment of 27 May 2019, OG / PI in joined cases C-508/18 and C-82/19 PPU, the German government presented a draft bill in 2024 according to which the right of the Ministers of Justice to issue instructions to the public prosecutor's offices should be regulated more precisely. In its position paper [34/2024](#) the DAV welcomed the fact that according to this draft law the right to issue instructions would be retained in principle, as under the German constitution the public prosecutor's office is part of the executive power rather than the independent judiciary. The DAV also welcomed that the draft law aimed to make the instructions more transparent and that instructions to the public prosecutor's office would need to be recorded and justified in writing. This enables concerned public prosecutors to raise objections. In the DAV's opinion it is important that non-judicial considerations must not have any influence on instructions given to public prosecutors (cf. DAV statement [PM 19/24: Weisungsrecht – Gute Ansätze des BMJ](#)).

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

According to § 1 of the Federal Lawyers Act (Bundesrechtsanwaltsordnung, BRAO) lawyers are independent agents of the administration of justice. An essential prerequisite for such independence in Germany is the self-administration of legal professionals by means of bar associations, which in turn are subject to (though limited) legal supervision by the competent federal state ministries of justice. The essential values and duties of lawyers are secured by a system of self-administration of regional Bars, regrouped under the German Federal Bar since 1959 in addition to the German Bar Association (DAV). The DAV has represented the interests of German Lawyers in

total independence via local bar associations, membership of which is voluntary, since 1871. Perceived efforts to limit the scope of self-administration by centralising the AML supervision have not been implemented. This has been welcomed as the role of the bar associations has thereby not been eroded but acknowledged.

Independence of the individual lawyer as one of the core values of the legal profession has been very recently strengthened by the ECJ in the Halmer case ([C-295/23](#), cf. [statement](#) of the DAV of 19 December 2024). The judgement underlines that the independence of the legal profession as guardian of the rule of law needs to be protected and that Member States have a wide margin of discretion in doing so.

The fundamental role of lawyers in maintaining the rule of law needs to be considered in legislative acts which have an impact on independence and professional secrecy ([Recommendations of the German Bar Association to Commission, Council and European Parliament 2024](#)).

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

B. Quality of justice²

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

Accessibility of courts in environmental matters

Aiming to fulfil EU and international legal obligations – particularly those stemming from the Aarhus Convention – the German parliament is currently discussing a draft law to amend the Environmental Remedies Act (UmwRG). As stated in its position paper 32/24, the DAV welcomes this development in general but criticises certain parts of the draft, in particular its scope: Access to justice shall only be granted when enumeratively listed environmental provisions are violated. The catalogue of legal acts listed enumeratively is incomplete, should not be limited to Union acts and is already outdated at the beginning of 2025, a few months after the draft law was published. As European legislation is highly dynamic, a static catalogue in German law would need to be updated through national

laws regularly and within nearly impossible time frames. The German Bar Association therefore recommends following the scope in the alternative wording proposed by the Ministry, which contains a general clause.

Digitalisation

The digitalisation of the German judiciary continues to progress. The “Law on the further digitalisation of justice” has been adopted and entered in force in July 2024. The law introduced legal adjustments in the area of electronic legal communication and electronic file management.

From 1 January 2026, all newly created files in the justice system must be kept electronically and hybrid file management for existing files will be introduced.

The law, moreover, provides that defendants, lawyers and the public prosecutor’s office representative will be able to participate in the main hearing in criminal appeal proceedings via video conference upon corresponding requests. In its position paper [78/23](#) the DAV welcomed that the law grants defendants in custody the right to take part audio visually in the hearing of the appeal. However, the DAV criticised the fact that the law also provides for hybrid appeal hearings in which some parties to the proceedings are present in person and some are only connected audio visually. The parties connected may suffer a psychological communication disadvantage.

Another positive and overdue development: The introduction of an electronic means of submission of applications to the Federal Constitutional Court entered into force on the 1st of August 2024 (cf. DAV position paper [54/23](#)).

Recently the introduction of a unified Cloud system for the justice system has been [announced](#).

Court Fees and Legal Aid

Depending on the value of the matter, court fees in Germany can be prohibitive. Their level has increased over time because (i) there is the concept that the cost of the judiciary should, at the least to some considerable extent, be financed through court fees, and (ii) to this effect court fees have been raised in parallel to statutory lawyers’

fees. This should be reconsidered as the judiciary is neither a dispensable nor a voluntary governmental service but guarantees the rule of law and is a key function and fundament of a modern democratic state and society.

Court fees should be set at a level that does not deter citizens, companies and organisations from bringing a case to court. Even with higher dispute values, court fees should not be prohibitive. The justice system does not need to be financially self-supporting and viable. To the contrary, it should be borne to a large extent from the tax revenues of the state.

The [CEPEJ evaluation report](#) published in 2024 illustrates the link between the percentage of the GDP spent for the judicial system and the efficiency thereof. We encourage the upcoming German government to bear this in mind and to reverse the trend of budget cuts.

Legal aid is often criticised as being inadequate. In order to guarantee access to justice for all citizen, it is therefore crucial to continuously provide for an adequate funding of the legal aid system.

Guaranteeing a functioning legal aid system also includes the adequate remuneration of the lawyers providing these legal services. The German legal profession has been calling for a long time for an adequate rise of the statutory fees for lawyers and urges the outgoing legislator to adopt the draft law amending the Act on the Remuneration of Lawyers (Rechtsanwaltsvergütungsgesetz) , cf. position paper [46/24](#) by the German Federal Bar and the German Bar Association asking for a linear rise of the statutory fees and some structural amendments of the Act on the Remuneration of Lawyers. It remains to be seen whether this overdue adjustment will still be adopted by Parliament ahead of the general elections which will take place on 23 February 2025.

12. Resources of the judiciary (human/financial/material³), remuneration/bonuses/rewards for judges and prosecutors, including observed changes (significant and targeted increase or decrease over the past year).

As already mentioned, the need to improve the resources of the judiciary persists. The anticipated wave of retirements in the judiciary during the next decade will remain a challenge. On the other hand, chambers at a number of regional courts have stated during the past years that their workload is constantly decreasing. Moreover, in the past years, it could be observed that a number of higher regional courts (Oberlandesgerichte) have accelerated the scheduling of oral hearings as well as the delivery of judgments. Such developments need to be monitored.

As already reported last year, bottle necks are largely found in the shortage of qualified support staff of courts and public prosecutors. The task thus remains to increase the number of staff positions with adequate remuneration, and to organise and provide efficient if not demanding training.

The DAV welcomed that in the framework of the digital pact (Digitalpakt) the federal government has started to provide a total of up to 200 million Euros for the years 2023 to 2026 and has committed itself to concrete goals in its digital strategy (cf. [Digitalstrategie](#)). The DAV calls upon the new government to maintain this funding. However, also the German Laender will have to raise their contributions to the justice system.

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

14. 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)

Audio(visual) documentation of criminal court proceedings

Unlike most other countries, criminal trials are generally not recorded. No official minutes of witness statements exist. As already raised in the 2023 Rule of Law Report on Ger-many (see page 1, abstract), the Federal Government presented a draft bill introducing digital audio documentation of criminal court proceedings, but this bill has been stalled in the mediation committee between the Bundestag and Bundesrat. The DAV has been vehemently pursuing this project of an audio and even visual

documentation of court proceedings for many years and, among other things, has argued in press release [06/24](#) why the documentation of criminal proceedings is indispensable (transparency, accuracy, European standard, modernity, interests of the witnesses, increased efficiency of the judicial proceedings). This important project needs to be passed by the future government, with Germany still lacking behind long-standing European standards.

Digitalisation of notary services

While regretting the partly too generous implementation deadlines, the DAV welcomes efforts to digitalize notary services in Germany (cf. DAV position paper [88/24](#)). It is now possible to handle real estate contracts fully digitally.

15. 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)

On the level of the higher regional courts a working group has been formed for the use of AI in the justice system. Its objective is to examine the use of AI and algorithmic systems in the judiciary, without replacing or restricting the human judge in its decision-making task, independence and impartiality. The fundamental rights of citizens must be upheld and must not be restricted by the use of AI. A supportive use of AI and algorithmic systems is technically conceivable in highly standardized proceedings (legal aid and cost decisions), where decisions by a judge are less frequent.

The participation of the legal profession in this debate and the development of a uniform standard is desirable.

In addition, a type of dedicated ChatGPT is currently being developed for the courts under the title "Generative language model of the judiciary" (e.g. "FRAUKE" in Hessen). Bavaria and North Rhine-Westphalia have developed and tested a language model specifically tailored to the needs of the judiciary in a research project as well.

As part of the current developments on the regulation of artificial intelligence at European level, the Federal Ministry of Economics and Climate Protection (BMWK) has

asked the DAV for examples of applications for the upcoming work on guidelines on the definition of AI systems and prohibited practices in AI in accordance with the AI Regulation. The DAV has contributed a comprehensive analysis in its position paper [67/24](#). The DAV has furthermore submitted a position paper within the framework of the multi-Stakeholder Consultation for Commission guidelines on the application of the definition of an AI System and the Prohibited AI Practices Established in the AI Act (cf. position paper [86/24](#)).

16. 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.

Please refer to the observations in our contribution to the previous Rule of law report (DAV position paper [02/24](#) and to the question on the specialisation for commercial cases below.

C. Efficiency of the justice system

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

Generally, we observe a rather positive trend with regard to the length of proceedings. This is particularly the case for civil cases (see in this regard already our contribution to the previous report).

Other—please specify

Need for a fundamental rights compliant data retention model (“Quick Freeze”):

The DAV regularly emphasizes the need to protect privacy, data protection and data economy. We therefore also welcome the fact that the Federal Ministry of Justice proposed a [draft law](#) providing for a quick freeze procedure for access to data in criminal proceedings in October 2024. In contrast to a [proposal](#) submitted by the Bundesrat, which would collect the traffic data of millions of citizens not blamed for any

faults, the quick freeze approach would avoid disproportionate mass surveillance, possible profiling and a severe encroachment on civil rights (cf. [Statement of the German Bar Association](#) of 22 November 2024).

“Surveillance summary” and Liberties Commission

The DAV has long been calling for a “Überwachungsgesamtrechnung”, a kind of surveillance summary which analyses all surveillance measures in place and their efficiency and combined effects. The DAV was a [project](#) partner of Ludwig Maximilian University in Munich between 2021 and 2024 and carried out their own surveillance summary (cf. [study](#)). We welcome that the German government intends to publish their own surveillance study, which had been announced in the 2021 [Government Coalition Agreement](#) and which has thereafter been carried out by Max Planck Institute in 2024, before the general election in February 2025 (cf. [DAV position paper ahead of the 2025 general elections](#)). The DAV also welcomes the recent announcement of the German Federal Minister of Justice to establish a long-awaited independent Liberties Commission which should advise the legislator on the actual necessity of new surveillance or other investigative measures and its impacts. We hope that this will lead Government to resume one of its key responsibilities, now often shifted to Constitutional courts: trimming laws to a level that is just compatible with the Constitution and the ECHR and honestly balancing the interests of enforcement against civil liberties already during the legislative process when drafting new laws.

Need for equality of arms during mobile phone searches

The DAV criticises the fact that the possibility of accessing data contained in mobile phones is used by [state agencies and investigators] for almost all offences, without a specific legal basis for this measure (as reported by DAV Criminal Law Committee member Gül Pinar and further panellists during [Deutscher Juristentag 2024](#), cf. also Dr. Mayeul Hiéramente in [LTO](#) and ECJ [C-548/21](#)).

The German Code of Criminal Procedure does not provide any clear legal conditions for access to smartphones, laptops etc. In order to guarantee the defendant an effective legal remedy and protect his or her rights, the data to be searched should be precisely specified in order to avoid excessive data collection. Clear search parameters could make the process more transparent. When reviewing the data of a mobile device, for

example, the apps to be viewed, the time period to be viewed and the relevant communication parties would have to be clearly defined in advance. This would protect the defendant from excessive scrutiny of their personal data, going beyond the investigative requirement. Although the defendant has the right to apply for a court decision against the search, there is currently no standard which ensures a suspensive effect of such court proceedings for access to the data. The review should only begin after a judicial review and the defendant should have the right to be present when the data is reviewed by the investigating authorities. The defence must have early and comprehensive access to the digital evidence as well as the software tools used in order to ensure equality of arms and a fair trial.

II. Anti-corruption framework (Fußnote 6)

18. Please provide information on measures taken to follow-up on the recommendations received in the 2024 Report regarding the anti-corruption framework (if applicable).

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

19. 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.

There is concern about organisational and structural deficiencies at the German delegated European Public Prosecutors at the EPPO. Those deficiencies threaten to jeopardize the right to a fair hearing, the right to a fair trial and the requirement to expedite detention proceedings, cf. DAV position paper [76/24](#).

The DAV notes that the European Delegated Prosecutors' file management and granting of access to the file do not always meet the requirements of the German Code

of Criminal Procedure, nor the rights of the accused to be protected under the case law of the ECtHR, nor the constitutionally established right of access to a complete file.

Furthermore, due to the nationwide jurisdiction of the European Delegated Prosecutors, proceedings are not necessarily conducted in the same court district in which the accused resides and in which the indictment will later take place. This results in persons being detained many kilometres away from their home and family, frequent prisoner transports and makes it difficult for the accused to maintain contact with their family. In practice, the risk of absconding is also often assumed almost automatically and pre-trial detention is ordered for disproportionately long periods.

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

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

B. Prevention

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

23. 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).

24. 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).

→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.).

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

26. 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 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.

C. Repression

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

28. Official data on the number of investigations, prosecutions, final judgments, and the application of sanctions for corruption offences (differentiated by offence if possible)⁷. Please indicate whether the cases: involve legal persons; are related to the implementation of EU or national funds⁸; involve high level corruption. Please indicate which data is publicly available and how policy-making is informed by the data.

29. 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).

30. 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.

Other –please specify

III. Media pluralism and media freedom

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

A. Media authorities and bodies

- 32. Measures taken to ensure the independence, enforcement powers and adequacy of resources (financial, human and technical) of media regulatory authorities and bodies.**
- 33. Conditions and procedures for the appointment and dismissal of the head / members of the collegiate body of media regulatory authorities and bodies.**
- 34. Existence and functions of media councils or other self-regulatory bodies.**

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

35. Measures taken to ensure the fair and transparent allocation of state advertising.

36. 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 licences, company operation, capital entry requirements, concentration, and corporate governance**

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

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

38. Rules and practices guaranteeing journalist's 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.

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

40. 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).

41. 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.

Other –please specify

Regulatory need: social media as a threat to democracy and the rule of law

It becomes increasingly apparent that social media platforms and their algorithms prioritise economic and other private interests over potential consequences for democratic processes and society as such.

The Digital Services Act of the EU is an important step into the right direction towards more algorithmic transparency and accountability. The EU must ensure its entire and continuous enforcement and, if necessary, adjustment.

IV. Other institutional issues related to checks and balances

42. 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).

A. The process for preparing and enacting laws

43. Framework, policy and use of impact assessments and evidence based policy-making, stakeholders'10/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.

The time limits granted to stakeholders during legislative consultation processes have slightly improved. However, there are still numerous cases with deadlines of only a few days even with regard to complex legislative drafts. We call upon the new Parliament to further improve the consultation process in order to strengthen the quality of law-making. For further details please see our contribution for the previous report (DAV position paper [2/24](#)).

- 44. 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).**
- 45. Rules and application of states of emergency (or analogous regimes), including judicial review and parliamentary oversight.**
- 46. Regime for constitutional review of laws.**

B. Independent authorities

- 47. 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 institutions¹¹**
- 48. 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.**

C. Accessibility and judicial review of administrative decisions

- 49. Transparency of administrative decisions and sanctions (incl. their publication and rules on collection of related data).**
- 50. 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).**

The DAV commented on the need to provide for legal remedies against decisions on admissibility in extradition law in its [Position paper 80/2024](#) on the Draft reform of the Act on International Mutual Assistance in Criminal Matters (IRG). The creation of an appeal against extradition detention by legislative means is necessary as currently there are no legal remedies against a decision on the admissibility of an extradition. While the only option is directly to launch a constitutional complaint, coupled with a request for interim relief, invoking fundamental and human rights, to the Federal Constitutional Court, this complaint and request does not suspend the enforcement of the extradition decision (see as an illustrating example the recent case of the German Constitutional Court Bundesverfassungsgericht of 28 June 2024 - 2 BvQ 49/24 regarding a non-binary

person who was extradited to Hungary). The current legal situation does not appear to be compatible with the human right to effective legal protection (Article 19(4) of the Basic Law, Article 13 of the ECHR, Article 47 of the Charta).

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

Our observations in the previous report remain valid.

52. 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.

Effective enforcement of administrative judgments against public authorities:

In the assessment of the DAV, further (legislative) steps improving the enforcement of administrative judgments against public authorities are necessary. Several examples have shown that these judgments are not effectively enforced (eg. the non-implemented diesel driving bans following a ruling by the BayVGH (Az.: 22 C 18.1718; CJUE judgment of 19 December 2019, C-752/18); the current rules only provide for the determination and the execution of coercive fines. This is not sufficient; a legislative proposal providing for additions and clarifications has not been passed yet ([BT-Drs 20/2533](#)).

Need for a legal framework for the use of civilian informants in criminal investigations (Vertrauenspersonen)

Germany has already been condemned several times by the ECtHR for the unlawful use of informants, most recently for violating the requirement of a fair trial under Art. 6 para. 1 sentence 1 of the European Convention on Human Rights in 2020 (decision of 15 October 2020, ref. 40495/15, 40913/15 and 37273/15). Nevertheless, a legislative proposal submitted by the German government has not yet been adopted. The DAV has welcomed the fact that the use of informants is to be given an explicit legal framework for the first time and in particular, that the judicial reservation would remain

untouched (cf. DAV [press release](#) on 13/03/2024, DAV position papers [1/24](#) and [35/21](#), the latter including a legislative proposal for a future regulation). The DAV is calling for the future regulation on the use of informants to include additional grounds for excluding civilian informants, for example if they have a criminal record. The maximum deployment period as well as the informant's remuneration must be regulated and limited more precisely in order to prevent overly close ties and economic dependence.

D. The enabling framework for civil society

53. 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.)

54. 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.

More and more lawyers become victims of threatening behaviour or aggression. A [survey prepared by the CCBE](#) and carried out in Germany by the German Federal Bar (BRAK) in 2024 shows that in the last two years 55.1 % of the German lawyers who participated in the survey experienced such a behaviour.

One reason for this phenomenon is that lawyers are often identified with their clients and/or their clients' behaviour, which clearly contradicts one of the core tasks of lawyers: granting access to justice. In Germany there has been a widely mediatized case of a migration lawyer who had given legal advice to the assassin of Solingen, cf. [statement by the DAV](#)).

The DAV is optimistic that the future Council of Europe Convention on the Protection of the profession of lawyer will also play an important role with regard to preventing threats against lawyers.

55. 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).

E. Initiatives to foster a rule of law culture

56. 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.).

Other – please specify

The abrupt termination of the Admission Programme (Bundesaufnahmeprogramm) for people from Afghanistan in December 2024 has met harsh criticism as not compliant with the rule of law principles (cf. [joint statement](#) by the DAV and other organisations from December 2024, from [January 2025](#) after the abrupt termination of the programme as well as the [statement](#) by the DAV in June 2024).

The German government had set up the programme in 2022 in order to evacuate endangered Afghans who had advocated for human rights, democracy and the rule of law more effectively. Subsequently it has not been implemented with the necessary rigour and thoroughness, which need to be remedied. Following registration in the programme, numerous Afghans including former employees of the German government went to Pakistan for evacuation. There many of them, more than 3000 in January 2025, are still waiting for the required visa papers which are only slowly provided. In January 2025, Pakistani security authorities have even begun deporting the applicants to Afghanistan.

Germany must fulfil its responsibility towards these people who have stood up for the rule of law. but must now live in fear for their life in the light of potential forced return to Afghanistan.

2025 Rule of Law Report - additional consultation on single market dimension

1 Specialisation (of judges/specific courts/chambers within courts) and training for the judiciary to deal with commercial cases.

(This question complements the questions in the original questionnaire related to quality and efficiency of justice)

The law for “Strengthening Germany as a Place of Justice” (Gesetz zur Stärkung des Justizstandortes Deutschland) has been adopted and [published in the Official Legal Journal](#) (Bundesgesetzblatt). The Law provides for the introduction of commercial courts and the court language English in civil justice. The DAV had been calling for the introduction of English as a court language for many years, cf. DAV position paper [46/10](#)) and therefore welcomes the introduction of commercial courts in principle, but sees the necessity for further actions in order to strengthen the attractiveness of the German law (cf. commercial courts in Germany, [Journal of International Business Law of the DAV](#)).

2 Alternative dispute resolution and mediation

(This question complements the questions in the original questionnaire on quality and efficiency of justice)

3 Measures for the prevention of corruption in relation to the issuing of official permits (e.g. related to environment, energy and various types of construction)

(This question complements the questions in the original questionnaire on the prevention of corruption)

4 Reporting on the use of digital technologies to enhance transparency and oversight in public procurement

(This question complements the questions in the original questionnaire on the prevention of corruption)

There have been no significant developments since January 2024. The electronic submission of tenders has been mandatory since 2018. Electronic communication with

the awarding chambers works very differently, depending on the concrete awarding chamber concerned.

5 Safeguards to ensure legal certainty, the stability of the legal framework and non-discrimination.

(This question complements the question in the original questionnaire on rules and use of fast-track and emergency procedures, linked to the overall process for preparing and enacting laws)

6 Safeguards to ensure the effective independence of supervisory and regulatory authorities with a direct impact on economic operators

(This question complements the questions in the original questionnaire on the independence, resources and powers of national human rights institutions, ombudspersons, equality bodies and supreme audit institutions)

7 Respect of the good administration principle (including the obligation of the administration to give reasons for decisions)

(This question complements the question in the original questionnaire on transparency of administrative decisions)

8 Safeguards (other than judicial review) regarding decisions or inaction of administrative authorities, including remedies

(This question complements the question in the original questionnaire on judicial review of administrative decisions)

9 Any other points you would like to raise related to the single market dimension in the context of the Rule of Law Report

We welcome the approach taken by the European Commission to reflect on the single market dimension of the Rule of Law and, as a consequence, to include this dimension in its annual Rule of Law Report. The EU is a single market and a *Rechtsgemeinschaft* with a high rule of law standard in Art. 2 TEU, which is based on the depth of integration and the geographical proximity of Member States as well as the concept of mutual trust and mutual recognition. As a result, problems in one country will affect others quickly.

The rule of law principle being a fundamental precondition for the functioning of the single market, one has to further analyse the interdependencies in order to strengthen both – the principles of the rule of law as well as the functioning and the development of the single market. The rule of law cannot be regarded as a purely economic factor.

Mailing List:

Germany

Auswärtiges Amt
Bundesministerium für Justiz

Europe

European Parliament

- Committee on Legal Affairs (JURI)
- Committee on Civil Liberties, Justice and Home Affairs (LIBE)

European Commission

- Directorate-General for Justice and Consumers (DG JUST)

Permanent Representation of the Federal Republic of Germany to the EU
Judicial officers of the representations of the German Bundesländer to the EU
Council of Bars and Law Societies of Europe (CCBE)